

ACTUAL CASE RESULTS AS REFERRED TO IN THIS WEBSITE DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE. THE RESULTS OBTAINED IN THESE CASES DO NOT GUARANTEE OR NECESSARILY PREDICT A SIMILAR RESULT IN ANY FUTURE CASES. (Notice pursuant to Virginia State Bar Rule 7.2(a)(3))

Rearend settles for policy limits of \$1M

From [Virginia Lawyers Weekly](#), December 25th, 2006

Type of Action: Rear end motor vehicle collision

Name of Case: Winstead v. Henry's Wrecker Service of Fairfax County Inc.

Jurisdiction: Circuit Court of Fairfax County (no suit filed)

Settlement: \$1,000,000.00

Special Damages: \$300,000.00 in medicals

Plaintiff's Attorney: Roger L. Amole, Alexandria

Plaintiff's Experts: Michael W. Hasz, M.D.; Pierre Nedelcovych, M.D.; Andrew Cherrick, M.D.

Insurance Carrier: SUA Insurance Company, Chicago

On March 5, 2005, Larry Winstead, 56, was struck from the rear by the driver of a Henry's Wrecker Service tow truck which was trying to make a lane change. Mr. Winstead's vehicle had come to a stop due to traffic backup despite a green light. Prior to this accident, Mr. Winstead had undergone four surgeries; two to the lumbar and two to the cervical regions of his spine due to a condition known as "stenosis," a congenital narrowing of the spinal column. The last surgery before the subject accident was performed about a year earlier, on April 1, 2004, which was a decompressive lumbar hemilaminectomy. During the year between that surgery and the accident, Winstead improved some but was unable to return to his previous employment as an auto mechanic and had to accept a position as an emissions inspector which requires less heavy lifting. He was still on six Percocet a day for pain at the time of this accident.

As a result of the collision with Henry's Wrecker Service, Winstead experienced severe new pain described as an 8 out of 10 on the analog scale. He began receiving physical therapy which failed to improve his condition. He was given epidural injections over six months but continued to deteriorate. After various changes in medication, physical therapy and further epidural injections, he underwent lumbar diskography at Reston Hospital. Based on the discography performed at five levels, T12-L1, L1-2, L2-3, L4-5, L5-S1, it was determined that Winstead needed and would likely benefit from extensive lumbar surgery.

It was decided that because the needed surgery was so extensive, it would be done on two separate days. The initial surgery was performed on Dec. 20, 2005; anterior lumbar fusions at L3-4, L4-5, L5-S1; anterior lumbar partial discectomy and fusions at L3-4 and L4-5; placement of intervertebral prosthetic device at L5-S 1, all performed by Dr. Michael Hasz at Reston Hospital. Two days later Dr. Hasz performed posterior thoracic fusion at T10- 11, T11- 12 and T 11-L1 (the thoracic spine had never been symptomatic. It was used essentially as an anchor) lumbar fusion at L1-2; posterolateral lumbar fusion at L2-3, L3-4, L4-5, L5-S 1.

Winstead did not work from March 5, 2005, until June 2006 when he returned to his job as an emissions inspector. He has continued to work up through the present.

From the time of the accident through August 2006, Winstead required 10- 12 Percocet just to get through a day which was twice the amount he was using before the accident. He has been told by his physicians that he will have chronic low back pain for the rest of his life. He has recently begun seeing Abraham Cherrick, M.D., of Capitol Spine and Pain Center. Dr. Cherrick has managed to wean Winstead from most of the Percocet and has started him on a new drug which is allowing him to sleep through the night, something he had not done since the accident. Winstead's physicians have told him most people with this condition end up on disability before reaching retirement age.

The plaintiff's approach to settlement was to assume Winstead's return to employment was temporary and that total disability was a foregone conclusion based upon his doctors' statements. The insurance carrier was presented with a chart showing Winstead's monthly expenses calculating their annual escalation through his life expectancy of 78 and a chart showing the effects of disabling injuries from loss of a standard work life experience which showed the gross cash flow needs through his life expectancy and calculated an amount of foregone surplus retirement savings or funds Winstead could have saved over his remaining work life as a productive employee if he were able to work. In his case, this sum was about \$330,000. In addition Winstead has increased risk for further surgery and there is no assurance that Medicare will cover these costs in the future under current laws. A sum was calculated showing that his future out-of-pocket medical expenses will likely run \$4,000 a year based upon his current and past experience which will probably be approximately \$88,000 over his life time. Winstead's hospital, surgical, therapy and medication costs in relation to this accident were approximately \$300,000. His health insurance provider under his wife's policy, Anthem Blue Cross Blue Shield, filed an FEHBA claim for reimbursement of \$102,000 paid under his wife's insurance policy toward those costs.

Henry's Wrecker Service representatives argued that there were significant medical causation issues: Winstead had a known congenital condition which caused him to have multiple previous surgeries from which he had already sustained significant permanent disability. On Oct. 26, 2006, without filing suit, the case was settled for the policy limits of \$1 million. The policy provided for personal injury and property damage combined. The property damage payment was \$6,464.75, made shortly after the accident. The balance applying to the personal injury claim was \$993,535.25.