



## Plaintiff claimed she suffered severe injuries after being hit by train

**Type:** Verdict-Plaintiff

**Amount:** \$557,106,000

**State:** Texas

**Venue:** Harris County

**Court:** Harris County District Court, 129th, TX

**Injury Type(s):**

- *brain* - coma; traumatic brain injury
- *epidermis* - degloving
- *amputation* - leg; leg (above the knee); finger

**Case Type:**

- *Motor Vehicle* - Pedestrian; Single Vehicle
- *Railroad* - Railroad Accident

**Case Name:** Mary Johnson v. Dawn Fudge d/b/a Last Concert Cafe, and Dolce Frida, Inc., No. 2016-80991

**Date:** March 03, 2023

**Plaintiff(s):**

- Mary Johnson, (Female, 23 Years)

**Plaintiff Attorney(s):**

- J. Kyle Findley; Arnold & Itkin; Houston TX for Mary Johnson
- Kala S. Sellers; Arnold & Itkin; Houston TX for Mary Johnson
- John G. Grinnan; Arnold & Itkin; Houston TX for Mary Johnson

**Plaintiff Expert(s):**

- Todd D. Cowen M.D., CLCP; Life Care Planning; Thibodaux, LA called by: J. Kyle Findley, Kala S. Sellers
- Daniel R. Phillips; Accident Reconstruction; Dallas, TX called by: J. Kyle Findley, Kala S. Sellers
- Douglas George Smith M.D.; Orthopedic Surgery; Seattle, WA called by: J. Kyle Findley, Kala S. Sellers
- Charles "Smokey" Culver; Railroad Operations; League City, TX called by: J. Kyle Findley, Kala S. Sellers

**Defendant(s):**

- Dawn Fudge
- Dolce Frida Inc.
- Union Pacific Corp.
- Union Pacific Railroad

**Defense  
Attorney(s):**

- John W. Proctor; Brown, Proctor & Howell, LLP; Fort Worth, TX for Union Pacific Railroad
- Sheryl S. Norman; Brown, Proctor & Howell, LLP; Houston, TX for Union Pacific Railroad
- Ashley D. Boutte; Union Pacific Railroad Co.; Spring, TX for Union Pacific Railroad

**Defendant  
Expert(s):**

- Kacy L. Turner CLCP; Vocational Rehabilitation; Tyler, TX called by: for John W. Proctor, Sheryl S. Norman, , Ashley D. Boutte
- Mark Pollan; Railroad Policy & Procedures; Omaha, NE called by: for John W. Proctor, Sheryl S. Norman, , Ashley D. Boutte
- Mark Lee Edwards Ph.D.; Human Factors -- See also TECHNICAL-Engineering-Ergonomics; Frederick, MD called by: for John W. Proctor, Sheryl S. Norman, , Ashley D. Boutte

**Facts:**

On March 5, 2016, plaintiff Mary Johnson, 23, a middle-school teacher, went with friends to a concert at Last Concert Café in downtown Houston. She became separated from her friends, and she did not have her phone. She sat down on some railroad tracks, and a Union Pacific train, traveling from Angleton to Little Rock, Ark., struck her at about 2:30 a.m. Johnson sustained injuries of her hand and leg and a traumatic brain injury.

Johnson sued Union Pacific Railroad. The lawsuit alleged that the railroad was negligent and grossly negligent in the operation of the train. Johnson also sued Union Pacific Corp., as well as Last Concert Café owner Dawn Fudge and her company Dolce Frida Inc., but they were no longer in the case at the time of trial. Union Pacific Corp. was nonsuited, and Fudge and her company obtained a summary judgment. The case proceeded to trial against Union Pacific Railroad.

Plaintiff's counsel argued that, although train crew members saw something on the tracks that they thought might be a person, they did not apply the emergency brakes until 50 feet before impact. Plaintiff's counsel further argued that the conductor and engineer identified Johnson as a person when the train was about 700 feet from her, and that they made a conscious decision not to stop or slow down the train.

In addition, Johnson introduced evidence of numerous safety violations on the part of Union Pacific.

Plaintiff's counsel further argued that, although Johnson was impaired by alcohol consumption, her impairment was a minor factor in the incident.

Plaintiff's counsel argued that Union Pacific was at least 85 percent responsible for the incident.

Union Pacific contended that Johnson was responsible for the incident. The company argued that she was highly intoxicated; a hospital record said that, at the hospital, her serum alcohol level was .232. Union Pacific argued that Johnson was negligent for becoming highly intoxicated, sitting down on the tracks and not getting out of the way despite warnings from the train.

The negligence question included a Sudden Emergency instruction.

**Injury:**

Johnson was struck by the train. She sustained open left tibia and fibula fractures with degloving and traumatic amputation of her leg above the knee; partial traumatic amputation of her right (non-dominant) hand, including her little and ring fingers; a lacerated liver; a fractured clavicle; skull fractures; intracranial hemorrhage; and a traumatic brain injury. She further claimed that the head injury slowed her processing speeds and caused mood changes and difficulty with word-finding.

She spent two to three weeks in an induced coma. She was hospitalized for a little under six weeks and then spent a month in an inpatient rehabilitation facility.

Her surgeries included leg amputation above the knee, hemicraniectomy, cranioplasty, multiple operations on her right hand and an exploratory laparotomy.

She claimed that she would need leg stump revision surgeries, as well as neuropsychological and psychological care.

The jury heard evidence of \$106,000 in past lost earnings.

Johnson sought a little more than \$1.8 million for past medical expenses. She also sought about \$7.8 million for future medical expenses and unspecified damages for past loss of earning capacity.

In addition, she sought damages for physical pain, mental anguish, physical impairment and disfigurement, all in the past and future.

The jury charge also included a blank for future loss of earning capacity, but plaintiff's counsel told the jury to put zero for that element.

The defense contended that Johnson recovered well. By the time of trial, she was in her second year of law school, at St. John's University School of Law.

**Result:**

The jury found negligence and comparative responsibility of 80 percent on Union Pacific and 20 percent on Johnson, and it found gross negligence on Union Pacific.

The jury determined that Johnson's damages totaled \$557,106,000, consisting of \$57,106,000 in actual damages and \$500 million in punitive damages. Comparative responsibility reduced the actual damages to \$45,684,800.

The parties dispute whether the punitive damages are capped. According to the defense, the punitives are capped, by statute, at \$19,962,000.

Mary Johnson

\$ 1,900,000 Past Medical Cost

\$ 7,600,000 Future Medical Cost

\$ 7,500,000 Past Physical Impairment

\$ 8,000,000 Future Physical Impairment

\$ 500,000,000 Punitive Exemplary Damages

\$ 5,000,000 Past Disfigurement

\$ 7,000,000 Future Disfigurement

\$ 4,000,000 past physical pain

\$ 7,000,000 future physical pain

\$ 3,000,000 past mental anguish

\$ 6,000,000 future mental anguish

\$ 106,000 past loss of earning capacity

**\$ 557,106,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Michael P. Gomez

**Demand:** bracket of \$10 million to \$25 million

**Offer:** \$15,000

**Trial Length:** 9 days

**Trial Deliberations:** 0

**Jury Vote:** 10-2 in phase 1; 12-0 in phase 2

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

**Writer** John Schneider

## Hit-and-run crashes left plaintiff with severe injuries

**Type:** Verdict-Plaintiff

**Amount:** \$100,604,715

**State:** Florida

**Venue:** Broward County

**Court:** Broward County Circuit Court, 17th, FL

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; fracture, leg; fracture, proximal fibula
- *back* - lower back; fracture, back; fracture, L5; fracture, vertebra; fracture, L5; fracture, vertebra; fracture, transverse process
- *head*
- *knee* - fracture, knee; fracture, tibial plateau
- *neck* - fracture, vertebra; fracture, transverse process
- *ankle* - fracture, ankle; fracture, bimalleolar; dislocation
- *brain* - coma; brain damage; traumatic brain injury; subarachnoid hemorrhage; internal bleeding
- *chest* - fracture, rib
- *other* - fever; atrophy; dysphagia; infection; fracture, sacrum; physical therapy; comminuted fracture; fracture, displaced; fracture dislocation; nondisplaced fracture
- *pelvis* - fracture, pelvis; fracture, pubic ramus
- *amputation* - leg; leg (below the knee)
- *sensory/speech* - hearing, partial loss of; speech/language, impairment of
- *arterial/vascular* - artery; hemorrhage
- *surgeries/treatment* - debridement; open reduction; external fixation; internal fixation; tracheostomy/tracheotomy
- *mental/psychological*
- *pulmonary/respiratory* - pneumonia; pneumothorax; collapsed lung

**Case Type:**

- *Motor Vehicle* - Pedestrian; Rear-ender; Hit and Run; Multiple Impact; Multiple Vehicle

**Case Name:** Jose Cruz and Jasmine Cruz, his wife, individually, and as natural parents of Iliana Cruz, Adriana Cruz, and Racquel Cruz, their minor children v. Damany A. Harrison, Andre Theodore Thompson, and Alberta Amoateng, No. CACE21003408

**Date:** May 22, 2023

**Plaintiff(s):**

- Jose Cruz , (Male, 36 Years)
- Iliana Cruz, (, 0 Years)
- Adriana Cruz, (, 0 Years)
- Racquel Cruz, (, 0 Years)
- Jasmine Cruz , (, 0 Years)

**Plaintiff Attorney(s):**

- Patrick S. Montoya; Whitfield Coleman & Montoya LLC; Coral Gables FL for Iliana Cruz,, Adriana Cruz,, Racquel Cruz,, Jose Cruz
- Markus M. Kamberger; Whitfield Coleman & Montoya LLC; Coral Gables FL for Iliana Cruz,, Adriana Cruz,, Racquel Cruz,, Jose Cruz

**Plaintiff Expert (s):**

- Paul Ramos P.T., C.L.C.P.; Life Care Planning; Miami, FL called by: Patrick S. Montoya, Markus M. Kamberger
- Brian J. Cross D.O.; Orthopedic Surgery; Fort Lauderdale, FL called by: Patrick S. Montoya, Markus M. Kamberger

**Defendant(s):**

- Alberta Amoateng
- Damany A. Harrison
- Andre Theodore Thompson

**Defense Attorney(s):**

- None Reported for Damany A. Harrison, Andre Theodore Thompson, Alberta Amoateng



**Facts:**

On Oct. 13, 2019, plaintiff Jose Cruz, 36, a security guard, was operating a sport utility vehicle on Sunrise Boulevard, near the entrance to the Florida Turnpike in Plantation. His then-girlfriend, Jasmine Cruz, was a passenger in the vehicle.

Jose Cruz stopped for a red light at the intersection. Damany Harrison, who was operating a minivan directly behind Cruz's vehicle, rear-ended Cruz. Cruz then exited his vehicle to talk to Harrison. Harrison subsequently fled the scene on foot.

At the same time, Andre Thompson was operating a car on Sunrise Boulevard near the same intersection. Thompson's vehicle struck Cruz, who was still standing in the road. Cruz was thrown 30 to 40 feet in the air and hit the windshield of Thompson's car. Thompson's vehicle subsequently hit a light pole. Thompson then also fled on foot. Cruz suffered head, pelvis, sacrum, back, ankle, knee and multiple rib injuries.

Cruz sued Harrison and Thompson. Cruz alleged that the drivers were negligent in the operation of their respective vehicles. Cruz also sued the owner of Thompson's vehicle, Alberta Amoateng, for vicarious liability.

Harrison and Thompson were both charged criminally following the incident.

A default judgment was entered against all three defendants. The matter proceeded to an empty-chair trial to determine damages and the apportionment of liability.

Plaintiffs' counsel asked the jury to assign 25 percent of the liability to Harrison and the remaining 75 percent to Thompson and Amoateng. Jasmine Cruz testified that Jose Cruz was physically fine after the initial collision. Plaintiffs' counsel also noted that Jasmine Cruz was not injured in the first crash.

**Injury:**

Cruz was placed in an ambulance and transported to Broward Health Medical Center. He was admitted for 103 days.

Cruz was diagnosed with an intracranial subarachnoid hemorrhage, a traumatic brain injury, minimally displaced fractures of nine ribs and a collapsed lung. Doctors additionally noted comminuted and displaced fractures of the right knee's tibial plateau and proximal fibula, and suspected occlusion of the anterior tibial artery.

Cruz also suffered a closed and displaced fracture dislocation of the left ankle. The fracture dislocation was deemed bimalleolar. Cruz additionally had nondisplaced fractures of the right sacrum, the L5 transverse process, and the right superior and inferior pubic rami.

Cruz was placed in a medically induced coma shortly after arriving at the hospital. He

remained in the coma for 60 days. In the hospital, Cruz developed ventilator-associated pneumonia and a fever.

The day of the accident, Cruz had surgery on his right knee and left ankle. The procedure included closed treatment with manipulation of the tibia and ankle fractures. The doctors also applied an external fixator to the right leg and performed an irrigation and debridement of damaged tissue in that leg. Cruz then received a tracheostomy tube on Oct. 30, 2019.

The ankle fracture was a malunion, so Cruz underwent open reduction internal fixation surgery on the ankle on Nov. 23. Cruz then had another closed treatment with manipulation of his right leg on Dec. 6, which included an additional debridement. A week later, Cruz received a skin graft.

Cruz's right leg wound ultimately became infected. A few weeks after Cruz's discharge, he returned to the hospital for a below-knee amputation of his right leg.

Cruz had no additional surgeries. He did undergo physical, speech and vocational therapies. He also claimed that his brain injury has caused hearing loss in both ears, which makes it difficult to understand him, and that he suffers from dysphagia, which is difficulty swallowing.

Because of Cruz's ankle fracture, his lower left extremity is atrophying and points at a 20-degree angle. He has been recommended for an amputation of that extremity, as well, but has declined this procedure.

Cruz is still unable to stand up on his own. He also suffers from right-sided weakness. He has suicidal ideations and has communicated that he thinks his family will be better off without him. Cruz has received some minimal psychiatric treatment.

Plaintiff's counsel argued that Cruz requires constant physical and psychological care. His counsel presented a life-care plan that mentioned the need for a left ankle fusion and subsequent inpatient rehabilitation. The life-care plan also included a surgical procedure to address any neuromas, and various medical evaluations, diagnostic tests, physical, occupational, speech and recreational therapies, neurological counseling, mobility equipment and prosthetic care. The life-care planner further opined that Cruz will need a certified nurses' aide, medications, housing/vehicle modifications and home maintenance services for the rest of his life.

Prior to jury deliberations, the court granted the plaintiff \$211,905.47 in past medical expenses. Cruz also sought \$15,106,999.64 in future medical expenses, as well as past and future lost wages and damages for past and future pain and suffering. Cruz's three daughters additionally filed derivative claims for their past and future loss of their father's

comfort, society, attention and services. Jasmine Cruz also initially filed a derivative claim, but it was dropped before trial because she was not married to Jose Cruz at the time of the crashes.

**Result:**

The jury concluded that Harrison was 20 percent liable for Cruz's damages, and that Thompson and Amoateng were jointly 80 percent liable. The jury determined that Cruz's damages totaled \$79,047,154.47. However, due to a mathematical error, the verdict form listed his total award as \$78,104,715.44. The jury also awarded \$7.5 million to each of Cruz's children.

Plaintiff's counsel did not contest the mathematical error and a judgment was entered for \$100,604,715.44, which includes the past medical expenses previously granted by the court.

Jose Cruz

\$ 211,905.47 Past Medical Cost

\$ 30,000,000 Future Medical Cost

\$ 65,000 Past Lost Earnings

\$ 770,249 Future Lost Earnings

\$ 32,000,000 Future Pain Suffering

\$ 16,000,000 Past Pain Suffering

**\$ 79,047,154.47 Plaintiff's Total Award**

Racquel Cruz

\$ 2,500,000 past loss of her father's comfort, society, attention and services

\$ 5,000,000 future loss of her father's comfort, society, attention and services

**\$ 7,500,000 Plaintiff's Total Award**

Adriana Cruz

\$ 2,500,000 past loss of her father's comfort, society, attention and services

\$ 5,000,000 future loss of her father's comfort, society, attention and services

**\$ 7,500,000 Plaintiff's Total Award**

Iliana Cruz

\$ 2,500,000 past loss of her father's comfort, society, attention and services

\$ 5,000,000 future loss of her father's comfort, society, attention and services

**\$ 7,500,000 Plaintiff's Total Award**

Jasmine Cruz

**Trial Information:**

**Judge:** Mark A. Speiser

**Trial Length:** 1 days

**Trial Deliberations:** 1 hours

**Jury Vote:** 6-0

**Jury Composition:** 5 male; 1 female; 2 Black, 2 Hispanic, 2 white

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

**Writer**

Melissa Siegel

## Drunk driver caused physical and psychological injuries: lawsuit

**Type:** Verdict-Plaintiff

**Amount:** \$77,523,749

**Actual Award:** \$77,136,130

**State:** Oregon

**Venue:** Multnomah County

**Court:** Multnomah County Circuit Court, OR

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; crush injury, leg
- *back* - lower back; fracture, back; fracture, L5; sprain, lumbar; strain, lumbar; fracture, vertebra; fracture, L5; fracture, vertebra; fracture, transverse process
- *neck* - fracture, vertebra; fracture, transverse process
- *other* - fracture; infection; soft tissue; crush injury; coccyx/tailbone; fracture, coccyx; fracture, sacrum; physical therapy; nondisplaced fracture
- *pelvis* - fracture, pelvis
- *amputation* - leg; leg (below the knee)
- *mental/psychological* - anxiety; depression; post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Broadside; Passenger; Hit and Run; Multiple Impact; Multiple Vehicle; Alcohol Involvement

**Case Name:** M.M, N.S. and M.A. v. McMenamins, Inc., an Oregon corporation, dba Lighthouse Brewpub; Newport Pacific Corporation, an Oregon corporation, dba Mo's Restaurant; Beachbreakers Bar and Grill, Inc., an Oregon corporation, dba Maxwell's Restaurant & Lounge and dba Maxwell's at the Coast; and Fraternal Order of Eagles North Lincoln Aerie No. 2576; Perry Nicolopoulos, No. 20CV10189

**Date:** February 17, 2023

**Plaintiff(s):**

- M. A., (, 0 Years)
- M. M., (Male, 27 Years)
- N. S., (Female, 23 Years)

**Plaintiff Attorney(s):**

- Aaron DeShaw; Dr. Aaron DeShaw, Esq., P.C.; Portland OR for M. M., N. S.

**Plaintiff Expert  
(s):**

- John D. Fountaine C.R.C, C.C.M.; Vocational Rehabilitation; Bothell, WA called by: Aaron DeShaw
- James K. Boehnlein M.D.; Psychiatry; Portland, OR called by: Aaron DeShaw
- Jimmie L. Valentine Ph.D.; Alcohol Toxicology; Little Rock, AR called by: Aaron DeShaw
- Richard L. Riley C.P.; Prosthetics; Washoe Valley, NV called by: Aaron DeShaw
- Christina P. Tapia Ph.D.; Economics; Seattle, WA called by: Aaron DeShaw
- Delphine Engel M.D.; Trauma; Portland, OR called by: Aaron DeShaw

**Defendant(s):**

- McMenamins, Inc.
- Perry Nicolopoulos
- Newport Pacific Corp.
- Beachbreakers Bar and Grill Inc.
- Fraternal Order of Eagles North Lincoln Aerie No. 2576

**Defense  
Attorney(s):**

- Leslie Kocher-Moar; MacMillan Scholz & Marks LLC; Portland, OR for Perry Nicolopoulos

**Facts:**

On March 6, 2018, plaintiff M.M., 27, a deli manager, was exiting the parking lot of a restaurant along U.S. Route 101 in Lincoln City. His wife, plaintiff N.S., 23, was a passenger in the vehicle.

At around the same time, Perry Nicolopoulos was driving to the subject parking lot from Maxwell's Restaurant & Lounge. Nicolopoulos' vehicle struck the side of the plaintiffs' vehicle. M.M. and N.S., whose names were anonymized for litigation, then exited their vehicle to survey the damage.

At that point, Nicolopoulos drove his vehicle into the plaintiffs. M.M. pushed his wife away from the path of the vehicle, which struck the husband. Nicolopoulos then backed up his vehicle and struck the plaintiffs' vehicle again before fleeing the scene.

Nicolopoulos was later apprehended and charged with driving under the influence and other criminal offenses. He was ultimately convicted and sentenced to prison.

The male plaintiff suffered extensive lower-body injuries, including leg fractures that resulted in a below-the-knee amputation. His wife claimed back and psychological injuries.

The husband and wife sued Nicolopoulos. They alleged that Nicolopoulos was negligent in the operation of his vehicle. The plaintiffs' son, M.A., was initially named as a plaintiff but was dismissed from the case prior to trial.

The plaintiffs also initially sued numerous establishments that allegedly served alcohol to Nicolopoulos the night of the crash. One of those entities was Maxwell's Restaurant & Lounge.

The claims against the various entities resolved prior to trial. However, Maxwell's remained on the verdict form for the apportionment of liability.

According to the plaintiffs' toxicology expert, Nicolopoulos' blood alcohol level was between 0.27 and 0.30% at the time of the accident. Nicolopoulos' impairment was so severe that he could not remember which establishments had served him alcohol, the expert stated.

Plaintiffs' counsel played body camera footage from the arrest in which Nicolopoulos repeatedly asked what he had done wrong.

The defense stipulated to liability, and the trial solely addressed damages.

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**Injury:**

M.M. was taken by ambulance to a hospital and admitted for five weeks. He was diagnosed with a crush injury to his right leg that included tibia and fibula fractures. He also had four nondisplaced pelvic fractures, a coccyx fracture, a sacrum fracture and an L5 transverse process fracture. He was ultimately diagnosed with post-traumatic stress disorder and chronic mild depression.

M.M. underwent approximately eight surgical repairs of his right leg. The surgeries were unsuccessful, and the plaintiff had his right leg amputated below the knee.

Following his hospitalization, M.M. underwent physical therapy and received a prosthesis. He also suffered ongoing infections to his right leg that were treated accordingly. At the time of trial, the plaintiff was still receiving care related to his prosthesis.

M.M. additionally received counseling for his post-traumatic stress disorder and depression.

According to the plaintiff's trauma surgery expert, M.M.'s amputated leg will cause him to experience a lifetime of limitations and potential musculoskeletal problems in his hips and back. The plaintiff's prosthetics expert testified that M.M. will require replacements for his prosthesis every five years.

M.M. was unable to return to his deli manager job following his amputation. He ultimately trained to become a truck driver but is only able to complete short driving jobs and requires accommodations. The plaintiff's vocational rehabilitation expert determined that M.M.'s physical injuries have significantly impaired his job prospects.

M.M. testified about his daily limitations. He said he continues to become more depressed about his amputation and its impact on his life.

M.M. sought recovery of \$774,155 in past medical expenses, more than \$1 million in future medical expenses and more than \$300,000 in future lost earnings. He also sought damages for his past and future pain and suffering.

N.S. was initially diagnosed with strains and sprains of her lumbar spine. On the day of the accident, N.S. was briefly examined and released. In the ensuing days, she followed up with her primary care physician and complained of spinal pain.

Soon after the accident, N.S. began suffering multiple daily panic attacks, which prompted her to see a therapist. The therapist diagnosed N.S. with post-traumatic stress disorder, anxiety and depression.

In the ensuing years, the plaintiff underwent extensive counseling and took medication. Her panic attacks eventually waned. At the time of trial, N.S. was no longer receiving treatment.

The plaintiff's psychiatry expert causally related the wife's emotional trauma to the accident. The expert testified that the plaintiff would benefit from additional psychotherapy.

N.S. testified that the accident traumatically altered her life and changed her role as a parent. She talked about the repeated panic attacks and how she looks at the world in a different way. N.S. added that she constantly felt unsafe and thus asked their family to move to quieter surroundings to mitigate her emotional trauma. The family ultimately did this multiple times.

N.S. sought recovery of more than \$50,000 in economic damages. She also sought damages for her past and future pain and suffering.

The defense maintained that M.M.'s projected future economic damages should be limited. The defense criticized plaintiffs' counsel for using a 2019 mortality table, which estimated a remaining life expectancy of 57.4 years, when determining M.M.'s damages. The defense used a 2020 mortality table, which Nicolopoulos' counsel argued was more accurate. Based on the 2020 table, M.M. had a remaining life expectancy of approximately 52 years, the defense noted.

The defense additionally attributed the female plaintiff's emotional injuries to her pre-existing pregnancy-related depression and anxiety.

**Result:**

The jury determined Nicolopoulos was 99.5 percent liable and Maxwell's Restaurant & Lounge was 0.5 percent liable. The jury awarded the plaintiffs \$77,523,748.93, which was accordingly reduced to \$77,136,130.19 based on the liability apportionment.

M. A.

N. S.

\$ 52,964.75 economic damages

\$ 5,000,000 noneconomic damages

**\$ 5,052,964.75 Plaintiff's Total Award**

M. M.

\$ 2,470,779.18 economic damages

\$ 70,000,000 noneconomic damages

**\$ 72,470,779.18 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Leslie G. Bottomly

**Demand:** None reported

**Offer:** \$300,000

**Trial Length:** 5 days

**Trial  
Deliberations:** 4 hours

**Jury Vote:** 12-0

**Editor's  
Comment:**

This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel for Nicolopoulos did not respond to the reporter's phone calls. Counsel for the other defendants were not asked to contribute.

**Writer**

Aaron Jenkins

## Motor Vehicle - Products Liability - Auto Seat

**Type:** Verdict-Plaintiff

**Amount:** \$59,700,000

**State:** Maryland

**Venue:** Baltimore City

**Court:** Baltimore City, Circuit Court, MD

**Injury Type(s):**

- *abdomen*
- *amputation - leg*

**Case Type:**

- *Motor Vehicle*
- *Products Liability*
- *Contracts - Breach of Contract*

**Case Name:** Prashant Kumar v. Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar, No. 24C98096065

**Date:** May 12, 2000

**Plaintiff(s):**

- Prashant Kumar (Male, 25 Years)

**Plaintiff Attorney(s):**

- Michael S. Morgenstern; ; Rockville MD for Prashant Kumar
- Paul D. Bekman; ; Baltimore MD for Prashant Kumar
- Robert L. Langdon; ; Lexington MO for Prashant Kumar

**Plaintiff Expert (s):**

- John Cohen M.D.; Orthopedics; Washington D.C., MD called by:
- David Biss; Design; Rockville, MD called by:
- Jerry Wallingford; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; San Antonio, TX called by:
- Harold Goldstein; Economics; Boston, MA called by:
- Joseph L. Burton M.D., P.C.; Pathology; Alpharetta, GA called by:
- Kenneth R. Laughery; Labels & Warnings; Houston, TX called by:
- Kathleen Sampeck; Vocational Rehabilitation; Alexandria, VA called by:

**Defendant(s):** • Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar

**Defense Attorney(s):** • Joel A. Dewey; Baltimore, MD for Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar  
• Kenneth L. Thompson; Baltimore, MD for Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar  
• H. Bruce Dorsey; Baltimore, MD for Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar  
• Francis C. Lanasa; Towson, MD for Toyota Motor Corporation, Toyota Motor Sales, Tokai Rika and Estate of Alfred C. Shumar

**Defendant Expert(s):** • Allan L. Dorris; Labels & Warnings; Atlanta, GA called by: for  
• James Radden M.D.; Biomechanics; Boerne, TX called by: for  
• Robert Rucoba; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Houston, TX called by: for  
• Michael Klima; Design; Novi, MI called by: for

**Facts:** Plaintiff was a passenger in a 1996 Toyota Tercel traveling along New Jersey State Highway 40. Defendant Shumar was driving in the opposite direction when he crossed the median and struck plaintiff's vehicle head-on. Plaintiff's seat, which was in a reclining position, moved forward on its track, pushing plaintiff into the car's footwell. The Tercel was manufactured and sold by Toyota. Defendant Tokai was the seat belt manufacturer.

Plaintiff alleged that: (1) he was wearing a seatbelt; (2) Defendant Shumar failed to maintain proper control of his vehicle; (3) the seat, seat track, and seatbelt were defectively designed; and (4) Toyota failed to adequately warn of the danger of reclining the seat while the car was in motion.

Defendant Shumar contended that the severity of plaintiff's injuries were the result of defects with the Tercel. The other defendants contended that: (1) the seat, seat track and seatbelt were not defective; (2) regardless of seat position, plaintiff would have sustained his injuries; and (3) plaintiff was not wearing a seatbelt.

**Injury:** Internal injuries and crushed legs requiring bilateral above knee amputation of legs. Plaintiff claimed \$5,763,365 in past and future medicals and \$3,991,417 in future wage loss.

**Result:** \$59,754,782 with 70% liability to Shumar and 30% to the other defendants. Breakdown: \$50,000,000 pain and suffering; \$5,763,365 past and future medicals; and \$3,991,417 future wage loss. See Editor's Note.

## **Trial Information:**

**Judge:** John C. Byrnes

**Trial** 3 hours  
**Deliberations:**

**Writer**

## Pedestrian/Auto Accident - Signage - Construction Zone

**Type:** Verdict-Plaintiff

**Amount:** \$57,653,500

**State:** Michigan

**Venue:** Macomb County

**Court:** Macomb County, Circuit Court, Mt. Clemens, MI

**Injury Type(s):**

- *head* - closed head injury
- *pelvis* - fracture, pelvis
- *face/nose* - fracture, jaw
- *amputation* - leg; finger
- *urological*

**Case Type:**

- *Motor Vehicle* - Pedestrian
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Negligent Supervision

**Case Name:** William Hattan and Jane Hattan v. C.A. Hull, Inc., NES WorkSafe, Inc. and Stacey Bettcher, No. 04-11376-NI

**Date:** October 28, 2005

**Plaintiff(s):**

- Jane Hattan
- William Hattan (Male, 45 Years)

**Plaintiff Attorney(s):**

- John R. Monnich; ; Royal Oak MI for Jane Hattan, William Hattan

**Plaintiff Expert(s):**

- Donald Holmes; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; E. Lansing, MI called by: John R. Monnich
- Gerald Dresselhouse; Engineering; Chelsea, MI called by: John R. Monnich
- Barbara Fisher Ph.D.; Neuropsychology; Washington Township, MI called by: John R. Monnich

**Defendant(s):**

- C.A. Hull, Inc., NES WorkSafe, Inc. and Stacey Bettcher



**Defense  
Attorney(s):**

- Withheld upon request of counsel for C.A. Hull, Inc., NES WorkSafe, Inc. and Stacey Bettcher

**Defendant  
Expert(s):**

- Thomas Malek P.E.; Engineering; E. Lansing, MI called by: for Withheld upon request of counsel
- Weldon D. Greiger FACFE; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Howell, MI called by: for Withheld upon request of counsel
- William Taylor Ph.D.; Traffic; E. Lansing, MI called by: for Withheld upon request of counsel

**Insurers:**

- AIG/Chartis

**Facts:**

A Macomb County jury awarded \$57,653,500 to a highway safety expert who sustained disabling injuries when he was struck by a car while working along I-94. The award included \$8,400,000 to the man's wife for loss of consortium. The jury found both a general contractor and a motorist responsible for the accident. A verdict of no cause of action was returned for a subcontractor.

Defendant C.A. Hull was the general contractor for an improvement project on I-94. The contract required the use of a Dynamic Lane Change System (DLCS) to enhance the safety of highway workers and motorists. Defendant C.A. Hull subcontracted with NES WorkSafe, Inc. to supervise installation of the system. The equipment was purchased from International Road Dynamics, the company that employed Plaintiff William Hattan. According to the contract, C.A. Hull was paid to provide a dedicated Worksite Traffic Supervisor to oversee traffic safety during construction. The supervisor was to educate himself about traffic patterns, attend traffic control meetings and verify that safety measures were implemented. C.A. Hull was also supposed to provide truck mounted attenuators while plaintiff and the subcontractor installed the signs. The supervisor was allegedly aware of a potential problem with placement of the signs because of the taper location, but did not attend an August 8, 2002 meeting when he could have relayed this information to the contractors. On the same day, a representative of NES marked where the DLCS signs were to be placed. This was done in the presence of plaintiff and Tanya Loewen, an engineer who also worked for International Road Dynamics. All had attended the meeting, but NES unknowingly used the incorrect taper point because the supervisor allegedly failed to inform them of the appropriate location. The signs were marked 2,055 feet north of where they were supposed to be situated. The next morning, plaintiff, Loewen and an NES representative began installing the signs on I-94. The attenuators were not provided for the workers' protection and the supervisor was not present. Plaintiff and Loewen were calibrating a sign when a vehicle driven by Defendant Stacey Bettcher entered southbound I-94 from M-59. Signs indicating drivers needed to merge left were supposed to have been placed at the exit, per defendant's contract, but they were not. Police reports indicated that Bettcher was traveling at least 65 mph when her car slammed into the signal trailer plaintiff was installing on the shoulder of the road. Loewen was killed instantly and the impact tossed plaintiff 50 feet into the air and over the guardrail onto a roadside embankment. Defendant Bettcher was charged criminally, but was acquitted of all charges.

Plaintiff alleged C.A. Hull had control of the workplace and breached special provisions in its contract to provide a worksite traffic supervisor and truck mounted attenuators for the safety of all workers. Plaintiff claimed NES negligently marked the roadway, placing him and Loewen in greater danger. Plaintiff argued that Bettcher negligently operated her vehicle.

Defendants C.A. Hull and NES contended there was no proximate cause because Bettcher's vehicle could have struck plaintiff even if attenuators had been present. They claimed Bettcher's negligence was greater than theirs. Further, they maintained plaintiff was working on the wrong side of the intersection and was comparatively negligent for his injuries. Defendant Bettcher claimed a truck in front of her stopped suddenly, forcing her to swerve onto the shoulder of the road. She contended she had no chance to avoid the accident and was unaware plaintiff or Loewen were working on the shoulder.

Plaintiff was a 45 year old married male employed in construction and highway safety.

**Injury:** Fractured pelvis in 19 places, amputation of legs below the knees, amputation of finger, compromised jaw, multiple internal injuries, adult respiratory distress syndrome, impotency and severe closed head injury with cognitive memory losses. Plaintiff was comatose for more than 40 days and had more than 60 surgeries as of the date of trial. His legs were amputated two years after this accident due to osteomyelitis. He was able to care for himself, but was assisted by his spouse. He claimed a reduced earning capacity from a pre-accident income of \$140,000 to \$160,000/year to a post-accident earning capacity of \$20,000 to \$25,000/year. He also sought \$900,000 in medicals.

**Result:** \$57,653,500. Breakdown: \$49,253,500 for Plaintiff William Hattan, including \$1,000,000/year for non-economic damages and \$8,400,000 for Plaintiff Jane Hattan's loss of consortium. The jury found Defendant C.A. Hull 80% responsible, Defendant Bettcher 20% responsible, and returned a no cause of action for Defendant NES.

**Trial Information:**

**Judge:** Richard L. Caretti

**Trial  
Deliberations:** 2 days

**Editor's  
Comment:** Per other published reports, Tanya Loewen's estate settled with Defendants C.A. Hull and NES for approximately \$775,000 prior to trial. A \$775,000 default judgment was entered against Defendant Bettcher. Reportedly, Bettcher was the first person to be charged under Michigan's "Andy Law" that makes killing a road worker with a vehicle through negligence or a moving violation in a construction zone a felony punishable by 15 years in prison.

**Writer** Margi Banner

## Plaintiff had dual amputation after being struck by 18-wheeler

**Type:** Verdict-Plaintiff

**Amount:** \$55,000,000

**State:** New Jersey

**Venue:** Essex County

**Court:** Superior Court of Essex County, NJ

**Injury Type(s):**

- *leg* - scar and/or disfigurement, leg
- *other* - necrosis; prosthesis; physical therapy
- *amputation* - leg; leg (above the knee)
- *surgeries/treatment* - debridement
- *mental/psychological* - emotional distress

**Case Type:**

- *Motor Vehicle* - Speeding; Pedestrian; Single Vehicle; Tractor-Trailer

**Case Name:** Angel May Rider v. Jersey City Transfer, Inc. and Paul DePass, No. ESX-L-002221-19

**Date:** April 11, 2024

**Plaintiff(s):**

- Angel Rider, (Female, 22 Years)

**Plaintiff Attorney(s):**

- Emeka Igwe; The Igwe Law Firm; Philadelphia PA for Angel Rider
- Kevin O'Brien; Stampone O'Brien Dilsheimer Holloway; Cheltenham PA for Angel Rider
- Kristin Buddle; Stampone O'Brien Dilsheimer Holloway; Cheltenham PA for Angel Rider
- Tyler Stampone; Stampone O'Brien Dilsheimer Holloway; Cheltenham PA for Angel Rider

**Plaintiff Expert  
(s):**

- Guy W. Fried M.D.; Physical Rehabilitation; Philadelphia, PA called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- Alex Karras O.T.R.; Life Care Planning; Philadelphia, PA called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- John Schulte; Prosthetics; Baltimore, MD called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- Andrew Verzilli Ph.D.; Economics; Lansdale, PA called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- Steven H. Gumerman Ph.D.; Vocational Assessment; Huntingdon Valley, PA called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- Stephen R. Benanti; Accident Reconstruction; Groveland, MA called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle, Tyler Stampone
- Nicholas F. Quercetti III D.O.; Orthopedic Trauma; Wilmington, DE called by: Emeka Igwe, Kevin O'Brien, Kristin Buddle

**Defendant(s):**

- Estate of Paul DePass
- Alert Motor Freight, Inc.
- Jersey City Transfer, Inc.
- Haier US Appliance Solutions, Inc.

**Defense  
Attorney(s):**

- Thomas A. Martin; Bond, Schoeneck & King PLLC; Newark, NJ for Jersey City Transfer, Inc., Alert Motor Freight, Inc., Estate of Paul DePass
- Charles Gayner; Ehrlich | Gayner LLP; New York, NY for Jersey City Transfer, Inc., Alert Motor Freight, Inc., Estate of Paul DePass

**Defendant  
Expert(s):**

- Nicholas Bellizzi; Accident Reconstruction; Holmdel, NJ called by: for Thomas A. Martin, Charles Gayner,

**Insurers:**

- Prime Insurance Co.

**Facts:**

On Dec. 21, 2018, plaintiff Angel May Rider, 22, a barista, was driving south on Interstate 95 in Maryland when she struck a disabled vehicle that was stopped in her lane of travel. A short time earlier, another two-vehicle crash took place at the same location, with one of the vehicles leaving the scene. Rider, assisted by the driver of the car she hit, exited her vehicle and stood on the shoulder of the road, next to the guardrail. While she was talking to a 911 operator, an 18-wheeler driven by Paul DePass, came on the scene, could not stop in time and jackknifed on the wet pavement, striking Rider. Rider's legs were severed when the truck pinned her against the guardrail.

Rider sued DePass and his employers, Jersey City Transfer Inc. and Alert Motor Freight Inc. Rider alleged that DePass was negligent in the operation of a vehicle, and his employers were vicariously liable. She later sued Haier US Appliance Solutions Inc., which had a contract with Jersey City Transfer and Alert Motor Freight; the claim against Haier was dismissed, prior to trial. DePass died during the course of litigation.

It was raining at the time of the accident. Rider's expert in accident reconstruction testified that DePass was traveling too fast for the conditions, in violation of the Federal Motor Carrier Safety Regulations and the Commercial Motor Vehicle Drivers Manual, which requires a one-third speed reduction in rainy conditions. Had DePass been paying attention and driving at an appropriate speed, he would have been able to avoid the accident, the expert concluded.

The defense maintained that Rider was comparatively negligent because she stood on the side of the guardrail closer to the roadway, rather than climbing over to the other side.

The defense's expert in accident reconstruction opined that the plaintiff was traveling at a reasonable speed. DePass should have slowed down pursuant to the Federal Motor Carrier Safety Regulations and Commercial Drivers Manual.

**Injury:**

Rider was taken by ambulance to a hospital and admitted. She underwent emergency surgery in which her legs were amputated above her knees. The plaintiff was hospitalized for approximately two months, during which time she underwent multiple revision surgeries to her legs.

Rider was ultimately transferred to inpatient rehabilitation, where she treated with physical therapy for another month. Following her discharge home, she continued to undergo revisions surgeries to repair necrotic tissue—15 total surgeries since the accident—and she eventually was fitted with prostheses. At the time of trial, Rider continued to treat with physical therapy, receive pain management and consult with a prosthetist.

Rider's psychiatrist testified that she requires lifelong care in the form of surgery, physical therapy, pain management, home care and annual prosthetics.

According to the plaintiff's expert in vocational rehabilitation, Rider's injuries and present condition have rendered her permanently disabled.

Rider testified about how her injuries radically altered her life. She can no longer work and has to rely on herself to perform her activities of daily living, since her domestic partner works throughout the day and her home is not handicap accessible. Since it is difficult to ambulate, she crawls on the floor to get around, and performs therapy exercises to stay active.

Rider sought to recover stipulated medical costs of \$559,413.13, approximately \$11 million in future medical costs and roughly \$1.5 million to \$2.5 million in past and future lost earnings, plus damages for past and future pain and suffering.

**Result:**

The jury found the defendants negligent and their negligence was a proximate cause in bringing about Rider's harm. The jury determined that Rider was not negligent. The jury awarded Rider \$55,000,000.13.

Angel Rider

\$ 559,413.13 Past Medical Cost

\$ 25,000,000 Future Medical Cost

\$ 23,940,587 Future Pain Suffering

\$ 3,000,000 Past Pain Suffering

\$ 2,500,000 past and future lost wages

**\$ 55,000,000.13 Plaintiff's Total Award**

**Trial Information:**

**Judge:** Thomas Vena

**Demand:** 15000000

**Offer:** 1000000

**Trial Length:** 6 days

**Trial  
Deliberations:** 3 hours

**Jury Vote:** Yes

**Jury  
Composition:** 2 Female, 6 Male

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from New Jersey Law Journal, an ALM publication.



**Writer**

Aaron Jenkins

## Car-rental agency negligence led to accident, per pedestrian

**Type:** Verdict-Plaintiff

**Amount:** \$47,000,000

**Actual Award:** \$47,140,067

**State:** Georgia

**Venue:** Gwinnett County

**Court:** Gwinnett County, State Court, GA

**Injury Type(s):**

- *leg* - fracture, leg
- *other* - hardware implanted
- *amputation* - leg; leg (above the knee)
- *surgeries/treatment* - open reduction; internal fixation

**Case Type:**

- *Motor Vehicle* - Pedestrian
- *Worker/Workplace Negligence* - Negligent Hiring; Negligent Security

**Case Name:** Adrienne Danielle Smith v. Avis Rent a Car System, LLC, Avis Budget Group, Inc., PV Holding Corp., CSYG, Inc., Yonas G. Gebremichael, Peter Duca and Byron Devon Perry, No. 14C-00798-4

**Date:** February 03, 2017

**Plaintiff(s):**

- Adrienne Danielle Smith (Female, 20 Years)

**Plaintiff Attorney(s):**

- Michael L. Neff; The Law Offices of Michael Lawson Neff, P.C.; Atlanta GA for Adrienne Danielle Smith
- Michael B. Terry; Bondurant Mixson & Elmore LLP; Atlanta GA for Adrienne Danielle Smith

**Plaintiff Expert (s):**

- Jeffrey H. Gross; Security/Premises Liability; Powder Springs, GA called by: Michael L. Neff, Michael B. Terry

**Defendant(s):**

- CSYG Inc.
- Peter Duca
- PV Holding Corp.
- Byron Devon Perry
- Yonas G. Gebremichael
- Avis Budget Group, Inc.
- Avis Rent a Car System LLC

**Defense Attorney(s):**

- Michael D. St. Amand; Gray, Rust, St. Amand, Moffett & Brieske LLP; Atlanta, GA for Byron Devon Perry
- G. Lee Welborn; Downey & Cleveland, LLP; Marietta, GA for CSYG Inc., Yonas G. Gebremichael
- None reported; None reported for PV Holding Corp.
- Brantley C. Rowlen; Lewis Brisbois Bisgaard & Smith LLP; Atlanta, GA for Avis Rent a Car System LLC, Avis Budget Group, Inc., Peter Duca

**Facts:**

On Aug. 23, 2013, plaintiff Adrienne Danielle Smith, a woman in her 20s, was seated on a brick wall with her friend near 824 Peoples St., in Atlanta. A Ford Edge, stolen from a car rental agency by an employee of the rental agency, was traveling approximately 74 mph in a 25-mph zone. The driver of the Edge, Byron Perry, lost control of the vehicle and veered off the road. The Edge struck Smith and her friend. Smith claimed severe leg injuries.

Smith sued Avis Rent a Car System, LLC and Avis Budget Group, Inc. as the vehicle owner, as well as Byron Perry, Perry's employer and independent agency operator CSYG, Inc., CSYG principal Yonas G. Gebremichael, and Avis security head Peter Duca.

PV Holding Corp. was initially named as a defendant in the suit, but was dismissed prior to trial. The case proceeded against the remaining defendants.

Smith's friend was also injured and filed a separate lawsuit. The two cases were consolidated for pre- and post-trial actions, but were tried separately.

Smith alleged that Avis and CSYG had been negligent in hiring Perry, as he had a criminal history with car-theft convictions. She further alleged Avis and CSYG's inadequate key protection policy enabled Perry to steal the Ford Edge. Smith maintained that the defendants' failure to perform a criminal background check or properly secure rental vehicle keys enabled the collision.

Avis and CSYG disputed liability, arguing that Perry's theft of the vehicle and subsequent collision were unforeseeable events that could not have been prevented. They maintained that the vehicle keys had been adequately secured under company policy.

At trial, Perry admitted fault for the theft and collision.

**Injury:** Smith was taken by ambulance to the emergency room of Grady Memorial Hospital, where she was hospitalized for several weeks. Smith suffered a partially severed right leg, which required an above-the-knee amputation. She also suffered multiple fractures to her left leg, which required open reduction and internal fixation with hardware.

Smith complained of chronic leg pain and difficulty walking.

The defendants' arguments on damages were unavailable for publication.

**Result:** The jury found the defendants liable for the collision and Smith's injuries. The jury attributed 50 percent liability to Avis, 15 percent liability to CSYG, 1 percent liability to Gebremichael, 1 percent liability to Duca and 33 percent liability to Perry. The jury determined that Smith's damages totaled \$47 million and that she was also entitled to punitive damages against Perry. Pursuant to the jury's finding with regard to punitives, the parties stipulated to \$1 in punitive damages.

Also, the jury expressly found, by special verdict, that CSYG is an "employee" of Avis and, thus, Avis is vicariously liable for CSYG. Per the judgment, Avis is jointly and severally liable with CSYG, as well as being jointly and severally liable with Gebremichael, a CSYG employee, and Duca, an Avis employee, meaning that Avis was directly liable or jointly and severally liable for 67 percent of the award.

The plaintiff was also entitled to offer of judgment (prejudgment) interest of \$140,066.14 against CSYG, plus costs and post-judgment interest against all defendants.

### **Trial Information:**

**Judge:** Joseph C. Iannazzone

**Trial Length:** 2 weeks

**Trial Deliberations:** 3 hours

**Post Trial:** The defense was expected to appeal the verdict.

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

**Writer:** Max Robinson

## Plaintiff struck by driver suffered multiple bodily trauma

**Type:** Verdict-Plaintiff

**Amount:** \$46,000,000

**State:** California

**Venue:** San Bernardino County

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

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia
- *other* - multiple trauma; fractured spleen; spleen, laceration; multi-system trauma
- *abdomen*
- *amputation* - leg
- *arterial/vascular* - internal bleeding
- *surgeries/treatment* - splenectomy
- *gastrointestinal/digestive* - spleen

**Case Type:**

- *Motor Vehicle* - Pedestrian; Right Turn

**Case Name:** Faustino Torres Solorio v. Nissan of Fontana, Inc., Nissan of San Bernardino, Metro Nissan of Redlands, Gunnar Ayala, Louie Ayala Jr. and L.A.G.D.J. Courier Services, No. CIVDS1512469

**Date:** August 09, 2016

**Plaintiff(s):**

- Faustino Torres Solorio (Male, 53 Years)

**Plaintiff Attorney(s):**

- Mark P. Robinson, Jr.; Robinson Calcagnie, Inc.; Newport Beach CA for Faustino Torres Solorio
- Scot D. Wilson; Robinson Calcagnie, Inc.; Newport Beach CA for Faustino Torres Solorio
- Henry Y. Pan; Robinson Calcagnie, Inc.; Newport Beach CA for Faustino Torres Solorio

**Plaintiff Expert  
(s):**

- Bob Caldwell; High Speed Accidents; Denver, CO called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan
- Ted Vavoulis M.S.; Economics; Los Angeles, CA called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan
- John W. Michael M.Ed., C.P.O.; Prosthetics; Chicago, IL called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan
- Carol R. Hyland M.A.; Life Care Planning; Lafayette, CA called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan
- Lester M. Zackler M.D.; Neuropsychology; Sherman Oaks, CA called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan
- Thomas A. Owings; Automotive; Pinetop-Lakeside, AZ called by: Mark P. Robinson, Jr., Scot D. Wilson, Henry Y. Pan

**Defendant(s):**

- Gunnar Ayala
- Louie Ayala Jr.
- Nissan of Fontana, Inc.
- Metro Nissan of Redlands
- Nissan of San Bernardino
- L.A.G.D.J. Courier Services

**Defense  
Attorney(s):**

- Timothy P. McDonald; Ford, Walker, Haggerty & Behar, LLP; Long Beach, CA for Gunnar Ayala, Louie Ayala Jr., L.A.G.D.J. Courier Services
- Craig J. Silver; Law Offices of Craig J. Silver; Costa Mesa, CA for Nissan of Fontana, Inc., Nissan of San Bernardino, Metro Nissan of Redlands

**Defendant  
Expert(s):**

- Rick A. Chavez C.P.O.; Prosthetics; Northridge, CA called by: for Timothy P. McDonald, Craig J. Silver
- Rhonda S. Renteria R.N.; Life Care Planning; Anaheim, CA called by: for Timothy P. McDonald, Craig J. Silver
- Kendall S. Wagner M.D.; Orthopedic Surgery; Yorba Linda, CA called by: for Timothy P. McDonald, Craig J. Silver
- Stephanie R. Rizzardi M.B.A.; Economics; San Marino, CA called by: for Timothy P. McDonald, Craig J. Silver

**Facts:**

On Sept. 10, 2013, plaintiff Faustino Torres Solorio, 53, a landscaper, was standing behind the tailgate of a Ford F-150 on the shoulder of Alabama Street, in Redlands. As Solorio was getting a gas canister out of the back of the Ford F-150 pickup truck, he was struck by a 1992 Honda Accord operated by Gunnar Ayala, a Nissan parts delivery driver, who had made a right turn off Interstate 10 -- also known as the Christopher Columbus Transcontinental Highway and the Redlands Freeway -- onto Alabama Street. The impact forced Solorio through the front windshield of Ayala's vehicle, causing injuries to Solorio's abdomen and legs.

Solorio sued the driver, Gunnar Ayala; the owner of the Honda Accord, Gunnar Ayala's father, Louie Ayala Jr.; Gunnar Ayala's employers, Nissan of Fontana Inc., Nissan of San Bernardino, and Metro Nissan of Redlands; and Louie Ayala's business, L.A.G.D.J. Courier Services.

Gunnar Ayala worked for the dealerships of Metro Nissan of Redlands and Nissan of San Bernardino, which is owned by the corporate entity of Nissan of Fontana. Gunnar Ayala was a parts delivery driver who used his father's vehicle to perform his job. Louie Ayala Jr. set up L.A.G.D.J. Courier Services to work with, and deliver parts between, the dealerships.

Plaintiff's counsel contended that Gunnar Ayala was negligent in the operation of the Nissan Accord while in the course and scope of his employment at the Nissan dealerships. Counsel also contended that Gunnar Ayala was an agent of the Nissan dealerships and was acting within the authority of those agencies when he struck Solorio. Counsel further contended that Louie Ayala Jr. was vicariously liable for his son's actions.

Specifically, plaintiff's counsel argued that Gunnar Ayala violated Vehicle Code § 22107, for unsafe turning movements, and that Gunnar Ayala was negligent for not using reasonable care while driving a vehicle. Counsel further argued that Gunnar Ayala was negligent for failing to keep a lookout for pedestrians and for failing to use reasonable care when turning.

Nissan's counsel contended that Gunnar Ayala was an independent contractor, so the Nissan companies were not liable for Gunnar Ayala's actions.

The parties ultimately stipulated that Gunnar Ayala was negligent and that his negligence was a substantial factor in causing Solorio harm.

**Injury:** Solorio sustained multiple trauma to his body system. He also sustained a right tibial shaft fracture, and his left, lower leg was mangled and essentially hanging on by a thread. As a result, Solorio was transported to Loma Linda University Medical Center, in Loma Linda, where, on the date of the accident, his left leg underwent a traumatic left knee disarticulation, which is an amputation done between bone surfaces, rather than by cutting through bone. Solorio also underwent two more surgeries, both revision surgeries to his left leg, above the knee. In addition, he required an emergency splenectomy due to lacerations to the spleen, as the ruptured spleen was flooding his abdominal cavity with blood, so the spleen had to be removed.

Ultimately, Solorio underwent nine surgeries over the course of almost three months at the hospital, before being discharged home with no physical therapy or rehabilitation. He then received a mechanical prosthetic. However, he claimed it ill-fitting, as it was too short and the socket did not fit.

As Solorio was a physical laborer, he will not be able to return to work.

Thus, Solorio sought recovery of future medical costs, and damages for his past and future pain and suffering.

**Result:** The jury found that Gunnar Ayala was an employee/agent of Nissan and that Gunnar Ayala was in the course and scope of his employment/agency when he harmed Solorio. The jury also determined that Solorio's damages totaled \$46 million.

### **Faustino Torres Solorio**

\$2,000,000 Personal Injury: Future Medical Cost

\$6,000,000 Personal Injury: Past Pain And Suffering

\$38,000,000 Personal Injury: Future Pain And Suffering

### **Trial Information:**

**Judge:** Wilfred J. Schneider, Jr.

**Trial Length:** 14 days

**Trial Deliberations:** 3 hours

**Jury Vote:** 12-0 as to all questions and damages



**Post Trial:** The Nissan entities ultimately agreed to settle confidentially post-trial. The Ayalas and L.A.G.D.J. also agreed to a separate, confidential, post-trial settlement.

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel, and defense counsel for the Ayalas and L.A.G.D.J. Defense counsel for the Nissan entities did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Biker hit by drag racer has limbs amputated, suffered brain injury

**Type:** Verdict-Plaintiff

**Amount:** \$39,000,000

**State:** New Jersey

**Venue:** Middlesex County

**Court:** Middlesex County Superior Court, NJ

**Injury Type(s):**

- *arm* - scar and/or disfigurement, arm
- *leg* - fracture, leg; scar and/or disfigurement, leg
- *head* - headaches; closed head injuries
- *brain* - brain damage; brain abnormalities; traumatic brain injury
- *other* - physical therapy
- *amputation* - arm; arm (above the elbow); leg; leg (at the knee)
- *neurological* - brachial plexus; nerve damage/neuropathy
- *arterial/vascular* - internal bleeding
- *surgeries/treatment* - debridement
- *mental/psychological* - cognition, impairment; memory, impairment; concentration, impairment

**Case Type:**

- *Motor Vehicle* - Head-On; Motorcycle; Multiple Vehicle
- *Premises Liability* - Dangerous Condition; Inadequate or Negligent Security; Negligent Repair and/or Maintenance

**Case Name:** Hussein M. Agiz v. Heller Industrial Parks Inc., Georgia Pacific Harmon Recycling LLC, John Wiley & Sons Inc., Lagasse Brothers Inc., United Stationers Inc., Taylored Services LLC, ADI Logistics, Celebrity International, NFI Distribution a/k/a National Distribution Center, DNP International, Oved Apparel Corp., Jonathon J. Bonilla, Township of Edison and Edison Township Police Department, No. MID-L-004520-13

**Date:** February 04, 2019

**Plaintiff(s):**

- Hussein M. Agiz (Male, 18 Years)

**Plaintiff Attorney(s):**

- Bruce H. Nagel; Nagel Rice LLP; Roseland NJ for Hussein M. Agiz
- Andrew L. O'Connor; Nagel Rice LLP; Roseland NJ for Hussein M. Agiz

- Plaintiff Expert (s):**
- Carl F. Mercurio M.D.; Orthopedic Surgery; Belleville, NJ called by: Bruce H. Nagel, Andrew L. O'Connor
- Defendant(s):**
- ADI Logistics
  - NFI Distribution
  - DNP International
  - Oved Apparel Corp.
  - Township of Edison
  - Jonathon J. Bonilla
  - Lagasse Brothers Inc.
  - Taylored Services LLC
  - John Wiley & Sons Inc.
  - United Stationers Inc.
  - Celebrity International
  - Heller Industrial Parks Inc.
  - Edison Township Police Department
  - Georgia Pacific Harmon Recycling LLC
- Defense Attorney(s):**
- None reported for Georgia Pacific Harmon Recycling LLC, John Wiley & Sons Inc., Lagasse Brothers Inc., United Stationers Inc., Taylored Services LLC, ADI Logistics, Celebrity International, NFI Distribution, DNP International, Oved Apparel Corp., Jonathon J. Bonilla, Township of Edison, Edison Township Police Department
  - William H. Mergner Jr.; Leary, Bride, Mergner & Bongiovanni, P.A.; Cedar Knolls, NJ for Heller Industrial Parks Inc.
  - David J. Dering; Leary, Bride, Mergner & Bongiovanni, P.A.; Cedar Knolls, NJ for Heller Industrial Parks Inc.
- Insurers:**
- Hartford Insurance Group

**Facts:**

On July 9, 2012, plaintiff Hussein Agiz, 18, was motorcycling on Saw Mill Road, a public road contained within the Heller Industrial Parks in Edison. Two cars were drag racing on the road in the opposite direction. One of the racers, Jonathan Bonilla, veered into Agiz's lane and struck his vehicle head-on. Agiz sustained a brain injury and severe damage of his right arm and right leg, which led to amputation.

Agiz sued Bonilla, Heller Industrial Parks Inc., and a number of other parties. Agiz alleged that Bonilla was negligent in the operation of his vehicle. Agiz alleged that Heller, which owned the adjoining property, was negligent for allowing a dangerous condition to exist.

Bonilla failed to answer the complaint, and the court issued a default judgment on liability against him. The claims against the other parties were either dismissed or concluded via dispositions involving undisclosed terms, prior to trial.

During a trial in September 2016, the jury found Heller Industrial Parks 40 percent liable and Bonilla 60 percent liable. Agiz was determined to receive \$6,860,831. After the trial, Agiz's counsel moved for a new trial on noneconomic damages only, which was later granted. Heller Industrial Parks' counsel sought leave to appeal this ruling, which was granted by the appellate division. The appellate division ultimately upheld the trial court's granting of a new trial on noneconomic damages only.

**Injury:**

Agiz's right dominant arm was amputated below the elbow at the scene of the accident before he was taken by ambulance to a hospital. He was diagnosed with a traumatic brain injury, internal bleeding, a brachial plexus injury and multiple fractures of his right leg. Over the next several days, Agiz underwent 11 surgeries to save his life. The operations were needed to stop internal bleeding and to save his right leg and right arm. The procedures included debridement and wound irrigation. His right leg was ultimately amputated at the knee.

Agiz was hospitalized for six months before he was transferred to a rehabilitation facility. He was an inpatient at the facility for approximately nine months. Agiz underwent extensive physical therapy, and he was fitted with prostheses to his arm and leg. Due to the extensive nerve damage from the brachial plexus injury, Agiz was unable to be fitted with a prosthesis that provided any functionality. The rehabilitation also addressed Agiz's traumatic brain injury, which caused him to suffer headaches and memory issues. He was able to make a good recovery from his head injury.

After he was discharged from the rehabilitation facility, Agiz continued with physical therapy.

Agiz's expert in orthopedic surgery explained how the brachial plexus nerves were ripped from the spinal column, resulting in permanent impaired function of the right arm. As a result, the expert stated that Agiz will never be able to use a mechanical arm prosthetic. According to the expert, Agiz will require future prostheses, stump revisions to his amputated leg and treatment for future arthritis and other orthopedic-related conditions to his hip and back that are expected to develop due to Agiz's impaired gait.

Agiz testified that he is unable to walk long distances because it causes his stump to perspire and the prosthetic to become unstable. Agiz discussed his daily challenges, including the ability to cut his own food since he only has one functional arm. Additionally, he has difficulty walking up and down stairs, or walking in snow and ice. Agiz is able to drive with the aid of handicap modifications, but he has difficulty doing so. Many of his activities of daily living require help, such as cutting his fingernails, Agiz testified.

Despite his limitations, Agiz was enrolled in college pursuing a career in mechanical engineering. He won a scholarship to learn to play golf through an amputee program, and he has competed in several golf tournaments. He also takes photographs for his school's newspaper. Agiz sought damages for past and future pain and suffering.

The defense maintained that despite his injuries, Agiz made a good recovery and was able to enroll in college and engage in most activities of daily living. Any testimony about Agiz suffering from future orthopedic-related injuries was speculative, the defense contended.

**Result:**

The jury determined that Agiz would receive \$39 million.

**Trial Information:**

**Judge:** Michael V. Cresitello Jr.

**Trial Length:** 2 days

**Trial  
Deliberations:** 3 hours

**Post Trial:** The court entered judgment in favor of Agiz in the amount of \$49,036,531.54.

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel. Heller Industrial Parks' counsel did not respond to the reporter's phone calls, and the remaining defendants' counsel were not asked to contribute.

**Writer** Aaron Jenkins

## Motorcyclist: Negligence by driver caused accident

**Type:** Verdict-Plaintiff

**Amount:** \$38,000,000

**State:** Florida

**Venue:** Palm Beach County

**Court:** Palm Beach Circuit Court, FL

**Injury Type(s):**

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *other* - prosthesis
- *pelvis* - fracture, pelvis
- *amputation* - leg; leg (below the knee); finger

**Case Type:**

- *Motor Vehicle* - Stop Sign; Motorcycle
- *Premises Liability* - Negligent Repair and/or Maintenance

**Case Name:** Timo Nummela v. Joseph Cantu and Kingdom Construction, LLC, No. 2005 CA006908 AJ

**Date:** May 31, 2011

**Plaintiff(s):**

- Timo Nummela (Male, 51 Years)

**Plaintiff Attorney(s):**

- Jeff Vastola; Vastola & Associates; North Palm Beach FL for Timo Nummela
- J. Stuart Kirwan III; ; North Palm Beach FL for Timo Nummela

**Plaintiff Expert(s):**

- Marc D. Golden D.O.; Orthopedic Surgery; Delray Beach, FL called by: Jeff Vastola, J. Stuart Kirwan III
- David A. Thompson Ph.D., P.E.; Ergonomics/Human Factors; Incline Village, NY called by: Jeff Vastola, J. Stuart Kirwan III
- Bernard F. Pettingill Jr. Ph.D.; Vocational Assessment; Palm Beach, FL called by: Jeff Vastola, J. Stuart Kirwan III
- Richard E. Cabrera P.E.; Engineering; Plantation, FL called by: Jeff Vastola, J. Stuart Kirwan III

**Defendant(s):**

- Joseph Cantu
- Kingdom Construction LLC

**Defense****Attorney(s):**

- None reported for Joseph Cantu
- David V. King; King & Chaves, LLC; West Palm Beach, CA for Kingdom Construction LLC

**Facts:**

On Feb. 24, 2005, plaintiff Timo Nummela, 51, a construction contractor and Finnish citizen on vacation, was riding a motorcycle northbound on U.S. Highway 1 in Lake Worth when he was struck by a vehicle operated by Joseph Cantu, who was eastbound on 3rd Avenue South. Nummela sustained pelvis, leg and finger injuries.

The views of Nummela and Cantu were allegedly obstructed by bushes on the property at the southwest corner of the intersection, which is owned by Kingdom Construction Co.

Nummela sued Cantu for negligently operating the motor vehicle and Kingdom Construction for negligently maintaining the bushes on its property.

Cantu, who was uninsured, was arrested shortly after the accident for driving with a suspended license and leaving the scene of an accident with serious bodily injury. Cantu took a plea with the state and served some jail time. He did not respond to the civil suit.

The case went to trial against Cantu and Kingdom Construction in 2009. The jury was deadlocked so the court declared a mistrial. Nummela subsequently settled with Kingdom Construction for a confidential sum in July 2010.

The case was retried solely against Cantu in 2011.

Nummela relied on the testimony of eyewitnesses that Cantu ran through a stop sign and subsequently hit him on his motorcycle. Nummela noted that a surveyor's deposition stated that the hedges on Kingdom Construction's lot were in violation of code. Nummela's engineer performed calculations indicating that if the hedges on 3rd Avenue had not been overgrown and in violation of applicable code, Nummela would have had time to see Cantu running the stop sign and to take evasive action to avoid the collision. Nummela's human factors expert testified that the typical motorcyclist's perception/reaction time is around 0.5 seconds.



**Injury:** Nummela was taken to Delray Medical Center, a trauma facility, where it was determined that he sustained an open book fracture to his pelvis, where the fracture is essentially toward the rear end and causes the pelvis to open up; a Grade III open tibia fibula fracture of his left leg; and severed pinkie and ring fingers of his left hand. Subsequently, Nummela had the fingers amputated at the hospital. On Feb. 26, 2005, Nummela returned home to Finland where he continued his medical care. Nummela then had his left leg amputated below the knee, and treatment for his pelvic fracture included a full body cast for complete immobilization for about six weeks. Nummela was left 100 percent disabled.

Nummela's care is ongoing and includes continuously revising the prosthesis for his left lower leg. Prior to the prosthesis, Nummela required a great deal of help with his daily needs, but after the prosthesis has been able to regain his independence. Plaintiff's counsel noted that the medical treatment Nummela underwent in the U.S. was covered by a European travel insurer, while the rest of his treatment is being completed in Finland, where there is no lien for medical bills. Since the accident, Nummela has been less active. Nummela and his wife divorced. He still vacations in Florida and still rides a motorcycle.

**Result:** The jury awarded Nummela \$38 million.

#### **Timo Nummela**

\$2,000,000 Personal Injury: future loss of earning capacity and medical expenses incurred

\$7,500,000 Personal Injury: pain and suffering, disability, physical impairment

\$28,500,000 Personal Injury: punitive damages

#### **Trial Information:**

**Judge:** Robin L. Rosenberg

**Editor's Comment:** This report is based on information that was provided by plaintiff's counsel. Counsel for Kingdom Construction did not contribute.

**Writer** Priya Idiculla

## Dangerous intersection caused leg amputation: motorcyclist

**Type:** Verdict-Plaintiff

**Amount:** \$35,000,000

**Actual Award:** \$27,500,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg*
- *brain - coma*
- *other - infection; prosthesis; unconsciousness*
- *amputation - leg; leg (below the knee)*

**Case Type:**

- *Motor Vehicle - Motorcycle; Intersection*
- *Premises Liability - Dangerous Condition of Public Property*

**Case Name:** Amir Nicoles Ekbatani v. United Independent Taxi Drivers Inc., United Taxi of the South-West Inc. dba United Taxi of South Bay, State of California, Caltrans, City of Redondo Beach, Mesfin Kinfu, Yosief Xihunie, and Does 1 to 100, No. BC504902

**Date:** January 09, 2017

**Plaintiff(s):**

- Amir Nicoles Ekbatani (Male, 25 Years)

**Plaintiff Attorney(s):**

- Garo Mardirossian; Mardirossian & Associates, Inc.; Los Angeles CA for Amir Nicoles Ekbatani
- Lawrence Marks; Mardirossian & Associates, Inc.; Los Angeles CA for Amir Nicoles Ekbatani

**Plaintiff Expert  
(s):**

- Jon B. Landerville M.S., P.E.; Accident Reconstruction; Torrance, CA called by: Garo Mardirossian, Lawrence Marks
- Anne Barnes R.N., C.L.C.P.; Life Care Planning; Glendale, CA called by: Garo Mardirossian, Lawrence Marks
- Edward D. Ruzak P.E.; Traffic; Fountain Valley, CA called by: Garo Mardirossian, Lawrence Marks
- Janice Carter M.D.; Behavioral Psychology; Marina del Rey, CA called by: Garo Mardirossian, Lawrence Marks
- Robert W. Johnson C.P.A.; Economics; Los Altos, CA called by: Garo Mardirossian, Lawrence Marks
- Bennett Williamson Ph.D.; Psychology/Counseling; Los Angeles, CA called by: Garo Mardirossian, Lawrence Marks
- Richard H. Anderson Ph.D.; Vocational Rehabilitation; Fullerton, CA called by: Garo Mardirossian, Lawrence Marks

**Defendant(s):**

- Mesfin Kinfu
- Yosief Xihunie
- State of California
- City of Redondo Beach
- United Taxi of the South-West Inc.
- United Independent Taxi Drivers Inc.
- California Department of Transportation

**Defense  
Attorney(s):**

- Jill Siciliano; California Department of Transportation, Legal Division; Los Angeles, CA for California Department of Transportation, State of California
- Wayne B. Mason; Sedgwick LLP; Dallas, TX for Mesfin Kinfu, United Independent Taxi Drivers Inc., United Taxi of the South-West Inc.
- Karen Woodward; Sedgwick LLP; Los Angeles, CA for Mesfin Kinfu, United Independent Taxi Drivers Inc., United Taxi of the South-West Inc.
- Matthew B. Grace; California Department of Transportation, Legal Division; Los Angeles, CA for California Department of Transportation, State of California
- None reported; Los Angeles, CA for City of Redondo Beach, Yosief Xihunie
- Mark E. Killingsworth; Sedgwick LLP; Dallas, TX for Mesfin Kinfu, United Independent Taxi Drivers Inc., United Taxi of the South-West Inc.

**Defendant  
Expert(s):**

- Jd Bamfield; Traffic; Sacramento, CA called by: for Jill Siciliano, Matthew B. Grace
- Ted Vavoulis M.S.; Economics; La Jolla, CA called by: for Jill Siciliano, Matthew B. Grace
- Clay A. Campbell; Accident Reconstruction; Livermore, CA called by: for Jill Siciliano, Matthew B. Grace
- Gene Bruno M.S., C.R.C., C.D.M.S.; Life Care Planning; Encino, CA called by: for Jill Siciliano, Matthew B. Grace

**Facts:**

At around 10:20 p.m. on July 14, 2012, plaintiff Amir Ekbatani, 25, was riding his motorcycle north on the Pacific Coast Highway, in Redondo Beach, when he was struck by a taxi van operated by Mesfin Kinfu, who was making a left turn from southbound Pacific Coast Highway onto Diamond Street. Ekbatani was subsequently knocked from his motorcycle, and he claimed injuries to his left leg.

Ekbatani sued Kinfu; the owner of the taxi cab, Yosief Xihunie; Kinfu's employers, United Independent Taxi Drivers Inc. and United Taxi of the South-West Inc. (which was doing business as United Taxi of South Bay); and the believed maintainers of the intersection, the state of California acting by through the Department of Transportation (Caltrans) and the city of Redondo Beach.

The city was dismissed out of the case early, and Kinfu's employers were also dismissed. There was a Mary Carter agreement with Kinfu, as there was a partial settlement whereby Ekbatani would be guaranteed an amount from the owner of the taxi and the taxicab companies, and Kinfu would remain in the case. Additionally, the more Caltrans was found liable, the less Kinfu would pay.

Ekbatani claimed that Kinfu failed to yield the right-of-way while making an unsafe left turn. He also claimed that Caltrans negligently designed the intersection.

Plaintiff's counsel contended that Diamond Street crosses Pacific Coast Highway at a diagonal so severe that Caltrans was obligated to take extra precautions to protect motorists. Thus, counsel argued that the crash was preventable if a left-turn signal had been in place. Specifically, counsel argued that if left-turn signal was in place, a red light would have stopped Kinfu from making his turn while Ekbatani proceeded straight on a green light. Plaintiff's counsel also argued that the striping of two double-yellow lines to form a simulated median on the pavement would have forced Kinfu and other motorists to drive further toward the center of the intersection before turning left. Counsel contended that this measure would have given Ekbatani the extra time he needed to get through the intersection before Kinfu's van smashed into his leg.

The plaintiff's accident reconstruction expert opined that the intersection was a dangerous condition and that double lines would have helped motorists.

Plaintiff's counsel used video footage to show jurors how motorists traveling south on Pacific Coast Highway go up a gradual incline that does not allow them to fully view oncoming traffic until they reach the intersection. Counsel added that there were numerous, previously left-turn accidents at the subject intersection and that in 2005, Caltrans ordered double-double yellow lines to be painted in the intersection to prevent early left turns because of line-of-sight problems on the road from a Starbucks driveway, but that the lines were never painted.

Caltrans' counsel contended that Kinfu was the sole cause of the accident. Counsel contended that Kinfu was familiar with the intersection because he had made a left turn at that location hundreds of times before, but that this time, Kinfu did not take the proper precautions and did not stop before attempting the left turn.

Caltrans' expert civil traffic engineer opined that the roadway did not constitute a dangerous condition. The expert opined that the 2005 investigation was unrelated to the subject incident and that Caltrans employed a Manual on Uniform Traffic Control Devices study to determine if a left sign at the intersection was warranted and that the study found that it was not. As such, the expert opined that Caltrans acted reasonably, as at the time of the study, a left sign was not warranted. In addition, the civil traffic engineer dissected the accident history at the subject location.

**Injury:**

Ekbatani was knocked unconscious at the scene and was subsequently taken to a hospital, where he remained in a coma for a day. The next day, he required a below-the-knee amputation of his left leg. Ekbatani was given only a 2 percent chance of survival, and he ultimately underwent 13 surgeries between the date of the accident and August 2016.

Ekbatani continues to suffer infections and will need a lifetime of medical care. He always carries a backpack with him that contains supplies to help him tend to his left limb, but he now walks normally on a lifelike prosthetic.

Prior to the crash, Ekbatani was a starting offensive lineman for the University of California, Los Angeles, from 2006 to 2009 and he was presented with two game balls for victories over the University of Washington and the University of Tennessee. After the accident, he obtained a master's degree at the University of Southern California through a "Swim With Mike" scholarship for physically-challenged athletes and he has worked with ESPN. Ekbatani is now a spin class instructor at a local gym, but he claimed that he hopes to one day compete in the Paralympics.

Ekbatani waived his claims for past medical costs and past loss of earnings, but sought recovery for his future medical care and future loss of earnings, claiming that his life care plan totaled \$8 million. Thus, he sought recovery of \$50 million in total damages.

**Result:**

The jury found that the vicinity of the subject intersection constituted a dangerous condition and that Caltrans had notice of the dangerous condition for a long enough time for Caltrans to have protected against it. It also found that the negligent acts, omissions, or wrongful conduct of the employees acting within the scope of their employment with Caltrans created a dangerous condition and that the dangerous condition was a substantial factor in causing harm to Ekbatani. The jury further found that Kinfu was negligent in the operation of his vehicle and that his negligence was a substantial factor in causing harm to Ekbatani. Thus, the jury apportioned 70 percent liability to Caltrans and 30 percent liability to Kinfu.

The jury determined that Ekbatani's damages totaled \$35 million.

Based on Proposition 51, or the Multiple Defendants Tort Damage Liability Act, Caltrans would pay 100 percent of the economic damages award and only 70 percent (its percentage of fault) of the non-economic damages award. Thus, Ekbatani should recover \$27.5 million from Caltrans.

## **Amir Nicoles Ekbatani**

\$8,000,000 Personal Injury: Future Medical Cost

\$2,000,000 Personal Injury: FutureLostEarningsCapability

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

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

### **Trial Information:**

**Judge:** Anthony J. Mohr

**Demand:** \$18,000,000

**Offer:** \$2,990,000 from Caltrans

**Trial Length:** 8 weeks

**Trial  
Deliberations:** 2.5 days

**Jury  
Composition:** 4 male, 8 female; 7 black, 2 white, 2 Hispanic, 1 Asian

**Post Trial:** Caltrans' counsel noted that Caltrans may pay less than the verdict amount, as there could be an offset due to the Mary Carter agreement with Kinfu. Caltrans also intends to file post-trial motions and an appeal.

**Editor's  
Comment:** This report is based on information that was provided by plaintiff's counsel and defense counsel for Caltrans and the state of California. Counsel for the remaining defendants did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Truck's unsafe turn resulted in bicyclist's need for amputation

**Type:** Verdict-Plaintiff

**Amount:** \$34,555,220

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg*
- *amputation* - leg; leg (below the knee)
- *mental/psychological* - emotional distress

**Case Type:**

- *Motor Vehicle* - Bicycle; Right Turn; Intersection; Tractor-Trailer

**Case Name:** Alan Casillas v. Landstar Ranger, Inc. and Francisco Azurdia, and Does 1-50, inclusive, No. BC500485

**Date:** January 29, 2015

**Plaintiff(s):**

- Alan Casillas (Male, 19 Years)

**Plaintiff Attorney(s):**

- Brian J. Panish; Panish Shea & Boyle LLP; Los Angeles CA for Alan Casillas
- Thomas A. Schultz; Panish Shea & Boyle LLP; Los Angeles CA for Alan Casillas

**Plaintiff Expert(s):**

- Jan Roughan R.N., B.S.N.; Life Care Planning; Monrovia, CA called by: Brian J. Panish, Thomas A. Schultz
- John R. Brault M.S.; Biomechanical; Mission Viejo, CA called by: Brian J. Panish, Thomas A. Schultz
- John W. Michael M.Ed., C.P.O.; Prosthetics; Chicago, IL called by: Brian J. Panish, Thomas A. Schultz
- Alvin Lowi, III P.E.; Accident Reconstruction; El Segundo, CA called by: Brian J. Panish, Thomas A. Schultz
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Brian J. Panish, Thomas A. Schultz

**Defendant(s):**

- Francisco Azurdia
- Landstar Ranger, Inc.

**Defense  
Attorney(s):**

- Kevin J. Gramling; Klinedinst PC; Santa Ana, CA for Landstar Ranger, Inc., Francisco Azurdia
- James J. Yukevich; Yukevich | Cavanaugh; Los Angeles, CA for Landstar Ranger, Inc., Francisco Azurdia
- Patrick J. Cimmarusti; Yukevich | Cavanaugh; Los Angeles, CA for Landstar Ranger, Inc., Francisco Azurdia

**Defendant  
Expert(s):**

- Jim C. Lee Ph.D., P.E.; Traffic; Phoenix, AZ called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- David M. Lechuga Ph.D.; Psychology/Counseling; Lake Forest, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Erich S. Phillips Ph.D.; Ergonomics/Human Factors; San Carlos, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Laura Fuchs Dolan M.B.A.; Economics; San Diego, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Alfred D. Chichester M.B.A.; Vocational Rehabilitation; Mentone, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Andrew E. Levitt; Accident Reconstruction; Torrance, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Thomas L. Hedge, Jr. M.D.; Psychiatry; Northridge, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti
- Richard Kent Tracy C.P.O.; Prosthetics; Northridge, CA called by: for Kevin J. Gramling, James J. Yukevich, Patrick J. Cimmarusti

**Insurers:**

- American International Group Inc.



**Facts:**

On Dec. 7, 2012, at around 8:40 a.m., plaintiff Alan Casillas, 19, a high school student, was riding his beach cruiser bicycle on a sidewalk along westbound Tweedy Boulevard, in Los Angeles. After Casillas came to a stop at the intersection with Alameda Street, a 55-foot-long trailer, part of a tractor-trailer operated by Francisco Azurdia, drove over the sidewalk, striking Casillas' bike and knocking Casillas to the ground. The rear wheels of the trailer then ran over Casillas' left leg.

Casillas sued Azurdia and the owner of the tractor-trailer, Landstar Ranger Inc. Casillas alleged that Azurdia was negligent in the operation of the tractor-trailer and that Landstar was vicariously liable for Azurdia's actions.

Plaintiff's counsel contended that Azurdia drove the tractor-trailer into the intersection and was attempting to make a right turn onto Alameda Street. However, after interviewing Casillas, Azurdia and multiple eyewitnesses, the responding the California Highway Patrol officer determined that Azurdia caused the collision by driving his trailer over the sidewalk when Azurdia failed to allow enough room to safely make the right turn. Thus, plaintiff's counsel (and the responding CHP officer) determined that Azurdia's actions constituted a violation of California Vehicle Code § 22107 (for unsafe turning movement).

Defense counsel initially asserted that Casillas was comparatively at fault, in that Casillas could have avoided the trailer, but that he was inattentive due to being on a cell phone. Counsel also initially asserted that the design of the intersection was a dangerous condition. However, during jury selection, Azurdia admitted that he was solely at fault for the accident.

**Injury:**

Casillas was taken to St. Francis Medical Center, in Lynwood, where he remained hospitalized for 54 days. After the third day of hospitalization, Casillas' left leg, which was swollen and discolored, was amputated below the knee. He then underwent a course of rehabilitation.

After rehab, Casillas was prescribed a prosthesis for walking. However, he claimed that two of the prosthetic legs caused him pain and that he ultimately required more revision surgeries.

Casillas is now 21 years old and he can drive without assistance. However, he claimed that he is embarrassed about needing assistance with getting around and that he is saddened by the appearance of his leg since the amputation. He also claimed that looking at his leg depresses him, so he tries not to look at it. Casillas further claimed additional emotional distress, including nightmares, which have since subsided.

Before the accident, Casillas dropped out of high school when he was in the 11th grade and worked in manual labor. He claimed he was athletic and liked to ride his bike long distances, as well as run, but that he can no longer do so. He also claimed he has been unable to return to work in construction because of the pain he suffers and the difficulty he has getting around. In addition, Casillas testified about his strong family ties, marriage and fatherhood, and about obtaining his General Educational Development (GED) diploma after the accident.

The parties agreed that Casillas' past medical expenses totaled \$754,351.

Defense counsel noted that Casillas was able to earn his GED diploma after the accident and that he attended junior college. Counsel also noted that Casillas got married, had a child, and participated in many family activities. In addition, counsel noted that Casillas was able to secure employment and that he is able to drive a car and walk with a prosthesis. Thus, defense counsel argued that Casillas made a good recovery and has a bright future. Counsel further challenged the amount of damages sought by Casillas and asked the jury to award Casillas between approximately \$5 million and \$7 million.

**Result:**

The jury determined that Casillas' damages totaled \$34,555,220.

## **Alan Casillas**

\$5,187,230 Personal Injury: Future Medical Cost

\$66,099 Personal Injury: Past Lost Earnings Capability

\$672,540 Personal Injury: FutureLostEarningsCapability

\$754,351 Personal Injury: past medical costs (stipulated)

\$11,700,000 Personal Injury: past non-economic damages

\$16,175,000 Personal Injury: future non-economic damages

### **Trial Information:**

**Judge:** Elizabeth Allen White

**Demand:** \$23,100,000 (C.C.P. § 998)

**Offer:** \$10,000,000 (during jury deliberations)

**Trial Length:** 2 weeks

**Trial  
Deliberations:** 1 days

**Jury Vote:** 12-0

**Post Trial:** After the verdict, a confidential settlement was reached.

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

**Writer** Priya Idiculla

## Motorcycle, oncoming tractor-trailer sideswiped each other

**Type:** Verdict-Plaintiff

**Amount:** \$31,331,636

**State:** Texas

**Venue:** Nueces County

**Court:** Nueces County District Court, 117th, TX

**Injury Type(s):**

- *back* - lower back; herniated disc, lumbar
- *head* - concussion; closed head injury
- *neck* - herniated disc, lumbar
- *ankle*
- *brain* - traumatic brain injury; subarachnoid hemorrhage; diffuse axonal brain injury
- *chest* - fracture, rib
- *other* - unconsciousness
- *wrist* - fracture, wrist
- *shoulder* - fracture, shoulder; fracture, clavicle
- *amputation* - leg; leg (below the knee); finger
- *hand/finger* - hand
- *mental/psychological* - cognition, impairment; memory, impairment

**Case Type:**

- *Gross Negligence*
- *Motor Vehicle* - Passenger; Sideswipe; Motorcycle; Center Line; Tractor-Trailer
- *Worker/Workplace Negligence* - Negligent Training; Negligent Supervision

**Case Name:** Theresa Gamez v. Dillon Transport, Inc.; Dillon Transport, Inc. in its common or assumed name; Kenneth Eugene Jennings; and Miguel A. Garcia Jr., No. 2015DCV-0235-B

**Date:** December 18, 2015

**Plaintiff(s):**

- Theresa Gamez (Female, 48 Years)
- Miguel A. Garcia (cross-plaintiff/defendant) (Male, 49 Years)

- Plaintiff Attorney(s):**
- Alejandro Blanco; The Blanco Law Firm PC; Glendale CA for Miguel A. Garcia (cross-plaintiff/defendant)
  - Craig S. Smith; Law Office of Craig S. Smith; Corpus Christi TX for Miguel A. Garcia (cross-plaintiff/defendant)
  - William (Billy) R. Edwards III; The Edwards Law Firm; Corpus Christi TX for Theresa Gamez
  - Angie Beltran; The Edwards Law Firm; Corpus Christi TX for Theresa Gamez
- Plaintiff Expert(s):**
- Wade Bartlett; Accident Reconstruction; Rochester, NH called by: William (Billy) R. Edwards III, Angie Beltran
  - Angel Roman M.D.; Life Care Planning; San Antonio, TX called by: William (Billy) R. Edwards III, Angie Beltran
  - Betty Wintroath; Life Care Planning; Lubbock, TX called by: Alejandro Blanco, Craig S. Smith
  - Donna Johnson M.Ed.; Vocational Rehabilitation; Corpus Christi, TX called by: Alejandro Blanco, Craig S. Smith
  - Roger Allen; Transportation/Highway Safety -- See also Technical: Safety; Friendswood, TX called by: William (Billy) R. Edwards III, Angie Beltran
  - Roger Wolcott M.D.; Physical Medicine; Lubbock, TX called by: Alejandro Blanco, Craig S. Smith
  - Robert W. Johnson; Economics; Los Altos, CA called by: Alejandro Blanco, Craig S. Smith
  - Everett Dillman Ph.D.; Economics; El Paso, TX called by: William (Billy) R. Edwards III, Angie Beltran
  - Haskell Hoine Ph.D.; Psychology/Counseling; San Antonio, TX called by: William (Billy) R. Edwards III, Angie Beltran
  - Randall Benson M.D.; Neurology; Novi, MI called by: Alejandro Blanco, Craig S. Smith, William (Billy) R. Edwards III, Angie Beltran
- Defendant(s):**
- Miguel A. Garcia Jr.
  - Dillon Transport Inc.
  - Kenneth Eugene Jennings
- Defense Attorney(s):**
- Douglas E. Chaves; Chaves, Obregon & Perales, LLP; Corpus Christi, TX for Kenneth Eugene Jennings
  - Larry D. Warren; Naman Howell Smith & Lee; San Antonio, TX for Dillon Transport Inc.
- Defendant Expert(s):**
- Dirk Edward Smith Ph.D., P.E.; Accident Reconstruction; Houston, TX called by: for Douglas E. Chaves, Larry D. Warren
  - Andrew Sievers; Driver Training; Mahomet, IL called by: for Douglas E. Chaves, Larry D. Warren
  - Michael W. Dennis M.D.; Neurosurgery; Haymarket, VA called by: for Douglas E. Chaves, Larry D. Warren
- Insurers:**
- Great West Casualty Co.
  - Lexington Insurance Co.

**Facts:** On March 2, 2013, plaintiff Theresa Gamez, 48, an insurance salesperson, was riding on the back of a Honda Goldwing motorcycle operated by cross-plaintiff Miguel A. Garcia

Sr., 49, an aircraft mechanic. They were in San Patricio County on a rural, two-lane road that curved to the right. Kenneth Eugene Jennings was driving an oncoming tractor-trailer in the course and scope of his employment with Dillon Transport Inc. The motorcycle and the truck sideswiped each other, and Garcia and Gamez were thrown from the motorcycle. They sustained severe injuries. Both were wearing helmets.

Garcia resided in Nueces County and was uninsured.

Gamez sued Jennings for negligently crossing the center line and failing to keep a proper lookout. She sued Dillon Transport on a theory of respondeat superior, but also for negligent and grossly negligent training and supervision. She sued Garcia in case the evidence showed that he was negligent, as Dillon and Jennings argued he was.

Garcia cross-claimed against Dillon and Jennings for the same negligence that Gamez alleged.

A key question was on which side of the center line the impact took place. There was no direct, physical evidence on this issue, and Garcia had no memory of the accident. Gamez testified that Jennings came into the motorcycle's lane.

Jennings denied crossing the center line, and he testified that he saw the motorcycle on or near the center line. However, when he stopped looking at the motorcycle, it was still ahead of him, and he did not see the impact.

There were two eyewitnesses, one behind the truck and one behind the motorcycle, and the parties vehemently disputed both what those witnesses saw and what they said about the positions of the vehicles.

Garcia's counsel and Gamez's counsel argued that Jennings crossed the center line. In the alternative, however, they argued that, if Garcia crossed the center line, then Jennings failed to take proper evasive action.

On the issue of Dillon Transport's negligence, Gamez's truck safety expert testified that it is five times more dangerous for an 18-wheeler to travel on a rural road than on an interstate, and that Jennings had an interstate available for this trip. The expert opined that Dillon Transport should have trained Jennings to take the interstate whenever one was available.

For comparative responsibility, Gamez's counsel suggested 60 percent on Dillon, 30 percent on Jennings and 10 percent on Garcia. Garcia's counsel suggested 80 percent on Dillon, 15 percent on Jennings and 5 percent on Garcia.

Both Dillon's and Jennings' counsel argued that the motorcycle crossed the center line. In the alternative, they argued that, if Jennings crossed the center line, then Garcia failed to take proper evasive action. They also argued that Garcia was taking the curve too fast and that he alone was negligent.

The defense truck safety expert opined that truck companies can reasonably rely on their drivers to choose their own routes.

**Injury:**

Gamez went to the hospital by ambulance. She sustained a concussion, loss of

## **injury:**

consciousness and a traumatic brain injury (subarachnoid hemorrhage in the left temporal lobe and right medial parietal lobe), with short term memory loss and impairment of executive function. She also sustained fractures of the left clavicle, the left ankle, the left wrist, and a couple of ribs on her left side. She also sustained a herniated lumbar disc.

Gamez's initial hospital stay was five days, and about a week later, she was re-admitted for a couple of days. She subsequently followed up with a neurologist for her brain injury.

Gamez's neurology expert and life care planning expert opined that, over time, Gamez's brain would deteriorate more rapidly than if she had not sustained an injury. The fractures healed, but her life care planning expert opined that she would need surgery on her herniated disc.

Gamez's employer testified how Gamez's brain injury affected her work. He said that she used to have three areas of responsibility, but could handle only one now. Gamez had worked for him for many years, and her counsel argued that he kept her employed out of generosity.

Gamez sought \$70,634 in past medical bills; \$3 million in future medical bills; about \$1 million in future lost earning capacity; \$1 million for past physical pain and mental anguish; \$6 million for future physical pain and mental anguish; \$4 million for past physical impairment; and \$20 million for future physical impairment. She also sought punitive damages.

Garcia was airlifted to a hospital. He sustained left leg injuries requiring amputation below the knee, and he sustained injuries to his left little finger, which also had to be amputated. He claimed that he also sustained a traumatic brain injury/diffuse axonal injury, concussion and loss of consciousness, with impairment of memory and executive function.

He was in the hospital for three weeks, during which doctors tried unsuccessfully to save his leg. After amputation of the leg, he spent a month in a rehabilitation hospital.

Garcia underwent an imaging study called diffusion tensor imaging, which his treating neurologist opined showed diffuse axonal injury. The doctor opined that diffusion tensor imaging, although a relatively new diagnostic technique, is considered reliable by the medical community.

Garcia's vocational rehabilitation expert opined strongly that, because of the brain injury and amputation of his leg, Garcia would never be able to work again.

Garcia sought \$264,842 in past medical bills; \$1,296,224 in future medical bills; \$152,000 in past lost earning capacity; \$760,000 in future lost earning capacity; \$2 million for past physical pain and mental anguish; \$10 million for future physical pain and mental anguish; \$1 million for past physical impairment; \$10 million for future physical impairment; \$1 million for past disfigurement; and \$10 million for future disfigurement. He also sought punitive damages.

The defense argued that Gamez's head injury was nothing but a mild concussion and that she recovered fully. She returned to work within a few weeks of the accident, the defense

noted.

The defense denied that Garcia sustained a head injury. The defense neurology expert opined that diffusion tensor imaging is still considered experimental.

As to Gamez, defense counsel argued for an award of \$70,000 in past medical bills and \$250,000 in other damages.

As to Garcia, the defense argued that, if it reached the question of his damages, then it should award between \$500,000 and \$1 million.

**Result:**

On Dec. 16, during trial, Gamez settled her claims against Garcia for \$100,000.

The jury found negligence and comparative responsibility of 60 percent on Dillon Transport, 20 percent on Jennings and 20 percent on Garcia. The jury did not reach the question of Dillon Transport's gross negligence.

The jury awarded \$6,154,794 to Gamez and \$25,176,842 to Garcia for a combined total of \$31,331,636.

Garcia filed a motion for remittitur, seeking reduction of his award of future medical bills from \$3 million to \$1,296,224 and lost earning capacity from \$912,000 to \$721,807. The court granted the motion.

For Gamez, the court entered judgment against Dillon Transport for Gamez's \$6,054,794 award (\$6,154,794 minus a \$100,000 credit for her settlement with Garcia) and against Jennings for 20 percent of \$6,054,794.

For Garcia, the court entered judgment against Dillon Transport for 80 percent of his \$23,282,873 award (\$25,176,842 reduced in accordance with the remittitur) and against Jennings for 20 percent of \$23,282,873.

The judgment also included prejudgment interest.



**Theresa Gamez**

\$70,634 Personal Injury: Past Medical Cost

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

\$150,000 Personal Injury: Past Physical Impairment

\$3,000,000 Personal Injury: Future Physical Impairment

\$150,000 Personal Injury: past physical pain and mental anguish

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

\$534,160 Personal Injury: future lost earning capacity

**Miguel A. Garcia (cross-plaintiff/defendant)**

\$264,842 Personal Injury: Past Medical Cost

\$3,000,000 Personal Injury: Future Medical Cost

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

\$10,000,000 Personal Injury: Future Physical Impairment

\$200,000 Personal Injury: Past Disfigurement

\$800,000 Personal Injury: Future Disfigurement

\$760,000 Personal Injury: future lost earning capacity

\$2,000,000 Personal Injury: past physical pain and mental anguish

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

\$152,000 Personal Injury: past lost earning capacity

**Trial Information:**

**Judge:** Sandra Watts

**Demand:** \$15 million combined demand by Gamez and Garcia

**Offer:** \$150,000 to Gamez; zero to Garcia

**Trial Length:** 2 weeks

**Trial  
Deliberations:** 2.5 days

**Jury Vote:** 10-2

**Editor's  
Comment:** This report is based on information that was provided by Gamez's and Garcia's counsel.  
Dillon's and Jennings' counsel did not respond to the reporter's phone calls.

**Writer** John Schneider

## Guardrail sliced through car door, severing man's arm, leg

**Type:** Verdict-Plaintiff

**Amount:** \$31,295,008

**State:** New Jersey

**Venue:** Camden County

**Court:** Camden County Superior Court, NJ

**Injury Type(s):**

- *arm*
- *leg* - fracture, leg; fracture, femur; fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *elbow*
- *other* - laceration
- *amputation* - leg; leg (below the knee)

**Case Type:**

- *Motor Vehicle* - Single Vehicle
- *Premises Liability* - Dangerous Condition of Public Property

**Case Name:** Nicholas Anderson v. County of Camden, No. CAM-L-8247-06

**Date:** October 17, 2008

**Plaintiff(s):**

- Nicholas Anderson (Male, 18 Years)

**Plaintiff Attorney(s):**

- Jason A. Daria; Feldman, Shepherd, Wohlgernter, Tanner, Weinstock & Dodig; Philadelphia PA for Nicholas Anderson
- John M. Dodig; Feldman, Shepherd, Wohlgernter, Tanner, Weinstock & Dodig; Philadelphia PA for Nicholas Anderson

**Plaintiff Expert  
(s):**

- Guy W. Fried M.D.; Physical Rehabilitation; Philadelphia, PA called by: Jason A. Daria, John M. Dodig
- David Fuller M.D.; Orthopedic Surgery; Philadelphia, PA called by: Jason A. Daria, John M. Dodig
- Terri S. Patterson R.N.; Life Care Planning; Plymouth Meeting, PA called by: Jason A. Daria, John M. Dodig
- George Wiedas P.E.; Transportation/Highway Safety -- See also Technical: Safety; Medford, NJ called by: Jason A. Daria, John M. Dodig
- Robert Ostrum M.D.; Orthopedic Surgery; Camden, NJ called by: Jason A. Daria, John M. Dodig

**Defendant(s):**

- County of Camden

**Defense  
Attorney(s):**

- Donna M. Whiteside; Assistant County Counsel; Camden, NJ for County of Camden

**Defendant  
Expert(s):**

- Robert Kelly P.E.; Transportation/Highway Safety -- See also Technical: Safety; Camden, NJ called by: for Donna M. Whiteside

**Insurers:**

- Meadowbrook Insurance Group

**Facts:**

On Dec. 23, 2004, plaintiff Nicholas Anderson, an 18-year-old student, was driving his sedan on Raritan Avenue near Third Street in Atco when he swerved to the right to avoid an oncoming vehicle in his lane. Anderson veered onto the shoulder that was about 6 inches below the level of the road. He lost control and when he tried to navigate back onto the road he collided with an adjacent guardrail. The guardrail sliced through Anderson's driver's side door, severing his left leg, nearly severing his left arm and fracturing his right leg. Anderson's car was then thrown down a steep ravine where it came to rest.

Anderson sued Camden County for premises liability, alleging that the guardrail posed a dangerous condition, and the decline in elevation between the roadway and the shoulder helped force Anderson's car into the guardrail.

Counsel argued that the dropoff from the paved roadway on Raritan Avenue to the gravel and dirt-covered shoulder contributed to the dangerous condition because it forced drivers toward the unsafe guardrail.

Plaintiff's counsel contended that the guardrail, which was in place for at least 20 years, did not meet the standards of the American Association of State Highway Transportation and was not deemed crashworthy because it couldn't absorb the energy of a collision and redirect vehicles back onto the roadway. The county always knew of the dangerous guardrail, but failed to remove or replace it, the plaintiff alleged.

Plaintiff's counsel also alleged that the county's policy toward replacing dangerous guardrails was unreasonable because it held that such hazards wouldn't be corrected or replaced until an accident occurred or a safety project was conducted.

Counsel presented the testimony of a roadway safety expert who supported the plaintiff's allegations. Counsel also noted that it would only have cost the county \$3,000 to put an end treatment on the guardrail, asserting that such a treatment would have prevented the guardrail from cutting through Anderson's vehicle and severing his leg.

Counsel for the county contended the county didn't breach any duty it owed to Anderson via the presence of the guardrail. Counsel also claimed that the accident was a result of Anderson's negligence or the driver who had entered his lane prior to his exiting the roadway and the county couldn't be held liable to the negligence of either of the drivers.

Defense counsel also questioned whether there actually was a driver who had entered Anderson's lane of travel, as Anderson had claimed.

**Injury:**

Anderson's left leg was severed just below the knee at the scene. He was airlifted to a hospital. Anderson was in shock when he arrived, and he was induced into a coma that lasted for two weeks. The hospital staff performed multiple surgeries to ensure that the amputated leg was clean. They also began procedures to save Anderson's left arm which was also nearly severed. Anderson also fractured his right tibia, fibula and femur.

Anderson underwent elbow replacement surgery, his right leg was treated for the fractures, with the insertion of a rod into the area, and a prosthetic leg was attached to his left leg. Anderson underwent extensive rehabilitation and therapy to learn how to live with the prosthetic limb. Defense counsel stipulated to \$1,295,008 in past medical expenses.

Plaintiff's counsel presented a future life care and medical damages plan of about \$8 million. According to the life care plan, Anderson would require a new prosthesis every five years, knee replacement surgery on his right leg every 10 years, and an elbow replacement every five years. Counsel noted that the numerous surgeries incurred the risk of infection, especially since there was a rod inserted into his right leg. Counsel included the costs of the rehabilitation, therapy and hospitalization into the life care plan but noted that it only afforded costs for the standard prosthesis and not waterproof or activity prostheses, which would add an additional cost of at least \$1 million to the plan.

Counsel also contended that the life care plan only included costs for annual visits to an orthopedist and those visits could be more frequent should Anderson require additional care due to complications. Counsel insinuated that Anderson had already fallen at least five times since the accident and, on at least one occasion, sustained an additional fracture. Counsel asserted that the medical ramifications of those falls hadn't been factored into the life care plan either. Counsel also contended there was a possibility that Anderson's left arm could require amputation in the future.

**Result:**

The jury found that the guardrail and the change in deviation between the roadway and shoulder created a dangerous condition that caused Anderson's injuries, and that created a foreseeable risk of such injury. It also found the county had actual or constructive notice of the condition, and that its action or inaction was palpably unreasonable, while it found Anderson was not negligent. It awarded \$31,295,008.

**Nicholas Anderson**

\$1,295,008 Personal Injury: Past Medical Cost

\$15,000,000 Personal Injury: Future Medical Cost

\$15,000,000 Personal Injury: past and future pain & suffering

**Trial Information:**

**Judge:** John A. Fratto

**Offer:** The county offered its \$300,000 self-insured retention rate on the final day of the trial.

**Trial Length:** 2 weeks

**Trial Deliberations:** 2.5 hours

**Jury Vote:** 8-0

**Post Trial:** On June 12, 2009, a \$19.3 judgment was entered. In June 2010, the county agreed to pay a \$15 million settlement.

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

**Writer** Joshua Couzens

## Motorcyclist required amputations after head-on crash

**Type:** Verdict-Plaintiff

**Amount:** \$27,512,500

**Actual Award:** \$13,800,000

**State:** Michigan

**Venue:** Kent County

**Court:** Kent County, Circuit Court, Grand Rapids, MI

**Injury Type(s):**

- *leg* - fracture, leg; fracture, femur; fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *elbow* - fracture, elbow
- *other* - prosthesis; physical therapy; hardware implanted; comminuted fracture
- *pelvis* - fracture, pelvis
- *foot/heel* - fracture, foot
- *amputation* - leg; leg (above the knee); finger
- *hand/finger* - hand; fracture, metacarpal
- *surgeries/treatment* - debridement; open reduction; external fixation; internal fixation
- *mental/psychological* - post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Head-On; Cell Phone; Motorcycle; Center Line; Lane Change; Multiple Vehicle

**Case Name:** Richard Thomas Wilson and Stephanie Wilson v. Elizabeth Lynn Stratton and Catholic Charities West Michigan, No. 22-10747-NI

**Date:** May 03, 2024

**Plaintiff(s):**

- Stephanie Wilson, (, 0 Years)
- Richard Thomas Wilson, (Male, 29 Years)



- Plaintiff Attorney(s):**
- Jason A. Waechter; Law Offices of Jason A. Waechter; Southfield MI for Richard Thomas Wilson
  - Sean Murphy; Law Offices of Jason A. Waechter; Southfield MI for Stephanie Wilson
- Plaintiff Expert(s):**
- John S. Carton Ph.D.; Psychology/Counseling; Grand Rapids, MI called by: Jason A. Waechter, , Sean Murphy
  - Peter M. Samet M.D.; Physical Medicine; Southfield, MI called by: Jason A. Waechter, , Sean Murphy
  - Matthew Starke M.D.; Orthopedic Surgery; Grand Rapids, MI called by: Jason A. Waechter, Sean Murphy
  - Benjamin J. Bruinsma M.D.; Physical Medicine; Grand Rapids, MI called by: Jason A. Waechter, Sean Murphy
- Defendant(s):**
- Elizabeth Lynn Stratton
  - Catholic Charities West Michigan
- Defense Attorney(s):**
- Madelaine C. Lane; Warner Norcross + Judd LLP; Grand Rapids, MI for Elizabeth Lynn Stratton, Catholic Charities West Michigan
  - Janet L. Ramsey; Warner Norcross + Judd LLP; Grand Rapids, MI for Elizabeth Lynn Stratton, Catholic Charities West Michigan
  - Diane E. Webster; Gordon Rees Scully Mansukhani, LLP; Chicago, IL for Elizabeth Lynn Stratton, Catholic Charities West Michigan
  - Gretchen H. Sperry; Gordon Rees Scully Mansukhani, LLP; Chicago, IL for Elizabeth Lynn Stratton, Catholic Charities West Michigan
- Defendant Expert(s):**
- John M. Janzen Ed.D.; Vocational Rehabilitation; Boise, ID called by: for Janet L. Ramsey
- Insurers:**
- Munich Reinsurance Co.

**Facts:**

On May 19, 2022, plaintiff Richard Wilson, 29, a shipping clerk, was riding his motorcycle on One Mile Road in White Cloud. Elizabeth Stratton was driving an SUV in the opposite direction of the same road. The SUV drifted over the center line and struck the motorcycle. Wilson claimed leg, femur, pelvis, elbow, hand and finger injuries.

Wilson sued Stratton. Wilson claimed Stratton was negligent in the operation of her vehicle. Wilson also made negligent entrustment and respondeat superior claims against Stratton's employer, Catholic Charities West Michigan. The negligent entrustment claim was dismissed before trial.

According to plaintiff's counsel, body-camera footage from the scene showed Stratton telling the responding police officer that she was checking her blood-glucose levels via a cell phone application when she drifted over the center line.

While the defense initially made a comparative-fault argument during discovery, the defense admitted liability at trial. The jury solely considered damages.

**Injury:**

Wilson was hospitalized for 48 days after the accident.

Wilson sustained numerous injuries to his left leg, including comminuted foot, femur, tibia and fibula fractures. He also suffered a traumatic amputation of his left, nondominant hand's pinky fingertip. He additionally claimed left elbow, metacarpal and pelvis fractures.

Wilson immediately underwent an above-the-knee amputation of his left leg. During his hospital stay, doctors also performed a revision of the pinky amputation. Wilson additionally received an external fixator for his pelvis and had open reduction internal fixation surgeries on his elbow and hand. Wilson had numerous debridements of his residual leg stump, as well.

A few weeks after his discharge, Wilson returned to the hospital to have the external fixator removed. At home, Wilson received nursing care and extensive physical therapy.

Because Wilson's stump is irregularly shaped, he cannot find a prosthetic leg that stays in place. As a result, he still has trouble ambulating. Wilson also can no longer boat, kayak or fish as he did before the accident. He did not return to work.

Wilson was additionally diagnosed with post-traumatic stress disorder. He saw a counselor for a few sessions.

Wilson sought \$10 million in damages for past pain and suffering and \$28.8 million for future pain and suffering. Plaintiffs' counsel claimed Wilson has a life expectancy of 45 years.

Wilson's wife, Stephanie Wilson, filed a derivative claim. She sought \$2 million for past loss of consortium and \$4 million for future loss of consortium.

The defense noted Wilson's heavy weight and claimed he could improve his recovery by being more active. Defense counsel additionally contended that Wilson's weight and tobacco use limited his life expectancy.

The defense also argued that Wilson should have been able to return to some type of work and implied that Wilson was addicted to painkillers. The defense additionally claimed that Wilson could have mitigated his psychological damages by continuing to see his counselor.

**Result:**

The jury awarded the plaintiffs \$27,512,500. The present-value adjustment reduced the verdict to \$13.8 million.

Richard Wilson

\$ 5,000,000 Past Pain Suffering

\$ 20,512,500 future pain and suffering through 2069

**\$ 25,512,500 Plaintiff's Total Award**

Stephanie Wilson

\$ 2,000,000 Past Loss of Consortium

**\$ 2,000,000 Plaintiff's Total Award**

**Trial Information:**

**Judge:** George Jay Quist

**Demand:** \$6.6 million

**Offer:** \$5 million

**Trial Length:** 1 weeks

**Trial  
Deliberations:** 45 minutes

**Jury Vote:** 6-2

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

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

**Writer**

Melissa Siegel

## Woman's leg destroyed when struck by bus

**Type:** Verdict-Plaintiff

**Amount:** \$27,500,000

**State:** New York

**Venue:** New York County

**Court:** New York Supreme, NY

**Injury Type(s):**

- *arm*
- *leg* - crush injury, leg
- *head*
- *other* - abrasions; infection; prosthesis; physical therapy
- *epidermis* - road rash
- *amputation* - leg; leg (above the knee)
- *neurological* - nerve damage/neuropathy
- *mental/psychological* - depression; post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Bus; Pedestrian; Right Turn
- *Government* - Municipalities

**Case Name:** Gloria Aguilar and Aristides Aguilar v. New York City Transit Authority and Andrew Monaco, No. 103132/06

**Date:** April 15, 2009

**Plaintiff(s):**

- Gloria Aguilar (Female, 45 Years)
- Aristides Aguilar (Male)

**Plaintiff Attorney(s):**

- Ben B. Rubinowitz; Gair, Gair, Conason, Steigman & Mackauf; New York NY for Gloria Aguilar, Aristides Aguilar
- Richard M. Steigman; Gair, Gair, Conason, Steigman & Mackauf; New York NY for Gloria Aguilar, Aristides Aguilar
- Peter J. Saghir; Gair, Gair, Conason, Steigman & Mackauf; New York NY for Gloria Aguilar, Aristides Aguilar

**Plaintiff Expert  
(s):**

- Mark Goldberg M.D.; Prosthetics; East Setauket, NY called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir
- Mark Rubinstein M.D.; Psychiatry; New York, NY called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir
- Robert E. Genna; Accident Reconstruction; Commack, NY called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir
- Robert S. Goldstein M.D.; Orthopedic Surgery; New York, NY called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir
- Charles A. Kincaid Ph.D.; Life Care Planning; Hackensack, NJ called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir
- Jeffrey M. Siedenberg Ph.D.; Economics; Riverdale, NY called by: Ben B. Rubinowitz, Richard M. Steigman, Peter J. Saghir

**Defendant(s):**

- Andrew Monaco
- New York City Transit Authority

**Defense  
Attorney(s):**

- John Y. Woodruff, Jr.; of counsel, Wallace D. Gossett; Brooklyn, NY for New York City Transit Authority, Andrew Monaco

**Defendant  
Expert(s):**

- Mark Marpet Ph.D, P.E.; Engineering; Chester, NJ called by: for John Y. Woodruff, Jr.

**Facts:**

On Nov. 4, 2005, plaintiff Gloria Aguilar, 45, a homemaker and part-time housecleaner, was struck by a public bus. The incident occurred on West 50th Street, alongside its intersection at 10th Avenue, in Manhattan. Aguilar sustained injuries of her arms, head, legs and torso.

Aguilar sued the bus's driver, Andrew Monaco, and the bus's operator, the New York City Transit Authority. Aguilar alleged that Monaco was negligent in his operation of the bus. She further alleged that the New York City Transit Authority was vicariously liable for Monaco's actions.

Aguilar claimed that a green pedestrian-traffic signal permitted her entrance to the intersection. She contended that she checked both directions of traffic, entered a crosswalk, walked 10 to 15 feet and was struck by the bus, which was completing a right turn onto West 50th Street. However, she acknowledged that she did not see the bus until it was immediately upon her. The New York City Transit Authority investigated the matter, and it determined that the impact occurred within a crosswalk.

Monaco contended that the impact occurred while he was maintaining a speed of about 5 mph. He claimed that he utilized intersection-scanning procedures that he had been taught during the New York City Transit Authority's training, but that he did not see any pedestrians in or near the crosswalk.

The defense's expert engineer opined that Aguilar should have seen the bus before she entered the roadway. He also opined that Aguilar entered the roadway before Monaco had begun his turn. He contended that Aguilar initiated the contact, and he also contended that the impact occurred slightly outside of the crosswalk.

Defense counsel contended that the incident occurred shortly after Aguilar had completed an eight-hour workday and that she was tired and hurrying home at the time of the incident. He suggested that the incident was a result of Aguilar's inattentiveness.



**Injury:**

Aguilar's left leg was crushed by the bus's front right tire. She also sustained an injury of her right leg and abrasions and road rash of her head, limbs and torso. She was placed in an ambulance, and she was transported to Bellevue Hospital Center, in Manhattan. Her left leg could not be saved, so it was amputated below the knee.

Aguilar subsequently developed an infection of the remaining portion of her left leg. As a result, she had to undergo surgeries that included further amputation of the leg. She ultimately lost her left knee and about four additional inches of the area above the knee. She wears a prosthetic device. Her hospitalization lasted two months, and she subsequently underwent orthopedic treatment.

Aguilar claimed that she suffers residual damage of her legs' nerves. She also claimed that she experiences "phantom" pain that seems to stem from the missing portion of her left leg. She further claimed that she undergoes treatment of residual psychological conditions that include post-traumatic stress disorder and major depression. She contended that her disability prevents her resumption of work.

Aguilar's life-care-planning expert opined that Aguilar must undergo lifelong physical therapy. He also opined that Aguilar's prosthesis must be replaced every three to five years.

Aguilar sought recovery of about \$5.6 million for her future medical expenses. She also sought recovery of damages for her past and future pain and suffering. Her husband sought recovery of damages for his past and future loss of services and society.

**Result:**

The jury found that the defendants were liable for the accident. It also found that Aguilar was negligent, but it concluded that her negligence was not the cause of the accident. The jury determined that the plaintiffs' damages totaled \$27.5 million.

**Aristides Aguilar**

\$1,000,000 Personal Injury: past loss of services and society

\$1,000,000 Personal Injury: future loss of services and society (27.4 years)

**Gloria Aguilar**

\$9,500,000 Personal Injury: Future Medical Cost

\$4,000,000 Personal Injury: Past Pain And Suffering

\$4,000,000 Personal Injury: future pain and suffering (32.5 years)

\$4,000,000 Personal Injury: past emotional, mental and psychological suffering

\$4,000,000 Personal Injury: future emotional, mental and psychological suffering (32.5 years)

## **Trial Information:**

**Judge:** Paul G. Feinman

**Demand:** \$7,500,000 (total, by both plaintiffs, from both defendants)

**Offer:** \$3,000,000 (total, for both plaintiffs, by both defendants)

**Trial Length:** 20 days

**Trial  
Deliberations:** 8 hours

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

**Post Trial:** Defense counsel made motions to set-aside the verdict as excessive and for a new trial, but the motions were denied. Defense counsel indicated that they plan to appeal.

**Editor's  
Comment:** This report includes information that was gleaned from articles that were published by The New York Times and New York Post. It also includes information that was gleaned from court documents and an interview of plaintiff's and defense counsel.

**Writer** Tim Heinz

## Suit: Sleepy bus driver caused interstate crash with 18-wheeler

**Type:** Verdict-Plaintiff

**Amount:** \$27,018,940

**State:** Ohio

**Venue:** Cuyahoga County

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

**Injury Type(s):**

- *arm* - fracture, humerus
- *hip*
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *back* - fracture, back; fracture, L4; fracture, back; fracture, L5; fracture, vertebra; fracture, L4; fracture, vertebra; fracture, L5
- *ankle*
- *elbow*
- *other* - plate; atrophy; laceration; cannulation; phantom pain; catheterization; physical therapy; pins/rods/screws; spleen, laceration; compartment syndrome; fasciotomy/fasciectomy; decreased range of motion; scar and/or disfigurement
- *wrist*
- *pelvis* - fracture, pelvis
- *cardiac* - heart; aorta, tear
- *shoulder* - fracture, shoulder; fracture, scapula; fracture, shoulder; fracture, clavicle
- *face/nose* - face; facial laceration
- *foot/heel* - crush injury, foot
- *amputation* - leg; leg (below the knee); toe
- *urological* - incontinence; sexual dysfunction; impotence; bladder, perforation/rupture
- *arterial/vascular* - pseudoaneurysm
- *surgeries/treatment* - skin graft; open reduction; internal fixation
- *gastrointestinal/digestive* - spleen; gallbladder, injury; gallbladder, loss/removal

**Case Type:**

- *Transportation* - Bus
- *Motor Vehicle* - Truck; Passenger; Rear-ender; Driver Fatigue; Tractor-Trailer; Multiple Vehicle

**Case Name:** Mark D. Soberay v. Greyhound Lines, Inc. and Sabrina M. Anderson, No. CV-13-817909

**Date:** January 21, 2016

**Plaintiff(s):** • Mark D. Soberay (Male, 43 Years)

**Plaintiff Attorney(s):** • Charles I. Kampinski; Attorneys Kampinski and Schneider; Cleveland OH for Mark D. Soberay  
• Kent B. Schneider; Attorneys Kampinski and Schneider; Cleveland OH for Mark D. Soberay

**Plaintiff Expert(s):** • John J. Smith P.E., MSEE, MSBMT; Accident Reconstruction; Parker, CO called by: Charles I. Kampinski, Kent B. Schneider  
• Mark E. Edwards Ph.D.; Human Factors -- See also TECHNICAL-Engineering-Ergonomics; Lake Mary, FL called by: Charles I. Kampinski, Kent B. Schneider  
• Steven Levine M.D.; Neurology; New York, NY called by: Charles I. Kampinski, Kent B. Schneider  
• Richard P. Bonfiglio M.D.; Physical Medicine; Export, PA called by: Charles I. Kampinski, Kent B. Schneider  
• Maryanne Cline R.N.; Life Care Planning; Cleveland, OH called by: Charles I. Kampinski, Kent B. Schneider

**Defendant(s):** • Akos Gubica  
• Karoly Gubica  
• Sabrina M. Anderson  
• Greyhound Lines, Inc.  
• C.A.V. Enterprises, LLC

**Defense Attorney(s):** • Thomas P. Mannion; Mannion, Gray, Uhl & Hill Co., L.P.A.; Cleveland, OH for Greyhound Lines, Inc., Sabrina M. Anderson  
• Robert T. Glickman; McCarthy, Lebit, Crystal & Liffman Co., LPA; Cleveland, OH for C.A.V. Enterprises, LLC, Akos Gubica, Karoly Gubica  
• Bradley J. Barmen; Mannion, Gray, Uhl & Hill Co., L.P.A.; Cleveland, OH for Greyhound Lines, Inc., Sabrina M. Anderson  
• John E. Moran; McCarthy, Lebit, Crystal & Liffman Co., LPA; Cleveland, OH for C.A.V. Enterprises, LLC, Akos Gubica, Karoly Gubica

**Defendant Expert(s):** • Lee J. Harris M.D.; Neurology; Philadelphia, PA called by: for , Bradley J. Barmen  
• Robert C. Sugarman Ph.D., P.E.; Human Factors -- See also TECHNICAL-Engineering-Ergonomics; Buffalo, NY called by: for , Bradley J. Barmen  
• Steven M. Schorr P.E.; Accident Reconstruction; Abington, PA called by: for , Bradley J. Barmen

**Insurers:** • American International Group Inc. (excess)

**Facts:** On Oct. 9, 2013, plaintiff Mark Soberay, 43, a music studio owner, was a front row passenger on a Greyhound bus traveling from New York to Cleveland, operated by Sabrina Anderson. The bus was traveling on Interstate 80, near the Lewisburg/Williamsport exit in White Deer, Pa. At approximately 1:30 am, the bus struck the rear of an 18-wheel commercial truck also traveling west. The 18-wheeler was

operated by Akos Gubica. The impact forced the rear of the 18-wheeler into the front interior of the bus, pinning Soberay to his seat, which was located to the right of the bus driver's seat. Soberay claimed crush injuries of a leg, necessitating a below-the-knee amputation, and injuries of his urethra, gallbladder, spleen, heart and shoulder, and impotence of his sexual organs.

Soberay sued Greyhound Lines, Inc. and bus driver Sabrina Anderson. Soberay claimed that Anderson was negligent in the operation of the bus, and that Greyhound was vicariously liable as the owner of the bus. Soberay also claimed that Greyhound displayed a conscious disregard for company policy that requires bus drivers to stop every three hours or 150 miles.

Soberay alleged that Anderson fell asleep while operating the bus. He also asserted that, at the time of the accident, Anderson had driven the bus for approximately 180 miles (for over three hours), and that the accident occurred 45 miles before a mandatory scheduled rest stop in Milesburg, Pa. Soberay claimed this mandatory stop was scheduled approximately 75 miles past Greyhound's 150 mile stop requirement, due to internal failures by the company's scheduling and safety departments to coordinate proper stop locations.

Soberay further argued that Greyhound and its chief executive officer, regional managers and safety inspectors had created a corporate culture in which the stop requirement was not enforced. Soberay claimed Greyhound failed to implement the proper policies, procedures and systems that would have prevented Anderson from operating the Greyhound bus while she was too tired or fatigued. He also claimed that Greyhound knew its drivers operated the buses while too fatigued. In support of this allegation, plaintiff's counsel argued that following a Greyhound bus crash that occurred in 1998, in which seven people including the driver died, Greyhound was directed by the NTSB to implement a fatigue management program. Plaintiff's counsel argued that, while such a program was implemented, it was not followed by Greyhound. Soberay also argued that Greyhound has an internal policy for its drivers to never admit responsibility in the event of a crash.

Greyhound denied liability for the accident and filed a third-party claim against Akos Gubica, and the owners of the 18-wheeler he was operating, C.A.V Enterprises, LLC and Karoly Gubica.

Greyhound contended that Akos Gubica caused the accident by operating the 18-wheeler at a dangerously low speed of 16 mph, and that the truck owners were vicariously liable for his actions. An accident reconstruction expert retained by Greyhound testified as to the 18-wheeler's slow speed.

Plaintiff's counsel countered the evidence presented by the defense by presenting the testimony of an accident reconstruction and looming expert, who testified that based upon the damage caused to the two vehicles, the 18-wheeler was traveling 45 to 50 mph. He further testified that, if the 18-wheeler had actually been traveling 16 mph as claimed, Anderson would have had ample time to change lanes or stop had she been awake.

A truck driver witness claimed that he had passed Gubica's truck in the late evening hours of October 8. He stated that the truck's lights were on at that time and that the 18-wheeler was traveling at 45 to 50 mph. The witness further claimed that, prior to the accident, the

subject bus nearly hit his truck while passing him and swerved off of the road onto the rumble strips. He stated that he came upon the subject accident five minutes later. Multiple passengers on the subject bus testified that Anderson had fallen asleep.

Anderson did not give an immediate statement while hospitalized post-accident. She was interviewed by state police approximately two months after the accident, at which time she claimed she blacked out following numbness in her right leg and right arm, and that this was the cause of the accident. Anderson ultimately contended that she suffered a transient ischemic attack, causing her to "black out" while driving. She claimed she suffered a concussion as a result of the accident, causing retrograde amnesia. In response, plaintiff's counsel argued that Anderson's claim of suffering a concussion was not true, due to the absence of a head injury following the accident. Also, the plaintiff's stroke expert testified that Anderson most likely fell asleep and that she did not suffer a stroke.

The C.A.V. defendants settled out of the case prior to trial. The matter proceeded against Greyhound and Anderson only.

**Injury:**

Soberay was extracted from his bus seat after about three hours after the crash. He was placed in an ambulance and transported to the emergency room at Geisinger Medical Center. He remained hospitalized for about 5.5 months.

Soberay suffered injuries of the right lower extremity, including occluded tibial arteries; a crush injury of his ankle, foot, tibia and fibula; compartment syndrome; and major damage to the muscles and tendons. These injuries necessitated a below-the-knee amputation of the right leg.

Soberay also suffered lower left extremity injuries, including multiple fractures of the tibia and fibula; a crush injury of the left foot; a partial fifth toe amputation; and compartment syndrome. He underwent multiple surgeries to address his left leg injuries. The procedures Soberay underwent on his left leg included open reduction and internal fixation of the tibia, including the use of a rod and screws; open reduction and internal fixation of the fibula using a plate; fasciotomies to relieve compartment syndrome pressure; and skin grafts due to the unhealed fasciotomies.

Soberay additionally suffered a fracture of the left femoral head of his pelvis, a fracture of the pubic rami and bilateral hip dislocations. He also claimed a comminuted fracture of the proximal humerus of his right shoulder; vertebrae fractures at L4 and L5; left wrist dislocation; a ruptured bladder; a damaged gallbladder necessitating removal; a pseudoaneurysm (hole in the aorta); lacerations of his spleen, left upper eyelid, upper right cheek and right elbow; and a severed urethra.

Soberay underwent surgery to address his shoulder injury on Oct. 14, 2013. The procedure consisted of open reduction and internal fixation, using a plate and screws. He underwent the implementation of a stent in his abdominal aorta, as well as a cannula, IVC filter and endostent.

Soberay's urethra was reconnected through urethral transection, returning normal urinary function. However, Soberay claimed continuing leaking, incontinence and impotence. He alleged that other residual effects of his injuries include decreased range of motion in his right shoulder; loss of balance; right leg phantom pain; constant left leg pain; and severe limitations in his ability to care for himself. He claimed he requires the use of a wheelchair, as well as a walker, and that he is mostly confined to a hospital bed (approximately 15 hours per day) that he had installed in his office.

Soberay underwent approximately 30 surgeries to address his various and extensive injuries, and claimed he would require an unknown number of surgeries in the future. He also underwent physical therapy and occupational therapy and rehabilitation, which he claimed he would need on an ongoing basis.

Soberay claimed that his medical expenses totaled \$2 million at the date of the trial. He sought recovery of \$30 million for past and future pain and suffering and medical expenses, and his loss of society and loss of enjoyment of life.

**Result:** The jury found Greyhound and Anderson negligent and that this negligence caused the plaintiff's damages. The jury also found that Greyhound was negligent in failing to follow its own rules and requirements, which constituted malicious conduct and showed reckless indifference to the interest of others. The jury awarded compensatory damages of \$23,018,790 and punitive damages of \$4,000,150, for a total of \$27,018,940.

**Mark D. Soberay**

\$1,468,790 Personal Injury: Past Medical Cost

\$3,550,000 Personal Injury: Future Medical Cost

\$4,000,150 Personal Injury: Punitive Exemplary Damages

\$2,500,000 Personal Injury: past and future loss of enjoyment of life

\$8,000,000 Personal Injury: pain and suffering

\$5,000,000 Personal Injury: past and future disfigurement

\$2,500,000 Personal Injury: past and future embarrassment and humiliation

**Trial Information:**

**Judge:** John D. Sutula

**Demand:** \$30 million

**Offer:** \$20 million (following verdict for compensatory damages)

**Trial Length:** 4 weeks

**Trial  
Deliberations:** 2 days

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

**Editor's  
Comment:** This report is based on information gleaned from court documents. Information was also provided by plaintiff's counsel, defense counsel and counsel for the third-party defendants.

**Writer** Jack Deming



## Pedestrian struck in crosswalk suffered traumatic amputation

**Type:** Verdict-Plaintiff

**Amount:** \$26,255,368

**State:** California

**Venue:** Orange County

**Court:** Superior Court of Orange County, Santa Ana, CA

**Injury Type(s):**

- *brain* - traumatic brain injury
- *other* - prosthesis
- *amputation* - leg; leg (above the knee)

**Case Type:**

- *Motor Vehicle* - Crosswalk; Red Light; Pedestrian; Intersection; Single Vehicle

**Case Name:** Maryam Hedayati, by and through her Guardian ad Litem Mohammad Hedayati v. Maurice Vanwyk, No. 30-2012-00619582-CU-PA-CJC

**Date:** August 19, 2014

**Plaintiff(s):**

- Maryam Hedayati (Female, 43 Years)

**Plaintiff Attorney(s):**

- Torsten M. Bassell; Lari-Joni & Bassell, LLP; Los Angeles CA for Maryam Hedayati
- Nicole Lari-Joni; Lari-Joni & Bassell, LLP; Los Angeles CA for Maryam Hedayati
- Reza Torkzadeh; The Torkzadeh Law Firm; Los Angeles CA for Maryam Hedayati
- Korosh Torkzadeh; The Torkzadeh Law Firm; Los Angeles CA for Maryam Hedayati

**Plaintiff Expert(s):**

- Anne Barnes R.N.; Life Care Planning; Glendale, CA called by: Torsten M. Bassell, Nicole Lari-Joni, Reza Torkzadeh, Korosh Torkzadeh
- David R. Patterson M.D.; Physical Medicine; Pomona, CA called by: Torsten M. Bassell, Nicole Lari-Joni, Reza Torkzadeh, Korosh Torkzadeh
- Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Torsten M. Bassell, Nicole Lari-Joni, Reza Torkzadeh, Korosh Torkzadeh
- Ronald Fisk M.D., Ph.D.; Neurology; Los Angeles, CA called by: Torsten M. Bassell, Nicole Lari-Joni, Reza Torkzadeh, Korosh Torkzadeh
- Tamorah Hunt Ph.D.; Economics; Santa Ana, CA called by: Torsten M. Bassell, Nicole Lari-Joni, Reza Torkzadeh, Korosh Torkzadeh

**Defendant(s):**

- Maurice Vanwyk

**Defense Attorney(s):**

- Patrick J. Gibbs; Ford, Walker, Haggerty & Behar, LLP; Long Beach, CA for Maurice Vanwyk
- Stacy A. Bradfield; Ford, Walker, Haggerty & Behar, LLP; Long Beach, CA for Maurice Vanwyk

**Defendant Expert(s):**

- C. Philip O'Carroll M.D.; Neurology; Newport Beach, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Amy Sutton Ph.D.; Life Care Planning; Anaheim, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Paul A. Zimmer C.P.A.; Economics; San Diego, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Rick A. Chavez C.P.O.; Prosthetics; Thousand Oaks, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- David M. Lechuga Ph.D.; Neuropsychology; Lake Forest, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Nancy E. Fraser R.N.; Coding & Billing (Medical); Los Angeles, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Martin H. Breen M.S.; Toxicology; Tustin, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Ronald S. Kvitne M.D.; Orthopedic Surgery; Los Angeles, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Steven Molina Ph.D.; Vocational Rehabilitation; Santa Ana, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; Northridge, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield
- Richard B. Rhee M.D.; Radiology; Newport Beach, CA called by: for Patrick J. Gibbs, Stacy A. Bradfield

**Insurers:**

- Interinsurance Exchange of the Automobile Club

**Facts:**

On Oct. 1, 2012, at approximately 2:45 p.m., plaintiff Maryam Hedayati, 43, was traversing the crosswalk in the southwest part of the intersection of Moulton Parkway and Aliso Niguel, in Laguna Niguel, when she was struck by a vehicle operated by Maurice Vanwyk, who was traveling on southbound Moulton Parkway. As a result of the accident, Hedayati sustained a traumatic brain injury and ultimately underwent an above-the-knee amputation of her left leg.

Maryam Hedayati, by and through her guardian ad litem, Mohammad Hedayati, sued Vanwyk. Maryam Hedayati alleged that Vanwyk was negligent in the operation of his vehicle. Specifically, she claimed that Vanwyk ran a red light at the subject intersection.

Vanwyk admitted liability and to his negligence being the sole cause of Hedayati's injuries. Thus, the sole issue at trial was regarding the nature and extent of Maryam Hedayati's injuries and damages.

**Injury:**

Maryam Hedayati sustained a traumatic below-the-knee amputation of her left leg. She was subsequently taken by ambulance to an emergency room, where she was diagnosed with a traumatic brain injury and had to be placed in a medically-induced coma for a few weeks. Hedayati ultimately required surgical revision on the remaining portion of her left leg, resulting in an above-the-knee, transfemoral amputation. According to plaintiff's counsel, Hedayati started to come out of the coma throughout October and November of 2012, and was later transferred to multiple acute rehabilitation facilities, where Hedayati became further stabilized.

Hedayati claimed she was not mobilized as early as possible with regard to her prosthetic leg, causing her to seek multiple prosthetic limbs, with a frequency change of two to three years per prosthetic. With regard to attendant care, Hedayati sought basic attendant care and did not seek 24-7 attendant care from licensed vocational nurses or registered nurses. However, she claimed she still requires three different prosthetic legs: a primary prosthetic, an identical backup prosthetic, and a water leg.

With regards to her loss of earning capacity, Hedayati claimed she studied medicine in Mexico and was planning on taking the United States Medical License Examination upon coming to the United States. However, she did not have any earnings history to present at trial and she had a four-year gap between the accident date and when she stopped attending school in Mexico.

Thus, Hedayati sought recovery of future life care costs in the range of \$6,066,609 to \$8,586,735. The range was provided by Hedayati to give the jury options with regard to the type of prosthetic devices she would require in the future. She also presented a range of recovery for her future loss of earning capacity, seeking \$2,858,592 if she pursued a career as a family medicine doctor, \$3,326,505 if she pursued a career as a self-employed family medicine doctor, and \$6,978,319 if she pursued a career as a dermatologist. In closing arguments, plaintiff's counsel asked the jury to award Hedayati \$15 million in past pain and suffering and \$45 million in future pain and suffering.

Defense counsel contended that according to Hedayati's medical records, she was placed in the medically induced coma for a few weeks, but remained in a steady coma after being taken off the sedation medication. Counsel contended that Hedayati remained in a coma as she was transferred to multiple acute rehabilitation facilities and did not regain consciousness until January 2013, when she became alert, responsive, and began crying.

In regard to Hedayati's prosthetic needs, defense counsel argued that Hedayati should not be provided with a high-level prosthetic leg, which the defense's experts opined was for individuals with earlier mobilization and less problems. Counsel also argued that Hedayati would only require one prosthetic, a non-microprocessor hydraulic unit, at a time. Defense counsel further argued that the frequency of the prosthetic changes should be every four to five years.

In closing arguments, defense counsel asked the jury to award Hedayati \$2 million in future loss of earning capacity, \$3.8 million in future life care expenses, \$1 million in damages for past pain and suffering, and \$3 million in damages for future pain and suffering.

**Result:** The jury determined that Maryam Hedayati's damages totaled \$26,255,367.84.

**Maryam Hedayati**

\$1,255,368 Personal Injury: Past Medical Cost

\$3,000,000 Personal Injury: Past Pain And Suffering

\$12,000,000 Personal Injury: Future Pain And Suffering

\$7,000,000 Personal Injury: future life care costs

\$3,000,000 Personal Injury: future loss of earning capacity

**Trial Information:**

**Judge:** Thierry P. Colaw

**Demand:** \$17 million (C.C.P. § 998)

**Offer:** \$25,000 (policy limit)

**Trial Length:** 11 days

**Trial  
Deliberations:** 4.5 hours

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

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

**Writer** Dan Israeli

## Plaintiff: Distracted driver caused man's horrific injuries

**Type:** Verdict-Plaintiff

**Amount:** \$26,000,000

**State:** Florida

**Venue:** Manatee County

**Court:** Manatee County Circuit Court, 12th, FL

**Injury Type(s):**

- *other* - loss of services
- *amputation* - leg
- *urological* - renal failure
- *sensory/speech* - vision, partial loss of

**Case Type:**

- *Motor Vehicle* - Pedestrian

**Case Name:** Jerry Johnson and Sabrina Johnson, individually and as Natural Parents and Legal Guardians of Meredith Johnson and Chloe Johnson, minors v. Daniel Drakulich, Diane Drakulich and Jean Lucente, No. 2012-CA-003522

**Date:** December 16, 2014

**Plaintiff(s):**

- Chloe Johnson (Female)
- Jerry Johnson (Male)
- Sebrina Johnson (Female, 27 Years)
- Meredith Johnson (Female)

**Plaintiff Attorney(s):**

- John F. Romano; Romano Law Group; West Palm Beach Florida for Meredith Johnson, Jerry Johnson, Sebrina Johnson, Chloe Johnson
- R. Gene Odom; Martinez-Odom Law Group; for Meredith Johnson, Jerry Johnson, Sebrina Johnson, Chloe Johnson

**Plaintiff Expert  
(s):**

- Jody Abrams M.D.; Neuro-ophthalmology; Sarasota, FL called by: John F. Romano, R. Gene Odom
- John Merritt M.D.; Life Care Planning; Tampa, FL called by: John F. Romano, R. Gene Odom
- Brian Kimbral; Trauma; , called by: John F. Romano, R. Gene Odom
- Ellen Fernandez; Vocational Rehabilitation; Melbourne, FL called by: John F. Romano, R. Gene Odom
- Frank Fore P.E.; Accident Reconstruction; Jupiter, FL called by: John F. Romano, R. Gene Odom
- Melinda Lacerna; Plastic Surgery/Reconstructive Surgery; , called by: John F. Romano, R. Gene Odom

**Defendant(s):**

- Jean Lucente
- Diane Drakulich
- Daniel Drakulich

**Defense  
Attorney(s):**

- Todd B. Miller; Goodis Thompson & Miller, PA; Lakewood Ranch, Florida for Diane Drakulich, Jean Lucente
- Andrew J. Lewis; Haas Lewis DiFiore, P.A.; Tampa, Florida for Daniel Drakulich
- J. Emory Wood; Wood, Gross & Wood, P.A.; St. Petersburg, Florida for Daniel Drakulich
- Paul N. Gross; Wood, Gross & Wood, P.A.; St. Petersburg, Florida for Daniel Drakulich

**Defendant  
Expert(s):**

- Joyce Eastridge; Economics; Tampa, FL called by: for Andrew J. Lewis, J. Emory Wood, Paul N. Gross
- Brenda B. Mulder; Economics; Tampa, FL called by: for Andrew J. Lewis, J. Emory Wood, Paul N. Gross
- Richard Katz; Physical Rehabilitation; Jupiter, FL called by: for Andrew J. Lewis, J. Emory Wood, Paul N. Gross
- Geraldine Pennachio Ph.D.; Life Care Planning; Miami, FL called by: for Andrew J. Lewis, J. Emory Wood, Paul N. Gross

**Insurers:**

- Geico

**Facts:**

On the morning of December 13, 2011, plaintiff Jerry Johnson, 39, was the driver of a disabled Waste Management sanitation truck stopped in the northbound lane of 51st Street East in Bradenton, Florida. Johnson exited the vehicle to place hazard symbols around the truck's perimeter to alert other drivers. During this time, a vehicle traveling southbound on 51st Street East operated by Daniel R. Drakulich veered into the northbound lane of 51st Street. Although Drakulich attempted to regain control of the vehicle, he struck Johnson and crushed him into the front of the Waste Management vehicle.

Johnson and his wife, Sabrina Johnson, sued Drakulich for negligence. Although the vehicle's owners, Diane Drakulich and Jean Lucente, were initially named as defendants, they settled prior to trial.

Johnson alleged that driver Drakulich, who was 19 at the time of the accident, failed to pay attention to his surroundings and recklessly operated his vehicle outside the boundaries of the roadway. The defense conceded liability prior to trial, after three years of litigation.

During trial, the defense argued that Jerry Johnson sought an excessive award for future expenses and lost earnings. At trial, driver Drakulich testified that he had been on his way to work at the time of the accident and unfamiliar with the area. He stated that the accident was the result of a mistake. Driver Drakulich stated that his vehicle spun out after striking Jerry Johnson.

Jerry Johnson testified that he had no recollection of the accident from the moment of impact. He demonstrated for the jury the daily process of putting on his prosthetic legs. Sabrina Johnson testified that her husband's injuries have made their life difficult.



**Injury:**

The crash's crushing force amputated Johnson's legs upon impact. Johnson also sustained a pelvic fracture. He was transported from the accident site by ambulance to the trauma wing of Blake Medical Center in Bradenton, Fla. He required resuscitation and CPR during transport. Johnson's severe internal, pelvic and lower extremity crush injuries required immediate surgery. Due to massive blood loss, Johnson suffered cardiac arrest during surgery and required an emergency left thoracotomy. During the thoracotomy, Johnson's heart was manually massaged and compressed to resuscitate him. After the discovery and treatment of a Morel-Lavallee lesion, Johnson's excessive bleeding ceased. He required multiple blood transfusions, stump reconstruction and over 70 skin debridements. Johnson also suffered renal failure, respiratory failure and vision loss. He was hospitalized for a period of three months following the accident. Johnson spent additional time in a rehab facility.

Due to the collision, Johnson is permanently disabled. He sustained multiple, traumatic injuries, physical as well as mental pain and suffering, and significant economic losses. Johnson believes his capacity for the enjoyment of life has been irrevocably harmed by his injuries, and he requires ongoing in-home nursing care. Due to excessive blood loss, Johnson developed substantial loss of vision in both eyes.

Johnson sought reimbursement for past and future medical expenses; for past and future lost earnings; for past pain and suffering, and future pain and suffering; and for inconvenience and diminished capacity for the enjoyment of life. Derivatively, Jerry and Sabrina Johnson, on behalf of their children Meredith and Chloe Johnson, sought damages for loss of parental guidance and companionship. Sabrina Johnson, individually, sought loss of consortium damages. The sought damages totaled \$98,000,000.

Johnson's accident reconstruction expert Frank Fore testified that Drakulich's vehicle had been traveling approximately 49 miles per hour when the impact occurred. The plaintiff's neuro-ophthalmologist Dr. Abrams testified that his decreased vision was a result of extreme blood loss from the subject accident. Johnson's treating trauma surgeon testified as to the need for a manual massage of Johnson's heart. Johnson's plastic surgeon testified regarding how she reconstructed the ends of Johnson's legs, and the complications that arose during her care. The plaintiff's rehabilitation expert testified regarding the rehabilitation plan he developed based on an examination of Johnson and a review of his medical records. Johnson's life care expert testified as to the life care plan she developed for Johnson based on medical recommendations. Johnson's expert economist applied a value of \$6,300,000 to \$8,000,000 to the life care plan. Johnson's lifetime lost earning capacity was estimated at \$1,100,000.

The defense's rehabilitation expert found that Johnson required slightly less-regular care. In light of this, he calculated a life care plan that included less in-home nursing and potential surgery. The defense's expert economist calculated a life care plan for Johnson of less than \$4,000,000.

**Result:**

The jury awarded Jerry Johnson \$109,200 in past lost earnings, \$1,350,381 in future lost earnings, \$1,740,419 in past medical expenses, \$8,000,000 in future medical expenses, \$4,000,000 in past pain and suffering and \$5,400,000 in future pain and suffering. The jury also awarded Sabrina Johnson \$3,400,000 in lost consortium damages and Chloe and Meredith Johnson received \$1,000,000 each in loss of services damages. Therefore, the total award for the Johnson family was \$26,000,000.

**Chloe Johnson**

\$1,000,000 Personal Injury: Future Loss Of Services

**Jerry Johnson**

\$1,740,419 Personal Injury: Past Medical Cost

\$8,000,000 Personal Injury: Future Medical Cost

\$109,200 Personal Injury: Past Lost Earnings Capability

\$1,350,381 Personal Injury: FutureLostEarningsCapability

\$4,000,000 Personal Injury: Past Pain And Suffering

\$5,400,000 Personal Injury: Future Pain And Suffering

**Meredith Johnson**

\$1,000,000 Personal Injury: Future Loss Of Services

**Sebrina Johnson**

\$3,400,000 Personal Injury: Future Loss Of Consortium

**Trial Information:**

**Judge:** Peter A Dubensky

**Trial Length:** 6 days

**Trial Deliberations:** 4.5 hours

**Jury Composition:** Three female, three male

**Post Trial:** The defense moved for a new trial, which was denied. Their set off motion is currently pending.

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

**Writer**

Max Robinson

## Man's leg severed by cop allegedly going over 100 mph

**Type:** Verdict-Plaintiff

**Amount:** \$25,000,000

**State:** Connecticut

**Venue:** Fairfield County

**Court:** Fairfield Judicial District, Superior Court, Bridgeport, CT

**Injury Type(s):**

- *arm*
- *leg* - crush injury, leg
- *brain* - coma; traumatic brain injury
- *chest*
- *other* - laceration
- *pelvis* - fracture, pelvis
- *amputation* - leg
- *hand/finger* - hand
- *arterial/vascular* - internal bleeding
- *mental/psychological* - post-traumatic stress disorder

**Case Type:**

- *Government* - Police
- *Motor Vehicle* - Speeding; Pedestrian; Single Vehicle

**Case Name:** Melvin Gordils and Maria Gordils v. State of Connecticut, No. FBT-CV-10-6011845S

**Date:** March 12, 2013

**Plaintiff(s):**

- Melvin Gordils (Male, 45 Years)

**Plaintiff Attorney(s):**

- Michael A. Stratton; Stratton Faxon; New Haven CT for Melvin Gordils
- Joel T. Faxon; Stratton Faxon; New Haven CT for Melvin Gordils

**Plaintiff Expert  
(s):**

- Gary M. Crakes Ph.D.; Economics; Cheshire, CT called by: Michael A. Stratton, Joel T. Faxon
- Dante Brittis M.D.; Orthopedic Surgery; Fairfield, CT called by: Michael A. Stratton, Joel T. Faxon
- Peter Fearon; Police Practices & Procedures; Westport, CT called by: Michael A. Stratton, Joel T. Faxon
- Robert Novelty Ph.D.; Neuropsychology; Norwalk, CT called by: Michael A. Stratton, Joel T. Faxon
- Michael A. Cei; Accident Reconstruction; Wallingford, CT called by: Michael A. Stratton, Joel T. Faxon
- Lawrence S. Forman M.D.; Physical Rehabilitation; Miami, FL called by: Michael A. Stratton, Joel T. Faxon

**Defendant(s):**

- State of Connecticut

**Defense  
Attorney(s):**

- James E. Coyne; Coyne, von Kuhn, Brady & Fries, LLC; Stratford, CT for State of Connecticut
- Colleen D. Fries; Coyne, von Kuhn, Brady & Fries, LLC; Stratford, CT for State of Connecticut

**Defendant  
Expert(s):**

- Marc J. Bayer M.D.; Toxicology; Farmington, CT called by: for James E. Coyne, Colleen D. Fries
- Robert H. Powers Ph.D.; Toxicology; Meriden, CT called by: for James E. Coyne, Colleen D. Fries
- William Vliet P.E.; Accident Reconstruction; Manchester, CT called by: for James E. Coyne, Colleen D. Fries

**Insurers:**

- AIG
- Everest National Insurance Co.
- Self-insured

**Facts:**

On May 29, 2010, plaintiff Melvin Gordils, 45, a restaurant owner, was driving southbound on Connecticut Route 8, near Exit 2 in Bridgeport, when his car ran out of gas. Gordils became stranded on the side of the highway, and was attempting to cross the road when a police cruiser operated by state trooper Darren Pavlik traveling on southbound CT-8 struck him. Pavlik initially left the scene of the accident before returning to find Gordils lying in the breakdown (shoulder) lane. Gordils suffered an amputation to his right leg, as well as injuries to his left leg, brain, chest and upper extremities, and internal organs.

Gordils sued the State of Connecticut, alleging that as the employer of Pavlik, the state was liable for Pavlik's negligent, careless and reckless operation of his vehicle, which caused his injuries. Gordils' wife, Maria Gordils, was named in the original complaint, but did not file a cause of action, as the law does not waive sovereign immunity for the spouse.

The Gordilses claimed that Pavlik was driving at an unreasonable rate of speed, more than 100 mph without any lights or sirens, in violation of state police procedures. They further claimed that Pavlik failed to timely brake his vehicle and/or failed to swerve, in an attempt to avoid the collision.

The couple claimed that after accident Pavlik did not pull over and, instead, inexplicably left the scene, abandoning Gordils. The plaintiffs claimed that Pavlik drove around the streets of Bridgeport, so that his in-car camera would not save the video of the collision, thereby eliminating all video evidence of the accident. Gordils claimed that when Pavlik returned, instead of administering first aid, the trooper began interrogating him about the accident.

The plaintiffs also argued that after the accident was investigated by Pavlik's in-house supervisor, Sgt. John Jacobi, no discipline of any type was administered to Pavlik, despite his allegedly 100 mph reckless driving in a 40 mph zone.

The state claimed that Pavlik was roving and was permitted by statute to drive what he claimed was 60 to 70 mph in a 40 mph zone, in order to enforce traffic laws. The state also claimed that Gordils was intoxicated with a .26 BAC at the time of the accident, three times over the legal limit, and was using the highway recklessly as a pedestrian.

Gordils countered that the hospital-administered BAC test was unreliable, given the severity of his amputation and tissue injuries, which can alter and skew the reading. He further claimed that since the traffic on the highway was very light, it was reasonable for him to cross the road in the direction of his home, which was approximately three-quarters of a mile away.

**Injury:**

Gordils was taken by ambulance to the emergency room from the scene of the accident, in a trauma-induced coma. His right leg had been completely severed, above the knee, requiring approximately 25 surgical procedures for proper closure. Gordils also sustained severe crush injuries and nerve damage to his lower left leg. His physician declared him 100 percent whole person disabled.

Gordils also sustained a fractured left pelvis and injuries to his internal organs, resulting in significant internal bleeding to his arms. He also claimed a traumatic brain injury from the accident, as well as shock and stress throughout his entire nervous system. He further claimed that he has lost grip strength in both hands.

Gordils claimed that he has lost his ability to work and enjoy life as a result of the accident and his injuries. He claimed that he used to be an avid athlete, playing baseball and other sports, and was also active with his five children. He claimed \$1.2 million in past medical costs (total state lien), and further asked the jury for in excess of \$5 million for future medical costs, including full-time attendant care. Gordils further sought between \$750,000 and \$2.1 million in lost earnings and earning capacity, as well as damages for his pain and suffering.

**Result:**

The jury found Pavlik 65 percent at fault for the accident and Gordils 35 percent at fault. It determined that the plaintiffs' damages totaled \$25 million, which was reduced by 35 percent, to \$16.25 million, due to the comparative negligence finding. The verdict was the highest ever delivered against the State of Connecticut and the highest in the history of the Bridgeport Judicial District.

**Melvin Gordils**

\$1,200,000 Personal Injury: Past Medical Cost

\$5,500,000 Personal Injury: Future Medical Cost

\$1,300,000 Personal Injury: loss of earning capacity

\$17,000,000 Personal Injury: pain and suffering

**Trial Information:**

**Judge:** Dale Radcliffe

**Demand:** None

**Offer:** \$1,000,000 (pre-lien)

**Trial Length:** 5 days

**Trial  
Deliberations:** 2 days

**Jury Vote:** 6-0

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

**Post Trial:** On Oct. 9, 2013, the parties settled for \$9.8 million, according to the Connecticut Post

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

**Writer** Dan Israeli



## Motorcyclist severely injured in crash with tractor-trailer

**Type:** Verdict-Plaintiff

**Amount:** \$25,000,000

**Actual Award:** \$23,750,000

**State:** Pennsylvania

**Venue:** Federal

**Court:** U.S. District Court, Eastern District of Pennsylvania, Allentown, PA

**Injury Type(s):**

- *hip* - fracture, hip
- *leg* - scar and/or disfigurement, leg
- *ankle* - fracture, ankle
- *other* - infection; prosthesis; catheterization; physical therapy
- *pelvis* - crush injury, pelvis
- *epidermis* - bedsore/decubitus ulcer/pressure sore
- *foot/heel* - foot; fracture, heel/calcaneus; fracture, calcaneus/heel
- *amputation* - leg; leg (below the knee)
- *urological* - penis; rectum; sexual dysfunction
- *surgeries/treatment* - colostomy

**Case Type:**

- *Motor Vehicle* - Motorcycle; Intersection; Tractor-Trailer; Multiple Vehicle

**Case Name:** Travis S. Sweigart v. Voyager Trucking Corp., Kevin J. Patten, Blue & Green Trucking & Hair, LLC and Kevin J. Patten d/b/a Blue & Green Trucking & Hair, LLC, No. 5:21-cv-00922-EGS

**Date:** November 04, 2022

**Plaintiff(s):**

- Travis S. Sweigart, (Male, 0 Years)

**Plaintiff  
Attorney(s):**

- Charles P. Hehmeyer; Berman & Simmons; Lewiston ME for Travis S. Sweigart
- Daniel Bencivenga; Raynes & Lawn; Philadelphia PA for Travis S. Sweigart
- Mark J. LeWinter; Raynes & Lawn; Philadelphia PA for Travis S. Sweigart
- Martina Walsh McLaughlin; Raynes & Lawn; Philadelphia PA for Travis S. Sweigart

**Plaintiff Expert  
(s):**

- Guy W. Fried M.D.; Physical Medicine; Philadelphia, PA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Jon Paul Dillard; Trucking Industry; Birmingham, AL called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Dale Berry C.P.; Prosthetics; Las Vegas, NV called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Calum McRae Ph.D.; Biomechanical; Penns Park, PA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- David L Strayer Ph.D.; Traffic Accident Analysis; Salt Lake City, UT called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Randy Nelson; Motorcycles; Huntington Beach, CA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Filip Moshkovsky M.D.; General Surgery; Reading, PA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Joellen Gill; Ergonomics/Human Factors; Spokane, WA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Stanley B. Andrews M.S.; Accident Reconstruction; Fayetteville, AR called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin
- Valerie V. Parisi RN; Life Care Planning; Doylestown, PA called by: Charles P. Hehmeyer, Daniel Bencivenga, Mark J. LeWinter, Martina Walsh McLaughlin

**Defendant(s):**

- Kevin J. Patten
- Voyager Trucking Corp.
- Blue & Green Trucking & Hair, LLC

**Defense  
Attorney(s):**

- Thomas J. Wagner; Law Offices of Thomas J. Wagner, LLC; Philadelphia, PA for Voyager Trucking Corp., Kevin J. Patten, Blue & Green Trucking & Hair, LLC
- Amy L. Wynkoop; Law Offices of Thomas J. Wagner, LLC; Philadelphia, PA for Voyager Trucking Corp., Kevin J. Patten, Blue & Green Trucking & Hair, LLC

**Defendant  
Expert(s):**

- L. Matthew Schwartz M.D.; Physical Medicine; Wyndmoor, PA called by: for Thomas J. Wagner, Amy L. Wynkoop
- Kirk O. Cummings; Trucking Industry; Farmington, MI called by: for Thomas J. Wagner, Amy L. Wynkoop
- Todd D. Hoover; Accident Reconstruction; Houston, TX called by: for Thomas J. Wagner, Amy L. Wynkoop
- David G. Curry Ph.D.; Ergonomics/Human Factors; Montgomery, IL called by: for Thomas J. Wagner, Amy L. Wynkoop
- Jeffrey W. Muttart; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Uncasville, CT called by: for Thomas J. Wagner, Amy L. Wynkoop

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**Facts:**

On Sept. 9, 2019, plaintiff Travis Sweigart, a foreman of a roofing company, was driving his motorcycle on Route 10 in Morgantown. Sweigart's motorcycle struck the fourth axle tire of a tractor-trailer driven by Kevin Patten, who was turning onto Route 10 from Interstate 176. Sweigart suffered fractures to his pelvis and foot, resulting in a below-the-knee amputation.

Sweigart sued Patten and Voyager Trucking Corp., which hired Patten as an independent contractor, and a related entity, Blue & Green Trucking & Hair LLC. Sweigart alleged that Patten was negligent in the operation of a vehicle, and that Voyager was vicariously liable for Patten's conduct under the Federal Motor Carrier Regulations.

Sweigart's counsel argued that Patten was solely liable for causing the accident by turning onto Route 10 when it was not safe to do so, and for failing to yield to Sweigart, who had the right of way.

Sweigart's expert in accident reconstruction testified that the defense's reconstruction of the accident was not properly calculated and Patten's testimony did not match up with data recorded by the truck's electronic logging system.

Sweigart's expert in human factors testified that Patten was distracted with a phone call and failed to use proper stopping precautions before Patten turned the truck into Sweigart's path.

According to Sweigart's motorcycle expert, Sweigart was driving in accordance with the speed limit and could not have taken any evasive measures to avoid the crash, since Patten had suddenly turned in front of him.

The defense maintained that Sweigart was comparatively negligent. Patten testified that, before turning onto Route 10 from Interstate 176, he saw the headlight of Sweigart's motorcycle at a bridge about three football fields away. Patten said that he had almost completed his turn when Sweigart crashed into the tractor-trailer.

The defense's expert in accident reconstruction testified that Sweigart sped toward Patten's moving tractor-trailer and watched 65 feet of the 70-foot tractor-trailer move in front of him for 11.6 seconds before he struck it. According to the expert, Patten's tractor-trailer was present at the road edge and visible for at least three seconds before initiating the 11.6-second turn, which meant that Patten's tractor-trailer was visible and present for more than 15 seconds before impact and before Sweigart crossed the bridge to approach the intersection.

The expert opined that Sweigart caused the accident by losing control and striking the side of a vehicle that he had been looking at for 15 or so seconds while speeding toward it. The expert stated that, had Sweigart been honoring the posted speed limit, Patten's trailer

would have cleared the lane before Sweigart drove into it. Moreover, per the expert, Sweigart could have easily avoided the collision had he approached the intersection with caution, maintained an assured clear distance, slowed, or moved from the left side of the lane to the right side of the lane to go around the rear of the trailer.

**Injury:**

The impact caused Sweigart's motorcycle's rear fender and subframe to fold over and crush his pelvis. Sweigart was taken by ambulance to a hospital and admitted.

In addition to the crush injury to the pelvis, Sweigart was diagnosed with a crushed right ankle, a severe left calcaneus fracture and a fractured right hip. It was further determined that Sweigart's rectum and anus completely ripped off the surrounding soft-tissue attachments up into the pelvis, which necessitated an abdominoperineal resection and permanent colostomy. Also, Sweigart's internal shaft of the penis completely separated from the normal anatomy, which resulted in a permanent urinary catheter and permanent sexual dysfunction. The disrupted blood flow from the crush injury to Sweigart's right ankle required amputation of his leg below the knee.

After several weeks hospitalized, Sweigart was transferred to a rehabilitation facility where he treated on an inpatient basis for over a month. During that time, his right leg was fitted with a prosthesis. Following his discharge, Sweigart continued to treat with outpatient physical therapy and be monitored by an orthopedic surgeon, a urologist and a gastroenterologist.

Sweigart's expert in physical medicine detailed the extent of the plaintiff's injuries, which are permanent in nature. According to the expert, Sweigart requires lifelong treatment that consists of additional prosthetics, physical therapy, pain medication, imaging studies and medical monitoring by specialists.

Sweigart testified that his life is no longer the same as it was prior to the accident. He recounted how he suffers from daily pain and is no longer physically active. He sought to recover \$7,504,868.28 in future medical costs, plus damages for past and future pain and suffering.

The defense's expert in physical medicine testified that Sweigart was able to make a good recovery, given the severity of injuries, and that he would not need as much future treatment as he alleged.

**Result:**

The jury attributed 95 percent liability to Patten and five percent liability to Sweigart. The jury determined that Sweigart's damages totaled \$25 million, which was reduced to \$23.75 million to reflect Sweigart's comparative negligence.

Travis Sweigart

**Trial Information:**

**Judge:** Edward G. Smith

**Trial Length:** 10 days

**Trial  
Deliberations:** 0

**Post Trial:** The plaintiff's counsel motioned for prejudgment interest in the amount of \$750,000.

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

**Writer** Aaron Jenkins

## Motorcyclist claimed crash resulted in leg amputation

**Type:** Decision-Plaintiff

**Amount:** \$23,720,996

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *ankle* - fracture, ankle; dislocation
- *foot/heel* - fracture, foot; fracture, talus; Lisfranc injury; crush injury, foot
- *amputation* - leg; leg (below the knee)

**Case Type:**

- *Motor Vehicle* - Truck; Broadside; Left Turn; Motorcycle; Intersection; Multiple Vehicle

**Case Name:** Steeve O. Rojas, an individual, and Sandra E. Acevedo, an individual v. Hajoca Corporation, a Maine corporation; Kevin Anthony Henderson, an individual; and Does 1 to 50, inclusive, No. BC689703

**Date:** February 10, 2021

**Plaintiff(s):**

- Sandra Acevedo, (Female, 38 Years)
- Steeve O. Rojas, (Male, 40 Years)

**Plaintiff Attorney(s):**

- Brian J. Panish; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- Thomas A. Schultz; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- Matthew J. Stumpf; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- John W. Shaller; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- James M. Trotter; Panish Shea & Boyle LLP; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo
- P. Ryan Banafshe; Banafshe Law Firm PC; Los Angeles CA for Steeve O. Rojas,, Sandra Acevedo

**Plaintiff Expert  
(s):**

- P. Richard Emmanuel M.D.; Orthopedic Surgery; Culver City, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Jan Roughan R.N., C.R.R.N.; Life Care Planning; Pasadena, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- John R. Brault M.S.; Biomechanical; Mission Viejo, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Rick A. Sarkisian Ph.D.; Vocational Rehabilitation; Fresno, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Kevin Calvo C.P.O.; Prosthetics; San Diego, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Peter Formuzis Ph.D.; Economics; Santa Ana, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Edward C. Fatzinger, Jr. M.S., P.E.; Accident Reconstruction; Torrance, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Dr. Lester M. Zackler M.D.; Psychiatry; Sherman Oaks, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Nathan Rose M.S.; Ergonomics/Human Factors; Greenwood Village, CO called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe
- Lawrence S. Miller M.D.; Physical Medicine; Santa Monica, CA called by: Brian J. Panish, Thomas A. Schultz, Matthew J. Stumpf, John W. Shaller, James M. Trotter, P. Ryan Banafshe

**Defendant(s):**

- Hajoca Corporation
- Kevin Anthony Henderson

**Defense  
Attorney(s):**

- Kara A. Pape; Tyson & Mendes LLP; Los Angeles, CA for Kevin Anthony Henderson, Hajoca Corporation
- Paul D. Motz; Segal McCambridge Singer & Mahoney, Ltd.; Chicago, IL for Kevin Anthony Henderson, Hajoca Corporation
- Mark A. Johnson; Tyson & Mendes LLP; Los Angeles, CA for Kevin Anthony Henderson, Hajoca Corporation

**Defendant  
Expert(s):**

- Amy M. Sutton Ph.D.; Life Care Planning; Long Beach, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Beau LeBlanc; Accident Reconstruction; Torrance, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Rick Riley C.P., F.A.A.O.P.; Prosthetics; Washoe Valley, NV called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Jennie McNulty C.P.A., M.B.A.; Economics; Los Angeles, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Steven Molina Ph.D.; Vocational Rehabilitation; Santa Ana, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Thomas L. Hedge, Jr. M.D.; Physical Medicine; Northridge, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Kenneth S. Jung M.D.; Foot & Ankle; Los Angeles, CA called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson
- Stephen Garets; Motorcycles; Corvallis, OR called by: for Kara A. Pape, Paul D. Motz, Mark A. Johnson

**Insurers:**

- Hartford Insurance Group
- Everest National Insurance Co.



**Facts:**

On Dec. 5, 2017, plaintiff Steeve Rojas, 40, a houseman at the Peninsula Hotel, was motorcycling on southbound Coldwater Canyon, in Los Angeles. As he proceeded through the uncontrolled T-intersection with Valleyheart Drive, his motorcycle was struck by a 28-foot utility truck operated by Kevin Henderson, who was making a left turn from Valleyheart Drive onto northbound Coldwater Canyon. Rojas was ultimately forced to lay his bike down on the pavement. He claimed he sustained injuries to his right, lower leg and right foot.

Rojas sued Henderson and Henderson's employer, Hajoca Corp., which owned Henderson's truck. Rojas alleged that Henderson was negligent in the operation of his vehicle and that Hajoca Corp. was vicariously liable for Henderson's actions while in the course and scope of his employment.

Rojas' counsel argued that Henderson was the sole cause of the collision by negligently turning left in front of Rojas, in violation of Rojas' right of way. Counsel contended that as a result, Henderson broadsided Rojas with his company truck. Counsel also contended that Rojas was initially able to maintain control of his motorcycle, but that Rojas became overwhelmed with severe pain and was forced to lay his bike down on the pavement. Thus, Rojas' counsel argued that Rojas was not negligent and that there was no action Rojas could have reasonably undertaken that would have made the collision avoidable.

Defense counsel noted that, prior to the collision, Henderson was at a complete stop on Valleyheart Drive, waiting for southbound traffic to clear so that he could make the left turn onto northbound Coldwater Canyon. Counsel admitted that Henderson was negligent, but argued that Rojas bore 50 percent fault for driving too fast for the traffic conditions and for failing to keep a proper lookout as he approached the intersection. Defense counsel further argued that the collision could have been avoided had Rojas taken appropriate measures.

**Injury:**

Rojas sustained a crush injury to his lower, right foot, resulting in multiple fractures, including open fracture dislocations of the talus and a metatarsal, an open Chopart's fracture dislocation and an open Lisfranc fracture dislocation. He was rushed by ambulance to Cedars-Sinai Medical Center, in Los Angeles, and underwent numerous surgeries in an effort to save his right, lower limb. Eight days after the crash, after being transferred to Huntington Hospital, in Pasadena, Rojas underwent a below-the-knee amputation of his right leg.

Rojas claimed that because of his injuries, he is unemployable and requires a lifetime of future medical and psychiatric treatment.

Rojas sought recovery of past and future medical costs, and damages for his past and future pain and suffering. His wife, Sandra Acevedo, a housekeeper, became a homemaker for the couple's four children after the accident. Thus, she sought recovery for her loss of consortium.

Defense counsel disputed the severity of Rojas' residual injuries and the alleged cost of future medical care. Counsel also disputed Rojas' loss-of-earnings claim, and contended that Rojas was able to work.

**Result:**

Judge J. Stephen Czuleger found in favor of Rojas and his wife. He determined that the plaintiffs' damages totaled \$23,720,996, which included \$22,520,996 for Rojas and \$1.2 million for Acevedo.

In reading his decision on the \$18 million pain-and-suffering award to Rojas, Czuleger stated that he found that Rojas "...suffered a traumatic injury which was compounded by multiple surgeries, including a revision and an amputation. Soldiering through this was painful, long, and difficult. There was trauma not only to [Rojas'] body but to his mental state as well, a situation that continues to this very day and is compensable. The court will not split the baby as between the two requests...but rather will award an amount appropriate based upon the evidence."

**Trial Information:**

**Judge:** J. Stephen Czuleger

**Demand:** \$14.5 million (C.C.P. § 998) from Rojas; \$500,000 (C.C.P. § 998) from Acevedo

**Offer:** \$4.75 million (C.C.P. § 998) to Rojas; \$250,000 (C.C.P. § 998) to Acevedo

**Trial Length:** 0

**Trial  
Deliberations:** 0

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

**Writer** Priya Idiculla

## Plaintiff: Tractor-trailer's unsafe lane entering caused crash

**Type:** Verdict-Plaintiff

**Amount:** \$23,700,000

**State:** Virginia

**Venue:** Richmond City

**Court:** Richmond City, Circuit Court, VA

**Injury Type(s):**

- *leg* - fracture, leg; fracture, femur
- *head* - headaches; cephalalgia
- *brain* - traumatic brain injury; diffuse axonal brain injury
- *other* - groin; infection; neuropathy; phantom pain; compartment syndrome
- *pelvis* - crush injury, pelvis
- *shoulder* - shoulder impingement; rotator cuff, injury (non-tear)
- *foot/heel* - foot; hallux valgus
- *amputation* - leg; leg (above the knee)
- *urological* - incontinence; sexual dysfunction; impotence; sexual dysfunction; erectile dysfunction
- *neurological* - nerve damage/neuropathy; nerve damage, sciatic nerve; nerve damage/neuropathy; nerve damage, peroneal nerve; reflex sympathetic dystrophy; complex regional pain syndrome
- *arterial/vascular* - internal bleeding
- *surgeries/treatment* - skin graft; debridement
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment; post-concussion syndrome; concentration, impairment; attention deficit disorder; post-traumatic stress disorder
- *pulmonary/respiratory* - respiratory distress

**Case Type:**

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

**Case Name:** Ricky Jones, Cross-Claim Plaintiff v. Moen Incorporated, Cross-Claim Defendant, No. CL08-5037

**Date:** February 28, 2011

- Plaintiff(s):**
- Ricky Jones (Male, 39 Years)
- Plaintiff Attorney(s):**
- Douglas A. Barry; Allen Allen Allen & Allen; Richmond VA for Ricky Jones
  - P. Christopher Guedri; Allen Allen Allen & Allen; Richmond VA for Ricky Jones
- Plaintiff Expert(s):**
- Rao Ivatury M.D.; Surgery; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Ajai K. Malhotra M.D.; Surgery; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Mary Wells Ph.D.; Psychology/Counseling; Mechanicsville, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Paul Spector D.O.; Chronic Pain; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - James McGowan M.D.; Physical Medicine; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Susan Riddick-Grisham; Life Care Planning; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Elwood Boone M.D.; Urology; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Robert Cook Ph.D.; Economics; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Robert Adelaar M.D.; Orthopedic Surgery; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Douglas Gibson Ph.D.; Neuropsychology; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Gregory Domson M.D.; Orthopedic Surgery; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Gregory O'Shanick M.D.; Brain Injury/Trauma; North Chesterfield, VA called by: Douglas A. Barry, P. Christopher Guedri
  - Stephen Long M.D.; Chronic Pain; Richmond, VA called by: Douglas A. Barry, P. Christopher Guedri
- Defendant(s):**
- Moen Incorporated
- Defense Attorney(s):**
- D. Cameron Beck Jr.; Morris & Morris; Richmond, VA for Moen Incorporated
  - James W. Morris III; Morris & Morris; Richmond, VA for Moen Incorporated
  - H. Robert Yates III; LeClairRyan, P.C.; Charlottesville, VA for Moen Incorporated
- Insurers:**
- Ace Insurance Group

**Facts:**

On April 11, 2007, at 6 a.m., plaintiff Ricky Jones, 39, a truck driver, was driving a tractor-trailer north on Interstate 295 in Richmond when he struck the rear-end of a Moen Inc. tractor-trailer. Moen, a wholly owned subsidiary of Fortune Brands Inc., is a manufacturer of kitchen and bathroom faucets and fixtures.

Jones was originally a defendant in a suit brought by another party who was in a subsequent accident after the collision between Jones and the Moen tractor-trailer. Jones subsequently made a cross-claim against Moen and several other defendants.

The claims of the plaintiff in the original suit were no longer pending and the other defendants were no longer in the case. Thus, only Jones' claims against Moen proceeded to trial.

Jones' counsel contended that evidence developed in discovery established that Moen's driver had stopped upon the interstate's emergency shoulder approximately nine minutes prior to the accident. After accelerating to 25 miles-per-hour, the Moen driver merged from the shoulder into the right travel lane of the interstate and into the path of Jones.

Jones asserted that Moen and its driver were negligent for stopping on the emergency shoulder in violation of the controlling federal regulations. He also asserted that Moen's driver was negligent for pulling from the shoulder into the left travel lane of the interstate at 25 mph and for failing to yield the right of way to Jones, who was lawfully traveling in the lane into which the Moen driver was attempting to merge.

Jones' counsel argued that the actions of the Moen driver left Jones, who had no memory of the accident, with no reasonable opportunity to avoid the collision and that Jones had acted with all due care under the circumstances.

Jones' counsel also stated that the evidence at trial was conflicting as to whether Moen's driver activated its left turn signal prior to its merge from the shoulder into the right lane of travel.

Moen admitted its driver was negligent, but argued that Jones was contributorily negligent. Moen's counsel argued that Jones should have seen the Moen tractor-trailer merging into his lane and should have slowed, changed lanes or taken other evasive action.

**Injury:**

Following a two-hour extraction from his vehicle, Jones was sent by helicopter to the Medical College of Virginia, a level-one trauma center.

Jones sustained a traumatic brain injury of the diffuse axonal type, a spinal cord injury, chest and abdominal injuries that resulted in acute respiratory failure, and cephalalgia to the left temporoparietal region of his brain. He also suffered internal bleeding, which required exploratory abdominal surgery.

Jones also sustained multiple injuries to his right leg, which resulted in an above-the-knee amputation. He sustained an open fracture of his right femur and a crush injury to his pelvis with open right sacroiliac joint. He sustained multiple lower left extremity injuries that resulted in a compartment syndrome and a massive loss of tissue to his lower left leg. This required multiple surgeries and skin grafts.

Jones sustained an injury to his groin and urinary tract resulting in periods of incontinence, impotence and erectile dysfunction.

Jones sustained an injury to the peroneal nerve, tibial nerve and sciatic nerve with all resulting in neuropathy. He also had entrapment of the left peroneal nerve.

In addition, Jones sustained a left shoulder rotator cuff injury with impingement syndrome, and injuries to his hands and wrist, which resulted in bilateral carpal tunnel surgery. He suffered multiple infections requiring multiple surgical procedures, many of which pertained to wound care, debridement and skin grafts. He also suffered from complex regional pain syndrome (CPRS), also known as reflex sympathetic dystrophy (RSD), of the left lower extremity requiring a lumbar sympathetic block.

At the time of trial, Jones had undergone 26 separate operative procedures.

Jones claimed that he suffers from post-concussive syndrome resulting in cognitive deficits, which included severe impairment of his memory, attention, concentration, immediate and delayed recall, language, visuospatial/constructional abilities, visual scanning, sequencing, motor speed and his ability to process information. He also claimed a significant decline in his overall intellectual functioning. Jones further claimed that he is left with chronic back, pelvic and left lower extremity pain, as well as chronic phantom limb pain, and chronic neurogenic and neuropathic pain. In addition, he claimed he has a left foot drop and hallux valgus deformity of the left foot with lateral hallux drift. He also claimed he has a deformed second toe of his left foot and a deformed fifth metatarsal and bunionette.

Jones alleged that he suffers from severe depression, an anxiety disorder, panic disorder, post-traumatic stress disorder, neurolinguistic changes and attention deficit disorder. He claimed that as result, his personality has changed.

Jones claimed that he will need further treatment to address his ongoing physical and psychological problems.

Plaintiff's counsel asked the jury to award Jones \$1,128,562 in past medical expenses, \$6 million to \$10 million in future medical and related expenses, \$254,323 in past lost wages, and \$1,541,618 in future lost wages until the projected age of 65.

**Result:** The jury found for Jones and awarded him \$23 million plus interest on the \$3 million amount, which plaintiff's counsel stated totaled \$700,000. Thus, the plaintiff's total award would be \$23.7 million.

**Ricky Jones**

\$23,000,000 Personal Injury: damages

\$700,000 Personal Injury: interest

**Trial Information:**

**Judge:** Melvin Hughes

**Post Trial:** Defense counsel's post-trial motions were overruled. According to plaintiff's counsel, judgment was entered for the plaintiff in accordance with the jury verdict. An appeal to the Virginia Supreme Court has been noted by Moen Inc.

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

**Writer** Jaclyn Stewart



## Lawsuit: Driver failed to see man behind disabled vehicle

**Type:** Settlement

**Amount:** \$23,000,000

**State:** California

**Venue:** Los Angeles County

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

**Injury Type(s):**

- *leg*
- *amputation* - leg; leg (above the knee)

**Case Type:**

- *Motor Vehicle* - Speeding; Pedestrian
- *Products Liability* - Design Defect

**Case Name:** Gabriel Simon Abikzer and Maria Angela Abikzer v. City of Los Angeles, AG Daimler, Jeffrey Eric Joel, Mercedes-Benz USA LLC and Does 1-100, No. BC706830

**Date:** September 23, 2020

**Plaintiff(s):**

- Maria Angela Abikzer (Female, 0 Years)
- Gabriel Simon Abikzer (Male, 46 Years)
- Maria Angela Abikzer, (Female, 0 Years)

**Plaintiff Attorney(s):**

- Thomas V. Girardi; Girardi & Keese; Los Angeles CA for Gabriel Simon Abikzer, Maria Angela Abikzer
- Keith D. Griffin; Girardi & Keese; Los Angeles CA for Gabriel Simon Abikzer, Maria Angela Abikzer

**Defendant(s):**

- AG Daimler
- Jeffrey Eric Joel
- City of Los Angeles
- Mercedes-Benz USA LLC

**Defense Attorney(s):**

- Dikran H. Sassounian; Office of the City Attorney; Los Angeles, CA for Jeffrey Eric Joel, City of Los Angeles
- None reported; Los Angeles, CA for Mercedes-Benz USA LLC, AG Daimler

**Facts:**

On Oct. 23, 2017, plaintiff Gabriel Abikzer, 46, an executive chef, was driving his 2015 Mercedes-Benz S550 on Mason Avenue, in Los Angeles. The vehicle was equipped with ECO Start/Stop technology, which allegedly allows fuel savings and reduced emissions by reducing the idling of the engine without altering the driver's operation. When Abikzer was south of Corbin Avenue, he suffered some engine trouble and was unable to restart his car. As a result, he got out of his vehicle while it was on Mason Avenue. While Abikzer was near the back of his disabled vehicle, attempting to remove items from the trunk, he was struck by a truck operated by Jeffrey Joel, a Los Angeles city building inspector. Abikzer sustained injuries to his legs.

Abikzer sued the manufacturer of his vehicle, Mercedes-Benz USA LLC; Mercedes-Benz's parent company, AG Daimler; the driver of vehicle that struck him Jeffrey Joel; and Joel's employer, the city of Los Angeles. Abikzer alleged that Joel was negligent in the operation of his vehicle and that the city was vicariously liable for Joel's actions while in the course and scope of his employment. Abikzer also alleged Mercedes-Benz and AG Daimler defectively designed and/or manufactured his vehicle, causing it to stop of the roadway.

Plaintiff's counsel initially contended that Abikzer's vehicle contained a defective software program that led to the engine's failure. However, after further investigation and testing, it was revealed that the alleged software issue was likely unrelated to the engine failure. As a result, AG Daimler and Mercedes-Benz settled out of the case for an undisclosed amount.

Plaintiff's counsel asserted that Joel was inattentive and driving too fast for the road conditions and that as a result, Joel caused the collision.

Joel claimed that he was not speeding and that he did not see an individual behind the disabled vehicle prior to the impact.

**Injury:**

One of Abikzer's legs was traumatically amputated above-the-knee at the scene due to the force of the accident. Abikzer was taken to a hospital, where his other leg was later surgically amputated above-the-knee, as it could not be saved.

Abikzer has been unable to work since the accident, but he claimed that he holds out hope that he will cook professionally in the future.

Abikzer sought recovery of past and future medical costs, past and future earnings, and damages for his past and future pain and suffering. His wife, Maria Abikzer, presented a derivative claim seek recovery for her loss of consortium.

**Result:** The city, on behalf of itself and Joel, agreed to pay the Abikzers \$23 million to settle the claim prior to trial.

**Trial Information:**

**Judge:** Melvin D. Sandvig

**Trial Length:** 0

**Trial  
Deliberations:** 0

**Editor's  
Comment:** This report is based on information that was provided by plaintiffs' counsel, and defense counsel for the city of Los Angeles and Jeffrey Eric Joel. Counsel for Mercedes-Benz USA LLC and AG Daimler did not respond to the reporter's phone calls.

**Writer** Priya Idiculla

## Failure to repair center median caused amputation: motorcyclist

**Type:** Verdict-Plaintiff

**Amount:** \$22,618,041

**Actual Award:** \$18,094,433

**State:** California

**Venue:** Ventura County

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

**Injury Type(s):**

- *amputation* - leg; leg (below the knee)
- *surgeries/treatment* - debridement
- *mental/psychological* - post-traumatic stress disorder

**Case Type:**

- *Motor Vehicle* - Motorcycle
- *Government* - Municipalities; State and Local Government
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance

**Case Name:** Jared McCoy v. California Department of Transportation, Alcorn Fence Co., Harris & Associates Inc. and Magnum Pacific Corp., No. 56-2014-00461883-CU-PO-VTA

**Date:** July 26, 2016

**Plaintiff(s):**

- Jared McCoy (Male, 23 Years)

**Plaintiff Attorney(s):**

- John H. Howard; Lowthorp Richards McMillan Miller & Templeman; Oxnard CA for Jared McCoy
- Brett C. Templeman; Lowthorp Richards McMillan Miller & Templeman; Oxnard CA for Jared McCoy

**Plaintiff Expert  
(s):**

- Anne Barnes R.N.; Life Care Planning; Glendale, CA called by: John H. Howard, Brett C. Templeman
- Dale Ten Broeck; Highway/Street Maintenance; Rogue River, OR called by: John H. Howard, Brett C. Templeman
- Eric F. Shepherd M.D.; Orthopedic Surgery; Santa Barbara, CA called by: John H. Howard, Brett C. Templeman
- John C. Meyers M.A., C.R.C.; Vocational Rehabilitation; Ventura, CA called by: John H. Howard, Brett C. Templeman
- Paul R. Abramson Ph.D.; Psychology/Counseling; Santa Barbara, CA called by: John H. Howard, Brett C. Templeman
- David R. Patterson M.D.; Physical Rehabilitation; Claremont, CA called by: John H. Howard, Brett C. Templeman
- Emily S. Benson M.D.; Orthopedic Surgery; Ventura, CA called by: John H. Howard, Brett C. Templeman
- Lance Clawson C.P.O.; Prosthetics; Pomona, CA called by: John H. Howard, Brett C. Templeman
- Voyko Banjac Ph.D.; Accident Reconstruction; San Diego, CA called by: John H. Howard, Brett C. Templeman
- Darryl R. Zengler M.A.; Economics; Pasadena, CA called by: John H. Howard, Brett C. Templeman
- Edward D. Ruzak P.E.; Traffic; Fountain Valley, CA called by: John H. Howard, Brett C. Templeman
- Kenneth L. Pearl B.S.M.E.; Tires; Woodland Hills, CA called by: John H. Howard, Brett C. Templeman

**Defendant(s):**

- Alcorn Fence Co.
- State of California
- Magnum Pacific Corp.
- Harris & Associates Inc.
- California Department of Transportation

**Defense  
Attorney(s):**

- Timothy Q. Day; California Department of Transportation, Legal Division; Los Angeles, CA for California Department of Transportation, State of California
- Matthew Laufer; California Department of Transportation, Legal Division; Los Angeles, CA for California Department of Transportation, State of California
- None reported for Alcorn Fence Co., Harris & Associates Inc., Magnum Pacific Corp.

**Defendant  
Expert(s):**

- Ted Vavoulis M.S; Economics; Los Angeles, CA called by: for Timothy Q. Day, Matthew Laufer
- Gene Bruno M.S.; Life Care Planning; Encino, CA called by: for Timothy Q. Day, Matthew Laufer
- Rick Ryan; Traffic; Vancouver, WA called by: for Timothy Q. Day, Matthew Laufer
- Rick A. Chavez C.P.O.; Prosthetics; Northridge, CA called by: for Timothy Q. Day, Matthew Laufer
- Keith P. McKibben; Motorcycles; Santa Ana, CA called by: for Timothy Q. Day, Matthew Laufer
- Joseph L. Grant; Tires; Matthews, NC called by: for Timothy Q. Day, Matthew Laufer
- Nathan Rose; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Greenwood Village, CO called by: for Timothy Q. Day, Matthew Laufer
- Thomas L. Hedge Jr.; Physical Rehabilitation; Northridge, CA called by: for Timothy Q. Day, Matthew Laufer

**Insurers:**

- self-insured

**Facts:**

On July 26, 2014, plaintiff Jared McCoy, 23, a truck driver and mechanical assistant, was riding a Harley Davidson sport motorcycle on northbound U.S. Route 101, also known as East Thompson Boulevard, approximately one-half mile south of South Seaward Avenue, in Ventura, when his motorcycle became unresponsive. Unable to control the direction of the motorcycle, McCoy applied the brakes and slowed his speed from approximately 65 or 70 mph to 48 mph. However, he approached a 90-degree curve in the highway. As a result, McCoy's motorbike continued in a straight direction, toward the highway's center median, which was partly made of concrete and partly made of metal. (The materials that made up the guardrail were connected by a metal flange/terminal connector.)

In the process of slowing the motorbike, McCoy's left leg dangled off the side, causing it to drag along a metal strip that protruded from the center divider. McCoy ultimately required an above-the-knee amputation of his left leg.

McCoy sued the entities that maintained and owned the highway, the California Department of Transportation (Caltrans) and the state of California, acting by and through the Department of Transportation. He alleged that the center median was dangerous and that motorists could not have reasonably anticipated the hazard. McCoy further alleged that the state's transportation department had actual and constructive notice of the hazard and that it failed to remove the unsafe condition.

McCoy also sued three subcontractors that were retained to install the concrete barrier median in 2002, Alcorn Fence Co., Harris & Associates Inc. and Magnum Pacific Corp. However, each of the subcontractors were let out of the lawsuit on summary judgement. Thus, the matter proceeded to trial against Caltrans only.

Plaintiff's counsel contended that the accident stemmed from the state's failure to mitigate a hazard that was created when the material used to create the center median structure changed from concrete to metal. Specifically, they claimed that the accident site was marked by where the concrete portion of the barrier terminated and the metal guardrail section of the divider began. McCoy's counsel contended that a metal strip, which was

intended to create a smooth connection between the concrete and metal barriers, protruded four inches into the northbound side of the highway. Thus, counsel argued that the original installation of the barrier was not in compliance with the approved highway design and that Caltrans failed to properly supervise the installation of the median.

Plaintiff's counsel that Caltrans and its agents performed, or were required to perform, weekly inspections of the highway's barriers and that they regularly visited the accident site during the two years preceding the incident. However, counsel argued that the rail had existed in the jagged condition for at least two years prior to the accident, that there were agents of Caltrans working at or near the incident site during the five-month period before McCoy was injured, and that Caltrans fixed other hazards on the road, but did not mitigate the protruding metal condition, despite actual knowledge of the hazard.

The plaintiff's traffic engineering and highway maintenance expert testified that the tip of the guardrail was not flush with the rest of the barrier and that Caltrans' failure to secure the tip of the guardrail with three bolts resulted in damage to the metal rail, causing the jagged metal tip to protrude out like a blade facing oncoming traffic.

At trial, a Caltrans employee who was assigned to perform work at the incident site testified that he had been at the site five months before the accident, at which time he did see the condition.

Defense counsel for the state argued that the defect on the median was minor and that it did not constitute an unreasonably unsafe condition or driving hazard. Caltrans contended that while the 2001 design plans may have called for the installation of three bolts, the subcontractors, as agents of the transportation department, could have consciously decided not to use the bolts, which would have justified the state's inaction to install them. Defense counsel also argued that the accident was McCoy's fault, in that McCoy positioned himself inside of the highway's shoulder through his own negligent error and possible failure to properly lean into the turn.

The defense's accident reconstruction expert opined that McCoy's motorcycle was working properly at the time of the accident, and denied that the front tire of the motorbike was deflated. He also testified that the tire markings left on the pavement after the incident did not reveal any evidence of an underinflated tire. The accident reconstruction expert also performed an analysis of the incident and found that McCoy had been operating his motorcycle within the speed limit and had approached the guardrail at an approximate 90 degree angle.

The defense's highway maintenance expert testified that Caltrans met the required safety and maintenance standards.

On cross-examination, McCoy conceded that whether or not one of the motorbike's tires was underinflated, he was responsible for properly driving the motorcycle and for checking the tires condition before operating the motorbike. He also admitted that it was his fault that his bicycle left the highway's left lane and entered the shoulder.

**Injury:**

McCoy sustained an injury of his left leg, requiring an above-the-knee amputation and two revision surgeries. He also claimed he suffers from post-traumatic stress disorder.

After the accident, McCoy was taken by ambulance to the emergency room at a nearby Kaiser Permanente treatment center, in Ventura. He was admitted to the hospital and had a portion of his left knee and a portion of his left leg's femur bone removed. Several days later, he underwent a revision surgery and had more of his left leg removed. He also underwent wound debridement after each surgery, and received physical therapy so that he could learn to ambulate.

In June 2015 and March 2016, McCoy underwent revision surgeries at the site where his leg had been amputated. Each surgery removed more flesh and bone at or above his left knee. Following the most recent revision surgery, McCoy developed a neuroma in his left, lower extremity, and diagnostic testing revealed a large osteophyte above the left knee.

McCoy claimed that he experiences difficulties walking with crutches and that while he is able to bear weight on his right leg, the imbalanced distribution of his weight placed a strain on the rest of his body that causes him to experience pain and discomfort throughout his right side. He contended that as a result, he would require a permanent prosthetic device for his left leg and that the device would need to be replaced a number of times. He also contended that he would require supplemental medical care to effectively integrate the prosthetic device into his daily life.

The plaintiff's expert life care planner opined that in order to ambulate independently, McCoy would require a new prosthetic device every three-to-five years for the rest of his life. The expert also opined that McCoy would require future conservative medical treatment and physical therapy once he receives a temporary and, ultimately, a permanent prosthetic device for his lower, left leg. He further opined that McCoy would benefit from hiring home health aides to assist him with the activities of daily living, and projected that McCoy's future medical expenses would total more than \$4.5 million over the course of his lifetime.

Defense counsel for Caltrans did not dispute the cause or nature of McCoy's injuries, but contested the cost of McCoy's alleged future medical care.

The defense's expert life care planner opined that McCoy's prosthetic would need to be replaced every five-to-six years and that that the cost of McCoy's future medical expenses would be less than \$4 million.

**Result:**

The jury found that Caltrans was 80 percent liable for the accident and that McCoy was 20 percent liable. It also determined that McCoy's damages totaled \$22,618,040.73.

After liability is apportioned to reflect the jury's finding of comparative/contributory negligence, McCoy should recover \$18,094,432.58.

The judgement on the special verdict stipulated that seven percent interest on the judgment would begin to accrue 180 days after the date of the judgment was entered until the verdict was paid.



## **Jared McCoy**

\$53,000 Personal Injury: Past Lost Earnings Capability

\$4,614,754 Personal Injury: future medical expenses and life care needs

\$700,000 Personal Injury: future loss of income and earning capacity

\$15,000,000 Personal Injury: past non-economic loss, including past pain and mental suffering

### **Trial Information:**

**Judge:** Vincent O'Neill

**Demand:** \$7.5 million (C.C.P. § 988)

**Offer:** \$5 million (C.C.P. § 988)

**Trial Length:** 13 days

**Trial  
Deliberations:** 1 day

**Jury Vote:** 12-0 as to dangerous condition; 11-1 as to Caltrans' liability; 9-3 as to damages

**Post Trial:** Caltrans' counsel moved for a new trial, but the motion was denied.

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

**Writer** Jacqueline Birzon