



## Tractor-trailer collision led to five deaths, three other injuries

**Type:** Mediated Settlement

**Amount:** \$7,800,000

**State:** New Jersey

**Venue:** Federal

**Court:** U.S. District Court, District of New Jersey, Newark, NJ

**Injury Type(s):**

- *back* - lordosis; myelopathy; fracture, back; fracture, T7; fracture, back; fracture, T8; contusion, spine; nerve impingement; fracture, vertebra; fracture, T7; fracture, vertebra; fracture, T8; bulging disc, lumbar
- *knee* - meniscus, tear; medial meniscus, tear
- *neck* - lordosis; myelopathy; fracture, neck; fracture, C3; contusion, spine; nerve impingement; fracture, vertebra; fracture, C3; derangement, 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; herniated disc, cervical; herniated disc at C7-T1
- *other* - death; spondylitis; comminuted fracture; compression fracture; nondisplaced fracture
- *shoulder* - derangement, shoulder
- *face/nose* - facial laceration; scar and/or disfigurement, face
- *foot/heel* - fracture, foot; fracture, metatarsal
- *hand/finger* - fracture, metacarpal
- *neurological* - radiculopathy; nerve impingement
- *mental/psychological* - anxiety; depression
- *paralysis/quadriplegia* - paralysis; tetraplegia

**Case Type:**

- *Wrongful Death*
- *Insurance - Coverage*
- *Motor Vehicle - Rear-ender; Tractor-Trailer; Multiple Vehicle*

**Case Name:** Rose Mary Olcese and Joseph Urbano, in their capacity as administrators of the Estates of Jeannette Urbano and Salvatore Urbano, deceased v. Dewey T. Thomas, Ron Campbell, Cromartie Transportaion Lines, Zelenka Nursery and CRST Malone Inc.; Edward M. Kane, administrator ad prosequendum of the Estates of Anna B. Kane, Rose K. Kane and Francis X. Kane, deceased v. Dewey T. Thomas, Ron Campbell, Cromartie Transportation Lines, Zelenka Nursery and CRST Malone Inc.; Alphonso Simmons, Stephen Magee and Kenneth Brown v. Dewey T. Thomas, Ron Campbell, Cromartie Transportaion Lines, Zelenka Nursery and CRST Malone, Inc., No. 2:09-cv-06076-SRC - MAS (consolidated)

**Date:** February 14, 2011

**Plaintiff(s):**

- Anna B. Kane (Female, 70 Years)
- Rose K. Kane (Female, 70 Years)
- Joseph Urbano (Male)
- Kenneth Brown (Male)
- Stephen Magee (Male)
- Edward M. Kane (Male)
- Francis X. Kane (Male, 70 Years)
- Jeanette Urbano (Female, 70 Years)
- Alphonso Simmons (Male, 56 Years)
- Rose Mary Olcese (Female)
- Salvatore Urbano (Male, 70 Years)

**Plaintiff Attorney(s):**

- Stephanie Ann Mitterhoff; Bramnick, Rodriguez, Mitterhoff, Grabas & Woodruff, LLC; Scotch Plains NJ for Rose Mary Olcese, Joseph Urbano, Jeanette Urbano, Salvatore Urbano
- Kenneth A. Berkowitz; Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C.; Chatham NJ for Edward M. Kane, Anna B. Kane, Francis X. Kane, Rose K. Kane
- Daniel Thomas Gluck; Zaremba Brownell & Brown, PLLC; New York NY for Alphonso Simmons, Stephen Magee, Kenneth Brown
- John Zaremba; Zaremba Brownell & Brown, PLLC; New York NY for Alphonso Simmons, Stephen Magee, Kenneth Brown

**Plaintiff Expert (s):**

- Peter Salgo M.D.; Pain & Suffering Evaluations; New York, NY called by: Stephanie Ann Mitterhoff

**Defendant(s):**

- Ron Campbell
- Dewey T. Thomas
- Zelenka Nursery
- CRST Malone, Inc.
- Cromartie Transportaion Lines

**Defense Attorney(s):**

- Leonard C. Leicht; Morgan Melhuish Abrutyn; Livingston, NJ for Zelenka Nursery
- David M. Maselli; Wright & O'Donnell, P.C.; Conshohocken, PA for Dewey T. Thomas
- David Aaron Weglin; Stevens & Schwab; Berkeley Heights, NJ for CRST Malone, Inc.

**Facts:**

On April 25, 2009, decedents Salvatore and Jeannette Urbano, husband and wife in their 70s, were en route to a wedding from the Passaic area to southern New Jersey. Jeannette's three adult siblings, all in their 70s, were in the rear seat. On the New Jersey Turnpike, near Exit 4, as traffic slowed down and backed up, Dewey T. Thomas' tractor-trailer rig rear-ended the Urbanos' vehicle, which caught fire; all five occupants burned to death.

Nine vehicles became involved in the subsequent chain-reaction accident. The three occupants of the car in front of the Urbano vehicle -- Alphonso Simmons, 56, Stephen Magee, 56, and Kenneth Brown, 54 -- were also injured but survived.

Three lawsuits ensued against Dewey, the trucking firm he was contracted to haul flowers from Georgia to New York for, and the nursery that was shipping the plants. Dewey had delivered the flowers and was returning with an empty trailer. All three actions were soon consolidated. One of the defendants, CRST Malone, Inc. was improvidently made a party because its DOT required decal had not been removed from the trailer. CRST Malone achieved a voluntary dismissal.

Dewey did not seriously dispute his liability but insurance issues complicated the resolution of the case. The tractor was nominally owned by Dewey pursuant to a lease-purchase arrangement and had \$1 million in available insurance coverage. The trailer, owned by the nursery for whom the plants had been hauled, had \$10 million in available coverage, but that policy contained a provision excluding coverage if the trailer is being towed by a tractor "owned" by an operator other than that of the tractor.

Because of the purchase-lease status of Dewey's "ownership," the parties disputed whether the extended coverage on the trailer was available. If not, there was only \$1 million available to the five decedents and three seriously injured people. The coverage question became complicated by choice of law issues. The tractor's lease agreement with the finance company had a nexus to Michigan, Dewey lives and "owns" his truck in Georgia and the contract with the trucking company is a Georgia document. Plaintiffs Simmons, Magee and Brown were New York residents. Application of New Jersey, Georgia, Michigan and/or New York law would have resulted in quite disparate results.

**Injury:**

With the exception of Jeanette Urbano, who witnesses say showed some signs of life for a short time after being pulled from the car, all five occupants of the Urbano vehicle burned to death in the fire and had a very short time of conscious pain and suffering. Jeanette and Salvatore Urbano had two surviving adult children.

Anna B. Kane, Rose K. Kane and Francis X. Kane, the back-seat passengers, were survived by some nephews and nieces.

Alphonso Simmons was rendered a quadriplegic by the accident and will be confined to a wheelchair for the rest of his life. Simmons was taken via emergency airlift to Cooper University Hospital in Camden where he was diagnosed with tetraplegia secondary to a spinal cord injury. He was transferred to Mount Sinai Hospital in New York, N.Y., on May 4, 2009. Upon admission to Mount Sinai, Simmons was found to suffer from tetraplegia, and had no use of any part of his body below his neck. He continued as an inpatient admission at Mt. Sinai through July 6, 2009, and has been diagnosed with: fractured spine at C3 with spinal cord compression; spinal cord compression at T7/8; central cord compression; central cord syndrome; sacral decubiti ulcer; and facial lacerations requiring sutures.

Simmons now has a continuous need for use of Aspen collar, motorized wheelchair and a Foley catheter. He claimed psychological damages, has continued with outpatient rehab with Mt. Sinai from the date of his discharge through today and anticipates the need for rehabilitation for the balance of his life. With the aid of rehabilitation, Simmons has resumed light ambulation with assistance, but continues to suffer from tetraplegia and drastically reduced sensation, neurological damage, flexibility and range of motion in all of his extremities; including significant stiffness and inability to use his bilateral upper extremities and significant loss of his fine motor skills.

Stephen Magee was first taken via emergency airlift to Cooper University Hospital in Camden where he was diagnosed with tetraplegia secondary to a spinal cord injury. He was transferred to Mount Sinai hospital on May 4, 2009, where he was found upon admission to suffer from tetraplegia and had no use of any part of his body below his neck. Magee continued an inpatient admission at Mt. Sinai through May 19, 2009. He has been diagnosed with: spinal cord contusion; C1-4 central cord syndrome; C5-7 central cord syndrome; cervical canal narrowing; spondylotic changes at C3-4, C5-6, and C6-7 with neuroforaminal narrowing; loss of the normal cervical lordosis; comminuted fracture of right fifth metatarsal with medial displacement and lateral angulation of the fracture fragments; and non-displaced fracture of the fourth metatarsal.

With the aid of rehabilitation, Magee has resumed light ambulation with assistance, but continues to suffer from tetraplegia and drastically reduced sensation, neurological damage, flexibility and range of motion in all of his extremities; including significant stiffness and inability to use his bilateral upper extremities and significant loss of his fine motor skills. His neurological damage and loss of sensation, flexibility and mobility is permanent, and he will require assistance in ambulating for the balance of his life.

Brown was first taken via emergency airlift to Virtua Hospital in Marlton. He was released to the care of an emergency medicine care specialist closer to his home in Brooklyn, N.Y., and was diagnosed with diagnosed with: cervical spine derangement with herniated discs at C3-4, C5-6, C6-7 and C7-T1; impingement upon the spinal cord; bilateral neural foraminal narrowing at C3-4 and C5-6; cervical myelopathy and cervical radiculopathy; dorsal spine sprain and strain resulting in radiculopathy; lumbosacral spine derangement with a bulging disc at L4-5; torn medial meniscus in the right knee for which surgery has been indicated; torn meniscus in the left knee; right shoulder internal derangement; facial lacerations and scarring; and post-traumatic adjustment reaction with depression and anxiety.

Brown has been told he will need multiple surgical interventions relative to his injuries, which are permanent in nature.

**Result:**

After mediation with retired Superior Court Judge James D. Clyne, with Benchmark Resolution Services, LLC, in New Egypt, the parties reached a global settlement of \$7.8 million.

The estates of Jeanette and Salvatore Urbano received a combined \$1.5 million. The estates of the Kane sisters shared a combined \$1.8 million. The three occupants of the Simmons vehicle received a total of \$4.5 million, with the lion's share going to Simmons.

**Trial Information:**

**Judge:** Stanley R. Chesler, James D. Clyne J.S.C. (ret.)

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

**Writer** Jon Steiger

## Big Rig Rear-Ends Car Slowing To Avoid Lane Changer

**Type:** Verdict-Plaintiff

**Amount:** \$2,717,654

**Actual Award:** \$2,717,654

**State:** California

**Venue:** San Joaquin County

**Court:** Superior Court of San Joaquin County, Stockton, CA

**Injury Type(s):**

- *back* - contusion, spine
- *neck* - contusion, spine
- *shoulder* - frozen shoulder (adhesive capsulitis)
- *urological* - neurogenic bladder

**Case Type:**

- *Motor Vehicle* - Rear-ender; Tractor-Trailer

**Case Name:** Alfredo Concepcion v. Nestle Transportation Company, Joyce Sinclair, Nino Frank Masellis, Vito Masellis, Quality Used Cars, No. CV 008304

**Date:** August 08, 2002

**Plaintiff(s):**

- Alfredo Concepcion (Male, 56 Years)

**Plaintiff Attorney(s):**

- Hartley T. Hansen; Hansen, Boyd, Culhane and Watson; Sacramento CA for Alfredo Concepcion
- John J. Rueda; Hansen, Boyd, Culhane & Watson; Sacramento CA for Alfredo Concepcion

**Plaintiff Expert  
(s):**

- John D. Hancock; Economics; Sacramento, CA called by: Hartley T. Hansen, John J. Rueda
- David Yoshida Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Palo Alto, CA called by: Hartley T. Hansen, John J. Rueda
- Peggy Portwood M.D.; Physical Medicine; Sacramento, CA called by: Hartley T. Hansen, John J. Rueda
- Steven W. McCormick Ph.D.; Psychology/Counseling; Sacramento, CA called by: Hartley T. Hansen, John J. Rueda
- Maureen D. Miner M.D.; Spinal Injury/Trauma; Gilroy, CA called by: Hartley T. Hansen, John J. Rueda
- William P. Duffy M.D.; Orthopedic Surgery; Sacramento, CA called by: Hartley T. Hansen, John J. Rueda
- Kathleen McCann R.N.; Life Care Planning; Vista, CA called by: Hartley T. Hansen, John J. Rueda

**Defendant(s):**

- Vito Masellis
- Joyce Sinclair
- Quality Used Cars
- Nino Frank Masellis
- Nestle Transportation Company

**Defense  
Attorney(s):**

- Robert Gephardt; Schnader, Harrison, Segal & Lewis; San Francisco, CA for Nestle Transportation Company, Joyce Sinclair
- Juliet Stoudt; Schnader, Harrison, Segal & Lewis; San Francisco, CA for Nestle Transportation Company, Joyce Sinclair
- Douglas McKay; Vitale & Haluck; Rancho Cordova, CA for Nino Frank Masellis, Vito Masellis, Quality Used Cars

**Defendant  
Expert(s):**

- Earle Fogelburg M.D.; Orthopedic Surgery; San Francisco/Daly City, CA called by: for Robert Gephardt, Juliet Stoudt, Douglas McKay
- James Y. Soong; Neurology; San Francisco, CA called by: for Robert Gephardt, Juliet Stoudt, Douglas McKay
- Randy Sugarman; Economics; San Francisco, CA called by: for Robert Gephardt, Juliet Stoudt, Douglas McKay
- Anthony Stone M.D.; Urology; Sacramento, CA called by: for Robert Gephardt, Juliet Stoudt, Douglas McKay
- Gregory Sells; Vocational Rehabilitation; Sacramento, CA called by: for Robert Gephardt, Juliet Stoudt, Douglas McKay

**Insurers:**

- Empire Fire and Marine Insurance
- Lloyds

**Facts:**

On Dec. 22, 1998, the plaintiff, a 52-year-old licensing program analyst employed by the State of California-- Department of Social Services, was driving southbound in the slow lane of State Route 99 in Modesto. Defendant Joyce Sinclair, while in the course and scope of her employment, was driving an 18-wheel tractor/trailer that was owned by defendant Nestle Transportation behind the plaintiff. The plaintiff claimed that as he was driving, he had to stop his care to avoid slowing traffic in front of him caused by a dangerous lane maneuver undertaken by Vito Frank Masellis. When the plaintiff stopped his vehicle, defendant Sinclair did not stop the big rig in time and rear-ended the plaintiff's vehicle. Defendant Used Quality Cars is the fictitious name of the used car business co-owned by defendants Vito and Nino Masellis, and was the registered owner of the vehicle driven at the time of the accident by Vito Masellis. Defendant Nino Masellis is also the father of Vito Masellis.

**Injury:**

The plaintiff presented evidence at trial that as a result of this accident, he suffered a spinal cord contusion diagnosed as central cord syndrome at the C3-C4 level with resulting loss of motor strength and increased fatigability in the upper and lower extremities (more pronounced in the upper extremities). He has been able to regain significant amounts of function in his upper and lower extremities, but has permanent weakness in the upper extremities particularly with fine motor functions of the hand, and constant severe neurogenic pain particularly in the cervical and shoulder areas. The plaintiff also suffered with neurogenic bladder symptoms with a significant increased urinary frequency and urgency, as well as a frozen left shoulder. The plaintiff claimed that he is permanently disabled from his regular occupation as an inspector of group homes for the Department of Social Services for the State of California, that he virtually cannot partake in any of his avocational activities, and his injuries require a comprehensive life care plan providing for diagnostic, therapeutic and preventative medical services, in-home assistance and equipment.

The defendants, while conceding liability and conceding that the plaintiff did suffer from central cord syndrome injury as a result of this accident, disputed the seriousness and extent of the plaintiff's injuries. The defendants contended that the plaintiff was able to perform some outside employment, and disputed many of the plaintiff's life care plan as unnecessary. The defendants procured sub rosa video of the plaintiff, which they claimed showed the plaintiff's level of function to be greater than asserted (the plaintiff claimed that the video only showed him performing his morning walks that he always disclosed that he was able to do).

**Result:**

After four-days of deliberation, the jury returned an award of \$2,717,654.

The plaintiff's counsel reported that the jury focused most of its attention on specific components of the plaintiff's life care plan and it appeared the jury itemized each item and decided them on a per item basis.



## **Alfredo Concepcion**

\$1,217,654 Personal Injury: economic damages

\$1,500,000 Personal Injury: non-economic damages

### **Trial Information:**

**Judge:** K. Peter Saiers

**Demand:** \$4.9 million collectively to all defendants

**Offer:** \$1.5 million collectively from all defendants

**Trial Length:** 18 days

**Trial  
Deliberations:** 4 days

**Post Trial:** After the trial, the defendants agreed to apportion 55% liability to defendants Vito Masellis, Nino Masellis and Quality Used Cars and 45% comparative liability to defendants Nestle Transportation and Joyce Sinclair (neither the defendants nor the plaintiff asked for an apportionment of fault from the jury. The defendants had stipulated to liability and did not want to appear adverse to each other during the trial on damages). The defendants did not appeal the judgment entered on the verdict&

**Writer** Randy Stewart

## Plaintiff claimed she tore knees in highway crash

**Type:** Verdict-Plaintiff

**Amount:** \$1,700,000

**Actual Award:** \$800,000

**State:** New York

**Venue:** Bronx County

**Court:** Bronx Supreme, NY

**Injury Type(s):**

- *back* - sprain, lumbar
- *knee* - meniscus, tear
- *neck* - sprain, cervical
- *other* - physical therapy
- *surgeries/treatment* - arthroscopy

**Case Type:**

- *Motor Vehicle* - Passenger; Multiple Vehicle; Weather Conditions

**Case Name:** Tiffany Horton v. Hannaford Trucking Co. & John E. Albert, No. 18309/05

**Date:** March 07, 2011

**Plaintiff(s):**

- Tiffany Horton (Female, 21 Years)

**Plaintiff Attorney(s):**

- Alan M. Greenberg; Law Offices of Alan M. Greenberg, New York, NY, trial counsel, Sheldon Leibenstern; New York NY for Tiffany Horton

**Plaintiff Expert (s):**

- David Capiola M.D.; Orthopedics; New York, NY called by: Alan M. Greenberg

**Defendant(s):**

- John Albert
- Hannaford Trucking Co.

**Defense  
Attorney(s):**

- Lawrence J. Buchman; Pillinger Miller Tarallo LLP; Elmsford, NY for Hannaford Trucking Co., John Albert

**Defendant  
Expert(s):**

- Joseph Tuvia M.D.; Radiology; New York, NY called by: for Lawrence J. Buchman
- Charles Toterio M.D.; Orthopedics; Purchase, NY called by: for Lawrence J. Buchman

**Facts:**

On Jan. 22, 2005, plaintiff Tiffany Horton, 21, an airline's hostess, was a rear-seat passenger of a vehicle that was traveling on the southbound side of the New York State Thruway, near Catskill. The vehicle was struck by a 48-foot-long southbound tractor-trailer that was being driven by John Albert. Horton claimed that she sustained injuries of her back, her knees and her neck.

Horton sued Albert and his employer, Hannaford Trucking Co. Horton alleged that Albert was negligent in the operation of his vehicle. Horton further alleged that Hannaford Trucking was liable because the accident occurred within the scope of Albert's work functions.

Horton claimed that she was sleeping when the accident occurred, and, as such, she contended that she could not describe the circumstances that preceded the incident. Her counsel claimed that Albert was maintaining a speed of 35 to 40 mph in conditions that were marred by heavy snowfall. He contended that Albert's rig struck the rear end of the vehicle in which Horton was traveling. Photographs demonstrated that Horton's vehicle was badly crushed.

Albert contended that his vehicle fishtailed. He claimed that he applied the truck's brakes, but that he could not avoid the collision. He also claimed that his rig struck the rear portion of the right side of the vehicle that Horton occupied, not the rear end. However, defense counsel ultimately conceded liability. The trial addressed damages.

**Injury:**

Horton was placed in an ambulance, and she was transported to a hospital. She underwent minor treatment of sprains of her back and neck. She acknowledged that her sprains quickly resolved.

Horton claimed that her knees became painful during the ensuing day. She initially underwent about six months of physical therapy, and she contended that she could not work during the treatment. In June 2005, she underwent arthroscopic surgery that addressed her right knee. The surgeon repaired a tear of the knee's meniscus, and Horton claimed that the damage was a result of the accident.

Horton contended that her left knee's pain continued, but that pregnancy and subsequent child-rearing responsibilities delayed her attention to the injury until August 2010, when she underwent arthroscopic surgery. The surgeon repaired a tear of the knee's meniscus, and Horton claimed that the damage was a result of the accident.

Horton contended that her knees remain painful, that they occasionally buckle and that they emit clicking sounds. She claimed that she cannot run, that she cannot endure prolonged periods in which she is standing and that she cannot resume one of her favorite recreational activities: skiing.

Horton sought reimbursement of a medical-expenses lien that approximated \$16,000. She also sought recovery of damages for her past and future pain and suffering.

Defense counsel contended that Horton's right knee has fully healed without residual effects. He also contended that her left knee's injury was not a result of the crash, given the significant gap between the accident and the surgery that addressed the knee.

Concurrent with the defense's concession of liability, the parties negotiated a high/low stipulation: Damages could not exceed \$800,000, but they had to equal or exceed \$200,000.

**Result:**

The jury determined that Horton's damages totaled \$1.7 million. However, Horton's recovery was limited to the high/low stipulation's maximum amount: \$800,000.

**Tiffany Horton**

\$700,000 Personal Injury: Past Pain And Suffering

\$1,000,000 Personal Injury: future pain and suffering (53.4 years)

**Trial Information:**

**Judge:** Julia Rodriguez

**Demand:** \$600,000 (prior to the trial)

**Offer:** \$250,000

**Trial Length:** 4 days

**Trial  
Deliberations:** 2.5 hours

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

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

**Writer** Jaclyn Stewart

## Big rig's rear-ender set off multiple vehicle smash-up

**Type:** Mediated Settlement

**Amount:** \$1,235,598

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *back* - bulging disc
- *neck* - bulging disc
- *other* - avulsion fracture
- *shoulder*
- *face/nose* - fracture, facial bone; fracture, orbit
- *hand/finger* - hand

**Case Type:**

- *Motor Vehicle* - Truck; Rollover; Rear-ender; Multiple Impact; Multiple Vehicle

**Case Name:** John Doe Driver and John Roe Operator v. three unnamed, No. Confidential

**Date:** December 22, 2006

**Plaintiff(s):**

- John Doe Driver (Male, 55 Years)
- John Roe Operator (Male, 53 Years)

**Plaintiff Attorney(s):**

- Andrew L. Shapiro; Lewitt, Hackman, Shapiro, Marshall & Harlan; Encino CA for John Doe Driver, John Roe Operator
- David B. Bobrosky; Lewitt, Hackman, Shapiro, Marshall & Harlan; Encino CA for John Doe Driver, John Roe Operator

**Defendant(s):**

- unnamed

**Defense Attorney(s):**

- Defense Confidential; conf., CA for unnamed

**Facts:**

On May 17, 2005, at approximately 5:35 a.m., plaintiff John Doe Driver, 55, was driving a 1987 Mack truck for work, with plaintiff John Roe Operator, 53, a front end loader and machine operator, in the passenger seat. Both were wearing seatbelts. As plaintiffs were traveling at approximately 50 mph in the far right lane of the northbound Route 14, they were struck in the right rear by Defendant A, who was driving a big rig. The force and angle of the collision caused plaintiffs' Mack truck to go out of control across the northbound lanes, roll over onto its passenger side, and crash into the center divider. Plaintiffs' vehicle was eventually struck again in the fast lane by Defendant C.

Plaintiffs Doe Driver and Roe Operator sued Defendants A, B and C for negligence. Defendant A was the driver and owner of the tractor. Defendant B was the owner of the trailer. Both A and B were initially represented by one counsel. Defendant C was always in pro per. Defendant A filed a cross complaint for indemnity against Doe Driver.

The defense contended that Plaintiffs were partially responsible for the accident and the significant injuries that occurred. The defense contended that Plaintiffs' truck was carrying a load that was too heavy for the truck, and one that was not properly loaded, balanced or secured. Additionally, the defense argued that it was the load and all of its problems that caused the truck to overturn, resulting in the most serious of the injuries. The defense also contended that the plaintiffs were driving too slow up an incline and should have had their hazards on.

Plaintiffs' counsel recreated the loading procedure and accident to show that the truck was properly loaded and balanced, and that the accident was solely caused by Defendants' negligence.

**Injury:**

Doe Driver suffered a 2 mm broad based disc bulge at L4-5; 2-3 mm disc protrusion at L5-S1 and a right shoulder sprain.

Plaintiff Roe Operator suffered a left distal tibia/fibia fracture, a right orbital blow-out fracture, left hand 3rd, 4th, and 5th avulsed injuries to the proximal and distal phalanges on the palmar side.

Doe Driver treated with an internist and orthopedist. The defense contended that Doe Driver suffered essentially soft tissue injuries that required physical therapy. No surgical intervention was necessary. The defense further contended that the disc bulges and protrusions were normal for a man of his age and occupation.

Plaintiff Roe Operator underwent two surgeries on his left leg and one surgery on his right hand. Roe Operator has virtually no educational background and worked as a manual laborer and machine operator for his entire life. His residuals included walking with a cane and a limited functioning left hand.

Doe Driver's medicals totaled \$17,780.31 and Roe Operator's totaled \$171,095.94

**Result:**

The parties agreed to a \$1,235,597.94 mediated settlement.

**Trial Information:**

**Judge:** Holly Kendig

**Writer:** Michael Rehak



**Plaintiff: Multiple vehicle crash caused ankle and back injuries**

**Type:** Settlement

**Amount:** \$1,200,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *back* - fusion, lumbar; bulging disc, lumbar
- *ankle* - fracture, ankle; fracture, distal fibula
- *surgeries/treatment* - discectomy

**Case Type:**

- *Motor Vehicle* - Truck; Multiple Vehicle

**Case Name:** Victor Avila Marquez v. Americus Logistics, Marco Antonio Silva, Conrad Rios and BP Products North America Inc., No. KC059156

**Date:** March 06, 2012

**Plaintiff(s):**

- Victor Marquez (Male, 50 Years)

**Plaintiff Attorney(s):**

- Juan J. Dominguez; Juan J. Dominguez, APLC; Los Angeles CA for Victor Marquez
- Spencer R. Lucas; Panish, Shea & Boyle, L.L.P.; Los Angeles CA for Victor Marquez
- Thomas A. Schultz; Panish, Shea & Boyle, L.L.P.; Los Angeles CA for Victor Marquez

**Plaintiff Expert  
(s):**

- P. Richard Emmanuel M.D.; Orthopedics; Culver City, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- V. Paul Herbert C.P.S.A.; Truck Industry Policy & Procedures; Quincy, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Bakersfield, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- Alvin Lowi, III P.E.; Mechanical; El Segundo, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- Peter Formuzis Ph. D.; Economics; Santa Ana, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- Sanjog Pangarkar M.D.; Physical Medicine; Los Angeles, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz
- Richard H. Andersen Ph.D.; Vocational Rehabilitation; Westminster, CA called by: Juan J. Dominguez, Spencer R. Lucas, Thomas A. Schultz

**Defendant(s):**

- Conrad Rios
- Americus Logistics
- Marco Antonio Silva
- BP Products North America Inc.

**Defense  
Attorney(s):**

- Marc W. Hawkins; Law Offices of Marc W. Hawkins; Diamond Bar, CA for Americus Logistics, Marco Antonio Silva
- George L. Mallory, Jr.; George L. Mallory, Jr. & Associates; Los Angeles, CA for BP Products North America Inc., Conrad Rios

**Defendant  
Expert(s):**

- Ed Workman Ph.D.; Vocational Rehabilitation; San Clemente, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Ken Solomon Ph.D., P.E.; Accident Reconstruction; Woodland Hills, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Ted Vavoulis M.A.; Economics; Los Angeles, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Isaac Yang M.D.; Neurosurgery; Los Angeles, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- George Reis; Accident Photo Analysis & Mapping; Fountain Valley, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Milton E. Legome M.D.; Orthopedic Surgery; Orange, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Thomas J. Lepper; Brakes; Long Beach, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.
- Richard B. Rhee M.D.; Radiology; Corona del Mar, CA called by: for Marc W. Hawkins, George L. Mallory, Jr.

**Facts:**

On April 6, 2010, plaintiff Victor Marquez, 50, a truck driver, was operating a big rig truck, a 2010 Freightliner, on the eastbound State Route 60 in the city of Industry when he slowed to stop with the rest of traffic. Subsequently, his truck was rear-ended by another big rig truck, a 2009 Kenworth, which was being operated by Conrad Rios, and Rios' big rig was rear-ended by a third big rig truck, which was operated by Marco Silva. Upon impact, Marquez was forcefully jolted forward and backward inside his truck while seat belted. Paramedics then arrived on the scene and examined Marquez, whom complained of back and ankle pain, and was transported to St. Jude Medical Center.

Marquez sued Rios; the owner of Rios' truck, BP Products North America Inc.; Silva; and the owner of Silva's truck, Americus Logistics. Marquez alleged that Rios and Silva were negligent in the operation of their respective big rig trucks. He also alleged that BP Products was vicariously liable for Rios' actions and that Americus Logistics was vicariously liable for Silva's actions.

Plaintiff's counsel contended that Rios failed to timely stop his truck and avoid rear-ending Marquez's truck. Counsel also contended that Silva failed to stop as the traffic in front of him came to a stop, causing a chain-reaction rear-ender accident.

Rios' counsel contended that the brakes on Marquez's trailer were not functioning properly, as seen in Rios' BP truck drive-cam. Thus, Rios claimed that he could not see Marquez's vehicle slowing down.

Silva contended that he was travelling behind Rios and was unable to stop his vehicle in time.

**Injury:**

Marquez sustained a fibular fracture of the ankle and a 5-millimeter lumbar disc bulge at the L5-S1 level. He subsequently underwent ankle surgery 18 months post-incident, and a lumbar discectomy and fusion two years after the accident. Thus, Marquez claimed approximately \$280,000 in medical expenses, as well as sought recovery for unspecified damages for his pain and suffering.

Defense counsel contended that Marquez sustained an ankle injury because the driver's seat was defective and dislodged during impact, causing it to slide forward and strike Marquez's ankle. Counsel further contended that Marquez did not sustain a lumbar injury in the event in light of the fact that he did not treat for any lumbar pain for several months after the accident.

**Result:**

The parties agreed to settle prior to trial for \$1.2 million, with \$700,000 to be paid by Americus Logistics and \$500,000 to be paid by BP Products.

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

Robert A. Dukes

**Editor's  
Comment:**

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

**Writer**

Priya Idiculla

## In fatal collision, estate argued other driver was inattentive

**Type:** Mediated Settlement

**Amount:** \$875,000

**State:** New Jersey

**Venue:** Hunterdon County

**Court:** Hunterdon County Superior Court, NJ

**Injury Type(s):**

- *other* - death; crush injury; conscious pain and suffering

**Case Type:**

- *Wrongful Death*
- *Motor Vehicle* - Truck; Rear-ender; Lane Change; Tractor-Trailer; Multiple Vehicle

**Case Name:** Delores Hammond, individually and as administratrix of the Estate of William B. Hammond v. Franklin R. Suero, Carlisle Carrier Corp., State of New Jersey, County of Hunterdon, Township of Bethlehem, and New Jersey Department of Transportation, No. HUN-388-12

**Date:** February 17, 2014

**Plaintiff(s):**

- Delores Hammond (Female)
- Estate of William B. Hammond (Male, 48 Years)

**Plaintiff Attorney(s):**

- Jeffrey S. Hark; Hark & Hark, P.C.; Cherry Hill NJ for Estate of William B. Hammond, Delores Hammond

**Plaintiff Expert (s):**

- Ian Hood M.D.; Autopsies; Burlington, NJ called by: Jeffrey S. Hark
- Andrew C. Verzilli M.B.A.; Economics; Lansdale, PA called by: Jeffrey S. Hark
- Robert P. Wolf Ed.D., M.B.A; Vocational Assessment; Cherry Hill, NJ called by: Jeffrey S. Hark
- Steven W. Rickard; Accident Reconstruction; Hershey, PA called by: Jeffrey S. Hark

**Defendant(s):**

- Franklin R. Suero
- County of Hunterdon
- State of New Jersey
- Carlisle Carrier Corp.
- New Jersey Department of Transportation

**Defense Attorney(s):**

- Jason T. LaRocco; Fineman Krekstein & Harris, P.C.; Philadelphia, PA for Franklin R. Suero, Carlisle Carrier Corp.

**Defendant Expert(s):**

- Greg Sullenberger; Accident Reconstruction; Ligonier, PA called by: for , Jason T. LaRocco
- Mark Lee Edwards; Ergonomics/Human Factors; Lake Mary, FL called by: for Jason T. LaRocco

**Facts:**

On March 30, 2010, William Hammond, 48, was driving a FedEx double-trailer truck westbound in the right lane of I-78 in Bloomsbury at about 4:00 a.m. when he rear-ended a tractor-trailer belonging to Carlisle Carrier Corp. driven by employee Franklin R. Suero. Hammond died approximately 25 minutes after the accident from internal injuries.

Hammond's wife, Delores Hammond, sued on behalf of herself and her late husband's estate for negligence. The primary defendants were Suero and his employer, Carlisle Carrier. It was alleged that Suero improperly drove his slow-moving vehicle in front of Hammond's rig when exiting a rest-area from the right side of the highway. Named as preliminary defendants were the State of New Jersey, County of Hunterdon, Township of Bethlehem, and the New Jersey Department of Transportation, all of which were dismissed from the case during discovery.

Suero contended that he entered the highway with his 4-way flashers on as he tried to gain speed coming off the ramp from the rest area. He claimed he checked his side-view mirror two or three times before reaching 10-15 mph. He saw only one truck in the center lane, and seconds after that truck passed him the FedEx truck hit the rear of his rig.

A police investigation revealed that Hammond's vehicle left straight skid-marks in the right lane; there was no evidence of Hammond taking evasive action other than a panic stop. The plaintiff argued that Hammond could not have avoided the accident because of the sudden appearance of Suero's vehicle ahead. It was established that Suero had at least a 1,000 ft. unobstructed view of the highway behind him and the speed of the Hammond vehicle was estimated at 65 mph until the attempted braking.

The defense contended that Hammond had ample time to see Suero's vehicle coming off the entrance ramp and could have slowed or taken other evasive measures.

**Injury:**

Hammond died at the scene of the accident from massive internal injuries after what was estimated as 25 minutes of conscious pain and suffering. He was survived by his wife and two children.

**Result:** The case settled following mediation with retired Superior Court Judge Francis J. Orlando Jr. (now practicing with law firm Connell Foley in Cherry Hill). The defendants' liability carrier agreed to pay \$675,000; an additional \$200,000 was received from the employer's workers' compensation carrier as consideration for a waiver of future Pennsylvania workers' compensation benefits. There was also a waiver by the employer's workers' compensation carrier of a \$106,000 compensation lien. The packaged settlement resulted in a \$875,000 settlement to the Estate of William B. Hammond.

**Trial Information:**

**Judge:** Francis J. Orlando Jrr.

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel for the truck driver and truck owner declined to contribute. The attorneys for the public entity defendants were not asked to contribute.

**Writer** Jon Steiger

## Accident with jackknifed truck caused spinal injuries: plaintiff

**Type:** Settlement

**Amount:** \$700,000

**State:** California

**Venue:** Solano County

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

**Injury Type(s):**

- *back* - upper back
- *neck*
- *other* - swelling; physical therapy; chronic pain syndrome
- *epidermis* - numbness

**Case Type:**

- *Motor Vehicle* - Passenger; Red Light; Rear-ender; Intersection; Tractor-Trailer

**Case Name:** James Espy v. Saeed Iqbal Khan and Scully Distribution Services Inc., No. FCS034376

**Date:** June 28, 2011

**Plaintiff(s):**

- James Espy (Male, 45 Years)

**Plaintiff Attorney(s):**

- Hal F. Seibert; Scranton Law Firm; Concord CA for James Espy

**Plaintiff Expert (s):**

- Fred Rosenthal M.D.; Psychiatry; San Francisco, CA called by: Hal F. Seibert
- Michael Levins M.D.; Pain Management; Sacramento, CA called by: Hal F. Seibert

**Defendant(s):**

- Saeed Iqbal Khan
- Scully Distribution Services Inc.

**Defense  
Attorney(s):**

- Roger F. Allen; Ericksen, Arbuthnot, Kilduff, Day & Lindstrom, Inc.; Oakland, CA for Saeed Iqbal Khan
- Daniel R. Sullivan; Sullivan, Ballog & Williams, LLP; Santa Ana, CA for Scully Distribution Services Inc.
- Brian L. Williams; Sullivan, Ballog & Williams, LLP; Santa Ana, CA for Scully Distribution Services Inc.
- Alyson M. Gleason; Ericksen, Arbuthnot, Kilduff, Day & Lindstrom, Inc.; Oakland, CA for Saeed Iqbal Khan

**Defendant  
Expert(s):**

- Karl Erik Volk M.A., B.S.; Economics; Lafayette, CA called by: for Roger F. Allen, Daniel R. Sullivan, Brian L. Williams, Alyson M. Gleason
- Eugene E. Van De Bittner Ph.D.; Vocational Rehabilitation; Walnut Creek, CA called by: for Roger F. Allen, Daniel R. Sullivan, Brian L. Williams, Alyson M. Gleason
- Steven D. Feinberg M.D.; Pain Management; Palo Alto, CA called by: for Roger F. Allen, Daniel R. Sullivan, Brian L. Williams, Alyson M. Gleason
- Bernard S. Rappaport M.D.; Psychiatry; Orinda, CA called by: for Roger F. Allen, Daniel R. Sullivan, Brian L. Williams, Alyson M. Gleason
- Pasquale X. Montesano M.D.; Orthopedic Surgery; Folsom, CA called by: for Roger F. Allen, Daniel R. Sullivan, Brian L. Williams, Alyson M. Gleason

**Facts:**

On the morning of Oct. 8, 2007, plaintiff James Espy, an unemployed 45-year-old, was a passenger in a vehicle traveling in the far left lane on Highway 12 in Fairfield. At the same time, a tractor-trailer driven by Saeed Iqbal Khan was approaching a red light on Beck Avenue at the intersection with Highway 12 and failed to stop in time. As a result, Khan performed a sudden maneuver to his left, causing the truck to skid sideways and jackknife. The back wheels of the rig subsequently rear-ended the vehicle carrying Espy, pushing it into the intersection. Espy claimed injuries to his neck and back.

Espy sued Khan and the owner of the trailer being towed by Kahn's tractor, Scully Distribution Services Inc. He alleged that Khan was negligent in the operation of his vehicle and that Scully Distribution was vicariously liable for his actions.

Espy claimed that Khan was inattentive as he approached the intersection and negligently made a sudden maneuver to his left to avoid crashing into vehicles stopped for the red light. Plaintiff's counsel contended that Scully Distribution had a non-delegable duty to defend, and that both Scully Distribution and Khan had the same insurance carrier in the action.

Scully Distribution contended that Khan was an independent contractor and not its employee. Hence, it claimed that it was not liable for Khan's actions under course and scope.



**Injury:**

Espy was taken by his father to an emergency room on the evening of the accident. Espy complained of severe neck pain at the hospital and he claimed he developed chronic pain syndrome, with swelling and numbing in his neck. As a result, he underwent a cervical laminoplasty at the C3-4, C4-5, C5-6 and C6-7 levels on Dec. 12, 2007. Espy later followed up with physical therapy.

Espy claimed that while his neck condition has somewhat resolved, he still experiences chronic, debilitating pain in his upper back, which developed two months after his neck surgery and for which he receives pain management. He claimed he hasn't been able to work and has gone on social security disability as a result of his injuries. Espy alleged that he is severely limited physically due to his back pain and has trouble walking. Thus, he sought recovery of damages for his past medical costs, future medical costs, and past and future pain and suffering.

Defense counsel contended that Espy's neck injury and surgery were unrelated to the accident in question, and were caused by a pre-existing, degenerative spine condition. Counsel further contended that the plaintiff's residual back condition was due to an unrelated chronic arthritic problem.

**Result:**

The parties negotiated a settlement for \$700,000.

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

Paul L. Beeman

**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**

Dan Israeli

## Most of trucker's injuries due to degeneration, defense argued

**Type:** Settlement

**Amount:** \$575,000

**State:** South Carolina

**Venue:** Federal

**Court:** U.S. District Court for the District of South Carolina, SC

**Injury Type(s):**

- *hip*
- *back* - lower back; fusion, lumbar; sprain, lumbar; strain, lumbar; spondylolisthesis; herniated disc, lumbar; herniated disc at L3-4
- *neck* - spondylolisthesis
- *other* - bone graft; physical therapy; steroid injection; loss of consortium; epidural injections
- *epidermis* - numbness
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - decompression surgery

**Case Type:**

- *Motor Vehicle* - Truck; Rear-ender; Tractor-Trailer; Multiple Vehicle

**Case Name:** James Thomason and Kathryn Thomason v. Travis Boston and Experience Trucking, No. 7:15-cv-02391-MGL

**Date:** March 18, 2016

**Plaintiff(s):**

- James Thomason (Male, 66 Years)
- Kathryn Thomason (Female, 60 Years)

**Plaintiff Attorney(s):**

- William R. Padgett; Finkel Law Firm, LLC; Columbia SC for Kathryn Thomason, James Thomason
- Michael W. Clark; Daggett, Shuler, Koontz, Nauman & Bell, PLLC; Winston-Salem NC for Kathryn Thomason, James Thomason
- Carl D. Hiller; Finkel Law Firm, LLC; Columbia SC for Kathryn Thomason, James Thomason

**Plaintiff Expert(s):**

- B. Perry Woodside III; Personal Injury (Economics); Charleston, SC called by: William R. Padget, Michael W. Clark, Carl D. Hiller
- Mark L. Dumonski M.D.; Orthopedic Surgery; Greensboro, NC called by: William R. Padget, Michael W. Clark, Carl D. Hiller
- Dhari D. Brooks M.D.; Orthopedic Surgery; Greensboro, NC called by: William R. Padget, Michael W. Clark, Carl D. Hiller
- Maria Vargas C.R.C.; Vocational Rehabilitation; Belmont, NC called by: William R. Padget, Michael W. Clark, Carl D. Hiller
- William Stephen Furr M.D.; Orthopedic Surgery; Salisbury, NC called by: William R. Padget, Michael W. Clark, Carl D. Hiller

**Defendant(s):**

- Travis Boston
- Experience Trucking

**Defense Attorney(s):**

- Robert Daniel Moseley Jr.; Smith Moore Leatherwood LLP; Greenville, SC for Travis Boston, Experience Trucking
- Kristen Lacombe Nowacki; Smith Moore Leatherwood LLP; Greenville, SC for Travis Boston, Experience Trucking

**Insurers:**

- Great West Casualty

**Facts:**

On May 23, 2012, plaintiff James Reece Thomason, 66, truck driver, was traveling north on Interstate 85 in the deceleration lane. He was approaching the off ramp at Exit 151 for Priester Road near Blacksburg. The driver of a second tractor-trailer rig, Travis Boston, who was in the course of his employment with Experience Trucking, was traveling directly behind Thomason's rig and was also intending to exit the interstate. Boston was reportedly inattentive to the rate at which Thomason's rig was slowing due to concern about auto traffic overtaking both trucks on the nearest lane to the left. Boston's rig struck Thomason's rig in the rear. The speed limit was 25 mph in the lane where the accident occurred. Thomason claimed spinal hyperextension injuries that ultimately required lumbar fusion surgery.

Thomason sued Boston, alleging that he was negligent in the operation of the tractor-trailer. He also sued Experience Trucking.

Thomason alleged that Boston was inattentive and failed to keep a proper lookout. He also argued that Experience Trucking was vicariously liable for Boston's actions.

Boston contended that he was distracted due to a perception that traffic overtaking the trucks might be attempting to dart in front of the trucks. However, for the purposes of settlement, liability was not disputed.

**Injury:**

Thomason did not receive immediate medical attention, but was seen within two days of the accident by his employer's workers' compensation medical providers. His initial complaints were for lower back and left lateral hip pain. He was initially diagnosed with lumbar sprain and strain. Physical therapy was prescribed, in which Thomason participated from July 3 to July 19, 2012. A physical examination on July 23, 2012, noted that Thomason continued to experience a lot of pain and numbness in the lower back.

Thomason was referred to an orthopedic specialist who examined him on Aug. 24, 2012.

Pain medication was prescribed and MRIs and EMGs were ordered. The MRIs revealed L3-4 spondylolisthesis and degenerative facet changes at L5-S1. The latter was interpreted by the examining orthopedist to have been worsened by the motor vehicle accident. Thomason was referred for a pain management evaluation to determine if epidural injections would be beneficial. It was noted at that time that a spine specialist would be recommended if conservative treatment was not successful.

Thomason underwent the pain management evaluation and received lumbar epidural injections on Nov. 9, 2012, and Feb. 25, 2013. He was then evaluated by an independent medical examiner on March 13, 2013, who recommended an epidural steroid injection to identify and confirm the pain generator. Additional therapy was recommended and surgery was not ruled out.

On May 2, 2013, Thomason underwent a left L3 selective nerve root block. Thomason was next seen by the same doctor who had administered the selective nerve root block who noted that Thomason had undergone gallbladder removal, which affected the ability to determine if the recent injection had been successful. Additional injections were recommended and given.

On Sept. 5, 2013, Thomason was reevaluated for pain management, resulting in an assessment of chronic lower back pain radiating to the left thigh. Additional pain medications and steroid injections were prescribed.

On Jan. 17, 2014, Thomason returned to the orthopedic surgeon and continued to complain of severe back pain. It was recommended that Thomason undergo lumbar decompression surgery. On May 12, 2014, after seeking a second opinion regarding the recommended surgery, Thomason was still experiencing right leg pain.

On July 10, 2014, Thomason underwent lumbar fusion surgery at L3-4 with local bone graft and posterolateral decompression of L4 to S1. Following this surgery, Thomason was provided with a bone stimulator and was referred for further physical therapy. Thomason remained out of work on the recommendation of his treating physicians.

On Oct. 6, 2014, Thomason returned to his orthopedic surgeon and reported unchanged symptoms. He was prescribed medication for neuropathic leg pain. When Thomason returned for a follow-up visit on Dec. 30, 2014, it was noted that he was pleased with his overall recovery. He was cleared to return to sedentary work for four hours per day.

On March 2, 2015, Thomason was referred for a CT scan due to ongoing lumbar symptoms. On this occasion, he received an injection to his left knee for continued pain symptoms that had developed. It was also determined that he should be discontinued from work status, if sedentary and part-time.

On April 21, 2015, Thomason returned to his pain management physicians who noted the results of the CT scan suggested progression at the site of the lumbar fusion at the interbody space. Thomason was complaining of pain in the lateral aspect of his hip and lower back, as well as an overall loss of function. A trochanteric bursa injection was performed and continued physical therapy was prescribed. It was recommended that Thomason return to work with a 10-lb., no overhead activity restriction.

On June 19, 2015, Thomason returned to his pain management doctors complaining of

significant pain that limited his activities of daily living. He reported significant and increased pain with any forward flexion, riding in a car, standing on hard floors and walking for extended periods. It was determined at this visit that Thomason had reached maximum medical improvement and he was assigned a 55-percent impairment rating. It was reported that Thomason would not be able to return to gainful full-time employment and he was provided with work restrictions to include sedentary work with alternating sitting and standing as needed. It was further reported that Thomason was permanently and totally disabled. It was also recommended that Thomason be evaluated for a spinal cord stimulator. However, Thomason developed heart problems and had to have stents placed in his heart. This medical circumstance, unrelated to the motor vehicle accident, necessitated at least a one-year postponement with respect to the insertion of a spinal cord stimulator.

Thomason began participation in water therapy, which he was continuing to attend two to three times per week. The water therapy has provided him with some pain relief.

Thomason was terminated from his job after he was out of work for eight months. His return to work is not foreseen. He is unable to drive a truck because he cannot get in and out of the cab; he needs multiple breaks (and was previously allowed very few to none); he is unable to tolerate the vibrations associated with truck driving; and he can no longer pass the physical examination for a CDL license.

At the time of the accident, Thomason planned on working indefinitely. His economic expert projected an economic loss of \$251,206. There was a workers' compensation lien against the file for the sum of \$121,258. Thomason's wife joined in the action asserting a loss of consortium claim.

The defense argued that a great deal of Thomason's claimed spinal injuries were due to his relatively advanced age, as well as acknowledged degenerative conditions that pre-existed the accident. The argument about damages pivoted largely on how much of Thomason's injuries were entirely pre-existing and how much of the pre-existing injuries were aggravated by the motor vehicle accident.

**Result:** The case settled for \$575,000 prior to trial. The workers' compensation lien of \$121,258 was negotiated and reduced to \$76,714.87.

### **Trial Information:**

**Judge:** Mary Geiger Lewis

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

**Writer** Jon Steiger

## Plaintiff's Time Off Work Central Issue of Big Rig Accident Trial

**Type:** Verdict-Plaintiff

**Amount:** \$214,600

**State:** California

**Venue:** Solano County

**Court:** Superior Court of Solano County, Fairfield, CA

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

**Case Name:** Eric Johnson v. Elite Express and Billy Holloway, No. 015550

**Date:** April 30, 2002

**Plaintiff(s):** • Eric Johnson (Male, 43 Years)

**Plaintiff Attorney(s):** • Robert Fowler; Fowler & Ball; Ukiah CA for Eric Johnson

**Plaintiff Expert (s):** • Alan Hunstock M.D.; Neurosurgery; Santa Rosa, CA called by: Robert Fowler  
• Dr. Barry Ben-Zion; Economics; Santa Rosa, CA called by: Robert Fowler  
• Daniel Farley M.A., C.R.C.; Vocational Rehabilitation; Santa Rosa, CA called by: Robert Fowler  
• Dennis Bossen M.D.; Industrial Medicine; Petaluma, CA called by: Robert Fowler  
• Fredric Newton M.D.; Neurology; Oakland, CA called by: Robert Fowler  
• Laurence Alavezos M.D.; Family Medicine; Ukiah, CA called by: Robert Fowler

**Defendant(s):** • Elite Express  
• Billy Holloway

**Defense Attorney(s):** • Philip M. Andersen; Gooding, Shinnick, Golub, Holt & Andersen; Oakland, CA for Elite Express

**Defendant Expert(s):**

- Larry Guinney M.D.; Orthopedic Surgery; Santa Rosa, CA called by: for Philip M. Andersen
- Lawrence J. Deneen; Rehabilitation Counseling; Oakland, CA called by: for Philip M. Andersen

**Insurers:**

- St. Paul Fire and Marine Insurance Co.

**Facts:**

A Solano County jury awarded \$214,600 to a big rig truck driver rear ended by another big rig truck driver. Liability was conceded. The central issue was the reasonableness of the length of time the plaintiff remained off work following his surgery for a herniated disc.

The plaintiff was rear-ended on Highway 12 near Rio Vista by a big rig/combo truck driven by Billy Holloway and owned by Elite Express. The plaintiff was also driving a big rig/combo for Viking Freight. The property damage was relatively minor and the plaintiff continued to work that night and for the next 9 months. Elite Express Inc. and its driver, Billy Holloway, admitted 100% fault for the accident. Elite express subsequently went out of business.

**Injury:**

A year after the accident the plaintiff underwent a C6-7 cervical fusion. Doctors for both sides agreed that the accident was a cause of the herniated disc and the surgery. The plaintiff argued that he was justified in remaining off work for 19 months following the surgery. He contended that he could only make \$32,000 a year for the rest of his life as a truck driver due to a restriction on heavy lifting. He said he was making about \$53,000 before the accident. He claimed he had a past wage loss of \$92,000, a future wage loss of \$618,000, loss of household services of \$60,000 and general damages of \$300,000. He asked the jury to award him \$1,070,000.

The defendants noted that the plaintiff had an existing cervical disc disease at the same level. They contended that that prior condition, and the fact that the plaintiff continued to work after the accident, were the most significant factors in causing the disc herniation. Disputing future wage loss, the defense said that the fusion was successful and that the plaintiff could have returned to truck driving within nine months after the surgery and could have worked 10 to 12 hours a day. They showed at trial that the plaintiff was an avid bass fisherman before the accident and that he continued to compete in bass fishing contests with his friends following the accident. The defendants alleged that gas receipts that the plaintiff was compelled to produce at trial showed that his fishing activities doubled after the surgery during the time he claimed he was recovering and was unable to work. The defendants asked the jury to award the plaintiff \$25,000 in medical expenses, \$22,000 to \$53,000 in past wage loss and \$50,000 for general damages.

**Result:** The jury returned a verdict for the plaintiff.

Defense counsel Phillip Andersen reported the defendants will seek up to \$40,000 in costs from the verdict as they prevailed on the CCP 998. The plaintiff must also pay the workers compensation lien of \$69,000.

**Eric Johnson** \$25,000 past medical

\$150,000 pain/suffering

\$39,600 past lost wages

**Demand** \$499,000

**Offer** \$400,000 CCP 998

**Trial Information:**

**Judge:** William C. Harrison

**Trial Length:** 7 days

**Trial  
Deliberations:** 1 hours

**Writer**



## Spinout Across 210 Freeway Resulted in Truck/Car Collision

**Type:** Verdict-Plaintiff

**Amount:** \$200,000

**Actual Award:** \$200,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *other* - soft tissue
- *shoulder* - rotator cuff, injury (non-tear)

**Case Type:**

- *Motor Vehicle* - Truck

**Case Name:** Kathy Fields v. Dalton Trucking Co., No. KC034270

**Date:** October 11, 2002

**Plaintiff(s):**

- Kathy Fields (Female, 40 Years)

**Plaintiff Attorney(s):**

- Gregory S. Chudacoff; Law Office of Gregory S. Chudacoff; Los Angeles CA for Kathy Fields
- Marvin S. Cherin; Law Office of Gregory S. Chudacoff; Los Angeles CA for Kathy Fields

**Defendant(s):**

- Jessie Johnson
- Salvador Molina
- Francisco Alvarez

**Defense Attorney(s):**

- E. Michael Kwan; Barry Bartholomew & Associates; Glendale, CA for Jessie Johnson
- Bert W. Struck; Sullivan Struck & Ballog; Santa Ana, CA for Salvador Molina, Francisco Alvarez

**Defendant Expert(s):**

- Stein E. Husher; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Paramount, CA called by: for Bert W. Struck

**Insurers:**

- State Farm
- Ranger Ins.

**Facts:**

On the westbound 210 Freeway in Glendora, defendan Jessie Johnson was driving her Ford pickup in the #4 lane. The plaintiff, a 40-year-old female computer support specialist, was driving her Toyota Corolla in the #1 lane. The lane of the defendant Salvador Molina's Freightliner tractor and trailer combination was disputed. Molina claimed he was in the #3 lane. Johnson claimed he was in the #4 lane. A contact was made between the Molina and the Johnson vehicles, which caused Johnson to lose control, spin out across the freeway lanes into the plaintiff's lane, where the plaintiff's car and the Johnson pickup collided. Johnson claimed the big rig rear-ended her truck. Molina claimed Johnson made a lane change into his truck.

The plaintiff Kathy Fields contended that one or both of the defendants were negligent in causing the first impact which led to the one in which she was involved.

Molina contended the police department photographs of the big rig and pickup confirmed his version of the accident that Johnson changed lanes into his big rig.

Johnson contended that her testimony and that of an independent witness confirmed that the big rig was behind her pickup in the #4 lane and that the defendant Molina negligently rear-ended her pickup, causing her to lose control.

**Injury:**

The plaintiff claimed soft tissue injuries to her neck, back, right arm and right shoulder. She was diagnosed with a right shoulder rotator cuff tear and underwent two repair surgeries during 2002.

Medicals: \$48,963

Loss of earnings: \$24,567

**Result:**

A unanimous jury returned a plaintiff's verdict against Johnson on the issue of liability. The parties stipulated before trial that the plaintiff's recovery would be \$200,000 for all the damages (economic and non-economic).

**Trial Information:**

**Judge:**

R. Bruce Minto

**Trial Length:** 2 days

**Trial  
Deliberations:** 2 hours

**Jury Vote:** 12-0 (liability as to defendant Johnson only).

**Post Trial:** Settlement Discussions: The parties stipulated before trial that her recovery would be \$200,000 for all damages (economic and non-economic).

**Writer**

## Rig rear-ended plaintiff's car, pushed it into vehicle ahead

**Type:** Verdict-Plaintiff

**Amount:** \$108,388

**State:** Texas

**Venue:** Federal

**Court:** United States District Court, Eastern District, Tyler, TX

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

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

**Case Name:** Milton Ansley v. Paul Weidner and Genova Products, No. 6:08-cv-00428-MHS

**Date:** November 20, 2009

**Plaintiff(s):** • Milton Ansley (Male)

**Plaintiff Attorney(s):** • David Dobbs; Dobbs & Tittle, P.C.; Tyler TX for Milton Ansley  
• James Lee Mitchell; Payne Mitchell Law Group, LLP; Dallas TX for Milton Ansley  
• Jay Joseph Murray; Murray & Pelletier; Dallas TX for Milton Ansley

**Defendant(s):** • Paul Weidner  
• Genova Products

**Defense Attorney(s):** • Keith W. Starr; Mayo Mendolia & Starr; Tyler, TX for Paul Weidner, Genova Products  
• Michael Shane McGuire; Mayo Mendolia & Starr; Tyler, TX for Paul Weidner, Genova Products

**Defendant Expert(s):** • Gary Hutchison M.D.; Neurosurgery; Dallas, TX called by: for Keith W. Starr, Michael Shane McGuire

**Facts:** On Jan. 3, 2007, plaintiff Milton Ansley was driving south on Highway 59 in Marshall. Behind him, operating a tractor-trailer rig owned by Genova Products, was Paul Weidner. The rig struck the rear of Ansley's vehicle, which pushed it into the car ahead of him.

Ansley sued Weidner and Genova Products, alleging Weidner was negligent in the operation of a motor vehicle and Genova Products was vicariously liable for his actions.

The defendants conceded liability.

**Injury:** An emergency vehicle transported Ansley to the hospital. He sustained soft-tissue injuries to his back and neck. He underwent two months of physical therapy and it was suggested that he might need future surgery. His past medical bills amounted to \$21,387.85.

The defense's neurosurgery expert opined that Ansley would not need any surgery and that his injuries were minimal.

**Result:** The jury returned with a verdict for Ansley and awarded him \$108,387.85 in damages.

### **Milton Ansley**

\$21,388 Personal Injury: Past Medical Cost

\$60,000 Personal Injury: Future Medical Cost

\$5,000 Personal Injury: Past Physical Impairment

\$12,000 Personal Injury: Future Physical Impairment

\$10,000 Personal Injury: Past Pain And Suffering

### **Trial Information:**

**Judge:** Michael H. Schneider

**Offer:** \$60,000

**Editor's Comment:** The information in this report was gleaned from court documents and provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

**Writer** James Withers

## Expressway accident caused tears of knees, plaintiff claimed

**Type:** Mediated Settlement

**Amount:** \$101,000

**State:** New York

**Venue:** Bronx County

**Court:** Bronx Supreme, NY

**Injury Type(s):**

- *back* - sprain, lumbar; strain, lumbar; sprain, thoracic; strain, thoracic
- *knee* - knee contusion; knee derangement; medial meniscus, tear; lateral meniscus, tear; chondromalacia / chondromalacia patella
- *neck* - sprain, cervical; strain, cervical
- *other* - synovitis; synovectomy; chondroplasty; physical therapy; decreased range of motion
- *shoulder*
- *surgeries/treatment* - arthroscopy; knee surgery; meniscectomy

**Case Type:**

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

**Case Name:** Mark S. Tullis as Trustee for Nicolette Burke v. Michael Morin, 3102-3013 Quebec Inc., Elrac, LLC and Nyshea Doloson, No. 22755/12

**Date:** October 20, 2016

**Plaintiff(s):**

- Nicolette Burke (Female)

**Plaintiff Attorney(s):**

- Joseph P. DePaola; DePaola Valdes, LLP; New York NY for Nicolette Burke
- Regina Valdes Montalva; DePaola Valdes, LLP; New York NY for Nicolette Burke

**Plaintiff Expert(s):**

- Erie T. Agustin; Primary Care Physician; Woodside, NY called by: Joseph P. DePaola,
- Louis C. Rose M.D.; Orthopedic Surgery; Bronx, NY called by: Joseph P. DePaola,
- Michael Daras; Neurology; New York, NY called by: Joseph P. DePaola,
- Sanford R. Wert M.D.; Orthopedic Surgery; Brooklyn, NY called by: Joseph P. DePaola,

**Defendant(s):**

- Elrac LLC
- Michael Morin
- Nyshea Doloson
- 3102-3013 Quebec Inc.

**Defense Attorney(s):**

- Robert Scott; Gibson, McAskill & Crosby, LLP; Buffalo, NY for Michael Morin, 3102-3013 Quebec Inc.
- Brian R. Berger; Carman Callahan & Ingham, LLP; Farmingdale, NY for Nyshea Doloson, Elrac LLC

**Defendant Expert(s):**

- Lisa Nason M.D.; Orthopedic Surgery; Yonkers, NY called by: for Robert Scott, Brian R. Berger

**Insurers:**

- Elco Administrative Services
- Aviva Canada

**Facts:**

On Sept. 13, 2012, plaintiff's trustor Nicolette Burke was a rear-seat passenger of a car that was being driven by Nyshea Doloson, who was traveling on the northbound side of the Major Deegan Expressway, near its interchange at Van Cortlandt Park South, in the Kingsbridge Heights section of the Bronx. While Doloson was proceeding in stop-and-go traffic, her car was involved in a collision with a trailing tractor-trailer that was being driven by Michael Morin. Burke claimed that she sustained injuries of her back, her knees, her neck and her shoulders.

Burke subsequently declared bankruptcy. The bankruptcy's estate trustee, Mark Tulis, acting in Burke's behalf, sued Doloson; her car's owner, Elrac LLC; Morin; and his tractor-trailer's owner, 3102-3013 Quebec Inc. The lawsuit alleged that Doloson and Morin were negligent in the operation of their respective vehicles. The lawsuit further alleged that Elrac and 3102-3013 Quebec were vicariously liable for the actions of the drivers of their respective vehicles.

Elrac was dismissed, though its insurer was obligated to indemnify Doloson. The matter proceeded against the remaining defendants.

Plaintiff's counsel claimed that Doloson abruptly entered the path of Morin's rig, and they further claimed that Morin failed to exercise due caution.

Doloson claimed that the impact occurred moments after she had entered the lane that Morin's rig occupied. She claimed that the rig struck the rear end of her car. She claimed that Morin was maintaining an excessive speed relative to the traffic conditions, and she further claimed that he failed to timely apply his rig's brakes.

Morin claimed that the collision occurred while Doloson was merging into the direct path of his rig. He claimed that her vehicle's left side swiped the front end of his rig. Morin's counsel contended that Morin provided the correct account of the accident, given the location of the damage that each vehicle sustained.

**Injury:**

After two days had passed, Burke presented to Nyack Hospital, in Nyack. She claimed that her back and her left knee were painful. She underwent minor treatment.

Burke ultimately claimed that she sustained a tear of each knee's lateral meniscus, a tear of each knee's medial meniscus, contusions of each knee, derangement of each knee, a sprain and strain of each shoulder, and sprains and strains of her cervical, lumbar and thoracic regions. She also claimed that each knee developed chondromalacia: softening of cartilage. She further claimed that her left knee developed synovitis: inflammation of tissue that lines a joint.

Burke underwent about eight weeks of physical therapy, but she claimed that the treatment provided little relief. On March 26, 2015, she underwent arthroscopic surgery that addressed her left knee. The procedure included a meniscectomy, which involved excision of a portion of the knee's lateral meniscus, a chondroplasty, which involved a repair of cartilage, and a synovectomy, which involved excision of inflamed tissue. Burke subsequently underwent about eight weeks of physical therapy.

Burke claimed that her knees remain painful, that her back and neck experience lingering discomfort, and that she suffers a residual diminution of her range of motion. She claimed that she declined recommended surgery that would have addressed her right knee, but that the procedure will likely become necessary.

Burke also claimed that, at the time of the accident, she was a self-employed real estate investor. She claimed that her injuries hindered her ability to visit potential investment properties.

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

Defense counsel contended that Burke's injuries were degenerative conditions that predated the accident. They also contended that any current pain or limitations stem from a subsequent motor-vehicle accident.

Defense counsel further contended that Burke was not employed at the time of the accident.

**Result:**

The parties negotiated a pretrial settlement. The insurer of Morin and 3102-3013 Quebec agreed to pay \$100,000, and Doloson's insurer agreed to pay \$1,000. Thus, the settlement totaled \$101,000. The negotiations were mediated by Joseph Ehrlich, of National Arbitration and Mediation Inc.

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

Joseph Ehrlich

**Editor's  
Comment:**

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

**Writer**

Jason Eisenberg



## Truck driver claimed rear-ender injuries left him unable to work

**Type:** Settlement

**Amount:** \$70,000

**State:** California

**Venue:** Nevada County

**Court:** Superior Court of Nevada County, Truckee, CA

**Injury Type(s):**

- *neck*

**Case Type:**

- *Motor Vehicle - Passenger; Rear-ender; Tractor-Trailer*
- *Agency/Apparent Agency - Respondeat Superior*

**Case Name:** Robert Steelman v. Daniel Lauther and V.E. Lee Trucking, No. T03066C

**Date:** March 02, 2005

**Plaintiff(s):**

- Robert Steelman (Male, 49 Years)

**Plaintiff Attorney(s):**

- Robert B. Gibson; Gibson & Hughes; Santa Ana CA for Robert Steelman

**Plaintiff Expert (s):**

- Andrew M. O'Brien M.S., C.R.C.; Vocational Rehabilitation; Sacramento, CA called by: Robert B. Gibson,
- Tamorah Hunt; Economics; Huntington Beach, CA called by: Robert B. Gibson,
- Dr. Pasquale X. Montesano; Orthopedic Surgery; Sacramento, CA called by: Robert B. Gibson,

**Defendant(s):**

- Daniel Lauther
- V.E. Lee Trucking

**Defense Attorney(s):**

- Craig S. MacGlashan; Nageley, Meredith & Miller, Inc; Sacramento, CA for Daniel Lauther, V.E. Lee Trucking

**Defendant Expert(s):**

- Jim Anderson M.D.; Neurosurgery; Sacramento, CA called by: for Craig S. MacGlashan
- Bahram Ravani Ph.D.; Biomechanical; Sunnyvale, CA called by: for Craig S. MacGlashan
- Gregory Burke CPA; Economics; Sacramento, CA called by: for Craig S. MacGlashan
- Timothy R. Sells; Vocational Rehabilitation; Sacramento, CA called by: for Craig S. MacGlashan

**Facts:**

On May 21, 2002, plaintiff Robert Steelman, 49, worked as a truck driver for Watkins Motor Lines. A resident of Arkansas, he was in California on a long haul trucking assignment. While he was in the sleeper section of his tractor-trailer, his vehicle was being operated by another employee of Watkins and was stopped, according to Steelman, at an agricultural inspection station in Truckee. The rig was rear-ended by another tractor-trailer, driven by Daniel Lauther while in the course and scope of his employment with V.E. Lee Trucking. Lauther/V.E. Lee maintained that Steelman's big rig was slowing and not stopped at the time of impact.

Stelman sued Lauther and V.E. Lee Trucking, alleging vehicular negligence.

The defendants did not dispute liability, but did dispute the nature and extent of Steelman's injuries.

**Injury:**

The day after the accident, Steelman was seen at a medical clinic in Sacramento for neck pain. He and his co-employee then drove their rig back to Arkansas over the next 3.5 weeks. While in Arkansas, he was seen by different doctors. MRIs revealed no objective finding, but Steelman claimed that he had persistent pain due to a protruding disc in the cervical area, which he argued was going to result in the need for neck surgery. His Arkansas physicians advised against surgery due to a heart condition that required him to be on Coumadin. A Sacramento neurosurgeon opined that he could perform surgery so long as some other physician monitored Steelman's heart condition. Steelman also claimed that because of these injuries, he was going to be unable to continue in his occupation as a truck driver. His medical billings and temporary disability had been paid by his employer's workers' compensation insurer in the amount of \$45,000. Steelman claimed future medical expenses of approximately \$50,000 for surgery and loss of future earnings of \$200,000, as well as unspecified general damages.

The defendants contended that the impact in this accident was too slight to have caused any injury and that there was no observable damage to any of the vehicles. Further, the defendants maintained that Steelman's neck problems pre-existed this accident, and that his injuries were only soft-tissue in nature and did not require surgery. The defense also argued that Steelman was not wearing a seatbelt at the time of the accident. They argued that Steelman failed to mitigate his wage loss because he refused to participate in a functional capacity survey that was to be given by his employer's insurer. Lastly, the defendants purchased the workers' compensation lien of Steelman and claimed that they were entitled to an offset.

**Result:**

Stelman settled his claimed for \$70,000.

**Trial Information:****Judge:** None Assigned**Demand:** \$200,000 "new money"**Offer:** \$25,000 CCP § 998**Writer:** Randy Stewart

## Big Rig Truck Rear-End Collision

**Type:** Verdict-Plaintiff

**Amount:** \$25,272

**State:** California

**Venue:** San Mateo County

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

**Case Type:**

- *Motor Vehicle - Rear-ender*

**Case Name:** James Touchstone v. Martin Perez Caudillo; E.J. Pires Trucking et al., No. 396552

**Date:** July 17, 1997

**Plaintiff(s):**

- James Touchstone (Male, 54 Years)

**Plaintiff Attorney(s):**

- Reuben J. Doing; ; Redwood City CA for James Touchstone

**Plaintiff Expert (s):**

- James Kenner M.D.; Orthopedics; , called by:
- Robert Jackler M.D.; Otology; , called by:
- Malvina Levy; Speech Analysis; San Francisco, CA called by:

**Defendant(s):**

- E.J. Pires Trucking
- Martin Perez Caudillo

**Defense Attorney(s):**

- Andrew P. Sclar; Ericksen, Arbuthnot, Kilduff, Day and Lindstrom; San Francisco, CA for Martin Perez Caudillo, E.J. Pires Trucking

**Defendant Expert(s):**

- F. Blair Simmons M.D.; Otolaryngology; , called by: for

**Insurers:**           • Condor

**Facts:**           June 21, 1995, plaintiff, a 54-year-old retired airline mechanic, was injured when his Suburban was rear-ended by an 18-wheel big rig truck, operated by defendant Martin Perez Caudillo and owned by defendant Eugene Pires, in San Mateo.

Defendants admitted liability.

Plaintiff attorney asked the jury to award an unspecified amount, but in the range of \$200,000.

Medical \$10,000. Income loss approximately \$10,000. Property damage/loss of use approximately \$11,000.

**Injury:**           Injury: Dr. Kenner testified that plaintiff's soft tissue orthopedic injuries had resolved.

Dr. Jackler testified that plaintiff's tinnitus was caused by the subject accident.

Dr. Simmons testified that the tinnitus was not caused by the subject accident.

**Result:**           Result: \$25,272 Plaintiff Verdict (economic damages). The issues as to prevailing party and entitlement to costs are pending as of publication date.

Poll: (economic damages) 12-0

Settlement: Demand \$135,000, with an indication of \$100,000. Offer \$30,001 C.C.P. 998, raised to \$75,000, lowered to \$70,000.

Motion for new trial made by plaintiff--denied.

### **Trial Information:**

**Judge:**           Lawrence T. Stevens

**Trial Length:**   8 days

**Trial  
Deliberations:** 1 days

**Writer**           S Domer

## Auto/Truck Accident - Rear-End - Passenger Injured

**Type:** Verdict-Plaintiff

**Amount:** \$8,310

**State:** Georgia

**Venue:** DeKalb County

**Court:** DeKalb County, State Court, GA

**Injury Type(s):**

- *shoulder*

**Case Type:**

- *Motor Vehicle*

**Case Name:** Joyce Stevens v. Terry Blackmon, No. 07A76538

**Date:** May 14, 2009

**Plaintiff(s):**

- Joyce Stevens (Female, 55 Years)

**Plaintiff Attorney(s):**

- Allen W. Johnson; ; Augusta GA for Joyce Stevens

**Defendant(s):**

- Terry Blackmon

**Defense Attorney(s):**

- Stephanie V. Kandzierski; Dunwoody, GA for Terry Blackmon

**Defendant Expert(s):**

- Alex Collins D.O.; Orthopedics; Augusta, GA called by: for
- Priva Deshpande M.D.; Family Medicine; Augusta, GA called by: for

**Insurers:**

- State Farm

**Facts:** A passenger in a tractor-trailer was allegedly injured in an accident involving defendant's vehicle. Defendant disputed that plaintiff's injuries were related to this incident. The jury returned an \$8,310 verdict in favor of plaintiff.

Plaintiff Joyce Stevens was a passenger in a tractor-trailer that was traveling on a surface street in a commercial area of Riverdale. She claimed she was sitting on the bench seat in the cab when the rig was struck by a vehicle driven by Defendant Terry Blackmon. Plaintiff testified that she was jolted and thrown against the side of the cab.

Plaintiff alleged that defendant caused the accident when he failed to keep a safe distance between vehicles and struck the rear of the rig. Plaintiff acknowledged she had preexisting neck and back complaints, but denied any prior shoulder complaints or radiating pain from her neck area. She claimed her shoulder injury was the direct result of this accident and that she had recovered from her prior neck and back problems.

Defendant admitted he struck the rear of the truck, but contended that plaintiff had preexisting neck and back complaints, as well prior shoulder complaints. Defendant argued that plaintiff's injuries were not caused by this accident and any minor injuries should have resolved. He disputed the extent of plaintiff's damages.

Plaintiff was a 55 year old married female who was a truck driver.

**Injury:** Soft tissue cervical and lumbar injuries requiring physical therapy and chiropractic treatment, as well as shoulder (nerve) impingement which required arthroscopic surgery. Plaintiff had continuing complaints of shoulder pain to the date of trial and returned to work with limitations. She claimed \$26,200 in past medicals, unspecified lost wages, and damages for pain and suffering.

**Result:** \$8,310

### **Trial Information:**

**Judge:** Barbara J. Mobley

**Trial  
Deliberations:** 1 hours

**Editor's  
Comment:** There was no appeal and this case is closed.

**Writer**

## Motor Vehicle-

**Type:** Verdict

**Amount:** \$0

**State:** New York

**Venue:** Orange County

**Court:** Orange Supreme, NY

**Case Type:**

- *Motor Vehicle*

**Case Name:** Helen Blank, indiv. and as Adm. of the Est. of George Blank v. Sun Company, Inc. and Thomas Keck, No. 3043/98

**Date:** November 20, 2000

**Plaintiff(s):**

- Helen Blank, indiv. and as Adm. of the Est. of Geo (Male, 64 Years)

**Plaintiff Attorney(s):**

- Robert B. Marcus; ; New City NY for Helen Blank, indiv. and as Adm. of the Est. of Geo

**Plaintiff Expert(s):**

- Murray Siegel; Traffic Accident Analysis; Stratham, NH called by:

**Defendant(s):**

- Thomas Keck
- Sun Company Inc.

**Defense Attorney(s):**

- Anthony J. Colucci, III; Block & Colucci; Buffalo, NY for Sun Company Inc.

**Defendant Expert(s):**

- Eugene R Camerota; Traffic Accident Analysis; Fayetteville, NY called by: for



**Facts:**

On 11/1/96 at 6:36 PM, Pltf.'s decedent, a 64-year-old court officer, was driving north on River Rd. in the Town of New Windsor. It was dark at the time. Decedent drove up over a hill and proceeded down the grade and around a long left-to-right curve towards the site of the accident, which occurred in front of Deft. Sun Company's oil and gas distribution terminal. At the site the road is straight and level, and the posted speed limit is 40 mph. Deft. Keck, driving a Mack tractor and pulling a tanker filled to capacity with gasoline, claimed that after waiting for heavy traffic to clear both north and south, he saw no approaching headlights and began to pull out of the terminal and made a left turn to head south on River Rd. Deft. claimed that he first saw decedent's headlights as he Deft. crossed the double line dividing north and southbound traffic. He claimed that decedent was about 1/4 mile away at that time, but Deft. was unable to complete his turn before the collision occurred. Deft. testified that decedent's vehicle did not change its course or speed until it crashed into his rig near the rear tandem wheels.

Pltf.'s accident reconstruction expert testified that the lack of adequate lighting in the area and the 40° angle of the tanker across the northbound lane made it impossible for decedent to see the tanker until it was too late to avoid the impact. The expert estimated the speed at impact at 20-30 mph. Deft.'s accident reconstruction expert contended that decedent was driving at more than 55 mph. He also testified that there was sufficient lighting to illuminate the reflector tape along the tanker chassis.

Offer: \$150,000; demand: \$1,500,000.

**Injury:**

Partial transection of the aorta. Decedent was transported by medivac helicopter to a hospital, where he underwent emergency cardiothoracic surgery. He died 19 days after the accident. Decedent, age 64 at his death, is survived by his wife, presently age 70, and two adult daughters.

**Result:**

Pltf.'s verdict on liability 100% v. both Defts.; subsequently settled for an undisclosed amount, pursuant to a confidentiality agreement. Post-trial motions were denied. Jury: 4 male, 2 female.

**Trial Information:**

**Judge:** Peter C. Patsalos

**Trial Length:** 5

**Trial Deliberations:** 4

**Writer**

## Multi-Auto Freeway

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** Los Angeles County

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

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

**Case Name:** Daniel Nunenmacher vs. Jim Hurtt Trucking, Inc. and Albert Richard Williams, No. BC 125 772

**Date:** November 06, 1997

**Plaintiff(s):** • Daniel Nunenmacher (Male, 30 Years)

**Plaintiff Attorney(s):** • Kenneth Lipton; ; Van Nuys CA for Daniel Nunenmacher  
• John Wolcott; ; Los Angeles CA for Daniel Nunenmacher

**Plaintiff Expert (s):** • Marc A. Firestone; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Los Angeles, CA called by:  
• Alvin Reiter; Otolaryngology; Beverly Hills, CA called by:  
• Frank Perez Ph.D.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Livermore, CA called by:  
• Jerome Friedland; Orthopedic Surgery; Reseda, CA called by:

**Defendant(s):** • Albert Richard Williams  
• Jim Hurtt Trucking, Inc.

**Defense Attorney(s):** • Garth Goldberg; Wilson, Kenna & Borys; Los Angeles, CA for Jim Hurtt Trucking, Inc., Albert Richard Williams

**Defendant Expert(s):**

- Wes Pabst; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Los Alamitos, CA called by: for

**Insurers:**

- John Deer Transportation Services

**Facts:**

4/23/94: Plaintiff, a 30 year-old rock video producer, was driving his 1964 Mustang in the number five lane. The Defendant's truck rear-ended his car. This caused it to go out of control and hit two other cars.

**Plaintiff claimed** Defendant's big rig rear-ended Plaintiff in the number 5 lane, causing Plaintiff to go out of control, colliding with 2 other vehicles.

**Defendant argued** his big rig was in the number 3 lane and Plaintiff went out of control, colliding with other vehicles before hitting Defendant's big rig. Defendant was not responsible for this accident. Plaintiff was at fault.

**Injury:**

**Injuries:** Fractured ankle, broken leg, shoulder injury with calcifications, lacerations to face, ear and neck. **Treatment:** Future shoulder surgery. **Residuals:** Severe limp, pain and stiffness in shoulder and scars on face.

**Medical Costs:** Approximately \$44,000 past, \$122,000 future

**Result:**

Verdict: Defense

Jury Poll: 12-0

Settlement: **Offer:** \$5,000 CCP 998

**Demand:** \$300,000 reduced to \$80,000 before trial reduced to \$20,000 after Judge applied Proposition 213

Note:

Judge applied Proposition 213 pursuant to Yoshioka vs. Superior Court. Plaintiff had a claim for spoliation of evidence, which was dropped before trial. CHP officer testified in detail regarding his investigation, which determined Plaintiff to be at fault. Jury was persuaded by the physical evidence, including numerous photographs of the vehicles and a taillight housing (including an intact bulb) brought to the court by Plaintiff's expert.

Defendant was given judgment against Plaintiff for damage to his truck tires on cross-complaint. Cost bill to be filed for \$20,666 pursuant to CCP 998.

**Trial Information:**

**Judge:**

Irving S. Feffer

**Trial Length:** 8 days

**Trial  
Deliberations:** 3 hours

**Writer**

## One Big Rig Rear-ends Another on Freeway

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *eye*
- *back* - herniated disc
- *knee*
- *neck* - herniated disc
- *sensory/speech* - hearing, loss of
- *mental/psychological* - post-concussion syndrome

**Case Type:**

- *Motor Vehicle* - Rear-ender; Tractor-Trailer

**Case Name:** Jeffrey Woolard v. Neil Kramer and Primrose Path, No. BCV04807

**Date:** April 08, 2003

**Plaintiff(s):**

- Jeffrey Woolard (Male, 42 Years)

**Plaintiff Attorney(s):**

- Gary Odom; Law Office of Gary Odom; Riverside CA for Jeffrey Woolard

**Plaintiff Expert (s):**

- James Griffen; Accident Reconstruction; Riverside, CA called by: Gary Odom
- Sanjay J. Chauhan M.D.; Neurology; Victorville, CA called by: Gary Odom
- Patrick Wymore D.C.; Chiropractic; Victorville, CA called by: Gary Odom

**Defendant(s):**

- Neil Kramer
- Primrose Path

**Defense Attorney(s):**

- Robert T. Bergsten; Hosp, Gilbert, Bergsten & Phillips; Pasadena, CA for Neil Kramer, Primrose Path

**Defendant Expert(s):**

- Edmund Dombrowki M.D.; Orthopedics; Redlands, CA called by: for Robert T. Bergsten
- Dr. Kenneth A. Solomon; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Woodland Hills, CA called by: for Robert T. Bergsten

**Insurers:**

- Scottsdale Insurance Company

**Facts:**

On Jan. 21, 1999, plaintiff Jeff Woolard, a 42-year-old truck driver, was driving his tractor-trailer on northbound Interstate 15 near Baker. Neil Kramer, while in the course and scope of his employment for Primrose Path, was also driving a tractor-trailer northbound on I-15. Kramer fell asleep at the wheel and slammed his 80,000-pound rig into the rear of Woolard's semi, knocking it off the freeway and into the desert. Woolard subsequently sued Kramer and Primrose alleging vehicular negligence. The defendants admitted liability.

**Injury:**

Woolard, who was knocked unconscious, claimed that he suffered herniated discs in his neck and low back, post-concussion syndrome, a knee derangement, an eye injury and hearing loss. He claimed that due to his injuries, he underwent two years of orthopedic, neurologic, chiropractic and physical therapy care, MRIs, CT scans and neuro tests. Woolard never returned to work as a trucker. He filed for workers' compensation benefits and received vocational rehab, but he has been unable to find full-time employment. Woolard, his wife and six children have been living on workers' compensation, state disability and welfare benefits for the past four years. He claimed past medical specials, future medical expenses of \$100,000 (future neck and back surgeries, physical therapy), past loss of earnings \$200,000 and a future loss of earnings of \$1.2 million.

The defendants disputed the nature and extent of Woolard's claimed injuries and damages. The defendants contended that there was no causation between this accident and Woolard's injuries.

**Result:**

The jury returned a defense verdict after finding no causation between the accident and Woolard's injuries.

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

John P. Vander Feer

**Demand:**

\$1,000,000

**Offer:**

\$500 CCP 998

**Trial Length:** 5 days

**Trial  
Deliberations:** 5 minutes

**Jury Vote:** 12-0 causation

**Post Trial:** The defendants were awarded \$20,000 in costs and expert fees per their CCP 998 offer.

**Writer** Randy Stewart

## Rig rear-ended pickup; plaintiff claimed operated back injury

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Texas

**Venue:** Dallas County

**Court:** Dallas County District Court, 44th, TX

**Injury Type(s):**

- *back* - lower back; strain, lumbar
- *other* - soft tissue; back and neck

**Case Type:**

- *Motor Vehicle* - Truck; Rear-ender; Tractor-Trailer

**Case Name:** Felipe Martinez v. Coleman Logistics and John Bowers, No. 02-06657-B

**Date:** January 12, 2006

**Plaintiff(s):**

- Felipe Martinez (Male, 54 Years)

**Plaintiff Attorney(s):**

- Manuel Rios Jr.; Law Office of Manuel Rios; Dallas TX for Felipe Martinez

**Plaintiff Expert (s):**

- Brent C. Morgan M.D.; Surgery; Richardson, TX called by: Manuel Rios Jr.
- Benjamin Cunningham M.D.; Orthopedic Surgery; Dallas, TX called by: Manuel Rios Jr.

**Defendant(s):**

- John Bowers
- Coleman Logistics

**Defense Attorney(s):**

- C. Andrew Woodward; Fee, Smith, Sharp & Vitullo; Dallas, TX for John Bowers, Coleman Logistics
- Michael P. Sharp; Fee, Smith, Sharp & Vitullo; Dallas, TX for John Bowers, Coleman Logistics



**Defendant Expert(s):**

- Erwin A. Cruz M.D.; Neurology; Dallas, TX called by: for C. Andrew Woodward, Michael P. Sharp
- George H. Wharton M.D.; Orthopedics; Dallas, TX called by: for C. Andrew Woodward, Michael P. Sharp

**Facts:**

On Oct. 4, 2001, plaintiff Felipe Martinez, 54, a construction worker, was driving westbound on I-30 in Dallas. An 18-wheeler driven by John Bowers merged onto I-30 from I-45. Martinez slowed for traffic, and Bowers rear-ended him. Martinez was in a heavy-duty pickup.

Bowers was in the course and scope of his employment with Coleman Logistics, Grand Prairie.

Martinez sued Bowers for rear-ending him and sued Coleman Logistics under respondeat superior.

Bowers' attorney argued that it was just an accident, not negligence. He requested a jury instruction on sudden emergency, but the request was denied.

**Injury:**

Martinez sustained soft-tissue neck injuries and herniated discs at L4-5 and L5-S1. He had lumbar surgery twice: first a laminectomy and discectomy and later a fusion. His medical bills were roughly \$220,000, but were covered by workers' compensation.

Martinez claimed about \$100,000 in past lost wages. He claimed ongoing intractable pain and that he is unable to do any job that demands physical labor. His daughter also testified about how the pain affects his life.

At the time of the accident, Martinez had a prior history of continuing lower back problems. He had had surgery in 1989, and a motor vehicle accident in June 2001, and he had another motor vehicle accident in June 2004.

Neurologist Erwin Cruz, who treated Martinez and was called by the defense, said that an MRI from shortly after the accident showed a preexisting, long-term condition, not acute trauma.

**Result:**

The jury did not find Bowers negligent. Damages were conditioned and not reached.

**Trial Information:**

**Judge:** David Kelton

**Offer:** 40,000

**Trial Length:** 4 days

**Trial  
Deliberations:** 1.75 hours

**Jury Vote:** 10-2

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

**Editor's  
Comment:** The workers' compensation lien was at least \$250,000.

**Writer** John Schneider

## 18-Wheeler Hits Two Cars on Toll Road Feeder

|                               |  |
|-------------------------------|--|
| <b>Type:</b>                  | Settlement   |
| <b>Amount:</b>                | \$0  |
| <b>State:</b>                 | Texas  |
| <b>Venue:</b>                 | Harris County  |
| <b>Court:</b>                 | Harris County District Court, 61st, TX   |
| <b>Case Type:</b>             | <ul style="list-style-type: none"><li>• <i>Motor Vehicle</i> - Tractor-Trailer; Question of Lights</li></ul>   |
| <b>Case Name:</b>             | Joel Torres, John Wayne Bulsterbaum and Jesus Bravo v. Adolph Scott Kansteiner and Cannon Express Corp., No. 2002-03228  |
| <b>Date:</b>                  | April 14, 2003   |
| <b>Plaintiff(s):</b>          | <ul style="list-style-type: none"><li>• Joel Torres (Male, 17 Years)</li><li>• Jesus Bravo (Intervenor) (Male, 19 Years)</li><li>• John Wayne Bulsterbaum (Intervenor) (Male, 64 Years)</li></ul>  |
| <b>Plaintiff Attorney(s):</b> | <ul style="list-style-type: none"><li>• Brian Augustus Beckcom; Stevenson &amp; Ammons; for Joel Torres, John Wayne Bulsterbaum (Intervenor)</li><li>• Robert E. Lapin; Lapin &amp; Landa; Houston TX for Jesus Bravo (Intervenor)</li></ul>   |
| <b>Plaintiff Expert(s):</b>   | <ul style="list-style-type: none"><li>• J. S. Hinton; Accident Reconstruction; Houston, TX called by: Robert E. Lapin</li><li>• Jack G. Dial; Neuropsychology; Dallas, TX called by: Robert E. Lapin</li><li>• Rodney Isom Ph.D.; Life Care Planning; Denton, TX called by: Robert E. Lapin</li><li>• Emmanuel G. Melissinos M.D.; Plastic &amp; Reconstructive Surgery; Houston, TX called by: Brian Augustus Beckcom, Robert E. Lapin</li><li>• Rosemary Buckle M.D.; Orthopedic Surgery; Houston, TX called by: Robert E. Lapin</li></ul> |
| <b>Defendant(s):</b>          | <ul style="list-style-type: none"><li>• Cannon Express Corp.</li><li>• Adolph Scott Kansteiner</li></ul>   |
| <b>Defense Attorney(s):</b>   | <ul style="list-style-type: none"><li>• Alan N. Magenheimer; Magenheimer, Bateman &amp; Helfand; Houston, TX for Adolph Scott Kansteiner, Cannon Express Corp.</li></ul>   |

**Defendant  
Expert(s):**

- Dale King; Accident Reconstruction; Houston, TX called by: for Alan N. Magenheim

**Facts:**

Plaintiff Joel Torres and intervenor, Jesus Bravo, his passenger, were traveling eastbound on Hammerly Blvd. underneath the Sam Houston Tollway. Intervenor John Bulsterbaum was driving another vehicle also eastbound on Hammerly Blvd. As the two vehicles entered the intersection of Hammerly and the tollway feeder, they were each struck by an 18-wheel tractor-trailer owned by Cannon Express Corp., Springdale, AR, and driven by Adolph Scott Kansteiner.

The cab of the rig struck Bulsterbaum's vehicle and spun it around. Torres' vehicle became lodged under the rig's rear axle and was dragged underneath until the both came to a stop.

Torres sued, and Bravo and Bulsterbaum intervened against, Kansteiner and Cannon Express alleging negligence in the operation of the 18-wheeler. They argued that the rig had entered the intersection against a red light.

Canon Express and Kansteiner contended that Kansteiner's rig entered the intersection with a yellow light. They argued that the lights at the intersection had a timing problem.

**Injury:**

Bravo was transferred to Hermann Hospital via emergency life flight. He sustained numerous serious injuries including: fracture of 1st and 7th ribs; right extrapleural hematoma; right lower pneumothorax; bleeding within the right oblique muscle; soft tissue loss (necrosis) to his right arm; fracture of his right ulna; diastasis of his right sacroiliac joint; right lateral and right flank subcutaneous fat hematoma; comminution of the symphysis pubis; open right tibia fracture; open right fibula fracture; injury to the right peroneal nerve; fracture of the medial malleolus; fracture of the T7 and T8 transverse process; laceration of the liver; fracture of his S1 transverse process splitting the sacrum; fractures of the bilateral inferior pubis ramis; soft tissue loss (necrosis) to his right leg; and a split thickness skin graft from left thigh to his right leg.

Bulsterbaum suffered a burst fracture in his thoracic vertebrae which caused his leg to go numb and significantly interferes with the enjoyment of his retirement. Surgery has been recommended to remedy the burst fracture.

Torres suffered broken ribs and a lacerated liver. While he has recovered from his more serious injuries, he still experiences occasional pain in his knee.

**Result:**

After voir dire, the defendants settled the Bulsterbaum claim. Following the testimony of one of the independent eye-witnesses to the accident, the remaining parties settled on the second day of the jury trial for confidential amounts.

**Trial Information:**

**Judge:** John Donovan

**Demand:** Confidential

**Offer:** Confidential

**Trial Length:** 2 days

**Jury  
Composition:** 6 male; 6 female

**Post Trial:** Settled.

**Writer** B. K. Silva

## Passenger Injured In Rear-End

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** California

**Venue:** San Bernardino County

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

**Case Type:**

- *Motor Vehicle - Truck*

**Case Name:** Fulsaac Franklin vs. Greyhound Lines, Inc., No. BCV 008139

**Date:** April 29, 1997

**Plaintiff(s):**

- Fulsaac Franklin (Male, 30 Years)

**Plaintiff Attorney(s):**

- Geoffrey C. Mousseau; ; Santa Monica CA for Fulsaac Franklin

**Plaintiff Expert (s):**

- Dr. Jon Greenfield; Orthopedic Surgery; Beverly Hills, CA called by:
- Gene Bruno; Physical Rehabilitation; Los Angeles, CA called by:
- George M. Brinton; Economics; Los Angeles, CA called by:
- Melvin Friedlander; Safety; Huntington Beach, CA called by:

**Defendant(s):**

- Greyhound Lines, Inc.

**Defense Attorney(s):**

- J. E. Holmes, III; Thompson & Colegate; Riverside, CA for Greyhound Lines, Inc.

**Defendant Expert(s):**

- Edward A. Abraham; Orthopedic Surgery; Santa Ana, CA called by: for
- Michael Morris; Physical Rehabilitation; Santa Ana, CA called by: for
- Mr. Richard J. Fay; Accident Reconstruction; Denver, CO called by: for

**Insurers:**

- self-insured (\$5 million)

**Facts:**

December 19, 1989, at 11:30 a.m.: Plaintiff was an unemployed bus driver in his 30s. High winds and blowing sand reduced visibility in the northbound lanes of Interstate 15, ten miles north of Barstow. A sport-utility vehicle rear-ended a tractor-trailer rig hauling large paper rolls. The sport-utility vehicle blocked the first and second northbound lanes. A second tractor-trailer rig rear-ended an auto in the number one lane that had slowed for the sport-utility vehicle. The auto driver pulled his vehicle to the center median and parked. The second tractor-trailer rig pulled to the center median and parked as well, but the trailer did not clear the number one northbound lane. It blocked the lane. Another auto struck the right rear corner of the second tractor-trailer, causing the strapping holding five 9,000-pound rolls of paper to come loose. The paper rolled off the flatbed. Defendant's bus driver swerved into the center median while braking. The bus passed alongside the tractor-trailer. The paper roll struck the bus in the right front windshield. Plaintiff was the right front passenger of the bus. He was asleep, leaning against the window. The California Highway Patrol conducted an investigation that yielded a 148-page traffic collision report. It concluded that the accident and many of the resulting injuries were a direct result of the failure of the tractor-trailer driver to remove his rig from the road. It also attributed causation to each driver involved, and to the fact that the bus' brakes were severely degraded. Six of the eight tires on the bus were underinflated.

Plaintiff contended the bus driver was negligent for driving too fast. He followed too closely. He failed to maintain a safe distance between vehicles. He was inattentive. The bus was in an unsafe condition. Plaintiff was unable to return to his career as a bus driver.

Defendant contended the tire pressure was appropriate. The brake adjustments, with the exception of one, fell within the parameters of the bus manufacturer and federal regulations. The speed of the bus was between 40 and 45 miles per hour. The liability for the case rested with the tractor-trailer driver and other parties involved in the prior accidents. Defendant's driver was not responsible. His was the only vehicle to avoid a collision with the tractor-trailer. Had the paper rolls not been negligently loaded, the accident would never have occurred.

Settlement: Offer: \$400,000 new money (Defendant advanced Plaintiff \$50,000 for surgery)

Demand: \$600,000 immediately before trial

Verdict: Defense 9-3

Note: Plaintiff's motion for new trial was denied. April 29, 1997

**Injury:**

Injuries: Fracture of left femur with subsequent infection, dislocated left ankle, amputation of right small finger and tip of right finger, and broken teeth. Treatment: Surgery to replace infected femoral rod and removal of broken teeth. Residuals: Limp and speech problems.

**Result:** Medical Costs: \$160,000 past, \$50,000 future

Loss of Earnings: \$150,000

**Trial Information:**

**Judge:** Thomas G. Glasser

**Trial Length:** 9 weeks

**Trial  
Deliberations:** 5 days

**Writer** S Domer



## Defense: Car, not rig, caused pedestrian's fatal injuries

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** New York

**Venue:** Queens County

**Court:** Queens Supreme, NY

**Injury Type(s):**

- *hip* - fracture, hip
- *leg* - fracture, leg; fracture, femur; fracture, leg; fracture, fibula
- *head*
- *ankle*
- *chest* - fracture, rib; fracture, sternum
- *other* - death; abrasions; laceration; unconsciousness
- *pelvis* - fracture, pelvis
- *cardiac* - cardiac arrest
- *epidermis* - contusion; degloving
- *gynecological* - vagina

**Case Type:**

- *Motor Vehicle* - Pedestrian; Right Turn
- *Wrongful Death* - Survival Damages

**Case Name:** Matina Karadiakos as the Administratrix of the Estate of Aglaia Karadiakos, Deceased, v. G.K. Pope Trucking, Co. Inc., Nathaniel Generette and Alan Zvonko Piscak, No. 15175/10

**Date:** May 03, 2013

**Plaintiff(s):**

- Estate of Aglaia Karadiakos (Female, 81 Years)

**Plaintiff Attorney(s):**

- James R. Schermerhorn; Bamundo, Zwal & Schermerhorn, LLP; New York NY for Estate of Aglaia Karadiakos

**Plaintiff Expert (s):**

- David Delonga; Biomechanical; Pensacola, FL called by: James R. Schermerhorn

**Defendant(s):**

- Alan Zvonko Piscak
- Nathaniel Generette
- G.K. Pope Trucking Co. Inc.

**Defense  
Attorney(s):**

- Jeffrey K. Van Etten; Kral Clerkin Redmond Ryan Perry & Van Etten, LLP; New York, NY for G.K. Pope Trucking Co. Inc., Nathaniel Generette
- None reported for Alan Zvonko Piscak

**Defendant  
Expert(s):**

- Leon Kazarian; Biomechanical; Bellbrook, OH called by: for Jeffrey K. Van Etten
- C. Bruce Gambardella; Accident Reconstruction; Spring Valley, NY called by: for Jeffrey K. Van Etten

**Insurers:**

- Scottsdale Insurance Co.

**Facts:**

On Nov. 13, 2008, plaintiff's decedent Aglaia Karadiakos, 81, was struck by a motor vehicle. The incident occurred on 23rd Avenue, alongside its intersection at 46th Street, in the Astoria section of Queens. Karadiakos sustained fatal injuries.

Karadiakos' daughter, Matina Karadiakos, acting as the administrator of her mother's estate, sued the drivers of two vehicles that were believed to have been at the intersection at the time of the accident, Nathaniel Generette and Alan Piscak, and the owner of Generette's vehicle, G.K. Pope Trucking Co. Inc. The estate alleged that Generette and Piscak were negligent in the operation of their respective vehicles. The estate further alleged that G.K. Pope Trucking was vicariously liable for Generette's actions.

The estate's counsel ultimately discontinued the claim against Piscak. The matter proceeded to a trial against Generette and G.K. Pope Trucking.

The estate's counsel claimed that Aglaia Karadiakos was struck by a tractor-trailer that Generette was driving. A witness, John Pappas, claimed that the incident occurred while Generette was executing a right turn onto 46th Street, from 23rd Avenue. He contended that, after stopping alongside the intersection, Generette inched forward and initiated contact. He claimed that Karadiakos, who was using a cane, spun, fell and rolled beneath the vehicle. He contended that the rig's rear tires rolled over her. The estate's expert biomechanical engineer noted that Karadiakos sustained degloving, fractures and internal injuries, and he opined that the injuries were consistent with the injuries that would have been caused by a truck's tires having rolled over her. The expert also opined that Karadiakos would not have spun and fallen under the rig unless the rig had struck her cane or her extremities.

Generette contended that Karadiakos was not struck by the rig. He claimed that he approached the intersection, stopped on the left side of 23rd Avenue, a one-way street, and prepared to execute a wide turn onto 46th Street. He contended that another motorist passed the rig's right side and struck Karadiakos. He acknowledged that he eventually began his turn, but he claimed that he proceeded slowly and did not detect contact or anything else that suggested that a collision had occurred. A witness agreed that the rig did not strike Karadiakos.

The defense's accident-reconstruction expert challenged Pappas' description of the accident. He opined that Pappas' testimony suggested that Karadiakos and the rig were initially separated by a distance of some 16 feet. As such, the expert concluded that the rig could not have inched forward and struck Karadiakos.

The defense's expert biomechanical engineer opined that Karadiakos' injuries were consistent with the injuries that would have resulted from a small vehicle having struck one of her hips. He noted that she sustained a fracture of her left leg's fibula, and he opined that the injury was caused by twisting of the leg; not the leg having been caught beneath a rig's tires. He also noted that she sustained fractures of her pelvis and degloving injuries of her ankles, and he contended that the rig's tires, whose width measured 22 inches, could not have simultaneously injured body parts that were separated by about 36 inches of bone and flesh.

**Injury:** Karadiakos sustained degloving of her ankles, a fracture of her right hip, fractures of her left leg's femur and fibula, a fracture of her sternum, fractures of her pelvis and several ribs, a laceration of her bladder, a laceration of her left lung, a laceration of her vaginal wall, an injury of her head, and abrasions, contusions and lacerations of her torso and legs. Pappas claimed that he overheard Karadiakos moaning and that she seemed to be attempting to move.

An ambulance arrived some eight minutes after the accident had occurred. Emergency medical technicians noted that Karadiakos was suffering cardiac arrest. One technician opined that Karadiakos was not conscious. Karadiakos was placed in the ambulance, and she was transported to a hospital, where she was pronounced dead during the ensuing hour. The estate's expert biomechanical engineer estimated that Karadiakos experienced eight to 12 minutes of conscious pain and suffering, though he also acknowledged that her head's injury could have caused a loss of consciousness.

Karadiakos, 81, died Nov. 13, 2008. She was survived by a daughter, a son and two grandchildren. Karadiakos' estate sought recovery of wrongful-death damages that included \$5,700 for the cost of Karadiakos' funeral, \$10,000 for the cost of her burial, \$1 million for her conscious pain and suffering, and a total of \$250,000 for her children's loss of parental guidance.

Defense counsel challenged the contention that Karadiakos experienced as many as eight to 12 minutes of conscious pain and suffering.

**Result:** The jury rendered a defense verdict. It found that Karadiakos was not struck by Generette's rig.

**Trial Information:**

**Judge:** Allan B. Weiss

**Demand:** \$450,000 (total, from G.K. Pope Trucking and Generette)

**Offer:** \$57,500 (total, by G.K. Pope Trucking and Generette)

**Trial Length:** 9 days

**Trial Deliberations:** 1 days

**Jury Vote:** 5-1

**Jury Composition:** 3 male, 3 female; 2 Guyanese, 4 white

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel and counsel of G.K. Pope Trucking and Generette. Piscak's counsel was not asked to contribute.

**Writer** Max Mitchell

## Truck driver had no time to react to avoid crash: defense

**Type:** Verdict-Defendant

**Amount:** \$0

**State:** Maryland

**Venue:** Federal

**Court:** U.S. District Court, District of Maryland, Greenbelt, MD

**Injury Type(s):**

- *head* - closed head injury
- *other* - death; unconsciousness

**Case Type:**

- *Wrongful Death*
- *Motor Vehicle* - Truck; Parked Car; Rear-ender; Visibility

**Case Name:** Frances Lynn Eisel, individually and as personal representative of the Estate of Jeremy L. Grimes, deceased and Douglas Scott Louia v. Enrique Silva, II, Juana C. Silva, and MAG Carriers, LLC, No. 8:13-cv-00235-PWG

**Date:** November 19, 2014

**Plaintiff(s):**

- Frances Lynn Eisel (Female, 40 Years)
- Douglas Scott Louia (Male, 40 Years)
- Estate of Jeremy L. Grimes (Male, 25 Years)

**Plaintiff Attorney(s):**

- Donna S. Mangold; Cooter, Mangold,Deckelbaum & Karas, L.L.P.; Bethesda MD for Estate of Jeremy L. Grimes, Frances Lynn Eisel
- Dale A. Cooter; Cooter, Mangold,Deckelbaum & Karas, L.L.P.; Bethesda MD for Estate of Jeremy L. Grimes, Frances Lynn Eisel
- Michael Lloyd Smith; Smith Graham & Crump LLC; Largo MD for Douglas Scott Louia

**Plaintiff Expert (s):**

- Anthony L. Bocchichio; Accident Reconstruction; Annapolis, MD called by: Donna S. Mangold, Dale A. Cooter, Michael Lloyd Smith

**Defendant(s):**

- Juana C. Silva
- Enrique Silva II
- MAG Carriers, LLC

**Defense  
Attorney(s):**

- Inga Oesterle Upshaw; Ryan, Drewniak & Upshaw, LLC; Annapolis, MD for Enrique Silva II, Juana C. Silva, MAG Carriers, LLC

**Defendant  
Expert(s):**

- Alfred Cipriani P.E.; Accident Reconstruction; Millersville, MD called by: for Inga Oesterle Upshaw
- Cpl. Justin Zimmerman; Accident Reconstruction; La Plata, MD called by: for Inga Oesterle Upshaw

**Insurers:**

- State Auto Insurance Companies

**Facts:**

On Jan. 17, 2012, plaintiff's decedent Jeremy L. Grimes, 25, was the driver of a vehicle that had become disabled on the right side of westbound Interstate 50 near Davidsonville. The roadway was unlit and it was a dark stormy night. Subsequently, a tractor-trailer driven by Enrique Silva approached. (Silva also owned the tractor component of the rig. The trailer component of the rig was owned by Juana C. Silva, and both tractor and trailer were leased out to MAG Carriers, LLC, who engaged Enrique Silva to act as its contract/employee driver.) The front of the Silva/MAG Carriers rig rear-ended the left-rear side of Grimes' disabled vehicle that was, by most accounts, protruding slightly into the right lane of the highway. Grimes died five days later from traumatic injuries suffered as a result of the collision.

Grimes' mother brought a wrongful death lawsuit against MAG Carriers and both Silvas. The lawsuit was filed in the Circuit Court of Montgomery County. The defendants removed the action to federal court based on diversity jurisdiction. Grimes' father, Douglas Scott Louia, who was estranged from Grimes' mother, joined in the action and was separately represented by counsel.

The plaintiffs alleged that Silva was driving while fatigued and at an excessive rate of speed for the conditions. They also alleged that Grimes' vehicle was disabled and stopped with the hazard lights engaged on the right shoulder of the highway.

Defense counsel denied negligence and asserted contributory negligence and assumption of risk on the part of Grimes. The defense contended that Grimes assumed a risk by remaining in a vehicle that he had negligently positioned on a travel lane of a major highway, without any measures taken to exhibit hazard flashers or any other form of illumination. Further, the defense argued that, by the time Silva saw Grimes' vehicle obstructing his right-of-way, there was insufficient time to perceive or react to the dilemma presented.

Shortly before the accident, a motorist had phoned in a report of a vehicle on the side of the highway that appeared to be "abandoned," as it had no hazard lights or interior lights. Immediately before the accident, a Maryland state trooper dispatched to investigate the report of the abandoned vehicle was traveling behind the Silva/MAG Carriers truck in search of what proved to be Grimes' vehicle. That officer would ultimately testify that the truck was not exceeding the speed limit, nor operating at a speed unsuitable for the weather and visibility conditions.

The accident was investigated by the Maryland State Police as a possible vehicular homicide. The trooper who headed that investigation would be qualified as an expert and later testify as a defense witness during the trial that Grimes' disabled vehicle was partially

protruding into the travel portion of the right lane of the highway and was not illuminated in any way. There were other witnesses who corroborated that the disabled vehicle exhibited no hazard lights or interior illumination. The investigating trooper was allowed to render an opinion that Grimes' failure to pull his vehicle entirely off the roadway and the failure to display any form of illumination on a dark highway in inclement weather were factors that substantially contributed to the accident. No criminal charges were brought against Enrique Silva.

Each side presented retained accident reconstruction experts that offered conflicting opinions about perception and reaction times afforded Silva given the circumstances of the accident. What's more, plaintiff's reconstruction expert conceded that Silva might have had less than two seconds to react to the dilemma presented.

**Injury:** The responding State Trooper and EMTs who arrived at the scene reported that Grimes appeared unconscious at the scene. Grimes was taken to Anne Arundel County Medical Center and shortly thereafter transported by helicopter to University of Maryland Shock Trauma in Baltimore, where he died on Jan. 22, 2012, as a result of systemic failures attributed to massive head trauma.

Grimes was mostly comatose from the time of the accident until his death, which was ultimately immaterial to the damages claim. The court did not allow a claim for pain and suffering and limited the damages issues to the wrongful death cause of action brought by the surviving parents. There was no specific wage loss claim. Grimes had been unemployed for a considerable period of time prior to the accident.

**Result:** The jury returned a defense verdict by determining that there was no primary negligence on the part of the defendants.

### **Trial Information:**

**Judge:** Paul W. Grimm

**Demand:** \$1.5 million

**Offer:** None

**Trial Length:** 5 days

**Trial Deliberations:** 30 minutes

**Jury Vote:** 8-0



**Editor's  
Comment:**

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

**Writer**

Jon Steiger