

DAILY REPORT

Jury Awards \$417K Despite Facebook Posts of Injured Man Running Race

By Greg Land

April 23, 2018

The lawyer for a young man rear-ended when he stopped for a stalled vehicle on Interstate 285 felt good about his trial: The defendant admitted negligence, and medical evidence backed up claimed injuries of head trauma and a fractured hip.

But things appeared to go sideways when the defense produced Facebook photos of a chipper plaintiff working out and coated with mud as he competed in a 2017 obstacle course race.

There was also a report from emergency medical technicians indicating plaintiff Johnny Nguyen, 23, had been drinking, but he was not cited for driving under the influence and blamed any disorientation on the brain injury.

In the end, a DeKalb County jury nonetheless delivered Nguyen a post-apportionment award of \$417,454 on April 19.

Jimmy Rice and [James A. Rice Jr.](#) P.C. associate Kimberly McGowan wrested a post-



Kimberly McGowan (left) and James Rice Jr.

apportioned \$417,454 award from the DeKalb County jury.

Rice said the Facebook pictures of Nguyen competing in a Tough Mudder race took him by surprise.

"It was one of those times when when you think the trial is going well," Rice said.

It was during defense questioning of Nguyen when defense attorney Jay Patton, noting the young man had returned to playing tennis and basketball, asked whether he had resumed running.

Nguyen said "no," recalled Rice, "and Jay said 'Are you sure?' Johnny said 'no, no,' and Jay went to his box and pulled out these pictures."

“It was one of those times when the jurors put down their notebooks and really start to pay attention,” Rice said

Defendant Audria Leverett was represented by Patton of [Taylor English Duma](#) and associate Stephanie Cappezuto.

Patton said in an email that they are reviewing their options and have not decided whether there will be an appeal or other posttrial litigation.

Patton recalled the mud-laden obstacle course as a Spartan Race and said the Facebook postings would have packed a bigger punch if Nguyen claimed more serious physical injuries.

“On a back injury case, running a Spartan race would have been damning,” said Patton. “In our case, he sustained a traumatic closed head injury and testified to continuing memory issues. He also sustained small fracture (non-displaced) to his hip bone that he seemed to recover well from.”

The photos, he said, “showed him enjoying life. He is an athletic person, and it was consistent with who he was.”

According to Rice and trial [documents](#), the crash happened in January 2016 when Nguyen’s Honda Accord was stopped behind a stalled vehicle in the left lane of I-285 near LaVista Road. Leverett’s Honda Civic plowed into Nguyen’s car.

Nguyen’s was taken by ambulance to Atlanta Medical Center and treated for a brain hemorrhage and hip fracture.

Nguyen sued Leverett in DeKalb County State Court.

According to his pleadings, Nguyen accrued more than \$76,000 in medical bills and lost more than \$6,000 in wages.

Prior to trial, Rice said the highest Nguyen’s underinsured motorist carrier, State Farm, would offer was \$50,000. The coverage limit was \$200,000, and Nguyen offered to settle for \$175,000, which was declined.

Trial started April 16 before DeKalb County State Court Judge Johnny Panos.

At trial, the defense argued that Nguyen should have activated his emergency four-way flashers when he stopped. There was also some dispute at trial as to whether Nguyen had hit the car in front of him or was knocked into it.

Rice said the jury took over three hours to award \$430,365, apportioning 3 percent of the negligence to Nguyen, for a total award of \$417,454.

In conversation afterward, Rice said jurors told him they had been “worried” by the Facebook postings, and did think he had hit the car in front of him first.

“That’s why they gave him 3 percent negligence,” Rice said.