



Snow-Tubing Accident Results In \$8M Settlement

Complex negotiations preceded deal to compensate paralyzed woman

By THOMAS B. SCHEFFEY

Rose Marie Deschesnes v. The City of Waterbury: A Waterbury woman who was left a quadriplegic in a snow-tubing accident received an \$8 million settlement, but only after complex negotiations involving the plaintiff's attorney, the city of Waterbury and an insurance company.

When she was atop at sledding hill in Waterbury's Fulton Park on Feb. 15, 2007, Rose Marie Deschesnes seemed on top of the world as well. Recently married, she was pursuing a University of Connecticut degree in business and, though working at the Athena Diner, had dreams of becoming a clothing designer.

Deschesnes and her cousin, Christine Gursky, grabbed the large blue snow tube and headed downhill. Their rudderless path sent them toward a stout wooden bench near a baseball field, a bench cemented into frozen ground.

Christine ducked and missed it; Rose Marie did not. Her head struck the bench so hard, bones crushed in her spine. "I can't breathe," she gasped to her cousin.

Eyes rolling up into her head, she was literally frothing at the mouth. A police officer gave her CPR. Paramedics whisked her to Waterbury Hospital. Over 21 days, she received spinal surgery and the start of more than \$500,000 in medical treatment.

Deschesnes' young husband, Mehmet Ortak, didn't respond well to the crisis. They never shared a home after the crash. In 2009, he divorced her.

Deschesnes subsisted on Social Security disability in a Waterbury apartment where she lived with two sisters and her mother. She received Medicaid and help from the Visiting Nurse Association. She was always either in a



Rose Marie Deschesnes became a quadriplegic after the snow tube she was riding hit a bench in Waterbury's Fulton Park that was anchored to the ground by a heavy pipe set in concrete.



Contributed Photos

bed or wheelchair. In 2008, she gamely tried to continue college, with her sister taking class notes. It proved too much for her. She quit school, while receiving counseling for pain, anxiety and depression.

Two lawyers told her she didn't have a case they considered worth taking. Cities like Waterbury enjoy municipal immunity, they explained. Furthermore, if she were found partly at fault, it could reduce or completely erase any negligence award.

Third Time Charm

Then Deschesnes' mother met with Stamford lawyer **Stewart M. Casper, of Casper & deToledo**. He knows municipal sledding cases. In 2004, Casper won a \$6.4 million verdict for a doctor who severely fractured his leg in a Greenwich park.

Municipal immunity, Casper explains, is qualified. It applies only to employees carrying out discretionary obligations that can be discharged in many different ways. The

same immunity isn't available for routine and "ministerial" tasks, such as clearing snow from a walkway.

Waterbury had no written plan to cover sledding safety where Deschesnes was hurt. However, portable bleachers were usually moved away during sledding season. Casper saw this as a "remove the obstructions" plan. From old photos and aerial maps, he discerned that the fixed bench was located only seven feet from the bleachers. It would be "ridiculous," he contends, to call it good risk management to move the bleachers in the winter, but not the bench.

Through discovery, Casper learned Waterbury hadn't always followed its own plan. Two people threatened suits in 2003 and 2004, claiming injuries from hitting bleachers that had not been removed. This prompted Casper to add a count of recklessness to his complaint.

Third, because the bench was fixed permanently in concrete, Casper claimed it

constituted a public nuisance. Comparative negligence by the plaintiff is no defense in a nuisance case, Casper said.

He collected experts with zeal. Lawrence S. Foreman, of Vocational Rehabilitation Consultants in New York, calculated a life care and vocational assessment of Deschesnes. He figured that without the accident she should be earning over \$47,000 annually, but in her current condition had no earning capacity. Cheshire economist Gary Crakes used those findings to project lost earning and lifetime care costs between \$13.4 million and \$28.4 million.

After an exhaustive search, Casper also hired Mary Lou Iverson, a trained playground safety consultant from Washington state. She was formerly a municipal park's official Washington, Colorado and Oklahoma.

Calculated Offer

After braiding together the law and facts to show liability, and picking a team of experts to prove damages, Casper took his most crucial strategic step. "It's important to pick an offer that really can't be refused," he said.

He knew the city of Waterbury was self-insured up to \$1 million, and had a \$7 million excess coverage policy with Chartis insurance.

Realistically, he "knew that I had a case that could go south. It could be lost. It's a case that my client could be hit with some significant amount of comparative negligence."

So Casper didn't ask for the economist's high number of \$28 million or his low of \$13 million. On June 30 of this year, he made an offer of compromise for Waterbury's \$1 million and the excess coverage policy of \$7 million.

This offer was good until July 30, but Casper agreed to the insurers' request for a 30-day extension. The negotiations were heavy, with offers of \$3 million, then \$4 million. Casper stuck to his \$8 million demand.

Waterbury was represented by **Justin Donnelly** from the city's corporation counsel's office. With the plaintiff's offer on the table, Donnelly brought in one of Connecticut's top insurance attorneys, **John Lemega**, of Hartford's **Halloran & Sage**.

Waterbury was resigned to parting with its \$1 million in self-insurance, but there was considerable additional risk to the city's finances if the case went to trial and a jury decided to award more than \$8 million. Lemega's job was to consider Waterbury's excess exposure and deal with the insurance company.

And why should Chartis insurance care about Waterbury's exposure, if any excess above \$8 million would have to be paid by the city? It's because of the doctrine of good faith. An insurer has a duty to settle a claim within the policy limits if it can do so, thereby protecting its insured. Chartis could meet that duty by accepting the \$8 million deal – a bird in the hand offer it

might never see again.

If it didn't accept the deal? Casper would proceed with his lawsuit. If a jury rendered a verdict based on economist Crakes' figures, Waterbury would be stuck with a huge bill. It might then justifiably claim Chartis had failed to protect it.

Waterbury's interests would then be aligned with Casper's in a likely action against Chartis for breach of good faith. In such an action, the sky is the limit.

Lemega entered the case when Casper filed the offer of compromise. "I think he was there to make sure that Chartis didn't screw around," said Casper. "It was a brilliant move on Justin Donnelly's part to bring someone like John Lemega in. When it became clear he was in to protect Waterbury from being exposed to an excess verdict, I was thrilled."

On Aug. 31, the parties cemented a deal in Waterbury Superior Court for \$8 million and avoided a roller-coaster of uncertainty. A bad faith claim, with appeals, can stretch out for five years. "Meanwhile, my client would be sitting in horrendous living conditions," said Casper.

Under the settlement, Rose Marie Deschesnes has the nursing care she needs, secured for her lifetime under a special needs trust that, with interest, will likely net her \$20 million in payments. "The pleasures she has are very simple," Casper concluded. "Under the circumstances, I have one very happy client." ■