



Male teen claimed drug caused enlarged breasts

Type: Verdict-Plaintiff

Amount: \$8,001,750,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):

- *chest* - gynecomastia
- *other* - scar and/or disfigurement
- *mental/psychological* - emotional distress

Case Type:

- *Products Liability* - Pharmaceutical; Failure to Warn; Marketing Defect; Strict Liability

Case Name: Nicholas Murray v. Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C., Excerpta Medica Inc. and Elsevier Inc., No. 130401990

Date: October 08, 2019

Plaintiff(s):

- Nicholas Murray (Male, 13 Years)

Plaintiff Attorney(s):

- Thomas R. Kline; Kline & Specter, PC; Philadelphia PA for Nicholas Murray
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Nicholas Murray
- Cory D. Itkin; Arnold & Itkin LLP; Houston TX for Nicholas Murray
- Samantha R. Mertz; Sheller, P.C.; Philadelphia PA for Nicholas Murray
- Stephen A. Sheller; Sheller, P.C.; Philadelphia PA for Nicholas Murray
- Christopher A. Gomez; Kline & Specter, PC; Philadelphia PA for Nicholas Murray

Plaintiff Expert(s):

- David A. Kessler M.D.; FDA Regulatory Affairs; San Francisco, CA called by: Thomas R. Kline, Jason A. Itkin, Cory D. Itkin, Samantha R. Mertz, Stephen A. Sheller, Christopher A. Gomez
- Francesco De Luca M.D.; Pediatric Endocrinology; Philadelphia, PA called by: Thomas R. Kline, Jason A. Itkin, Cory D. Itkin, Samantha R. Mertz, Stephen A. Sheller, Christopher A. Gomez

Defendant(s):

- Elsevier Inc.
- Excerpta Medica Inc.
- Johnson & Johnson Co.
- Janssen Pharmaceuticals Inc.
- Johnson & Johnson Pharmaceutical Research and Development L.L.C.

Defense Attorney(s):

- John D. Winter; Patterson Belknap Webb & Tyler LLP; New York, NY for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.
- William V. Essig; Drinker Biddle & Reath LLP; Chicago, IL for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.
- Tonia Ann Patterson; Drinker Biddle & Reath LLP; Philadelphia, PA for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.
- None reported for Excerpta Medica Inc., Elsevier Inc.
- Ethel J. Johnson; Morgan, Lewis & Bockius LLP; Houston, TX for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.

Defendant Expert(s):

- Alan D. Rogol M.D.; Pediatric Endocrinology; Charlottesville, VA called by: for John D. Winter, William V. Essig, Tonia Ann Patterson, Ethel J. Johnson
- Janet B. Arrowsmith M.D.; FDA New Drug Review/Approval Procedures; Santa Fe, NM called by: for John D. Winter, William V. Essig, Tonia Ann Patterson, Ethel J. Johnson
- Nadine Schwartz M.D.; Adolescent Psychiatry; Philadelphia, PA called by: for John D. Winter, William V. Essig, Tonia Ann Patterson, Ethel J. Johnson

Facts:

In 2007, plaintiff Nicholas Murray, 13, of Federalsburg, Md., began developing excessive breast tissue. In 2014, he was diagnosed with gynecomastia, otherwise known as swollen male breast tissue. Murray attributed the condition to Risperdal, a prescribed antipsychotic drug that he had been taking.

Murray sued Risperdal's manufacturers, Janssen Pharmaceuticals Inc. and Johnson & Johnson Co., and two companies that printed the warning labels that accompanied the medication's packaging, Excerpta Medica Inc. and Elsevier Inc. The lawsuit alleged that the defendants negligently failed to provide a warning that adequately disclosed the medication's side effects.

Excerpta Medica and Elsevier were ultimately dismissed. The matter proceeded against Janssen Pharmaceuticals and Johnson & Johnson.

Since 2003, Murray had been taking Risperdal to treat, among other conditions, insomnia,

autism spectrum disorder and attention deficit hyperactivity disorder. Murray's mother assumed that her son's enlarged breasts were caused by weight gain, which was a side effect of the drug. In 2008, with Risperdal no longer effective, and with concern about Murray's weight gain, a doctor took Murray off the drug. However, despite discontinuing Risperdal and losing weight, Murray continued to have enlarged breast tissue. After news reports detailed the connection between Risperdal and gynecomastia, it was suspected that Murray suffered from the condition. This was confirmed in 2014. Risperdal continues to remain on the market.

During the lawsuit's compensatory-damages phase, Murray's counsel presented internal data from Janssen that demonstrated that the company, through studies dating to 2002, knew of an association between Risperdal and gynecomastia. Despite having this information, Janssen did not provide it on its labels until 2006. Murray's counsel criticized the label's language: "In clinical trials of 1,885 children and adolescents with autistic disorder or other psychiatric disorders treated with Risperdal ... gynecomastia was reported in 2.3 percent of Risperdal-treated patients." Counsel contended that more direct, stronger language should have been used to warn users of gynecomastia. Murray's counsel suggested that Janssen was looking to promote Risperdal off-label to as many children as possible, and it was able to convince the Food and Drug Administration to approve the drug for use in autistic children in 2006. Murray's counsel claimed that, knowing the drug's side effect of breast-tissue growth, Janssen misrepresented Risperdal to the FDA and to the medical community by withholding evidence that there was a statistically significant association between Risperdal and gynecomastia.

Murray's expert in FDA regulatory affairs opined that Janssen, based on its data, should have warned earlier of the causal link between Risperdal and gynecomastia. The expert further criticized Janssen for its "off-label" marketing. According to the expert, Risperdal was approved by the FDA for only the treatment of adults with schizophrenia, but physicians were allowed to prescribe the drug off-label to children. However, Janssen was prohibited from marketing Risperdal to children until the FDA allowed it in 2006. The expert faulted Janssen for marketing and promoting the drug to children before 2006 and for not warning about the association between Risperdal and gynecomastia once it learned about this association.

The defense maintained that Janssen properly and sufficiently warned about the risks of gynecomastia relating to Risperdal use, in accordance with FDA regulations. Moreover, Janssen's marketing efforts were based on the intention to develop a label for children with autism, the defense contended.

Janssen's expert in FDA regulatory affairs opined that the drug manufacturer, despite its internal data from 2002, was not legally permitted to warn of any risks associated with gynecomastia prior to 2006, since the FDA did not approve the drug's marketing to children until 2006. The defense also argued that several studies did not show as significant an association between Risperdal usage and gynecomastia as claimed by Murray's counsel.

The defense's expert in pediatric psychiatry testified about the risk-benefit analysis associated with every drug and how prescribing physicians have to figure out whether the benefits outweigh the risks. Given Murray's medical situation, Risperdal's benefits outweighed its risks, the expert concluded. The defense's expert in pediatric endocrinology testified there was no evidence that Murray had gynecomastia and that, in the event that

he did have gynecomastia, there was no evidence that Risperdal caused his condition.

Injury:

Murray claimed that he suffers gynecomastia. The only treatment available is a mastectomy, but because of Murray's mental condition, it is not a viable option. Otherwise, gynecomastia is a permanent condition, according to Murray's counsel.

During the lawsuit's trial for compensatory damages, Murray's expert in pediatric endocrinology causally related Murray's gynecomastia to his five-year usage of Risperdal.

Murray's mother testified about her son's condition and how it made him feel self-conscious. Murray sought damages for past and future pain, suffering, disfigurement and emotional distress.

During the trial for punitive damages, Murray's expert in FDA regulatory affairs testified that Janssen's conduct was in reckless disregard of the safety of children who, like Murray, might be prescribed Risperdal. In 2003 and later, Janssen knowingly failed to inform physicians of the specific risks associated with the drug, the expert contended

According to the expert, Janssen dramatically understated Risperdal's risks on the label, and in its communications with the FDA, physicians and the public. Based on internal Janssen documents and clinical trial data, the expert testified that, by 2002, Janssen knew that Risperdal was associated with higher levels of prolactin, a breast-tissue hormone, than other antipsychotics were; with prolactin elevations even at the recommended low doses of Risperdal; with "frequent" incidences of gynecomastia under Janssen's own definitions; and with four to five cases of gynecomastia in every 100 patients. The expert testified that the Risperdal label did not reflect these risks even though Janssen had aggressively marketed Risperdal for off-label treatment of conditions in children and adolescents, and even though Risperdal had become widely prescribed for these unapproved populations.

During the trial for punitive damages, it was stipulated that the combined net worth of Johnson & Johnson and Janssen was approximately \$70 billion.

The defense's expert in pediatric endocrinology, during the suit's compensatory-damages phase, opined that gynecomastia can be caused by a number of factors, including puberty, genetics and other drugs. He also testified that if Murray has gynecomastia, Risperdal did not cause the condition, since he stopped taking the drug in 2008 and was not diagnosed until six years later, which would have been more than enough time for the drug to end its effects on the body, the expert concluded.

The defense maintained that Murray was not entitled to damages.

Result: During the trial for compensatory damages in 2015, before Judge Victor DiNubile Jr., a jury found that Janssen negligently failed to adequately warn physicians and health care providers of the extent of the risk of gynecomastia stemming from the use of Risperdal. The jurors determined that Janssen's negligence was a substantial factor in bringing about Murray's gynecomastia. Murray was determined to receive \$1.75 million.

Following the trial, the case was remanded for a separate trial on punitive damages, after the Pennsylvania Superior Court ruled that a plaintiff's state should apply. In this case, since Murray was from Maryland, Maryland law applied, allowing for Murray to pursue punitive damages.

During the trial for the punitive damages phase in 2019, before Judge Kenneth Powell Jr., Murray was determined to receive \$8 billion, for a total verdict of \$8,001,750,000.

Trial Information:

Judge: Victor J. DiNubile Jr., Kenneth J. Powell Jr.

Trial Length: 4 weeks

Trial Deliberations: 7.5 hours

Jury Vote: 10-2 (punitive damages)

Post Trial: The court reduced the \$1.75 million in compensatory damages to \$680,000, based on an application of a Maryland damages cap. Following the punitive-damages phase of trial, the court granted the defense's remittitur motion, reducing the amount for punitive damages to \$6.8 million.

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Counsel of Janssen and Johnson & Johnson did not respond to the reporter's phone calls, and the remaining defendants' counsel were not asked to contribute.

Writer Aaron Jenkins

Plaintiffs: Improperly set crane led to daughter's death

Type: Verdict-Mixed

Amount: \$860,012,006

State: Texas

Venue: Dallas County

Court: Dallas County Court at Law No. 2, TX

Injury Type(s):

- *other - death*

Case Type:

- *Wrongful Death*
- *Construction - Accidents; Falling Object*
- *Workplace - Workplace Safety*

Case Name: Mason Flores, Antonio Griffin, Tyra Lee, Tonian Marshall, and Tierney Rattler, Individually, And As Next Friend of [redacted] v. Bigge Crane and Rigging, Greystar Development & Construction, LP, Gabriella Tower, LLC, Gabriella Nationwide, LLC, and Meeks + Partners, Co., No. CC-19-04006-B

Date: April 27, 2023

Plaintiff(s):

- Michele Williams, (Female, 0 Years)
- Patrick Kirkland, (Male, 56 Years)
- Estate of Kiersten Smith, (Female, 29 Years)

Plaintiff Attorney(s):

- Jason Itkin; Arnold & Itkin LLP; Houston TX for Michele Williams,, Estate of Kiersten Smith
- Cory Itkin; Arnold & Itkin LLP; Houston TX for Michele Williams,, Estate of Kiersten Smith
- Michael P. Lyons; Lyons & Simmons, LLP; Dallas TX for Michele Williams,, Estate of Kiersten Smith
- Jonathon C. Clark; Glasheen, Valles & Inderman; Austin TX for Patrick Kirkland

Plaintiff Expert (s):

- Benjamin Gibson; Workplace Safety; San Antonio, TX called by: Jason Itkin, Cory Itkin, Michael P. Lyons, Jonathon C. Clark

Defendant(s):

- Gabriella Tower, LLC
- Meeks + Partners Co.
- Bigge Crane and Rigging
- Gabriella Nationwide, LLC
- Greystar Development & Construction, L.P.
- Greystar Development & Construction, L.P.--Gabriella Tower Contractor Series

**Defense
Attorney(s):**

- Dana Alden Fox; Lewis Brisbois Bisgaard & Smith LLP; Los Angeles, CA for Greystar Development & Construction, L.P., Gabriella Tower, LLC, Gabriella Nationwide, LLC, Greystar Development & Construction, L.P.--Gabriella Tower Contractor Series
- Christopher White; Lewis Brisbois Bisgaard & Smith LLP; Dallas, TX for Greystar Development & Construction, L.P., Gabriella Tower, LLC, Gabriella Nationwide, LLC, Greystar Development & Construction, L.P.--Gabriella Tower Contractor Series
- Katherine Compton; Lewis Brisbois Bisgaard & Smith LLP; Dallas, TX for Greystar Development & Construction, L.P., Gabriella Tower, LLC, Gabriella Nationwide, LLC, Greystar Development & Construction, L.P.--Gabriella Tower Contractor Series
- Darrell L. Barger; Hartline Barger LLP; Corpus Christi, TX for Bigge Crane and Rigging
- Clayton J. Callen; Bowman and Brooke LLP; Austin, TX for Bigge Crane and Rigging

**Defendant
Expert(s):**

- Jacob Bice Ph.D., P.E.; Structural; Dallas, TX called by: for Dana Alden Fox, Christopher White, Katherine Compton

Facts:

On June 9, 2019, plaintiffs' decedent Kiersten Smith, 29, was a resident of Elan City Lights, an apartment building in Dallas. During heavy winds, a construction tower crane in an adjacent block toppled over onto Smith's building, causing several floors to collapse. Many people were injured, and Smith was killed. She was survived by her parents, plaintiff Michele Williams and plaintiff James Kirkwood. The crane was owned and operated by Bigge Crane and Rigging Co., and the construction site was owned by Gabriella Tower, LLC., a subsidiary of Greystar Development and Construction L.P. The general contractor was Greystar Development and Construction L.P./Gabriella Tower Contractor Series.

Smith's parents sued the Greystar/Gabriella entities and Bigge. The lawsuit alleged that the companies were negligent. However, at trial, the plaintiffs sought liability findings against the Greystar/Gabriella entities only. Also, architecture firm Meeks + Partners Co. was originally a defendant, but was no longer in the case at the time of trial.

The case was originally filed by other plaintiffs, and many other cases were consolidated into it. The claims of Smith's parents were the first ones to go to trial.

Plaintiffs' counsel argued that the Greystar/Gabriella defendants negligently failed to set the crane, which was more than 200 feet tall, to "weathervane," or turned so that it pointed into the wind.

Plaintiffs' counsel sought comparative responsibility of 60 percent on Greystar Development & Construction LP; 30 percent on Greystar Development & Construction LP/Gabriella Tower Contractor Series; and 10 percent on Gabriella Tower, LLC. Plaintiffs' counsel sought a no-negligence finding as to Bigge.

Bigge argued that the Greystar/Gabriella entities alone were responsible; that Bigge's crane operator Robert Hilty was a borrowed servant of Greystar at all relevant times; and that Bigge did not retain any control over Hilty's work.

The Greystar/Gabriella entities denied liability. They further argued that Bigge paid Hilty's salary and was responsible for providing a qualified operator.

Injury:

Plaintiffs' decedent, Kiersten Smith, 29, was killed. She was survived by her parents, plaintiff Michele Williams and plaintiff James Kirkwood.

Williams sought \$560 million for actual damages, consisting of past and future loss of companionship and society and past and future mental anguish.

Kirkwood sought \$140 million for actual damages, consisting of the same elements.

Against the Greystar/Gabriella entities only, the plaintiffs also sought findings of gross negligence and punitive damages. Plaintiffs' counsel asked for \$12,006 in punitives, because Smith's apartment number was 12006.

The jury charge also included a question on Smith's pain and mental anguish, but plaintiffs' counsel asked the jury not to award anything for that element.

Result:

The jury found the Greystar/Gabriella entities liable, but not Bigge.

The jury found negligence and comparative responsibility of 55 percent on Greystar Development & Construction L.P.; 35 percent on Greystar Development & Construction L.P./Gabriella Tower Contractor Series; and 10 percent on Gabriella Tower, LLC.

The jury also found gross negligence as to Greystar Development & Construction L.P. and Greystar Development & Construction L.P./Gabriella Tower Contractor Series, but not Gabriella Tower, LLC.

The jury determined that the plaintiffs damages totaled \$860,012,006, including \$300 million in punitive damages against Greystar Development & Construction L.P. and \$200 million in punitive damages against Greystar Development & Construction L.P./Gabriella Tower Contractor Series.

The findings of negligence, gross negligence and punitive damages were unanimous.

The jury apportioned 80 percent of the punitives to the estate and 10 percent to each of the parents.

The jury also found that, on the occasion in question, the three Greystar entities, including Gabriella Towers, were engaged in a joint enterprise with each other.

In addition, the jury found that Hilty was acting as an employee of Greystar Development & Construction, LP/Gabriella Tower Contractor Series.

The jury did not find that Bigge's negligence, if any, proximately caused Smith's death. Thus, the plaintiffs took nothing against Bigge.

Estate of Kiersten Smith

\$ 160,000,000 80% of punitives against GDC--Gabriella Tower Contractor Series

\$ 240,000,000 80% of punitives against GDC

\$ 400,000,000 Plaintiff's Total Award

James Kirkwood

\$ 3,000,000 Past Loss of Society Companion

\$ 6,000,000 Future Loss of Society Companion

\$ 7,000,000 Past Mental Anguish

\$ 4,000,000 Future Mental Anguish

\$ 20,000,000 10% of punitives against GDC--Gabriella Tower Contractor Series

\$ 30,000,000 10% percent of punitives against GDC

\$ 70,000,000 Plaintiff's Total Award

Michele Williams

\$ 50,000,000 Past Loss of Society Companion

\$ 100,000,000 Future Loss of Society Companion

\$ 140,000,000 Past Mental Anguish

\$ 50,012,006 Future Mental Anguish

\$ 20,000,000 10% of punitives against GDC--Gabriella Tower Contractor Series

\$ 30,000,000 10% of punitives against GDC

\$ 390,012,006 Plaintiff's Total Award

Trial Information:

Judge: Melissa J. Bellan

Offer: \$2.5 million (for Kirkwood)

Trial Length: 2 weeks

**Trial
Deliberations:** 7 hours

Jury Vote: 5-1

**Jury
Composition:** 4 male, 2 female

Post Trial: The plaintiffs moved for judgment and severance.

**Editor's
Comment:** This report includes information gleaned from court documents and an article published by ALM website law.com, as well as information provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer John Schneider

Plaintiff claimed company's negligence led to husband's death

Type: Verdict-Plaintiff

Amount: \$222,000,000

State: Texas

Venue: Fort Bend County

Court: Fort Bend County District Court, 268th, TX

Injury Type(s):

- *brain - coma*
- *burns*
- *other - death*

Case Type:

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

Case Name: Kelli Most, Individually and as Personal Representative of the Estate of Jesse Henson v. Team Industrial Services, Inc., No. 18-DCV-256883

Date: June 01, 2021

Plaintiff(s):

- Carol Anno, (, 0 Years)
- Kelli Most, (, 0 Years)
- Dorian Henson, (, 0 Years)
- Cecilia Henson, (, 0 Years)
- Tracy Dunnaway, (, 0 Years)
- Bailey Burchett, (, 0 Years)
- Dalton Burchett, (, 0 Years)
- Estate of Jesse Henson, (Male, 45 Years)
- Estate of Damien Burchett, (, 0 Years)

**Plaintiff
Attorney(s):**

- Jason Itkin; Arnold & Itkin LLP; Houston TX for Estate of Jesse Henson,, Kelli Most
- Cory Itkin; Arnold & Itkin LLP; Houston TX for Estate of Jesse Henson,, Kelli Most
- S. Scott West; The West Law Firm; Sugar Land TX for Estate of Jesse Henson,, Kelli Most
- John Christopher Ramsey; Ramsey Law Group; for Cecilia Henson,, Dorian Henson
- Nathan L. Karlin; Pottroff & Karlin, LLC; for Carol Anno,, Tracy Dunnaway
- Daniel D. Horowitz III; Law Office of Daniel D. Horowitz III P.C.; for Carol Anno,, Tracy Dunnaway
- Michael Rader; Bartimus Frickleton Robertson Rader; for Bailey Burchett,, Dalton Burchett,, Estate of Damien Burchett
- Michelle Marvel; Bartimus Frickleton Robertson Rader; for Bailey Burchett,, Dalton Burchett,, Estate of Damien Burchett
- Lance Lubel; Lubel Voyles LLP; for Bailey Burchett,, Dalton Burchett,, Estate of Damien Burchett
- Adam Voyles; Lubel Voyles LLP; for Bailey Burchett,, Dalton Burchett,, Estate of Damien Burchett

**Plaintiff Expert
(s):**

- Sid Cammaresi; Valves/Valve Stems; Westfield, IN called by: Jason Itkin, Cory Itkin, S. Scott West
- Eric L. Van Iderstine P.E.; Mechanical; Pensacola, FL called by: Jason Itkin, Cory Itkin, S. Scott West
- Darrell Henderson M.D.; Plastic Surgery/Reconstructive Surgery; Lafayette, LA called by: Jason Itkin, Cory Itkin, S. Scott West

Defendant(s):

- Siemens Corp.
- Emerson Electric Co.
- Team Industrial Services Inc.
- Emerson Process Management Valve Automation Inc.
- Emerson Process Management Regulator Technologies Inc.

**Defense
Attorney(s):**

- Andrew Z. Schreck; Downs & Stanford, P.C.; Sugar Land, TX for Team Industrial Services Inc.
- Eileen O'Neill; Ware, Jackson, Lee, O'Neill, Smith & Barrow, LLP; Houston, TX for Team Industrial Services Inc.
- S. Paul Smith; Ware, Jackson, Lee, O'Neill, Smith & Barrow, LLP for Team Industrial Services Inc.
- W. Jeffrey Muskopf; SmithAmundsen for Team Industrial Services Inc.
- None reported for Emerson Electric Co., Emerson Process Management Regulator Technologies Inc., Emerson Process Management Valve Automation Inc., Siemens Corp.

**Defendant
Expert(s):**

- Kurt Vandervoort; Mechanical; Houston, TX called by: for Andrew Z. Schreck, Eileen O'Neill, S. Paul Smith, W. Jeffrey Muskopf
- William Hickerson M.D.; Burn Medicine; Memphis, TN called by: for Andrew Z. Schreck, Eileen O'Neill, S. Paul Smith, W. Jeffrey Muskopf
- Christopher Cassino; Power Plants; Glen Burnie, MD called by: for Andrew Z. Schreck, Eileen O'Neill, S. Paul Smith, W. Jeffrey Muskopf

Facts:

On June 3, 2018, plaintiffs' decedent Jesse Henson, 45, a plant operator, was working at a power plant in St. Mary's, Kansas. During a three-month scheduled maintenance outage at one of the plant's units, a discharge pipe disconnected from a valve, resulting in steam escaping into multiple floors of the plant. Henson and a co-worker, Damien Burchett, entered an elevator and traveled to one of the affected floors. When the elevator's doors opened, the men were instantly engulfed in superheated steam that had leaked from the valve. They suffered fatal injuries. Two months before the incident, Team Industrial Services Inc., a company headquartered in Fort Bend County, had inspected and repaired multiple valves in the unit, including the valve attached to the discharge pipe that disconnected.

Henson's wife sued Team. She initially sued in Harris County, but after the case was removed to federal court, she dismissed it and refiled in Fort Bend County. The lawsuit alleged that Team's inspection and repair work were faulty and negligent and that, as a result, the valve failed and caused the pipe to disconnect.

Henson's children later joined the suit, but settled all their claims before trial for an undisclosed amount.

The plaintiffs also sued Seimens Corp., the maker of a turbine, but dismissed Seimens after discovery showed that the turbine had nothing to do with the incident. The plaintiffs also sued Emerson Electric Co. and various related entities, which allegedly designed and manufactured the valve in question; however, the plaintiffs dismissed them after discovery showed no problem with the design or manufacture of the valve.

Burchett's children, mother and putative wife intervened in the case, but settled all their claims shortly before opening statements for an undisclosed amount.

Team denied negligence and argued the incident was caused by the negligence of Henson, Burchett and the plant owner, which was designated as a responsible third party. Specifically, the defense argued that the plant owner did not have appropriate safety policies, equipment or training for inspecting steam leaks; that it had a lax safety environment generally and with respect to using proper personal protective equipment; and that it failed to replace the valves as recommended by Team or have Team onsite to adjust the valves at the restart of the unit. Team also argued that Henson and Burchett were negligent in taking an elevator instead of outside stairs to investigate the leak.

Injury:

Henson sustained second-degree burns over 25 percent of his body and third-degree burns over 75 percent of his body. He was taken by helicopter ambulance to a burn unit, where a coma was induced. Doctors performed escharotomies, but Henson died about 12 hours after arriving at the burn unit.

The estate sought damages for Henson's physical pain and, separately, mental anguish.

Henson and plaintiff Kelli Most, 50, had been married for seven years and enjoyed outdoor activities together, such as hiking and biking. She sought damages for her past and future loss of companionship and society and past and future mental anguish.

Plaintiffs' counsel suggested a total award of \$233 million.

Defense counsel argued that reasonable damages would be \$3 million.

Result:

The jury found that the negligence of Team Industrial and the plant owner, but not the negligence, if any, of Henson himself, proximately caused the incident. It found comparative responsibility of 90 percent on Team Industrial and 10 percent on the plant owner, and it awarded the plaintiffs a total of \$222 million.

Tracy Dunnaway

Estate of Damien Burchett

Dorian Henson

Cecilia Henson

Dalton Burchett

Carol Anno

Bailey Burchett

Kelli Most

\$ 25,000,000 Past Loss of Society/Companion

\$ 40,000,000 Future Loss of Society Companion

\$ 45,000,000 Past Mental Anguish

\$ 45,000,000 Future Mental Anguish

\$ 165,000,000 Plaintiff's Total Award

Estate of Jesse Henson

\$ 27,000,000 physical pain

\$ 30,000,000 mental anguish

\$ 57,000,000 Plaintiff's Total Award

Trial Information:

Judge: O'Neil Williams

Trial Length: 16 days

**Trial
Deliberations:** 1.5 days

Jury Vote: 10-1

**Jury
Composition:** 5 male, 6 female

**Editor's
Comment:** This report is based on information that was provided by Most's/Henson's, Team Industrial's and the Burchett parties' counsel.

Writer John Schneider

Roundup weed killer caused cancer, plaintiff claimed

Type: Verdict-Plaintiff

Amount: \$175,000,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):

- *neck*
- *other* - tumor; fatigue
- *cancer* - chemotherapy
- *mental/psychological* - emotional distress
- *gastrointestinal/digestive* - gastrointestinal complications; nausea

Case Type:

- *Products Liability* - Design Defect; Failure to Warn; Strict Liability; Breach of Warranty; Household Products

Case Name: Ernest Caranci and Carmela Caranci v. Monsanto Company, Penn Hardware, Inc. and Penn Hardware Two, Inc., No. 210602213

Date: October 27, 2023

Plaintiff(s):

- Ernest Caranci , (Male, 70 Years)
- Carmela Caranci , (Female, 0 Years)

Plaintiff Attorney(s):

- Thomas R. Kline; Kline & Specter; Philadelphia PA for Ernest Caranci ,, Carmela Caranci
- Jason Itkin; Arnold & Itkin; Houston TX for Ernest Caranci ,, Carmela Caranci
- Tobi L. Millrood; Kline & Specter; Philadelphia PA for Ernest Caranci ,, Carmela Caranci
- Melissa A. Merk; Kline & Specter; Philadelphia PA for Ernest Caranci ,, Carmela Caranci

Plaintiff Expert (s):

- Timur S. Durrani M.D.; Occupational Medicine; Los Angeles, CA called by: Thomas R. Kline, Jason Itkin, Tobi L. Millrood, Melissa A. Merk

Defendant(s):

- Monsanto Company
- Penn Hardware, Inc.
- Penn Hardware Two, Inc.

Defense Attorney(s):

- Manuel F. Cachán; Skadden, Arps, Slate, Meagher & Flom LLP; Los Angeles, CA for Monsanto Company
- Moira Penza; Wilkinson Stekloff; New York, NY for Monsanto Company

Defendant Expert(s):

- Ran Reshef M.D.; Surgical Treatment; New York, NY called by: for Manuel F. Cachán, Moira Penza
- Nevin Lawrence; Pesticides/Insecticides; Scottsbluff, NE called by: for , , , Manuel F. Cachán, Moira Penza
- Adana A.M. Llanos Ph.D., M.P.H.; Epidemiology (Cancer); Fanwood, NJ called by: for Manuel F. Cachán, Moira Penza
- Connie Welch; Regulatory & Legislative Affairs; Lewistown, PA called by: for , , , Manuel F. Cachán, Moira Penza
- Cristian Tomasetti Ph.D.; Epidemiology (Cancer); Baltimore, MD called by: for , , , Manuel F. Cachán, Moira Penza

Facts:

In 2013, plaintiff Ernest Caranci, in his 70s, was diagnosed with non-Hodgkin lymphoma. Caranci claimed his cancer was caused by exposure to the glyphosate-based herbicide Roundup.

Caranci sued Roundup's manufacturer, Monsanto Co. He asserted claims of products liability, including design defect, strict liability and failure to warn. A number of other companies were originally named as defendants in the suit, but the claims against those entities were either dismissed or concluded via dispositions involving undisclosed terms.

Caranci began using Roundup on his garden and around his home in the early 1990s. He stated that he used the chemical approximately once every couple of weeks from late May through August. Each application took him about an hour and a half to two hours. He continued this schedule until 1998, when he stopped the garden. When using Roundup, Caranci claimed he typically wore shorts, short socks and sneakers, but did not wear gloves or any kind of protective equipment.

Caranci's counsel argued that Monsanto has known for decades that glyphosate is toxic to humans, yet Monsanto sold and represented the Roundup product as being safe to humans and the environment. According to Caranci's counsel, multiple studies from 2000 through the present have minimized any safety concerns about the use of glyphosate. Per counsel, these studies were ghostwritten in part, and/or published by, Monsanto through other companies. Counsel asserted that the studies are used to convince regulators to allow the sale of Roundup and to convince customers to use the weed-killing chemical.

Caranci's counsel maintained that the International Agency for Research, or IARC, classified glyphosate as a Group 2A herbicide, which meant that it is "probably carcinogenic to humans." The IARC concluded that the cancers most associated with

glyphosate exposure are non-Hodgkin lymphoma and other hematopoietic cancers. In addition, the IARC reportedly found convincing evidence that Roundup caused cancer in laboratory animals and, according to Caranci's counsel, confirmed that glyphosate is toxic to humans.

The defense maintained that Roundup is a widely used glyphosate-based herbicide that has been approved for use by the Environmental Protection Agency for decades. According to the defense, regulators in the United States and around the world have considered the relevant scientific literature, including epidemiologic, animal and mechanistic studies, and have unanimously concluded that Roundup products are safe, effective and do not cause non-Hodgkin lymphoma.

The defense argued that the IARC is not a regulatory agency and unlike regulatory agencies, such as the EPA, the IARC does not perform risk assessments, which analyze cancer risk to humans at real world exposure levels.

The defense's agriculture expert testified that glyphosate works by inhibiting a growth-stimulating enzyme that is found in plants, but not in human or animal cells. The expert stated that the bioavailability of glyphosate is extremely low, meaning that even the heaviest users of glyphosate products absorb no more than extremely small systemic doses from all possible routes of exposure.

Injury:

In the late 2000s, Caranci began experiencing symptoms related to his non-Hodgkin lymphoma, such as fatigue, which prevented him from running his pizza shop the way he had for decades. He said he could no longer work the hours he used to work and shifted his focus from preparing the pizzas to doing administrative tasks in the office, where he often would lie down during the day.

By 2012, Caranci claimed he developed large bumps on his neck that were uncomfortable and very troubling to him. In 2013, he underwent six rounds of chemotherapy, causing uncontrollable shaking, nausea and weakness. After the chemotherapy successfully treated enlarged lymph nodes in his neck and groin, he said he began to feel better, but he still required regular monitoring with his oncologist.

Caranci's cancer returned on at least two occasions, first in 2015 and again in 2019. Each time, he required additional treatments to control his cancer and relieve his symptoms.

Caranci's expert in occupational medicine testified that exposure to glyphosate and glyphosate formulation can cause non-Hodgkin lymphoma in humans. The expert concluded that Caranci's exposure to Roundup caused or was a substantial factor in causing his development of non-Hodgkin lymphoma.

Caranci alleged he remains at risk for additional recurrences for the remainder of his life. He has stated that he experienced pain, discomfort, fatigue, weakness, loss of life's

enjoyments and emotional distress.

Caranci sought recovery of compensatory damages, as well as punitive damages for Monsanto's alleged willful and wanton conduct. His wife sought recovery of damages for loss of consortium.

The defense's expert in epidemiology testified that the bulk of human epidemiological studies, which are the most reliable indicator as to whether there is an association or causal connection between Roundup and non-Hodgkin lymphoma, demonstrate that the use of Roundup does not increase the likelihood an individual will develop non-Hodgkin lymphoma. According to the expert, a large data set of rodent carcinogenicity and genotoxicity studies show there is no carcinogenic effect from exposure to glyphosate. The expert concluded that it is clear the most reliable scientific evidence supports the conclusion that exposure to Roundup does not cause non-Hodgkin lymphoma.

The defense's oncology expert opined that most of the mutations that lead to cancer are not caused by environmental or hereditary factors, but rather by mutational processes that are a normal part of every living cell. The expert explained that these naturally occurring mutations account for about two-thirds of mutations in cancers across all human tissue types, and that environmental and hereditary factors together account for about one-third of mutations. The expert concluded that more than 95 percent of mutations that lead to non-Hodgkin lymphoma are caused by natural replication errors, and that Caranci's non-Hodgkin lymphoma was likely caused by these naturally occurring errors, not his exposure to Roundup.

Result:

The jury found that Monsanto was negligent in the design of and warning about Roundup, which was a factual cause of harm suffered by Caranci, but Roundup was not defective under the consumer expectations test. According to the jury, the design defect was a factual cause of the harm suffered by Caranci, Roundup was defective because it was not accompanied by proper warnings or instructions concerning its use, and the failure to provide proper warnings or instructions was a factual cause of the harm suffered by Caranci. The jury further found that Monsanto's conduct was malicious, wanton, willful or oppressive, or showed reckless indifference to the interests of others. The jury awarded Caranci \$175 million, including \$150 million in punitive damages.

Carmela Caranci

Ernest Caranci

\$ 150,000,000 Punitive Exemplary Damages

\$ 25,000,000 compensatory damages

\$ 175,000,000 Plaintiff's Total Award

Trial Information:

Judge: James C. Crumlish III

Trial Length: 0

**Trial
Deliberations:** 0

Jury Vote: 10-2

**Editor's
Comment:** This report is based on an article published by The Legal Intelligencer. Additional information was gleaned from court documents. Plaintiffs' and defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Ambulance transporting patient crashed into truck

Type: Verdict-Plaintiff

Amount: \$116,939,241

Actual Award: \$104,459,543

State: Louisiana

Venue: Iberville Parish

Court: 18th Judicial District Court, Parish of Iberville, LA

Injury Type(s):

- *neck* - fracture, neck; fracture, cervical; cervical disc injury
- *brain* - coma; brain damage
- *other* - unconsciousness; physical therapy; scar and/or disfigurement
- *sensory/speech* - speech/language, impairment of
- *mental/psychological* - emotional distress; cognition, impairment
- *paralysis/quadriplegia* - paralysis; triplegia

Case Type:

- *Motor Vehicle* - Rear-ender
- *Worker/Workplace Negligence* - Ambulance/Emergency Medical Services

Case Name: Peggy Ross, as curatrix for Whitley Lacey, tutrix for Z'Kyriah Lacey, and tutrix for Aaliyaha Lacey v. Michael Averette, Acadian Ambulance Service Inc., Acadian Companies, Indian Harbor Insurance Co., Steadfast Insurance Co., Daniel Colchado, Dale Purpera d/b/a Dale Purpera Farms, and DAP Trucking L.L.C., No. 70,538, Division "D"

Date: August 01, 2012

Plaintiff(s):

- Peggy Ross (Female)
- Whitley Lacey (Female, 21 Years)
- Aaliyaha Lacey
- Z'Kyriah Lacey

**Plaintiff
Attorney(s):**

- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey
- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey
- Michael E. Pierce; Arnold & Itkin LLP; Houston TX for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey
- William N. Gee III; The Law Office of William Gee III; Lafayette LA for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey
- Tony Clayton; Clayton & Fruge; Port Allen LA for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey
- Michael Fruge; Clayton & Fruge; Port Allen LA for Peggy Ross, Whitley Lacey, Z'Kyriah Lacey, Aaliyaha Lacey

**Plaintiff Expert
(s):**

- G. Randolph Rice Ph.D.; Economics; Baton Rouge, LA called by: Jason A. Itkin, Kurt B. Arnold, Michael E. Pierce, William N. Gee III, Tony Clayton, Michael Fruge
- Olga Krivitsky M.D.; Physical Medicine; Metairie, LA called by: Jason A. Itkin, Kurt B. Arnold, Michael E. Pierce, William N. Gee III, Tony Clayton, Michael Fruge
- Cline Young Ph.D., P.E.; Accident Reconstruction; Dallas, TX called by: Jason A. Itkin, Kurt B. Arnold, Michael E. Pierce, William N. Gee III, Tony Clayton, Michael Fruge
- Shelly N. Savant M.D.; Neurology; New Iberia, LA called by: Jason A. Itkin, Kurt B. Arnold, Michael E. Pierce, William N. Gee III, Tony Clayton, Michael Fruge
- Cornelius Gorman Ph.D.; Life Care Planning; Lafayette, LA called by: Jason A. Itkin, Kurt B. Arnold, Michael E. Pierce, William N. Gee III, Tony Clayton, Michael Fruge

Defendant(s):

- Dale Purpera
- Daniel Colchado
- Michael Averette
- Acadian Companies
- DAP Trucking L.L.C.
- Steadfast Insurance Co.
- Indian Harbor Insurance Co.
- Acadian Ambulance Service Inc.

**Defense
Attorney(s):**

- Robert E. Kerrigan Jr.; Deutsch, Kerrigan & Stiles, L.L.P.; New Orleans, LA for Michael Averette, Acadian Ambulance Service Inc., Acadian Companies, Indian Harbor Insurance Co.
- David P. Salley; Salley, Hite, Mercer & Resor, LLC; New Orleans, LA for Michael Averette, Acadian Ambulance Service Inc., Acadian Companies, Steadfast Insurance Co.
- Charles V. Giordano; Hebbler & Giordano, L.L.C.; Metairie, LA for Daniel Colchado, Dale Purpera, DAP Trucking L.L.C.

**Defendant
Expert(s):**

- Todd D. Cowen M.D.; Physical Medicine; Thibodaux, LA called by: for Robert E. Kerrigan Jr., David P. Salley
- Kevin J. Bianchini Ph.D.; Neuropsychology; Metairie, LA called by: for Robert E. Kerrigan Jr., David P. Salley
- Robert A. Gisclair; Vocational Rehabilitation; Baton Rouge, LA called by: for Robert E. Kerrigan Jr., David P. Salley
- Robert Shavelle Ph.D.; Life Expectancy & Mortality; San Francisco, CA called by: for Robert E. Kerrigan Jr., David P. Salley
- Kenneth J. Boudreaux Ph.D.; Economics; New Orleans, LA called by: for Robert E. Kerrigan Jr., David P. Salley
- Michael S. Gillen; Accident Reconstruction; Baton Rouge, LA called by: for Robert E. Kerrigan Jr., David P. Salley

Facts:

On Dec. 27, 2010, at 6:30 a.m., plaintiff Whitely Lacey, 21, a nursing-home employee, was seven months pregnant and experiencing stomach pains. She contacted Acadian Ambulance to transport her to the hospital.

Lacey alleged that while en route to the hospital on north Highway 1, just outside of Brusly, ambulance driver Michael Averette, who was driving at a rate of speed of 60 mph (the posted speed limit was 55 mph), dropped his magnetic key from his pocket. While reaching down to grab it, he allegedly took his eyes off the road, and in doing so, the ambulance slammed into the rear of a sugar cane truck driven by Daniel Colchado, who had just turned left onto the highway. Lacey suffered spinal cord and brain injuries.

Lacey sued Averette, Acadian Ambulance Service and Colchado. Lacey also sued Dale Purpera Farms, who employed Colchado, and DAP Trucking L.L.C., a truck company created by Purpera. Counsel for Lacey argued that Averette should never have been allowed to operate an ambulance. Not only did he have a history of causing serious accidents, he was proven to have poor vision and had been cited for bad driving in 10 of the previous 45 quarters, maintained Lacey.

Lacey's retained expert in accident reconstruction opined that Averette was at fault.

Acadian's retained expert in accident reconstruction maintained that Colchado was traveling too slow, as he was only driving at a rate of speed no faster than 28 mph, and that his failure to travel at a higher rate of speed contributed to the accident.

Counsel for Colchado and Purpera echoed Lacey's theory of liability against Averette and Acadian. At the close of evidence, the judge granted a directed verdict in favor of Colchado, Purpera and DAP Trucking. Averette and Acadian Ambulance Service were the only remaining parties on the verdict slip.

Injury:

On impact Lacey came under the straps of the gurney and catapulted into a wall of the ambulance. Unconscious, Lacey was taken by another ambulance to Our Lady of Lourdes Regional Medical Center in Lafayette, where her baby was born prematurely, via Cesarean section. Lacey suffered bleeding on the brain and a fracture of the C2-3 disc, which rendered her quadriplegic, as she is able to move her left arm. Lacey remained in a coma for the next few months. Upon awakening, Lacey underwent rehabilitation that involved speech and cognitive therapy. With diminished motor skills, Lacey is able to talk but with difficulty, according to her attorney. She sought to recover over \$1.4 million in past medical bills.

Lacey's treating psychiatrist and neurologist both testified that her condition could improve given the proper lifetime of care, which consisted of continued cognitive and physical therapies. She sought to recover a life-care plan of over \$30 million, with a life expectancy of 50 to 57 more years.

Lacey's two children (she already had a child at the time of her pregnancy) live with Lacey's mother. Lacey, who will remain wheelchair-bound for the rest of her life, sought to recover unspecified amounts in non-economic damages for past and future pain and suffering. She further sought to recover \$23,715 in past lost wages and \$415,526 in future lost earnings.

According to Acadian's retained experts in physical medicine and neuropsychology, Lacey only has a window of four to five more years in which her condition will improve from therapy; after that, her condition will decline and diminish, and such rehabilitation thereafter will have little to no effect. Given the diminished returns of future treatment, the defense's retained life-care planning expert said that instead of a long-term, inpatient brain-rehabilitation program that Lacey's counsel was suggesting, it would be more appropriate to place Lacey in a nursing facility. Therefore, her future life-care plan would be in the range of \$12 million to \$15 million. In addition, Lacey had only 40 more years to live, opined the defense's retained expert in life expectancy.

Result:

The jury found that Acadian Ambulance Service Inc., Acadian Companies and Averette were at fault for the accident in question and a cause in fact of Lacey's damages. The jury awarded the plaintiffs an amount of \$116,939,241.

Aaliyaha Lacey

\$2,500,000 Personal Injury: loss of consortium

Whitley Lacey

\$1,500,000 Personal Injury: Past Medical Cost

\$35,000,000 Personal Injury: Future Medical Cost

\$8,000,000 Personal Injury: Past Loss Enjoyment Of Life

\$20,000,000 Personal Injury: Future Loss Enjoyment Of Life

\$23,715 Personal Injury: Past Lost Earnings Capability

\$415,526 Personal Injury: FutureLostEarningsCapability

\$15,000,000 Personal Injury: Past Pain And Suffering

\$20,000,000 Personal Injury: Future Pain And Suffering

\$12,000,000 Personal Injury: scarring and disfigurement

Z'Kyriah Lacey

\$2,500,000 Personal Injury: loss of consortium

Trial Information:

Judge: William C. Dupont

Trial Length: 7 days

**Trial
Deliberations:** 3 hours

Post Trial: Acadian and Averette motioned for judgment notwithstanding the verdict, and the court reduced the verdict amount of \$116,939,241 to \$104,459,543. Indian Harbor's layer of coverage is \$52,500,000 to \$77,500,000. Steadfast's layer of coverage is \$77,500,000 to \$102,500,000. font color="#000080" font COLOR="#000000"

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel and counsel for Averette/Acadian/Steadfast Insurance Co. Counsel for Averette/Acadian/ Indian Harbor Insurance Co. and counsel for Purpera, Colchado and DAP Trucking L.L.C. did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Companies failed to warn of drug's side-effects, suit alleged

Type: Verdict-Plaintiff

Amount: \$70,000,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):

- *chest* - gynecomastia
- *mental/psychological* - schizophrenia; emotional distress

Case Type:

- *Products Liability* - Pharmaceutical; Failure to Warn; Marketing Defect
- *Consumer Protection* - Consumer Fraud

Case Name: A.Y. and Billie Ann Yount v. Janssen Pharmaceuticals, Inc., Johnson & Johnson Company, and Johnson & Johnson Pharmaceutical Research and Development, L.L.C., No. 2094/13

Date: July 01, 2016

Plaintiff(s):

- Andrew Yount (Male, 4 Years)
- Billie Ann Yount (Female)

Plaintiff Attorney(s):

- Thomas R. Kline; Kline & Specter, P.C.; Philadelphia PA for Billie Ann Yount, Andrew Yount
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Billie Ann Yount, Andrew Yount

Plaintiff Expert(s):

- Mark P. Solomon M.D.; Plastic Surgery/Reconstructive Surgery; Bala Cynwyd, PA called by: Jason A. Itkin
- David A. Kessler M.D.; FDA Regulatory Affairs; San Francisco, CA called by: Jason A. Itkin

Defendant(s):

- Johnson & Johnson Co.
- Janssen Pharmaceuticals Inc.
- Johnson & Johnson Pharmaceutical Research and Development, LLC

**Defense
Attorney(s):**

- David F. Abernethy; Drinker Biddle & Reath LLP; Philadelphia, PA for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development, LLC
- William V. Essig; Drinker, Biddle & Reath, LLP; Chicago, IL for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development, LLC

**Defendant
Expert(s):**

- Mark Molitch M.D.; Endocrinology; Chicago, IL called by: for David F. Abernethy
- Janet Arrowsmith M.D.; FDA Regulatory Affairs; Gallup, NM called by: for David F. Abernethy

Facts:

Beginning in August 2003, minor plaintiff Andrew Yount, 4, who lives with his family in Morristown, TN, was prescribed the anti-psychotic drug Risperdal to treat schizophrenia. He took the drug intermittently for about 10 years. In December 2003, he showed symptoms of gynecomastia and was later diagnosed with the condition, which causes male breast tissue to swell.

Yount and his mother, Billie Ann Yount, brought a lawsuit against the maker of the drug, Janssen Pharmaceuticals Inc., and its parent company, Johnson & Johnson Co., alleging failure to adequately warn of the drug's dangers. The suit is one of five unrelated lawsuits tried before a jury concerning Risperdal's possible link to gynecomastia.

Yount specifically claimed that the companies were aware that gynecomastia was a potential side-effect of Risperdal prior to 2003 but failed to warn the Food and Drug Administration and the public.

Yount further maintained that the companies deliberately concealed an internal document ("Table 21") which concluded that there was a scientific link between Risperdal and gynecomastia, and suppressed part of a later Johnson & Johnson document ("Tab 4"), which confirmed Table 21's conclusions.

Counsel contended that although the companies know of the link, they were marketing the drug for off-label use for children even while the FDA had approved the drug only for treatment of adults.

. Counsel for the Younts entered Table 21 into evidence at trial.

Yount's father testified that he would not have allowed his son to take Risperdal had he known gynecomastia was a possible side-effect.

Former FDA commissioner David Kessler testified at trial as an expert witness, stating that the label for Risperdal should have been updated to denote the potential risk of gynecomastia.

Counsel for the companies denied liability and any link between Risperdal and gynecomastia. Counsel also denied marketing the drug for children and argued that there was no need to revise the label accordingly. In addition, counsel noted that several of Yount's treating physicians were aware of the risk of gynecomastia as a side-effect but elected to keep Yount on the medication due to its benefits.

Counsel further asserted that the companies did not have a responsibility under federal regulations to provide the public with internal scientific documents.

A corporate representative for Janssen testified at trial. When presented with Table 21 and Tab 4, she indicated that she recognized the documents but maintained that she was unqualified to speak as to their validity.

The defense counsel called an expert on food and drug regulation to testify. She opined that Risperdal's existing label was adequate and that the defendants were not required to update it under FDA requirements.

Injury: Yount said his gynecomastia has left him disfigured and led to bullying at school due to his appearance. He sought damages for emotional distress and physical disfigurement.

Yount's expert on plastic surgery testified that he believed Risperdal caused Yount's breast growth, based on his physical examination and a review of medical records. He classified Yount's breast size as a C to D cup bra-size, for purposes of classification.

Defense counsel questioned whether Yount suffered from gynecomastia and argued that if he did suffer from the condition, it was unrelated to his exposure to the medication. The defense's expert endocrinologist corroborated this in his testimony.

Result: The jury found that the companies had failed to adequately warn of the drug Risperdal's possible side-effects and this failure caused Yount's gynecomastia. The jury also found that Janssen intentionally falsified, destroyed, or concealed records containing material evidence. Yount was awarded \$70 million in damages for emotional distress and physical disfigurement.

Andrew Yount

\$70,000,000 Personal Injury: Past Disfigurement

Trial Information:

Judge: Paula Patrick

Trial Length: 11 days

Trial Deliberations: 5 hours

Jury Vote: unanimous

Jury Composition: nine women, three men

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

Writer Max Robinson

Investor backed out of deal, pursued purchase on its own

Type: Verdict-Plaintiff

Amount: \$26,350,000

Actual Award: \$38,220,000

State: Hawaii

Venue: Honolulu County

Court: Honolulu Circuit Court, HI

Case Type:

- *Business Law - Unfair Competition*
- *Partnership - Breach of Fiduciary Duty*
- *Intentional Torts - Tortious Interference with a Contract*

Case Name: Richard Foreman v. Key Principal Partners LLC and Key Corp., No. 041214011

Date: May 23, 2007

Plaintiff(s):

- Richard Foreman (Male)

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Richard Foreman
- Mark S. Davis; Davis Levin Livingston Grande; Honolulu HI for Richard Foreman
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Richard Foreman

Plaintiff Expert(s):

- David Fuller CFA; Valuation; Dallas, TX called by: Kurt B. Arnold, Mark S. Davis, Jason A. Itkin

Defendant(s):

- Key Corp.
- Key Principal Partners LLC

Defense Attorney(s):

- Scott O'Connell; Nixon Peabody LLP; Boston, MA for Key Principal Partners LLC, Key Corp.

**Defendant
Expert(s):**

- Mark Hayden CPA; Business; Los Angeles, CA called by: for Scott O'Connell
- Curtis McClamm; Insurance Industry; Los Angeles, CA called by: for Scott O'Connell

Facts:

In 2003 to 2004, plaintiff Rick Foreman, entered into a letter of intent to purchase Honsador Lumber Corp. in Honolulu, and partnered with Key Principal Partners LLC to assist in financing the investment.

Foreman alleged that prior to closing the deal Key Principal Partners wrongfully backed out of its partnership and then purchased Honsador Lumber for itself. He claimed that it bought buying the lumber company for several million dollars more than what he had offered.

Foreman sued Key Principal and Key Corp., holding company of Key Bank, for breach of fiduciary duty, tortious interference and violation of the Hawaii Unfair Competition statute. Foreman also sued Honsador for breach of contract, which settled for a confidential amount.

Plaintiff's counsel argued that it was unfair, immoral and illegal for Key Principal Partners to wrongfully back out of the transaction and steal the opportunity for themselves, and that it was not the way a company should be conducting business in Hawaii or anywhere else. Plaintiff's counsel asserted that its conduct was outrageous and that the jury should stop it from acting this way again.

The defense denied the allegations. Defense counsel contended that Key Principal Partners' conduct with Honsador did not affect the seller's decision not to sell to Foreman. Curtis McClamm, the defense's industry conduct expert, testified that it was not outside industry norms for Key Principal Partners, a potential buyer, to contact Honsador, even though a buyer knows that the seller has a contract with someone else.

Injury:

David Fuller, the plaintiff's valuation expert, testified that Honsador Lumber's enterprise value was more than \$80 million and that the value of Key's investment had increased by \$40 million at the time of trial.

Mark Hayden, the defense's valuations expert, testified that Fuller's analysis was erred since it incorrectly compared Honsador Lumber's value to other companies, and that he should have used lower EBITDA (Earnings Before Income Taxes Depreciation Amortization) multiples in his calculation.

Key Principal Partners counterclaimed that Foreman owed it unpaid fees of \$30,000.

Result:

The jury found that Key Principal Partners breached its fiduciary duty, tortiously interfered with Foreman's contract with Honsador, and violated the Hawaii Unfair Competition statute. It awarded the plaintiff \$26,350,000. Of the award, he received \$13.6 million in punitives. However, the plaintiff chose to have his compensatory damages trebled to \$38,250,000 so he had to forfeit the punitives. This is offset by an award of \$30,000 to Key Principal Partners for unpaid fees, bringing the total recovery to \$38,220,000.

Richard Foreman

\$13,600,000 Commercial: Punitive Exemplary Damages

\$12,750,000 Commercial: compensatory damages

Trial Information:

Judge: Sabrina McKenna

Trial Length: 5 weeks

**Trial
Deliberations:** 1 days

Jury Vote: 10-2

**Jury
Composition:** 5 male, 7 female

**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 Aaron Jenkins

Plaintiff claimed hit by UPS driver caused lasting brain injuries

Type: Verdict-Mixed

Amount: \$19,142,635

Actual Award: \$12,442,713

State: Texas

Venue: Harris County

Court: Harris County District Court, 281st, TX

Injury Type(s):

- *brain* - subdural hematoma; traumatic brain injury; subarachnoid hemorrhage
- *other* - shunt; sepsis; seizure; craniectomy; gastrojejunostomy; spleen, laceration
- *epidermis* - contusion
- *arterial/vascular* - thrombosis/thrombus
- *surgeries/treatment* - splenectomy; tracheostomy/tracheotomy
- *pulmonary/respiratory* - pneumonia; respiratory

Case Type:

- *Gross Negligence*
- *Motor Vehicle* - Truck; Pedestrian; Reversing Vehicle

Case Name: Abraham Casarez and Adela Casarez v. Corey Taylor, No. 2019-38019

Date: April 28, 2021

Plaintiff(s):

- Adela Casarez, (Female, 0 Years)
- Abraham Casarez, (Male, 67 Years)

Plaintiff Attorney(s):

- Jason Itkin; Arnold & Itkin; Houston TX for Abraham Casarez,, Adela Casarez
- Cory Itkin; Arnold & Itkin; Houston TX for Abraham Casarez,, Adela Casarez

Plaintiff Expert (s):

- Lew Grill; Safety; Billings, MT called by: Jason Itkin, Cory Itkin
- Danny Phillips; Accident Reconstruction; Dallas, TX called by: Jason Itkin, Cory Itkin

Defendant(s):

- Corey Taylor
- United Parcel Service Inc.

Defense Attorney(s):

- Matthew F. Barr; Hawkins Parnell & Young, LLP; Atlanta, GA for Corey Taylor, United Parcel Service Inc.
- David E. Brothers; Brothers Alvarado, P.C.; Houston, TX for Corey Taylor, United Parcel Service Inc.

Defendant Expert(s):

- April A. Yergin; Accident Reconstruction; Houston, TX called by: for Matthew F. Barr, David E. Brothers
- Steve Arndt Ph.D.; Ergonomics/Human Factors; Alexandria, VA called by: for Matthew F. Barr, David E. Brothers
- Stephen Chewning P.E.; Safety; Atlanta, GA called by: for Matthew F. Barr, David E. Brothers

Insurers:

- Liberty Mutual Insurance Co.

Facts:

On May 21, 2019, plaintiff Abraham Casarez, 67, a groundskeeper for the Houston Museum of Natural Science, was standing in the museum's loading dock. A United Parcel Service truck was making a delivery to the museum, and when it backed into the loading dock, it struck Casarez. The UPS driver was Corey Taylor. Casarez suffered a traumatic brain injury and other injuries.

Casarez and his wife sued Taylor and UPS. The lawsuit alleged that UPS was liable for Taylor's negligence in the operation of the vehicle and for its own negligence and gross negligence in providing a vehicle that lacked reasonable safety features. Taylor was nonsuited before trial.

Casarez alleged that the truck should have been equipped with a better rear camera and an alarm to sound when going in reverse. The truck's camera view extended about 15 feet behind the truck, and plaintiffs' counsel argued that it should have extended farther.

Casarez claimed that the area in which he was standing was part of his general work area.

It was undisputed that Taylor did not exit the vehicle to look behind it, as UPS policies required him to do before backing up.

Plaintiffs' counsel argued that Taylor and UPS were negligent and that Casarez was not.

The defense denied negligence on the part of UPS and argued that Taylor and Casarez were each 50 percent responsible for the incident. Casarez was in the truck's blind spot; had no reason to be standing in the loading dock with his back to traffic; and failed to keep a proper lookout, the defense argued. The defense expert on truck safety emphasized that UPS violated no Federal Motor Carrier Safety Regulations and that backup alarms and cameras are not required by law.

Injury:

Cazares sustained a severe traumatic brain injury, including bilateral subdural hematomas, cerebellar contusions, subarachnoid hemorrhage and occipital fracture. He also sustained multiple splenic lacerations. He developed transverse sinus thrombosis, posttraumatic seizures and multiple medical complications, including aspiration pneumonia, acute-on-chronic respiratory failure and sepsis. His brain injury caused permanent, severe limitations.

He was transported by ambulance, and he spent more than a year in hospitals and rehabilitation facilities. Surgeries included a bifrontal temporal craniectomy, a tracheostomy due to respiratory failure, placement of a ventriculoperitoneal shunt and splenectomy. A gastrojejunostomy tube was placed for feeding. Rehabilitation for his brain injury was interrupted several times for readmission to acute care due to his medical complications. There were about 200,000 pages of medical records in evidence. Casarez was still seeing a neurologist at the time of trial.

Plaintiffs' life care planner opined that Casarez would need 24-hour attendance by a licensed vocational nurse for the rest of his life.

Plaintiffs' counsel asked the jury to award Casarez \$2,142,635 for past medical expenses; \$17,000,000 for future medical expenses; \$16,250,000 for past physical pain; \$16,250,000 for future physical pain; \$16,250,000 for past mental anguish; \$16,250,000 for future mental anguish; \$16,250,000 for past physical impairment; \$16,250,000 for future physical impairment; \$16,250,000 for past disfigurement; and \$16,250,000 for future disfigurement. He also sought punitive damages.

For Casarez's wife, counsel sought \$16,250,000 for past loss of consortium and \$16,250,000 for future loss of consortium.

UPS' life care planner contended that an LVN was not necessary and that a certified nursing assistant could provide the services that Casarez needed for \$10 million less. This expert's life care plan totaled about \$4 million.

The defense experts on neuropsychology and physical medicine opined that, although Casarez suffered from significant, permanent impairment, his condition had improved, and he would not need the constant attendance of an LVN. There were no recent medical records showing significant problems, the defense noted.

Defense counsel also noted that Casarez's wife did not testify, nor did any of their other family members.

Defense counsel asked the jury to award all the past medical expenses; about \$5 million for future medical expenses; and total noneconomic damages of \$5 million to \$6 million.

Result: The jury did not find UPS negligent, but found negligence and comparative responsibility of 65 percent on Taylor and 35 percent on Casarez. It awarded the plaintiffs \$19,142,635.

The jury did not answer the question on gross negligence.

\$1000000 Personal Injury: Past Loss of Consortium

\$1000000 Personal Injury: Future Loss of Consortium

Trial Information:

Judge: Christine Weems

Demand: \$65 million

Offer: \$25 million

Trial Length: 6 days

**Trial
Deliberations:** 1 days

Jury Vote: 10-2

**Jury
Composition:** 5 male, 7 female

**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 John Schneider

Mother killed, girl injured in railroad crossing accident

Type: Verdict-Plaintiff

Amount: \$10,890,000

Actual Award: \$9,256,500

State: Texas

Venue: Jefferson County

Court: Jefferson County District Court, 60th, TX

Injury Type(s):

- *leg* - fracture, leg; fracture, femur
- *head* - closed head injury
- *neck* - fusion, cervical
- *brain* - encephalopathy
- *other* - death; tracheitis; subluxation; transfusion; loss of consortium; spleen, laceration; iron deficiency anemia; decreased range of motion
- *cardiac* - cardiac arrest
- *urological* - neurogenic bowel; neurogenic bladder; urinary tract infection
- *mental/psychological* - depression; emotional distress
- *paralysis/quadriplegia* - paraplegia; quadriplegia

Case Type:

- *Negligence*
- *Motor Vehicle* - Railroad Crossing
- *Wrongful Death* - Survival Damages

Case Name: Derrik Cezar, as next of friend of Jasmine Cezar and Lorenzo Ardoin, Lashasa Ardoin, and Rodney Woods, as next friend of Jarvis Ardoin v. Union Pacific Railroad and Jack Mann, No. B-0176429

Date: November 09, 2007

Plaintiff(s):

- Derrick Cezar (Male)
- Patsy Ardoin (Female, 35 Years)
- Rodney Woods (Male)
- Jarvis Ardoin (Male, 15 Years)
- Jasmine Cezar (Female, 4 Years)
- Lashasa Ardoin (Female, 18 Years)
- Lorenzo Ardoin (Male, 11 Years)

**Plaintiff
Attorney(s):**

- Kurt B. Arnold; Arnold & Itkin, LLP; Houston TX for Derrick Cezar, Jasmine Cezar, Lorenzo Ardoin, Lashasa Ardoin, Rodney Woods, Jarvis Ardoin, Patsy Ardoin
- Jason A. Itkin; Arnold & Itkin, LLP; Houston TX for Derrick Cezar, Jasmine Cezar, Lorenzo Ardoin, Lashasa Ardoin, Rodney Woods, Jarvis Ardoin, Patsy Ardoin
- Jeff Seely; Arnold & Itkin, LLP; Houston TX for Derrick Cezar, Jasmine Cezar, Lorenzo Ardoin, Lashasa Ardoin, Rodney Woods, Jarvis Ardoin, Patsy Ardoin

**Plaintiff Expert
(s):**

- Archie Burham; Railroads; McDonough, FL called by: Kurt B. Arnold, Jason A. Itkin, Jeff Seely
- Robert Bruce; Noise Pollution; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Jeff Seely
- Kenneth G. McCoin Ph.D.; Economics; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Jeff Seely,
- William L. Quintanilla; Vocational Rehabilitation; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Jeff Seely
- Jacqueline Kelly M.D., J.D.; Life Care Planning; Austin, TX called by: Kurt B. Arnold, Jason A. Itkin, Jeff Seely

Defendant(s):

- Jack Mann
- Union Pacific Railroad

**Defense
Attorney(s):**

- Jon B. Burmeister; Moore Landrey, L.L.P.; Beaumont, TX for Union Pacific Railroad, Jack Mann
- Doug Poole; McLeod, Alexander, Powell & Apffel, P.C.; Galveston, TX for Union Pacific Railroad, Jack Mann
- Kyle L. Gideon; Davidson, Meaux, Sonnier & McElligott; Lafayette, LA for Union Pacific Railroad, Jack Mann
- Kevin Dills; Davidson, Meaux, Sonnier & McElligott; Lafayette, LA for Union Pacific Railroad, Jack Mann
- J.E. McElligott Jr.; Davidson, Meaux, Sonnier & McElligott; Lafayette, LA for Union Pacific Railroad, Jack Mann
- William R. Floyd; McLeod, Alexander, Powell & Apffel, P.C.; Galveston, TX for Union Pacific Railroad, Jack Mann

**Defendant
Expert(s):**

- Mike Fann P.E.; Audiology; Grapevine, TX called by: for Jon B. Burmeister, Doug Poole, Kyle L. Gideon, Kevin Dills, J.E. McElligott Jr., William R. Floyd
- Donna Johnson MEd, LPC, CRC; Vocational Assessment; Corpus Christi, TX called by: for Jon B. Burmeister, Doug Poole, Kyle L. Gideon, Kevin Dills, J.E. McElligott Jr., William R. Floyd
- Martin J. Tomasovic M.D.; Medical/Health; , called by: for Jon B. Burmeister, Doug Poole, Kyle L. Gideon, Kevin Dills, J.E. McElligott Jr., William R. Floyd
- Richard J. Fay; Structural; Denver, CO called by: for Jon B. Burmeister, Doug Poole, Kyle L. Gideon, Kevin Dills, J.E. McElligott Jr., William R. Floyd
- William Fogarty; Accident Reconstruction; Miami, FL called by: for Jon B. Burmeister, Doug Poole, Kyle L. Gideon, Kevin Dills, J.E. McElligott Jr., William R. Floyd

Facts:

On July 7, 2005, plaintiffs' decedent Patsy Ardoin, 35, a caterer, was driving a 1997 Dodge Ram truck on Eddy Street in Vinton, La. In the vehicle with Ardoin was her 4-year-old daughter, plaintiff Jasmine Cezar. Ardoin came to a Union Pacific railroad crossing which had no automatic gates or lights. Jack Mann, a claims investigator for Union Pacific, had investigated prior accidents at this crossing, and although he had authority to recommend changes at the crossing, no gates or lights were installed. Ardoin stopped at the stop sign and as she proceeded across the tracks her truck was struck by a Union Pacific train. Ardoin was killed in the collision. Jasmine was thrown from the vehicle and sustained serious injuries.

Derrick Cezar, Ardoin's common-law husband and father of Jasmine; Rodney Woods, the father of two of Ardoin's other children, Jarvis Ardoin and Lashasa Ardoin; and Lorenzo Ardoin, another son of Ardoin, sued Union Pacific and Mann, alleging wrongful death and gross negligence. They contended that the defendants were liable for Ardoin's death and Jasmine's injuries for failing to install automatic gates or lights at the dangerous railroad crossing.

The defense argued that Ardoin pulled in front of the train and that Jasmine was not restrained in a child's car seat.

Injury:

Patsy Ardoin was killed instantly when the train struck her vehicle. She was survived by her four children -- daughters, Jasmine and Lashasa, 18; and sons, Lorenzo, 11, and Jarvis, 15.

Jasmine, who sustained extensive spinal cord damage from C6 through T1, was transported to the hospital immediately after the accident. She was diagnosed with C-6 incomplete quadriplegia (though she is now functioning as a T-2 paraplegic), C5-6 dislocation with subluxation, splenic laceration, closed head injury, fracture of the right femur, tracheitis, generalized encephalitis, anemia requiring transfusions and depression.

She was hospitalized at Hermann Hospital for two months and was then transferred to Healthbridge Children's Hospital for two additional months. She underwent surgery to fuse her cervical spine and post-operatively was placed in a halo.

In September 2005, Jasmine went into cardiac arrest and was successfully resuscitated. She required bronchoscopies to clear mucus plugs from her lungs, and the insertion of a feeding tube through her abdominal wall. Her femoral fracture was surgically repaired as well. She also suffered urinary tract infections with E. coli, tracheal infections with methicillin-resistant Staphylococcus aureus (MRSA), pseudomonas, yeast and stentrophonams.

Following her hospitalization, Jasmine was discharged home with the gastrostomy feeding tube still in place and a number of existing medical issues. She has decreased to no sensation below the level of injury (although the exact level was difficult to determine due to her age), which places her at an increased risk for pressure ulcers. She has decreased mobility and needs to continually work on strengthening and balance. Due to the femoral fracture, she has decreased range of motion of the right knee.

In addition, Jasmine has a neurogenic bladder, which puts her at risk for reflux and hydronephrosis and requires intermittent catheterization every six hours; and neurogenic bowel, which requires daily treatment with a suppository and stool softeners. She is at risk for autonomic dysreflexia, especially if her bowel or bladder become distended. She is also at risk for increased or decreased body temperature according to the room or ambient temperatures around her.

Derrick Cezar sought recovery of an unspecified amount for his daughter's past and future damages.

Ardoin's other surviving children made claims for past and future loss of consortium and emotional distress.

Result:

The jury returned a verdict in favor of the plaintiffs. Union Pacific was found 65 percent liable, the Louisiana Department of Transportation was found 20 percent liable, and Patsy Ardoin was found 15 percent liable. The plaintiffs were awarded \$10.89 million in damages, which was reduced to \$9,256,500 due to the jury's finding of comparative negligence against Ardoin.

Jarvis Ardoin

\$88,167 Wrongful Death: Past damages

\$372,333 Wrongful Death: Future damages

Lashasa Ardoin

\$103,076 Wrongful Death: Past damages

\$328,075 Wrongful Death: Future damages

Lorenzo Ardoin

\$118,143 Wrongful Death: Past damages

\$407,706 Wrongful Death: Future damages

Derrick Cezar

\$1,180,000 Wrongful Death: Past damages

\$7,717,450 Wrongful Death: Future damages

Jasmine Cezar

\$99,485 Wrongful Death: Past damages

\$483,015 Wrongful Death: Future damages

Trial Information:

Judge: Gary Sanderson

Trial Length: 3 weeks

Trial Deliberations: 2 days

Jury Vote: 10-2

Post Trial: The defendants filed a motion for judgment on the verdict and to disregard the jury findings in part and an alternative motion to reduce the jury award. On July 16, 2009, the Texas Ninth District Court of Appeals reversed the judgment against Union Pacific and remanded the case for transfer to Harris County.

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 James Withers

Seaman suspended over deck when he was struck by sling

Type: Verdict-Plaintiff

Amount: \$4,921,441

Actual Award: \$4,183,225

State: Texas

Venue: Harris County

Court: Harris County District Court, 157th, TX

Injury Type(s):

- *arm* - fracture, humerus
- *back* - fracture, back; fracture, T6; fracture, back; fracture, T7; fracture, back; fracture, T10; fracture, back; fracture, T11; fracture, back; fracture, T12; fracture, vertebra; fracture, T6; fracture, vertebra; fracture, T7; fracture, vertebra; fracture, T10; fracture, vertebra; fracture, T11; fracture, vertebra; fracture, T12
- *head* - closed head injury
- *neck* - bulging disc, cervical
- *chest* - fracture, rib
- *other* - compound fracture
- *surgeries/treatment* - open reduction; internal fixation

Case Type:

- *Workplace* - Workplace Safety
- *Admiralty/Maritime* - Unseaworthiness
- *Worker/Workplace Negligence* - Negligent Training; Negligent Supervision

Case Name: Joel Upton v. Diamond Offshore Drilling Inc., No. 2010-35498

Date: November 16, 2011

Plaintiff(s):

- Joel Upton (Male, 30 Years)

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Joel Upton
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Joel Upton
- Paul Skrabanek; Arnold & Itkin, LLP; Houston TX for Joel Upton

- Plaintiff Expert(s):**
- Jack Madely; Safety; College Station, TX called by: Kurt B. Arnold, Jason A. Itkin, Paul Skrabanek
 - Jeff Peterson; Vocational Assessment; Lake Charles, LA called by: Kurt B. Arnold, Jason A. Itkin, Paul Skrabanek
 - Kenneth G. McCain Ph.D.; Economics; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Paul Skrabanek

- Defendant(s):**
- Diamond Offshore Drilling Inc.

- Defense Attorney(s):**
- T. Patrick Baynham; Baynham Best; Melairie, LA for Diamond Offshore Drilling Inc.
 - Steven K. Best; Baynham Best; Melairie, LA for Diamond Offshore Drilling Inc.

- Defendant Expert(s):**
- Bruce H. Brawner; Vocational Rehabilitation; Madison, MS called by: for T. Patrick Baynham, Steven K. Best
 - David S. Baskin M.D.; Neurosurgery; Houston, TX called by: for T. Patrick Baynham, Steven K. Best
 - Robert Yohlman M.D.; Neurosurgery; Houston, TX called by: for T. Patrick Baynham, Steven K. Best

Facts: On May 28, 2010, plaintiff Joel Upton, 30, was employed as a seaman on a vessel off the coast of Brazil owned by Diamond Offshore Drilling. While installing a compensator Upton was struck by a sling. He sustained multiple injuries.

Upton sued Diamond, claiming negligence. While he was suspended over the deck on a riding belt, a crew member violated an all-stop order and heaved up equipment, causing the sling to break and strike him, he claimed. He claimed this was the result of Diamond's failure to properly train and supervise the crew, and that it rendered the vessel unseaworthy.

Diamond argued Upton was the supervisor of the job and was the sole proximate cause of his own injuries.

Injury: Upton sustained a compound fracture of his non-dominant left humerus, fractures of his second through fifth ribs, compression fractures at T7, T9, T10, T11, T12, a closed head injury and a bulging disc at C3-4. He underwent open reduction and internal fixation of the arm, and claimed the arm will require additional surgery. Plaintiff claimed he will be unable to return to work until that surgery takes place, and that after this he will still likely be medically restricted from lifting weights larger than 15 pounds, bending, climbing and similar activities.

Defense counsel disputed the damages, arguing some of Upton's injuries were preexisting conditions.

Result: The jury found the vessel was not unseaworthy but that Diamond was negligent. It found Diamond 85 percent negligent and Upton 15 percent negligent. It awarded Upton \$4,921,441, which was reduced to \$4,183,224.85.

Joel Upton

\$18,905 Personal Injury: Past Medical Cost

\$327,000 Personal Injury: Future Medical Cost

\$148,000 Personal Injury: Past Lost Earnings Capability

\$3,500,000 Personal Injury: FutureLostEarningsCapability

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

\$750,000 Personal Injury: Future Pain And Suffering

\$1,000 Personal Injury: Past Disfigurement

\$1,000 Personal Injury: Future Disfigurement

\$16,800 Personal Injury: Future Maintenance

\$8,736 Personal Injury: Future Cure

Trial Information:

Judge: Randy Wilson

Trial Length: 2 weeks

Jury Vote: 12-0

Editor's Comment: This report is based on information that was gleaned from court documents and an interview of plaintiff's counsel. Defense counsel did not respond to calls for comment.

Writer Rick Archer

Inland rig worker fell while using ladder to go from rig to barge

Type: Verdict-Plaintiff

Amount: \$2,795,620

State: Texas

Venue: Galveston County

Court: Galveston County Court at Law No. 2, TX

Injury Type(s):

- *back* - fusion, lumbar
- *other* - soft tissue; back and neck; strains and sprains

Case Type:

- *Admiralty/Maritime*
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Oil Field

Case Name: Jude Lewis v. Axxis Drilling Inc. and Century Exploration Houston Inc., No. 63,061

Date: October 27, 2011

Plaintiff(s):

- Jude Lewis (Male, 40 Years)

Plaintiff Attorney(s):

- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Jude Lewis
- Cory D. Itkin; Arnold & Itkin LLP; Houston TX for Jude Lewis

Plaintiff Expert(s):

- Joe G. Gonzales M.D.; Life Care Planning; San Antonio, TX called by: Jason A. Itkin, Cory D. Itkin
- Ken McCain Ph.D.; Economics; Houston, TX called by: Jason A. Itkin, Cory D. Itkin
- Carl Hansen; Vocational Rehabilitation; Austin, TX called by: Jason A. Itkin, Cory D. Itkin
- Jack T. Madeley; Safety; College Station, TX called by: Jason A. Itkin, Cory D. Itkin

Defendant(s):

- Axxis Drilling Inc.
- Century Exploration Houston Inc.

Defense Attorney(s):

- John Duvieilh; Jones, Walker, Waechter, Poitevent, Carrere & Denegre; New Orleans, LA for Axxis Drilling Inc.
- Katherine Winters; Jones, Walker, Waechter, Poitevent, Carrere & Denegre; New Orleans, LA for Axxis Drilling Inc.

Defendant Expert(s):

- S. Gary Kuzina Ph.D.; Economics; New Orleans, LA called by: for John Duvieilh, Katherine Winters
- David S. Baskin M.D.; Neurosurgery; Houston, TX called by: for John Duvieilh, Katherine Winters
- Robert Cox; Vocational Rehabilitation; Houston, TX called by: for John Duvieilh, Katherine Winters

Insurers:

- Travelers Insurance Co.

Facts:

On Nov. 19, 2009, plaintiff Jude Lewis, 40, a well tester, was working on an inland drilling rig in Louisiana's Barataria Bay. The rig was owned by Axxis Drilling Inc. Lewis, in order to do his job, had to cross from the drilling rig to a work barge stationed a few feet away. A ladder owned by Axxis bridged the gap. While Lewis was crossing, the ladder slipped out from under him, and he fell 5 feet into the water. He claimed neck and back injuries.

Lewis sued Axxis for not having provided a gangway. He sued another company, Century Exploration Houston Inc., but it was dismissed long before trial.

The defense argued that using a ladder was proper, because one deck was much higher than the other, which created a steep incline.

The defense also argued that Lewis' employer set up the ladder and was responsible for not adequately securing it.

Last, the defense argued that Lewis was contributorily negligent for failing to exercise stop-work authority and report the condition to the rig's supervisor.

Injury:

Lewis claimed neck and back sprains and strains, and he underwent a fusion at L5-S1. Surgery was also recommended at L4-L5, for adjacent-level disc disease. Lewis sought \$132,500 in past medical, \$410,600 in future medical, \$72,600 in past lost earnings, \$679,920 in future lost earnings, \$500,000 in past pain and suffering and \$500,000 in future pain and suffering. He said he could not lift heavy objects, bend over, stoop, play with his children as he used to, or play sports. The surgery was a success, and Lewis recovered well.

The defense argued that the medical care was "lawyer-driven"; that the MRI findings were minimal; and that, because the surgery was a success, Lewis needed no significant future care.

Result: The jury found Axxis alone negligent and that Lewis' damages were \$2,795,620.

Jude Lewis

\$132,500 Personal Injury: Past Medical Cost

\$410,600 Personal Injury: Future Medical Cost

\$72,600 Personal Injury: Past Lost Earnings Capability

\$679,920 Personal Injury: FutureLostEarningsCapability

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

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

Trial Information:

Judge: Barbara Roberts

Demand: \$999,000

Offer: None

Trial Length: 4 days

**Trial
Deliberations:** 2 hours

Jury Vote: 6-0

**Jury
Composition:** 2 male, 4 female

**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 John Schneider

Families of drowning victims said vessel was unseaworthy

Type: Decision-Plaintiff

Amount: \$1,931,204

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Galveston, TX

Injury Type(s):

- *other* - death; loss of consortium; conscious pain and suffering

Case Type:

- *Wrongful Death*
- *Admiralty/Maritime* - Unseaworthiness

Case Name: Rosalva Mireles, Individually, and as Personal Representative of the Estate of Raul Mireles, Deceased and as Next Friend of Alberto Martinez; Rosalda Martinez; Karina Mireles; Diana Mireles; and Maria Gonzalez, Individually, and as Personal Representative of the Estate of Juan Manuel Gonzalez Santillana, Deceased and as Next Friend of Emmanuel Gonzalez; Genesis Gonzalez; Maritza Gonzalez; Juan Manuel Gonzalez Jr.; and Christi Gonzalez v. Sea Freight Services Inc., Sea Freight Services Ltd., Sea Freight Services Inc. Ltd., Jorge Goodman, and the M/V Scout, No. 3:06-cv-00053

Date: July 01, 2008

Plaintiff(s):

- Diana Mireles
- Karina Mireles
- Maria Gonzales (Female)
- Rosalva Mireles (Female)
- Alberto Martinez
- Christi Gonzales
- Genesis Gonzales
- Maritza Gonzales
- Rosalda Martinez
- Emmanuel Gonzales
- Estate of Raul Mireles (Male)
- Juan Manuel Gonzales Jr.
- Estate of Juan Manuel Gonzales (Male)

**Plaintiff
Attorney(s):**

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Maria Gonzales, Emmanuel Gonzales, Genesis Gonzales, Maritza Gonzales, Juan Manuel Gonzales Jr., Christi Gonzales, Rosalva Mireles, Karina Mireles, Diana Mireles, Alberto Martinez, Rosalda Martinez
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Maria Gonzales, Emmanuel Gonzales, Genesis Gonzales, Maritza Gonzales, Juan Manuel Gonzales Jr., Christi Gonzales, Rosalva Mireles, Karina Mireles, Diana Mireles, Alberto Martinez, Rosalda Martinez
- Micajah Boatright; Arnold & Itkin LLP; Houston TX for Maria Gonzales, Emmanuel Gonzales, Genesis Gonzales, Maritza Gonzales, Juan Manuel Gonzales Jr., Christi Gonzales, Rosalva Mireles, Karina Mireles, Diana Mireles, Alberto Martinez, Rosalda Martinez

Defendant(s):

- Jorge Goodman
- Sea Freight Services Inc.

**Defense
Attorney(s):**

- None reported for Sea Freight Services Inc., Jorge Goodman

Facts:

On Dec. 16, 2003, plaintiffs' decedents Raul Mireles and Juan Manuel Gonzales were crew members of the M/V Scout, a vessel owned by Sea Freight Services Inc., a Belize-based company owned by Jorge Goodman. The vessel was being transferred from its previous owner, Rip-Tide Marine LLC, to Sea Freight when it capsized. Mireles and Gonzales drowned in the incident.

The families of Mireles and Gonzales sued Goodman and Sea Freight, alleging negligence. The plaintiffs claimed the Scout was unseaworthy because of improper maintenance, inadequate safety equipment, and poor training and supervision of the crew, resulting in the accident and the deaths of Mireles and Gonzales.

Sea Freight and Goodman were not represented by counsel and did not file a response to the suit.

The suit originally named Rip-Tide Marine and its owners, but the plaintiffs dropped those claims before trial.

Injury:

Mireles and Gonzales drowned in the accident. Mireles was survived by his wife, Rosalva Mireles, and children Karina and Diana Mireles and Alberto and Rosalda Martinez. Gonzales was survived by his wife, Maria Gonzales, and children Emmanuel, Genesis, Maritza, Juan Jr. and Christi Gonzales.

The plaintiffs claimed both men were a major source of both financial and emotional support for their families. They sought an unspecified amount for pre-death pain and suffering, as well as past and future lost income, loss of consortium and burial and funeral expenses.

Result: Judge Lee Rosenthal entered a default judgment against Sea Freight and Goodman, awarding the estate of Raul Mireles \$500,000 for pre-death pain and suffering and Rosalva Mireles and her children \$298,725 for past and future loss of support. The judge also awarded the estate of Juan Gonzales \$500,000 for pre-death pain and suffering and Maria Gonzales and her children \$632,439 for past and future loss of support.

Trial Information:

Judge: Lee H. Rosenthal

Editor's Comment: This report is based on court documents. Plaintiffs' counsel did not return the reporter's phone calls.

Writer Rick Archer

Teen maintained that the drug Risperdal led to gynecomastia

Type: Verdict-Plaintiff

Amount: \$1,750,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):

- *chest* - gynecomastia
- *other* - scar and/or disfigurement
- *mental/psychological* - emotional distress

Case Type:

- *Products Liability* - Pharmaceutical; Failure to Warn

Case Name: Nicholas Murray v. Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C., Excerpta Medica Inc., and Elsevier Inc., No. 130401990

Date: November 09, 2015

Plaintiff(s):

- Nicholas Murray (Male, 13 Years)

Plaintiff Attorney(s):

- Jason A. Itkin; Arnold & Itkin, LLP; Houston TX for Nicholas Murray
- Cory Itkin; Arnold & Itkin, LLP; Houston TX for Nicholas Murray
- Samantha R. Mertz; Sheller, P.C.; Philadelphia PA for Nicholas Murray

Plaintiff Expert(s):

- David A. Kessler M.D.; FDA Regulatory Affairs; San Francisco, CA called by: Jason A. Itkin, Cory Itkin, Samantha R. Mertz
- Francesco De Luca M.D.; Pediatric Endocrinology; Philadelphia, PA called by: Jason A. Itkin, Cory Itkin, Samantha R. Mertz

Defendant(s):

- Elsevier Inc.
- Excerpta Medica Inc.
- Johnson & Johnson Co.
- Janssen Pharmaceuticals Inc.
- Johnson & Johnson Pharmaceutical Research and Development L.L.C.

Defense Attorney(s):

- John D. Winter; Patterson Belknap Webb & Tyler LLP; New York, NY for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.
- None reported for Excerpta Medica Inc., Elsevier Inc.
- William V. Essig; Drinker Biddle & Reath LLP; Chicago, IL for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.
- Tonia Ann Patterson; Drinker Biddle & Reath LLP; Philadelphia, PA for Janssen Pharmaceuticals Inc., Johnson & Johnson Co., Johnson & Johnson Pharmaceutical Research and Development L.L.C.

Defendant Expert(s):

- Alan D. Rogol M.D.; Pediatric Endocrinology; Charlottesville, VA called by: for John D. Winter, William V. Essig, Tonia Ann Patterson
- Janet Arrowsmith M.D.; FDA Regulatory Affairs; Santa FE, NM called by: for John D. Winter, William V. Essig, Tonia Ann Patterson
- Nadine Schwartz M.D.; Adolescent Psychiatry; Philadelphia, PA called by: for John D. Winter, William V. Essig, Tonia Ann Patterson

Facts:

Around 2007, plaintiff Nicholas Murray, 13, of Federalsburg, Md., began experiencing excessive breast tissue.

Since 2003, he had been taking the antipsychotic drug Risperdal to treat, among other conditions, sleep problems, autism spectrum disorder, and attention-deficit hyperactivity disorder.

Nicholas' mother assumed his enlarged breasts were due to weight gain, which was a side-effect of the drug. In 2008, with Risperdal no longer effective and with concern about his weight gain, Nicholas was taken off the drug. However, despite discontinuing Risperdal and losing weight, Murray continued to have enlarged breast tissue, and was monitored by his pediatrician.

After news reports detailed the connection between Risperdal and gynecomastia (swollen male breast tissue), it was suspected that Murray suffered from the condition (which was confirmed in 2014).

Nicholas sued Risperdal-manufacturers Janssen Pharmaceuticals Inc. and Johnson & Johnson Co. on failure-to-warn claims. He also sued Excerpta Medica Inc. and Elsevier Inc. (which were later dismissed), which were responsible for printing warning labels on Risperdal prescription bottles.

Nicholas' counsel presented internal data from Janssen which demonstrated that the company, through studies dating back to 2002, knew of an association between Risperdal and gynecomastia; however, despite having this information, Janssen did not provide this information on its labels until 2006. Nicholas' counsel further criticized the language

Janssen used on its labels ("In clinical trials of 1,885 children and adolescents with autistic disorder or other psychiatric disorders treated with Risperdal ... gynecomastia was reported in 2.3 percent of Risperdal-treated patients") and maintained that more direct, stronger language should have been used to warn users of gynecomastia.

Nicholas' expert in FDA regulatory affairs opined that Janssen, based on its data, should have warned earlier of the causal link between Risperdal and gynecomastia. The expert further criticized Janssen for its "off-label" marketing. According to the expert, Risperdal was only approved by the FDA to treat adults with schizophrenia, but physicians were allowed to prescribe the drug "off label" to children. However, Janssen was prohibited from marketing Risperdal to children, until the FDA allowed it in 2006. The expert faulted Janssen for marketing and promoting the drug to children before 2006 and not warning about the association between Risperdal and gynecomastia once it learned about this association

The defense maintained that Janssen properly and sufficiently warned about the risks of gynecomastia relating to Risperdal use, in accordance with FDA regulations.

Janssen's expert in FDA regulatory affairs opined that the drug manufacturer, despite its internal data from 2002, was not legally permitted to warn of any risks associated with gynecomastia prior to 2006, since the FDA did not approve of its marketing to children until 2006.

Janssen also argued that several studies did not show as significant an association between Risperdal usage and gynecomastia as claimed by Nicholas' counsel.

The defense's expert in pediatric psychiatry testified about the risk-benefit analysis associated with every drug and how prescribing physicians have to figure out whether the benefits outweigh the risks. Given Nicholas' medical situation, Risperdal's benefits outweighed its risks, the expert concluded. The defense's expert in pediatric endocrinology testified that there was no evidence that Nicholas had gynecomastia and, in the event that he did have gynecomastia, that there was no evidence that Risperdal caused his condition.

Injury:

The only treatment available for gynecomastia is a mastectomy, but due to Nicholas' mental condition, it not a viable option; otherwise, it is a permanent condition, according to his counsel.

Nicholas' mother testified about her son's condition and how it made him feel self-conscious. He sought damages for past and future pain and suffering, disfigurement, and emotional distress.

Nicholas' expert in pediatric endocrinology causally related his gynecomastia to his five-year usage of Risperdal.

The defense's expert in pediatric endocrinology opined that gynecomastia can be caused by a number of factors, including puberty, genetics, and other drugs. He also testified that, if Nicholas hypothetically has gynecomastia, Risperdal did not cause the condition, since he stopped taking the drug in 2008, and was not diagnosed until six years later, which would have been more than enough time for the drug to end its effects on the body, concluded the expert.

Result: The jury found that Janssen negligently failed to adequately warn physicians/health-care providers of the extent of the risk of gynecomastia stemming from the use of Risperdal. Jurors determined that Janssen's negligence was a substantial factor in bringing about Nicholas' gynecomastia. Nicholas was determined to receive \$1.75 million.

Trial Information:

Judge: Victor J. DiNubile Jr.

Trial Length: 2 weeks

**Trial
Deliberations:** 2.5 hours

**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. Elsevier Inc. and Excerpta Medica Inc. were not asked to contribute.

Writer Aaron Jenkins

Collision caused worker standing in back of truck to fall

Type: Verdict-Plaintiff

Amount: \$1,551,745

State: Texas

Venue: Harris County

Court: Harris County District Court, 133rd, TX

Injury Type(s):

- *knee*
- *neck* - herniated disc, cervical; fusion, cervical, two-level
- *chest* - fracture, rib
- *other* - back and neck
- *shoulder*
- *neurological* - radiculopathy

Case Type:

- *Motor Vehicle* - Truck; Intersection
- *Slips, Trips & Falls* - Falldown
- *Worker/Workplace Negligence*

Case Name: Gilberto Villegas v. APM Terminals North America, Inc., Universal Maritime Service Corp., and Roy Goodman III, No. 2008-43180

Date: May 11, 2010

Plaintiff(s):

- Gilberto Villegas (Male, 42 Years)

Plaintiff Attorney(s):

- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Gilberto Villegas
- Cory D. Itkin; Arnold & Itkin LLP; Houston TX for Gilberto Villegas

Plaintiff Expert(s):

- Ken McCoin Ph.D., CFA; Economics; Houston, TX called by: Jason A. Itkin, Cory D. Itkin
- Angel Roman M.D.; Life Care Planning; San Antonio, TX called by: Jason A. Itkin, Cory D. Itkin

Defendant(s):

- Roy Goodman, III
- Universal Maritime Service Corp
- APM Terminals North America, Inc

**Defense
Attorney(s):**

- Christopher Tramonte; Tramonte & Associates; Houston, TX for APM Terminals North America, Inc, Universal Maritime Service Corp, Roy Goodman, III
- Pamela Dupuis; Tramonte & Associates; Houston, TX for APM Terminals North America, Inc, Universal Maritime Service Corp, Roy Goodman, III

**Defendant
Expert(s):**

- Barry Wilbratte Ph.D.; Personal Injury (Economics); Houston, TX called by: for Christopher Tramonte, Pamela Dupuis
- Bruce R. Weiner M.D.; Orthopedics; Houston, TX called by: for Christopher Tramonte, Pamela Dupuis
- Carla Seyler; Vocational Rehabilitation; New Orleans, LA called by: for Christopher Tramonte, Pamela Dupuis
- Andrew P. Kant M.D.; Orthopedic Surgery; Houston, TX called by: for Christopher Tramonte, Pamela Dupuis

Facts:

On May 29, 2008, plaintiff Gilberto Villegas, 42, a ship repairman, was working at APM Terminals North America Inc. in the Port of Houston. He was unloading materials while standing in the bed of a flatbed pickup truck when yard mule driver Roy Goodman, who was working for APM Terminals, collided with the truck. Villegas fell in the bed. He claimed he sustained injuries in the incident.

Villegas sued APM Terminals North America Inc., Universal Maritime Service Corp. (which is a subsidiary of APM) and Goodman. He alleged that Goodman was negligent in the operation of the yard mule truck and that APM and Universal Maritime were liable for his actions.

APM argued that Goodman was not at fault because Villegas' truck was parked in the middle of an intersection.

The defendants also contended that the impact from the collision was minor because Goodman was only driving 1 or 2 mph when the trucks collided.

Injury:

Villegas was transported to the hospital via ambulance. He complained of shoulder pain, a broken rib and knee pain, and was treated and released. He did not have cervical and lumbar pain complaints at the hospital. However, he was later diagnosed with two cervical herniations and radiculopathy, which he claimed were caused by the accident.

Villegas underwent a 2-level cervical fusion approximately a year after the accident. His doctors also recommended he have lumbar fusion surgery in the future.

The plaintiff's economic expert testified that Villegas' lost wages were approximately \$250,000, and a life care planning expert opined that Villegas' life care plan would cost \$290,000. Villegas sought \$1.8 million in total damages.

APM argued that Villegas' surgery was unnecessary and noted that Villegas had neck complaints which preexisted the accident. APM also contended that Villegas sustained only minor muscle strains

The defense's orthopedic surgery expert said that the symptoms of radiculopathy include reflex loss, diminished sensation and muscle weakness, none of which were reported by Villegas' treating doctors. The expert also said that Villegas did not need surgery.

The defense's vocational rehabilitation expert opined that Villegas could get his GED and return to the work force and make \$8 to \$15 dollars per hour.

The defense's economics expert testified that depending on if the jury thought Villegas could return to work in one, two or three years, his lost wages ranged between \$69,000 and \$118,000.

Result:

The jury found in favor of the plaintiff. It apportioned liability between the defendants -- 75 percent for APM, 15 percent for Goodman, and 10 percent for Universal Maritime. Villegas was awarded \$1,551,745.05 in damages.

Gilberto Villegas

\$139,330 Personal Injury: Past Medical Cost

\$250,000 Personal Injury: Future Medical Cost

\$150,000 Personal Injury: Past Physical Impairment

\$100,000 Personal Injury: Future Physical Impairment

\$62,415 Personal Injury: Past Lost Earnings Capability

\$425,000 Personal Injury: FutureLostEarningsCapability

\$100,000 Personal Injury: Past Pain And Suffering

\$100,000 Personal Injury: Future Pain And Suffering

\$50,000 Personal Injury: Past Disfigurement

\$25,000 Personal Injury: Future Disfigurement

\$100,000 Personal Injury: past mental anguish

\$50,000 Personal Injury: future mental anguish

Trial Information:

Judge: Jaclanel McFarland

Demand: \$999,000

Offer: \$35,000

Trial Length: 6 days

**Trial
Deliberations:** 11 hours

Jury Vote: 12-0

**Jury
Composition:** 3 male, 9 female

**Editor's
Comment:** The information in this report was provided by plaintiff's counsel and defense counsel.

Writer James Withers

Worker broke wrist and hip in fall inside trash bin

Type: Settlement

Amount: \$1,450,000

State: Maryland

Venue: Allegany County

Court: Allegany County, Circuit Court, MD

Injury Type(s):

- *hip* - fracture, hip
- *wrist* - fracture, wrist

Case Type:

- *Negligence*
- *Admiralty/Maritime* - Unseaworthiness

Case Name: Robert Wilson v. Liberty Maritime Corporation, No. 2007-cv-02656

Date: March 08, 2010

Plaintiff(s):

- Robert Wilson (Male, 40 Years)

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Robert Wilson
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Robert Wilson
- Cory D. Itkin; Arnold & Itkin LLP; Houston TX for Robert Wilson

Defendant(s):

- Liberty Maritime Corporation

Defense Attorney(s):

- Gregory W. O'Neill; Hill Betts & Nash LLP; New York, NY for Liberty Maritime Corporation
- Geoffrey S. Tobias; Ober, Kaler, Grimes & Shriver for Liberty Maritime Corporation

Defendant Expert(s):

- James Cobey M.D.; Orthopedics; Washington D.C., MD called by: for Gregory W. O'Neill, Geoffrey S. Tobias
- George S. Glass M.D., P.A.; Psychiatry; Houston, TX called by: for Gregory W. O'Neill, Geoffrey S. Tobias
- Robert G. Harper M.D.; Neuropsychology; Houston, TX called by: for Gregory W. O'Neill, Geoffrey S. Tobias
- Robert J. Cirincione M.D.; Orthopedic Surgery; Hagerstown, MD called by: for Gregory W. O'Neill, Geoffrey S. Tobias

Facts:

On June 10, 2007, plaintiff Robert Wilson, a 40-year-old apprentice seaman for Liberty Maritime, was working in a trash bin in Kuwait City, Kuwait, when he fell and broke his right wrist and right hip. Liberty Maritime paid for Wilson's medical treatment, pursuant to its maintenance and cure obligation under maritime law. Wilson, however, claimed that he could no longer work after the accident.

Wilson sued Liberty Maritime and its related corporate entities for negligence and unseaworthiness under maritime law.

Injury:

Wilson sustained a fracture to his right, dominant wrist and right hip. He underwent open reduction surgery on the wrist with internal fixation of hardware. Wilson also underwent surgery to repair his hip. He underwent physical therapy to treat both injuries. Wilson claimed he was permanently disabled.

The defendant argued that Wilson was able to return to work, noting that the plaintiff's treating surgeon agreed. Liberty Maritime claimed that Wilson had made a full recovery from his injuries, but that he had not returned to work due to his alcoholism.

Result:

Prior to trial, the parties reached a settlement agreement in the amount of \$1.45 million.

Trial Information:

Judge: Benson Legg

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

Writer: Shannon Green

Loose cable struck, injured leverman working on dredge

| | |
|-------------------------------|--|
| Type: | Settlement |
| Amount: | \$1,200,000 |
| State: | Texas |
| Venue: | Federal |
| Court: | United States District Court, Southern District, Houston, TX |
| Injury Type(s): | <ul style="list-style-type: none">• <i>back</i> - fusion, lumbar; herniated disc, lumbar; herniated disc at L1-2• <i>neck</i> - fusion, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C6-7 |
| Case Type: | <ul style="list-style-type: none">• <i>Negligence</i>• <i>Admiralty/Maritime</i> - Jones Act• <i>Worker/Workplace Negligence</i> - Oil Field |
| Case Name: | Kenneth Fruge v. Willbros Group Inc. and Willbros International Inc., No. 4:08-cv-00376 |
| Date: | January 26, 2009 |
| Plaintiff(s): | <ul style="list-style-type: none">• Kenneth Fruge (Male, 41 Years) |
| Plaintiff Attorney(s): | <ul style="list-style-type: none">• Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Kenneth Fruge• Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Kenneth Fruge• Cory Itkin; Arnold & Itkin LLP; Houston TX for Kenneth Fruge |
| Plaintiff Expert(s): | <ul style="list-style-type: none">• Alex C. Willingham M.D.; Life Care Planning; San Antonio, TX called by: Kurt B. Arnold, Jason A. Itkin, Cory Itkin• Kenneth G. McCain Ph.D.; Economics; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Cory Itkin |
| Defendant(s): | <ul style="list-style-type: none">• Willbros Group Inc.• Willbros International Inc. |

**Defense
Attorney(s):**

- Robert Browning; Browning Sims PC; Houston, TX for Willbros Group Inc., Willbros International Inc.
- Richard White; Buckley, White, Castaneda & Howell LLP; Houston, TX for Willbros Group Inc., Willbros International Inc.

Facts:

On Nov. 13, 2004, plaintiff Kenneth Fruge, 41, was working as a leverman on a dredge for Willbros Group Inc.

, a Panamanian corporation, in an oilfield off the coast of Nigeria. A cable had become crossed with another cable, and Fruge and a co-worker were assigned to correct the problem. During the process, a cable struck Fruge. He sustained back injuries in the incident.

Fruge sued Willbros Group and Willbros International, claiming negligence under the Jones Act. He alleged that other Willbros employees left the cable they were unspooling loose on the deck instead of spooling it on an empty spool, and that this was the cause of the accident.

The defendants denied negligence. They argued contributory negligence, claiming Fruge should have ensured the cable was being properly unspooled. They also argued Fruge's employment agreement called for arbitration to resolve claims of this nature and that, alternatively, Panama was the proper venue for the case.

Injury:

Fruge claimed he sustained herniations at C4-5, C6-7 and L1-2, which required cervical and lumbar fusion. He said he has been unable to return to work since the accident. He sought \$324,125 for past lost income, \$1,766,904 for future lost income, and an unspecified amount for past and future pain and suffering, medical costs, and physical impairment.

Result:

The case was dismissed and referred to arbitration by Judge Lynn Hughes. Before entering arbitration, the parties settled for \$1.2 million.

Trial Information:

Judge: Lynn M. Hughes

Offer: \$1,300,000

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

Writer Rick Archer

Barge tankerman fell from ladder at night

Type: Verdict-Plaintiff

Amount: \$1,133,342

Actual Award: \$609,921

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Houston, TX

Injury Type(s):

- *back* - bulging disc
- *neck* - bulging disc; herniated disc, cervical; herniated disc at C5-6
- *other* - back and neck
- *surgeries/treatment* - discectomy; laminectomy

Case Type:

- *Admiralty/Maritime* - Jones Act; Unseaworthiness
- *Construction* - Scaffolds and Ladders

Case Name: Norman Seymore v. Penn Maritime, Inc., No. 3:05-CV-528

Date: March 01, 2007

Plaintiff(s):

- Norman Seymore (Male, 38 Years)

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Norman Seymore
- Jason Itkin; Arnold & Itkin LLP; Houston TX for Norman Seymore

Plaintiff Expert(s):

- Zoran Cupic M.D.; Orthopedic Surgery; Houston, TX called by: Kurt B. Arnold, Jason Itkin
- Kenneth G. McCain Ph.D.; Economics; Houston, TX called by: Kurt B. Arnold, Jason Itkin

Defendant(s):

- Penn Maritime Inc.

**Defense
Attorney(s):**

- Joseph T. Stearns; Kenny, Stearns & Zonghetti; New York, NY for Penn Maritime Inc.
- Douglas F. Reeder; Gardere Wynn Sewell LLP; Houston, TX for Penn Maritime Inc.

**Defendant
Expert(s):**

- Larry Lee Likover M.D.; Orthopedic Surgery; Houston, TX called by: for Joseph T. Stearns, Douglas F. Reeder

Facts:

Plaintiff Norman Seymore, 38, was a tankerman on a barge owned by his employer, Penn Maritime. On the night of May 29, 2005, the vessel was at sea near Philadelphia, and Seymore was standing on a ladder to clean a 10-foot-high ceiling. The ladder came out from underneath him, and he fell three or four feet. No one witnessed the incident.

Seymore sued Penn Maritime Inc., Stamford, Conn., under the Jones Act, alleging negligence, unseaworthiness and failure to pay maintenance and cure. The plaintiff alleged that he should not have been ordered to clean the ceiling at night while working alone. In the alternative, he alleged that Penn failed to provide him with proper equipment, such as a long brush to reach the ceiling without a ladder.

The defense maintained that a long brush was available

and that the plaintiff was negligent for not using it.

Seymore testified that he was unaware of any long brush being available and that he had been on the job only 21 days.

Injury:

Seymore claimed a herniation at C5-6 and a protruding disc lower in his spine. He underwent a cervical laminectomy and discectomy and at the time of trial, was continuing to undergo physical therapy. For maintenance and cure, he sought \$4,500 and \$82,000, respectively. He claimed \$120,000 for a possible future surgery and further analgesic care.

Seymore was making about \$60,000 a year at the time of the incident. He did not return to work, claiming \$61,000 in past lost wages and more than \$525,000 for 21 years' future lost wages.

Seymore also sought unspecified amounts for intangible damages.

The defense argued that the case was a fraud, that Seymore's injuries were preexisting and that his neck surgery was unnecessary.

Result:

The jury found that the defendant unreasonably failed to pay maintenance and cure and that the vessel was unseaworthy. It found Penn Maritime and Seymore each 50% at fault and determined Seymore's damages to be \$1,133,342, including \$86,500 for maintenance and cure. The jury did not find that Seymore's condition was aggravated by the failure to pay maintenance and cure.

Comparative fault applied to all damages except maintenance and cure, reducing Seymore's recovery to \$609,921, plus prejudgment and post-judgment interest of 5.05%.

Norman Seymore

\$101,000 Personal Injury: Future Medical Cost

\$61,000 Personal Injury: Past Lost Earnings Capability

\$634,842 Personal Injury: FutureLostEarningsCapability

\$62,500 Personal Injury: future mental anguish and suffering

\$62,500 Personal Injury: past pain, suffering & disability

\$4,500 Personal Injury: maintenance

\$62,500 Personal Injury: future pain, suffering & disability

\$82,000 Personal Injury: cure

\$62,500 Personal Injury: past mental anguish and suffering

Trial Information:

Judge: David Hittner

Trial Length: 7 days

**Trial
Deliberations:** 2 days

Jury Vote: 8-0

**Jury
Composition:** 5 male, 3 female

**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 John Schneider

Longshoreman said company failed to secure steel tubing

Type: Verdict-Defendant

Amount: \$0

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Galveston, TX

Injury Type(s): • *back* - lower back; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1

Case Type: • *Workplace* - Workplace Safety

Case Name: Charles Tyler v. Cementnatie, CV, No. G-06-430

Date: August 23, 2007

Plaintiff(s): • Charles Tyler (Male, 59 Years)

Plaintiff Attorney(s): • Jason A. Itkin; Arnold & Itkin, LLP; Houston TX for Charles Tyler
• Michael Pierce; Arnold & Itkin, LLP; Houston TX for Charles Tyler

Plaintiff Expert(s): • Ken McCain Ph.D.; Economics; Dallas, TX called by: Jason A. Itkin, Michael Pierce
• John Zemanek; Marine Survey; La Porte, TX called by: Jason A. Itkin, Michael Pierce
• Zoran Cupic M.D.; Orthopedic Surgery; Houston, TX called by: Jason A. Itkin, Michael Pierce
• Thomas O'Keefe; Marine Survey; Seabrook, TX called by: Jason A. Itkin, Michael Pierce

Defendant(s): • Cementnatie, CV

Defense Attorney(s):

- Jeffrey R. Bale; Bale & Godkin, LLP; Sugar Land, TX for Cementnatie, CV
- Lewis E. Henderson; Bale & Godkin, LLP; Sugar Land, TX for Cementnatie, CV

Defendant Expert(s):

- Bruce Brawner; Vocational Rehabilitation; Jackson, MS called by: for Jeffrey R. Bale, Lewis E. Henderson
- Michael L. Martin; Marine Survey; Houston, TX called by: for Jeffrey R. Bale, Lewis E. Henderson

Insurers:

- AXA Belgium

Facts: On Oct. 13, 2003, plaintiff Charles Tyler, 59, a longshoreman, was working at the Barbours Cut ship terminal in La Porte, offloading the ship M/V Lykes Navigator. The ship's cargo included three containers of steel tubing, each weighing approximately eight tons. The tubing was packed by Cementnatie C.V., a Belgian company. En route from Antwerp, Belgium to La Porte, the Lykes Navigator encountered a few days of near gale and gale force winds. In La Porte, the first two containers were offloaded without incident. The third container was loaded onto a trailer being towed by a tractor that Tyler was operating. Tyler drove approximately 3,000 yards to a drop point and as he was backing in, the trailer flipped, causing the tractor to rise into the air and violently slam back down.

Tyler sued Cementnatie and a number of other parties, all of which settled before trial, for negligence, claiming that the defendant failed to properly secure and stow the steel tubing, which caused it to shift within the container. Tyler asserted that, because of this, the container was off balance when it arrived in La Porte, resulting in Tyler's subsequent accident and injuries.

Cementnatie denied that the container was packed improperly, showing photos demonstrating that the tubing had not shifted during transit. Cementnatie argued that no shifting or tipping of the container was observed during the drive to the drop point, despite the fact that the route had a number of 90 degree turns. Cementnatie asserted that Tyler jackknifed the trailer while parking and was entirely liable for the accident.

Injury: Tyler complained of low back pain, receiving treatment. He claimed that he has been unable to work since the accident. Treating physicians recommended a fusion at the L4-5 and L5-S1 discs.

Tyler sought \$300,000 in past and future medical expenses and lost income, and an unspecified amount for pain and suffering.

Result: The jury found that Cementnatie was not liable for the accident or Tyler's injuries.

Trial Information:

Judge: Sam Kent

Trial Length: 3 days

**Trial
Deliberations:** 45 minutes

**Jury
Composition:** 5 male, 3 female

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

Writer Rick Archer

Injured boatswain claimed tugboat was unsafe work environment

Type: Decision-Defendant

Amount: \$0

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Galveston, TX

Injury Type(s):

- *knee*
- *elbow*
- *shoulder*

Case Type:

- *Admiralty/Maritime*
- *Workplace - Workplace Safety*
- *Worker/Workplace Negligence - Negligent Training*

Case Name: Gabriel Bonefont v. U.S. Shipping Partners LP, USS Transport LLC, USS Chartering LLC and M/V ITB Mobile, No. G-07-012

Date: August 22, 2008

Plaintiff(s):

- Gabriel Bonefont (Male)

Plaintiff Attorney(s):

- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Gabriel Bonefont
- Micajah Boatright; Arnold & Itkin LLP; Houston TX for Gabriel Bonefont

Defendant(s):

- M/V ITB Mobile
- USS Transport LLC
- USS Chartering LLC
- U.S. Shipping Partners LP

Defense Attorney(s):

- Robert L. Klawetter; Eastham, Watson, Dale & Forney; Houston, TX for U.S. Shipping Partners LP, USS Transport LLC, USS Chartering LLC, M/V ITB Mobile
- Christina K. Schovajsa; Eastham, Watson, Dale & Forney; Houston, TX for U.S. Shipping Partners LP, USS Transport LLC, USS Chartering LLC, M/V ITB Mobile

Facts: On Sept. 29, 2006, plaintiff Gabriel Bonefont, a recertified boatswain, was employed by USS Transport LLC. He was serving as the temporary boatswain of the ITB Mobile, a 690 foot long integrated tugboat, which was on a voyage between Corpus Christi and Port Everglades, Fla. As boatswain, Bonefont was in charge of the deck crew. His chief-mate informed him that the ship had been given a docking change and would be docking port-side, even though the boat was 17 hours out of the Port of Everglade. This required for the breast line to be removed from its starboard deck position, which is where Bonefont put it the day before.

Bonefont decided that he and his fellow crew members would change the position of the breast line that day. He attempted to throw the breast line and he fell, sustaining injuries.

Bonefont sued U.S. Shipping Partners LP, USS Transport LLC and ITB Mobile, claiming unsafe work environment, faulty equipment, inadequate training for employees, and failure to provide proper medical care after the September 2006 accident.

The defendants countered that Bonefont's injuries were a result of the plaintiff's own negligence.

Injury: Bonefont allegedly injured his right knee, elbow and shoulder.

Result: The judge rendered a decision for the defendants.

Trial Information:

Judge: John R. Froeschner

Editor's Comment: This report is based on court documents. Plaintiff's and defense counsel did not return the reporter's phone calls.

Writer: James Withers

Driver claimed soft-tissue injuries in rear-ender

Type: Verdict-Defendant

Amount: \$0

State: Texas

Venue: Hidalgo County

Court: Hidalgo County District Court, 398th, TX

Injury Type(s): • *other* - soft tissue; back and neck

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

Case Name: Rosa Mendez v. Javier Salinas, and Antara Trucking, L.L.C., No. C-5062-14-1

Date: November 03, 2016

Plaintiff(s): • Rosa Mendez (Female, 40 Years)

Plaintiff Attorney(s): • Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Rosa Mendez

Defendant(s): • Javier Salinas
• Antara Trucking, L.L.C.

Defense Attorney(s): • Tamara L. Rodriguez; Vidaurri, Lyde, Rodriguez & Haynes L.L.P.; Edinburg, TX for Javier Salinas, Antara Trucking, L.L.C.
• Glenn D. Romero; Vidaurri, Lyde, Rodriguez, & Haynes, L.L.P.; Edinburg, TX for Javier Salinas, Antara Trucking, L.L.C.

Facts: On Feb. 10, 2014, plaintiff Rosa Mendez was operating her vehicle on a street in Hidalgo County when she became involved in a motor vehicle collision. Mendez claimed a truck driven by Javier Salinas rear-ended her. Mendez claimed that she injured her neck and back.

Mendez sued Salinas claiming that he was negligent in the operation of his vehicle. Mendez also sued the vehicle's owner, Antara Trucking, claiming it was vicariously liable for the driver's negligence because he was engaged in the course and scope of employment at the time.

Salinas denied negligence, contending the accident was caused by Mendez.

Injury: Mendez presented to an emergency room after the accident with complaints of pain in her neck and back. She underwent X-rays and was discharged with instructions to follow up with an orthopedist.

Mendez was ultimately diagnosed with soft-tissue neck and back injuries and underwent medical care. Mendez claimed residual pain and limitations. Mendez sought to recover damages for past and future medical expenses; and past and future pain and suffering.

Result: The jury found that there was no negligence on the part of Salinas.

Trial Information:

Judge: Ernesto Aliseda

Trial Length: 2 days

**Trial
Deliberations:** 2 hours

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

Writer Gary Raynaldo

Man in custody for marijuana possession was raped in jail

Type: Decision-Defendant

Amount: \$0

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Houston, TX

Injury Type(s):

- *other - rape*

Case Type:

- *Civil Rights - 42 USC 1983*
- *Constitutional Law - Fourteenth Amendment*

Case Name: John Doe v. Harris County, No. 4:05-cv-03938

Date: July 13, 2007

Plaintiff(s):

- John Doe

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for John Doe
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for John Doe

Defendant(s):

- Harris County

Defense Attorney(s):

- George A. Nachtigall; Harris County Attorney's Office; Houston, TX for Harris County

Defendant Expert(s):

- Jerome Garber; Prison Standards; Houston, TX called by: for George A. Nachtigall

Facts:

On May 13, 2004, the plaintiff was driving home from his job at the Texas Medical Center in Harris County when he was pulled over by police because his truck resembled one associated with a robbery that had occurred that evening. The police found marijuana in his car and arrested him. While he was being held in the Harris County IPC, another inmate raped him.

The plaintiff sued Harris County, claiming violations of his Eighth Amendment rights under 42 USC 1983, violation of his Fourteenth Amendment rights and negligence.

He alleged that that when he arrived at the jail, he was placed in a crowded holding cell, then transferred to another one that was just as crowded. While he was standing in front of a urinal, with his back to the other inmates, another inmate, whom he could not identify, held him down and raped him. The attack last about two to three minutes, during which time the plaintiff cried for help, but no one came. Once the rape was over, he banged on the cell door for a guard, but no one responded. He claimed that he could see the guards through the cell window, but no one came for him. He was later bailed out of jail but did not report the rape until later that day, when he went to the hospital.

Harris County argued that it could not violate the plaintiff's Eighth Amendment rights because he was not a convicted criminal at the time of the attack, a criterion required by the Eighth Amendment. The county argued that its jailors did not know that the plaintiff was in danger, and the plaintiff himself did not know whether the guards had any reason to believe that the attack had occurred. In addition, the county argued that the policies it had in place did not violate the constitution, which would be required for the plaintiff's claim against the county to succeed.

The county further argued that the inmates were carefully monitored via the Harris County Inmate Processing Center; that an inmate-on-inmate sexual assault is an almost unheard-of event; and that serious inmate-on-inmate violence is an extremely rare occurrence. Harris County's prison security expert, Jerome Graber, asserted that a "significantly higher level of safety from sexual assault exists in the IPC compared to other jails, and the community at large, and there was no pattern of sexual or violent assaults presenting a serious risk of injury to inmates."

Injury:

The plaintiff asked for unspecified damages for pain and suffering and mental anguish.

Result:

Judge Gary H. Miller granted summary judgment to the defense, ruling that while the county and jail employees could have behaved differently or established additional safeguards, their actions constituted no deliberate indifference to the plaintiff's constitutional rights.

Trial Information:**Judge:**

Gary Miller

**Editor's
Comment:**

This report is based on information gleaned from court documents and plaintiff's and defense counsel.

Writer

William Cresenzo

Plaintiff had worked long hours before getting behind the wheel

Type: Verdict-Defendant

Amount: \$0

State: Texas

Venue: Dallas County

Court: Dallas County District Court, 95th, TX

Injury Type(s): • *other* - soft tissue; chiropractic; back and neck; physical therapy

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

Case Name: David Moreno v. Southeastern Freight Lines, Inc.; and Joshua Tatum, No. DC-14-04862

Date: January 05, 2017

Plaintiff(s): • David Moreno (Male, 40 Years)

Plaintiff Attorney(s): • Jason A. Itkin; Arnold & Itkin LLP; Houston TX for David Moreno

Plaintiff Expert (s): • Angel M. Roman M.D.; Physical Rehabilitation; San Antonio, TX called by: Jason A. Itkin

Defendant(s): • Joshua Tatum
• Southeastern Freight Lines Inc.

Defense Attorney(s): • William F. Allred; Cooper & Scully; Dallas, TX for Southeastern Freight Lines Inc., Joshua Tatum
• Amy Agnew; Cooper & Scully; Dallas, TX for Southeastern Freight Lines Inc., Joshua Tatum

Defendant Expert(s):

- Marvin E. Van Hal M.D.; Orthopedics; Hurst, TX called by: for William F. Allred, Amy Agnew

Facts:

On Feb. 17, 2014, plaintiff David Moreno, 40, a waiter, was driving in Dallas when a tractor-trailer driven by Joshua Tatum rear-ended him. Tatum worked for Southeastern Freight Lines Inc. Moreno claimed neck and back injuries.

Moreno sued Tatum for negligent operation and Southeastern Freight Lines for vicarious liability, alleging that he was in the course and scope of employment at the time.

Tatum claimed that Moreno had been working long hours as a waiter and then was driving while fatigued. Tatum claimed that Moreno's vehicle suddenly and unexpectedly drifted over to his lane and he was unable to stop in time to avoid the impact.

Injury:

Moreno refused an ambulance at the scene. He was driven home and then sought medical treatment a week later. He claimed pain in his neck and back. Moreno was ultimately diagnosed with soft-tissue neck and back injuries, and underwent physical therapy and chiropractic treatment.

Moreno claimed residual pain and limitations performing activities of daily living. He continued to work following the accident. He sought to recover damages for past and future medical expenses; and past and future pain and suffering. Moreno's treating doctor opined that the need for future spinal surgery and epidural injections. Moreno claimed \$31,000 in past medical expenses. Moreno's counsel suggested the jury award \$350,000.

The defense argued that Moreno was not injured in the accident. The defense's expert orthopedist opined that Moreno's spinal complaints pre-existed the accident. He opined that Moreno had minor soft-tissue injuries that only required approximately \$7,500 in past medical care.

The defense also noted that Moreno called his attorney nine days after the accident who then gave him a list of medical treaters.

Result:

The jury rendered a defense verdict, finding that Tatum was not negligent.

Trial Information:

Judge: Ken Molberg

Trial Length: 2 days

Trial Deliberations: 2 hours

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

Writer

Gary Raynaldo

14-year-old girl met man on MySpace, was assaulted

Type: Decision-Defendant

Amount: \$0

State: Texas

Venue: Federal

Court: United States District Court, Western District, Austin, TX

Case Type:

- *Internet Law*
- *Intentional Torts - Sexual Assault*
- *Communications - Communications Decency Act*

Case Name: Jane Doe, Individually and as Next Friend of Julie Doe, a minor v. MySpace Inc and News Corp., No. A-06-CA-983

Date: February 13, 2007

Plaintiff(s):

- Jane Doe (Female)
- Julie Doe (Female, 14 Years)

Plaintiff Attorney(s):

- Douglas H. Wigdor; Thompson & Alessio; New York NY for Jane Doe
- Kurt Arnold; Arnold & Itkin LLP; Houston TX for Jane Doe, Julie Doe
- Carl Barry; Barry & Loewy LLP; Austin TX for Jane Doe, Julie Doe
- Jason Aaron Itkin; Arnold & Itkin, LLP; Houston TX for Jane Doe
- Micajah Boatwright; Arnold & Itkin LLP; for Jane Doe, Julie Doe
- Nicholas Spiliotis; Arnold & Itkin, L.L.P.; Houston TX for Jane Doe
- Scott Browning Gilly; Thompson Wigdor & Gilly LLP; New York NY for Jane Doe, Julie Doe
- Adam Loewy; Barry & Loewy LLP; Austin TX for Jane Doe, Julie Doe

Defendant(s):

- News Corp.
- MySpace Inc.

**Defense
Attorney(s):**

- Michael D. Marin; Vinson & Elkins; Austin, TX for MySpace Inc., News Corp.
- Christopher Popov; Vinson & Elkins; Austin, TX for MySpace Inc., News Corp.
- Clifford Louis Thau; Vinson & Elkins; Austin, TX for MySpace Inc., News Corp.
- Hilary Lovett Preston; Vinson & Elkins; New York, NY for MySpace Inc., News Corp.
- Ronald Leslie Oran; New York, NY for MySpace Inc., News Corp.
- Susan Denmon Gusky; Vinson & Elkins; Austin, TX for MySpace Inc., News Corp.

Facts:

In April 2006, plaintiff, a 14-year-old girl, met a 19-year-old man who had e-mailed her via her MySpace profile, in which she stated that she was 14. The two went to dinner and a movie, and the plaintiff alleged that the man sexually assaulted her. He was later charged with with sexual assault.

Doe and her mother sued MySpace Inc. and its parent company, News Corp. of Beverly Hills, Calif., alleging negligence, gross negligence, fraud and negligent representation. Plaintiff's counsel argued that MySpace lacked rules to safeguard minor users and should have an age verification mechanism to prevent adults from contacting minors. Counsel also maintained that the defendants had a legal duty to prevent foreseeable injuries from occurring due to MySpace.com.

Defense counsel argued that they had immunity under the Communications Decency Act of 1996, which provides immunity for interactive computer services for injuries resulting from third-party content posted online. Defense counsel further argued that the plaintiffs' claims were barred by Texas common law, and that they failed to plead fraud with particularity under federal Rule 9(b).

Plaintiff's counsel countered that the Communications Decency Act does not apply because the plaintiff was not suing MySpace for the publication of third-party content but, rather, for failing to implement safety measures to prevent sexual predators from communicating with minors.

Injury:

Plaintiffs maintained that the girl's life has been permanently altered as a result of the assault and she is in therapy. Counsel initially asked for \$30,000, but later asked for unspecified amounts for to pain and suffering, mental anguish, physical pain and emotional trauma.

Result:

Judge Sam Sparks dismissed the negligence claim with prejudice and the fraud and negligent representation claims without prejudice, finding that plaintiffs' claims were barred by the immunity provision of the Communications Decency Act. Sparks further held that the Act's Good Samaritan provision barred claims against MySpace to the extent that such claims sought liability against allegedly ineffective security measures or policies relating to age verification.

Sparks noted that if MySpace had to determine the age of a MySpace user and make sure that minors were not communicating with adults, it "would ... stop MySpace's business in its tracks and close this avenue of communication, which Congress in its wisdom has decided to protect," citing the Communications Decency Act.

Sparks also held that the plaintiffs' claims were barred under Texas common law because MySpace had no duty to protect users from criminal acts or to institute reasonable safety measures on its website

"If anyone had the duty to protect Julie Doe, it was her parents, not MySpace," Sparks wrote.

Trial Information:**Judge:**

Sam Sparks

Post Trial:

Plaintiff's counsel is appealing the ruling on the negligence claim and plans to refile the fraud and negligent misrepresentation claims in California state court.

Writer

William Cresenzo

Motorcyclist rear-ended car, fell in highway traffic, and was killed

Type: Verdict-Defendant

Amount: \$0

State: Texas

Venue: Jefferson County

Court: Jefferson County District Court, 136th, TX

Injury Type(s):

- *other - death*

Case Type:

- *Motor Vehicle - Motorcycle; Tractor-Trailer; Multiple Vehicle*
- *Wrongful Death - Survival Damages*

Case Name: Melissa Stapleton, individually and as personal representative of the estate of Peter Stapleton v. Eclipse Trucking, Alejandro Villegas, and Express Carriers, No. D-184302

Date: October 26, 2011

Plaintiff(s):

- Donna Ward (Female)
- Melissa Stapleton (Female)
- Estate of Peter Stapleton (Male, 54 Years)

Plaintiff Attorney(s):

- Ed Fisher; Provost & Umphrey Law Firm LLP; Beaumont TX for Estate of Peter Stapleton, Melissa Stapleton
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Donna Ward

Defendant(s):

- Eclipse Trucking
- Express Carriers
- Alejandro Villegas

Defense Attorney(s):

- Maria Fox; Hays McConn Rice & Pickering, P.C.; Houston, TX for Alejandro Villegas, Eclipse Trucking
- Leslee Haas; Hays, McConn, Rice & Pickering; Houston, TX for Alejandro Villegas, Eclipse Trucking

**Defendant
Expert(s):**

- Whitney Morgan; Traffic; Birmingham, AL called by: for Maria Fox, Leslee Haas

Facts:

On March 22, 2009, plaintiffs' decedent Peter Stapleton, 54, was riding a motorcycle in the left lane of Interstate 10 East in Orange County. There were two lanes in each direction. Stapleton rear-ended a black mid-size sedan and fell. His family claimed that Stapleton was allegedly then run over by an 18-wheeler operated by Alejandro Villegas and owned by Eclipse Trucking. Stapleton died at the scene. He was wearing a helmet.

Before the accident, the black sedan was directly ahead of Stapleton, and a red pickup driven by Donna Ward was behind him. A full-size sedan was behind Ward. In the right lane, next to the black sedan, there was an 18-wheeler owned by Express Carriers. The Eclipse truck was behind the Express truck.

Immediately before the accident, the driver of the black sedan braked suddenly, incorrectly thinking that the Express truck was about to enter the left lane. Stapleton then rear-ended the black sedan and fell. The pickup and the full-size sedan then swerved into the right lane in front of Villegas, to avoid hitting Stapleton. Villegas rear-ended the full-size sedan, which in turn hit the pickup. Ward claimed that Villegas, too, hit the pickup. Two witnesses said Stapleton slid toward the right lane into Villegas' path and was struck by Villegas.

Initially, Ward sued Stapleton, Express, Eclipse, and Villegas, but she settled her claims the week before trial for a confidential amount. By that time, Stapleton's widow and estate had filed a cross-claim against Eclipse and Villegas. The widow and estate were treated as the plaintiffs at trial.

The plaintiffs argued that Villegas failed to take proper evasive action and that he was following the Express Carriers 18-wheeler too closely.

Ward testified that, although Stapleton was speeding, that he was not driving erratically.

Villegas and Eclipse denied negligence. They argued that Stapleton was speeding, weaving in and out of traffic, and following too closely behind the black sedan, and that a sudden emergency occurred when plaintiff hit the black sedan and lost control of his motorcycle.

Also, Villegas and two other drivers whom Stapleton passed a few seconds before the accident said he was not only speeding but, also, driving erratically. Villegas said Stapleton looked "out of control" shortly before he cut in front of Ward's vehicle and rear-ended the mid-size sedan.

Ward settled her claims against Express Carrier about a year before trial for a confidential amount. She settled her remaining claims the week before trial.

Injury: Stapleton, a house husband, was killed in the accident and was survived by his wife of 26 years, a chemical engineer. The widow sought \$100,000 in past pecuniary loss, \$500,000 in future pecuniary loss, \$500,000 in past loss of companionship and society, \$2.5 million in future loss of companionship and society, and \$250,000 in past mental anguish, \$250,000 in future mental anguish. The estate sought \$3,827.18 in funeral and burial expenses.

Villegas and Eclipse contended that there was no evidence that being run over was what killed him. They said it could have happened when he first fell or as he was bouncing down the highway.

Result: The jury found only Stapleton negligent. The jury found no negligence by Villegas/Eclipse or Express Carriers.

Trial Information:

Judge: Milton Shuffield

Trial Length: 3 days

**Trial
Deliberations:** 1 hours

Jury Vote: 12-0

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

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

Writer John Schneider

Mechanic injured his wrist when he slipped on offshore rig

Type: Decision-Defendant

Amount: \$0

State: Texas

Venue: Federal

Court: United States District Court, Southern District, Galveston, TX

Injury Type(s):

- *other* - plate; synovectomy; hardware implanted
- *wrist*
- *mental/psychological* - depression

Case Type:

- *Premises Liability* - Invitees; Slip and Fall
- *Worker/Workplace Negligence* - Negligent Maintenance
- *Admiralty/Maritime* - Outer Continental Shelf Lands Act

Case Name: Raymond LeBouef v. Grasso Production Management Inc. and Island Operating Company Inc., No. 3:06-cv-00613

Date: November 24, 2008

Plaintiff(s):

- Raymond LeBouef (Male, 41 Years)

Plaintiff Attorney(s):

- Kurt B. Arnold; Arnold & Itkin LLP; Houston TX for Raymond LeBouef
- Jason A. Itkin; Arnold & Itkin LLP; Houston TX for Raymond LeBouef
- Michael E. Pierce III; Arnold & Itkin LLP; Houston TX for Raymond LeBouef

**Plaintiff Expert
(s):**

- Ed Ziegler P.E.; Safety; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III
- Neil J. Maki M.D.; Orthopedics; Thibodaux, LA called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III
- Zoran Cupic M.D.; Orthopedic Surgery; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III
- Robert Q. Kearney M.D.; Orthopedics; Marrero, LA called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III,
- Steven Guillory M.D.; Orthopedics; Broussard, LA called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III
- Kenneth G. McCoin Ph.D.; Economics; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III
- William L. Quintanilla; Vocational Rehabilitation; Houston, TX called by: Kurt B. Arnold, Jason A. Itkin, Michael E. Pierce III

Defendant(s):

- Island Operating Company Inc.
- Grasso Production Management Inc.

**Defense
Attorney(s):**

- David L. Merkley; Germer Gertz; Houston, TX for Grasso Production Management Inc.
- Ped C. Kay; Broussard & Kay; Lafayette, LA for Island Operating Company Inc.

**Defendant
Expert(s):**

- S. Gary Kuzina Ph.D.; Economics; New Orleans, LA called by: for David L. Merkley
- Mike Smith; Pipeline; Pleasanton, TX called by: for David L. Merkley
- George S. Glass M.D., P.A.; Psychiatry; Houston, TX called by: for David L. Merkley
- Pamela K. Lewis Ph.D.; Vocational Rehabilitation; Houston, TX called by: for David L. Merkley
- Charles L. Metzger M.D.; Orthopedic Surgery; Bellaire, TX called by: for David L. Merkley

Facts:

On Aug. 3, 2005, plaintiff Raymond LeBouef, 41, a mechanic, was an employee of an independent contractor hired to repair a compressor on an offshore oil platform in the Gulf of Mexico off the coast of Galveston. While repairing the compressor, LeBouef slipped and fell, injuring his wrist.

Grasso Production Management Inc. provided operating services for the platform. A number of companies had employees working on the platform, including Island Operating Co.

LeBouef sued Grasso and Island Operating, claiming negligence and premises liability under the federal Outer Continental Shelf Lands Act. LeBouef alleged he slipped and fell because of oil and sand on the floor of the work area. He claimed he had reported the condition of the floor to employees of Grasso and Island Operating several days before the accident, but no steps were taken to clean it up.

Several other companies were also initially named as defendants in the suit, but they were dismissed before trial.

Grasso and Island Operating argued that neither of them exercised actual control over the platform or LeBouef. They also argued LeBouef's employment contract gave him the right to refuse to work under conditions he considered dangerous, a right he exercised the day before the accident. The defense argued LeBouef's decision to return to work with conditions unchanged on Aug. 3 put the liability for his injuries on him.

Island Operating also alleged LeBouef did not file suit against it until September 2007, after the statute of limitations had expired.

LeBouef claimed the statute of limitations did not apply and said he could not file against Island Operating earlier because other parties concealed Island Operating's involvement in the case until after the statute of limitations ran out.

Injury:

LeBouef struck his dominant right wrist in the fall. The wrist had been fractured six years earlier and a metal plate installed. LeBouef claimed the fall caused the hardware to fail. It was surgically removed and a right exterior synovectomy was performed. The plate fractured again in 2006 and was surgically repaired.

LeBouef claimed the injury resulted in chronic pain. He said the combination of the pain, the inability to use his right for everyday household tasks or playing with his child, and his inability to return to work resulted in clinical depression.

He sought an unspecified amount for past and future pain and suffering, medical expenses, physical impairment and lost income.

The defendants disputed the damages, arguing that it was impossible to determine if the hardware failure was due to the fall or if it had happened previously, and that LeBouef's depression was unrelated to the accident.

The defense also argued LeBouef aggravated his injuries by attempting to move his wrist against doctor's orders and by smoking during recovery.

Result: In a summary judgment, Judge Kenneth Hoyt found Grasso did not exercise any control over the compressor and that the claims against Island Operating were barred by the statute of limitations.

Trial Information:

Judge: Kenneth M. Hoyt

Post Trial: The plaintiff is appealing the statute of limitations ruling.

Editor's Comment: This report is based on information from court documents and provided by defense counsel. Plaintiff's counsel did not return the reporter's phone calls.

Writer Rick Archer