

## Plaintiffs: Negligent hiring led to fatal stabbing by employee

June 23, 2022

<b>Amount:</b>	\$7,375,000,000	<b>Type:</b>	Verdict-Plaintiff
<b>Court:</b>	Dallas County Court at Law No. 5, TX		
<b>Case Name:</b>	William Goff as Personal Representative of Betty Jo McClain Thomas, deceased; Charles Thomas; Cindy Ringness; Cheryl Goff; and Charlotte Glover v. Roy James Holden, Jr., No. CC-20-01579-E		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Chris S. Hamilton; Hamilton Wingo, LLP; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li><li>• Ray T. Khirallah Jr.; Hamilton Wingo, LLP; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li><li>• Brad Jackson; The Law Offices of Brad Jackson; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li><li>• Paul Wingo; Hamilton Wingo, LLP; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li><li>• Allie J. Hallmark; Hamilton Wingo, LLP; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li><li>• Grant P. Boston; Hamilton Wingo, LLP; Dallas TX for William Goff,, Betty Jo McClain Thomas,, Charles Thomas,, Cindy Ringness,, Cheryl Goff,, Cheryl Glover</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Michael H. Bassett; The Bassett Firm; Dallas, TX for Charter Communications LLC</li><li>• Edward Davis; Lewis Brisbois Bisgaard &amp; Smith LLP; Dallas, TX for Charter Communications LLC</li><li>• Dale Wainwright; Greenberg Traurig LLP; Austin, TX for Charter Communications LLC</li><li>• Michael Kawalek; Kawalek Firm PLLC; Dallas, TX for Charter Communications LLC</li><li>• Clint Cox; Cox P.L.L.C.; Dallas, TX for Roy James Holden</li><li>• O. Luke Davis III; Cox P.L.L.C.; Dallas, TX for Roy James Holden</li><li>• Sarah Schuller; Cox P.L.L.C.; Dallas, TX for Roy James Holden</li></ul>		
<b>Facts:</b>	<p>On Dec. 12, 2019, plaintiffs' decedent Betty Jo McClain Thomas, 83, was stabbed to death at her home in Irving. The killer was Roy James Holden Jr., a field technician for Charter Communications LLC since November 2018. Charter provides residential phone, internet and television services. Holden entered into a plea agreement and was sentenced to life in prison for Thomas' murder.</p> <p>Holden had performed work at Thomas' house the day before he killed her. He returned on the 12th, in a Charter truck and Charter uniform, under the pretext of fixing an ongoing problem with her fax machine. While he was there, she caught him stealing her credit cards, and he stabbed her with his Charter-issued utility knife.</p> <p>Thomas was survived by three daughters and one son. They were plaintiff Cindy Ringness, 65; plaintiff Cheryl Goff, 63; plaintiff Charlotte Glover, 58; and plaintiff Charles Thomas, 67.</p> <p>Thomas' estate and four children sued Holden and later added Charter as a defendant. The lawsuit alleged that Holden assaulted and killed Thomas and that Charter was negligent and grossly negligent in its hiring, retention and supervision of Holden. The plaintiffs later added a claim of forgery, alleging that Charter fabricated terms and conditions containing an arbitration provision and limitation of liability to which Thomas had not agreed.</p> <p>The plaintiffs claimed that Charter negligently failed to verify Holden's employment history. When Holden applied to Charter, he had been terminated from several jobs. Holden failed to disclose some of these jobs at all; others he said he left voluntarily. His most recent termination was the day before the application and was for harassment of a coworker.</p> <p>The plaintiffs claimed that Charter stopped verifying field techs' employment histories in 2016. Charter's human resources director for the Texas region and Holden's supervisor testified that, had an employment verification been run on Holden, Charter would have discovered numerous red flags and discrepancies and would not have hired him.</p> <p>The jury received a spoliation instruction as to Charter's failure to preserve video surveillance footage of the parking lot where Holden accessed a company van before and after killing Thomas.</p> <p>Plaintiffs' counsel asked the jury to find 90 percent responsibility on Charter and 10 percent on Holden, for causing or contributing to cause Thomas' death.</p> <p>Holden's counsel argued that Charter alone was responsible for Thomas' death, because Holden was having a mental breakdown and begged his supervisors for help in the weeks before the murder. In response to a written request for assistance, Charter's operations manager had responded, "Get to work... lol," counsel noted.</p>		
	<p>Charter denied negligence, gross negligence and forgery. Charter's counsel argued that Holden alone was responsible for Thomas' death.</p>		

**Injury:** Thomas was stabbed and killed. She was survived by three daughters and one son.

Thomas and her daughters all lived within a mile of each other in Irving and saw each other often. Thomas' son lived in Florida, and Thomas stayed with him for about six months out of the year.

The estate sought \$100 million for Thomas' pain and mental anguish. Thomas was stabbed four times in the neck and once in the forearm, and plaintiffs' counsel argued that the forearm wound was defensive in nature.

The four children sought a total of \$286 million, for past and future pecuniary loss, past and future loss of companionship and society and past and future mental anguish.

The plaintiffs also sought punitive damages of \$6 billion to \$12 billion.

Charter suggested an award of \$10 million to \$20 million in actual damages and zero in punitive damages, should the jury find Charter liable.

**Result:** The jury found negligence and comparative responsibility of 90 percent on Charter; found assault and comparative responsibility of 10 percent on Holden; and determined that the plaintiffs' actual damages totaled \$375 million.

The jury also found gross negligence as to Charter and assessed punitive damages of \$7 billion, apportioning 20 percent to the estate and 20 percent to each of the four children.

The jury also found that Charter, beyond a reasonable doubt, with the intent to defraud or harm the plaintiffs, knowingly or intentionally committed forgery of the terms and conditions of service.

The trial was bifurcated. The second phase had only three jury questions: the amount of punitives, the apportionment of punitives and the forgery question.

Phase one lasted 13 days, and phase two lasted two days. The jury deliberated for three hours in phase one and two hours in phase two.

**Judge:** Juan Renteria

**Trial Length:** 15 days

## Plaintiffs: Improperly set crane led to daughter's death

April 27, 2023

**Amount:** \$860,012,006      **Type:** Verdict-Mixed

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

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

**Plaintiff Attorney(s):**

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

**Defense Attorney(s):**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Judge:** Melissa J. Bellan

**Trial Length:** 2 weeks

## Truck driver lost control on icy road, led to fatal crashes

November 16, 2017

**Amount:** \$38,978,670 **Type:** Verdict-Plaintiff

**Court:** Dallas County Court at Law No. 5, TX

**Case Name:** Jaswinder Chohan, Individually and as Next Friend and Natural Mother of GKD, HSD and AD, Minors and as Representative of The Estate of Bhupinder Singh Deol, Darshan Singh Deol and Jagtar Kaur Deol v. Guillermo Vasquez, Sarah Gregory, New Prime, Inc., d/b/a Prime, Inc., Orlando Santiago Ferrer, Pablo Diaz d/b/a P & O Transport, M.C. Van Kampen Trucking, Inc. and Cindy L. Erving, No. CC-15-02925-E

**Plaintiff Attorney(s):**

- Micky N. Das; Tyler & Das; Houston TX for Estate of Bhupinder Singh Deol, Jaswinder Chohan, Guneet Kaur Deol, Aashish Deol, Harshjot Singh Deol, Darshan Deol, Jagtar Deol
- Michael H. Bassett; The Bassett Firm; Dallas TX for Estate of Alma Belinda Vasquez, William Vasquez, Gregory Vasquez, Alma J. Perales, Guillermo Vasquez, Estate of Hector Perales, Elijah Perales, Noah Perales
- Greg Marks; Guajardo & Marks LLP; Dallas TX for Guy Jones, Nancy Buss, Steve Buss, Myles Buss, Brett Jones, Estate of Tracy Jones, Clayton Ireton
- Tim Tate; Tate Law Offices PC; Dallas TX for Estate of Bhupinder Singh Deol, Jaswinder Chohan, Guneet Kaur Deol, Aashish Deol, Harshjot Singh Deol, Darshan Deol, Jagtar Deol
- Tim Dollar; Dollar, Burns & Becker, L.C.; Kansas City MO for Estate of Alma Belinda Vasquez, William Vasquez, Gregory Vasquez, Alma J. Perales, Guillermo Vasquez, Estate of Hector Perales, Elijah Perales, Noah Perales
- J. J. Burns; Dollar, Burns & Becker, L.C.; Kansas City MO for Estate of Alma Belinda Vasquez, William Vasquez, Gregory Vasquez, Alma J. Perales, Guillermo Vasquez, Estate of Hector Perales, Elijah Perales, Noah Perales

**Defense Attorney(s):**

- Steven A. Springer; Fletcher, Farley, Shipman & Salinas LLP; Dallas, TX for New Prime Inc., Sarah Gregory
- Roy L. Stacy; Stacy Conder Allen LLP; Dallas, TX for Orlando Santiago Ferrer, Pablo Diaz
- Michael L. Hurst; Hermes Law P.C.; Dallas, TX for Cindy L. Erving, M.C. Van Kampen Trucking Inc.
- Drew T. Peters; Fee Smith Sharp & Vitullo LLP; Dallas, TX for Ondre Orlando Reynolds, DOD Reynolds LLC
- Alex J. Bell; Fletcher, Farley, Shipman & Salinas LLP; Dallas, TX for New Prime Inc., Sarah Gregory

**Facts:**

On Nov. 22, 2013, plaintiff Guillermo Vasquez, 75, a retired school administrator was driving a van with plaintiff's decedent Alma B. Vasquez, 74, retired, his wife; and plaintiff's decedent Hector Perales, 47, a school teacher, his passenger. Plaintiffs' decedent Bhopinder Deol was driving a tractor-trailer owned by Maryland Trucking Inc. and plaintiff Guy Jones was driving a 2013 Toyota Prius with his mother, plaintiffs' decedent Tracy Jones as a passenger. Plaintiff Clayton Ireton was a passenger in the Jones vehicle. They were heading east on Interstate 40 in Oldham County along with Sarah Gregory, in a tractor-trailer owned by New Prime Inc.; Orlando Ferrer in an 18-wheeler owned by P&O Transport Inc.; Cindy Erving, in a tractor-trailer owned by M.C. Van Kampen Trucking Inc.; and Ondre Reynolds in a tractor-trailer owned by DOD Reynolds LLC. The road was icy, and it was about 11:15 p.m.

Gregory lost control and her truck came to rest blocking more than half of the eastbound lanes. Deol pulled over onto the shoulder and exited his truck. Vasquez and Jones slowed down, but struck Gregory's truck. Ferrer struck Gregory's truck, Vasquez's van and Jones' car, and Vasquez's van was pushed into Deol, killing him.

Deol was survived by his wife, plaintiff Jaswinder Chohan; his mother, plaintiff Jagtar Kaur Deol; his father, plaintiff Darshan Singh Deol; and his three minor children, who were also plaintiffs.

Besides Guy Jones, other survivors of Tracy Jones were her minor child, who was a plaintiff and was also in the accident; another adult child, plaintiff Myles Buss; her mother, plaintiff Nancy Buss; and her father, plaintiff Steve Buss.

Besides Guillermo Vasquez, other survivors of Alma Vasquez were her daughter, plaintiff Alma J. Perales, who was also Hector's wife and was also in the accident; her son plaintiff William Vasquez, 51, an auto mechanic, who was also in the accident; and her son plaintiff Gregory Vasquez.

Besides his wife, Hector Perales was also survived by his minor sons, plaintiff Elijah Perales and plaintiff Noah Perales. Noah was also in the accident.

The lawsuit was filed initially by Deol's estate and family. They sued Vasquez; Gregory and New Prime; Ferrer and Pablo Diaz, doing business as P&O Transport Inc.; and Erving and M.C. Van Kampen Trucking. Reynolds and DOD Reynolds were later added as defendants.

The Joneses, the Busses and Ireton intervened as plaintiffs. Later, the Peraleses and the Vasquezes intervened.

Cross-claims, counterclaims and third-party claims were filed, as well.

The case went to trial on only the claims of Chohan, the Deols, the Peraleses and the Vasquezes against Gregory and New Prime.

At trial, the plaintiffs maintained that Gregory was negligent and grossly negligent for failing to maintain control of her vehicle, failing to keep a proper lookout, failing to control her speed, driving too fast, failing to turn on her hazard lights after blocking the interstate and failing to call 911 or other authorities, and that New Prime was negligent and grossly negligent both for entrusting the vehicle to her and in her training and supervision. Gregory was in the course and scope of her employment with New Prime.

Regarding why Deol pulled over and exited his vehicle, the plaintiffs' position was that Deol stopped to render aid after Gregory's truck jackknifed.

For comparative responsibility, plaintiffs' counsel asked the jury to find percentages totaling 85 percent against Gregory and New Prime and to find 15 percent against Ferrer.

Gregory and New Prime denied negligence, contending that Gregory was confronted with black ice. They also argued that Vasquez negligently failed to keep a proper lookout and failed to control his speed and that Deol negligently exited his vehicle and failed to keep a proper lookout.

The jury charge included a "sudden emergency" instruction.

**Injury:**

Deol died at the scene from blunt force trauma, as did Hector Perales. Alma Vasquez died nine days later from her injuries, which included bleeding in the brain and fractures of the neck, mid-back, shoulder and ribs. Guillermo Vasquez lost a large portion of his leg. William Vasquez sustained soft-tissue injuries. Alma Perales sustained a fractured ankle and three fractured toes. Noah Perales sustained a punctured lung and a severe laceration on the left side of his scalp.

The decedents' estates sought damages for pain and mental anguish. Deol's widow, parents and three minor children claimed past and future pecuniary loss, past and future loss of companionship and society and past and future mental anguish. Hector's widow and two minor sons sought the same, as did Alma Vasquez's husband, daughter and two sons.

Guillermo Vasquez's past medical bills were stipulated at about \$174,000, and the issue of his past medical treatment was not submitted to the jury. For his bodily injuries, he asked the jury for future medical bills, past and future physical pain and mental anguish, past and future physical impairment and past and future disfigurement.

William Vasquez sought past and future physical pain and mental anguish for his bodily injuries.

Alma Perales' past medical bills were stipulated at \$14,000, and the issue of her past medical treatment was not submitted to the jury. For her bodily injuries, she asked the jury for past and future physical pain and mental anguish.

Hector Perales' son sought past and future physical pain and mental anguish for his bodily injuries.

**Result:** The jury found negligence and comparative responsibility of 55 percent on Gregory, 30 percent on New Prime and 15 percent on Ferrer and awarded the plaintiffs \$38,978,670.

Gregory and New Prime were liable for 100 percent of the damages; Gregory's 55 percent responsibility, which made her liable for 100 percent, is also attributed to New Prime as her employer.

The jury did not reach the questions on gross negligence.

**Judge:** Mark Greenberg

**Trial Length:** 12 days

## Suit: Employer's flawed safety protocols contributed to crash

July 19, 2016

<b>Amount:</b>	\$37,945,000	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$9,000,000		
<b>Court:</b>	Dallas County District Court, 116th, TX		
<b>Case Name:</b>	Irasema Hinostrza Garcia, as next friend of Jazmin Elizabeth Galindo Hinostrza and Yatzari Nohemi Galindo Hinostrza, for the wrongful death of Manuel Galindo Camacho under the Texas Wrongful Death and Survival Statutes v. O'Reilly Auto Enterprises, LLC d/b/a O'Reilly Auto Parts, and David Shoots, No. DC-15-02606		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Kevin W. Liles; Liles Harris White PLLC; Corpus Christi TX for Irasema Hinostrza Garcia, Jazmin Elizabeth Galindo Hinostrza, Yatzari Nohemi Galindo Hinostrza</li><li>• Philip G. Bernal; Ketterman Rowland &amp; Westlund; San Antonio TX for Estate of Manuel Galindo-Camacho, Neida Galindo, Sophia Galindo</li><li>• Stuart R. White; Liles Harris White PLLC; Corpus Christi TX for Irasema Hinostrza Garcia, Jazmin Elizabeth Galindo Hinostrza, Yatzari Nohemi Galindo Hinostrza</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Paul A. Bezney; Adkerson, Hauder &amp; Bezney P.C.; Dallas, TX for O'Reilly Auto Enterprises LLC, David Shoots</li><li>• J. Kevin Kindred; Adkerson, Hauder &amp; Bezney P.C.; Dallas, TX for O'Reilly Auto Enterprises LLC, David Shoots</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Safety National Casualty Corp. (excess)</li></ul>		



<b>Facts:</b>	<p>On Feb. 28, 2015, plaintiffs' decedent Manuel Galindo-Camacho, 42, a drywall laborer, was driving a minivan in the left eastbound lane of Highway 29 outside Burnet. It was about 6 a.m., drizzling and below freezing, and the roads were icy. Several miles to the east, David Shoots was traveling westbound in an 18-wheeler, transporting hazardous materials. He allegedly crossed a railroad track at 51 mph without stopping and a quarter mile later lost control on a curve while traveling 57 to 59 mph. The 18-wheeler hit a guardrail and jackknifed. The trailer came to rest with its lights out and blocking Galindo-Camacho's lane. Galindo-Camacho collided with the unlit trailer and was killed.</p> <p>Galindo-Camacho's daughters sued Shoots and Shoots' employer, O'Reilly Auto Enterprises LLC, operating as O'Reilly Auto Parts, with whom Shoots was in the course and scope of his employment at the time of the accident. The suit alleged that Shoots' driving was unsafe and that O'Reilly failed to take Shoots off the road months before the crash, due to an unsafe driving record. The suit alleged negligence and gross negligence. The decedent's widow, mother and estate later joined the suit.</p> <p>Plaintiffs' counsel argued that Shoots was involved in prior unsafe-driving incidents during several years of employment with O'Reilly, which should have disqualified him from driving. Although O'Reilly had an internal driver review points system that was intended to keep unsafe drivers off the road, plaintiffs' counsel maintained that the points system was flawed and failed to identify problem drivers, such as Shoots.</p> <p>Plaintiffs' trucking industry expert opined that O'Reilly did not enforce its policies. This expert also mentioned that Shoots had a conviction for driving under the influence. However, this statement reportedly violated a defense motion in limine and, following objection by defense counsel, the court instructed the jury to disregard it. A mistrial was also requested by the defense, but the motion was denied. Plaintiffs' counsel contended that the testimony in question had been solicited by defense counsel.</p> <p>The plaintiffs alleged that Shoots lost control of the truck because he was driving too fast for the existing conditions and using his cell phone. Accident reconstruction experts for both sides opined that Shoots was traveling 57 to 59 mph when he lost control, with plaintiffs' accident reconstruction expert stating that Galindo-Camacho was going 35 to 46 mph at the time of the accident.</p> <p>Shoots was also negligent, the plaintiffs argued, for leaving his unlit trailer blocking lanes of traffic without putting out warning cones or triangles to warn approaching motorists of the disabled vehicle in the roadway. Plaintiffs' counsel introduced police dash camera video showing the dark, low-visibility conditions.</p> <p>Plaintiffs' counsel also asserted that Shoots violated federal regulations by not stopping at the railroad crossing. Had he stopped, plaintiffs' counsel argued, he would not have been going as fast around the curve and would not have lost control.</p> <p>The defense did not dispute that Shoots' negligence was a proximate cause of the accident, but it argued that Galindo-Camacho was also negligent in driving too fast for the existing conditions and not keeping a proper lookout. Defense counsel also argued that Galindo-Camacho should have been able to stop in time. The defense asserted that, because of reflective tape on the disabled trailer, Galindo-Camacho should have seen the trailer from 1,200 feet away. Also, defense counsel noted that several drivers arriving on the scene later were able to stop and avoid any collision. In response, plaintiffs' counsel maintained that Shoots' loss of control resulted in a sudden emergency for Galindo-Camacho.</p> <p>O'Reilly argued that it was a safe company and that it met and exceeded all applicable motor carrier regulations. Defense counsel introduced a company snapshot from the Federal Motor Carrier Safety Administration's website to support this argument. The defense also noted that most of Shoots' prior incidents took place on O'Reilly property.</p> <p>The defense further argued that weather conditions caused the accident. Police dash-camera video showed the investigating officer pulling up to the scene and losing control of her car on the ice. The video also showed the officer slipping on the ice when she exited her vehicle.</p> <p>The defense's accident reconstruction expert opined that, because the air bag control module in Galindo-Camacho's vehicle lost power in the accident, its data was incomplete. Therefore, the defense expert asserted that the calculations of the plaintiffs' accident reconstructionist were faulty and likely underestimated the decedent's speed. He agreed, though, that it was possible the decedent's speed was as low as 46 mph.</p> <p>Shoots did not attend trial. He testified in his deposition that he stopped at the railroad track and that he was going 45 mph when he lost control. Defense counsel reportedly acknowledged at trial that this testimony was not true.</p>
<b>Injury:</b>	<p>Galindo-Camacho was killed instantly. He is survived by his wife, two teenage daughters, and his mother, all of whom sought damages for past and future pecuniary loss, loss of companionship and society, and mental anguish.</p> <p>The decedent's wife was plaintiff Neida Galindo, 48, a housekeeping manager. His daughters were plaintiffs Jazmin Elizabeth Galindo Hinostrza, about 17, a student, and plaintiff Yatzari Nohemi Galindo Hinostrza, about 14, also a student. They lived in Fredericksburg. The biological mother was initially a plaintiff as their next friend. However, by the time of trial, because Jazmin was 18 and could serve as her sister's next friend, their mother was no longer in the case. The decedent's mother, plaintiff Sophia Galindo, 71, retired, lived in Mexico.</p> <p>The estate sought damages for the decedent's mental anguish, which was limited to his anticipation of the impending accident.</p>
<b>Result:</b>	<p>The jury found negligence and gross negligence on the part of the defendants, but no negligence on the part of Galindo-Camacho. The jury attributed 60-percent liability to O'Reilly and 40-percent to Shoots. The jury awarded \$37,945,000. However, the verdict was subject to a high/low agreement of \$9 million/\$3 million, which reduced the jury's award to \$9 million.</p>
<b>Judge:</b>	<p>Tonya Parker</p>
<b>Trial Length:</b>	<p>6 days</p>

## Driver drifted into shoulder lane, leading to fatal hit, plaintiffs claimed

April 11, 2024

**Amount:** \$37,500,000      **Type:** Verdict-Plaintiff

**Actual Award:** \$31,500,000

**Court:** Dallas County District Court, 160th, TX

**Case Name:** Baldish Kaur in her own right and on behalf of Simran Kaur and Parmvir Singh Sarkaria (minor children); and Pushpinder Kaur; Individually and as Personal Representative of the Estate of Shamsher Singh, Deceased v. Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp, and Joseph Collin Pederson, No. DC-21-12096

**Plaintiff Attorney(s):**

- Matt Greenberg; Zehl & Associates; Houston TX for Estate of Shamsher Singh,, Baldish Kaur,, Simran Kaur,, Parmvir Singh Sarkarkia,, Pushpinder Kaur
- Ryan Zehl; Zehl & Associates; Houston TX for Estate of Shamsher Singh,, Baldish Kaur,, Simran Kaur,, Parmvir Singh Sarkarkia,, Pushpinder Kaur
- Mike Streich; Zehl & Associates; Houston TX for Estate of Shamsher Singh,, Baldish Kaur,, Simran Kaur,, Parmvir Singh Sarkarkia,, Pushpinder Kaur
- Michael P. Lyons; Lyons & Simmons, LLP; Dallas TX for Estate of Shamsher Singh,, Baldish Kaur,, Simran Kaur,, Parmvir Singh Sarkarkia,, Pushpinder Kaur

**Defense Attorney(s):**

- Deron L. Wade; Dykema; Dallas, TX for Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp., Joseph Collin Pedersen
- E. Leon Carter; Carter Arnett Bennett & Perez; Dallas, TX for Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp., Joseph Collin Pedersen
- Clay A. Cosse; Dykema; Dallas, TX for Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp., Joseph Collin Pedersen
- Christopher D. Kratovil; Dykema; Dallas, TX for Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp., Joseph Collin Pedersen
- Prescott W. Smith; Dykema; Dallas, TX for Oncor Electric Delivery Company NTU LLC, Oncor Electric Delivery Company LLC, Oncor Electric Delivery Administrative Corp., Joseph Collin Pedersen

**Facts:** Plaintiff counsel for the family of a truck driver crushed on Aug. 7, 2021, when an Oncor Electric bucket truck rear-ended his 18-wheeler used toll road video to show the jury how the accident happened.

The wrongful death lawsuit in Baldish Kaur et al. v. Oncor Electric Delivery Co. NTU LLC came to a conclusion after a nine-day trial in the 160th District Court of Texas Judge Aiesha Redmond.

The deceased, Shamsher Singh, was a videographer in Italy who relocated his family to the United States in 2016 to pursue the American dream, plaintiff attorney Matt Greenberg of Zehl & Associates said.

To support his family, Singh became a long-haul truck driver. Baldish Kaur, his widow, filed suit Aug. 31, 2021 on behalf of her late husband's estate, herself and their three children.

Greenberg described Singh as a loving and caring father who was 52 when he was killed by Oncor driver and co-defendant Collin Pedersen.

Greenberg said the expert witnesses included an accident reconstructionist who pieced together the circumstances of the crash, and an emergency medical doctor who explained the physical and physiological suffering Singh experienced during the last 15 to 20 minutes of his life.

Greenberg said the most important evidence was the highway video that captured the events leading up to and after the crash, and the testimony of an eyewitness passerby who stopped to render aid.

"He was a good Samaritan in his 50s, a former Tarrant County volunteer firefighter who held Mr. Singh in his arms for 15 minutes while he died," Greenberg said.

The incident began when Singh's truck experienced a malfunction and he pulled over between the right shoulder and outside lane, leaving 2 feet of space between the shoulder and a concrete barrier so he could scoot out of the cabin to examine the truck. The tractor and trailer occupied 2 feet of the outside lane of travel.

According to the video evidence, within 48 seconds of Singh exiting the cabin, Pedersen drifted onto the shoulder and struck the trailer, pinning Singh between the trailer and the concrete barrier, Greenberg said.

Greenberg claimed the defense team tried to shift the blame to Singh, alleging he created a hazardous situation by parking his truck 2 feet into the right traffic lane.

Greenberg said video evidence, however, showed that other vehicles were able to avoid the truck, including an Oncor driver that was in front of the driver defendant—Oncor vehicles were driving in a caravan.

Plaintiff counsel argued the video showed Pedersen made no attempt to take evasive action. They also alleged Pedersen was distracted, possibly by his cell phone, and never noticed the danger.

“I’ve been saying this trial was a race to credibility, and the defendants never got out of the gate, that Oncor must take full accountability for this crash and that Oncor will say this driver was distracted,” Greenberg said.

“Oncor stood up and they did not say that. They never admitted the driver was distracted. They tried to spin a tale that their driver did everything he could to avoid the 18-wheeler,” Greenberg said.

The defense scenario of the accident, he continued, was that Pedersen was about to switch lanes and looked in his rearview mirror, but there was an oncoming car. When he looked forward, it was too late.

Greenberg noted that Pedersen made three attempts to call Oncor before he made a 911 call to first responders. His fifth call was to the Oncor driver that was in front of him and the first words out of his mouth, Greenberg said, were allegedly “I fucked up.”

That admission was presented to the jury from video depositions of both drivers, Greenberg said.

Deron Wade, of Dykema, lead counsel for the defendants, said that Oncor long ago acknowledged that its driver could have avoided the collision and that Pedersen and Oncor were therefore partly responsible. However, the defense denied that Pedersen was using his cell phone at the time of the collision. The defense emphasized that he voluntarily answered questions from the numerous police officers and surrendered his cell phone to them at the scene. Also, the police report said nothing about Pedersen being on his phone, and he was not issued a citation, the defense noted.

The defense argued that Singh was at fault for not getting his tractor-trailer completely off the highway and not setting up emergency triangles to alert other drivers of his presence on the roadway. The defense also argued that Pedersen tried to take evasive action.

The jury in its verdict found Singh 16 percent responsible.

However, there is also \$5 million in accrued pre-judgment interest, Greenberg said. After deducting the proportionate liability and adding the interest, he estimates final judgment will be about \$36.5 million.

Singh’s dream was for his family to become naturalized citizens, Greenberg added. The wife and children made it to their naturalization ceremony after his death.

“They told me they were very grateful during that ceremony,” Greenberg said. “But that they felt the loss of the person that started this journey for the family, and did not get to realize it himself.”

**Injury:** Singh was pinned between his truck and the concrete barrier. He remained conscious and died 15 to 20 minutes later from his injuries. An emergency medical doctor explained the physical and physiological suffering Singh experienced during the last 15 to 20 minutes of his life, plaintiffs’ counsel said. An eyewitness passerby who stopped to render aid also testified.

Singh’s estate sought damages for his pain and mental anguish.

Singh’s widow, minor child and two adult children sought damages for their past and future loss of companionship and society and past and future mental anguish. Witnesses described Singh as a loving and caring father.

The plaintiffs sought actual damages totaling little less than \$80 million.

The plaintiffs also sought a finding of gross negligence, as a predicate for a potential second phase of trial, on punitive damages.

**Result:** The jury found negligence and comparative responsibility of 84 percent on Pedersen and 16 percent on Singh. It determined that the plaintiffs’ damages totaled \$37,500,000, but the comparative negligence reduction produced net damages of \$31,500,000.

The jury did not find gross negligence.

**Judge:** Aiesha Redmond

**Trial Length:** 9 days

## Family alleged tire, SUV defects caused fatal rollover

May 08, 2009

<b>Amount:</b>	\$20,439,582	<b>Type:</b>	Verdict-Mixed
<b>Actual Award:</b>	\$8,585,484		
<b>Court:</b>	Dallas County Court at Law No. 4, TX		
<b>Case Name:</b>	James Wiles, Individually and as representative of the Estate of Diane Wiles, and as next friend of J. Schaffer Wiles and Kiersten Wiles, Kenneth Charles Wiles, Dorothy Wiles, and Virginia Rassman v. Ford Motor Company, Michelin North America, Inc. and ProCare Automotive Service Solutions, No. 03-10376-D		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Bill Zook; Ted Lyon &amp; Associates; Mesquite TX for James Wiles, Diane Wiles, Ken Wiles, Dorothy Wiles, Kiersten Wiles, J. Schaffer Wiles</li><li>• Ted B. Lyon Jr.; Ted Lyon &amp; Associates; Mesquite TX for James Wiles, Diane Wiles, Ken Wiles, Dorothy Wiles, Kiersten Wiles, J. Schaffer Wiles</li><li>• Richard L. Denney; Denney &amp; Barrett, P.C.; Norman OK for Virginia Rassman</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Warren Platt; Snell &amp; Wilmer L.L.P.; Phoenix, AZ for The Ford Motor Company</li><li>• William L. Mennucci; Thompson, Coe, Cousins &amp; Irons, LLP; Austin, TX for The Ford Motor Company</li><li>• Joe E. Byrne; Byrne, Mead &amp; Smitherman; Dallas, TX for ProCare Automotive Service Solutions</li><li>• Thomas M. Bullion III; Germer Gertz Beaman &amp; Brown; Austin, TX for Michelin North America, Inc.</li><li>• Brad Petersen; Snell &amp; Wilmer; Phoenix, AZ for The Ford Motor Company</li><li>• Richard Grafton; Germer Gertz Bearman &amp; Brown; Austin, TX for Michelin North America, Inc.</li></ul>		

**Facts:**

On July 12, 2003, plaintiffs' decedent Diane Wiles, 42, a private-school administrator, was with her extended family returning from New Mexico. They were in a three-vehicle caravan on Highway 87 in Dallam County near Dalhart. The lead vehicle was a 1996 Ford Explorer, four-door 4x4, driven by plaintiff James Wiles, 47, president of an insulation distributor company. His father, plaintiff Ken Wiles, 76, a retiree, was in the front seat, and wife Diane Wiles was in the back seat. The driver and front seat passenger were seat belted. There was a dispute as to whether Diane Wiles was also restrained.

While traveling at 70 mph, the Explorer's left rear tire lost its tread and the vehicle's rear end started to skate, which caused it to go out of control. Approximately an hour before the crash, James and Ken Wiles noticed a new vibration and noise coming from the Explorer. They suspected it was a tire problem but could not identify the specific cause and continued driving. James Wiles lost control while attempting to steer off the road. The Explorer rolled four and a quarter times and Diane Wiles was ejected. She died at the scene.

The tire was a Uniroyal Laredo steel-belted radial made in 1998 and purchased as a replacement tire. In July 2003, the tire was 4.5 years old and had been in service for 34,940 miles. ProCare Automotive Services had performed a Texas State inspection and general maintenance inspection 31 days and 1,562 miles before the accident.

James Wiles, individually and as representative of the estate of Diane Wiles, and as next friend of J. Schaffer Wiles and Kiersten Wiles, as well as Ken Wiles, Dorothy Wiles, and Virginia Rassman, sued Ford Motor Company, Michelin North America Inc. and ProCare Automotive Service Solutions, alleging products liability charges against the car and tire makers, as well as negligence against ProCare.

The plaintiffs alleged the tire was defectively designed and manufactured by Michelin.

They further contended the Ford Explorer was defective because its suspension design resulted in "vehicle skate" when it experienced a tire tread detachment. In addition, the vehicle's design allowed it to quickly develop an over-steer problem, and it was too top heavy and had a stability problems. They also said the Explorer's seat belt system internally unlatched, and that the window glass was not laminated and failed to retain Diane Wiles.

The plaintiffs also alleged that ProCare should have found a bald spot when they examined the vehicle and removed the tire from service.

Pretrial rulings eliminated all of the plaintiffs' theories against Ford except for "vehicle skate" and window glass.

Gary Derian, the plaintiffs' engineering expert, testified that the tire had poor adhesion due to a manufacturing process and that ProCare should have seen evidence of the bald spot and removed the tire.

Stan Andrews, the plaintiffs' accident reconstruction expert, discussed the nature of how the vehicle operated, while automobiles expert David Renfrope opined that the vehicle had poor shock absorbers, which allowed the vehicle to skate during the tread detachment.

The plaintiffs' automotive glass expert, Stephen Batzer, argued the 1996 Explorer was defective because the windows were tempered as opposed to laminated. Batzer claimed that if the windows were laminated Wiles would have been kept in the vehicle.

Anil Khadilkar, the plaintiffs' seat belts expert, and Mariuz Zieiewski, their biomechanics expert, claimed that there was physical evidence that Diane Wiles was wearing her seat belt at the time of the crash.

Michelin contended that the tire suffered a road hazard impact that damaged it, and it later failed after an internal separation began and grew over time.

ProCare argued that there was no bald spot at the time it inspected the vehicle and, regardless, that the alleged bald spot would not have failed the state standards.

Ford contended that tire failures like this one negatively affect all vehicles. While tire failures can be controlled, a slick rear tire does not have the same traction as a good tire and cannot respond to significant steering inputs at high speeds. Ford further argued that the "vehicle skate" in the context of a tread detachment is "lawsuit science" not proven by reliable testing.

As to the plaintiffs' glass claim, Ford argued that the Explorer's tempered side glass met federal safety standards, and all vehicles sold in the U.S. in 1996 had tempered side window glass, not laminated. In addition, Ford claimed that Diane Wiles was not wearing her seat belt and that no glass system could have contained the unbelted plaintiff in this high-speed, high-severity crash.

Joe Grant, Michelin's tire expert, said the tire failed due to a road hazard. Tom Giaponni, ProCare's tire service expert, further claimed there was no evidence of a bald spot when ProCare examined the tire.

Lee Carr, Ford's accident reconstructionist, claimed there was no scientific evidence of a tire event that induced the vehicle's skate.

Michael Carhart, Ford's biomechanics expert, opined that laminated glass is not part of a vehicle restraint system and no substitute for a seat belt. Elizabeth Raphael, another biomechanics expert for Ford, asserted Diane Wiles was not wearing her seat belt and her injuries occurred outside of the vehicle.

**Injury:**

Family members rendered aid to Diane Wiles immediately following the accident. She was conscious 20 minutes after the accident, but died at the scene before the arrival of emergency personnel.

Diane Wiles is survived by her husband; their two children, ages 12 and 8; and her mother, Virginia Rassman, 71.

Ken Wiles sustained fractures of his shoulder blade and collarbone, as well as a collapsed lung. He was hospitalized for a week and then went through physical therapy. He has a permanently reduced range of motion in his left arm. He also claimed he went through a period of depression following the accident. Ken Wiles incurred about \$160,000 in medical expenses. His wife, Dorothy Wiles, also had a derivative claim.

The plaintiffs sought recovery of \$50 million in damages, including funeral expenses, medical expenses, and loss of financial support and household services.

**Result:** The jury found a defect in the Explorer's suspension system. However, it found that no defect existed in the Explorer's window glass. The jury also found that no defect existed in the tire, exonerating Michelin, and that there was no negligence on the part of ProCare. The jury further determined that James Wiles was negligent in causing the accident and that Diane Wiles was negligent for not wearing a seat belt. The jury found James Wiles 50 percent at fault and Ford 50 percent at fault. As to Diane Wiles' death and damages, the jury found James Wiles, Diane Wiles and Ford each 33.3 percent at fault.

The jury awarded \$20,439,581.84 in total damages. After factoring comparative negligence and the addition of prejudgment interest, the plaintiffs' recovery was \$8,585,484.34.

**Judge:** Ken Tabscott

**Trial Length:** 6 weeks

## Man who was tire builder for 30 years died of mesothelioma

September 05, 2014

**Amount:** \$18,600,000      **Type:** Verdict-Plaintiff

**Actual Award:** \$2,890,000

**Court:** Dallas County Court at Law No. 5, TX

**Case Name:** Vicki Lynn Rogers, Individually and as Representative of the Estate of Carl Rogers, Deceased, Natalie Rogers and Courtney Dugat v. 3M Company a/k/a Minnesota Mining & Manufacturing Company; Crane Co.; Flowsolve (US) Inc.; (as successor to Edward Valve, Inc.; General Electric Company; Georgia-Pacific L.L.C. f/k/a Georgia-Pacific Corporation; The Goodyear Tire & Rubber Company; Guard-Line, Inc.; Ingersoll Rand Company (successor-by-merger to Trane US, Inc.); John Crane, Inc.; Leslie Controls, Inc.; McNeil (Ohio) Corporation; Merico Abatement Contractors, Inc.; Metropolitan Life Insurance Company; Riley Power, Inc. f/k/a Riley Stoker Corporation; Sue Kobelco Stewart Bolling, Inc. sued as successor-by-merger to Kobe Steel, Ltd.; Trane US, Inc.; Union Carbide Corporation; Yarway Corporation, No. 10-03294-E

**Plaintiff Attorney(s):**

- Christopher J. Panatier; Simon Greenstone Panatier Bartlett PC; Dallas TX for Vicki Lynn Rogers, estate of Carl Rogers, Natalie Rogers, Courtney Dugat
- Darren P. McDowell; Simon Greenstone Panatier Bartlett PC; Dallas TX for Vicki Lynn Rogers, estate of Carl Rogers, Natalie Rogers, Courtney Dugat

**Defense Attorney(s):**

- Tiffany B. Briscoe; Vorys, Sater, Seymour and Pease LLP; Houston, TX for The Goodyear Tire & Rubber Co.
- David A. Oliver; Vorys, Sater, Seymour and Pease LLP for The Goodyear Tire & Rubber Co.

**Facts:** Plaintiffs' decedent, Carl Rogers, worked for 30 years as a tire builder at a tire plant in Tyler, until he retired in 2004 after a back injury. The plant was owned and operated by Kelly-Springfield Tire Co., a subsidiary of Rogers' employer, The Goodyear Tire & Rubber Co. In August 2008, Rogers was diagnosed with mesothelioma, a deadly cancer caused by exposure to asbestos fibers, and he died of the disease in September 2009, at age 60.

Rogers' estate and family sued Goodyear for gross negligence, alleging that Rogers was continuously exposed to asbestos on the job and that it caused his mesothelioma and resulting death.

The suit initially named 18 defendants, including other manufacturers, employers, and premises owners and operators; asbestos supplier Union Carbide Corp.; and Metropolitan Life Insurance Co., which had conducted asbestos studies. By the time of trial, however, all the defendants except Goodyear either had been dismissed or had settled the claims against them.

According to plaintiffs' counsel, for 30 years, Rogers worked with Goodyear machines that constantly exposed him to asbestos, and he was exposed to asbestos-wrapped piping when maintenance work was taking place at the plant.

Goodyear, the plaintiffs' attorneys argued, was well-versed in OSHA's asbestos safety standards for protecting workers from asbestos-related disease, but ignored the standards and withheld information from employees about the risks of asbestos exposure. The company also failed to perform air monitoring as required by OSHA, plaintiffs' counsel argued.

The plaintiffs' microscopy and pathology expert performed a tissue digestion procedure on Rogers' lung tissue and concluded that the level of asbestos was up to 3,400 percent above background.

The plaintiffs' occupational medicine expert and their certified industrial hygiene expert testified about Rogers' increased risk of mesothelioma because of his work.

The plaintiffs' cell biology expert explained the mechanism by which asbestos fibers cause mesothelioma, and the plaintiffs' pathology expert confirmed the diagnosis of mesothelioma.

Goodyear denied gross negligence and contended that it acted with reasonable care. All the defense experts opined that the amount of Rogers' asbestos exposure was insufficient to have caused his mesothelioma.

**Injury:** Rogers died 13 months after being diagnosed with mesothelioma. He was survived by his wife, plaintiff Vicki Rogers, and their two adult daughters, plaintiffs Natalie Rogers and Courtney Ducat, both in their early 30s.

The plaintiffs testified extensively about how important their husband and father was to them and how much he did for them. He and his daughters also enjoyed playing basketball together.

There was no jury question on medical bills. The defense stipulated to the amount that was paid or incurred.

Plaintiffs' counsel argued for \$2 million for past and future pecuniary loss. For loss of companionship and society, they argued for \$200,000 in the past and \$800,000 in the future for Rogers' widow and \$100,000 in the past and \$400,000 in the future for each of the daughters. For past mental anguish, plaintiffs' counsel argued for \$200,000 for the widow and \$100,000 for each daughter. For future mental anguish, they argued for a total of \$1.6 million. For punitive damages, plaintiffs' counsel asked the jury for \$10 million.

**Result:** The jury found by clear and convincing evidence that asbestos fibers from the facility in question were a proximate cause of Rogers' mesothelioma that resulted in his death. The jury also found by clear and convincing evidence that Rogers' death resulted from Goodyear's gross negligence.

The jury awarded actual and punitive damages of \$18.6 million. Of the punitive damages, which were \$15 million, the jury apportioned 90 percent to the widow and 5 percent to each daughter.

Goodyear said in a statement, "We are extremely disappointed in the verdict and will appeal this decision."

**Judge:**

Mark Greenberg



## Bus on its way to casino rolled over, killed two passengers

May 02, 2016

<b>Amount:</b>	\$10,942,912	<b>Type:</b>	Verdict-Plaintiff
<b>Court:</b>	Dallas County District Court, 193rd, TX		
<b>Case Name:</b>	Alice Wilkinson Stanley v. Cardinal Coach Line, Inc.; and Loyd Earl Rieve, No. DC-13-04381		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Frank L. Branson; Law Offices of Frank L. Branson P.C.; Dallas TX for Estate of Alice Wilkinson Stanley, Linda Sewell, Ronald Stanley, William Stanley</li><li>• Spencer P. Browne; Reyes Browne Reilley; Dallas TX for Estate of Paula Hahn (intervenor), Melissa Engman (intervenor), Kenneth Hildreth (intervenor), Donna Garner (intervenor), Kathy Bolton (intervenor)</li><li>• Debbie Dudley Branson; The Law Offices of Frank L. Branson, P.C.; Dallas TX for Estate of Alice Wilkinson Stanley, Linda Sewell, Ronald Stanley, William Stanley</li><li>• Andy Payne; PayneMitchell Law Group; Dallas TX for Molly Dillon (intervenor; settled)</li><li>• Chip Brooker; Law Offices of Frank L. Branson P.C.; Dallas TX for Estate of Alice Wilkinson Stanley, Linda Sewell, Ronald Stanley, William Stanley</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Howard J. Klatsky; Fee, Smith, Sharp &amp; Vitullo; Dallas, TX for Choctaw Nation of Oklahoma</li><li>• Thomas W. Fee; Fee, Smith, Sharp &amp; Vitullo, LLP; Dallas, TX for Choctaw Nation of Oklahoma</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Occidental</li></ul>		

**Facts:**

On April 11, 2013, plaintiffs' decedent Alice Wilkinson Stanley, 83, a master seamstress; plaintiff intervenors' decedent Paula Hahn, 69, recently retired from the billing department of the Fort Worth Water Department; and plaintiff Molly Dillon were passengers on a charter bus traveling from Bedford to Choctaw Casino Resort in Durant, Okla. The bus driver was Loyd Rieve, an employee of bus owner Cardinal Coach Lines Inc. Rieve lost control of the bus on the George Bush Turnpike in Irving. The bus struck the crash attenuators on the right shoulder; crossed several lanes from right to left; and struck the center concrete barrier before rolling over. Hahn and Stanley sustained fatal injuries.

Also on the bus was nonparty Sue "Casino Sue" Taylor, the group tour coordinator who had organized the trip for 45 senior citizens. Taylor also sustained fatal injuries in the accident.

The estates and families of Stanley and Hahn, along with Dillon, sued Choctaw Nation of Oklahoma, operating as Choctaw Casino Resort, Rieve and Cardinal for his motor vehicle negligence.

Rieve and Cardinal settled the claims against them about 1.5 years before trial for undisclosed amounts. However, the plaintiffs alleged that Cardinal, Rieve and Taylor were acting in furtherance of a mission for the benefit of the casino and subject to the casino's control as to the details of the mission; that Rieve and Taylor were acting as borrowed employees of the casino; that Rieve and Taylor were ostensible agents of the casino; and that, based on these theories, the casino was liable for not only its own negligence, if any, but also that of Cardinal, Rieve and Taylor.

The plaintiffs emphasized that the casino derived substantial income from bus trips such as this one and from Texans generally. Plaintiffs' counsel introduced evidence, over an objection to relevance, that 75 percent of the casino's income comes from Texans and that 85 percent of its customers arriving on buses come from Texas. The casino had 12 buses of its own that it used for similar trips, and plaintiffs' counsel argued that the casino's duties were the same whether it used its own bus or a charter bus for a particular group of customers. The casino's motion for summary judgment on these issues was denied.

The plaintiffs alleged that the casino negligently retained Rieve and Cardinal, and that Cardinal negligently retained Rieve. The casino did not perform a background check on Rieve, who had a history of multiple accidents, including a fatality, and multiple prior tickets for going more than 10 mph over the speed limit while driving a bus. In 2007, his license was suspended, and he was fired from his two most recent commercial bus jobs before Cardinal.

The plaintiffs alleged that, in the April 11 accident, Rieve negligently failed to pay attention while driving, lost control of the bus and failed to drive in a single lane.

The plaintiffs alleged that Taylor negligently violated the very safety guidelines that it was her responsibility to enforce while on the bus. These guidelines included not distracting the driver and not standing up while the bus is in motion. According to the plaintiffs, Rieve and Taylor were discussing which route to take and which of them would pay the toll. This discussion distracted Rieve and contributed to causing the accident, the plaintiffs alleged. The investigating officer agreed that Rieve's discussion with Taylor was the cause of his inattention.

The plaintiffs retained an accident reconstructionist, who gave his deposition in February 2015. He testified that, in his opinion, Rieve's inattention caused the accident. However, at the time of deposition, evidence of Rieve's distraction by the casino representative had not yet been developed.

For comparative responsibility, plaintiffs' counsel asked the jury to consider the relative dollar amounts that the casino, Cardinal and Rieve would have made from this trip.

Initially, Stanley was the only plaintiff, and she filed the lawsuit shortly before her death. When she died, her estate and family joined the lawsuit, and Hahn's estate and family, as well as Dillon, later intervened. Dillon settled her claims before trial.

Rieve and Cardinal were the only defendants originally. The casino was added later.

The casino denied negligence. It argued that Rieve and Cardinal were solely responsible for the bus and the accident, but it denied that Cardinal, Rieve or Taylor was acting in furtherance of a mission for the benefit of the casino or subject to the casino's control as to the details of the mission. The casino also denied that Rieve or Taylor was acting as a borrowed employee or that either one was an ostensible agent of the casino. The casino argued that it did not hire Rieve or own the bus and that Taylor was not a casino employee.

The casino argued in pretrial motions that, as a matter of law, Rieve was a statutory employee of the bus company and that the casino could not be vicariously liable for the negligent operation of the bus. The court denied these motions.

<b>Injury:</b>	<p>Stanley was taken by ambulance to the emergency room. She sustained multiple broken ribs, multiple spinal fractures and a traumatic amputation of her right (dominant) arm. She was unconscious for the first day after the accident. She died in the hospital 10 days later. The cause of death was blunt force trauma. Stanley's trauma surgeon described her as a tough person.</p> <p>Stanley was survived by three adult children, plaintiff Linda Sewell, plaintiff Ronald Stanley and plaintiff William Stanley. They all stayed with their mother at the hospital after the accident.</p> <p>Stanley was very active. She worked long hours and designed costumes for internationally competitive ballroom dancers and figure skaters. Because she was on Social Security, however, she allowed herself only \$12,000 in annual income from her work.</p> <p>The estate sought the medical bills of \$164,157.47 and funeral and burial expenses of \$8,755. For Stanley's pain and suffering and mental anguish, plaintiffs' counsel asked the jury to award the estate what the casino advertised that it gave away daily in jackpots in August 2014. Based on the casino's Web site, plaintiffs' counsel said, the casino gave away approximately \$870,000 a day in jackpots in August 2014.</p> <p>Stanley's adult children sought unspecified damages for past and future pecuniary loss, mental anguish and loss of companionship and society.</p> <p>Hahn sustained blunt force trauma and died within 10 minutes of the accident. A good Samaritan testified that he tried to help her while she struggled to free herself from the bus and that Hahn stopped moving after 10 minutes. The medical examiner opined that she died of positional asphyxiation. She was survived by her four adult children, intervenor Melissa Engman; intervenor Kenneth Hildreth; intervenor Donna Garner; and intervenor Kathy Bolton. They sought damages for past and future pecuniary loss, mental anguish and loss of companionship and society.</p>
<b>Result:</b>	<p>The jury found that Cardinal, Rieve and Taylor were acting in furtherance of a mission for the benefit of the casino and subject to the casino's control as to the details of the mission; that Rieve, but not Taylor, was acting as a borrowed employee of the casino; and that an ostensible agency relationship existed between Taylor and the casino, but not between Rieve and the casino.</p> <p>The jury found that negligence and comparative responsibility of 58 percent on Rieve, 25 percent on the casino and 17 percent on Cardinal.</p> <p>The jury awarded \$10,942,912.47.</p> <p>The jury did not find negligent retention by the casino of Rieve or Cardinal.</p> <p>The casino had \$5 million in primary coverage and \$15 million in excess coverage.</p> <p>Before trial, the casino waived sovereign immunity up to the limit of its applicable insurance policies.</p>
<b>Judge:</b>	Carl Ginsberg
<b>Trial Length:</b>	2 weeks

## Family blamed exposure from 50 years ago for mesothelioma

March 16, 2011

<b>Amount:</b>	\$9,000,000	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$2,700,000		
<b>Court:</b>	Dallas County District Court, 160th, TX		
<b>Case Name:</b>	Tanya Elaine Henderson, Magdalena Adrienna Abutahoun individually and as Trustee of the Estate of Robert Henderson and Za'Qoia Zanice Henderson v. The Dow Chemical Co., No. 10-07003		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• John Langdoc; Baron &amp; Budd; Dallas TX for Estate of Robert Henderson</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Thomas Kuhns; Kirkland &amp; Ellis; Chicago, IL for The Dow Chemical Co.</li><li>• Stacy Pagonis; Kirkland &amp; Ellis; Chicago, IL for The Dow Chemical Co.</li><li>• Lawrence Abbott; Cotten, Schmidt &amp; Abbott; Fort Worth, TX for The Dow Chemical Co.</li></ul>		
<b>Facts:</b>	<p>In April 2010, plaintiff's decedent Robert Henderson, 68, was diagnosed with mesothelioma and died later that year. For 10 months in 1967, he was a contract employee at a chemical refinery owned by Dow Chemical Co., in Freeport. He the spent 27 years working for Alcoa Inc.</p> <p>Henderson's family members, individually and on behalf of his estate, sued Dow, claiming he was exposed to asbestos as a bystander while working at the Dow plant and that this exposure was the cause of his mesothelioma. The family claimed that Dow employees were stripping asbestos insulation from pipes located directly above where Henderson was working at the plant. Plaintiffs' counsel argued the cancer risks of asbestos exposure were known both within the chemical industry and to the general public in 1967, and that despite this, Dow did not provide any protective gear. Plaintiffs' counsel agued that while Henderson was exposed to asbestos while working for Alcoa, he was exposed to much higher concentrations at the Dow plant.</p> <p>Dow argued that Henderson was exposed to asbestos for a much longer period of time while working for Alcoa, and that this exposure was the cause of his mesothelioma. Defense counsel argued that Dow took all necessary safety measures based on what was known of asbestos' health risks in 1967. Defense counsel argued that the plaintiffs had not proven the asbestos removal was being performed by Dow employees.</p> <p>The plaintiffs originally named Alcoa, the Crane Co. and Haveg Industries Inc., two asbestos manufacturers, in the suit, but settled with all three parties before trial.</p> <p>The plaintiffs originally claimed Henderson was exposed as an employee of the contractor and as a bystander, but the employee claim was dismissed in a summary judgment prior to trial.</p>		
<b>Injury:</b>	Plaintiffs claimed Henderson contracted mesothelioma from asbestos exposure at the Dow plant. They were seeking an unspecified amount for wrongful death and pre-death pain and suffering.		
<b>Result:</b>	The jury found Dow 30 percent liable and Alcoa 70 percent liable. The plaintiffs were awarded \$9 million, which was reduced to \$2.7 million.		
<b>Judge:</b>	Jim Jordan		
<b>Trial Length:</b>	2 weeks		

## Helicopter company knew for years about asbestos: family

March 27, 2017

**Amount:** \$8,800,000 **Type:** Verdict-Plaintiff

**Actual Award:** \$1,250,000

**Court:** Dallas County District Court, 95th, TX

**Case Name:** Billy H. Dickson; and Shirley Dickson v. Georgia-Pacific, LLC, f/k/a Georgia Pacific Corporation, individually and as successor-in-interest to Bestwall Gypsum Company; Guard-Line, Inc.; Kelly-Moore Paint Company, Inc.; Kentile Floors, Inc.; Murco Wall Products, Inc.; Owens-Illinois, Inc. individually and as successor-in-interest to Owens-Illinois Glass Company and d/b/a O-I; and Union Carbide Corporation, No. DC-12-05995

**Plaintiff Attorney(s):**

- Darren P. McDowell; Simon Greenstone Panatier Bartlett; Dallas TX for Shirley Dickson, Randall C. Dickson, Daryl W. Dickson, Deanna K. Boaz Kizer
- Sam Iola; Simon Greenstone Panatier Bartlett; Dallas TX for Shirley Dickson, Randall C. Dickson, Daryl W. Dickson, Deanna K. Boaz Kizer

**Defense Attorney(s):**

- Don Swaim; Cunningham Swaim LLP; Dallas, TX for Bell Helicopter Textron Inc.
- D. Todd Parrish; Cunningham Swaim LLP; Dallas, TX for Bell Helicopter Textron Inc.

**Facts:** On Sept. 7, 2011, plaintiffs' decedent Billy Dickson, a retiree in his early 70s, was diagnosed with mesothelioma, a terminal cancer of the lining of the lungs that is caused primarily by asbestos exposure. Dickson, a former mechanical engineer, worked for Bell Helicopter Textron Inc. from 1962 until his retirement in 1999. He claimed that, from 1962 through 1973, his work at Bell Helicopter exposed him to asbestos.

Dickson designed enclosures for heat-testing helicopter components, including some used in military helicopters during the Vietnam War. He claimed that the enclosures incorporated asbestos insulation boards.

Bell Helicopter was a workers' compensation subscriber. Generally, under the Texas Labor Code, workers' compensation is the exclusive remedy against a subscriber for injury or death of an employee, except in the case of death caused by the employer's intentional conduct or gross negligence.

In 2012, Dickson and his wife, plaintiff Shirley Dickson, sued several manufacturers of asbestos-containing products. They included Georgia-Pacific LLC, Guard-Line Inc., Kelly-Moore Paint Co. Inc., Kentile Floors Inc., Murco Wall Products Inc., Owens-Illinois Inc. and Union Carbide Corp.

Sometime after his deposition, Dickson died in 2013 from complications of mesothelioma. He was survived by his wife; his adult daughter, plaintiff Deanna K. Boaz Kizer; and his two adult sons, plaintiff Randall C. Dickson and plaintiff Daryl W. Dickson.

After Dickson's death, the daughter and sons were added as plaintiffs, and Bell Helicopter was added as a defendant.

The manufacturer defendants were no longer in the case at the time of trial.

The plaintiffs alleged that Bell Helicopter was grossly negligent. According to the plaintiffs, Bell Helicopter knew by 1955 that asbestos exposure could result in fatal diseases, but took no steps to protect workers from asbestos exposure until 1973, when the company started monitoring the air in its workplace. Other protective measures that the company should have implemented include dust control, dust suppression and investigating possible substitute materials, plaintiffs' counsel said. However, all documents from the 1960s and earlier had been destroyed under the company's 30-year document retention policy, and that policy complied with federal regulations.

The plaintiffs' occupational medicine expert testified about Dickson's likely exposure levels at Bell, compared to ambient levels in the environment.

The plaintiffs' cell biology expert detailed how asbestos causes cellular breakdown and mesothelioma. The case involved "mixed-dust exposure," or exposure to both chrysotile and amphibole asbestos.

According to defense counsel, there was strong evidence that Dickson's illness was proximately caused by asbestos exposure at other, non-Bell workplaces, and that the exposure levels at other jobs were higher and involved a more dangerous type of asbestos.

However, defense counsel said the MDL judge ruled before trial that Bell Helicopter could not offer evidence that Dickson was exposed to asbestos at other, non-Bell jobs, and the defense was therefore limited at trial to disputing gross negligence.

The defense argued that there was no evidence that Bell Helicopter engaged in any grossly negligent conduct. The company introduced test data to argue that its asbestos levels were within the safety limits applicable at the time. In addition, the plaintiffs' occupational medicine expert acknowledged that it was unlikely that Dickson's job at Bell Helicopter exposed him to higher asbestos levels than the science of the time recognized as safe.

<b>Injury:</b>	<p>Dickson was diagnosed with mesothelioma on Sept. 7, 2011. He tried an experimental chemotherapy, which was to last 38 days. It consisted of daily doses of chemotherapy that were 10 times as strong as the usual treatment. Dickson did not tolerate the experimental therapy well; it resulted in kidney failure, and he stopped the treatment after 21 days.</p> <p>Dickson recuperated and was fairly stable during 2012. In about August 2013, however, his condition worsened, and the following month it took a drastic downturn. Dickson died from complications of mesothelioma on Dec. 15, 2013. He was survived by his wife, adult daughter and two adult sons.</p> <p>The Texas Labor Code prohibits claims for actual damages against workers' compensation subscribers, but the jury has to decide actual damages so that they can be used to calculate the statutory cap. Therefore, plaintiffs in such cases put on evidence of and submit a jury question on actual damages, but not in order to recover them.</p> <p>The plaintiffs claimed that they sustained past and future pecuniary loss, loss of companionship and society and mental anguish. Plaintiffs' counsel asked the jury to find \$7.4 million for actual damages and \$11.2 million for punitives.</p> <p>The defense did not dispute that Dickson's mesothelioma was caused by asbestos exposure.</p>
<b>Result:</b>	<p>The jury found by clear and convincing evidence that the harm to Dickson was proximately caused by Bell Helicopter's gross negligence. The jury awarded \$8.8 million (actual damages of \$1 million and punitive damages of \$7.8 million). The jury apportioned the punitives, giving 55 percent to the widow and 15 percent to each adult child.</p> <p>Actual damages are not recoverable, and punitive damages are capped at \$1.25 million. (The cap is an amount equal to two times the economic damages, plus the noneconomic damages up to \$750,000.)</p>
<b>Judge:</b>	Ken Molberg
<b>Trial Length:</b>	1 weeks

## Former pipefitter blamed pipe manufacturer for mesothelioma

December 28, 2011

<b>Amount:</b>	\$8,400,000	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$1,680,000		
<b>Court:</b>	Dallas County District Court, 68th, TX		
<b>Case Name:</b>	John Edwards Gensler and Martha Ann Gensler personally and as representative of the Estate of John Edwards Gensler, deceased v. Hercules Inc. individually and as successor in interest to Hercules Powder Company, successor in interest to Haveg Industries, Inc., successor by merger to Haveg Corporation, individually and successor in interest to Hercules Powder Company, successor in interest to Haveg Industries, Inc., successor by merger to Haveg Corporation and the "Haveg" asbestos liabilities and "Haveg" product line, No. DC-10-08454-D		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• John Langdoc; Baron &amp; Budd, P.C.; Dallas TX for John Edward Gensler, Martha Gensler</li><li>• Alana Kalantzakis; Baron &amp; Budd P.C.; Dallas TX for John Edward Gensler, Martha Gensler</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Todd J. Suddleson; DeHay &amp; Elliston LLP; Dallas, TX for Hercules Inc.</li><li>• Pamela J. Williams; DeHay &amp; Elliston LLP; Dallas, TX for Hercules Inc.</li></ul>		
<b>Facts:</b>	<p>In March 2010, plaintiff's decedent John Gensler, 61, a former pipefitter, was diagnosed with mesothelioma. From 1967 through 1973, he had been employed as an insulator helper and pipefitter at the Dow Chemical Co. plant in Freeport. He died in September 2010. He worked with pipes manufactured by Hercules Inc.</p> <p>Gensler and his wife sued Hercules Inc., claiming products liability. The plaintiffs claimed that Gensler contracted mesothelioma from contact with asbestos in pipe manufactured by Hercules while employed at the Freeport plant. The inclusion of high levels of asbestos in the products was a design defect, and the products were sold with inadequate warnings despite knowledge of the health hazards of asbestos at the time of their manufacture and sale, the family claimed.</p> <p>Hercules denied exposure to its products was the proximate cause of his mesothelioma. Defense counsel argued that the company had no duty to warn based on the scientific knowledge of the time and its reasonable reliance on Gensler's employers providing adequate warnings and safety equipment.</p> <p>Dow Chemical and Crane Co., a gasket manufacturer, were originally named in the suit but settled prior to trial.</p>		
<b>Injury:</b>	Gensler died of mesothelioma. His family sought an unspecified amount for past pain and suffering, physical impairment and disfigurement and past and future mental anguish, loss of companionship and loss of care, maintenance and support, plus punitive damages.		
<b>Result:</b>	The jury found Dow Chemical 35 percent liable, Hercules 20 percent liable, Crane Co. 5 percent liable and the remainder on 11 other companies that had employed Gensler but were not named in the suit. The plaintiffs were awarded \$8.4 million, of which they recovered \$1.68 million.		
<b>Judge:</b>	Martin Hoffman		
<b>Trial Length:</b>	3 weeks		

## Former painter attributed leukemia to work with benzene

October 20, 2015

<b>Amount:</b>	\$7,067,234	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$6,895,068		
<b>Court:</b>	Dallas County District Court, 160th, TX		
<b>Case Name:</b>	Virgil Hood and Lorrie Hood v. Akzo Nobel Coatings Inc., Ampac Chemical Company Inc., E.I. Du Pont de Nemours & Co., Exxon Mobil Corp., Kano Laboratories Inc., PPG Industries Inc., Tempco Products Co., and The Sherwin-Williams Co., No. DC-13-03619-H		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Peter A. Kraus; Waters &amp; Kraus, LLP; Dallas TX for Virgil Hood, Lorrie Hood</li><li>• Scott R. Frieling; Allen Stewart, P.C.; Dallas TX for Virgil Hood, Lorrie Hood</li><li>• Susannah Chester-Schindler; Waters &amp; Kraus, LLP; Dallas TX for Virgil Hood, Lorrie Hood</li><li>• Jonathan A. George; Waters &amp; Kraus, LLP; Dallas TX for Virgil Hood, Lorrie Hood</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Larry E. Cotten; Cotten, Schmidt &amp; Abbott LLP; Fort Worth, TX for E.I. DuPont de Nemours &amp; Co.</li><li>• George R. Diaz-Arrastia; Schirmeister, Diaz-Arrastia &amp; Brem; Houston, TX for E.I. DuPont de Nemours &amp; Co.</li><li>• Andrew C. Schirmeister III; Schirmeister, Diaz-Arrastia &amp; Brem LLP; Houston, TX for E.I. DuPont de Nemours &amp; Co.</li><li>• Dennis Conrad; Cotten, Schmidt &amp; Abbott LLP; Fort Worth, TX for E.I. DuPont de Nemours &amp; Co.</li></ul>		
<b>Facts:</b>	<p>In 2012, plaintiff Virgil Hood, 57, an equipment calibrator, husband of plaintiff Lorrie Hood, was diagnosed with myelodysplastic syndrome. He was subsequently diagnosed with acute myeloid leukemia. Between 1973 and 1981 Hood had worked as a painter for Timpte Trailers, a Colorado company. During that time E.I. DuPont de Nemours &amp; Co. was a manufacturer of paints and solvents.</p> <p>The Hoods sued DuPont for claims under a theory of products liability. (The Hoods originally named seven other paint and solvent manufacturers in the suit. PPG Industries and Sherwin-Williams Co. settled prior to trial for confidential amounts. The remaining defendants were dismissed by the court or nonsuited by the plaintiffs prior to trial.)</p> <p>Plaintiffs' counsel maintained between 1973 and 1981 DuPont manufactured paints and solvents containing benzene and sold them to Timpte, where Hood was exposed to the benzene due to inadequate respiratory safety measures taken by Timpte.</p> <p>The plaintiffs' pathology expert testified that, based on the exposure estimates generated by the plaintiffs' industrial hygiene expert, Hood's benzene exposure was sufficient to cause both his myelodysplastic syndrome and leukemia.</p> <p>Plaintiffs' counsel maintained that company records showed DuPont had received warnings of the danger of bone marrow disorders caused by benzene exposure as early as 1938, and the company failed to discontinue use of the chemical or place warnings on products containing benzene.</p> <p>Defense counsel denied any of the products sold to Timpte during the period in question contained benzene. The defense medical experts testified that Hood does not have myelodysplastic syndrome, and maintained that based on the exposure estimates generated by the defense toxicology expert Hood was not exposed to sufficient benzene to cause leukemia.</p> <p>Defense counsel argued that benzene-caused leukemia is typically diagnosed 10 to 15 years after exposure, not 25, and that therefore the exposure was not the proximate cause of his leukemia.</p>		
<b>Injury:</b>	<p>Plaintiffs' counsel maintained that Hood contracted myelodysplastic syndrome and acute myeloid leukemia due to his exposure to DuPont products. Hood underwent chemotherapy and a bone marrow transplant in 2014. The parties stipulated to \$1,486,601.25 in past medical expenses.</p> <p>Plaintiffs' counsel maintained that this resulted in complications which included three bouts of pneumonia and near total loss of sight, which plaintiffs' counsel maintained would require surgery to correct. Plaintiffs' counsel maintained that Hood has been unable to work since 2014.</p> <p>The plaintiffs sought an unspecified amount for future medical expenses and past and future pain and suffering, physical impairment, disfigurement, lost income, loss of household services, and loss of consortium.</p>		
<b>Result:</b>	The jury found DuPont 80 percent liable and Timpte 20 percent liable and awarded \$7,067,234 in damages. With the addition of the stipulated \$1,486,601.25 in medical expenses and adjustment for comparative liability, the net award was \$6,895,068.20.		
<b>Judge:</b>	Jim Jordan		
<b>Trial Length:</b>	12 days		



## Plaintiffs' estate alleged failed crankshaft led to fatal crash

December 24, 2019

<b>Amount:</b>	\$5,000,000	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 192nd, TX		
<b>Case Name:</b>	Julie Ann Kos, Individually, as as Personal Representative of the Estate of James Maurice Kos, Deceased; Jason Kos, Individually; Eric Kos, Individually; and Allison Atha, Individually v. Superior Air Parts, Inc.; Barrett Precision Engines, Inc.; and Kyle W. Sheahen as Executor of the Estate of Dane Sheahen, Deceased, No. DC-18-03265		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Ladd Sanger; Slack Davis Sanger LLP; Dallas TX for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha, Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen</li><li>• Joe Bosco; LaRose &amp; Bosco Ltd.; Chicago IL for Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen</li><li>• Kevin R. Boyle; Panish, Shea &amp; Boyle LLP; Los Angeles CA for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha</li><li>• Fred Begy; Law Offices of Fred Begy III P.C.; Chicago IL for Kyle W. Sheahen, Estate of Dane E. Sheahen, Kristen M. Sheahen</li><li>• Matt Stumpf; Panish, Shea &amp; Boyle LLP; Los Angeles CA for Julie Ann Kos, Estate of James Maurice Kos, Jason Kos, Eric Kos, Allison Atha</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Michael H. Hull; Maloney, Bean, Horn &amp; Hull; Irving, TX for Superior Air Parts Inc.</li><li>• Annie Jo Jacobs; Clark Hill Strasburger; Dallas, TX for Ruhrtaler Gesenkschmiede F.W. Wengeler GmbH &amp; Company KG</li><li>• None reported; Los Angeles, CA for Barrett Precision Engines Inc., Estate of Dane Sheahen</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Allianz</li></ul>		
<b>Facts:</b>	<p>On March 12, 2016, plaintiffs' decedent Dane Sheahen, 63, an owner of hardware stores, was piloting a Van's RV-8 amateur-built, single-engine aircraft from Port Orange, Fla., to Winter Haven, Fla. Plaintiffs' decedent James Maurice Kos, 58, a machinist, was a passenger. Sheahen, who held a private pilot certificate, built the plane from a kit. He bought the engine separately from Barrett Precision Engines Inc. The engine was designed and assembled by Superior Air Parts Inc., headquartered in Coppell, Texas. The engine's crankshaft was designed by Superior and forged by Ruhrtaler Gesenkschmiede F.W. Wengeler GmbH &amp; Company KG. During the flight, the crankshaft fractured. The result was a complete loss of power. The plane crashed in a field. Sheahen and Kos were killed.</p> <p>The Kos and Sheahen families and estates sued Superior. The Kos family and estate were the original plaintiffs and the Sheahen family and estate were intervening plaintiffs. The lawsuit alleged that Superior was liable for manufacturing defects and design defects in the crankshaft. Superior designated Ruhrtaler as a responsible third party, and the plaintiffs then added it as a defendant, alleging that it was also liable for manufacturing defects.</p> <p>Superior asserted a claim against Ruhrtaler for contribution and indemnity</p> <p>In the original petition, the defendants were Superior, Barrett and Sheahen's estate. The Kos plaintiffs subsequently resolved their claims against Sheahen's estate via a confidential settlement. Barrett was granted an unopposed summary judgment.</p> <p>The crankshaft in Sheahen's engine had been in operation for a total of only 20 hours when it failed. The plaintiffs alleged that the failure resulted from internal stress caused either by detonation or by the materials and temperatures used in forging the crankshaft. The plaintiffs further alleged that Superior failed to test the engine, model XP-400, adequately before releasing it to the market. The plaintiffs also alleged that, after the engine was released to the market, Superior learned of premature failures but was slow to react. In March 2019, Superior voluntarily announced a grounding and mandatory buyback of XP-400 engines.</p> <p>The defendants denied any defect or wrongdoing. According to Superior, there were only two premature failures of the XP-400 engine prior to the accident, and both were due to the owner adding a nitrous oxide system to boost horsepower, which increased stresses on the crankshaft.</p> <p>Superior said that, in the three years after the Sheahen crash, it learned of several other crankshaft failures, and although none involved injury, it implemented a mandatory buyback in the interest of customer safety.</p> <p>The defendants also alleged that Sheahen's negligence proximately caused the incident and the resulting injuries and deaths. The National Transportation Safety Board concluded that the probable cause of the accident was "[t]he pilot's exceedance of the airplane's critical angle of attack while maneuvering for a forced landing; which resulted in an aerodynamic stall and loss of control. Contributing to the accident was the fatigue failure of the crankshaft for reasons that could not be determined based on the available information."</p>		
<b>Injury:</b>	<p>Sheahen and Kos died in the crash. Sheahen was survived by his adult son, plaintiff Kyle W. Sheahen, and adult daughter, plaintiff Kristen M. Sheahen. Kos was survived by his wife, plaintiff Julie Ann Kos, and three adult children, plaintiffs Jason Kos, Eric Kos and Allison Atha.</p> <p>Both Sheahen and Kos were close to their families.</p> <p>The estates sought damages for the decedents' funeral and burial expenses and conscious physical pain and mental anguish. Their families sought damages for past and future pecuniary loss, loss of companionship and society and mental anguish.</p> <p>In addition, Kyle Sheahen had recently become co-owner of his father's hardware business, which had been in their family for generations. Kyle alleged that his father's death caused Kyle significant past lost earnings and future lost earning capacity.</p>		

**Result:**

The plaintiffs settled with Superior and Ruhrtaler for a total of \$5 million, consisting of \$4,950,000 from Superior's insurer and \$50,000 from Ruhrtaler. Superior's policy limit was \$5 million.

As part of the settlement agreement, Superior dropped its claim against Ruhrtaler for contribution and indemnity.

## Motorcyclist killed in crash with allegedly fatigued trucker

August 09, 2017

<b>Amount:</b>	\$4,550,000	<b>Type:</b>	Verdict-Plaintiff
<b>Court:</b>	Dallas County Court at Law No. 1, TX		
<b>Case Name:</b>	Betty J. Sires, Individually and as Representative of the Estate of James Sires, Deceased, and Jessica Ball, Jodi Huizar, and Alton Sires, All Individually and as Wrongful Death Beneficiaries of James Sires, Deceased v. Eric Nilsson, Nilco Enterprises Inc., Jose Thomas Quinones, and Dial Lubricants Inc., No. CC-15-04241-A		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Randall G. Walters; Walters, Balido &amp; Crain; Dallas TX for Betty J. Sires, Estate of James Sires, Jessica Ball, Jodi Huizar, Alton Sires</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Victor D. Vital; Barnes &amp; Thornburg LLP; Dallas, TX for Dial Lubricants Inc., Jose Thomas Quinones, Nilco Enterprises Inc., Eric Nilsson</li><li>• Charles B. Mitchell Jr.; Naman Howell Smith &amp; Lee; Fort Worth, TX for Dial Lubricants Inc., Jose Thomas Quinones, Nilco Enterprises Inc., Eric Nilsson</li><li>• Lindsay P. Daniel; Naman Howell Smith &amp; Lee; Fort Worth, TX for Dial Lubricants Inc., Jose Thomas Quinones, Nilco Enterprises Inc., Eric Nilsson</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• HDI-Gerling</li></ul>		
<b>Facts:</b>	<p>On July 11, 2015, plaintiffs' decedent James Sires, 63, a self-employed painter, was one of three motorcyclists riding together on Highway 6, a two-way road in Bosque County. It was daylight. Sires was the lead rider, and he was on a touring motorcycle. Jose Thomas Quinones was in the same lane, ahead of the motorcycles in an 18-wheeler. Quinones attempted a wide right turn into a private drive. He went left, crossing completely into the oncoming lanes before turning right, across Sires' lane. Sires was unable to stop in time. He laid down his motorcycle and slid into the right side of the cab, toward the rear. He was killed upon hitting the truck. Quinones was arrested for negligent homicide. Sires was survived by his wife, plaintiff Betty J. Sires, 58, a homemaker; his son, plaintiff Alton Sires, 24; his daughter plaintiff Jodi Huizar, 26; and his daughter plaintiff Jessica Ball, 27.</p> <p>Quinones was in the course and scope of his employment with Dial Lubricants Inc., and the owner of the tractor-trailer was Nilco Enterprises Inc. Both companies were owned by Eric Nilsson. Quinones was turning into the driveway for Nilsson's parents' ranch.</p> <p>The plaintiffs sued Quinones, Nilsson, Nilco and Dial for negligence and gross negligence. He alleged that Quinones was negligent for making such a wide turn and unexpectedly turning right from the left side of the road, and in failing to use his turn signal. When Sires first saw the truck, it was completely in the oncoming lane and probably appeared to be an oncoming vehicle, plaintiffs' counsel said.</p> <p>Quinones also falsified his hours-of-service logs and was driving while impaired from fatigue, the plaintiffs alleged.</p> <p>The claims against the companies included negligent hiring, training, supervision and retention.</p> <p>The plaintiffs' trucking expert said Dial had a significant history of hours-of-service violations.</p> <p>The plaintiffs also alleged that Nilco and Dial were engaged in a joint enterprise. The plaintiffs noted that Nilsson owned both companies; that Dial drivers drove only Nilco trucks; and that Dial drivers were the only drivers of Nilco trucks.</p> <p>The court instructed the jury to find Quinones negligent. All the defendants were listed in the negligence question, but only Quinones and Nilsson were listed in the comparative-responsibility question.</p> <p>Plaintiffs' counsel asked the jury to find 65 percent responsibility on Nilsson and 35 percent on Quinones.</p> <p>The defense denied that Quinones or other Dial drivers intentionally falsified their logs.</p> <p>The defense trucking expert noted that Dial had policies and procedures in place to prevent drivers from logging excessive hours.</p> <p>The defense argued that Quinones was not fatigued at the time of the accident and that he did signal his turn. Quinones pleaded the Fifth Amendment.</p> <p>The defense accident reconstruction and motorcycle experts opined that Sires should have been able to stop without a collision, as the other two riders behind him did. The defense argued that Sires was not keeping a proper lookout and that he took faulty evasive action.</p>		
<b>Injury:</b>	<p>Sires, who was wearing a helmet, laid down his motorcycle and slid into the truck cab. He sustained massive trauma, including head trauma, and was pronounced dead at the scene.</p> <p>He and his wife had been married for more than 30 years. The two daughters were married, and one of them, Ball, lived in Memphis, Tenn. The other daughter and the son lived in the Dallas area, as did Sires and his wife.</p> <p>The estate sought \$250,000 for Sires' pain and mental anguish starting from the time he saw he was going to hit the truck.</p> <p>His widow sought \$300,000 for past loss of companionship and society; \$200,000 for future loss of companionship and society; \$300,000 for past mental anguish; \$700,000 for future mental anguish; \$300,000 for past loss of consortium; and \$700,000 for future loss of consortium.</p> <p>Each of the children sought \$100,000 for past loss of companionship and society; \$200,000 for future loss of companionship and society; \$100,000 for past mental anguish; \$200,000 for future mental anguish; \$100,000 for past loss of parental consortium; and \$200,000 for future loss of parental consortium.</p>		

**Result:** The jury rendered a plaintiffs' verdict, finding negligence by all the defendants. It apportioned comparative responsibility of 65 percent on Nilsson and 35 percent on Quinones and awarded the plaintiffs \$4.55 million.

Based on the verdict, Quinones, Nilco and Dial are liable for 35 percent of the award. Nilsson, because he was found more than 50 percent responsible, is liable for the entire award.

The jury also found that Nilco and Dial were engaged in a joint enterprise.

The jury also found Quinones, Nilco and Dial grossly negligent, but the parties reached a confidential agreement that rendered a trial on punitive damages moot.

**Judge:** D'Metria Benson

**Trial Length:** 6 days

## Greyhound bus struck disabled SUV on highway

July 17, 2017

**Amount:** \$4,123,500                      **Type:** Settlement

**Court:** Dallas County District Court, 68th, TX

**Case Name:** Carol Hymon v. Greyhound Lines Inc. and Larry Sampson, No. DC-16-04398

**Plaintiff Attorney(s):**

- Micky N. Das; Tyler & Das; Houston TX for Jonathan Moore, Robelia Moore
- Ron McCallum; Simon Greenstone Panatier Bartlett; Dallas TX for Carol Hymon
- Kevin Lamar Kelley; The Kelley Law Firm P.C.; Dallas TX for Doris Edwards, Walter Davis, Estate of Torii Davis, L. D.
- Ryan H. Zehl; Zehl & Associates; Houston TX for Makea Hall
- John Hallman; Simon Greenstone Panatier Bartlett; Dallas TX for Carol Hymon
- Michael Crozier; The Kelley Law Firm P.C.; Dallas TX for Doris Edwards, Walter Davis, Estate of Torii Davis, L. D.
- Patricia Morgan; The Kelley Law Firm P.C.; Dallas TX for Doris Edwards, Walter Davis, Estate of Torii Davis, L. D.
- Tim Tate; Tate Law Offices; Dallas TX for Jonathan Moore, Robelia Moore

**Defense Attorney(s):**

- Michael P. Sharp; Fee, Smith, Sharp & Vitullo; Dallas, TX for Larry Sampson, Greyhound Lines Inc.
- Scott W. Self; Fee, Smith, Sharp & Vitullo; Dallas, TX for Larry Sampson, Greyhound Lines Inc.
- T. Cass Keramidas; Keramidas Law Firm; Richardson, TX for Danielle Stewart, Jonathan Moore

**Insurers:**

- National Unity Insurance Co.
- Gallagher Bassett

**Facts:**

On Dec. 20, 2015, plaintiffs' decedent Torii Davis, 28, an employee in the claims department of an insurance company, was a passenger in a sport utility vehicle, a 2003 Ford Explorer, driven by plaintiff Jonathan Moore in Arlington, and plaintiff Carol Hymon, 68, a part-time cashier, and plaintiff Makea Hall were passengers on a Greyhound Lines Inc. bus. At about 5:30 a.m. both vehicles were traveling west on Interstate 30 when the SUV, which was owned by Danielle Stewart, lost control and hit the left concrete barrier. The SUV came to rest facing west in the middle lane, disabled but with its headlights and taillights still illuminated. Larry Sampson, who worked for Greyhound, then rear-ended the SUV. Davis was killed, Moore sustained a severe brain injury and Hall and Hymon claimed multiple injuries.

The contributing factors in the police report were against Sampson for faulty evasive action and against Moore for being parked in a traffic lane.

Hymon sued Greyhound and Sampson (cause number DC-16-04398) on April 15, 2016. Davis' wrongful death beneficiaries (her mother, plaintiff Doris Edwards; her father, plaintiff Walter Davis; and her minor daughter, also a plaintiff, age 6) sued Greyhound, Sampson, Moore and Stewart (cause number DC-16-04500) the following day. On April 19, Hall intervened in Hymon's case, and Moore, through his mother, intervened in the Davis case. A month later, the Davis case was consolidated into the Hymon case. Moore and Hall settled for confidential amounts.

Davis and Hymon alleged that Sampson negligently took faulty evasive action, failed to brake or turn in time to avoid the collision, failed to keep a proper lookout, failed to control his speed, drove too fast and followed too closely. They alleged that Moore and Stewart negligently failed to maintain the SUV properly; that Moore negligently lost control of the SUV; and that Stewart negligently entrusted the SUV to Moore.

Greyhound and Sampson argued that Moore and Stewart were at fault, and Moore and Stewart argued that Sampson was at fault.

Greyhound and Sampson also maintained that Davis was negligently standing in front of the SUV at the time of the impact.

Counsel for Davis denied this claim.

The plaintiffs' accident reconstruction expert opined that Davis was inside the vehicle at the time of impact.

**Injury:**

Davis was pronounced dead at the scene. She was survived by her parents and her 6-year-old daughter.

The estate sought damages for Davis' conscious pain and suffering. Davis' parents and daughter claimed past and future loss of companionship and society, mental anguish and pecuniary loss. Davis and her family all lived in DeSoto, and she had a good relationship with her family. Davis and her daughter lived with Davis' father.

Hymon went to the emergency room on the date of the accident. She claimed a right knee contusion, bilateral ankle swelling, a right rotator cuff injury, neck and back sprains and strains, headaches and dizziness. Her attorneys said the main injuries were to her ankles and right knee, which she said slammed against the footrest and seat back in front of her. At the emergency room, she complained of right knee and right leg pain and dizziness. Leg X-rays were unremarkable, as was a cranial CT scan. She was diagnosed with a knee contusion.

Two days after the emergency room, Hymon went to an injury clinic, where she was diagnosed with neck, back and right knee sprains and strains; headaches; and bilateral ankle swelling. She underwent chiropractic care and physical therapy through March 22.

On Oct. 6, 2016, she saw another doctor, whose impression was, "status post MVA with lumbar strain in the setting of chronic degeneration and post traumatic changes, right shoulder probable rotator cuff injury, and improving cervical strain."

Hymon's counsel reported that she had numerous pre-existing age-related injuries, as well as age-related complications of her accident-related injuries. She had spent many years working on an auto assembly line.

Hymon's gross medical charges were about \$40,000, of which about \$20,000 was paid or incurred.

**Result:**

Hymon settled on or before May 23, 2017, for \$93,500. On July 17, 2017, Davis' family settled for \$4.03 million, consisting of Moore's and Stewart's \$30,000 policy limit and \$4 million from Greyhound's insurer. The first layer of coverage on the Greyhound policy was \$5 million. Hall settled confidentially on July 31, 2017. Moore settled confidentially on the Friday before a Monday trial setting.

## Workers fell 70 ft. from scaffold into river where they drowned

May 04, 2011

<b>Amount:</b>	\$4,074,500	<b>Type:</b>	Verdict-Mixed
<b>Court:</b>	Dallas County District Court, 191st, TX		
<b>Case Name:</b>	Ana Lilia Flores, Emmeline Flores, Manuel Flores, Jr., Juana Silva Ramirez, Elias Flores Guerrero, the Estate of Manuel Flores, Ana Rosa Herrera, Alma Ruiz, Juan Ramon Ruiz, Refugio Hinojosa Garcia, Ramon Ruiz Perez, and the estate of Wulfrano Ruiz v. Oscar Renda Contracting, Walter Terry Winn, Jr., Winn Professional Engineers & Constructors, LLC, Donna Dietz, and Kassaw & Dietz, Inc. No. 08-4368		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Jill Herz; Jill Herz, Attorney at Law, PC; Dallas TX for Ana Lilia Flores, Emmeline Flores, Juana Silva Ramirez, Elias Flores Guerrero, Estate of Manuel Flores, Ana Rosa Herrera, Alma Ruiz, Juan Ramon Ruiz, Refugio Hinojosa Garcia, Ramon Ruiz Perez, Estate of Wulfrano Ruiz, M. Flores, Jr.</li><li>• Beth Jaynes; Jill Herz, Attorney at Law, P.C.; Dallas TX for Ana Lilia Flores, Emmeline Flores, Juana Silva Ramirez, Elias Flores Guerrero, Estate of Manuel Flores, Ana Rosa Herrera, Alma Ruiz, Juan Ramon Ruiz, Refugio Hinojosa Garcia, Ramon Ruiz Perez, Estate of Wulfrano Ruiz</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Richard Capshaw; Capshaw &amp; Associates; Dallas, TX for Walter Terry Winn, Jr., Winn Professional Engineers &amp; Constructors, LLC</li><li>• Jonathan P. Ayers; Ayers &amp; Ayers; Colleyville, TX for Oscar Renda Contracting</li><li>• Brent Anderson; Taylor &amp; Anderson, LLP; Denver, CO for Oscar Renda Contracting</li><li>• Mitchell S. Milby; Milby, PLLC; Dallas, TX for Donna Dietz, Kassaw &amp; Dietz, Inc</li></ul>		
<b>Facts:</b>	<p>On April 2, 2008 plaintiffs Manuel Flores, 32, and Wulfrano Ruiz, 45, were employees of Oscar Renda Contracting Inc., a national utility contractor out of Roanoke. They, and a third employee, were working on a suspended work platform over the Arkansas River in Little Rock, Ark. The employees were helping install two water pipelines along the underside of the Interstate 430 Bridge. Walter Terry Winn Jr. and Winn Professional Engineers &amp; Constructors, LLC, a firm from Longview, were hired by Oscar Renda Contracting to create a custom made suspended scaffold. Winn Professional hired Donna Dietz and Kassaw &amp; Dietz, Inc., a structural engineering firm from Tyler, to review Winn's member sizing on the scaffold and to verify the scaffold would carry the loads Winn specified. Winn and Kassaw &amp; Dietz never entered into a written contract defining one another's scope of work on the scaffold. As Flores and Ruiz were working, the tongue on the scaffold broke, and the platform on which the men were standing (suspended from the bridge by the tongue) fell from the bridge. They plunged 70 feet into the river and drowned.</p> <p>The families of Flores and Ruiz sued Oscar Renda Contracting, Winn, Winn Professional Engineers &amp; Constructors, Dietz and Kassaw &amp; Dietz. The plaintiffs claimed Oscar Renda Contracting failed to hire a qualified scaffold designer; did not provide proper life jackets and a proper rescue boat; and didn't provide a tie-off to the bridge/ personal fall arrest system. Plaintiffs' counsel maintained that Winn accepted a job he was not qualified for, and improperly sealed engineering drawings despite having not performed a proper structural analysis.</p> <p>The plaintiffs further claimed that Kassaw &amp; Dietz wasn't qualified to do the work that Winn hired them to do, and they failed to do a proper structural analysis of the scaffold. This breached the professional standard of care for a structural engineer. With respect to the engineers (Winn and Kassaw &amp; Dietz, the plaintiffs claimed that unanticipated loads/forces were exerted on the scaffold's single point of connection (the tongue), and that these loads/forces caused the tongue to break, and allowed the men in the platform (suspended by and below the tongue) to fall to their death in the river below. According to plaintiffs' counsel, it was the engineers' failure to consider these loads/ forces in their analysis of the scaffold that was a breach of the professional standard of care and caused in part or whole the death of the men. Plaintiffs' counsel noted the testimony of Winn and Dietz who said that neither one of them ever considered the force from the Interstate 430 Bridge itself, deflecting against the scaffold when traffic drove across it. This analysis would have been critical since the design of the scaffold placed its one, and only connection point, against the bottom of the bridge's floor beams.</p> <p>Oscar Renda Contracting denied having committed any negligent act.</p> <p>Winn countered it retained and relied upon Kassaw &amp; Dietz to provide a structural assessment. It was the understanding of the parties the structural strength of the platform was adequate. Winn noted the exact cause of the collapse is not known.</p> <p>Kassaw &amp; Dietz argued it was hired only to verify whether Winn's initial member sizing for the scaffold would carry the three loads that Winn specified: four men, equipment and the weight of the platform itself. Winn gave no other loads/forces to Kassaw &amp; Dietz for its review, and limited the information and contact that Kassaw &amp; Dietz had on the project. Kassaw &amp; Dietz insisted Winn never gave them the bridge drawings; did not hire it to go to the job site; did not include it in any meetings regarding the design and construction of the scaffold; and Winn limited its contact with others on the project. Ultimately, the scaffold failed because of loads/forces Winn never gave to Kassaw &amp; Dietz, and conditions it could never have known because of its limited involvement and scope of work. Kassaw &amp; Dietz pointed to Winn, who testified Kassaw &amp; Dietz did all of the work he asked the company to do; that the scaffold supported the load he gave the company; and that nothing Kassaw &amp; Dietz worked on failed.</p>		
<b>Injury:</b>	Flores and Ruiz both drowned. The plaintiffs' medical expert testified that it takes several minutes to succumb and it is a terrifying way to die. Flores leaves a wife, Ana Lilia Flores, 32; a daughter, Emmeline Flores, 8; a son, Manuel Flores Jr., 2; and his parents, Juana Silva Ramirez, Elias Flores Guerrero. Ruiz leaves a wife, Ana Rosa Herrera, 43; two children, Alma Ruiz, 20, and Juan Ramon Ruiz, 21; a mother, Refugio Hinojosa Garcia; and a father, Ramon Ruiz Perez, who died five months after his son.		
<b>Result:</b>	The jury found Oscar Renda Contracting 51 percent negligent, Winn Professional Engineers & Constructors 39 percent negligent and Winn 10 percent negligent. Dietz and Kassaw & Dietz were not found negligent. There was no finding of gross negligence. The final award came to \$4,074,500.		
<b>Judge:</b>	Gena Slaughter		
<b>Trial Length:</b>	1 months		

## Fatal rear-ender by truck driver with sleep apnea

December 07, 2011

<b>Amount:</b>	\$3,250,000	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	Wanda Lindsay, individually and as independent executor of the estate of John Lindsay; Tom Lindsay; Michelle Teinert; and Melissa Ashcraft v. Celadon Trucking Services Inc. and David A. Downey, No. DC-10-08146-G		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Jim Cole; Cole, Cole &amp; Easley; Victoria TX for Wanda Lindsay, Estate of John Lindsay, Tom Lindsay, Michelle Teinert, Melissa Ashcraft</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Karl W. Koen; Grau Koen, P.C.; Dallas, TX for Celadon Trucking Services Inc., David A. Downey</li><li>• Robert J. Collins; Grau Koen P.C.; Dallas, TX for Celadon Trucking Services Inc., David A. Downey</li></ul>		
<b>Facts:</b>	<p>On May 7, 2010, plaintiffs' decedent John Lindsay, 71, was driving a mid-size sedan on Interstate 30 near Texarkana with his wife, plaintiff Wanda Lindsay, 65, as a passenger. They were on their way to Kentucky to visit relatives. They entered a construction zone and came to a stop, the last car in a line roughly 3 miles long. David A. Downey was operating a tractor-trailer on Interstate 30 in the same direction as the plaintiffs and was going about 65 mph on cruise control. He rear-ended the Lindsays, and Mr. Lindsay was killed. Downey was an employee of Celadon Trucking Services Inc. They claimed that Downey often suffered from daytime drowsiness as a result of sleep apnea.</p> <p>Downey had been diagnosed with sleep apnea after Celadon sent him to a facility for a sleep study. He was provided with a continuous positive airway pressure machine to control his sleep apnea, as required by Federal Motor Carrier Safety Act guidelines. Based on a May 13, 2010, download and printout of the machine's usage data, the plaintiffs claimed that Downey did not use the machine at all in the two weeks before the accident. According to plaintiffs' counsel, Downey testified that the machine never helped his daytime drowsiness anyway.</p> <p>The plaintiffs sued Downey for rear-ending the plaintiffs and sued Celadon for allowing Downey behind the wheel. They alleged that Downey had been fired from his previous job for refusing to have a sleep study, and that he was rejected as a driver by 30 companies before Celadon hired him.</p> <p>According to plaintiffs' counsel, the problem of truck drivers driving with uncontrolled sleep apnea has been described as an epidemic, and industry experts believe that about 30 percent of truck drivers have sleep apnea.</p> <p>More stringent and detailed screening guidelines have been proposed for decades, but have not been adopted. Under the proposed guidelines, Downey would not have been qualified to drive. (The plaintiffs' Department of Transportation expert acknowledged that Downey was qualified to drive under the existing guidelines, if he was using the airway pressure machine.)</p> <p>The defendants denied the allegations and argued that the download from the machine was not dispositive of the issue of whether Downey was using it, as required. Downey said he was using it, prior to and at the time of the accident.</p> <p>Also, Downey had no prior injury accidents.</p> <p>The defense noted that, although Downey applied online to 30 companies, the trucking industry and economy were severely depressed at that time.</p>		
<b>Injury:</b>	<p>Mr. Lindsay was survived by his wife of 46 years and their three adult children. The couple had recently retired and were planning to travel in their retirement. The plaintiffs sought survival and wrongful death damages.</p> <p>Mrs. Lindsay claimed bodily injuries. She was taken to the emergency room and found to have a small amount of subarachnoid blood in the left Sylvian fissure. She also sustained fractured ribs, a broken nose and a scalp contusion. She was monitored in intensive care for a couple of days.</p>		
<b>Result:</b>	<p>The case settled for \$3.25 million.</p> <p>Plaintiffs' counsel said that, in an unwritten agreement, as part of the settlement, Celadon also agreed to educate its drivers about indications of sleep apnea; about driver unawareness of the condition; about the extreme danger of driving under the effects of the condition; about the fact that drivers treated for sleep apnea can qualify to drive a truck; and about the positive health effects of sleep apnea treatment. Plaintiffs' counsel said Celadon also agreed to examine its policies with the assistance of its retained expert and to permit him to use his findings to lobby for changes in regulations and industry practice, in order to prevent future accidents related to sleep apnea.</p> <p>Defense counsel said Celadon agreed only to consider such education and examination.</p> <p>According to plaintiffs' counsel, Celadon expressly recognized, in the same unwritten agreement, the importance of screening for sleep apnea and monitoring drivers who have been diagnosed with it.</p> <p>Since the accident, Lindsey's widow and children have founded the John Lindsay Foundation, which is dedicated to changing the way the trucking industry deals with uncontrolled sleep apnea among its drivers.</p> <p>The plaintiffs' case included a video of the Lindsay family story, accentuated by state-of-the-art 3D demonstration technology. This exhibit, the first project of Justice Media Lab Inc., was instrumental in the settlement negotiations, the plaintiffs' attorneys said.</p> <p>According to the plaintiffs' attorneys, at the time the lawsuit was filed, no trucking company had ever acknowledged that sleep apnea in one of its drivers had led to a death.</p>		



**Judge:**

Dale Tillery

## Mentally ill man struck, killed on unlighted section of road

September 18, 2009

<b>Amount:</b>	\$2,370,000	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$948,000		
<b>Court:</b>	Dallas County District Court, 95th, TX		
<b>Case Name:</b>	Sara Wojewski, Luca Wojewski, Isabella Wojewski, Paul Wojewski and Jack Wojewski v. TXU Electric Delivery Co., Dr. Michael Rosenthal, and Alejandro Garcia, No. 06-07584		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Hunter Craft; Watts Guerra Craft LLP; Houston TX for Sara Wojewski, Luca Wojewski, Isabella Wojewski, Paul A. Wojewski, Paul W. Wojewski, Jack Wojewski, Paul Wojewski, deceased</li><li>• John Ramsey; Watts Guerra Craft LLP; Houston TX for Sara Wojewski, Luca Wojewski, Isabella Wojewski, Paul A. Wojewski, Paul W. Wojewski, Jack Wojewski, Paul Wojewski, deceased</li><li>• Daniel Longoria; Watts Guerra Craft LLP; Austin TX for Sara Wojewski, Luca Wojewski, Isabella Wojewski, Paul A. Wojewski, Paul W. Wojewski, Jack Wojewski, Paul Wojewski, deceased</li><li>• Rachel Candelet; Watts Guerra Craft LLP; Houston TX for Sara Wojewski, Luca Wojewski, Isabella Wojewski, Paul A. Wojewski, Paul W. Wojewski, Jack Wojewski, Paul Wojewski, deceased</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Lance Travis; Burford &amp; Ryburn, L.L.P.; Dallas, TX for TXU Electric Delivery Co.</li><li>• Andrew Cox; Burford &amp; Ryburn, L.L.P.; Dallas, TX for TXU Electric Delivery Co.</li><li>• None reported for Michael Rosenthal, Alejandro Garcia</li></ul>		
<b>Facts:</b>	<p>On Aug. 26, 2005, plaintiffs' decedent Paul Wojewski, 57, a surgeon out of work on disability, was voluntarily admitted to a mental hospital in Dallas on the advice of his psychiatrist, Dr. Michael Rosenthal. Wojewski had been diagnosed with bipolar disorder and was experiencing a manic-depressive episode. He left Rosenthal's office, claiming he was returning to his hotel room to check out and collect his belongings, and did not return.</p> <p>At approximately 9:30 p.m. on Aug. 28, Wojewski was walking in the center lane on the westbound side of Belt Line Road in Dallas when he was struck by a car driven by Alejandro Garcia. Wojewski sustained fatal injuries.</p> <p>The streetlights on the section of road were operated and maintained by TXU Electric Delivery Co.</p> <p>Wojewski's family sued TXU, alleging negligence. They claimed the streetlights at the accident scene were not operational, causing Garcia to be unable to see Wojewski in time to avoid the accident. They family contended that TXU received notice the streetlights were not operational on July 29. TXU allegedly sent a crew to check the electrical circuit, but after it found no problems, the company failed to investigate other possible causes of the outage and did not remediate the problem. The plaintiffs said TXU ultimately replaced the bulbs and fuses on the streetlights in question two weeks after the accident.</p> <p>The Wojewski family also sued the psychiatrist, Rosenthal, alleging he was negligent in allowing Wojewski to leave his office unescorted. Rosenthal settled prior to trial for an undisclosed amount.</p> <p>TXU argued that its streetlight maintenance system was reasonable. It contended that negligence for the accident fell on Rosenthal for allowing Wojewski to leave unescorted, Garcia for failing to keep a proper lookout, and on Wojewski for failing to take his prescribed psychiatric medication and thus inducing a psychotic state.</p> <p>TXU named Garcia as a third-party defendant. It claimed Garcia struck Wojewski because he failed to keep a proper lookout.</p> <p>Garcia argued the lighting conditions on the road were too poor for him to see Wojewski until it was too late to avoid the collision.</p>		
<b>Injury:</b>	<p>Wojewski sustained fatal injuries in the accident. He was 57. He is survived by his wife, Sara Wojewski; children, Paul W., 11, Isabella, 4, Luca, 2, and Paul A., who was born after Wojewski's death; and his father, Jack Wojewski.</p> <p>The Wojewskis sought an unspecified amount for past and future pecuniary loss, loss of companionship and society, mental anguish, and funeral and burial expenses.</p>		
<b>Result:</b>	<p>The jury found TXU was found 40 percent, Rosenthal 40 percent and Wojewski 20 percent liable. Garcia was found not negligent.</p> <p>The jury found that the plaintiffs' damages were \$2.37 million. With the reduction for comparative fault and prior undisclosed settlement from Rosenthal, the family recovered a total of \$948,000 from TXU.</p>		
<b>Judge:</b>	Ken Molberg		
<b>Trial Length:</b>	4 days		

## Driver killed in crash with tractor-trailer blocking all lanes

August 01, 2013

<b>Amount:</b>	\$1,050,000	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$945,000		
<b>Court:</b>	Dallas County Court at Law No. 5, TX		
<b>Case Name:</b>	Suzie Tsai, Ginny Kang and Scott Oh in his capacity as a representative of the Estate of Kook Rok Oh v. Jorge Ramiro Gallegos-Alvarez and J. Correa Trucking Inc., No. CC-12-01228-E		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Eric W. Hines; Cooper &amp; Scully; Dallas TX for Estate of Kook Rok Oh, Ginny Kang, Suzie Tsai, Scott Oh</li><li>• Micah Dortch; Cooper &amp; Scully; Dallas TX for Estate of Kook Rok Oh, Ginny Kang, Suzie Tsai, Scott Oh</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Michael H. Bassett; The Bassett Firm; Dallas, TX for Jorge Ramiro Gallegos-Alvarez, J. Correa Trucking Inc.</li><li>• Jennifer R. Ashmore; The Bassett Firm; Dallas, TX for Jorge Ramiro Gallegos-Alvarez, J. Correa Trucking Inc.</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Progressive Insurance Co.</li></ul>		
<b>Facts:</b>	<p>On the night of Feb. 14, 2012, plaintiffs' decedent Kook Rok Oh, a 72-year-old retired business owner, was driving a car on the Interstate 35 frontage road near Highway 67 when he was involved in a collision with the side of a tractor-trailer owned by J. Correa Trucking and driven by employee Jorge Gallegos-Alvarez. Oh was declared dead on the scene.</p> <p>Oh's wife and two children, individually and on behalf of his estate, sued Gallegos-Alvarez and J. Correa, claiming negligence and gross negligence.</p> <p>Plaintiffs' counsel argued that Gallegos-Alvarez, acting in his capacity as an employee of J. Correa, had intended to enter Interstate 35 but missed the entrance ramp. In the course of attempting to maneuver back to the ramp, he attempted to execute a three-point turn, causing his 57-foot trailer to block all lanes of the road.</p> <p>The plaintiffs' accident reconstruction expert testified that the slope of the road and the dark conditions prevented Oh from seeing the trailer until it was too late for him to avoid the collision.</p> <p>Gallegos-Alvarez and J. Correa denied negligence and gross negligence. Defense counsel argued Oh failed to keep a proper lookout and was liable for the collision. The defense accident reconstruction expert testified Oh should have seen the trailer and that he failed to apply his brake soon enough to avoid the collision. The defense internal medicine and eye experts testified that Oh's medical records showed he had poor eyesight and was experiencing dementia, and defense counsel argued this established he was unfit to drive.</p>		
<b>Injury:</b>	<p>Oh sustained massive head injuries and was declared dead after first responders reached the scene. Plaintiffs' counsel produced a recording of a 911 call where the caller reported seeing Oh alive 12 to 15 minutes after the collision.</p> <p>The family sought an unspecified amount for pre-death pain and suffering and past and future mental anguish, loss of companionship and pecuniary losses, plus punitive damages.</p>		
<b>Result:</b>	<p>The jury found the defendants 90 percent liable and Oh 10 percent liable. The jury found Gallegos-Alvarez grossly negligent. The plaintiffs were awarded \$1.05 million in actual damages, reduced to \$945,000 for comparative liability. Before the punitive damages phase began, the parties settled for \$1.2 million.</p>		
<b>Judge:</b>	Mark Greenberg		
<b>Trial Length:</b>	4 days		

## Plaintiff in pickup was killed when rear-ended by 18-wheeler

August 15, 2013

<b>Amount:</b>	\$805,637	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 14th, TX		
<b>Case Name:</b>	Eduarda Tobias, individually and as representative of the estate of Isidro Tobias, deceased, and as next friend of Daniel Tobias, a Minor, Isidro Manuel Tobias and Myra Tobias v. BFD Logistics, LLC, and Wilmar Marc Walker, No. DC-11-08760		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Joe M. Williams; Williams &amp; Associates; Houston TX for Eduarda Tobias, estate of Isidro Tobias, Daniel Tobias, Isidro Manuel Tobias, Myra Tobias</li><li>• Jeremy W. McKey; McKey, Morrison &amp; Sanchez; Dallas TX for Eduarda Tobias, estate of Isidro Tobias, Daniel Tobias, Isidro Manuel Tobias, Myra Tobias</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Mike Holloway; Burford &amp; Ryburn; Dallas, TX for Southwest International Trucks Inc. [nonsuited without payment]</li><li>• Jason N. Thomas; Carnahan Thomas, LLP; Southlake, TX for Wilmar Marc Walker, BFD Logistics LLC</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Truckers Insurance Exchange</li></ul>		
<b>Facts:</b>	<p>On April 30, 2012, plaintiffs' decedent Isidro Tobias, 53, a construction worker, was driving a full-size pickup truck to work, with a non-party passenger. They were heading south on Interstate 35 in Buda, on their way from Austin to San Antonio. An accident on the freeway had brought traffic to a standstill. Tobias stopped and was rear-ended by an 18-wheeler driven by Wilmar Marc Walker. Tobias was killed instantly. His passenger sustained serious injuries but survived.</p> <p>Walker was working for BFD Logistics LLC. BFD had leased the truck from Southwest International Trucks Inc.</p> <p>Tobias' estate and family sued Walker for failing to stop in time. The plaintiffs alleged negligence and gross negligence on Walker's part. The plaintiffs also sued BFD and Southwest International, under respondeat superior. Against Southwest International, the plaintiffs also alleged failure to maintain the truck. (Walker testified that he tried to stop but that the brakes failed.)</p> <p>The plaintiffs retained Scientific Analysis Inc., which reported that the tractor-trailer was a 2012 model with less than 4,000 miles; that the brakes were in perfect working condition; and Walker braked only momentarily before hitting Tobias at 65 mph.</p> <p>Walker contended that Tobias swerved in front of him and the truck's brakes failed when he tried to stop.</p> <p>Southwest International was nonsuited without payment.</p>		
<b>Injury:</b>	<p>Tobias was killed instantly. He was survived by his widow, plaintiff Eduarda Tobias, and their adult children, plaintiffs Isidro Manuel Tobias and Myra Tobias, both college students, and minor son, plaintiff Daniel Tobias, 16. They all lived together.</p> <p>The plaintiffs sought damages for the wrongful death of Tobias, including past and future loss of companionship and society, past and future mental anguish, and past and future pecuniary loss. Tobias had held the same job for more than 20 years and was making about \$55,000 annually at the time of the accident.</p> <p>The plaintiffs also sought damages for vehicle repair costs and medical bills. Tobias was taken to the hospital after the accident before being declared dead. The medical bills were about \$5,000.</p> <p>The defense was not disputing the damages.</p>		
<b>Result:</b>	<p>The plaintiffs settled for \$805,636.67, which was the remaining coverage on BFD/Walker's \$1 million policy. Southwest International was nonsuited without payment.</p> <p>After the case settled, the minor's portion of the settlement was approved in a friendly suit in Travis County.</p>		
<b>Judge:</b>	Eric Moye		

## Wheelchair passenger died after rear-ender

May 09, 2014

<b>Amount:</b>	\$750,000	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	Cipriano Nava Vazquez, Individually, and as Heir to and Representative of the Estate of Maria Guadalupe Vazquez, Deceased, Maria Vazquez, Patricia Herrera, Maria D. Martinez, Rosalinda Vazquez, Reyna Vazquez, Sonia Vazquez Nava, Maria DeJesus Vazquez, Isaias Vazquez Nava, and Lino Vazquez, Individually, and as Heirs to the Estate of Maria Guadalupe Vazquez, Deceased v. Arty Logistics & Transportation, LLC, Azmi Abdelhadi Elhassan, and Irving Holdings, Inc., No. DC-12-08112		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>George A. Boll; Juneau, Boll, Stacy, &amp; Ucherek; Addison TX for Cipriano Nava Vazquez, estate of Maria Guadalupe Vazquez, Maria Vazquez, Patricia Herrera, Maria D. Martinez, Rosalinda Vazquez, Reyna Vazquez, Sonia Vazquez Nava, Maria DeJesus Vazquez, Isaias Vazquez Nava, Lino Vazquez</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>John H. House; Burt Barr &amp; Associates, L.L.P.; Dallas, TX for Irving Holdings Inc.</li><li>Bryan P. Reese; Fee, Smith, Sharp &amp; Vitullo; Dallas, TX for Azmi Abdelhadi Elhassan, Arty Logistics &amp; Transportation LLC</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>Hallmark Specialty Insurance Co.</li><li>Irving Holdings Inc. (self-insured)</li></ul>		
<b>Facts:</b>	<p>On March 5, 2012, plaintiffs' decedent Maria Guadalupe Vazquez, 79, blind, and confined to a wheelchair, was being transported to a doctor's appointment in a wheelchair minivan operated by Azmi Abdelhadi Elhassan. Elhassan rear-ended another vehicle. Vazquez was thrown from her wheelchair, and she died in the hospital four days later, on March 9. The van was owned by Arty Logistics &amp; Transportation LLC. The accident occurred in the 300 block of East Main Street in Richardson.</p> <p>Vazquez was a participant in the Medical Transportation Program, which is administered by the Texas Health and Human Services Commission. The program provides transportation services to Medicaid recipients. Arty and Elhassan were subcontractors of Irving Holdings Inc., a company that had contracted with Health and Human Services to provide transportation services under the program.</p> <p>Arty and Elhassan claimed that the minivan's restraint system was installed by Advanced Mobility Systems of Texas Inc.</p> <p>Vasquez's estate and family sued Elhassan and Arty for negligence and gross negligence. Elhassan and Arty designated Irving and Advanced Mobility as responsible third parties, and the plaintiffs later joined Irving and Advanced Mobility as defendants. Advanced Mobility was granted a summary judgment in July 2013.</p> <p>The plaintiffs alleged that Elhassan failed to use the van's restraint system to secure Vazquez before and during transport; that Arty was vicariously liable under respondeat superior; and that Irving contractually accepted vicarious liability for the negligence or gross negligence of anyone transporting Medicaid patients under Irving's agreement with Health and Human Services.</p> <p>The defendants denied liability. Arty contended that it only leased the van to Elhassan, who Arty said was an independent contractor for whom Arty was not responsible. Arty further contended that Elhassan was trained by Irving and subject to Irving's control and supervision. Arty maintained that Irving, not Arty, dispatched Elhassan to pick up Vazquez on the day of the incident.</p> <p>Irving argued that Arty and Elhassan were independent contractors for whom it had no responsibility, and Irving cross-claimed against Arty based on the written subcontract agreement. According to Irving, under the agreement, Arty agreed to defend and indemnify Irving against claims involving the alleged negligence of Arty or its employees.</p> <p>A discovery dispute arose between plaintiffs and Arty, and the plaintiffs filed a motion to compel, which was granted in May 2013. Arty filed a mandamus proceeding, but the plaintiffs settled with Arty and Elhassan for their \$500,000 policy limit in July 2013, while the mandamus proceeding was pending. The litigation continued against Irving only.</p>		
<b>Injury:</b>	<p>Vasquez sustained acute fractures of her lower right femur and left tibia and fibula. She died in the hospital on March 9, four days after the accident. The death certificate and autopsy report listed the cause of death as blunt force injuries to the lower extremities.</p> <p>Before her death, Vazquez experienced significant pain, particularly when doctors attempted to straighten her legs to put on braces. The estate claimed Vasquez's conscious pain and suffering.</p> <p>Vasquez was survived by her 10 adult children: plaintiffs Cipriano Nava Vazquez, Maria Vazquez, Patricia Herrera, Maria D. Martinez, Rosalinda Vazquez, Reyna Vazquez, Sonia Vazquez Nava, Maria DeJesus Vazquez, Isaias Vazquez Nava, and Lino Vazquez. They claimed past and future mental anguish and loss of companionship and society.</p>		
<b>Result:</b>	<p>In April 2014, the plaintiffs filed a motion for partial summary judgment against Irving, arguing that Irving's contract with Health and Human Services made Irving vicariously liable for the conduct of any person or company transporting Medicaid patients under the agreement. Prior to a hearing on the motion, Irving settled for \$250,000. Including the \$500,000 settlement with Arty and Elhassan, the settlement proceeds totaled \$750,000.</p>		
<b>Judge:</b>	Dale Tillery		

## Faulty ladder caused electrician's fatal fall: family

May 24, 2017

<b>Amount:</b>	\$600,000	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 14th, TX		
<b>Case Name:</b>	Cydney Just, Individually and as Representative of the Estate of Kenneth Just, Deceased; and Amanda Just v. Glenn Grounds d/b/a Grounds Electric Co., No. DC-16-08922		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Michael D. Stacy; Juneau, Boll, Stacy &amp; Ucherek, PLLC; Addison TX for Estate of Kenneth Just, Cynthia Just, Amanda Just</li><li>• George A. Boll; Juneau, Boll, Stacy &amp; Ucherek, PLLC; Addison TX for Estate of Kenneth Just, Cynthia Just, Amanda Just</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Scott A. Seelhoff; Law Offices of Scott A. Seelhoff; Dallas, TX for Glenn Grounds</li><li>• Brett W. Levinson; Law Offices of Scott A. Seelhoff; Houston, TX for Glenn Grounds</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Hartford Insurance Group</li></ul>		
<b>Facts:</b>	<p>On April, 27, 2016, plaintiffs' decedent, Kenneth Just, a journeyman electrician, was installing light fixtures with a co-worker at a job site in DeSoto. Their employer was Glenn Grounds, operating as Grounds Electric Co., a small electrical contractor that had workers' compensation, and Ground provided the ladder. Just was on an 8-foot stepladder, and the plaintiffs claimed that the ladder broke. Just fell and sustained fatal injuries.</p> <p>Just's family, individually and on behalf of his estate, sued Grounds for gross negligence. Just's co-worker testified that Just was standing on the ladder's fifth step and adjusting the position of his feet. The top cap, or plastic on top of the ladder, split, and the folding arms broke, causing Just to fall to the ground, the co-worker said.</p> <p>Grounds was cited by the Occupational Safety and Health Administration for not having removed the unsafe ladder from service, and failing to provide ladder safety training for its employees.</p> <p>Grounds acknowledged that that he knew prior to the incident that working on a ladder could be very risky and dangerous, and that faulty ladders can cause falls leading to serious injury or death. The plaintiffs claimed that he demonstrated conscious indifference to his employees' safety by failing to inspect the ladder properly, provide training regarding ladder safety, and remove the ladder from service.</p> <p>Because Grounds was a workers' compensation subscriber, the Texas Labor Code barred any claim the plaintiffs may have had against him for ordinary negligence. Under the statute, their burden of proof on gross negligence was clear and convincing evidence.</p> <p>Grounds acknowledged that the ladder was in poor condition and should have been removed from service, but he denied that it caused Just's fall.</p> <p>The defense expert, a safety engineer, opined that Just simply lost his balance and fell, and that the top cap and folding arms were damaged when the ladder struck the concrete. Grounds also contended that Just negligently modified the ladder and thereby weakened its structural integrity. Regarding ladder inspections, Grounds contended that he delegated that duty to Just and that it was therefore Just, not Grounds, who was negligent for failing to inspect the ladder and remove it from service.</p> <p>Grounds filed a motion for summary judgment, arguing that the plaintiffs' claims were barred by the Texas Labor Code, but the motion was denied.</p>		
<b>Injury:</b>	<p>Just was taken by ambulance to the hospital. He sustained an ankle fracture, and four days later, he was diagnosed with hemorrhagic pancreatitis. He died the next day, as a result of hemoperitoneum, secondary to the pancreatitis and a ruptured peri-pancreatic artery.</p> <p>He underwent ankle surgery at the hospital and was discharged on April 30. Soon after, he began experiencing severe abdominal pain, and he went to the emergency room on May 1. The pancreatitis was discovered at that time, and Just died the next day.</p> <p>Just was survived by his wife, plaintiff Cydney Just, 57, and his daughter, plaintiff Amanda Just, 29.</p> <p>Under the Texas Labor Code, the only recoverable damages were punitive damages. The cap on any punitive damages would be based on the actual damages. The plaintiffs claimed that the past medical bills were \$54,000; that the funeral and burial expenses were \$5,500; that the plaintiffs' loss of Just's earning capacity was \$273,730; and that their loss of his household services was \$308,700.</p> <p>The plaintiffs' economics expert opined about the value of Just's earning capacity and household services.</p>		
<b>Result:</b>	The case settled for \$600,000. The policy limit was \$1 million.		

## Family said trucker developed fatal pneumonia after accident

May 07, 2009

<b>Amount:</b>	\$475,142	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$456,159		
<b>Court:</b>	Dallas County District Court, 101st, TX		
<b>Case Name:</b>	Wanda Jayne, Jeff Jayne, Amy Jane Lewis, Daniel Jayne, Matthew Jayne and the Estate of Arthur Lee Jayne v. FFE Transportation Services Inc., No. DC-07-05056		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Blair A. Bisbey; Seale, Stover &amp; Bisbey; Jasper TX for Estate of Arthur Lee Jayne, Wanda Jayne, Jeff Jayne, Amy Jayne Lewis, Daniel Jayne, Matthew Jayne</li><li>• Sid S. Stover; Seale, Stover &amp; Bisbey; Jasper TX for Estate of Arthur Lee Jayne, Wanda Jayne, Jeff Jayne, Amy Jayne Lewis, Daniel Jayne, Matthew Jayne</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Michael L. Hurst; Hermes Sargent Bates; Dallas, TX for FFE Transportation Services, Inc.</li><li>• David L. Sargent; Hermes Sargent Bates; Dallas, TX for FFE Transportation Services, Inc.</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Self Insured</li></ul>		
<b>Facts:</b>	<p>On April 1, 2006, plaintiffs' decedent Arthur Lee Jayne, 59, was a training a driver for FFE Transportation Services Inc. Jayne was asleep in an sleeper berth when his trainee ran their tractor-trailer off the road on Interstate 40 in San Bernardino County, Calif. Jayne died nine days later at his daughter's apartment in Garland. His family alleged Jayne's death was related to injuries sustained in the accident.</p> <p>Jayne's wife and four children sued FFE Transportation Services. They alleged Jayne was injured to the negligence of the his fellow employee. They claimed Jayne died from pneumonia which developed due to his injuries.</p> <p>The defense argued that Jayne died from a sudden cardiac arrest unrelated to the injuries caused by the accident. It contended his death was caused by preexisting obesity (he was 380 pounds), hypertension, diabetes and coronary artery disease.</p> <p>The defense also maintained that Jayne's negligence was the sole proximate cause of his injuries due to his violation of company policy, which forbid sleeping while a trainee is driving, and his failure to wear a restraint while in the sleeper. The defense argued that if Jayne had been sitting in the passenger seat as required, he would not have been injured.</p>		
<b>Injury:</b>	<p>Following the April 1 accident, Jayne was Life Flighted to an hospital in Las Vegas, where he was treated and released. He sustained soft-tissue injuries, described by the plaintiffs' forensic pathology expert as bruises and scrapes. He was also examined by doctors on April 4 and April 7, but there were no new diagnoses.</p> <p>On April 10, Jayne was recuperating at his daughter's home when he collapsed and died. The plaintiffs alleged he died from pneumonia which developed due to his injuries.</p> <p>The forensic pathology expert testified that Jayne's death was accidental and caused by the injuries sustained in the accident. She opined that Jayne would not have died when he did but for his injuries from the accident and, as stated in her autopsy report, the cause of death was bronchopneumonia associated with mixed drug toxicity, the sequelae of blunt force injuries and diabetes mellitus, and hypertensive and arteriosclerotic cardiovascular disease associated with morbid obesity.</p> <p>Jayne's wife and four adult children sought an unspecified amount for pecuniary loss, loss of companionship and society, and mental anguish.</p> <p>The defense argued that Jayne did not show any symptoms of pneumonia before April 10.</p> <p>The defense's cardiology expert claimed that the cause of death was "sudden cardiac death," most likely an arrhythmia. This would be totally unrelated to the scrapes and bruises caused by the accident or the pneumonia found in the autopsy, he said. Instead, the expert claimed Jayne's death was due solely to his preexisting health conditions including morbid obesity, hypertension, diabetes and coronary artery disease.</p>		
<b>Result:</b>	The jury found the defendant negligent and awarded the plaintiffs \$475,142. Since Jayne's medical expenses were already paid by his employer, the plaintiffs' net award was reduced to \$456,159.21.		
<b>Judge:</b>	Martin Lowy		
<b>Trial Length:</b>	4 days		

## Seaman claimed years of exposure on Exxon tanker ships

May 02, 2017

**Amount:** \$250,000                      **Type:** Verdict-Plaintiff

**Court:** Dallas County District Court, 68th, TX

**Case Name:** Robert Garcia, Jr., as Anticipated Personal Representative of the Heirs and Estate of Robert Garcia, Sr., Deceased v. Exxon Mobil Corporation, f/k/a Exxon Corporation, Standard Oil Corporation (New Jersey) and Standard Oil Company of New Jersey, individually and d/b/a Exxon Company, U.S.A., Exxon Chemical Company and ExxonMobil Refining & Supply Company; SeaRiver Maritime Financial Holdings, Inc. f/k/a SeaRiver Maritime, Inc. f/k/a Exxon Shipping Company; and SeaRiver Maritime, Inc., No. DC-16-6256

**Plaintiff Attorney(s):**

- David E. Cannella; Baron & Budd P.C.; Dallas TX for Robert Garcia, Jr., Estate of Robert Garcia, Sr.
- Chad Cotton; Baron & Budd, P.C.; Dallas TX for Robert Garcia, Jr., Estate of Robert Garcia, Sr.

**Defense Attorney(s):**

- Gary D. Elliston; DeHay & Elliston, L.L.P.; Dallas, TX for ExxonMobil Corp., Standard Oil Corp. (New Jersey), Standard Oil Company of New Jersey, Exxon Chemical Co., ExxonMobil Refining & Supply Co., SeaRiver Maritime Financial Holdings Inc., SeaRiver Maritime Inc.
- S. Shayne Gardner; DeHay & Elliston, L.L.P.; Dallas, TX for ExxonMobil Corp., Standard Oil Corp. (New Jersey), Standard Oil Company of New Jersey, Exxon Chemical Co., ExxonMobil Refining & Supply Co., SeaRiver Maritime Financial Holdings Inc., SeaRiver Maritime Inc.
- David P. Herrick; Herrick & Associates, P.C.; Dallas, TX for ExxonMobil Corp., Standard Oil Corp. (New Jersey), Standard Oil Company of New Jersey, Exxon Chemical Co., ExxonMobil Refining & Supply Co., SeaRiver Maritime Financial Holdings Inc., SeaRiver Maritime Inc.
- Jayme C. Long; Dentons U.S. LLP; Los Angeles, CA for ExxonMobil Corp., Standard Oil Corp. (New Jersey), Standard Oil Company of New Jersey, Exxon Chemical Co., ExxonMobil Refining & Supply Co., SeaRiver Maritime Financial Holdings Inc., SeaRiver Maritime Inc.

**Facts:** In June 2015, plaintiffs' decedent Robert Garcia, Sr., 76, a retired seaman, was diagnosed with mesothelioma. Garcia had worked as a seaman from 1963 to 1978 on tanker ships in Austin with SeaRiver Maritime Inc., which is Exxon Mobil Corp.'s global shipping arm. In October he died of arteriosclerotic coronary artery disease/malignant mesothelioma.

Robert Garcia Jr., on behalf of his father's estate, sued Exxon Mobil Corp.; Standard Oil Corp.; Standard Oil Co. of New Jersey, individually and operating as Exxon Co.; Exxon Chemical Co.; ExxonMobil Refining & Supply Co.; SeaRiver Maritime Financial Holdings Inc., formerly known as SeaRiver Maritime Inc., formerly known as Exxon Shipping Co.; and SeaRiver Maritime Inc. for exposure to asbestos-containing products and machinery while employed as a Jones Act seaman.

The family alleged that Garcia was exposed to asbestos when he performed maintenance on shipping equipment covered with asbestos insulation, in or on ship equipment, or when asbestos was disturbed by other workers close to Garcia.

Plaintiff's counsel maintained that Exxon acted negligently by failing to provide warnings about asbestos, and the company owed Garcia a duty of care.

Garcia's medical experts opined that the exposure to asbestos substantially contributed to his disease.

The defense medical expert opined that Garcia was not exposed to asbestos in sufficient amounts while he worked aboard ExxonMobil tanker ships that would have exceeded the existing government or industry standards. He opined that Garcia's death resulted from his long history of congestive heart disease. ExxonMobil acknowledged it had no air monitoring test results for the relevant time period of the alleged asbestos exposure. However, the defense produced testimony of a deceased former medical director who testified that he recalled air monitoring testing occurring on ships and recalled that the results were not above the then existing government or industry standards.

The defense boat/ship materials expert testified that Garcia would have had very limited opportunities for exposure to asbestos while on Exxon's ships based on his job duties (at times he was an able-bodied seaman; at other times he was a messman).

The defense boat/ship materials expert also testified that Garcia would have had been exposed to a lot of asbestos when he served aboard the USS Rupertus in the Navy from 1958 to 1960. The expert testified that the Coast Guard did not issue standards concerning the handling and use of asbestos until the early 1980s, therefore, Exxon was doing everything it was required to do under the Coast Guard regulations.

**Injury:** Garcia died approximately five months after he was diagnosed with mesothelioma. The cause of death was arteriosclerotic coronary artery disease/malignant mesothelioma. He leaves a wife and a son.

The family claimed that Garcia lost more than 100 pounds in the last seven months of his life. He was unable to ambulate, lost all his strength and experienced severe fatigue and pain. Also, Garcia required an oxygen tank to help him breath 24 hours a day, the family claimed.

The family sought to recover damages under the Jones Act for Garcia's pain and suffering and mental anguish caused by his mesothelioma up to the time of his death. They sought \$25 million in damages.

The defense argued that the suggested award was excessive and not supported by the evidence.

The defense argued that Garcia died from his underlying bad heart condition, rather than mesothelioma.

The defense medical expert said Garcia's death resulted from his long history of congestive heart disease.

The defense further argued that Garcia himself admitted that he did not experience any pain from his mesothelioma.



**Result:** The jury found that Exxon was a cause of Garcia's injury. It awarded his estate \$250,000.

**Judge:** Martin Hoffman

**Trial Length:** 2 weeks

## Doctor's failure to admit patient led to her death, family claimed

April 16, 2009

<b>Amount:</b>	\$200,000	<b>Type:</b>	Settlement
<b>Court:</b>	Dallas County District Court, 44th, TX		
<b>Case Name:</b>	Mario Guzman, individually and as representative of the Estate of Rosa Guzman and as next friend of Belen Guzman, a minor, Alberto Guzman and Elondia Ortiz v. Ray Rollins, No. 07-07807		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• William B. Curtis; Miller Curtis &amp; Weisbrod LLP; Dallas TX for Mario Guzman, Elondia Ortiz, Alberto Guzman, Belen Guzman, Estate of Rosa Guzman</li><li>• Anjel K. Avant-Black; Miller Curtis &amp; Weisbrod LLP; Dallas TX for Mario Guzman, Elondia Ortiz, Alberto Guzman, Belen Guzman, Estate of Rosa Guzman</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Vernon L. Krueger; Stewart Stimmel LLP; Dallas, TX for Ray Rollins</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Texas Medical Liability Trust</li></ul>		
<b>Facts:</b>	<p>On Dec. 19, 2005, plaintiffs' decedent Rosa Guzman, 39, presented to Dr. Ray Rollins, a Dallas family practitioner, complaining of abdominal pain. Ten years earlier, Guzman had received a kidney transplant and had been taking immunosuppressants and steroids to prevent rejection ever since. Rollins diagnosed her with diverticulitis, and ordered a CT scan and prescribed antibiotics.</p> <p>On Dec. 23, Guzman returned to Rollins complaining of worsening symptoms. She was then prescribed additional antibiotics. On Dec. 25, she checked into an emergency room in Mesquite complaining of abdominal pain, diarrhea, fever and weakness. Two hours later she was placed on a ventilator and she was in multi-system organ failure. On Dec. 30, she was diagnosed with a perforated colon. She died March 30, 2006.</p> <p>Guzman's family sued Rollins, alleging medical malpractice. They claimed Rollins should have admitted Guzman to a hospital, sought surgical consult, prescribed anaerobic antibiotics, and put her on bowel rest with a liquid diet. The plaintiffs said that Rollins' inactions resulted in Guzman's death.</p> <p>The defense argued that Rollins' actions or inactions were not the proximate cause of Guzman's death, contending she was treated by multiple hospital physicians between her last visit with Rollins and her death three months later.</p> <p>Rollins claimed the CT scan taken on Dec. 19 showed no signs of a colon perforation. He also said Guzman's reported symptoms on Dec. 25 resolved prior to the diagnosis of the colon perforation, and that hospital physicians discontinued the antibiotics prescribed by him until that time.</p>		
<b>Injury:</b>	<p>The plaintiffs claimed that as a result of Rollins' failure to have Guzman admitted to a hospital, her gastrointestinal perforations developed into peritonitis, causing internal bleeding, abscess formation, seizures, ischemic colitis and sepsis. They claimed these in turn developed into cytomegalovirus infection and multi-system organ failure, leading to her death.</p> <p>Guzman is survived by her husband, Mario Guzman, 41; two children, Alberto Guzman, 18, and Belen Guzman, 13; and her mother, Elondia Ortiz, 71. They sought an unspecified amount for Guzman's pre-death pain and suffering and loss of consortium.</p>		
<b>Result:</b>	The parties settled before trial for Rollins' \$200,000 insurance policy limit, plus an additional confidential amount.		
<b>Judge:</b>	Carlos R. Cortez		
<b>Trial Length:</b>	2 days		

## School bus monitor fired after accidentally urinating on bus

November 13, 2013

<b>Amount:</b>	\$166,292	<b>Type:</b>	Verdict-Plaintiff
<b>Court:</b>	Dallas County District Court, 162nd, TX		
<b>Case Name:</b>	Paul Green v. Dallas County Schools, No. DC-12-09857		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Matthew R. Scott; Kendall Law Group; Dallas TX for Paul Green</li><li>• Jamie McKey; Kendall Law Group; Dallas TX for Paul Green</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Meredith P. Walker; Walsh, Anderson, Gallegos, Green and Trevino; Irving, TX for Dalas County Schools</li><li>• Laura R. McLean; Walsh, Anderson, Gallegos, Green and Trevino; Irving, TX for Dalas County Schools</li></ul>		
<b>Facts:</b>	<p>On Sept. 16, 2011, plaintiff Paul Green, 59, was terminated from his employment as a school bus monitor with the Dallas County Schools for failing to protect the health and safety of students, stemming from an incident when he urinated on a school bus on Aug. 30.</p> <p>Green sued Dallas County Schools, claiming violations of the Americans with Disabilities Act and retaliation. Plaintiff's counsel maintained that Green was terminated due to his medical condition.</p> <p>Plaintiffs' counsel noted that Green has been diagnosed with colon cancer, hypertension and congestive heart failure, and was taking Coreg for treatment of his heart condition.</p> <p>The plaintiff's urology expert testified that incontinence is a known side effect of Coreg and can also be caused by Green's medical conditions. While on a bus run on Aug. 30, at a point on the route when there were no students on the bus, Green experienced a sudden need to urinate.</p> <p>Plaintiff's counsel maintained the driver refused to stop, and as a result Green was unable to control his bladder and urinated in his pants. At this point the driver stopped and allowed Green to exit the bus and finish urinating in an empty water bottle, after which Green used a towel to clean himself as best he could. The bus subsequently picked up a child in a wheelchair. Green was able to assist her into the bus without any direct contact.</p> <p>The plaintiff's urology expert testified even with direct contact there would have been no risk of disease transmission.</p> <p>Defense counsel argued that Green was fired solely due to violations of school health policies and not due to any medical condition. Defense counsel maintained the decision-maker who decided on Green's termination had no knowledge of his alleged disability.</p> <p>The defense medical experts denied incontinence is a side effect of Coreg or a consequence of Green's medical conditions.</p> <p>Defense counsel argued that the bus driver was unaware of any restrooms closer than the next stop on the route, and could not have accommodated Green's request.</p> <p>Defense counsel argued that Green's actions violated health and safety standards because he failed to clean his hands at the next stop; failed to use an onboard bodily fluids cleanup kit to sanitize a seat he had used; and failed to report the incident.</p> <p>The defense urologist testified there was a risk of disease transmission.</p>		
<b>Injury:</b>	Green claimed emotional distress during and after the incident and to have lost his job in retaliation for his complaint. He sought \$41,292 for past lost income and an unspecified amount for past emotional distress.		
<b>Result:</b>	The jury found Green had been terminated due to his disability and awarded him \$166,292.		
<b>Judge:</b>	Phyllis L. Brown		
<b>Trial Length:</b>	6 days		

## Resident died after falling in nursing home's driveway

July 25, 2012

<b>Amount:</b>	\$122,500	<b>Type:</b>	Verdict-Plaintiff
<b>Actual Award:</b>	\$61,250		
<b>Court:</b>	Dallas County District Court, 162nd, TX		
<b>Case Name:</b>	Rebecca O'Banion and Janis L. Wood, individually and as personal representatives of the Estate of J.D. Richmond, deceased v. Christian Care Centers, No. DC-09-12201		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• John P. Polewski; Polewski &amp; Associates; DeSoto TX for Rebecca O'Banion, Janis L. Wood, Estate of J.D. Richmond</li><li>• Grace Ann Weatherly; Wood, Thacker &amp; Weatherly; Denton TX for Rebecca O'Banion, Janis L. Wood, Estate of J.D. Richmond</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Delta S. Best; Best &amp; Spruill, P.C.; Austin, TX for Christian Care Centers Inc.</li><li>• Allison L. Spruill; Best &amp; Spruill, P.C.; Austin, TX for Christian Care Centers Inc.</li></ul>		
<b>Facts:</b>	<p>On Sept. 12, 2007, plaintiffs' decedent J.D. Richmond, 88, was a resident in a Dallas residential care center owned and operated by Christian Care Centers. Richmond was walking across a driveway on the property using a rolling walker with a seat purchased by his daughter, Janis Wood, when he fell and sustained injuries. He died Sept. 13.</p> <p>Individually and on behalf of their father's estate, Wood and Rebecca O'Banion (another daughter of Richmond) sued Christian Care Centers, alleging premises liability and gross negligence.</p> <p>The family alleged that Richmond fell when a wheel on his walker became stuck in a drainage grate. The daughter's claimed that the driveway was designated as a walking area for residents, and that speed bumps funneled pedestrian traffic over the grate. They contended that this condition posed an unreasonable risk of harm and that the defendant's employees were aware of the condition and took no steps to mitigate it.</p> <p>Christian Care Centers denied the allegations. It argued that the grate was not unreasonably dangerous; that it was open and obvious; and that there had been no prior falls involving the grate.</p> <p>Defense counsel argued that Richmond was seated in the walker and lost control, and that his actions were the proximate cause of his fall. Counsel also argued that Wood was contributorily negligent because she failed to provide Richmond with instructions on the proper use of the walker.</p>		
<b>Injury:</b>	The family claimed that Richmond fell backward and struck his head, causing severe head injuries that were the proximate cause of his death. They sought an unspecified amount for Richmond's past pain and suffering, as well as their own past and future mental anguish and loss of companionship and society.		
<b>Result:</b>	The jury found Richmond and Christian Care Centers each 50 percent at fault. The jury awarded the plaintiffs \$122,500, which was reduced for comparative fault to \$61,250.		
<b>Judge:</b>	Lorraine Raggio		

## Passenger killed in left-turn crash

March 29, 2011

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 44th, TX		
<b>Case Name:</b>	Claudia Luna Rios individually and as next friend of Arnulfo Luna Rios, a minor and Marco Rasgattino individually and as representative of the Estate of Maria Delcarmen Rios Lopez, deceased v. Tiseo Paving Co., Texas United Excavators LLC and Jairo Melendez, No. DC-09-04340		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>Ronald McLain; The Law Offices of Tim O'Hare; Dallas TX for Arnulfo Luna Rios, Claudia Luna Rios, Estate of Maria Delcarmen Rios Lopez, Marco Rasgattino</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>Jeffery M. Kershaw; Chamblee &amp; Ryan; Dallas, TX for Texas United Excavators LLC, Tiseo Paving Co.</li><li>Mark A. Goodman; David, Goodman &amp; Madole, P.C.; Dallas, TX for Jairo Melendez</li></ul>		
<b>Facts:</b>	<p>On June 24, 2007, plaintiff's decedent Maria Delcarmen Rios Lopez, 60, and plaintiff Arnulfo Rios, 4, were passengers in a car driven by Claudia Rios. They were driving through a construction zone in Carrollton. Subcontractor Texas United Excavators LLC, under general contractor Tiseo Paving Co., was performing the work. At an intersection, Rios was involved in a collision with a pickup truck driven by Jairo Melendez. Lopez sustained was pronounced dead at the scene and Arnulfo sustained lacerations.</p> <p>Rios, individually and on behalf of her son, Arnulfo, and Marco Rasgattino, as a representative of Lopez's estate, sued Texas United Excavators, Tiseo and Melendez, claiming negligence. Rios claimed she was driving through the intersection on a green light when Melendez made a left turn in disregard of her right of way into the side of her car. The plaintiffs claimed the contractors negligently created a dangerous condition at the intersection by piling tree trunks and other debris in the median, blocking lines of sight and failing to install a traffic light with a green arrow.</p> <p>Texas United and Tiseo argued that Rios' actions were the sole cause of the collision.</p> <p>Melendez settled prior to trial.</p>		
<b>Injury:</b>	Lopez was killed in the accident. Arnulfo sustained facial lacerations and scarring. He and his mother sought bystander damages. They sought \$4 million for past and future pain and suffering, medical expenses, funeral expenses, emotional distress and loss of companionship and society.		
<b>Result:</b>	The jury found that Texas United Excavators and Tiseo Paving were not negligent.		
<b>Judge:</b>	Carlos Cortez		
<b>Trial Length:</b>	4 days		

## Decedent's girlfriend claimed she was his common law wife

December 17, 2012

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County Probate Court No. 1, TX		
<b>Case Name:</b>	In re: The Estate of Eddie Paul Baxter, Deceased; Willie Jo Johnson v. Angelia Baxter, as Independent Executor of the Estate of Eddie Paul Baxter, Deceased, No. PR-10-3662-1		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• W. Weir Wilson; Wilson, White &amp; Doby; Fort Worth TX for Willie Jo Johnson</li><li>• Dustin L. Payne; ; Fort Worth TX for Willie Jo Johnson</li><li>• Fauniel D. Rowland; Wilson, White &amp; Doby; Fort Worth TX for Willie Jo Johnson</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• R. Kevin Spencer; Spencer Law; Dallas, TX for Angelia Baxter</li><li>• Zachary E. Johnson; Spencer Law; Dallas, TX for Angelia Baxter</li><li>• Brendan P. Harvell; Spencer Law; Dallas, TX for Angelia Baxter</li></ul>		
<b>Facts:</b>	<p>Plaintiff Willie Jo Johnson, about 60, claimed that she was the common-law wife of Eddie Paul Baxter, who died at age 62 on Dec. 20, 2009, leaving a \$1.2 million estate. The couple lived in Garland. Under the terms of Baxter's will, at his death, the estate was placed in a trust, from which Johnson was to receive \$100,000. The rest of the trust was to go to Baxter's children. The executor was the decedent's daughter Angelia Baxter.</p> <p>The trust was created under California law. The couple had lived together in California from 1994 to April 2004. According to the estate's attorneys, California has an omitted-spouse rule, under which, generally, spouses omitted from a will are entitled to a third of the estate. Johnson filed an omitted-spouse claim in California, but California does not recognize common-law marriage. Texas does, however.</p> <p>Johnson sued the estate in Texas for a declaratory judgment that she was the decedent's common law wife. The case began in family court but was moved to the probate court.</p> <p>Johnson testified that they agreed to marry and that they did marry on Oct. 19, 2004. She said they threw a party that night to celebrate and that they called each other husband and wife ever after.</p> <p>In the last years of his life, on medical forms, Baxter occasionally represented that he was married.</p> <p>The estate denied that Baxter and Johnson agreed to marry or that that they held themselves out as married. According to defense counsel, the plaintiff produced no documents on which she indicated she was married to Baxter, no greeting cards saying "husband" or "wife," and no anniversary cards. Also, Baxter and Johnson filed separate tax returns.</p> <p>The defense argued that Johnson never claimed to be Baxter's wife until after his death, when she started filling out forms to collect death benefits.</p> <p>The jury was asked whether they were married, and if so, when.</p>		
<b>Injury:</b>	Johnson sought a declaration that she was Baxter's common law wife.		
	The parties stipulated that the reasonable and necessary attorney fees for each side were \$97,779.11 through trial. The question of entitlement to attorney fees was submitted to the court.		
<b>Result:</b>	The jury found that the couple was not married. It therefore did not reach the question of when they married.		
	The court awarded attorney fees and expenses to the estate only, but reduced the award sua sponte to \$25,000 through trial.		
<b>Judge:</b>	Brenda Hull Thompson		
<b>Trial Length:</b>	5 days		

## Doctor's diagnosis was reasonable, defense argued

June 12, 2013

**Amount:** \$0 **Type:** Verdict-Defendant

**Court:** Dallas County Court at Law No. 3, TX

**Case Name:** Courtney D. Thomas individually and as Executrix of the Estate of Nita G. Thomas v. Alexander A. Gaidarski and Physicians Emergency Care Associates, No. CC-11-05956-C

**Plaintiff Attorney(s):**

- William F. Blankenship III; William F. Blankenship III PC; Dallas TX for Courtney D. Thomas, Estate of Nita G. Thomas

**Defense Attorney(s):**

- Jeffery M. Kershaw; Chamblee, Ryan, Kershaw & Anderson; Dallas, TX for Alexander A. Gaidarski, Physicians Emergency Care Associates

**Insurers:**

- Texas Medical Claims Trust

**Facts:** On Jan. 4, 2010, plaintiff's decedent Nita Thomas, 53, an administrator, checked into an emergency room in Dallas with complaints of abdominal pain. Dr. Alexander Gaidarski diagnosed her with low blood pressure and a urinary tract infection and discharged her. Thomas died the next day. The cause of death was determined to be a hemorrhage from a perforation of the inferior vena cava.

Thomas' daughter, individually and on behalf of her estate, sued Gaidarski and his practice, claiming he negligently failed to diagnose the actual cause of Thomas' symptoms. The plaintiff's emergency medicine expert testified that given Thomas' symptoms, Gaidarski should have admitted her to the hospital and performed additional tests.

The defense emergency medicine expert testified that Gaidarski's diagnosis was reasonable for Thomas' symptoms. The defense radiology expert testified that a CT scan ordered by Gaidarski on Jan. 4 showed no perforation of the inferior vena cava or internal bleeding.

**Injury:** Thomas hemorrhaged to death from a perforation of the inferior vena cava. The plaintiff sought \$250,000 for pre-death pain and suffering and past and future loss of companionship and emotional distress.

**Result:** The jury found Gaidarski had not committed malpractice.

**Judge:** George L. Allen

**Trial Length:** 5 days

## Golfer fell down slope, broke his neck, then died at hospital

March 26, 2012

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County Court at Law No. 3, TX		
<b>Case Name:</b>	Cecelia Grant, individually and as Executrix of the Estate of William Grant, deceased, Wesley Grant, Daniel Grant and Christopher Grant v. Linder Construction Co. Inc. and Glanton Inc., No. CC-10-06095-C		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Ben C. Martin; Law Offices of Ben C. Martin; Dallas TX for Estate of William Grant, Cecelia Grant, Wesley Grant, Daniel Grant, Christopher Grant</li><li>• Edward W. Sampson; Law Offices of Ben C. Martin; Dallas TX for Estate of William Grant, Cecelia Grant, Wesley Grant, Daniel Grant, Christopher Grant</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• James W. Grau; Grau Koen P.C.; Dallas, TX for Linder Construction Co. Inc.</li><li>• Brian K. Truncale; Law Office of David Klosterboer &amp; Associates; Richardson, TX for Glanton Inc.</li></ul>		
<b>Facts:</b>	<p>On Oct. 2, 2009, plaintiffs' decedent William Grant, 61, occupation not given, was participating in a golf tournament at the Sherill Park Municipal Golf Course in Richardson. While retrieving a ball at the 12 th hole, Grant fell down a slope 14 feet into an area where construction work was being performed in an adjacent creek bed by Linder Construction Co. Grant sustained spinal fractures. He was transported to the hospital, where he was declared dead. The Dallas County Medical Examiner determined that the fractures were the cause of death.</p> <p>Grant's wife, individually and on behalf of his estate, and his three sons sued Linder Construction and Glanton Inc., the manager of the golf course, claiming premises liability and gross negligence. Plaintiff's counsel argued that Grant lost his balance and fell because he was distracted by a loud noise caused by a construction worker. Plaintiff's counsel argued that both Linder and Glanton knew the construction created a dangerous condition for golfers on the 12th hole, but failed to erect safety fencing, place warning signs or temporarily close the hole.</p> <p>Defense counsel argued that the slope was a natural condition of the land and an open and obvious danger, and that Grant took an unreasonable risk attempting to retrieve his ball from the area. Counsel for Glanton argued it had not charged Grant an entry fee and was therefore not liable.</p>		
<b>Injury:</b>	Grant sustained spinal fractures at C2-3 that caused his death. His family sought an unspecified amount for pre-death pain and suffering, past medical expenses, funeral and burial expenses, past and future mental distress, pecuniary losses, loss of companionship, loss of consortium and punitive damages.		
<b>Result:</b>	The jury found no negligence or gross negligence on the part of either the defendants or the plaintiff.		
<b>Judge:</b>	Sally F. Montgomery		



## Patient's family claimed perforation during colonoscopy

July 10, 2014

<b>Amount:</b>	\$0	<b>Type:</b>	Decision-Defendant
<b>Court:</b>	Dallas County Court at Law No. 4, TX		
<b>Case Name:</b>	Elizabeth Jane Burks, individually and as personal representative of the Estate of Gene Alderson Burks Sr., deceased v. John J. Duncan, Alicia Sanga Duncan, Wellmark Heartlab d.b.a. Viascan of Las Colinas and John Andrew Osborne, No. CC-12-02824-D		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Les Weisbrod; Miller Weisbrod LLP; Houston TX for Elizabeth Jane Burks, Gene Anderson Burks</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Russell G. Thornton; Cowles &amp; Thompson; Dallas, TX for John Andrew Osborne</li><li>• Brad Dickinson; Dickinson &amp; Bartlett; Dallas, TX for John J. Duncan, Alicia Sanga Duncan, Wellmark Healthlab Inc.</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Uninsured</li></ul>		
<b>Facts:</b>	<p>On Oct. 19, 2010, plaintiff's decedent Gene Burks, 70, retired, underwent a virtual colonoscopy, where the colon is examined via a CT scan without the insertion of instruments, at Wellmart Healthlab, a Dallas CT scanning clinic owned by John Duncan. He underwent a second virtual colonoscopy on Nov. 1 performed by technician Alicia Sanga Duncan. Burks was admitted to the hospital on Nov. 2. He died on Nov. 17.</p> <p>Burks' wife, individually and on behalf of her husband's estate, sued the Duncans and Wellmart for medical malpractice. Plaintiff's counsel maintained that Burks' colon was perforated during the Nov. 1 colonoscopy and that this was the cause of his death.</p> <p>Plaintiff's counsel maintained that medical records showed Burk's treating physician recommended a second colonoscopy due to some inconclusive results from the Oct. 19 colonoscopy.</p> <p>Plaintiff's counsel maintained that due to indications from the first colonoscopy that Burk had diverticulosis, a condition that weakens the walls of the colon, and the fact virtual colonoscopy requires the colon be inflated with air, the treating doctor ordered a standard colonoscopy.</p> <p>Plaintiff's counsel maintained the defendants instead performed another virtual colonoscopy, which was not completed because the colon was not retaining air.</p> <p>The plaintiff's internal medicine expert testified that performing the procedure without a physician's order or a medical doctor present was a breach of the standard of care and resulted in the colon rupture and Burk's death.</p> <p>Defense counsel maintained that the defendants had verbal authorization from Dr. John Osborne to perform the procedure and produced a letter to this effect.</p> <p>Defense counsel maintained no colon perforation occurred, maintaining no perforation is mentioned in the medical records until Nov. 15.</p> <p>Defense counsel argued during cross-examination that the plaintiff's medical expert testified an optical colonoscopy presented a greater risk of colon perforation than a virtual one.</p> <p>Defense counsel argued that Burks' medical expert was unqualified to render an opinion on the case and that the plaintiff therefore had insufficient evidence of malpractice.</p> <p>Plaintiff's counsel subsequently named Osborne as a defendant.</p> <p>Osborne denied malpractice. Osborne denied that he gave verbal authorization for the colonoscopy or wrote the letter attributed to him, arguing Osborne's name does not appear in Burk's medical records.</p>		
<b>Injury:</b>	Plaintiff's counsel maintained the defendants' malpractice resulted in Burk's death. Plaintiff was seeking an unspecified amount in damages.		
<b>Result:</b>	Following a defense motion, Judge Ken Tapscott struck the plaintiff's expert witness testimony and subsequently issued a directed verdict for the defense.		
<b>Judge:</b>	Ken Tapscott		

## Pneumonia patient died within a day of discharge from hospital

May 24, 2013

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 68th, TX		
<b>Case Name:</b>	Jack Jones, individually and on behalf of the estate of Sondra Colleen Jones v. Edna Iris Flores, M.D., Georges I. Khouri, M.D., David J. Gonzales, M.D., Gary L. Weinstein, M.D., Nadia Habl, M.D., Ryan Henry Heise, M.D., Patricia K. Turner, R.N., Presbyterian Hospital of Dallas, Texas Health Presbyterian Hospital Dallas, individually and d/b/a Presbyterian Hospital of Dallas, Texas Health Resources, individually and d/b/a Texas Health Presbyterian Hospital Dallas, and Southwest Pulmonary Associates LLP, No. DC-10-08494		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Ben C. Martin; Law Offices of Ben C. Martin; Dallas TX for Jack Jones, estate of Sondra Colleen Jones</li><li>• Tony D. Crabtree; Law Offices of Tony D. Crabtree; Dallas TX for Jack Jones, estate of Sondra Colleen Jones</li><li>• Russell Button; ; Dallas TX for Jack Jones, estate of Sondra Colleen Jones</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Ty Bailey; Stinnett, Thiebaud &amp; Remington; Dallas, TX for Ryan Henry Heise, M.D.</li><li>• David E. Olesky; Cooper &amp; Scully; Dallas, TX for Texas Health Resources, Texas Health Presbyterian Hospital Dallas, Presbyterian Hospital of Dallas, Patricia K. Turner, R.N.</li><li>• Cory M. Sutker; Cooper &amp; Scully; Dallas, TX for Texas Health Resources, Texas Health Presbyterian Hospital Dallas, Presbyterian Hospital of Dallas, Patricia K. Turner, R.N.</li><li>• William Dixon Wiles; Hiersche, Hayward, Drakeley &amp; Urbach; Addison, TX for Southwest Pulmonary Associates LLP, Gary L. Weinstein, M.D.</li><li>• Jennifer Shuff; Stinnett Thiebaud &amp; Remington; Dallas, TX for Ryan Henry Heise, M.D.</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Medical Protective</li><li>• API ProAssurance</li></ul>		

**Facts:**

On May 7, 2008, plaintiffs' decedent Sondra Colleen Jones, 56, went to the emergency room of a hospital in Kaufman, complaining of respiratory problems. A chest X-ray seemed to show a mass that was thought to be cancer, and she was transferred to Presbyterian Hospital of Dallas the same day. No cancer was found, but she was diagnosed with pneumonia. She was given oxygen, respiratory treatments and antibiotics. On the afternoon of May 9, she was discharged home. Jones died in her sleep that night in bed.

The attending physician was Dr. Georges I. Khouri, although he was not involved in her care on the day of discharge. Dr. Edna Iris Flores was a resident under Khouri.

The transfer to Presbyterian Hospital of Dallas was accepted by Dr. David J. Gonzales, but he did not see the patient.

The nurse who cared for the patient on the day of discharge was Patricia Kay Turner.

The treating pulmonologist at the hospital in Dallas was Gary L. Weinstein. His practice group was Southwest Pulmonary Associates LLP.

Another doctor who saw her at the hospital in Dallas was Dr. Nadia Habil.

The hospitalist who ordered her discharge was Dr. Ryan Henry Heise.

Jones' husband and estate sued Khouri, Flores, Gonzales, Habil, Weinstein, Heise, Turner, Presbyterian Hospital of Dallas (and related companies Texas Health Resources and Texas Health Presbyterian Hospital Dallas) and Southwest Pulmonology, alleging medical malpractice.

Turner was nonsuited at trial, as were Texas Health Resources and Texas Health Presbyterian Hospital Dallas. Flores, Khouri, and Gonzales were nonsuited early in the case.

The plaintiffs went to trial on their claims against Weinstein, Southwest Pulmonology, Heise, and (for nursing malpractice) the hospital. The claim against Southwest Pulmonology was for vicarious liability only.

The plaintiffs claimed that Heise was negligent for ordering her discharge; that Weinstein was negligent for agreeing to it; and that the Turner was negligent for not refusing on behalf of the patient to implement the discharge.

Jones had been on high doses of fentanyl and hydrocodone for years, as treatment for scoliosis and post-polio syndrome. Plaintiffs' counsel reported that Jones was discharged from the hospital with not only oxygen and antibiotics but, also, with hydrocodone and a fentanyl patch on.

According to plaintiffs' counsel, the doctor who performed the autopsy, J. Keith Pinckard, concluded that Jones died from a combination of pneumonia, fentanyl and hydrocodone.

Also, Jones was noted to be confused around noon on the date of discharge, and the plaintiffs argued that, contrary to the opinion of Heise and Turner, Jones was still confused at the time of discharge and after.

The plaintiffs' pulmonology expert opined that, contrary to the defense contentions, Jones' oxygen needs were increasing, not decreasing, at the time of discharge, and that she should have been kept at the hospital until her white blood count was normal. Plaintiffs' counsel said Jones' vitals were not taken on the morning of discharge.

The plaintiffs' counsel argued for negligence of 50 percent on Weinstein, 25 percent on Heise, and 25 percent on the Dallas hospital.

The defense denied negligence and argued that the discharge was appropriate. The hospital further argued that nurses do not decide if or when to discharge patients.

According to the defense, Jones' death did not result from pneumonia or the medication she was on but rather from a cardiac arrhythmia, specifically a ventricular fibrillation. The defense argued that Jones had a narcotic tolerance and had been on fentanyl and hydrocodone for years without their causing any respiratory problems.

According to the defense, Jones had chronic hypoxemia. The defense also argued that Jones' white blood count and oxygen needs decreased throughout her hospitalization.

The defense also argued that Jones was an alcoholic and that she was put on Ativan at the hospital to prevent delirium tremens.

The defense denied that Jones was still confused at the time of discharge. The defense argued that the confusion had resulted from the Ativan, and that her dose was reduced accordingly. Heise and the nurse claimed that they evaluated Jones before discharge and that she was no longer confused at that time.

The defense further noted that, after Jones husband took her home, he left her alone and went to pick up some prescriptions and a pizza while she changed clothes. Jones ate dinner with her husband, smoked some cigarettes, watched TV and went to bed around 9:30 p.m. Her husband checked on her several times before he went to bed; he testified that she was sleeping peacefully with her oxygen on. The defense argued that Jones' condition and actions were inconsistent with those of someone about to die from pneumonia.

Weinstein's counsel reported that, at the time of discharge, Jones' pneumonia was resolving, though it had not resolved completely; that her oxygen needs and white blood count decreased throughout her hospitalization; and that her confusion had resolved by the time of discharge.

**Injury:** Jones was survived by her husband, age 65, a medical technologist. They had been married for a little more than 20 years. He remarried about 14 months after her death.

The husband sought damages for past and future mental anguish, past and future loss of companionship and society, and past and future loss of household services.

Jones was not able to perform many household services, but would occasionally fix dinner.

The plaintiffs sought about \$500,000 total.

**Result:** The jury found no negligence by Weinstein, Heise or the Dallas hospital and did not reach the damages question.

**Judge:** Martin Hoffman

**Trial Length:** 2 weeks

## Student fatally hit by van while walking on highway

October 28, 2009

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	Linda Gayle Hite, individually and as representative of the Estate of Tommy Wayne Hite v. Allied Medequip Inc., Med-Depot Inc., David Ryan Brock, and North American Insurance Agency, No. DC-06-09840		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Martin E. Rose; Rose Walker LLP; Dallas TX for Linda Gayle Hite, Estate of Tommy Wayne Hite</li><li>• Michael D. Richardson; Rose Walker; Dallas TX for Linda Gayle Hite, Estate of Tommy Wayne Hite</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Kelly M. Crain; Walters, Balido &amp; Crain; Dallas, TX for Allied Medequip Inc., Med-Depot Inc.</li><li>• Michael L. Fox; Law Office of Michael L. Fox; Dallas, TX for David Ryan Brock</li><li>• Sarah H. Long; Walters, Balido &amp; Crain; Dallas, TX for Allied Medequip Inc., Med-Depot Inc.</li><li>• David L. Chumbley; Law Office of David Chumbley; Dallas, TX for North American Insurance Agency</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Safeco/America First</li></ul>		
<b>Facts:</b>	<p>On Feb. 28, 2006, plaintiff's decedent Tommy Hite, 22, a student, was driven on Highway 224 in Commerce when his car broke down. He had started walking with traffic when he was struck by a delivery van owned by Med-Depot Inc. and driven by employee David Brock. Hite sustained fatal injuries.</p> <p>Hite's mother, individually and on behalf of her son's estate, sued Brock, alleging negligence and gross negligence, and Med-Depot and Allied Medequip (a company that does billing for Med-Depot), alleging gross negligence and negligent hiring. Plaintiff's counsel claimed Brock strayed onto the shoulder and was not keeping a proper lookout when he struck Hite. Counsel argued Brock had multiple speeding citations and traffic accidents on his record, and that Med-Depot was negligent for failing to do a background check before employing him as a driver.</p> <p>Med-Depot, Allied Medequip and Brock denied negligence. Brock denied he was on the shoulder. He claimed he struck Hite when Hite attempted to cross a highway exit ramp as Brock was exiting. Brock said he was unable to see Hite due to darkness.</p> <p>In discovery, Med-Depot claimed it had relied on its insurance carrier, North American Insurance Agency, to conduct background checks on its employees' driving records. However, Med-Depot did not make this argument at trial.</p> <p>North American and Safeco were named in the suit during discovery, but were abated before trial. Allied Medequip was dismissed on summary judgment before trial.</p>		
<b>Injury:</b>	Hite was declared dead at the scene. His mother, Linda Hite, sought \$5.1 million for pre-death pain and suffering, loss of consortium, loss of support, emotional distress and punitive damages.		
<b>Result:</b>	The jury found no negligence on Brock or Hite.		
<b>Judge:</b>	James M. Stanton		
<b>Trial Length:</b>	7 days		

## Patient was given too much morphine, doctor argued

March 24, 2017

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	Ann Philips, Individually and on behalf of the Estate of Robert Philips, M.D., Deceased, Laura Philips, Robert Philips, III, and William Philips v. Brian Gogel, M.D., Kristen Casenave, M.D. and Medical City Hospital, No. DC-13306		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>James L. Mitchell; Payne Mitchell Law Group, LLP; Dallas TX for Ann Philips, Estate of Robert Philips, Laura Philips, Robert Philips, III, William Philips</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>Edward P. Quillin; Quillin Law Firm, P.C.; Dallas, TX for Brian Gogel, Kristen Casenave, Medical City Hospital</li></ul>		
<b>Facts:</b>	<p>On April 2, 2013, plaintiffs' decedent Dr. Robert O. Philips Jr., 71, a medical doctor, presented to surgical oncologist Dr. Brian M. Gogel at Medical City Hospital in Dallas for evaluation of a pancreatic mass. Philips had a medical history of, among other things, atrial fibrillation and was taking Coumadin. On April 9, Gogel performed a distal subtotal pancreatectomy and splenectomy without complication. Dr. Kristen Casenave, an internist, was consulted later that day to manage Philips' atrial fibrillation and other medical issues.</p> <p>At 7 a.m. on April 10, Gogel saw Philips and documented that he looked good and his pain was "OK." Gogel saw nothing concerning. At 10:12 a.m., Casenave documented that Philips' pain was tolerable. His hemoglobin was within normal range. Casenave wrote an order to restart Lovenox twice a day.</p> <p>On April 12, Gogel saw Philips at 9 a.m. and noted there was blood in the post-operative Jackson-Pratt drain. Philips' hemoglobin dropped dangerously low from a measurement of 12.9 to 8.7, which indicated internal bleeding. Gogel ordered the Lovenox to be held, and two units of packed red blood cells to be transfused. Another hemoglobin test was ordered and to be reported to Gogel after the transfusion was finished. This transfusion began at 11:05 a.m. and ended at 3:25 p.m. The hemoglobin was drawn at 3:52 p.m. and showed that hemoglobin increased to 9.8. At 10:49 a.m., Casenave observed that Philips was fatigued and she was concerned about low hemoglobin and that he was still receiving Coumadin.</p> <p>On April 13, Philips received 2 milligrams of morphine at 1:20 a.m. and 5:42 a.m. Dr. Cathy Hernandez was covering for Casenave who was off duty for the weekend. Around 8:30 a.m., Gogel evaluated and reported that Philips was doing "OK." Between 9:45 a.m. and 10 a.m., a nurse observed that Philips' speech was slurred and he was unable to form words. At 1:45 p.m., the nurse gave Philips an additional 4 milligrams of morphine. Shortly thereafter, Philips became agitated, quit breathing and turned blue. A code was called which continued through 2:50 p.m. Philips was unable to be resuscitated and died. The autopsy concluded that the cause of death was a multifactorial combination of blood-fluid loss, which constituted a physiological trigger leading to arrhythmia and circulatory collapse.</p> <p>Ann Philips, individually and on behalf of her husband's estate, and children Laura Philips, Robert Philips III and William Philips sued Gogel, Casenave and Medical City Hospital for medical malpractice.</p> <p>The family claimed that Gogel and Casenave were negligent in failing to recognize Philips' fluid volume deficit and treat it in a timely manner. The family also alleged that Medical City's nurse was negligent in inappropriate over-administration of narcotic medication. The family settled with the hospital and Gogel. The trial proceeded against Casenave only.</p> <p>The plaintiffs' pulmonology expert opined that had Gogel and Casenave timely recognized Philips' internal bleeding and provided treatment, he would have survived. The expert opined that Philips' autopsy showed that his death was caused by blood loss.</p> <p>The defense argued that Philips was being closely monitored by both Casenave and Gogel, and his post-operative complications were properly treated as they arose.</p> <p>The defense's internal medicine expert opined that although Philips' condition worsened on April 12, he remained stable. He opined that after transfusing 4 units of packed red blood cells, Phillips was stable, had stopped bleeding and was going to recover. He also opined that Casenave was not caring for Philips on the day he died.</p> <p>Casenave was adamant that Philips died because he was given too much pain medication. The defense presented at trial a breakdown of the amount of morphine administered on April 13 as follows: 1:20 a.m., 2 milligrams; 5:42 a.m., 2 milligrams; 8:03 a.m. 2 milligrams; 10:28 a.m., 2 milligrams; 11:09 a.m., Norco 7.5 milligrams via two tablets; 1:45 p.m. 4 milligrams.</p> <p>The defense's internal medicine expert further opined that Philips' blood pressure readings were 83/60 at 10:20 a.m., 99/50 at 11:52 a.m. and 96/65 at 12:41 p.m.; that the pain medication was administered in the face of concerning hypotension; and that in addition, the hemoglobin level of 10 at 6:30 a.m. is not consistent with hypovolemia. He also opined that Casenave saw the patient every day, adjusted medications accordingly, followed Gogel's instructions regarding Lovenox and Coumadin, and ordered the right amount of saline to be given with the blood transfusion.</p>		
<b>Injury:</b>	Philips' wife and children sought to recover damages for past and future loss of companionship and mental anguish.		
<b>Result:</b>	The jury rendered a defense verdict, finding that Casenave was not negligent.		
<b>Judge:</b>	Dale Tillery		
<b>Trial Length:</b>	3 days		

## Intubation tube was placed properly, defense argued

June 13, 2013

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	Barbara Gansz, individually and as representative of The Estate of Frank Gansz, decased v. Texas Health Presbyterian Hospital Dallas and Rebecca Lee Doebele, No. DC-11-06618		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>Jay Harvey; Winckler &amp; Harvey; Austin TX for Estate of Frank Gansz, Barbara Gansz</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>Edward P. Quillin; Quillin Law Firm; Dallas, TX for Rebecca Lee Doebele</li><li>Alan L. Campbell; Alan Campbell &amp; Associates; McKinney, TX for Texas Health Presbyterian Hospital Dallas</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>American Physician Insurance Co.</li></ul>		
<b>Facts:</b>	<p>On April 22, 2009, plaintiff's decedent Frank Gansz, 70, a football coach, underwent knee replacement surgery at Texas Health Presbyterian Hospital in Dallas. Gansz stopped breathing 5.5 hours after the surgery and was intubated by pulmonologist Dr. Rebecca Lee Doebele. About 13 minutes later, while Gansz was on an elevator for transfer to the intensive care unit accompanied by Doebele, his heart rate dropped, his pulse was lost and CPR was administered.</p> <p>Gansz arrived in intensive care and about three minutes later it was discovered that the intubation tube was in the esophagus and not the trachea. His reintubation by Doebele was complete approximately five minutes later. He was subsequently found to have slipped into a vegetative state due to oxygen deprivation. He was removed from life support and died April 27.</p> <p>Gansz's wife, individually and on behalf of his estate, sued Texas Health Presbyterian and Doebele, for medical malpractice. The plaintiff's anesthesiology expert testified that Gansz's respiratory arrest was caused by interactions between the anesthetics and narcotics he had been administered for the surgery and that he began displaying symptoms of this interaction an 90 minutes before his respiratory arrest.</p> <p>Plaintiff's counsel argued that the hospital nursing staff was negligent for failing to monitor Gansz's breathing during this period.</p> <p>The plaintiff's expert testified that Doebele's initial placement of the tube was not negligent, as her technique was proper and Gansz appeared to improve, but she was negligent for failing to recognize his heart rate drop on the elevator due to an intubation problem and for failing to re-intubate immediately.</p> <p>Defense counsel argued that Doebele's actions met the standard of care. The defense pulmonary expert testified all checks prior to the elevator verified the tube had been placed properly, and that as Gansz was en route to intensive care it was appropriate to continue there for treatment instead of stopping on the elevator. The defense expert testified that the CPR can dislodge breathing tubes, and defense counsel argued that the tube may have been properly placed but dislodged on the elevator.</p> <p>Texas Health Presbyterian settled prior to trial for an undisclosed amount.</p>		
<b>Injury:</b>	Gansz experienced a diffuse acute ischemia of the cortex due to oxygen deprivation and as a result entered a permanent vegetative state.		
	Gansz's wife sought an unspecified amount for past medical expenses, funeral costs, and past and future emotional distress and loss of companionship.		
<b>Result:</b>	The jury found that Doebele was not negligent.		
<b>Judge:</b>	Dale Tillery		
<b>Trial Length:</b>	2 days		

## Family claimed exposure to joint compound caused meso

June 24, 2011

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 68th, TX		
<b>Case Name:</b>	Dale Wayne Giles, Individually, and as Personal Representative of the Heirs and Estate of Calvin P. Giles, Jr., and Crystal Giles-Sowa, Jody B. Giles, and Misty Giles Payne, Individually, and as Wrongful Death Beneficiaries of the Estate of Calvin P. Giles, Jr. v. Murco Wall Products, Inc., No. 2009-76848-ASB		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• John Langdoc; Baron &amp; Budd; Dallas TX for Dale Wayne Giles, Calvin P. Giles, Jr., Crystal Giles-Sowa, Jody B. Giles, Misty Giles Payne</li><li>• Alana Kalantzakis; Baron &amp; Budd; Dallas TX for Dale Wayne Giles, Calvin P. Giles, Jr., Crystal Giles-Sowa, Jody B. Giles, Misty Giles Payne</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Gregory L. Deans; Deans &amp; Lyons, LLP; Dallas, TX for Murco Wall Products</li><li>• Katherine H. Stepp; Deans &amp; Lyons, LLP; Dallas, TX for Murco Wall Products</li></ul>		
<b>Facts:</b>	<p>On Nov. 1, 2008, plaintiff Calvin P. Giles Jr., 61, died from mesothelioma. He worked as a carpenter in industrial construction settings from 1968 to 1978.</p> <p>Giles' family, individually and on his behalf, sued Murco Wall Products Inc., alleging that he was exposed to dust containing asbestos fibers created by drywall workers mixing, sanding and cleaning up drywall mud. The decedent's brother, Lawrence Giles, testified that he recalled seeing various brands of joint compound, including Murco Wall Products joint compound product on two of the job sites. The family claimed that the decedent's mesothelioma was caused by exposure to asbestos allegedly contained in Murco's products.</p> <p>Murco maintained that Giles' significant exposure to thermal insulation products at various oil refineries was the cause of his mesothelioma, and that he was not exposed to Murco asbestos-containing joint compound. The defendant additionally noted that even if Giles were exposed to its products, the asbestos in the joint compound was not a substantial contributing factor, given his thermal insulation exposure.</p> <p>Plaintiffs' experts testified that all exposures to all forms of asbestos contributed to cause Giles' mesothelioma and death. The experts further testified the majority of scientific evidence and opinion supports the conclusion that all forms of asbestos, including the chrysotile used in joint compounds, cause mesothelioma.</p> <p>Defense experts in pathology and industrial hygiene testified that the exposure to amphibole asbestos contained in the thermal insulation products caused the mesothelioma. They added that exposure to pure chrysotile had not been shown to increase a person's risk of contracting mesothelioma, and that, at minimum, products containing amphibole asbestos fibers were 100 times more potent for causing mesothelioma than products containing chrysotile asbestos fibers. The defense expert in building materials noted Giles' work, as a union carpenter constructing portions of buildings in Houston's Greenway Plaza development from 1971 to 1975 would not have placed him around drywall workers for significant amounts of time.</p>		
<b>Injury:</b>	<p>Giles died from mesothelioma. He leaves four adult children. The family sought \$12.5 million for past physical pain and mental anguish, disfigurement and physical impairment as to the deceased. Although the jury charge included questions on past and future pecuniary loss, loss of companionship and society and mental anguish as to each of the four adult children, in closing arguments, plaintiffs' counsel advised the jurors to award no damages for the individual claims of the adult children.</p> <p>The defendant argued there was little to no evidence to support that amount requested.</p>		
<b>Result:</b>	The jury returned with a verdict for Murco Wall Products, Inc.		
<b>Judge:</b>	Martin Hoffman		
<b>Trial Length:</b>	10 days		



## Plaintiff said bus' wheelchair lift came down on his foot

March 28, 2012

**Amount:** \$0 **Type:** Verdict-Defendant

**Court:** Dallas County District Court, 298th, TX

**Case Name:** Linda Rincon, executrix of the estate of Robert Rincon v. Dallas Area Rapid Transit, No. DC-10-01701

**Plaintiff Attorney(s):**

- John T. Kirtley III; Ferrer, Poirot & Wansbrough; Dallas TX for Estate of Robert Rincon

**Defense Attorney(s):**

- Harold R. McKeever; Dallas Area Rapid Transit Legal Division; Dallas, TX for Dallas Area Rapid Transit

**Facts:** On April 14, 2009, plaintiff Robert Rincon, 52, occupation not given, was a passenger on a Dallas Area Rapid Transit bus. He was about to exit the bus at the intersection of Jefferson Boulevard and Llewellyn Avenue in Dallas when he turned around to talk to a friend who was still on the bus. He said that someone in a wheelchair was entering the bus and the wheelchair lift, or platform, suddenly and unexpectedly came down on his right foot as the bus driver was raising the lift. The bus driver then drove off, Rincon said. He claimed back and foot injuries.

Rincon sued DART for its driver lowering the platform onto his foot and failing to warn him to get out of the way.

The defense argued that Rincon failed to show the incident happened at all. The driver could not be accurately identified, and DART had no record of the incident. No witnesses were identified.

Also, there were inconsistencies in Rincon's description of the incident, including the date, the route or bus number, and whether the bus driver gave a warning to "move back."

Rincon died in October 2011, and the case was then prosecuted by his executrix. Rincon's death was unrelated to the incident.

**Injury:** Rincon claimed a swollen, bruised foot and lumbar sprains and strains. He said that, after the platform was lowered onto his foot, he jerked his foot out from under it and injured his back in the process. He went to the emergency room on his own later that evening, and he went by ambulance to the emergency room a couple weeks later. No evidence of foot trauma was found at those visits. He followed up with doctors, including a chiropractor, for back pain. From July 2009 to October 2010, his only treatment was a few visits to the emergency room. Around October 2010, he went to an orthopedic surgeon, who diagnosed him with discitis, which is an infection. The doctor attributed the infection to the accident. He also performed three trigger-point injections for Rincon's back.

Rincon said he could no longer play basketball or go bowling without pain. His paid or incurred medical bills were about \$30,000. He sought about \$40,000 for past and future pain and suffering and physical impairment.

The defense argued that the initial emergency room doctors found no evidence of foot trauma, that Rincon had almost no treatment from July 2009 to October 2010, and that Rincon had had back problems as early as age 14.

**Result:** The jury found Rincon 75 percent negligent and DART's driver 25 percent negligent.

**Judge:** Emily Tobolowsky

**Trial Length:** 3 days

## Medical power of attorney was clear and valid, defense argued

December 30, 2016

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 160th, TX		
<b>Case Name:</b>	Greg Frausto, individually and as heir to the estate of Diane Rimert, deceased, and Glen Frausto, individually and as heir of the estate of Diane Rimert, deceased, and Jamie Snow, individually and as heir of the estate of Diane Rimert, deceased v. Pennsylvania Rehab., L.P., Texas Health Harris Methodist Hospital, Adolphus Ray Lewis, Josephine Juleau, Denise Deapen, Suzanne St. George, Zona Smith, John Does 1 through 9, and Jane Does 1 through 9, No. DC-12-13131		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Jeffrey Antonson; Adkerson Hauder &amp; Bezney, P.C.; Dallas TX for Diane Rimert</li><li>• Darell Adkerson; Adkerson Hauder &amp; Bezney, P.C.; Dallas TX for Diane Rimert</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Wesley T. D. Myers; Blaies &amp; Hightower, L.L.P.; Fort Worth, TX for Texas Health Harris Methodist Hospital</li><li>• Stephen W. Johnson; Stephen W. Johnson &amp; Associates, P.C.; Dallas, TX for Adolphus Ray Lewis</li><li>• Cyndee W. Cole; Stephen W. Johnson &amp; Associates, P.C.; Dallas, TX for Adolphus Ray Lewis</li><li>• Michael Stewart; Stewart Wiegand &amp; Owens, P.C.; Dallas, TX for Pennsylvania Rehab., L.P., Denise Deapen, Suzanne St. George, Zona Smith</li><li>• Greg Blaies; Blaies &amp; Hightower, LLP; Fort Worth, TX for Texas Health Harris Methodist Hospital</li><li>• Cathy F. Bailey; Steed Dunnill Reynolds Bailey Stephenson LLP; Dallas, TX for Josephine Juleau</li><li>• C. Timothy Reynolds; Steed Dunnill Reynolds Bailey Stephenson LLP; Dallas, TX for Josephine Juleau</li></ul>		
<b>Facts:</b>	<p>On Feb. 16, 2012, plaintiffs' decedent Diane Rimert, 67, passed away from complications of pneumonia and bed sores. Rimert, who had a history of cancer, diabetes, high blood pressure and mental illness, had been a resident of Pennsylvania Rehab L.P. since May 2009. In 2011, Rimert developed bedsores on her heels and buttocks. In 2012, Rimert developed pneumonia and was transferred to Texas Health Harris Methodist Hospital. She had a do-not-resuscitate order, and the hospital refused to place Rimert on a ventilator. She was treated by Dr. Adolphus Ray Lewis and physician's assistant Josephine Juleau.</p> <p>Greg and Glen Frausto and Jamie Snow, her adult children, individually and as heirs to Rimert's estate, sued Pennsylvania Rehab for failure to treat her bedsores; Texas Health Harris Methodist Hospital for not resuscitating Rimert; Lewis and Juleau for failure to monitor her bedsores; Pennsylvania Rehab owner Denise Deapen; former owner Suzanne St. George; and the home's nursing director, Zona Smith, for negligent care.</p> <p>Plaintiffs' counsel asserted that it was the negligence of the medical staff at Pennsylvania Rehab that caused Rimert's untreated bedsores to develop into pneumonia. The nursing home allowed Rimert to sign a DNR order and designate a neighbor with medical power of attorney, even though she had a history of mental illness, the family alleged.</p> <p>The family also claimed that the hospital should have intubated Rimert to keep her alive.</p> <p>Defense counsel for Pennsylvania Rehab argued that the recurrent cancer and end-stage mental illness made skin breakdown unavoidable.</p> <p>Defense counsel further noted that efforts to prevent and heal skin breakdown were complicated by Rimert's noncompliance, as she would not elevate her heels and turn her body, and she would unplug the air mattress that was part of her treatment plan.</p> <p>The nursing home argued that Rimert also timely received medication and treatments to treat the bedsores.</p> <p>It also argued that she was nutritionally deficient and would not eat sufficient amounts.</p> <p>Defense counsel for Texas Health Harris Methodist Hospital argued that Rimert's medical power-of-attorney document was facially valid, imposing a medical, legal and ethical obligation on the doctor and nursing staff to honor it.</p> <p>The hospital argued that it was not in the position to violate someone's clear advance directive. Rimert's medical power of attorney chose to honor her friend's previous out-of-hospital DNR directive and to not intubate, allowing Rimert to pass away naturally. Contrary to the plaintiffs' assertions that the hospital should have intubated her to keep her alive, this is an action reserved for a medical doctor not a hospital or nurse.</p> <p>The hospital also argued that the plaintiffs failed to establish that Rimert's history of mental illness equated to mental incompetency at the time of her executing her medical power of attorney and previous DNR.</p> <p>Defense counsel for Lewis and Juleau argued that Rimert was provided the appropriate standard of care for bedsores.</p>		
<b>Injury:</b>	Rimert died on Feb. 16, 2017. She was 67. She leaves three adult children.		
<b>Result:</b>	The jury rendered a defense verdict, finding no negligence on the part of all defendants.		
<b>Judge:</b>	Martin Hoffman		
<b>Trial Length:</b>	3 weeks		

## Plaintiffs said 911 should've been called sooner

April 24, 2014

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 134th, TX		
<b>Case Name:</b>	The estate of Benino Perez; Alejandra Veloz Perez, individually and as personal representative of the estate of Benino Perez v. Texas Industries, Inc., a/k/a TXI, Inc., and TXI Operations, L.P., No. DC-12-06316		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>• Cassandra Gandara; Law Office of Domingo Garcia, P.C.; Dallas TX for Estate of Benino Perez, Alejandra Veloz Perez</li><li>• Albert Villegas; Law Office of Domingo Garcia; Dallas TX for Estate of Benino Perez, Alejandra Veloz Perez</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>• Mark E. Stradley; The Stradley Law Firm; Dallas, TX for TXI Operations L.P., Texas Industries Inc.</li></ul>		
<b>Insurers:</b>	<ul style="list-style-type: none"><li>• Travelers</li></ul>		
<b>Facts:</b>	<p>At 9:30 a.m. on July 1, 2011, plaintiff's decedent Benino Perez, 67, a heavy equipment operator, was operating a front-end loader at a plant in Dallas owned by Texas Industries Inc. Perez fell to the ground and sustained a basal skull fracture and catastrophic brain injury. His hard hat was found inside the vehicle. The cause of the fall was unknown. After Perez fell, co-workers found him stumbling around, but they did not realize that he had hit his head. After about 25 to 30 minutes, with Perez's condition worsening, they called 911 and an ambulance came and took him to the hospital. That night or the next morning, he was declared brain-dead, and doctors removed life support on the afternoon of July 2.</p> <p>Perez's widow and estate sued Texas Industries, also known as TXI Inc., and TXI Operations L.P., for gross negligence. Negligence claims were barred because the defendants were workers' compensation subscribers. The case went to trial against Texas Industries only.</p> <p>The plaintiffs alleged that Texas Industries' first-aid training was insufficient and its employees were not trained to recognize serious injuries. The medical examiner said that Perez's chances of survival would have been better if 911 had been called sooner. Plaintiffs' expert Edward Taylor said the delay in calling 911 might have caused Perez's death.</p> <p>The plaintiffs also maintained that the company should not have allowed Perez to operate heavy equipment because he was too old and sick to do so properly. Perez had a pacemaker and suffered from diabetes. Plaintiffs' counsel argued that he should have had a desk job.</p> <p>The defense expert said that calling 911 sooner would not have made a difference.</p> <p>Also, according to the defense, none of the plaintiffs' experts testified that, within reasonable medical probability, Perez would have survived but for the delay in calling 911. The court denied the defendants' motion for directed verdict on liability.</p> <p>The defense argued that, although Perez sometimes went home early, he was not too old or sick to do his job. He had been offered retirement several times and had always refused. Also, according to the defense, he had never requested a different job in the 30 years he had worked for the company, and he was very experienced and well trained at his job.</p> <p>The defense argued that, although Texas Industries has a number of older workers, the reason is that its older workers are treated well and want to keep working there.</p> <p>Also, OSHA investigated the incident and issued no citations to the company.</p>		
<b>Injury:</b>	<p>Perez sustained a basal skull fracture and catastrophic brain injury. He was taken by ambulance to the hospital, where he was declared brain-dead that night or the next morning. Doctors removed life support on the afternoon of July 2.</p> <p>By statute, the plaintiffs could not recover actual damages, but findings of actual damages were sought in order to calculate the cap on punitives. Punitives would be capped at two times the economic damages, plus the noneconomic damages up to \$750,000.</p> <p>The plaintiffs sought findings of \$50,000 for past mental anguish, \$250,000 for future mental anguish, \$50,000 for past pecuniary loss, \$500,000 for future pecuniary loss, and \$7,400 for funeral and burial expenses. They also sought Perez's medical bills, but the amount was unavailable.</p> <p>For punitive damages, the plaintiffs sought \$1 million to \$7.5 million.</p> <p>Perez was going to retire in two weeks, after which he and his wife, a physical therapist, planned to travel together. Also, he was going to help his wife open a physical therapy clinic.</p> <p>They had been married for about 12 years. It was his second marriage.</p> <p>The defense argued that, if the jury found liability, they should award considerably less than the plaintiffs were seeking.</p>		
<b>Result:</b>	The jury did not find gross negligence and therefore did not reach the other questions.		
<b>Judge:</b>	Dale Tillery		
<b>Trial Length:</b>	4 days		

## Worker was killed by falling beam at demolition site

March 04, 2016

<b>Amount:</b>	\$0	<b>Type:</b>	Verdict-Defendant
<b>Court:</b>	Dallas County District Court, 95th, TX		
<b>Case Name:</b>	Luis Rayo, individually, Ulises Rayo, individually, Erick E. Rayo, individually and as representatives of the Estate of Antonio Rayo v. Lloyd D. Nabors Demolition, LLC, No. DC-14-07932		
<b>Plaintiff Attorney(s):</b>	<ul style="list-style-type: none"><li>Nuru Witherspoon; The Witherspoon Law Group PLLC; Dallas TX for Estate of Antonio Rayo, Luis Rayo, Ulises Rayo, Erick E. Rayo</li></ul>		
<b>Defense Attorney(s):</b>	<ul style="list-style-type: none"><li>James W. Grau; Grau Law Group PLLC; Dallas, TX for Lloyd D. Nabors DemolitionLLC</li></ul>		
<b>Facts:</b>	<p>On Oct. 25, 2014, plaintiffs' decedent Antonio Rayo, 63, a laborer employed by Lloyd D. Nabors Demolition, LLC, was at a demolition site at Las Colinas Elementary School in Irving. He was directing construction trucks and preventing others from entering the interior of the building. Due to a thunderstorm, Rayo sought shelter within the building. An excavation machine performing brick skinning work on the building prior to demolition accidentally clipped a roof beam. The roof collapsed. Rayo was struck by the edge of the falling beam and knocked to the ground. He died within a day of the accident.</p> <p>Rayo's children Luis Rayo, Ulises Rayo and Erick Rayo sued Rayo's employer Lloyd D. Nabors Demolition, alleging gross negligence under the Texas wrongful death statute. The Rayos alleged that the defendant's failure to follow internal safety procedures or implement safety policies in the face of known dangers constituted gross negligence.</p> <p>The Rayos' expert on Occupational Safety and Health Administration regulations testified that the employer failed to implement an adequate employee location protocol, both in and outside turbulent weather, when it knew or should have known that workers could be struck by variable types of falling debris. He opined that the defendant had been grossly negligent.</p> <p>An employee of Lloyd D. Nabors Demolition who witnessed the accident testified at trial as a non-party witness. He explained that an excavation machine horn was honked to warn employees of the start of brick removal work. He explained that he heard the horn and attempted to leave the building when the roof collapsed. He testified that no actual demolition work was performed on the date of incident. Other crew members working at the site testified that they were unaware that Rayo had entered the building and that Rayo was instructed to stay clear of the building during the brick removal procedure.</p> <p>According to a police accident report entered into evidence, it is extremely common for machinery to clip a roof beam during this kind of pre-demolition work.</p> <p>Lloyd D. Nabors Demolition denied that the harm to Rayo was as a result of gross negligence. The company maintained that Rayo had been warned to stay out of the structure.</p> <p>The defense OSHA expert testified that the company was unaware that Rayo was not adhering to the policies and procedures it had implemented at the jobsite, and that he was expected to help implement them. He opined that Lloyd D. Nabors Demolition wasn't negligent and there were no violations of OSHA standards in the performed work. He said the defendant's safety program was well above the industry average.</p>		
<b>Injury:</b>	<p>Rayo was transported to the intensive care unit of a nearby hospital, where he was hospitalized. Rayo was initially diagnosed with a minor abrasion to the back of his head and a large scrape abrasion to his back. Rayo died the following day due to multiple blunt force injuries. He leaves three sons.</p> <p>Rayo's sons sought punitive damages of \$750,000.</p> <p>Damages were not in dispute.</p>		
<b>Result:</b>	<p>The jury found that Lloyd D. Nabors Demolition's actions did not constitute gross negligence. Questions concerning actual damages were asked of the jury for the purposes of establishing a statutory cap. The jury responded with \$454,000 for economic and noneconomic damages, which are not recoverable.</p>		
<b>Judge:</b>	Ken Molberg		
<b>Trial Length:</b>	4 days		