



Motorist's unsafe turn caused fatal crash, estate contended

Type: Settlement

Amount: \$1,535,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Compton, CA

Injury Type(s):

- *other* - death; sepsis; hernia, ventral
- *urological* - kidney
- *arterial/vascular* - hypovolemic shock; internal bleeding
- *gastrointestinal/digestive* - liver; intestine, resection

Case Type:

- *Wrongful Death*
- *Motor Vehicle* - Left Turn; Intersection; Multiple Vehicle
- *Transportation* - Roadways
- *Government* - Municipalities
- *Worker/Workplace Negligence*
- *Dangerous Condition of Public Property*

Case Name: Gabriel Ramirez, Nadia Ramirez, Efrain Ramirez, Alex Ramirez, Livier Ramirez and Jason Andrew Ramirez v. Asuncion Garcia, Expert Plant Care, Inc., Willdan Engineering, City of Paramount, State of California and Does 1-50, No. BC668662

Date: November 08, 2021

Plaintiff(s):

- Alex Ramirez, (, 0 Years)
- Jason Ramirez, (, 0 Years)
- Nadia Ramirez, (, 0 Years)
- Efrain Ramirez, (, 0 Years)
- Livier Ramirez, (, 0 Years)
- Gabriel Ramirez, (, 0 Years)
- Estate of Rosa Salazar, (Female, 59 Years)

**Plaintiff
Attorney(s):**

- John S. Hinman; Hinman Law Group; Long Beach CA for Estate of Rosa Salazar,, Gabriel Ramirez,, Nadia Ramirez,, Efrain Ramirez,, Alex Ramirez,, Livier Ramirez,, Jason Ramirez
- Seth E. Workman; Hinman Law Group; Long Beach CA for Estate of Rosa Salazar,, Gabriel Ramirez,, Nadia Ramirez,, Efrain Ramirez,, Alex Ramirez,, Livier Ramirez,, Jason Ramirez
- Benjamin T. Ikuta; Hodes Milman Ikuta, LLP; Irvine CA for Estate of Rosa Salazar,, Gabriel Ramirez,, Nadia Ramirez,, Efrain Ramirez,, Alex Ramirez,, Livier Ramirez,, Jason Ramirez

Defendant(s):

- Willdan
- William Pagett
- Asuncion Garcia
- City of Paramount
- Willdan Associates
- Willdan Group Inc.
- State of California
- Willdan Engineering
- Expert Plant Care, Inc.

**Defense
Attorney(s):**

- Thomas W. Shaver; Shaver, Korff & Castronovo LLP; Encino, CA for Expert Plant Care, Inc.
- Craig J. Mariam; Gordon & Rees LLP; Los Angeles, CA for Willdan Engineering, Willdan, Willdan Group Inc., Willdan Associates, William Pagett
- David M. Ferrante; Wesierski & Zurek LLP; Los Angeles, CA for City of Paramount
- Frank J. D'Oro; Wesierski & Zurek LLP; Los Angeles, CA for City of Paramount
- None reported for State of California
- John P. Cogger; Gordon & Rees LLP; Los Angeles, CA for Willdan Engineering, Willdan, Willdan Group Inc., Willdan Associates, William Pagett
- Dhava K. Balatero; Freeman Mathis & Gary, LLP; Los Angeles, CA for Asuncion Garcia

Insurers:

- Government Employees Insurance Co.
- Mercury Insurance Group
- Florists' Mutual Insurance Co.

Facts:

At about 5:35 a.m. on June 28, 2016, plaintiffs' decedent Rosa Salazar, 59, was driving on the northbound side of Garfield Avenue, near its intersection at Jackson Street, in Paramount. While she was proceeding through the intersection, her vehicle collided with a truck that was being driven by Asuncion Garcia, who was executing a left turn onto the eastbound side of Jackson Street, from the southbound side of Garfield Avenue. Salazar suffered a fatal injury.

Salazar's widower, Gabriel Ramirez, and children, Alex Ramirez, Efrain Ramirez, Jason Ramirez, Livier Ramirez and Nadia Ramirez, sued Garcia; Garcia's employer, Expert Plant Care Inc.; three entities believed to have been involved in the design of the intersection's traffic signals, the city of Paramount, the state of California and Willdan Engineering; Willdan Engineering's director and senior vice president, William Pagett; and three Willdan Engineering affiliates, Willdan, Willdan Associates and Willdan Group Inc. The lawsuit alleged that Garcia was negligent in the operation of his vehicle, that Expert Plant Care was liable because the accident occurred during Garcia's performance of his job's duties, and that the remaining defendants negligently created a dangerous condition that contributed to the accident.

The city of Paramount, the state of California, Willdan Engineering, Pagett, Willdan, Willdan Associates and Willdan Group were dismissed. The matter proceeded against Garcia and Expert Plant Care.

Plaintiffs' counsel contended that the accident was a result of Garcia having failed to yield the right of way.

Plaintiffs' counsel also contended that Expert Plant Care was liable because Garcia was en route to work when the accident occurred. Garcia's time records for the day indicated that he began working at 5 a.m., some 35 minutes prior to the accident. Plaintiffs' counsel contended that Garcia was being paid for commuting time.

Expert Plant Care's counsel claimed that Garcia was driving his personal truck, was not transporting work equipment and was not engaged in a business activity. As such, he contended that Garcia was not at work when the accident occurred. He also claimed that no one at Expert Plant Care had explicitly agreed to pay Garcia for his commute, and he contended that the company had not checked Garcia's time records to ensure that Garcia was properly logging his hours on the job.

Injury:

Salazar suffered injuries of her kidneys, her liver, and her large and small intestines. She also suffered a mesenteric vessel injury and a ventral hernia. She was retrieved by an ambulance, and she was transported to a hospital, where she developed severe sepsis and hemorrhagic shock.

Salazar underwent a small bowel resection, a colon resection and other surgeries to address internal bleeding, but she could not be saved. She died after 17 days had passed.

Salazar, 59, was survived by her husband, four adult children and a minor child. Her survivors sought recovery of wrongful-death damages.

Result:

Plaintiffs' counsel appealed the dismissals of the city of Paramount, Willdan Engineering, Pagett, Willdan, Willdan Associates and Willdan Group. During pendency of the appeal, the parties negotiated a pretrial settlement. Expert Plant Care accepted the plaintiffs' Code of Civil Procedure § 998 demand for \$1.5 million; Garcia's insurer tendered its policy, which provided \$15,000 of coverage; the city of Paramount agreed to pay \$10,000; and Willdan Engineering agreed to pay \$10,000. Thus, the settlement totaled \$1,535,000.

Jason Ramirez

Livier Ramirez

Alex Ramirez

Efrain Ramirez

Nadia Ramirez

Gabriel Ramirez

Estate of Rosa Salazar

Trial Information:**Judge:**

Kristin S. Escalante

Trial Length: 0

**Trial
Deliberations:** 0

**Editor's
Comment:** This report is based on information that was provided by plaintiffs' counsel. The state of California's counsel was not asked to contribute, and the remaining defendants' counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

Bus driver claimed teenage bicyclist darted out into street

Type: Verdict-Plaintiff

Amount: \$250,000

Actual Award: \$50,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Los Angeles, CA

Injury Type(s):

- *other* - death; loss of society; multiple trauma

Case Type:

- *Wrongful Death*
- *Motor Vehicle* - Bus; Bicycle; Intersection

Case Name: Karen Hernandez v. First Student Inc., Barbara Jean Calderon, and Does 1 to 100 / Sergio Saravia v. First Student Inc., Barbara Jean Calderon, and Does 1 to 100, No. BC513802; BC514509

Date: December 12, 2016

Plaintiff(s):

- Sergio Saravia (Male)
- Karen Hernandez (Female)
- Estate of Jonathan Hernandez (Male, 13 Years)

- Plaintiff Attorney(s):**
- Carney R. Shegerian; Shegerian & Associates; Santa Monica CA for Estate of Jonathan Hernandez, Sergio Saravia
 - Alan Aghabegian; Aghabegian & Associates, PC; Glendale CA for Estate of Jonathan Hernandez, Karen Hernandez, Sergio Saravia
 - Nancy P. Doumanian; Doumanian & Associates; La Crescenta CA for Estate of Jonathan Hernandez, Sergio Saravia
 - Nicholas C. Rowley; Carpenter, Zuckerman & Rowley, LLP; Beverly Hills CA for Estate of Jonathan Hernandez, Karen Hernandez
 - Courtney E. Rowley; The Rowley Law Firm, P.C.; Ojai CA for Estate of Jonathan Hernandez, Karen Hernandez
 - Deborah L. Pepaj; Law Offices of Deborah L. Pepaj; Pasadena CA for Estate of Jonathan Hernandez, Karen Hernandez, Sergio Saravia

- Plaintiff Expert(s):**
- Arbi G. Ohanian M.D.; Neurology; Pasadena, CA called by: Carney R. Shegerian, Alan Aghabegian, Nancy P. Doumanian, Nicholas C. Rowley, Courtney E. Rowley, Deborah L. Pepaj
 - Iain M. McIntyre Ph.D.; Medical Toxicology; San Diego, CA called by: Carney R. Shegerian, Alan Aghabegian, Nancy P. Doumanian, Nicholas C. Rowley, Courtney E. Rowley, Deborah L. Pepaj
 - Timothy J. Reust P.E.; Accident Reconstruction; Newhall, CA called by: Carney R. Shegerian, Alan Aghabegian, Nancy P. Doumanian, Nicholas C. Rowley, Courtney E. Rowley, Deborah L. Pepaj

- Defendant(s):**
- First Student Inc.
 - Barbara Jean Calderon

- Defense Attorney(s):**
- Paul J. Lipman; Wesierski & Zurek LLP; Los Angeles, CA for First Student Inc., Barbara Jean Calderon
 - Thomas G. Wianecki; Wesierski & Zurek LLP; Irvine, CA for First Student Inc., Barbara Jean Calderon
 - David M. Ferrante; Wesierski & Zurek LLP; Los Angeles, CA for First Student Inc., Barbara Jean Calderon
 - Michelle R. Prescott; Wesierski & Zurek LLP; Irvine, CA for First Student Inc., Barbara Jean Calderon

- Defendant Expert(s):**
- Gerald P. Bretting P.E.; Biomechanical; El Segundo, CA called by: for Paul J. Lipman, Thomas G. Wianecki, David M. Ferrante, Michelle R. Prescott,
 - Charles E. Smith; DUI; Palm City, FL called by: for Paul J. Lipman, Thomas G. Wianecki, David M. Ferrante, Michelle R. Prescott,
 - Darrell O. Clardy Ph.D.; Medical Toxicology; Brea, CA called by: for Paul J. Lipman, Thomas G. Wianecki, David M. Ferrante, Michelle R. Prescott,

Facts: At around 2 p.m. on May 2, 2013, after school let out, plaintiffs' decedent Jonathan Hernandez, 13, was riding his bicycle on a sidewalk, heading west into the four-way stop intersection of Columbus Avenue and Riverdale Drive, in Glendale. As he rode off the sidewalk and entered the intersection, Jonathan was struck by a northbound school bus operated by Barbara Calderon. Jonathan sustained fatal injuries.

Jonathan's mother, Karen Hernandez, sued Calderon and the owner of the school bus, First Student Inc. She alleged that Calderon was negligent in the operation of the bus and that

First Student was vicariously liable for Calderon's actions.

Jonathan's father, Sergio Saravia, brought a separate action against Calderon and First Student, also alleging negligence and vicarious liability against the respective defendants.

The matters were ultimately consolidated.

It was undisputed that Calderon came to a full stop at the four-way stop sign intersection and remained stopped for at least three seconds, as measured by on-board GPS electronics that only register a stop if it is three seconds or longer. The bus was pointed northbound, and it was undisputed that Jonathan came from Calderon's right, riding off the sidewalk without stopping, into the path of the bus just as it started moving forward.

An aide who supervised students on the bus (the only person on the bus other than Calderon) and a pedestrian who was Jonathan's friend were the only other people to see the accident. Jonathan's friend was walking north when she saw Jonathan riding west on the sidewalk in front of her, coming from her right and going toward her left. She claimed that she called and waved to Jonathan as he got close to the intersection and that before reaching the intersection, Jonathan nodded to her and then rode into the four-way stop intersection without stopping or slowing. The bus aide saw Jonathan just as he came off the sidewalk and yelled out at the time of, or just before, the impact.

Engineering experts for each side put Jonathan's speed between 9 and 11 mph, or perhaps 13 mph, which was about 13- to 19-feet per second. The pedestrian witness told a news reporter that even though he was riding westbound, Jonathan was not paying attention and was looking northbound (away from the bus) at the time he rode into the intersection.

After the crash, Calderon was hysterical and grief stricken at the scene, and she was ordered to the hospital for her own good by the police. Since the incident involved the death of a minor, the police dispatched one of their drug recognition experts, who was accompanied by another drug recognition expert officer, to do field sobriety testing on Calderon. There was no alcohol in Calderon's system, but the officer concluded that Calderon's prescription medications impaired her, as she was unable to walk a straight line and allegedly "failed" other tests, which the officer performed while visiting her at the hospital. However, the emergency room doctor opined that Calderon was not impaired. The police obtained a list of her prescription medications from Calderon, which included anti-anxiety medication, blood pressure medication, and prescription pain medication for arthritic knees. Blood testing confirmed that Calderon had her prescription medication in her body in some unknown amount, but the test did not quantify the amounts. Thus, the officer concluded that Calderon was impaired by prescription medication, but the district attorney rejected the report and did not file charges.

Plaintiffs' counsel argued that Calderon should have seen Jonathan on the sidewalk coming from her right and that Calderon was impaired by her prescription medications. Counsel acknowledged that Calderon came to a full stop for three seconds, as recorded by the bus's electronics, but argued that Calderon was not stopped long enough to look left, right, and left again.

The police report stated various things about where Calderon said she looked, but plaintiff's counsel argued that the statements were at odds with her testimony at trial. For example, counsel noted that at one place on the police report, it stated that Calderon said

at the scene that she looked left and then went forward.

Thus, plaintiffs' counsel argued that while Jonathan would have clearly seen the bus beforehand, he probably thought Calderon saw him and was going to stay stopped. Counsel also argued that Jonathan probably felt safe riding into the street without stopping because there was a crosswalk. In addition, plaintiff's counsel argued that Jonathan probably saw a car that had reportedly stopped in an eastbound lane and thought that the bus would yield until that stopped car went, per right-of-way rules.

The plaintiff's expert neurologist testified that based on the officer's field sobriety testing and his review of Calderon's video deposition, it was his opinion that Calderon was not only impaired at the hospital, but also impaired at her video deposition.

The plaintiff's accident reconstruction expert put little emphasis on any obstruction caused by the shrubbery at the corner, or by the bus's door and mirror on the right side, and opined that Calderon had a clear line of sight down the sidewalk for at least 75 feet.

Calderon claimed that she did not see Jonathan coming from her right side before he rode his bicycle off the sidewalk in front of the bus, just as the bus started forward from being stopped. She also claimed that while it was possible someone would break the law and ride off the sidewalk into the four-way stop intersection without stopping, she did look to her right, but that at the time she did so, there appeared to be no one there, as the bicycle on the sidewalk was obscured and invisible due to shrubbery on the corner of the intersection. Thus, from her perspective, the incident involved a dart-out situation.

Defense counsel contended that Calderon came to a full stop at the intersection, looked left, right and then left again, pursuant to Calderon's training and habit of 15 years. However, counsel contended that when Calderon looked to her right, there was no one to be seen coming down the sidewalk due to the shrubbery at the corner of the intersection. Counsel also contended that both Calderon and the student bus aide, who sat beside Calderon to her right and a little back from her, claimed that when Calderon came up to the stop, she looked to her left, then to her right (not seeing Jonathan on the sidewalk at that time), and then back to her left before proceeding. Thus, defense counsel argued that shrubbery at the corner partially obscured Calderon's view to the right and that Calderon had looked to the right, but did not see Jonathan coming down the sidewalk on his bike. Counsel also argued the shrubbery obscured Calderon's line of sight of a relatively small bicycle more than it obscured Jonathan's line of sight of a large, yellow bus.

Defense counsel argued that even if Jonathan was allowed to be riding a bicycle on the sidewalk, a 13 year old should know to stop, look and listen before riding out into an intersection, particularly when there was traffic already at the intersection. Counsel also contended that there was a bike lane available in the area. Defense counsel noted that Jonathan's mother, Hernandez, testified that Jonathan had been taught to stop at intersections, particularly if there is a stop sign or light. Counsel also noted that Hernandez's boyfriend had taught Jonathan to ride, as Jonathan's parents were divorced and Jonathan's father, Saravia, had moved up north years before to pursue a relationship and get a job. Thus, defense counsel argued that Jonathan's parents had not taught their son much about bike riding and that at the time of the accident, Jonathan was riding a new bicycle after having just learned how to ride.

In regard to Calderon's condition at the time of the accident, defense counsel contended

that Calderon was grief-stricken and hysterical and that Calderon was evidently misunderstood by the police to the extent that the report appeared to be odds with her recollection. Counsel noted that Calderon was taken by ambulance to a hospital to be evaluated and that the emergency room doctor opined that Calderon was not impaired. Thus, defense counsel argued that the officer's testing was done on a distraught woman, so that findings like "cottonmouth" were irrelevant. Counsel also argued that the failed sobriety tests were invalid because of how distraught Calderon was and other factors. Counsel further argued that the officer's sobriety tests were prohibited by the national testing standards for someone of Calderon's age (58), weight (243 pounds when she was 5-foot, 4-inches tall), and medical condition (arthritic knees). In addition, defense counsel argued that the accident took place 17 hours after Calderon had taken all of her medicines, which she took no later than 9 p.m. the night before, and had a full night's sleep after taking them. Counsel contended that Calderon customarily took a nap between shifts, so that by the time of the accident at 2 p.m. the next day, Calderon had plenty of sleep and had very little active medication in her system.

Calderon's personal physician testified that Calderon had been on medication for years, that Calderon's dosages were stable, and that Calderon had no side effects. Defense counsel argued that Calderon gets periodic testing as part of her work and is monitored in terms of her driving skills, so any supposed impairment would have been quickly noted. The bus company's doctor was allegedly aware of Calderon's list of medications, reviewed them annually, and checked Calderon annually, as Calderon has to pass muster with the California Highway Patrol and other agencies. Defense counsel contended that Calderon drove hundreds of thousands of miles, driving school buses among children, bicyclists and pedestrians before the accident. Thus, counsel argued that Calderon was clearly not impaired by her prescriptions. In addition, counsel argued that Calderon had 15 years with a perfect record of no injury accidents and no tickets, and that Calderon could not be terribly "impaired" by her prescriptions with such an exemplary safety record and reputation for care at her work.

Defense counsel questioned the drug recognition expert who performed the sobriety tests on Calderon, about Calderon passing her vertical gaze nystagmus test at the hospital. The officer admitted at trial that the finding was not consistent with high amounts of central nervous system depressants in the system, but that Calderon failed her horizontal gaze nystagmus test when he performed it, even though the emergency room doctor did the same test and said that Calderon passed it. However, the defense's field sobriety testing expert challenged the officer's "rolling log" of testing of suspects and opined that the officer was only correct on his findings of "impairment" 38 percent of the time, which is far below the accuracy required to pass certification.

The defense's biomechanical engineering expert, who has a specialty in bicycling, challenged the plaintiff's engineering expert, noting that the plaintiff's accident reconstruction expert took no pictures of his own, despite being on scene within three weeks of the accident. He also noted that the plaintiff's expert made no line-of-sight diagrams, other than at his deposition, where he drew an impromptu line on a sheet of notebook paper. In opposition, the defense's biomechanical expert testified that he did laser measurement and mapping at the scene shortly after the accident and that he took photos from inside an exemplar bus parked at the limit line, showing a partially obstructed view down the sidewalk to the right. The defense's expert animator then took the defense's biomechanical expert's measurements and made videos recreating the points of view of the driver (Calderon) and Jonathan.

Injury: Jonathan sustained multiple traumatic injuries and died immediately at the scene. It was stipulated that various non-head injuries would have killed Jonathan anyway, whether he was wearing a helmet or not, so there was no "helmet defense" in the case.

Jonathan's parents, Hernandez and Saravia, who were divorced, testified that the loss of their first-born son was a great loss of care, comfort, society, and affection. Thus, they claimed that an award of \$250 million in wrongful death damages was warranted for the loss of their son.

Defense counsel pointed out that the only recoverable damages in a wrongful death suit are for loss of the relationship, not for the value of the individual. Thus, defense counsel contended that although she claimed that she is now reformed, Hernandez testified that she had been a methamphetamine user and had been in and out of jail. Defense counsel also pointed out that as to a divorced father, Saravia had very little contact with Jonathan during his life and had lived out of state for many years. In addition, counsel contended that Saravia never sought custody of Jonathan.

Thus, defense counsel argued that if Calderon was found liable, the jury should only award Hernandez and Saravia \$250,000 in total damages, including \$100,000 for past damages and \$150,000 for future damages.

Result: The jury found that Calderon was 20 percent liable for the accident and that Jonathan was 80 percent liable. It determined that Jonathan's parents' damages totaled \$250,000, including \$100,000 in past damages and \$150,000 in future damages.

After a reduction based on Jonathan's comparative negligence, Hernandez and Saravia will receive \$50,000.

Trial Information:

Judge: Ruth Ann Kwan

Demand: \$7,000,000

Offer: \$300,000 (C.C.P. § 998) each to Hernandez and Saravia

Trial Length: 4 weeks

**Trial
Deliberations:** 3 days

Jury Vote: 9-3 as to liability and substantial factor; 9-3 as to Jonathan's comparative fault; 9-3 as to damages

Post Trial: Defense counsel filed for costs pursuant to the C.C.P. § 998 offers.

**Editor's
Comment:** This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.

Writer Priya Idiculla

After fatal crash, the defendants disputed liability

Type: Settlement

Amount: \$3,053,000

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, West Los Angeles, CA

Injury Type(s):

- *eye*
- *back* - lower back
- *ankle* - fracture, ankle
- *chest* - fracture, rib
- *other* - death; loss of consortium
- *foot/heel* - fracture, foot
- *pulmonary/respiratory* - pneumonia
- *gastrointestinal/digestive* - pancreas; pancreas, laceration

Case Type:

- *Motor Vehicle* - Broadside; Red Light; Sideswipe; Intersection; Multiple Vehicle; Dangerous Condition
- *Wrongful Death* - Survivorship Action
- *Dangerous Condition of Public Property*
- *Agency/Apparent Agency* - Vicarious Liability

Case Name: The Estate of William Weissberg, by and through its Successor-in-Interest Rosemary Weissberg; and Rosemary Weissberg, an Individual; David Wise, an individual; and Penny Wise, an individual v. S&T Express Inc., a Corporation; Thomas J. Wagner d/b/a Valley Truck Services; Sand Materials & Aggregate Sales Inc. d/b/a SM Sales, a Corporation; Hovik O. Papikyan, an Individual; State of California, a public entity; County of Los Angeles, a public entity; City of Malibu, a public entity; Johannes A. Haze, an Individual; DOES 5 through 50, inclusive; and DOES 1 through 50, inclusive, No. SC096110 and SC098720

Date: April 24, 2009

Plaintiff(s):

- David Wise (Male, 44 Years)
- Penny Wise (Female)
- Rosemary Weissberg (Female)
- William Weissberg (decedent) (Male)

**Plaintiff
Attorney(s):**

- Brian J Panish; Panish, Shea & Boyle LLP; Los Angeles CA for Rosemary Weissberg, David Wise, Penny Wise, William Weissberg (decedent)
- Spencer Lucas; Panish, Shea & Boyle LLP; Los Angeles CA for Rosemary Weissberg, David Wise, Penny Wise, William Weissberg (decedent)
- David A. Rudorfer; Panish, Shea & Boyle LLP; Los Angeles CA for Rosemary Weissberg, David Wise, Penny Wise, William Weissberg (decedent)

Defendant(s):

- City of Malibu
- Johannes A. Haze
- S&T Express Inc.
- Thomas J. Wagner
- State of California
- County of Los Angeles
- The Estate of Hovik O. Papikyan
- Sand Materials & Aggregate Sales Inc.

**Defense
Attorney(s):**

- Janine R. Fowler; California Department of Transportation (Caltrans); Los Angeles, CA for State of California
- John M. Coleman; Coleman & Associates; Los Angeles, CA for County of Los Angeles
- Craig R. Breitman; Selman Breitman LLP; Los Angeles, CA for Johannes A. Haze
- Stephen C. Pasarow; Knapp, Petersen & Clarke, P.C.; Glendale, CA for Thomas J. Wagner, Sand Materials & Aggregate Sales Inc.
- Steven J. Freeburg; Freeburg, Judy & Nettels; Pasadena, CA for S&T Express Inc., The Estate of Hovik O. Papikyan
- Robert Brugge; Knapp, Petersen & Clarke, P.C.; Glendale, CA for Thomas J. Wagner, Sand Materials & Aggregate Sales Inc.
- Michael S. Mars; Knapp, Petersen & Clarke, P.C.; Glendale, CA for Thomas J. Wagner, Sand Materials & Aggregate Sales Inc.
- Jamie O. Norman; Freeburg, Judy & Nettels; Pasadena, CA for S&T Express Inc., The Estate of Hovik O. Papikyan
- David M. Ferrante; Wesierski & Zurek LLP; Los Angeles, CA for City of Malibu
- Charles Collins; Coleman & Associates; Los Angeles, CA for County of Los Angeles

Insurers:

- State Farm
- Progressive

Facts:

On Oct. 24, 2007, plaintiffs' decedent William Weissberg, 58, an attorney, was driving westbound on Pacific Coast Highway in the Point Dume area, approaching the Kanan Dume Road intersection at a red light. Plaintiff David Wise, 44, a firefighter, was driving directly behind Weissberg.

At the same time, Hovik O. Papikyan was operating a trailer filled with small rocks, heading southbound on Kanan Dume at about 70 m.p.h. Papikyan missed the safety escape median at the bottom of Kanan Dume and ran a red light at Pacific Coast Highway before the trailer broadsided Weissberg and sideswiped Wise, resulting in an enormous explosion.

Weissberg and Papikyan died.

Wise sustained major injuries.

Weissberg's widow, Wise and Wise's wife sued Papikyan's estate; his personal trucking company, S&T Express Inc.; and the trucking broker which retained Papikyan to deliver the load, Thomas J. Wagner, operating as Valley Truck Service, or Valley Truck Service. The plaintiffs claimed wrongful death, motor vehicle negligence and vicarious liability.

The plaintiffs also sued Johannes Haze, a homeowner who might have been responsible for one of the many signs on Kanan Dune being down at the time of the incident. They also sued the City of Malibu, the County of Los Angeles and the State of California, the public entities which controlled the Kanan Dume-Pacific Coast Highway intersection or adjacent property.

The discovery process revealed that the liability of the public entities was limited due to Papikyan's disregard of numerous forms of signage and his failure to use the safety escape median at the bottom of Kanan Dume.

For those reasons, as well as other costs concerns, the City of Malibu, the State of California and County of Los Angeles and Haze all settled. The city settled for \$18,000. The state and the county settled for a waiver of costs. Haze settled for \$10,000.

The plaintiffs also sued Sand Materials & Aggregate Sales Inc., operating as SM Sales, as the sand/rock broker which sold the load of rock that Papikyan was hauling.

Plaintiffs' counsel argued that Valley Truck and SM Sales were acting as motor carriers with regard to the trailer and load and thus the non-delegable duty rule applied. The lawyers also argued that a joint venture existed between S&T Express, Valley Truck and SM Sales, and that Valley Truck and SM Sales actively participated in -- and controlled -- the manner and means of Papikyan's services. Plaintiffs' counsel claimed that rock-hauling was an activity that fell under the peculiar risk doctrine and the defendants were in breach of the subhaul agreement with S&T Express requiring \$1 million insurance coverage. The lawyers said that these theories defeated the independent contractor defense.

Through discovery, it was revealed that a joint venture existed between the truck broker and the sand/rock broker, both of which held separate \$1 million policies, and both entities exercised various forms of control over Papikyan, his truck and his routes, and had a financial interest in the load of rock being shipped.

Papikyan's estate, S&T Express and Valley Truck argued that the only applicable insurance was that of Papikyan and S&T Express, which held a policy in the amount of \$750,000.

Valley Truck disputed any liability for Papikyan's negligence on the grounds that he was a mere independent contractor over which it had no control.

Valley Truck and SM Sales contended that the only culpable parties were Papikyan and S&T Express.

Injury: Weissberg lost his life. He earned between \$200,000 and \$400,000 a year prior to his death.

His widow's special damages were based on the loss of his financial support.

Wise fractured his right foot/ankle, requiring multiple surgeries. He also had multiple broken ribs on the left side, permanent left eye injury, lower back injury with slight bleeding from his pancreas and pneumonia from inhaling gases from the burning diesel fuel.

He eventually returned to work.

Wise's medical specials were approximately \$60,000. His wage loss included roughly one year of being unable to work. His wife filed a loss-of-consortium claim.

Result: After 1.5 years of litigation, S&T Express, Valley Truck and SM Sales agreed to a global settlement with the plaintiffs.

The insurance for S&T Express tendered \$1 million. The insurance for Valley Truck tendered \$1 million. The insurance for SM Sales tendered \$1 million. And the owner of SM Sales provided \$25,000 out-of-pocket.

The total recovery was \$3,053,000.

Trial Information:

Judge: Lisa Hart Cole

Editor's Comment: This report is based on information from plaintiffs' counsel and defense counsel for Haze, the City of Malibu, the County of Los Angeles, SM Sales and Valley Truck. Defense counsel for the State of California, Papikyan's estate and S&T Express did not contribute.

Writer Priya Idiculla

Failure to Disclose Soils Problem to Investor

Type: Verdict-Defendant

Amount: \$0

State: California

Venue: Los Angeles County

Court: Superior Court of Los Angeles County, Long Beach, CA

Case Type: • *Professional Negligence*

Case Name: Anton Berkovich vs. Larry Moore & Associates Realtors, Inc. / X-Comp: Moore vs. Berkovich / X-Comp: Rottman vs. Berkovich, No. NC 012 995

Date: April 02, 1997

Plaintiff(s):

- Astrid Rottman (0 Years)
- Anton Berkovich (Male, 67 Years)
- Larry Moore & Associates Realtors, Inc. (0 Years)

Plaintiff Attorney(s):

- Arthur S. Frumkin; Fox & Frumkin; Los Angeles CA for Anton Berkovich
- Diane L. Gibson; Graham & James; San Francisco CA for Anton Berkovich
- Thomas F. McAndrews; Reback, Hulbert, McAndrews & Kjar; Manhattan Beach CA for Larry Moore & Associates Realtors, Inc.
- David Ferrante; Reback, Hulbert, McAndrews & Kjar; Manhattan Beach CA for Larry Moore & Associates Realtors, Inc.
- Anthony J. Oliva; Allen, Matkins, Leck, Mallory & Gamble; Los Angeles CA for Astrid Rottman
- Gregory G. Gorman; Allen, Matkins, Leck, Mallory & Gamble; Los Angeles CA for Astrid Rottman

Plaintiff Expert (s):

- Dan Hourihan; Construction Estimates; Orange County, CA called by:
- James Meyers; Economics; Los Angeles, CA called by:
- Daniel Overton; Soil; Denver, CO called by:
- Dennis Evans; Engineering; Carlsbad, CA called by:
- Marvin Silverman Esq; Real Estate; Carmel, CA called by:

Defendant(s):

- Anton Berkovich
- Larry Moore & Associates Realtors, Inc.

Defense Attorney(s):

- Arthur S. Frumkin; Fox & Frumkin; Los Angeles, CA for Anton Berkovich
- Diane L. Gibson; Graham & James; San Francisco, CA for Anton Berkovich
- Thomas F. McAndrews; Reback, Hulbert, McAndrews & Kjar; Manhattan Beach, CA for Larry Moore & Associates Realtors, Inc.
- David Ferrante; Reback, Hulbert, McAndrews & Kjar; Manhattan Beach, CA for Larry Moore & Associates Realtors, Inc.

Defendant Expert(s):

- Alan Long; Real Estate; Los Angeles, CA called by: for
- Dave Lee; Soil; Laguna Hills, CA called by: for

Facts:

4/22/90: Plaintiff, a 67 year-old real estate investor, on behalf of himself and his family trust, purchased the Garden Village Shopping Center in the city of San Pedro. An agent of Larry Moore & Associates acted as Plaintiff's agent. The shopping center was sold by the Astrid Rottman family for a total of \$14.05 million. The original sale price was \$14.2 million, which was reduced by \$150,000 at Plaintiff's request, to address a soils/structural problem at the northeast section of the site. Plaintiff was provided three soils surveys pertaining to the northeast section, and was advised to obtain an independent investigation. Plaintiff ignored the advice, and agreed to indemnify both the broker and the seller for any liability to the shopping center. Escrow closed in December of 1990, subsequent to which Plaintiff claimed he discovered the soils problem. Larry Moore & Associates filed a cross-complaint alleging breach of contract. The seller Rottmans filed a cross-complaint for indemnity and declaratory relief.

Plaintiff claimed his real estate agent did not advise him to obtain an independent soils study.

Defendant argued the broker provided three comprehensive soils reports to Plaintiff. The broker advised Plaintiff on several occasions to obtain an independent soils study. Plaintiff insisted he had sufficient engineering experience to address the problem, refusing to follow the broker's advise.

Injury:

Damages: \$7 to \$8 million in costs to repair the shopping center and approximately \$4 million in prejudgment interest

Result:

Settlement: **Offer:** \$50,000**Demand:** \$1,000,000

Verdict: Defense on complaint

Judgment for Cross-Complainants with the court awarding attorney fees of \$206,000 on Moore's cross-complaint, and \$113,000 in attorney fees on the Rothman cross-complaint

Jury Poll: 10-2

Note: Motion for new trial was not made.

Trial Information:

Judge: Margaret M. Hay

Trial Length: 2 weeks

**Trial
Deliberations:** 3 days

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