

## 2.9 Million Awarded to School Teacher Hit by Tractor-Trailer.

**November 22, 2011, Denver, Colorado**

A Denver, Colorado Jury awarded Mrs. Debra Ankele \$2,215,000.00 for injuries she sustained after being hit by a tractor-trailer at 50 m.p.h. on August 25, 2008. With interest the total amount of the verdict will be \$2,928,045.58 along with an estimated \$150,000 in costs that Defendants will have to pay. Defendants had offered \$600,000 months before trial and then during trial offered \$1,000,000. Both offers were rejected by Mrs. Ankele who felt that the jury would see the truth.

The tractor-trailer was being driven by Gerald Flageolle, a 75 year-old driver who was working for the Contech Construction Products Corporation. On the day of the collision, the tractor, trailer, and its cargo all weighed approximately 50,000 pounds. Mrs. Ankele was stopped for traffic when she was rear-ended by this tractor-trailer.

The impact launched Mrs. Ankele 300-400 feet at 45 m.p.h. where she hit another car and then rolled a few hundred feet further. The force of the impact was so great that Mrs. Ankele's body absorbed approximately 40 g of force, and as she went backwards she hit her driver's seat so hard that it broke the seat and bent the metal. Mrs. Ankele had spotty memory of these events, a loss of consciousness, and was hospitalized for three days. She was discharged for one day, and after having serious headaches and pain, she returned to the emergency room for a second time.

Mrs. Ankele, a 53 year-old first grade school teacher and foster mother, sustained serious and permanent injuries including a fracture in her thoracic spine, injuries to her cervical facet joints, and a brain injury.

Mark A. Gould, in his second trial as lead attorney, argued to the jury that Mrs. Ankele's brain injury was akin to having a computer processor that does not process information efficiently and that when her brain becomes loaded with information, she becomes tired, fatigued, and has difficulty thinking.

"A brain injury is sometimes difficult to prove," says Gould. "I couldn't put up the X-rays showing the fractured bones. We had to make this injury something that the jury could relate to. All of us have had a slow computer and when there are many applications going on and you try to download a document, it could take a long time, errors could happen, and it is frustrating."

"This type of slowed cognitive functioning is exactly what happens on a daily basis for Mrs. Ankele," says Mr. Gould. "She has difficulty finding words, she has to keep lists to manage her tasks, she's forgetful, and it all becomes worse when there is cognitive loading," Gould remarked.

According to Mr. Gould the reality that the jury saw was that "Deb couldn't manage 28 first graders as well as she used to, she was getting written up at work as her work performance was declining, her friends and colleagues noticed that she was not the same person, and she even had to give up her foster kids."

Despite her brain injury, Mrs. Ankele continues to work and the defense tried to use this against her to say that she recovered from her brain injury. If she was hurt that bad, the defense argued, then she wouldn't be able to work.

"What the defense failed to consider was that while Deb continued to work, she just was not working as much or in the same way as she used to. She was not writing curriculum for three courses, she was not planning student events and outings, she was doing the bare minimum and the only bad review she had in 26 years of teaching was after this collision," explained Mr. Gould.

In the end, the jury had to decide whether this first grade school teacher and foster mother to some of the most abused and unloved children would give all of that up for a lawsuit and was as the defense claimed "an over-reporter of pain, an exaggerator, and a faker."

Mr. Gould explained that "this jury was smart and they saw the defense/insurance company hired doctors for what they were--experts hired to say Deb wasn't hurt--and the jurors told us they determined very quickly that she was not a faker."

The Defendants and their insurance company, Zurich Insurance, (owned by Farmers' Insurance) mounted the typical insurance company defenses and hired two doctors to review Mrs. Ankele's orthopedic and brain injuries.

One doctor did not find that any of Mrs. Ankele's injuries were caused by this collision and instead argued that Mrs. Ankele's fracture to a vertebra in her back was caused by "mild degeneration." The other doctor agreed Mrs. Ankele had sustained a brain injury, but argued she should have recovered and because she did not recover she must be exaggerating or faking.

Defendants also argued that the injuries to Mrs. Ankele's facet joints in her neck and the capsules that surround the joints were ruptured after the collision were also caused by normal, age related degenerative processes.

Mr. Richard Eddington, co-counsel with The Law Office of Mark A. Gould, handled the orthopedic side of the case and commented that "the best question in the trial was one asked by the jury to the defense doctor. . .when the juror asked how much of the time the doctor was hired by the defense---he refused to answer."

That was telling and this jury knew that he was simply giving the opinion that he was paid to give, that this collision was not the cause of her injuries.

Mr. Eddington also explained to the jury that "the defense hired doctor is a professional witness, he does not treat any patients, and he markets his services all across the country on internet websites."

Though he claimed that he was an "independent doctor" hired by the defense, "his testimony ultimately revealed the absurdity of the defense that this collision did not cause any of the fractures or serious injuries to Mrs. Ankele," said Eddington. "There were fractures in her spine on the day of the collision,

and their doctor was just saying that this was something that you would expect to see in a 53 year-old spine," remarked Eddington.

After their verdict, the jurors commented that they first had determined that Mrs. Ankele was not an "over-reporter, exaggerator, or faker," and within an hour had awarded her \$1,015,000 for her past and future medical care for the orthopedic injuries.

The jurors then spent the next five hours determining the nature and extent of her brain injury, and had to determine the value of losing cognitive functioning.

Defendants hired a neuropsychologist who opined that Mrs. Ankele did sustain a brain injury, but that she should have recovered. The insurance hired neuropsychologist concluded that Mrs. Ankele was a person who "over-reported and exaggerated" her symptoms.

In one breath, the defense lawyers would say that they were not calling Mrs. Ankele a "faker," but at the same time they would not explain why they hired an insurance investigator to sit outside of the Ankele household on the weekend for 15.5 hours only to video tape her as she came out of her home for 1 minute and 29 seconds.

The investigator also followed her to her school and attempted to video her there as well.

This video was powerful evidence for Mrs. Ankele who testified that while she was able to work despite her fatigue and brain injury, on the weekends she no longer lived the once vibrant and active life that she used to before the collision---a point proved by the insurance investigator as she only came out of her home for 1 minute and 29 seconds.

Mrs. Ankele knew that she was being followed and when her attorneys asked the defense for any video, the defense lawyers and insurance company refused to provide it even after the trial court's order requiring its production.

The defense attorneys asserted that the video was "attorney work-product," and appealed to the Colorado Supreme Court who refused to hear the issue and ultimately the video was disclosed.

"I think this is a classic example of defense lawyers and insurance companies being sneaky. If this video had shown Mrs. Ankele doing activities that she said she could not do, they would have brought the video into court and shown in on the biggest screen they could find," remarked Gould.

"But when the video showed evidence that supported Deb's claims, they tried to conceal it and were forced by the Courts to disclose it," says Gould. For Mrs. Ankele, a foster mother, she was very scared and worried about the notion of being followed and someone sitting outside her home video taping her.

The defense hired a neuropsychologist who was also exposed for the way he conducted his "independent examination" of Mrs. Ankele.

"At trial, we showed that this doctor relied on tests such as the Fake Bad Scale of the MMPI which was paid for and developed by insurance companies to try and show jurors that people who claim a brain injury beyond three months are faking or over-reporting," Gould said.

This expert also failed to provide "tests and data that supported Mrs. Ankele's claims, had miscalculated many of her scores, had made numerous mistakes that affected his conclusions, only showed the jurors bits and pieces of literature that supported his opinions, and overall only looked at the facts and evidence that supported his opinion that Mrs. Ankele should have recovered," Mr. Gould explained.

"Our Courts are the only way that good and decent people can get a fair shake. In this case, these jurors saw that insurance companies and defense lawyers will go to all ends to avoid compensating someone fairly for their losses," said Gould. Ultimately the jurors forced the insurance company to do what it had refused to do, to acknowledge Mrs. Ankele's true injuries and compensate her fairly.

"Their expert kept saying that this was a 'mild' brain injury." "I guess it's easy to call it 'mild' when it's someone else's brain," Gould remarked.

Below is a picture of Mrs. Ankele's vehicle. The gas tank was crushed and immediately following the collision, there was a fear that the car would explode. While by-standers and witnesses joined in to help Mrs. Ankele who could not be extracted from the vehicle until the jaws of life arrived, 75 year-old Defendant Flageolle stayed at his tractor-trailer on his cellular phone calling the Contech Corporation.

