

THE NATIONAL  
LAW JOURNAL

THE TOP 100 VERDICTS OF 2019

 VERDICTSEARCH

June 2020



# THE TOP 100 VERDICTS

OF 2019

The National Law Journal's VerdictSearch affiliate scoured the nation's court records in search of 2019's biggest verdicts, also consulting with practitioners and reviewing reports by other ALM Media publications. The amounts listed here represent jury awards—they do not account for judicial reductions, offsets or appeals.

## TOP 100 VERDICTS OF 2019

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## Top Verdict Categories

Dollar value of Top 100 verdicts by cause of action, in millions.

2018			2019		
1	Products Liability	\$5,909	1	Products Liability	\$11,633
2	Intellectual Property	\$3,497	2	Intellectual Property	\$2,417
3	Medical Malpractice	\$1,301	3	Motor Vehicle	\$2,176
4	Worker/Workplace Negligence	\$1,274	4	Intentional Torts	\$1,567
5	Intentional Torts	\$988	5	Contracts	\$1,253
6	Motor Vehicle	\$897	6	Medical Malpractice	\$719
7	Antitrust	\$490	7	Worker/Workplace Negligence	\$520
8	Contracts	\$146	8	Premises Liability	\$317
9	Government	\$123	9	Professional Negligence	\$171
10	Employment	\$116	10	Business Law	\$169

Source: VerdictSearch. Figures are rounded to the nearest \$1 million.

## METHODOLOGY

The Top 100 Verdicts report is compiled by NLJ affiliate VerdictSearch, which strives to report as many jury verdicts, decisions and settlements as possible. Although a great many cases are submitted by attorneys, the publication also relies on assignment editors who scour docket lists, cultivate relationships with law firms and search the internet and news sources, including ALM Media's family of legal publications.

Verdicts are ranked by gross award calculated by the jury. They do not reflect reductions for comparative negligence or assignment of fault to settling defendants or nonparties; additurs, remittiturs or reversals; or attorney fees and costs, unless awarded by the jury. In situations in which awards are automatically trebled or doubled by statute, the increased amount determines rank. VerdictSearch does not consider cases in which the jury only determined per-plaintiff or per-year damages that a judge later used to calculate the gross award, nor cases in which the jury's instructions permitted it to determine damages against a party that it had already deemed not liable.

The editors retain sole discretion to make adjustments in rank when necessary to reflect statutes that provide for election of remedies or other overlapping awards.

**MOTOR VEHICLE**

Passenger — Motor Vehicle — Center Line — Motor Vehicle — Driver Fatigue — Motor Vehicle — Negligent Entrustment — Worker/Workplace Negligence — Negligent Retention — Worker/Workplace Negligence — Negligent Supervision — Worker/Workplace Negligence — Negligent Training — Motor Vehicle — Multiple Vehicle — Wrongful Death — Survival Damages

**Sleepy truck driver caused fatal head-on collision: lawsuit**

**VERDICT**            **\$280,065,000**

**ACTUAL**            **\$180,315,000**

**CASE**                Larry Madere, as Surviving Spouse of Judy Ann Gaudet Madere, Deceased, and Anjanette Madere Thomas, as Administratrix of the Succession of Judy Ann Gaudet Madere, Deceased v. Greenwich Insurance Company, Schnitzer Southeast, LLC, Schnitzer Steel Industries, Inc. and Kenneth E. Cathey, No. SC 17CV106

**COURT**              Muscogee County, State Court, GA

**JUDGE**              Andrew Prather, II  
**DATE**                8/23/2019

**PLAINTIFF**  
**ATTORNEY(S)**    **Christopher B. McDaniel,** Butler Wooten & Peak LLP, Columbus, GA  
**LaRae D. Moore,** Page, Scrantom, Sprouse, Tucker & Ford, P.C., Columbus, GA  
**Brandon L. Peak,** Butler Wooten & Peak LLP, Atlanta, GA  
**Ramsey B. Prather,** Butler Wooten & Peak LLP, Atlanta, GA

**Joel O. Wooten, Jr.,** Butler Wooten & Peak LLP, Columbus, GA

**DEFENSE**

**ATTORNEY(S)**    **Mark A. Barber,** Baker Donelson Bearman Caldwell & Berkowitz, PC, Atlanta, GA  
**Ciera N. Locklair,** Baker Donelson Bearman Caldwell & Berkowitz, PC, Atlanta, GA  
**Robert L. Shannon, Jr.,** Baker Donelson Bearman Caldwell & Berkowitz, PC, Atlanta, GA

**FACTS & ALLEGATIONS** On July 18, 2016, plaintiff’s decedent Judy Madere, 58, was a passenger of a sport utility vehicle that was being driven by her daughter. They were traveling west on U.S. Highway 80, near the highway’s intersection with Jowers Road, in Phenix City, Ala. A tractor-trailer driven by Kenneth Cathey collided head-on with their vehicle. Madere and the other occupants of her vehicle, including her daughter, twin sister and two grandchildren, suffered fatal injuries.

Judy Madere’s husband, Larry Madere, and Anjanette Madere Thomas, as administrator of Judy Madere’s estate, sued Cathey; the owner of the truck, Schnitzer Southeast, LLC; Schnitzer Southeast’s parent company, Schnitzer Steel Industries Inc.; and the defendants’ liability carrier, Greenwich Insurance Co. The plaintiffs alleged that Cathey was negligent in the operation of the truck and that the Schnitzer entities were vicariously liable.

The estates of the other family members killed in the accident filed separate lawsuits. Three of the other cases were settled prior to trial. The other case was still pending.

The plaintiffs alleged that Cathey was fatigued, having slept less than five hours the night before the accident. The plaintiffs claimed that Cathey fell asleep, crossed the center line of the two-lane highway and collided head-on into Madere’s vehicle. The plaintiffs also alleged negligent training, retention, supervision and entrustment against the Schnitzer entities.

The plaintiffs presented skid-mark evidence to show there were skid marks

left by the SUV, but no skid marks were left by the truck Cathey was driving.

Liability was conceded prior to trial, and the defense stipulated that the driver of Madere’s vehicle was not at fault.

**INJURIES/DAMAGES** *death*

Madere died due to injuries suffered in the accident. Her estate sought unspecified damages for her pain and suffering prior to her death under the theory of pre-impact fright. The estate also sought damages for the value of Madere’s life. Counsel for the estate suggested the jury award \$200 million for the full value of her life. The estate also sought punitive damages against Schnitzer Southeast and Schnitzer Steel Industries to send a message to the trucking industry, as well as approximately \$100 million in attorneys’ fees.

The defense argued that punitive damages were not warranted, as it had initiated reforms in its truck-driving business.

**RESULT** The jury found that the negligence of the defendants proximately caused the death of Madere and determined that the estate’s damages totaled \$280,065,000, including \$100 million in punitive damages and \$65,000 for attorneys’ fees. However, the punitive damages award was reduced to \$250,000 due to the statutory cap, resulting in a net award of \$180,315,000.

<b>ESTATE OF JUDY MADERE</b>	\$30,000,000 survival \$100,000,000 punitive damages \$150,000,000 value of life \$65,000 attorneys’ fees
<hr/>	
	\$280,065,000

**TRIAL DETAILS** Trial Length: 5 days  
Trial Deliberations: 45 minutes

**PLAINTIFF**  
**EXPERT(S)**        None reported

**DEFENSE**  
**EXPERT(S)**        None reported

**EDITOR’S NOTE** This report is based on information that was provided by plaintiffs’ and defense counsel.

**MOTOR VEHICLE**

Red Light — Motor Vehicle — Intersection — Motor Vehicle — Negligent Entrustment — Motor Vehicle — Broadside — Motor Vehicle — Passenger — Motor Vehicle — Tractor-Trailer — Motor Vehicle — Multiple Vehicle

**Family claimed tractor-trailer ran red light, causing crash**

**VERDICT** **\$70,578,289**

**CASE** Tomasa Cuevas, by and through her Guardian ad Litem, Joseph F. Etienne; Fidencio Cuevas; Alejandro Cuevas and Maritza Cuevas, by and through their Guardian ad Litem, Fidencio Cuevas Jr. v. Rai Transport, Inc.; Amarjit Aulakh; and Does 1 to 100, Inclusive, No. BCV-18-100615

**COURT** Superior Court of Kern County, Kern, CA

**JUDGE** Stephen D. Schuett

**DATE** 12/19/2019

**PLAINTIFF ATTORNEY(S)** **Joseph H. Low, IV** (co-lead), Law Offices of Joseph H. Low IV, Long Beach, CA (Alejandro Cuevas, Maritza Cuevas)  
**Daniel Rodriguez** (co-lead), Rodriguez & Associates, Bakersfield, CA (Tomas Cuevas)  
**Danay Gonzalez**, Rodriguez & Associates, Bakersfield, CA (Tomas Cuevas)  
**Chantal A. Trujillo**, Rodriguez & Associates, Bakersfield, CA (Tomas Cuevas)  
**None reported**, Bakersfield, CA (Fidencio Cuevas)

**DEFENSE ATTORNEY(S)** **Aaron C. Hancock**, Bishop | Barry | Drath, A.P.C., Emeryville, CA

**FACTS & ALLEGATIONS** On Aug. 14, 2017, plaintiff Tomasa Cuevas, 42, was

driving her sport utility vehicle with her son, plaintiff Alejandro Cuevas, 15, as a front seat passenger and her daughter, plaintiff Maritza Cuevas, 11, as a back seat passenger. As they entered the intersection of Pamana Road and South Union Avenue, in Bakersfield, their SUV was broadsided by a tractor-trailer operated by Amarjit Aulakh of Rai Transport Inc. Ms. Cuevas and Alex sustained injuries to their faces and heads, while Maritza witnessed the aftermath.

Ms. Cuevas, acting by and through her guardian ad litem, Joseph Etienne, and her children, Alejandro and Maritza, acting by and through their guardian ad litem, Fidencio Cuevas Jr., sued Aulakh and Aulakh’s employer, Ajit Singh Rai, who was doing business as Rai Transport Inc. The Cuevas family alleged that Aulakh was negligent in the operation of the tractor-trailer and that Rai negligently entrusted the truck to Aulakh and was vicariously liable for Aulakh’s actions.

Plaintiffs’ counsel contended that Aulakh ran a red light while traveling north on South Union Avenue, causing the collision. Counsel further contended that Rai negligently entrusted the vehicle to Aulakh, as Aulakh was operating the truck with a suspended commercial driver’s license and had been involved in 14 previous crashes.

Rai initially denied liability, but one month before trial, he admitted that Aulakh ran the red light and caused the collision. Aulakh was then let out of the case, and Rai’s counsel argued damages.

**INJURIES/DAMAGES** *abrasions; anxiety; bulging disc, cervical; cognition, impairment; depression; eye; face; fracture, facial bone; fracture, skull; head; memory, impairment; neck; post-traumatic stress disorder; traumatic brain injury; vision, impairment*

Ms. Cuevas, Alejandro and Maritza were all taken to a hospital, where Ms. Cuevas and Alejandro were admitted.

Ms. Cuevas was diagnosed with numerous skull and facial fractures, as well as a moderate traumatic brain injury. She remained hospitalized for approximately three weeks.

Ms. Cuevas claimed that she is left with impaired vision, and physical pain in her head and neck. She also claimed that she suffers impairments in her memory, smell, hearing and walking. In addition, she claimed that she suffers from post-traumatic stress disorder and depression.

Plaintiff’s counsel contended that Ms. Cuevas is now susceptible to brain diseases as a result of the brain injury.

Alejandro sustained facial fractures and skull fractures. He also claimed he suffered a 1.77 millimeter cervical disc bulge and a traumatic brain injury. After being admitted to the hospital, he was airlifted to the nearest children’s hospital, where he was treated.

Alejandro claimed that he is left with physical pain to his head, face and eyes and that he suffers from visual impairment and blurred vision. He also claimed he suffers from a delay in mental processing and that as a result, it takes him longer to read and process information.

Alejandro was a cross-country runner who was about to enter the 10th grade. However, he claimed he can no longer run as fast as he used to be capable of running and that he now suffers from anxiety.

Maritza only sustained scratches in the accident. However, she claimed she witnessed the horrific injuries to her mother and brother. After the accident, paramedics found Maritza crying hysterically outside of the SUV after seeing her mother and brother covered in blood and being unresponsive. Maritza has since been diagnosed with post-traumatic stress disorder. She also claimed she suffers from anxiety.

Ms. Cuevas and Alejandro waived their past medical costs, and did not make a claim for lost wages or earning capacity. However, they each sought recovery for their respective future medical costs. In addition, Ms. Cuevas, Alejandro and Maritza sought recovery of noneconomic damages for their past and future pain and suffering. Ms. Cuevas’ husband, Fidencio Cuevas, initially presented a derivative claim, but he did not continue to trial as a plaintiff.

Defense counsel contested the Cuevas family’s alleged injuries, and contended that Ms. Cuevas’ orthopedic injuries were pre-existing. Counsel also contended that Ms. Cuevas, Alejandro and Maritza all returned to baseline and were no longer affected by their alleged injuries.

**RESULT** The jury determined that the amount of damages inflicted upon Ms. Cuevas, Alejandro and Maritza totaled \$70,578,289.

<b>ALEJANDRO CUEVAS</b>	\$590,855 future medical cost \$11,000,000 past pain and suffering <u>\$14,500,000</u> future pain and suffering \$26,090,855
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**MARITZA CUEVAS** \$3,500,000 past pain and suffering  
\$2,000,000  
future pain and suffering  
\$5,500,000

**TOMASA CUEVAS** \$6,487,434 future medical cost  
\$13,000,000 past pain and suffering  
\$19,500,000  
future pain and suffering  
\$38,987,434

**PLAINTIFF EXPERT(S)**  
**Bradley A. Jabour, M.D.**, neuroradiology, Santa Monica, CA  
**Robert W. Johnson, M.B.A.**, economics, Los Altos, CA  
**Sharon K. Kawai, M.D.**, life care planning, Fullerton, CA  
**Galina V. Nikolskaya, M.D.**, neurology, San Diego, CA  
**Michael M. Price, M.D.**, orthopedic surgery, Bakersfield, CA  
**Tony L. Strickland, Ph.D.**, neuropsychology, Playa del Rey, CA

**DEFENSE EXPERT(S)**  
**Eric J. Drabkin, Ph.D.**, economics, Lafayette, CA  
**Scott Graham, M.D.**, orthopedic surgery, Laguna Woods, CA  
**Ari Kalechstein, Ph.D.**, neuropsychology, Los Angeles, CA  
**Kimberley D. Lakes, Ph.D.**, psychology/counseling, Riverside, CA  
**Tami Rockholt, R.N.**, coding & billing (medical), Beaverton, OR

**EDITOR'S NOTE** This report includes information that was provided by plaintiffs' counsel. Additional information was gleaned from an article that was published by News. Law. Defense counsel did not respond to the reporter's phone calls.

## EQUIPMENT RENTAL

### MOTOR VEHICLE

Left Turn — Motor Vehicle — Rollover — Motor Vehicle — Multiple Vehicle — Motor Vehicle — Passenger

## Plaintiffs claimed permanent injuries from 18-wheeler crash

**VERDICT** \$44,625,426

**ACTUAL** \$22,088,737

**CASE** Atreyu Muniz, Christina McGee, Jeffrey Anderson, and Trevor Moczygemba v. Stallion Oilfield Services, Ltd.; Stallion Production Services; Stallion Oilfield Holdings, Inc.; and Rodney Simmons, No. 17-04-24, 142  
**COURT** DeWitt County District Court, 24th, TX  
**JUDGE** Bobby Bell  
**DATE** 7/23/2019

**PLAINTIFF ATTORNEY(S)** **Donald H. Kidd** (co-lead), Perdue & Kidd LLP, Houston, TX (Lloyd Alexander Kulik)  
**Charlie Webb** (co-lead), Webb Cason, Corpus Christi, TX (Atreyu Muniz)  
**Patrick L. Beam**, Webb Cason, Corpus Christi, TX (Atreyu Muniz)  
**Adam J. Blake**, Perdue & Kidd LLP, Houston, TX (Lloyd Alexander Kulik)  
**Errol John Dietze**, Dietze & Reese, Cuero, TX (Lloyd Alexander Kulik)  
**Errol John "Johnny" Dietze Jr.**, Dietze & Reese, Cuero, TX (Lloyd Alexander Kulik)  
**Jim M. Perdue, Jr.**, Perdue & Kidd LLP, Houston, TX (Lloyd Alexander Kulik)  
**Raymond Reese**, Dietze & Reese, Cuero, TX (Lloyd Alexander Kulik)  
**Michael A. Sheppard**, Crain & Sheppard, Cuero, TX (Atreyu Muniz)

None reported (Christina McGee, Jeffrey Anderson, Trevor Moczygemba)

### DEFENSE

**ATTORNEY(S)** **Dwayne Newton** (lead), Newton, Jones & Spaeth, Houston, TX  
**Pete McKinney**, Newton, Jones & Spaeth, Houston, TX  
**Jon L. McNeely**, Newton, Jones & Spaeth, Houston, TX  
**Roger Townsend**, Cokinos Young, Houston, TX

**FACTS & ALLEGATIONS** On March 30, 2017, plaintiff Lloyd Kulik, 35, an oil-field worker, was driving a pickup truck north on Farm to Market Road 108, a two-lane road near Yorktown. His passengers were plaintiffs Atreyu Muniz, 24, Christina McGee, Jeffrey Anderson and Trevor Moczygemba. It was night, with a new moon, and the road was unlighted. The speed limit was 65 mph. About 1.3 miles north of State Highway 119, in a passing zone, Kulik, driving at about 70 mph, came up behind a slow-moving 18-wheeler operated by Rodney Simmons. The road was flat and straight, and there was no oncoming traffic. Kulik attempted to pass Simmons, who was attempting to turn left onto an unmarked lease road. The front left of the 18-wheeler struck Kulik's right rear door, and the pickup went into a roll. Kulik was ejected, and Muniz was partly ejected. Kulik suffered injuries of his head, a hip, his neck and a shoulder. Muniz suffered injuries of his back, his chest, his face, his head, his neck and several ribs.

Muniz, McGee, Anderson and Moczygemba sued Simmons, Simmons' employer, Stallion Production Services, and a Stallion affiliate and Stallion's parent company. Kulik intervened as a plaintiff. The lawsuit alleged that Simmons was negligent in the operation of the 18-wheeler and that the remaining defendants were vicariously liable.

Simmons was nonsuited before trial, and the Stallion affiliate and parent company were nonsuited at the end of the plaintiffs' case in chief.

All the plaintiffs except Kulik and Muniz settled before trial for undisclosed amounts.

The plaintiffs claimed that Simmons had been traveling 50 mph or less since turning onto Farm to Market Road 108 from State Highway 119, and that he was not slowing down noticeably or braking when Kulik started to pass him. Also, Simmons

acknowledged that he did not check his side mirrors and did not see the pickup.

Muniz did not testify, and Kulik had no recollection of the accident.

Kulik's counsel argued that when the roof of the pickup hit the ground as it rolled over, Kulik's head was against the inside roof, and that he sustained a cervical fracture. Kulik was not wearing his seat belt, but his biomechanical expert opined that wearing it would not have prevented a spinal fracture. This expert opined, and Stallion's biomechanical expert agreed, that Kulik's head could have hit the roof during the rollover even if he had been wearing a seat belt.

Muniz testified that he was wearing his seat belt. Muniz's counsel argued that chest contusions supported that testimony. Muniz's biomechanical expert opined that Muniz's brain injury was consistent with him wearing a seat belt. Muniz's counsel further argued that the fact that Muniz was partially ejected meant he was wearing his seat belt.

Kulik's attorneys argued that the jury should find Stallion at least 95 percent responsible and Kulik no more than 5 percent responsible for his own injuries. Muniz's counsel argued that Stallion alone was responsible for Muniz's injuries.

Simmons testified that he was braking before making his turn, and both he and the defense accident reconstruction expert testified that Simmons' left-turn indicator was on for at least 10 seconds before the accident. The defense argued that Kulik was negligent for passing unsafely.

The defense argued that Kulik and Muniz were negligent for not wearing their seat belts and that this negligence was the cause of their injuries. The defense biomechanical expert opined that all of Muniz's injuries happened outside the pickup, and that he did not hit his head on the inside of the pickup. Defense counsel also argued that Kulik's injuries resulted from his ejection from his vehicle, and that the ejection would not have occurred if Kulik had been wearing his seat belt. Defense counsel asked the jury to find negligence on Kulik and Muniz and none on Stallion.

**INJURIES/DAMAGES** *Bankart lesion; anxiety; brain damage; cognition; impairment; coma; concussion; depression; diffuse axonal brain injury; foot; fracture, C5; fracture, acetabulum; fracture, hip; fracture, humerus; fracture, neck; fracture, rib; fracture, scapula; fracture, shoulder; fracture, sinus; fracture, skull; fracture, sternum; fracture, vertebra; hardware*

*implanted; head; laceration; laparotomy; memory, impairment; physical therapy; post-concussion syndrome; quadriplegia; scar and/or disfigurement; spasm; stroke; traumatic brain injury*

Kulik was flown by helicopter to a hospital and admitted.

Kulik sustained a burst fracture of the C5 vertebra, which resulted in quadriplegia. He also sustained a left acetabulum fracture, a left foot laceration, a left parietal fracture, a left Bankart fracture (a type of scapula fracture) and a fracture of the right shoulder's humeral head. He later developed a mild traumatic brain injury, as a result of mini-strokes that resulted from his neck fracture. The symptoms of his brain injury included cognitive impairment, memory impairment, anxiety, depression and suicidal thoughts.

After emergency surgery to stabilize his neck, Kulik was an inpatient for several months, first in the hospital and then in a rehabilitation facility. He was still in outpatient physical therapy at the time of trial. He also underwent counseling. Upon his discharge home, he could no longer care for himself and moved in with his parents. He could barely move his hands and had no dexterity, and his doctors testified that his quadriplegia was permanent. He also experienced muscle spasms and physical pain.

Kulik's neuropsychology expert opined that, because of his injuries, Kulik would be unable to work.

Kulik's older sister and younger brother testified about Kulik's life before and after the accident. The family lived on a farm, and Kulik enjoyed hunting, fishing and working on cars. They said he was no longer able to carry out these activities.

Kulik's counsel asked the jury to award their client about \$48 million, including past and future physical pain and mental anguish, past and future physical impairment, past and future disfigurement, \$672,283.07 for past medical expenses, \$9,352,172 for future medical expenses, \$78,854 for past loss of earning capacity, and \$1,042,600 for future loss of earning capacity.

Muniz was also flown by helicopter to a hospital and admitted.

Muniz sustained a diffuse axonal injury to his brain and was in an induced coma for about two weeks. He developed post-concussion syndrome, mood swings, impulse control problems, headaches, cognitive impairment, memory impairment, anxiety and depression.

Muniz also sustained fractures to his sternum, cervical spine, sinus wall and ribs, as well as lacerations to his back.

Muniz was in the hospital for about one month. He underwent an exploratory laparotomy and, to relieve intracranial pressure, received temporary placement of a metal bolt. Also, glass had to be removed from the lacerations in his back, leaving behind scars. After being discharged from the hospital, he moved in with his parents because he could not care for himself. He and his mother testified that the only work he could perform was for a family friend who would deal with Muniz's angry outbursts. The friend also testified.

Muniz treated with a psychologist but was no longer treating at the time of trial.

Muniz's counsel asked the jury to award their client \$204,517 for past medical expenses. They also submitted damages for future medical expenses, past and future loss of earning capacity, past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement.

Defense counsel argued that plaintiffs' counsel were seeking excessive amounts for noneconomic damages.

The defense disputed Kulik's potential earning capacity, claiming that he had graduated at the bottom of his class.

The defense also questioned Muniz's claim for loss of earning capacity, saying he had an uneven employment history. Also, Muniz had impulse-control problems long before this accident, the defense argued.

**RESULT** As to Kulik's injuries, the jury found negligence and comparative responsibility of 50 percent on Stallion and 50 percent on Kulik. As to Muniz's injuries, the jury found negligence and comparative responsibility of 45 percent on Stallion, 45 percent on Kulik and 10 percent on Muniz. The jury awarded the plaintiffs \$44,625,426.07. After the reduction for comparative fault, Kulik's recovery was \$20,072,954.54, and Muniz's was \$2,015,782.65.

<b>LLOYD ALEXANDER KULIK</b>	\$672,283 past medical cost
	\$9,352,172 future medical cost
	\$2,000,000 past physical impairment
	\$8,000,000 future physical impairment
	\$1,000,000 past disfigurement
	\$3,000,000 future disfigurement

\$1,042,600 future loss of earning capacity  
\$3,000,000 past physical pain and mental anguish  
\$12,000,000 future physical pain and mental anguish  
\$78,854 past loss of earning capacity  
\$40,145,909

**ATREYU MUNIZ** \$204,517 past medical cost  
\$700,000 future medical cost  
\$250,000 past physical impairment  
\$1,000,000 future physical impairment  
\$250,000 past disfigurement  
\$1,000,000 future disfigurement  
\$450,000 future loss of earning capacity  
\$100,000 past physical pain and mental anguish  
\$500,000 future physical pain and mental anguish  
\$25,000 past loss of earning capacity  
\$4,479,517

**INSURER(S)** Zurich North America for all defendants (primary insurer)  
Lloyd's of London for all defendants (excess)  
Liberty Mutual Insurance Co. for all defendants (excess)

**TRIAL DETAILS** Trial Length: 8 days  
Trial Deliberations: 5.75 hours  
Jury Vote: 12-0  
Jury Composition: 5 male, 7 female

**PLAINTIFF EXPERT(S)** David J. Altman, M.D., CLCP, life care planning, San Antonio, TX (videotaped deposition presented)  
Dan Bagwell, R.N., CLCP, life care planning, San Antonio, TX  
Brian J. Benda, Ph.D., biomechanical, Penns Park, PA  
Andrea Bradford, CRC, vocational rehabilitation, Austin, TX

Cam Cope, accident reconstruction, Conroe, TX  
Carlos Jaramillo, M.D., Ph.D., life care planning, San Antonio, TX  
Paul R. Lewis, biomechanics, Roswell, GA  
Gilbert Martinez, Ph.D., neuropsychology, San Antonio, TX  
Justin O'Rourke, Ph.D., neuropsychology, San Antonio, TX (treating doctor)  
Thomas Roney, economics, Dallas, TX

**DEFENSE EXPERT(S)** Kelley Adamson, M.E., P.E., accident reconstruction, College Station, TX  
Debra R. Marth, Ph.D., biomechanics, Detroit, MI

**POST-TRIAL** Stallion's counsel filed notice of appeal.

**EDITOR'S NOTE** This report is based on information that was provided by Kulik's and Muniz's counsel. Defense counsel declined to contribute, and the remaining plaintiffs' counsel were not asked to contribute.

## TRANSPORTATION

### MOTOR VEHICLE

Passenger — Motor Vehicle — Rear-ender — Motor Vehicle — Sudden Emergency Defense — Motor Vehicle — Tractor-Trailer — Worker/Workplace Negligence — Negligent Supervision — Motor Vehicle — Multiple Vehicle

## Suit: Punitives warranted due to gross negligence, willful actions

**VERDICT** \$35,000,000

**CASE** Brandon Glover v. David Hill, JHOC, Inc., Willie Glover and Earl Cuff, No. 2016CP3801152

**COURT** Orangeburg County, Court of Common Pleas, SC

**JUDGE** Edgar W. Dickson  
**DATE** 4/26/2019

**PLAINTIFF ATTORNEY(S)** Mark B. Tinsley, Gooding & Gooding, P.A., Allendale, SC

**DEFENSE ATTORNEY(S)** Alexis V. Blitch, Murphy & Grantland, P.A., Columbia, SC (Earl Cuff)  
William M. Connor, V, Bill Connor Law Firm, LLC (David Hill, JHOC Inc.)  
Kelly D. Dean, Griffith, Freeman & Liipfert, LLC, Beaufort, SC (Willie Glover)  
E. Mitchell Griffith, Griffith, Freeman & Liipfert, LLC, Beaufort, SC (Willie Glover)  
Anthony W. Livoti, Murphy & Grantland, P.A., Columbia, SC (Earl Cuff)  
Ciera N. Locklair, Wheeler Trigg O'Donnell LLP, Atlanta, GA (David Hill, JHOC Inc.)  
Hillary G. Meyer, Griffith, Freeman & Liipfert, LLC, Beaufort, SC (Willie Glover)  
Robert L. Shannon, Jr., Wheeler Trigg O'Donnell LLP, Atlanta, GA (David Hill, JHOC Inc.)  
Christian Stegmaier, Collins & Lacy, PC, Columbia, SC (David Hill, JHOC Inc.)  
David R. Williams, Williams & Williams, Orangeburg, SC (Willie Glover)  
Virginia W. Williams, Williams & Williams, Orangeburg, SC (Willie Glover)

**FACTS & ALLEGATIONS** On Aug. 4, 2015, plaintiff Brandon Glover, 23, was a front-seat passenger in a commercial van driven by his father, Willie Glover, 52. They were traveling westbound on Interstate 26 in Orangeburg County when the vehicle in front of them stopped suddenly to avoid striking a disabled vehicle, allegedly operated by Earl Cuff, that was stopped partially on the right shoulder and partially in the right lane of travel. When Willie Glover also stopped suddenly, his van was rear-ended by a tractor-trailer driven by David Hill. The Glover vehicle then went

off the roadway and struck a tree. Brandon Glover claimed neck and back injuries. Willie Glover also claimed neck and back injuries.

Brandon Glover sued Willie Glover, Hill and Hill's employer, JHOC, Inc., which also owned the tractor-trailer Hill was driving. They later added Cuff as a defendant. Brandon Glover alleged that Willie Glover, Cuff and Hill were all negligent in the operation of their respective vehicles and that JHOC was vicariously liable for Hill's negligence and had negligently supervised Hill.

Willie Glover initiated a cross-claim against Hill, JHOC and Cuff. He alleged that Hill and Cuff were negligent in the operation of their respective vehicles and that JHOC was vicariously liable for Hill's negligence and had negligently supervised Hill.

The Glovers alleged that Hill was driving too fast for conditions and was following other vehicles too closely. There was also an allegation that Hill had a long history of narcotic drug use and that he was under the influence of narcotics at the time of the accident. With regard to the negligent supervision claim, evidence was presented that Hill's truck was equipped with GPS tracking and other on-board computer devices that would allow it to monitor the truck's rate of speed and hours of service violations and that the monitoring system showed Hill was violating hours of service rules at the time of the accident.

JHOC and Hill asserted a sudden emergency defense. JHOC and Hill contended that they cannot be held liable for damages because Hill was suddenly placed in an emergency situation and compelled to act instantly to avoid a collision.

Hill contended that he merely tapped Willie Glover's van and his actions were reasonable as a matter of law. JHOC and Hill further argued that Glover was comparatively negligent because he had been traveling approximately 65 mph just prior to the accident and was following too closely behind the other vehicle.

Hill denied he was using narcotic drugs at the time of the accident. While acknowledging that he had used narcotic drugs due to knee and shoulder problems, he insisted he was off the narcotics when he was driving.

JHOC further contended that Hill was appropriately supervised.

Cuff was dismissed from the case during trial on directed verdict. The judge found that no evidence had been presented that Cuff had

been negligent, nor was it established that he owned or operated the disabled vehicle. The case then proceeded to the jury on Brandon Glover's claims against Willie Glover, Hill and JHOC, as well as on Willie Glover's cross-claim.

**INJURIES/DAMAGES** *fusion, cervical; fusion, lumbar; hardware implanted; herniated disc at C3-4; herniated disc at C4-5; herniated disc at C5-6; herniated disc at L5-S1; lower back; neck; pins/rods/screws; plate; ;*

Brandon Glover and Willie Glover were taken to the emergency department of a local hospital after the accident.

Brandon complained of neck and back pain at the hospital. He had X-rays and was discharged.

Brandon was ultimately diagnosed with disc herniations at C4-5 and L5-S1. Brandon underwent lumbar fusion at L5-S1, with implantation of a plate and screws.

Brandon's orthopedic surgeon testified that, while surgery may lessen Brandon's pain in the future, Brandon would have significant physical restrictions. He also said that Brandon would never be able to do most of the things he was required to do in his former employment, regardless of the surgical outcome.

Brandon claimed chronic pain. He said he is partially disabled and unable to return to his job as a landscaper. He now walks with the assistance of a walker.

Brandon sought to recover damages for past and future medical costs, past and future loss of earnings, and past and future pain and suffering. In addition to compensatory and actual damages, he sought punitive damages against Hill and JHOC for their allegedly grossly negligent, willful and wanton actions.

Willie complained of neck and back pain at the hospital. He had X-rays and was discharged.

Willie was eventually diagnosed with disc herniations at C3-4, C4-5, C5-6 and L5-S1. He underwent cervical fusion at C4-5 and C5-6, with implantation of plates and screws.

Willie claimed residual, chronic pain and limitations performing activities of daily living. He claimed he now has to rely on unreliable labor to handle tasks he was previously able to handle himself. He further stated that he would need a second surgery and that his injury would cause him to work less or retire prematurely.

Willie sought damages for past and future medical costs, past and future loss of earnings, and past and future pain and suffering. He also sought punitive damages

against Hill and JHOC.

The defense contended that the Glovers both made a good recovery from surgery. The defense further asserted that punitive damages were not warranted because there was no evidence Hill was on any type of drugs at the time of the accident.

**RESULT** The jury attributed 10-percent liability to Willie Glover and 90-percent liability to Hill and JHOC, Inc. The jury determined that Brandon Glover's damages totaled \$21 million (\$4 million in compensatory damages and \$16 million in punitive damages against Hill and JHOC and \$1 million in punitive damages against Willie Glover) and Willie Glover's damages totaled \$14 million (\$4 million in compensatory damages and \$10 million in punitive damages against Hill and JHOC). The award to Willie Glover was reduced to \$12.6 million to reflect the comparative negligence finding.

<b>BRANDON GLOVER</b>	\$17,000,000 punitive damages
	<u>\$4,000,000 actual damages</u>
	\$21,000,000

<b>WILLIE GLOVER</b>	\$10,000,000 punitive damages
	<u>\$4,000,000 actual damages</u>
	\$14,000,000

**TRIAL DETAILS** Trial Length: 8 days  
Trial Deliberations: 4 hours

**PLAINTIFF EXPERT(S)** None reported

**DEFENSE EXPERT(S)** None reported

**POST-TRIAL** The defense filed several post-trial motions, including Motion for Judgment Notwithstanding the Verdict, Motion for New Trial Absolute, Motion for Remittitur - One to One Ratio, Motion for Remittitur - Three Times Actuals, Motion for New Trial Pursuant to the Thirteenth Juror Doctor, Motion for New Trial NISI Remittitur with regard to Brandon Glover and Motion for New Trial NISI Remittitur with regard to Willie Glover. All of the motions were denied.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel for Hill, JHOC, Inc. and Willie Glover.



## INDIVIDUAL

### MOTOR VEHICLE

Left Turn — Motor Vehicle — Motorcycle — Wrongful Death

## Motorcyclist killed due to negligence of turning driver

**VERDICT** \$33,413,000

**ACTUAL** \$32,412,610

**CASE** Tanisha Mayfield, Individually, and Courtland Greene Phillips as Administrator of the Estate of Daniel K. Mayfield, Jr. v. Vickie Lynn Kennison (F/K/A) Vicke Lynn Fain, No. 14SV-154

**COURT** Spalding County, State Court, GA

**JUDGE** Josh W. Thacker

**DATE** 2/26/2019

**PLAINTIFF ATTORNEY(S)** Ben C. Brodhead, III, Brodhead Law, LLC, Atlanta, GA  
Holli Clark, Brodhead Law, LLC, Atlanta, GA  
Ashley B. Fournet, Brodhead Law, LLC, Atlanta, GA

**DEFENSE ATTORNEY(S)** Karl P. Broder, Beck, Owen & Murray, Griffin, GA  
William M. Dallas, III, Beck, Owen & Murray, Griffin, GA  
Matthew D. Friedlander, Holland & Knight LLP, Atlanta, GA

**FACTS & ALLEGATIONS** On April 10, 2006, plaintiff's decedent Daniel Mayfield Jr., 26, a salesman, was motorcycling on State Route 3, near its intersection at Talmadge Road, in Spalding County. He was involved in a collision with a vehicle driven by Vickie Lynn Kennison. Mayfield suffered a fatal injury.

Mayfield's estate sued Kennison. The lawsuit alleged that Kennison was negligent in the operation of her vehicle.

The estate's counsel claimed that Kennison had been traveling on Talmadge Road and suddenly and without warning turned left in front of Mayfield's motorcycle. Mayfield struck the passenger side of Kennison's vehicle, near the rear. The estate's accident-reconstruction expert opined that Kennison was negligent in failing to yield to Mayfield and in failing to ensure the road was clear before making her turn.

The defense contended that Mayfield was operating his motorcycle at a speed of as much as 100 mph as he approached the intersection. The estate's counsel countered that no one actually observed the motorcycle's speed in the 10 seconds prior to the collision.

### INJURIES/DAMAGES *death*

Mayfield died because of blunt-force trauma from the crash. He died about two hours after the accident. The estate sought wrongful-death damages for medical and funeral expenses, as well as damages for the value of Mayfield's life.

**RESULT** The jury assigned 3 percent liability to Mayfield and 97 percent liability to Kennison. The jury determined that the estate's damages totaled \$33,413,000, which was reduced to \$32,412,610 to reflect the comparative-negligence finding.

**ESTATE OF DANIEL K. MAYFIELD** \$63,000  
medical and funeral cost  
\$3,250,000 general estate  
damages  
\$4,100,000 wrongful death  
\$26,000,000 wrongful  
death value of life  
\$33,413,000

**TRIAL DETAILS** Trial Length: 4 days  
Trial Deliberations: 3 hours

**PLAINTIFF EXPERT(S)** Sean Alexander, accident reconstruction, Warner Robins, GA

**DEFENSE EXPERT(S)** None reported

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

## EQUIPMENT OPERATOR

### MOTOR VEHICLE

Center Line — Worker/Workplace Negligence — Negligent Hiring — Motor Vehicle — Head-On — Motor Vehicle — Multiple Vehicle — Wrongful Death — Survival Damages

## Impaired motorist caused fatal accident, plaintiffs claimed

**VERDICT** \$32,144,972

**CASE** Estate of Marie Garmon by David Garmon, Administrator, and David Garmon, Individually, and David Garmon as Parent & Guardian of John Paul Garmon, and David Garmon as Parent & Guardian of Marlie Forbes Garmon v. Eric Jenkins and Atlas Excavating / Atlas Trucking, No. 12-CI-00395

**COURT** Anderson County, Circuit Court, KY

**JUDGE** Charles Hickman

**DATE** 10/3/2019

**PLAINTIFF ATTORNEY(S)** Steve R. Romines (lead), Romines, Weis & Young, Louisville, KY  
Lawrence I. Young, Romines, Weis & Young, Louisville, KY

**DEFENSE ATTORNEY(S)** John G. McNeill, Landrum & Shouse LLP, Lexington, KY

**FACTS & ALLEGATIONS** On Sept. 7, 2012, plaintiffs' decedent Marie Garmon, 43, a hospice nurse, was driving on U.S. Highway 62, in Lawrenceburg. Eric Jenkins was driving a dump truck in the opposite direction on the same roadway. A third motorist stopped directly in front of Jenkins' dump truck. Jenkins evaded that vehicle but hit Garmon's minivan head-on. Garmon suffered a fatal injury. Jenkins had marijuana in his system at the time of the accident. He was charged in connection with the accident and pleaded guilty to second-degree manslaughter.

Garmon's widower, David Garmon, acting as the administrator of his wife's estate, sued Jenkins; Jenkins' employer, Atlas Excavating LLC; and Atlas Excavating's owners, Amanda Russell and Clint Russell. The estate alleged that Jenkins was negligent in the operation of his vehicle; that Atlas Excavating, Amanda Russell and Clint Russell were vicariously liable for Jenkins' actions; and that Atlas Excavating was negligent in its hiring of Jenkins.

The estate's counsel asked the jury to find Jenkins 50 percent liable for the accident and Atlas Excavating and the Russells 50 percent liable. The estate's counsel claimed that Jenkins was impaired at the time of the accident and that this prevented him from responding appropriately to the stopped vehicle. Counsel contended that Jenkins veered across the roadway's center line.

The estate's counsel further contended that Jenkins had a history of drug use and that Atlas Excavating failed to test him for drugs prior to hiring him. The estate's counsel also claimed that Atlas Excavating did not talk to Jenkins' prior employers or doctors to determine if he had taken drugs in the past. The estate's counsel also claimed that Jenkins was not subjected to a drug-testing program once he was hired.

The defense claimed that Jenkins was under the influence of drugs but not impaired. The defense argued that the motorist in front of Jenkins stopped suddenly and did not give Jenkins time to react. Jenkins claimed that he attempted to stop his truck, but that the brakes locked, causing him to veer over the center line.

The defense also claimed that Garmon was tailgating another vehicle prior to the accident. The estate's counsel countered that any tailgating by Garmon was unrelated to the accident.

Defense counsel admitted that Jenkins was not drug-tested. However, the defense maintained that Atlas Excavating employees are typically screened and that Jenkins was simply overlooked.

**INJURIES/DAMAGES** *compartment syndrome; crush injury, pelvis; death; fracture, leg; fracture, rib; liver, laceration; unconsciousness*

Marie Garmon suffered crush injuries of her pelvis, fractures of her legs, fractures of ribs and a laceration of her liver. She also developed compartment syndrome, which is a pressurized condition of a muscle or muscles.

Garmon was trapped in her vehicle for more than an hour. She was eventually

extracted and airlifted to University of Kentucky Hospital.

Doctors attempted surgeries on Garmon in an effort to save her, but she never regained consciousness. She succumbed to compartment syndrome five days after the accident, on Sept. 12, 2012. She left behind her husband and children, John Paul Garmon, 14, and Marlie Forbes Garmon, 11.

The estate sought recovery of past medical expenses, destruction of the power to labor and earn future income, property damage, funeral expenses, and damages for Marie Garmon's conscious pain and suffering.

David Garmon sought recovery of damages for loss of consortium, spousal services, assistance, affection, comfort, aid, society, companionship, love and support of his wife. John and Marlie each sought recovery of damages for loss of comfort, aid, society, affection, love and support of their mother. The plaintiffs also sought punitive damages.

The defense argued that the noneconomic damages award should be limited. Defense counsel noted that the surviving plaintiffs did not require psychological treatment to help them cope with Marie Garmon's death.

**RESULT** The jury found that Jenkins failed to comply with his duty to exercise the degree of ordinary care expected of a reasonable and prudent person operating a commercial motor vehicle under similar circumstances. The jury also found that his failure to comply was a substantial cause of Marie Garmon's death.

The jury further found that Atlas Excavating and the Russells failed to exercise the degree of ordinary care expected of a reasonable and prudent company or person in the administration and operation of their business, and that their failure was a substantial cause of Garmon's death.

The jury further found that Garmon did not fail to exercise the degree of ordinary care expected of a reasonable and prudent person operating a motor vehicle under similar circumstances. Garmon was thus assigned zero percent of the liability for the death. Jenkins was assigned 50 percent of the liability, and the defendants were assigned a total of 50 percent of the liability.

The jury further found that the defendants acted in reckless disregard for the lives, safety or property of others, and that the defendants authorized, ratified or should have anticipated Jenkins' conduct.

The jury awarded the plaintiffs a total of \$32,144,971.88, including \$10 million in punitive damages.

**DAVID GARMON** \$5,000,000 loss of consortium, other noneconomic damages  
\$5,000,000

**ESTATE OF MARIE GARMON** \$315,279 past medical cost  
\$13,881 property damage  
\$1,802,110 destruction of the power to labor and earn future income  
\$13,702 funeral burial expense  
\$5,000,000 survival  
\$7,144,972

**JOHN PAUL GARMON** \$5,000,000 loss of comfort, aid, society, affection, love and support  
\$5,000,000

**MARLIE FORBES GARMON** \$5,000,000 loss of comfort, aid, society, affection, love and support  
\$5,000,000

**GARMON FAMILY** \$10,000,000 punitive damages  
\$10,000,000

**INSURER(S)** National Indemnity Co. for all defendants

**TRIAL DETAILS** Trial Length: 1 week  
Trial Deliberations: 2 hours  
Jury Vote: 9-3 on apportionment of liability; 10-2 on amount of punitive damages; 12-0 on all other questions

**PLAINTIFF EXPERT(S)** William Baldwin, Ph.D., economics, Lexington, KY

**DEFENSE EXPERT(S)** None reported

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

**MOTOR VEHICLE**

Passenger — Motor Vehicle — Stop Sign —  
 Motor Vehicle — Broadside — Motor Vehicle —  
 Intersection — Motor Vehicle — Multiple Vehicle

## Car crash caused permanent brain injury, plaintiff claimed

**VERDICT**      **\$30,101,599**

**ACTUAL**        **\$34,668,619**

**CASE**            Randy Willoughby v. Eddie Ellison, Alberta S. Ellison and 21st Century Centennial Insurance Company, No. 13-CA-008277

**COURT**          Hillsborough County Circuit Court, 13th, FL

**JUDGE**          Ralph C. Stoddard

**DATE**            3/15/2019

**PLAINTIFF**

**ATTORNEY(S)**    Brandon Cathey (lead), Swope, Rodante P.A., Tampa, FL  
 Daniel Greene, Swope, Rodante P.A., Tampa, FL  
 Brent Steinberg, Swope, Rodante P.A., Tampa, FL

**DEFENSE**

**ATTORNEY(S)**    James B. Thompson, Jr. (lead), Goodis Thompson & Miller, PA, St. Petersburg, FL (Eddie Ellison, Alberta S. Ellison)  
 Troy W. Holland, Goodis Thompson & Miller, PA, St. Petersburg, FL (Eddie Ellison, Alberta S. Ellison)  
 None reported (21st Century Centennial Insurance Co.)

**FACTS & ALLEGATIONS** On Nov. 2, 2012, plaintiff Randy Willoughby, 20, a cashier, was a front-seat passenger of a car that was traveling on Williams Road, near its intersection at Harney Road, in Thonotosassa. While the car's driver was proceeding through the intersection, the car's right side was struck by a pickup truck that was being driven by Eddie Ellison, who was traveling on Harney Road. Willoughby claimed that he suffered injuries of an eye,

his face, his head, his pelvis and his spleen.

Willoughby sued Ellison and the owner of Ellison's vehicle, Alberta Ellison. Willoughby also sued his insurer, 21st Century Insurance Co. The lawsuit alleged that Eddie Ellison was negligent in the operation of his vehicle. The lawsuit further alleged that Alberta Ellison was vicariously liable for Eddie Ellison's actions. Willoughby sought underinsured-motorist benefits from his insurer.

Willoughby and 21st Century settled their case prior to trial. The insurer agreed to pay \$4 million. Esurance, the insurance provider for the driver of Willoughby's vehicle, paid an additional \$20,000. The amount of the settlement was revealed as part of the appellate case 212 So. 3d 516 in the Florida Second District Court of Appeal.

Willoughby claimed that Eddie Ellison ignored a stop sign that governed his entrance to the intersection. The other motorist's course was not governed by a traffic-control device.

The Ellisons' counsel conceded liability, and Eddie Ellison's insurer tendered its policy, which provided coverage of \$100,000. The matter proceeded to a trial that addressed damages against Alberta Ellison.

**INJURIES/DAMAGES** *anxiety; atrophy; brain damage; closed reduction; cognition; impairment; coma; comminuted fracture; depression; diffuse axonal brain injury; dysphasia; eye; fracture, facial bone; fracture, jaw; fracture, orbit; fracture, pelvis; fracture, pubic bone; fracture, skull; frontal lobe contusion; internal fixation; memory, impairment; nondisplaced fracture; open reduction; physical therapy; pins/rods/screws; plate; speech/language, impairment of; spleen, laceration; tracheostomy/tracheotomy; traumatic brain injury; unconsciousness*

Willoughby sustained a grade-III diffuse axonal injury, which involves widespread lesions of the brain's white matter. He also had generalized atrophy of brain tissue and contusions of his brain's temporal and frontal lobes.

Willoughby also suffered a nondisplaced fracture of his skull's left parietal bone, a comminuted fracture of the right foramen ovale, temporal bone fractures, a clival fracture, a jaw fracture, a fracture of his right orbital bone, nondisplaced fractures of his pelvis, including the pubic bone, right-eye trauma, and a laceration of his spleen.

Willoughby lost consciousness at the scene of the accident. He was retrieved by an ambulance, and he was transported to Tampa General Hospital, where he

remained for approximately one month. He was unresponsive for approximately eight days. He gradually improved before coming out of his coma 30 days post-accident. While Willoughby was in the coma, doctors performed a tracheostomy and inserted an external ventricular drain in his brain. Doctors also performed surgery to repair Willoughby's broken jaw. The procedure included open reduction with internal fixation, plus closed reduction with maxillomandibular fixation. Willoughby had screws and plates put into the jaw, which was wired shut until Dec. 3, 2012.

Three days later, Willoughby was transferred to a rehabilitation facility. He remained there until January 2013. During that time, he underwent physical, occupational and speech therapy. The speech therapy addressed dysphasia: an inability to formulate words and sentences.

Willoughby received limited outpatient rehabilitation. He also had a few months of behavioral therapy with a neuropsychologist. He continued to follow up with a psychiatrist through the date of the trial.

Over the next two years, Willoughby required around-the-clock care. His parents and wife helped him with activities of daily living, including bathing, dressing, toileting and feeding. He has made significant strides since then. He has regained much of his independence, but he still has permanent cognitive, behavioral and emotional deficits. He experiences spatial deficits that impact his memory and his cognitive processing of visual materials. He also has motor-processing deficits and problems with executive functions. His doctors have recommended that he no longer drive. Willoughby claimed that he can no longer work.

Willoughby also claimed that he developed anxiety, depression and a mood disorder following the accident. He took some medication for these issues but ultimately weaned himself off this treatment.

Willoughby's counsel presented a life-care plan that included child-care assistance, psychological counseling and financial assistance. The plan also included supervision from a personal care attendant for a few hours each day.

The parties stipulated that Willoughby's past medical expenses totaled \$147,020. Willoughby sought recovery of that amount, future medical expenses, past and future lost earnings, and damages for past and future pain and suffering.

The defense claimed that Willoughby's medical treatment would not cost as much as Willoughby's counsel said it would.

The defense also claimed that Willoughby recovered well. The defense further claimed that Willoughby's wife could continue to serve as his caregiver and attendant.

**RESULT** The jury determined that Willoughby's damages totaled \$30,101,599. The addition of stipulated damages produced a net verdict of \$30,248,619. Following a setoff of \$100,000 -- the amount of Eddie Ellison's settlement with Willoughby -- a final judgment was issued, for \$30,148,619.

The Ellisons' insurer also paid an additional \$400,000 for attorney fees and costs. After the addition of this amount and the prior settlements, Willoughby's total recovery was \$34,668,619.

<b>RANDY WILLOUGHBY</b>	<p>\$5,106,590 future medical cost</p> <p>\$155,000 past lost earnings</p> <p>\$1,925,009 future lost earnings</p> <p>\$4,835,000 past pain and suffering</p> <p><u>\$18,080,000</u></p> <p><u>future pain and suffering</u></p> <p>\$30,101,599</p>
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**INSURER(S)** 21st Century Insurance Group for Willoughby Government Employees Insurance Co. for Alberta Ellison and Eddie Ellison

**TRIAL DETAILS** Trial Length: 5 days  
 Trial Deliberations: 2.5 hours  
 Jury Vote: 6-0  
 Jury Composition: 3 male, 3 female

**PLAINTIFF EXPERT(S)** Dana Deboskey, Ph.D., neuropsychology, Lutz, FL  
 Melinda Hayes, M.D., physical medicine, Tampa, FL (treating doctor)  
 Frederick A. Raffa, Ph.D., economics, Orlando, FL  
 Douglas Rodriguez, M.D., radiology, Tampa, FL (treating doctor)  
 Michael Shahnasarian, Ph.D., life care planning, Tampa, FL

**DEFENSE EXPERT(S)** Finnie B. Cook, Ph.D., economics, Tampa, FL (did not testify)  
 Denise K. Griffin, M.D., neurology, Tampa, FL (did not testify)  
 Glenn J. Larrabee, Ph.D., neuropsychology, Sarasota, FL  
 John McKay, Ph.D., vocational rehabilitation, Tallahassee, FL (did not testify)

**POST-TRIAL** Defense counsel filed a motion for a new trial or, alternatively, remittitur. Defense counsel also filed a renewed motion for an offset and a motion to apply Florida Statutes Section 324.021. The motions were denied.

Defense counsel has also filed an appeal of the final judgment.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and counsel of Alberta Ellison and Eddie Ellison. Additional information was gleaned from court documents. Counsel of 21st Century Insurance Group was not asked to contribute.

## TRANSPORTATION

**MOTOR VEHICLE**  
 U-Turn — Motor Vehicle — Parked Car — Motor Vehicle — Multiple Vehicle — Wrongful Death

### Improperly parked tractor-trailer contributed to fatal crash

**VERDICT** \$30,000,000

**ACTUAL** \$12,000,000

**CASE** Rodolfo Plascencia and Diocelina Trujillo v. Anita Hidalgo Newcomb, Charles Glynn Deese, Flat Creek Transportation, Franciscos Fruit Inc., MMFG LLC, Jose Pascual, State of California, the People of the State of California acting by and through the Department of Transportation, and County of Ventura, No. 56-2015-00475756-CU-PO-VTA

**COURT** Superior Court of Ventura County, Ventura, CA  
**JUDGE** Matthew P. Guasco  
**DATE** 3/25/2019

**PLAINTIFF ATTORNEY(S)** Arash Homampour (lead), The Homampour Law Firm, PC, Sherman Oaks, CA  
 Scott E. Boyer, The Homampour Law Firm, PC, Sherman Oaks, CA  
 Hamed L. Yazdanpanah, HYP Law Group, Beverly Hills, CA

**DEFENSE ATTORNEY(S)** Art Preciado (lead), Gutierrez Preciado & House, Pasadena, CA (Charles Glynn Deese, Flat Creek Transportation Inc.)  
 Arthur Javier, Gutierrez Preciado & House, Pasadena, CA (Charles Glynn Deese, Flat Creek Transportation Inc.)  
 None reported, Pasadena, CA (Anita Hidalgo Newcomb, Franciscos's Fruit Inc., State of California, Jose Pascual, MMFG LLC, Ventura County)

**FACTS & ALLEGATIONS** On April 19, 2014, plaintiffs' decedent Jocelyne Plascencia, 19, was driving east on State Route 126, also known as East Telegraph Road, in Fillmore. Anita Newcomb drove out of the parking lot of Francisco's Fruit Stand and crossed both lanes of eastbound SR-126 in an attempt to make a U-turn directly in front of Plascencia's vehicle. Plascencia went onto the shoulder of the highway to avoid colliding with Newcomb's vehicle, causing Plascencia to lose control of her vehicle. As a result, Plascencia's vehicle swerved to the right and collided with the back of a tractor-trailer that was parked by its operator, Charles Deese, three feet from the roadway. Plascencia ultimately died from her injuries.

Newcomb left the scene, claiming that she did not know there had been an accident. She was later charged with the misdemeanor vehicular manslaughter under Penal Code § 192(c)(2), and pleaded nolo contendere in the criminal matter.

The decedent's parents, Rodolfo Plascencia and Diocelina Trujillo, sued Newcomb; Deese; and Deese's employer, Flat Creek

**PREMISES LIABILITY**

Negligent Repair and/or Maintenance — Intentional Torts — Willful Misconduct — Premises Liability — Apartment Building — Premises Liability — Apartment — Premises Liability — Tenant’s Injury — Wrongful Death — Survival Damages

**Tenant’s estate blamed broken A/C system for man’s death**

**VERDICT \$125,000,000**

**CASE** Christina Thornton, Individually and as Administrator of the Estate of Charles Hart v. Ralston GA LLC d/b/a The Ralston, PF Ralston, LLC, PF Holdings, LLC, Schoolhouse Road Estates, Inc., Yaakov Litvin, and John Does, 1-4, No. SC 17CV 572

**COURT** Muscogee County, State Court, GA

**JUDGE** Andrew Prather, II

**DATE** 7/1/2019

**PLAINTIFF ATTORNEY(S)** Miranda Brash, Charles A. Gower, P.C., Columbus, GA  
 Charlie Gower, Charles A. Gower, P.C., Columbus, GA  
 Shaun O’Hara, Charles A. Gower, P.C., Columbus, GA

**DEFENSE ATTORNEY(S)** James T. Budd, Mabry & McClelland, LLP, Atlanta, GA  
 Jessica F. Hubbartt, Mabry & McClelland, LLP, Atlanta, GA

**FACTS & ALLEGATIONS** On July 6, 2017, plaintiff’s decedent Charles Hart, 62, was found dead, lying across his bed in his apartment in The Ralston apartment building located in Columbus. The temperature of the room was more than 98 degrees. Hart was believed to have died from heat stroke.

Hart’s daughter, Christina Thornton, individually and as administratrix

Transportation Inc., which owned the tractor-trailer. They also sued the owners and operators of the fruit stand, Francisco’s Fruit Inc., MMFG LLC and Jose Pascual; and the believed maintainers of the roadway, Ventura County and the State of California Department of Transportation. The decedent’s parents alleged that Newcomb and Deese were negligent in the operation of their respective vehicles and that Flat Creek Transportation was vicariously liable for Deese’s actions. They also alleged that the county and state failed to properly maintain the roadway, creating a dangerous condition of public property, and that Pascual, Francisco’s Fruit and MMFG were negligent for contributing to the dangerous condition.

The decedent’s parents claimed that Newcomb was negligent for making the unsafe U-turn; that Deese was parked illegally; that Flat Creek Transportation was vicariously liable for Deese’s actions; that Pascual and the fruit stand were negligent for encouraging customers to park on the shoulder of the highway; and that the state was statutorily liable since the fruit stand and the stand’s parking lot were located on the road’s right of way.

The county was dismissed from the case following demurrer, and several other parties settled before trial. The matter then continued against Deese and Flat Creek Transportation only.

Prior to trial, plaintiffs’ counsel conceded that some fault should be apportioned to Newcomb, as Newcomb was negligent and Newcomb’s negligence was a substantial factor in causing the incident.

During trial, plaintiffs’ counsel contended that Deese pulled over to buy strawberries at the fruit stand and negligently parked the tractor-trailer on the shoulder of the highway. Counsel contended that tractor-trailers are to only be parked on a highway’s shoulder in an emergency and that Deese did not have one. Plaintiffs’ counsel argued that if Deese had not parked on the shoulder, Jocelyne Plascencia would have been able to safely maneuver her vehicle onto the shoulder instead of colliding with the tractor-trailer.

Deese claimed that he did have an emergency and that he pulled over on the side of the highway because he smelled hot oil coming from his truck. Deese’s counsel further argued that the accident was solely Newcomb’s fault.

**INJURIES/DAMAGES** *death*

Plascencia sustained traumatic injuries. She was transported to a hospital, but she

died on May 24, 2014, a little more than a month after the accident. At the time of her death, she was 19 years old and was survived by her parents.

Plascencia’s parents sought recovery of wrongful death damages for the loss of their only daughter.

**RESULT** The jury found that Deese and Flat Creek Transportation were negligent and that their negligence was a substantial factor in causing Plascencia’s death. It apportioned 40 percent liability to Deese and Flat Creek Transportation and 60 percent liability to Newcomb. The jury determined that the decedent’s family’s damages totaled \$30 million. After apportionment, the decedent’s family should recover \$12 million from Deese and Flat Creek Transportation.

**RODOLFO PLASCENCIA** \$5,000,000 past noneconomic damages  
\$10,000,000 future noneconomic damages  
 \$15,000,000

**DIOCELINA TRUJILLO** \$5,000,000 past noneconomic damages  
\$10,000,000 future noneconomic damages  
 \$15,000,000

**PLAINTIFF EXPERT(S)** Lewis Grill, trucks, Billings, MT  
 David J. King, P.E., accident reconstruction, Los Angeles, CA

**DEFENSE EXPERT(S)** Larry E. Miller, trucking industry, La Verne, CA

**EDITOR’S NOTE** This report is based on information that was provided by plaintiffs’ counsel. Counsel of Charles Deese and Flat Creek Transportation did not respond to the reporter’s phone calls, and the remaining defendants’ counsel were not asked to contribute.

of the estate of her father, sued the owner and managers of the apartment building, Ralston GA LLC; PF Ralston, LLC; PF Holdings, LLC; Schoolhouse Road Estates Inc.; and Yaakov Litvin. The estate alleged negligence and wrongful death.

The estate dropped Litvin from the case during trial. The matter proceeded against the remaining defendants.

The estate alleged that the defendants were negligent in failing to properly maintain the apartment building in a reasonably safe condition. The estate asserted that, prior to Hart's death, many of the residents of the 269-unit, Section 8 assisted building, signed a petition regarding a broken air-conditioning system. The estate claimed that most of the residents who signed the petition stated that their air conditioning had not worked for weeks, if not months. Some of the residents stated that their air conditioning had not worked for a year.

The estate introduced as evidence the Muscogee County Coroner's death report on Hart. The coroner stated in his report that when he walked into Hart's room, it was very hot, with an actual temperature of 98.6 degrees. He stated that Hart's skin was hot to the touch. He also stated that after Hart was reported dead, staff turned on the air conditioning in his room and, though the air started blowing, the air was not cool. The coroner claimed that, even after the air conditioner ran for 30 minutes, the inside temperature never came down under 98 degrees.

The estate alleged that PF Holdings and Litvin were notified multiple times of air-conditioning issues with the Ralston weeks before Hart was found dead. The estate claimed that Columbus' director of building inspections and code enforcement stated he brought the air-conditioning issues to the attention of PF Holdings and Litvin approximately one week after receiving the May 30, 2017, petition the residents had signed. The estate also alleged that some residents were afraid of retribution for complaining, including fear of eviction.

The defense contended that Hart did not die from excessive heat in the apartment. The defense maintained that Hart's air conditioner was functioning on the day he died, but that he had turned it off.

**INJURIES/DAMAGES** *conscious pain and suffering; death; stroke*

Hart allegedly died from heat stroke. The estate introduced testimony from the coroner indicating that Hart did not die immediately and that he would have endured approximately two minutes of pain and suffering as he slowly suffocated.

The estate sought compensatory damages for the wrongful death and damages for Hart's conscious pain and suffering. The estate additionally sought punitive damages for the defendants' alleged egregious, willful and wanton conduct in failing to provide a habitable apartment to Hart. The estate also sought attorneys' fees.

The defense's medical expert, a pulmonologist, opined that Hart did not die from heat stroke, but may have died from an undiagnosed cancer. He opined that Hart had lost approximately 60 pounds in the six months prior to his death and that the rapid weight loss could have been a symptom of cancer.

**RESULT** The jury found for Hart's estate on the wrongful death claim and that Hart had suffered conscious pain and suffering. The jury also found that the defendants' conduct was egregious, willful and/or wanton. The jury determined that the estate's damages totaled \$125 million, including \$50 million in punitive damages.

<b>ESTATE OF CHARLES HART</b>	\$15,000,000 survival
	\$50,000,000 punitive damages
	\$35,000,000 compensatory damages
	<u>\$25,000,000 attorneys' fees</u>
	\$125,000,000

**TRIAL DETAILS** Trial Length: 6 days  
Trial Deliberations: 3 hours

**PLAINTIFF EXPERT(S)** None reported

**DEFENSE EXPERT(S)** Thomas P. Demarini, M.D., pulmonology, Decatur, GA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

**PREMISES LIABILITY**

Inadequate or Negligent Security — Premises Liability — Parking Lot

**Inadequate security at Kroger led to shooting, paraplegia**

**VERDICT** **\$81,000,000**

**ACTUAL** **\$69,660,000**

**CASE** Laquan Tremell Taylor v. The Kroger Co., Western Union and Norred & Associates Inc., No. 15-A57407E3

**COURT** DeKalb County, State Court, GA

**JUDGE** Wayne M. Purdom

**DATE** 4/18/2019

**PLAINTIFF ATTORNEY(S)** Denise Hoying, Law & Moran Attorneys at Law, Atlanta, GA  
Peter A. Law, Law & Moran Attorneys at Law, Atlanta, GA  
E. Michael Moran, Law & Moran Attorneys at Law, Atlanta, GA

**DEFENSE ATTORNEY(S)** Frederick L. Cooper, IV, Weinberg Wheeler Hudgins Gunn & Dial, Atlanta, GA (Kroger Co.)  
Richard H. Hill, II, Weinberg Wheeler Hudgins Gunn & Dial, Atlanta, GA (Kroger Co.)  
Ryan A. Kolb, Carlock Copeland & Stair LLP, Atlanta, GA (Norred & Associates Inc.)  
Jonathan T. Krawcheck, Weinberg Wheeler Hudgins Gunn & Dial, Atlanta, GA (Kroger Co.)  
Charles M. McDaniel, Jr., Carlock Copeland & Stair LLP, Atlanta, GA (Norred & Associates Inc.)  
None reported (Western Union)

**FACTS & ALLEGATIONS** On Jan. 15, 2015, plaintiff Laquan Tremell Taylor, 26, drove into the parking lot of a Kroger store located on Moreland Avenue, in DeKalb County. After Taylor exited his vehicle and began walking toward the store, he was approached by Javon Ross and Victor Moore. The two men demanded Taylor's keys and wallet. Taylor complied with the demand, handed over his keys and wallet, and then turned and began walking away. Ross then shot Taylor in the back. Taylor fell to the ground and, as he lay on the pavement, Ross shot him another 10 or 11 times before driving off in Taylor's vehicle. Taylor was rushed to Grady Hospital. He survived the shooting but was rendered paraplegic. Ross and Moore were apprehended and charged with hijacking a motor vehicle and aggravated assault. They were ultimately convicted and sentenced to prison.

Taylor sued The Kroger Co.; Western Union, which had an outlet inside the Kroger store; and Norred & Associates Inc., which provided interior security for the store.

Taylor sued Western Union because he allegedly had planned to use the Western Union outlet located inside the Kroger store. However, it was determined that Western Union was not a proper party and it was dropped from the case prior to trial.

Taylor claimed Kroger was aware the store was located in an unsafe, high-crime area but failed to provide proper security. He alleged that Kroger failed to place security guards in the parking lot where he was robbed and shot. Taylor likewise alleged that Norred & Associates failed to provide adequate security.

Kroger contended that there was adequate security at its property and the incident was not foreseeable. Kroger argued that the two men who robbed and shot Taylor were solely responsible for Taylor's injury and damages. Kroger added those two men, Javon Ross and Victor Moore, as non-party defendants for apportionment purposes.

Norred & Associates argued that there was no evidence of a causal connection between Norred's actions and the incident involving Taylor. Norred argued that it was under contract by Kroger to provide internal security only. Therefore, Norred asserted that it was not liable to Taylor as a matter of law. Norred additionally argued that the evidence established that Norred's security officer was located inside the store at the entrance at the time of the shooting, which is an appropriate location and where the officer was expected to be positioned. Moreover, Norred maintained that there were reports

that the two men had followed Taylor before he even arrived on Kroger's property/parking lot. Norred was dismissed from the case on a directed verdict.

**INJURIES/DAMAGES** *emotional distress; gunshot wound; paraplegia*

Taylor was shot 11 to 14 times. He was taken to Grady Memorial Hospital, where he underwent 14 surgeries in two months. He was rendered paraplegic and requires the use of a wheelchair.

After being released from Grady Memorial, Taylor spent two months at Shepherd Center. He then spent an additional seven months at the James A. Haley Veteran's Hospital in Tampa undergoing rehabilitation.

Taylor claimed he will require medical care for the rest of his life. He also claimed he suffered emotional distress as a result of the incident, stating that he believed he was going to die. According to Taylor, after initially being shot, he lay on the ground screaming as Ross approached him and shot him multiple times.

Taylor was a U.S. Navy veteran, having served in the Middle East. He relocated to Tampa, Florida, where he receives treatment through the Department of Veterans Affairs Spinal Center. He claimed \$4.5 million in past medical costs. He also sought damages for future medicals; past and present pain and suffering; physical impairment; and past and future loss of earnings.

The defense did not actively dispute the issue of Taylor's damages and focused on liability.

**RESULT** The jury apportioned 86 percent liability to Kroger, 7 percent liability to apportionment defendant Ross and 7 percent liability to apportionment defendant Moore. The jury determined that Taylor's damages totaled \$81 million, but that amount was reduced to \$69.66 million due to the jury's apportionment of fault.

<b>LAQUAN TREMELL TAYLOR</b>	\$4,260,078 past medical cost \$13,056,402 future medical cost \$183,520 past lost earnings \$3,500,000 future lost earnings \$60,000,000 <u>pain and suffering, physical impairment</u> \$81,000,000
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**TRIAL DETAILS** Trial Length: 9 days  
Trial Deliberations: 3 hours

**PLAINTIFF EXPERT(S)** None reported

**DEFENSE EXPERT(S)** None reported

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and defense counsel for Norred & Associates Inc. Defense counsel for The Kroger Co. did not respond to the reporter's phone calls.

**RETAIL PHARMACY**

**PREMISES LIABILITY**

Inadequate or Negligent Security — Premises Liability — Failure to Warn — Premises Liability — Parking Lot

**CVS was aware of criminal activity on premises, per lawsuit**

**VERDICT** \$45,000,000

**ACTUAL** \$42,750,000

**CASE** James Carmichael v. Georgia CVS Pharmacy, L.L.C., Mimms Enterprises, Inc., Malon D. Mimms Family, L.P., CVS Manager #1 and CVS Manager #2, No. 16EV005617

**COURT** Fulton County, State Court, GA

**JUDGE DATE** Fred C. Eady  
3/22/2019

**PLAINTIFF ATTORNEY(S)** James A. Rice, Jr., The Rice Firm, Atlanta, GA

**DEFENSE ATTORNEY(S)** Carrie A. Moss, Bendin Sumrall & Ladner LLC, Atlanta, GA (Georgia CVS Pharmacy, L.L.C., Malon D. Mimms Family, L.P, Mimms Enterprises Inc.)

**Brian D. Trulock**, Bendin Sumrall & Ladner LLC, Atlanta, GA (Georgia CVS Pharmacy, L.L.C., Malon D. Mimms Family, L.P, Mimms Enterprises Inc.)  
**None reported** (CVS Manager #1, CVS Manager #2)

**FACTS & ALLEGATIONS** On Dec. 20, 2012, plaintiff James Carmichael, 47, was shot while he was sitting in his car, which was parked in the parking lot of a pharmacy located on Moreland Avenue SE, in Atlanta. The shooter was never located. Carmichael suffered injuries of an arm, his liver and his stomach.

Carmichael sued the pharmacy's owners, Georgia CVS Pharmacy, L.L.C.; two related entities, CVS Manager #1 and CVS Manager #2; and the premises' owners, Mimms Enterprises Inc. and Malon D. Mimms Family, L.P. The lawsuit alleged that the shooting was a result of the defendants having negligently failed to properly secure their premises.

Mimms Enterprises, Malon D. Mimms Family, CVS Manager #1 and CVS Manager #2 were dismissed. The matter proceeded to a trial against Georgia CVS Pharmacy.

Carmichael said he had driven to the parking lot to meet a business acquaintance for the arranged purpose of purchasing an iPad. Carmichael claimed that Frankie Gray, who was interested in purchasing an iPad or other electronic device from Carmichael, got into Carmichael's vehicle to discuss the potential transaction. According to Carmichael, they were unable to agree to mutual terms for the sale and Gray exited the car. Per Carmichael, as soon as Gray exited, an unidentified man forced entry into Carmichael's vehicle and demanded his money and electronics while pointing a gun at him. Carmichael, who was also in possession of a handgun, shot the man twice with a .22 caliber pistol. Carmichael claimed that the man responded by firing several shots from his own .45 caliber pistol, striking Carmichael several times. Gray, who allegedly conspired with the man who shot Carmichael, was later arrested but released without charge.

Carmichael alleged that there was a history of criminal activity in and surrounding the parking lot. Carmichael argued that Georgia CVS Pharmacy had actual and/or constructive knowledge of that criminal activity, yet failed to provide adequate security or warn of the danger. Carmichael

maintained that CVS employees even feared for their safety because the parking lot was constantly occupied with drug dealers and loiterers. He further alleged that there had been other armed robberies inside the store, as well as a purse snatching in the parking lot prior to the shooting incident.

The defense contended that Carmichael was engaged in a private business transaction at the time and was not an invitee to whom CVS owed a duty of ordinary care. The defense argued that Carmichael was, instead, a licensee under Georgia law and that CVS merely owed him a duty to avoid willfully causing harm. The defense further argued that the shooting incident was not foreseeable.

The defense asserted that the property had adequate security and that there was no evidence that additional safety measures would have prevented this targeted, conspired armed attack. The defense also argued that Carmichael chose to meet Gray in the parking lot because he thought it to be a safe environment.

The defense added Gray as a nonparty defendant to the verdict slip for the purpose of fault apportionment.

**INJURIES/DAMAGES** *abdomen; decreased range of motion; emotional distress; fracture, arm; fracture, humerus; gunshot wound; internal fixation; liver; pins/rods/screws; plate; scar and/or disfigurement, arm*

Carmichael was taken by ambulance to a local emergency department. He had bullet wounds to his left, nondominant arm, liver and stomach. A bullet caused a fracture of the upper shaft of the humerus of the left arm and another bullet penetrated his liver. Carmichael underwent several surgical procedures to repair his arm, including implantation of plates and screws, and surgery to repair the liver and stomach wounds.

Carmichael claimed residual pain and limited use of his left arm due to some nerve damage. He also had scarring on his arm. He additionally claimed he suffers from emotional distress as a result of the incident.

Carmichael sought damages for past and future medicals, past and future pain and suffering, and past and future loss of earning capacity. Carmichael's counsel suggested the jury award \$60 million in compensatory damages. Carmichael also sought \$60 million in punitive damages against Georgia CVS.

Georgia CVS argued that Carmichael made a good recovery from his surgeries. Georgia CVS argued that punitive damages were not warranted, as the incident was not foreseeable.

**RESULT** The jury apportioned 95 percent liability to Georgia CVS and 5 percent liability to apportionment defendant Gray. The jury's award of \$45 million was reduced to \$42,750,000 based on the jury's apportionment of fault. The jury determined that Carmichael was not entitled to an award for punitive damages.

<b>DEMAND</b>	\$3,000,000 (from Georgia CVS Pharmacy)
<b>OFFER</b>	\$250,000 (by Georgia CVS Pharmacy)
<b>TRIAL DETAILS</b>	Trial Length: 4 days Trial Deliberations: 3 hours
<b>PLAINTIFF EXPERT(S)</b>	None reported
<b>DEFENSE EXPERT(S)</b>	None reported

**POST-TRIAL** Defense counsel has filed a motion for a new trial.

**EDITOR'S NOTE** This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

## GOLF COURSE

### PREMISES LIABILITY

Failure to Warn — Premises Liability — Dangerous Condition — Recreation — Bicycle — Premises Liability — Housing Complex — Premises Liability — Negligent Assembly or Installation

## Bicyclist paralyzed after hitting pathway bollard

<b>VERDICT</b>	<b>\$41,050,000</b>
<b>CASE</b>	James Schnurr and Christine Schnurr v. J.L. Property Owners Association, Inc. and Jonathan's Landing Golf Club, Inc., No. 50-2016-CA-009882-XXXX-MB
<b>COURT</b>	Palm Beach County Circuit Court, 15th, FL
<b>JUDGE</b>	Lisa S. Small
<b>DATE</b>	5/15/2019



**PLAINTIFF****ATTORNEY(S)**

**Gregg A. Schlesinger** (lead), Schlesinger Law Offices, P.A., Fort Lauderdale, FL  
**Thomas P. Angelo**, Angelo & Banta, P.A., Fort Lauderdale, FL  
**Zane Berg**, Schlesinger Law Offices, P.A., Fort Lauderdale, FL  
**James W. Carpenter**, Angelo & Banta, P.A., Fort Lauderdale, FL  
**Crane A. Johnstone**, Johnstone Law, P.A., Fort Lauderdale, FL  
**Cristina Sabbagh**, Schlesinger Law Offices, P.A., Fort Lauderdale, FL

**DEFENSE****ATTORNEY(S)**

**Todd R. Ehrenreich** (lead), Lewis Brisbois Bisgaard & Smith LLP, Coral Gables, FL (J.L. Property Owners Association Inc.)  
**Kathryn L. Ender**, Lewis Brisbois Bisgaard & Smith LLP, Coral Gables, FL (J.L. Property Owners Association Inc.)  
**Brian S. Goldenberg**, Lewis Brisbois Bisgaard & Smith LLP, Miami, FL (J.L. Property Owners Association Inc.)  
**Arthur J. Laplanté**, Hinshaw & Culbertson LLP, Fort Lauderdale, FL (J.L. Property Owners Association Inc.)  
**Martin D. Stern**, Hinshaw & Culbertson LLP, Fort Lauderdale, FL (J.L. Property Owners Association Inc.)  
**None reported** (Jonathan's Landing Golf Club Inc.)

**FACTS & ALLEGATIONS** On April 10, 2016, plaintiff James Schnurr, 64, chief accountant for the U.S. Securities and Exchange Commission, was bicycling on a two-lane, multi-use pathway in Jupiter. The pathway connected the residential community of Hidden Cove to Captain Kirle Drive.

Schnurr was riding behind his wife. As the couple approached the intersection with Captain Kirle Drive, there were two wooden bollards on the pathway. The bollards were in place to prevent cars on the roadway from

using the pathway as a shortcut. Schnurr crashed into one of the bollards and was propelled off of his bicycle. He sustained severe neck injuries and was rendered an incomplete quadriplegic.

Schnurr and his wife, Christine Schnurr, sued Jonathan's Landing Golf Club, which owned the section of land where he fell. Schnurr also sued J.L. Property Owners Association, the master association for the development. Schnurr alleged that the defendants were liable for a dangerous condition that caused his accident.

The golf club was not part of the lawsuit at the time of trial. However, it remained on the verdict form as Fabre defendant.

Schnurr's counsel claimed that the bollards were installed illegally without a permit and thus should not have been on the property. Counsel presented an expert engineer who opined that the bollards were likely made and installed by in-house maintenance employees rather than a contractor or engineer. The expert also stated that the in-house employees likely did not know when the use of bollards was indicated, or where and how to place bollards properly.

Schnurr also alleged that the bollards did not even serve their purpose. While they were installed to prevent cars from using the pathway, the bollards were far enough apart that a car could drive between them, per plaintiff's counsel.

Schnurr's counsel further argued that the bollards did not follow appropriate standards and guidelines. Counsel claimed fixed obstructions such as bollards are not supposed to be placed on multi-use pathways, because they are hazardous to bicyclists and others utilizing the pathway. Plaintiff's counsel argued that the defendant could have used a flexible delineator or simply installed signs warning cars not to go onto the pathway.

Schnurr's counsel also claimed the pathway could have been reconfigured so that it did not connect to the road. Counsel argued that this would have prevented cars from going on the pathway. According to plaintiff's counsel, the property association and the golf club had discussed this solution a few years before the subject accident but chose not to implement this change.

Schnurr further argued that if a bollard is used on a pathway, it should be placed in between the two through lanes so that it does not block pathway traffic. However, the two bollards in question were placed directly in the middle of each lane of travel, according to plaintiff's counsel.

Plaintiffs' counsel additionally made a failure to warn claim. Counsel noted that

the bollards were painted tan so that they blended in with the surroundings. Plaintiff's counsel argued that the bollards should have been painted a brighter color and had appropriate reflective material. This would have allowed Schnurr to see the bollards from a distance and given him enough time to avoid them, per plaintiffs' counsel. Counsel similarly claimed that there should have been painted striping on the ground to guide bicyclists around the bollards.

Schnurr also called a human factors expert who discussed the low contrast between the color of the bollards and their surroundings, which included the concrete pathway and the palm trees in the background. The expert concluded that this would have made the bollards more difficult to see. The expert also opined that Schnurr's wife, who was riding in front of him, may have obstructed his view of the bollards until he was within 25 feet of them.

The plaintiffs' accident reconstructionist, meanwhile, opined that Schnurr was biking approximately 12 miles per hour at the time of the crash and thus did not have sufficient time to react to the bollard.

The property owners' association initially argued that the golf club was solely responsible for maintaining the pathway. In response, plaintiffs' counsel retained a real estate attorney who analyzed the legal documents governing the community in order to help the jury understand them.

The court ultimately granted a directed verdict in favor of the plaintiffs regarding this issue. The court found that the property owners' association had a duty to maintain the premises.

The defense maintained that Schnurr had used the pathway in the past and thus should have been aware of the bollards. The defense noted that Schnurr, who had a home in the gated community, used the pathway every time he went to the gym. Schnurr's counsel countered that the plaintiff worked primarily in Washington, D.C., and thus didn't spend a lot of time at the Florida home prior to the crash.

The defense further claimed the bollards were visible and that Schnurr could and should have avoided them. The defense alleged Schnurr was looking to his right as he rode his bicycle, rather than keeping his eyes straight ahead. Schnurr's counsel countered that he was not looking solely to his right but was instead watching all around him so that he would be aware of his surroundings.

The defense additionally noted that there had been no reports of other accidents involving the bollards in the 30 years since

they were installed. Plaintiff's counsel countered there were marks and dings on the bollards, indicating that golf carts or bicycles likely hit the bollards in the past.

The defense also retained an accident reconstructionist who opined that Schnurr was traveling at about only 10 miles per hour prior to the crash. The expert claimed Schnurr had time to react to and avoid the bollard.

**INJURIES/DAMAGES** *arthrodesis; bedsore/decubitus ulcer/pressure sore; bone graft; catheterization; colostomy; debridement; edema; foraminectomy/foraminotomy; fracture, C6; fracture, C7; fracture, neck; hematoma; infection; laminectomy; nerve damage/neuropathy; neuropathy; pins/rods/screws; pulmonary/respiratory; quadriplegia; spastic quadriplegia; swelling*

Schnurr was taken by helicopter to Jupiter Medical Center. He was transferred to St. Mary's Medical Center the same day. He was diagnosed with fractures to his C6 spinal canal, C6 right inferior articular facet, C7 left lateral mass and superior articular facet, and C6 anterior-inferior vertebral body. He also had a hematoma at the C6-7 level in combination with a focal cord edema.

Schnurr remained at St. Mary's for several days before being transferred to Jackson Memorial Hospital. On April 14, he underwent a surgery that included posterior cervical-thoracic laminectomies and foraminotomies at C2-T1. The surgery also included a posterior lateral arthrodesis at C5-T1; the placement of screws and rods at C5, C6, C7 and T1; and bone grafting.

Despite the surgery, Schnurr was rendered an incomplete quadriplegic. He has traces of movement in his toes, but he is unable to move his legs. While he can move his arms, he does not have a normal range of motion, strength or functional ability in those limbs. He also suffers from spasticity in his hands, which limits the use of his fingers.

After staying at Jackson for a few weeks, Schnurr was transferred to a rehabilitation center in Atlanta. He underwent eight to 10 months of intensive therapy.

While Schnurr returned home after this treatment, he was in and out of the hospital and rehab centers for the next several years, due to numerous complications. He suffered from bed sores/ulcers, respiratory problems and numerous infections. He has also had surgeries to install a colostomy bag, a suprapubic catheter and a Baclofen pump. His other surgeries included a skin flap procedure to cover one of his bedsores, and multiple ulcer debridements.

In December 2017, Schnurr was placed in a subacute facility for skilled nursing care. He was still there at the time of the trial.

Schnurr continues to suffer from neuropathic pain. His counsel said that Schnurr hopes to return home in the future, but he does and will require 24-hour nursing care. Schnurr's counsel presented an expert neurologist who opined that if Schnurr receives appropriate care, he should have a normal life expectancy. Schurr's counsel also retained a life care planner who concluded that Schnurr is no longer able to work.

Schnurr stated that he used to enjoy exercising every day, but he is now greatly limited in his physical activity. Schnurr further said that, prior to the crash, he had been looking forward to reducing his work hours and going on trips with his wife. However, now he is unable to travel. He also stated that he is not able to hold his young grandchildren.

Schnurr sought recovery of past and future medical expenses and past and future lost earnings, and damages for his past and future pain and suffering. His wife, Christine Schnurr, presented a derivate claim for comfort, society and attention, and loss of services.

The defense claimed Schnurr was going to spend the rest of his life in the nursing facility and would not be able to return home. The defense also retained a life care planner who said that Schnurr would live only six to eight more years. Thus, the defense claimed that any damages award should be limited.

**RESULT** The jury issued a defense verdict on the negligence/failure to maintain a safe premises claim. However, the jury determined that J.L. Property Owners failed to warn Schnurr about a dangerous condition.

The jury assigned Schnurr 50 percent of the liability for his injuries. J.L. Property owners was assigned 45 percent of the liability, while Jonathan's Landing Golf Club was assigned the remaining 5 percent of liability.

The jury determined that the plaintiffs' damages totaled \$41,050,000. The liability apportionment would normally produce a net verdict of \$18,472,500, but there may still be post-trial motions that could affect how much money the plaintiffs recover.

**CHRISTINE SCHNURR** \$5,000,000 loss of comfort, society and attention  
\$5,000,000

**JAMES SCHNURR** \$4,800,000 past medical cost  
\$12,000,000 future medical cost  
\$750,000 past lost earnings  
\$3,500,000 future lost earnings  
\$10,000,000 past pain and suffering  
\$5,000,000 future pain and suffering  
\$36,050,000

**INSURER(S)** Greenwich Insurance Co. for J.L. Property Owners (excess)  
Philadelphia Insurance Cos. for J.L. Property Owners (primary insurer)

**TRIAL DETAILS** Trial Length: 17 days  
Trial Deliberations: 6 hours  
Jury Vote: 6-0

**PLAINTIFF EXPERT(S)** Jeffrey Gelblum, M.D., neurology, Aventura, FL  
Henry Hillman, engineering, Fort Lauderdale, FL (did not testify; videotaped deposition presented)  
Robert S. Kennedy, Ph.D., ergonomics/human factors, Orlando, FL  
D. Rowland Lamb, P.E., accident reconstruction, Tallahassee, FL  
Craig H. Lichtblau, M.D., physical medicine, Palm Beach, FL  
Brent Longnecker, compensation (employment), Houston, TX  
John T. Metzger, law (real estate), West Palm Beach, FL  
Oscar J. Padron, C.P.A., economics, Miami Lakes, FL  
Arnold Ramos, traffic, Fort Lauderdale, FL  
Richard B. Seely, M.D., psychiatry, Delray Beach, FL

George W. Zimmerman,  
building codes, West Palm  
Beach, FL

**DEFENSE  
EXPERT(S)**

Marca Alexander, M.D., life  
care planning, Birmingham,  
AL

C. William Brewer, P.E.,  
engineering, Palm Beach  
Gardens, FL

G. Bryant Buchner, P.E.,  
accident reconstruction,  
Tallahassee, FL

Merle F. Dimbath, PhD.,  
economics, Stuart, FL

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel and J.L. Property Owners Association's counsel. Jonathan's Landing Golf Club's counsel was not asked to contribute.

Luis "L.A." Elizondo,  
Gowan Elizondo LLP,  
Corpus Christi, TX  
Gregory Gowan, Gowan  
Elizondo LLP, Corpus  
Christi, TX

**DEFENSE  
ATTORNEY(S)**

Scott W. Self (lead), Brown  
Fox, PLLC, Dallas, TX  
(Lasko Products LLC)

Darrell Barger, Hartline  
Barger, Houston, TX (Lasko  
Products LLC)

Wanda Fowler, Wright Close  
& Barger, Houston, TX  
(Lasko Products LLC)

John P. "Jack" Freedenberg,  
Goldberg Segalla L.L.P.,  
New York, NY (Lasko  
Products LLC)

None reported (American  
Electric Power Service Corp.,  
Carlos Hernandez, Leggett  
and Platt Inc.)

Lasko that they did not meet one specification or another when they were inspected in China before they were imported.

There were four other defendants, but they were no longer in the case at the time of trial. Leggett and Platt Inc. manufactured Mrs. Enriquez's electric adjustable bed, which was plugged into the wall in the northeast corner of the room. AEP Texas Inc., a subsidiary of American Electric Power Service Corp., was the electricity provider for the region. Carlos Hernandez was an alleged drunk driver who caused a power outage by crashing into a utility pole. The fire at the Enriquez home was first noticed 10 to 15 minutes after power was restored.

Plaintiffs' counsel portrayed Lasko as profiting from China's cheap labor at the expense of product safety.

Lasko denied any manufacturing defect. Its corporate representative, a safety manager, testified that Lasko had imported 1.3 million of the heaters without receiving any complaints of fire. He also testified about all inspections and checks that the components and finished product undergo. The defense expert on cause and origin and electrical engineering testified that ceramic heaters could not fail in the manner that the plaintiffs claimed. He explained ceramic heater technology, and contrasted it with older, less safe heater technology that uses a red-hot resistance wire as its heating element. The heating element in a ceramic heater consists of numerous ceramic pellets, which stay well below 400 temperatures and are not hot enough to ignite paper, he said.

Also, the fire department's report said that because of multiple possible ignition sources, the cause of the fire could not be determined. As possible ignition sources, the defense pointed to the electric bed and an old power strip that provided electricity to the heater and a cordless-phone unit. The defense noted that the line cord of the power strip showed evidence of sustained arcing.

The defense also questioned whether the heater was plugged in at all, given that carpeting was found melted around the prongs of the plug. The defense further argued that, even if the heater was plugged in, it would be odd for it to fail suddenly and catch fire after years of operating safely and without any problems.

Lasko argued that, based in part on a metallurgical analysis, the bead that Rasco considered evidence of arcing was, in fact, only a solder. The defense further argued that plaintiffs' counsel did not provide Rasco with any of Lasko's design, engineering or manufacturing records or

**FACTS & ALLEGATIONS** On Jan. 3, 2016, plaintiffs' decedent Martin Enriquez Sr., 89, a retiree, and his wife, plaintiffs' decedent Angelita M. Enriquez, 86, a retiree, died in a fire at their home in Corpus Christi. The fire started in the northeast corner of Mrs. Enriquez's bedroom. In that part of the room, there was a ceramic air heater, which had been manufactured in China in 2009. It was imported by Lasko Products LLC.

The plaintiffs were survived by three adult children. Plaintiffs Martin Enriquez Jr., 60s, and Irene Gonzalez, 60s, children of both decedents, and Daniel Martinez, 60s, Mrs. Enriquez's son and Mr. Enriquez's stepson.

The plaintiffs sued Lasko. They alleged that the ceramic heater had a manufacturing defect. Plaintiffs' electrical engineering expert, Dennis Rasco, P.E., opined that either a ceramic pellet in the heater failed, or a loose wire in the heater resulted in resistance heating, or both. He further testified that he saw evidence of arcing on a wire inside the heater.

Plaintiffs' expert on cause and origin opined that the heater was the only competent ignition source in the area where the fire started. In addition, one of the fire department investigators, Mikal Stuiwe, opined at trial that the heater was 80 percent likely to be the cause of the fire.

Over Lasko's objection, the plaintiffs also introduced deposition testimony from the company's import quality control manager and also introduced reports of heaters written for

**IMPORTER**

**PRODUCTS LIABILITY**

Manufacturing Defect — Products Liability —  
Appliances — Wrongful Death — Survival Damages

**Plaintiffs claimed defect  
in ceramic heater caused  
fatal fire**

**VERDICT** **\$36,240,000**

**CASE** Martin Enriquez, Jr.,  
Daniel Martinez, and Irene  
Gonzalez, individually  
and on behalf of Martin  
Enriquez, Sr. (deceased)  
and Angelita M. Enriquez  
(deceased) v. Lasko Products,  
Inc., American Electric Power  
Service Corporation; Leggett  
and Platt, Incorporated; and  
Carlos Hernandez, No. 2017-  
CCV-60993-4

**COURT** Nueces County Court at  
Law No. 4, TX

**JUDGE** Mark H. Woerner

**DATE** 11/21/2019

**PLAINTIFF  
ATTORNEY(S)** Doug Allison, The Allison  
Law Firm, Corpus Christi,  
TX

with any testimony from the defense experts or employees, and that Rasco relied solely on the Wikipedia “ceramic heaters” page for his information about ceramic heaters. Also, the defense noted that Rasco did not attend joint forensic inspections at which defendants’ experts used a scanning electron microscope and energy dispersive spectroscopy to examine artifacts from the fire scene.

Lasko filed Daubert/Robinson motions as to the admissibility of the plaintiffs’ retained expert testimony, but the motions were denied.

When Stuiwe testified at trial that the heater was likely the cause of the fire, the defense objected and sought to impeach him. The fire department’s report, which Stuiwe authored, said unequivocally that the cause of the fire was undetermined, and Stuiwe he was consistent with the report in his deposition.

Lasko further argued that plenty of its products are made in the U.S., and that practically all U.S. companies that sell ceramic heaters import them from China, because the components are made there.

**INJURIES/DAMAGES** *burns; cardiac arrest; death; smoke inhalation*

Mr. and Mrs. Enriquez sustained severe burns and smoke inhalation and later died.

Mr. Enriquez was unconscious from the time he was extracted from the house until his death about 18 hours later. He died from cardiac arrest, secondary to burns and smoke inhalation. He was burned on 69 percent of his body.

When Mrs. Enriquez was removed from the house, she was aware that her husband was still inside. She remained conscious until she arrived at the hospital, at which time she was put into a coma. She underwent debridements, but died about four days after the fire. The cause of death was cardiac arrest, secondary to burns and smoke inhalation.

Martin Jr. and Daniel lived in Corpus Christi. Martin Jr. lived a few blocks away from his parents and saw them at least weekly. Irene had moved to Austin in 2011.

Plaintiffs’ counsel asked the jury to award a total of \$40 million.

For Mr. Enriquez’s estate, plaintiffs’ counsel sought \$170,000 for medical expenses; \$10,000 for funeral and burial expenses; and damages for pain and mental anguish.

For Mrs. Enriquez’s estate, plaintiffs’ counsel sought \$50,000 for medical expenses; \$10,000 for funeral and burial expenses; and damages for pain and mental anguish.

For Martin Jr. and Irene, plaintiffs’ counsel sought damages for past and future loss of their parents’ companionship and society

and past and future mental anguish for the loss of their parents.

For Daniel, plaintiffs’ counsel sought damages for past and future loss of his mother’s companionship and society and past and future mental anguish for the loss of his mother.

**RESULT** Lasko was the only defendant still in the case at the time of trial.

The jury found Lasko liable for the decedents’ deaths and awarded the plaintiffs \$36,240,000.

Angelita’s estate’s damages totaled \$4,060,000 and consisted of \$4 million for pain and mental anguish; \$50,000 for medical expenses; and \$10,000 for funeral and burial expenses.

Martin Sr.’s estate’s damages totaled \$2,180,000 and consisted of \$2 million for pain and mental anguish; \$170,000 for medical expenses; and \$10,000 for funeral and burial expenses.

Martin Jr.’s and Irene’s damages totaled \$24 million. They were each awarded \$1 million for the past loss of each parent’s companionship and society; \$2 million for the future loss of each parent’s companionship and society; \$1 million for past mental anguish from each parent’s death; and \$2 million for future mental anguish from each parent’s death.

Daniel’s damages totaled \$6 million and consisted of \$1 million for the past loss of his mother’s companionship and society; \$2 million for the future loss of his mother’s companionship and society; \$1 million for past mental anguish from his mother’s death; and \$2 million for future mental anguish from his mother’s death.

The jury deliberations took place on two days.

<b>ESTATE OF ANGELITA M. ENRIQUEZ</b>	\$50,000
	past medical cost
	\$10,000 funeral burial expense
	<u>\$4,000,000 survival</u>
	\$4,060,000

<b>MARTIN ENRIQUEZ JR.</b>	\$2,000,000 past loss of society companionship
	\$4,000,000 future loss of society companionship
	\$2,000,000 past mental anguish
	<u>\$4,000,000 future mental anguish</u>
	\$12,000,000

<b>ESTATE OF MARTIN ENRIQUEZ SR.</b>	\$170,000
	past medical cost
	\$10,000 funeral burial expense
	<u>\$2,000,000 survival</u>
	\$2,180,000
<b>IRENE GONZALEZ</b>	\$2,000,000 past loss of society companionship
	\$4,000,000 future loss of society companionship
	\$2,000,000 past mental anguish
	<u>\$4,000,000 future mental anguish</u>
	\$12,000,000
<b>DANIEL MARTINEZ</b>	\$1,000,000 past loss of society companionship
	\$2,000,000 future loss of society companionship
	\$1,000,000 past mental anguish
	<u>\$2,000,000 future mental anguish</u>
	\$6,000,000
<b>DEMAND OFFER</b>	None \$150,000
<b>INSURER(S)</b>	<b>Starr Cos.</b> for Lasko (excess) <b>American International Group Inc.</b> for Lasko (primary)
<b>TRIAL DETAILS</b>	Trial Length: 7 days Trial Deliberations: 5 hours Jury Vote: 6-0 Jury Composition: 2 male, 4 female
<b>PLAINTIFF EXPERT(S)</b>	<b>Osbert Blow, M.D.</b> , trauma, Corpus Christi, TX (treater) <b>Dennis Rasco, P.E.</b> , electrical, San Antonio, TX <b>Bryan Skelly</b> , cause & origin, San Antonio, TX <b>Mikal Stuiwe</b> , accident investigation, Corpus Christi, TX (non-retained) <b>Eric Wood</b> , investigation, Corpus Christi, TX (non-retained)
<b>DEFENSE EXPERT(S)</b>	<b>Donald Hoffmann, Ph.D.</b> , safety, Warren, MI
<b>POST-TRIAL</b>	Lasko plans to file motions for judgment notwithstanding the verdict and a new trial.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel.

## EVENT PROMOTER

### WORKER/WORKPLACE NEGLIGENCE

Labor Law — Workplace — Workplace Safety —  
Workplace — Forklift — Slips, Trips & Falls — Fall  
from Height

## Worker fell 10 feet, suffered brain injury requiring four surgeries

**VERDICT** \$101,799,768

**ACTUAL** \$102,114,768

**CASE** Mark Perez v. Beach  
Concerts, Inc., Live Nation  
Worldwide, Inc., Live  
Nation Marketing, Inc.,  
Live Nation Global Venues  
and Properties, Inc. and  
Michael J. Brogden, No.  
158373/13

**COURT** New York Supreme, NY  
**JUDGE** John J. Kelley  
**DATE** 12/9/2019

**PLAINTIFF**  
**ATTORNEY(S)** **Benedict P. Morelli** (lead),  
Morelli Law Firm, PLLC,  
New York, NY  
**Alexander Morelli**, Morelli  
Law Firm, PLLC, New  
York, NY  
**Michael S. Schlesinger**,  
Morelli Law Firm, PLLC,  
New York, NY  
**David T. Sirotkin**, Morelli  
Law Firm, PLLC, New  
York, NY

**DEFENSE**  
**ATTORNEY(S)** **Jeffrey L. O'Hara** (lead),  
Connell Foley, Newark,  
NJ (Beach Concerts Inc.,  
Live Nation Marketing  
Inc., Live Nation  
Worldwide Inc., Michael J.  
Brogden, Nation  
Global Venues and  
Properties Inc.)

**Scott L. Haworth**, Haworth  
Barber & Gerstman, LLC,  
New York, NY (Beach  
Concerts Inc., Live Nation  
Marketing Inc., Live Nation  
Worldwide Inc., Michael  
J. Brogden, Nation Global  
Venues and Properties Inc.)  
**Mitchell B. Levine**, Fishman  
McIntyre Berkeley Levine  
Samansky P.C., New York,  
NY (Best Buy Stores, L.P.)

**FACTS & ALLEGATIONS** On June 26,  
2013, plaintiff Mark Perez, 30, a graphic  
designer, worked at Jones Beach Marine  
Theater, an open-air stadium that is located  
at 1 Ocean Parkway, in Wantagh. Perez had  
designed promotional artwork that was to be  
displayed during one of the stadium's events,  
in a two-story vendor booth composed of  
trusses. The booth was being assembled by  
another man, Michael Brogden, and Perez  
was hanging artwork and providing other  
assistance. While Perez was standing on one  
of the booth's horizontal trusses, the booth  
was struck by a forklift that Brogden was  
operating. Perez resultantly fell off of the  
truss. He plummeted a distance of some  
10 feet, and he landed on the ground. He  
suffered injuries of his back, his face, his  
head, a lung, his neck, a shoulder and eight  
ribs.

Perez sued Brogden; Brogden's employer and  
the event's promoter, Live Nation Worldwide  
Inc.; that entity's marketing subsidiary, Live  
Nation Marketing Inc.; another subsidiary,  
Nation Global Venues and Properties Inc.;  
and the theater's operator, Beach Concerts  
Inc. The lawsuit alleged that Brogden was  
negligent in his operation of the forklift,  
that Brogden's negligence contributed to the  
accident, and that the remaining defendants  
were vicariously liable for Brogden's  
actions. The lawsuit further alleged that  
Beach Concerts, Live Nation Marketing,  
Live Nation Worldwide, and Nation Global  
Venues and Properties negligently failed to  
provide a safe workplace, that their failure  
contributed to the accident, and that their  
failure constituted a violation of the New  
York State Labor Law.

Live Nation Marketing and Live Nation  
Worldwide impleaded Perez's employer, Best  
Buy Stores, L.P. Live Nation Marketing  
and Live Nation Worldwide sought  
indemnification.

Perez's counsel abandoned the claims  
against Brogden, Beach Concerts, which had  
been acquired by Live Nation Worldwide,  
and Nation Global Venues and Properties,

which did not answer the complaint. The  
matter proceeded against Live Nation  
Worldwide and Best Buy Stores.

Perez's counsel contended that the accident  
stemmed from an elevation-related hazard,  
as defined by Labor Law § 240(1), and  
that Perez was not provided the proper,  
safe equipment that is a requirement of the  
statute.

Perez's counsel moved for summary  
judgment of Live Nation Worldwide's  
liability, and the motion was granted. The  
trial addressed damages.

**INJURIES/DAMAGES** *LeFort fracture;*  
*anxiety; aphasia; brain damage; cognition,*  
*impairment; collapsed lung; coma;*  
*craniectomy; depression; dysarthria;*  
*encephalomalacia; epilepsy; fracture,*  
*C1; fracture, C2; fracture, C3; fracture,*  
*C4; fracture, T10; fracture, T9; fracture,*  
*clavicle; fracture, collarbone; fracture,*  
*neck; fracture, orbit; fracture, rib; fracture,*  
*shoulder; fracture, skull; fracture, transverse*  
*process; fracture, vertebra; gastrostomy;*  
*hemicraniectomy; infection; insomnia;*  
*memory, impairment; physical therapy; pins/*  
*rods/screws; pneumothorax; post-traumatic*  
*stress disorder; respiratory; scar and/or*  
*disfigurement; seizure; sepsis; septicemia;*  
*shoulder, separation; speech/language,*  
*impairment of; subarachnoid hemorrhage;*  
*subdural hematoma; tracheostomy/*  
*tracheotomy; traumatic brain injury*

Perez suffered a fracture of his skull's  
right temporal bone and right orbit, which  
is the socket of the right eye. The fracture  
was deemed a LeFort fracture, which  
involves complete or partial separation of  
the mid-face and the skull base. The injuries  
damaged his brain, and he developed a  
subdural hematoma and a subarachnoid  
hemorrhage.

Perez also suffered fractures of his C1,  
C2, C3 and C4 vertebral bodies; fractures  
of transverse processes of his T9 and T10  
vertebrae; a fracture of his right shoulder's  
clavicle, which is the collarbone; a complete  
separation of the same shoulder; and  
fractures of eight ribs. One fractured rib  
caused a pneumothorax, which involved a  
collapse of a lung.

Perez was airlifted to Nassau University  
Medical Center, in East Meadow. A  
coma was induced, and he underwent a  
hemicraniectomy, which involved removal  
of about 40 percent of his skull, to relieve  
intracranial pressure. The extracted bone  
was sewn into his abdomen for preservation  
and later replacement. During the interim  
period, Perez wore a protective helmet.

During his hospitalization, Perez developed sepsis and septicemia. He required a tracheostomy, mechanical assistance of his respiration and a percutaneous endoscopic gastrostomy: surgical implantation of a tube that allows automatic feeding of a patient. His hospitalization lasted 29 days, and it was followed by about six weeks of inpatient rehabilitative treatment, which included physical therapy and therapy that addressed residual impairment of Perez's cognition.

On Oct. 8, 2013, Perez underwent a cranioplasty, which involved replacement of the bone that had been removed during his hemispherectomy. The bone was secured via implantation of 27 screws.

On Jan. 20, 2015, Perez underwent another cranioplasty. The procedure involved implantation of titanium mesh that replaced a portion of his skull. On May 12, 2015, he underwent another cranioplasty. The procedure was necessitated by an infection.

Perez's brain's injury caused permanent residual effects that include encephalomalacia, epileptic seizures, impairment of his muscular coordination, and impairment of his executive functions, memory, speech and other elements of his cognition. Specific manifestations include: aphasia, which involves impairment of the ability to formulate sentences and speech; apraxia, which involves impairment of the ability to perform known commands; and dysarthria, which involves slowing and/or slurring of speech. Perez also suffers post-traumatic stress disorder, with manifestations that include anxiety, depression and insomnia.

Perez can perform most physical activities, but he claimed that experiences dangerous episodes of confusion, forgetfulness and impulsiveness. Perez's brother, Justin Perez, claimed that his brother's forgetfulness has extended to his use of medication and appliances, such as an oven, and that his brother cannot be trusted to safely cross streets assistance. Mark Perez also claimed that his diminished state ended an eight-year relationship with a girlfriend he was dating at the time of the accident. He further claimed that his injuries prevent his performance of meaningful work. He also retains physical scars and an obvious disfiguration of his skull. Perez's counsel claimed that Perez requires lifelong psychological counseling, that Perez will require as many as four surgeries to address his brain and/or skull, that Perez's right shoulder requires surgery, and that Perez will ultimately require the presence of a full-time aide.

The parties stipulated that Perez's past medical expenses totaled \$315,000. Perez sought recovery of that amount; a total of \$14,028,959 for future medical expenses, rehabilitative needs and life-care costs; damages for past and future loss of earnings; and damages for past and future pain and suffering.

Defense counsel contended that Perez exaggerated the extent of his residual effects. Defense counsel also contended that Perez has resisted surgery and other treatment that would improve his condition.

**RESULT** The jury found that Perez's damages totaled \$101,799,768. After the addition of the stipulated medical expenses, Perez's recovery totaled \$102,114,768.

**MARK PEREZ** \$163,069 past lost earnings  
\$10,500,000 past pain and suffering  
\$3,656,804 future medical cost (43 years)  
\$6,768,150 cost of future custodial care (41.54 years)  
\$307,707 cost of future rehabilitative care (43 years)  
\$5,154,038 future lost earnings (43 years)  
\$75,250,000 future pain and suffering (43 years)  
\$101,799,768

**DEMAND OFFER** None reported  
\$31,000,000 (by Live Nation Worldwide)

**TRIAL DETAILS** Trial Length: 5 weeks  
Trial Deliberations: 1 day  
Jury Vote: 6-0  
Jury Composition: 1 male, 5 female

**PLAINTIFF EXPERT(S)** Debra S. Dwyer, Ph.D., economics, Stony Brook, NY  
Wayne A. Gordon, Ph.D., neuropsychology, New York, NY  
Jerry A. Lubliner, M.D., orthopedic surgery, New York, NY  
Edmond A. Provder, C.R.C., life care planning, Lodi, NJ  
Theodore H. Schwartz, M.D., neurosurgery, New York, NY

**DEFENSE EXPERT(S)** Leonard R. Freifelder, Ph.D., economics, New York, NY  
Kimberly Kushner, R.N., life care planning, Southampton, PA

**POST-TRIAL** Defense counsel has moved for a new trial. Defense counsel has also moved for remittitur.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and Best Buy Stores' counsel. Additional information was gleaned from court documents. The remaining defendants' counsel did not respond to the reporter's phone calls.

## BAR/RESTAURANT

### WORKER/WORKPLACE NEGLIGENCE

Negligent Service of Alcohol — Motor Vehicle — Pedestrian — Motor Vehicle — Alcohol Involvement — Hotel/Restaurant — Dram Shop

## Bar served man 24 drinks in one night, suit alleged

**VERDICT** \$30,840,016

**CASE** Guardianship of Jacquelyn Anne Faircloth v. Cantina Tallahassee, LLC, d/b/a Cantina 101 Restaurant and Tequila Bar, 101 Management Group, LLC, 101 International Investment Group, LLC, and Main Street Entertainment, Inc., d/b/a Potbelly's, No. 2015 CA 002778  
**COURT** Leon County Circuit Court, 2nd, FL  
**JUDGE DATE** Kevin Carroll 8/23/2019

**PLAINTIFF ATTORNEY(S)** Mark A. Avera (co-lead), Avera & Smith, LLP, Gainesville, FL  
Donald M. Hinkle (co-lead), Hinkle & Foran, Tallahassee, FL

## DEFENSE

**ATTORNEY(S)** **Michael J. Carney** (co-lead), Kubicki Draper, Fort Lauderdale, FL (Main Street Entertainment Inc.)  
**Brian E. Chojnowski** (co-lead), Kubicki Draper, Tallahassee, FL (Main Street Entertainment Inc.)  
**None reported** (Cantina Tallahassee LLC, 101 International Investment Group LLC, 101 Management Group LLC)

**FACTS & ALLEGATIONS** On Nov. 29, 2014, plaintiff Jacquelyn Faircloth, 18, a high school student, was struck by a pickup truck as she crossed Pensacola Street, near the Florida State University campus. There was no crosswalk nearby. Faircloth suffered a brain injury.

Faircloth was hit at approximately 2 a.m. She had been at the Cantina 101 Restaurant and Tequila Bar. Although Faircloth was under the legal drinking age of 21 and she used her regular identification, she was able to enter the bar and consume alcohol. The pickup truck driver was a 20-year-old employee of another local bar, Potbelly's. After he had finished his shift earlier that night, he returned to Potbelly's and consumed alcoholic beverages. The driver fled the scene and did not undergo a blood-alcohol test. However, he was later convicted of a hit-and-run with injury.

Faircloth's guardianship sued Cantina 101 and the operator of Potbelly's, Main Street Entertainment Inc. The guardianship also sued entities related to Cantina 101: 101 Management Group LLC and 101 International Investment Group LLC. The lawsuit alleged that the bars willfully and unlawfully served Faircloth and the pickup truck driver.

Cantina has since closed. The sued Cantina entities did not have their own insurance coverage or an attorney present at trial.

Plaintiff's counsel admitted that Faircloth's intoxication was a contributing cause of the accident. However, plaintiff's counsel maintained that the pickup truck driver had also been drinking heavily prior to the accident.

Plaintiff's counsel presented bar tabs from Potbelly's showing that the driver had purchased 18 beers and six bourbons in the four hours prior to the crash. Her counsel also played a deposition from a toxicologist originally retained by the defense. The expert said that in the absence of a blood-alcohol

test, the totality of the circumstances to determine whether a person is intoxicated should be considered.

Plaintiff's counsel maintained that Faircloth walked into the road at an angle and was in the street for nine to 10 seconds before being struck by the truck. Plaintiff's counsel also presented testimony from an accident reconstructionist, who concluded that the lighting on the street was sufficient. Plaintiff's counsel maintained that if the driver had been sober, he would have been able to see and avoid the pedestrian.

Plaintiff's counsel additionally argued that the driver fled the scene of the crash because he knew he was intoxicated at the time.

The defense admitted that it knowingly served alcohol to the underage driver. However, the defense disputed whether the driver was intoxicated. The defense maintained that the driver did not consume all of the alcohol he purchased. The driver claimed that he only had four or five beers that night.

The defense also presented an expert forensic engineer, who testified that the accident was unavoidable due to a dark sky and poor lighting. The defense additionally claimed that Faircloth darted onto the road and ran into the pickup truck. The defense expert said that the damage to the truck was consistent with his version of the events. The defense also noted that a witness said in her pretrial statement that Faircloth had run onto the road. At trial the witness claimed that she did not see exactly what had happened.

**INJURIES/DAMAGES** *brain damage; cognition, impairment; coma; craniotomy; fine motor skills, impairment; fracture, jaw; fracture, mandible; fracture, skull; head; physical therapy; seizure; speech/language, impairment of; subarachnoid hemorrhage; subdural hematoma; tracheostomy/tracheotomy; traumatic brain injury*

Faircloth was placed in an ambulance and transported to Tallahassee Memorial Hospital. She was diagnosed with a severe traumatic brain injury, including subdural and subarachnoid hematomas. She also had a basilar skull fracture and a fracture of the mandible.

Faircloth was in a coma following the accident. She had an emergency craniotomy the night she arrived at the hospital. She remained in the coma when she was transported to a rehabilitation center a few weeks later. She was admitted to the center for more than 300 days.

Faircloth went home briefly following the rehabilitation stay, but a short time later, she

was placed in a skilled nursing facility. She remained there at the time of the trial. She continues to receive therapy outside of the facility several times a week.

Faircloth has regained some use of her left arm. However, she still requires a tracheostomy tube and a feeding tube. She needs constant care and assistance with activities of daily living, including bathing and eating. She also is dependent on a wheelchair and has a pump that administers medication.

Faircloth is unable to speak or walk and has limited motor skills. However, she is still aware of, and interacts with, her environment. She suffered seizures after the accident but has not had any recently.

Faircloth's counsel presented a life care plan. It stated that Faircloth will need continued facility care, rehab, transportation assistance, and refills of her medication pump.

Faircloth sought recovery of \$5,442,208.51 in past medical expenses, \$15,806,787 in future medical expenses and \$2,591,020 in future lost earnings. She also sought recovery of damages for her past and future pain and suffering.

The defense did not dispute Faircloth's injuries or treatment needs. However, the defense's life care planner maintained that the damages award should be limited. He testified that Faircloth only had a life expectancy of 11 more years. Faircloth's treating psychiatrist maintained that Faircloth should live until age 74.

**RESULT** The jury determined that the pickup truck driver was intoxicated at the time of the accident and that his intoxication was a contributing legal cause of Faircloth's injuries. The jury awarded Faircloth \$30,840,015.51.

### JACQUELYN ANNE FAIRCLOTH

\$5,442,209 past medical cost  
\$15,806,787 future medical cost  
\$2,591,020 future lost earnings  
\$2,000,000 past pain and suffering  
\$5,000,000 future pain and suffering  

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\$30,840,016

**INSURER(S)** **Hudson Insurance Group** for Main Street Entertainment

**TRIAL DETAILS** Trial Length: 1 week  
Trial Deliberations: 90 minutes  
Jury Vote: 6-0

**PLAINTIFF EXPERT(S)** **G. Bryant Buchner, P.E.**, accident reconstruction, Tallahassee, FL  
**Anna Elmers, M.D.**, physical medicine, Atlanta, GA (treating doctor; videotaped deposition testimony presented)  
**Melinda Hayes, M.D.**, physical medicine, Tampa, FL (treating doctor)  
**Gerri Pennachio, CLCP**, life care planning, Lakeland, FL  
**Frederick A. Raffa, Ph.D.**, economics, Orlando, FL

**DEFENSE EXPERT(S)** **Bruce A. Goldberger, Ph.D.**, alcohol toxicology, Gainesville, FL (videotaped deposition testimony presented)  
**Paul J. Montalbano, P.E.**, forensic engineering, Jupiter, FL  
**Robert M. Shavelle, Ph.D.**, statistical analysis, San Francisco, CA (videotaped deposition testimony presented)

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel and Main Street Entertainment's counsel. Additional information was gleaned from court documents. The remaining defendants' counsel was not asked to contribute.

**CASE** Sean Kalinowski and Michele Kalinowski v. Keenan Auto Body, an ABRA Co.; Joseph T. Keenan and Sons LLC d/b/a Keenan Auto Body, an ABRA Co.; Joseph T. Keenan and Sons LLC; Keenan Auto Body Corporate; Joseph T. Keenan and Sons Inc. d/b/a Keenan Auto Body Corporate; ABRA Auto Body & Glass LP; and 2626 Market LLC, No. 161101863  
**COURT** Philadelphia County Court of Common Pleas, PA  
**JUDGE** Lisa M. Rau  
**DATE** 3/20/2019

**PLAINTIFF ATTORNEY(S)** **Kenneth M. Rothweiler** (lead), Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., Philadelphia, PA  
**Fredric S. Eisenberg**, Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., Philadelphia, PA  
**Todd A. Schoenhaus**, Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C., Philadelphia, PA

**DEFENSE ATTORNEY(S)** **Kevin S. Taylor** (co-lead), Taylor | Anderson, LLP, New York, NY (Keenan Auto Body, ABRA Auto Body & Glass LP, Joseph T. Keenan and Sons LLC, Keenan Auto Body Corporate)  
**Marc B. Zingarini** (co-lead), McGivney, Kluger & Cook, P.C., Philadelphia, PA (2626 Market LLC)  
**Kiernan G. Cavanagh**, Marshall Dennehey Warner Coleman & Goggin, P.C., Philadelphia, PA (ABRA Auto Body & Glass LP)  
**Mary Ellen Conroy**, Cipriani & Werner, P.C., Blue Bell, PA (2626 Market LLC)  
**Frederick T. Lachat Jr.**, Margolis Edelstein, Philadelphia, PA (MR2 Builders and Remodelers, MR2 Construction, Richard Tuzio)

**Christopher P. Soper**, Taylor | Anderson, LLP, New York, NY (Keenan Auto Body, ABRA Auto Body & Glass LP, Joseph T. Keenan and Sons LLC, Keenan Auto Body Corporate)  
**None reported** (Upper Chichester Township)

**FACTS & ALLEGATIONS** On June 24, 2016, plaintiff Sean Kalinowski, 43, a sheet metal worker, was working on a roof of an auto-body facility in Aston. He fell through an unprotected skylight and landed headfirst on the concrete floor more than 20 feet below. Kalinowski suffered multiple injuries.

Kalinowski sued the premises' owner, 2626 Market LLC, and the premises' lessor, ABRA Co. Kalinowski alleged that the defendants negligently allowed a dangerous condition to exist on the property and negligently failed to provide a safe workplace.

The premises' owner impleaded MR2 Builders and Remodelers, and MR2 Construction and its owner, Richard Tuzio, as third-party defendants. MR2 was a contractor that repaired one of the skylights on the property, prior to Kalinowski's accident.

Prior to trial, Kalinowski settled with MR2 and Tuzio for an undisclosed amount.

Kalinowski, working through his independent side business, had been retained by 2626 Market to apply a seal coating on the facility's 22,000-square-foot roof, which contained eight unguarded skylights. At the time of the accident, Kalinowski allegedly tripped on a pallet, the skylight curb mount or some other object, and inadvertently fell forward through the unprotected skylight. Kalinowski's counsel argued that 2626 Market and ABRA failed to safeguard skylights on the roof with guardrails and/or screens that are required by the Occupational Health and Safety Administration, and failed to ensure fall protection for all those working on the roof.

Kalinowski's counsel cited the testimony of Tuzio, a contractor who had replaced one of the building's skylights a few months prior to the accident. The contractor testified that he warned the defendants that the skylights were hazards that needed to be covered, and that someone could be killed or severely injured as a result of them not being taken care of.

Kalinowski's OSHA expert testified that 2626 Market and ABRA breached their shared duty to protect the skylight with a readily available and inexpensive guard, as

## BAR/RESTAURANT

### WORKER/WORKPLACE NEGLIGENCE

Workplace — Workplace Safety — Slips, Trips & Falls — Fall from Height

## Roofer falls through unprotected skylight, lands on concrete 20 feet below

**VERDICT** **\$24,849,735**

**ACTUAL** **\$22,364,762**



required by OSHA. According to the expert, the two companies compounded their failure to guard the skylight by failing to require fall protection and failing to warn Kalinowski of the skylight hazard known to them but not to him. The expert further opined that 2626 Market and ABRA were required by OSHA to prevent workers from falling through skylights and roof and floor openings, and to ensure that walking-working surfaces were regularly inspected and maintained in a safe condition. The expert concluded that 2626 Market and ABRA's various deviations directly caused Kalinowski's accident.

Kalinowski's expert in fall protection testified that if 2626 Market and ABRA had addressed the skylight properly, with adequate guarding prior to the accident, Kalinowski would not have been exposed to a "hole" hazard and would have suffered no injuries. The expert stated that Kalinowski would have suffered no injuries had 2626 Market and ABRA insisted on fall protection and properly warned Kalinowski of the skylight hazard.

According to Kalinowski's expert in human factors, it was foreseeable to 2626 Market and ABRA that contractors like Kalinowski would not identify or appreciate the risk associated with the unprotected skylights. The presence of trip hazards on and around the roof was foreseeable to 2626 Market and ABRA, as was the potential for someone on the roof to inadvertently trip and fall onto and through the skylight, the expert stated. The expert concluded that 2626 Market and ABRA failed to provide guarding on or around the skylights, failed to provide or require any fall protection for individuals accessing the roof, and failed to provide any warning -- verbal or posted -- to such individuals regarding the unguarded skylights and the fall hazard they presented.

The defense maintained that Kalinowski was liable for the accident because he was responsible for his safety at the jobsite under OSHA regulations. According to the defense, Kalinowski was a seasoned construction worker with ample knowledge of fall hazards from roofs, and of OSHA requirements for fall protection. Kalinowski ignored OSHA's accident prevention regulations while engaging in roof work and failed to develop a job-safety analysis prior to performing the work, the defense asserted.

2626 Market's counsel argued that it performed due-diligent inspections prior to the purchase of the property and attempted to hire firms with the requisite expertise in roof inspection, design and construction. 2626 Market's counsel further argued that

the company had no knowledge of any unsafe condition involving skylights prior to the accident.

ABRA's expert in engineering testified that ABRA had no duty under any applicable code or standard to design, manage or implement a fall-protection plan for people working on the roof who were not its employees. Under OSHA, it is the responsibility of each employer who places its worker on a roof to understand the relevant codes and safety standards, to assess the hazards and to provide its employees with appropriate protection. Neither ABRA, as the tenant of the property, nor 2626 Market, as the landlord who hired Kalinowski, shared this responsibility, the expert concluded.

According to ABRA's expert in roofing, it was Kalinowski's decision to place materials in an area that was immediately adjacent to the skylight, and it was his decision not to implement any fall-protection measures despite having the knowledge and experience necessary to do so. The expert opined that ABRA had no responsibility for the decisions that Kalinowski made, or for the actions that he performed and/or failed to perform.

Counsel for Tuzio and MR2 argued that Tuzio had advised 2626 Market and ABRA about the need for a safety guard over the unprotected skylight, and that 2626 Market and ABRA ignored the recommendation.

Tuzio and MR2 were dismissed during the course of trial.

**INJURIES/DAMAGES** *arm; blindness, one eye; brain damage; cognition, impairment; craniotomy; fracture, acetabulum; fracture, arm; fracture, hip; fracture, pelvis; fracture, pubic ramus; fracture, radius; fracture, skull; fracture, wrist; hardware implanted; head; incontinence; internal fixation; memory, impairment; open reduction; physical therapy; plate; seizure disorder; speech/language, impairment of; tracheostomy/tracheotomy; traumatic brain injury; vestibular deficits; vision, impairment; vision, partial loss of*

Kalinowski was taken by ambulance to a hospital and was diagnosed with a severe traumatic brain injury and fractures of his skull, right acetabulum, right pubic ramus and right distal radius, of his dominant arm. He underwent emergency craniotomies with placement of an intracranial pressure bolt. He later underwent a tracheostomy, a percutaneous endoscopic gastrostomy-tube placement and an open reduction and internal fixation of his right wrist. Kalinowski was hospitalized for two weeks and then transferred to a skilled nursing facility,

where he treated with speech, physical and occupational therapies. A month later, he was transferred back to a hospital and was treated for two months. He then returned to a skilled nursing facility for three weeks. On Oct. 19, 2016, almost four months after the accident, Kalinowski was discharged home and received home care through Aug. 9, 2017. During that period, Kalinowski was re-hospitalized several times for seizure disorders and removal of hardware in his right arm. In August 2017, Kalinowski was admitted to a rehabilitation facility for neurobehavioral treatment. He was treated through October 2017.

Upon his discharge home, Kalinowski required 24-hour supervision, including ongoing home health care providing him with assorted therapies and assistance with activities of daily living. At the time of trial, Kalinowski remained under neurological, neuropsychological and other care for significant cognitive, behavioral and physical impairment.

Kalinowski's expert in physical medicine outlined his impairment and limitations, which include mobility dysfunction, incontinence, total blindness in the right eye and partial blindness in the left eye. According to the expert, and Kalinowski's expert in neuropsychology, Kalinowski suffered a severe and permanent brain injury and his prognosis is poor. He has many future risks due to the accident; he cannot work or live alone, and he will indefinitely need continuous help with activities of daily living, the experts determined.

Kalinowski's expert in life care planning testified that Kalinowski requires lifelong medical care. This includes ongoing physical, occupational and speech therapies; equipment and modifications to his home; ongoing seizure medication and monitoring for his seizures; diagnostic testing; ophthalmological exams; home care with supportive services; and placement in a specialized residential brain-injury program. His expert in economics calculated \$16 million to \$19 million in future lost earnings and future medical costs.

Kalinowski's wife testified about her husband's injuries and how she quit her job to take care of him around-the clock. She testified that she essentially lost her husband and best friend, and that their relationship, as well as Kalinowski's relationship with his children, has been altered irrevocably. She testified that Kalinowski is limited in his speech, as he can say only a few words; that he is prone to anger and frustration; and that he requires assistance from either a person or a walker when walking. She sought damages

for her claim for loss of consortium, and Kalinowski sought damages for past and future pain and suffering.

The defense's expert in life expectancy testified that, given Mr. Kalinowski's catastrophic injuries, he has a reduced life expectancy of 21 years. Due to Kalinowski's reduced life expectancy, his future medical costs will be within the range of \$3.5 million to \$4.2 million, according to the defense's expert in life care planning and economics.

The parties negotiated a high/low stipulation: 2626 Market LLC agreed to pay \$3 million irrespective of the verdict, and Kalinowski agreed not to collect any judgment against defendants in excess of \$36 million, the full extent of insurance.

**RESULT** The jury found ABRA 60 percent liable, 2626 Market 30 percent liable and Kalinowski 10 percent liable. Kalinowski and his wife were awarded a total of \$24,849,735.24. In accordance with Pennsylvania's Fair Share Act, the court reduced the award to \$22,364,761.68 to account for Kalinowski's comparative negligence. The court ordered ABRA to pay the remaining \$19,364,761.68, after accounting for the \$3 million 2626 Market LLC payment, and to account for ABRA's 60 percent liability under joint and several liability.

**MICHELE KALINOWSKI** \$3,000,000 loss of consortium  
\$3,000,000

**SEAN KALINOWSKI** \$575,112 past medical cost  
\$15,259,136 future medical cost  
\$175,354 past lost earnings  
\$2,840,133 future lost earnings  
\$3,000,000 past and future pain and suffering,  
loss of life's pleasures,  
disfigurement and humiliation  
\$21,849,735

**DEMAND** \$12,000,000  
**OFFER** None

**INSURER(S)** Great American Insurance Group  
Great American Insurance Co. for ABRA Auto Body & Glass LLP and 2626 Market LLC  
Great American Insurance Group for ABRA Auto Body & Glass LLP and 2626 Market LLC

**TRIAL DETAILS** Trial Length: 1 month  
Trial Deliberations: 2 days  
Jury Vote: 12-0

**PLAINTIFF EXPERT(S)** Laurie A. Browngoehl, M.D., physical medicine, Haverford, PA  
Royal A. Bunin, M.B.A., economics, Wynnewood, PA  
Jody Masterson, R.N., life care planning, Wayne, PA  
Jeremiah Midkiff, C.S.P., C.R.S.P., osha, Albrightsville, PA  
Terri Morris, Ph.D., neuropsychology, Bala Cynwyd, PA  
William J. Vigilante Jr., Ph.D., ergonomics/human factors, PhoenixvillePA, PA  
John T. Whitty Jr., P.E., safety, Wilmington, DE

**DEFENSE EXPERT(S)** Richard P. Baxter, roofing, Monroe, NC  
Timothy J. Carlsen, P.E., engineering, Edison, NJ  
Samuel J. Gualardo, C.S.P., osha, Salix, PA (did not testify)  
Kelly L. Lance, A.P.R.N., life care planning, Draper, UT  
Gerard T. Olson, Ph.D., economics, Villanova, PA  
Robert M. Shavelle, Ph.D., life expectancy & mortality, San Francisco, CA  
James W. Stanley, osha, Franklin, TN (did not testify)

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel and counsel of MR2 Builders and Remodelers, MR2 Construction and Tuzio. Counsel of 2626 Market LLC, ABRA Auto Body & Glass, Joseph T. Keenan and Sons LLC, Keenan Auto Body, and Keenan Auto Body Corporate did not respond to the reporter's phone calls, and Upper Chichester Township's counsel was not asked to contribute.

## GOVERNMENT AGENCY

### WORKER/WORKPLACE NEGLIGENCE

Negligent Training — School

## Student burned during teacher's science-class experiment

**VERDICT** \$59,170,000

**CASE** Yvonne Yanes, Claudio Yanes, Individually and as Parents and Natural Guardians of, Alonzo Yanes and an Infant v. The City of New York, the New York City Department of Education, the Board of Education of the City of New York and Anna Poole, No. 161066/14  
**COURT JUDGE DATE** New York Supreme, NY Alexander M. Tisch 7/1/2019

**PLAINTIFF ATTORNEY(S)** Ben B. Rubinowitz (lead), Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, New York, NY  
Richard J. Steigman, Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, New York, NY

**DEFENSE ATTORNEY(S)** Mark S. Mixson, Senior Counsel, Zachary W. Carter, Corporation Counsel, New York, NY

**FACTS & ALLEGATIONS** On Jan. 2, 2014, plaintiff Alonzo Yanes, 16, attended a school that

was located at 522 W. 44th St., in the Hell's Kitchen section of Manhattan. During one class, a teacher, Anna Poole, conducted a flame-test demonstration commonly termed "a rainbow demonstration" or "a rainbow flame." In such demonstrations, methanol is introduced to various salts. When the methanol is ignited, the salts release flames of differing colors. The demonstration was successfully performed. Several students arrived after the demonstration had been completed, so the demonstration was repeated after several minutes had passed. During the second demonstration, a fireball formed and projected toward the area in which Alonzo and other students were seated. Alonzo suffered burns of his arms, his back, his chest, his ears, his face, his hands, his head, his neck and his shoulders.

Alonzo's parents, Claudio Yanes and Yvonne Yanes, acting individually and as Alonzo's parents and natural guardians, sued Poole; the school's owner, the city of New York; and the school's operator, the New York City Department of Education, formerly the Board of Education of the City of New York. The lawsuit alleged that Poole was negligent in her performance of the demonstration, that her negligence caused the accident that injured Alonzo, that the remaining defendants were vicariously liable for Poole's actions, that the New York City Department of Education was negligent in its training of Poole, and that the New York City Department of Education's negligence contributed to the accident.

Plaintiffs' counsel contended that Poole did not properly perform the demonstration. The demonstration's methanol was obtained from a gallon-sized jug. During the first performance of the demonstration, methanol was poured into a beaker, from which Poole extracted small amounts that were added to the salts that were burned. Alonzo and another student claimed that the second demonstration was not similarly performed. They claimed that methanol was poured directly from the jug. The plaintiffs' science-safety expert opined that the accident was an instance of "flame jetting," which is a torchlike effect that occurs when flammable liquid interacts with an igniter. The expert opined that methanol was applied to heated salt, that unintended ignition occurred, that a resultant flame traveled into the jug of methanol, and that a resultant fireball projected toward Alonzo. Alonzo and the other student claimed that the jug's open

end was facing them. The expert contended that the jug should not have been held near the heated salts.

The plaintiffs' science-safety expert also suggested that the second demonstration was undertaken without Poole having ensured that the salts had stopped burning. The expert noted that burning methanol emits a clear or slightly blue flame. She contended that detection would have required deactivation of the classroom's lights, and Alonzo claimed that the lights were not deactivated.

The plaintiffs' science-safety expert further opined that Poole did not perform a proper pre-demonstration hazard-risk analysis. The expert contended that Poole should have prepared for each of the hazardous events that could have developed during the demonstration. The expert also opined that the demonstration should have been performed in a classroom that had a fume-removal system, a shower and a fireproof blanket, but that those safeguards were not present. Poole utilized goggles, but the students were not provided goggles. The expert further opined that Poole and the students should have been separated by a distance of eight feet, but Alonzo estimated that the distance measured two or three feet. The expert contended that Poole should have relocated the students.

Plaintiffs' counsel also contended that the New York City Department of Education should have undertaken precautionary measures. In December 2013, the U.S. Chemical Safety and Hazard Investigation Board issued a warning and a video that explained the hazardous nature of flame-test demonstrations. Plaintiffs' counsel claimed that the New York City Department of Education had received that warning, but that the warning was not relayed to Poole.

The defense claimed that evidence did not establish that a flame-jetting event occurred. He argued that the accident was an extraordinary, unpredictable and unpreventable event.

Poole claimed that she could not recall the manner in which she performed the second demonstration, but she claimed that she never employs a process that involves methanol being poured from a jug. She claimed that she always utilizes a beaker, from which methanol is extracted via use of a pipette. She also claimed that she had ensured that the salts had stopped burning after the first demonstration had been completed. The defense's science-education expert reviewed the testimony

of witnesses, photographs of the scene of the accident, and the findings of an investigation that was performed by the Fire Department of the City of New York, and she opined that Poole conventionally and appropriately performed the demonstration. However, during cross-examination, she acknowledged that the students should have been relocated before the demonstration began.

**INJURIES/DAMAGES** *back; burns, third degree; chest; coma; contracture; debridement; ear; hand; head; neck; nerve damage/neuropathy; scar and/or disfigurement; scar and/or disfigurement, arm; scar and/or disfigurement, face; shoulder; skin graft*

Alonzo suffered burns of his back, his chest, his ears, his face, his forearms, his hands, his head, his neck and his shoulders. The burns covered 31 percent of his body's surface. Plaintiffs' counsel claimed that the burns were third-degree burns.

Alonzo was retrieved by an ambulance, and he was transported to a hospital. A coma was induced, and Alonzo underwent intravenous administration of 38 pounds of fluids. The coma lasted three days. During the ensuing two months, Alonzo underwent a total of five procedures that involved grafting of skin. The grafts were harvested from Alonzo and a cadaver. The grafts compromised more than 15 percent of the unburned areas of Alonzo's body. Alonzo also required near-daily debridement of damaged tissue, and he underwent daily sessions of hydrotherapy. His hospitalization lasted 54 days, and it was followed by 167 days of inpatient rehabilitative therapy. During the year that followed the accident, he had to wear specialized garments that compressed and secured the burned areas of his body. The garments included a facemask.

Plaintiffs' counsel claimed that Alonzo suffered complete destruction of the burned areas' nerves and sweat glands, and Alonzo claimed that those areas have lost all sensory ability. He claimed that he suffers constant contractures, itchiness and tightness of skin, and he further claimed that he experiences chronic overheating of skin. He also retains scars of his chest, his face, his forearms, his hands, his head and his neck, and his ears are not intact.

Alonzo's parents sought recovery of damages for Alonzo's past and future pain and suffering. They also presented derivative claims, but those claims were discontinued.

The defense contended that plaintiffs' counsel exaggerated the extent of the destruction of nerves and sweat glands. Defense counsel also contended that Alonzo can perform all of the activities of a normal person.

**RESULT** The jury found that the defendants were liable for the accident. It determined that Alonzo's damages totaled \$59.17 million.

**ALONZO YANES** \$29,585,000 past pain and suffering  
\$29,585,000 future pain and suffering (54 years)  
\$59,170,000

**DEMAND** \$50,000,000 (by Alonzo)  
**OFFER** \$10,000,000 (for Alonzo)

**TRIAL DETAILS** Trial Length: 23 days  
Trial Deliberations: 8 hours  
Jury Vote: 6-0  
Jury Composition: 3 male, 3 female

**PLAINTIFF EXPERT(S)** **Samuella Beth Sigmann**, school safety, Boone, NC  
**Roger W. Yurt, M.D.**, surgery, New York, NY (treating doctor)

**DEFENSE EXPERT(S)** **Catherine Milne**, school safety, New York, NY

**POST-TRIAL** Defense counsel has moved for remittitur.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel. Additional information was gleaned from court documents.

## TRANSPORTATION

### MOTOR VEHICLE

Passenger — Motor Vehicle — Center Line — Motor Vehicle — Speeding — Motor Vehicle — Head-On — Motor Vehicle — Multiple Vehicle

## High school students seriously injured in head-on crash with bus

**VERDICT** **\$36,500,000**

### CASE

Rebecca Lipton, Individually and as next friend of Eva Lipton, Ivan Lipton, Individually and as next friend of Eva Lipton, and Eva Lipton v. Monica N. Knight, Anthony F. Knight Catherine Dennis, and First Student, Inc. / Aliza Nantais v. Monica N. Knight, Anthony F. Knight, Catherine Dennis and First Student, Inc. / Brendon McGilley and Marianne Caputo v. Monica N. Knight, Anthony F. Knight, Catherine Dennis, and First Student, Inc., No. 1483CV00528; 1583CV00236; 1583CV00287  
Plymouth County, Superior Court, MA  
Mark A. Hallal  
8/28/2019

### COURT

### JUDGE DATE

### PLAINTIFF

### ATTORNEY(S)

**Jeffrey S. Beeler** (lead), Heinlein Beeler Mingace & Heineman, P.C., Framingham, MA (Aliza Nantais, Julie Nantais)  
**Robert S. Sinsheimer** (lead), Sinsheimer & Associates, Boston, MA (Eva Lipton, Ivan Lipton, Rebecca Lipton)  
**Benjamin Stevenson** (lead), Stevenson McKenna & Callanan LLP, Boston, MA (Brendon McGilley, Marianne Caputo)  
**Lisa A. Parlagreco** (co-lead), of counsel, Sinsheimer & Associates, Boston, MA (Eva Lipton, Ivan Lipton, Rebecca Lipton)

### DEFENSE

### ATTORNEY(S)

**Brian P. Voke** (lead), Campbell Conroy & O'Neil, P.C., Boston, MA (First Student Inc.)  
**Francis J. Lynch III**, Lynch & Lynch, South Easton, MA (Monica N. Knight)  
**Thomas A. Murphy**, Lynch & Lynch, South Easton, MA (Monica N. Knight)

**Ryan J. O'Neil**, Campbell Conroy & O'Neil, P.C., Berwyn, PA (First Student Inc.)

**William B. Scarpelli**, Morrison Mahoney LLP, Boston, MA (First Student Inc.)

**None reported** (Anthony F. Knight, Catherine Dennis)

**FACTS & ALLEGATIONS** On March 30, 2012, plaintiffs Eva Lipton, Aliza Nantais and Brendon McGilley, 17-year-old high school students, were passengers of a car that was being driven by Monica Knight, also 17. They were traveling north on Lake Street, near Silver Lake Regional High School, in Kingston, when they were involved in a head-on collision with a southbound school bus. The front of the car ended up underneath the bus. Catherine Dennis, who was driving the bus, was the only person in the bus at the time. The plaintiffs each sustained brain injuries, as well as numerous other injuries.

The plaintiffs each filed lawsuits against Monica Knight and Dennis, as well as Anthony Knight, who owned the car Monica was driving, and First Student Inc., which owned the bus. The plaintiffs alleged that Monica Knight and Dennis were negligent in the operation of their respective vehicles, and that Anthony Knight and First Student were vicariously liable.

The lawsuits were consolidated. Anthony Knight and Dennis were dismissed from the case prior to trial.

Monica Knight's insurer agreed to tender its \$40,000 policy, which would be split among the three plaintiffs. However, for strategic purposes, the agreement was not formalized until after the trial. Knight thus remained in the lawsuit and had counsel present at trial. Her counsel used the same arguments that plaintiffs' counsel did regarding the liability of First Student.

Plaintiffs' counsel believed that Monica Knight's negligence was obvious, since she ended up driving in the wrong lane. The trial thus primarily focused on Dennis' actions.

Plaintiffs' counsel alleged that Dennis was traveling too fast around the curve where the accident took place. GPS data said that the bus was traveling at least 33.9 mph. The plaintiffs claimed that the speed limit at the site of the crash was 30 mph, while First Student maintained that it was 40 mph. The plaintiffs' accident-

reconstruction expert opined that Dennis was speeding and that Dennis had time to make an evasive maneuver. Plaintiffs' counsel suggested that Dennis drifted into the northbound lane while driving around the curve, causing Knight to swerve into the southbound lane. Plaintiffs' counsel, the bus then collided with the car as Dennis attempted to return to her lane.

Plaintiffs' counsel presented GPS evidence that the bus was in the northbound lane prior to the accident. Plaintiffs' counsel also pointed out that there was yellow paint on the bus's front left tire. Plaintiffs' counsel asserted that the paint and the location of tire marks supported the conclusion that the bus crossed over the center line before the crash.

There was a camera on the bus at the time of the crash. The plaintiffs' moving-media expert testified that the portion of the video immediately preceding the crash had been intentionally recorded over with static. Over First Student's objection, the trial judge gave an instruction that the jury could infer consciousness of liability on the part of First Student for the accident because of the condition of the video.

Dennis testified that she had placed an empty coffee cup in front of the windshield prior to the crash. Plaintiffs' counsel maintained that this supported the inference that Dennis was drinking coffee at the time of the collision. Plaintiffs' counsel also noted that Dennis changed her story regarding how fast she was traveling prior to the crash.

First Student's counsel maintained that Knight was fully at fault for the crash. First Student contended that Knight was distracted and came into the bus's lane. The defense also cross-examined the plaintiffs' GPS expert, who conceded that the GPS data was not reliable and could not be used to show the bus was in the northbound lane.

The defense established that Dennis was an excellent driver and had a good driving record before the crash. The defense's accident-reconstruction expert also testified at trial that the point of impact between the two vehicles was the southbound lane.

**INJURIES/DAMAGES** *anxiety; blindness, one eye; brain damage; closed head injury; coma; compression fracture; contracture; contusion, pulmonary; craniotomy; depression; diffuse axonal brain injury; dysphagia; edema, cerebral; external fixation; fracture, C1; fracture,*

*C5; fracture, C7; fracture, T5; fracture, T6; fracture, T7; fracture, back; fracture, clavicle; fracture, displaced; fracture, femur; fracture, leg; fracture, mandible; fracture, neck; fracture, nose; fracture, orbit; fracture, rib; fracture, sacrum; fracture, scapula; fracture, shoulder; fracture, sternum; fracture, transverse process; fracture, vertebra; fracture, wrist; frontal lobe contusion; gastrotomy; hand; head; hematoma; hemicraniectomy; hemorrhage; hydrocephalus; hygroma; hypoxia; infection; kidney; laceration; memory, impairment; mental/psychological; neurological impairment; neuropsychological; nondisplaced fracture; physical therapy; pins/rods/screws; pneumonia; pneumothorax; retropulsion; seizure; sepsis; sinusitis; speech/language, impairment of; spleen; spleen, laceration; subarachnoid hemorrhage; subdural hematoma; tongue; traumatic brain injury; unconsciousness; vision, impairment; vision, partial loss of*

Lipton was unconscious at the scene. Her mouth was full of blood due to a tongue laceration. She was provided manual resuscitation at the scene and intubated while being airlifted to Boston Medical Center. She remained there until May 2012.

Lipton suffered severe rotational, acceleration and deceleration forces on the brain, along with blunt trauma and polytrauma. A head CT showed diffuse global edema of the brain, bilateral frontal contusions, a subarachnoid hemorrhage and an intraventricular hemorrhage.

Further studies revealed a C1 anterior neural arch fracture, a C5 laminal fracture, a C7 transverse process fracture, bilateral pneumothoraces, a rib fracture, a sternal fracture, a splenic laceration, displaced mandibular fractures, sacral fractures, a fracture of each shoulder's scapula, a left clavicle fracture and a left femoral shaft fracture. Subsequent CTs revealed increasing size of the intraparenchymal hemorrhage, worsening of the subarachnoid hemorrhage and a left subdural hematoma.

Lipton underwent an emergency left hemicraniectomy, which involved opening of the skull and evacuation of a hematoma. This was followed by hyperosmolar therapy, sedation, pain control, cooling and paralytic therapy. A follow-up MRI revealed a grade-III diffuse axonal injury involving the frontal lobes, corpus callosum and brain stem, with hydrocephalus and cystic hygroma. Her condition was complicated by paroxysmal autonomic

instability with dystonia, which required medical treatment to control.

At the hospital, Lipton had surgery to wire her jaw shut. She received gastrostomy and chest tubes and underwent external fixation of her fractured femur. The fixator was eventually removed. She subsequently had a left hemi-cranioplasty, which involved a repair of her skull.

Lipton was transferred to an inpatient rehabilitation facility in May 2012. She was weaned off the ventilator and received occupational, speech and physical therapy. She also had drug therapies and medical monitoring.

Lipton was at the rehabilitation facility until September 2012. She spent time in several different skilled nursing facilities before being transferred to a group home, where she resided at the time of trial. She suffers contractures in both hands, for which she is treated with Botox injections every three months.

Lipton developed numerous complications during her recovery, including ventilator-associated pneumonia, sinusitis, seizures, sympathetic storming and dysphagia, which is an impairment of the ability to swallow. She also had kidney issues, sepsis, infections and recurrent pneumonia. Due to these various complications, she has required approximately one inpatient hospitalization in an intensive care unit each quarter since leaving Boston Medical in May 2012.

Lipton is in a minimally conscious state and will require constant care for the rest of her life. Since March 30, 2012, she has been and remains entirely dependent upon others for all her daily needs. She currently receives medication, nursing care and physical therapy. Her counsel claimed that she will need all of this treatment, plus hospital care, in the future.

Lipton's doctor also recommended Lipton for water and music therapy. She had received both of these treatments prior to the trial.

Lipton's parents, Rebecca Lipton and Ivan Lipton, sought recovery of approximately \$4 million in past medical expenses, more than \$1.7 million in lost earnings and more than \$26 million in future medical expenses. They also filed derivative claims. The Liptons' counsel asked the jury to award a total of \$36 million to their clients.

Nantais was taken by critical care transport to Boston Medical Center. She remained there for approximately one month.

Nantais had a traumatic brain injury,

specifically a subdural hematoma that required a left craniotomy. She also had dysphagia, a displaced right femur fracture, a left hand laceration, a spleen laceration, a liver laceration and a kidney laceration.

Nantais underwent a left hemicraniectomy and received an external fixator for her femur. She later had surgery to remove the screws from her femur. She additionally required a gastrostomy tube.

Following her hospital stay, Nantais went to inpatient rehabilitation, where she remained until June 2012. She had physical, occupational and speech therapy at the facility. She also treated with a neurologist and a physiatrist, and was continuing to receive outpatient treatment with a neurologist.

Nantais is partially blind in one eye as a result of the accident. She also has memory problems and is unable to drive.

Prior to the accident, Nantais hoped to go to medical or law school. While she was enrolled in college at the time of the trial, her brain injury forced her to choose a less demanding career path.

Nantais sought recovery of past and future lost earnings and damages for past and future pain and suffering. Her counsel asked the jury to award \$12 million to \$15 million. Her mother, Julie Nantais, filed a derivative claim. Her counsel asked for \$1.5 million to \$3 million.

McGilley was placed in an ambulance and transported to South Shore Hospital. When he arrived, he had Glasgow Coma Scale score of 7.

McGilley was diagnosed with a closed head injury and traumatic brain injury. He had a shear injury to his brain's frontal cortex. He also had diffuse axonal brain injuries, plus hemorrhages in the frontal lobe and the gray/white matter junction area. Additionally, he had compression fractures at T5, T6 and T7, and a transverse process fracture at T2. Doctors further diagnosed bone lucency at T3 and retropulsion at T11.

McGilley suffered pulmonary contusions in both lungs, along with bilateral pneumothoraces. His other injuries included nondisplaced fractures of seven ribs and nondisplaced fractures of his right, dominant hand and wrist, as well as nasal and orbital fractures.

Within a few hours of his arrival at South Shore, McGilley was transferred to Brigham and Women's Hospital. He was ultimately placed in a medically induced coma. He remained in the hospital for approximately two weeks.

He was discharged to a rehabilitation facility, where he had neurological and neuropsychological treatment.

McGilley was discharged home following this stay. He continued to receive outpatient neurological and neuropsychological treatment until he reached maximum medical improvement. He had some outpatient physical therapy as well.

McGilley claimed that he developed anxiety and depression after the accident. He has memory problems, mood swings, impulsive behavior and poor judgment. McGilley also continues to suffer back pain that prevents him from running or playing basketball and baseball. McGilley was unemployed at the time of the trial. His counsel said he will not be able to perform any jobs that are uniquely challenging or that require good judgment and behavioral control.

McGilley sought recovery of more than \$2 million in medical bills and lost wages. He also sought \$8 million to \$11 million in damages for past and future pain and suffering. His mother, Marianne Caputo, filed a derivative claim. Her counsel asked the jury to award \$1.5 million to \$3 million.

Lipton and Nantais' counsel agreed to a confidential high/low stipulation with the defense that was put on the record of the court at sidebar while the jury was deliberating.

**RESULT** The jury found that Monica Knight and First Student were negligent and that their negligence was a cause of injury to the plaintiffs. They determined that the plaintiffs' damages totaled \$36.5 million, joint and several against both defendants. The final recovery will be determined by the high/low stipulation's terms.

**MARIANNE CAPUTO** \$750,000 total damages  
\$750,000

**EVA LIPTON** \$21,000,000 total damages  
\$21,000,000

**IVAN LIPTON** \$2,000,000 total damages  
\$2,000,000

**REBECCA LIPTON** \$2,000,000 total damages  
\$2,000,000

**BRENDON MCGILLEY** \$4,000,000 total damages  
\$4,000,000

**ALIZA NANTAIS** \$6,000,000 total damages  
\$6,000,000

**JULIE NANTAIS** \$750,000 total damages  
\$750,000

**INSURER(S)** American International Group Inc. for First Student

Arbella Insurance Group for Monica Knight

**TRIAL DETAILS** Trial Length: 2 months  
Jury Composition: 6 male, 8 females; 2 Asian, 2 black, 10 white

**PLAINTIFF EXPERT(S)** Stephen Benanti, accident reconstruction, Groveland, MA  
Peter H. Dana, Ph.D., accident reconstruction, Georgetown, TX (GPS data)  
Laurie M. Douglass, M.D., neurology, Boston, MA (treating doctor)  
Michael R. Garneau, analysis of photographs, video & digital images, Newton, MA  
Seth Herman, M.D., brain injury/trauma, Charlestown, MA (treating doctor; did not testify)

**Norman Hursh, Ph.D.**,  
vocational rehabilitation,  
Boston, MA

**Douglas Katz, M.D.**,  
neurology, Boston, MA  
(treating doctor; did not  
testify)

**Cheryl Kaufman, RN**,  
BScN, CLCP, CNLP, life  
care planning, Taunton,  
MA

**Neville S. Lee**, economics,  
Winchester, MA

**Neal McGrath, Ph.D.**,  
neuropsychology,  
Brookline, MA

**Rosemarie Meissner**,  
Ph.D., economics,  
Ashburnham, MA

**Randall Otto, M.D.**, neu-  
ropsychology, Braintree,  
MA (treating doctor)

**Amy E. Vercillo, CRC**,  
CDMS, vocational reha-  
bilitation, Boston, MA

**Joseph Webby**, land sur-  
veying, Kingston, MA

**DEFENSE  
EXPERT(S)**

**Gerard Murphy**,  
accident reconstruction,  
Fernandina Beach, FL

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel and counsel of First Student and Monica Knight. Additional information was gleaned from court documents. The remaining defendants' counsel were not asked to contribute.

# Sometimes bad things happen

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