



## Defense: Renal failure not due to surgery

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Orange, CA

**Injury Type(s):**

- *other* - dialysis
- *urological* - renal failure

**Case Type:**

- *Medical Malpractice* - Neurosurgery; Failure to Consult; Negligent Treatment

**Case Name:** Ben Whittington and Cheryl Whittington v. Robert Jackson M.D. and Mission Hospital, No. 30-2019-01052108

**Date:** February 20, 2024

**Plaintiff(s):**

- Ben Whittington, (Male, 0 Years)
- Cheryl Whittington, (Female, 0 Years)

**Plaintiff Attorney(s):**

- John D. Schumacher; Hodes Milman, LLP; Irvine CA for Ben Whittington,, Cheryl Whittington
- Lee M. Weiss; Hodes Milman, LLP; Irvine CA for Ben Whittington,, Cheryl Whittington

- Plaintiff Expert(s):**
- Tony F. Feuerman M.D.; Spinal Surgery; Encino, CA called by: John D. Schumacher, Lee M. Weiss
  - Kelly Nasser R.N.; Life Care Planning; New York, NY called by: John D. Schumacher, Lee M. Weiss
  - Michael W. Fitzgibbons M.D.; Infectious Diseases; Santa Ana, CA called by: John D. Schumacher, Lee M. Weiss
  - Jonathan P. Tolins M.D.; Nephrology; Edina, MN called by: John D. Schumacher, Lee M. Weiss
  - Catherine M. Graves M.B.A., C.F.A.; Economics; Fullerton, CA called by: John D. Schumacher, Lee M. Weiss

- Defendant(s):**
- Robert Jackson
  - Mission Hospital

- Defense Attorney(s):**
- Terrence J. Schafer; Doyle Schafer McMahon, LLP; Irvine, CA for Robert Jackson

- Defendant Expert(s):**
- Eric A. Wechsler M.D.; Nephrology; Newport Beach, CA called by: for Terrence J. Schafer
  - Nitin N. Bhatia M.D.; Spinal Surgery; Costa Mesa, CA called by: for Terrence J. Schafer
  - Howard E. Pitchon M.D.; Infectious Diseases; Beverly Hills, CA called by: for Terrence J. Schafer
  - Heather H. Xitco M.B.A., C.P.A., C.F.F.; Economics; San Diego, CA called by: for Terrence J. Schafer
  - Melissa Keddington R.N.; Life Care Planning; Anaheim, CA called by: for Terrence J. Schafer
  - Jonathan E. Zuckerman M.D., Ph.D.; Anatomic Pathology; Los Angeles, CA called by: for Terrence J. Schafer

- Insurers:**
- The Doctors' Company

**Facts:** On Sept. 20, 2017, plaintiff Ben Whittington, who had a medical history of diabetes, hypertension, chronic anemia and Stage 3a chronic kidney disease, met with neurosurgeon Dr. Robert Jackson, presenting with signs and symptoms of cervical myelopathy. Jackson recommended surgical intervention in both the anterior and posterior cervical spine, and that the procedure was scheduled to take place on Nov. 21, 2017.

In anticipation of surgery, pre-operative labs on Oct. 30, 2017 showed a creatinine of 1.41 and an eGFR of 50, consistent with his Stage 3a chronic kidney disease. Jackson proceeded to order 1g of vancomycin and 120 mg of gentamicin prophylactic IV antibiotics for surgery, with one dose of each to be administered before surgery and further doses to be administered 12 hours and 24 hours later.

The surgery of Nov. 21, 2017 was more difficult than anticipated, with more bleeding than normal, leading Jackson to postpone the posterior stage of this surgery after the anterior stage was completed. On the morning of Nov. 22, 2017, after being adequately hydrated,

Ben Whittington's creatinine was measured as normal at 1.05 with a normal eGFR of 72.

Plaintiff Cheryl Whittington, Ben Whittington's wife, testified that her husband demonstrated intermittent confusion at home in the days following surgery, and that she reported this development to the office of Jackson. She was reportedly told that the intermittent confusion was due to her husband's anemia and was encouraged to double his doses of iron supplementation. Cheryl Whittington further testified that she and her husband were running late to their post-operative appointment with Jackson on Dec. 6, 2017, and that they ran into Jackson's physician assistant in the lobby of the office building. They claimed that the physician assistant conducted the post-operative appointment in the lobby of the office building, rather than upstairs in any exam room, and that the issue of Ben Whittington's intermittent confusion was never addressed.

On Dec. 8, 2017, Ben Whittington was brought to Mission Hospital emergency room in acute renal failure (with a creatinine of 6.48) and respiratory failure, requiring him to be intubated and admitted to the ICU. His renal function never recovered, and a renal biopsy on Dec. 13, 2017 revealed acute tubular necrosis with myoglobin casts consistent with rhabdomyolysis, as well as tubular vasculopathy, potentially secondary to proteinuria, exposure to IV contrast, volume expanders, IVIG and certain nephrotoxic medications, such as vancomycin. The physicians at Mission Hospital thereafter uniformly indicated in the medical records that Ben Whittington had suffered acute renal failure as a result of exposure to nephrotoxic antibiotics, vancomycin and gentamicin. Ben Whittington never recovered any renal function and will spend the rest of his life on dialysis.

Ben Whittington sued Jackson and Mission Hospital, alleging medical malpractice – negligent treatment and failure to consult. Mission Hospital was removed from the case prior to trial by way of a motion for summary judgment on April 6, 2020.

Plaintiffs' counsel contended that the medications Jackson utilized directly caused Ben Whittington's acute and irreversible renal failure on Dec. 8, 2017, 17 days after his surgery.

Plaintiffs' counsel argued that it was below the standard of care for Jackson to have issued orders for prophylactic antibiotics, in this case using nephrotoxic medications, vancomycin and gentamicin. It was alleged that it was completely unnecessary to order both of these medications, and in three separate doses, for a "clean" surgery of the cervical spine, especially with other alternatives available and preferred, that would not be nephrotoxic.

Plaintiffs' counsel further argued that it was especially unnecessary to order gentamicin to cover for gram negative infections, since those would not be expected following a "clean" surgery of the cervical spine. Plaintiffs' counsel also noted that by ordering these two medications together, Jackson triggered a synergistic effect that made the two medications even more nephrotoxic.

Plaintiffs' counsel added that if Jackson truly believed that Ben Whittington, a patient with chronic kidney disease, needed these antibiotics, then he should have only done so with the advance blessing of a nephrologist or an infectious disease specialist.

The defense contended that the care rendered to Ben Whittington by Jackson complied with the standard of care in all respects. The defense argued that this was a complicated cervical spine surgery with multiple risk factors for the development of post-operative infections (diabetes, hypertension, anemia, instrumentation, manipulation of the esophagus), and that a postoperative infection at this location would be a devastating and life-threatening complication. Furthermore, the defense disputed that gram negative infections could not be expected after this type of surgery, since that complication had occurred in the past and especially at Mission Hospital. The defense acknowledged that Ben Whittington had Stage 3a chronic kidney disease, and that both vancomycin and gentamicin had the potential to be nephrotoxic, but disputed whether the potential existed at the low dosage and short duration that Ben Whittington had received. In addition, defense maintained that after receiving proper hydration at the time of surgery, Ben Whittington's kidney function was completely normal, suggesting there were no difficulties clearing the antibiotics from his system.

The defense argued that if Ben Whittington had suffered acute renal failure as a result of the prophylactic antibiotics, he would have become acutely ill long before Dec. 8, 2017, and that his postoperative course was completely unremarkable through Dec. 6, 2017. This argument conflicted with Ben Whittington's own testimony regarding reports of intermittent confusion at home after surgery and the alleged examination in the medical office building lobby.

Defense counsel argued that the renal pathology results demonstrated acute renal failure, secondary to rhabdomyolysis, proteinuria, tissue hypoxia and potentially sepsis.

**Injury:**

Ben Whittington suffered loss of renal function. Plaintiffs' counsel argued that Ben Whittington had required significant medical services over the past six years, and would continue needing those services going forward, over his remaining 2.5 year life expectancy, primarily relating to complications from his lifetime dialysis.

The Medicare lien for the last six years totaled \$736,582, with future medical expenses estimated to have a present value of \$819,178. The present value of lost household services was calculated to be \$174,484. Ben and Cheryl Whittington further alleged that they had incurred \$72,000 in out-of-pocket medical expenses since Ben Whittington's acute renal failure in December 2017. These specials totaled \$1,802,244. Additionally, both plaintiffs sought at least \$250,000, the statutory maximum, in non-economic damages for Ben Whittington's injuries.

**Result:**

The jury returned a defense verdict on whether the standard of care was met and found that Jackson was not negligent.

Cheryl Whittington

Ben Whittington

**Trial Information:**

**Judge:** Thomas S. McConville

**Trial Length:** 11 days

**Trial  
Deliberations:** 1 hours

**Jury Vote:** 12-0 (negligence)

**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

## Plaintiff claimed rear-end collision caused lasting injuries

**Type:** Verdict-Plaintiff

**Amount:** \$2,000,969

**State:** California

**Venue:** Los Angeles County

**Court:** Superior Court of Los Angeles County, Van Nuys, CA

**Injury Type(s):**

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *other* - chiropractic; epidural injections
- *surgeries/treatment* - decompression surgery

**Case Type:**

- *Motor Vehicle* - Rear-ender; Multiple Vehicle

**Case Name:** Sergio Gil v. Trevor Michael Buczynski, Anderson Commercial Plumbing Inc. and Does 1 through 25, No. BC605711

**Date:** April 24, 2018

**Plaintiff(s):**

- Sergio Gil (Male, 43 Years)

**Plaintiff Attorney(s):**

- Spencer R. Lucas; Panish, Shea & Boyle, LLP; Los Angeles CA for Sergio Gil
- Robert S. Glassman; Panish, Shea & Boyle, LLP; Los Angeles CA for Sergio Gil

**Plaintiff Expert(s):**

- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: Spencer R. Lucas, Robert S. Glassman
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Spencer R. Lucas, Robert S. Glassman
- Tooraj "Todd" Gravori M.D.; Neurosurgery; Encino, CA called by: Spencer R. Lucas, Robert S. Glassman
- Vikram J. Singh M.D.; Pain Management; Van Nuys, CA called by: Spencer R. Lucas, Robert S. Glassman
- Richard B. Rhee M.D.; Radiology; Corona del Mar, CA called by: Spencer R. Lucas, Robert S. Glassman

**Defendant(s):**

- Trevor Michael Buczynski
- Anderson Commercial Plumbing Inc.

**Defense  
Attorney(s):**

- Jack M. Liebhaber; Raffalow, Bretoi & Adams; Sherman Oaks, CA for Trevor Michael Buczynski, Anderson Commercial Plumbing Inc.
- Dustin E. Thordarson; Raffalow, Bretoi & Adams; Sherman Oaks, CA for Trevor Michael Buczynski, Anderson Commercial Plumbing Inc.

**Defendant  
Expert(s):**

- Gene Bruno M.S., C.R.C., C.D.M.S.; Life Care Planning; Encino, CA called by: for Jack M. Liebhaber, Dustin E. Thordarson
- Brian F. King M.D.; Neuroradiology; Santa Monica, CA called by: for Jack M. Liebhaber, Dustin E. Thordarson
- Bryan C. Randles M.S.; Biomechanical; Long Beach, CA called by: for Jack M. Liebhaber, Dustin E. Thordarson
- Nitin N. Bhatia M.D.; Spinal Surgery; Irvine, CA called by: for Jack M. Liebhaber, Dustin E. Thordarson

**Insurers:**

- Travelers Property Casualty Corp.
- Mercury Insurance Group

**Facts:**

On the evening of June 26, 2014, plaintiff Sergio Gil, 43, a construction framer, was driving on Interstate 605, also known as the San Gabriel River Freeway, in Whittier, heading home following a long day of work. However, Gil had no driver's license. When he was near the Slauson Avenue exit, his vehicle was rear-ended by a large, Andersen Commercial Plumbing van operated by Trevor Buczynski. Gil claimed injuries to his neck and back.

Gil sued Buczynski and Buczynski's employer, Anderson Commercial Plumbing Inc., which also owned the van. Gil alleged that Buczynski was negligent in the operation of the van and that Anderson Commercial Plumbing was vicariously liable for Buczynski's actions while in the course and scope of his employment.

Prior to trial, defense counsel admitted that Buczynski was entirely at fault for the accident. Thus, the only issues that remained for trial were the nature and extent of Gil's injuries.

**Injury:**

Gil claimed he sustained herniated discs at the L4-5 and L5-S1 levels.

Following the collision, later that evening, Gil was evaluated in the emergency room for neck and back sprains and strains. He then returned to work the following day, continuing his employment as a construction framer. Gil underwent conservative therapy treatment, such as pain management, chiropractic treatment, and epidural injections for about one year. He claimed that after conservative treatment failed him, he underwent a discogram to further assure that surgery would be required. Gil's discogram was positive, so he underwent a spinal fusion at the L5-S1 level and a lumbar decompression to the adjacent level, at L4-5.

Gil was a lifetime construction worker who continues to work in construction and did not miss any time from work. However, he claimed that he now suffers from pain every day and that his mobility is limited. Gill alleged that as a result, he will require treatment and care for the rest of his life, as well as a lumbar fusion to the adjacent disc in 15 years.

The plaintiff's medical experts agreed that Gil's treatment was reasonable and necessary and that Gil's injuries were caused by the collision.

The plaintiff's expert life care planner estimated a future life care plan at approximately \$400,000.

Thus, Gil, who required the use of an interpreter throughout trial, sought recovery for his past and future medical costs, and past and future pain and suffering.

Defense counsel disputed causation and damages, arguing that Gil's injuries did not require surgery, or future care and treatment. Counsel also argued that Gil, who is non-English speaking, continued his employment as a framer immediately after the collision.

The defense's biomechanical expert opined that the impact, which occurred at only a 6 mph, could not have caused a spinal injury. In addition, the defense's spinal expert opined that such an impact could not have possibly caused nerve compression.

Thus, defense counsel asked the jury to award Gil only \$15,000 in total damages.

**Result:**

The jury found that Buczynski's negligence was a substantial factor in causing Gil harm. It also determined that Gil's damages totaled \$2,000,969.

**Sergio Gil**

\$325,000 Personal Injury: Past Medical Cost

\$350,000 Personal Injury: Future Medical Cost

\$1,325,969 Personal Injury: past and future pain and suffering



## **Trial Information:**

**Judge:** Valerie F. Salkin

**Demand:** \$1,300,000 (C.C.P. § 998)

**Offer:** \$500,000

**Trial Length:** 1 weeks

**Trial  
Deliberations:** 1 days

**Post Trial:** The parties reached an agreement that the verdict would be paid within 30 days of judgment.

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

**Writer** Priya Idiculla

## Plaintiffs claimed rear-end collision caused spinal injuries

**Type:** Settlement

**Amount:** \$180,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *back* - sprain, lumbar; strain, lumbar; bulging disc, lumbar
- *neck* - sprain, cervical; strain, cervical; bulging disc, cervical
- *other* - ablation; soft tissue; chiropractic; physical therapy; epidural injections; decreased range of motion
- *mental/psychological* - insomnia; emotional distress

**Case Type:**

- *Motor Vehicle* - Passenger; Rear-ender; Multiple Vehicle

**Case Name:** Gary Scotton and Fernanda Da Silva, Individually and as Guardian Ad Litem for Daniele Rosa Alves Da Silva, a Minor v. Joan Tellez, Peaches Stevens and Does 1 to 50, No. BC580503

**Date:** January 22, 2018

**Plaintiff(s):**

- Gary Scotton (Male, 56 Years)
- Fernanda Da Silva (Female, 34 Years)
- Daniele Rosa Alves Da Silva (Female, 16 Years)

**Plaintiff Attorney(s):**

- Jeffrey A. Milman; Hodes Milman Liebeck, LLP; Irvine CA for Gary Scotton, Fernanda Da Silva, Daniele Rosa Alves Da Silva
- Benjamin T. Ikuta; Hodes Milman Liebeck, LLP; Irvine CA for Gary Scotton, Fernanda Da Silva, Daniele Rosa Alves Da Silva

**Plaintiff Expert(s):**

- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: Jeffrey A. Milman, Benjamin T. Ikuta
- Bradley Rutledge M.S.; Mechanical; Laguna Hills, CA called by: Jeffrey A. Milman, Benjamin T. Ikuta
- Standiford Helm M.D.; Pain Management; Laguna Hills, CA called by: Jeffrey A. Milman, Benjamin T. Ikuta

**Defendant(s):**

- Joan Tellez
- Peaches Stevens

**Defense****Attorney(s):**

- None reported for Peaches Stevens
- Lyn A. Woodward; Law Offices of Gregory J. Lucett; Glendale, CA for Joan Tellez

**Defendant****Expert(s):**

- Jesse L. Wobrock Ph.D.; Accident Reconstruction; San Francisco, CA called by: for Lyn A. Woodward
- Jonathan T. Nassos M.D.; Orthopedic Surgery; Beverly Hills, CA called by: for Lyn A. Woodward

**Insurers:**

- Allstate Insurance Co.

**Facts:**

On Feb. 13, 2014, plaintiff Gary Scotton, 56, a retiree, was driving his Bentley in Los Angeles with his wife, plaintiff Fernanda Da Silva, 34, unemployed, and his stepdaughter, who is Da Silva's daughter, plaintiff Daniele Da Silva, 16, a high school student. While they were stopped at a red light in the left turn lane of southbound La Cienega Boulevard, waiting to make a turn onto Stocker Street, their vehicle was rear-ended by a Cadillac operated by Joan Tellez. Gary Scotton claimed injuries to his back, Fernanda Da Silva claimed injuries to her neck, and Daniele Da Silva claimed injuries to her neck and back.

Scotton, acting individually, and Da Silva, acting individually and as Daniele's guardian ad litem, sued Tellez, alleging that Tellez was negligent in the operation of her vehicle.

Peaches Stevens, who was a passenger in Tellez's vehicle, was also named as a defendant, but she was ultimately dismissed from the case.

Tellez initially claimed that both vehicles simultaneously changed lanes into the turn lane when Scotton suddenly applied his brakes. However, on the eve of trial, Tellez admitted liability.

**Injury:**

Following the collision, Scotton, Da Silva and Daniele were all taken to a hospital.

Scotton claimed that he sustained bulging lumbar discs at the L4-5 and L5-S1 levels. He subsequently underwent six months of chiropractic treatment and 1.5 years of physical therapy. He also received two epidural injections and two radiofrequency ablations.

Scotton claimed that he continues to have problems with bending and lifting, resulting in daily annoyances as a result of his injuries. He alleged that as a result, he will require future treatment, including additional injections and radiofrequency ablations.

Fernanda Da Silva claimed that she sustained bulging cervical disc at the C4-5 and C5-6 levels. She subsequently underwent six months of chiropractic treatment and 1.5 years of physical therapy. She ultimately received two epidural injections and two radiofrequency ablations.

Da Silva claimed that she suffers from constant pain and continues to have problems walking distances. She also claimed that her injuries cause her to have problems with sleeping, resulting in insomnia, and that she now has a fear of being in cars. Da Silva alleged that she will require future medical treatment, including additional injections and radiofrequency ablations, and a possible neck surgery.

Daniele claimed that she suffered from pain to her neck and back as a result of cervical and lumbar sprains and strains. She underwent one month of chiropractic care and her injuries ultimately resolved.

The plaintiffs' pain management expert, who treated both Scotton and Da Silva, opined that both Scotton and Da Silva needed future injections and radiofrequency ablations and that Da Silva also needed a future cervical surgery.

Defense counsel would have argued that Scotton's injuries were pre-existing and that all of the plaintiffs' claims were attorney driven.

**Result:**

The parties agreed to an \$180,000 settlement.

While the parties were initially far apart during negotiations, Tellez's insurer offered \$157,000, collectively, 10 days before trial, but the plaintiffs declined the offer. Then, after the parties picked a jury and gave opening statements, Tellez's insurer increased its offer to \$180,000, which was accepted by the plaintiffs. Of the total settlement, \$10,000 was for Daniele, \$70,000 was for Scotton and \$100,000 was for Da Silva.

**Trial Information:****Judge:**

Patrick T. Madden

**Editor's  
Comment:**

This report is based on information that was provided by plaintiffs' counsel. Tellez's counsel did not respond to the reporter's phone calls, and Stevens' counsel was not asked to contribute.

**Writer**

Priya Idiculla

## Collision hastened need for hip replacements, plaintiff claimed

**Type:** Settlement

**Amount:** \$550,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *hip* - hip replacement
- *leg* - bruise
- *knee*
- *other* - chiropractic; osteoarthritis; aggravation of pre-existing condition
- *epidermis* - contusion; ecchymosis
- *hand/finger* - hand

**Case Type:**

- *Motor Vehicle* - Head-On; Center Line; Multiple Impact; Multiple Vehicle

**Case Name:** Brindusha Bauer v. Commercial Coating Co., Inc. dba Commercial Paving and Coating, John Saylor, William Emerson and Does 1 to 25, No. BC606502

**Date:** October 31, 2017

**Plaintiff(s):**

- Brindusha Bauer (Female, 39 Years)

**Plaintiff Attorney(s):**

- Judy Patno; Law Offices of Judy Patno; Fullerton CA for Brindusha Bauer
- Jeffrey A. Milman; Hodes Milman, LLP; Irvine CA for Brindusha Bauer

**Plaintiff Expert(s):**

- David J. King P.E.; Accident Reconstruction; Los Angeles, CA called by: Judy Patno, Jeffrey A. Milman
- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: Judy Patno, Jeffrey A. Milman
- Catherine M. Graves M.B.A.; Economics; Fullerton, CA called by: Judy Patno, Jeffrey A. Milman
- Christopher A. Wills M.D.; Orthopedic Surgery; Orange, CA called by: Judy Patno, Jeffrey A. Milman

**Defendant(s):**

- John Saylor
- William Emerson
- Commercial Coating Co. Inc.

**Defense  
Attorney(s):**

- Steve R. Belilove; Yee & Belilove, LLP; Pasadena, CA for Commercial Coating Co. Inc., John Saylor, William Emerson
- Steven R. Yee; Yee & Belilove, LLP; Pasadena, CA for Commercial Coating Co. Inc., John Saylor, William Emerson
- Eric O. Zeiger; Yee & Belilove, LLP; Pasadena, CA for Commercial Coating Co. Inc., John Saylor, William Emerson

**Defendant  
Expert(s):**

- Eric S. Deyerl P.E.; Accident Reconstruction; Culver City, CA called by: for Steve R. Belilove, Steven R. Yee, Eric O. Zeiger
- Gene Bruno M.S., C.R.C., C.D.M.S.; Life Care Planning; Encino, CA called by: for Steve R. Belilove, Steven R. Yee, Eric O. Zeiger
- Darryl R. Zengler M.A.; Economics; Pasadena, CA called by: for Steve R. Belilove, Steven R. Yee, Eric O. Zeiger
- Stephan V. Yacoubian M.D.; Orthopedic Surgery; Burbank, CA called by: for Steve R. Belilove, Steven R. Yee, Eric O. Zeiger

**Insurers:**

- HDI Global SE

**Facts:**

On Dec. 22, 2014, plaintiff Brindusha Bauer, 39, a certified registered nurse anesthetist, was driving in the far left, fast (number one) lane on northbound Soto Street, in Los Angeles, when her vehicle was hit nearly head-on by a truck operated by John Saylor, who approached from the southbound lanes of Soto Street. The impact caused Bauer's vehicle to spin 180 degrees, travel in a southerly direction, and then collide with the right, front bumper and right side of a non-party Honda. Bauer claimed injuries to her hips.

Bauer sued Saylor; Saylor's employer, Commercial Coating Co. Inc. (doing business as Commercial Paving and Coating); and the registered owner of Saylor's truck and owner of Commercial Coating, William Emerson. Bauer alleged that Saylor was negligent in the operation of the truck and that Commercial Coating and Emerson were vicariously liable for Saylor's actions.

Bauer contended that Saylor lost control of his vehicle and that she could not avoid colliding with his truck.

The defendants conceded liability.

**Injury:**

Bauer was diagnosed with contusions to a hip and a hand, osteoarthritis, and ecchymosis to the left and right leg. (Ecchymosis is a discoloration of the skin resulting from bleeding underneath and is the medical term for a common bruise.) She also claimed the accident aggravated her prior hip dysplasia. Bauer was immediately transported to a hospital, where she was treated and released. She later had chiropractic therapy and orthopedic consults, as well as a Synvisc injection to a knee.

Bauer contended that although she previously had bone on bone congenital dysplasia, she was asymptomatic and would not have needed a bilateral hip replacement for at least a decade. However, Bauer claimed the subject accident aggravated her condition in each hip and that she ultimately required a hip replacement to one hip on Sept. 1, 2015 and to the other hip on Jan. 7, 2016.

Bauer presented a HealthComp lien in the total amount of \$315,492.19.

Bauer was employed at Keck Medical Center, in Los Angeles, and was able to return to work after the surgeries. However, she contended that she lost gross income in the amount of \$22,737.50 initially and an additional sum of \$26,960.19 following her second surgery.

Thus, Bauer sought recovery of past and future medical costs, past loss of earnings, and damages for her past and future pain and suffering.

Defense counsel contended that because of Bauer's congenital hip dysplasia with bone on bone radiographs, Bauer would have needed the bilateral hip replacements within one year, regardless of the subject crash.

**Result:**

The parties agreed to a \$550,000 settlement on the day of trial. The settlement was paid by Commercial Coating's insurer, on behalf of all defendants, with a substantial reduction of the health care lien by the Employee Retirement Income Security Act of 1974 (ERISA).

**Trial Information:****Judge:**

Benny C. Osorio

**Editor's  
Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer**

Priya Idiculla

## Crosswalk accident caused leg and lower back injuries: plaintiff

**Type:** Settlement

**Amount:** \$850,000

**State:** California

**Venue:** Ventura County

**Court:** Superior Court of Ventura County, Ventura, CA

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *back*
- *other* - soft tissue; closed reduction
- *surgeries/treatment* - open reduction; internal fixation

**Case Type:**

- *Motor Vehicle* - Crosswalk; Pedestrian

**Case Name:** Darline Barrios v. Nancy Sue Barbour, No. 56-2015-00471214-CU-PA-VTA

**Date:** August 10, 2017

**Plaintiff(s):**

- Darline Barrios (Female, 28 Years)

**Plaintiff Attorney(s):**

- Rahul Ravipudi; Panish Shea & Boyle LLP; Los Angeles CA for Darline Barrios
- Matthew B. Nezhad; NSL Law Firm; Sherman Oaks CA for Darline Barrios
- Robert S. Glassman; Panish Shea & Boyle LLP; Los Angeles CA for Darline Barrios
- Yashpal ("Jessie") S. Sandhu; NSL Law Firm; Sherman Oaks CA for Darline Barrios



**Plaintiff Expert(s):**

- Kelly Nasser R.N.; Life Care Planning; Irvine, CA called by: Rahul Ravipudi, Matthew B. Nezhad, Robert S. Glassman, Yashpal ("Jessie") S. Sandhu
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Rahul Ravipudi, Matthew B. Nezhad, Robert S. Glassman, Yashpal ("Jessie") S. Sandhu
- Pasquale X. Montesano M.D.; Orthopedic Surgery; Beverly Hills, CA called by: Rahul Ravipudi, Matthew B. Nezhad, Robert S. Glassman, Yashpal ("Jessie") S. Sandhu

**Defendant(s):**

- Nancy Sue Barbour

**Defense Attorney(s):**

- Thomas W. Shaver; Shaver, Korff & Castronovo; Encino, CA for Nancy Sue Barbour

**Defendant Expert(s):**

- James R. High M.D.; Psychiatry; Santa Monica, CA called by: for Thomas W. Shaver
- Hillel Sperling M.D.; Orthopedic Surgery; Tarzana, CA called by: for Thomas W. Shaver

**Insurers:**

- American Automobile Association

**Facts:** At around 5:20 p.m. on Sept. 21, 2013, plaintiff Darline Barrios, an unemployed 28-year-old who was born with fragile X syndrome (a genetic condition which can cause enlarged physical features, difficulty with social interactions, and intellectual disabilities), was walking in a marked crosswalk across Tapo Street, in Simi Valley, when she was struck by a Toyota Corolla operated by Nancy Sue Barbour. Barrios claimed injuries to her left leg and lower back.

Barrios sued Barbour, alleging that Barbour was negligent in the operation of her vehicle. Specifically, Barrios contended that Barbour failed to yield the right of way to a pedestrian and caused the accident.

Barbour did not dispute liability.

**Injury:** After Barrios was knocked down, she was taken by ambulance to Simi Valley Hospital, in Simi Valley, where she was diagnosed with open fractures of her left leg's tibia and fibula. Barrios also claimed that she sustained a soft tissue injury to her lower back. Simi Valley had no orthopedic coverage at the time, so Barrios was transferred to Los Robles Hospital & Medical Center, in Thousand Oaks. She ultimately underwent a closed reduction of the tibia and fibula fractures followed by an open reduction and internal fixation.

Defense counsel disputed the nature and extent of Barrios' alleged damages, asserting that Barrios would not require any future care or treatment, as Barrios' injuries had resolved.

**Result:** The parties agreed to an \$850,000 settlement prior to trial.

**Trial Information:**

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

**Writer** Priya Idiculla

## Plaintiff knocked over by store's employee claimed brain injury

**Type:** Verdict-Plaintiff

**Amount:** \$1,190,106

**State:** California

**Venue:** Ventura County

**Court:** Superior Court of Ventura County, Ventura, CA

**Injury Type(s):**

- *neck*
- *brain* - traumatic brain injury
- *other* - physical therapy; strains and sprains
- *mental/psychological* - cognition, impairment

**Case Type:**

- *Worker/Workplace Negligence*

**Case Name:** Wanda L. Katz v. CVS Pharmacy Inc., No. 56-2013-00440158-CU-PO-VTA

**Date:** May 12, 2016

**Plaintiff(s):**

- Wanda L. Katz (Female, 54 Years)

**Plaintiff Attorney(s):**

- John H. Howard; Lowthorp, Richards, McMillan, Miller & Templeman; Oxnard CA for Wanda L. Katz
- Dennis LaRochelle; Arnold LaRochelle Mathews VanConas & Zirbel LLP; Oxnard CA for Wanda L. Katz

**Plaintiff Expert  
(s):**

- Alex J. Balian M.B.A.; Retail Safety; West Hills, CA called by: John H. Howard, Dennis LaRochelle
- Doug Carner; Photographic Analysis; Van Nuys, CA called by: John H. Howard, Dennis LaRochelle
- John C. Meyers M.A., C.R.C.; Vocational Rehabilitation; Ventura, CA called by: John H. Howard, Dennis LaRochelle
- John E. Nordstrand M.A.; Economics; Santa Barbara, CA called by: John H. Howard, Dennis LaRochelle
- Marc Broberg P.T.; Physical Therapy; Ventura, CA called by: John H. Howard, Dennis LaRochelle
- Bruce H. Dobkin M.D.; Neurology; Los Angeles, CA called by: John H. Howard, Dennis LaRochelle
- James G. Kent Ph.D.; Biomechanical; Los Angeles, CA called by: John H. Howard, Dennis LaRochelle
- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: John H. Howard, Dennis LaRochelle
- Tania Davidson Psy.D.; Psychology/Counseling; Ventura, CA called by: John H. Howard, Dennis LaRochelle
- Edward I. Cho M.D.; Otolaryngology; Los Angeles, CA called by: John H. Howard, Dennis LaRochelle
- Ronald Chochinov M.D.; Endocrinology; Oxnard, CA called by: John H. Howard, Dennis LaRochelle
- Janelle M. Johnson P.T.; Physical Therapy; Ventura, CA called by: John H. Howard, Dennis LaRochelle
- Stephen D. Covington M.D.; Gastroenterology; Ventura, CA called by: John H. Howard, Dennis LaRochelle

**Defendant(s):**

- CVS Pharmacy Inc.

**Defense  
Attorney(s):**

- Robert J. Rossi; Homan & Stone; Redlands, CA for CVS Pharmacy Inc.

**Defendant  
Expert(s):**

- John C. Gardiner Ph.D.; Biomechanical; Laguna Hills, CA called by: for Robert J. Rossi
- Kyle Boone Ph.D.; Neuropsychology; Torrance, CA called by: for Robert J. Rossi
- Michael A. Wienir M.D.; Neurology; Tarzana, CA called by: for Robert J. Rossi
- Stephen L.G. Rothman M.D.; Radiology; Los Angeles, CA called by: for Robert J. Rossi

**Facts:**

On Feb. 1, 2013, plaintiff Wanda Katz, 54, a retired hairstylist, was shopping at a CVS store in Port Hueneme. While crouched down and examining some products near the bottom of a display rack, Katz was knocked to the ground by a CVS employee who was pushing a four-wheel cart loaded with merchandise. Katz claimed that as she fell, the right side of her head struck the bottom shelf.

Katz sued CVS Pharmacy Inc. She alleged that the employee negligently caused the accident and that CVS Pharmacy was vicariously liable for the employee's actions.

Plaintiff's counsel noted that the CVS employee claimed that she did not see Katz because the merchandise on the cart she was pushing blocked her line of sight. Thus, counsel argued that the employee was negligent for failing to keep a proper lookout while pushing the cart.

The incident was partially captured on a CVS video surveillance camera, but the video did not show the alleged head strike. Plaintiff's counsel argued that Katz's head strike could not be seen because the recorder was set to capture images at five frames per second, rather than the usual 30 frames per second.

Defense counsel argued that CVS Pharmacy was not liable for the alleged incident and that Katz should not have crouched down when she was approximately 6-feet away from a parked, four-wheel cart that was loaded with merchandise. Counsel also argued that Katz did not hit her head on the lower shelf.

## **Injury:**

Katz claimed that she sustained a traumatic brain injury and a neck strain. She alleged she suffered neck pain after the incident, but did not seek immediate medical treatment. Instead, she spoke with a neighbor, who was an orthopedist. Katz's first documented doctor's office visit was six weeks after the incident, after her neck pain became severe and she started to experience some sensory and cognitive deficits.

Within two months of the incident, Katz underwent an MRI of the brain and was determined to have a lesion in the cerebellum. The radiologist allegedly misinterpreted the lesion as evidence of a stroke. However, 1.5 years after the subject incident, Katz presented to the head of the Stroke and Neuro-Rehabilitation Department at UCLA, was told by the plaintiff's expert neurologist that she never had a stroke, but rather the lesion in the cerebellum was evidence of traumatic brain injury caused by the subject incident. Katz then consulted with her expert otolaryngologist, a balance disorder specialist at House Clinic, in Ventura, and was diagnosed with persistent postural-perceptual dizziness (PPPD), a balance and sensory disorder that can be caused either by brain trauma or by a serious neck injury.

Plaintiff's counsel contended that the brain trauma was from Katz striking her head. Specifically, counsel contended that when Katz struck her head, it caused an injury to her vestibular system, which then led to PPPD. Plaintiff's counsel noted that balance and sensory disorders are often simply dismissed as "dizziness" and left untreated, but that PPPD is now recognized in literature with specific diagnostic criteria and can be treated using specific therapeutic regimens. As a result, Katz continues to undergo extensive physical therapy, cognitive therapy, and occupational therapy.

Katz claimed that although she had retired from a career as a hairstylist by the time of the accident, she continued to maintain both her cosmetology and real estate licenses. She alleged that as a result, her injuries caused her to suffer a loss of earning capacity and caused her to be unable to perform many of her household services. She also alleged that she can no longer drive a car for any significant distance and that she can no longer walk along the beach or enjoy yoga.

Thus, Katz sought recovery of \$56,229 in current medical costs, \$288,000 in future medical costs, and \$399,836 in future loss of household services. She also sought recovery of damages for her past and future pain and suffering.

Defense counsel asserted that Katz was not seriously injured and that Katz was a hypochondriac who exaggerated and over-stated her symptoms.

According to the defense's medical experts, the lesion in the cerebellum may have been due to a stroke, but, in any event, did not cause any of Katz's alleged symptoms. In addition, the defense's medical experts opined that persistent PPPD is a garbage diagnosis and purely subjective.

During jury deliberations, the parties established a \$3 million/\$750,000 high/low agreement, with the amount to be adjusted based on the finding of liability. The agreement included a stipulation that there would be no appeals.

**Result:** The jury found that the CVS employee was negligent and that her negligence was a substantial factor in causing Katz harm. It also apportioned 100 percent liability to CVS, and found that Katz was not contributorily liable for the incident. Thus, the jury determined that Katz's damages totaled \$1,190,105.79.

**Wanda L. Katz**

\$188,673 Personal Injury: past economic damages

\$451,433 Personal Injury: future economic damages

\$200,000 Personal Injury: past non-economic damages

\$350,000 Personal Injury: future non-economic

**Trial Information:**

**Judge:** Rocky J. Baio

**Demand:** \$224,000 (C.C.P. § 998)

**Offer:** \$75,001 (C.C.P. § 998)

**Trial Length:** 10 days

**Trial Deliberations:** 2 days

**Jury Vote:** 11-1 as to defendant's negligence; 10-2 as to damages; 9-3 as to no contributory negligence

**Post Trial:** Plaintiff seeks over \$300,000 in costs, expert fees and prejudgment interest based on the verdict exceeding the C.C.P. § 998 demand. However, the defense claimed the § 998 demand was unreasonable due to plaintiff's counsel not hiring all of their experts at the time it was made. Plaintiff's counsel claimed the § 998 demand was made after they listed 14 medical experts and prior trial dates had been continued. They only added more experts when discovery was reopened after the last continuance.

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

**Writer** Priya Idiculla

## Cardiologist: Coronary artery stent would have been too risky

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Orange, CA

**Injury Type(s):**

- *leg*
- *other* - fasciectomy/fasciotomy
- *foot/heel* - foot; foot drop (drop foot)
- *arterial/vascular* - embolism

**Case Type:**

- *Medical Malpractice* - Cardiac Care; Cardiac Surgery; Delayed Treatment

**Case Name:** James Arnold Murrin and Sheila Yee-Murrin v. Los Alamitos Medical Center, Omid Vahdat, Omid Vahdat, M.D., Inc., and Robert Shuman, No. 30-2013-00648198-CU-MM-CJC

**Date:** January 25, 2016

**Plaintiff(s):**

- Sheila Yee-Murrin (Female)
- James Arnold Murrin (Male, 72 Years)

**Plaintiff Attorney(s):**

- John P. Blumberg; Blumberg Law Corporation; Long Beach CA for James Arnold Murrin, Sheila Yee-Murrin

**Plaintiff Expert (s):**

- David V. Cossman M.D.; Vascular Surgery; Los Angeles, CA called by: John P. Blumberg
- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: John P. Blumberg
- William French M.D.; Cardiology; Torrance, CA called by: John P. Blumberg

**Defendant(s):**

- Omid Vahdat
- Robert Shuman
- Omid Vahdat, M.D., Inc.
- Los Alamitos Medical Center



**Defense  
Attorney(s):**

- Richard P. Booth; Schmid & Voiles; Orange, CA for Omid Vahdat, Omid Vahdat, M.D., Inc., Robert Shuman, Los Alamitos Medical Center
- Margaret M. Cahill; Schmid & Voiles; Orange, CA for Omid Vahdat, Omid Vahdat, M.D., Inc., Robert Shuman, Los Alamitos Medical Center

**Defendant  
Expert(s):**

- C. Alan Brown M.D.; Cardiology; Santa Barbara, CA called by: for Richard P. Booth, Margaret M. Cahill
- David J. Weiner M.B.A.; Economics; Los Angeles, CA called by: for Richard P. Booth, Margaret M. Cahill
- Timothy Harward M.D.; Vascular Surgery; Orange County, CA called by: for Richard P. Booth, Margaret M. Cahill

**Facts:**

On Feb. 28, 2012, plaintiff James Murrin, 72, a real estate worker who had a 60-year history of smoking and a 10-year history of peripheral arterial vascular disease with numbness and tingling, presented to the Emergency Department at Los Alamitos Medical Center after suffering five hours of chest pain. He was diagnosed with an ST segment elevation myocardial infarction (STEMI).

Dr. Omid Vahdat, a board certified cardiologist and interventional cardiologist, arrived at the hospital within 30 minutes of being notified of the STEMI. He then performed an emergent cardiac catheterization procedure, during which he identified multiple significant blockages in the right coronary artery, the immediate cause of the STEMI, and significant blockages in the left coronary artery and multiple branches. Significant findings included the left main artery with a 50 to 60 percent proximal lesion; the left anterior descending coronary artery with a 70 percent mid-lesion; the diagonal branch with an 80 percent ostial lesion; between 80 percent and 90 percent lesions in the circumflex and obtuse marginal; and a 99 percent ostial lesion with a Thrombolysis In Myocardial Infarction risk score of 2 flow in the right coronary artery. Vahdat, in his judgment, and consistent with the American College of Cardiology/American Heart Association (ACA/AHA) guidelines, opted not to stent the right coronary artery due to the size of the lesions in the left main branches and because such stent, which is not without risk, may delay Murrin's needed coronary artery bypass graft surgery or increase the risks of surgery because anti-coagulants must accompany stent placement.

Due to the STEMI, and significant right and left coronary artery blockages and risks associated therewith, Vahdat placed an intra-aortic balloon pump (IABP) to assist and support the heart function and to increase blood flow to the coronary arteries. Murrin also received nitroglycerine and Heparin, as well as Morphine for pain. Once the IABP pump was placed, there was no longer EKG evidence of a STEMI, meaning blood flow was improved and his chest pain resolved. Vahdat then contacted Dr. Robert Shuman, a cardiothoracic surgeon, at 10 p.m. on Feb. 28, 2012. Shuman agreed to see Murrin the following morning and arrange for his transfer to Long Beach Memorial Hospital, as Los Alamitos did not have the capability to perform bypass surgery. Murrin was stable at 11:30 p.m., when Vahdat left the hospital.

At approximately 6 a.m. on Feb. 29, 2012, Murrin began complaining of severe right pain, distal from the IABP placement in the right femoral artery for which he was medicated by the nurse caring for him. Vahdat was subsequently notified of the pain at 6:45 a.m., and Shuman saw Murrin at 7 a.m. Murrin was then transferred to Long Beach Memorial and, in the operating room, within six to eight hours, Shuman performed an emergent three-vessel coronary artery bypass graft surgery, removing the IABP and performing an

embolectomy before beginning the coronary artery bypass graft surgery. Shuman determined that there was good blood flow to the right leg after the embolectomy and then completed the bypass surgery.

Following the surgery, Murrin was sent to the cardiac intensive care unit and did well until the following day, when Murrin had evidence of an ischemic right leg. A pre-op CT angiography on March 1, 2012, confirmed that he had thrombosed the entire iliac system on the right side. Murrin was also diagnosed with a platelet clumping disorder, although this disorder did not come into evidence. A fem-fem bypass by Shuman restored right leg blood flow, but the patient developed compartment syndrome the following day and underwent a fasciotomy.

Murrin had a rocky hospital course due to his significant disease, but was ultimately discharged to rehabilitation after about two months. He was walking with a walker when he was last seen by Shuman in September 2012. At the time of trial, Murrin had a right leg wound that he contended was related to the IABP.

Murrin sued Shuman; Vahdat; Vahdat's medical office, Omid Vahdat, M.D., Inc.; and Los Alamitos Medical Center.

Shuman and the hospital were let out of the case on summary judgment, and Vahdat's corporation was also dismissed from the case. Thus, the matter continued only against Vahdat, as an individual.

Plaintiff's counsel contended that shortly after a balloon angioplasty was performed by Vahdat, Murrin complained of extreme pain in his lower leg and foot. The technician on duty notified Vahdat, who prescribed pain medication and went home for the evening after telling Shuman, the vascular surgeon, that he should come in the next morning to transfer Murrin for bypass surgery at another hospital. Counsel noted that Shuman opined that by the next morning, when he saw Murrin, irreparable damage had been done to the nerves and muscles of the lower leg, resulting in drop foot. Plaintiff's counsel contended that the window of opportunity opened at 10 p.m. on Feb. 28, 2012, when Murrin had complaints of right foot pain.

The plaintiff's cardiology expert opined that the onset of pain following the balloon angioplasty is the hallmark of critical limb ischemia and that it requires immediate removal of the pump and referral for vascular surgery re-vascularization. The expert opined that the failure of Vahdat to recognize the condition and inform the vascular surgeon of the emergency was negligent, and was the cause of Murrin's injury. The plaintiff's cardiology expert contended that an IABP was contra-indicated, that a stent or balloon angioplasty were the only acceptable options in order to comply with the standard of care, and that Murrin could wait up to 30 days for coronary artery bypass graft surgery.

Vascular surgery experts testified that there is a six to eight hour window of time to restore blood flow to the right leg, which may have been impaired due to Murrin's vascular issue and the IABP.

Defense counsel noted that the right leg wound was nearly four years after the surgery. Defense contended that no recent vascular studies had been done to ascertain the cause of the wound, which experts admitted could have been due to Murrin's longstanding peripheral vascular arterial disease.

The defense's experts opined that the window opened at 6 a.m. with the acute limb ischemia (documented then and not before). Defense counsel contended that Vahdat had examined Murrin at 10 p.m. and found no evidence of acute limb ischemia, and that the foot pain resolved until 6 a.m. Counsel also contended that Shuman examined Murrin at 7 a.m. and determined that there was acute limb ischemia at that time, but that due to cardiac concerns, he did not remove the IABP until Murrin was in the operating room at Long Beach Memorial Hospital. In addition, counsel contended that Vahdat was notified of the foot pain at 6:45 a.m. and was then at Long Beach Memorial, awaiting Murrin's arrival.

The defense's cardiology expert testified that all conduct by Vahdat was within the standard of care and in compliance with American College of Cardiology/American Heart Association guidelines. The expert also pointed out on the angiogram the improved blood flow after the IABP and the resolution of the STEMI EKG findings, a finding admitted by the plaintiff's cardiology expert at trial.

Both the defense's and plaintiff's vascular experts testified in depositions that the delays in the timing of the fem-fem bypass after the coronary artery bypass graft surgery, the development of compartment syndrome, and the timing of the fasciotomy were the cause of the foot drop, and not the IABP. Shuman also testified at deposition that the IABP was either not the cause of the vascular problems or had only contributed perhaps 1 percent to the outcome. Over objection and motion, the court excluded this testimony because Shuman's expert (who was never deposed and was only presented during the motion for summary judgment) opined that the damage was done already by 6 a.m.

**Injury:**

Murrin had evidence of an ischemic right leg and a pre-op CT angiography on March 1, 2012, confirmed that the entire iliac system on the right side had been thrombosed. He was also diagnosed with a platelet clumping disorder, although this disorder did not come into evidence. A fem-fem bypass by Shuman restored right leg blood flow, but Murrin developed compartment syndrome the following day and underwent a fasciotomy. Murrin then had a rocky hospital course due to his significant disease, but was ultimately discharged to rehabilitation after about two months.

Murrin claimed that all of his vascular injuries after seeing Vahdat were due to the delayed surgery, and no stent and/or intra-aortic balloon pump placement. He alleged that as a result, he has a residual foot drop in his right foot and a non-healing wound on his right leg. Murrin was walking with a walker when he was last seen by Shuman in September 2012. At the time of trial, Murrin had a right leg wound that he contended was related to the IABP. He also claimed his leg condition prevented him from driving or doing much of anything. Murrin also claimed that he could no longer sleep in his bed and could only sleep in a recliner.

The plaintiff's life care planning expert testified that Murrin could expect future medical costs to be in excess of \$500,000 to nearly \$2 million.

Murrin's wife, Sheila Yee-Murrin, initially sought recovery for loss of consortium, but later did not oppose a motion to dismiss her claim on procedural grounds.

Defense counsel argued that all of Mr. Murrin's residual complaints were due to his longstanding coronary artery disease and peripheral arterial vascular disease. Counsel also contended that Murrin has significant emphysema, which Mr. Murrin admitted was responsible for most of his sleep issues.

The defense's expert economist testified as to the present value of the alleged, and disputed, future damages.

**Result:**

The jury returned a defense verdict, finding that Vahdat was not negligent.

**Trial Information:****Judge:**

James J. Di Cesare

**Demand:**

\$500,000 (C.C.P. § 998)

**Offer:**

Cost waiver

**Trial Length:**

3 weeks

**Trial  
Deliberations:** 4 hours

**Jury Vote:** 10-2

**Jury  
Composition:** 4 male, 8 female; including one male alternate seated due to illness of one juror

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Priya Idiculla

## Defense claimed memory loss not linked to ECT sessions

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Sacramento County

**Court:** Superior Court of Sacramento County, Sacramento, CA

**Injury Type(s):**

- *brain* - brain abnormalities
- *other* - loss of consortium
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Medical Malpractice* - Psychiatrist; Informed Consent; Negligent Treatment

**Case Name:** Jose Topete, by and through his Guardian ad Litem, Margaret Topete and Margaret Topete v. Sutter Health, Theodore Goodman, M.D., Robert Blanco, M.D., James C. Stoody, M.D., F.A.A.N., Eugene Fealk, D.O., Charles Panadero, M.D., and Does 1-10, inclusive, No. 34-2011-00099829-CU-MM-GDS

**Date:** June 18, 2014

**Plaintiff(s):**

- Jose Topete (Male, 55 Years)
- Margaret Topete (Female, 53 Years)

**Plaintiff Attorney(s):**

- Michael D. Mosher; Law Office of Michael D. Mosher; Paris TX for Jose Topete, Margaret Topete
- Scott E. Schutzman; Law Offices of Scott E. Schutzman; Santa Ana CA for Jose Topete, Margaret Topete

**Plaintiff Expert(s):**

- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: Michael D. Mosher, Scott E. Schutzman
- Peter Breggin M.D.; Psychiatry; Ithaca, NY called by: Michael D. Mosher, Scott E. Schutzman
- Pamela Gusland Ph.D.; Psychology/Counseling; Auburn, CA called by: Michael D. Mosher, Scott E. Schutzman
- Bernard Bauer Ph.D.; Psychology/Counseling; San Francisco, CA called by: Michael D. Mosher, Scott E. Schutzman

**Defendant(s):**

- Eugene Fealk
- Robert Blanco
- James C. Stoody
- Charles Panadero
- Theodore Goodman
- Sutter Health Sacramento Sierra Region

**Defense Attorney(s):**

- Barry Vogel; LaFollette, Johnson, DeHaas, Fesler & Ames; Sacramento, CA for Theodore Goodman, Robert Blanco
- Theodore D. Poppinga; Schuering Zimmerman & Doyle, LLP; Sacramento, CA for Eugene Fealk
- Norman V. Prior; Porter Scott, APC; Sacramento, CA for Sutter Health Sacramento Sierra Region
- None reported; Sacramento, CA for James C. Stoody, Charles Panadero

**Defendant Expert(s):**

- Jerome A. Barakos M.D.; Neuroradiology; San Francisco, CA called by: for Barry Vogel, Theodore D. Poppinga
- Stuart J. Eisendrath M.D.; Clinical Psychiatry; San Francisco, CA called by: for Barry Vogel, Theodore D. Poppinga
- Stephen E. Hall M.D.; Psychiatry; San Francisco, CA called by: for Barry Vogel, Theodore D. Poppinga

**Insurers:**

- Cooperative of American Physicians/Mutual Protection Trust
- NORCAL Mutual Insurance Co.

**Facts:**

On Sept. 2, 2009, plaintiff Jose Topete, 50, a former business taxes specialist for the state of California, Board of Equalization, began undergoing electroconvulsive therapy (ECT) to treat his history of depression.

A psychologist previously diagnosed Topete with a major depressive disorder on Oct. 1, 2007. As a result, Topete was prescribed antidepressant medication and was seen by his primary care physician. Topete was also taking pain medications since 2004 due to his history of chronic pain from work-related injuries to his knees and lower back. In April 2008, he was referred to a psychiatrist, who also felt that Topete had a major depressive disorder. Various combinations of psychiatric medications, in conjunction with psychotherapy, were subsequently tried, but Topete seemed to be treatment resistant. Topete then participated in an intensive, partial hospitalization program from July 2008 through September 2008. He initially improved, but shortly after being discharged, he threatened suicide. As a result, he kept as an inpatient at a psychiatric hospital from Sept. 15, 2008 through Sept. 22, 2008. Topete then participated in another intensive, partial hospitalization program from Sept. 22, 2008 through Oct. 9, 2008. At the end of the

second program, Topete returned to the care of his psychiatrist and psychologist, and participated in group therapy. However, he remained depressed. At that point ECT treatment was considered.

Topete switched psychiatrists on Jan. 7, 2009, and began receiving outpatient psychiatric care from Dr. Eugene Fealk until August 2009. Although Fealk managed Topete's depression with various psychiatric medications, Topete's condition worsened. As a result, Fealk recommended that Topete undergo ECT and subsequently referred him to Dr. Theodore Goodman and Dr. Robert Blanco at the Sutter Center for Psychiatry.

Topete ultimately underwent 23 ECT treatments with Goodman and Blanco at the Sutter Center for Psychiatry between Sept. 2, 2009 and Dec. 23, 2009. However, Topete claimed that he suffered severe memory loss as a result of the ECT treatments and/or the overuse of psychotropic medications.

Topete sued Fealk; Goodman; Blanco; a neurologist, Dr. James Stoodly; a psychiatrist, Dr. Charles Panadero; and the operator of Sutter Center for Psychiatry, Sutter Health Sacramento Sierra Region (which was initially erroneously sued as "Sutter Health"). Topete alleged that the defendants were negligent in the treatment of his depression and that their negligence constituted medical malpractice.

Stoodly and Panadero were both dismissed prior to trial, and Sutter Health Sacramento Sierra Region was dismissed from the case after it was granted a motion for summary judgment. Thus, the matter continued against Goodman, Blanco, and Fealk.

Plaintiff's counsel argued that Fealk, Goodman and Blanco were negligent for failing to discontinue all of Topete's medications, as they failed to identify whether the various medications that Topete was on for depression and other health problems were the true source of his depression. Specifically, counsel contended that Fealk should have discontinued all Topete's medications before referring him for ECT and that Goodman and Blanco should have discontinued Topete's medications before starting the ECT sessions. Plaintiff's counsel also argued that since Topete's medications were the source of his problems, ECT was not indicated and that if the physicians had discontinued all of Topete's medications, then Topete's depression would have resolved. Counsel further argued that Fealk should have discussed the risks of ECT, including memory loss, with Topete. In addition, plaintiff's counsel argued that there were several aspects of the administration of ECT that were inappropriate and that the number of ECT sessions was excessive.

Defense counsel contended that all care administered to Topete was appropriate. Counsel noted that Topete had been diagnosed with depression on Oct. 1, 2007, and that Topete had been taking pain medications for years with no adverse reaction or depression. Fealk, Goodman and Blanco also claimed that they obtained proper informed consent before Topete underwent ECT.

Fealk claimed that he was a not specialist in ECT, which was why he referred Topete to Goodman and Blanco, who were ECT specialists.

Goodman and Blanco claimed that the ECT sessions did not explain Topete's alleged memory loss. Specifically, they claimed that neuropsychiatric testing and imaging studies, including multiple MRIs of the brain and brain positron emission tomography (PET)



scans, were performed both before and after the ECT sessions and evaluated by five neurologists who saw Topete over the course of time, but that the tests and studies showed no damage and the five neurologists could not find any evidence to connect Topete's memory loss to the ECT sessions.

**Injury:** Topete claimed that he suffers from near complete memory loss of events prior to the ECT sessions. He first complained of complete retroactive amnesia on Jan. 14, 2010, and for everything that pre-dated that day. Topete is now cared for at home and is on disability, as he can no longer be employed in his position.

Topete's wife, Margaret Topete, sought recovery for her loss of consortium.

Thus, the Topetes sought recovery of \$2.2 million in total damages.

Defense counsel produced records allegedly showing that Mr. Topete had severe memory loss complaints before the ECT. Thus, defense counsel argued that Mr. Topete's alleged memory loss was a function of his depression. However, counsel noted that Mr. Topete still drove his children to school, even though Mr. Topete claimed that he had complete retroactive amnesia of events prior to January 2010.

**Result:** The jury rendered a defense verdict. It found that Fealk, Goodman and Blanco were not negligent in the treatment of Mr. Topete.

### **Trial Information:**

**Judge:** David W. Abbott

**Demand:** \$499,999 (C.C.P. § 998) to Goodman and \$249,999 (C.C.P. § 998) each to Fealk and Sutter

**Offer:** None reported

**Trial Length:** 13 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 10-2 as to Fealk being not negligent; 11-1 as to Goodman and Blanco being not negligent

**Post Trial:** Plaintiffs' counsel moved for a new trial, but the motion was denied. The Topetes also appealed Sutter Health's successful pre-trial motion for summary judgment. However, on Aug. 2, 2017, the Court of Appeals affirmed the trial court's decision.

**Editor's Comment:** This report is based on information that was provided by defense counsel for Fealk, Goodman and Blanco. Plaintiffs' counsel did not respond to the reporter's phone calls, and counsel for the remaining defendants were not asked to contribute.

**Writer**

Priya Idiculla

## Defense disputed plaintiff's residual complaints after crash

**Type:** Verdict-Mixed

**Amount:** \$230,000

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Orange, CA

**Injury Type(s):**

- *arm* - fracture, arm; fracture, ulna; fracture, arm; fracture, radius
- *other* - closed reduction; fracture, distal; hardware implanted; loss of consortium; comminuted fracture
- *surgeries/treatment* - open reduction

**Case Type:**

- *Motor Vehicle* - Passenger; Rear-ender; Multiple Impact; Multiple Vehicle

**Case Name:** Ronald Bomberger and Sarah Bomberger v. James Fredrick Rumm, Rogelia Salazar and Jamie Reid, No. 30-2012-00538711-CU-PA-CJC

**Date:** May 08, 2014

**Plaintiff(s):**

- Sarah Bomberger (Female, 32 Years)
- Ronald Bomberger (Male, 36 Years)

**Plaintiff Attorney(s):**

- Kevin G. Liebeck; Hodes Milman Liebeck Mosier, LLP; Irvine CA for Ronald Bomberger, Sarah Bomberger

**Plaintiff Expert(s):**

- Kelly Nasser R.N.; Life Care Planning; Hudson, NY called by: Kevin G. Liebeck
- Richard Anderson M.S.; Vocational Rehabilitation; Westminster, CA called by: Kevin G. Liebeck
- Harrison G. Tuttle M.D.; Orthopedic Surgery; Raleigh, NC called by: Kevin G. Liebeck
- Catherine M. Graves M.B.A.; Economics; Fullerton, CA called by: Kevin G. Liebeck

**Defendant(s):**

- Jamie Reid
- Rogelia Salazar
- James Fredrick Rumm

**Defense Attorney(s):**

- Scott L. Macdonald; Musick, Peeler & Garrett LLP; Los Angeles, CA for Jamie Reid
- Tracy A. Tucker; Homan & Stone; Redlands, CA for James Fredrick Rumm, Rogelia Salazar

**Defendant Expert(s):**

- Amy M. Sutton Ph.D.; Life Care Planning; Long Beach, CA called by: for Scott L. Macdonald
- Steven Molina Ph.D.; Vocational Rehabilitation; Santa Ana, CA called by: for Scott L. Macdonald
- Charles S. Lane M.D.; Orthopedic Surgery; Beverly Hills, CA called by: for Scott L. Macdonald

**Insurers:**

- Government Employees Insurance Co. (GEICO)
- Fireman's Fund Insurance Co.

**Facts:**

On Feb. 25, 2010, at approximately 8:25 a.m., plaintiff Ronald Bomberger, 36, an insurance salesman, was a passenger in a vehicle operated by Jamie Reid and traveling west on the 91 Freeway. When they were near the Carmenita area of Cerritos, their vehicle struck the vehicle in front of them that stopped, or was attempting to stop, suddenly.

Prior to the impact, James Rumm collided with a vehicle in front of him that had stopped for traffic. As a result, the vehicle behind Rumm attempted to stop to avoid the accident when it was rear-ended by Reid's vehicle. The impact from Reid's vehicle then pushed the vehicle behind Rumm into Rumm's vehicle, causing Rumm to strike the vehicle in front of him a second time. Bomberger fractured his left forearm in the accident.

Bomberger sued Reid, Rumm and the owner of Rumm's vehicle, Rogelia Salazar. Bomberger alleged that Reid and Rumm were negligent in the operation of their respective vehicles and that Salazar was vicariously liable for Rumm's actions.

Reid and Rumm subsequently filed cross-complaints against each other, and Salazar was dismissed from the case for a waiver of costs just before the start of trial.

Reid admitted negligence, but claimed that Rumm contributed to the accident.

Rumm denied any liability, alleging that he was not responsible for the actions of the motorists behind him.

**Injury:**

Bomberger sustained a comminuted intra-articular fracture to the distal end of the left radius and styloid process of the ulna with marked dorsal angulation and complete ulnar displacement. He was subsequently taken to a hospital shortly after the accident and underwent closed reduction with percutaneous pinning of the injury later that day.

In July 2010, Bomberger and his wife relocated to North Carolina and by October 2010, he was determined to have nonunion of the ulnar styloid. As a result, he underwent open reduction with the insertion of hardware, which was later taken out in November 2012. On May 23, 2013, Bomberger underwent a left lateral epicondylar release with reattachment of extensor carpi radialis brevis muscle, and left lateral ulnar collateral ligament reconstruction with semitendinosus allograft.

Bomberger claimed he had a functionally useless arm that would require two future surgeries. He alleged that he would need an ulnar shortening procedure and a subsequent "salvage" procedure known as an achilles allograft. Thus, the plaintiff's life care planning expert opined that Bomberger's future included pain medications, splints, orthopedic visits, X-rays, physical therapy, a nurse case manager, a gardener, a tree-trimmer, someone to snow shovel, and a nanny.

Bomberger claimed he could not work as an insurance salesman after the accident and had to move to North Carolina, where he is now works inside sales for Time Warner Cable. He alleged that as a result, his work life expectancy was reduced by 11 to 18 years, at which time he would be forced to leave the workforce.

Thus, Bomberger sought recovery of \$24,000 in past lost earnings, \$491,226 to \$786,143 in future loss of earnings, and \$212,000 in future medical and other expenses based on the presented life care plan. He also sought recovery of \$200,000 in past non-economic damages and \$864,000 in future non-economic damages. Bomberger did not make a claim for past medical expenses. In addition, his wife, Sarah Bomberger, sought recovery of \$315,000 in damages for her loss of consortium.

Defense counsel conceded that Mr. Bomberger's care and treatment of the wrist injury were reasonable. However, counsel contended that the healing was good, if not great, and that Mr. Bomberger would experience some residual pain, which would be controlled by medications, activity modification and the use of splints. Thus, defense counsel disputed the extent of the alleged residual symptoms and the need for any future surgeries, but contended that only the medications, splints, and possibly the orthopedist and X-rays were appropriate. Counsel further contended that no life care plan was necessary.

Defense counsel argued that before the accident, Mr. Bomberger was failing as an insurance salesman and was already planning on moving out of California. Counsel also argued that Mr. Bomberger's current job was paying him over three times more than what he had ever earned in any given year before the accident and that Mr. Bomberger would not suffer any reduction in his work life expectancy.

In addition, defense counsel disputed that any loss of consortium damages had been incurred.

The parties ultimately established a \$991,600/\$175,000 high/low agreement during trial.

**Result:** The jury returned a defense verdict for Rumm and found Reid to be 100 percent responsible for the accident. Thus, the jury determined that Mr. Bomberger's damages totaled \$230,000.

According to the parties' pre-determined high/low agreement, Mr. Bomberger will receive the full \$230,000.

### **Ronald Bomberger**

\$30,000 Personal Injury: Future Medical Cost

\$80,000 Personal Injury: past non-economic damages

\$120,000 Personal Injury: future non-economic damages

### **Trial Information:**

**Judge:** William D. Cluster

**Demand:** \$750,000

**Offer:** \$300,000 by Reid; \$25,000 by Rumm

**Trial Length:** 7 days

**Trial Deliberations:** 3 hours

**Jury Composition:** 4 male, 8 female

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

**Writer** Priya Idiculla

**Patient: VA hospital failed to diagnose necrotizing fasciitis**

**Type:** Settlement

**Amount:** \$599,000

**State:** California

**Venue:** San Bernardino County

**Court:** Superior Court of San Bernardino County, San Bernardino, CA

**Injury Type(s):**

- *other* - necrotizing fasciitis
- *surgeries/treatment* - debridement

**Case Type:**

- *Medical Malpractice* - Failure to Monitor; Failure to Diagnose

**Case Name:** John Doe v. United States of America, Roe Emergency Medical Physician and Roe VA Surgeon, No.

**Date:** December 01, 2011

**Plaintiff(s):**

- John Doe (Male, 50 Years)

**Plaintiff Attorney(s):**

- Jeffrey A. Milman; Hodes Milman, L.L.P.; Irvine CA for John Doe

**Plaintiff Expert(s):**

- Kelly Nasser; Life Care Planning; New York, NY called by: Jeffrey A. Milman
- Kenneth B. Deck M.D.; General Surgery; Laguna Hills, CA called by: Jeffrey A. Milman
- Raymond L. Ricci M.D.; Emergency Medicine; Irvine, CA called by: Jeffrey A. Milman
- Catherine M. Graves M.B.A.; Economics; Fullerton, CA called by: Jeffrey A. Milman
- Christopher A. Wills M.D.; Orthopedic Surgery; Los Angeles, CA called by: Jeffrey A. Milman

**Defendant(s):**

- Roe VA Surgeon
- United States of America
- Roe Emergency Medical Physician

**Defense  
Attorney(s):**

- Keith M. Staub; Assistant United States Attorney, U.S. Attorney's Office; Los Angeles, CA for United States of America, Roe Emergency Medical Physician, Roe VA Surgeon

**Defendant  
Expert(s):**

- Linda D. Olzack R.N., B.S.N., P.H.N., C.L.C.P.; Life Care Planning; Merced, CA called by: for Keith M. Staub
- Jerald H. Udinsky Ph.D.; Economics; Berkeley, CA called by: for Keith M. Staub
- Michel F. Brones M.D.; Plastic Surgery/Reconstructive Surgery; Los Angeles, CA called by: for Keith M. Staub
- Michael E. Smolens M.D.; Emergency Medicine; Torrance, CA called by: for Keith M. Staub



**Facts:**

On Feb. 27, 2008, the plaintiff, a 50-year-old Veteran who worked in residential real estate sales, sought care for a small burn on his ankle with the Veterans Affairs Hospital in Loma Linda. The burn was thought to be from a small space heater.

The plaintiff's presentation at 7:04 a.m. included pain and swelling in his right lower leg, secondary to a possible burn from the space heater. Sometime between 8 and 9 a.m., an unknown VA individual placed a phone call to Arrowhead Regional Medical Center, where the surgical head of the burn unit indicated to the unknown VA employee that this did not sound like a burn and it appeared to be necrotizing fasciitis. He specifically instructed the VA employee not to transfer the plaintiff, but rather to have a surgical consult, as necrotizing fasciitis was a surgical emergency. However, the plaintiff claimed the phone call and information was not relayed to any of the other treating VA physicians.

At 7:55 a.m., a triage nurse reported that, in an addendum, the small burn had become a blister on the plaintiff's right ankle. The plaintiff claimed that this was indicative of a worsening condition. At 8:36 a.m., an emergency medical physician examined the plaintiff, but did not diagnose the problem correctly. Additionally, at 11:11 a.m., a VA surgeon performed a surgical consult. Subsequently, transfer orders were included and the plaintiff was transferred to Arrowhead Regional Medical Center mid-afternoon without a diagnosis being made.

After the plaintiff's transfer, the surgical head of the burn unit and the staff at Arrowhead Regional Medical Center made the diagnosis of necrotizing fasciitis.

The plaintiff sued the VA's operator, the United States of America, as well as the emergency medical physician and the VA Surgeon. He alleged that the defendants failed to timely diagnose his condition and that this failure constituted medical malpractice.

The plaintiff contended that based upon the phone call with the surgical head of the burn unit at Arrowhead, necrotizing fasciitis should have been diagnosed by the VA staff at Loma Linda. He further contended that based upon his presentation, which included acute renal failure and rhabdomyolysis, the correct diagnosis should have been made irrespective of the phone call with the surgical head of the burn unit.

Defense counsel contended that necrotizing fasciitis is a rare condition and that the plaintiff's clinical presentation did not warrant such a diagnosis.

**Injury:** The plaintiff was ultimately diagnosed with necrotizing fasciitis after being transferred to Arrowhead Regional Medical Center. He was subsequently stabilized and surgery was performed later that same day. Thereafter, multiple surgical debridements were performed over the next six weeks of hospitalization.

The plaintiff contended MICRA damages of \$250,000, a life care plan of future medical costs of \$2.41 million, and past loss of earnings and future loss of earning capacity of \$330,000.

Defense counsel contended that the plaintiff's medical needs would be met by the VA hospital, so the total damages for his life care plan, which the plaintiff based off of private pay rates, would be nothing. Counsel further contended that the plaintiff's alleged future medical care was unnecessary and only merited \$33,000. In addition, defense counsel contended that the staff at Arrowhead Regional Medical Center delayed the surgery on the plaintiff, which worsened his condition.

**Result:** The parties settled the case for \$599,000 prior to trial.

### **Trial Information:**

**Judge:** John A. Kronstadt

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

**Writer:** Priya Idiculla

## **Surgery necessary due to prior failed back syndrome: defense**

**Type:** Settlement

**Amount:** \$500,000

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Orange, CA

**Injury Type(s):** • *other* - foraminotomy/foraminectomy

**Case Type:** • *Motor Vehicle* - Rear-ender; Multiple Vehicle

**Case Name:** John Doe v. Roe Company and Roe Company's Driver, No.

**Date:** November 30, 2011

**Plaintiff(s):** • John Doe (Male, 52 Years)

**Plaintiff Attorney(s):** • Jeffrey A. Milman; Hodes Milman, L.L.P.; Irvine CA for John Doe

**Plaintiff Expert (s):** • Kelly Nasser; Life Care Planning; New York, NY called by: Jeffrey A. Milman  
• Jeffrey D. Gross M.D.; Neurosurgery; Laguna Niguel, CA called by: Jeffrey A. Milman

**Defendant(s):** • Roe Company  
• Roe Company's Driver

**Defense Attorney(s):** • Michaela Sozio; Tressler, L.L.P.; Los Angeles, CA for Roe Company, Roe Company's Driver

**Facts:** On Aug. 5, 2008, the plaintiff, a 52-year-old former owner of a commercial lighting company, was stopped at a red light on a surface street in Orange County when his vehicle was rear-ended.

The plaintiff sued the driver, who was operating the vehicle as a company employee. He alleged that the employee was negligent in the operation of the vehicle and that the company was vicariously liable for the driver's actions.

Since the police report was favorable to the plaintiff, the parties stipulated to liability.

**Injury:** The plaintiff brought himself to an emergency room later on the day of the accident. He claimed the crash aggravated a prior back injury, causing him to be further disabled and required surgery.

At the time of the accident, the plaintiff was unemployed and already on total disability from a prior failed back surgery in December 1995. He contended that the August 2008 accident was a substantial factor in causing him additional disability and the need for a cervical foraminotomy at the C6-7 level at Cedars-Sinai Medical Center in June 2009. Subsequently, on Jan. 5, 2011, the plaintiff underwent a C3-4, C4-5 and C5-6 posterior spinal fusion with instrumentation.

The plaintiff claimed that there was the possibility he would need additional surgery on his knee and lumbar spine. Thus, he contended that his future medical expenses would include approximately \$200,000. A Medicare lien was present for the Cedars-Sinai surgeries.

Defense counsel contended that the plaintiff was already on total disability and that nowhere in the medical records was the car crash identified as a substantial factor. Instead, counsel asserted that the true cause of the plaintiff's need for surgery was the failed prior back syndrome and cervical spinal surgery in June 2002, in addition to problems with his lumbar spine.

**Result:** The parties agreed to settle for \$500,000 prior to trial.

### **Trial Information:**

**Judge:** Alex Polsky

**Demand:** \$1 million (policy limits)

**Offer:** \$100,000

**Editor's Comment:** This report is based on information that was provided by plaintiff's and defense counsel.

**Writer** Priya Idiculla