



Parents claimed defamation by Alex Jones after child shot at Sandy Hook

Type: Verdict-Plaintiff

Amount: \$49,310,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 459th, TX

Injury Type(s): • *mental/psychological* - emotional distress

Case Type: • *Intentional Torts* - Defamation; Intentional Infliction of Emotional Distress

Case Name: Neil Heslin v. Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer, No. D-1-GN-18-001835

Date: August 05, 2022

Plaintiff(s):

- Neil Heslin, (Male, 0 Years)
- Scarlett Lewis, (Female, 0 Years)

Plaintiff Attorney(s):

- Wesley Todd Ball; Farrar & Ball LLP; Houston TX for Neil Heslin,, Scarlett Lewis
- Kyle Farrar; Farrar & Ball LLP; Houston TX for Neil Heslin,, Scarlett Lewis
- Mark Bankston; Farrar & Ball LLP; Houston TX for Neil Heslin,, Scarlett Lewis
- Bill Ogden; Farrar & Ball LLP; Houston TX for Neil Heslin,, Scarlett Lewis

Plaintiff Expert (s):

- Roy Lubit M.D., Ph.D.; Forensic Psychiatry; New York, NY called by: Wesley Todd Ball, Kyle Farrar, Mark Bankston, Bill Ogden
- Fred Zipp; Journalism Standards; Austin, TX called by: Wesley Todd Ball, Kyle Farrar, Mark Bankston, Bill Ogden
- Becca Lewis; Cyberspace/Internet; Stanford, CA called by: Wesley Todd Ball, Kyle Farrar, Mark Bankston, Bill Ogden

Defendant(s):

- Infowars LLC
- Alex E. Jones
- Owen Shroyer
- Free Speech Systems LLC

Defense**Attorney(s):**

- F. Andino Reynal; The Reynal Law Firm, P.C.; Houston, TX for Alex E. Jones, Infowars LLC, Free Speech Systems LLC, Owen Shroyer

Facts:

On Dec. 14, 2012, the son of plaintiff Neil Heslin and plaintiff Scarlett Lewis was one of 26 people, including 20 children, who were shot and killed in a mass shooting at Sandy Hook Elementary School in Newton, Conn. The plaintiffs' son was in first grade. Radio and internet host Alex Jones, along with his media company Infowars LLC, quickly made the incident the focus of a "false flag" conspiracy theory. Jones and Infowars argued that the shooting never happened and that it was a hoax staged by the government, using crisis actors and complicit members of the media, to inflame public opinion against guns.

On June 18, 2017, NBC profiled Jones on its show "Sunday Night with Megyn Kelly," and Heslin was interviewed for the segment. Regarding the theory that the shooting never happened, Heslin told Kelly, "I lost my son. I buried my son. I held my son with a bullet hole through his head."

About a week later, on June 26, Infowars broadcast a segment hosted by its employee Owen Shroyer, who said that, based on the timeline of the shooting and a coroner's statement, it could not be true that Heslin held his son after the shooting. Infowars re-broadcast Shroyer's comments a few weeks later, on July 20.

Infowars' parent company is Free Speech Systems LLC.

The plaintiffs sued Infowars, Free Speech Systems, Jones and Shroyer. The lawsuit alleged defamation of Heslin and intentional infliction of emotional distress on both plaintiffs. Heslin and Lewis filed separate lawsuits, but they were consolidated.

Heslin claimed that the defendants' statements on June 26 and July 20, 2017, were defamatory.

The plaintiffs claimed that the defendants intentionally inflicted emotional distress from 2013 to 2018 by promoting the theory that the Sandy Hook shooting was a "false flag" conspiracy in which no one died and which was staged as a hoax.

In September 2021, the court granted a default judgment against the defendants on liability, based on their repeated discovery violations.

Shroyer was nonsuited on July 13, 2022.

The case went to trial on damages only, in two phases. The first phase was on actual damages, and the second was on punitives.

Injury: For defamation, Heslin claimed past and future injury to reputation; past and future mental anguish; and punitive damages.

For intentional infliction of emotional distress, the plaintiffs claimed past and future mental anguish and punitive damages.

Result: The jury determined that the plaintiffs' damages totaled \$49,310,000.

In November 2022, a Connecticut jury awarded \$965 million to 15 plaintiffs, mostly relatives of Sandy Hook victims, in a lawsuit against Jones for defamation and intentional infliction of emotional distress. Jones filed for Chapter 11 bankruptcy a few weeks later.

Scarlett Lewis

\$ 20,500,000 Punitive Exemplary Damages

\$ 1,500,000 past mental anguish

\$ 500,000 future mental anguish

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

Neil Heslin

\$ 50,000 past injury to reputation

\$ 10,000 future injury to reputation

\$ 50,000 past mental anguish from defamation

\$ 1,500,000 past mental anguish from IIED

\$ 500,000 future mental anguish from IIED

\$ 4,200,000 punitive damages for defamation

\$ 20,500,000 punitive damages for IIED

\$ 26,810,000 Plaintiff's Total Award

Trial Information:

Judge: Maya Guerra Gamble

Trial Length: 9 hours

**Trial
Deliberations:** 0

Jury Vote: 10-2 on actual damages; 12-0 on punitives

Post Trial: At a hearing on the plaintiffs' motion for entry of judgment, the court ruled that an exception to the statutory cap on punitive damages applied under Texas Penal Code section 22.04. The court also ruled that the cap was unconstitutional as applied to the facts of this case.

**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

Father claimed son breached fiduciary duties with assets

Type: Verdict-Plaintiff

Amount: \$42,571,511

State: Texas

Venue: Travis County

Court: Travis County District Court, 201st, TX

Case Type:

- *Trusts and Estates*

Case Name: Frank Ahlgren, Jr. and Elise Leake co-trustees on behalf of the Ahlgren Management Trust v. Frank Ahlgren, III; The Copernican, LLC; Cryptomacy, LLC; and Liquid Publishing, LLC, No. D-1-GN-20-001472

Date: July 23, 2021

Plaintiff(s):

- Ahlgren Management Trust (, 0 Years)

Plaintiff Attorney(s):

- Ryan Squires; Scott, Douglass & McConnico LLP; Austin TX for Ahlgren Management Trust
- Abe Kuczaj; Scott Douglass & McConnico LLP; Austin TX for Ahlgren Management Trust

Plaintiff Expert (s):

- Bob Struwbe; Appraisal; , called by: Ryan Squires, Abe Kuczaj
- Vance Powell; Appraisal; Austin, TX called by: Ryan Squires, Abe Kuczaj
- Pamela Clegg; Appraisal; Dallas, TX called by: Ryan Squires, Abe Kuczaj

Defendant(s):

- Copernican, LLC
- Cryptomacy, LLC
- Frank Ahlgren III
- Liquid Publishing, LLC

**Defense
Attorney(s):**

- Brad Rock Reagan; Brad Rock Reagan Law; Austin, TX for Frank Ahlgren III
- Joseph M. Oswald; Law Office of Joseph M. Oswald; Austin, TX for Frank Ahlgren III
- Brad Reeves; Reeves Law; Austin, TX for Copernican, LLC, Cryptomacy, LLC, Liquid Publishing, LLC

Facts:

In late 2019, plaintiff Ahlgren Management Trust claimed that Frank Ahlgren III, known as Paco, breached his fiduciary duties to his father, Frank Ahlgren Jr., known as Nim.

The claims were originally Nim's, but he assigned them to Ahlgren Management Trust, of which Nim, now 87, is the sole beneficiary. Nim and his daughter, Elise Leake, of Virginia, are co-trustees.

In 1997, Nim was a retired newspaperman in El Paso, and his son was a writer, musician and journalist living in Austin. At the time, Nim's assets included approximately \$1.5 million in investments. He was living on his investment income, along with his pension and Social Security benefits. Nim claimed that, around that time, at Paco's request, he gave Paco a power of attorney, and that Paco began managing these assets. He further claimed that, over the years, he entrusted Paco with hundreds of thousands of dollars in additional assets. Nim moved in with Paco in about 2006.

Nim claimed that, by 2019, Paco had built a substantial fortune by gradually moving Nim's assets out of securities and investing them in real estate, gold and cryptocurrency.

The plaintiffs claimed that most, if not all, of the funds used for Paco's investments could be traced back to funds entrusted by Nim to Paco.

Nim claimed that, in 2019, he asked for Paco for his share of the investments, and Paco refused.

Ahlgren Management Trust, through its co-trustees, sued Paco and his company The Copernican LLC. The lawsuit alleged breach of fiduciary duty. The plaintiff also sued Paco's companies Cryptomacy LLC and Liquid Publishers LLC, but nonsuited them after Paco testified in deposition that they were defunct or without assets.

The defense denied the allegations.

Paco maintained that Nim had gifted most of the \$1.5 million to him and Leake and that, after the credit crisis of 2008, both he and Nim were broke and in debt. By then, Nim was living with him, and Paco claimed that he was working hard to support both his father and his family. Paco claimed that, at some point, he was able to invest some of his earnings in cryptocurrency, but that none of his successful investments were made with Nim's money. The cryptocurrency rose dramatically in value.

Paco claimed that he continued to support his father financially. However, in 2019, Paco divorced, and he claimed that his ex-wife, Leake and Nim then conspired with Nim and persuaded him to move out of the Austin house and assert an interest in Paco's assets.

Injury:

Plaintiff's counsel asked the jury to award between \$12 million and \$80 million, depending on the damages model used. The damages sought included the value of cryptocurrency held, owned or controlled by Paco; the value of the Austin house and a luxury home in Park City, Utah; and Paco's profits, to the extent that these things were traceable to assets entrusted by Nim to Paco. The plaintiff also sought attorney fees.

Defense counsel argued that the jury should award damages of no more than \$150,000, if the jury reached the damages questions.

Result:

The case went to trial against Paco and the Copernican only.

The jury found that Nim's assets were used to pay 50 percent of the acquisition price of cryptocurrency, gold, the house in Austin and the house in Utah, and that Paco breached his fiduciary duty in connection with Nim's request for the return of his assets in 2019. It also found that The Copernican was responsible for Paco's conduct.

The jury awarded Ahlgren Management Trust \$42,571,511.20.

The defense plans to appeal, if necessary.

According to plaintiff's counsel, the award is the largest to a private plaintiff in Travis County in more than 20 years. It is the second-largest award of actual damages to a private plaintiff in the history of Travis County, counsel said.

This case was the first in-person jury trial in Travis County since early 2020 and was part of a short-lived pilot program to resume in-person jury trials there.

\$9074390 Personal Injury: value of cryptocurrency traceable to Nim's assets

\$1900000 Personal Injury: value of Utah home traceable to Nim's assets

\$375000 Personal Injury: value of Austin home traceable to Nim's assets

\$29329378 Personal Injury: Paco's profits

\$1892743.2 Personal Injury: attorney fees through trial

Trial Information:

Judge: Amy Clark Meachum

Trial Length: 7 days

**Trial
Deliberations:** 2 days

Jury Vote: 10-2

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

Writer John Schneider

Plaintiff claimed tractor-trailer accident led to permanent injuries

Type: Verdict-Plaintiff

Amount: \$7,396,314

Actual Award: \$4,883,942

State: Texas

Venue: Travis County

Court: Travis County District Court, 459th, TX

Injury Type(s):

- *back* - stenosis; myelopathy
- *head* - headaches; concussion
- *neck* - stenosis; myelopathy; bulging disc, cervical; herniated disc, cervical
- *other* - physical therapy; decreased range of motion; foraminotomy/foraminectomy; aggravation of pre-existing condition
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - laminectomy; decompression surgery

Case Type:

- *Gross Negligence*
- *Transportation* - Trucking
- *Motor Vehicle* - Cell Phone; Tractor-Trailer
- *Worker/Workplace Negligence* - Negligent Training; Negligent Maintenance

Case Name: Ronnie Claxton and Sandra Claxton v. Dennis Edward Raynor, Even Better Logistics, LLC, and Michelle Cora Croom, No. D-1-GN-19-000281

Date: January 23, 2020

Plaintiff(s):

- Ronnie Claxton (Male, 72 Years)
- Sandra Claxton

Plaintiff Attorney(s):

- L. Todd Kelly; The Carlson Law Firm, P.C.; Austin TX for Ronnie Claxton, Sandra Claxton
- Jaime Lynn; The Carlson Law Firm, P.C.; Round Rock TX for Ronnie Claxton, Sandra Claxton

- Plaintiff Expert(s):**
- Gerald Casenave Ph.D.; Vocational Assessment; Dallas, TX called by: L. Todd Kelly, Jaime Lynn
 - Hector A. Miranda-Grajales M.D.; Life Care Planning; West Lake Hills, TX called by: L. Todd Kelly, Jaime Lynn
- Defendant(s):**
- Michelle Cora Croom
 - Dennis Edward Rayner
 - Even Better Logistics, LLC
- Defense Attorney(s):**
- John P. Donovan; Koeller, Nebeker, Carlson & Haluck LLP; Austin, TX for Michelle Cora Croom, Even Better Logistics, LLC, Dennis Edward Rayner
- Defendant Expert(s):**
- John Kocke; Life Care Planning; Baton Rouge, LA called by: for John P. Donovan,
 - Anton Jorgenson M.D.; Spinal Surgery; San Antonio, TX called by: for John P. Donovan,
- Insurers:**
- Gravitas Insurance Co.

Facts:

On April 5, 2017, plaintiff Ronnie Claxton, 72, a dump truck driver, was driving a pickup truck in Austin. Dennis Rayner was ahead of Claxton driving a tractor-trailer carrying an oversize load of construction equipment strapped onto the flatbed. As Rayner drove under a highway overpass, the top of the load hit the structure and a 25-pound metal turnbuckle, or a tie-down ratchet, came off the trailer and went through Claxton's windshield. Claxton braked and swerved to a stop. Police found that the tractor-trailer had seven violations, including defective brakes and inoperative brake lights. Rayner was not driving on a route approved for his trip by the Texas Department of Transportation, and he had been off that approved route for a little more than 13 miles. Claxton claimed head and neck injuries.

Claxton sued Rayner; Rayner's employer, Even Better Logistics LLC; and the company's owner, Michelle Cora Croom. The lawsuit alleged that Rayner was negligent and grossly negligent in the operation of the truck. The lawsuit further alleged that the employer and its owner were negligent and grossly negligent for failing to maintain the truck properly, failing to provide safety training, failing to have a written safety policy and failing to road-test Rayner.

Claxton's counsel emphasized that Rayner knew he was not on the approved route, but did not pull over, turn around or call for a police escort, any of which would have been an approved course of action under federal regulations.

Claxton's counsel also argued that Rayner's testimony, including his claim that he was traveling merely 20 mph, was not credible.

On the issues of Croom's and the company's gross negligence, Claxton's counsel noted that Croom testified that she ran her current trucking business the same way she ran Even Better Logistics at the time of the accident.

For comparative responsibility, Claxton's counsel asked the jury to find 80 percent on Even Better Logistics, 10 percent on Croom and 10 percent on Rayner.

The defense did not strongly dispute ordinary negligence on the part of Rayner but disputed Croom's and the company's negligence and disputed gross negligence on the part of any defendant. Rayner testified that he did not see the overpass until it was too late to stop. He admitted he was talking to his wife on his cell phone but said he was using a headset and that his wife was giving him directions back to the approved route. The defense argued that Rayner did perform a pre-trip inspection and that all of the so-called violations found by police resulted from the truck's load hitting the overpass

Injury:

Claxton was retrieved by an ambulance and taken to a hospital after his family arrived at the scene and convinced him to seek medical attention. Claxton was diagnosed with headaches, a concussion and a neck injury. The head injury resolved later, but he was diagnosed with herniations and bulges of cervical intervertebral discs, as well as cervical myelopathy and stenosis. He also complained of radicular symptoms. Two months after the accident, he underwent a multi-level cervical laminectomy, decompression and foraminotomy. He acknowledged pre-existing, asymptomatic degenerative conditions but claimed that the accident aggravated them and made them symptomatic.

Claxton's surgery was on June 5, 2017. Two days later, he was transferred to an inpatient rehabilitation facility and discharged on June 28. He underwent outpatient physical therapy until Sept. 14, 2017.

A report by the life care planner for Claxton said Claxton would need in-home care and that Claxton would likely develop adjacent segment disease and need another fusion.

Claxton claimed permanent impairment from his neck injury. He and his wife testified that, since the accident, his injuries prevent him from driving or dressing himself. The day of the accident, Mr. Claxton said, would be the last time that he would ever be able to drive or dress himself.

Claxton and his wife, daughters, son and co-workers testified about his condition. He could not raise his arms above his shoulder, and his injuries limit his performance of his favorite activities, such as country dancing, with his daughters and granddaughters. Even hugging them was difficult, he said.

Claxton sought damages for past and future loss of earning capacity, future medical expenses, past and future physical pain, past and future mental anguish, and past and future physical impairment. He also sought punitive damages against all three defendants. Claxton's wife, Sandra Claxton, claimed past and future loss of household services and past and future loss of consortium.

Plaintiffs' counsel asked the jury to award \$121,676 for past loss of earning capacity; \$90,083 for future loss of earning capacity; \$1,049,555 for future medical expenses; and \$85,000 total for past and future loss of household services. He did not specify amounts for the rest of the actual damages, but asked that they be calculated on a per diem basis.

For punitive damages, plaintiffs' counsel suggested the jury award \$3,413,870 from Rayner. He suggested \$34,138,700 from Croom, and for the company, he suggested an award of \$341,387,000.

The defense retained a spine surgeon, who opined that Mr. Claxton's neck problems and related complaints were wholly age-related, degenerative and preexisting and that he would have needed surgery regardless of the accident.

The defense also retained a life care planner, who opined that the charges in Claxton's life care plan were excessive.

Defense counsel also noted that Claxton had seen a doctor for back pain two years before the accident.

Also, four days after the accident, Claxton fell. The defense argued that some of his complaints did not arise until after the fall and that the fall caused those complaints. The defense also argued that the fall was unrelated to the accident. Claxton attributed the fall to dizziness from the concussion and therefore to the accident.

The defense also argued that Claxton's initial refusal to be transported by ambulance indicated that he sustained no serious injuries in the accident.

Defense counsel suggested a total award of \$150,000, if the jury reached damages.

Result: The jury found negligence and comparative responsibility of 70 percent on Even Better Logistics, 15 percent on Croom and 15 percent on Rayner. It awarded the plaintiffs \$7,396,314.

In general, Texas law caps punitive damages against any one defendant at two times the economic damages awarded by the jury. The punitives against Rayner and Croom, \$100,000 and \$1 million, respectively, did not exceed the cap, but the punitives against the company, \$5 million, were capped at \$2,522,628. The result was a net recovery of \$4,883,942, plus any prejudgment interest and taxable costs.

Ronnie Claxton

\$1,049,555 Personal Injury: Future Medical Cost

\$121,676 Personal Injury: Past Lost Earnings Capability

\$90,083 Personal Injury: FutureLostEarningsCapability

\$5,000,000 Personal Injury: punitive damages (Even Better Logistics)

\$1,000,000 Personal Injury: punitive damages (Croom)

\$100,000 Personal Injury: punitive damages (Raynor)

Sandra Claxton

\$35,000 Personal Injury: future loss of household services

Trial Information:

Judge: Maya Guerra Gamble

Demand: \$1,000,000 (total, from all defendants; during the trial)

Offer: \$150,000 (total, by all defendants)

Trial Length: 7 days

**Trial
Deliberations:** 6.5 hours

Jury Vote: 12-0

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

Writer John Schneider

Plaintiff: Series of accidents led to severe neck injuries**Type:** Verdict-Plaintiff**Amount:** \$5,646,000**State:** Texas**Venue:** Travis County**Court:** Travis County Court at Law No. 1, TX**Injury Type(s):**

- *arm*
- *head* - headaches
- *neck* - fusion, cervical; bulging disc, cervical; herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *other* - ablation; chiropractic; physical therapy; aggravation of pre-existing condition
- *epidermis* - numbness
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - discectomy

Case Type:

- *Motor Vehicle* - Rear-ender

Case Name: James Combs v. Jolena Agnes Nussell, Marten Transport, Ltd. and Michael Andrew Escamilla, No. c-1-cv-16-009841**Date:** March 31, 2023**Plaintiff(s):**

- James Combs, (Male, 51 Years)

Plaintiff Attorney(s):

- Luke Dow; Wenholz Dow, PC; Austin TX for James Combs
- Jack Holtzman; Wenholz Dow, PC; Austin TX for James Combs
- Deborah Hensley Loewe; The Hensley Law Firm; Houston TX for James Combs

Plaintiff Expert(s):

- Jack Leifer Ph.D., P.E.; Engineering; San Antonio, TX called by: Luke Dow, Jack Holtzman, Deborah Hensley Loewe
- Hector A. Miranda-Grajales M.D.; Life Care Planning; West Lake Hills, TX called by: Luke Dow, Jack Holtzman, Deborah Hensley Loewe
- Robert A. Josey M.D.; Orthopedic Surgery; Austin, TX called by: Luke Dow, Jack Holtzman, Deborah Hensley Loewe
- Sauman Rafii M.D.; Pain Management; Austin, TX called by: Luke Dow, Jack Holtzman, Deborah Hensley Loewe
- Jeffrey T. Kiel Ph.D.; Vocational Rehabilitation; San Antonio, TX called by: Luke Dow, Jack Holtzman, Deborah Hensley Loewe

Defendant(s):

- Jolena Agnes Nussell
- Marten Transport Ltd.
- Michael Andrew Escamilla

Defense Attorney(s):

- Nick Lanza; Lanza Law Firm, P.C.; Bellaire, TX for Jolena Agnes Nussell, Marten Transport Ltd.
- Stew Schmella; Lanza Law Firm, P.C.; Bellaire, TX for Jolena Agnes Nussell, Marten Transport Ltd.
- Grace Cousins; Lanza Law Firm, P.C.; Bellaire, TX for Jolena Agnes Nussell, Marten Transport Ltd.

Defendant Expert(s):

- J. Clark Race M.D.; Orthopedic Surgery; Austin, TX called by: for Nick Lanza, Stew Schmella, Grace Cousins
- Mark A. "Tony" Freund; Biomechanics; San Antonio, TX called by: for Nick Lanza, Stew Schmella, Grace Cousins
- Joanna L. Vasquez; Vocational Rehabilitation; Houston, TX called by: for Nick Lanza, Stew Schmella, Grace Cousins

Facts:

On Jan. 8, 2015, plaintiff James Combs, early 50s, a construction superintendent, was driving on an interstate in Austin. Jolena Agnes Nussell rear-ended him in an 18-wheeler, which pushed Combs into the vehicle ahead of him. Nussell was in the course and scope of her employment with Marten Transport Ltd. She received a ticket for failing to maintain an assured clear distance.

Weeks later, on Jan. 28, Combs was driving east on a highway in Austin when Michael Andrew Escamilla ran a red light going south and hit Combs' left side. Combs' vehicle spun around and struck a pickup that was going north through the intersection. Escamilla received a ticket for disregarding the light.

Combs claimed he suffered injuries of his neck in both accidents.

Combs sued Nussell, Marten and Escamilla. The lawsuit alleged that the defendant drivers were negligent in the operation of their vehicles and that their negligence proximately caused Combs' injuries. Escamilla settled before trial for an undisclosed amount.

Plaintiff's counsel argued for comparative responsibility of 90 percent on Nussell and 10 percent on Escamilla.

Nussell's counsel argued that only Escamilla's negligence proximately caused Combs' injury.

Injury:

After the Nussell accident, Combs told the investigating officer that his neck hurt. Combs went to an urgent care clinic on his own later that day. He complained of neck and arm pain and said his arm had hit the steering wheel. He also called his orthopedic surgeon to schedule an appointment and mentioned the accident. On Dec. 24, 2014, Combs had undergone left elbow extensor tendon debridement.

Ultimately, Combs claimed he suffered disc herniations at C3-4, C4-5 and C5-6 and a disc bulge at C6-7 or, in the alternative, that he suffered aggravation of preexisting degenerative conditions in his neck. He further claimed that his injuries caused chronic neck pain; canal stenosis; foraminal stenosis; and radiating pain, numbness and tingling in both arms.

On Jan. 25, 2015, he saw his orthopedic surgeon, who said there was no evidence that the Jan. 8 accident had reinjured the arm.

Three days later, on the date of the second accident, he went to an urgent care center again. This time, he complained of headaches and dizziness only.

He continued to follow up with his orthopedic surgeon about his elbow, while referencing

the accidents. He also saw his primary care doctor, to whom he complained of neck pain, radiating right shoulder pain and headaches.

On April 24, 2015, he went to an urgent care center for his neck pain. The next day, he started physical therapy with a chiropractor. The chiropractor treated him until October 2015. A year later, Combs underwent a month of physical therapy.

In 2017, he continued following up with his primary care doctor, and in November, he went to a neurosurgeon.

On Jan. 17 and again on Jan 24, 2018, he underwent cervical medial branch blocks from C3-4 to C6-7. The following month, he underwent radiofrequency ablation at the same levels. From March to May 2015, he underwent physical therapy. At the end of May, he saw orthopedic surgeon Dr. Robert A. Josey for the first time. Seven months later, Josey performed a discectomy and fusion from C3 to C6.

Combs followed up with Josey in 2019 and continued to complain of neck pain. He began seeing a pain management doctor in May 2020.

Josey opined that Combs likely will need a fusion at the adjacent levels in the future.

He claimed his injuries affected his activities, such as household chores, yardwork and fishing. The jury also heard testimony from his wife; his niece and her husband; and his boss, regarding his condition and activities before and after the accident.

Combs sought \$900,000 for future medical expenses; \$196,000 for past loss of earning capacity; \$350,000 for future loss of earning capacity; \$650,000 for past physical impairment and \$1.5 million for future physical impairment. He also sought damages for past and future physical pain and suffering and past and future mental anguish.

Disfigurement was included in the jury charge, based on Combs' scars. However, he testified that the scars did not bother him much, and his attorneys asked the jury not to award damages for disfigurement.

Plaintiff's counsel argued that the first accident, the one with Nussell, caused the vast majority of the plaintiff's damages.

Nussell contended that Combs' neck injuries, if any, were caused by the second accident, the one with Escamilla. Nussell's biomechanical expert noted that the Escamilla accident was a T-bone collision. He said neck injuries are more likely in a T-bone collision than in a rear-ender, in part because the neck has no support on the sides. Also, the Escamilla

accident involved greater forces, he said, and the damage to Combs' vehicle was much greater than in the Nussell accident.

Nussell's orthopedic expert opined that neither accident caused the claimed injuries. He testified that Combs' had virtually no substantive treatment for three months after the accidents.

Nussell's counsel suggested an award of \$300,000, if the jury reached the damages question.

Result:

The jury found negligence and comparative responsibility of 90 percent on Nussell and 10 percent on Escamilla. It determined that Combs' damages totaled \$5,646,000.

Plaintiff's counsel said Combs made a better witness than Nussell.

James Combs

\$ 900,000 Future Medical Cost

\$ 650,000 Past Physical Impairment

\$ 1,500,000 Future Physical Impairment

\$ 400,000 past physical pain

\$ 1,000,000 future physical pain

\$ 250,000 past mental anguish

\$ 400,000 future mental anguish

\$ 196,000 past loss of earning capacity

\$ 350,000 future loss of earning capacity

\$ 5,646,000 Plaintiff's Total Award

Trial Information:

Judge: Todd Wong

Demand: \$2,800,000

Offer: \$75,000

Trial Length: 5 days

**Trial
Deliberations:** 4 hours

Jury Vote: 10-2

**Jury
Composition:** 10-2

Post Trial: Combs and Nussell/Marten reached a confidential post-verdict settlement.

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

Writer John Schneider

Plaintiffs: Improper HVAC installation led to toxic mold growth

Type: Verdict-Plaintiff

Amount: \$3,659,372

State: Texas

Venue: Travis County

Court: Travis County District Court, 200th, TX

Case Type:

- *Toxic Torts - Mold*
- *Gross Negligence*
- *Consumer Protection - Deceptive Trade Practices Act*
- *Worker/Workplace Negligence - Negligent Maintenance*

Case Name: Kristina and Evan Baehr, and as Next Friend of CB, MB, EB, and SB v. Williams-Austin Builders, Inc.; Sarah and Jason Williams; Ortiz Sheet Metal Roofing LLC, Guzman Framing; TexCode Inc.; Doyle Williamson; James Earl Westbrook; Westbrook Engineering, LLC; Randy Herrera; Randy Herrera Designer, LLC, No. D-1-GN-21-002112

Date: August 16, 2023

Plaintiff(s):

- C. B., (Male, 0 Years)
- M. B., (Female, 0 Years)
- S. B., (Male, 0 Years)
- Evan Baehr, (Male, 40 Years)
- Eleanor Baehr, (Female, 0 Years)
- Kristina Baehr, (Female, 42 Years)

Plaintiff Attorney(s):

- Kevin Terrazas; Terrazas PLLC; Austin TX for Kristina Baehr,, Evan Baehr,, C. B., M. B., S. B., Eleanor Baehr
- Robert McKee; The McKee Law Group; Davie FL for Kristina Baehr,, Evan Baehr,, C. B., M. B., S. B., Eleanor Baehr

**Plaintiff Expert
(s):**

- Les Wallace; HVAC; Austin, TX called by: Kevin Terrazas
- Mark Gault; nvironmental; Austin, TX called by: Kevin Terrazas
- Larry Pollock Ph.D.; Neuropsychology; Houston, TX called by: Kevin Terrazas
- Robyn Wiley; Occupational Therapy; Austin, TX called by: Kevin Terrazas
- Joshua Rachal; Mold & Fungal Identification; Austin, TX called by: Kevin Terrazas
- Stuart Nolley; Construction Cost Estimates/Analysis; , called by: Kevin Terrazas

Defendant(s):

- TexCode Inc.
- Guzman Framing
- Randy Herrera
- Jason Williams
- Sarah Williams
- Doyle Williamson
- James Earl Westbrook
- Randy Herrera Design
- Westbrook Engineering, LLC
- Woods Comfort Systems Inc.
- Williams-Austin Builders Inc.
- Ortiz Sheet Metal Roofing, LLC

**Defense
Attorney(s):**

- Ian R. Beliveaux; Donato, Brown, Pool & Moehlmann, LLP; Houston, TX for Woods Comfort Systems Inc.
- Douglas Wall; Donato, Brown, Pool & Moehlmann, LLP; Houston, TX for Woods Comfort Systems Inc.

**Defendant
Expert(s):**

- Toner Kersting; Construction Design; Austin, TX called by: for Ian R. Beliveaux, Douglas Wall

Insurers:

- United Fire Lloyds

Facts:

In 2020, plaintiff Kristina Baehr, 42, an attorney, and her husband, plaintiff Evan Baehr, 40, an entrepreneur, learned that their home was contaminated with toxic mold. They had lived there for seven years, with their four minor children, Scott, Cooper, Madeleine and Eleanor. The only defendant at the time of trial was Woods Comfort Systems Inc., the company that had installed the HVAC system. The other defendants, including the builder and various other contractors, all settled or were dismissed or nonsuited before trial.

The plaintiffs alleged negligence, gross negligence and knowing Deceptive Trade Practices Act (DTPA) violations against Woods, all based on improper HVAC installation and servicing.

Woods denied the allegations. Woods also pointed out that the system was installed before the Baehrs owned the house and that the company, therefore, made no representations to the Baehrs.

According to plaintiffs' counsel, Woods' defense "was that the (HVAC) system had been changed and that the system didn't cause the issues. They tried to implicate the building and the roofer."

Injury:

Kristina Baehr said that, in 2017, she “started feeling dizzy, had blurred vision, brain fog [and] was getting migraines. I didn’t figure out what the problem was for another two years.” Initially, her doctors concluded she was just stressed. Later, during the pandemic, the family was confined to the home, and her symptoms and those of her children became worse, she said.

The minor plaintiffs were ages 5, 5, 10 and 13 at the time of trial.

Their son Scott, who was just over 2 years old at the time, began to regress developmentally, she said. According to the lawsuit, “[h]e suffered extreme mood swings and began to bite siblings and caregivers. He often seemed uncontrollable and inconsolable. At other times, he seemed floppy and lethargic.”

Under negligence, the plaintiffs sought the cost of restoring the home; engineering and consulting fees; the cost to replace personal property; and for each plaintiff, loss of use of the home and personal property.

For actual damages under the DTPA, the plaintiffs sought the cost of restoring the home; the expenses of temporary housing during the repair period; engineering and consulting fees; the cost to replace personal property; and for each plaintiff, past and future mental anguish. They claimed that the mental anguish manifested as headaches, hyperactivity, brain fog, insomnia, and excessive sleepiness.

The plaintiffs also sought additional damages for violating the DTPA knowingly.

The plaintiffs also sought attorney fees under the DTPA.

They sought a total of \$5 million, including actual damages, additional DTPA damages, punitive damages and attorney fees through trial.

Result:

The jury found negligence and comparative responsibility of 45 percent on Williams-Austin Builders Inc.; 40 percent on Woods Comfort Systems; 10 percent on Kristina and Evan Baehr; and 5 percent on Ortiz Sheet Metal Roofing. Under negligence, the jury determined that the plaintiffs' damages totaled \$963,346.02. That amount consisted of \$632,666.02 for the cost of restoring the home; \$35,680 for engineering and consulting fees; \$95,000 for the cost of replacing personal property; \$100,000 for Mr. Baehr's loss of use; and \$100,000 for Mrs. Baehr's loss of use.

The jury also found gross negligence by Woods Comfort Systems and assessed punitive damages of \$700,000.

The jury also found DTPA violations, including one or more "laundry-list" violations and unconscionability, by Woods Comfort Systems. They also found that this conduct was committed knowingly. Under the DTPA, the jury determined that the plaintiffs' actual damages totaled \$1,605,846.02, which consisted of \$632,666.02 for the cost of restoring the house; \$150,000 for the expenses of temporary housing; \$35,680 for engineering and consulting fees; \$95,000 for the cost of replacing personal property; \$100,000 for Scott's past mental anguish; \$125,000 for Madeleine's past mental anguish; \$15,000 for Eleanor's past mental anguish; \$60,000 for Cooper's past mental anguish; \$100,000 for Mr. Baehr's past mental anguish; \$175,000 for Mrs. Baehr's past mental anguish; \$45,000 for Scott's future mental anguish; \$62,500 for Madeleine's future mental anguish; and \$10,000 for Mrs. Baehr's future mental anguish.

Also under the DTPA, the jury found that their reasonable attorney fees through trial were \$390,180.20. The jury did not find that the DTPA violations were committed knowingly or intentionally.

Other than appellate attorney fees, the amounts found by the jury add up to \$3,659,372.24. However, the plaintiffs will have to make an election of remedies.

As a result of her experience dealing with mold in her home, Kristina Baehr switched her practice from intellectual property to toxic torts.

Eleanor Baehr

Scott Baehr

Madeleine Baehr

Cooper Baehr

Evan Baehr

Kristina Baehr

Trial Information:

Judge: Jessica Mangrum

Demand: \$2 million

Offer: \$30,000

Trial Length: 6 days

Trial Deliberations: 8 hours

Jury Composition: 6 male, 6 female; 1 black, 2 Hispanic, 9 white

Editor's Comment: This report includes reprinted information that was previously published by VerdictSearch's sister publication, Texas Lawyer. Additional information was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Writer John Schneider

Plaintiff claimed to be hit by SUV while riding bicycle

Type: Verdict-Plaintiff

Amount: \$3,350,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 419th, TX

Injury Type(s):

- *head* - closed head injury
- *dental* - tooth loss; fractured teeth
- *face/nose* - face
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Recreation* - Bicycle
- *Motor Vehicle* - Bicycle

Case Name: Marjorie Drake v. James Curtis Pugh and Texas Health and Human Services Commission, No. D-1-GN-19-004253

Date: July 02, 2024

Plaintiff(s):

- Marjorie Drake, (Female, 30 Years)

Plaintiff Attorney(s):

- Lenore Rae Shefman; Cyclistlaw; Austin TX for Marjorie Drake

Plaintiff Expert(s):

- John Russell McFarlane DDS; Dentistry/Odontology; Austin, TX called by: Lenore Rae Shefman
- Justin Meuse M.D.; Neurology; Salt Lake City, UT called by: Lenore Rae Shefman

Defendant(s):

- James Curtis Pugh
- Texas Health and Human Services Commission

Defense Attorney(s):

- Jose Luis Valtzar; Attorney General's Office; Austin, TX for James Curtis Pugh, Texas Health and Human Services Commission

Facts:

On Feb. 16, 2018, plaintiff Marjorie Drake, early 30s, a Ph.D. student in the math department at the University of Texas, was riding her bicycle home in Austin at about 8 p.m. Defendant James Curtis Pugh made a left turn in a sport utility vehicle, and Drake claimed that he hit her. She went over the handlebars and landed on the pavement.

Pugh was in the course and scope of his employment with defendant Texas Health and Human Services Commission and was nonsuited before trial.

Drake's attorney argued that Pugh negligently hit her. In the alternative, counsel argued that, even if there was no contact and Drake threw herself off the bike as the defense contended, Pugh created an emergency situation and Drake was reasonably trying to minimize her own injuries and avoid being killed.

Drake's attorney also noted that Drake was wearing a helmet and "clipped in" to her pedals, and she argued that Drake's bicycle's light was visible 1,000 feet away.

Pugh denied any contact and contended that Drake threw herself off the bike. Alternatively, the defense argued that neither person saw the other and that any contact was unavoidable. The defense also argued that footage from a bus camera supported its arguments. The video was not produced in discovery or introduced into evidence, but a supervising police officer was allowed to testify about what it showed.

Injury:

Drake's face hit the pavement when she landed, and she was taken by ambulance to a hospital. She ultimately claimed tooth fractures and the loss of four upper front teeth. She also claimed that she developed post-concussion syndrome.

Drake had a total of 15 dental appointments, many of which lasted several hours. The dental work included bone grafts and gum grafts. She also had two visits with a neurologist.

Drake claimed that her concussion and post-concussion symptoms delayed her graduation by two years. Her dean testified about the slowdown in Drake's progress and the impact it could have on her career.

Drake claimed past and future physical pain and mental anguish, past and future physical impairment and past and future and future disfigurement. She sought a total of \$4 million.

The defense argued that she had preexisting dental issues, including a prior crown.

Result: The jury found that the defendant was liable for the occurrence. Specifically, it found that Pugh's negligence proximately caused Drake's injuries and that Drake's negligence, if any, did not.

The jury determined that Drake's damages totaled \$3.35 million.

The damages are capped by statute at \$250,000.

By the time of trial, Drake was a professor at Massachusetts Institute of Technology.

Marjorie Drake

\$ 400,000 Past Physical Impairment

\$ 700,000 Future Physical Impairment

\$ 450,000 Past Disfigurement

\$ 400,000 Future Disfigurement

\$ 800,000 past physical pain and mental anguish

\$ 600,000 future physical pain and mental anguish

\$ 3,350,000 Plaintiff's Total Award

Trial Information:

Judge: Daniella DeSeta Lyttle

Demand: \$250,000

Offer: \$16,000

Trial Length: 6 days

**Trial
Deliberations:** 2.5 hours

Jury Vote: 12-0

**Jury
Composition:** 10 male, 2 female

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

Writer John Schneider

Plaintiffs: Rear-ending led to injuries to driver, passengers

Type: Verdict-Plaintiff

Amount: \$1,681,024

State: Texas

Venue: Travis County

Court: Travis County District Court, 200th, TX

Injury Type(s):

- *back* - stenosis; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L5-S1; disc protrusion, lumbar; herniated disc, thoracic; herniated disc at T5-6
- *head* - headaches
- *neck* - stenosis; bulging disc, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7; disc protrusion, cervical
- *other* - chiropractic; steroid injection; epidural injections; trigger point injection
- *neurological* - radiculopathy

Case Type:

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

Case Name: Andrew Bogdanovich, Edward Reyes and JoAnn Reyes, Individually and A/N/F of Minor Child E.R. v. Eric Valdez, No. D-1-DN-17-006640

Date: July 01, 2022

Plaintiff(s):

- E. R., (Male, 12 Years)
- Edward Reyes, (Male, 37 Years)
- Joann Calderon, (Female, 37 Years)
- Andrew Bogdanovich, (Male, 0 Years)

- Plaintiff Attorney(s):**
- Willard Clark; Alford & Clark Injury Attorneys; San Antonio TX for Edward Reyes,, Joann Calderon,, E. R.
 - Jacob Alford; Alford & Clark Injury Attorneys; San Antonio TX for Edward Reyes,, Joann Calderon,, E. R.
 - Amanda Hazleton; Alford & Clark Injury Attorneys; San Antonio TX for Edward Reyes,, Joann Calderon,, E. R.
 - Ryne Bazan; Alford & Clark Injury Attorneys; San Antonio TX for Edward Reyes,, Joann Calderon,, E. R.
 - Crystal Andrade; Alford & Clark Injury Attorneys; Austin TX for Edward Reyes,, Joann Calderon,, E. R.
- Plaintiff Expert (s):**
- Desh Sahni M.D.; Neurosurgery; Austin, TX called by: Willard Clark, Jacob Alford, Amanda Hazleton, Ryne Bazan, Crystal Andrade
 - Kenneth Weiher Ph.D; Economics; San Antonio, TX called by: Willard Clark, Jacob Alford, Amanda Hazleton, Ryne Bazan, Crystal Andrade
 - Srinivason Parthasarathy M.D.; Life Care Planning; San Antonio, TX called by: Willard Clark, Jacob Alford, Amanda Hazleton, Ryne Bazan, Crystal Andrade
- Defendant(s):**
- Eric Valdez
- Defense Attorney(s):**
- Lamar G. Clemons; Law Office of Lamar G Clemons; Austin, TX for Eric Valdez
- Defendant Expert(s):**
- Gilbert Meadows M.D.; Orthopedic Surgery; San Antonio, TX called by: for Lamar G. Clemons
- Insurers:**
- State Farm Insurance Cos.

Facts:

On Oct. 25, 2017, plaintiff Edward Reyes, 37, a tree trimmer, was sitting in traffic on divided highway in Austin. He was in a pickup truck with a stake-bed trailer attached. His wife, plaintiff JoAnn Reyes, 38, a cook; their minor son, plaintiff Edward Reyes III, 12; and plaintiff Andrew Bogdanovich claimed that they were passengers. Eric Valdez rear-ended the Reyes vehicle while on his cell phone and going between 20 and 40 mph. The plaintiffs claimed they suffered injuries of their neck and back, and Mr. Reyes claimed he suffered headaches, as well.

The plaintiffs sued Valdez. The lawsuit alleged that he was negligent in the operation of his vehicle. Bogdanovich settled his claims for an undisclosed amount before trial.

The plaintiffs claimed that Valdez was distracted. Plaintiffs' counsel argued that distracted driving is just as bad as drunken driving.

Valdez denied negligence. He said he was not distracted, but only looked down briefly to check his speed. He also said he could not tell when the vehicle ahead stopped, because its taillights were either nonexistent or not working.

Valdez also denied that Mrs. Reyes and the minor plaintiff were in the vehicle. He said they arrived at the scene moments later in a separate vehicle.

Injury:

The plaintiffs went to an emergency room on their own. Mr. Reyes ultimately claimed he suffered disc herniations at C6-7, L5-S1 and T5-6, as well as headaches. He further claimed that the herniated discs indented the thecal sac and caused cervical and lumbar radiculopathy.

Mrs. Reyes ultimately claimed she suffered disc protrusion-herniations at C4-5, C5-6 and C6-7, as well as disc bulges at L2-3, L4-5, L5-S1. She further claimed that the protrusion-herniations caused cervical and lumbar radiculopathy, indentation of the thecal sac and foraminal stenosis.

The minor plaintiff ultimately claimed he suffered disc bulges at C5-6, C6-7, C7-T1 and L4-5, as well as a disc protrusion at L5-S1. He further claimed that the cervical discs indented the thecal sac and that the lumbar discs caused radiculopathy.

Mr. Reyes underwent a course of chiropractic care, followed by epidural steroid injections. He underwent lumbar injections on Feb. 20, March 27 and July 9, 2018, and two months later, he underwent lumbar and thoracic injections. He underwent cervical injections on June 11 and July 23, 2018. A spinal cord stimulator was subsequently recommended.

Mr. Reyes sought \$163,193.50 for past medical expenses; \$414,784.54 for future medical expenses; and unspecified damages for past and future physical pain, past and future

mental anguish, past and future physical impairment and future disfigurement.

Mrs. Reyes underwent a course of chiropractic care, followed by trigger-point and epidural steroid injections. On March 27, 2018, she underwent cervical and trapezium trigger-point injections, and the following month, she underwent an interlaminar cervical epidural steroid injection.

In June 2018, she underwent an anterior cervical discectomy and fusion.

In late 2019, she claimed that her neck and lower back pain was worsening and radiating to her right shoulder and left thigh. She underwent chiropractic care for about a week, but it aggravated her symptoms.

Mrs. Reyes sought \$498,649.84 for past medical expenses; \$1,015,708 for future medical expenses; \$20,834 to \$33,570 for past loss of earning capacity; \$369,351 to \$595,138 for future loss of earning capacity; and unspecified damages for past and future physical pain, past and future mental anguish, past and future physical impairment and past and future disfigurement.

The minor plaintiff underwent a course of chiropractic care and a pain management consultation. He sought \$14,270.82 for past medical expenses and unspecified damages for past and future physical pain, past and future mental anguish and past and future physical impairment.

For each plaintiff, the defense suggested that, if the jury reached the damages questions, it should award about half the past medical expenses; \$5,000 to \$10,000 for each element of past noneconomic damages; and zero for future damages.

Result:

The jury found that Valdez was liable for the accident. Specifically, it found negligence and proximate cause as to him and not the plaintiff driver. The jury determined that the plaintiffs' damages totaled \$1,681,023.79.

Andrew Bogdanovich

Edward Reyes

\$ 11,300 Past Medical Cost

\$ 5,000 past mental anguish

JoAnn Reyes

\$ 506,748.84 Past Medical Cost

\$ 250,000 Future Medical Cost

\$ 30,000 Past Physical Impairment

\$ 50,000 Future Physical Impairment

\$ 5,000 Past Disfigurement

\$ 100,000 past physical pain

\$ 50,000 past mental anguish

\$ 15,000 past loss of earning capacity

\$ 50,000 future physical pain

\$ 10,000 future mental anguish

\$ 50,000 future loss of earning capacity

\$ 1,116,748.84 Plaintiff's Total Award

Edward Reyes

\$ 169,088.50 Past Medical Cost

\$ 129,000 Future Medical Cost

\$ 10,000 past physical pain

\$ 10,000 future physical pain

\$ 15,000 past mental anguish

\$ 338,088.50 Plaintiff's Total Award

Trial Information:

Judge: Jessica Mangrum

Demand: \$900,000

Offer: \$517,000

Trial Length: 5 days

**Trial
Deliberations:** 0

Jury Vote: 10-2

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

Writer John Schneider

Plaintiff claimed doctors' failure led to severe infection

Type: Verdict-Plaintiff

Amount: \$995,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 459th, TX

Injury Type(s):

- *arm*
- *other - infection*
- *surgeries/treatment - skin graft; debridement*

Case Type:

- *Medical Malpractice - Surgeon; Infection Control; Prescription and Medication*

Case Name: Ronald Bacon v. St. David's Healthcare Partnership LP, LLP, d/b/a St. David's Round Rock Medical Center and St. David's Round Rock Wound Care; Dr. Bratcher L. Runyan; and Dr. Andy Hawthorne, No. D-1-GN-20-000978

Date: May 13, 2022

Plaintiff(s):

- Ronald Bacon, (Male, 60 Years)

Plaintiff Attorney(s):

- Michelle W. Wan; Thomas & Wan, LLP; Houston TX for Ronald Bacon
- Linda L. Thomas; Thomas & Wan, LLP; Houston TX for Ronald Bacon

Plaintiff Expert(s):

- Jeffrey Greene M.D.; Infectious Diseases; New York, NY called by: Michelle W. Wan, Linda L. Thomas

Defendant(s):

- Andy Hawthorne M.D.
- Bratcher L. Runyan M.D.
- St. David's Healthcare Partnership L.P. LLP

**Defense
Attorney(s):**

- Dan Ballard; Ballard Simmons & Campbell; Austin, TX for Bratcher L. Runyan M.D., Andy Hawthorne M.D.
- Katherine Campbell; Ballard Simmons & Campbell; Austin, TX for Bratcher L. Runyan M.D., Andy Hawthorne M.D.
- None reported for St. David's Healthcare Partnership L.P. LLP

Insurers:

- Texas Medical Liability Trust

Facts:

On Sept. 10, 2019, plaintiff Ronald Bacon, late 60s, a real estate appraiser, was at a property in Travis County when he fell through a rotting wood deck to the ground below. He sustained a laceration of his right arm and was taken by ambulance to St. David's Round Rock Medical Center. He was admitted by Dr. Bratcher L. Runyan and discharged the next day by Dr. Andy Hawthorne. Both doctors were trauma surgeons. Bacon was discharged without any antibiotics being prescribed, and he claimed he developed a severe infection in his arm. He was readmitted to the hospital for 10 days on Sept. 15, 2019. During that admission, Bacon underwent five debridements and skin grafts, and *Clostridium tertium*, a bacterium found in dirt, was detected in the wound.

Bacon sued the hospital, Runyan and Hawthorne. The lawsuit alleged medical malpractice on the part of the doctors for failing to prescribe antibiotics before discharging him, especially given that Bacon was an older man with a history of vascular disease. The hospital settled long before trial for an undisclosed amount.

Plaintiff's counsel argued that the infection was seeded at the time of the initial fall. They argued for 50 percent responsibility on each of the doctors. The negligence question also included the hospital.

The defendant doctors denied negligence and denied that Bacon had an infection. They said his readmission, debridements and skin grafts were necessitated by pressure inside the wound. Their attorneys argued that no one was negligent.

Injury:

Bacon claimed he developed a severe infection in his right (dominant) arm and that it necessitated his undergoing five very painful operations, each consisting of a debridement and skin graft. He lost virtually his entire right bicep.

He testified that he can still work, with the exception of certain tasks, such as lifting his right arm up all the way and climbing a ladder.

He also said the injuries affected his golf swing. He had looked forward to spending his retirement golfing, and his house was on a course.

He sought about \$1 million, consisting of past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement.

Result: The case went to trial against the defendant doctors only.

The jury found negligence and comparative responsibility of 25 percent on Hawthorne, 25 percent on Runyan and 50 percent on the hospital. It determined that Bacon's damages totaled \$995,000.

After applying the noneconomic damages cap, settlement credits and prejudgment interest to the total verdict, the court determined that 25 percent of the damages would be \$125,000. Therefore, the court awarded \$125,000 against each doctor, for a total of \$250,000.

Ronald Bacon

\$ 225,000 Past Physical Impairment

\$ 100,000 Future Physical Impairment

\$ 225,000 Past Disfigurement

\$ 100,000 Future Disfigurement

\$ 345,000 past physical pain and mental anguish

\$ 995,000 Plaintiff's Total Award

Trial Information:

Judge: Cleve Doty

Demand: \$500,000 (\$250,000 policy limit from each defendant)

Offer: none

Trial Length: 3 days

**Trial
Deliberations:** 3 hours

Jury Vote: 11-1

**Jury
Composition:** 10 male, 2 female

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

Writer John Schneider

Plaintiff disputed driver's story that car suddenly accelerated

Type: Verdict-Mixed

Amount: \$671,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 200th, TX

Injury Type(s):

- *leg*
- *back* - lower back; annular tear
- *head* - headaches; concussion
- *neck* - annular tear; sprain, cervical; strain, cervical
- *brain* - traumatic brain injury
- *other* - fatigue; physical therapy; vomiting/vomition; strains and sprains
- *epidermis* - numbness
- *neurological* - nerve damage/neuropathy
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment
- *gastrointestinal/digestive* - gastrointestinal complications; nausea

Case Type:

- *Motor Vehicle* - Driveway; Left Turn; Sudden Emergency Defense

Case Name: Pawel Lukasz Pabich v. Mark Anthony Santacruz and Shelby Gaskin, No. D-1-GN-18-001009

Date: March 06, 2020

Plaintiff(s):

- Pawel Lukasz Pabich (Male, 33 Years)

Plaintiff Attorney(s):

- Brian H. Crockett; Crockett Law, P.C.; Houston TX for Pawel Lukasz Pabich

**Plaintiff Expert
(s):**

- Kit Harrison Ph.D.; Neuropsychology; Houston, TX called by: Brian H. Crockett
- Jack Leifer Ph.D.; Accident Reconstruction; San Antonio, TX called by: Brian H. Crockett
- Anand Joshi M.D.; Pain Management; Austin, TX called by: Brian H. Crockett
- Shelly N. Savant M.D.; Neurology; Lafayette, LA called by: Brian H. Crockett
- Kenneth Lehrer Ph.D.; Economics; Houston, TX called by: Brian H. Crockett

Defendant(s):

- Shelby Gaskin
- Mark Anthony Santacruz

**Defense
Attorney(s):**

- W. Paul Miller; Germer, Beaman & Brown PLLC; Austin, TX for Mark Anthony Santacruz
- Robert Burns; Burns Anderson Jury & Brenner, LLP; Austin, TX for Shelby Gaskin

**Defendant
Expert(s):**

- John Bertelson M.D.; Neurology; Austin, TX called by: for W. Paul Miller, Robert Burns
- Kacy Turner; Life Care Planning; Austin, TX called by: for W. Paul Miller, Robert Burns
- Brian Piper Ph.D.; Economics; Austin, TX called by: for W. Paul Miller, Robert Burns
- David Levey M.D.; Radiology; Shavano Park, TX called by: for W. Paul Miller, Robert Burns
- Janyna Mercado Ph.D.; Neuropsychology; San Antonio, TX called by: for W. Paul Miller, Robert Burns
- Richard A. Lutz D.O.; Orthopedic Surgery; Austin, TX called by: for W. Paul Miller, Robert Burns

Insurers:

- Government Employees Insurance Co.

Facts:

On July 23, 2016, plaintiff Pawel Lukasz Pabich, 33, a marketing consultant, was driving a sports car in Austin. Mark Anthony Santacruz, was with his girlfriend, Shelby Gaskin, driving her subcompact car. Santacruz was pulling out from a gas station on Pabich's right and attempting to execute a left turn. The two cars collided. Santacruz told officers that his vehicle unexpectedly accelerated and, according to the police report, Gaskin said her car had a mechanical issue. Pabich claimed he suffered neck and back injuries and a concussion.

Pabich sued Santacruz and Gaskin. The lawsuit alleged that Santacruz was negligent in the operation of the vehicle and that Gaskin was negligent for failing to maintain her vehicle and warn Santacruz of the mechanical defect, if any.

Pabich's counsel argued that Santacruz alone was negligent and that there was no credible evidence of any mechanical defect. Gaskin denied that she told police that the car had a mechanical problem. She testified that, when the car moved forward, it felt as if Santacruz had put his foot on the accelerator, and not as if the car suddenly accelerated. Although maintenance records showed the car had a history of stalling, they showed no history of sudden acceleration.

Further, Gaskin testified that Santacruz did not look to his left before the car moved forward.

Santacruz denied negligence. He maintained that, as soon as he took his foot off the brake, the car accelerated suddenly and that his foot was not pushing on the accelerator pedal. Gaskin admitted she could not see Santacruz's feet. Santacruz also testified that Gaskin had not warned him of any mechanical problems with the car.

Santacruz's counsel argued that the investigating officer concluded that a mechanical defect caused the accident. The police report listed a contributing factor of "other - see narrative," and the narrative cited a mechanical problem.

The defense lawyers argued that the collision was just an accident and that no one was negligent. In the alternative, they argued that Pabich was partly responsible. According to the defense, Pabich could have avoided the accident had he slammed on his brakes. Defense counsel also argued that Pabich was speeding, and they noted he was driving a Mustang GT.

At defense counsel's request, the jury charge included a "sudden emergency" instruction and an "unavoidable accident" instruction.

Injury:

Pabich went to his primary care doctor two days after the accident. He was diagnosed with neck and back sprains and strains and a concussion. Pabich ultimately claimed an annular tear of the L5-S1 intervertebral disc, nerve damage, fluid in the facet joints and leg numbness. He further claimed a mild traumatic brain injury, difficulty sleeping, memory and anger issues, anxiety, depression and fatigue. He also testified that he developed a severe headache, nausea and vomiting after the accident.

Pabich was examined by a neurosurgeon, who recommended a course of physical therapy for his back. Pabich told the neurologist in August 2016 that his concussion symptoms had resolved.

Pabich underwent physical therapy through December 2016. The following month, he started treating with a pain management doctor. An electromyogram confirmed nerve damage at L5-S1. Additional physical therapy was recommended. Pabich said he received a medial branch block injection, which resulted in a 70 percent improvement. Another medial branch block and epidural steroid injections were recommended, but Pabich did not undergo the treatment. His last visit to the pain management doctor was in May 2017.

In December 2017, Pabich returned to the pain management doctor and complained of concussion symptoms and depression and anxiety. A neurologist treated Pabich with medication from January to April 2018, and Pabich reported significant improvement. Pabich did not treat again until November 2018, when he started seeing a licensed professional counselor.

In April 2019, a different neurologist put Pabich on short-term disability. Pabich continued to treat with the new neurologist and the counselor until trial.

Pabich had undergone a single-photon emission computed tomography (SPECT) scan and diffusion tensor imaging (DTI). The SPECT showed abnormalities, and the DTI showed two white matter lesions, which Pabich's doctors interpreted as evidence of a traumatic brain injury.

Pabich's counsel argued that, at the time of the accident, their client was a rising star at Dell, his employer. He had been promoted to senior consultant after immigrating to the U.S. from Europe and was earning approximately \$107,000 a year. Pabich claimed that his brain injury hurt his job performance and that, as a result, he was passed over for promotions.

Friends and family testified that, after the accident, Pabich struggled with depression, anxiety and anger issues. He testified that the injuries prevented him from being active and taking part in his favorite activities like kite surfing or wake boarding.

Pabich had alleged a \$1.3 million loss of earning capacity, but he dropped this claim shortly before trial.

Plaintiff's counsel asked the jury to award a total of about \$7.5 million, including \$1.9 million for future medical expenses. The damages submitted were future medical expenses, past and future physical pain and suffering and past and future physical impairment.

The defense experts included a radiologist, orthopedic surgeon, neurologist and neuropsychologist. They maintained that all of Pabich's problems were a result of preexisting degenerative conditions, a high-stress job and other life issues. At most, they said, he sustained sprains and strains and a concussion from which he fully recovered. His fatigue and lack of energy were likely related to low vitamin B12, low testosterone and high cholesterol, conditions that were identified before the accident, they claimed.

The defense pointed out that Pabich missed one week of work and that he never told his

employer of ongoing problems related to the accident. On the contrary, in forms submitted to his supervisor, he identified three major life changes that affected his job performance; his marriage, the birth of his child and difficulties with a new supervisor.

The defense also pointed to August 2016 medical records that said his concussion symptoms had resolved. Also, later that month, Pabich visited the gym several times, as well as an outdoor fitness camp. The defense also noted that he sought no concussion treatment from August 2016 until December 2017.

Defense counsel also noted that, at the time of trial, Pabich was earning \$135,000 annually and had received a \$24,000 bonus in 2019. According to the defense neuropsychology expert, if Pabich was suffering from his alleged injuries, he would have been fired. She also opined that some of Pabich's neuropsychological test results were so poor and inconsistent that they could not be credible. Pabich's counsel argued that the poor test results were a result of fatigue.

Defense counsel also argued that, since Santacruz and Gaskin were not injured even though they were in a subcompact car, Pabich's injuries could not have been severe as he alleged. Santacruz and Gaskin testified that Pabich appeared uninjured at the scene. The investigating officer testified that, if anyone at the scene had indicated any injuries, or complained about pain, he would have indicated a possible injury in his report. Also, Pabich's accident reconstruction expert, after testifying that the impact resulted in forces of 2.6G, or 2.6 times the force of gravity, acknowledged that bumper cars typically result in forces of 6G.

The defense radiologist disputed the validity of the SPECT scan and DTI, and he told the jury that the type of lesions shown in the SPECT scan were common in the asymptomatic population.

At the defendants' request, the jury charge included a "failure to mitigate" instruction. The defense argued that the gaps in treatment were a failure to mitigate his damages.

Gaskin's counsel suggested an award of \$50,000, if the jury reached damages. Santacruz's counsel did not suggest an amount.

Result:

The jury found that Santacruz was liable for the accident. It awarded Pabich \$671,000. The jury did not find negligence on the part of Gaskin or the plaintiff.

Pawel Lukasz Pabich

\$100,000 Personal Injury: Future Medical Cost

\$283,500 Personal Injury: Past Physical Impairment

\$250,000 Personal Injury: Future Physical Impairment

\$25,000 Personal Injury: past physical pain

\$12,500 Personal Injury: future physical pain

Trial Information:

Judge: Dustin Howell

Demand: \$1,300,000 (policy limit)

Offer: \$250,000

Trial Length: 14 days

**Trial
Deliberations:** 7 hours

Jury Vote: 10-2

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

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

Writer John Schneider

Broadside crash caused neck, back injuries, plaintiff claimed

Type: Settlement

Amount: \$350,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 419th, TX

Injury Type(s):

- *back* - herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *head* - concussion; closed head injury
- *neck* - herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C6-7
- *other* - massage therapy; physical therapy; epidural injections; trigger point injection

Case Type:

- *Motor Vehicle* - Broadside; Left Turn; Multiple Vehicle

Case Name: Marisol Rizzo v. James Wang, No. D-1-GN-20-002372

Date: August 13, 2021

Plaintiff(s):

- Marisol Rizzo, (Female, 31 Years)

Plaintiff Attorney(s):

- Joseph R. Caputo; Zinda Law Group; for Marisol Rizzo

Plaintiff Expert(s):

- Todd D. Cowen M.D.; Life Care Planning; San Antonio, TX called by: Joseph R. Caputo

Defendant(s):

- James Wang

**Defense
Attorney(s):**

- Todd M. Fine; Susan L. Florence & Associates; Austin, TX for James Wang

**Defendant
Expert(s):**

- Jan Schieber R.N.; Coding & Billing (Medical); Dallas, TX called by: for Todd M. Fine

Insurers:

- Allstate Insurance Co.

Facts:

On Oct. 28, 2019, plaintiff Marisol Rizzo, 31, was driving east on Anderson Mill Road in Austin. The front of her sedan struck the driver's side of a car. The car had attempted to turn left from exiting a parking lot. Rizzo claimed head, neck and back injuries.

Rizzo sued the driver, James Wang. The lawsuit alleged that he was negligent in the operation of his vehicle. Prior to filing suit, Rizzo's underinsured-motorist carrier tendered its policy, which provided \$100,000 of coverage. Rizzo's counsel asserted that, after Wang turned left to exit the parking lot, he realized that he was unable to make the turn safely, and put his car in reverse in the eastbound lane.

Rizzo's counsel contended that Wang was 100 percent liable for the accident.

The defense maintained that Rizzo should have taken measures to avoid striking Wang's vehicle.

Injury: Following the accident, Rizzo drove herself to an emergency room and was examined and released.

She was ultimately diagnosed with a concussion and herniations at cervical and lumbar intervertebral discs C4-5, C6-7, L4-5 and L5-S1.

Within a week of the accident, Rizzo began a course of physical therapy, which she treated for six weeks. She later returned to receive further treatment. Rizzo also treated with multiple epidural and trigger-point injections to her neck. Rizzo discussed the possibility of undergoing a cervical fusion and discectomy in the future. In August 2021, Rizzo was scheduled to receive additional injections.

In his report, Rizzo's expert in life-care planning outlined her future treatment, which consisted of a cervical fusion and discectomy, injections and physical therapy.

Rizzo alleged that her injuries have made it difficult caring for her two young children, who are 1 and 3 years old. She sought to recover \$88,731.22 in past medical costs and approximately \$438,000 in future medical costs, plus damages for past and future pain and suffering.

The defense's expert in medical billing opined in her report that the majority of Rizzo's medical expenses were unreasonable and should be valued significantly lower.

Result: The parties negotiated a pretrial settlement. Wang's insurer tendered its policy, which provided \$250,000 of coverage.

Trial Information:

Trial Length: 0

Trial Deliberations: 0

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

Writer Aaron Jenkins

Plaintiff underwent lumbar fusion surgery after accident

Type: Verdict-Plaintiff

Amount: \$235,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 345th, TX

Injury Type(s):

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches; closed head injury
- *neck* - sprain, cervical; strain, cervical
- *other* - chiropractic; physical therapy; trigger point injection; scar and/or disfigurement

Case Type:

- *Gross Negligence*
- *Motor Vehicle* - Sideswipe; Parked Car; Pedestrian; Multiple Vehicle
- *Worker/Workplace Negligence* - Negligent Hiring

Case Name: Rick J. Salazar v. Gabriel Guerrero and DM Delivery, No. D-1-GN-17-001817

Date: November 22, 2019

Plaintiff(s):

- Rick J. Salazar (Male, 30 Years)

Plaintiff Attorney(s):

- Nicholas R. Madsen; Bonilla Law Firm; Austin TX for Rick J. Salazar

Plaintiff Expert(s):

- Anand Joshi M.D.; Pain Management; Austin, TX called by: Nicholas R. Madsen
- Robert Josey M.D.; Orthopedic Surgery; Austin, TX called by: Nicholas R. Madsen
- Christine Vidouria D.O.; Life Care Planning; San Antonio, TX called by: Nicholas R. Madsen

Defendant(s):

- DM Delivery
- Gabriel Guerrero

**Defense
Attorney(s):**

- Sheila Wollam; Lucero Wollam PLLC; Wimberley, TX for DM Delivery, Gabriel Guerrero
- Erik R. Wollam; Lucero Wollam PLLC; Wimberley, TX for DM Delivery, Gabriel Guerrero

**Defendant
Expert(s):**

- Jay Ellis M.D.; Pain Management; San Antonio, TX called by: for Sheila Wollam, Erik R. Wollam
- Stephen Esses M.D.; Orthopedic Surgery; Houston, TX called by: for Sheila Wollam, Erik R. Wollam

Insurers:

- National General Insurance

Facts:

On Aug. 6, 2015, plaintiff Rick J. Salazar, a commercial painter in his 30s, was driving on an Austin freeway and developed mechanical problems. Salazar pulled over on the left shoulder of an interchange. It was about 11:30 p.m. Police told him he had to move the vehicle. Salazar was on his cell phone and standing in front of his compact car, facing away from traffic. Gabriel Guerrero, in a box truck, sideswiped Salazar's vehicle and, Salazar claimed, the car then struck him. The investigating officer placed fault on Guerrero only, for failing to control his speed. Salazar claimed back injuries.

Salazar sued Guerrero and Guerrero's employer, DM Delivery. The lawsuit alleged that Guerrero was negligent in the operation of the truck. Against DM Delivery, the lawsuit alleged vicarious liability, negligent hiring and gross negligence. The employer had not obtained a background check or driving history on Guerrero, and plaintiff's counsel argued that his driving history would have shown two at-fault collisions and two tickets.

Salazar's counsel argued that only the defendants were negligent. He also noted the Guerrero did not have a commercial driver's license and that, although the truck he was driving did not require one, it was the largest class of truck exempt from requiring a commercial license.

Salazar testified that he was calling a tow truck when the accident happened and that he was standing 6 to 8 feet in front of his vehicle.

Guerrero admitted fault for the accident. However, he testified that he saw Salazar's vehicle and was going to change lanes to the right, but that a vehicle was in the right lane. According to Guerrero, he overcorrected slightly to the left. Defense counsel argued that the left shoulder was very narrow and that Salazar's vehicle was therefore very close to the left lane, giving Guerrero only a small margin of error.

The defense argued for comparative responsibility on Salazar, for standing right in front of his car and talking on his cell phone while facing away from traffic.

Defense counsel also questioned Salazar's credibility about what happened after Guerrero hit Salazar's car. The defense argued that Salazar gave police, ambulance personnel and hospital personnel different versions of how and whether he was struck.

The defense denied negligence for failing to perform a background check and argued that Guerrero's driving history was pretty unremarkable and would not have prevented him from being hired. Defense counsel said that Guerrero had a minor accident in 2011, a 2014 accident in which he denied fault, a 2011 speeding ticket and a 2004 ticket for not wearing a seat belt.

Injury:

Salazar declined to be transported by ambulance but went to the emergency room on his own the next day. He complained that he had head, leg and toe pain at the scene.

Salazar said the force of the impact threw him into the air and that he shattered the windshield with his head. He denied neck and back pain at the hospital. A CT brain scan was unremarkable. He was diagnosed with a closed head injury and prescribed medication but underwent no other treatment for the head injury, which resolved, as did the leg and toe pain. He ultimately claimed cervical sprains and strains and herniations of the L4-5

and L5-S1 intervertebral discs.

About one month after the accident, he went to a chiropractor and complained of neck and lower back pain. The chiropractor provided physical therapy and chiropractic care until December 2015. In May 2016, Salazar went to a pain management doctor and underwent a lumbar MRI and an electromyography.

In October 2016, he underwent lumbar medial branch block injections. He returned on Feb. 21, 2017, with complaints of increased pain. Two days earlier on Feb. 19, he had gone to the emergency room and said he had hurt himself while lifting weights. He did not mention that injury or hospital visit to any of his treaters for the accident.

On Feb. 21, 2017, the pain management doctor performed trigger point injections and referred Salazar to an orthopedic surgeon. Salazar underwent a lumbar fusion on Oct. 24, 2017. Other than two follow-up visits with the surgeon, he underwent no further treatment, although the surgeon recommended post-operative physical therapy, and although Salazar testified that he continued to experience pain through the time of trial.

Salazar testified that, during the numerous apparent gaps in treatment, he was taking pain medication.

He claimed disfigurement, based on a 3-inch surgical scar on his abdomen.

The plaintiff's life care planning expert prepared a life care plan of about \$1 million, which included epidural steroid injections and radiofrequency ablations for the rest of Salazar's life.

In addition, plaintiff's orthopedic surgeon opined that, because of the fusion, Salazar's adjacent levels would probably degenerate more rapidly and require at least one more and probably two more surgeries. The cost of these surgeries was not included in the life care planner's report.

Plaintiff's counsel asked the jury to award about \$250,000 for past medical expenses and about \$600,000 for future medical expenses. He also sought damages for past and future physical pain and mental anguish, past disfigurement and future physical impairment, as well as punitive damages. The trial was bifurcated.

The defense denied that the accident was the cause of the claimed injuries.

The defense experts were an orthopedic surgeon and a pain management specialist. They opined that, at most, only the treatment and complaints before the February 2017 hospital visit were related to the motor vehicle accident.

The defense emphasized the numerous gaps between visits to providers, including the one-month gap between the accident and the first visit to the chiropractor. Also, it came into evidence that Salazar was referred to the chiropractor by an attorney.

The defense denied that Salazar hit the windshield. The investigating officer testified that, had it been broken or had Salazar claimed at the scene that his head hit it, the police report would have mentioned that fact.

The defense also emphasized the lack of any neck or back complaints in the records until Salazar went to the chiropractor.

The defense argued that the life care plan was speculative and excessive, especially given that Salazar had undergone no treatment in the two years since the surgery, had undergone no radiofrequency ablations and had testified that the steroid injections he received were not effective.

The defense also disputed his claim of ongoing pain. He was back at work just a few months after the surgery, and he did not seek physical therapy or pain management, even though his doctors recommended it. The defense also asserted failure to mitigate, based in part on his weightlifting injury and failure to undergo post-operative treatment.

Finally, the defense did not admit that Salazar was struck at all.

Defense counsel suggested that the jury award total damages of about \$11,000, representing the bills for the initial hospital visit and the chiropractor's treatment.

Result: The jury found Guerrero liable for the accident. It did not find negligence on the part of his employer or Salazar, and did not find gross negligence. The jury awarded Salazar \$235,000.

Rick J. Salazar

\$115,000 Personal Injury: Past Medical Cost

\$115,000 Personal Injury: Future Medical Cost

\$5,000 Personal Injury: past physical pain and mental anguish

Trial Information:

Judge: Jan Soifer

Demand: \$980,000

Offer: \$250,000

Trial Length: 5 days

Trial Deliberations: 4 hours

Jury Vote: 10-2

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

Writer John Schneider

Plaintiff: Rear-ending caused passenger's neck, back woes**Type:** Verdict-Plaintiff**Amount:** \$195,438**Actual Award:** \$213,441**State:** Texas**Venue:** Travis County**Court:** Travis County District Court, 353rd, TX**Injury Type(s):**

- *neck*
- *other* - laceration; scar tissue; scar and/or disfigurement
- *mental/psychological* - cognition, impairment; memory, impairment; post-concussion syndrome

Case Type:

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

Case Name: Krystal Mathis v. Brandon David Neal and Michael Mobley, No. D1-GN-19-004098**Date:** December 09, 2021**Plaintiff(s):**

- Krystal Mathis, (Female, 33 Years)
- Michael Mobley, (Male, 0 Years)

Plaintiff Attorney(s):

- Clint Reed; Attorney Brian White & Associates, P.C.; Houston TX for Krystal Mathis
- Steeves Hopson; Attorney Brian White & Associates, P.C.; Houston TX for Krystal Mathis
- Andrew Traub; The Traub Law Office; Austin TX for Michael Mobley

Defendant(s):

- Michael Mobley
- Brandon David Neal
- Allstate Fire and Casualty Insurance Co.

**Defense
Attorney(s):**

- Justin Studdard; Martin Disiere Jefferson & Wisdom; Austin, TX for Brandon David Neal
- Jesse Joslin; Martin Disiere Jefferson & Wisdom; Austin, TX for Brandon David Neal
- Mike Lopez; Lisa Chastain & Associates; Austin, TX for Allstate Fire and Casualty Insurance Co.

**Defendant
Expert(s):**

- Christine Dickison R.N.; Coding & Billing (Medical); Georgetown, TX called by: for Justin Studdard, Jesse Joslin

Insurers:

- State Farm Insurance Cos.

Facts:

On Oct. 1, 2017, plaintiff Krystal Mathis, 33, an insurance adjuster, was a passenger in a sedan driven by plaintiff Michael Mobley, her boyfriend at the time. They were traveling east on Highway 71 in Travis County, approaching The Parking Spot for Austin-Bergstrom International Airport. Brandon David Neal was also eastbound, in a pickup truck. Neal's front right corner and the center of Mobley's rear bumper collided. The plaintiffs' vehicle then struck a guardrail just east of the Parking Spot entrance. Mathis claimed she suffered injuries of her head and neck, and Mobley claimed he suffered orthopedic and traumatic brain injuries.

Mathis had \$30,000 in underinsured motorist (UIM) coverage with Allstate Fire and Casualty Insurance Co.

Mathis sued Mobley and Neal, and in a separate lawsuit that was later consolidated, Mobley sued Neal. The lawsuits alleged that Neal was negligent in the operation of his vehicle. Before trial, Mathis nonsuited her claims against Mobley, and Mobley settled his claims, as well. Mathis added Allstate as a defendant, but the claims against Allstate were severed and abated before trial. Allstate did not participate in the trial.

Mathis claimed that Mobley was in a non-turn lane approaching the parking entrance and going straight the whole time. She claimed that Neal rear-ended Mobley while either going too fast or not keeping a proper lookout. Plaintiff's counsel further argued that Neal tried to swerve at the last minute, and that this maneuver explained the location of the vehicle damage.

Mathis' counsel further argued that Neal was not credible. Neal had given about four different versions of the accident, counsel said, and none of them were consistent with the physical evidence.

Neal denied negligence and contended that Mobley was at fault. At trial, Neal claimed that Mobley missed his turn at the Parking Spot and suddenly slowed down and attempted a U-turn, causing the accident. Mathis braked but did not swerve, he said. The defense argued that Mobley's attempted U-turn explained the location of the vehicle damage.

The case was tried via Zoom.

Injury:

The Mathis vehicle sustained significant damage, and photos of it came into evidence. Mathis sustained a 2-centimeter laceration at the hairline above her right eyebrow, and paramedics noted that she was confused at the scene. She also reported neck pain at the scene. Mathis ultimately claimed that the accident caused ongoing neck pain and stiffness, headaches and post-concussion syndrome. She further claimed that the head injury caused memory problems and personality changes. The laceration also left a scar.

Mathis was taken by ambulance to an emergency room at a level II trauma center. She was kept overnight, in the critical decision unit, after a partial trauma-team activation.

After her release, she did not follow up on the head injury. She followed up a single time with her primary care doctor for neck pain.

She went to work two days after the accident, but her supervisor told her to go home, and she took the next two to three days off. She testified that she felt she had to keep working because the bills for the ambulance and hospital were so high and she did not have health insurance at the time.

Mathis served as a praise leader and choir soloist at her church and said that, because of memory problems, she had been able to do so only twice since the accident. When she did, she said, she had to use a lyrics sheet for a song that she had known by heart her whole life. Her pastor, who was also her cousin, testified about Mathis' personality changes, saying she was less energetic and active.

Plaintiffs' counsel cross-examined the defense expert, who testified on medical billing. Counsel focused on how much the expert made, up to \$300,000 a year working 20 hours a week, doing this type of work for defense firms.

Mathis' counsel acknowledged that the hospital charges were high, but he argued that Mathis owed the money regardless and had no choice about where she was taken. The hospital was just eight minutes away from the accident scene and was the nearest emergency room, he noted.

Mathis' counsel sought a total of a little less than \$260,000, including \$58,670 for past medical expenses. The other damages submitted were past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement. For past and future disfigurement, counsel suggested 25 cents an hour for 16 waking hours a day every day, or \$6,112 in the past and \$58,400 in the future.

The defense disputed the severity of the injuries; emphasized how little treatment Mathis underwent; and disputed causation of the neck injuries. Although the records from the scene mentioned neck pain, the hospital records did not. The defense expert opined that the hospital charges were excessive and that the hospital records did not document that Mathis met Medicare criteria for a trauma activation. He opined that the reasonable and necessary charges were about \$16,000.

Defense counsel suggested that, if the jury reached the damages question, it should award \$16,000 for past medical expenses; \$12,000 for past physical pain; and no other damages.

Result: The case went to trial on Mathis' claims against Neal only.

The jury found that Neal was liable for Mathis' injuries. It determined that Mathis' damages totaled \$195,438.

The jury did not find that Mobley's negligence, if any, proximately caused the injuries.

Michael Mobley

Krystal Mathis

\$ 58,670 Past Medical Cost

\$ 18,336 Past Physical Impairment

\$ 11,680 Future Physical Impairment

\$ 36,672 past physical pain and mental anguish

\$ 70,080 future physical pain and mental anguish

\$ 195,438 Plaintiff's Total Award

Trial Information:

Judge: Maya Guerra-Gamble

Demand: \$125,000 (as to Neal; during trial)

Offer: \$75,000 (by Neal, the Friday before trial, after expiration of a Stowers demand)

Trial Length: 2 days

**Trial
Deliberations:** 5 hours

Jury Vote: 12-0

**Jury
Composition:** Gender about even

Post Trial: Mathis reached post-verdict settlements with Neal and Allstate. They agreed that the final judgment, including prejudgment interest and taxable costs, would have been \$213,440.90; that Allstate would pay its \$30,000 policy limit; and that State Farm would pay the remaining \$183,440.90.

**Editor's
Comment:** This report is based on information that was provided by Mathis', Mobley's, Neal's and Allstate's counsel. Additional information was gleaned from court documents.

Writer John Schneider

Plaintiff: Failure to stop at sign led to injury-causing accident

Type: Verdict-Plaintiff

Amount: \$187,463

State: Texas

Venue: Travis County

Court: Travis County District Court, 250th, TX

Injury Type(s):

- *leg*
- *other* - contracture; chiropractic; physical therapy
- *foot/heel* - foot
- *surgeries/treatment* - osteotomy

Case Type:

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

Case Name: Antonia Ugarte v. Linda Walenga, No. D-1-GN-18-005167

Date: March 31, 2023

Plaintiff(s):

- Antonia Ugarte, (Female, 40 Years)

Plaintiff Attorney(s):

- Pete Rutter; DJC Law; Austin TX for Antonia Ugarte

Plaintiff Expert(s):

- Andrew M. Ebert M.D.; Foot & Ankle; Austin, TX called by: Pete Rutter

Defendant(s):

- Linda Walenga

Defense Attorney(s):

- Justin Studdard; Martin Disiere Jefferson & Wisdom; Austin, TX for Linda Walenga

**Defendant
Expert(s):**

- Travis Burns M.D.; Orthopedic Surgery; San Antonio, TX called by: for Justin Studdard

Insurers:

- State Farm Insurance Cos.

Facts:

On Nov. 10, 2016, plaintiff Antonia Ugarte, mid-40s, a cosmetologist, was driving on a street in Travis County. Linda Walenga, 80s, exited a parking lot, and Ugarte broadsided her. Walenga had a stop sign, and Ugarte did not. Walenga said she checked for traffic before proceeding.

Injury:

Ugarte went to an emergency room on her own on the date of the accident. She ultimately claimed a left foot and lower leg injury: stage 2 posterior tibial tendon dysfunction with acquired pes plano valgus deformity, which is a type of flat-foot syndrome, and contracture of the gastrocnemius musculature, which is in the calf. According to Ugarte, the injury resulted in part from how hard she was bracing herself and braking before the impact.

She underwent physical therapy and chiropractic care for more than a year, followed by a gap of about two years before finally undergoing surgery.

On June 30, 2020, Ugarte underwent a flexor digitorum longus (FDL) tendon transfer and calcaneal osteotomy. The surgeon testified that, in his opinion, the surgery was necessitated by the accident. He added that, if Ugarte's condition were not traumatic in origin, it probably would have affected both feet rather than just one.

Ugarte underwent rehabilitation after the surgery, but testified that her foot continued to hurt. Her last treatment was in 2021.

She sought \$104,462.93 for past medical expenses. She also claimed past and future physical pain and mental anguish and past and future physical impairment.

The defense denied that the surgery, or indeed any treatment after 2018, was related to the accident.

The defense also noted the lack of any treatment since 2021.

In addition, the defense suggested that her job, which requires her to be on her feet for long periods, contributed to or caused her foot condition.

Result:

The jury found that Walenga was liable for the accident. It determined that Ugarte's damages totaled \$187,462.93.

Antonia Ugarte

\$ 104,462.93 Past Medical Cost

\$ 30,000 Past Physical Impairment

\$ 4,000 Future Physical Impairment

\$ 45,000 past physical pain and mental anguish

\$ 4,000 future physical pain and mental anguish

\$ 187,462.93 Plaintiff's Total Award

Trial Information:

Judge: Jan Soifer

Demand: \$100,000 (Stowers; policy limit)

Trial Length: 5 days

**Trial
Deliberations:** 0

Jury Vote: 10-2

Post Trial: With prejudgment interest and taxable costs, the total amount to which Ugarte was entitled was \$271,863.12. However, after the verdict, Ugarte's underinsured motorist carrier paid its \$30,000 policy limit, which reduced Walenga's liability to \$241,863.12.

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

Writer John Schneider

Plaintiff: Tipped portable toilet led to injuries of legs and back

Type: Verdict-Plaintiff

Amount: \$170,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 345th, TX

Injury Type(s):

- *leg*
- *back* - lower back; fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *other* - facetectomy; physical therapy; epidural injections; scar and/or disfigurement; foraminectomy/foraminotomy
- *epidermis* - numbness
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - discectomy

Case Type:

- *Gross Negligence*
- *Motor Vehicle* - Truck; Single Vehicle; Reversing Vehicle
- *Worker/Workplace Negligence* - Negligent Hiring

Case Name: Cirilo Vega Rodriguez v. Noe Gabriel Sanchez Moncada d/b/a Zena's Trucking, and John Doe, No. D-1-GN-20-001515

Date: December 04, 2023

Plaintiff(s):

- Cirilo Vega Rodriguez, (Male, 30 Years)

Plaintiff Attorney(s):

- Burgess Williams; Zinda Law Group; Austin TX for Cirilo Vega Rodriguez
- Joseph R. Caputo; Zinda Law Group; Austin TX for Cirilo Vega Rodriguez
- Kelly Gibbons; Durham, Pittard & Spalding; Dallas TX for Cirilo Vega Rodriguez

**Plaintiff Expert
(s):**

- Ram R. Vasudevan M.D.; Neurosurgery; Austin, TX called by: Burgess Williams, Joseph R. Caputo
- Pete Sullivan; Fleet Management; Houston, TX called by: Burgess Williams, Joseph R. Caputo
- Angela Bradford M.Ed.; Life Care Planning; Austin, TX called by: Burgess Williams, Joseph R. Caputo
- Carlos Jaramillo M.D., Ph.D.; Life Care Planning; San Antonio, TX called by: Burgess Williams, Joseph R. Caputo
- Thomas M. Roney Ph.D.; Economics; Dallas, TX called by: Burgess Williams, Joseph R. Caputo

Defendant(s):

- Miguel Angel Alvarez Gomez
- Noe Gabriel Sanchez Moncada

**Defense
Attorney(s):**

- Mark E. Macias; Langley & Banack; San Antonio, TX for Noe Gabriel Sanchez Moncada, Miguel Angel Alvarez Gomez
- Brian A. Metcalf; Langley & Banack; San Antonio, TX for Noe Gabriel Sanchez Moncada, Miguel Angel Alvarez Gomez
- Rachel Hope Stinson; Wright Close & Barger; Houston, TX for Noe Gabriel Sanchez Moncada, Miguel Angel Alvarez Gomez

**Defendant
Expert(s):**

- Nick Leachman; Surveillance; San Antonio, TX called by: for Mark E. Macias, Brian A. Metcalf
- Frank Garcia M.D.; Orthopedic Surgery; San Antonio, TX called by: for Mark E. Macias, Brian A. Metcalf

Facts:

On Feb. 15, 2020, plaintiff Cirilo Vega Rodriguez, early 30s, a pipefitter, was in a portable toilet at a construction site. Defendant Miguel Angel Alvarez Gomez backed into it in a dump truck and knocked it over. Gomez was in the course and scope of his employment with defendant Zena's Trucking.

The concrete subcontractor, which allegedly placed the portable toilet, settled before trial.

The general contractor, which allegedly authorized the placement of the portable toilet, also settled before trial.

The only defendants in the case at trial were Gomez and Zena's, and plaintiff's counsel argued that only they were negligent. Gomez's commercial driver's license was from Honduras, not the U.S. The allegations included negligent hiring and gross negligence by Zena's.

The defense denied gross negligence and argued for 25 percent responsibility each on Gomez, Zena's, the concrete subcontractor and the general contractor.

Gomez had had his Honduras CDL for 42 years and was experienced and well-qualified, the defense argued.

Injury:

Gomez backed into the portable toilet Rodriguez was occupying and knocked it down. Rodriguez claimed that it was also dragged 15 feet. He said he was standing when the incident occurred.

He went to an occupational medicine clinic 10 days later and ultimately claimed herniated discs at L4-5 and L5-S1, with radiating pain, numbness and tingling in his legs.

His treatment included extensive physical therapy; a lumbar epidural steroid injection; and, in October 2021, a lumbar facetectomy, foraminotomy, discectomy and fusion. The surgery left a scar.

His treating neurosurgeon opined that Rodriguez would probably develop adjacent disc syndrome and need another fusion.

Rodriguez testified about being unable to go horseback riding and go out dancing with his wife.

He sought \$152,000 for past medical expenses; \$423,000 for future medical expenses; \$329,520 for past physical pain; \$4,117,200 for future physical pain; \$329,520 for past mental anguish; \$4,117,200 for future mental anguish; \$329,520 for past physical impairment; \$4,117,200 for future physical impairment; \$7,872 for past disfigurement; and \$411,720 for future disfigurement, a total of \$14,334,752.

The defense introduced surveillance video of Rodriguez and argued that his testimony exaggerated his pain and impairment. The defense also argued that the surgery was unrelated to the incident.

The defense argued that the jury should award \$24,928 for past medical expenses; \$25,000 for past physical pain; \$25,000 for past mental anguish; \$25,000 for past physical impairment; \$3,000 for past disfigurement; and zero for everything else. The defense suggested other, greater amounts if the jury believed the surgery was related to the incident.

Result: The jury found negligence and comparative responsibility of 40 percent on Gomez; 35 percent on Zena's; 15 percent on the general contractor; and 10 percent on the concrete subcontractor. The jury determined that Rodriguez's damages totaled \$170,000.

Zena's was jointly and severally liable for the entire amount. However, Zena's and Gomez were entitled to a \$130,000 credit for the plaintiff's settlements with White and BCS.

The jury did not find gross negligence.

Cirilo Rodriguez

\$ 50,000 Past Medical Cost

\$ 10,000 Future Medical Cost

\$ 25,000 Past Physical Impairment

\$ 15,000 Future Physical Impairment

\$ 25,000 past physical pain

\$ 10,000 future physical pain

\$ 25,000 past mental anguish

\$ 10,000 future mental anguish

\$ 170,000 Plaintiff's Total Award

Trial Information:

Judge: Jan Soifer

Demand: \$1 million (policy limit)

Offer: \$225,000

Trial Length: 6 days

**Trial
Deliberations:** 5 hours

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

Writer John Schneider

Plaintiff: Collision at traffic light caused neck injuries**Type:** Verdict-Plaintiff**Amount:** \$132,750**State:** Texas**Venue:** Travis County**Court:** Travis County Court at Law No. 1, TX**Injury Type(s):**

- *back* - contusion, spine
- *head* - headaches
- *neck* - contusion, spine
- *other* - myelomalacia; physical therapy; steroid injection; epidural injections

Case Type:

- *Motor Vehicle* - Left Turn; Red Light; Intersection; Multiple Vehicle

Case Name: Anne Fitterer v. Felipe Galindo Garcia, No. C-1-CV-10-001473**Date:** April 26, 2023**Plaintiff(s):**

- Anne Fitterer, (Female, 37 Years)

Plaintiff Attorney(s):

- Jack Holtzman; Wenholz Dow, PC; Austin TX for Anne Fitterer
- Ben Newman; Ben Newman Attorney at Law, PLLC; Austin TX for Anne Fitterer

Defendant(s):

- Felipe Galindo Garcia

Defense Attorney(s):

- Michelle Garcia Shaw; Martinez, Dieterich & Zarcone Legal Group; San Antonio, TX for Felipe Galindo Garcia

Defendant Expert(s):

- Gilbert R. Meadows M.D.; Orthopedic Surgery; San Antonio, TX called by: for Michelle Garcia Shaw

Facts:

On April 5, 2017, plaintiff Anne Fitterer, 37, a software engineer, was driving west on a two-way street in Travis County. She entered an intersection on a green light. Felipe Galindo Garcia ran a red light while making a left turn into the eastbound lanes, and he and Fitterer collided. Fitterer claimed she suffered injuries primarily of her neck.

Fitterer sued Garcia. The lawsuit alleged that he was negligent in the operation of his vehicle.

Garcia stipulated to liability.

Injury:

Fitterer went to an urgent-care clinic later that day for head, neck and back pain. She ultimately claimed that she suffered a possible contusion or myelomalacia at C6-7.

Fitterer underwent physical therapy for two months, and in July 2017, she received a cervical epidural steroid injection. Her cervical MRIs were read as showing a hyperintensity, possibly representing a small contusion or myelomalacia.

In July 2018, someone backed into Fitterer's vehicle in a parking lot, which temporarily increased her neck pain. After 3.5 months of treatment, including an urgent-care visit, physical therapy and a facet injection, her pain levels returned to where they had been before the subsequent accident, Fitterer said.

Fitterer testified that her injuries from the 2017 accident affected her work as a software engineer, which involved sitting at her desk for long periods. They also affected her hobbies, such as gardening and running.

No future treatment was recommended.

Fitterer had been to physical therapy earlier on the day of the accident, but that treatment was for her hip, and she was not claiming a hip injury from the accident.

Fitterer's sedan sustained moderate damage in the accident. Garcia's vehicle sustained much less damage, but was a large sport utility vehicle.

For past physical pain and mental anguish, Fitterer sought \$82,500, representing 5.5 years at \$15,000 a year.

For future physical pain and mental anguish, he sought \$90,000, representing 30 years at \$3,000 a year.

For past physical impairment, he sought \$16,500, representing 5.5 years at \$3,000 a year.

For future physical impairment, he sought \$60,000, representing 30 years at \$2,000 a year.

The defense disputed the severity and duration of the claimed injuries. Two days after the accident, Fitterer went to Chicago, where she ran a half marathon. She went on to run a triathlon and a full marathon in the next two years. Also, at visits to her primary care doctor in late 2018 and in 2019, her neck pain levels, when mentioned at all, were 0 and 1 on a scale of 1 to 10.

The defense expert, an orthopedic surgeon, opined that only the treatment prior to the 2018 accident was reasonable and necessary as a result of the 2017 accident. Fitterer subsequently nonsuited her claim for past medical expenses.

Defense counsel suggested a total award of \$5,000.

Result: The jury determined that Fitterer's damages totaled \$132,750.

Anne Fitterer

\$ 13,750 Past Physical Impairment

\$ 30,000 Future Physical Impairment

\$ 44,000 past physical pain and mental anguish

\$ 45,000 future physical pain and mental anguish

\$ 132,750 Plaintiff's Total Award

Trial Information:

Judge: Todd Wong

Offer: \$2,500

Trial Length: 0

**Trial
Deliberations:** 0

Jury Vote: 6-0

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

Writer John Schneider

Plaintiffs alleged driver ran light and struck their motorcycle

Type: Verdict-Plaintiff

Amount: \$125,356

Actual Award: \$115,603

State: Texas

Venue: Travis County

Court: Travis County District Court, 345th, TX

Injury Type(s):

- *hip*
- *back* - bulging disc, lumbar
- *head* - headaches; concussion
- *neck* - cervical disc displacement
- *ankle* - fracture, ankle; fracture, malleolus; fracture, ankle; fracture, bimalleolar
- *brain* - brain damage; traumatic brain injury
- *other* - plate; chiropractic; physical therapy; pins/rods/screws; hardware implanted; epidural injections
- *shoulder*
- *face/nose* - facial laceration
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - open reduction; internal fixation
- *mental/psychological* - cognition, impairment; memory, impairment; post-concussion syndrome

Case Type:

- *Gross Negligence*
- *Motor Vehicle* - Passenger; Motorcycle; Intersection; Question of Lights

Case Name: Michael Thomas and Marlene Pinedo v. Eric Herbst, Alamo Lakeline LLC, Alamo South Lamar, Alamo Ritz LLC, Alamo Slaughter Lane Ltd. and Alamo Drafthouse Cinemas LLC, No. D-1-GN-17-000945

Date: February 03, 2020

Plaintiff(s):

- Marlene Pinedo (Female, 20 Years)
- Michael Thomas (Male, 20 Years)

- Plaintiff Attorney(s):**
- Timothy B. Moss; Erskine & Blackburn; Austin TX for Michael Thomas
 - Keith Lee Kleinhans; Law Office of KG, PLLC; Austin TX for Marlene Pinedo
 - Kimberly Gruber Kleinhans; Law Office of KG, PLLC; Austin TX for Marlene Pinedo
- Plaintiff Expert(s):**
- Anand Joshi M.D.; Pain Management; Austin, TX called by: Timothy B. Moss, Keith Lee Kleinhans
 - David Lavery M.D.; Orthopedic Surgery; Austin, TX called by: Timothy B. Moss, Keith Lee Kleinhans
 - Wendee Whitehead D.C.; Chiropractic; Austin, TX called by: Timothy B. Moss, Keith Lee Kleinhans
- Defendant(s):**
- Eric Herbst
 - Alamo Ritz LLC
 - Alamo South Lamar
 - Alamo Lakeline LLC
 - Alamo Slaughter Lane Ltd.
 - Alamo Drafthouse Cinemas LLC
- Defense Attorney(s):**
- Erin Holmes; Skelton & Woody; Austin, TX for Eric Herbst
 - Edward Kaye; Skelton & Woody; Austin, TX for Eric Herbst
- Defendant Expert(s):**
- Jay Ellis M.D.; Pain Management; San Antonio, TX called by: for Erin Holmes, Edward Kaye
- Insurers:**
- State Farm Insurance Cos.

Facts:

At about 2:20 a.m. on Sept. 22, 2016, plaintiff Michael Thomas, a cook in his mid-20s, was motorcycling in Austin. His then-girlfriend, plaintiff Marlene Pinedo, a woman in her mid-20s, was his passenger. Thomas and Pinedo, both wearing helmets, were returning home from a music venue and came to an intersection with flashing red lights governing all four lanes of traffic. Eric Herbst, driving a sedan on a cross street, struck the side of the motorcycle in the intersection. A passing motorist called 9-1-1, but Herbst left the scene without exchanging information before police arrived. However, his license plate had been dislodged in the collision and was found on the road, and he was later identified. Pinedo suffered a fractured ankle. Thomas claimed injuries to his neck and back. Herbst was charged with a felony hit and run.

Thomas and Pinedo sued Herbst. The lawsuit alleged that Herbst was negligent and grossly negligent in the operation of his vehicle. Herbst was coming from the Alamo Drafthouse Cinema, a movie theater with a restaurant and bar, and the plaintiffs originally sued various Alamo entities, but dismissed them prior to trial.

Thomas said he came almost to a complete stop at the intersection, looked both ways and did not see any traffic before proceeding. He said Herbst ran the light and hit him. The foot peg of the motorcycle punched through the car's front license plate.

Herbst denied running the light. He contended that he came to a complete stop, looked both ways and did not see any vehicles. Defense counsel argued that Thomas was speeding and ran the light. She also noted that, even if Thomas had slowed down, he admitted he did not come to a complete stop.

In addition, defense counsel noted that the person who called 9-1-1 was a friend of Thomas' who claimed that he just happened to be driving by.

Defense counsel also noted that Herbst was not charged with a hit and run until after the plaintiffs filed a criminal complaint and after Herbst had filed an answer denying liability and alleging contributory negligence. The arrest warrant was issued based solely on the plaintiffs' statements to police, the defense also argued.

Herbst denied having any alcohol that night at the Alamo Drafthouse, and that he only consumed soda. He testified that, after the accident, the plaintiffs appeared uninjured, and Thomas informed him that they were fine. Pinedo was sitting on the curb, but Herbst thought he remembered seeing her standing at some point, he said.

Thomas and Pinedo admitted each having a single drink at 9 p.m. and stopped drinking after that.

Injury:

Pinedo was placed in an ambulance and taken to a local hospital. Pinedo sustained a displaced left bimalleolar fracture. She later claimed a possible concussion and post-concussion syndrome, saying she was suffering headaches, memory issues, cognitive difficulty and photosensitivity. She also claimed bulges of the L2-3, L3-4, L4-5 and L5-S1 discs and a radiating pain in her hip.

Pinedo was released from the hospital later the same day. Her ankle was placed in an orthopedic boot. She returned about two weeks later for open reduction internal fixation,

with a plate and five screws. The surgery took only 26 minutes. Pinedo was discharged the same day. She wore a hard cast on her ankle for about two weeks.

Pinedo underwent a course of physical therapy with a chiropractor from October 2016 to January 2017 for neck and back pain. She resumed physical therapy shortly before the trial. In addition, she was examined by a pain management doctor twice in 2019.

The chiropractor testified that Pinedo may have suffered a concussion and that it could have been overlooked amid the more immediate concern to treat her ankle.

Pinedo's surgeon said the plaintiff eventually may need removal of the hardware from her ankle, at a cost of \$10,000 to \$20,000.

Pinedo testified that, even after she recovered, she suffered debilitating pain in her ankle when the weather changed, and that her injuries hindered her activities, like dancing and running. She also said she could not wear certain kinds of shoes anymore. Also, her gait was slightly different since the accident, and she was left with a scar on her ankle.

Pinedo also said she never fully recovered from the headaches, photosensitivity and memory and cognitive issues, and that she still experienced neck and back pain.

She sought \$24,477.59 for past medical expenses. She also sought \$10,000 to \$20,000 for future medical expenses; \$10,115 for past loss of earning capacity; and zero for future loss of earning capacity. For noneconomic damages, she sought a total of \$400,000 to \$600,000. The noneconomic damages were past and future physical pain, past and future mental anguish, past and future physical impairment and past and future disfigurement.

Pinedo also sought punitive damages.

Thomas rode to the hospital in the same ambulance with Pinedo. He was examined and released. Thomas was diagnosed with a forehead laceration, neck and back pain and a bone bruise in his right knee. He ultimately claimed displacement of his C6-7 intervertebral disc, with pain radiating into his shoulders.

Thomas followed up with a chiropractor about 12 days later. He underwent a course of physical therapy that lasted until January 2017 and, after a gap of about two weeks, returned for a couple more sessions.

He treated with a pain management doctor from November 2017 to February 2017. Thomas returned to the pain management doctor in 2019 and, on Feb. 2, 2019, underwent an epidural steroid injection at C7-T1. The improvement was significant, he said.

The pain management doctor said that, eventually, Thomas may benefit from a set of epidural steroid injections, which would cost \$9,500 to \$14,000.

Thomas testified that, after the accident, he landed his dream job, working for the Colorado River Authority, but that, because of his injuries, he was unable to keep the position. At the time of trial, he was working as a cook again.

Thomas sought past medical bills of \$31,333.35. He also sought \$9,500 to \$14,000 for future medical expenses; \$2,333.50 for past loss of earning capacity; and a total of

\$150,000 to \$250,000 for noneconomic damages. The noneconomic damages were past and future physical pain, past mental anguish, past and future physical impairment and past disfigurement.

Thomas also sought punitive damages.

The defense expert, a pain management doctor, opined that the pain in Pinedo's hip was unrelated to the accident and that she did not have a concussion.

On cross examination, the defense expert acknowledged that the damage to Pinedo's helmet, along with her complaints, could indicate that she had suffered a concussion. He also acknowledged that a bulging disc can cause pain in the hip. In addition, he acknowledged that his fees came to about \$22,000. Plaintiffs' counsel argued that he was being paid \$22,000 to dispute an \$11,000 bill.

The defense expert also opined that Thomas' injection was not medically necessary and that it should not have cost more than \$500.

The defense also emphasized the two-year gap in treatment before the plaintiffs went to a pain management doctor in 2019. The chiropractic care for both plaintiffs was excessive, the defense also argued.

Result:

The jury found negligence and comparative responsibility of 80 percent on Herbst and 20 percent on Thomas. It awarded the plaintiffs \$125,355.94. The comparative-negligence reduction reduced Thomas' damages from \$48,763.35 to \$39,010.40. Pinedo's damages, \$76,592.59, were not reduced.

The jury did not find gross negligence.

Marlene Pinedo

\$24,478 Personal Injury: Past Medical Cost

\$15,000 Personal Injury: Future Medical Cost

\$2,000 Personal Injury: Past Disfigurement

\$10,000 Personal Injury: future mental anguish

\$10,115 Personal Injury: past loss of earning capacity

\$5,000 Personal Injury: past physical pain

\$10,000 Personal Injury: past mental anguish

Michael Thomas

\$31,333 Personal Injury: Past Medical Cost

\$5,000 Personal Injury: Future Medical Cost

\$5,000 Personal Injury: past mental anguish

\$2,430 Personal Injury: past loss of earning capacity

\$2,500 Personal Injury: past physical pain

\$2,500 Personal Injury: future physical pain

Trial Information:

Judge: Dustin Howell

Demand: \$30,000 (by each plaintiff [Stowers demands] expired)

Offer: \$30,000 (Pinedo); none (Thomas)

Trial Length: 4 days

**Trial
Deliberations:** 1 days

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

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

Writer John Schneider

Plaintiff claimed rear-ending caused neck, back pains

Type: Verdict-Plaintiff

Amount: \$120,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 250th, TX

Injury Type(s):

- *back* - stenosis; nerve impingement
- *neck* - stenosis; nerve impingement; herniated disc, cervical; herniated disc at C3-4
- *other* - chiropractic; microdiscectomy; physical therapy; steroid injection; epidural injections
- *shoulder*
- *neurological* - nerve impingement; radicular pain / radiculitis
- *mental/psychological* - anxiety

Case Type:

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

Case Name: Patrick Brickley v. Kevin Terry, Armor Affiliates, Inc. and Armor Sealants & Firestopping, Inc., No. D-1-GN-18-002794

Date: January 28, 2021

Plaintiff(s):

- Patrick Brickley (Male)
- Margarita Vanessa Flores (Female, 32 Years)

Plaintiff Attorney(s):

- Daniel A. "Danny" Torres; Villarreal Law Firm; Brownsville TX for Patrick Brickley, Margarita Vanessa Flores

**Plaintiff Expert
(s):**

- John J. Smith P.E.; Biomechanics; Parker, CO called by: Daniel A. "Danny" Torres
- Grant Godby; Coding & Billing (Medical); Austin, TX called by: Daniel A. "Danny" Torres
- James R. Schiffer D.C.; Chiropractic; Round Rock, TX called by: Daniel A. "Danny" Torres
- Jolie S. Brams Ph.D.; Psychology/Counseling; Columbus, OH called by: Daniel A. "Danny" Torres
- Deshdepak Sahni M.D.; Neurosurgery; Austin, TX called by: Daniel A. "Danny" Torres

Defendant(s):

- Kevin Terry
- Armor Affiliates Inc.
- Armor Sealants & Firestopping Inc.

**Defense
Attorney(s):**

- Scott R. Taylor; Chamberlain McHaney; Austin, TX for Armor Sealants & Firestopping Inc., Armor Affiliates Inc., Kevin Terry

**Defendant
Expert(s):**

- Marc Chapman; Coding & Billing (Medical); Austin, TX called by: for Scott R. Taylor
- Brian Sullivan M.D.; Orthopedic Surgery; Austin, TX called by: for Scott R. Taylor

Insurers:

- Cincinnati Insurance Co.

Facts:

On Sept. 12, 2017, plaintiff Margarita Vanessa Flores, 32, was driving in Pflugerville, and plaintiff Patrick Brickley was behind her. They were in the center lane. Kevin Terry rear-ended Brickley, who was then pushed into Flores. Flores was then pushed into the vehicle ahead of her. Flores and the driver ahead of her were in sedans, and Terry and Brickley were in pickup trucks. Terry was in the course and scope of his employment with Armor Affiliates Inc. and Armor Sealants & Firestopping Inc. Flores claimed she suffered neck and shoulder injuries, headaches and anxiety.

Brickley sued Terry and the Armor entities, and Flores later intervened. The lawsuit alleged that Terry was negligent in the operation of his vehicle. Brickley's claims settled for an undisclosed amount before trial.

Flores and Brickley testified that they each came to a normal stop and felt only one impact from behind.

Terry denied negligence. He testified that he was in the right lane when an unidentified driver, or phantom vehicle, cut him off. In response, Terry swerved into the center lane, where traffic had stopped, he said.

The unidentified driver was designated as a responsible third party and added as a "Jane Doe" defendant.

Flores and Brickley testified that they did not see the phantom vehicle, if any.

Injury:

Flores went to an emergency room later that evening and was treated and released. She ultimately claimed she suffered a herniation of her C3-4 intervertebral disc, headaches and anxiety. She further claimed that the disc injury caused foraminal stenosis and nerve root impingement, as well as radiating pain in her right shoulder.

A few days after the accident, she went to a chiropractor, who administered physical therapy for about two months. Flores also underwent two to three cervical epidural steroid injections, a cervical nerve block and an optical nerve block. Finally, in October 2018, she underwent a cervical microdiscectomy.

She claimed that her neck and shoulder pain continued, and she continued to undergo physical therapy. However, no physical therapy bills or records from after the surgery came into evidence. Her chiropractor opined that Flores would continue to need physical therapy, at a cost of \$2,000 to \$3,000 a year.

Flores was evaluated by a psychologist 1.5 years before trial and again about two days before trial. The doctor opined that Flores suffered from anxiety and that it would continue.

Flores' biomechanical expert, relying in part on vehicle photos showing moderate damage, opined about the forces that Flores would have experienced during the accident. The impact to Brickley's vehicle broke his seat, Flores' counsel noted.

Flores' attorney asked the jury to award past medical expenses of \$186,000, as well as damages for future medical expenses, past and future physical pain, past and future physical impairment and past and future mental anguish. He sought about \$1.2 million total.

The defense expert, an orthopedic surgeon, opined that the accident caused only cervical sprains and strains and that Flores' injections and surgery were unrelated to the accident. He opined that the hospital visit and first two months of physical therapy were reasonable.

In addition, defense counsel noted that Flores was referred to the surgeon and some of the other providers by an attorney and that those providers had a financial interest in the outcome of the case.

Also, Flores had been in four prior accidents, including three rear-enders, and some of them had resulted in injuries and treatment.

Defense counsel asked the jury to award \$8,000 for past medical expenses and no other damages.

Result: The case was tried remotely, via Zoom.

The jury found that Terry's negligence proximately caused the accident and that the phantom driver's negligence, if any, did not. It awarded Flores \$120,000.

Margarita Vanessa Flores

\$100,000 Personal Injury: Past Medical Cost

\$10,000 Personal Injury: past physical pain

\$10,000 Personal Injury: past mental anguish

Trial Information:

Judge: Karin Crump

Demand: \$1,200,000

Offer: \$8,000

Trial Length: 3 days

**Trial
Deliberations:** 3 hours

Jury Vote: 6-0

**Jury
Composition:** 5 male, 1 female

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

Writer John Schneider

Sudden lane change caused accident, plaintiffs claimed

Type: Verdict-Plaintiff

Amount: \$112,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 353rd, TX

Injury Type(s):

- *back* - hypolordosis; fusion, lumbar; nerve impingement; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - hypolordosis; fusion, cervical; nerve impingement; bulging disc, cervical; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7
- *elbow* - biceps tendon, tear
- *other* - hematoma; myospasm; chiropractic; physical therapy; epidural injections
- *shoulder* - glenoid labrum, tear
- *neurological* - nerve impingement
- *surgeries/treatment* - discectomy

Case Type:

- *Motor Vehicle* - Passenger; Sideswipe; Lane Change; Multiple Vehicle

Case Name: Robert Lee Brown and Kisha Sanders v. Ryan Alan Anthony Lored, DComm Inc. and Time Warner Cable, No. D-1-GN-17-006938

Date: January 17, 2020

Plaintiff(s):

- Kisha Sanders (Female, 30 Years)
- Robert Lee Brown (Male, 28 Years)

Plaintiff Attorney(s):

- David Wenzholz; The Wenzholz Law Firm; Austin TX for Robert Lee Brown
- Luke Dow; ; Austin TX for Kisha Sanders
- Sean B. Swords; The Wenzholz Law Firm; Austin TX for Robert Lee Brown

- Plaintiff Expert(s):**
- Hector A. Miranda-Grajales M.D.; Life Care Planning; West Lake Hills, TX called by: Luke Dow
 - Robert Josey M.D.; Orthopedic Surgery; Austin, TX called by: David Wenholz, Luke Dow, Sean B. Swords
- Defendant(s):**
- DComm Inc.
 - Time Warner Cable
 - Ryan Alan Anthony Loredó
- Defense Attorney(s):**
- Catherine Kyle; Chamberlain McHaney; Austin, TX for Time Warner Cable, DComm Inc., Ryan Alan Anthony Loredó
- Defendant Expert(s):**
- Marc Chapman; Coding & Billing (Medical); Austin, TX called by: for Catherine Kyle
 - Brian Sullivan M.D.; Orthopedic Surgery; Austin, TX called by: for Catherine Kyle
- Insurers:**
- Cincinnati Insurance Co.

Facts:

On Feb. 23, 2016, plaintiff Robert Brown, 28, a cook, was driving in the middle lane of Interstate 35's southbound feeder road, in Austin. His girlfriend, plaintiff Kisha Sanders, a woman in her early 30s, was a passenger. Ryan Loredo, 19, a cable installer for DComm Inc., was driving his work truck in the right lane. Loredo entered the middle lane and struck the front of Brown's sedan. Brown and Sanders claimed they suffered neck and back injuries.

Brown and Sanders sued Loredo and DComm. The lawsuit alleged that Loredo was negligent in the operation of his vehicle and that the accident happened while he was in the course and scope of his employment with DC Comm. The plaintiffs also sued Time Warner Cable that had hired DComm as a contractor, but Time Warner was dismissed on summary judgment before trial.

The plaintiffs testified that Loredo suddenly and unexpectedly swerved into their lane.

Loredo enlisted in the military during the litigation and was assigned overseas. He did not attend the trial. Excerpts from his video deposition were played.

Loredo testified that a car ahead of him had stopped abruptly, forcing him to swerve to the left into the path of the plaintiffs' sedan. The defense conceded negligence on Loredo's part, but argued that Brown was equally responsible, because he failed to take evasive action. The defense also noted that neither plaintiff had a driver's license.

The defense stipulated that Loredo was in the course and scope of his employment with DComm.

After the accident and before trial, Brown was charged in connection with three alleged incidents of family violence, all of which came into evidence. Sanders was the alleged victim in each instance. One of the charges was a second-degree felony assault. Brown was convicted on two Class A misdemeanor charges and sentenced to 60 days in jail.

Sanders had a restraining order against Brown at the time of trial. The jury was not told of the restraining order, but the plaintiffs did not sit together.

Brown's counsel argued that he had been punished and paid his debt to society, and that he had become a better person.

Injury:

Brown refused an ambulance but went to the emergency room on his own later that day. He complained of neck and back pain. Brown underwent a cervical discectomy and fusion.

Brown claimed his injuries included herniation of the L5-S1 disc with abutment of the S1 nerve roots; a herniation of the L4-5 disc with abutment of the L5 nerve roots; cervical hypolordosis; a herniation of the C5-6 disc with impression on the thecal sac; and bulges of the C4-5 and C6-7 discs.

Brown testified that the impact was significant.

Brown underwent chiropractic care from early March 2016 through April 2016. He

underwent epidural steroid injections at L4-5 in August 2016 and at L5-S1 a few months later in October.

On Jan. 17, 2017, he underwent a lumbar fusion. Brown developed a complication, a hematoma in the rectus abdominis muscle, which had to be evacuated surgically on Jan. 23, 2017.

Brown testified that the pain limited him in his ability to lift his children and hindered him from performing chores and yard work.

Sanders also refused an ambulance but went to the emergency room on her own later that day. She also complained of neck and back pain.

Sanders underwent a lumbar fusion.

Sanders claimed she had a torn right subscapularis tendon; tearing of the right bicep tendon; linear tearing of the right anterior labrum; a bulge of the L5-S1 disc; and a herniation of the C6-7 disc with abutment of the right C6 nerve root.

She also testified that the impact was significant.

Sanders underwent a course of chiropractic care from March 2016 through April 2016. From late March to early May 2016, she underwent a cervical epidural steroid injection, a lumbar epidural steroid injection and a lumbar facet joint injection.

She underwent physical therapy 10 times from July to September 2016.

An orthopedic surgeon recommended that Sanders undergo an anterior cervical discectomy and fusion of C5 and C6. The procedure was performed on Dec. 8, 2016.

Between September 2017 and January 2018, she underwent a series of epidural steroid injections at C7-T1. In April 2019, she underwent a cervical facet joint injection.

Sanders testified that her injuries hindered her ability to lift her children, carry out chores and groom her hair.

Brown's counsel did not specify amounts for past and future medical expenses or for past and future disfigurement but did ask for \$185,620 for past physical pain and mental anguish; \$185,620 for future physical pain and mental anguish; \$90,000 for past physical impairment; and \$90,000 for future physical impairment.

The defense controverted Brown's medical bills, and the only ones that came into evidence were related to his surgeries. The surgeon testified that those bills were \$185,620.58.

According to defense counsel, Sanders' counsel sought \$525,000 for past medical expenses. Sanders' counsel disagreed. The defense had controverted Sanders' medical bills, and the only ones that came into evidence were related to her surgery. The surgeon testified that those bills were \$131,651.25.

According to defense counsel, Sanders' counsel also sought \$650,684 for future medical

expenses; \$140,000 for past physical pain and mental anguish; \$200,000 for future physical pain and mental anguish; unspecified damages for past physical impairment; \$50,000 for future physical impairment; unspecified damages for past disfigurement; and \$140,000 for future disfigurement.

Defense counsel argued that the accident was a low-speed, low-impact collision, and maintained that the damages being sought were excessive.

An orthopedic surgeon retained by the defense as an expert witness opined that Brown and Sanders' injections and surgeries were not related to the accident.

The defense also noted that, on the day of the accident, Brown's CAT scan showed degenerative narrowing between C4 and C5 with osteophytes, and he was diagnosed with neck sprains only.

Vehicle photos came into evidence, and they depicted little damage. Both vehicles were drivable, and the plaintiffs did not claim injury at the scene, the defense noted.

Defense counsel suggested an award of \$2,550 for each plaintiff.

One of Brown's providers accidentally included an MRI report from a different person with the same name. That report was dated before the accident.

Over Sanders' objection, it also came into evidence that she had Medicaid.

Result:

The jury found that that Loredo was liable for the accident. DComm was not submitted, but was liable under respondeat superior. The jury awarded the plaintiffs \$112,000. It did not find Brown negligent.

Some of the jurors spoke to defense counsel afterward and said the jury did not consider Brown's criminal history, nor the MRI report that was for a different person with the same name. They also said the lone holdout juror wanted to award a little more.

According to defense counsel, Loredo presented poorly in his deposition.

Luke Dow and David Wenholz became involved in the case after the discovery deadline had passed.

Sanders' last settlement demand before the verdict was \$750,000. The last offer to her was \$75,000, according to Sanders' counsel, or \$125,000, according to defense counsel.

Brown's last demand was \$270,000, and the last offer to him was \$100,000.

Robert Lee Brown

\$25,000 Personal Injury: Past Medical Cost

\$12,000 Personal Injury: Future Medical Cost

\$5,500 Personal Injury: Past Physical Impairment

\$500 Personal Injury: Future Physical Impairment

\$12,000 Personal Injury: past physical pain and mental anguish

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

Kisha Sanders

\$11,000 Personal Injury: Past Medical Cost

\$15,000 Personal Injury: Future Medical Cost

\$2,000 Personal Injury: Past Physical Impairment

\$2,000 Personal Injury: Future Physical Impairment

\$15,000 Personal Injury: past physical pain and mental anguish

\$9,000 Personal Injury: future physical pain and mental anguish

Trial Information:

Judge: Scott H. Jenkins

Trial Length: 3 days

**Trial
Deliberations:** 4.5 hours

Jury Vote: 11-1

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

**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' and defense counsel.

Writer

John Schneider

Plaintiff: Rear-ending led to back and head injuries

Type: Verdict-Plaintiff

Amount: \$95,000

State: Texas

Venue: Travis County

Court: Travis County District Court, 126th, TX

Injury Type(s):

- *back* - lower back
- *head* - occiput; headaches
- *other* - physical therapy; aggravation of pre-existing condition
- *neurological* - neurological impairment; neuralgia

Case Type:

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

Case Name: Jeramiah Coffey v. Tyler Hayden King, No. D-1-GN-19-003852

Date: November 16, 2022

Plaintiff(s):

- Jeramiah Coffey, (Male, 25 Years)

Plaintiff Attorney(s):

- Jacob Mancha; The Carlson Law Firm P.C.; Austin TX for Jeramiah Coffey

Plaintiff Expert(s):

- Rajat Gupta M.D.; Neurology; Austin, TX called by: Jacob Mancha

Defendant(s):

- Tyler Hayden King

Defense Attorney(s):

- Glenn Brown; Leighton Michaux Adkinson Brown; Austin, TX for Tyler Hayden King

Insurers:

- State Farm Insurance Cos.

Facts:

On July 10, 2017, plaintiff Jeramiah Coffey, 25, an information technology worker, was driving in Travis County when Tyler Hayden King rear-ended him. Coffey claimed he suffered back and head injuries.

Coffey sued King. The lawsuit alleged that King was negligent in the operation of his vehicle. Coffey claimed King negligently failed to keep a proper lookout and followed too closely.

The defense denied the allegations and argued that King's conduct, even if the jury believed he was at fault, did not rise to the level of negligence.

Injury:

Coffey went to class after the accident and went to an emergency room later that day. He ultimately claimed he suffered post-traumatic headaches, including but not limited to migraines; occipital neuralgia; and aggravation of a preexisting, work-related lumbar strain. He said he hit the back of his head against the headrest in the King accident.

Three days later, he went to his primary care doctor, who referred him to physical therapy. Coffey underwent physical therapy for about two months. His back improved, but not his head, he said.

In November 2017, he began seeing a neurologist. In March 2018, this doctor performed bilateral occipital injections for Coffey's headaches. The injections provided temporary relief.

Coffey returned to the neurologist in 2021 and said he was still having headaches.

He sought \$55,000 for past physical pain and mental anguish and \$1,005,000 for future physical pain and mental anguish.

The defense pointed out numerous inconsistencies between Coffey's deposition and trial testimony and argued that he was not truly injured. The defense also argued that headache pain and relief are largely subjective.

Result: The jury determined that Coffey's damages totaled \$95,000.

Plaintiff's counsel borrowed many specific trial tactics and techniques from such attorney lecturers and authors as David Ball (vignettes, preponderance template, harms and losses template, forced-answer questions), Bill Barton, Gerry Spence (worry-list scale questions), Mark Lanier (road map) and James McComas.

Jurors told plaintiff's counsel they would have liked to hear from lay damages witnesses.

Jeremiah Coffey

\$ 55,000 past physical pain and mental anguish

\$ 40,000 future physical pain and mental anguish

\$ 95,000 Plaintiff's Total Award

Trial Information:

Judge: Jessica Mangrum

Demand: \$20,000

Offer: \$7,500

Trial Length: 2 days

**Trial
Deliberations:** 6 hours

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

Writer John Schneider

Plaintiff claimed wrong fuel in gas pump destroyed vehicle

Type: Verdict-Plaintiff

Amount: \$89,772

State: Texas

Venue: Travis County

Court: Travis County District Court, 419th, TX

Case Type:

- *Consumer Protection - Deceptive Trade Practices Act*

Case Name: Janey Spellman v. Circle K Stores Inc. and American Energy Transport LLC, No. D-1-GN-18-000851

Date: July 13, 2021

Plaintiff(s):

- Janey Spellman, (Female, 0 Years)

Plaintiff Attorney(s):

- J. R. Skrabanek; Thompson & Skrabanek PLLC; Austin TX for Janey Spellman

Defendant(s):

- Circle K Stores Inc.
- American Energy Transport LLC

Defense Attorney(s):

- Ruben Alcantara; Law Office of R.E. Cox; San Antonio, TX for Circle K Stores Inc., American Energy Transport LLC

Insurers:

- Nationwide Mutual Insurance Co.

Facts: In May 2016, plaintiff Janey Spellman fueled her diesel sport utility vehicle at a convenience store and gasoline station located in Austin. Unknown to Spellman, the underground diesel tank had been mistakenly filled with unleaded gas. Later that day, her vehicle would not start. She took it to a dealership and was told that the wrong fuel had been used.

Spellman sued the convenience store's operator, Circle K Stores Inc., and the fuel-delivery company that had filled the gasoline tank, American Energy Transport, LLC. The lawsuit alleged negligence and a violation of the Deceptive Trade Practices Act.

Liability was decided via summary judgment. The trial addressed damages and attorney's fees.

Injury: Spellman's diesel vehicle sustained damage from being filled with non-diesel fuel. Her tank was almost empty when she filled it with unleaded gasoline.

Spellman claimed that the damage could not be repaired, and she sought the full value of her vehicle, a 2013 BMW X5. Her attorney argued for damages of \$67,439.32, based on the amount Spellman had paid for the vehicle, minus depreciation for the mileage.

Spellman also sought \$22,332.68 in attorney fees through trial, bringing the total amount sought to \$89,772.

The defense disputed the value of the vehicle and argued that it could have been repaired.

Result: The jury determined that Spellman's damages totaled \$89,772.

Janey Spellman

\$ 67,439.32 Property Damages

\$ 22,332.68 attorney's fees

\$ 89,772 Plaintiff's Total Award

Trial Information:

Judge: Catherine Mauzy

Trial Length: 2 days

**Trial
Deliberations:** 1 hours

Jury Vote: 6-0

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

Writer John Schneider

Plaintiff: Broadside crash led to injuries of neck, back and knees**Type:** Verdict-Plaintiff**Amount:** \$31,826**Actual Award:** \$27,052**State:** Texas**Venue:** Travis County**Court:** Travis County Court at Law No. 1, TX**Injury Type(s):**

- *arm*
- *hip*
- *leg*
- *back* - nerve impingement; bulging disc, lumbar
- *head* - headaches
- *neck* - nerve impingement
- *other* - chiropractic; bilateral knee injury
- *epidermis* - numbness
- *neurological* - nerve impingement

Case Type:

- *Motor Vehicle* - Left Turn; Red Light; Intersection; Multiple Vehicle; Question of Lights

Case Name: Sergio Cruz Ortiz v. Crystal Martinez, No. C-1-CV-20-003653**Date:** August 22, 2022**Plaintiff(s):**

- Sergio Cruz Ortiz, (Male, 24 Years)

Plaintiff Attorney(s):

- Bianca Moroles; Cagle Law Firm; Austin TX for Sergio Cruz Ortiz

Defendant(s):

- Crystal Martinez

**Defense
Attorney(s):**

- Augusto Guerra; Chavez Legal Group for Crystal Martinez

Insurers:

- Fred Loya

Facts:

On June 27, 2019, plaintiff Sergio Cruz Ortiz, 24, an air-conditioner installation technician, was driving north in Austin, approaching the westbound feeder road of a highway. Crystal Martinez was on the feeder road. Martinez attempted a left turn, and Ortiz broadsided her. The intersection was controlled by a traffic signal. Ortiz claimed he suffered injuries of his neck, back, hips and knees, as well as headaches.

Ortiz sued Martinez. The lawsuit alleged that she was negligent in the operation of her vehicle. Ortiz claimed that his light was green. He and an eyewitness testified that northbound traffic was proceeding through the intersection, while westbound traffic, except for Martinez, was stopping or slowing down at the light. Also, Ortiz said he had just crossed the eastbound feeder road on a fresh green light, and he and the eyewitness testified that the lights at the two intersections are in sync.

Plaintiff's counsel argued that Martinez accelerated suddenly to try to turn in front of Ortiz and that she ran a red light. Ortiz testified that he slammed on his brakes and swerved to the right but could not avoid the impact.

On rebuttal, plaintiff's counsel argued that, since only one of the drivers could have had a green light, the jury should find one or the other negligent, but not both.

Martinez testified that her light was green, but defense counsel acknowledged that she may have entered the intersection early, just before the light turned green. He argued that the jury should find her 40 to 50 percent responsible. He argued that Ortiz was inattentive because he was eating shaved ice; that he was speeding; and that he could have avoided the accident.

Injury:

Ortiz said he did not experience pain at first, but that the pain was severe by about two weeks after the accident. He then went to a pain management doctor. Ortiz ultimately claimed he suffered a bulging disc at L5-S1, as well as neck sprains and strains, headaches and pain in his hips and knees. He further claimed that the neck and back injuries caused numbness and weakness down his arms and legs and that the lumbar disc impinged a nerve root.

The pain management doctor prescribed medication, ordered X-rays and referred Ortiz to a chiropractor. He also eventually recommended a lumbar epidural steroid injection, but Ortiz declined it, saying he was afraid of the needle and potential complications.

The chiropractic care lasted through October 2019.

Ortiz testified that, during his recovery, he stopped going to the gym and gained weight. Also, his knees would lock unexpectedly, and he had to lean against a wall to try to unlock them, he said.

He testified that his head, neck, hip and knee issues resolved, but that his lower back issues persisted. He said sitting or standing for long periods aggravates his lower back and that he intends to return to the chiropractor. He acknowledged that he has started to lift weights again and that his job requires a lot of heavy lifting.

Both vehicles sustained significant damage.

Ortiz sought \$10,288 for past medical expenses; \$5,538 for future medical expenses; \$8,000 for past physical pain and suffering; \$5,000 for future physical pain and suffering; \$5,000 for past mental anguish; \$2,500 for future mental anguish; \$8,000 for past physical impairment; and \$5,000 for future physical impairment.

Result:

The jury found negligence and comparative responsibility of 85 percent on Martinez and 15 percent on Ortiz. It determined that Ortiz's damages totaled \$31,826, but the comparative-negligence reduction produced net damages of \$27,052.10.

Jurors told plaintiff's counsel afterward that they would have liked to have seen the light sequence. Plaintiff had video of it, but the judge excluded the video because it was not made or corroborated by the city. Jurors said they did not award future noneconomic damages because he seemed like he was doing fine. They also suggested that he could have slowed down and lessened the severity of the impact.

Sergio Ortiz

\$ 10,288 Past Medical Cost

\$ 5,538 Future Medical Cost

\$ 8,000 Past Physical Impairment

\$ 8,000 past physical pain and suffering

\$ 31,826 Plaintiff's Total Award

Trial Information:

Judge: Todd Wong

Demand: \$29,500

Offer: \$1,000

Trial Length: 1 days

**Trial
Deliberations:** 1.5 hours

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

Writer John Schneider

Plaintiff claimed she suffered sprains and strains in rear-end accident

Type: Verdict-Plaintiff

Amount: \$28,553

State: Texas

Venue: Travis County

Court: Travis County District Court, 459th, TX

Injury Type(s):

- *back* - lower back; sprain, lumbar; strain, lumbar
- *neck* - sprain, cervical; strain, cervical; herniated disc, cervical
- *other* - physical therapy

Case Type:

- *Motor Vehicle* - Truck; Rear-ender; Parking Lot

Case Name: Dana Henderson v. William Mouton, No. D-1-GN-17-005816

Date: October 23, 2019

Plaintiff(s):

- Dana Henderson (Female, 48 Years)

Plaintiff Attorney(s):

- C. Brooks Schuelke; Schuelke Law; Austin TX for Dana Henderson

Plaintiff Expert (s):

- Hector A. Miranda-Grajales M.D.; Physical Medicine; West Lake Hills, TX called by: C. Brooks Schuelke
- Randall Dryer M.D.; Orthopedic Surgery; Austin, TX called by: C. Brooks Schuelke

Defendant(s):

- William Mouton

Defense Attorney(s):

- Mark Siefken; MacInnes, Whigham & Siefken; Austin, TX for William Mouton

Insurers:

- State Farm Insurance Cos.

Facts: On Oct. 8, 2016, plaintiff Dana Henderson, 48, was the driver of a sport utility vehicle in the drive-thru of a McDonald's in Austin. William Mouton rear-ended her in a compact pickup truck. Henderson claimed neck and back injuries.

Henderson sued Mouton. The lawsuit alleged that he was negligent in the operation of his vehicle.

Mouton stipulated to liability.

Injury: Henderson went to a family doctor two days after the accident. She complained of neck and back pain. She was ultimately diagnosed with cervical and lumbar sprains and strains and a herniated cervical intervertebral disc.

She underwent physical therapy from November 2016 to February 2017. She underwent no further treatment until January 2018, when a cervical MRI showed a herniated disc. She saw an orthopedic surgeon, who recommended a cervical discectomy and fusion. The surgeon testified to his recommendation, and a retained medical expert testified to the surgery's probable cost, which was about \$151,000.

The damages submitted to the jury were past and future medical expenses, past and future physical pain, past and future mental anguish and past physical impairment. Henderson's counsel asked the jury to award the past medical, which was \$9,053.45 and about \$151,000 for future medical. He also suggested amounts for past physical pain, mental anguish and physical impairment, but said Henderson did not want anything for future physical pain and mental anguish.

Defense counsel said that Henderson was not hurt in the accident and that the jury should award zero in damages. The vehicles sustained no damage; there was an 11-month gap in treatment before the MRI and surgical recommendation; and Henderson has not had the surgery even though it was recommended almost two years before trial, he said.

Result: The jury awarded Henderson \$28,553.45.

Dana Henderson

\$9,053 Personal Injury: Past Medical Cost

\$12,500 Personal Injury: Past Physical Impairment

\$5,000 Personal Injury: past physical pain

\$2,000 Personal Injury: past mental anguish

Trial Information:

Judge: Maya Guerra Gamble

Demand: \$30,000 (Stowers; policy limit)

Offer: \$8,000

Trial Length: 3 days

**Trial
Deliberations:** 3 hours

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

Writer John Schneider

Auto accident caused back and neck injuries, plaintiffs claimed

Type: Verdict-Plaintiff

Amount: \$22,825

State: Texas

Venue: Travis County

Court: Travis County District Court, 353rd, TX

Injury Type(s):

- *back* - sprain, thoracic; strain, thoracic; herniated disc, lumbar; herniated disc at L4-5
- *head* - headaches
- *neck* - sprain, cervical; strain, cervical; bulging disc, cervical; herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7
- *other* - ablation; chiropractic; epidural injections

Case Type:

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

Case Name: Julie Dupre, individually and as next friend of Scarlet Dupre, and Beatrice McNabb v. Leah Heit, No. D-1-GN-17-006541

Date: December 13, 2019

Plaintiff(s):

- Julie Dupre (Female, 43 Years)
- Scarlet Dupre (Female, 8 Years)
- Beatrice McNabb (Female, 69 Years)

Plaintiff Attorney(s):

- Will Sutton; The Sutton Law Firm, P.C.; Austin TX for Beatrice McNabb, Julie Dupre, Scarlet Dupre

Plaintiff Expert(s):

- Dean Rushing D.C.; Chiropractic; Buda, TX called by: Will Sutton
- Rajat Gupta M.D.; Neurology; Austin, TX called by: Will Sutton
- Daniel Frederick M.D.; Pain Management; Austin, TX called by: Will Sutton

Defendant(s):

- Leah Heit

Defense Attorney(s):

- Todd M. Fine; Susan L. Florence & Associates; Austin, TX for Leah Heit

Defendant Expert(s):

- Joseph K. Vaughan M.D.; Neurology; Frisco, TX called by: for Todd M. Fine
- Arnolando Gutierrez D.C.; Chiropractic; San Antonio, TX called by: for Todd M. Fine
- Richard V. Baratta Ph.D.; Biomechanics; Houston, TX called by: for Todd M. Fine

Insurers:

- Allstate Insurance Co.

Facts:

On Jan. 4, 2017, plaintiff Julie Dupre, 43, a homemaker, was driving a minivan on the westbound side of Barbara Jordan Boulevard, in Austin. Her mother, plaintiff Beatrice McNabb, 69, a salesperson, was seated in the front seat, and Dupre's daughter, plaintiff Scarlet Dupre, 8, was in the middle row. While the vehicle was stopped at the yield sign at the northbound feeder road of Interstate 35, its rear end was struck by a trailing car that was being driven by Leah Heit. Dupre claimed that she suffered neck and back injuries. McNabb claimed that she suffered neck injuries. Scarlet suffered neck and back injuries.

Dupre, McNabb and Scarlet sued Heit. The lawsuit alleged that Heit was negligent in the operation of her vehicle.

Dupre testified that she was waiting for traffic to clear and had not started to proceed when Heit rear-ended her.

Heit testified that she was stopped for about a minute behind Dupre's minivan, and when its brake lights went off, Heit looked to her left and took her foot off the brake. When she saw that the minivan was not moving, she braked but could not stop in time, she said. Heit testified that the impact was just a tap.

Injury:

Dupre went to the hospital on her own. She ultimately claimed she suffered intervertebral disc herniations at L4-5, C5-6 and C6-7; thoracic sprains and strains; and migraines.

Dupre went to her long-time regular chiropractor soon after the accident and treated with him a few times for neck and back pain. Dupre was then referred by an attorney to Pro-Care Medical Center, where at various times she was examined by a chiropractor, an internist, a neurologist and a pain management doctor. In March 2017, the neurologist began administering periodic occipital nerve blocks for Dupre's migraines, and those treatments continued through the time of trial.

Dupre was also referred to Central Texas Pain Center. In April 2017, she underwent the first of four lumbar epidural steroid injection. In May 2018, she underwent a lumbar nerve block, and two months later, she underwent a lumbar radiofrequency ablation. She was still treating with Central Texas Pain at the time of trial.

The chiropractor and neurologist from Pro-Care testified, as did the pain management doctor from Central Texas Pain. They opined that the treatment was reasonable and necessary and that the claimed injuries were caused by the accident. The neurologist and pain management doctor testified that Dupre would need occipital nerve blocks and

lumbar radiofrequency ablations, respectively, for the rest of her life.

Dupre's husband testified in support of her pain and impairment.

Dupre's counsel asked the jury to award \$121,327.69 for her past medical expenses; \$126,000 for her future medical expenses; \$121,327.69 for her past physical pain and mental anguish; \$121,327.69 for her past physical impairment; and unspecified damages for her future physical pain and mental anguish and future physical impairment.

McNabb was taken by ambulance to an emergency room. She ultimately claimed she suffered intervertebral disc herniations at C3-4 and C4-5 and bulges at C5-6 and C6-7.

McNabb, who was visiting from Victoria at the time of the accident, was referred by an attorney to Pro-Care while in Austin and was treated by a chiropractor and examined by a pain management doctor.

McNabb's counsel asked for \$37,400.33 for her past medical; \$100,457 for her future medical; \$37,400.33 for her past physical pain and mental anguish; \$37,400.33 for her past physical impairment; and unspecified damages for her future physical pain and mental anguish and future physical impairment.

Dupre took Scarlet with her to the hospital, but the girl was not examined there. Dupre ultimately claimed that Scarlet suffered neck and back sprains and strains.

Dupre had been taking Scarlet to a chiropractor since she was 2 or 3 years old. Scarlet was treated by him a few times after the accident. She was then treated by a chiropractor at Pro-Care.

The family's counsel asked the jury to award \$4,755 for Scarlet's past medical expenses; \$4,755 for her past physical pain and mental anguish; and \$4,755 for her past physical impairment.

The defense disputed causation of the injuries. Photos of the vehicles showed only a scratch to the minivan and no damage to Heit's car. The defense called a biomechanical expert, who said delta-V, or change of velocity, of the Dupre's vehicle was 2.5 mph, at most. He also said the forces experienced by Dupre, McNabb and the child in the accident were comparable to sitting down and standing up.

Defense counsel said it was reasonable for Dupre, McNabb and the child to be examined and maybe to see a chiropractor a few times, but not to claim that they were injured for life or that the accident caused Dupre's ongoing migraines. A defense expert, a chiropractor, opined that Dupre, McNabb and the child were treated for longer than necessary. Another defense expert, a neurologist, opined that the treating neurologist's care was reasonable and necessary, but that the ongoing complaints of headaches and migraines were not caused by the accident. Dupre had complained of headaches before the accident.

Also, McNabb's MRI reports indicated degenerative findings, and Dupre had preexisting scoliosis and had complained of back pain for years before the accident.

Defense counsel suggested that, if the jury reached damages, it should award past medical

expenses of \$13,807.92 for Beatrice; \$3,440.62 for Scarlet; \$12,600.95 for Dupre; and no other damages.

Result: The jury found that Heit was liable for the accident. It awarded Dupre and McNabb \$22,825.09 total and awarded zero to Scarlet.

The presiding juror was deaf; sign-language interpreters were used during the trial.

Julie Dupre

\$9,017 Personal Injury: Past Medical Cost

Beatrice McNabb

\$13,808 Personal Injury: Past Medical Cost

Trial Information:

Judge: Tim Sulak

Trial Length: 4 days

**Trial
Deliberations:** 5 hours

Jury Vote: 11-1

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

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

Writer John Schneider

Plaintiff claimed rear-ending at traffic light caused neck injuries

Type: Verdict-Plaintiff

Amount: \$14,856

State: Texas

Venue: Travis County

Court: Travis County Court at Law No. 1, TX

Injury Type(s):

- *neck* - whiplash
- *other* - chiropractic

Case Type:

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

Case Name: Amy McCurdy v. Pamela Stroman, No. C-1-CV-19-002256

Date: July 11, 2022

Plaintiff(s):

- Amy McCurdy, (Female, 40 Years)

Plaintiff Attorney(s):

- Bianca Moroles; Cagle Law Firm; Austin TX for Amy McCurdy

Plaintiff Expert (s):

- Alberto King D.C.; Chiropractic; Austin, TX called by: Bianca Moroles

Defendant(s):

- Pamela Stroman

Defense Attorney(s):

- Adam Wyma; Fanaff, Hoagland, Gonzales, Baldwin & Cunningham; Austin, TX for Pamela Stroman

Insurers:

- Farmers Insurance Group of Cos.

Facts:

On Oct. 25, 2017, plaintiff Amy McCurdy, 40, a delivery driver for a sandwich shop, made a right turn from a driveway into the right lane of a street in Austin. She then changed lanes, and the traffic signal ahead changed from green to yellow. She stopped at the light, and Pamela Stroman rear-ended her. McCurdy claimed she suffered injuries of her neck.

McCurdy sued Stroman. The lawsuit alleged that Stroman was negligent in the operation of her vehicle.

McCurdy said that, after she signaled her lane change, Stroman flashed her lights to indicate that she was letting McCurdy into her lane. When she braked for the light, Stroman honked, which Stroman acknowledged was to encourage McCurdy to proceed through the intersection rather than stopping.

Stroman said that only five to 10 seconds passed from when she first saw McCurdy braking to the collision, but plaintiff's counsel noted that she had previously testified it was 10 to 15 seconds. Counsel further argued that, either way, she should have had enough time to stop.

Stroman denied flashing her lights and said that McCurdy recklessly cut her off and then stopped suddenly on a yellow light. She said McCurdy had plenty of time to proceed through the intersection.

The defense also noted that McCurdy changed her testimony about how far it was from the driveway to the intersection. At trial, she said she had recently revisited the scene, and the distance was shorter than she said before.

Injury:

McCurdy went to a pain management doctor two days after the accident. She ultimately claimed she suffered cervical, thoracic and lumbar sprains and strains, muscle spasms and headaches.

She went back to the pain management doctor about six weeks after the accident, in mid-December. In early January 2018, she began chiropractic treatment. She said she could not get an appointment with the chiropractor sooner because of the holiday season.

The chiropractor treated her for about two months.

The chiropractor testified that low-speed accidents can and often do cause injury, even when the vehicles sustain little or no damage. Also, McCurdy said she braced for the impact, which the chiropractor said can make the injuries worse. The chiropractor also opined that McCurdy would need \$10,000 in future care. However, McCurdy testified that she was doing better. Plaintiff's counsel said that, although the issues of future medical expenses, future physical pain and future physical impairment were submitted to the jury, damages for those elements were not sought in closing.

McCurdy sought \$7,856 for past medical expenses; \$5,000 for past physical pain; and \$5,000 for past physical impairment.

The defense disputed causation of the claimed injuries. The vehicle damage was minor; McCurdy's vehicle sustained hardly any damage.

Defense counsel suggested the jury award the past medical bills and \$3,000 in general damages, if the jury found liability.

Result:

The jury determined that McCurdy's damages totaled \$14,856.

The attorneys interviewed jurors afterward. They said the jury was not sure if McCurdy cut Stroman off or not, but felt that, even if she did, failing to stop when a car is in front of you is worse.

Amy McCurdy

\$ 7,856 Past Medical Cost

\$ 2,000 Past Physical Impairment

\$ 5,000 past physical pain

\$ 14,856 Plaintiff's Total Award

Trial Information:

Judge: Todd Wong

Demand: \$20,000

Offer: \$500

Trial Length: 1 days

**Trial
Deliberations:** 45 minutes

Jury Vote: 6-0

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

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

Writer John Schneider

Plaintiff: Rear-ending led to head and back injuries

Type: Verdict-Plaintiff

Amount: \$13,702

State: Texas

Venue: Travis County

Court: Travis County District Court, 455th, TX

Injury Type(s):

- *back* - lower back; bulging disc, thoracic; herniated disc, lumbar; herniated disc at L4-5
- *head* - headaches
- *neck* - bulging disc, cervical
- *other* - chiropractic
- *shoulder*
- *neurological* - radicular pain / radiculitis

Case Type:

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

Case Name: Shelbe Taylor v. Leanne Pugh, No. D-1-GN-22-002897

Date: February 07, 2024

Plaintiff(s):

- Shelbe Taylor, (Female, 29 Years)

Plaintiff Attorney(s):

- Thomas E. Pronske; Lorenz & Lorenz; Austin TX for Shelbe Taylor

Defendant(s):

- Leanne Pugh

Defense Attorney(s):

- Adam Wyma; Fanaff, Gonzales, Baldwin & Cunningham; Austin, TX for Leanne Pugh

Insurers: • Farmers Insurance Group of Cos.

Facts: On Oct. 1, 2021, plaintiff Shelbe Taylor, 29, a stay-at-home mom, was rear-ended by Leanne Pugh. Taylor's vehicle was totaled. The defense stipulated to liability.

Injury: Taylor went to urgent care on the date of the accident. She ultimately claimed a small cervical disc bulge, a thoracic disc bulge and a disc bulge at L4-5, as well as headaches and radiating shoulder pain.

She treated with a chiropractor 30 times over a three-month period. Toward the end of that treatment, she complained of lumbar pain for the first time, was referred to a pain management doctor and underwent a lumbar MRI. The bill and records for the lumbar MRI were not in evidence, but the pain management doctor's records referenced a disc bulge at L4-5. Taylor saw the pain management doctor twice.

Taylor testified that her injuries made housekeeping and taking care of her toddler difficult and painful.

Taylor sought \$14,885.28 for past medical expenses; \$16,000 for future medical expenses; \$10,000 for past physical pain and mental anguish; \$7,000 for future physical pain and mental anguish; \$10,000 for past physical impairment; and \$7,000 for future physical impairment.

The defense argued that the lumbar complaints were not related to the accident and that the evidence did not support the amounts Taylor was seeking for noneconomic damages.

Defense counsel suggested an award of \$11,202 for past medical expenses, consisting of everything except the pain management visits. He also suggested \$3,000 for past physical pain and mental anguish, \$2,000 for past physical impairment and zero for all other elements.

Result: The jury determined that Taylor's damages totaled \$13,702.

Shelbe Taylor

\$ 11,202 Past Medical Cost

\$ 1,000 Past Physical Impairment

\$ 1,500 past physical pain and mental anguish

\$ 13,702 Plaintiff's Total Award

Trial Information:

Judge: Jessica Mangrum

Demand: \$30,000

Offer: \$24,000

Trial Length: 2 days

**Trial
Deliberations:** 1 hours

Jury Vote: 12-0

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

Writer John Schneider