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Ankle-injury suit settles for \$3.1M in DuPage Co.

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A woman who suffered severe ankle injuries in a rented recreational vehicle has reached a \$3.1 million settlement, a record high in DuPage County for an ankle injury.

The settlement stemmed from a personal-injury case filed in DuPage County Circuit Court and a declaratory judgment action filed in federal court in South Carolina, where the accident occurred.

A total of \$3 million of the settlement was paid by two insurance companies to resolve the personal-injury claim and the declaratory action. A company that leased the recreational vehicle to a rental company had policies with those insurers.

On July 30, 2011, Carolyn White, then 15, was vacationing with family friends, also from DuPage County, in Isle of Palms, S.C.

John Thoele, a White family friend, rented an electric slow-speed vehicle, similar to a golf cart, for use on the island.

Thoele's son, Andrew Thoele, then 18, drove the vehicle with White as a passenger. Thoele allegedly took a sharp turn that resulted in the vehicle rolling over.

White's right leg was crushed. She suffered from open tibia and fibula fractures on her right ankle and had damage to two arteries leading to her foot.

She underwent 11 surgeries for her ankle injuries and for reconstruction of her ankle.

"She's mobile, able to walk, drive and perform daily functions," said Bradley N. Pollock, a partner at Walsh, Knippen, Pollock & Cetina Chtd. in Wheaton, who represented White along with his colleague, Adam C. Kruse.

"But she has permanent

sensation loss in her foot, is unable to run and has permanent limitations associated with her injuries."

In 2012, a personal-injury lawsuit was filed on White's behalf against Thoele alleging negligence in the DuPage County Circuit Court.

Thoele's insurance coverage for the accident was limited to \$100,000, which State Farm Mutual Automobile Insurance Co. agreed to pay to settle the personal-injury case.

"Once the injuries and liability were determined, the policy limits were offered," said James P. Iovinelli, with Beverly & Pause, who represented Thoele in the personal-injury case.

The insurer for the rental company, Lightning Bugz, paid its \$25,000 policy limits in the personal-injury case.

Michael P. Horger, a partner at Horger & Connor LLC in Orangeburg, S.C. represented Lightning Bugz insurer — Tower Insurance Co. of New York. He could not be reached for comment.

The parties reached the settlement in January for both cases after a full-day mediation session with Hollis L. Webster of Michael J. Gallagher Mediation Services LLC.

U.S. District Judge C. Weston Houck of the District of South Carolina dismissed the declaratory judgment action on June 24. *American Economy Insurance Co. and American States Insurance Co. v. Andrew Thoele et al.*, No. 2-13-CV-2424.

DuPage County Circuit Judge Ronald D. Sutter also dismissed the personal-injury case last month. *Carolyn White v. Andrew Thoele*, No. 12 L 1322.

The vehicle was manufactured overseas and modified in the U.S. for use here.

While investigating the case, Pollock learned that one of the



Bradley N. Pollock

U.S. corporate entities that helped with the modification process had kept the vehicle as insured under its commercial primary and excess automobile policies, even though the vehicle was not in its possession.

That company — 2AM Group LLC — leased the vehicle to Lightning Bugz.

When Thoele was sued in DuPage County, a tender was made seeking indemnity from the commercial automobile insurers for 2 AM Group — American Economy and American States — seeking coverage under the policies for Thoele.

In 2013, the two insurance companies filed a declaratory judgment action against Thoele and others in the U.S. District Court for the District of South Carolina, Charleston Division.

The insurance companies disputed coverage, asserting that the vehicle rental agreement signed by John Thoele prohibited anyone under the age of 21, and that Andrew Thoele — then 18 — was therefore precluded from coverage.

The settlement is a record for a settlement or verdict for an ankle injury in a DuPage County case, said John L. Kirkton, editor of the Jury Verdict Reporter, a



Adam C. Kruse

division of Law Bulletin Publishing Company. The previous high was a \$1.57 million settlement reported in 2009.

American Economy and American States paid a combined total of \$3 million.

"The settlement money will compensate Carolyn and her parents for the profound and needless injuries that she has been forced to endure," Pollock said.

White, now 18, plans to attend college away from home this fall.

"I think the settlement reflects the potential dangers associated with the use of these types of vehicles," Pollock said. "And in our case the result is a reflection of the strength and true character of our young client in facing great medical challenges and adversity."

Brian P. Crotty, a partner at Nelson, Mullins, Riley & Scarborough LLP in Charleston, S.C., who represented American Economy and American States, declined to comment about the settlement.

Michael J. Ferri, managing attorney at Grimball & Cabaniss LLC in Charleston, who represented Thoele in the declaratory action, could not be reached for comment.