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## Phila. Lawyer Secures \$6 Mil. Settlement

### Fayette County Case Involves ATV Accident

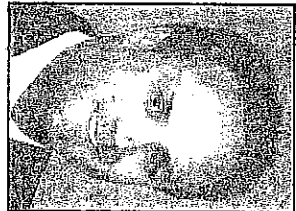
BY AMARIS ELLIOTT-ENGEL  
*Of the Legal Staff*

**I**n what may be the largest settlement of its kind ever in Fayette County, a Philadelphia attorney reached a \$6 million settlement in a case involving a 9-year-old blinded from an all-terrain vehicle handlebar that punctured his left eye socket during an accident.

Thomas Richard "T.J." Stewart V was riding an adult-sized ATV July 12, 2005, on the business property in Smock, Fayette County, of his grandfather, Thomas R. Stewart III, when he was startled by a loose hunting dog chasing his ATV and lost control of the ATV, according to the plaintiffs' mediation memorandum.

After T.J. Stewart fell, the ATV flipped and the ATV handlebar entered his left eye socket and severed both of his optic nerves, according to documents in the case. Plaintiffs' attorney Richard M. Jurewicz of Galfand Berger said, according to his

office's research, the settlement may be the highest ever in Fayette County. According to the Fayette County Prothonotary's Office, the settlement seems to be higher than any other settlement in the county in recent years.



JUREWICZ

A review of the highest verdicts and settlements over the last 10 years in *The Legal's* annual *Palaw* magazine failed to turn up a higher verdict or settlement in this southwestern Pennsylvania county of 144,000 residents.

The case settled for \$6,010,000 following a one-day mediation May 27 with mediator E. Max Weiss of Meadville.

Jurewicz represented T.J. Stewart and his mother, Annette Stewart, in their *Stewart v. Stewart* lawsuit, which named T.J.'s grandfather Thomas Richard Stewart III and his two businesses in which he was the sole shareholder: TNT Shooting Grounds Inc., a shooting preserve with live bird hunts, and Weeds No More Inc., an

industrial weed control company.

Thomas Richard Stewart III and his businesses filed a claim joining T.J.'s father Thomas Richard Stewart IV and Annette Stewart as additional defendants on a claim of negligent supervision.

The settlement was a global settlement, including the cross-claim against Thomas Richard Stewart IV and Annette Stewart, Jurewicz said.

According to the plaintiffs' mediation memorandum, the eldest Stewart was allegedly liable for his grandson's injuries because he ignored safety warnings that minors under the age of 16 should not use his ATV and because there was no reliable locking mechanism for his hunting dog kennels to keep dogs from escaping and chasing ATVs operating on his business property.

When the eldest Stewart purchased his ATV, numerous warnings were provided by the dealer or the manufacturer, including a hanging on the ATV's handlebar that cautioned against anyone driving the ATV under the age of 16, according to the plaintiffs' memorandum.

Despite these warnings, the eldest

Settlement continues on 9

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# Settlement

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Stewart purchased a helmet for T.J. to wear when he rode the ATV, taught T.J. how to operate the ATV and told his daughter-in-law Annette Stewart "she was being overly protective and babying her son" when she requested that T.J. be disallowed from using the ATV, the plaintiffs' memorandum alleged.

R. Sean O'Connell with Robb Leonard Mulvihill in Pittsburgh represented the eldest Stewart as an individual. Mark Reilly of the law offices of John DeMarco in Pittsburgh represented Weeds No More. David S. Cohen of Mintzer Sarowitz Zetris Ledva & Meyers in Philadelphia represented TNT Shooting Grounds.

According to Weeds No More's answer to plaintiffs' second amended complaint, Annette Stewart did not ask "any individual from Weeds No More, Inc., acting in their corporate capacity" to not permit T.J. from riding the ATV, but admitted that the eldest Stewart had been told by Annette Stewart about these concerns. The answer also said Weeds No More had no connection to the ATV.

According to TNT Shooting Grounds' answer to the plaintiffs' second amended complaint, TNT Shooting Grounds "denies that it or its [principals] ..., shareholders,

agents, servants or employees were negligent or careless at any time material or relevant to the instant cause of action."

In the eldest Stewart's complaint to join additional defendants, Stewart said he was not aware that his son had given permission for T.J. to operate his ATV without supervision or guidance on the day of T.J.'s accident and that both his son and his daughter-in-law failed to properly supervise T.J., which "was the direct and proximate cause of the minor-plaintiff's alleged injuries and damages."

O'Connell said his client settled before the mediation, while TNT Shooting Grounds and Weeds No More participated in the mediation. He said that there wasn't enough money involved for his client to fight the case, especially considering the potential verdict.

"I don't think it mattered what country you tried this case in ... it was a pretty sad and tragic case," O'Connell said. "You had a 9-year-old boy who lost sight in both eyes."

Jurewicz said the business defendants argued that even with T.J.'s injuries that a Fayette County jury might not return a large verdict.

Reilly and Cohen did not respond to requests for comment.

While Weeds No More was the weakest defendant in terms of liability because the ATV was primarily used in the TNT Shooting Grounds business, Jurewicz said,

he argued that the eldest Stewart had liability both as an individual and as president and individual owner of his two companies.

During the mediation, Jurewicz said, he acknowledged the businesses' defense theory that when T.J.'s father allowed his 9-year-old to operate an ATV without supervision, T.J.'s father became liable for T.J.'s subsequent injuries. But Jurewicz also argued that the eldest Stewart "made a pact" with T.J. and any children under the age of 16 by purchasing an ATV with safety warnings against allowing minors to ride an ATV designed for adults.

"They were blaming the father," Jurewicz said. "The father didn't have any insurance. It was my task to show that while the father's action was certainly a lapse of judgment, certainly a reason why this unfortunate accident occurred, that was not the only reason. My belief, as supported by the evidence, is that the grandfather actually started the series of dominoes that led to the accident on July 12, particularly when the grandfather purchased the ATV."

T.J.'s father did not have insurance and he did not hire a lawyer to represent his interests, Jurewicz said.

According to the plaintiffs' memorandum, T.J.'s surgeon, Dr. Frederic Deleyannis of Children's Hospital in Pittsburgh, said T.J.'s craniofacial injury was one of the most severe he'd ever seen.

T.J. needed emergency surgery to remove brain tissue that had herniated through tears in his brain lining, according to court papers. Further surgeries reconstructed his entire frontal skull with plates, pins, screws and bone grafting, reconstructed his left eyelid and repositioned his left eye that was embedded down into his sinus cavity.

According to plaintiffs' economist Dr. Robert Wolf, T.J. needs \$5,638,537 to \$10,040,437 in life care costs and his economic losses are between \$1,796,760 and \$3,455,319.

According to papers in the case, the eldest Stewart's homeowner's policy with Allstate tendered its limits of \$300,000; TNT Shooting Grounds' \$1 million policy with Arch Insurance Co. tendered its limits; Weeds No More tendered its primary policy of \$1 million with Trans Continental Insurance Co.; and Weeds No More's excess insurance carrier Federal Insurance Co. paid out \$3.7 million of its \$4 million policy. An ATV policy of \$10,000 also was tendered.

T.J., now 12, has adjusted to his disability and has returned to school.

"It was a gut-wrenching case, heart-wrenching," Jurewicz said. "I've gotten to know T.J. fairly well from handling this case. It's a case that has had a profound impact on me personally as well as professionally. He's a wonderful kid. I don't say this just because he's my client. He's such a likeable nice young kid." •

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