

## Rear-Ended Truck Passenger Settles For \$1.85M

### Pre-accident back pain was roadblock to trial

**R**ichardo Garcia v. Edward J. Fox, et al.: While stopped in heavy traffic on Interstate 95 in Fairfield, passenger Richardo Garcia's vehicle was struck from behind by another truck on Aug. 10, 2001. He was on the job for Quality Glass Works of Waterbury at the time. The tractor trailer that struck him was owned by Logistics Express Inc., of Orange, Calif., and driven by Edward J. Fox. The impact injured Garcia's neck, right arm and back. Before surgery, he was given a rating of 12 percent permanent partial disability to his lumbar spine, and a 10.8 percent whole person disability.

Ultimately, said Garcia's lawyer, **Mark F. Griffin of D'Amico, Griffin & Pettinicchi** in Watertown, his back impairment was "50 percent, according to his neurosurgeon, a very serious injury."

Garcia, 35 at the time of the accident, was treated by neurosurgeon Alan Waitze of Neurosurgery Associates of Northwestern Connecticut, in Waterbury. His surgery required decompression and fusion of his spine.

He also required implantation of a pain pump to administer doses of narcotic painkillers. The pump must be serviced

monthly, Griffin added.

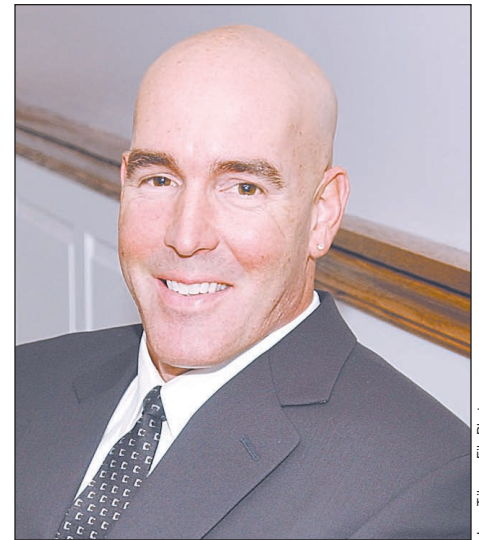
Co-counsel **Michael D'Amico** said the lawsuit faced a serious obstacle in that Garcia had visited a chiropractor just weeks before the crash and complained of back pains. "The arguments from the other side were that he had these same complaints [about back pain] before the accident," said D'Amico.

With the defense facing the potential of extraordinarily high pain and suffering damages, and the plaintiffs worried about how Garcia's previous back condition might play with a jury, the two sides settled out of court for \$1.85 million.

Since his accident, Garcia had collected \$252,000 in workers' compensation funding. In most cases, workers injured on the job cannot pursue separate negligence claims. But there is an exemption for accidents involving motor vehicles.

After Garcia settled the case, he and the D'Amico firm repaid the state the entire \$252,000 without compromise or settlement to avoid future conflicts between workers' comp and Medicare over future medical treatment.

D'Amico credited paralegal Kim Nowell



Law Tribune File Photo

**Watertown attorney Michael D'Amico said his lawsuit faced a serious obstacle in that his client had visited a chiropractor just weeks before the crash and complained of back pains.**

for six years of consistent work on the case. The defendants were represented by **Robert J. Chomiak Jr.**, of **Nuzzo & Roberts** in Cheshire, who had not been able to comment by press time. ■