



Auto Accident - Rear-End - Low Impact

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s): • *neck*

Case Type: • *Motor Vehicle*

Case Name: Susan Iler v. Audley Wright, No. 426538

Date: October 04, 2001

Plaintiff(s): • Susan Iler (Female, 38 Years)

Plaintiff Attorney(s): • Don C. Iler; ; Cleveland OH for Susan Iler

Plaintiff Expert(s): • James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:
• Dr. Robert Fumich; Orthopedics; Mayfield Heights, OH called by:

Defendant(s): • Audley Wright

Defense Attorney(s): • Timothy P. Whitford; Westlake, OH for Audley Wright

Insurers: • Progressive (\$50,000 policy)

Facts: Plaintiff was operating her vehicle when she was rear-ended by defendant on a snowy morning. Defendant stipulated negligence and the case proceeded on the issue(s) of proximate cause and damages.

Plaintiff alleged that defendant rear-ended her vehicle while traveling at 10 to 15 mph and that she suffered cervical strain and myofascitis with continuing pain as a direct result of the collision.

Defendant contended that he was only traveling at 5 mph when the collision occurred and that plaintiff was exaggerating the nature and extent of her injuries from the minimal impact collision.

Plaintiff was a 38 year old married female who was employed as a grant writer for the Great Lakes Festival.

Injury: Cervical strain and myofascitis resulting in continuing pain and stiffness. Plaintiff claimed \$1,013 in past medical specials.

Result: Defense verdict

Trial Information:

Judge: Ralph A. McAllister

**Trial
Deliberations:** 2 hours

**Editor's
Comment:** Per defense counsel, the lack of any significant damage to plaintiff's vehicle impacted the outcome.

Writer

Auto/Bicycle Accident - Passing - Wrongful Death

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Stark County

Court: Stark County, Court of Common Pleas, Canton, OH

Case Type:

- *Motor Vehicle - Bicycle*
- *Wrongful Death*
- *Domestic Relations*

Case Name: Kimberly Passwaters, et al. v. Jonathan Knaur, No. 2003CV00926

Date: July 14, 2005

Plaintiff(s):

- Kimberly Passwaters (Male, 13 Years)

Plaintiff Attorney(s):

- Martin S. Delahunty III; ; Cleveland OH for Kimberly Passwaters

Plaintiff Expert (s):

- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:

Defendant(s):

- Jonathan Knaur

Defense Attorney(s):

- Paul R. Garlock; Akron, OH for Jonathan Knaur

Defendant Expert(s):

- David Uhrich Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Kent, OH called by: for

Insurers:

- Progressive Insurance Co.

Facts: A 13 year old bicyclist was killed when he was struck by a car attempting to pass another vehicle. The boy's family sought damages from the motorist. However, a Stark County jury returned a defense verdict after deliberating 2 hours. Plaintiff filed an appeal.

Defendant Jonathan Knauer was operating a vehicle and attempted to pass another car in a passing zone. As he did, he noticed two bicyclists were in the same lane of traffic. He attempted to pass them as well, but, as he neared the cyclists, one of the bicyclists allegedly made a sharp left turn and struck defendant's car. The bicyclist, a 13 year old male, was killed as a result of his injuries. Plaintiff Kimberly Passwaters filed suit on behalf of the decedent.

Plaintiff alleged defendant should have pulled back into the lane of traffic rather than attempt to pass the bicycles. Plaintiff claimed defendant had enough time and space to return to the proper lane of travel.

Defendant contended that decedent made a sudden sharp turn into his car without looking and without signaling. Defendant claimed he did not have time to avoid the accident.

Plaintiff's decedent was a 13 year old male. He was survived by his parents.

Injury: Blunt force trauma resulting in death with no conscious pain and suffering.

Result: Defense verdict

Trial Information:

Judge: W. Don Reader Jr.

**Trial
Deliberations:** 2 hours

**Editor's
Comment:** Per defendant's counsel, the jury was impacted by the fact that the cyclist suddenly turned without looking or signaling.

Writer

Auto Accident - Rear-End - Disabled Vehicle

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s): • *hip - fracture, hip*

Case Type: • *Motor Vehicle*

Case Name: Sean Mills v. Audrey Van Cucha, No. 532111

Date: June 10, 2009

Plaintiff(s): • Sean Mills (Male, 56 Years)

Plaintiff Attorney(s): • Pamela Barker; ; Brecksville OH for Sean Mills

Defendant(s): • Audrey Van Cucha

Defense Attorney(s): • Terrence J. Kenneally; Fairview Park, OH for Audrey Van Cucha

Defendant Expert(s): • James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for

Insurers: • State Farm

Facts: A man who was injured when he struck a disabled vehicle on an interstate pursued this lawsuit. The defendant claimed plaintiff was responsible for the crash. The case was heard by a Cuyahoga County jury who found in favor of the defendant.

Defendant Audrey Van Cucha was driving her vehicle on I-480 during daylight hours. The vehicle suddenly lost power and came to a stop in the inside lane of the interstate. Plaintiff Sean Mills' vehicle rear-ended defendant's stopped car.

Plaintiff alleged defendant was negligent and caused the accident. He claimed defendant could have moved her vehicle to the berm to avoid creating a hazard for other motorists. Plaintiff claimed a fractured left hip and a permanent limp as a result of the accident.

Defendant denied plaintiff's allegations and contended that she could not move the vehicle to the berm due to the heavy volume of traffic in the lane to her right. Defendant claimed she activated her four-way flashers to warn other motorists of the emergency. Defendant's accident reconstruction expert testified that plaintiff proximately caused the accident by failing to maintain an assured clear distance.

Plaintiff was a 56 year old divorced male who was unemployed and on social security disability.

Injury: Fractured left hip, resulting in a permanent limp. Plaintiff claimed \$72,094 in past medicals.

Result: Defense verdict

Trial Information:

Judge: Linda Rocker

**Trial
Deliberations:** 2 hours

Writer

Auto/Pedestrian Accident - Intoxication - Defense Verdict

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s):

- *leg - fracture, leg*

Case Type:

- *Motor Vehicle - Alcohol Involvement*

Case Name: Michael Mikovsky v. Christopher Timko, No. 252350

Date: February 25, 2010

Plaintiff(s):

- Michael Mikovsky (Male, 30 Years)

Plaintiff Attorney(s):

- Michael A. Schroeder; ; Cleveland OH for Michael Mikovsky

Plaintiff Expert (s):

- Brendan Patterson M.D.; Orthopedics; Cleveland, OH called by:
- Frederick Lickert; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Springboro, OH called by:

Defendant(s):

- Christopher Timko

Defense Attorney(s):

- Terrence J. Kenneally; Fairview Park, OH for Christopher Timko

Defendant Expert(s):

- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for
- Manuel Martinez M.D.; Orthopedic Surgery; Westlake, OH called by: for

Insurers:

- State Farm

Facts:

A suit for personal injuries was brought after a pedestrian was struck while walking along a street. Plaintiff alleged defendant negligently struck him and caused his injuries. Defendant contended that plaintiff was intoxicated and walked into the path of his vehicle. An arbitrator in a separate proceeding also found plaintiff at fault for causing the underlying accident.

Plaintiff Michael Mikovsky was walking in the street in the same direction as the traffic. Plaintiff was struck from behind by Defendant Christopher Timko.

Plaintiff alleged defendant struck him from the rear as he was walking in the street with traffic. Plaintiff's accident reconstruction expert testified that defendant failed to look effectively and was negligent in striking plaintiff. Plaintiff claimed a comminuted leg fracture as a result of the accident.

Defendant denied plaintiff's allegations and contended that plaintiff stepped into the path of defendant's vehicle from the side of the road. Defendant's accident reconstruction expert testified that the physical evidence showed plaintiff came from the side into the path of defendant's vehicle. Defendant also argued that plaintiff was legally intoxicated at the time of this accident, which plaintiff denied.

Plaintiff was a 30 year old single male who was a warehouse worker.

Injury:

Comminuted fracture of the left tibia and fibula. Plaintiff incurred \$29,379 in past medicals and \$3,000 in past lost wages.

Result:

Defense verdict entered after a finding by the jury that plaintiff was 51% at fault.

Trial Information:**Judge:**

John D. Sutula

Trial Deliberations:

1.5 hours

Writer

Auto Accident - Intersection - Traffic Light

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s):

- *back*
- *chest* - fracture, rib
- *pelvis* - fracture, pelvis

Case Type:

- *Motor Vehicle*

Case Name: Gary E. Runyon, et al. v. Roofing Material Wholesalers, Inc. and Stanley Cohara, No. CV05563753

Date: July 28, 2006

Plaintiff(s):

- Gary E. Runyon, et al. (Male, 46 Years)

Plaintiff Attorney(s):

- Michael W. Czack; ; Cleveland OH for Gary E. Runyon, et al.
- William T. Neubert; ; Cleveland OH for Gary E. Runyon, et al.
- Donald E. Caravona; ; Cleveland OH for Gary E. Runyon, et al.

Plaintiff Expert(s):

- John Burke Ph.D.; Economics; Cleveland, OH called by:
- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:
- Heather Vallier M.D.; Orthopedics; Shaker Heights, OH called by:

Defendant(s):

- Roofing Material Wholesalers, Inc. and Stanley Cohara

**Defense
Attorney(s):**

- Warren S. George; Cleveland, OH for Roofing Material Wholesalers, Inc. and Stanley Cohara
- Jeffrey L. Austin; Cleveland, OH for Roofing Material Wholesalers, Inc. and Stanley Cohara
- Colin P. Sammon; Cleveland, OH for Roofing Material Wholesalers, Inc. and Stanley Cohara

**Defendant
Expert(s):**

- Richard Stevens; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for

Insurers:

- Grange

Facts:

A truck driver was injured in an intersection collision after he claimed defendant driver ran a red light. Defendants disputed liability and claimed they had the right-of-way. A Cuyahoga County jury deliberated 3 hours before returning a defense verdict.

Plaintiff Gary Runyon was traveling south on East 93rd Street at the intersection of Harvard Avenue. Defendant Stanley Cohara, who was employed by Defendant Roofing Material Wholesalers, Inc., was traveling west on Harvard Avenue in the company truck. Defendant Cohara T-boned plaintiff's vehicle in the middle of the intersection. A police officer concluded that plaintiff had run the red light. Prior to trial, plaintiff dismissed his claims against Defendant Cohara personally and tried it against Cohara's employer, Roofing Material because Cohara was acting in the course and scope of his employment.

Plaintiff alleged defendant driver was negligent in failing to yield the right-of-way and maintain a proper lookout. He claimed he had a green light and was lawfully entering the intersection. Plaintiff's eyewitness testified that he was driving behind plaintiff as they entered the intersection on a green light. Plaintiff claimed he suffered bilateral pelvic fractures, a lumbar fracture and multiple rib fractures as a direct result of the collision.

Defendant Roofing Material contended its driver entered the intersection on a green light. Witnesses for Defendant Roofing Material, a mother and daughter who were driving on Harvard Avenue in the opposite direction of defendant driver, testified they also entered the intersection on a green light.

Plaintiff was a 46 year old married white male employed as a truck driver.

Injury:

Bilateral pelvic fractures, lumbar fracture and multiple rib fractures. Plaintiff claimed \$30,000 in lost wages, \$285,000 in past medicals and \$450,000 in lost future wages.

Result:

Defense verdict

Trial Information:

Judge:

Michael P. Donnelly

Trial 3 hours
Deliberations:

Editor's Per defense counsel Sammon, Cohara filed an injury claim against Runyon, which settled
Comment: before trial without filing a case in court.

Writer

Child Molested in Preschool Bathroom

Type:	Verdict-Mixed
Amount:	\$0
State:	California
Venue:	Alameda County
Court:	Superior Court of Alameda County, Oakland, CA
Case Type:	<ul style="list-style-type: none">• <i>Negligence</i>
Case Name:	Racquel Quinones, individually, and as guardian ad Litem for Trina Burton, a minor v. Home Place Family Center, Ann Shine and Lisa Hauswald, No. 76 238 15
Date:	April 14, 1999
Plaintiff(s):	<ul style="list-style-type: none">• Trina Burton (Female, 4 Years)• Racquel Quinones (Female, 0 Years)
Plaintiff Attorney(s):	<ul style="list-style-type: none">• Panos Lagos; ; Oakland CA for Racquel Quinones, Trina Burton
Plaintiff Expert (s):	<ul style="list-style-type: none">• Dana Locke; Family Medicine; Oakland, CA called by: Panos Lagos• Donna Allen; State Regulations; Oakland, CA called by: Panos Lagos• James E. Crawford; Pediatrics; Oakland, CA called by: Panos Lagos
Defendant(s):	<ul style="list-style-type: none">• Ann Shine• Lisa Hauswald• Home Place Family Center
Defense Attorney(s):	<ul style="list-style-type: none">• Robert McNulty; McNulty & Saacke; Torrance, CA for Home Place Family Center, Ann Shine, Lisa Hauswald
Defendant Expert(s):	<ul style="list-style-type: none">• Toni Heineman Ph.D.; Child Psychology; San Francisco, CA called by: for Robert McNulty

Insurers:

- Non-Profit Alliance of California

Facts:

In July, 1994, plaintiff Trina Burton, a 4-year-old girl, was allegedly sexually abused in the children's bathroom at defendant's preschool, contracting gonorrhea in the process. Plaintiff underwent 1 ½ years of psychological treatment. Plaintiff testified that she was fondled. The alleged perpetrator was identified by the child as a homeless man who hung around the homeless shelter, which was also operated by defendants. The preschool was for the children of the homeless clients. Defendants Ann Shine and Lisa Hauswald were directors of the homeless center/preschool. The alleged perpetrator was arrested by police and released due to lack of sufficient evidence.

Plaintiff contended that a teacher left the child unattended in the bathroom, where the perpetrator was waiting.

Defendant denied all allegations and contended that the bathroom was locked at all times. The teachers had the keys and attended to the children in the bathroom. The gonorrhea was contracted elsewhere, not at school. Such diseases found in young children are generally caused by a family member or other trusted person.

Plaintiff attorney asked the jury to award \$1,000,000.

Injury:

Injuries: Gonorrhea

Specials:

Medical to date \$1,100 lien from Children's Hospital and \$8,200 lien for California Victims of Crime.

Result:

Settlement talks:

Demand \$500,000. Offer \$85,000.

Result: DEFENSE VERDICT for Shine and Hauswald.

Hung jury for Home Place Family Center.

12-0 for Shine and Hauswald

6-6 for Home Place Family Center

Note:

The case against Home Place Family Center was retried on November 8, 1999. Plaintiff waived the jury and the case was heard by Judge Dunbar. The Court found no liability for gonorrhea contracted by the child. The Court found sexual battery of the child in the bathroom and awarded \$60,000 in general damages, \$9,300 in medical liens for a total judgment of \$69,300. The case for plaintiff Racquel Quinones was dismissed because it was filed beyond the statute of limitations.

Trial Information:

Judge: William L. Dunbar

Trial Length: 23 days

**Trial
Deliberations:** 3 days

Writer S Domer

Trucker: Pedestrian ran into middle of rural highway

Type: Verdict-Defendant

Amount: \$0

State: Ohio

Venue: Federal

Court: U.S. District Court, Southern District of Ohio, Eastern Division, Columbus, OH

Injury Type(s):

- *arm* - fracture, arm; fracture, ulna; fracture, humerus
- *brain* - subdural hematoma; traumatic brain injury
- *chest* - fracture, rib
- *elbow* - fracture, elbow; fracture, olecranon
- *other* - unconsciousness; physical therapy; compound fracture; comminuted fracture; decreased range of motion
- *wrist* - fracture, wrist
- *pelvis* - fracture, pelvis
- *neurological* - brachial plexus
- *surgeries/treatment* - external fixation
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:

- *Motor Vehicle* - Pedestrian; Tractor-Trailer

Case Name: Robert M. Binger v. Alpont Transportation LLC and Randall E. Miller, No. 2:17-cv-00570-ALM-KAJ

Date: January 15, 2020

Plaintiff(s):

- Robert M. Binger (Male, 60 Years)

Plaintiff Attorney(s):

- Andrew R. Young; Young & McCarthy LLP; Cleveland OH for Robert M. Binger
- Don J. Young; Young & McCarthy LLP; Delaware OH for Robert M. Binger

Plaintiff Expert(s):

- Corey Van Hoff M.D.; Orthopedic Surgery; Dublin, OH called by: Andrew R. Young, Don J. Young
- James Crawford; Accident Reconstruction; Grafton, OH called by: Andrew R. Young, Don J. Young
- Donato Borrillo M.D.; Emergency Medicine; Toledo, OH called by: Andrew R. Young, Don J. Young

Defendant(s):

- Randall E. Miller
- Alpont Transportation LLC
- Interstate Chemical Company Inc.

Defense Attorney(s):

- Kevin P. Foley; Reminger Co., LPA; Columbus, OH for Alpont Transportation LLC, Randall E. Miller, Interstate Chemical Company Inc.
- Rick L. Weil; Reminger Co., LPA; Cincinnati, OH for Alpont Transportation LLC, Randall E. Miller, Interstate Chemical Company Inc.
- Nathan A. Lennon; Reminger Co., LPA; Cincinnati, OH for Alpont Transportation LLC, Randall E. Miller, Interstate Chemical Company Inc.

Defendant Expert(s):

- Neil Gilreath; Accident Reconstruction; Crescent Springs, KY called by: for Kevin P. Foley, Rick L. Weil, Nathan A. Lennon

Insurers:

- Aspen Insurance
- Berkley Environmental

Facts:

On June 10, 2016, plaintiff Robert Binger, 60, a livestock technician, was working on a farm at 11740 US-42 in Plain City. The commercial cattle farm was on both sides of the highway, with a driveway running across the highway and connecting the two sections. At the intersection of the driveway and US-42, a rural highway, there was no traffic control device. Vehicles thus had to wait for the right of way to proceed from one side of the driveway to the other.

Binger drove a pickup truck from one side of the farm to the other. As he did so, some items fell out of the truck and onto the highway. Binger was struck by a tractor-trailer as he re-entered the highway on foot and attempted to collect those items. He claimed injuries to his pelvis, ribs, brain, face and arms.

Binger sued the driver of the tractor-trailer, Randall E. Miller, and the owner of the vehicle, Alpont Transportation LLC. Binger claimed that Miller was negligent in his operation of the tractor-trailer, and that Alpont was vicariously liable for Miller's actions.

The complaint was later amended to include similar claims against a related company, Interstate Chemical Company, Inc. Interstate Chemical was Miller's statutory employer. Binger claimed that Alpont and Interstate Chemical negligently trained and supervised Miller.

The defendants filed a third-party claim against Binger's employer. The employer was let out of the case prior to trial via summary judgment due to workers' compensation immunity. However, the employer remained on the verdict form for the apportionment of liability.

Binger claimed that items from his truck had fallen into the middle of the road and that he tried retrieve them before they could cause an accident. He stated that he went onto the shoulder of the road, but stopped himself before crossing the fog line and entering the northbound travel lane. An accident reconstruction expert retained by Binger's counsel opined that, based on the damage to the tractor-trailer, the truck must have swerved over the fog line and hit Binger on the shoulder section of the highway, rather than in the tractor-trailer's lane of travel. Binger also maintained that Miller had enough time to come to a complete stop to avoid him and the items in the road, and that the defendants were the primary cause of the accident.

Binger's counsel called as a witness a management-level employee from Binger's employer. The employee agreed with Binger that the items from the truck were in the middle of the road. The employee testified that he ran out and retrieved the items after making sure that 911 had been called.

Miller and his employer maintained that the crash occurred in the middle of the highway, and that Miller did not swerve onto the shoulder. Miller stated that he saw Binger's truck cross the road, as well as the items falling out of the truck. However, Miller claimed that the items fell out on the opposite side of the highway and never made it into either of the road's travel lanes. Thus, he said he did not think he had to slow down. He said that Binger then ran out into the middle of the road and collided with the side of the tractor-trailer before Miller could avoid him.

The defense presented an independent witness who was driving behind Miller's vehicle. She supported Miller's testimony that Binger ran out into the travel lanes. The witness said that, because of how Binger suddenly ran into the road, she thought that Binger was trying to kill himself. Binger's counsel countered that the independent witness could not have seen what occurred due to her distance from the scene and the view from her vehicle.

The defense also presented an accident reconstruction expert to further support Miller's version of events. The expert concluded that, based on the damage to the side of the tractor-trailer, Binger was running, rather than stopped, when he was hit by the vehicle. The defense further asserted that, even if the items from the truck were in the middle of the road as Binger claimed, he did not have to run across a crowded highway to retrieve them.

Despite the third-party claim, defense counsel told the jury during closing argument to apportion zero liability to Binger's employer. However, during the trial, defense counsel did argue that the employer should have trained Binger not to run into the road and should have done a better job securing the items in its truck.

Injury:

Binger was placed in an ambulance and transported to Riverside Methodist Hospital. He was unconscious and in a coma for three to four weeks.

Binger was diagnosed with left-sided rib fractures and facial fractures. He also had fractures to the humerus of the left arm and the ulna of the right, dominant arm. The arm fractures were both compound. He additionally suffered a traumatic brain injury and subdural hematoma, as well as bilateral fractures of the olecranon, which is the bony prominence of the elbow's ulnar component. The left olecranon fracture was comminuted and required an external fixator. He also had an injury to the right brachial plexus, which is a network of nerves emanating from the spine to the shoulder, arm, hand and fingers.

Binger spent the next few months receiving inpatient care and physical therapy at various hospitals and rehabilitation centers. He was discharged home in October 2016. Over the next few years, he had extensive follow-up appointments.

Binger no longer has any grip strength in his right hand and no mobility in his left arm. While doctors performed two surgeries to try to improve the left arm's function, the procedures were unsuccessful. Binger's medical experts stated that Binger would likely need future treatment, but did not give specifics.

Binger claimed he can no longer do all of his activities of daily living. For instance, he cannot assist with household chores and can only drive short distances. He also requires special utensils for meals and has to drink his coffee through a straw since he cannot grip a cup. Binger additionally said that he has intermittent memory and cognition problems, and often seems scatterbrained. He further stated that he has trouble using his cell phone and that, while he used to enjoy horseback riding, hunting, running and farming, he can no longer do these activities. He never went back to work, either. Binger claimed that, prior to the crash, he had planned to continue working until age 75.

Binger sought \$600,000 in past and future medical expenses and \$500,000 in past and future lost earnings. He also sought damages for past and future pain and suffering. His counsel asked the jury to award approximately \$29 million.

The defense did not greatly dispute damages. However, the defense did maintain that Binger had reached maximum medical improvement and that no future treatment was necessary. The defense also pointed out that there are plenty of activities Binger can still do, including playing with his young children, and disputed the extent of Binger's cognitive impairment.

Result:

The jury found that Binger, Miller, Alpont/Interstate and Binger's employer were all negligent. The jury assigned 60 percent liability to Binger, 20 percent to Miller, 15 percent to Binger's employer and 5 percent jointly to Alpont/Interstate.

In accordance with Ohio Revised Code 2315.33, because the jury found that Binger was more than 50 percent at fault for his injuries, a judgment was entered for the defense.

Trial Information:

Judge: Algenon L. Marbley

Demand: \$1.5 million

Offer: \$515,000

Trial Length: 7 days

Jury Vote: 8-0

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

Writer: Melissa Siegel

Auto Accident - Passing - Sideswipe

Type: Verdict-Plaintiff

Amount: \$6,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s):

- *back*
- *neck*

Case Type:

- *Motor Vehicle*

Case Name: Sheree M. Csizek v. Robert N. Walter, No. 603497

Date: October 23, 2007

Plaintiff(s):

- Sheree M. Csizek (Female, 47 Years)

Plaintiff Attorney(s):

- John J. Spellacy; ; Cleveland OH for Sheree M. Csizek

Plaintiff Expert (s):

- Albert Musca M.D.; General Surgery; Cleveland, OH called by:

Defendant(s):

- Robert N. Walter

Defense Attorney(s):

- G. Michael Curtin; Akron, OH for Robert N. Walter

Defendant Expert(s):

- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for

Facts: A Cuyahoga County jury awarded \$6,000 to a woman claiming injuries following a sideswipe collision. The main dispute was whether the impact could have injured plaintiff.

Plaintiff Sheree M. Csizek was operating a minivan on a city street on April 7, 2004. Defendant Robert N. Walter attempted to pass plaintiff on the left. Plaintiff claimed she stopped as defendant passed her and defendant then sideswiped her van on the driver's side.

Plaintiff alleged defendant was negligent in the operation of his vehicle and negligently attempted to pass her on the left. Plaintiff claimed permanent soft tissue neck and back injuries as a result of the collision.

Defendant admitted negligence. However, an accident reconstruction expert claimed a sideswipe impact would not create a velocity change in plaintiff's minivan and could not have caused an injury. The expert also stated that the vehicles had incidental contact.

Plaintiff was a 47 year old female.

Injury: Soft tissue injuries to the cervical spine and upper and lower back.

Result: \$6,000

Trial Information:

Judge: Ralph A. McAllister

Writer

Lawyer Settled DTPA Case, Without Getting Her Fees

Type: Decision-Plaintiff

Amount: \$12,860

Actual Award: \$12,860

State: Texas

Venue: Dallas County

Court: Dallas County District Court, 101st, TX

Case Type:

- *Consumer Protection - DTPA*
- *Professional Negligence*
- *Attorney Fees - Statutory Fees*
- *Legal Profession - Malpractice*
- *Securities - Breach of Fiduciary Duty*

Case Name: LeEarl Bryant v. Fredye Long Alford, No. 01-11149-E

Date: February 21, 2003

Plaintiff(s):

- LeEarl Bryant (Female)

Plaintiff Attorney(s):

- Charles McGarry; Law Office of Charles McGarry; Dallas TX for LeEarl Bryant

Plaintiff Expert (s):

- Eliot Shavin; Legal Malpractice; Dallas, TX called by: Charles McGarry
- James Wharry; Roofing; Garland, TX called by: Charles McGarry

Defendant(s):

- Fredye Long Alford

Defense Attorney(s):

- Bruce A. Condit; Condit, Peek & Young; Texarkana, TX for Fredye Long Alford

**Defendant
Expert(s):**

- Phil Collins; Legal Malpractice; Dallas, TX called by: for Bruce A. Condit
- James Crawford; Legal Malpractice; Houston, TX called by: for Bruce A. Condit

Facts:

Plaintiff LeEarl Bryant, an engineer, had been the plaintiff in DTPA suit against a contractor over roofing work performed at Bryant's home in Dallas. That case settled, with the issue of attorney fees being reserved and submitted to the court, who did not award Bryant any attorney fees. Bryant claimed that her attorney in that case, Fredye Long Alford, of Texarkana, negligently failed to prove and recover the attorney fees.

Bryant sued Alford for malpractice and breach of fiduciary duty.

According to Bryant's attorney in this case, Alford denied any malpractice. She also disputed causation, maintaining that Bryant would not have won the underlying lawsuit.

This case was tried to the bench.

Injury:

Alford allegedly failed to prove and recover Bryant's attorney fees in the underlying case. Bryant's attorney in this case asked the judge to award \$19,000.

Result:

The judge found no breach of fiduciary duty, but found negligence and awarded Bryant \$12,860.50 in actual damages. Prejudgment interest was \$1,486.88.

Bryant was the 2002 president of The Institute of Electrical and Electronics Engineers, Inc.-U.S.A.

LeEarl Bryant

\$12,861 Commercial: actual damages

Trial Information:

Judge:

Jay Patterson

Demand:

\$12,000

Offer:

None per Bryant's attorney; \$5,000 at pretrial mediation per Alford's

Trial Length:

2 days

Writer

John Schneider



Auto Accident - Bicycle - Comparative Negligence

Type: Verdict-Plaintiff

Amount: \$70,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s):

- *leg*
- *shoulder* - fracture, shoulder
- *face/nose* - scar and/or disfigurement, face

Case Type:

- *Motor Vehicle* - Bicycle

Case Name: Sheila M. Phillips, et al. v. James A. Orban and West American Insurance Company, No. 509114

Date: May 09, 2006

Plaintiff(s):

- Sheila M. Phillips, et al. (Female, 38 Years)

Plaintiff Attorney(s):

- Geoffrey S. Hickey; ; Cleveland OH for Sheila M. Phillips, et al.

Plaintiff Expert (s):

- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:
- Marcy Dickey D.O.; Orthopedic Surgery; Aurora, OH called by:

Defendant(s):

- James A. Orban and West American Insurance Company

Defense Attorney(s):

- Phillip C. Kosla; Twinsburg, OH for James A. Orban and West American Insurance Company
- George C. Zucco; Cleveland, OH for James A. Orban and West American Insurance Company

Insurers:

- West American (UIM)

Facts:

A Cuyahoga County jury deliberated approximately 4 hours before returning a \$70,000 verdict for a bicyclist injured when she was struck by a motor vehicle. The award was reduced to \$1,000 after the jury found plaintiff 45% comparatively negligent and a prior settlement of \$37,500 from defendant driver's insurance company was setoff against the verdict. After an adjustment for plaintiff's husband's loss of consortium claim, the total judgment was approximately \$1,700.

Plaintiff Sheila M. Phillips and her family were riding their bikes shortly after sunset. Plaintiff's bike did not have a taillight. Defendant James A. Orban drove up behind plaintiff and struck the bicycle, causing plaintiff to be ejected. Plaintiff also pursued this claim against her underinsured motorist carrier, Defendant West American Insurance Company.

Plaintiff alleged defendant driver was negligent in failing to maintain a proper lookout. She claimed that, as a result of the collision, she sustained a fractured clavicle, a deep hematoma in her calf and facial abrasions and contusions that left permanent facial scars. Plaintiff's medical expert testified that plaintiff's injuries were permanent and were related to this crash. Plaintiff's accident reconstruction expert testified there was sufficient natural light for defendant driver to have seen plaintiff's bicycle. Plaintiff further alleged that her damages exceeded the policy limits of the tortfeasor.

Defendant driver admitted he did not see plaintiff prior to the collision, but claimed plaintiff was contributorily negligent. He contended plaintiff was negligent in operating a bicycle without proper taillights after sunset. Testimony was presented from the investigating police officer that, if plaintiff's bike had been properly equipped with a rear light, this accident may have been avoided. Since a settlement was paid on the defendant driver's behalf, he did not actually participate at trial. Defendant insurance company contended that the liability policy was sufficient to compensate plaintiff for her injuries.

Plaintiff was a 38 year old married female employed at a factory.

Injury:

Fractured clavicle, deep hematoma in calf and facial abrasions and contusions resulting in permanent facial scarring. Plaintiff has to wear a TED compression stocking to prevent clotting in her leg. She claimed \$17,000 in past medical expenses and \$8,000 in lost wages.

Result:

\$70,000 less 45% comparative negligence and offset of prior settlement of \$37,500 resulting in a net verdict of \$1,000. After an adjustment for plaintiff's husband's loss of consortium claim, the total judgment was approximately \$1,700.

Trial Information:

Judge: Brian J. Corrigan

**Trial
Deliberations:** 4 hours

**Editor's
Comment:** Per defense counsel Zucco, the judgment has been satisfied.

Writer

Truck/Truck Accident - Loss of Control - Left of Center

Type: Verdict-Plaintiff

Amount: \$99,920

State: Ohio

Venue: Lucas County

Court: Lucas County, United States District Court, Toledo, OH

Injury Type(s):

- *neck - herniated disc, cervical*
- *surgeries/treatment - discectomy*

Case Type:

- *Motor Vehicle*

Case Name: Dan Bernardo v. United Parcel Service, Inc., No. 01-07448

Date: November 01, 2002

Plaintiff(s):

- Dan Bernardo (Male, 48 Years)

Plaintiff Attorney(s):

- Willard E. Bartel; ; Cleveland OH for Dan Bernardo, Dan Bernardo

Plaintiff Expert (s):

- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:

Defendant(s):

- United Parcel Service, Inc.

Defense Attorney(s):

- John V. Rasmussen; Lakewood, OH for United Parcel Service, Inc., United Parcel Service, Inc.

Insurers:

- Liberty Mutual/Ohio Casualty Insurance Company

Facts:

After 6 to 7 hours of deliberation and a three day trial, a U.S. District Court jury returned a verdict in favor of a truck driver who was injured in a collision with another semi-tractor trailer on a rural roadway.

Plaintiff Dan Bernardo was a self-employed truck driver who was operating his semi-tractor trailer on Route 4 in Seneca County. One of Defendant United Parcel Service's (U.P.S.) drivers was operating a semi-tractor with tandem trailers in the opposite direction on Route 4 which was a two lane highway. As the trucks were passing one another, the front corner of the rear U.P.S. trailer struck the front of plaintiff's trailer. Plaintiff's truck then left the roadway and turned over onto its side. The collision occurred after dark on a narrow stretch of the roadway and it had been raining prior to the accident so the roadway was wet. Liability for the collision was highly contested by the parties.

Plaintiff alleged that defendant's driver had driven off the right of the roadway onto the berm and then lost control of the rear trailer when he returned to the roadway. Plaintiff argued that defendant's driver was negligent in losing control of the rear trailer and in crossing the centerline of the roadway and striking his truck. Plaintiff, a 48 year old male, asserted that he suffered significant injuries as a direct result of the negligence of defendant's driver. Plaintiff also alleged that defendant company was vicariously liable for the negligence of its driver. As a direct result of the collision, Bernardo maintained that he suffered a herniated cervical disc which required a discectomy and the insertion of a metal plate. Plaintiff claimed at trial that he was continuing to have difficulty in turning his neck from left to right due to the injury.

Defendant did not strongly contest plaintiff's injuries, however, U.P.S. denied liability for the collision. Defendant contended that approximately 600 to 1,000 feet from where the collision occurred, plaintiff had crossed the centerline with his truck and its driver had seen this occur. Defendant maintained that in response to plaintiff crossing the centerline, its driver had gone to the right of the roadway and then lost control because of the actions of plaintiff.

Plaintiff was a 48 year old married male who was self-employed as a truck driver.

Injury:

Herniated disc at C4-C5 requiring physical therapy, a discectomy and the placement of metal plate in plaintiff's neck and resulting in some difficulty in turning neck from left to right. Plaintiff claimed \$17,000 to \$18,000 in past medical specials and approximately \$26,000 in past wage loss.

Result:

\$99,920

Trial Information:**Judge:**

Vernelis K. Armstrong

Trial

6 hours

Deliberations:

**Editor's
Comment:**

Per plaintiff's counsel, the outcome of the case was impacted by the testimony of plaintiff's accident reconstruction expert. Further, the verdict in the case was impacted by the conservative nature of the jury. Case is closed.

Writer

Auto/Pedestrian Accident - Parking Lot - Backing

Type: Verdict-Plaintiff

Amount: \$457,421

State: Ohio

Venue: Fairfield County

Court: Fairfield County, Court of Common Pleas, Lancaster, OH

Injury Type(s):

- *head* - fracture, skull; closed head injury
- *shoulder* - fracture, shoulder

Case Type:

- *Motor Vehicle* - Pedestrian

Case Name: Jeffrey Evans v. John Coakley and Elite Construction and Renovations, Inc., No. 02-CV-0402

Date: March 05, 2004

Plaintiff(s):

- Jeffrey Evans (Male, 41 Years)

Plaintiff Attorney(s):

- John M. Gonzales; ; Westerville OH for Jeffrey Evans

Plaintiff Expert (s):

- Beal Lowe Ph.D.; Vocational Rehabilitation; Columbus, OH called by: John M. Gonzales
- Lisa Fugate M.D.; Physical Therapy; Columbus, OH called by: John M. Gonzales
- Mark Trzeciak D.O.; Orthopedics; Centerville, OH called by: John M. Gonzales
- David Boyd Ph.D.; Economics; Columbus, OH called by: John M. Gonzales
- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: John M. Gonzales

Defendant(s):

- John Coakley
- Elite Construction and Renovations Inc.

**Defense
Attorney(s):**

- Michael J. McLane; Columbus, OH for John Coakley

**Defendant
Expert(s):**

- John Weichel Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Columbus, OH called by: for Michael J. McLane
- Myles Pensak M.D.; Otolaryngology; Cincinnati, OH called by: for Michael J. McLane
- Donald Shrey Ph.D.; Vocational Rehabilitation; Cincinnati, OH called by: for Michael J. McLane
- Gerald Steiman M.D.; Neurology; Columbus, OH called by: for Michael J. McLane

Insurers:

- Cincinnati

Facts:

A Fairfield County Court of Common Pleas jury returned a \$457,421 verdict for a pedestrian who was struck by a construction vehicle in a parking lot. However, the jury's award was subject to a finding of 50% comparative negligence which resulted in a net verdict of \$228,710.

Plaintiff Jeffrey Evans, an HVAC technician, was performing maintenance inside a fast food restaurant prior to the restaurant's opening for the day. He left the restaurant to go to his vehicle to get a part for the walk-in freezer. As he stepped off the sidewalk into the parking lot, he was struck by a van driven by Defendant John Coakley. Plaintiff had no independent recollection of how the incident occurred. Defendant Coakley was employed by Defendant Elite Construction and was working with a crew on a concrete slab located on the premises. At the time of the incident, Defendant Coakley was backing the van, which belonged to Defendant Elite Construction.

Plaintiff, age 41, alleged that Defendant Coakley was negligent in striking him with the van and Defendant Elite Construction was responsible for the actions of its employee. Also, plaintiff argued that, due to a blind spot, Defendant Coakley should have utilized another employee to watch as Coakley backed the van. Further, plaintiff argued that he had suffered significant injuries which rendered him unable to return to employment.

Defendants contended that plaintiff was walking with his head down and failed to watch where he was walking. Defendants argued that, despite the back-up warning sounds emitted by the van, plaintiff walked into the van as it was backing. Defendants also disputed the nature and extent of the plaintiff's damages and asserted that plaintiff had made a good recovery. It was defendants' position that plaintiff's continuing dizziness was proximately related to preexisting inner ear problems. Further, defendants maintained that plaintiff should be able to return to less physically demanding employment.

Plaintiff was a 41 year old married male who was employed as an HVAC technician.

Injury:

Multiple skull fractures, fractured collarbone, fractured shoulder and closed head injury with continuing headaches and dizziness. Plaintiff was life-flighted to the hospital following the incident. He claimed \$63,030 in medical specials, \$88,391 in past lost wages and an amount for future wage loss due to disability from employment. The amount of the future lost wage claim was \$855,748. Plaintiff's wife claimed loss of consortium.

Result: \$457,421 against both defendants less 50% comparative negligence for a net verdict of \$228,710. The verdict included \$10,000 for loss of consortium.

Trial Information:

Judge: Richard E. Berens

**Editor's
Comment:** Case is closed.

Writer Margi Banner

Truck/Pedestrian Accident - Parking Lot - Wrongful Death

Type: Verdict-Plaintiff

Amount: \$681,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Case Type:

- *Wrongful Death*
- *Motor Vehicle - Pedestrian*

Case Name: Arthur Bessick et al v. Utilicon Corporation and Johnny Allen, No. 434292

Date: December 14, 2001

Plaintiff(s):

- Arthur Bessick et al (Female, 81 Years)

Plaintiff Attorney(s):

- John W. Martin; ; Cleveland OH for Arthur Bessick et al
- Andy Petropouleas; ; Cleveland OH for Arthur Bessick et al

Plaintiff Expert (s):

- John P. Conomy; Neurology; Chagrin Falls, OH called by: John W. Martin, Andy Petropouleas
- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: John W. Martin, Andy Petropouleas
- Elizabeth Balraj M.D.; Pathology; Cleveland, OH called by: John W. Martin, Andy Petropouleas

Defendant(s):

- Johnny Allen
- Utilicon Corp.

Defense Attorney(s):

- William M. Kovach; Cleveland, OH for Utilicon Corp.

Defendant Expert(s):

- Carl Schmidt M.D.; Pathology; Toledo, OH called by: for William M. Kovach
- Carmen Daecher; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Camphill, PA called by: for William M. Kovach
- Howard Tucker M.D.; Neurology; Mayfield Heights, OH called by: for William M. Kovach

Insurers:

- Travelers (excess)

Facts:

Plaintiff's decedent was a pedestrian who was cutting across a vacant gas station lot. A tandem dump truck which was owned by Defendant Utilicon, a construction company, was parked in the vacant lot. As decedent proceeded to walk past the parked dump truck, Defendant Allen, who was operating the dump truck in the course and scope of his employment with Defendant Utilicon, began to back up the dump truck. Decedent was struck and pushed to the ground. The truck then rolled over decedent's legs and stopped on her back. Decedent died from her injuries at the scene.

Plaintiff alleged that: (1) Defendant Allen was negligent in backing the dump truck over decedent; (2) Defendant Utilicon failed to equip the dump truck with backing lights or an audible backing warning mechanism or provide a ground guide to assist Defendant Allen in backing the dump truck; and (3) decedent died after up to two minutes conscious pain and suffering as a direct result of defendants' actions.

Defendant contended that decedent was comparatively negligent in walking behind the dump truck and that decedent had died instantaneously or within a very short period.

Plaintiff's decedent was an 81 year old single female.

Injury:

Wrongful death following up to two minutes conscious pain and suffering. Decedent was survived by five nephews and nieces.

Result:

\$681,000 less 24% comparative negligence resulted in a net judgment of \$517,560.

Trial Information:**Judge:**

Nancy M. Russo

Writer

Margi Banner

Auto Accident - Head-On Collision - Settlement

Type: Settlement

Amount: \$950,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, OH

Case Type:

- *Motor Vehicle*

Case Name: John Doe v. David Roe, No. WITHHELD

Date: June 02, 2004

Plaintiff(s):

- John Doe (Male, 45 Years)

Plaintiff Attorney(s):

- Ann Marie Stockmaster; ; Cleveland OH for John Doe
- Rubin Guttman; ; Cleveland OH for John Doe

Plaintiff Expert(s):

- Rod Durgin Ph.D.; Vocational Rehabilitation; Toledo, OH called by:
- Greg Nemunaitis M.D.; Physical Therapy; Cleveland, OH called by:
- Matt Likavec M.D.; Neurosurgery; Cleveland, OH called by:
- Brendan Patterson M.D.; Orthopedics; Cleveland, OH called by:
- Douglas Braund; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Youngstown, OH called by:
- Richard Nelson Ph.D.; Biomechanics; University Park, PA called by:

Defendant(s):

- David Roe

Defendant Expert(s):

- Dale Dent; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for
- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: for
- Joseph Zayat M.D.; Neurology; Cleveland, OH called by: for

Facts:

A 45 year old executive who sustained significant injuries as a result of a motor vehicle collision was able to settle his claim for \$950,000.

Plaintiff John Doe was operating his motor vehicle when he was involved in a head-on collision with Defendant David Roe. The parties were operating their motor vehicles in opposite directions on a roadway at the time of the motor vehicle collision. Prior to the impact with plaintiff's vehicle, defendant had swerved right and struck a guardrail. Defendant's vehicle then crossed the two lanes in his direction and the center turn lane before striking plaintiff's stopped vehicle. At the time of the collision, defendant's vehicle was traveling approximately 40 mph.

Plaintiff alleged that defendant was negligent in traveling left of center and striking plaintiff's vehicle. As a direct result of the collision, plaintiff argued that he sustained severe spinal cord and cervical disc injuries resulting in temporary paralysis below the neck. Although he made a good recovery from the injuries, plaintiff claimed that he was left with permanent spasticity in his fingers, which affected his ability to use an adding machine and a computer keyboard and affected daily activities such as buttoning a shirt. Plaintiff also argued that, due to the spinal cord and leg injuries, he required the use of a cane for ambulation.

Defendant denied liability for the motor vehicle collision. Defendant argued that he had suffered a sudden blackout or temporary loss of consciousness due to a seizure or mini-stroke which caused his vehicle to travel left of center. Defendant supported the sudden medical emergency defense by relying on the data contained in the black box located on defendant's vehicle. The defense maintained that the data from the black box was consistent with an unconscious defendant. Also, defendant argued that he had no independent recollection of the collision and that he had awakened during the ambulance ride.

Plaintiff disputed that defendant had suffered a lack of consciousness. Plaintiff argued that the evidence, including the vehicle's black box, showed that defendant had been pumping the brakes after striking the guardrail. Further, plaintiff maintained that the emergency personnel reported that defendant was conscious at the scene.

Plaintiff was a 45 year old married male who was employed as an executive.

Injury:

Primary injury of a compressed spinal cord with a disc herniation at C5-C6 requiring surgery and resulting in temporary paralysis below the neck. Secondary injuries of a severe comminuted intratrochanteric and subtrochanteric fracture of the left femur with a shaft fracture of the left femur requiring surgery and a fractured rib. Plaintiff was hospitalized for an extended period and confined temporarily to a wheelchair. He underwent inpatient and outpatient therapy for several months. Plaintiff was left with permanent spasticity in his fingers and required the use of a cane for ambulation. He claimed \$277,278 in medical specials. Plaintiff did not pursue a lost wage claim.

Result: \$950,000

Trial Information:

Editor's Comment: Per plaintiff's counsel, at the pretrial hearing the court repeatedly indicated its belief in the strength of the sudden emergency medical defense in this case. Plaintiff's counsel reported that the outcome of the case was impacted by the sudden medical emergency defense in light of recent Ohio Supreme Court decisions which favored the defendant.

Writer

Auto Accident - Head-On - Loaded Pickup Truck

Type: Verdict-Plaintiff

Amount: \$1,750,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s): • *paralysis/quadriplegia - paralysis*

Case Type: • *Motor Vehicle*

Case Name: David W. Lundgren v. Wholesale Waterproofers, Inc. and R.W. Sidley, Inc., No. 98CV357398

Date: July 11, 2000

Plaintiff(s): • David W. Lundgren (Male, 56 Years)

Plaintiff Attorney(s): • Peter H. Weinberger; ; Cleveland OH for David W. Lundgren
• Jennifer L. Whitney; ; Cleveland OH for David W. Lundgren

Plaintiff Expert(s): • John Sontich M.D.; Orthopedics; Cleveland, OH called by:
• Henry Lipian; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:
• James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by:
• Michael Keith M.D.; Orthopedics; Cleveland, OH called by:

Defendant(s): • Wholesale Waterproofers, Inc. and R.W. Sidley, Inc.

Defense Attorney(s):

- Marilyn J. Singer; Cleveland, OH for Wholesale Waterproofers, Inc. and R.W. Sidley, Inc.
- Keith D. Thomas; Cleveland, OH for Wholesale Waterproofers, Inc. and R.W. Sidley, Inc.

Defendant Expert(s):

- Richard Stevens; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Brunswick, OH called by: for

Insurers:

- Allstate Insurance Comp.

Facts: Plaintiff's van was struck head-on by a one ton pickup truck owned by Defendant Wholesale which crossed the center line of a two lane road. The driver went left of center to avoid traffic stopped in front of him. Defendant Sidley had loaded the pickup truck with gravel to be taken to Defendant Wholesale's jobsite.

Plaintiff alleged that: (1) Defendant Wholesale was negligent when its driver failed to stop the pickup truck within an assured clear distance with the traffic stopped in front of him; (2) Defendant Sidley was negligent in overloading the truck with gravel beyond its weight capacity which caused the brakes to fail; (3) plaintiff suffered significant injuries resulting in permanency as a direct result of defendants' negligence.

Defendant Wholesale contended that Defendant Sidley was negligent in overloading the truck with gravel. Defendant Sidley contended that the truck had bad brakes and it should not be held responsible for causing the collision.

Injury: Crushing injury to left forearm, fractured left femur and fractured right ankle requiring surgeries and resulting in partial paralysis in left hand. Plaintiff claimed \$135,000 in past medical specials and \$20,000 in past wage loss.

Result: \$1,750,000 joint and several.

Trial Information:

Judge: Thomas O. Matia

Trial Deliberations: 3.5 hours

Writer

Pedestrian, who lost foot in bus accident, claimed driver at fault

Type: Mediated Settlement

Amount: \$2,500,000

State: New Jersey

Venue: Essex County

Court: Essex County Superior Court, NJ

Injury Type(s):

- *leg* - limp; scar and/or disfigurement, leg
- *other* - prosthesis; physical therapy
- *foot/heel* - crush injury, foot
- *amputation* - foot
- *surgeries/treatment* - debridement

Case Type:

- *Motor Vehicle* - Bus; Crosswalk; Pedestrian; Intersection; Single Vehicle

Case Name: Antonio J. Almeida and Maria E. Almeida v. New Jersey Transit Corp., New Jersey Transit Bus Operations Inc., Dennis Martin, Winston Fraser, and State of New Jersey, No. ESX-L-2391-16

Date: July 06, 2017

Plaintiff(s):

- Maria S. Almeida (Female)
- Antonio J. Almeida (Male, 72 Years)

Plaintiff Attorney(s):

- Paul M. da Costa; Snyder Sarno D'Aniello Maceri & da Costa LLC; Roseland NJ for Antonio J. Almeida, Maria S. Almeida

Plaintiff Expert(s):

- Ned B. Einstein; Public Transportation; New York, NY called by: Paul M. da Costa
- James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: Paul M. da Costa
- Peter L. Salgo M.D.; Pain & Suffering Evaluations; New York, NY called by: Paul M. da Costa
- Anthony W. Griffith W.S.O.-C.S.S.D.; Buses; New York, NY called by: Paul M. da Costa

Defendant(s):

- Dennis Martin
- Winston Fraser
- State of New Jersey
- New Jersey Transit Corp.
- New Jersey Transit Bus Operations Inc.

Defense Attorney(s):

- Thomas C. Hart; Ruprecht Hart Weeks & Ricciardulli, LLP; Westfield, NJ for New Jersey Transit Corp., Winston Fraser, State of New Jersey, New Jersey Transit Bus Operations Inc., Dennis Martin
- Francis D. Engracia; Ruprecht Hart Weeks & Ricciardulli, LLP; Westfield, NJ for New Jersey Transit Corp., Winston Fraser, State of New Jersey, New Jersey Transit Bus Operations Inc., Dennis Martin

Facts:

On Aug. 3, 2015, plaintiff Antonio Almeida, 72, was walking on Ferry Street, in Newark. He was crossing Union Street when he was struck by a New Jersey Transit bus. The bus was making a left turn from Ferry Street onto Union Street when it struck the left side of Almeida's body. He was knocked to the ground, and the bus ran over his left foot, crushing it. His foot was later amputated.

Almeida sued New Jersey Transit, acting director Dennis Martin, bus driver Winston Fraser, and the state of New Jersey, alleging that Fraser was negligent in the operation of the bus.

Almeida's counsel maintained that Fraser made an unsafe turn by failing to see and yield to Almeida, who had the right-of-way.

In his deposition, Fraser stated that he did not see Almeida before or during the turn, and only when he was about half-way through the turn did he hear a thump. He acknowledged that he was looking in his passenger's side-view mirror when he heard the thump. He then proceeded to look at his driver's side-view mirror and saw Almeida. At that point, Almeida had fallen to the ground.

Fraser claimed that Almeida walked into the side of the bus, and the state maintained, therefore, that Almeida was at least partly responsible for the accident.

Almeida's counsel argued that the claim that he walked into the bus was pure speculation, since Fraser did not see Almeida walk into the bus.

Injury: Almeida was taken by ambulance to a hospital, where he had surgery to repair his crushed left foot. For the next month, he underwent six procedures that mostly consisted of irrigations, debridements, and wound drainages. Despite the procedures, Almeida's foot was amputated.

On Sept. 2, Almeida was transferred to an inpatient rehabilitation facility, where he treated for about one month. He was fitted with a prosthesis and had further physical therapy to learn how to walk with it. He eventually stopped therapy, and no further treatment was administered. He sought to recover a medical lien of approximately \$300,000.

Almeida claimed that his prosthesis is heavy and cumbersome. This causes him to walk with an impaired gait and he therefore limits his walking. He walks outside less often and also has difficulty walking around his apartment due to its narrow doorways and minimal open space to get around. He asserted that he is unable to garden and sees his children and grandchildren less frequently. He sought damages for past and future pain and suffering. His wife sought damages for her claim of loss of consortium.

Result: After depositions, and prior to expert discovery, the parties settled for \$2.5 million, during mediation.

Trial Information:

Judge: C. Judson Hamlin

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 Aaron Jenkins

Former Army personnel blamed earplugs for hearing loss

Type: Verdict-Plaintiff

Amount: \$7,130,500

State: Florida

Venue: Federal

Court: U.S. District Court, Northern District, Pensacola, FL

Injury Type(s):

- *sensory/speech* - tinnitus; hearing, loss of

Case Type:

- *Negligence Per Se*
- *Fraud* - Misrepresentation; Fraudulent Concealment
- *Products Liability* - Design Defect; Failure to Warn; Strict Liability; Breach of Warranty

Case Name: Lewis Keefer v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC / Stephen Hacker v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC / Luke Estes v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC, No. 7:20-cv-00104; 7:20-cv-00131; 7:20cv137

Date: April 30, 2021

Plaintiff(s):

- Luke Estes, (Male, 0 Years)
- Lewis Keefer, (Male, 0 Years)
- Stephen Hacker , (Male, 0 Years)

**Plaintiff
Attorney(s):**

- Thomas P. Cartmell; Wagstaff & Cartmell; Kansas City MO for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Thomas W. Pirtle; Laminack Pirtle & Martines; Houston TX for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Brian Barr; Levin Papantonio Rafferty; Pensacola FL for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Bryan F. Aylstock; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Neil D. Overholtz; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Katherine Cornell; Pulaski Kherkher, PLLC; Houston TX for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Jennifer M. Hoekstra; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Michael A. Sacchet; Ciresi Conlin LLP; Minneapolis MN for Lewis Keefer,, Stephen Hacker ,, Luke Estes
- Megan L. Odom; Ciresi Conlin LLP; Minneapolis MN for Lewis Keefer,, Stephen Hacker ,, Luke Estes

**Plaintiff Expert
(s):**

- Mark Dee Packer M.D.; Neurotology; St. Louis, MO called by: Thomas P. Cartmell, Thomas W. Pirtle, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Michael A. Sacchet, Megan L. Odom
- Allie Leslie; Federal Government; Washington, DC called by: Thomas P. Cartmell, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Thomas P. Cartmell, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom
- Moises Arriaga M.D.; Neurotology; Baton Rouge, LA called by: Thomas P. Cartmell, Thomas W. Pirtle, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom
- Richard L. McKinley; Audio Engineering; WPAFB, OH called by: Thomas P. Cartmell, Thomas W. Pirtle, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Michael A. Sacchet, Megan L. Odom
- Lawrence R. Lustig M.D.; Neurotology; New York, NY called by: Thomas P. Cartmell, Thomas W. Pirtle, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Michael A. Sacchet, Megan L. Odom
- Elizabeth A. Davis Ph.D., R.N.; Life Care Planning; Cedar Bluff, VA called by: Thomas P. Cartmell, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom
- Christopher Spankovich Au.D., Ph.D.; Audiology; Jackson, MS called by: Thomas P. Cartmell, Brian Barr, Bryan F. Aylstock, Neil D. Overholtz, Katherine Cornell, Michael A. Sacchet, Megan L. Odom

Defendant(s):

- 3M Co.
- Aearo LLC
- Aearo Holding LLC
- Aearo Intermediate LLC
- Aearo Technologies LLC
- 3M Occupational Safety LLC

**Defense
Attorney(s):**

- Hariklia Karis; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Charles F. Beall Jr.; Moore, Hill & Westmoreland, P.A.; Pensacola, FL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Mike Brock; Kirkland & Ellis LLP; Washington, DC for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Kimberly Branscome; Dechert LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Jay Bhimani; Dechert LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Ashley Neglia; Kirkland & Ellis LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Nicholas Wasdin; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Mark J. Nomellini; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Tabitha De Paulo; Kirkland & Ellis LLP; Houston, TX for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Saghar Esfandiarifard; Kirkland & Ellis LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Karl Gunderson; of counsel, Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Mary Kim; Dechert LLP; San Francisco, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Craig Castiglia; Dechert LLP; Philadelphia, PA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Allie Ozurovich; Dechert LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Sierra Elizabeth; Kirkland & Ellis LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Cole Carter; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC

**Defendant
Expert(s):**

- John W. House M.D.; Neurotology; Los Angeles, CA called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- John G. Casali Ph.D.; Engineering; Blacksburg, VA called by: for Hariklia Karis, Mike Brock, Kimberly Branscome, Ashley Neglia, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- Mark R. Stephenson Ph.D.; Audiology; Cincinnati, OH called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- Harri K. Kytomaa Ph.D., P.E.; Mechanical; Natick, MA called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- James V. Crawford M.D.; Neurotology; Boise, ID called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- Derek Jones M.D.; Otolaryngology; Pensacola, FL called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- Gregory Flamme Ph.D.; Audiology; Forest Grove, OR called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Kimberly Branscome, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter
- Jennifer R. LaBorde Aud.D.; Audiology; Gulf Breeze, FL called by: for Hariklia Karis, Charles F. Beall Jr., Mike Brock, Jay Bhimani, Ashley Neglia, Nicholas Wasdin, Mark J. Nomellini, Tabitha De Paulo, Saghar Esfandiarifard, Karl Gunderson, Mary Kim, Craig Castiglia, Allie Ozurovich, Sierra Elizabeth, Cole Carter

Facts:

In 2009, plaintiff Stephen Hacker was diagnosed with tinnitus, which is ringing in the ears. Plaintiffs Lewis Keefer and Luke Estes were also diagnosed with tinnitus and hearing loss. Estes' diagnosis was in March 2014.

All three plaintiffs had spent time in the United States Army. The Army gave each of them 3M Combat Arms Earplugs Version 2. These pre-formed earplugs are dual-sided. One side was designed to let the wearer hear commands on the battlefield or shooting range while protecting the user from impulse noise. The other side was intended to block steady-state noise. 3M started selling these earplugs to the Army in 1999. Hacker received them in 2006. Keefer and Estes received theirs a few years later.

Hacker, Keefer and Estes contended that the earplugs were defective, and that this led to their hearing issues.

The plaintiffs sued 3M and several related companies, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC. The lawsuits included products liability claims.

Numerous other plaintiffs filed similar lawsuits against the same defendants. The Hacker, Estes and Keefer cases were consolidated for a bellwether trial.

Estes and Keefer's lawsuits were tried under Georgia law. Their suits included claims for strict liability design defect, strict liability failure to warn, negligent design, negligent failure to warn, negligence per se, fraudulent misrepresentation, fraudulent concealment, negligent misrepresentation, breach of express warranty and breach of implied warranty. Hacker's suit was tried under Kentucky law and included strict liability design defect, strict liability failure to warn, negligent design, negligent failure to warn, fraudulent misrepresentation, fraudulent concealment and negligent misrepresentation claims.

Plaintiffs' counsel argued that the earplugs became loose and did not properly protect the ears. Counsel contended that the defendants knew about this defect in 1999, yet continued selling the earplugs. Plaintiffs' counsel further claimed the defendants did not notify the government about the defect until 15 years later.

Plaintiffs' counsel alleged that the defendants started selling the earplugs before testing them to see if they met American National Standards Institute S3.19-1974 standards. Counsel argued the defendants conducted this test a few months after they started selling the product. Per plaintiffs' counsel, the test showed that the earplugs had an insufficient noise reduction rating and would not block the sound of excessive gunfire. Plaintiffs' counsel argued that this test proved the earplugs did not work, and that the defendants did not respond appropriately to the test results.

The earplugs performed better during a subsequent noise reduction rating test in 2000. Plaintiffs' counsel contended that this test was improper, the defendants had altered the earplugs for the test in order to get a better result and the defendants hid the prior test from the United States military.

Plaintiffs' counsel presented experts at trial who opined that the earplugs failed because their stems were too short, hard and fat. One of these experts was an audio engineer from Wright-Patterson Air Force Base.

Plaintiffs' counsel additionally argued that internal documents showed the defendants

knew the earplugs did not function properly and that neither end of the earplug worked as represented.

The defense contended that there were no records of which earplugs each plaintiff used and there was no proof that the earplugs worn by the plaintiffs were defective. The defense further argued that the plaintiffs were comparatively negligent in that they did not put in the earplugs properly and failed to wear the earplugs when they were told. Plaintiffs' counsel countered that soldiers get written up for failing to wear earplugs and that none of the plaintiffs were cited for this transgression.

In Keefer's and Estes' lawsuits, the defendants also argued that the Army was contributorily negligent. The defendants contended that the Army did not follow its own hearing conservation program. Defense counsel specifically claimed that the Army should have had each soldier fitted for the earplugs annually by a medically trained professional. Defense counsel additionally made statute of limitations arguments in those two cases.

Injury:

Hacker had preexisting hearing loss. He was diagnosed with tinnitus in 2009.

Estes and Keefer were each diagnosed with both hearing loss and tinnitus. Estes' diagnosis was in March 2014.

All three plaintiffs treated with audiologists and otolaryngologists. Estes and Keefer also received hearing aids. However, there is no cure for the plaintiffs' conditions, and their hearing will continue to get worse as they get older.

The plaintiffs claimed they will need continued medical appointments in the future. They also alleged that their hearing loss shortened their work lives. The plaintiffs further contended that they have problems communicating with their families and that it is hard for them to hear in crowded locations.

Hacker sought recovery of damages for his mental and physical pain and suffering. Keefer and Estes each sought recovery of future medical expenses, future lost earnings and damages for their mental and physical pain and suffering. All three plaintiffs also sought punitive damages.

Defense counsel primarily focused on liability. However, the defense did contend that Hacker's prior hearing loss, rather than the earplugs, caused his tinnitus.

Result:

The jury found that Keefer and Estes proved their claims for strict liability design defect, strict liability failure to warn, negligent design, negligent failure to warn, negligence per se, fraudulent misrepresentation, fraudulent concealment, negligent misrepresentation, breach of express warranty and breach of implied warranty. The jury further found that 3M did not prove its affirmative defenses of superseding cause, avoidance of consequences and statute of limitations in Keefer's and Estes' cases, and did not apportion any liability to Keefer, Estes or the United States Army. The jury awarded \$2,420,000 to Keefer and \$2,450,500 to Estes.

The jury found that Hacker proved his claims for strict liability design defect, strict liability failure to warn, negligent design, negligent failure to warn, fraudulent misrepresentation, fraudulent concealment and negligent misrepresentation. The jury further found that 3M did not prove its affirmative defense of contributory negligence in Hacker's case and did not apportion any liability to Hacker. The jury awarded \$2,260,000 to Hacker.

\$36000 Personal Injury: Future Medical Cost

\$147500 Personal Injury: Future Loss of Earnings

\$2100000 Personal Injury: Punitive Exemplary Damages

\$167000 Personal Injury: mental and physical pain and suffering

Trial Information:

Judge: M. Casey Rodgers

Trial Length: 5 weeks

**Trial
Deliberations:** 7 hours

Jury Vote: 8-0

**Jury
Composition:** 1 male, 7 female

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

Writer Melissa Siegel

3M misled military about effectiveness of earplugs, plaintiff argued

Type: Verdict-Plaintiff

Amount: \$13,062,320

State: Florida

Venue: Federal

Court: U.S. District Court, Northern District, Tallahassee, FL

Injury Type(s):

- *sensory/speech* - tinnitus; hearing, partial loss of

Case Type:

- *Fraud* - Misrepresentation
- *Products Liability* - Design Defect; Failure to Warn

Case Name: Guillermo Camarillorazo v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC, No. 7:20-cv-00098-MCR-GRJ

Date: November 15, 2021

Plaintiff(s):

- Guillermo Camarillo, (Male, 30 Years)

Plaintiff Attorney(s):

- Thomas W. Pirtle; Laminack Pirtle & Martines, L.L.P.; Houston TX for Guillermo Camarillo
- Jennifer M. Hoekstra; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Guillermo Camarillo
- Paul J. Pennock; Morgan & Morgan; New York NY for Guillermo Camarillo

Plaintiff Expert (s):

- Mark Packer M.D.; Otolaryngology; St. Louis, MO called by: Thomas W. Pirtle,
- Allie Leslie; Federal Government; Washington, DC called by: Jennifer M. Hoekstra,
- Moises Arriaga M.D.; Otolaryngology; Baton Rouge, LA called by: Thomas W. Pirtle,
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Jennifer M. Hoekstra,
- Richard McKinley; Audio Engineering; WPAFB, OH called by: Thomas W. Pirtle,
- Elizabeth A. Davis Ph.D., R.N.; Life Care Planning; Cedar Bluff, VA called by: Jennifer M. Hoekstra,
- Christopher Spankovich Au.D., Ph.D.; Audiology; Jackson, MS called by: , Paul J. Pennock

Defendant(s):

- 3M Co.
- Aearo LLC
- Aearo Holding LLC
- Aearo Intermediate LLC
- Aearo Technologies LLC
- 3M Occupational Safety LLC

Defense Attorney(s):

- Barry E. Fields; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- David I. Horowitz; Kirkland & Ellis LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Judson Brown; Kirkland & Ellis LLP; Washington, DC for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC

Defendant Expert(s):

- John Casali Ph.D.; Ergonomics/Human Factors; Blacksburg, VA called by: for Barry E. Fields, David I. Horowitz, Judson Brown
- James V. Crawford M.D.; Neurotology; Boise, ID called by: for Barry E. Fields, David I. Horowitz, Judson Brown
- Gregory Flamme Ph.D.; Audiology; Forest Grove, OR called by: for Barry E. Fields, David I. Horowitz, Judson Brown

Facts:

In 2008, plaintiff Guillermo Camarillo, a tank mechanic and combat veteran in his mid-30s, began experiencing symptoms of hearing loss and tinnitus, which is ringing in the ears. He was formally diagnosed with these conditions in 2009.

Camarillo is a member of the United States Army. The Army issued him a pair of 3M Combat Arms Earplugs Version 2 in 2003. Camarillo continued using the earplugs into 2019.

These pre-formed earplugs are dual-sided. One side was designed to let the wearer hear commands on the battlefield or shooting range while protecting the user from impulse noise. The other side was intended to block steady-state noise. 3M started selling these

earplugs to the Army in 1999.

Camarillo contended that the earplugs were defective, and that this led to his hearing issues.

Camarillo sued 3M and several related companies, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC. The lawsuit included products liability claims for design defect, failure to warn and/or instruct, negligent design, negligent failure to warn and/or instruct, gross negligence, fraudulent misrepresentation and negligent misrepresentation.

The plaintiff, an American citizen who was born in Mexico, was identified as “Guillermo Camarillorazo” on military documents. “Camarillorazo” is a combination of his parents’ last names. The plaintiff thus originally filed the subject lawsuit under the name “Guillermo Camarillorazo.” However, his actual last name is “Camarillo.”

Numerous other plaintiffs filed similar lawsuits against the same defendants. The Camarillo case was one of several bellwether trials held in 2021. The first bellwether trial involved three plaintiffs who were awarded a total of \$7,130,500. Two subsequent trials ended in \$1.7 million and \$8.2 million gross verdicts for the plaintiff.

Another bellwether trial was held simultaneous to the Camarillo case. That trial ended in a defense verdict. There were also two other prior defense verdicts in bellwether trials.

In the Camarillo case, plaintiff’s counsel retained an audio engineering expert who opined that the subject earplugs were defectively designed. The expert opined that the weight and shape of each earplug pulls it loose from its secure fit. The expert claimed that this loosening is imperceptible to the person wearing the earplugs.

Plaintiff’s counsel maintained that the defendants knew about this defect yet failed to notify the United States Military about the imperceptible loosening issue. Camarillo’s counsel argued that 3M had internal documents as far back as the year 2000 that mentioned this loosening.

Plaintiff’s counsel also alleged that the defendants started selling the earplugs before testing them to see if they met American National Standards Institute (ANSI) standards. Camarillo’s counsel further argued the defendants conducted ANSI tests in January 2000 but stopped the tests because they did not show good results. The defendants then ran a second series of tests in May 2000. Plaintiff’s counsel argued that the defendants cherry-picked the subjects for these tests and then rigged the tests to get the results they wanted. Plaintiff’s counsel argued that the defendants only shared these test results, and not the less promising ones from January 2000, with the government.

The defense disputed whether the earplugs were defective. Defense counsel retained a human factors expert who opined that the earplugs fit 75 to 80 percent of people, including the plaintiff. The defense also maintained that military labs did not find any defects in the earplugs. Plaintiff's counsel countered that the labs had accepted that 3M's test results were correct. Camarillo's counsel claimed that the labs thus did not test the basic efficacy of the earplugs and only used the tests to compare the 3M earplugs with other products.

The defense further noted that the main decline in Camarillo's hearing came after his fifth overseas deployment in 2013. His first four deployments were to Iraq, while the fifth one was to a military base in Afghanistan. The base included lots of air traffic, and soldiers would sleep in plastic tents near where planes landed.

The defense's neurotology expert argued that this base was so noisy that no earplugs could have prevented Camarillo from suffering hearing loss. The defense's audiology expert similarly maintained that Camarillo was exposed to louder decibels in Afghanistan compared to his other deployments. The defense maintained that the United States Military was thus comparatively negligent for stationing Camarillo in such a loud location without providing extra hearing protection. Plaintiff's counsel countered that Camarillo's hearing was starting to decline prior to 2013.

The defense argued that Camarillo was comparatively at fault, as well. The defense contended that Camarillo should have known that earplugs are not supposed to last 15 years. The defense contended that Camarillo should have obtained replacement earplugs sometime between 2003 and 2019.

Injury:

Camarillo suffers from tinnitus and hearing loss. While there is little that can be done to treat his condition, he did receive hearing aids in both ears sometime after his return from Afghanistan. He also underwent various tests and saw different doctors.

Camarillo claimed that he will need his hearing aids replaced every few years. He will also require regular audiograms and doctors' appointments. Plaintiff's otolaryngology and audiology experts each opined that Camarillo will need a cochlear implant within the next 10 years.

Camarillo stated that his hearing problems have caused miscommunication issues in his marriage. He also has trouble hearing in public spaces. Camarillo additionally stated that his children have to stand in front of him when they talk to him.

Camarillo testified that he plans to retire from the military in a few years and become a mechanic. He claimed that he has a lower earning capacity in this profession due to his hearing loss.

Camarillo sought recovery of future medical expenses, future lost earnings and damages for his past and future pain and suffering. Camarillo also sought punitive damages.

The case was tried under Texas law, which includes a punitive damages cap. The cap does not apply if a plaintiff proves beyond a reasonable doubt and with clear and convincing evidence that the defendant committed fraud.

Plaintiff's counsel argued that the defendants secured execution of a Medical Procurement Item Description (MPID) through fraud, and that the punitive damages cap thus did not apply. An MPID is a procurement document that describes an item being purchased by the United States Military. Per plaintiff's counsel, the MPID for the subject earplugs stated that the product would provide protection up to 190 decibels. The MPID also claimed that 3M would perform certain tests on the earplugs, and that the earplugs would meet both ANSI and federal government regulations.

The MPID for the earplugs was executed in the year 2003 and updated three years later. Plaintiff's counsel argued that 3M knew it could not meet the requirements in the MPID and thus fraudulently obtained this document. Camarillo's counsel specifically contended that the earplugs were never capable of providing 190 decibels of protection.

The defense did not greatly dispute the extent of Camarillo's injury.

Result:

The jury found for the plaintiff on all claims. The jury also found that there was no negligence by Camarillo nor the United States Military that was a cause of the plaintiff's injuries. The jury additionally concluded that the plaintiff's injuries resulted from fraud, malice or gross negligence by 3M. The jury awarded Camarillo \$13,062,320.

The jury additionally found that Camarillo proved both by clear and convincing evidence and beyond a reasonable doubt that 3M knowingly secured execution of a Medical Procurement Item Description for the earplugs by deception. The verdict is thus not subject to the Texas punitive damages cap.

Guillermo Camarillo

\$ 105,750 Future Medical Cost

\$ 110,645 Future Lost Earnings

\$ 12,245,925 Punitive Exemplary Damages

\$ 408,000 Future Pain Suffering

\$ 192,000 Past Pain Suffering

\$ 13,062,320 Plaintiff's Total Award

Trial Information:

Judge: Mark Walker

Trial Length: 2 weeks

**Trial
Deliberations:** 5.5 hours

Jury Vote: 7-0

**Jury
Composition:** 3 male, 4 female; 3 Black, 4 white

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

Writer Melissa Siegel

Lawsuit: Marketing materials for military earplugs falsified their effectiveness

Type: Verdict-Plaintiff

Amount: \$22,500,000

State: Florida

Venue: Federal

Court: U.S. District Court, Northern District, Tallahassee, FL

Injury Type(s): • *sensory/speech* - tinnitus; hearing, partial loss of

Case Type: • *Gross Negligence*
• *Fraud* - Misrepresentation
• *Products Liability* - Design Defect; Failure to Warn

Case Name: Theodore Elwood Finley v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC, No. 7:20-cv-00170-MCR-GRJ

Date: December 10, 2021

Plaintiff(s): • Theodore Elwood Finley, (Male, 21 Years)

Plaintiff Attorney(s): • Douglas C. Monsour; Monsour Law Firm; Longview TX for Theodore Elwood Finley
• Neil D. Overholtz; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Theodore Elwood Finley
• Jennifer M. Hoekstra; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for Theodore Elwood Finley
• Katy Krottinger; Monsour Law Firm; Longview TX for Theodore Elwood Finley
• Andre Mura; Gibbs Law Group LLP; Oakland CA for Theodore Elwood Finley

**Plaintiff Expert
(s):**

- Mark Packer M.D.; Otolaryngology; St. Louis, MO called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura
- Allie Leslie; Federal Government; Washington, DC called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura
- Moises Arriaga M.D.; Otolaryngology; Baton Rouge, LA called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura
- Richard McKinley; Audio Engineering; WPAFB, OH called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura
- Roberto Gonzalez M.D.; Audiology; Copperas Cove, TX called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura
- Christopher Spankovich Au.D., Ph.D.; Audiology; Jackson, MS called by: Douglas C. Monsour, Neil D. Overholtz, Jennifer M. Hoekstra, Katy Krottinger, Andre Mura

Defendant(s):

- 3M Co.
- Aearo LLC
- Aearo Holding LLC
- Aearo Intermediate LLC
- Aearo Technologies LLC
- 3M Occupational Safety LLC

**Defense
Attorney(s):**

- Saghar Esfandiarifard; Kirkland & Ellis LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Britany Kabakov; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Mark Premo-Hopkins; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Erin Johnston; Kirkland & Ellis LLP; Washington, DC for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Diana Clough Benton; Kirkland & Ellis LLP; Houston, TX for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Caroline Stephens Milner; Kirkland & Ellis LLP; Washington, DC for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Daniel Murdock; Kirkland & Ellis LLP; Chicago, IL for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Austin J. Del Priore; Kirkland & Ellis LLP; Washington, DC for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC

**Defendant
Expert(s):**

- John Casali Ph.D.; Ergonomics/Human Factors; Blacksburg, VA called by: for Saghar Esfandiarifard, Britany Kabakov, Mark Premo-Hopkins, Erin Johnston, Diana Clough Benton, Caroline Stephens Milner, Daniel Murdock, Austin J. Del Priore
- Mark Stephenson Ph.D.; Hearing Aids; Loveland, OH called by: for Saghar Esfandiarifard, Britany Kabakov, Mark Premo-Hopkins, Erin Johnston, Diana Clough Benton, Caroline Stephens Milner, Daniel Murdock, Austin J. Del Priore
- James V. Crawford M.D.; Neurotology; Boise, ID called by: for Saghar Esfandiarifard, Britany Kabakov, Mark Premo-Hopkins, Erin Johnston, Diana Clough Benton, Caroline Stephens Milner, Daniel Murdock, Austin J. Del Priore
- Gregory Flamme Ph.D.; Audiology; Forest Grove, OR called by: for Saghar Esfandiarifard, Britany Kabakov, Mark Premo-Hopkins, Erin Johnston, Diana Clough Benton, Caroline Stephens Milner, Daniel Murdock, Austin J. Del Priore

Facts:

In July 2009, plaintiff Theodore Elwood Finley, 21, a soldier in the United States Army, was diagnosed with hearing loss and tinnitus, which is ringing in the ears.

The Army had given Finley a pair of 3M Combat Arms Earplugs Version 2 when he first enlisted in 2006 at age 19. These pre-formed earplugs are dual-sided. The yellow side was designed to let the wearer hear spoken words on the battlefield or shooting range while protecting against impulse noise. The green side was intended to block steady-state noise. 3M started selling these earplugs to the Army in 1999.

Finley used the earplugs during his subsequent training and on his deployment to Afghanistan, which lasted from July 2008 until July 2009. During his first two-and-a-half months in Afghanistan, he primarily fired mortars. He spent the rest of his deployment as a driver, while continuing to fire mortars occasionally. Finley was involved in approximately 400 firefights as a driver.

Following his return from Afghanistan, Finley was not placed in any overly loud situations and stopped wearing the earplugs. He had suffered several injuries while overseas and was eventually medically discharged from the Army for injuries unrelated to his hearing.

Finley contended that the earplugs were defective, and that this led to his hearing issues.

Finley sued 3M and several related companies, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC. The lawsuit included products liability claims for design defect, warning defect, negligent design, negligent warning, gross negligence and fraudulent misrepresentation.

Numerous other plaintiffs filed similar lawsuits against the same defendants. The Finley case was the eighth bellwether trial held in 2021. The first bellwether trial involved three plaintiffs who were awarded a total of \$7,130,500. Two subsequent trials ended in \$1.7 million and \$8.2 million gross verdicts for the plaintiff.

A bellwether trial in November 2021 ended in a gross verdict of \$13,062,320. The other three bellwether trials resulted in defense verdicts.

In the Finley trial, plaintiff's counsel argued that the earplugs were defectively designed. Plaintiff's counsel theorized that the internal stem of the plugs was too short, fat and stiff. Finley's counsel argued that this defect caused the earplugs to loosen, and that this loosening was imperceptible to the person wearing the earplugs. Plaintiff's counsel contended that the earplugs also imperceptibly loosen when the opposing flange presses up against the external portion of the ear.

Plaintiff's counsel also alleged that the defendants started selling the earplugs before testing them to see if they met American National Standards Institute (ANSI) standards. Finley's counsel further argued the defendants conducted ANSI tests in January 2000 but stopped the tests because they did not show good results. The defendants then ran a second series of tests in May 2000. Plaintiff's counsel argued that the defendants cherry-picked the subjects for these tests and then rigged the tests to get the results they wanted. Plaintiff's counsel argued that the defendants only shared these later test results, and not the less promising ones from January 2000, with the government.

For the failure to warn claim, Finley's counsel argued that the defendants' marketing materials claimed the earplugs could protect the ears from up to 190 decibels of sound. The materials also supposedly mentioned that the earplugs offered protection from shoulder-fired rockets and explosions. Plaintiff's counsel noted that Finley was exposed to explosions overseas. Finley's counsel maintained that despite these claims from 3M, the company's own internal documents showed that the earplugs did not provide the hearing protection described in the marketing materials.

Plaintiff's counsel similarly claimed that the defendants' military contract required the earplugs to provide protection for up to 100 exposures of 190 decibels. Finley's counsel presented internal emails from 3M stating that the earplugs could only offer protection for at most six of these exposures.

The defense offered a statute of limitations defense. Finley's fraudulent misrepresentation claim had a four-year statute of limitations, and his remaining claims had a two-year statute of limitations. Finley had filed the subject lawsuit in January 2020. The defense argued that Finley knew or should have known about his injuries prior to January 2016, and prior to January 2018.

Plaintiff's counsel countered that these statutes of limitations would have only applied if the plaintiff knew prior to either of those dates that wrongdoing by 3M had caused his injuries. Finley's counsel noted that the Army's civil fraud investigation into 3M's earplug tests did not end until 2018, and that the results did not become public until the following year. Finley's counsel argued that the plaintiff thus did not find out about the

allegedly defective earplugs until 2019. The defense pointed out that Finley's counsel had asserted the supposed defects became public in 2015 during separate litigation.

The defense also claimed that Finley and the United States Military were liable for any damage suffered by the plaintiff.

Injury:

Finley suffers from hearing loss in his left ear and tinnitus in both ears. He received a hearing aid at age 33. Finley said he will need additional audiology checkups and hearing aids in the future.

Finley said that his hearing problems affect his ability to sleep. He also avoids social situations and has become more withdrawn.

Finley sought recovery of damages for his past and future pain and suffering. He also sought punitive damages.

The case was tried under Texas law, which includes a punitive damages cap. The cap does not apply if a plaintiff proves beyond a reasonable doubt and with clear and convincing evidence that the defendant committed fraud.

Plaintiff's counsel argued that the defendants secured execution of a Medical Procurement Item Description (MPID) through fraud, and that the punitive damages cap thus did not apply. An MPID is a procurement document that describes an item being purchased by the United States Military.

Finley's counsel specifically argued that the defendants violated their military contract by failing to perform required quality testing of each batch of earplugs. Per plaintiff's counsel, the defendants failed to do any quality testing of the green end of each plug. While quality testing was done for the yellow side of each plug, Finley's counsel contended that up to 80 percent of the plugs in some batches failed this test. Plaintiff's counsel claimed that when the plugs failed the quality control test, the defendants would grant itself a waiver and ship the earplugs without notifying the Army about the failed tests.

The defense noted that Finley was exposed to excessively loud noises overseas due to his job firing mortars and the numerous firefights in which he took part. The defense claimed that no alternative earplug on the market could have prevented Finley from losing his hearing in these circumstances. The defense also argued that any purported testing problems related to the green end of the plugs had no bearing on Finley, because he used only the yellow ends during his exposure to mortars and firefights. The defense further noted that plaintiff's counsel failed to measure how the earplugs fit Finley's ears or how much protection the earplugs provided him.

The defense also contended that Finley's right ear had normal hearing, and that his left ear had only moderate hearing loss. The defense claimed that Finley was fortunate to still have as much hearing ability as he did, considering the unusual amount of extremely loud sounds to which he was exposed in Afghanistan.

The defense additionally claimed that Finley could hear fairly well with his hearing aid. The defense argued that Finley failed to mitigate his damages because he waited 12 years before obtaining the hearing aid, which he got just a few months before trial.

The defense further disputed how much the plaintiff's hearing loss caused his suffering. The defense claimed that Finley sustained a head injury in the Army that also lowered his quality of life. The defense further contended that Finley's sleep problems stemmed from neck and back injuries he suffered overseas.

Result:

The jury found for the plaintiff on all claims. The jury also found that there was no negligence by Finley nor the United States Military that was a cause of the plaintiff's injuries. The jury additionally concluded that Finley did not and should not have discovered prior to January 2016 that his injuries were the result of wrongful acts by 3M.

The jury additionally concluded that the plaintiff's injuries resulted from fraud, malice or gross negligence by 3M. The jury awarded Finley \$22.5 million.

The jury additionally found that Finley proved both by clear and convincing evidence and beyond a reasonable doubt that 3M knowingly secured execution of a Medical Procurement Item Description for the earplugs by deception. The verdict is thus not subject to the Texas punitive damages cap.

Theodore Finley

\$ 6,000,000 Future Pain Suffering

\$ 1,500,000 Past Pain Suffering

\$ 15,000,000 exemplary damages

\$ 22,500,000 Plaintiff's Total Award

Trial Information:

Judge: Mark Walker

Trial Length: 9 days

**Trial
Deliberations:** 5 hours

Jury Vote: 8-0

**Jury
Composition:** 2 male, 6 female; 2 Black, 6 white

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

Writer Melissa Siegel

Passengers sustained brain injuries in collision

Type: Verdict-Mixed

Amount: \$42,400,000

State: Ohio

Venue: Cuyahoga County

Court: Cuyahoga County, Court of Common Pleas, Cleveland, OH

Injury Type(s):

- *arm*
- *leg*
- *head* - headaches; fracture, skull
- *brain* - traumatic brain injury
- *face/nose* - fracture, nose; fracture, facial bone; fracture, sinus; fracture, facial bone; fracture, zygomatic arch
- *urological* - incontinence
- *hand/finger* - fracture, metacarpal
- *sensory/speech* - blindness, one eye; speech/language, impairment of
- *mental/psychological* - depression; cognition, impairment; memory, impairment
- *paralysis/quadriplegia* - paralysis, partial

Case Type:

- *Motor Vehicle* - Truck; Passenger; Rear-ender; Lane Change

Case Name: Kiara Torres and Joshua Rojas v. Concrete Designs Inc., Brian M. English and Jovanny Martinez, No. CV-12-795474

Date: October 01, 2014

Plaintiff(s):

- Joshua Rojas (Male, 18 Years)
- Kiara Torres (Female, 16 Years)

- Plaintiff Attorney(s):**
- John Gundy Jr.; The Gundy Law Firm; Beachwood OH for Kiara Torres
 - Andrew R. Young; Nurenberg, Paris, Heller & McCarthy; Cleveland OH for Joshua Rojas
 - Patrick Merrick; Steuer, Escovar, Berk & Brown L.P.A.; Cleveland OH for Joshua Rojas
 - Thomas Mester; Nurenberg, Paris, Heller & McCarthy; Cleveland OH for Joshua Rojas
- Plaintiff Expert(s):**
- Dr. John F. Burke Jr.; Lost Earnings (Economics); Cleveland, OH called by: Andrew R. Young, Patrick Merrick
 - Irene Dietz M.D.; Neurology Cognitive Disorders; Cleveland, OH called by: Andrew R. Young, Patrick Merrick
 - James Crawford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Grafton, OH called by: Andrew R. Young, Patrick Merrick
 - Pamela Hanigoski; Life Care Planning; Cleveland, OH called by: Andrew R. Young, Patrick Merrick
 - Kenneth C. Fischer M.D.; Neurology; Miami, FL called by: Andrew R. Young, Patrick Merrick
 - Richard Ancell; Vocational Rehabilitation; Southfield, MI called by: Andrew R. Young, Patrick Merrick
- Defendant(s):**
- Brian M. English
 - Jovanny Martinez
 - Concrete Designs Inc.
- Defense Attorney(s):**
- Jan L. Roller; Davis & Young; Cleveland, OH for Concrete Designs Inc., Brian M. English
 - Deborah W. Yue; Gallagher Sharp; Cleveland, OH for Jovanny Martinez
- Defendant Expert(s):**
- Jane D. Mattson Ph.D.; Life Care Planning; Norwalk, CT called by: for Jan L. Roller
 - Richard Stevens; Accident Reconstruction; Ravenna, OH called by: for Jan L. Roller
- Insurers:**
- Westfield Insurance Co. (\$2,000,000 policy)
 - Progressive Insurance Co. (\$12,500/\$25,000 policy)

Facts:

On Nov. 14, 2010 plaintiffs Joshua Rojas, an 18-year-old student, and Kiara Torres, a 16-year-old student, were passengers in a 1992 Honda being driven east on the Lorain-Carnegie Bridge in Cleveland by Jovanny Martinez when the car was involved in a collision with an eastbound dump truck owned by Concrete Designs and driven by Concrete Designs owner Brian English. Rojas was in the front passenger seat and Torres in the rear right seat. Martinez pleaded guilty to misdemeanor negligent assault. The plaintiffs claimed traumatic brain injuries.

Rojas and Torres sued Concrete Designs, English and Martinez for motor vehicle negligence.

The plaintiffs' accident reconstruction expert testified that Martinez was driving in the right eastbound lane when English attempted to move from the left to the right eastbound lane in a sudden and unsafe manner, cutting Martinez off.

Plaintiffs' counsel maintained that Martinez failed to keep a proper lookout or control his speed and ran the right side of the car under the left rear wheels of the truck.

Counsel for Martinez maintained that English had made an unsafe lane change and was the sole proximate cause of the collision. Martinez claimed that he attempted to swerve into the left lane to avoid the collision, but that English had changed lanes too suddenly and too close to him to avoid the collision. Counsel for Martinez maintained he accepted the guilty plea to avoid the two felony charges that had originally been filed against him.

Concrete Design's accident reconstruction expert testified that English made a safe lane change, maintaining Martinez's failure to pay reasonable attention was the sole proximate cause of the collision. Counsel for Concrete Designs argued that Martinez pleaded guilty to charges that he had caused the collision.

Injury:

Rojas and Torres were both transported by ambulance to the emergency room. Both plaintiffs sustained comminuted skull fractures and traumatic brain injuries.

Rojas sustained multiple facial fractures, including fractures of all four orbital walls, a right zygomatic arch fracture, comminuted fractures of the right maxillary, ethmoid and sphenoid sinuses, a sphenoid fracture extending to the sella and nasal fractures. He also sustained a laceration of the middle meningeal artery, and extradural hemorrhage, a closed right metacarpal fracture and lacerations to the right side of his face.

Rojas underwent surgical repair of his skull and the removal of approximately one-third of his brain. He was hospitalized and in nursing care for six months after the collision, including treatment of infected wounds and physical rehabilitation. Torres was hospitalized for six weeks after the collision.

Both plaintiffs claimed their injuries caused them to permanently lose their sight in their right eyes. Rojas claimed the injuries left him partially paralyzed on his left side, with extremely limited use of his left arm and an inability to grip objects in his non-dominant left hand.

Rojas must wear a brace on his left leg to move short distances and that moving any significant distance requires a wheelchair. Plaintiffs' counsel maintained his injuries have resulted in impaired problem-solving and communication abilities, impaired memory and insight, poor impulse control, hyperphagia, incontinence, lack of coordination and balance, speech impairment, chronic headaches and depression.

Counsel for Torres maintained that her injuries left her without the ability to smell and with a diminished sense of taste, and with cognitive deficits that prevented her from graduating high school.

Plaintiffs' counsel maintained that both plaintiffs would require continuing medical and psychological care and are permanently disabled and unable to work.

Rojas' life care planning and economics experts put his future medical expenses at \$6 million and future lost income at \$1.4 million.

Counsel for Rojas sought \$7 million to \$9 million for economic damages and \$26 million to \$43 million for noneconomic damages. Counsel for Torres sought an unspecified amount for economic and noneconomic damages.

The defense life care planning expert testified that Rojas future medical costs would be \$4 million.

Result:

The jury found Concrete Designs and English negligent and Martinez not negligent. It awarded \$42.4 million.

Joshua Rojas

\$8,200,000 Personal Injury: economic damages

\$26,400,000 Personal Injury: noneconomic damages

Kiara Torres

\$1,800,000 Personal Injury: economic damages

\$6,000,000 Personal Injury: noneconomic damages

Trial Information:

Judge: Thomas Porkorny

Demand: \$1,500,000

Offer: \$125,000 for Rojas, \$25,000 for Torres

Trial Length: 10 days

**Trial
Deliberations:** 2 days

Jury Vote: 8-2

Writer Rick Archer

Soldier claimed defective ear plugs caused hearing loss

Type: Verdict-Plaintiff

Amount: \$77,500,000

State: Florida

Venue: Federal

Court: U.S. District Court, Northern District, Pensacola, FL

Injury Type(s):

- *sensory/speech* - tinnitus; hearing, partial loss of

Case Type:

- *Fraud* - Misrepresentation; Fraudulent Concealment
- *Products Liability* - Design Defect; Failure to Warn; Strict Liability

Case Name: James E. Beal v. 3M Company, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC, No. 7:20-cv-00006-MCR-GRJ

Date: May 20, 2022

Plaintiff(s):

- James E. Beal , (Male, 23 Years)

Plaintiff Attorney(s):

- Daniel J. Thornburgh; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for James E. Beal
- Brian F. Aylstock; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for James E. Beal
- Jennifer M. Hoekstra; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for James E. Beal
- Michael A. Sacchet; Ciresi Conlin LLP; Minneapolis MN for James E. Beal
- Megan L. Odom; Ciresi Conlin LLP; Minneapolis MN for James E. Beal
- Brad Bradford; Aylstock, Witkin, Kreis & Overholtz, PLLC; Pensacola FL for James E. Beal

Plaintiff Expert (s):

- Mark Dee Packer M.D.; Neurotology; St. Louis, MO called by: Daniel J. Thornburgh, Brian F. Aylstock, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom, Brad Bradford
- Allie Leslie; Federal Government; Washington, DC called by: Daniel J. Thornburgh, Brian F. Aylstock, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom, Brad Bradford
- Gerald Edens; Military; Ft. Rucker, AL called by: Daniel J. Thornburgh, Brian F. Aylstock, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom, Brad Bradford
- Richard L. McKinley; Audio Engineering; WPAFB, OH called by: Daniel J. Thornburgh, Brian F. Aylstock, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom, Brad Bradford
- Christopher Spankovich Au.D., Ph.D.; Audiology; Jackson, MS called by: Daniel J. Thornburgh, Brian F. Aylstock, Jennifer M. Hoekstra, Michael A. Sacchet, Megan L. Odom, Brad Bradford

Defendant(s):

- 3M Co.
- Aearo LLC
- Aearo Holding LLC
- Aearo Intermediate LLC
- Aearo Technologies LLC
- 3M Occupational Safety LLC

Defense Attorney(s):

- Jerry W. Blackwell; Blackwell Burke P.A.; Minneapolis, MN for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Kimberly Branscome; Dechert LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC
- Jay Bhimani; Dechert LLP; Los Angeles, CA for 3M Co., 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, Aearo Technologies LLC

Defendant Expert(s):

- John G. Casali Ph.D.; Ergonomics/Human Factors; Blacksburg, VA called by: for Jerry W. Blackwell, Kimberly Branscome, Jay Bhimani
- James V. Crawford M.D.; Neurotology; Boise, ID called by: for Jerry W. Blackwell, Kimberly Branscome, Jay Bhimani
- Jennifer R. LaBorde Aud.D.; Audiology; Gulf Breeze, FL called by: for Jerry W. Blackwell, Kimberly Branscome, Jay Bhimani

Facts:

In 2005, plaintiff James Beal, 23, a soldier in the United States Army, began to experience tinnitus, which is ringing in the ears. Beal was completing basic training at the time. During an overseas deployment in 2006, he also started suffering from hearing loss.

The Army had given Beal a pair of 3M Combat Arms Earplugs Version 2 when he enlisted in 2005. These pre-formed earplugs are dual-sided. The yellow side was designed to let the wearer hear spoken words on the battlefield or shooting range while protecting against impulse noise. The green side was intended to block steady-state noise. 3M started selling these earplugs to the Army in 1999.

Beal exclusively used these earplugs for hearing protection during his time in the Army/Army Reserve, which lasted from 2005 to 2011. He contended that the earplugs were defective, and that this led to his hearing issues.

Beal sued 3M and several related companies, 3M Occupational Safety LLC, Aearo Holding LLC, Aearo Intermediate LLC, Aearo LLC, and Aearo Technologies LLC. The lawsuit included claims for strict liability design defect, strict liability failure to warn, negligent design defect, negligent failure to warn, fraudulent misrepresentation, negligent misrepresentation and fraudulent concealment.

Numerous other plaintiffs filed similar lawsuits against the same defendants. Beal's case was the 16th and final bellwether trial since 2021. The first bellwether trial involved three plaintiffs who were awarded a total of \$7,130,500. Two subsequent trials ended in \$1.7 million and \$8.2 million gross verdicts for the plaintiff.

A bellwether trial in November 2021 ended in a gross verdict of \$13,062,320, and a trial in December 2021 ended in a \$22.5 million verdict. The first bellwether trial of 2022 featured two plaintiffs who each received \$55 million. Three other trials in 2022 ended in gross verdicts of \$50 million, \$8 million and \$2.2 million. The other six bellwether trials resulted in defense verdicts.

Attorneys in Beal's case argued that the subject earplugs were defectively designed. Plaintiff's counsel theorized that the internal stem of the plugs was too short, fat and stiff. Beal's counsel argued that this defect caused the earplugs to loosen, and that this loosening was imperceptible to the person wearing the earplugs. Plaintiff's counsel contended that the earplugs also imperceptibly loosen when the opposing flange presses up against the external portion of the ear.

Plaintiff's counsel also alleged that the defendants started selling the earplugs before testing them to see if they met American National Standards Institute (ANSI) standards. Beal's counsel further argued the defendants conducted ANSI tests in January 2000 but stopped the tests because they did not show good results. The defendants then ran a second series of tests in May 2000. Plaintiff's counsel argued that the defendants cherry-picked the subjects for these tests and then rigged the tests to get the results they wanted. Plaintiff's counsel argued that the defendants only shared these later test results, and not the less promising ones from January 2000, with the government.

Plaintiff's counsel further claimed that the defendants' military contract required the earplugs to provide protection for up to 100 exposures of 190 decibels. Plaintiff's counsel presented internal emails from 3M stating that the earplugs could only offer protection for at most six of these exposures.

For the failure to warn claims, plaintiff's counsel argued that the defendants' marketing materials claimed the earplugs could protect the ears from up to 190 decibels of sound. The materials also supposedly mentioned that the earplugs offered protection on the gun range. Plaintiff's counsel maintained that despite these claims from 3M, the company's own internal documents showed that the earplugs did not provide the hearing protection described in the marketing materials. Beal claimed that his hearing issues at least partially stem from his exposure to loud gunfire on the shooting range.

The defense maintained that the earplugs are safe and effective. Defense counsel also retained a human factors expert who opined that the defendants properly developed the earplugs.

Injury:

Beal suffers from tinnitus and hearing loss. Beal received minimal treatment while he was in the Army. He ultimately got hearing aids for both ears in 2012. However, there is little else that can be done for his conditions.

Beal claimed that his hearing problems affect his ability to communicate with his family. He said that he never gets any reprieve from the tinnitus.

Beal sought recovery of compensatory damages for his past and future pain and suffering. He also sought punitive damages.

The defense disputed whether any defect in the earplugs caused injury to the plaintiff. The defense retained an audiology expert and a neurotology expert who each contended that when Beal wore his hearing aids, he had no functional deficits in his ears.

The defense further maintained that if Beal did have any hearing issues, they were unrelated to the earplugs. The defense pointed to some noise exposures Beal had before and after he joined the military. Specifically, he often went hunting as a child. He also was exposed to loud sounds when he drove a tractor-trailer and operated a handyman business following his Army stint.

Plaintiff's counsel countered that Beal's hearing issues began during -- not after -- his Army stint. Plaintiff's counsel also noted that Beal always wore hearing protection when he was exposed to loud noises in his tractor-trailer or as part of his handyman business.

The defense also theorized that Beal's hearing issues could stem from a traumatic brain injury he sustained while deployed overseas. The defense's neurotology expert, who is a military doctor, additionally testified that Beal could not have shot as many rounds on the Army's gun range as the plaintiff said he did. The defense thus disputed how much loud noise exposure Beal experienced on the range.

Plaintiff's counsel used a retired Army general as a rebuttal witness. The general claimed Beal's testimony regarding the frequency of shots Army soldiers make on the gun range was accurate. The general further contended that the defense's neurotologist is not a combat officer and thus would not know about shooting range procedures.

Result:

The jury found for the plaintiff on all claims. The jury also determined that there was no comparative negligence by the plaintiff.

The jury awarded Beal \$77.5 million.

James Beal

\$ 72,500,000 Punitive Exemplary Damages

\$ 5,000,000 compensatory damages

\$ 77,500,000 Plaintiff's Total Award

Trial Information:

Judge: Robin L. Rosenberg

Trial Length: 2 weeks

**Trial
Deliberations:** 3 hours

Jury Vote: 8-0

**Jury
Composition:** 6 male, 2 female; 8 white

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

Writer Melissa Siegel

Suit: Improperly trained driver responsible for deadly crash

Type: Verdict-Plaintiff

Amount: \$89,687,994

Actual Award: \$89,687,994

State: Texas

Venue: Harris County

Court: Harris County District Court, 127th, TX

Injury Type(s):

- *hip*
- *leg*
- *back* - sprain, lumbar; strain, lumbar
- *head* - headaches; concussion; closed head injury
- *knee*
- *neck* - sprain, cervical; strain, cervical
- *ankle* - fracture, ankle; fracture, malleolus
- *brain* - brain damage; subdural hematoma; traumatic brain injury
- *other* - death; thigh; scar tissue; unconsciousness; spleen, laceration
- *shoulder* - fracture, shoulder; fracture, scapula; fracture, shoulder; fracture, clavicle; fracture, shoulder; fracture, collarbone
- *face/nose* - fracture, facial bone; fracture, orbit; scar and/or disfigurement, face
- *sensory/speech* - vision, impairment
- *mental/psychological* - cognition, impairment; memory, impairment
- *pulmonary/respiratory* - pneumothorax; collapsed lung; contusion, pulmonary
- *paralysis/quadriplegia* - quadriplegia
- *gastrointestinal/digestive* - liver; liver, laceration

Case Type:

- *Motor Vehicle* - Ice; Speeding; Passenger; Multiple Vehicle; Weather Conditions
- *Gross Negligence*
- *Wrongful Death* - Survival Damages
- *Worker/Workplace Negligence* - Negligent Training; Negligent Supervision

Case Name: Jennifer Blake, Individually and as Next Friend for Brianna Blake and Nathan Blake, and as heir of the estate of Zachery Blake, Deceased v. Shiraz A. Ali and Werner Enterprises, Inc., No. 2015-36666

Date: May 17, 2018

- Plaintiff(s):**
- Nathan Blake (Male, 14 Years)
 - Brianna Blake (Female, 12 Years)
 - Jennifer Blake (Female, 32 Years)
 - Estate of Zackery Blake (Male, 7 Years)

- Plaintiff Attorney(s):**
- Darrin M. Walker; Law Office of Darrin Walker; Kingwood TX for Jennifer Blake, Brianna Blake, Nathan Blake, Estate of Zackery Blake
 - Zollie C. Steakley; Harrison Davis Steakley Morrison Jones, P.C.; Waco TX for Jennifer Blake, Brianna Blake, Nathan Blake, Estate of Zackery Blake
 - Eric T. Penn; The Penn Law Firm, P.C.; Jacksonville TX for Jennifer Blake, Brianna Blake, Nathan Blake, Estate of Zackery Blake
 - Kelley D. Peacock; The Penn Law Firm, P.C.; Jacksonville TX for Jennifer Blake, Brianna Blake, Nathan Blake, Estate of Zackery Blake

- Plaintiff Expert(s):**
- Katy Britt-Sharp Psy.D.; School Psychology; Waco, TX called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Mark D. Herbst M.D., Ph.D.; Radiology; St. Petersburg, FL called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Paul Heppner; Weather Conditions; Marlton, NJ called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - James Crawford; Accident Reconstruction; Grafton, OH called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Arthur Atkinson; Trucking Industry; Surprise, AZ called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Joseph Burton M.D.; Pathology; Alpharetta, GA called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Philip J. Smith; Accident Reconstruction; St. Pete Beach, FL called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Robert W. Johnson; Economics; Los Altos, CA called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Shelly N. Savant M.D.; Life Care Planning; New Iberia, LA called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock
 - Gilbert Martinez Ph.D.; Neuropsychology; San Antonio, TX called by: Darrin M. Walker, Zollie C. Steakley, Eric T. Penn, Kelley D. Peacock

- Defendant(s):**
- Shiraz A. Ali
 - Werner Enterprises Inc.

- Defense Attorney(s):**
- R. Russell Hollenbeck; Wright Close & Barger, LLP; Houston, TX for Werner Enterprises Inc., Shiraz A. Ali
 - Dale R. Mellencamp; Bair Hilty, P.C.; Houston, TX for Werner Enterprises Inc., Shiraz A. Ali
 - Amanda S. Hilty; Bair Hilty, P.C.; Houston, TX for Werner Enterprises Inc., Shiraz A. Ali
 - Bill Sanford; Bair Hilty, P.C.; Houston, TX for Werner Enterprises Inc., Shiraz A. Ali

**Defendant
Expert(s):**

- John E. Scarbrough Ph.D.; Economics; Ridgefield, CT called by: for R. Russell Hollenbeck, Dale R. Mellencamp, Amanda S. Hilty, Bill Sanford
- James Scapellato; Trucking Industry; Buckeye, AZ called by: for R. Russell Hollenbeck, Dale R. Mellencamp, Amanda S. Hilty, Bill Sanford
- Andrew D. Irwin; Accident Reconstruction; Dallas, TX called by: for R. Russell Hollenbeck, Dale R. Mellencamp, Amanda S. Hilty, Bill Sanford

Facts:

On Dec. 30, 2014, plaintiff Jennifer Blake, 32, and her children, plaintiff Brianna Blake, 12, plaintiff Nathan Blake, 14, and plaintiffs' decedent Zackery Blake, 7, were passengers in a 2003 Ford F-350 pickup truck driven by Zaragosa "Trey" Salinas. The pickup truck was traveling in the left eastbound lane of Interstate 20 in Ector County, near mile marker 107, approaching Odessa. The pickup truck went out of control, crossed the median and was struck by an 18-wheeler driven by Shiraz Ali. Ali, who was in the course and scope of his employment with Werner Enterprises Inc., had been driving the 18-wheeler westbound on Interstate 20 at 50 to 60 mph. Zackery was killed. Blake, Brianna and Nathan survived, but suffered severe injuries.

The Blakes sued Werner and Ali, alleging that Ali was negligent in the operation of the 18-wheeler.

The Blakes alleged that Ali failed to keep a proper lookout, failed to control his speed and was driving too fast for the icy conditions. The Blakes argued that the pickup truck's driver lost control when he hit a patch of black ice and that Ali was traveling in the left westbound lane at the time of the accident. Icy conditions had been forecast and two winter-weather warnings had been issued for the area. The Blakes argued that Ali was therefore negligent in driving on the freeway at 50 to 60 mph in the left lane. If he had not been doing so, the Blakes asserted, the collision would have been far less severe or would not have occurred at all.

The Blakes also alleged negligence and gross negligence in Werner's training and supervision of Ali, saying that he should have been told not to drive under such conditions and that he should have been notified when the weather warnings were issued. Werner had hired Ali earlier that month. Ali had a commercial driver's license, but was a trainee at the time of the accident. The trainer was asleep in the sleeping berth. Their destination was in California. The Blakes argued that Ali had no experience and, at the time of the accident, had not yet completed his training, including training on how to drive in winter weather.

The defense denied negligence and contended that the pickup truck's driver, designated by the defense as a responsible third party, was at fault for driving too fast to control his vehicle and failing to maintain control. The defense argued that the pickup truck went into Ali's path and Ali could not avoid the accident. The defense also contended that the roads were merely damp, not icy, and that Ali was in the right lane, not the left. The defense also noted that the speed limit was 75 mph.

Injury:

Zackery died three days after the accident and was survived by his mother. Zackery's injuries included a subdural hematoma, right pneumothorax and liver and spleen lacerations.

Jennifer Blake hit her head and lost consciousness in the accident. She claimed neck and back sprains and strains, a left orbital wall fracture and a concussion. She claimed she experienced severe headaches, memory loss and problems with depth perception. She also claimed right knee, hip and thigh pain and underwent surgery on her upper leg.

Blake sought damages for past and future physical pain and mental anguish and past and future physical impairment with regard to her own injuries, as well as past and future mental anguish related to Zackery's death. She also sought past and future mental anguish as a bystander to her children's injuries, plus punitive damages.

Nathan Blake claimed a left pulmonary contusion, pneumothorax and fractures of the left scapula and left clavicle. He underwent surgery for the collapsed lung. He also asserted that he had severe scars on his face, shortness of breath, severe headaches and left shoulder pain.

Nathan Blake sought damages for past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement. He also sought punitive damages.

Brianna Blake claimed an intraventricular hemorrhage, left pulmonary contusion and left malleolar fracture. She was diagnosed with a permanent brain injury and underwent multiple brain surgeries. Her injuries rendered her a quadriplegic, with the inability to walk. She was also unable to talk and was incontinent. She has difficulty swallowing and difficulty moving her extremities, reportedly experiences severe pain and muscle spasms and will require 24-hour care for the rest of her life.

Brianna Blake sought future medical expenses, past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement. She also sought punitive damages.

Result:

The jury found negligence, but no gross negligence. They attributed 70 percent liability to Werner employees other than Ali, 14 percent liability to Ali and 16 percent liability to Salinas (designated by the defense as a responsible third party). The jury awarded the plaintiffs \$89,687,994. Werner is jointly and severally liable for the entire amount. Ali is liable for 14 percent of the verdict.

Brianna Blake

\$43,187,994 Personal Injury: Future Medical Cost

\$3,750,000 Personal Injury: Past Physical Impairment

\$7,500,000 Personal Injury: Future Physical Impairment

\$1,250,000 Personal Injury: Past Disfigurement

\$1,250,000 Personal Injury: Future Disfigurement

\$3,750,000 Personal Injury: past physical pain and mental anguish

\$7,500,000 Personal Injury: future physical pain and mental anguish

Jennifer Blake

\$2,310,000 Personal Injury: Past Physical Impairment

\$2,310,000 Personal Injury: Future Physical Impairment

\$825,000 Personal Injury: future mental anguish as bystander

\$2,310,000 Personal Injury: past physical pain and mental anguish for her injuries

\$4,620,000 Personal Injury: future physical pain and mental anguish for her injuries

\$825,000 Personal Injury: past mental anguish as bystander

\$1,650,000 Wrongful Death: past mental anguish and loss of companionship and society

\$1,650,000 Wrongful Death: future mental anguish and loss of companionship and society

Nathan Blake

\$1,000,000 Personal Injury: Past Physical Impairment

\$1,000,000 Personal Injury: Future Physical Impairment

\$500,000 Personal Injury: Past Disfigurement

\$500,000 Personal Injury: Future Disfigurement

\$1,000,000 Personal Injury: past physical pain and mental anguish

\$1,000,000 Personal Injury: future physical pain and mental anguish

Trial Information:

Judge: R. K. Sandill

Jury Vote: 10-2

Post Trial: The judgment, entered on July 30, 2018, states that the defendants are entitled to a settlement credit of \$497,500. The judgment also included the additions of court costs and interest. Defense counsel has expressed an intention to move for a new trial.

Editor's Comment: This report is based on information that was provided by plaintiffs' and defense counsel. Additional information was gleaned from court documents.

Writer John Schneider