

DAILY REPORT

How a Trial With High Stakes, \$3 Million in Medical Bills, a Deadlocked Jury, Led to Cobb County Settlement

By Alex Anteau

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Former law school buddies and veteran attorneys, Peter Law and Matthew Moffett, have been working together on opposite sides to resolve cases for decades, but last week, the duo finally encountered a case they couldn't settle—or so it seemed.

"We've always been able to resolve our cases. That's been our practice. But this one, while we both worked to get it resolved, we just couldn't make it happen," defense attorney Moffett of Gray, Rust, Moffett, & Brieske told the Daily Report.

It was likely one of his first cases against one of Law's clients that had reached this juncture, Moffett said. The case went to trial August 12 in Cobb County Judge Allison Salter's courtroom, and the attorneys described it as contentious and risky, with a high level of exposure for both parties in a multimillion-dollar personal injury case. After nearly five hours of deliberation on August 15, the jury indicated that they had reached an impasse.

It led the parties to a confidential settlement the next day.



Matt Moffett

"Perhaps the other side recognized the risk that they may not win the case, just as I recognized that same risk," Moffett said, who represented the defendant, Michael Porter.

The plaintiff, Thomas Morder, represented by Law, hired contractor Porter to build a screen porch on top of an elevated deck at his home. During the construction process, Porter removed a portion of the deck railing to move supplies to the work area. Porter allegedly told the Morder family that the railing would be re-secured at the end of each day, and the builder also sometimes moved a trash

can or grill to block off the area in question. Still, he cautioned the homeowner to stay away from the area. After finishing up one day, however, Porter did not secure the railing or put a barrier in front of it.

That weekend, Morder went onto the deck and ended up falling off the side. The fall left him paralyzed, with a traumatic brain injury and \$3 million in medical bills. In April 2022, Morder filed the lawsuit against Porter.

While opposing counsel have historically worked to settle matters outside of trial, the parties couldn't find common ground. The attorneys continued negotiating throughout the case, but they came to an impasse early on when the defense declined Morder's initial \$1 million policy demand. From there, Law said he began treating the case as if it didn't have policy limits. As litigation progressed, Georgia's new tort reform law was passed and threw a wrench in the plaintiff's trial strategy.

"This [case] presented all the complexities you could possibly encounter in a bifurcated trial," Law said. "We had a plaintiff who was in perfect health ... before and wasn't fully functional after. ... That was the biggest part of the bifurcation that made it difficult, because damages are supposed to be in the second phase, but they were so significant and relevant to the liability issues."

As a result, Law said he had to strike "a delicate balance" between injuries and damages, especially because his client's accident left him with memory issues and he couldn't explain what happened. Bifurcation also made the trial more logistically complicated and expensive, because many of his witnesses were testifying on both liability and damages, and therefore planned to stay for both sections of the trial.

In addition to the challenges posed to the plaintiff's presentation, Porter had sent multiple messages to the Morders, telling the family to stay off the deck. The plaintiff countered this evidence by arguing that the communication wasn't consistent and clear when defining the time and scope of the hazard, Law explained.

Meanwhile, Moffett said the defense counsel grappled with how to handle an extremely likable plaintiff. Morder was a high-ranking Chick-fil-A employee who helped develop the fast food chain's grilled chicken sandwich, with a positive outlook and a calm demeanor. He watched the trial from his wheelchair, right next to the jury box.

"The challenge for us was the plaintiff, who is paralyzed, has a brain injury that has impacted his memory, where he cannot remember the most important information for purposes of a legal case, but that's not his fault," Moffett said. "So that means that the only person who can remember the most important evidence is my client, and so the attack was launched against his credibility."

Moffett said the defense didn't dispute Morder's injuries, but rather argued that Morder either fully or partially assumed the risk of walking onto the back deck. This strategy then informed their approach to voir dire, where they tried to pick jurors they felt would evaluate assumption of risk objectively and not be swayed by sympathy for Morder's injuries.

After the jurors indicated they were deadlocked, the parties ultimately settled the liability portion of the trial. Both attorneys said they were satisfied with the outcome.

"It was hard fought, and we went to war, but we professionally engaged with the common objective of resolving the case reasonably," Moffett said.