



## Plaintiff: Defendants ignored risks inherent in teaching jiu-jitsu

**Type:** Verdict-Plaintiff

**Amount:** \$46,475,112

**State:** California

**Venue:** San Diego County

**Court:** San Diego County Superior Court, North County, CA

**Injury Type(s):**

- *back* - anterolisthesis
- *neck* - anterolisthesis; fusion, cervical
- *brain* - stroke
- *other* - corpectomy; comminuted fracture
- *neurological* - nerve damage/neuropathy; nerve damage, spinal accessory nerve
- *arterial/vascular* - thrombosis/thrombus
- *surgeries/treatment* - discectomy
- *paralysis/quadriplegia* - quadriplegia

**Case Type:**

- *Worker/Workplace Negligence* - Labor Law

**Case Name:** Jack Greener v. M.Phelps, Inc. d.b.a. Del Mar Jiu Jitsu Club and Francisco Iturralde, No. 37-2020-00041382-CU-PO-CTL

**Date:** March 28, 2023

**Plaintiff(s):**

- Jack Greener, (Male, 27 Years)

**Plaintiff  
Attorney(s):**

- Shawn D. Morris; Morris, Sullivan & Lemkul, LLP; San Diego CA for Jack Greener
- Rahul Ravipudi; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- John W. Shaller; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- Paul A. Traina; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Jack Greener
- Michael Malady; Morris, Sullivan & Lemkul, LLP; for Jack Greener
- Christian Barton; Morris, Sullivan & Lemkul, LLP; for Jack Greener

**Plaintiff Expert  
(s):**

- Jan Roughan R.N., C.R.R.N.; Life Care Planning; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Peter Formuzis Ph.D.; Economics; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Ricky A. Sarkisian Ph.D.; Vocational Rehabilitation; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Fardad Mobin M.D.; Neurosurgery; Beverly Hills, CA called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Renner Gracie; Life Care Planning; Torrance, CA called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton
- Lawrence S. Miller M.D.; Geriatrics; , called by: Shawn D. Morris, Rahul Ravipudi, John W. Shaller, Paul A. Traina, Michael Malady, Christian Barton

**Defendant(s):**

- Francisco Iturralde
- M.Phelps, Inc. dba Del Mar Jiu Jitsu Club

**Defense  
Attorney(s):**

- Robert T. Bergsten; Hosp, Gilbert & Bergsten; Pasadena, CA for M.Phelps, Inc. dba Del Mar Jiu Jitsu Club, Francisco Iturralde
- Mary M. Campo; Hosp, Gilbert & Bergsten; Pasadena, CA for M.Phelps, Inc. dba Del Mar Jiu Jitsu Club, Francisco Iturralde

**Defendant  
Expert(s):**

- A. Jubin Merati; Economics; , called by: for Robert T. Bergsten, Mary M. Campo
- Clark Gracie; ; Torrance, CA called by: for Robert T. Bergsten, Mary M. Campo
- Steve Molina Ph.D.; Vocational Rehabilitation; , called by: for Robert T. Bergsten, Mary M. Campo
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; , called by: for Robert T. Bergsten, Mary M. Campo
- N. Neil Brown; Neurosurgery; Tarpon Springs, FL called by: for Robert T. Bergsten, Mary M. Campo
- Melissa A Keddington; Life Care Planning; Brea, CA called by: for Robert T. Bergsten, Mary M. Campo
- Michael Phelps; ; Del Mar, CA called by: for Robert T. Bergsten, Mary M. Campo
- Francisco Iturralde; ; San Diego, CA called by: for Robert T. Bergsten, Mary M. Campo

**Insurers:**

- United States Fire Insurance Company

**Facts:**

On Nov. 29, 2018, plaintiff Jack Greener, 23, a student of San Diego State University, was enrolled as a beginner Brazilian jiu-jitsu student at Del Mar Jiu-Jitsu Club (DMJJC), located in Del Mar. A one-stripe white belt in Brazilian jiu-jitsu, the plaintiff began his training that day under the direct tutelage of DMJJC instructor, Francisco Iturralde.

Following a 10-minute warm-up, a 20-minute instructional period and a short sparring rotation with another student, Greener was paired with Iturralde, a second-degree black belt in Brazilian jiu-jitsu with multiple international championship titles. During their sparring session, Iturralde performed a technique on him, which caused Greener to suffer a spinal cord injury, rendering him an incomplete quadriplegic.

Greener sued both Iturralde and the Del Mar Jiu Jitsu Club, claiming defendants unreasonably increased the risk inherent in the activity of Brazilian jiu-jitsu by failing to adhere to the requisite standard of care and sought compensation for his past and future medical expenses, loss of earnings, physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation and emotional distress.

While sparring with Iturralde, Greener was placed in the turtle position -- a position where a person is balled up on all fours with their face down on the mat. If an opponent is in a turtle position, the goal should be to safely put that person on their side, which is known as "taking the back." Instead, while positioned on top of Greener, Iturralde crouched on the balls of his feet, pinned Greener to the mat, immobilized his left arm and then launched himself up and over his opponent — placing his entire body's weight on Greener's neck. The extreme force of the maneuver crushed Greener's cervical vertebrae, causing the student to fall limp, paralyzed in all extremities.

The plaintiff argued that the forward-flip back take maneuver that Iturralde was attempting, even when done correctly, is an extremely dangerous technique, which should only be used on a highly experienced and skilled opponent who has received extensive training on how to properly receive the technique without sustaining crippling injuries, which Greener, as a beginner white belt, was not.

Iturralde testified he knew his obligations were to be safe and minimize risk for his white belt student, Greener, and that he failed to do so by attempting a dangerous move without any control over his student or himself.

Defendants Iturralde and Del Mar Jiu Jitsu Club denied that Iturralde was negligent or that Iturralde unreasonably increased the risk to the plaintiff over and above those inherent in Brazilian jiu-jitsu sparring.

The defendants claimed the maneuver employed by Iturralde was done properly, is generic to the sport of Brazilian jiu-jitsu, that is commonly used in competition without incident or injury and is not illegal at any level.

Defendants also claimed the doctrine of assumption of the risk barred liability because Greener assumed the particular risks of harm inherent in Brazilian jiu-jitsu sparring by choosing to participate. Defendants went on to argue that contrary to the plaintiff's claims that he was an absolute beginner in the sport of jiu-jitsu, Greener was experienced in the sport, having trained in jiu-jitsu at two other studios and competed in at least five Brazilian jiu-jitsu competitions — two of which he had finished in first place.

## **Injury:**

As a result of the incident, Green sustained a complex traumatic injury to the cervical spine, a comminuted fracture of the C5 transverse process, incomplete quadriplegia and a grade 1 anterolisthesis of C4 and C5.

Greener suffered a C4/5 spinal cord injury as a result of the incident and was hospitalized for months, during which time he was placed on a ventilator, catheterized and underwent numerous surgeries; including an anterior cervical discectomy and fusion of C5 corpectomy, titanium cage, and posterior spinal fusion from C4-5 and C5-6. He also suffered multiple strokes and multiple residual issues, including spasticity, loss of muscle tone, grip strength, total loss of muscles in hamstrings, drop foot, clonus, scissoring gait, no trunk muscles, erectile dysfunction, incontinence, anxiety, PTSD, depression, etc.

Every single aspect of Greener's life was impacted. He went from being a healthy 23-year-old ultra-athlete to being a quadriplegic in the blink of an eye. He has severe physical limitations and pain, as well as severe emotional distress.

Greener was able to return to work after the incident, albeit with pain and many challenges. According to plaintiff's experts, beginning at age 55, Greener's earnings would be reduced by 50% and he would have a complete inability to work by age 60. Before trial, the parties stipulated to \$637,959 for the future and past loss of earnings.

Greener will need extensive medical treatment going forward, including: procedural/surgical/intensive intervention, an intrathecal programmable medication pump (Baclofen), posterior hardware removal, epidural steroid injections, radiofrequency ablation/rhizotomy, adjacent level anterior cervical spine decompression/discectomy/fusion/ instrumentation/bone graft of C3-C4 and adjacent level anterior cervical spine decompression/discectomy/fusion/ instrumentation/bone graft of C6-C7.

He will also need home/facility care, diagnostic testing, orthotics/prosthetics, psychosocial services, evaluations/treatment sessions, educational/vocational/avocational, therapeutic equipment needs, social/leisure needs, aids for independent function, drugs/supplies, wheelchair needs, home maintenance and transportation.

The defense did not dispute Greener sustained the injuries; however, they disputed the costs of (and need for certain items of) future treatment and the amount of non-economic

damages sought by Greener.

The defense stipulated to the past medical expenses, agreeing that the reasonable and necessary amount was \$1,337,153.23.

Future Medical Expenses:

Plaintiff's Life Care Plan / What Plaintiff Asked Jury to Award: \$9,490,153

Defendants' Life Care Plan / What Defense Asked Jury to Award: \$654,686

What Jury Awarded: \$8,500,000.00

Non-Economic Damages:

Plaintiff: \$60m+ (past and future)

Defendants: \$1m past and between \$1-2 million future

Jury: \$36million (\$11 million past, \$25 million future)

The defense did not dispute that Greener would need care for the rest of his life; rather, they disputed the cost of the treatment and the need for certain items of future treatment in the plaintiff's life care plan, including disagreeing with the need for a Baclofen pain pump to help for spasticity (agreed he needed Baclofen, but said Greener should take the oral version which was cheaper, despite the fact the oral route made plaintiff sick and the pump would likely not make him sick); hardware removal surgery for the hardware in Greener's neck (despite the fact the treating physician who performed); pain treatment for Greener's cervical and lumbar spine, including steroid epidural injections, medial branch blocks, radiofrequency ablation (RFAs); an angioplasty surgery for the stent in his neck due to the stroke if and when that occurs.

**Result:**

The jury awarded damages of \$46 million to Greener.

Jack Greener

\$ 1,337,153.23 Past Medical Cost

\$ 8,500,000 Future Medical Cost

\$ 25,000,000 Future Pain Suffering

\$ 11,000,000 Past Pain Suffering

\$ 637,959 past loss of earnings and future loss of earnings

**\$ 46,475,112.23 Plaintiff's Total Award**

**Trial Information:**

**Judge:** James A. Mangione

**Trial Length:** 14 days

**Trial  
Deliberations:** 2 days

**Post Trial:** The defense is appealing the jury's decision. Defense counsel claimed the court committed reversible error by not instructing the jury on the correct law that applies to a primary assumption of the risk case such as this. Defense counsel further claimed that the court admitted on the record that if it gave the jury the correct instruction, the defendants would have prevailed.

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

**Writer** Jason Cohen

**Plaintiff: Insurer was unreasonable in refusing to pay policy demand**

**Type:** Settlement

**Amount:** \$5,000,000

**State:** California

**Venue:** Orange County

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

**Case Type:**

- *Insurance* - Bad Faith

**Case Name:** Jeffrey Golden, Trustee v. MedPro Group, Inc., No. 30-2018-01035776-CU-CO-CXC

**Date:** April 14, 2022

**Plaintiff(s):**

- Jeffrey Golden, (Male, 0 Years)

**Plaintiff Attorney(s):**

- Jerome L. Ringler; Ringler Law Corporation; Westlake Village CA for Jeffrey Golden

**Plaintiff Expert (s):**

- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Jerome L. Ringler
- Scott McFarland; Claims Handling; Los Angeles, CA called by: Jerome L. Ringler
- Timothy L. Walker Esq.; Bad Faith; Long Beach, CA called by: Jerome L. Ringler

**Defendant(s):**

- MedPro Group, Inc.

**Defense Attorney(s):**

- Steven D. Allison; Troutman Pepper Hamilton Sanders LLP for MedPro Group, Inc.
- Jennifer Mathis; Troutman Pepper Hamilton Sanders LLP for MedPro Group, Inc.

**Defendant  
Expert(s):**

- Bernd G. Heinze Esq.; Bad Faith; King of Prussia, PA called by: for Steven D. Allison, Jennifer Mathis
- Heather H. Xitco M.B.A., C.P.A., C.F.F.; Economics; San Diego, CA called by: for Steven D. Allison, Jennifer Mathis
- Patrick J. Galloway Esq.; Bad Faith; Kennewick, WA called by: for Steven D. Allison, Jennifer Mathis

**Facts:**

Between September 2017 and November 2018, plaintiff Jeffrey Golden, was assigned as trustee for a nurse who filed for Chapter 7 bankruptcy after a medical malpractice lawsuit from a 2-year-old child's botched insertion and removal of a tracheostomy tube, which resulted in a \$6 million dollar judgment against the nurse. Prior to this litigation, the child's parents previously sued the nurse and the hospital for medical negligence, and the nurse asked her insurer, MedPro, to pay her policy limits of \$1 million, but MedPro refused. The case went to binding arbitration, and the child's parents were awarded \$6 million against the nurse.

Golden sued MedPro.

Golden alleged claims for bad faith.

As her trustee, Golden alleged that MedPro acted negligently and in bad faith in not settling in a previous instance. Plaintiff's counsel contended that the nurse's negligence was obvious to any unbiased claims analyst, and that MedPro could have settled in May 2017 before the policy limits demand against MedPro expired on June 15, 2017.

Plaintiff's attorney contended that the test for whether or not an insurance carrier must accept a policy limits demand is whether at the time the demand was made it was reasonable, and that an insurance carrier is liable for refusing to pay a policy limits demand if its refusal was unreasonable. Plaintiff's counsel contended that at the time the policy limits demand for \$1 million was refused by MedPro, there was significant evidence reflecting the case had a value well in excess of the policy limits of \$1 million. Accordingly, plaintiff's counsel contended this was an unreasonable refusal to pay the policy on the part of MedPro and constituted a clear case of its breach of the obligations of good faith and fair dealing, which MedPro pro was obligated to satisfy in the defense of its insured nurse.

MedPro claimed that the nurse's former employer, Advance Specialty Care, LLC, had already been making stipulated payments to the child's family in the underlying case, and argued that it was entitled to an offset of these payments to any verdict, if the child's family prevailed, based upon those prior payments by ASC. These payments of ASC over time equaled \$1.5 million. The defense also claimed that any judgment adverse to MedPro would have to be periodically paid because the underlying award in favor of the child was based upon a medical negligence action where MICRA (The Medical Insurance Compensation Reform Act) applied.



MedPro also claimed that during the underlying litigation, before the arbitration was held, that the parents' counsel, rejected every attempt at settlement. MedPro further claimed that, the initial settlement offer of \$500,000, or half the MedPro Policy limits of \$1 million, was rejected by the parents' counsel within seven minutes after receiving it and he refused to negotiate in good faith thereafter. MedPro further claimed that the bad faith conduct of the parents' counsel for the child in the underlying action was the entire cause of the inability of MedPro to settle the lawsuit prior to arbitration.

**Injury:** Golden, as trustee, sought recovery for the unpaid portion of the underlying judgment, \$4 million, based upon the assignment he received from the nurse through the bankruptcy process. The nurse alleged general emotional distress for being upset about the judgment against her and Golden, as trustee, also sought recovery for the emotional distress suffered by the nurse, which was assigned to him as trustee in bankruptcy.

**Result:** MedPro Group agreed to settle with Golden for \$5 million, on the eve of trial.

Jeffrey Golden

**Trial Information:**

**Judge:** Randall J. Sherman

**Trial Length:** 0

**Trial Deliberations:** 0

**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

## Pedestrian claimed accident caused on-going pain

**Type:** Verdict-Plaintiff

**Amount:** \$2,754,982

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *other* - crush injury; hardware implanted
- *foot/heel* - foot; crush injury, foot
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

**Case Type:**

- *Motor Vehicle* - Crosswalk; Pedestrian; Intersection

**Case Name:** Michael Green v. Mohamad Navab and Neda Navab, No. 20STCV27708

**Date:** April 11, 2022

**Plaintiff(s):**

- Michael Green, (Male, 32 Years)

**Plaintiff Attorney(s):**

- Jeffrey A. Shane; Law Offices of Jeffrey A. Shane; Los Angeles CA for Michael Green
- Adam K. Shea; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Michael Green
- Spencer R. Lucas; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Michael Green
- Nicholas W. Yoka; Panish | Shea | Boyle | Ravipudi LLP; Los Angeles CA for Michael Green

**Plaintiff Expert  
(s):**

- F. David Rudnick M.D.; Neuropsychiatry; Los Angeles, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Jan Roughan R.N., C.R.R.N.; Life Care Planning; Pasadena, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Jon B. Landerville M.S.M.E., P.E.; Accident Reconstruction; Torrance, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Carl A. Hess M.D.; Pain Management; Fullerton, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- John Brault M.S.; Biomechanical; Mission Viejo, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- David J. Soomekh D.P.M.; Foot Surgery; Beverly Hills, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Joshua Prager M.D.; Chronic Pain; Los Angeles, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka
- Marilyn S. Jacobs Ph.D., Psy.D.; Clinical Psychology; Los Angeles, CA called by: Jeffrey A. Shane, Adam K. Shea, Spencer R. Lucas, Nicholas W. Yoka

**Defendant(s):**

- Neda Navab
- Mohamad Navab

**Defense  
Attorney(s):**

- Fred M. Blum; Edlin Gallagher Huie + Blum; San Francisco, CA for Mohamad Navab, Neda Navab
- Michael E. Gallagher Jr.; Edlin Gallagher Huie + Blum; Los Angeles, CA for Mohamad Navab, Neda Navab
- Jeffrey E. Lerman; Stratman, Schwartz & Williams-Abrego; Los Angeles, CA for Mohamad Navab, Neda Navab
- J. Kyle Gaines; Edlin Gallagher Huie + Blum; Los Angeles, CA for Mohamad Navab, Neda Navab

**Defendant  
Expert(s):**

- Leon Barkodar M.D.; Neurology; West Hills, CA called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines
- Mary E. Jesko Ed. D.; Life Care Planning; San Diego, CA called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines
- Arthur H. Fass D.P.M.; Podiatry; Northridge, CA called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines
- Wilson C. Hayes Ph.D.; Accident Reconstruction; Corvallis, OR called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines
- Adrienne Meier Ph.D.; Psychology/Counseling; Pasadena, CA called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines
- Constantine M. Boukidis M.A.; Economics; Los Angeles, CA called by: for Fred M. Blum, Michael E. Gallagher Jr., J. Kyle Gaines

**Facts:**

On Sept. 27, 2018, plaintiff Michael Green, 32, a technology director, was walking north in a marked pedestrian crosswalk at the intersection of Holloway Drive and Palm Avenue, in West Hollywood. While he was in the crosswalk, Green's left foot was run over by the left front tire of a vehicle operated by Mohamad Navab.

Green sued Mohamad Navab and the co-owner of Mr. Navab's vehicle, Neda Navab. Green alleged that Mr. Navab was negligent in the operation of his vehicle and that Ms. Navab was vicariously liable for Mr. Navab's actions.

Prior to trial, Green dismissed Ms. Navab, so there was no issue of vicarious liability during litigation or at trial.

Plaintiff's counsel contended that Mr. Navab was driving west on Holloway Drive, approaching the intersection with Palm Avenue, but that Navab came upon vehicles stopped in front of him and attempted to pass them by proceeding into the parking lane on the right side. Counsel contended that Navab's vehicle then entered the marked crosswalk where Green was crossing and ran over Green's foot.

Plaintiff's counsel presented a witness, an investigating police officer, and accident reconstruction and biomechanics experts to confirm that Navab's vehicle entered the crosswalk.

Defense counsel disputed liability, arguing that Green was inattentive and could have avoided Navab's vehicle. Counsel also presented accident reconstruction and biomechanics experts to confirm that Green was inattentive.

**Injury:** Green sustained a crush injury to his left foot and was taken by ambulance to a hospital for treatment.

Following the incident, Green had consistent complaints of pain and was ultimately diagnosed with complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition, about two years after the incident. Prior to being diagnosed, he attempted relief by undergoing three lumbar sympathetic blocks, several cortisol injections to the foot, a peroneal nerve release, a tarsal tunnel nerve release and a calcaneal nerve release, as well as having a temporary spinal cord stimulator implanted. However, Green alleged that none of the treatments resolved his pain completely, but that the temporary spinal cord stimulator has decreased the pain in his left foot.

Green claimed he will require a permanent spinal cord stimulator for relief.

Green sought recovery of past and future medical costs, and damages for his past and future pain and suffering.

Defense counsel denied that Green had CRPS or any other residual injuries as a result of the subject accident. Counsel introduced sub rosa surveillance videos of Green that allegedly showed Green walking and squatting without any signs of pain.

**Result:** The jury found that Navab was negligent and 100 percent liable for the incident. It determined that Green's damages totaled \$2,754,982.

Michael Green

\$ 95,000 Past Medical Cost

\$ 959,982 Future Medical Cost

\$ 1,250,000 Future Pain Suffering

\$ 450,000 Past Pain Suffering

**\$ 2,754,982 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Gregory W. Alarcon

**Demand:** \$3.3 million (C.C.P. § 998)

**Offer:** \$1 million (C.C.P. § 998)

**Trial Length:** 13 days

**Trial  
Deliberations:** 3 days

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

**Writer** Priya Idiculla

## Hotel failed to use reasonable care when checking on guest: suit

**Type:** Verdict-Plaintiff

**Amount:** \$60,445,361

**State:** California

**Venue:** Orange County

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

**Injury Type(s):**

- *arterial/vascular* - aneurysm; aneurysm, rupture
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Hotel/Restaurant*
- *Worker/Workplace Negligence* - Negligent Training; Negligent Investigation

**Case Name:** Priscilla O'Malley, by and through her Guardian Ad Litem, Michael O'Malley; and Michael O'Malley v. Diamond Resorts International; Diamond Resorts Holdings, LLC; California Riviera Vacations, Inc.; Riviera Beach and Spa Resort Vacation Plan Owners Association; Riviera Beach and Spa Resort; and Does 1 through 100, inclusive, No. 30-2015-00771021-CU-PO-NJC

**Date:** March 02, 2022

**Plaintiff(s):**

- Michael O'Malley, (Male, 0 Years)
- Priscilla O'Malley, (Female, 59 Years)

**Plaintiff Attorney(s):**

- Matthew B.F. Biren; Biren Law Group; Los Angeles CA for Priscilla O'Malley,, Michael O'Malley
- Arash Homampour; The Homampour Law Firm PC; Sherman Oaks CA for Priscilla O'Malley,, Michael O'Malley
- John A. Roberts; Biren Law Group; Los Angeles CA for Priscilla O'Malley,, Michael O'Malley

**Plaintiff Expert  
(s):**

- Amy L. Magnusson M.D.; Physical Medicine; San Diego, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- Barry D. Pressman M.D.; Neuroradiology; Los Angeles, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- Carol Hyland C.L.C.P.; Life Care Planning; Lafayette, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- David G. Frecker M.D.; Neurology; Santa Barbara, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- Tarvez Tucker M.D.; Neurology; Portland, OR called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts
- Dr. Jeffrey Schaeffer M.D.; Neuropsychology; Los Angeles, CA called by: Matthew B.F. Biren, Arash Homampour, John A. Roberts

**Defendant(s):**

- Riviera Beach and Spa Resort
- Diamond Resorts Holdings, LLC
- Diamond Resorts International
- Diamond Resorts Management Inc.
- California Riviera Vacations Inc.
- Hospitality Staffing Solutions, LLC
- Riviera Beach and Spa Resort Vacation

**Defense  
Attorney(s):**

- Christopher E. Faenza; Yoka & Smith LLP; Los Angeles, CA for Diamond Resorts Management Inc.
- Brent D. Anderson; Taylor | Anderson, LLP; Denver, CO for Diamond Resorts Management Inc.
- Floyd R. Hartley; Taylor | Anderson, LLP; Denver, CO for Diamond Resorts Management Inc.
- None reported for Diamond Resorts International, Diamond Resorts Holdings, LLC, Riviera Beach and Spa Resort Vacation, Riviera Beach and Spa Resort, Hospitality Staffing Solutions, LLC, California Riviera Vacations Inc.

**Defendant  
Expert(s):**

- Mary E. Jesko Ed. D.; Life Care Planning; San Diego, CA called by: for Christopher E. Faenza, Brent D. Anderson, Floyd R. Hartley
- Sidney Starkman M.D.; Emergency Medicine; Los Angeles, CA called by: for Christopher E. Faenza, Brent D. Anderson, Floyd R. Hartley
- Geoffrey P. Colby M.D., Ph.D.; Neurosurgery; Los Angeles, CA called by: for Christopher E. Faenza, Brent D. Anderson, Floyd R. Hartley

**Facts:**

On March 29, 2014, plaintiff Priscilla O'Malley, 59, a business owner, checked into the Diamond Resorts hotel, in Capistrano Beach. Hours later, Ms. O'Malley's husband, Michael O'Malley, called the hotel's front desk after 10 p.m., explaining that he had not heard from his wife after having called her cellphone repeatedly since 7 p.m. Mr. O'Malley told the front desk that he was concerned about his wife, as she was not answering her phone, and that he wanted the front desk clerk to send someone to check on her. The front desk clerk eventually agreed to send a maintenance person to check on Ms. O'Malley.



The maintenance person knocked on the door of Ms. O'Malley's hotel room and called out, "Maintenance!" He then opened the door, knocked and called out again, but he never entered into the room. The maintenance person later admitted that the room was dark and that he could not see beyond the entryway. Since no one responded to him and the lights in the room were off, the maintenance person reported to the front desk clerk that Ms. O'Malley was not in her hotel room. The front desk clerk then called Mr. O'Malley back and reported that Ms. O'Malley was not in her room.

Mr. O'Malley continued to call his wife's cellphone and after still not hearing from her, he eventually decided to drive to the hotel to check on her himself.

At around 5:30 a.m. on March 30, 2014, Mr. O'Malley entered his wife's hotel room and found her lying incapacitated on the hotel living room floor. It was determined that Ms. O'Malley had suffered a ruptured brain aneurysm at around 6:30 p.m. the prior evening, causing her to remain incapacitated on the floor for 11 hours until she was discovered by her husband.

Mr. O'Malley, acting individually and as his wife's guardian ad litem, sued the hotel's management company, Diamond Resorts Management Inc.; the employer of the maintenance person, Hospitality Staffing Solutions, LLC; and several entities associated with the hotel, including Diamond Resorts International, Diamond Resorts Holdings, LLC, Riviera Beach and Spa Resort Vacation Plan Owners Association, Riviera Beach and Spa Resort, and California Riviera Vacations Inc. Mr. O'Malley alleged that the defendants were negligent in their duty of care to ensure the safety of its guests. Specifically, he alleged that the defendants were negligent in undertaking the action of checking on his wife's safety, causing her further harm.

Several of the hotel's entities were dismissed from the case, and Hospitality Staffing Solutions was granted summary judgment on the "negligent undertaking" theory of liability.

The O'Malleys appealed the judgment.

The Courts of Appeal noted that "under the 'negligent undertaking' theory of liability, where a person who generally lacks a duty of care to another nonetheless undertakes to lend aid to that other, liability may result where the person does not act with reasonable care." It found that "because there were disputed material facts and inferences regarding precisely what [the maintenance person] may have undertaken to do and because the risk that [Ms. O'Malley] may have been lying incapacitated somewhere in the hotel room may have been reasonably foreseeable, a reasonable trier of fact might decide that some portion of the O'Malleys' injuries were the result of a lack of reasonable care exercised by [the maintenance worker]." Thus, the Courts of Appeal held that the summary judgment on the negligent undertaking theory of liability was improper. According to O'Malley's counsel, the appellate victory was the guide stone for the subject case's "negligent undertaking" claims, where one agrees to exercise reasonable care in rendering services to

another.

As a result of the Courts of Appeal's decision, the O'Malleys agreed to dismiss the claims against Hospitality Staffing Solutions, if Diamond Resorts Management agrees to treat the maintenance person as if he were an employee of Diamond Resorts Management. The hotel's management company agreed to be responsible for the case, and the matter proceeded to trial against Diamond Resorts Management only.

Plaintiffs' counsel argued that the hotel was negligent in its failure to complete the undertaking to see if Ms. O'Malley was in the hotel room and okay. Specifically, counsel contended that the hotel had a room/welfare check policy in place that required two people, with one being from management, to go to the room to see if a guest was okay. Thus, plaintiff's counsel argued that the hotel violated its own policy and procedure by only sending the maintenance person to check on Ms. O'Malley and that as a result, the maintenance person failed to fully enter the room and check for Ms. O'Malley.

Plaintiffs' counsel contended that Diamond Resorts Management had just taken over management of the hotel and that it never trained either the front desk clerk or the maintenance person on the hotel's policy and procedure regarding welfare checks. Counsel argued that if the maintenance person had turned on the light and entered the room, instead of only observing the dark room from the doorway, Ms. O'Malley would have been discovered at 10:30 p.m., instead of hours later. Additionally, counsel argued that if the management company and maintenance worker had properly done what they were supposed to do, Ms. O'Malley would have been able to obtain emergent medical care seven hours earlier than she did.

Diamond Resorts Management's counsel argued that the maintenance person's conduct was reasonable and that it was acceptable for the maintenance person to not enter the room to check for Ms. O'Malley because of his consideration for her privacy.

**Injury:**

Ms. O'Malley suffered a ruptured brain aneurysm at around 6:30 p.m. on March 29, 2014. She was found incapacitated approximately 11 hours later, at around 5:30 a.m. on March 30, 2014. She was transported to a hospital, where it was determined that she has permanent, irreversible brain damage.

Plaintiffs' counsel contended that Ms. O'Malley's suffers from short-term memory loss in the form of anterograde amnesia, which causes her to be unable to hold new memories for even seconds. Counsel noted that Ms. O'Malley cannot remember anything she is told, even five seconds before, and that Ms. O'Malley requires monitoring every second, as she can leave a location and then not know where she is.

The plaintiffs' medical experts opined that if Ms. O'Malley was found in the hotel room earlier, the processes that caused the loss of her short-term memory, which is controlled by the hippocampi, could have been prevented or, if already started, controlled before permanent damage set in. More specifically, the experts opined that if Ms. O'Malley had been found four hours after the rupture, instead of 11 hours later, and received neurocritical care, then she would have suffered only minor residual problems as a result of the initial bleed from the aneurysm.

Plaintiffs' counsel contended that Ms. O'Malley's future care would include 24/7, around-the-clock care and additional neurological behavior care during the 16 waking hours. Counsel argued that as a result, the cost of Ms. O'Malley's future care would total approximately \$10 million.

Mr. O'Malley, acting on his wife's behalf, sought recovery for Ms. O'Malley's future medical costs, and past and future pain and suffering. Since Mr. O'Malley helped to care for his wife for years after the accident, he also sought recovery for his own past and future loss of consortium.

The defense's medical experts opined that the injuries that caused Ms. O'Malley's memory loss occurred with the initial bleed from the aneurysm and that Ms. O'Malley's condition would have been the same no matter what time she was found. The experts also opined that nothing that happened after the initial bleed would have altered her short-term memory.

**Result:**

The jury found that Diamond Resorts Management was negligent and that its negligence was a substantial factor in causing harm to Ms. O'Malley. It also found that Diamond Resorts Management failed to exercise reasonable care in voluntarily rendering services needed for the protection of Ms. O'Malley and that this failure was also a substantial factor in causing harm to Ms. O'Malley. The jury further found that Diamond Resorts Management's failure to use reasonable care added to the risk of harm to Ms. O'Malley and that Ms. O'Malley suffered increased harm because Mr. O'Malley relied on Diamond Resorts Management's services. It determined that Ms. O'Malley's damages totaled \$50,445,361 and that Mr. O'Malley's damages totaled \$10,000. Thus, the O'Malleys' jury verdict awards totaled \$60,445,361.

Michael O'Malley

\$ 5,000,000 Past Loss of Consortium

\$ 5,000,000 Future Loss of Consortium

**\$ 10,000,000 Plaintiff's Total Award**

Priscilla O'Malley

\$ 9,445,361 Future Medical Cost

\$ 29,000,000 Future Pain Suffering

\$ 12,000,000 Past Pain Suffering

**\$ 50,445,361 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Frederick P. Horn

**Demand:** \$15 million

**Offer:** \$225,000 to Ms. O'Malley; \$25,000 to Mr. O'Malley

**Trial Length:** 13 days

**Trial Deliberations:** 5.5 hours

**Jury Vote:** 12-0 (liability); 10-2 (damages, with two jurors wanting to award more)

**Post Trial:** Plaintiffs' counsel anticipates that there will be \$30 million in interest added to the O'Malleys' recovery.

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

**Writer** Priya Idiculla

## Compromised rail caused truck to fall from bridge: driver

**Type:** Mediated Settlement

**Amount:** \$6,750,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head*
- *brain* - traumatic brain injury
- *paralysis/quadriplegia* - hemiparesis

**Case Type:**

- *Motor Vehicle* - Road Defect; Single Vehicle; Tractor-Trailer
- *Government* - State and Local Government
- *Dangerous Condition of Public Property*
- *Premises Liability* - Negligent Repair and/or Maintenance

**Case Name:** Virgil G. Mortensen v. State of California and State of California Department of Transportation / Virgil G. Mortensen and Dana M. Mortensen v. State of California and State of California Department of Transportation, No. 19STCV24786; 19STCV14586

**Date:** September 20, 2021

**Plaintiff(s):**

- Dana M. Mortensen, (Female, 0 Years)
- Virgil Mortensen, (Male, 56 Years)

**Plaintiff Attorney(s):**

- James P. Carr; Yuhl Carr LLP; Marina del Rey CA for Virgil Mortensen,, Dana M. Mortensen
- Tyler J. Barnett; Yuhl Carr LLP; Marina del Rey CA for Virgil Mortensen,, Dana M. Mortensen

**Plaintiff Expert(s):**

- Chuck A. Plaxico Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Canton, ME called by: James P. Carr, Tyler J. Barnett
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: James P. Carr, Tyler J. Barnett
- Khyber Zaffarkhan D.O.; Life Care Planning; Newport Beach, CA called by: James P. Carr, Tyler J. Barnett
- Malcolm H. Ray P.E., Ph.D.; Structural; Canton, ME called by: James P. Carr, Tyler J. Barnett
- Michael A. Lobatz M.D.; Neurology; Carlsbad, CA called by: James P. Carr, Tyler J. Barnett

**Defendant(s):**

- State of California
- State of California Department of Transportation

**Defense Attorney(s):**

- Helen P. Lemmon Alarcon; State of California, Department of Transportation – Legal Division; Los Angeles, CA for State of California, State of California Department of Transportation
- Michelle L. Han; State of California, Department of Transportation – Legal Division; Los Angeles, CA for State of California, State of California Department of Transportation
- Marisela Licerio; State of California, Department of Transportation – Legal Division; Los Angeles, CA for State of California, State of California Department of Transportation

**Defendant Expert(s):**

- Ari D. Kalechstein Ph.D.; Neuropsychology; Los Angeles, CA called by: for Helen P. Lemmon Alarcon, Michelle L. Han, Marisela Licerio
- Mark Davidson M.D.; Internal Medicine; Beverly Hills, CA called by: for Helen P. Lemmon Alarcon, Michelle L. Han, Marisela Licerio
- Thomas R. Garrick M.D.; Psychiatry; Los Angeles, CA called by: for Helen P. Lemmon Alarcon, Michelle L. Han, Marisela Licerio
- Dr. Michael E. Gold M.D.; Neurology; Santa Monica, CA called by: for Helen P. Lemmon Alarcon, Michelle L. Han, Marisela Licerio

**Facts:**

On Jan. 9, 2018, plaintiff Virgil Mortensen, 56, a truck driver, was driving a tractor-trailer owned by his employer, Swift Transportation, in rainy conditions. As he was traveling on an elevated transition road, heading from northbound Interstate 5 to westbound State Route 118, on the border of the Pacoima and Mission Hills areas of Los Angeles, Mortensen lost control of his tractor-trailer and struck the right (north) concrete bridge rail. Mortensen's tractor-trailer then went over the bridge rail and fell to the roadway below. Mortensen claimed injuries to his head.

Mortensen sued the owners of the elevated transition road, the state of California and the State of California Department of Transportation (known as Caltrans). Mortensen alleged that the defendants were negligent in the repair and maintenance of the bridge rail, creating a dangerous condition.

Plaintiff's counsel noted that there had been a prior motor vehicle collision on elevated transition road, causing damage to the bridge rail and that in response, Caltrans bolted a steel beam to the concrete bridge rail. Counsel contended that the load-bearing capacity of the concrete structure was significantly compromised from the prior collision and that had Caltrans made sufficient repairs, Mortensen's tractor-trailer would have been redirected back onto the highway without causing serious injury.

Defense counsel asserted that Mortensen was the sole cause of the accident. Counsel contended that Mortensen was driving recklessly, in that he was traveling at an unsafe speed for the weather conditions and was distracted by speaking hands-free on a cell phone. Defense counsel asserted that, given the high speed, weight, vehicle height and angle of impact of the out-of-control tractor-trailer, even a pristine bridge rail would not have prevented Mortensen's injuries.



**Injury:**

Mortensen was taken to a hospital, where he was determined to have suffered a traumatic brain injury, resulting in left-sided hemiparesis. He now requires the use of a wheelchair.

All of Mortensen's past medical bills were paid by his employer's workers compensation insurer. The workers compensation lien totaled \$2,729,848.78 (Indemnity: \$86,883.68; Medical: \$2,615,312.02; Permanency: \$27,653.08) and was resolved for \$150,000 in exchange for a third-party compromise and release.

Mortensen claimed that he will not be able to return to work. He also claimed that he will require future, ongoing medical care and in-home medical assistance, as he lives at home with his wife.

Mortensen sought recovery of between \$4,294,562 and \$5,268,009 in future medical costs, and between \$212,122 and \$591,120 in future lost earnings. He also sought recovery of an unspecified amount of damages for his past and future pain and suffering.

Defense counsel disputed the nature and severity of Mortensen's residual complaints. Counsel also disputed the amount of Mortensen's alleged future medical costs.

**Result:**

The parties negotiated a \$6.75 million pretrial settlement, which was established via the guidance of mediator Lars Johnson, of Signature Resolution LLC.

Dana Mortensen

Virgil Mortensen

**Trial Information:**

**Judge:** Daniel M. Crowley, Lars Johnson

**Trial Length:** 0

**Trial Deliberations:** 0

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

**Writer** Priya Idiculla

## Instructor subjected runner to unsafe conditions: lawsuit

**Type:** Settlement

**Amount:** \$39,500,000

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *brain* - encephalopathy
- *other* - organ failure
- *cardiac* - cardiac arrest
- *pulmonary/respiratory* - anoxia

**Case Type:**

- *School* - Negligent Supervision
- *Worker/Workplace Negligence* - Negligent Training

**Case Name:** Marissa Freeman, a disabled person, by and through her Guardian ad Litem, Arthur J. Freeman, Jr., v. Board of Trustees of the California State University, a public entity; Angel Castro, individually; and Does 1 through 100, Inclusive, No. CIVDS1902640

**Date:** February 15, 2021

**Plaintiff(s):**

- Marissa Freeman, (Female, 20 Years)

**Plaintiff Attorney(s):**

- Adam K. Shea; Panish, Shea & Boyle LLP; Los Angeles CA for Marissa Freeman,,
- Brian J. Panish; Panish Shea & Boyle LLP; Los Angeles CA for Marissa Freeman,,
- Richard S. Sailer; Sailer Law Firm APC; Whittier CA for Marissa Freeman,,
- Patrick K. Gunning; Panish Shea & Boyle LLP; Los Angeles CA for Marissa Freeman,,

**Plaintiff Expert  
(s):**

- Jan Roughan R.N., C.R.R.N.; Life Care Planning; Pasadena, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Fresno, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Barry D. Pressman M.D.; Neuroradiology; Los Angeles, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- David Patterson M.D.; Physical Medicine; Pomona, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Karen L. Owens P.T., D.P.T.; Physical Therapy; Irvine, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Vivek Patel M.D.; Neuro-ophthalmology; Los Angeles, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Andrew J. Grundstein Ph.D.; Meteorology/Climatology; Athens, GA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Douglas J. Casa Ph.D.; Kinesiology; Storrs, CT called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Michael A. Lobatz M.D.; Neurology; Carlsbad, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Michael S. Ritter M.D.; Emergency Medicine; Mission Viejo, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning
- Elizabeth P. Cisneros Ph.D.; Neuropsychology; Eastvale, CA called by: Adam K. Shea, Brian J. Panish, Richard S. Sailer, Patrick K. Gunning

**Defendant(s):**

- Angel Castro
- San Bernardino County
- American Medical Response
- Cambridge Sierra Holdings, LLC
- San Bernardino County Fire Protection District
- Board of Trustees of the California State University
- Community Hospital of San Bernardino dba Dignity Health

**Defense  
Attorney(s):**

- Michael J. Trotter; Carroll, Kelly, Trotter, Franzen & McKenna; Long Beach, CA for Community Hospital of San Bernardino dba Dignity Health
- James M. Baratta; Grant, Genovese & Baratta, LLP; Irvine, CA for Board of Trustees of the California State University, Angel Castro
- Loren S Leibl; Leibl, Miretsky & Mosely, LLP; Agoura Hills, CA for American Medical Response
- Brenda M. Ligorsky; Carroll, Kelly, Trotter, Franzen & McKenna; Long Beach, CA for Community Hospital of San Bernardino dba Dignity Health
- Milton V. Fajardo; Grant, Genovese & Baratta, LLP; Irvine, CA for Board of Trustees of the California State University, Angel Castro
- Paul A. Buckley; Taylor Anderson LLP; San Diego, CA for Board of Trustees of the California State University, Angel Castro
- Thomas J. Moran; Grant, Genovese & Baratta, LLP; Irvine, CA for Board of Trustees of the California State University, Angel Castro
- Mallory E. Lorber; Taylor Anderson LLP; San Diego, CA for Board of Trustees of the California State University, Angel Castro
- Linda B. Martin; Rinos & Martin LLP; Tustin, CA for , San Bernardino County, San Bernardino County Fire Protection District
- Mahadhi Corzano; Rinos & Martin LLP; Tustin, CA for , San Bernardino County, San Bernardino County Fire Protection District
- Michael Miretsky; Leibl, Miretsky & Mosely, LLP; Agoura Hills, CA for American Medical Response
- Laura K. Sitar; Pleiss Sitar McGrath Hunter & Hallack; Irvine, CA for Cambridge Sierra Holdings, LLC

**Defendant  
Expert(s):**

- Amy Sutton Ph.D.; Life Care Planning; Anaheim, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Paul Plummer M.A., A.T.C.; Athletics; Westfield, IN called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Suzi Kim M.D.; Physical Rehabilitation; San Clemente, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Daniel Wohlgeleirnter M.D.; Cardiology; Los Angeles, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Vernon B. Williams M.D.; Neurology; Los Angeles, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Eleanor Kenney R.N., Ph.D.; Nursing; Moorpark, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Michael Ferrara Ph.D., A.T.C.; Kinesiology; Durham, NC called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Franklin G. Moser M.D.; Neuroradiology; Los Angeles, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Jennifer Polhemus; Economics; Santa Monica, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber
- Kimberly Freeman M.D.; Emergency Medicine; Sonora, CA called by: for James M. Baratta, Milton V. Fajardo, Paul A. Buckley, Thomas J. Moran, Mallory E. Lorber

**Insurers:**

- California State University Risk Management Authority

**Facts:**

On Sept. 26, 2018, plaintiff Melissa Freeman, 20, a student at California State University,

**Facts:**

San Bernardino, attended the second session of a kinesiology class offered by the university in jogging, which was taught by Angel Castro, a university instructor. The assignment for the day was a timed "5k run" on a concrete and asphalt course, winding through the university, of approximately 5,000 meters, or approximately 3.1 miles. The class syllabus required students to complete all assignments as part of their grade.

Approximately 75 students were divided into three groups, which were identified as "beginner," "intermediate" and "advanced" groups. There were approximately 30 novice runners, including Freeman, in the class, and participants were given discretion to run or walk as needed. Any students who could not complete the full course were to run, jog and/or walk 20 minutes out and 20 minutes back along the 5k course.

The class began at 4 p.m. At that time, temperatures were approximately 95 degrees, according to the university's weather station. The 5k run assignment began at approximately 4:30 p.m.

Before 5:07 p.m., fellow students saw Freeman collapse to the ground just in front of Coussoulis Arena, the university's basketball/volleyball stadium. She was non-responsive, her eyes were rolled back in her head, and she was gasping for air. University athletic department employees were present on the scene. One of those employees called the university's certified athletic trainer, Pat Walsh, who arrived at the scene and had assessed Freeman as likely suffering a severe heat illness. As a result, a 9-1-1 call was made at 5:09 p.m.

Firefighters and paramedics cared for Freeman from 5:24 p.m. until 5:45 p.m., when an American Medical Response ambulance arrived and transported Freeman to Dignity Health - Community Hospital of San Bernardino. Freeman arrived at the emergency room at 6:07 p.m., and she was assessed as suffering from possible heat stroke.

At 7:27 p.m., Freeman suffered a two to four minute cardiac arrest but was successfully resuscitated. She was hospitalized until Nov. 1, 2018, when she was transferred to Reche Canyon Regional Rehabilitation Center, a skilled nursing facility in Colton. However, while at Reche Canyon, Freeman fell and suffered a potential head injury.

Freeman, by and through her guardian ad litem, her father, sued Castro and the owner and operator of the university, the Board of Trustees of the California State University. Freeman's father alleged that Castro was negligent for creating a dangerous condition and failing to properly supervise the students. He also alleged the board of trustees was negligent in its training of Castro and was vicariously liable for Castro's actions.

The board of trustees brought a third-party complaint against the employers of the responding firefighters and paramedics, the county of San Bernardino and the San Bernardino County Fire Protection District; the employer of the responding ambulance personnel, American Medical Response; the employer of the emergency room physician

and staff that cared for Freeman, Dignity Health (doing business as the Community Hospital of San Bernardino); and the operator of Reche Canyon Regional Rehabilitation Center, Cambridge Sierra Holdings, LLC. The Board of Trustees alleged that the third-party defendants were negligent in their care of Freeman, causing her ultimate condition.

Plaintiff's counsel contended that Castro's actions fell below the standard of care for a kinesiology instructor, as Castro directed the class, which included around 30 novice, un-acclimatized runners, such as Freeman, to do a timed 5k run/jog/walk under unsafe conditions. Counsel noted that Castro testified that he had in his mind a "cutoff" temperature for when it would be not safe to do the planned assignment and that the cutoff temperature was at or near 95 degrees Fahrenheit. However, plaintiff's counsel asserted that even though temperatures were above the cutoff temperature Castro had in mind when the class began, Castro did not cancel or modify the activity. Counsel also asserted that Castro did not build in an acclimatization period for novice runners not used to working out in the heat and that there were no assigned rest or water breaks at specific intervals. Counsel further asserted that Castro did not use available safer locations, like available grassy fields or a nearby running track, and that Castro, instead, established a course on hot concrete and asphalt. In addition, plaintiff's counsel contended that Castro had the class run on a route that led them out of the instructor's direct line of sight, which left Castro unable to monitor the students' progress, or watch for signs and symptoms of heat illness.

Plaintiff's counsel asserted that the university's board of trustees failed to provide to its kinesiology instructors, including Castro, or its athletic department personnel the required heat illness prevention training under CAL-OSHA regulations, a systemwide 2007 policy from the California State University Chancellor's Office, and a California State University, San Bernardino, 2016 Heat Illness Prevention Policy. Counsel asserted that this failure fell below the standard of care.

Plaintiff's counsel contended that the university's certified athletic trainer, Walsh, left Freeman on the concrete, in the sun, and did not move Freeman to the air-conditioned indoor arena 20 feet away. According to the university employees, two 32-ounce water bottles were obtained and that Walsh sprayed the water on Freeman's face and neck. However, plaintiff's counsel asserted that despite having access to already-prepared coolers of ice water, ice machines and towels, Walsh did not begin the immediate, whole-body cooling measures that were recommended by his own professional association's standards. Counsel added that when firefighters and paramedics testified that when they arrived at Freeman's side at 5:24 p.m., no one was providing active cooling to Freeman. Thus, plaintiff's counsel contended that the university's personnel, including Walsh, failed to provide reasonable emergency care and first aid to Freeman after her collapse. Counsel contended that, instead, Freeman was left lying face down on a concrete surface in the sun that was determined to be approximately 110 to 117 degrees Fahrenheit and that the standards of a NATA-certified athletic trainer required applying rapid whole-body cooling via cold water immersion or covering the body in ice water soaked towels, and transporting the affected person indoors to a cool, air conditioned environment. Plaintiff's counsel asserted that by failing to do this, despite having the knowledge and resources, Walsh fell below the standard of care.

Defense counsel for the board of trustees and Castro contended that Castro's use of a "self-paced activity," where students were told to go at their own pace, stop to rest, drink water, be in the shade whenever they needed to, and to not overexert themselves was reasonable. Counsel also contended that Freeman had a responsibility to know her own body and limits, and to act reasonably, but that Freeman overexerted herself during the run. Counsel noted that, out of the approximately 70 students in the class, no one had a problem with heat except Freeman. Thus, defense counsel asserted that the incident was a freak accident and unforeseeable and that the lack of other heat illnesses showed that it was safe.

Defense counsel asserted that since the jogging class was an athletic activity with inherent dangers, primary assumption of risk applied and imposed a higher, recklessness standard to Castro's conduct. Counsel also asserted that Walsh was not responsible for students other than those athletes assigned to him, that Walsh had no knowledge of what injuries Freeman had suffered or what she had been doing, and that Walsh acted as a Good Samaritan, thus requiring proof of gross negligence to establish liability for Walsh's actions. The board of trustees' counsel contended that the employee heat-illness training was for outdoor workers, like custodians, landscapers and maintenance staff, and that the training was a discretionary decision by California State University, San Bernardino, and was not admissible, as course and scope of employment were admitted.

Defense counsel for the board of trustees and Castro contended that the firefighters and paramedics of San Bernardino were grossly negligent in not providing treatment for heat stroke or any rapid cooling to Freeman between arriving at 5:24 p.m. and 5:45 p.m., when they turned over Freeman's care to the ambulance. Counsel also contended that the ambulance personnel of American Medical Response were grossly negligent in going to the wrong location, which delayed their arrival, and for not providing any rapid whole-body cooling to Freeman for heat stroke. Defense counsel further contended that the emergency room doctor and staff at Community Hospital of San Bernardino failed to provide prompt rapid cooling to Freeman, and caused Freeman's cardiac arrest by improperly administering a sedative, Versed, among other allegedly negligent errors. In addition, counsel contended that the staff at Reche Canyon Regional Rehabilitation Center was negligent in allowing Freeman to fall and hit her head, allegedly aggravating Freeman's injuries and damages via a concussion.

Counsel for each of the third-party defendants contended that the care and treatment provided to Freeman was reasonable under the circumstances and that Freeman's injuries and damages were caused by the negligence of the university's staff and the initial heat stroke event.

In response, plaintiff's counsel contended that primary assumption of risk did not apply to an all-levels academic jogging class, that the university's first responders were not acting in a Good Samaritan capacity and that the standard of ordinary care would apply to all university conduct.

On Oct. 26, 2020, court hearings began with COVID-19 precautions in place in a newly-created courtroom to accommodate proceedings of this size during the pandemic. Over the next three weeks, 105 motions in limine were heard.

During the hearings, the court determined that comparative fault should be excluded, as no evidence of Freeman acting unreasonably was proffered and as the defense's own kinesiology standard of care expert, Dr. Michael Ferrara, opined that Freeman acted reasonably. The court also determined that primary assumption of the risk did not apply as a matter of law. As a result, Ferrara's opinions were excluded, since he based his opinions entirely on the recklessness standard applicable under the primary assumption of risk doctrine, and not on negligence. In addition, the Good Samaritan defense regarding Walsh's conduct was excluded for failure to timely plead it, and for lack of supporting evidence or good cause for leave to amend.

**Injury:**

Freeman suffered severe heat stroke, multi-organ system failure, and an anoxic brain injury with metabolic encephalopathy.

It was undisputed that the injuries rendered Freeman unable to walk unaided, unable to speak in full sentences, unable to ever work or live independently, and in need of 24/7 home care and assistance. It was also undisputed that Freeman's injuries caused many other functional and cognitive impairments for the rest of her life. However, Freeman was able to be discharged to live in her family home environment. She was also able to feed herself with utensils, use a wheelchair, and communicate verbally and non-verbally with family and caregivers.

Plaintiff's counsel contended that Freeman's injuries and damages were caused by the university's negligence prior to the arrival of the firefighters and paramedics at 5:24 p.m., and that the conduct of the third-party defendants was reasonable and not a substantial factor in causing Freeman's injuries and damages.

Freeman sought recovery of \$1,987,312.28 for her past medical costs, between \$20,359,827 and \$23,055,288 for her future medical care costs, and between \$2,065,176 and \$2,746,941 (present value) for her loss of earning capacity. She also sought recovery of damages for her past and future pain and suffering.

Defense counsel for the university's Board of Trustees and Castro contended that Freeman's negligent overexertion was the cause of her injuries.

Defense counsel for each of the third-party defendants contended that all the harm resulting in Freeman injuries and sequelae occurred before any of the third-party defendants' medical or emergency personnel treated Freeman.

Defense counsel disputed the reasonable value of Freeman's alleged past medical expenses, and contended that the reasonable value of Freeman's future medical care was



between \$3,786,044 and \$10,633,003. In addition, counsel contended that any lost earnings were speculative, and suggested that Freeman be awarded award zero for lost earnings.

During the court hearings, the defense's causation expert, Dr. Vernon Williams, who would have testified regarding Freeman's brain injury, was excluded because of a lack of foundation and because he conceded that any possible additional harm caused by the third-party defendants' alleged negligence was unknowable. With no other admissible causation evidence, a nonsuit was granted as to the third-party complaint against each medical provider.

Since the rulings reduced the number of parties in the case, the trial moved to a standard, large courtroom in the San Bernardino Civil Justice Center to begin jury selection. The court imposed COVID-19 safety protocols, as approved by the County of San Bernardino Department of Public Health. However, defense counsel challenged the appropriateness of the COVID-19 protocols, and raised due process concerns on proceeding forward via an emergency writ petition for a stay, and subsequently a petition to the California Supreme Court.

The California Supreme Court denied the petition on Nov. 24, 2020, and jury selection began on Nov. 30, 2020. Jury selection continued until Dec. 14, 2020, when proceedings were halted by the court due to rising COVID-19 infection rates and Intensive Care Unit capacity in the county falling to 0 percent. Jury selection was scheduled to resume on Feb. 16, 2021, but while the trial was halted, defense counsel filed a second writ petition challenging, among other things, due process validity of proceeding forward during COVID-19, the trial court's evidentiary rulings, the trial court's rulings on the appropriate scope of voir dire, and the trial court's granting of cause challenges.

**Result:**

The Court of Appeal found good cause on the board of trustees and Castro's second writ petition, and issued a Palma notice on Feb.9, 2021, ordering the trial stayed pending a hearing in the Court of Appeals on the merits regarding the trial court's evidentiary and voir dire rulings.

Before any further hearing, with the appellate petition pending, and before the trial could resume, the California State University Risk Management Authority, acting on behalf of Castro and the Board of Trustees of the California State University, agreed to settle with Freeman for \$39.5 million.

The board of trustees' case against Reche Canyon was previously stayed in March 2020, with the intent that it would be tried after the trial involving all the other parties, but Reche Canyon was ultimately dismissed for a waiver of costs when the board of trustees settled with Freeman. Also, since judgment was previously entered via nonsuit in favor of the third-party defendants, the third-party complaint was settled for a waiver of costs in exchange for a waiver of appeal as to all parties.

In addition to the monetary settlement, and as a condition of the agreement with Freeman, the board of trustees of the California State University agreed to develop and implement a system-wide policy for heat-illness prevention, education and protocols with input from Dr. Douglas Casa, the head of the Korey Stringer Institute, a heat illness research and advocacy organization. The policy will apply in all academic environments to the nearly 500,000 enrolled students at all 23 California State University campuses.

**Trial Information:**

**Judge:** Lynn M. Poncin

**Trial Length:** 0

**Trial Deliberations:** 0

**Editor's Comment:** This report is based on information that was provided by plaintiffs' counsel and counsel of Castro, the Board of Trustees of the California State University and Cambridge Sierra Holdings. The remaining defendants' counsel did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Motorcyclist claimed crash resulted in leg amputation

**Type:** Decision-Plaintiff

**Amount:** \$23,720,996

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *ankle* - fracture, ankle; dislocation
- *foot/heel* - fracture, foot; fracture, talus; Lisfranc injury; crush injury, foot
- *amputation* - leg; leg (below the knee)

**Case Type:**

- *Motor Vehicle* - Truck; Broadside; Left Turn; Motorcycle; Intersection; Multiple Vehicle

**Case Name:** Steeve O. Rojas, an individual, and Sandra E. Acevedo, an individual v. Hajoca Corporation, a Maine corporation; Kevin Anthony Henderson, an individual; and Does 1 to 50, inclusive, No. BC689703

**Date:** February 10, 2021

**Plaintiff(s):**

- Sandra Acevedo, (Female, 38 Years)
- Steeve O. Rojas, (Male, 40 Years)

**Plaintiff Attorney(s):**

- Brian J. Panish; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- Thomas A. Schultz; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- Matthew J. Stumpf; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- John W. Shaller; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- James M. Trotter; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- P. Ryan Banafshe; Banafshe Law Firm PC; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo

**Plaintiff Expert  
(s):**

- P. Richard Emmanuel M.D.; Orthopedic Surgery; Culver City, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Jan Roughan R.N., C.R.R.N.; Life Care Planning; Pasadena, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- John R. Brault M.S.; Biomechanical; Mission Viejo, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Fresno, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Kevin Calvo C.P.O.; Prosthetics; San Diego, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Edward C. Fatzinger, Jr. M.S., P.E.; Accident Reconstruction; Torrance, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Dr. Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Nathan Rose M.S.; Ergonomics/Human Factors; Greenwood Village, CO called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Lawrence S. Miller M.D.; Physical Medicine; Santa Monica, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe

**Defendant(s):**

- Hajoca Corporation
- Kevin Anthony Henderson

**Defense  
Attorney(s):**

- Kara A. Pape; Tyson & Mendes LLP; Los Angeles, CA for Kevin Anthony Henderson, Hajoca Corporation
- Paul D. Motz; Segal McCambridge Singer & Mahoney, Ltd.; Chicago, IL for Kevin Anthony Henderson, Hajoca Corporation
- Mark A. Johnson; Tyson & Mendes LLP; Los Angeles, CA for Kevin Anthony Henderson, Hajoca Corporation

**Defendant  
Expert(s):**

- Amy M. Sutton Ph.D.; Life Care Planning; Long Beach, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Beau LeBlanc; Accident Reconstruction; Torrance, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Rick Riley C.P., F.A.A.O.P.; Prosthetics; Washoe Valley, NV called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Jennie McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Steven Molina Ph.D.; Vocational Rehabilitation; Santa Ana, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; Northridge, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Kenneth S. Jung M.D.; Foot & Ankle; Los Angeles, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Stephen Garets; Motorcycles; Corvallis, OR called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson

**Insurers:**

- Hartford Insurance Group
- Everest National Insurance Co.

**Facts:**

On Dec. 5, 2017, plaintiff Steeve Rojas, 40, a houseman at the Peninsula Hotel, was motorcycling on southbound Coldwater Canyon, in Los Angeles. As he proceeded through the uncontrolled T-intersection with Valleyheart Drive, his motorcycle was struck by a 28-foot utility truck operated by Kevin Henderson, who was making a left turn from Valleyheart Drive onto northbound Coldwater Canyon. Rojas was ultimately forced to lay his bike down on the pavement. He claimed he sustained injuries to his right, lower leg and right foot.

Rojas sued Henderson and Henderson's employer, Hajoca Corp., which owned Henderson's truck. Rojas alleged that Henderson was negligent in the operation of his vehicle and that Hajoca Corp. was vicariously liable for Henderson's actions while in the course and scope of his employment.

Rojas' counsel argued that Henderson was the sole cause of the collision by negligently turning left in front of Rojas, in violation of Rojas' right of way. Counsel contended that as a result, Henderson broadsided Rojas with his company truck. Counsel also contended that Rojas was initially able to maintain control of his motorcycle, but that Rojas became overwhelmed with severe pain and was forced to lay his bike down on the pavement. Thus, Rojas' counsel argued that Rojas was not negligent and that there was no action Rojas could have reasonably undertaken that would have made the collision avoidable.

Defense counsel noted that, prior to the collision, Henderson was at a complete stop on Valleyheart Drive, waiting for southbound traffic to clear so that he could make the left turn onto northbound Coldwater Canyon. Counsel admitted that Henderson was negligent, but argued that Rojas bore 50 percent fault for driving too fast for the traffic conditions and for failing to keep a proper lookout as he approached the intersection. Defense counsel further argued that the collision could have been avoided had Rojas taken appropriate measures.

**Injury:**

Rojas sustained a crush injury to his lower, right foot, resulting in multiple fractures, including open fracture dislocations of the talus and a metatarsal, an open Chopart's fracture dislocation and an open Lisfranc fracture dislocation. He was rushed by ambulance to Cedars-Sinai Medical Center, in Los Angeles, and underwent numerous surgeries in an effort to save his right, lower limb. Eight days after the crash, after being transferred to Huntington Hospital, in Pasadena, Rojas underwent a below-the-knee amputation of his right leg.

Rojas claimed that because of his injuries, he is unemployable and requires a lifetime of future medical and psychiatric treatment.

Rojas sought recovery of past and future medical costs, and damages for his past and future pain and suffering. His wife, Sandra Acevedo, a housekeeper, became a homemaker for the couple's four children after the accident. Thus, she sought recovery for her loss of consortium.

Defense counsel disputed the severity of Rojas' residual injuries and the alleged cost of future medical care. Counsel also disputed Rojas' loss-of-earnings claim, and contended that Rojas was able to work.

**Result:**

Judge J. Stephen Czuleger found in favor of Rojas and his wife. He determined that the plaintiffs' damages totaled \$23,720,996, which included \$22,520,996 for Rojas and \$1.2 million for Acevedo.

In reading his decision on the \$18 million pain-and-suffering award to Rojas, Czuleger stated that he found that Rojas "...suffered a traumatic injury which was compounded by multiple surgeries, including a revision and an amputation. Soldiering through this was painful, long, and difficult. There was trauma not only to [Rojas'] body but to his mental state as well, a situation that continues to this very day and is compensable. The court will not split the baby as between the two requests...but rather will award an amount appropriate based upon the evidence."

**Trial Information:**

**Judge:** J. Stephen Czuleger

**Demand:** \$14.5 million (C.C.P. § 998) from Rojas; \$500,000 (C.C.P. § 998) from Acevedo

**Offer:** \$4.75 million (C.C.P. § 998) to Rojas; \$250,000 (C.C.P. § 998) to Acevedo

**Trial Length:** 0

**Trial  
Deliberations:** 0

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

**Writer** Priya Idiculla



## Pedestrian claimed vehicle struck her in hotel parking lot

**Type:** Decision-Plaintiff

**Amount:** \$2,595,107

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *arm* - fracture, humerus
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *ankle* - fracture, ankle; dislocation; ankle ligament, tear; deltoid ligament, tear
- *other* - swelling; physical therapy; comminuted fracture
- *shoulder* - fracture, shoulder
- *surgeries/treatment* - skin graft; open reduction; internal fixation

**Case Type:**

- *Motor Vehicle* - Pedestrian; Parking Lot

**Case Name:** Nancy Fannin v. Camden Blaze, LLC dba Blaze Pizza; Carolinas Restaurant Holdings, LLC; Samantha George; Avis Budget Group, Inc.; Brighton SR Inc.; Castle Rock Hotel Group, LLC; and Oak View Hotel Limited Partnership, No. BC711616

**Date:** February 14, 2020

**Plaintiff(s):**

- Nancy Fannin (Female, 60 Years)

**Plaintiff Attorney(s):**

- Spencer R. Lucas; Panish Shea & Boyle LLP; Los Angeles CA for Nancy Fannin
- Alex J. Behar; Panish Shea & Boyle LLP; Los Angeles CA for Nancy Fannin

**Plaintiff Expert  
(s):**

- Tye J. Ouzounian M.D.; Orthopedic Surgery; Los Angeles, CA called by: Spencer R. Lucas, Alex J. Behar
- John R. Brault M.S.; Biomechanical; Mission Viejo, CA called by: Spencer R. Lucas, Alex J. Behar
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Fresno, CA called by: Spencer R. Lucas, Alex J. Behar
- Alvin Lowi, III P.E.; Accident Reconstruction; El Segundo, CA called by: Spencer R. Lucas, Alex J. Behar
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Spencer R. Lucas, Alex J. Behar
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Spencer R. Lucas, Alex J. Behar
- William J. Mealer M.D.; Orthopedic Surgery; Manhattan Beach, CA called by: Spencer R. Lucas, Alex J. Behar

**Defendant(s):**

- Samantha George
- Camden Blaze, LLC
- Avis Budget Group Inc.
- Brighton Management LLC
- Castle Rock Hotel Group LLC
- Carolinas Restaurant Holdings, LLC
- Oak View Hotel Limited Partnership

**Defense  
Attorney(s):**

- James M. Baratta; Grant, Genovese & Baratta LLP; Irvine, CA for Brighton Management LLC, Castle Rock Hotel Group LLC, Oak View Hotel Limited Partnership
- John S. Lowenthal; Lewis Brisbois Bisgaard & Smith LLP; San Bernardino, CA for Samantha George, Avis Budget Group Inc.
- Bradley A. Snyder; Law Offices of Brad Snyder; Woodland Hills, CA for Camden Blaze, LLC, Carolinas Restaurant Holdings, LLC

**Defendant  
Expert(s):**

- Amy M. Sutton Ph.D.; Life Care Planning; Brea, CA called by: for John S. Lowenthal, Bradley A. Snyder
- Tim Long; Accident Reconstruction; Valencia, CA called by: for John S. Lowenthal, Bradley A. Snyder
- Jeff Bruno M.A., P.V.E.; Life Care Planning; San Luis Obispo, CA called by: for John S. Lowenthal, Bradley A. Snyder
- John C. Gardiner Ph.D.; Biomechanical; Laguna Hills, CA called by: for John S. Lowenthal, Bradley A. Snyder
- Kevin M. Ehrhart M.D.; Orthopedic Surgery; Santa Monica, CA called by: for John S. Lowenthal, Bradley A. Snyder
- Jennifer L. Polhemus M.A.; Economics; Santa Monica, CA called by: for John S. Lowenthal, Bradley A. Snyder

**Insurers:**

- Cincinnati Insurance Co.

**Facts:**

On July 13, 2016, plaintiff Nancy Fannin, 60, a senior area manager and registered respiratory therapist for a home medical products company, was walking south in a parking lot for Holiday Inn Express Hotel and Suites Pasadena-Colorado Boulevard, in Pasadena, when she was struck by a rental vehicle operated by Samantha George. There were no eyewitnesses, photographs or video of the accident. Fannin sustained injuries to her left leg, left ankle and left shoulder.

Fannin sued George; George's employers, Carolinas Restaurant Holdings, LLC and Camden Blaze, LLC; the owner of the rental vehicle, Avis Budget Group Inc.; and the property owners and operators, Brighton Management, LLC, Castle Rock Hotel Group, LLC and Oak View Hotel Limited Partnership. Fannin alleged that George was negligent in the operation of her vehicle and that Camden Blaze and Carolinas Restaurant Holdings were vicariously liable for George's actions while she was in the course and scope of her employment. Fannin also alleged that Avis was vicariously liable for George's actions and that the property owners were also liable for the accident.

Avis, Brighton Management, Castle Rock Hotel Group and Oak View Hotel ultimately settled out of the case prior to trial. Thus, the matter proceeded to a bench trial on the claims against George and her employers.

Fannin claimed that she was hit from behind by George's vehicle at 15 to 20 mph.

Plaintiff's counsel focused on biomechanical analysis of Fannin's injuries and the damage to the passenger side, rearview mirror of George's vehicle to evidence that Fannin walking in a parallel direction to George's vehicle when Fannin was clipped by the vehicle's mirror. Specifically, the plaintiff's biomechanical expert opined that Fannin's injuries were consistent with an eversion injury, wherein Fannin was hit by the right side mirror, causing her body to forcefully turn, resulting in a fracture to the tibia and fibula, and a rupture of the deltoid ligament and skin. The expert further opined that Fannin continued to rotate as she fell onto her shoulder, causing a four part comminuted fracture. In addition, the plaintiff's biomechanical expert opined that if Fannin had in fact walked in front of the car, as the defense alleged, there would have been an additional head strike with the A-pillar of the vehicle, the roof support structure on either side of a vehicle's windshield, which would have caused significant head trauma that was not present for Fannin.

George admitted that she did not see Fannin until the impact, but she claimed she was looking straight ahead. Therefore, George claimed that Fannin must have inadvertently stepped quickly in front of her vehicle in an attempt to access to the hotel's entrance. Defense counsel noted the police report on the incident placed the blame on Fannin and also indicated that Fannin walked out in front of George's moving vehicle.

The defense's biomechanical engineering expert opined that Fannin's injuries were consistent with Fannin walking in front of the vehicle and being contacted by the right front bumper, which resulted in Fannin's ankle injury.

The defense's accident reconstruction expert opined that there was too little hard evidence to perform an accident reconstruction and that, as such, the plaintiff's reconstruction could not be accurate.

**Injury:**

Fannin sustained a grade IIIA open fracture and dislocation of her left ankle, including fractures of the left tibia and fibula. She also sustained a four part comminuted fracture of the humeral head of her left shoulder with a rupture of the deltoid ligament and skin. Fannin was taken to Huntington Memorial Hospital, in Pasadena, where she underwent four surgeries during her 11-day hospitalization. The surgeries included open reduction and internal fixation of her left ankle, open reduction and internal fixation of her left shoulder, and a split-thickness skin graft from her left thigh to her left ankle. Fannin then spent two months convalescing at her home and underwent extensive physical therapy.

Fannin claimed that she had to change jobs as a result of the accident because her former position required extensive travel, as she managed operations in sales for 19 locations in five states. She alleged that due to her physical limitations after the accident, her position became painful and difficult for her. As a result, Fannin was hired as a sales manager for a maintenance supply company in January 2019. However, she claimed that while the new position was sedentary, it offered less pay.

The plaintiff's medical experts opined that Fannin will eventually require a complete shoulder revision, as it was undisputed that the hardware was failing due to a varus collapse and that the screw was now in the joint space. The experts also opined that Fannin will require an ankle fusion or ankle replacement because of her progressing traumatic arthritis.

Fannin alleged that she continues to have swelling and pain in her left ankle. She claimed that as a result, she can no longer run and that she has difficulty walking long distances, hiking, standing for long periods, or walking on uneven ground and snow. She also claimed that she continues to have difficulties reaching for items overhead due to the condition of her left shoulder. In addition, Fannin claimed that her current medical condition makes it difficult for her to play with her grandchildren.

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

**Result:**

Judge Margaret Oldendorf found that George was negligent and 100 percent liable for the accident. She also found that George's negligence was a substantial factor in causing Fannin harm. Oldendorf determined that Fannin's damages totaled \$2,143,617. She also awarded an additional \$451,489.97 for costs as a result of beating the statutory offer, making Fannin's recovery total \$2,595,106.97.

## **Nancy Fannin**

\$126,683 Personal Injury: Past Medical Cost

\$318,663 Personal Injury: Future Medical Cost

\$44,955 Personal Injury: Past Lost Earnings Capability

\$153,316 Personal Injury: FutureLostEarningsCapability

\$1,000,000 Personal Injury: Past Pain And Suffering

\$500,000 Personal Injury: Future Pain And Suffering

\$451,490 Personal Injury: post-offer costs

### **Trial Information:**

**Judge:** Margaret L. Oldendorf

**Demand:** \$1,999,999.99 (from Camden Blaze [C.C.P. § 998]); \$1,999,999.99 (from George [C.C.P. § 998])

**Offer:** \$750,000

**Trial Length:** 14 days

**Post Trial:** According to defense counsel, plaintiff's counsel's motion for recovery of cost-of-proof damages, including attorney fees, was denied.

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel and counsel of Avis Budget Group, Camden Blaze, Carolinas Restaurant Holdings and George. The remaining defendants' counsel was not asked to contribute.

**Writer** Priya Idiculla

## Plaintiff claimed fall from city curb caused lifetime pain

**Type:** Settlement

**Amount:** \$3,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *foot/heel* - fracture, foot; fracture, metatarsal
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

**Case Type:**

- *Government* - Municipalities
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Negligent Repair and/or Maintenance; Dangerous Condition of Public Property

**Case Name:** Rasell Chavez v. City of Whittier, and Ricardo and Neva Casanas Trust, No. BC675619

**Date:** January 28, 2020

**Plaintiff(s):**

- Russell Chavez (Female, 28 Years)

**Plaintiff Attorney(s):**

- Robert S. Glassman; Panish Shea & Boyle LLP; Los Angeles CA for Russell Chavez
- Michael V. Sacchetto; Hanning & Sacchetto, LLP; Whittier CA for Russell Chavez

**Plaintiff Expert(s):**

- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Robert S. Glassman, Michael V. Sacchetto
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Robert S. Glassman, Michael V. Sacchetto
- Joshua P. Prager M.D.; Pain Management; Santa Monica, CA called by: Robert S. Glassman, Michael V. Sacchetto

**Defendant(s):**

- City of Whittier
- Ricardo and Neva Casanas Trust

**Defense  
Attorney(s):**

- Harold W. Potter, Jr.; Jones & Mayer; Fullerton, CA for City of Whittier
- Joshua D. Bordin-Wosk; Bordin Semmer LLP; Los Angeles, CA for City of Whittier
- None reported; Fullerton, CA for Ricardo and Neva Casanas Trust

**Defendant  
Expert(s):**

- Jennie M. McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Harold W. Potter, Jr., Joshua D. Bordin-Wosk
- Rhonda S. Renteria R.N.; Life Care Planning; Anaheim, CA called by: for Harold W. Potter, Jr., Joshua D. Bordin-Wosk
- Steven H. Richeimer M.D.; Pain Management; Los Angeles, CA called by: for Harold W. Potter, Jr., Joshua D. Bordin-Wosk
- Timothy T. Davis M.D.; Pain Management; Santa Monica, CA called by: for Harold W. Potter, Jr., Joshua D. Bordin-Wosk

**Insurers:**

- Self-insured
- California Insurance Pool Authority

**Facts:**

On March 5, 2017, plaintiff Rasell Chavez, 28, a state-subsidized caregiver, exited her vehicle and lost her footing on a curb in front of her home in Whittier, causing her to fall. She sustained injuries to her right foot.

Chavez sued the maintainer of the curb, the city of Whittier, and the adjacent homeowner, the Ricardo and Neva Casanas Trust. Chavez alleged that the defendants failed to repair and/or maintain the curb, creating a dangerous condition.

The trust was dismissed from the case once it was determined that the city owned and controlled the property and adjoining curb.

Plaintiff's counsel contended that the curb was broken and that the city failed to repair the damage, creating a dangerous condition.

The city admitted 50 percent liability but contended that Chavez was comparatively at fault, as the condition was open and obvious.

**Injury:**

Chavez presented to an emergency room the day after the accident and underwent X-rays, which revealed a fracture of the fifth metatarsal on the right foot. Her toe was placed in a splint, and Chavez sought orthopedic care. Her treating orthopedist put her in a CAM boot for approximately two months.

Chavez claimed that she has experienced persistent and, at times, unbearable pain in the foot throughout the more than two years since the fall. Her pain management expert opined that Chavez suffers complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition. According to plaintiff's counsel, Chavez's CRPS diagnosis was confirmed by the defense's two pain management experts, Dr. Steven Richeimer and Dr. Timothy Davis.

Although Chavez did not stop working as a caregiver, she claimed she is limited in her activities. She claimed that as a result, she now has a sedentary lifestyle.

Plaintiff's counsel noted that all of the doctors agreed that Chavez will require further care and treatment related to her CRPS for the remainder of Chavez's life, which is another 51 years, according to the California Civil Jury Instructions life expectancy table.

Chavez, a Medi-Cal recipient, will pay all medical liens.

The city's counsel challenged the nature and extent of Chavez's alleged CRPS injuries until one of their pain management experts, Richeimer, changed his opinion after his deposition.

**Result:**

The parties agreed to a \$3 million pretrial settlement, of which \$500,000 was paid by the city's self-insured policy and \$2.5 million was paid from an insurance pool.

**Trial Information:****Editor's  
Comment:**

This report is based on information that was provided by plaintiff's counsel and the city of Whittier's counsel. The Ricardo and Neva Casanas Trust's counsel was not asked to contribute.

**Writer**

Priya Idiculla



## School knew allowing student to walk home was dangerous: suit

**Type:** Mediated Settlement

**Amount:** \$28,715,000

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *head*
- *brain* - traumatic brain injury

**Case Type:**

- *Motor Vehicle* - Pedestrian
- *School* - Negligent Supervision
- *Premises Liability* - Dangerous Condition of Public Property

**Case Name:** Fabian Luciano Sanchez, by and through his Guardian Ad Litem, Maria Sanchez v. Raul Edward Martinez, Century 21 Real Estate LLC, State of California, County of San Bernardino, City of Victorville and Victor Elementary School District, No. CIVDS1719667

**Date:** November 04, 2019

**Plaintiff(s):**

- Maria Sanchez (Female)
- Fabian Sanchez (Male, 11 Years)

**Plaintiff Attorney(s):**

- Rahul Ravipudi; Panish Shea & Boyle LLP; Los Angeles CA for Maria Sanchez, Fabian Sanchez
- Jonathan C. Teller; Wilshire Law Firm, PLC; Los Angeles CA for Maria Sanchez, Fabian Sanchez
- Ian P. Samson; Panish Shea & Boyle LLP; Los Angeles CA for Maria Sanchez, Fabian Sanchez

**Plaintiff Expert  
(s):**

- Jan Roughan R.N., B.S.N.; Physical Rehabilitation; Pasadena, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- David M. Lechuga Ph.D.; Neuropsychology; Lake Forest, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Karen L. Owens P.T., D.P.T.; Physical Therapy; Irvine, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Susan Meyers Fosnot Ph.D.; Speech Pathology; Woodland Hills, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Ronald S. Gabriel M.D.; Pediatric Neurology; Los Angeles, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Sharon Grandinette M.S.Ed., C.B.I.S.T.; Special Education; Redondo Beach, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Bradley A. Jabour M.D.; Neuroradiology; Santa Monica, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Richard W. Alderson; Schools/Education; Vista, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Richard H. Anderson Ph.D.; Vocational Rehabilitation; Fullerton, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson
- Lawrence S. Miller M.D.; Pain Management; Santa Monica, CA called by: Rahul Ravipudi, Jonathan C. Teller, Ian P. Samson

**Defendant(s):**

- Vice Russo
- Anwar Wagdy
- Brian Gengler
- Donald Lester
- Nicole Anderson
- City of Victorville
- State of California
- Raul Edward Martinez
- FCL & Associates Inc.
- County of San Bernardino
- Century 21 Real Estate LLC
- Victor Elementary School District

**Defense  
Attorney(s):**

- Dana A. Fox; Lewis Brisbois Bisgaard & Smith LLP; Los Angeles, CA for FCL & Associates Inc.
- Harvey W. Wimer; Graves & King LLP; Riverside, CA for City of Victorville
- Thomas P. Gmelich; Bradley & Gmelich, LLP; Glendale, CA for Century 21 Real Estate LLC
- Michael J. Marlatt; Thompson & Colegate, LLP; Riverside, CA for Victor Elementary School District
- Steven M. Mitchel; Booth Mitchel & Strange LLP; Los Angeles, CA for FCL & Associates Inc.
- Michael D. Sargent; Graves & King LLP; Riverside, CA for City of Victorville
- Michael S. Ayers; Horton, Oberrecht, Kirkpatrick & Martha; Irvine, CA for Raul Edward Martinez
- Charles I. Karlin; Horton, Oberrecht, Kirkpatrick & Martha; Irvine, CA for Raul Edward Martinez
- None reported; Glendale, CA for State of California, County of San Bernardino, Anwar Wagdy, Vice Russo, Brian Gengler, Donald Lester, Nicole Anderson

**Defendant  
Expert(s):**

- Carol A. Bartz Ed.D.; Schools/Education; Indio, CA called by: for Michael J. Marlatt
- Jennie M. McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Dana A. Fox, Michael J. Marlatt, Steven M. Mitchel, Michael S. Ayers, Charles I. Karlin
- Joanne Latham M.A., C.R.C.; Life Care Planning; Encino, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin
- Robert M. Gray Ph.D.; Neuropsychology; San Diego, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin
- Thomas J. Grogan M.D.; Orthopedic Surgery; Santa Monica, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin
- Harriet T. Cokely M.D.; Pediatric Neurology; Santa Monica, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin
- Matthew J. Lotysch M.D.; Radiology; Inglewood, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin
- Kimberly K. BeDell M.D.; Pediatric Rehabilitation; Long Beach, CA called by: for Michael J. Marlatt, Michael S. Ayers, Charles I. Karlin

**Insurers:**

- California Schools Risk Management Joint Powers Authority
- Schools Excess Liability Fund (SELF)
- CNA
- self-insured
- Liberty Mutual Insurance Co.

**Facts:**

On Feb. 3, 2017, plaintiff Fabian Sanchez, 11, a fifth grade student, was allowed to walk home alone from Puesta del Sol Elementary School, in Victorville, even though he was supposed to be bused home, pursuant to his individualized education program. As he attempted to cross Village Drive, near the intersection with Puesta del Sol Drive, Fabian was struck by a vehicle operated by Raul Martinez. Fabian sustained head injuries.

Maria Sanchez, acting as Fabian's guardian ad litem, sued Martinez; Martinez's employer, FCL & Associates Inc.; FCL & Associates' parent entity, Century 21 Real Estate LLC; the maintainer of the intersection, the city of Victorville; and the operator of Puesta del Sol Elementary School, the Victor Elementary School District. Sanchez alleged that Martinez was negligent in the operation of his vehicle and that FCL & Associates and Century 21 were vicariously liable for Martinez's actions. Sanchez also alleged that Village Drive was dangerous and that the city was negligent for the dangerous condition of public property. In addition, she alleged that the school district was negligent for allowing Fabian to walk home alone, in violation of the mandatory duty imposed by Fabian's individualized education program and Education Code § 44808.

The county of San Bernardino, the state of California and five individuals were also named as defendants, but they were ultimately dismissed from the case. In addition, the city agreed to settle for \$25,000, Martinez's insurer agreed to settle for \$50,000 and Century 21's insurer agreed to settle for \$140,000. As a result, FCL & Associates and the settling defendants were dismissed from the case prior to trial, and the matter proceeded to a bifurcated bench trial against Victor Elementary School District only.

Plaintiff's counsel contended that after the school district reviewed Fabian, it established an individualized education program for Fabian and determined that Fabian needed "curb-to-curb bus transportation" to ensure that he safely made it to and from school each day. Counsel also contended that the school district knew that allowing Fabian to walk home alone was dangerous. However, plaintiff's counsel asserted that, on the day of the incident, the school district did not allow Fabian to take a school bus home, forcing him to walk across the dangerous road where the collision occurred.

The school district's counsel asserted that Fabian and Sanchez did not want Fabian to take the school bus home and, instead, elected to have the child walk home or be picked up by a parent. Counsel also asserted that Fabian darted out into the middle of the street, causing the collision, making Fabian and his mother negligent for the accident. The school district's counsel contended that if Fabian wanted to take the bus, he could have, but that Fabian and his mother did not want that and that if Fabian or Sanchez had a disagreement over Fabian's individualized education program, Fabian and Sanchez were first required to conduct a due process hearing under the Individuals with Disabilities Education Act.

**Injury:**

The bench trial was bifurcated. Damages were not before the court.

Fabian sustained blunt force trauma to his head. He was taken to a hospital, where he was diagnosed with a severe traumatic brain injury.

Plaintiff's counsel presented a life care plan that included a claim that Fabian requires 24/7 care.

**Result:** On July 23, 2019, Judge Wilfred Schneider Jr. found that Victor Elementary School District had a duty to bus Fabian home on the day of the collision and was therefore negligent.

On Nov. 4, 2019, one week before the damages phase of trial, the school district's risk management carrier agreed to a \$28.5 million settlement. The settlement was finalized via the guidance of mediator Thierry Patrick Colaw, of Judicate West.

With the addition of the prior \$25,000 settlement with the city, \$50,000 settlement with Martinez's insurer and \$140,000 settlement with Century 21's insurer, Fabian's recovery totaled \$28,715,000.

**Trial Information:**

**Judge:** Thierry Patrick Colaw

**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

## Plaintiff: Parking lot accident caused depression to be worse

**Type:** Settlement

**Amount:** \$3,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head* - headaches; fracture, skull
- *brain* - brain damage; traumatic brain injury
- *other* - hematoma; unconsciousness; nondisplaced fracture; aggravation of pre-existing condition
- *face/nose* - face; sinus; fracture, facial bone; fracture, sinus
- *sensory/speech* - vertigo
- *mental/psychological* - depression; emotional distress; cognition, impairment; memory, impairment

**Case Type:**

- *Motor Vehicle* - Speeding; Left Turn; Pedestrian; Parking Lot

**Case Name:** Judith O. Garcia v. Thomas H. Kanegae and Thomas H. Kanegae M.D. a Medical Corporation, No. BC700693

**Date:** October 30, 2019

**Plaintiff(s):**

- Judith O. Garcia (Female, 68 Years)

**Plaintiff Attorney(s):**

- Gregory R. Vanni; Thon Beck Vanni Callahan & Powell; Pasadena CA for Judith O. Garcia
- Thomas A. Schultz; Panish Shea & Boyle LLP; Los Angeles CA for Judith O. Garcia
- Deborah S. Chang; Panish Shea & Boyle LLP; Los Angeles CA for Judith O. Garcia

**Plaintiff Expert  
(s):**

- A. John Enayati M.D., M.P.H.; Internal Medicine; Los Angeles, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Mark B. Shattuck Ph.D.; Biomechanics; Woodside, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Rene A. Castaneda P.E.; Accident Reconstruction; Fresno, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Barry I. Ludwig M.D.; Neurology; Los Angeles, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- David R. Patterson M.D.; Physical Medicine; Pomona, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Jason A. Droll Ph.D.; Ergonomics/Human Factors; Hayward, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang
- Randall C. Epperson Ph.D.; Neuropsychology; Modesto, CA called by: Gregory R. Vanni, Thomas A. Schultz, Deborah S. Chang

**Defendant(s):**

- Thomas H. Kanegae
- Thomas H. Kanegae M.D. a Medical Corporation

**Defense  
Attorney(s):**

- Terry A. Rowland; Demler, Armstrong & Rowland; Long Beach, CA for Thomas H. Kanegae, Thomas H. Kanegae M.D. a Medical Corporation
- Robert W. Armstrong; Demler, Armstrong & Rowland; Long Beach, CA for Thomas H. Kanegae, Thomas H. Kanegae M.D. a Medical Corporation
- Dalen M. Saludes; Demler, Armstrong & Rowland; Long Beach, CA for Thomas H. Kanegae, Thomas H. Kanegae M.D. a Medical Corporation

**Defendant  
Expert(s):**

- Kyle B. Boone Ph.D.; Neuropsychology; Torrance, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- David J. Weiner M.B.A.; Economics; Los Angeles, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- James R. High M.D.; Psychiatry; Santa Monica, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Andrew H. Woo M.D.; Neurology; Santa Monica, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Daniel P. Voss M.S.; Biomechanics; Los Angeles, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Robert M. Shavelle Ph.D.; Life Expectancy & Mortality; San Francisco, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Jeffrey A. Suway M.S., P.E.; Ergonomics/Human Factors; Long Beach, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes
- Lawrence N. Tanenbaum M.D.; Radiology; Los Angeles, CA called by: for Terry A. Rowland, Robert W. Armstrong, Dalen M. Saludes

**Insurers:**

- Safeco Insurance Cos.

**Facts:**

On Dec. 3, 2017, plaintiff Judith Garcia, 68, parked her vehicle in the Panda Inn parking lot, in Pasadena, and was walking to the sidewalk when she was struck by a sport utility vehicle operated by Thomas Kanegae. The force of the impact knocked Garcia to the ground, causing her head to strike the pavement. Garcia claimed injuries to her face and head.

Garcia sued Kanegae and Kanegae's company, Thomas H. Kanegae, M.D., a Medical Corporation. Garcia alleged that Kanegae was negligent in the operation of his vehicle and that Kanegae's medical office was vicariously liable for his actions while in the course and scope of his employment.

Garcia's counsel noted that, prior to the collision, Kanegae saw patients in various hospitals, dropped his daughter off at her mother's house, talked to patients on his cell phone via the Bluetooth connection in the vehicle, and decided to stop at the Panda Inn Restaurant to pick up food to take home. Counsel contended that when Kanegae pulled into the lot, he noticed it was full of parked vehicles, pedestrians (including children and elderly people), and a large volume of moving cars and holiday traffic. Counsel contended that Kanegae turned left in an attempt to exit the parking lot but cut the corner short and struck Garcia. Garcia's counsel also contended that, prior to the collision, Garcia walked 18 feet or more, and was three-fourths of the way across the parking lot when she was struck and that Garcia was walking in front of Kanegae's vehicle, from Kanegae's right to his left, at the time of the collision. In addition, counsel contended that the force of the impact knocked Garcia off her feet and out of her shoes and that Garcia fell to the ground with her head striking the pavement at a minimum of 15 mph.

Garcia's counsel asserted that because Kanegae cut the corner, he did not afford Garcia sufficient time to recognize or react to his intended travel path and that Kanegae would have had a clear view of Garcia walking with ample time to avoid her but failed to do so. Counsel also asserted that Kanegae was making a left turn around a blind corner in a full lot when he improperly cut the corner while turning at a speed that was excessive for the lot's existing conditions. Garcia's counsel further asserted that unlike Garcia, Kanegae had time to see and avoid Garcia, but that because Kanegae was inattentive, he failed to see Garcia at any time prior to the collision.

Kanegae's medical office claimed that Kanegae used his company vehicle for both business and personal errands and that at the time of the accident, Kanegae was using the vehicle for personal reasons.

Kanegae claimed that he was traveling at less than 5 mph at the time of the accident and that never saw Garcia because Garcia suddenly and without warning darted out in front of his vehicle.

**Injury:**

After the collision, Kanegae got out of his vehicle to check on Garcia. He found that there was blood on Garcia's face and head area, and he noted that she was unconscious. As a cardiologist who was also board certified in internal medicine, Kanegae also recognized that Garcia was having seizures. He estimated that Garcia was unconscious for approximately six to seven minutes. When paramedics arrived, Garcia was in an altered state of consciousness. Garcia was then taken to a hospital, where she was diagnosed as



having a traumatic brain injury, a right temporoparietal scalp hematoma, a right temporal bone fracture, a nondisplaced fracture along the right temporal bone, and a nondisplaced fracture along the posterolateral wall of the right sphenoid sinus. She was also determined to have a tiny focus of extra-axial pneumocephalus in left temporal convexity, which could have pointed to a nondisplaced fracture of the left temporal bone.

Garcia claimed she suffers from memory loss, cognitive impairment and depression, as well as emotional and personality changes, as a result of her injuries. In March 2018, she underwent a comprehensive neuropsychological evaluation. The physician reported that Garcia continues to suffer incident-associated memory loss. Garcia claimed that she has no memory of the accident or up to one week following the incident. She also claimed that she suffers from daily vertigo, pressure in her right ear, and occasional headaches. Her cognitive complaints include difficulty remembering parts of conversations, avoiding tasks that require sustained attention, a decline in reading comprehension with an inability to retain the majority of what she has just read, and word-finding difficulties that include producing words in conversations. Garcia claimed that as a result, she avoids reading, which she used to enjoy, and her friends often provide words for her.

Emotionally, Garcia claimed that she now cries easily and has a real desire to not continue living. She also claimed that her mood is depressed and sad and that she has a lack of interest in activities that she used to enjoy. Plaintiff's counsel contended that Garcia has increased lability and verbal aggression toward family members, and has social disinhibition, in which Garcia says what is on her mind without hesitation. Counsel noted that while Garcia previously struggled with depression, Garcia explained to the physician that her condition was "...there before, but the accident took the lid off of the sadness" and that, now, she "can't contain it." Garcia also claimed that she was able to cope with her long history of depression before the accident, but that she now feels completely overwhelmed by her situation post-injury.

Based on neuropsychological testing, the plaintiff's neuropsychology expert opined that there was evidence of diminished attentional abilities and executive functioning. He also opined that the test results were consistent with the history of a moderate traumatic brain injury. As a result, the physician diagnosed Garcia as having a diffuse traumatic brain injury, a frontal lobe and executive function deficit, and a major depressive disorder.

Plaintiff's counsel contended that Garcia's deficits would likely be experienced as a significant change from Garcia's typical level of premorbid facility with cognitive functions. Counsel also contended that the significant level of depression contributed to Garcia's subjective experience of cognitive dysfunction and that the post-injury pattern of loss of emotional control, the emotional lability, irritability, social withdrawal and disinhibition are consistent with the types of behavioral sequelae of a traumatic brain injury.

Defense counsel disputed the force of the impact, asserting that Kanegae was only traveling at 5 mph. Counsel also asserted that Garcia recovered from any injury she may have sustained and that Garcia's problems stemmed from her pre-existing depression.

**Result:** The parties agreed to a \$3 million settlement.

**Trial Information:**

**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

## Bus driver struck man during unsafe turn, lawsuit alleged

<b>Type:</b>	Settlement
<b>Amount:</b>	\$17,000,000
<b>State:</b>	California
<b>Venue:</b>	Los Angeles County
<b>Court:</b>	Superior Court of Los Angeles County, Chatsworth, CA
<b>Injury Type(s):</b>	<ul style="list-style-type: none"><li>• <i>leg</i> - limp; fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; crush injury, leg; scar and/or disfigurement, leg</li><li>• <i>other</i> - avulsion fracture; comminuted fracture; fracture, displaced; decreased range of motion</li></ul>
<b>Case Type:</b>	<ul style="list-style-type: none"><li>• <i>Government</i> - Counties</li><li>• <i>Motor Vehicle</i> - Crosswalk; Left Turn; Pedestrian</li></ul>
<b>Case Name:</b>	Brian Gomez Garcia v. Los Angeles County Metropolitan Transportation Authority and Dhennis Devera, No. BC688353
<b>Date:</b>	July 10, 2019
<b>Plaintiff(s):</b>	<ul style="list-style-type: none"><li>• Brian Gomez Garcia (Male, 18 Years)</li></ul>
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Rahul Ravipudi; Panish Shea &amp; Boyle LLP; Los Angeles CA for Brian Gomez Garcia</li><li>• Robert S. Glassman; Panish Shea &amp; Boyle LLP; Los Angeles CA for Brian Gomez Garcia</li><li>• Nicholas A. Siciliano; Law Offices of Nicholas Siciliano; Woodland Hills CA for Brian Gomez Garcia</li></ul>

**Plaintiff Expert  
(s):**

- J. Robert Berkstresser; Bus Regulations & Standards; San Diego, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- P. Richard Emmanuel M.D.; Orthopedic Surgery; Culver City, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Rene A. Castaneda P.E.; Accident Reconstruction; Fresno, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Bakersfield, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Robert M. Applebaum M.D.; Plastic Surgery/Reconstructive Surgery; Beverly Hills, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Sanjog S. Pangarkar M.D.; Pain Management; Los Angeles, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano
- Willis Wagner M.D.; Vascular Surgery; Los Angeles, CA called by: Rahul Ravipudi, Robert S. Glassman, Nicholas A. Siciliano

**Defendant(s):**

- Dhennis Devera
- Los Angeles County Metropolitan Transportation Authority

**Defense  
Attorney(s):**

- Michael G. Martin; Graves & King LLP; Glendale, CA for Los Angeles County Metropolitan Transportation Authority, Dhennis Devera
- Paul M. O'Reilly; O'Reilly & McDermott; Torrance, CA for Los Angeles County Metropolitan Transportation Authority, Dhennis Devera

**Defendant  
Expert(s):**

- John C. Meyers M.A., C.R.C.; Vocational Rehabilitation; Ventura, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Juan Jimenez M.D.; Vascular Surgery; Los Angeles, CA called by: for Michael G. Martin, Paul M. O'Reilly
- David J. King P.E.; Accident Reconstruction; Los Angeles, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Griff Stelzner; Economics; Camarillo, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Kevin M. Ehrhart M.D.; Orthopedic Surgery; Santa Monica, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Shawn Roofian M.D.; Pain Management; Beverly Hills, CA called by: for Michael G. Martin, Paul M. O'Reilly
- George Chow M.D.; Neurology; Tarzana, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Jennie M. McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Stacey Helvin R.N., B.S.N., P.H.N.; Life Care Planning; Anaheim, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; Northridge, CA called by: for Michael G. Martin, Paul M. O'Reilly
- Jeffrey L. Rosenberg M.D.; Plastic Surgery/Reconstructive Surgery; Los Angeles, CA called by: for Michael G. Martin, Paul M. O'Reilly

**Insurers:**           •   Argo Group

**Facts:**           On June 28, 2017, plaintiff Brian Garcia, 18, a video game programmer, was standing on the corner of Old Depot Plaza Road and Lassen Street, in Chatsworth. When the traffic signal indicated it was safe to walk, Garcia stepped onto the roadway and was struck by a Los Angeles County Metropolitan Transportation Authority bus operated by Dhennis Devera, who was making a left turn from Old Depot Plaza Road onto Lassen Street. The bus ran over Garcia's left leg, crushing it.

Garcia sued Devera and the Los Angeles County Metropolitan Transportation Authority. Garcia alleged that Devera was negligent in the operation of the bus and that the transportation authority was vicariously liable for Devera's actions while in the course and scope of his employment as a bus driver.

Plaintiff's counsel contended that Devera made an unsafe left turn while Garcia was in the crosswalk, causing the accident.

Devera denied seeing Garcia prior to making his left turn. Defense counsel denied the defendants were liable for the accident and asserted that Garcia was at fault.

**Injury:**           Garcia sustained crush injuries of his left leg, including fractures of the left tibial shaft and fibular shaft. The fractures were so severe that the tibial and fibular shafts were displaced and broken into fragments. Garcia also suffered an avulsion fracture of the calcaneal tendon, also known as the Achilles tendon. Garcia was taken to a hospital, where he remained for nearly four months, during which time he underwent a total of 12 surgeries.

Garcia claimed that he now walks with a slight limp and that it is difficult for him to run or walk long distances. He contended that he can keep working, but that his wounds and scars are permanent.

Garcia sought recovery of damages for past and future pain and suffering.

Defense counsel disputed the nature and extent of Garcia's alleged damages and contended that Garcia's injuries had resolved.

**Result:**           The parties agreed to a \$17 million pretrial settlement, which was paid by the Los Angeles County Metropolitan Transportation Authority's insurer on behalf of both defendants.

### **Trial Information:**

**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

## Suit: Unlicensed driver struck pedestrian, causing brain injuries

**Type:** Mediated Settlement

**Amount:** \$1,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *head*
- *brain* - brain damage; cerebral palsy; edema, cerebral; traumatic brain injury; diffuse axonal brain injury
- *other* - syncope; dysarthria; laryngoscopy; Graves' disease; unconsciousness; physical therapy; vomiting/vomition
- *epidermis* - contusion
- *neurological* - neurological impairment; cranial nerve palsy
- *sensory/speech* - double vision / diplopia; diplopia / double vision; speech/language, impairment of
- *pulmonary/respiratory* - respiratory
- *gastrointestinal/digestive* - gastrointestinal complications; nausea

**Case Type:**

- *Motor Vehicle* - Pedestrian; Negligent Entrustment

**Case Name:** Ray-Von R. Hawes v. Steve Sellers, Mary Mitchell and Topanga Adams, No. MC025575

**Date:** June 27, 2019

**Plaintiff(s):**

- Ray-Von Hawes (Male, 18 Years)

**Plaintiff Attorney(s):**

- Mark J. Leonardo; Kuzyk Law, LLP; Lancaster CA for Ray-Von Hawes

**Plaintiff Expert(s):**

- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Mark J. Leonardo
- Jon B. Landerville M.S., P.E.; Accident Reconstruction; Torrance, CA called by: Mark J. Leonardo
- Paul Broadus M.A.; Occupational Therapy; La Verne, CA called by: Mark J. Leonardo
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Mark J. Leonardo
- Andrew S. Morris D.C.; Coding & Billing (Medical); Torrance, CA called by: Mark J. Leonardo
- Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Mark J. Leonardo
- Jeffrey Schaefer Ph.D.; Neuropsychology; Los Angeles, CA called by: Mark J. Leonardo
- Catalino Dureza M.D.; Neurosurgery; North Hollywood, CA called by: Mark J. Leonardo
- Franklin G. Moser M.D.; Radiology; West Hollywood, CA called by: Mark J. Leonardo
- Lawrence Miller M.D.; Physical Medicine; Los Angeles, CA called by: Mark J. Leonardo

**Defendant(s):**

- Mary Mitchell
- Steve Sellers
- Topanga Adams

**Defense Attorney(s):**

- Stephen C. Pasarow; Knapp, Petersen & Clarke, P.C.; Glendale, CA for Steve Sellers
- Thomas W. Shaver; Shaver, Korff & Castronovo; Encino, CA for Topanga Adams
- Ronald Zurek; Wesierski & Zurek LLP; Los Angeles, CA for Mary Mitchell

**Defendant Expert(s):**

- John T. Dunn Ph.D.; Psychology/Counseling; Valencia, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Jennie M. McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Rodica G. Predescu M.D.; Alcohol/Drugs; Granada Hills, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Thomas F. Fugger, Jr. P.E.; Accident Reconstruction; Valencia, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Michael S. Weiner M.D.; Neurology; Newbury Park, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek
- Richard C. Rosenberg M.D.; Orthopedic Surgery; Tarzana, CA called by: for Stephen C. Pasarow, Thomas W. Shaver, Ronald Zurek

**Insurers:**

- State Farm Insurance Cos.

**Facts:**

On Oct. 21, 2014, plaintiff Ray-Von Hawes, 18, a student, was walking along the edge of 20th Street East, north of the intersection with East Avenue I, in Lancaster. He was struck from behind by a vehicle operated by Topanga Adams, an unlicensed 15-year-old girl. Topanga admitted that she was traveling 55 mph when she hit Ray-Von, who was thrown into the windshield and passenger-side mirror. Ray-Von landed on the adjacent shoulder. He sustained injuries to his head and was rendered unconscious.

Ray-Von sued Topanga and the owner of Topanga's vehicle, Steve Sellers. Topanga's mother, Mary Mitchell, was also sued, as she initially claimed that she was the one who struck Ray-Von, ostensibly to protect her daughter. Ray-Von alleged that Topanga was negligent in the operation of her vehicle and that Sellers and Mitchell were vicariously liable for Topanga's actions. Ray-Von also alleged that Sellers and Mitchell were negligent in the entrustment of the vehicle to Topanga.

Plaintiff's counsel noted that Mitchell was initially issued a citation for driving with a suspended driver's license, in violation of Vehicle Code § 14601.1(a), but when Mitchell and Topanga admitted that Topanga was the one driving, Mitchell was issued another citation for allowing an unlicensed person to drive a vehicle, in violation of Vehicle Code § 14604(a). Counsel noted that Mitchell was also charged with making false statements during an investigation, in violation of Vehicle Code §§ 20 and 31. In addition, plaintiff's counsel noted that Topanga was cited and convicted for driving without a license, in violation of Vehicle Code § 12500(a), and cited, charged and convicted for a hit and run, in violation of Vehicle Code § 20001(a). Plaintiff's counsel contended that Mitchell told the police that she allows her kids to drive whenever they want, even though they don't have driver's licenses, and that she taught her kids to drive when they were 9 years old.

Mitchell claimed that Sellers was at work at the time and did not know that her kids drive his truck.

Sellers claimed that Topanga told him that she was 19 years old and in the ninth grade and that he would allow her to drive with him in the car at night. He also claimed that he had observed Topanga drive her mother's car on multiple occasions and that he had ridden with her on multiple occasions in her mother's car.

In response, plaintiff's counsel asserted that Sellers should have known that Topanga was underage to drive because a ninth grader is typically 13 to 15 years old. Counsel also asserted that Sellers forbade Topanga from driving at night, but that Sellers allowed her to drive his truck during the day.

**Injury:**

Paramedics arrived at the scene and found Ray-Von on the side of the roadway, lying prone in the sand. They found him unresponsive and unable to make any statements, noting that Ray-Von had suffered a blunt head injury with multiple traumatic injuries and neurological-altered mentation. Ray-Von's Glasgow coma scale score was determined to be only 3, and he was bleeding from the back and right side of his head. He was transported to the Antelope Valley Hospital, in Lancaster, where he was admitted, examined and treated by physicians and surgeons. Ray-Von was also immediately placed on ventilator support after suffering from acute respiratory failure.

While undergoing a CT scan, Ray-Von manifested a seizure and shivering. Internal injuries and broken bones were ruled out, but the CT scan of the head showed a diffuse cerebral edema. An MRI of the brain revealed a diffuse axonal brain injury with inferior



bilateral frontal, left anterior temporal, bilateral thalamus, mid-brain contusions, resulting in sixth cranial nerve palsy. He was determined to have sustained a traumatic brain injury.

Two weeks later, Ray-Von was transferred to Providence Holy Cross Medical Center, in Mission Hills, for inpatient, neurologic, acute rehabilitation, which included walking, talking, counting, bathing, dressing and essentially all daily activities of life. He also underwent physical therapy, speech therapy and occupational therapy. On Nov. 24, 2015, Ray-Von underwent throat surgery, consisting of a microdirect laryngoscopy with laser excision of a laryngeal scar and laryngeal balloon dilation, after being diagnosed with laryngeal stenosis.

Ray-Von claimed he suffered from shortness of breath, nausea, vomiting, wheezing, syncope and diplopia (double vision) as a result of his injuries. He also claimed he suffered from recurrent "dysarthria" (difficult or unclear articulation of speech that is otherwise linguistically normal) during prolonged conversation and encopresis (involuntary defecation, especially associated with emotional disturbance or psychiatric disorder). He further claimed that he experienced frequent sleep walking and that he was diagnosed with a paranoid disorder. In addition, Ray-Von claimed that he was diagnosed with Grave's disease, which is a type of autoimmune problem that causes the thyroid gland to produce too much thyroid hormone (hyperthyroidism).

Plaintiff's counsel contended that Ray-Von's traumatic brain injury is a problem that will never go away. Counsel also contended that Ray-Von will likely never hold a job and that Ray-Von will have to be cared for and supported by his family and other care providers for the duration of his life. Counsel further contended that Ray-Von will likely never have a relationship with others, male or female, and that Ray-Von has lost all of his friends. Plaintiff's counsel asserted that the impact on Ray-Von's life could not have been much worse.

Ray-Von's expert life care planner provided a preliminary life care plan that indicated future medical and related services over Ray-Von's expected life of 55.8 years. The expert opined that Ray-Von's future medical and related services would total \$18,195,102.

Ray-Von sought recovery in excess of \$400,000 for past medical expenses and sought \$18,195,102 in future medical and related expenses. He also sought recovery of lost earnings and earning capacity in the range of \$590,000 to \$1.4 million. In addition, Ray-Von sought recovery of damages for his past and future pain and suffering.

The defense's medical experts agreed that Ray-Von suffered from closed head trauma, resulting in a severe brain injury, following a loss of consciousness, with imaging showing brain abnormalities that included frontal lobe hemorrhages, thalamic lesions and changes in the gray-white matter consistent with the clinical diagnoses of a diffuse axonal injury, swallowing problems, migraine headaches, and cognitive and behavioral abnormalities. The experts also agreed that Ray-Von suffered from a thought disorder, characterized by paranoia, as well as odd and unusual thinking and beliefs related to the brain injury. The experts further agreed that Ray-Von suffered from mild to moderate impairment of auditory and visual memory, working memory, perceptual reasoning, speed processing and executive functions. In addition, the defense's medical experts agreed that Ray-Von suffered from severe depression and a moderate level of anxiety and that, per the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Ray-Von met the

diagnostic criteria for major neurocognitive disorder with behavioral disturbance due to a brain injury.

The defense's expert neurologist recommended comprehensive neurocognitive rehabilitation at a facility, and for Ray-Von to be seen by a psychiatrist for psychotropic medication evaluation and monitoring.

**Result:** The defendants had a \$50,000 policy limit, but the policy was opened. The parties then agreed to a \$1 million settlement, which was finalized via the guidance of mediator Harrison Sommer, of Judicate West.

**Trial Information:**

**Judge:** Harrison Sommer

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Adams' counsel declined to contribute, and the remaining defendants' counsel did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Plaintiff claimed employer liable for employee's head-on crash

**Type:** Verdict-Plaintiff

**Amount:** \$2,600,000

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *ankle* - fracture, ankle; fracture, malleolus; fracture, ankle; fracture, bimalleolar; dislocation; fracture, distal fibula
- *brain* - brain damage; traumatic brain injury
- *other* - physical therapy
- *pelvis* - fracture, pelvis
- *face/nose* - facial laceration; fracture, facial bone; fracture, orbit
- *amputation* - finger
- *arterial/vascular* - internal bleeding
- *surgeries/treatment* - debridement; knee surgery; knee replacement; open reduction; internal fixation
- *mental/psychological* - anxiety; depression; cognition, impairment

**Case Type:**

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

**Case Name:** Delia Flores v. Lewis Rocchetti, Juan Ayala Roman, Esteves Logistics Corp., and ConvergeOne, Inc., No. CIVDS1620468

**Date:** March 25, 2019

**Plaintiff(s):**

- Delia Flores (Female, 58 Years)

**Plaintiff Attorney(s):**

- Taylor Rayfield; Greene Broillet & Wheeler, LLP; Santa Monica CA for Delia Flores
- Tobin M. Lanzetta; Greene Broillet & Wheeler, LLP; Santa Monica CA for Delia Flores

**Plaintiff Expert  
(s):**

- Amy L. Magnusson M.D.; Physical Medicine; San Diego, CA called by: Taylor Rayfield, Tobin M. Lanzetta
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Taylor Rayfield, Tobin M. Lanzetta
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Taylor Rayfield, Tobin M. Lanzetta
- Daniel E. Zehler Psy.D.; Neuropsychology; Long Beach, CA called by: Taylor Rayfield, Tobin M. Lanzetta

**Defendant(s):**

- Lewis Rocchetti
- ConvergeOne Inc.
- Juan Ayala Roman
- Esteves Logistics Corp.

**Defense  
Attorney(s):**

- Joshua D. Bordin-Wosk; Bordin Semmer LLP; Los Angeles, CA for ConvergeOne Inc.
- Justin F. Spearman; Bordin Semmer LLP; Los Angeles, CA for ConvergeOne Inc.
- None reported; Santa Monica, CA for Lewis Rocchetti, Juan Ayala Roman, Esteves Logistics Corp.

**Defendant  
Expert(s):**

- David J. Weiner M.B.A.; Economics; Los Angeles, CA called by: for Joshua D. Bordin-Wosk, Justin F. Spearman
- Rhonda S. Renteria R.N.; Life Care Planning; Anaheim, CA called by: for Joshua D. Bordin-Wosk, Justin F. Spearman

**Facts:**

On Oct. 12, 2016, plaintiff Delia Flores, 58, a medical coder, was driving on the eastbound side of Edison Avenue, a two-lane highway in San Bernardino County. When Flores was east of the intersection with Walker Avenue, her mid-size vehicle was struck head-on by a vehicle operated by Lewis Rocchetti, who had moved from westbound Edison Avenue into the eastbound lane in an attempt to pass a westbound 18-wheel tractor-trailer that was operated by Juan Ayala Roman. Flores sustained injuries to her head, face, a knee, abdomen, a finger, pelvis, internal organs and an ankle.

Flores sued Rocchetti; Rocchetti's employer, ConvergeOne Inc.; Roman; and the owner of Roman's tractor-trailer, Esteves Logistics Corp. Flores alleged that Rocchetti and Roman were negligent in the operation of their respective vehicles. Flores also alleged that ConvergeOne was vicariously liable for Rocchetti's actions while in the course and scope of his employment and that Esteves Logistics was vicariously liable for Roman's actions.

The matter ultimately continued against ConvergeOne only.

Plaintiff's counsel noted that Rocchetti was driving home from work at the time of the accident. However, counsel contended that Rocchetti was an exempt employee who was given a cellphone and laptop so that ConvergeOne could get in touch with him when he was not in the office. Counsel also contended that when Rocchetti was hired, he was told that travel would be less than 10 percent of his job responsibilities. Plaintiff's counsel noted that Rocchetti traveled off-site three different times during the 11 months he worked for ConvergeOne and that whenever Rocchetti traveled off-site, ConvergeOne reimbursed him for mileage. Accordingly, plaintiff's counsel argued that the vehicle use exception to the "coming and going" rule applied, as ConvergeOne received a benefit from Rocchetti having his car at work and readily available in case he needed to drive to a client's site.

ConvergeOne's counsel argued that Rocchetti was not in the course and scope of his job at the time of the accident, as Rocchetti only used his vehicle three times in close to 11 months. Counsel contended that on two of those instances, Rocchetti volunteered to travel to a client's site and that on the third instance, it was pre-planned.

**Injury:**

Flores sustained a bimalleolar fracture and an open talar fracture with dislocation to her right ankle. She also sustained a distal fibula fracture to the left ankle, a fracture of the inferior wall of the right orbit, facial lacerations, and a traumatic brain injury. In addition, she sustained a right pelvic fracture with abdominal bleeding and other internal injuries. Flores was immediately taken to a hospital, where a ring finger was partially amputated surgically.

On Oct. 13, 2016, one day after the accident, Flores underwent surgery on her left ankle, right eye and left knee. The next day, she underwent an abdominal wound closure. On Oct. 18, 2016, Flores underwent surgery on her right ankle. She then underwent open reduction and internal fixation surgery on the right tibia on Oct. 21, 2016, and a surgical repair of the right orbital floor fracture on Oct. 26, 2016. In addition, she underwent irrigation and debridement of the right ankle on Nov. 17, 2016, a total knee replacement on Nov. 14, 2018. Flores also underwent both in-patient and out-patient physical therapy, and both in-patient and out-patient occupational therapy.

Flores claimed that as a result of her traumatic brain injury, she suffers from cognitive impairment, depression and anxiety. She alleged that as a result, she was unable to return to work and requires supervision, care and assistance, such as at-home care and/or skilled nursing care. In addition, Flores claimed that she requires additional medical treatment, including a future ankle fusion.

Flores sought recovery of \$718,589 in past medical costs, \$82,874 in past lost earnings and \$1,189,096 in future medical costs. She also sought recovery of an unspecified amount of damages for her past and future pain and suffering.

**Result:**

The jury determined that Flores' damages totaled \$2.6 million.

**Delia Flores**

\$718,589 Personal Injury: Past Medical Cost

\$800,000 Personal Injury: Future Medical Cost

\$77,000 Personal Injury: Past Lost Earnings Capability

\$450,000 Personal Injury: past noneconomic damages

\$554,411 Personal Injury: future noneconomic damages

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

Wilfred J. Schneider, Jr.

**Demand:** \$1,000,000 (from ConvergeOne)

**Offer:** \$250,000 (by ConvergeOne [C.C.P. § 998])

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

**Writer** Priya Idiculla

## Plaintiff's speeding caused crash, defense argued

**Type:** Verdict-Plaintiff

**Amount:** \$2,947,180

**Actual Award:** \$1,620,949

**State:** California

**Venue:** Marin County

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

**Injury Type(s):**

- *head*
- *brain* - traumatic brain injury

**Case Type:**

- *Motor Vehicle* - Broadside; Stop Sign; Multiple Vehicle

**Case Name:** Robert Spinner and Leslie LaRhette v. Joshua Fesler, No. CIV1702644

**Date:** March 25, 2019

**Plaintiff(s):**

- Robert Spinner (Male, 70 Years)
- Leslie LaRhette (Female)

**Plaintiff Attorney(s):**

- Jeffrey R. Smith; Abramson Smith Waldsmith, LLP; San Francisco CA for Robert Spinner, Leslie LaRhette
- William B. Smith; Abramson Smith Waldsmith, LLP; San Francisco CA for Robert Spinner, Leslie LaRhette
- R.J. Waldsmith; Abramson Smith Waldsmith, LLP; San Francisco CA for Robert Spinner, Leslie LaRhette



**Plaintiff Expert  
(s):**

- Mark B. Shattuck Ph.D.; Injury Biomechanics; Woodside, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Bruce Adornado M.D.; Neurology; Palo Alto, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Karen L. Aznavoorian M.A.; Life Care Planning; Fresno, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Claude S. Munday Ph.D.; Neuropsychology; Oakland, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Jerome A. Barakos M.D.; Neuroradiology; San Francisco, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith
- Deborah Doherty M.D.; Physical Medicine; Kentfield, CA called by: Jeffrey R. Smith, William B. Smith, R.J. Waldsmith

**Defendant(s):**

- Joshua Felser

**Defense  
Attorney(s):**

- Denise Billups-Slone; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Pleasant Hill, CA for Joshua Felser
- Wilma J. Gray; McNamara, Ney, Beatty, Slattery, Borges & Ambacher LLP; Pleasant Hill, CA for Joshua Felser

**Defendant  
Expert(s):**

- Karen M. Preston P.H.N., R.N.; Life Care Planning; Sacramento, CA called by: for Denise Billups-Slone, Wilma J. Gray
- Howard J. Friedman Ph.D.; Neuropsychology; Walnut Creek, CA called by: for Denise Billups-Slone, Wilma J. Gray
- Steven McIntire M.D.; Neurology; Palo Alto, CA called by: for Denise Billups-Slone, Wilma J. Gray
- Maureen D. Miner M.D.; Physical Medicine; Gilroy, CA called by: for Denise Billups-Slone, Wilma J. Gray
- Raymond E. Merala M.S., P.E.; Accident Reconstruction; Hayward, CA called by: for Wilma J. Gray
- Timothy Gillihan C.P.A.; Economics; Oakland, CA called by: for Denise Billups-Slone, Wilma J. Gray

**Facts:** On June 4, 2016, plaintiff Robert Spinner, 70, was driving at the Marin County Civic Center, in San Rafael, when his vehicle was broadsided by a vehicle operated by Joshua Felser. Spinner claimed injuries to his head.

Spinner sued Felser, alleging that Felser was negligent in the operation of his vehicle.

Spinner claimed that he was traveling without any traffic controls and had the right of way when Felser pulled away from a stop sign and caused the collision.

Felser claimed that he had a clear lane when he left the stop sign and that Spinner was speeding.

Defense counsel contended that the accident would not have happened if Spinner had not been speeding.

The defense's accident reconstruction expert opined that Spinner was traveling at 35 mph, which was 10 miles over the speed limit, and that if Spinner was traveling at 25 mph, the accident would not have happened.

**Injury:** Spinner claimed he sustained a traumatic brain injury. He was taken to a hospital, where he was treated for his injury.

Spinner claimed that he requires future medical treatment and that he will require future home attendant care.

Spinner sought recovery of past and future medical costs, and damages for his past and future pain and suffering. His wife, Leslie LaRhette, sought recovery for her loss of consortium. Plaintiffs' counsel asked the jury to award Spinner and LaRhette \$16 million in total damages.

**Result:** The jury apportioned 45 percent fault to Spinner and 55 percent fault to Felser. It determined that the damages for Spinner and Larhette totaled \$2,947,180.

After apportionment, the recovery for Spinner and LaRhette should total \$1,620,949.

### **Leslie LaRhette**

\$200,000 Personal Injury: loss of consortium

### **Robert Spinner**

\$1,947,180 Personal Injury: economic damages

\$800,000 Personal Injury: non-economic damages

**Trial Information:**

**Judge:** James T. Chou

**Post Trial:** Spinner and LaRhette is appealing the verdict. The appeal is pending.

**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 alleged injuries from port accident require future care

**Type:** Verdict-Plaintiff

**Amount:** \$5,447,664

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *back* - myelopathy; nerve impingement
- *neck* - myelopathy; fusion, cervical; nerve impingement; herniated disc, cervical; herniated disc at C4-5; fusion, cervical, two-level
- *neurological* - nerve impingement
- *surgeries/treatment* - discectomy

**Case Type:**

- *Admiralty/Maritime* - Jones Act; Unseaworthiness

**Case Name:** James Ryan Peterson v. City of Long Beach, No. BC645456

**Date:** March 21, 2019

**Plaintiff(s):**

- James Ryan Peterson (Male, 45 Years)

**Plaintiff Attorney(s):**

- Joel Krissman; Krissman and Silver LLP; Long Beach CA for James Ryan Peterson

**Plaintiff Expert (s):**

- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Joel Krissman
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Joel Krissman
- Jeffrey Deckey M.D.; Spinal Surgery; Orange, CA called by: Joel Krissman
- Michael Danto M.D.; Physical Medicine; Orange, CA called by: Joel Krissman
- Alexander O. Francini M.D.; Physical Medicine; Long Beach, CA called by: Joel Krissman
- Christopher W. Ingalls Ph.D.; Psychology/Counseling; Newport Beach, CA called by: Joel Krissman

**Defendant(s):**

- City of Long Beach

**Defense Attorney(s):**

- Lynn L. Krieger; Lewis Brisbois Bisgaard & Smith LLP; San Francisco, CA for City of Long Beach
- David E. Russo; Lewis Brisbois Bisgaard & Smith LLP; San Francisco, CA for City of Long Beach

**Defendant Expert(s):**

- Darryl R. Zengler M.A., C.E.A.; Economics; Pasadena, CA called by: for Lynn L. Krieger, David E. Russo
- Edward L. Bennett M.A.; Vocational Rehabilitation; Santa Barbara, CA called by: for Lynn L. Krieger, David E. Russo
- Geoffrey E. Miller M.D.; Orthopedic Surgery; El Segundo, CA called by: for Lynn L. Krieger, David E. Russo

**Facts:**

On Feb. 23, 2016, plaintiff James Peterson, 45, a port-patrol police officer, landed awkwardly while attempting to board a patrol boat at a police dock in Long Beach Harbor. Peterson claimed injuries to his neck.

Peterson sued the owner and operator of the vessel and police dock, the city of Long Beach. He alleged that the city was negligent under the Jones Act and under the common law unseaworthiness doctrine.

Peterson claimed there was no boarding platform or gangway, causing him to land awkwardly as he boarded the patrol boat.

Plaintiff's counsel contended that the vessel/dock lacked a safe access system, gangway or ramp and that as a result, patrol officers were required to jump a minimum distance of three feet from the floating police dock to the floating patrol vessels.

Before trial, the city claimed there were safe ways to board the vessels, rather than jumping, and that Peterson was negligent in the method he used. However, the city admitted liability before jury selection, and the matter was tried on the nature and extent of Peterson's alleged damages.

**Injury:**

Peterson claimed he sustained a herniated disc at the C4-5 level, which compressed the cervical spinal cord. He underwent an emergency anterior discectomy and fusion at C4-5 and C5-6. However, the fusion resulted in non-union, so a follow-up posterior fusion was performed at the same level. The second surgery was successful.

Plaintiff's counsel contended that the initial injury to the cervical spinal cord resulted in a residual impairment of the right foot's gait, causing Peterson to swing his leg as he walks. Due to restrictions, Peterson was required to medically retire from the police department.

Peterson claimed he will require orthotics and follow-up care, which was valued in his life care plan. His treating physician also opined that Peterson will likely require a future cervical fusion of the adjacent level above his existing fusion within 10 years.

Peterson sought recovery of \$340,204 for his future medical expenses and approximately \$2.5 million for the loss of earning capacity. He also sought recovery of additional economic damages for his past wage loss, and noneconomic damages for his past and future pain and suffering.

Defense counsel, and the defense's medical expert, disputed the nature and extent of Peterson's alleged injuries.

The defense's expert orthopedic surgeon opined that it was possible that Peterson would need some future care, but denied it was likely that Peterson would need a future surgery. The expert also opined that, with respect to the likely cost of future medical care, Peterson would only require orthotics at a cost of \$4,500.

Defense counsel contended that Peterson had a successful spinal fusion that Peterson had employment opportunities available that would cause his alleged earnings loss to be substantially less than alleged.

**Result:**

The jury determined that Peterson's damages totaled \$5,447,664.

**James Ryan Peterson**

\$340,204 Personal Injury: Future Medical Cost

\$342,000 Personal Injury: Past Lost Earnings Capability

\$1,648,794 Personal Injury: FutureLostEarningsCapability

\$1,637,500 Personal Injury: past noneconomic damages

\$1,479,166 Personal Injury: future noneconomic damages

**Trial Information:**

**Judge:** Maurice A. Leiter

**Trial Length:** 10 days

**Trial  
Deliberations:** 2 days

**Jury Vote:** 12-0 (economic damages), 11-1 (noneconomic damages)

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

**Writer** Priya Idiculla

## Improper warnings about open trench caused crash: bicyclist

**Type:** Mediated Settlement

**Amount:** \$20,000,000

**State:** California

**Venue:** San Diego County

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

**Injury Type(s):**

- *neck* - fusion, cervical
- *other* - unconsciousness
- *paralysis/quadriplegia* - quadriplegia

**Case Type:**

- *Recreation* - Bicycle
- *Transportation* - Roadways
- *Government* - Municipalities
- *Worker/Workplace Negligence*
- *Dangerous Condition of Public Property*

**Case Name:** Sheng Du, an individual; Yun-Hua Chiang, an individual v. The City of San Diego, a public entity; KTA Construction, a corporation; Harris & Associates, Inc., a corporation; and Does 1 through 50 inclusive, No. 37-2018-00010639-CU-PO-CTL

**Date:** March 07, 2019

**Plaintiff(s):**

- Sheng Du (Male, 52 Years)
- Yun-Hua Chiang

**Plaintiff Attorney(s):**

- Richard L. Duquette; Law Office of Richard L. Duquette; Oceanside CA for Sheng Du, Yun-Hua Chiang
- Thomas A. Schultz; Panish, Shea & Boyle LLP; Los Angeles CA for Sheng Du, Yun-Hua Chiang
- Deborah S. Chang; Panish, Shea & Boyle LLP; Los Angeles CA for Sheng Du, Yun-Hua Chiang



**Plaintiff Expert  
(s):**

- Amy L. Magnusson M.D.; Physical Medicine; San Diego, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Sam Iler; Safety (Construction); San Diego, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- John E. Fisher P.E.; Traffic; South Pasadena, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- John Howard; Bicycles; Encinitas, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Mark B. Shattuck Ph.D.; Biomechanical; Woodside, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Paul Kayfet; Visibility Studies; Bolinas, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Rene A. Castaneda P.E.; Accident Reconstruction; Fresno, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Bakersfield, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Brook Feerick R.N., C.C.M., C.L.C.P.; Life Care Planning; San Diego, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Jason A. Droll Ph.D.; Ergonomics/Human Factors; Hayward, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang
- Michael A. Lobatz M.D.; Neurology; Encinitas, CA called by: Richard L. Duquette, Thomas A. Schultz, Deborah S. Chang

**Defendant(s):**

- Corson Smith
- Mike Requilman
- Tony Requilman
- KTA Construction
- City of San Diego
- Harris & Associates Inc.
- North County Traffic Control

**Defense  
Attorney(s):**

- Brian K. Stewart; Collins Collins Muir + Stewart LLP; South Pasadena, CA for Harris & Associates Inc.
- Dana A. Fox; Lewis Brisbois Bisgaard & Smith; Los Angeles, CA for KTA Construction
- Christie B. Swiss; Collins Collins Muir + Stewart LLP; Carlsbad, CA for Harris & Associates Inc.
- Rayna A. Stephan; Office of the City Attorney; San Diego, CA for City of San Diego
- Michael C. Rogers; Balestreri Potocki & Holmes; San Diego, CA for City of San Diego
- Justin D. Witzmann; Collins Collins Muir + Stewart LLP; Carlsbad, CA for Harris & Associates Inc.
- None reported for North County Traffic Control, Corson Smith, Mike Requilman, Tony Requilman

**Defendant  
Expert(s):**

- Kim Nystrom P.E.; Traffic; Sacramento, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Dale M. Isaef M.D.; Cardiology; Loma Linda, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- John O'Donnell P.E.; Construction; San Diego, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Paul S. Guthorn P.E.; Accident Reconstruction; Long Beach, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Rock E. Miller P.E.; Traffic; Irvine, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- David J. Weiner M.B.A.; Economics; Los Angeles, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- James Jay Todd Ph.D.; Ergonomics/Human Factors; San Mateo, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Nancy Fraser Michalski R.N.; Coding & Billing (Medical); Los Angeles, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Roger A. Thrush Ph.D.; Vocational Rehabilitation; La Mesa, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Roman Beck; Accident Reconstruction; San Diego, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Jerome C. Stenehjem M.D.; Physical Medicine; San Diego, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Joseph Cohen Ph.D.; Ergonomics/Human Factors; San Diego, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Stacey R. Helvin B.S.N., R.N.; Life Care Planning; Anaheim, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Swathi Kode Ph.D.; Biomechanical; Signal Hill, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Michael E. Gold M.D.; Neurology; Santa Monica, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann
- Richard Brady P.E.; Construction; San Diego, CA called by: for Brian K. Stewart, Dana A. Fox, Christie B. Swiss, Rayna A. Stephan, Michael C. Rogers, Justin D. Witzmann

**Insurers:**

- Valley Forge Insurance Co.
- CNA
- Lloyd's of London
- Continental Casualty Co.
- Hanover Insurance Co.
- Navigators Group Inc.

**Facts:**

On Dec. 8, 2017, plaintiff Sheng Du, 52, a software engineer, was bicycling on Sorrento Valley Road, in San Diego, when the front wheel of his bicycle dropped into an open trench in the middle of the road, causing him to flip forward.

Earlier that morning, construction crews from KTA Construction Inc. began excavating and refilling multiple trenches within the number one (far left), southbound lane and bicycle lane in conjunction with a water and sewer line replacement project for the city of San Diego. The project was supervised and managed by Harris & Associates Inc., and it was generally approved and overseen by the city of San Diego. While the work was being performed, the bicycle lane was closed, and all traffic was directed to a single lane that was allegedly "pinched" by the encroachment of the trench into that lane. Before the trench was refilled, Du hit it with his bicycle, causing him to be ejected from his bicycle and strike his head. Du also sustained injuries of his neck.

Du sued the city, KTA Construction, and Harris & Associates. Du alleged that the defendants negligently created a dangerous condition and failed to properly warn of that hazardous condition.

Du added four other defendants, including North County Traffic Control and three individuals, but they were ultimately dropped from the case.

Plaintiff's counsel asserted that the trench was unguarded, unmarked and unattended and that the city, KTA Construction, and Harris & Associates failed to comply with applicable standards, including the California Manual on Uniform Traffic Control Devices and the city's own standards. Counsel contended that, at the time of the incident, all traffic was directed to a single lane that was "pinched" by the encroachment of the trench into that lane thereby leaving insufficient room for both vehicles and bicyclists to travel safely. Plaintiff's counsel asserted that the applicable standards required a temporary traffic-control plan that specifically provided for the needs of bicyclists with adequate and safe access to the roadway and that specifically required the use of barriers and warning signs whenever open trenches were in the roadway. Counsel also asserted that, at the time of the incident, glare from the morning sun made it impossible for Du to realize that a trench was before him until it was too late, particularly when there were no warning signs provided in advance of the trench and no workers near the trench at the time of the incident.

Defense counsel asserted that Du rode his bicycle through a "cone zone." Counsel for the city, KTA Construction, and Harris & Associates all contended that KTA Construction's crew was responsible for site safety and that construction had closed the bicycle lane and adjacent, southbound, number one lane. They also contended that the construction crew had also set up proper traffic-control devices and warning signs in accordance with the city-approved traffic-control plan. Defense counsel asserted that Du was negligent for disregarding extensive traffic-control signs and warning devices, and for riding his bicycle into an active construction site. Counsel further asserted that Du's negligence was the sole cause of his injuries.

Just before trial, KTA Construction changed its position and admitted in verified written discovery responses that it and Harris & Associates were negligent and that Du was not negligent in causing his injuries. However, the city and Harris & Associates maintained their initial positions that Du's negligence was the sole cause of his injuries.

**Injury:**

Du landed head first on the roadway and was found face down, unconscious and near death. He was transported by ambulance to the emergency department at Scripps Memorial Hospital La Jolla. An MRI scan of the cervical spine revealed a serious high-level cervical spinal cord injury at the C2-3 level, which rendered him quadriplegic. Fusion of the C2-3 level was performed to stabilize and prevent further injury. Over the course of the next 10 months, Du endured numerous complications while he was an inpatient at the hospital and rehabilitation facilities, during which time he underwent 14 operations.

Du requires around-the-clock nursing care, which includes therapies for all activities of daily living, bowel management, bladder management, respiratory management, gastric-tube management, skin protection and transfers. The around-the-clock care is managed primarily by his wife, Yun-Hua Chiang, who rarely leaves his side.

Prior to sustaining the injuries at issue, Du worked as a software engineer for Verizon making approximately \$250,000 per year. He is no longer able to work, and he will require medical care and equipment for the rest of his life.

Du sought recovery of \$127.86 million in total damages, including \$10,000 in property damage, \$100,000 for past household services, \$750,000 for past loss of earnings, \$1.5 million for future household services, \$5 million for past medical care, \$5.5 million for future loss earnings, \$15 million for future medical care, \$20 million in damages for his past pain and suffering, and \$80 million in damages for his future pain and suffering.

Du's wife sought recovery of \$23.2 million in total damages, including \$200,000 for past attendant care, \$3 million for future attendant care, \$5 million for past loss of consortium and \$15 million for future loss of consortium.

**Result:**

The parties agreed to a \$20 million pretrial settlement, which was subject to city approval. The city, which is self-insured, agreed to pay \$1.5 million, KTA Construction's insurers agreed to pay \$4.25 million and Harris & Associates' insurers agreed to pay \$14.25 million. The settlement was finalized via the guidance of Judge Timothy Casserly, who was acting a mediator.

Of the \$4.25 million that KTA Construction agreed to pay, \$1 million will be paid from its commercial general liability insurance policy, \$1 million will be paid from its professional liability insurance policy and \$2 million will be paid from its excess policy with CNA. The remaining \$250,000 was supposed to be paid from its excess policy with Continental Casualty Co., but that amount remains unpaid because there was a coverage dispute. Of the \$14.25 million that Harris & Associates agreed to pay, \$2 million will be paid from its primary policy and \$9 million will be paid from its professional liability insurance policy. The remaining \$3.25 million was supposed to be paid from its excess policy with Navigators Group Inc., but that amount also remains unpaid because of a coverage dispute.

**Trial Information:**

**Judge:** Timothy M. Casserly

**Editor's  
Comment:**

This report is based on information that was provided by plaintiff's counsel, and defense counsel for Harris & Associates Inc. Defense counsel for KTA Construction and the city of San Diego did not respond to the reporter's phone calls. The remaining defendants' counsel were not asked to contribute.

**Writer**

Priya Idiculla

## Railway worker: Failure to secure heavy equipment caused injuries

**Type:** Verdict-Plaintiff

**Amount:** \$1,632,000

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *back* - stenosis; spondylosis; bulging disc, lumbar
- *head* - concussion
- *neck* - stenosis; spondylosis
- *ankle*
- *surgeries/treatment* - decompression surgery

**Case Type:**

- *Railroad*
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Negligent Maintenance

**Case Name:** David Arizaga v. BNSF Railway Company, No. CIVDS1706591

**Date:** January 10, 2019

**Plaintiff(s):**

- David Arizaga (Male, 42 Years)

**Plaintiff Attorney(s):**

- Jarod A. Krissman; Krissman & Silver LLP; Long Beach CA for David Arizaga

**Plaintiff Expert(s):**

- Mack A. Quan Ph.D., P.E.; Mechanical; El Segundo, CA called by: Jarod A. Krissman
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Jarod A. Krissman
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Jarod A. Krissman

**Defendant(s):**

- BNSF Railway Co.

**Defense  
Attorney(s):**

- V. Alan Arshansky; Lewis Brisbois Bisgaard & Smith LLP; Los Angeles, CA for BNSF Railway Co.
- Anthony E. Sonnett; Lewis Brisbois Bisgaard & Smith LLP; Los Angeles, CA for BNSF Railway Co.

**Defendant  
Expert(s):**

- James G. Kent Ph.D.; Biomechanical; Westwood, CA called by: for V. Alan Arshansky, Anthony E. Sonnett
- Thomas Grogan M.D.; Orthopedic Surgery; Los Angeles, CA called by: for V. Alan Arshansky, Anthony E. Sonnett
- Michael W. Rogers P.E.; Mechanical; Naperville, IL called by: for V. Alan Arshansky, Anthony E. Sonnett

**Facts:**

On Sept. 2, 2015, plaintiff David Arizaga, 42, a maintenance of way worker for BNSF Railway Co., was in the process of unloading a guardrail from the flatbed of a grapple truck at BNSF's train yard in Newberry when an 83-pound rail rack fell from the truck and struck him. Arizaga claimed injuries to his head, right ankle and lower back.

Arizaga sued BNSF Railway Co., alleging that BNSF was negligent under the Federal Employers Liability Act (FELA).

Arizaga claimed that the rack lacked safety pins to prevent the inadvertent dislodgement of the rail rack, which struck him.

BNSF admitted that the rail rack lacked a safety pin at the time of the accident, but denied the accident happened the way Arizaga claimed it did.

Reconstruction of the accident was complicated by the fact that Arizaga lacked a clear recollection of the details of the accident. Additionally, the accident was not witnessed by any other person.

**Injury:**

Arizaga sustained a spiral fracture to his right ankle. He also claimed he suffered a concussion, and bulging lumbar discs with spondylosis and stenosis at the L4-5 and L5-S1 levels. Arizaga underwent two surgeries on his right ankle, and a two-level lumbar decompression surgery.

Arizaga claimed that he will require future medical care, including surgeries to his lower back. He also claimed a loss of earning capacity on the basis that he was allegedly medically unfit to return to work for the railroad.

Defense counsel agreed that Arizaga injured his right ankle, but disputed the rest of the alleged injuries. Counsel also argued that Arizaga could return to work for the railroad.

**Result:**

The jury found that BNSF's negligence was a cause of harm to Arizaga. It determined that Arizaga's damages totaled \$1,632,000.



**David Arizaga**

\$400,000 Personal Injury: Future Medical Cost

\$500,000 Personal Injury: FutureLostEarningsCapability

\$150,000 Personal Injury: Past Pain And Suffering

\$400,000 Personal Injury: Future Pain And Suffering

\$182,000 Personal Injury: past economic damages

**Trial Information:**

**Judge:** Brian S. McCarville

**Demand:** None

**Offer:** \$50,000

**Trial Length:** 4 weeks

**Trial  
Deliberations:** 2.5 days

**Jury Vote:** 12-0

**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

## Shooting due to decedent not following commands: defense

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Orange County

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

**Injury Type(s):**

- *other - death*

**Case Type:**

- *Wrongful Death*
- *Government - Police; Municipalities; Excessive Force*
- *Civil Rights - Police as Defendant*

**Case Name:** Christine Villegas, a minor, by and through her Guardian Ad Litem, Miguel Villegas; Ricezen Villegas, minor, by and through his Guardian Ad Litem, Miguel Villegas; Daniel Villegas, a minor, by and through his Guardian ad Litem, Miguel Villegas; Jocelyn Castillo Villegas; and Estate of Bernie Cervantes Villegas v. City of Anaheim, a California municipal entity; Anaheim Police Department, a California municipal entity; John Welter; Brett Heitmann; Kevin Voorhis; Matthew Ellis; and Nicholas Bennallack, No. 30-2017-00897184-CU-PO-CJC

**Date:** December 18, 2018

**Plaintiff(s):**

- Daniel Villegas
- Ricezen Villegas
- Kristine Villegas
- Jocelyn Castillo Villegas
- Estate of Bernie Cervantes Villegas (Male, 36 Years)

**Plaintiff Attorney(s):**

- Federico C. Sayre; Abir Cohen Treyzon Salo, LLP; Irvine CA for Estate of Bernie Cervantes Villegas, Kristine Villegas, Daniel Villegas, Ricezen Villegas, Jocelyn Castillo Villegas

**Plaintiff Expert (s):**

- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Federico C. Sayre
- Scott A. DeFoe; Police Practices & Procedures; Huntington Beach, CA called by: Federico C. Sayre

**Defendant(s):**

- John Welter
- Kevin Voorhis
- Matthew Ellis
- Brett Heitmann
- City of Anaheim
- Nicholas Bennallack
- Anaheim Police Department

**Defense Attorney(s):**

- Moses W. Johnson, IV; Office of the City Attorney; Anaheim, CA for City of Anaheim, John Welter, Brett Heitmann, Kevin Voorhis, Matthew Ellis, Nicholas Bennallack, Anaheim Police Department

**Defendant Expert(s):**

- Joe Callanan; Police Practices & Procedures; Long Beach, CA called by: for Moses W. Johnson, IV
- Richard B. Clark M.D.; Medical Toxicology; San Diego, CA called by: for Moses W. Johnson, IV

**Facts:**

On Jan. 7, 2012, plaintiffs' decedent Bernie Villegas, 36, a restaurant worker, was holding a BB gun at an apartment complex in Anaheim when he was confronted by police officers from the Anaheim Police Department. The officers were investigating a report of an armed man at the complex. Ultimately, officer Nicholas Bennallack fired his gun five times, striking Villegas, who died at the scene.

The decedent's wife, Jocelyn Villegas; the decedent's father, Miguel Villegas, acting as the guardian ad litem to the decedent's three minor children, Daniel Villegas, Kristine Villegas and Ricezen Villegas; and the decedent's estate sued Bennallack; the other officers at the scene, Brett Heitmann, Kevin Voorhis and Matthew Ellis; the officers' supervisor, Police Chief John Welter; and the officers' employers, the city of Anaheim and the Anaheim Police Department. The decedent's family alleged that the defendants' actions constituted excessive force in violation of the decedent's civil rights.

Defense counsel moved for summary judgment, and it was granted. The Villegas family appealed the judgment, and the Court of Appeals reversed the trial court's decision on the claim of negligence but denied the civil rights claim based on qualified immunity. The matter was then sent back for a new trial in state court.

Welter was ultimately dismissed from the case before the start of the jury trial.

Plaintiffs' counsel contended that the decedent was only holding a BB gun and that the barrel was pointing toward the sky when the officers arrived. Counsel also contended that the officers failed to maintain their cover for their safety and to assess the decedent's actions. Counsel argued that if the officers maintained cover, instead of exposing themselves, they would have seen that the decedent was not threatening the officers and that the decedent was raising his hands in response to the officers' commands.

Defense counsel contended that the officers identified themselves as police and ordered the decedent, at gunpoint, to put up his hands and drop the gun. Counsel contended that the decedent began to raise the gun, so Bennallack fired his weapon.

**Injury:** Bernie Villegas sustained gunshot wounds and died at the scene on Jan. 7, 2012. He was 36 years old. He was survived by his wife, Jocelyn Villegas; his father, Miguel Villegas; and three children, Kristine Villegas and Ricezen Villegas, who were both minors at the time of the incident, but were adults by the time of trial, and Daniel Villegas, who was still at minor by the time of trial.

The decedent's family sought recovery of wrongful death damages for the loss of Bernie Villegas.

**Result:** The jury rendered a defense verdict. It found that, under the totality of the circumstances, none of the defendant officers were negligent in their tactical conduct and decision-making before the use of deadly force on Bernie Villegas.

**Trial Information:**

**Judge:** James L. Crandall

**Demand:** \$2,000,000 (total, by all plaintiffs, during mandatory settlement conference)

**Offer:** None

**Trial Length:** 6 days

**Trial Deliberations:** 1 days

**Jury Vote:** 9-3

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

**Writer:** Priya Idiculla

## Bus driver failed to notice pedestrian prior to making turn: lawsuit

**Type:** Verdict-Plaintiff

**Amount:** \$6,298,237

**Actual Award:** \$4,093,854

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; scar and/or disfigurement, leg
- *other* - hardware implanted
- *epidermis* - degloving
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - skin graft; debridement
- *mental/psychological* - emotional distress

**Case Type:**

- *Motor Vehicle* - Crosswalk; Pedestrian; Right Turn
- *Emotional Distress* - Negligent Infliction of Emotional Distress

**Case Name:** Solia Enriquez and Jaime Enriquez v. Gonzalez Travel & Tours Inc. and Mike A. Cisneros, No. BC619159

**Date:** May 16, 2018

**Plaintiff(s):**

- Jaime Enriquez (Male, 25 Years)
- Solia Enriquez (Female, 68 Years)

**Plaintiff Attorney(s):**

- Adam K. Shea; Panish, Shea & Boyle LLP; Los Angeles CA for Solia Enriquez, Jaime Enriquez
- Patrick K. Gunning; Panish, Shea & Boyle LLP; Los Angeles CA for Solia Enriquez, Jaime Enriquez

**Plaintiff Expert  
(s):**

- P. Richard Emmanuel M.D.; Orthopedic Surgery; Culver City, CA called by: Adam K. Shea, Patrick K. Gunning
- Jan Roughan R.N., B.S.N.; Life Care Planning; Pasadena, CA called by: Adam K. Shea, Patrick K. Gunning
- Jon B. Landerville M.S., P.E.; Accident Reconstruction; Torrance, CA called by: Adam K. Shea, Patrick K. Gunning
- John R. Brault M.S.; Biomechanical; Mission Viejo, CA called by: Adam K. Shea, Patrick K. Gunning
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Adam K. Shea, Patrick K. Gunning
- Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Adam K. Shea, Patrick K. Gunning
- Michel F. Brones M.D.; Plastic Surgery/Reconstructive Surgery; Los Angeles, CA called by: Adam K. Shea, Patrick K. Gunning
- Sanjog S. Pangarkar M.D.; Pain Management; Los Angeles, CA called by: Adam K. Shea, Patrick K. Gunning
- Augustine "Gus" Zemba; Bus Regulations & Standards; San Diego, CA called by: Adam K. Shea, Patrick K. Gunning

**Defendant(s):**

- Mike A. Cisneros
- Gonzalez Travel & Tours Inc.

**Defense  
Attorney(s):**

- Mary R. Fersch; Daniels, Fine, Israel, Schonbuch & Lebovits, LLP; Los Angeles, CA for Gonzalez Travel & Tours Inc., Mike A. Cisneros
- Michael Schonbuch; Daniels, Fine, Israel, Schonbuch & Lebovits, LLP; Los Angeles, CA for Gonzalez Travel & Tours Inc., Mike A. Cisneros

**Defendant  
Expert(s):**

- Tack C. Lam M.D., Ph.D.; Biomechanical; Los Angeles, CA called by: for Mary R. Fersch, Michael Schonbuch
- Alvin Lowi, III P.E.; Accident Reconstruction; El Segundo, CA called by: for Mary R. Fersch, Michael Schonbuch
- David A. Krauss Ph.D.; Ergonomics/Human Factors; Los Angeles, CA called by: for Mary R. Fersch, Michael Schonbuch
- Jaime S. Schwartz M.D.; Plastic Surgery/Reconstructive Surgery; Beverly Hills, CA called by: for Mary R. Fersch, Michael Schonbuch
- Rhonda S. Renteria R.N.; Life Care Planning; Anaheim, CA called by: for Mary R. Fersch, Michael Schonbuch
- Rhonda S. Renteria B.S.N.; Life Care Planning; Corona, CA called by: for Mary R. Fersch, Michael Schonbuch
- Samuel T. Dulin, Sr.; Bus Regulations & Standards; Lancaster, CA called by: for Mary R. Fersch, Michael Schonbuch
- Heather H. Xitco M.B.A., C.P.A., C.F.F.; Economics; San Diego, CA called by: for Mary R. Fersch, Michael Schonbuch
- Matthew D. Manjarrez P.E.; Traffic; Laguna Hills, CA called by: for Mary R. Fersch, Michael Schonbuch
- Jonathan Nissanoff M.D.; Orthopedic Surgery; Los Angeles, CA called by: for Mary R. Fersch, Michael Schonbuch

**Facts:**

On Aug. 14, 2015, plaintiff Solia Enriquez, 68, a retiree, was at the corner of North Boyle Avenue and East Cesar E. Chavez Avenue, in Los Angeles, when she entered a crosswalk while there was a flashing "Don't Walk" signal. After taking a few steps into the crosswalk, the right, rear tires of a tour bus, which was operated by Mike Cisneros and making a right turn, ran over her lower legs. Her son, plaintiff Jaime Enriquez, who was driving a vehicle that she had previously exited from, was behind the bus and witnessed the accident. Thus, he claimed serious emotional distress as a result of witnessing the incident.

Ms. and Mr. Enriquez sued Cisneros and Cisneros' employer, Gonzalez Travel & Tours Inc., which also owned the bus. Ms. and Mr. Enriquez alleged that Cisneros was negligent in the operation of the bus and that Gonzalez Travel & Tours was liable for Cisneros' actions.

Ms. Enriquez claimed that she took several steps into the crosswalk when she was struck by the turning tour bus, causing her to fall to the ground. She alleged that once she was on the ground, the right, rear tires of the bus ran over her lower legs.

Plaintiffs' counsel contended that Cisneros' turn was made using several inappropriate techniques, such as failing to align his bus between 18 and 36 inches from the right hand curb before beginning his turn and failing to use proper looking techniques. Counsel argued that if Cisneros had used the proper techniques, he would have seen Ms. Enriquez in the crosswalk and been able to take action to ensure her safety.

Cisneros testified that he had an unobstructed view of the entire crosswalk from end to end before he began his right turn and that he began the turn safely.

Defense counsel contended that Ms. Enriquez exited her son's vehicle because they were stuck behind Cisneros' bus, which was waiting to make a turn, and that she hurried into the crosswalk because she was worried about being late for a doctor's appointment. Counsel also contended that when Ms. Enriquez reached the corner of the intersection, there was seven seconds left on a flashing "Don't Walk" signal and that Ms. Enriquez paused to allow several pedestrians to pass onto the sidewalk before she entered the crosswalk. Thus, defense counsel argued that Ms. Enriquez, alone, caused the incident by illegally and unsafely entering the crosswalk, in violation of California Vehicle Code § 21456, while the already turning bus was close enough to be an immediate hazard. Counsel further contended that, according to multiple witnesses, Ms. Enriquez fell in the crosswalk without being struck by the bus and that Ms. Enriquez changed her story about how the accident happened multiple times. Thus, defense counsel argued that Ms. Enriquez's testimony should be disregarded, and requested a defense verdict and an award of zero to the plaintiffs.

Defense counsel noted that, during closing arguments, plaintiffs' counsel conceded that Ms. Enriquez was negligent and that the jury should determine her percentage of fault for causing the accident to be 20 percent because Ms. Enriquez stepped into the intersection against a "Don't Walk" signal.

## **Injury:**

Ms. Enriquez sustained open fractures of the tibia and fibula in each leg, as well as degloving injuries to both legs. She was immediately transported to Los Angeles County +USC Medical Center, located near the accident scene. Ms. Enriquez then underwent orthopedic surgeries, including fixation of the tibia and fibula fractures, multiple debridement procedures, and skin grafting surgeries that included harvesting tissue and muscle from other parts of her body. She also claimed that the crushing injuries from the bus tires led to the development of complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition. As a result, Ms. Enriquez underwent implantation of a dorsal root ganglion neurostimulator device to generate electrical pulses to her nerves as a treatment for her CRPS.

Ms. Enriquez claimed that before the incident, she was a vibrant and independent woman, despite having a medical history of diabetes, cancer, and other significant pre-existing conditions that required in-home care, which was provided by her son. As a result of the bus injuring her legs, Ms. Enriquez was forced to undergo several surgeries, and she claimed she will require additional pain management care, surgeries, and in-home care in the future. She also claimed that despite the implantation of the neurostimulator, she continues to experience pain 24 hours per day, requires the use of a cane to walk and can only walk for 15 minutes at a time. In addition, Ms. Enriquez claimed that her injuries have left her with scarring on her legs, as well as additional scarring to other parts of her body where tissue and muscle were harvested as part of the skin grafting procedures.

The plaintiffs' medical experts opined that Ms. Enriquez would require \$5,188,819 in future medical care costs, of which \$2,888,536 was allocated for a 24-hour personal assistant and a driver for Ms. Enriquez. The remaining amount of future medical care costs would allegedly be for orthopedic and plastic surgeries due to the disfiguring scarring on Ms. Enriquez's legs.

Mr. Enriquez, Ms. Enriquez's son, claimed that he witnessed his mother's injury as it was happening, which caused him to suffer from emotional distress. As a result, he sought recovery of damages based on the defendants' alleged negligent infliction of emotional distress.

Thus, plaintiffs' counsel asked the jury to return a total verdict of \$19,988,000, including \$5.4 million in past non-economic damages and \$8.5 million in future non-economic damages for the plaintiffs' pain and suffering.

The defense's medical experts opined that while Ms. Enriquez would need some future treatment for the management of her pain, additional orthopedic or plastic surgeries should not be performed due to the high risk of losing the skin grafted tissue and, ultimately, Ms. Enriquez's legs.

In regard to Mr. Enriquez's claim, defense counsel noted that Mr. Enriquez did not seek treatment with any therapist, psychologist or psychiatrist for his alleged emotional distress, and did not require any prescription medication to treat his alleged condition.



**Result:**

The jury found that Cisneros was negligent and that his negligence was a substantial factor in causing Enriquez harm. It also found that Ms. Enriquez was negligent and that her negligence was a substantial factor in causing her own injuries. Thus, the jury determined that Cisneros was 65 percent at fault and that Ms. Enriquez was 35 percent at fault for the accident. It also determined that the plaintiffs' damages totaled \$6,298,237, of which Ms. Enriquez was awarded the full amount, as the jury found that Mr. Enriquez did not suffer severe emotional distress and awarded him \$0.

After apportionment, Ms. Enriquez should recover \$4,093,854.05.

**Solia Enriquez**

\$898,237 Personal Injury: Past Medical Cost

\$1,400,000 Personal Injury: Future Medical Cost

\$2,000,000 Personal Injury: past general damages

\$2,000,000 Personal Injury: future general damages

**Trial Information:**

**Judge:** Victor E. Chavez

**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