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DAILY REPORT

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'Eggshell' Plaintiff Nets \$700K for Minor Bumper-Bender

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The attorney who landed a \$700,000 award for a man who developed back pain after driving away from a low-speed, minimal damage car crash said he went into trial prepared for a defense verdict.

“I thought it was 85 percent that we were going to get a defense verdict,” said James Rice Jr., particularly given that his client had previously injured his back—a fact he withheld from his treating physicians—and that he told the jury he was “95 percent better.”

“That actually helped his credibility,” said Rice. “And his credibility needed a lot of help.”

Rice said he and James A. Rice P.C. associate Kimberly McGowan staged a mock trial to gauge their case, and it not only resulted in a defense verdict, but “they wanted to award attorney’s fees to the defendant.”

That’s when he decided to argue that his client, Shin Hee Cho, was an “eggshell plaintiff” and that even a minor accident was enough to cause serious injury.

The award has already been paid, and lead defense attorney John Alday pointed out



(John Disney/Daily Report)

James Rice, Atlanta attorney

that Cho had accrued more than \$500,000 in medical expenses for four surgeries since the accident.

“[Rice] asked for \$1.2 million and they awarded \$700,000, so that’s less than \$200,000 in pain and suffering—that’s not really too much,” said Alday, a Waldon Adelman Castilla Hiestand & Prout partner.

“It turned out to be a result we could live with; that’s one reason why my client’s insurer just paid the judgment,” said Alday, who defended the case with associate Nnena Opara.

The accident happened in 2015 when Cho's Hyundai was struck from behind by a Ford pickup truck driven by Christine Upton, 68.

Cho, 36 and in "very good shape," according to Rice, told a police officer at the scene that he was "fine." Both he and Upton drove away after Upton was cited for following too closely.

The next day, Cho's neck was hurting and he consulted a chiropractor for neck pain. He underwent a microdiscectomy, a procedure to remove herniated disc tissue, but that failed to relieve the pain; he ultimately had two more back surgeries and one neck surgery.

In 2015, Cho sued Upton in Gwinnett County Superior Court.

Cho's insurer paid its \$100,000 limit, and Rice demanded the \$1.25 million limit of Upton's State Farm umbrella policy.

State Farm declined to offer anything, then offered \$100,000.

"They knew we couldn't accept it because his [medical bills] were already way higher than that," said Rice. "We sent an offer of judgment for \$700,000—ironically, the amount of the verdict—and they refused."

During a two-and-a-half day trial before Judge Melodie Conner, Rice said Cho's surgeon testified by video deposition, while the

defense experts included Atlanta orthopedic surgeon Lee Cross and biomechanics specialist Torrence Welch.

The defense argued that, given the low speed and minor damage to the vehicles—photos show a small dent in Cho's bumper—there was no way Cho's injuries could have been caused by the wreck, Rice said.

"One big issue was that he'd had an auto collision in 2008 and another in 2011," said Rice. "And in 2013, he was playing with his kid and hurt his back; he said he'd forgotten to tell his doctors about it, so obviously they made big deal about that."

"We tried to show that he had a degenerative condition and that all it takes is one little wreck and it's like cracking an egg" to sustain major injuries, he said.

Rice said he asked for between \$900,000 and \$1.2 million in closing.

The jury took about three hours to award \$700,000.

Rice said McGowen spoke to some of the jurors afterward, who said they had immediately agreed upon causation and decided to award Cho's medical expenses; the deliberations concerned the amount to award for pain and suffering.