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THE TOP 100 VERDICTS OF 2017

 VERDICTSEARCH

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Winning Strategy: Appeal to Jurors' Emotions

BY JOHN SCHNEIDER

A LAWYER BEHIND THE LARGEST JURY verdict of the year put his client—a millionaire widow suing a banking behemoth—on the stand for nearly four days.

That's a long time in front of a jury, any way you slice it. But Alan Loewinsohn, a senior partner at Loewinsohn Flegle Deary Simon in Dallas, realized he needed this time for the jury to get the whole picture of his client, Jo Hopper, who claimed JP Morgan grossly mishandled her late husband's \$26 million estate.

"It would be very easy for someone to say, 'I don't care if she was wronged. She's still got millions of dollars, and I don't,'" Loewinsohn said. "Obviously, we worked with Jo before coming into the courtroom so that she could try and describe her ordeal in words that would resonate with the jury. But we also had to not shy away from the fact that she had substantial assets."

In *Hopper v. JP Morgan Chase Bank, N.A.*, a Texas jury awarded \$8.04 billion to the widow and children of the late Max Hopper, an information technology pioneer and executive who developed an airline reservation system in the 1970s that became the industry standard.

Loewinsohn gave his client credit for being able to "shine through and get people to care" about her and about the wrongs she had suffered.

The Hopper family alleged that the bank not only incompetently administered the estate, taking years to distribute some assets but also improperly spent the estate's own money to resist the family's efforts in court to have the bank removed as administrator. The verdict included \$8 billion in punitive damages.

While the monetary award is enough to place this verdicts in the No. 1 spot on

VerdictSearch's Top 100 Verdicts of 2017, it also serves as a good example of how to appeal to jurors. Loewinsohn said Hopper and her husband came from humble beginnings and had worked hard for everything they had—personal attributes he aimed to get across to her peers deciding the outcome. He knew he had to keep her on the stand "to provide enough exposure to the jury to make her credible and likable and relatable," he said.

The No. 2 verdict for the year is a distant second place, with an award of \$500 million to a video game company and its subsidiary against a subsidiary of social media giant Facebook. The plaintiffs in *Zenimax Media Inc. v. Oculus VR Inc.* claimed that Oculus stole their source code and other intellectual property to develop commercially viable virtual reality products.

Tony Sammi, head of intellectual property litigation at Skadden, Arps, Slate, Meagher & Flom, was lead counsel for the plaintiffs. He said his most important task, besides making complicated technology relatable in layman's terms, was demonstrating that the plaintiffs' technology was essential to Oculus' products.

"At every opportunity, we made sure to map the behavior with the technology. In other words, in one timeline we'd see the progress defendants were making in their technology, and in another timeline, we'd see when they obtained our clients' technology. We then showed where those timelines matched up," Sammi said.

The case was also noteworthy as the first-ever appearance of Facebook founder Mark Zuckerberg in open court. "We had an overflow courtroom," Sammi recalled. "The media was there,

which made it particularly challenging to focus on the case at hand amidst all the noise."

So what did Sammi keep in mind in order to stay focused?

"Remember the jury. Nine people in that box. They are listening to the questions and the answers, and need clarity from us to be able to tune everything else out."

No. 3 on this year's Top 100 was a \$454 million award to a surgical center that claimed a maker of surgical gowns and a spinoff company fraudulently misrepresented the gowns' efficacy in protecting from such diseases as Ebola and HIV. *Sbahinian v. Kimberly-Clark Corp.* was a class action, but only one plaintiff, Bahamas Surgery Center, was still in the case at the time of trial.

Michael Avenatti, co-founder of the Newport Beach, Calif., litigation boutique Eagan Avenatti, was lead counsel for the plaintiff. He said the most challenging aspect of the case was that Kimberly-Clark had virtually unlimited resources. "They spent over \$50 million defending the case," he said.

Another difficulty was that the court limited each side to just 12 hours of court time, exclusive of opening and closing, to present its case. In a fraud class action with these complicated issues, putting on your evidence in that time is nearly impossible, Avenatti said.

On the other hand, the ability to adapt and react to such circumstances is what makes a winning trial lawyer, Avenatti said. "If you can't take a punch, you don't belong in the ring."

In 2016, there were three talc verdicts—claims that Johnson & Johnson's baby powder containing talc caused ovarian cancer—that made the Top 100.

top verdicts

This year, two supersized verdicts in talc powder litigation returned.

The biggest talc award ranks at No. 4 on this year's list, a \$417 million verdict in *Lloyd v. Johnson & Johnson*. Mark Robinson of Robinson Calcagnie, in Newport Beach, Calif., represented Eva Echeverria, the only plaintiff still in the case at the time of trial. She died from cancer a month after the Aug. 21 verdict.

Robinson had an uphill battle, as "the majority of the rulings went against us," he said, but several factors enabled him and his team to battle back and win a verdict.

His client was in the hospital, but she was able to attend voir dire and thank the jurors in person for their service. She had to go back to the hospital the next day, but Robinson played her video deposition during the trial, and it brought many in the courtroom to tears, he said.

Her testimony showed "how much she cared about other people and just was a good person," he said.

Another key factor was the testimony of the treating oncologist, whom Robinson described as an "amazing" witness despite having never testified before. "Causation is always the big issue in these cases. She really did a very good job of explaining it to the jury." And on cross-examination, he said, "She got even better."

Robinson's win was one of 21 products liability verdicts for this year's Top 100, making it the largest category on the list, for a total of \$1.58 billion in award dollars. The second-highest category is motor vehicle suits, with 19 verdicts for a total of \$886

million. The third-highest category is medical malpractice, with 12 verdicts totaling \$361 million. Worker/workplace negligence comes next, with nine verdicts totaling \$436 million. There are eight breach-of-contract cases on the list, totaling \$442 million and eight intellectual property cases, totaling \$854 million.

At No. 8 on this year's verdicts, six plaintiffs were awarded \$247 million in *Alicea v. DePuy Orthopedics Inc.* It's the fourth bellwether trial over metal-lined hip implants made by DePuy. About 9,300 similar lawsuits have been consolidated in multidistrict litigation before U.S. District Judge Ed Kinkeade. The plaintiffs alleged severe health problems arising from the friction-related shedding of microscopic metal ions from the implants into surrounding tissues.

Winning attorney Mark Lanier, of The Lanier Law Firm in Houston, said one key to the case, as well as the reason the trial took almost three months, was that he made sure that the jury had all the information that the defendants had about the implants.

"I used every teaching tool I could think of," Lanier said. "I drew pictures on the Elmo, used a large pad, used props ranging from boxes of donuts to large blocks of rock salt and jars of marbles."

The biggest challenge, Lanier said, was "clearing up the confusion caused by the defendants cherry-picking data and science to support their actions."

"If [the defendants] showed an excerpt from an article, I would show what they left out," he said. "If they hand-

selected one piece of science, I would show the 15 they ignored."

The ninth-largest verdict this year, *Signature Associates LLC v. International Paper*, was a \$246 million award to an industrial services contractor and its founder. The plaintiffs alleged that International Paper, the world's largest pulp and paper company, had no intention of paying Signature, a small contractor, for work at its paper plant. The delays and nonpayment sent Signature into a financial tailspin that gave it a negative balance sheet and prevented its sale to a private equity firm for \$42 million.

Glen Morgan, managing partner of Reaud, Morgan & Quinn, was lead counsel for Signature, and Wyatt Snider, of Snider Law Firm, represented Signature's founder and president, Jeff Ogden. Morgan and Snider said the biggest challenge in a commercial case is to make it about something other than just numbers. Morgan explained, "You have to make a case real. It's got to be about people, and it's got to be about their feelings."

Morgan and Snider were able to put a sympathetic face on the corporate plaintiff. Ogden, a former construction worker with a high school education, had started the company with only a credit card and his knowledge and contacts.

"It really just turned into a David and Goliath kind of case," Morgan said.

He noted that four of the jurors cried during closing argument.

"It's hard to get a jury to cry in a commercial case," he said.

Contact John Schneider at jschneider@alm.com

METHODOLOGY

The Top 100 Verdicts report is compiled by NLJ affiliate VerdictSearch, which strives to report as many jury verdicts, decisions and settlements as possible. Although a great many cases are submitted by attorneys, the publication also relies on assignment editors who scour docket lists, cultivate relationships with law firms and search the internet and news sources, including ALM Media's family of legal publications.

Verdicts are ranked by gross award calculated by the jury. They do not reflect reductions for comparative negligence or assignment of fault to settling defendants or nonparties; additurs, remittiturs or reversals; or attorney fees and costs, unless awarded by the jury. In situations in which awards are automatically trebled or doubled by statute, the increased amount determines rank. VerdictSearch does not consider cases in which the

jury only determined per-plaintiff or per-year damages that a judge later used to calculate the gross award, nor cases in which the jury's instructions permitted it to determine damages against a party that it had already deemed not liable.

The editors retain sole discretion to make adjustments in rank when necessary to reflect statutes that provide for election of remedies or other overlapping awards.

THE TOP 100 VERDICTS

OF 2017

The National Law Journal's VerdictSearch affiliate scoured the nation's court records in search of 2017's biggest verdicts, also consulting with practitioners and reviewing reports by other ALM Media publications. The amounts listed here represent jury awards—they do not account for judicial reductions, offsets or appeals.

TOP 100 VERDICTS OF 2016

Top Verdict Categories

Dollar value of Top 100 verdicts by cause of action, in millions.

2016			2017		
1	Intellectual Property	\$4,827	1	Professional Negligence	\$8,039
2	Breach of Contract	\$3,386	2	Products Liability	\$1,454
3	Wrongful Death	\$3,218	3	Intellectual Property	\$854
4	Products Liability	\$2,201	4	Motor Vehicle	\$839
5	Motor Vehicle	\$677	5	Fraud	\$710
6	Medical Malpractice	\$318	6	Intentional Torts	\$612
7	Worker/Workplace Negligence	\$237	7	Contracts	\$539
8	Fraud	\$227	8	Worker/Workplace Negligence	\$525
9	Premises Liability	\$194	9	Medical Malpractice	\$406
10	Professional Negligence	\$170	10	Government	\$390

Source: VerdictSearch. Figures are rounded to the nearest \$1 million.

EIGHTEEN

INDUSTRY: SERVICES - RESTAURANT

DRAM SHOP

Worker/Workplace Negligence — Negligent Service of Alcohol

Paralyzed in car crash, woman brought dram shop claims

VERDICT \$131,000,375
ACTUAL \$108,730,311

CASE

Melissa Blaylock v. Schwartz Brothers Restaurants/SBR Holdings, L.L.C./WAS, Inc., and Bruce Greene, No. 16-2-07043-4-SEA King County Superior Court, WA

COURT

Susan J. Craighead
11/3/2017

JUDGE DATE

PLAINTIFF

ATTORNEY(S)

John A. Kawai, Carpenter, Zuckerman & Rowley, LLP, Ojai, CA

Nicholas C. Rowley, Carpenter, Zuckerman & Rowley, LLP, Beverly Hills, CA

Terence F. Traverso, Law Offices of Terence F. Traverso, P.S., Bellevue, WA

DEFENSE

ATTORNEY(S)

Karl E. Malling, Malling Law Office, Shoreline, WA (Bruce Greene)
Steven G. Wraith, Lee Smart, P.S. Inc., Seattle, WA (Schwartz Brothers Restaurants/SBR Holdings, L.L.C./WAS Inc.)

FACTS & ALLEGATIONS On the night of May 3, 2014, plaintiff Melissa Blaylock, 39, a registered nurse, and her estranged husband, Bruce Greene, left a restaurant, Daniel's Broiler, in Bellevue. They had been drinking, celebrating a new business opportunity that Greene had just secured. They got into Greene's car and began to drive home, with Blaylock in the passenger seat. After they had traveled about two miles on 118th Avenue SE, Greene lost control of the car and drove into an embankment at about 20 mph. Blaylock sustained multiple severe bodily injuries and was rendered quadriplegic. Greene suffered mild traumatic brain injury.

Blaylock sued Greene, claiming he was negligent in the operation of a vehicle. She also sued the owner of the Daniel's Broiler restaurant, Schwartz Brothers Restaurants/SBR Holdings, L.L.C./WAS Inc., alleging it negligently overserved Greene alcohol.

Greene admitted to driving under the influence, and Blaylock admitted fault for getting into the car with him. The lawsuit

sought to apportion fault for the restaurant.

Counsel for Blaylock claimed that Greene was served more than 20 ounces of vodka over a 3-hour period, even while the restaurant was aware that Greene was intoxicated. At the accident scene, Greene and Blaylock had blood alcohol content (BAC) levels at or above .20, according to toxicologists on both sides. The legal BAC limit is .08. It was estimated that the accident occurred at about midnight, less than a half-hour after the two had left the restaurant.

Although Greene admitted negligence, he argued that there should be shared responsibility because the restaurant had over-served him alcohol.

The restaurant denied all liability and pointed out that Greene chose to drive knowing he was intoxicated, and Blaylock allowed Greene to drive and get into the car with him. Moreover, Blaylock was aware that Greene had two prior incidents involving driving under the influence, but she did not stop him from driving.

Blaylock and Greene both acknowledged that these points were true but maintained that the restaurant nevertheless shared responsibility for the crash.

INJURIES/DAMAGES *cognition, impairment; fine motor skills, impairment; fracture, C5; fracture, back; fusion, cervical; fusion, thoracic; laminectomy; memory, impairment; nerve damage/neuropathy; quadriplegia; spasm; tetraplegia; traumatic brain injury*

Blaylock was taken to a local emergency room. She suffered a mild traumatic brain injury with permanent cognitive impairment. She also had tetraparesis, which is a muscular weakness in all four limbs, stemming from injuries to her cervical spine, including damage to the C4-C5 intervertebral disc, and a dislocation and fracture at vertebra C5. She required a C2-T1 spinal fusion with a laminectomy for C3-C7 and had a 50 percent occlusion of the left vertebral artery at C5. Due to a failure of bilateral C7 pedicle screws, she had a posterior fusion at T1-T4. She has severe spasticity, which required implantation of an intrathecal baclofen pump.

Counsel for Blaylock, who is a mother of four, said she will never walk again or work again as a nurse. She is unable to self-administer her medications due to lack of fine and gross motor control in her hands and because she does not know her medications or remember if she has taken them. She has chronic neuropathic and musculoskeletal pain. Her life-care planning and economic experts opined that she will require a lifetime of medical care. Her life-care planner calculated the cost of her future needs to be \$22,463,000. Her lost income was calculated at \$2,207,000. Blaylock sought a

total damages award of \$250,000,000.

Schwartz Brothers reached a confidential settlement with Blaylock during trial. The company ceased to be a party to the suit after Blaylock finished presenting her case at trial and prior to presenting its own case to the jury.

RESULT The jury found Schwartz Brothers Restaurants was 44 percent liable, Greene was 39 percent liable, and Blaylock was 17 percent liable.

The jury determined that Blaylock's damages totaled \$131,000,375. The amount was reduced to \$108,730,311 to reflect Blaylock's comparative negligence.

The jury was not informed that the restaurant had settled with Blaylock, only that its absence from the case should not affect their deliberations or verdict. As a result, though the jury found Schwartz Brothers Restaurants was 44 percent liable, this did not translate into a judgment against it.

**MELISSA
BLAYLOCK** \$51,000,375 economic damages
\$80,000,000 non-economic damages
\$131,000,375

TRIAL DETAILS Trial Length: 6 days
Trial Deliberations: 2 days

**PLAINTIFF
EXPERT(S)** Robert D. Johnson, economics, Los Altos, CA
Sharon K. Kawai, M.D., life care planning, Irvine, CA

**DEFENSE
EXPERT(S)** None reported

EDITOR'S NOTE This report is based on information that was provided by counsel for plaintiff and for Bruce Greene.

Counsel for Schwartz Brothers Restaurants/SBR Holdings did not respond to the reporter's phone calls.

—Gary Raynaldo

THIRTY-ONE

INDUSTRY: SERVICES - TRANSPORTATION

MOTOR VEHICLE

Worker/Workplace Negligence — Negligent Hiring

Plaintiff said defendant, not wrong-way driver, caused wreck

VERDICT \$54,155,900

CASE James and Theresa Denton v. Universal Am-Can, Ltd., a corporation; Universal Truckload Services, Inc., a corporation; OMG, Inc., a corporation; RFX, Inc., a corporation; David Lee Johnson; Louis Broadwell, LLC, and Michael A. Twardak, No. 15 L 1727
COURT Cook County Circuit Court, IL
JUDGE Lorna E. Propes
DATE 10/16/2017

**PLAINTIFF
ATTORNEY(S)** Robert J. Napleton, Motherway & Napleton LLP, Chicago, IL
James M. Roche, Theisen & Roche, Wheaton, IL
Christopher Theisen, Theisen & Roche, Wheaton, IL

**DEFENSE
ATTORNEY(S)** Carlton D. Fisher (lead), Hinshaw & Culbertson LLP, Chicago, IL (Universal Am-Can Ltd., David Lee Johnson, Louis Broadwell LLC, Universal Truckload Services Inc.)
Michael J. Cunningham, Hinshaw & Culbertson LLP, Chicago, IL (Universal Am-Can Ltd., David Lee Johnson, Louis Broadwell LLC, Universal Truckload Services Inc.)
Patrick Fanning, Grant & Fanning, Chicago, IL (OMG Inc.)
Jennifer A. Moriarty, Grant & Fanning, Chicago, IL (OMG Inc.)
Terry A. Mueller, Law Office of Steven A. Lihosit, Chicago, IL (Michael A. Twardak)
Joseph J. Wilson, Maisel & Associates, Chicago, IL (RFX Inc.)

FACTS & ALLEGATIONS On Feb. 8, 2011,

plaintiff James Denton, 53, a regional vice president of a Fortune 500 flooring company, was driving a sport utility vehicle south on Interstate 65 in Jasper County, Ind., near Rensselaer. An elderly driver in a minivan had entered the southbound lanes about 5 miles south of Denton and was going the wrong way, north, at about 30 mph. As a result, traffic slowed down. When Denton slowed, David Lee Johnson, working for Universal Am-Can Ltd. and Louis Broadwell LLC, rear-ended him in a tractor-trailer. Denton then struck two other vehicles. He sustained multiple severe injuries.

Universal Truckload Services Inc. was the parent company of Universal Am-Can.

The trucking broker was RFX Inc., and the shipper was OMG Inc.

Michael A. Twardak was a driver about a half-mile ahead of Denton when the accident happened. He allegedly failed to keep a proper lookout, failed to control his vehicle and drove too fast.

The wrong-way driver died from unrelated causes about a month after the accident. Denton and his wife settled with his estate for \$100,000 before suit was filed.

Denton and his wife, Theresa Denton, sued the Universal companies, Broadwell and Johnson for negligently failing to keep a proper lookout, failing to control his speed, driving too fast, following too closely and failing to brake or turn in time to avoid rear-ending Denton. Plaintiffs' counsel argued that the wrong-way driver caused the change in the traffic pattern, but that the cause of the accident was Johnson's failure to maintain control of his vehicle. The plaintiffs also sued OMG Inc., RFX Inc. and Twardak, but they settled before trial. The settlements were \$10,000 from OMG; \$75,000 from RFX; and \$100,000 from Twardak. The case went to trial on only the claims against Johnson, Universal Am-Can and Broadwell.

The Dentons alleged gross negligence and willful and wanton conduct on the part of Universal Am-Can, for hiring and retaining Johnson, whose commercial driver's license had been suspended three times in the five years before the accident. Johnson also had multiple moving violations and two at-fault accidents; had been terminated by previous employers; and had a felony conviction arising from a 2004 road-rage incident.

Universal Truckload was dismissed on summary judgment before trial.

Johnson testified that he tried to avoid a collision by braking and steering to the right, between the minivan and the Denton vehicle.

The defense accident reconstruction expert opined that the wrong-way driver alone was at fault for the accident; that Johnson had inadequate time to react; and that Johnson's

actions satisfied Indiana's emergency doctrine. (The court applied Indiana law to the liability portion of the case.) The expert also cautioned the jury that hindsight bias tends to skew post-accident evaluations, making fault seem greater.

The defense trucking expert opined that none of Johnson's pre-accident conduct would have put Universal Am-Can on notice that hiring or retaining him would lead to a rear-end collision. Therefore, Johnson's pre-accident driving record was not the responsible cause of the accident, according to the expert.

INJURIES/DAMAGES *anxiety; arm; arthroplasty; arthroscopy; bone graft; buttocks; chondroplasty; chronic pain syndrome; decompression surgery; decreased range of motion; depression; discectomy; epidural injections; foraminotomy/foraminotomy; fusion, cervical; fusion, lumbar; hand; hardware implanted; headaches; herniated disc, cervical; herniated disc, lumbar; incontinence; knee replacement; knee surgery; leg; medial meniscus, tear; meniscectomy; myospasm; neurogenic bladder; numbness; osteophyte; pins/rods/screws; plate; radicular pain / radiculitis; radiculopathy; sciatica; shoulder; steroid injection*

Denton went to the emergency room by ambulance. He sustained multiple herniated cervical and lumbar discs and a torn left medial meniscus. He developed chronic pain syndrome in his neck and back; cervical adjacent segment disease; cervical and lumbar radicular symptoms, including occasional urinary incontinence; and depression and anxiety.

He underwent nine operations: three each on his cervical spine, lumbar spine and knee. He also underwent seven epidural steroid injections (three cervical and four lumbar).

The first knee surgery was on July 1, 2011. It was an arthroscopy with partial medial meniscectomy, chondroplasty and injection of steroids. He underwent a total left knee arthroplasty, or total knee replacement, on March 14, 2012, and surgical manipulation of the knee on June 13, 2012. Doctors said there is a strong possibility that eventually he will need a revision of the knee replacement.

His first cervical operation was on Aug. 1, 2011, a discogram. On Aug. 24, 2011, he underwent a C6-7 discectomy with bilateral foraminotomy, osteophyctomy and interbody fusion with allograft 7-millimeter tricortical bone. Hardware included Synthes plates and 14-millimeter screws. On Sept. 19, 2013, he underwent a complex anterior discectomy with fusion at C5-6 with structural allograft bone. Hardware included a PEEK 8-millimeter medium Novel cage and Alphatec Trestle Luxe plate. A pain management doctor recommended

a permanent, internal spinal cord stimulator and pain pump. The estimated cost of these devices over the course of Denton's life would be \$389,755 for the stimulator and \$1,631,280.63 for the pain pump, according to plaintiffs' coding expert Barbara King.

Denton's first lumbar surgery was on Feb. 11, 2013, a complex anterior L5-S1 fusion and anterior spinal decompression with structural allograft bone. Hardware included an Alphatec plate and mechanical interbody device. On April 10, 2014, he underwent a bilateral minimally invasive L4-5 segmental decompression, and on March 26, 2015, he underwent complex decompression at L4-5.

His three cervical ESIs were on June 2 and 16, 2011, and July 13, 2016. His four lumbar ESIs were on Dec. 5, 2012, Jan. 13, 2014, Oct. 17, 2016, and Nov. 14, 2016.

Denton claimed that his neck injury causes severe, debilitating headaches; numbness and tingling from his shoulders to his hands, especially on his left (non-dominant) side; more than 50 percent reduction in the normal range of cervical side-to-side motion; and near-constant muscle spasms, for which he takes strong muscle relaxers. The muscle relaxers reduce the pain but make it hard to function.

Denton claimed debilitating radiating pain from his right buttocks down to his right foot and about a 50 percent reduction in the normal lumbar range of motion. He also has increased urgency in urination and episodes of incontinence.

Denton claimed that his injuries affect all his activities of daily living. He has to rotate his shoulder and torso to look over his shoulder when driving. Just holding his head up all day makes him fatigued and causes headaches and neck spasms. Any overhead reaching is difficult, he said, even putting on a shirt. He said he also loves playing guitar and that it used to be a great source of relaxation, but that he can no longer play for more than a few minutes before the neck spasms start.

Denton claimed that, when his lumbar pain and lumbar radiculopathy flare up, walking and climbing stairs are difficult, and he cannot bend or lift. He is embarrassed when rising from a seated position around other people and he said he looks like an 80-year-old. The injuries greatly limit his sex life and prevent him from golfing, he said; he used to golf two to three times a month. He said he also cannot play other sports or run. He cannot climb a ladder to change a light bulb, for example. Putting on socks is enormously painful, he said.

Denton testified that he used to vacation several times a year, but that now it is physically and financially less practical. His brother has a lake house, where they would ride Jet Skis, but

he can no longer do so. He said he lost friends with whom he worked. He had to cancel plans too often because of his injuries, and people stopped making plans with him.

Denton said the injuries greatly limit his interactions with his son, daughter and grandchildren. He said he and his wife were former “gym rats,” and that working out for two hours every Friday, Saturday and Sunday was a very big part of their life. His workouts are greatly limited by his injuries, he said.

Denton said he is usually asleep by 8 p.m. because of his medication. It also causes mood swings, and he goes to bed early partly to avoid conflicts with his wife.

He claimed that his inability to work has created stress and anxiety about money. He and his wife cannot afford to vacation or socialize as before. They rely on Theresa’s income, but have to dip into their savings. Denton thinks his wife will not be able to retire, which he says is unfair to her. They have arguments about money now.

Denton claimed that the injuries have deprived him of sleep. The pain and need to go to the bathroom wake him up four or five times a night. Often he sleeps in a spare room to avoid disturbing his wife.

Denton said his injuries prevent him from working. He tried to go back to work part time, but had to stop after six months.

Denton claimed anxiety and depression, as well. His self-esteem was closely tied to his work and his job position. He testified that he was very proud to be a good provider and that he feels he is not the man he used to be.

Plaintiffs’ counsel asked the jury for \$19,126,173 in compensatory damages, including \$678,900 for past medical bills and \$2,918,000 for past and future lost earnings. The compensatory damages also included Denton’s past and future pain and suffering, past and future disability and disfigurement, as well as his wife’s past and future loss of services and past and future loss of society, companionship and sexual relationship.

For punitive damages, Denton sought one to 10 times the compensatory damages.

The defense argued that the future lost earnings were exaggerated and that Denton could work part-time. The defense vocational rehabilitation expert opined that the lost-income claim should have been reduced by between \$200,000 and \$350,000.

The defense medical billing expert opined that the medical charges, which were \$850,000, had a reasonable value of \$601,000.

The defense argued that, pursuant to an interlocutory appellate ruling, Indiana law applied not only to the liability portion of the case but to damages, as well. Therefore, the defense argued, the defense vocational expert

should be allowed to testify about how much was actually paid and accepted, which was \$399,000. The trial court, however, did not apply Indiana law to the damages portion of the case.

Defense counsel suggested \$3.5 million for compensatory damages and zero for punitives. The defense unsuccessfully moved for a mistrial twice during the punitives phase of trial, asserting that plaintiff’s counsel’s arguments were inflammatory.

RESULT The jury found negligence and fault of 60 percent on Universal Am-Can for negligent hiring and/or retention and 40 percent on Johnson, individually and as agent of Broadwell and Universal Am-Can. The jury did not find fault on the wrong-way driver.

The jury awarded the plaintiffs \$54,155,900.

JAMES DENTON \$35,000,000 punitive damages
\$6,000,000 past and future disability
\$1,178,900 past and future medical expenses
\$2,917,000 past and future lost earnings
\$6,000,000 past and future pain and suffering
\$51,095,900

THERESA DENTON \$60,000 past and future loss of services
\$3,000,000 past and future loss of society, companionship and sexual relationship
\$3,060,000

DEMAND OFFER None
\$1,000,000 (during deliberations)

INSURER(S) Cherokee Insurance Co. for Universal Am-Can, Broadwell and Johnson

TRIAL DETAILS Trial Length: 4 weeks
Trial Deliberations: 2.5 hours
Jury Vote: 12-0

PLAINTIFF EXPERT(S) Nicholas A. Angelopoulos, D.O., pain management, Tinley Park, IL (treating doctor)
George Branovacki, M.D., orthopedics, Orland Park, IL (treating doctor)

DEFENSE EXPERT(S)

Peter Dragisic, M.D., family medicine, Oak Lawn, IL (treating doctor)
David Gibson, economics, Louisville, KY
Shawn Gyorke, accident reconstruction, Algonquin, IL
William Holley, mental health, Tinley Park, IL (treating doctor)
Barbara King, coding & billing (medical), Mount Carroll, IL
Richard Lim, M.D., spinal surgery, Orland Park, IL (treating doctor)
Michael Napier, trucking industry, Macon, GA
George Sreckovic, M.D., urology, Orland Park, IL (treating doctor)

John M. Goebelbecker, P.E., accident reconstruction, Morton Grove, IL
Christine Kraft, coding & billing (medical), Indianapolis, IN
James Radke, vocational rehabilitation, Northbrook, IL
Sean A. Salehi, M.D., neurosurgery, Westchester, IL
Andrew Sievers, trucking industry, Mahomet, IL

POST-TRIAL The court entered a judgment of \$11,493,540 against Universal; \$7,662,360 against Johnson, Broadwell and Universal; and \$35 million against Universal for punitive damages, for a total of \$54,155,900. Johnson, Broadwell and Universal have filed motions for, in the alternative, JNOV; new trial; and on the punitive damages, remittitur. They argue in that the trial court didn’t follow the appellate court’s ruling; that plaintiffs’ counsel were allowed to make inflammatory arguments on punitive damages; and that the no-fault finding on the wrong-way driver was against the evidence.

EDITOR’S NOTE This report is based on information that was provided by plaintiffs’ and the trial defendants’ counsel.

–John Schneider

INDUSTRY: CONSTRUCTION

MOTOR VEHICLE

U-Turn — Worker/Workplace Negligence — Negligent Hiring

Supervisory lapse led to fatalities at roadwork site, lawsuit alleged

VERDICT **\$45,005,000**

CASE Miguel Angel Angulo and Aris Dalila Lopez, as Co-Personal Representatives of the Estate of Liza Angulo v. Juan C. Calero, Individually; Double B Line Corp., a Florida corporation; Eduardo Hernandez Rodriguez, individually; Rolayn Truck Corp., a Florida corporation; Ranger Construction Industries, Inc., a Florida corporation, and Dragados USA, Inc., a foreign corporation / Jennifer A. Astaphan, as Personal Representative of the Estate of Jonathan R. Astaphan v. Ranger Construction Industries, Inc., a Florida corporation for profit; Wantman Group, Inc., a Florida corporation for profit; Allied Trucking of Florida, Inc., a Florida corporation for profit; Allied Trucking of Palm Beach, LC, a Florida limited liability company; Double B Line Corp., a Florida corporation for profit; and Juan C. Calero, an individual, No. CACE-15-009991; CACE-15-012992

COURT Broward County Circuit Court, 17th, FL

JUDGE Michael Robinson

DATE 10/26/2017

PLAINTIFF ATTORNEY(S) **Stuart N. Ratzan** (lead), Ratzan Law Group, P.A., Miami, FL (Estate of Jonathan R. Astaphan, Jennifer A. Astaphan, Reginald Astaphan)

DEFENSE ATTORNEY(S)

Lincoln J. Connolly, Lincoln J. Connolly Trial & Appeals, P.A., Miami, FL (Estate of Jonathan R. Astaphan, Jennifer A. Astaphan, Reginald Astaphan)

Fredrick P. Freedman, Rick Freedman & Associates, P.A., Miramar, FL (Patrissia Rolle)

Evan Gilead, Ratzan Law Group, P.A., Miami, FL (Estate of Jonathan R. Astaphan, Jennifer A. Astaphan, Reginald Astaphan)

Eduardo Gomez, Eduardo Gomez, P.A., Coral Gables, FL (Estate of Liza Angulo)

Paul J. Layne, Silva & Silva, P.A., Coral Gables, FL (Estate of Liza Angulo)

J. Luis Quintana, Quintana & Associates, P.A., Coral Gables, FL (Estate of Liza Angulo)

Carlos E. Silva, Silva & Silva, P.A., Coral Gables, FL (Estate of Liza Angulo)

Stuart J. Weissman, Ratzan Law Group, P.A., Miami, FL (Estate of Jonathan R. Astaphan, Jennifer A. Astaphan, Reginald Astaphan)

Edward M. Baird (co-lead), Baird Law, PLLC, Winter Park, FL (Wantman Group Inc.)

Benjamin M. Esco (co-lead), Cole, Scott & Kissane, P.A., Miami, FL (Eduardo Hernandez Rodriguez, Rolayn Truck Corp.)

James L. White, III (co-lead), Bobo, Ciotoli, White & Russell, P.A., Palm Beach Gardens, FL (Allied Trucking of Florida Inc., Allied Trucking of Palm Beach, LC)

Jeffrey A. Cohen, Carlton Fields Jordan Burt, P.A., Miami, FL (Allied Trucking of Florida Inc., Allied Trucking of Palm Beach, LC)

David Dunham, Bobo, Ciotoli, White & Russell, P.A., Palm Beach Gardens, FL (Allied Trucking of Florida Inc., Allied Trucking of Palm Beach, LC)

Amy Furness, Carlton Fields Jordan Burt, P.A., Miami, FL (Allied Trucking of Florida Inc., Allied Trucking of Palm Beach, LC)

Mark A. Hendricks, Lydecker Diaz, Miami, FL (Ranger Construction Industries Inc.)

David Luck, Carlton Fields Jordan Burt, P.A., Miami, FL (Allied Trucking of Florida Inc., Allied Trucking of Palm Beach, LC)

Michael Mattson, Boyd Richards Parker Colonnelli, Fort Lauderdale, FL (Double B Line Corp., Juan C. Calero)

Edwin “Ted” Mortell, III, Peterson Bernard, Stuart, FL (Ranger Construction Industries Inc.)

Giancarlo V. Nicolosi, Cole, Scott & Kissane, P.A., Miami, FL (Eduardo Hernandez Rodriguez, Rolayn Truck Corp.)

John H. Richards, Boyd Richards Parker Colonnelli, Fort Lauderdale, FL (Double B Line Corp., Juan C. Calero)

Kathryn A. Slye, Peckar & Abramson, P.C., Miami, FL (Dragados USA Inc.)

Lauren J. Smith, Peterson Bernard, Stuart, FL (Ranger Construction Industries Inc.)

Mark T. Snelson, Wright, Fulford, Moorhead & Brown, P.A., Altamonte Springs, FL (Wantman Group Inc.)

Heather Wallace-Bridwell, Peterson Bernard, Stuart, FL (Ranger Construction Industries Inc.)

FACTS & ALLEGATIONS On the night of May 28, 2015, plaintiffs’ decedent Jonathan Astaphan, 29, a medical student, was driving south on I-75 in Broward County. His passenger was Patrissia Rolle. Another motorist, Liza Angulo, 17, was driving on the road nearby.

At the same time, Ranger Construction Industries Inc. was performing construction on I-75. Part of the project included work on the Miramar Parkway Bridge. A Ranger Construction supervisor determined that additional concrete barrier walls were needed at the site.

The supervisor escorted two flat-bed tractor-trailers, provided by subcontractor Double B Line Corp., to the highway median just

north of the Pembroke Bridge overpass on I-75, where concrete barrier wall was being stored. The supervisor directed another Ranger Construction employee to load the two tractor-trailers with nine concrete barrier walls each. The supervisor then left the site. The two trucks were lined up in the median, facing north. However, they had to turn south to get back to the Miramar Parkway.

The driver of the front truck was Juan C. Calero, an employee of Double B Line. He attempted to make a U-turn, crossing all the southbound lanes of I-75. As he was doing so, Jonathan Astaphan's Mitsubishi struck the tractor-trailer, shearing off the car's roof and killing Astaphan on impact. His passenger, Rolle, suffered significant injuries. Angulo was also killed, when the barrier walls fell on her car.

Astaphan's mother, Jennifer Astaphan, acting as personal representative of her son's estate, sued Calero, Double B Line Corp. and Ranger Construction Industries Inc. She also sued Allied Trucking of Florida, Inc. and related entity Allied Trucking of Palm Beach, LC, the broker that Ranger Construction used to hire Calero, and she sued the designer of the project, Wantman Group Inc.

Astaphan's suit was consolidated with suits against these defendants and others, brought by Rolle and the Angulo family; however, Rolle and the Angulos reached settlements prior to trial.

The Allied Trucking defendants also settled with Astaphan before jury selection, and the Wantman Group was granted summary judgment.

There were cross-claims among the defendants, which were dismissed.

After the settlements and dismissals, the remaining plaintiff was Jennifer Astaphan on behalf of her son's estate, and the defendants were Ranger Construction, Double B Line and Calero.

Ms. Astaphan alleged that Calero was negligent and reckless in the operation of his vehicle, that Double B Line was vicariously liable for Calero's actions and negligent in hiring him, and that Ranger Construction failed to properly supervise Calero and ensure that the work-zone was safe for motorists.

According to counsel, the Ranger Construction supervisor left Calero in an unfamiliar, poorly lit area, unsupervised and without any instructions about how to safely merge the truck back onto the highway.

Moreover, the company had no safe plan for getting heavy construction vehicles out of its median construction sites and onto Interstate 75. This violated the terms of its contract with

the Florida Department of Transportation, which required it to provide a safe means of exiting the sites. In fact, the only safe way off the median site that night would have been with lane closures, proper supervision, lighting, and the assistance of Florida Highway Patrol.

Counsel noted that the company had received complaints from drivers and also received a warning from the Florida Department of Transportation just days before the accident about the company's vehicles disrupting traffic.

Calero argued that he was an agent of Ranger Construction when the accident occurred. He admitted that he was negligent but maintained that he was not grossly negligent or reckless. His counsel pointed out that Calero was left unsupervised with no way of getting off the median safely.

According to Calero, when the supervisor left the median in a pickup truck, he simply made a U-turn and used no such acceleration or deceleration lanes and Calero thus attempted to do the same.

Calero's supervisor denied that he made a U-turn at the site and said he exited on an acceleration lane.

Ranger Construction's counsel argued that the accident was the fault of Calero and the other motorists on the highway.

INJURIES/DAMAGES *blunt force trauma to the head; death; head*

Jonathan Astaphan suffered massive head trauma and blunt force injuries as a result of the accident. He died at the scene. His estate sought recovery for emotional pain and suffering.

The defense counsel argued that any damages award should be limited to between \$1.5 million and \$3 million, because of the Astaphans' advanced ages.

Angulo also died at the scene.

Rolle suffered severe injuries but survived and was taken by ambulance to Memorial Regional Hospital.

RESULT The jury determined that Ranger Construction and Calero were each 50 percent liable for the accident. It also ruled that Calero was an agent of Ranger Construction at the time of the accident.

The jury determined that Jennifer Astaphan's damages totaled \$10 million, and that Jonathan's father, Reginald Astaphan (who was not a representative of the estate) would also receive damages of \$10 million.

The jury additionally ordered Ranger to pay \$25 million in punitive damages, and Calero to pay \$5,000 in punitive damages.

ESTATE OF JONATHAN R. ASTAPHAN	\$25,005,000 punitive damages
JENNIFER A. ASTAPHAN	\$10,000,000 pain and suffering
REGINALD ASTAPHAN	\$10,000,000 pain and suffering
TRIAL DETAILS	Trial Deliberations: 250 minutes Jury Composition: 3 male, 3 female; 2 black, 2 Hispanic, 2 white
PLAINTIFF EXPERT(S)	Richard E. Cabrera, P.E., engineering, Plantation, FL Olof Jacobson, M.S., P.E., accident reconstruction, Littleton, CO Anita M. Kerezman, C.D.S., transportation/highway safety -- see also technical: safety, Palm Springs, CA Frederick A. Raffa, Ph.D., economics, Orlando, FL Joseph B. Sala, Ph.D., ergonomics/human factors, Philadelphia, PA
DEFENSE EXPERT(S)	David Ellrich, CPA, accounting (forensic), Palm Beach Gardens, FL Colin Jordan, Ph.D., accident reconstruction, West Palm Beach, FL Gus Quesada, P.E., engineering, Miami, FL

POST-TRIAL Counsel for Ranger Construction filed motions for remittitur and a new trial.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsels for Astaphan and Angulo, and defense counsels for Allied Trucking, Wantman Group, Rodriguez and Rolayn Truck Corp, and Dragados USA. Plaintiff's counsel for Rolle and defense counsel for Double B Line, Calero and Ranger Construction did not respond to the reporter's phone calls.

—Melissa Siegel

INDUSTRY: SERVICES - AUTO REPAIR

WORKER/WORKPLACE NEGLIGENCE

Negligent Assembly or Installation

Auto shop didn't weld roof to car during installation

VERDICT **\$41,936,423**
ACTUAL **\$31,452,317**

CASE Matthew Seebachan and Marcia Seebachan v. John Eagle Collision Center, Eagle Imports, LP A/K/A John Eagle Collision Center A/K/A John Eagle Lincoln-Mercury-Aston Martin, L.P., Huffines KIA A/K/A Huffines Denton Autos, Inc., No. DC-15-09782-K

COURT Dallas County District Court, 192nd, TX

JUDGE Craig Smith

DATE 10/16/2017

PLAINTIFF ATTORNEY(S) Andrew Counts, The Tracy Law Firm, Dallas, TX
Leighton Durham, Kelly, Durham & Pittard, Dallas, TX
Bill Liebbe, The Liebbe Firm, Tyler, TX
E. Todd Tracy, The Tracy Law Firm, Dallas, TX

DEFENSE ATTORNEY(S) Foster Reese, III, Law Offices of Gallerson & Yates, Irving, TX
Jaime A. Saenz, Colvin, Saenz, Rodriguez & Kennamer L.L.P., Brownsville, TX

FACTS & ALLEGATIONS On Dec. 21, 2013, plaintiff Matthew Seebachan, 33, a nurse, was driving his 2010 Honda Fit sedan with his wife, plaintiff Marcia Seebachan, 29, in the front seat on U.S. Route 281 north in Burnet County. Jack Jordan was also driving on the highway and struck the Seebachans during a rainstorm. The Seebachans had purchased the used Honda

about four months earlier from Huffines KIA. A new roof had been installed on their car 13 months before the accident by John Eagle Collision Center. Their car caught fire in the crash and Mr. Seebachan sustained severe burns while trapped in the vehicle. Mrs. Seebachan sustained multiple severe crush injuries.

The Seebachans sued John Eagle Collision Center; Eagle Imports LP, also known as John Eagle Collision Center, also known as John Eagle Lincoln-Mercury-Aston Martin L.P.; and Huffines KIA, also known as Huffines Denton Autos Inc., for negligent repair of their Honda. All of the defendants with the exception of John Eagle Collision Center were dismissed prior to trial. The trial proceeded only against John Eagle Collision Center.

The defense added Jack Jordan as a non-party defendant to apportion any finding of negligence.

The Seebachans alleged that John Eagle Collision Center, which performs repair service for Honda dealerships, was negligent because the shop installed their vehicle's roof using glue instead of welding it to the car. They claimed that the faulty repair compromised the structural integrity of the car, allowing it to catch fire.

Plaintiffs' counsel also argued that the Honda Fit didn't have its fuel tank protector. Counsel argued that John Eagle Collision was negligent for either removing the fuel tank protector, or failing to notice its removal.

The Seebachan's accident reconstruction expert opined that the roof panel buckled, which set in motion a chain reaction of structural failures that caused the safety cage of the vehicle to be destroyed, and the plaintiffs' injuries to be more severe than would have occurred otherwise. He opined that a prior owner of the Honda had sustained hail damage to the car's roof and took it to John Eagle Collision Center in Dallas for roof replacement.

The accident reconstruction expert opined that rather than weld the roof with 108 welds, the collision center used 3M 8115 adhesive glue. He opined that the collision center did not inform the Seebachans, that its workers glued the roof, nor did it notify Carfax Inc. that a new roof had been installed.

The accident reconstruction expert opined that during the impact, the roof separated from the rest of the car, which also caused the lower frame rails to strike the fuel tank located under the driver and passenger.

The Seebachans' biomechanical engineer expert opined that the vehicle's excessive crush inside of the occupant compartment zone caused significant crushing injuries, and trapped Mr. Seebachan's feet so he was unable to exit the burning Honda.

The biomechanical expert also opined that the roof provides critical strength to the safety cage, much like plywood strengthens a building frame. He opined that the improper roof repair replacement resulted in the severe nature of their injuries. He opined that multiple crash tests proved that a roof properly welded to the safety cage remains intact even in more severe collisions.

The defense denied negligence, and contended that Jordan was entirely responsible for all of the plaintiffs' injuries and damages.

The defense's accident reconstruction expert opined that due to the dangerous rainstorm, the accident was unavoidable, and had nothing to do with the repair of the vehicle. He also opined that the force of the impact was so severe that it would not have made any difference if there was welding to the roof. He further opined that the impact would have damaged the roof regardless of welding.

The defense's biomechanical engineer expert opined that the collision impact was so intense that the injuries were caused by deceleration, not trauma associated with the collapsing safety cage. He also opined that glue is as strong or stronger than welds.

INJURIES/DAMAGES *arm; artery, severed/tear; avulsion fracture; back; burns; burns, fourth degree; closed head injury; comminuted fracture; contusion, pulmonary; debridement; fracture, calcaneus/heel; fracture, distal; fracture, femur; fracture, humerus; fracture, metatarsal; fracture, olecranon; fracture, pelvis; fracture, pubic ramus; fracture, radius; fracture, rib; fracture, sternum; fracture, toe; fracture, ulna; fracture, wrist; head; kidney; laceration; leg; neck; post-traumatic stress disorder; respiratory; sacroiliac joint; scar and/or disfigurement, leg; skin graft; thorax*

The Seebachans were transported by ambulance to a local emergency room. Mr. Seebachan sustained fourth-degree burns to both of his legs. He also sustained a closed head injury, a laceration of his forehead from the left eyebrow to hairline; open fractures of the ulna and radius in his left elbow; an olecranon fracture in the left elbow; bilateral internal carotid artery dissection; a fracture of the distal humerus of the left arm; rib fractures; acute respiratory failure; an open calcaneal fracture of the right heel; and a closed calcaneal fracture in left heel. Mrs. Seebachan sustained blunt neck trauma with asymptomatic carotid dissections; bilateral carotid artery dissections; a transected thoracic aorta distal to the left subclavian; bilateral pulmonary contusions; a sternum fracture; a fracture of distal radius in the right wrist; a comminuted fracture of the mid ulna in the right wrist; bilateral

renal contusions; bilateral superior and inferior ramus fractures; a fracture of left femur shaft; a disrupted right sacroiliac joint; an anterior to posterior compression fracture type 2 of the pelvis; a fracture of third metatarsal of the left foot; an avulsion fracture of distal fifth metatarsal on left foot; and proximal fractures of the first through fourth toes of the left foot.

Mr. Seebachan underwent wound care, including debridement and skin grafting. He underwent 10 surgeries to address his skin grafting. He was in and out of the hospital for two years following the accident due to the multiple surgeries and intense wound care for his burns.

Mr. Seebachan claimed that he experiences severe, constant pain, and is required to wear a Fentanyl patch daily. He claimed that the Fentanyl patch makes him feel lethargic, depressed and zombie-like. He claimed that his pain, without the patch, is the equivalent of child birth without the epidural. He claimed that he has difficulty walking due to the injuries to both of his heels.

Mr. Seebachan also claimed post-traumatic stress disorder with frequent flashbacks of the accident. He claimed that he vividly remembers his legs catching on fire, and screaming in pain thinking he and his wife were going to die.

The plaintiffs' burn specialist expert opined that Mr. Seebachan will experience severe pain for the rest of his life because the burns destroyed his nerve endings. She also opined that he sustained extensive scarring from the burns, and must avoid exposing the burned areas to the sun.

Mrs. Seebachan underwent surgeries to repair her wrist, pelvis and foot fractures. She also underwent surgery to repair the transected aorta. She also underwent skin grafts for the surgical scarring she sustained. She claimed permanent residual pain, and permanent limitations performing activities of daily living.

Mr. Seebachan sought damages for past and future medical expenses; past and future lost earnings; past and future physical impairment; past and future pain and suffering; past and future disfigurement; and past and future loss of consortium. Mrs. Seebachan sought damages for past and future medical expenses; past and future physical impairment; past and future pain and suffering; past and future disfigurement; and past and future loss of consortium.

Plaintiffs' counsel suggested the jury award a total of \$42 million in damages for both of them.

The defense did not actively dispute injuries and damages, and focused on liability.

RESULT The jury found John Eagle Collision Center 75 percent negligent and non-par-

ty Jordan 25 percent negligent. It awarded \$41,936,423. Because of comparative fault, the award was reduced to \$31,452,317. The case then settled under a stipulated high/low agreement, that was not disclosed.

MARCIA SEEBACHAN \$432,471 past medical cost
 \$50,000 future medical cost
 \$4,000,000 past loss of consortium
 \$5,000,000 future loss of consortium
 \$250,000 past physical impairment
 \$125,000 future physical impairment
 \$2,500,000 past pain and suffering
 \$1,000,000 future pain and suffering
 \$1,000,000 past disfigurement
 \$500,000 future disfigurement
 \$15,000 past loss of household services
\$300,000 future loss of household services
 \$15,172,471

MATTHEW SEEBACHAN \$626,152 past medical cost
 \$600,000 future medical cost
 \$750,000 past loss of consortium
 \$125,000 future loss of consortium
 \$4,500,000 past physical impairment
 \$2,250,000 future physical impairment
 \$75,000 past lost earnings
 \$1,000,000 future lost earnings
 \$4,000,000 past pain and suffering
 \$6,832,800 future pain and suffering
 \$3,000,000 past disfigurement
 \$3,000,000 future disfigurement
\$5,000 household services
 \$26,763,952

INSURER(S) Liberty Mutual Insurance Co. for John Eagle Collision Center

TRIAL DETAILS Trial Length: 9 days
 Trial Deliberations: 3 hours

PLAINTIFF EXPERT(S)

Neil Hannemann, product design, Vancouver, WA
 Karen Kowalske, M.D., burn medicine, Dallas, TX
 Richard Tonda, P.E., accident investigation & reconstruction/ failure analysis/product liability, Houston, TX
 Mariusz Ziejewski, Ph.D., biomechanics, Fargo, ND

DEFENSE EXPERT(S)

David M. Blaisdell, accident reconstruction, Gig Harbor, WA
 William S. Smock, M.D., emergency medicine, Louisville, KY

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

—Gary Raynaldo

FIFTY

INDUSTRY: SERVICES - LANDSCAPING

MOTOR VEHICLE

Bicycle — Wrongful Death

While training for triathlon, bicyclist killed in trailer collision

MIXED VERDICT \$39,960,000

CASE Michelle Lynn Braswell individually and as independent executrix of the estate of William Markley Braswell, deceased, and as next friend of XXXX XXXXXXXXXX and XXXXXXXX XXXXXXXXXX, minors and Sandra South Braswell v. The Brickman Group Ltd, LLC and Guillermo Rafael Bermea, No. 2015-38679

COURT Harris County District Court, 127th, TX

JUDGE DATE R. K. Sandill
 5/3/2017

PLAINTIFF

ATTORNEY(S) Richard Warren Mithoff (lead), Mithoff Law Firm, Houston, TX
 Joseph R. Alexander, Jr., The Alexander Firm, Houston, TX
 Janie L. Jordan, Mithoff Law Firm, Houston, TX

DEFENSE

ATTORNEY(S) D. Bowen Berry (lead), The Berry Firm, P.L.L.C., Dallas, TX
 Andrew Leibowitz, The Berry Firm, P.L.L.C., Dallas, TX

FACTS & ALLEGATIONS On May 16, 2014, plaintiffs' decedent William Markley Braswell, 43, a captain with the Houston Fire Department, was bicycling on North Bridgeland Lakes Parkway, next to a residential area in Cypress. He was training for a triathlon and going about 20 mph. A pickup truck and trailer owned by The Brickman Group Limited LLC, a landscaping company, were stopped next to the curb in the right lane. The road was straight and level, and Braswell had been on it for 400 to 500 yards. He struck the rear of the trailer and sustained a fatal head injury.

The truck driver was Guillermo Rafael Bermea, who was in the course and scope of his employment with Brickman. Bermea had stopped to allow a member of the landscaping crew to get out and unload equipment from the trailer.

Braswell's estate and family sued Bermea for negligently stopping in a lane of a busy street without setting out cones or warning signs and without turning on hazard lights or taking any other action to warn others of the danger, in violation of Brickman policy. The plaintiffs sued Brickman for negligence in permitting its trucks and trailers to stop in an active lane of traffic.

Plaintiffs' counsel argued that Bermea either cut in front of Braswell and stopped suddenly, or left the truck stopped in an active lane of traffic without any warning.

According to plaintiffs' counsel, Brickman's branch manager acknowledged that, before this incident, he was aware of the danger of unloading on a busy street and that he did not tell drivers not to do so.

The defense argued that the truck and trailer were stopped with their hazard lights on for about a minute or more before the impact, and that they were stopped in front of Braswell for at least 20 seconds before the impact. Braswell did not see them, the defense argued, because he had his head down, was not paying attention and was going too fast. Regarding his speed, the

defense noted that he sustained a severe head laceration despite the fact that he was wearing a helmet.

Defense counsel suggested that the jury find comparative responsibility of 80 percent on Braswell and 20 percent on Bermea.

INJURIES/DAMAGES *death; head; laceration*

The bicycle struck the trailer, and Braswell pitched forward. His head hit a piece of angle iron that was part of the trailer, and he lost consciousness and died at the scene from the resulting head injury.

He was survived by his wife of 23 years, plaintiff Michelle Lynn Braswell, a fire battalion chief; his minor son and minor daughter, also plaintiffs; and his mother, plaintiff Sandra South Braswell.

The widow and children sought damages for past and future pecuniary loss, loss of companionship and society and mental anguish. His mother sought damages for past and future loss of companionship and society and mental anguish.

RESULT The jury found liability on the part of Brickman, but not Bermea. The jury found negligence and comparative responsibility of 68 percent on Brickman and 32 percent on Braswell. The jury awarded the plaintiffs \$39,960,000. After the reduction for comparative fault, the plaintiffs' recovery was \$27,172,800.

MICHELLE LYNN

BRASWELL \$300,000 past loss of society companionship
 \$3,500,000 future loss of society companionship
 \$400,000 past loss of pecuniary contribution
 \$2,250,000 future loss of pecuniary contribution
 \$750,000 past mental anguish
\$400,000 future mental anguish
 \$7,600,000

SANDRA SOUTH

BRASWELL \$75,000 past loss of society companionship
 \$125,000 future loss of society companionship
 \$600,000 past mental anguish
\$300,000 future mental anguish
 \$1,100,000

MINOR

DAUGHTER \$1,200,000 past loss of society companionship
 \$4,500,000 future loss of society companionship
 \$200,000 past loss of pecuniary contribution
 \$470,000 future loss of pecuniary contribution
 \$2,250,000 past mental anguish
\$10,000,000 future mental anguish
 \$18,620,000

MINOR SON

\$1,200,000 past loss of society companionship
 \$3,000,000 future loss of society companionship
 \$200,000 past loss of pecuniary contribution
 \$470,000 future loss of pecuniary contribution
 \$1,500,000 past mental anguish
\$600,000 future mental anguish
 \$6,970,000

TRIAL DETAILS

Trial Length: 6 days
 Trial Deliberations: 1 day
 Jury Vote: 10-2
 Jury Composition: 5 male, 7 female

PLAINTIFF EXPERT(S)

David Lenorovitz, Ph.D., human factors -- see also technical-engineering-ergonomics, Littleton, CO
 Thomas Mayor, Ph.D., economics, Houston, TX
 Wayne K. Ross, M.D., biomechanics of injury, Lancaster, PA
 Lawrence A. Wilson, P.E., accident reconstruction, Ellicott City, MD

DEFENSE EXPERT(S)

Alfred Bowles, M.D., biomechanics of injury, San Antonio, TX
 Gerald Bretting, P.E., bicycles, El Segundo, CA
 Edward V. Fritsch, P.E., mechanical, Houston, TX

POST-TRIAL The defense filed motions for JNOV, new trial and remittitur and to alter or amend the judgment. The court denied the

motions on July 18, 2017, and the defense filed notice of appeal on July 20.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel and gleaned from court documents.

—John Schneider

FIFTY-ONE

INDUSTRY: SERVICES - TRANSPORTATION

MOTOR VEHICLE

Tractor-Trailer — Worker/Workplace Negligence — Negligent Training

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

VERDICT **\$38,978,670**

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

COURT Dallas County Court at Law No. 5, TX

JUDGE Mark Greenberg

DATE 11/16/2017

PLAINTIFF ATTORNEY(S) Michael H. Bassett, The Bassett Firm, Dallas, TX (Alma J. Perales, Elijah Perales, Estate of Alma Belinda Vasquez, Estate of Hector Perales, Gregory Vasquez, Guillermo Vasquez, Noah Perales, William Vasquez)

J. J. Burns, Dollar, Burns & Becker, L.C., Kansas City, MO (Alma J. Perales, Elijah

Perales, Estate of Alma Belinda Vasquez, Estate of Hector Perales, Gregory Vasquez, Guillermo Vasquez, Noah Perales, William Vasquez)

Micky N. Das, Tyler & Das, Houston, TX (Aashish Deol, Darshan Deol, Estate of Bhupinder Singh Deol, Guneet Kaur Deol, Harshjot Singh Deol, Jagtar Deol, Jaswinder Chohan)

Tim Dollar, Dollar, Burns & Becker, L.C., Kansas City, MO (Alma J. Perales, Elijah Perales, Estate of Alma Belinda Vasquez, Estate of Hector Perales, Gregory Vasquez, Guillermo Vasquez, Noah Perales, William Vasquez)

Greg Marks, Guajardo & Marks LLP, Dallas, TX (Brett Jones, Clayton Ireton, Estate of Tracy Jones, Guy Jones, Myles Buss, Nancy Buss, Steve Buss)

Tim Tate, Tate Law Offices PC, Dallas, TX (Aashish Deol, Darshan Deol, Estate of Bhupinder Singh Deol, Guneet Kaur Deol, Harshjot Singh Deol, Jagtar Deol, Jaswinder Chohan)

DEFENSE ATTORNEY(S)

Alex J. Bell, Fletcher, Farley, Shipman & Salinas LLP, Dallas, TX (New Prime Inc., Sarah Gregory)

Michael L. Hurst, Hermes Law P.C., Dallas, TX (Cindy L. Erving, M.C. Van Kampen Trucking Inc.)

Drew T. Peters, Fee Smith Sharp & Vitullo LLP, Dallas, TX (DOD Reynolds LLC, Ondre Orlando Reynolds)

Steven A. Springer, Fletcher, Farley, Shipman & Salinas LLP, Dallas, TX (New Prime Inc., Sarah Gregory)

Roy L. Stacy, Stacy Conder Allen LLP, Dallas, TX (Pablo Diaz, Orlando Santiago Ferrer)

FACTS & ALLEGATIONS On Nov. 22, 2013, plaintiff Guillermo Vasquez, 75, a retired school

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

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

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

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

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

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

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

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

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

The case went to trial on only the claims of Chohan, the Deols, the Peraleses and the

Vasquez against Gregory and New Prime.

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

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

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

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

The jury charge included a "sudden emergency" instruction.

INJURIES/DAMAGES *brain, internal bleeding; death; foot; fracture, ankle; fracture, back; fracture, neck; fracture, rib; fracture, shoulder; fracture, toe; fracture, vertebra; head; laceration; leg; lung, puncture*

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

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

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

future physical impairment and past and future disfigurement.

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

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

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

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

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

The jury did not reach the questions on gross negligence.

**JASWINDER
CHOHAN**

\$350,000 past loss of society companionship
\$2,625,000 future loss of society companionship
\$91,200 past loss of pecuniary contribution
\$684,000 future loss of pecuniary contribution
\$525,000 past mental anguish
\$3,937,500 future mental anguish
\$8,212,700

AASHISH DEOL

\$160,000 past loss of society companionship
\$1,200,000 future loss of society companionship
\$18,000 past loss of pecuniary contribution
\$123,000 future loss of pecuniary contribution
\$160,000 past mental anguish
\$925,000 future mental anguish
\$2,586,000

DARSHAN DEOL

\$160,000 past loss of society companionship
\$160,000 future loss of society companionship
\$600 past loss of pecuniary contribution

\$600 future loss of pecuniary contribution
\$160,000 past mental anguish
\$160,000 future mental anguish \$641,200

**ESTATE OF
BHUPINDER
SINGH DEOL**

\$500,000 pain and mental anguish

**GUNEET
KAUR DEOL**

\$160,000 past loss of society companionship
\$1,200,000 future loss of society companionship
\$18,000 past loss of pecuniary contribution
\$127,800 future loss of pecuniary contribution
\$5,000 past mental anguish
\$92,500 future mental anguish
\$1,603,300

**HARSHJOT
SINGH DEOL**

\$160,000 past loss of society companionship
\$1,200,000 future loss of society companionship
\$18,000 past loss of pecuniary contribution
\$121,800 future loss of pecuniary contribution
\$160,000 past mental anguish
\$925,000 future mental anguish
\$2,584,800

JAGTAR DEOL

\$160,000 past loss of society companionship
\$160,000 future loss of society companionship
\$600 past loss of pecuniary contribution
\$600 future loss of pecuniary contribution
\$160,000 past mental anguish
\$160,000 future mental anguish
\$641,200

**ALMA J.
PERALES**

\$1,000 past physical pain and mental anguish from her bodily injuries
\$1,322,400 damages for death of mother, Belinda Vasquez
\$8,093,700 damages for death of husband, Hector Perales
\$9,417,100

ELIJAH PERALES \$160,000 past loss of society companionship
 \$1,200,000 future loss of society companionship
 \$18,000 past loss of pecuniary contribution
 \$117,000 future loss of pecuniary contribution
 \$160,000 past mental anguish
\$925,000 future mental anguish
 \$2,580,000

ESTATE OF HECTOR PERALES \$50,000 pain and mental anguish

NOAH PERALES \$3,000 past physical pain and mental anguish from his bodily injuries
 \$160,000 past loss of society companionship
 \$1,200,000 future loss of society companionship
 \$18,000 past loss of pecuniary contribution
 \$119,400 future loss of pecuniary contribution
 \$180,000 past mental anguish from death of his father, Hector Perales
\$1,040,625 future mental anguish from death of his father, Hector Perales
 \$2,721,025

ESTATE OF ALMA BELINDA VASQUEZ \$500,000 pain and mental anguish

GREGORY VASQUEZ \$160,000 past loss of society companionship
 \$480,000 future loss of society companionship
 \$25,000 past loss of pecuniary contribution
 \$75,000 future loss of pecuniary contribution
 \$160,000 past mental anguish
\$480,000 future mental anguish
 \$1,380,000

GUILLERMO VASQUEZ \$193,000 past medical cost
 \$300,000 past physical impairment

\$187,500 future physical impairment
 \$150,000 past disfigurement
 \$600,000 past physical pain and mental anguish from his bodily injuries
 \$375,000 future physical pain and mental anguish from his bodily injuries
 \$350,000 past loss of society companionship
 \$437,500 future loss of society companionship
 \$51,200 past loss of pecuniary contribution
 \$64,000 future loss of pecuniary contribution
 \$525,000 past mental anguish from death of his wife, Belinda Vasquez
\$656,250 future mental anguish from death of his wife, Belinda Vasquez
 \$3,889,450

WILLIAM VASQUEZ \$5,000 past physical pain and mental anguish from his bodily injuries
 \$160,000 past loss of society companionship
 \$480,000 future loss of society companionship
 \$25,000 past loss of pecuniary contribution
 \$75,000 future loss of pecuniary contribution
 \$160,000 past mental anguish from death of his mother, Belinda Vasquez
\$480,000 future mental anguish from death of his mother, Belinda Vasquez
 \$1,385,000

DEMAND \$9,500,000 for all trial plaintiffs combined
OFFER \$700,000

TRIAL DETAILS Trial Length: 12 days
 Trial Deliberations: 4 days
 Jury Composition: 2 male, 4 female

PLAINTIFF EXPERT(S) Brooke Liggett, CPA, accounting, Springfield, MO
 Whitney Morgan, trucking industry, Birmingham, AL
 Bryan Rappolt, weather conditions, Phoenix, AZ

Nathan Rose, accident reconstruction, Greenwood Village, CO
 Alex Willingham, M.D., life care planning, San Antonio, TX

DEFENSE EXPERT(S) Helen Reynolds, Ph.D., economics, Dallas, TX
 Richard J. Schlueter, P.E., accident reconstruction, College Station, TX
 Scott Yates, M.D., internal medicine, Plano, TX

EDITOR'S NOTE This report is based on information that was provided by the Perales/Vasquez and Chohan/Deol plaintiffs' counsel. Gregory/New Prime's counsel and the Buss/Jones/Ireton plaintiffs' counsel did not respond to the reporter's phone calls. Erving/M.C. Van Kampen's counsel declined to contribute.

—John Schneider

FIFTY-TWO

INDUSTRY: REAL ESTATE

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Building's defect allowed visitor's paralyzing injury, suit alleged

VERDICT ACTUAL **\$37,397,603**
\$29,000,000

CASE Anastasia Klupchak v. First East Village Associates, Bernard McElhone, Susan Schenk, Tri-Star Equities, Inc. and Rod Feldman, No. 110617/09

COURT JUDGE DATE New York Supreme, NY
 Joan A. Madden
 3/7/2017

PLAINTIFF ATTORNEY(S) Thomas A. Moore (lead), Kramer, Dillof, Livingston & Moore, New York, NY

Matthew Gaier, Kramer,
Dillof, Livingston & Moore,
New York, NY

DEFENSE

ATTORNEY(S) Peter C. Kopff (lead), Peter C. Kopff, LLC, Garden City, NY
Eric Z. Leiter, of counsel,
Mauro Lilling Naparty LLP,
Woodbury, NY
Mark D. Levi, Smith Mazure
Director Wilkins Young &
Yagerman, P.C.,
New York, NY

FACTS & ALLEGATIONS On Nov. 15, 2008, plaintiff Anastasia Klupchak, 22, a student, visited a fourth-floor apartment that was located at 82 Second Ave., in the East Village section of Manhattan. The apartment's tenant was conducting a party. During the course of the event, Klupchak exited onto a fire-escape landing that abutted one of the apartment's windows. She fell through a 34-inch-wide gap that allowed entrance to a lower ladder. She plummeted a distance of 12 feet, and she landed on the roof of the building's second story. She suffered a paralyzing injury.

Klupchak sued the premises' owner, First East Village Associates; the company's principals, Bernard McElhone and Susan Schenk; the premises' manager, Tri-Star Equities; and that company's principal, Rod Feldman. Klupchak alleged that the defendants were negligent in their maintenance of the premises. She further alleged that the defendants' negligence created a dangerous condition that caused the accident.

Schenk was dismissed, and the matter proceeded to a trial against the remaining defendants.

New York law specifies that fire-escape systems must have rail-protected stairways whose incline does not exceed 60 degrees. The defendants' fire-escape system had unprotected ladders whose incline measured 90 degrees. Such ladders allow the type of unimpeded fall that injured Klupchak, and they are outlawed by New York Multiple Dwelling Law § 53, which was enacted in 1928. The law mandated replacement of all noncompliant fire-escape systems. Klupchak's expert architect contended that the fire-escape system should have been replaced, and he noted that a subsequent owner performed a code-compliant replacement.

The defense's expert engineer opined that the fire-escape system was safer than the legally required system.

Defense counsel contended that the fire-escape system was not intended for casual use, and they suggested that the apartment's tenant, Dana Rhinerson, should not have permitted

Klupchak's use of the fire-escape system.

Defense counsel also contended that Klupchak's fall was a result of Klupchak having been intoxicated. Klupchak had consumed several alcoholic beverages, and a test revealed that her blood's alcohol concentration measured 0.185. However, Klupchak's expert toxicologist contended that that measurement was artificially inflated by factors that included a trauma-related rupture of red blood cells. Klupchak claimed that she had consumed two or three alcoholic beverages, and Klupchak's expert toxicologist opined that Klupchak would not have been impaired.

INJURIES/DAMAGES *compression fracture; fracture, T12; fracture, T8; fracture, scapula; fracture, shoulder; fracture, vertebra; fusion, thoracic; incontinence; paralysis, partial; paraplegia; urinary tract infection*

Klupchak suffered a compression-induced fracture of her T8 vertebra, a burst fracture of her T12 vertebra and a fracture of her right, dominant shoulder's scapula.

Klupchak was placed in an ambulance, and she was transported to Bellevue Hospital Center, in Manhattan. After having been transferred to another facility, she underwent fusion of her spine's T8 and T12 levels.

Klupchak suffers residual paralysis of her waist and legs. She requires use of a wheelchair. Her condition causes frequent infections of her urinary tract, so a urologist has prescribed prophylactic use of an antibiotic. Klupchak is also susceptible to incontinence of the bladder and bowel, though her incontinence's frequency can be diminished via scheduled defecation and urination.

Klupchak employs a daily aide who provides four hours of assistance, but Klupchak claimed that she will ultimately require the constant presence of an aide. Klupchak also claimed that she will require further fusion of her spine, that she will require therapy, that she requires lifelong use of medication, and that her disability will necessitate modification of her residence.

Klupchak sought recovery of future medical expenses, the future cost of aides, the future cost of modification of her residence, and damages for past and future pain and suffering.

The defense's expert physiatrist opined that Klupchak does not require an aide, though he also estimated that an aide would be required when Klupchak reaches the age of 60.

During the jury's deliberations, the parties negotiated a high/low stipulation: Damages could not exceed \$29 million, but they had to equal or exceed \$13 million.

RESULT The jury found that the fire-escape sys-

tem was not safe, that its condition constituted a violation of New York Multiple Dwelling Law § 53, that the defendants were negligent in their failure to address the fire-escape system, and that the defendants' negligence was a substantial cause of Klupchak's injuries. The jury also found that Klupchak should not have ventured onto the fire-escape system's landing, though it did not fault Rhinerson. The defendants were assigned 75 percent of the liability, and Klupchak was assigned 25 percent of the liability.

The jury determined that damages totaled \$37,397,602.50. The jury also calculated growth-rate figures for each category of economic damages. After application of those rates, the jury's award would have totaled \$39,199,420. The comparative-negligence reduction would have produced a net recovery of \$29,399,565, but Klupchak recovered the stipulated limit: \$29 million.

ANASTASIA

KLUPCHAK \$2,000,000 past pain and suffering
\$30,000,000 future pain and suffering
\$4,009,780 future cost of aides
\$329,765 future cost of medical care (50.5 years)
\$541,108 future cost of medical equipment and supplies (50.5 years)
\$194,425 future cost of medication (50.5 years)
\$38,700 future cost of modification of residence
\$150,000 future cost of surgery
\$133,825 future cost of therapies (50.5 years)
\$37,397,603

DEMAND

\$35,000,000 (total, from Feldman, First East Village Associates, McElhone and Tri-Star Equities)

OFFER

\$15,000,000 (total, by Feldman, First East Village Associates, McElhone and Tri-Star Equities)

INSURER(S)

Chubb Group of Insurance Cos. for all defendants
QBE North America for all defendants
American General Life Insurance Co. for all defendants

TRIAL DETAILS Trial Length: 4 weeks
Trial Deliberations: 3 days
Jury Vote: 5-1 (Klupchak's negligence, Klupchak's liability, Rhinerson's negligence, Rhinerson's lack of liability, damages for past and future pain and suffering); 6-0 (all other questions)
Jury Composition: 2 male, 4 female

PLAINTIFF EXPERT(S)
Erica N. David, M.D., physical medicine, West Orange, NJ
Robert Arthur King, FAIA, architecture, New York, NY
William R. Sawyer, Ph.D., medical toxicology, Sanibel, FL
Les Seplaki, Ph.D., economics, Fort Lee, NJ

DEFENSE EXPERT(S)
Damon Borg, Ph.D., toxicology, Huntington, NY
Leonard R. Freifelder, Ph.D., economics, New York, NY
Jeffrey M. Gross, M.D., physical medicine, New York, NY
Elizabeth Kavalier, M.D., urogynecology, New York, NY
Robert Matteini, fire safety/protection, Garden City, NY
Valerie V. Parisi, R.N., life care planning, Doylestown, PA
Jeffrey J. Schwalje, P.E., engineering, Edison, NJ

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

—*Jack Deming*

Dock worker argued company knew equipment was unsafe

VERDICT **\$37,090,000**

CASE Logan Milstead v. Total Petrochemicals & Refining USA Inc., Turner Industries Group L.L.C., Brand Energy & Infrastructure Services Inc., Fryoux Barge Consultants Inc., Fryoux Consulting L.L.C., Fryoux Tankerman Service Inc., and Fryoux Marine L.L.C., No. 73334
COURT 18th Judicial District Court, Parish of Iberville, LA
JUDGE Alvin Batiste Jr.
DATE 3/28/2017

PLAINTIFF ATTORNEY(S)
Tony Clayton (lead), Clayton | Frugè | Ward, Port Allen, LA
Marc Frischhertz, Frischhertz Poulliard Frischhertz Impastato LLC, New Orleans, LA
Michael Frugè, Clayton | Frugè | Ward, Port Allen, LA
Anthony Joseph Impastato, Frischhertz Poulliard Frischhertz Impastato LLC, New Orleans, LA

DEFENSE ATTORNEY(S)
Thomas P. Diaz (lead), Liskow & Lewis, New Orleans, LA (Total Petrochemicals & Refining USA Inc.)
Raymond T. Waid, Liskow & Lewis, New Orleans, LA (Total Petrochemicals & Refining USA Inc.)
None reported (Brand Energy & Infrastructure Services Inc., Fryoux Barge Consultants Inc., Fryoux Consulting L.L.C., Fryoux Marine L.L.C., Fryoux Tankerman Service Inc., Turner Industries Group L.L.C.)

FACTS & ALLEGATIONS On Dec. 14, 2013, plaintiff Logan Milstead, 24, a dockman, was working at a Total Petrochemicals & Refining USA Inc. plant, in Iberville Parish. His duties included testing chemicals as they were

transferred between the plant and barges and ships moored at the company's floating dock on the Mississippi River. Milstead's employer, which supplies personnel for dock operations, had been contracted to work at the plant.

A plant supervisor instructed Milstead to look into a loud noise which had come from the loading arm, the device by which chemicals are transferred between the barges and the plant. The loading arm is balanced by 7,000 pounds of counterweight (seven stacked 1,000-pound steel plates suspended by a cable).

As Milstead was under the loading arm, it fractured, and the 7,000 pounds of counterweight fell on him, crushing his leg, which was eventually amputated above the knee.

Milstead sued Total, alleging that the company was negligent for sending him underneath the loading arm when it knew its structural integrity had been compromised and it was unsafe to do so. He also sued Fryoux Tankerman Service Inc., which owned the barge moored to the dock; Turner Industries Group L.L.C., a subcontractor aboard the dock; and Brand Energy & Infrastructure Services Inc., another subcontractor on the dock.

Milstead settled with Fryoux Tankerman Service for an undisclosed amount, prior to trial; Turner Industries Group and Brand Energy & Infrastructure Services were dismissed, prior to trial. Because Total faulted Fryoux and Milstead's employer (which was not named as a defendant) for the accident, they were identified on the verdict slip, for the jury to apportion liability.

The plant supervisor who dispatched Milstead to the loading arm had been at a nearby land-based site with a view of the loading arm through a camera attached to equipment. According to Milstead's expert in dock safety, the supervisor had full knowledge that the loading arm had a significant crack, since he had zoomed in on the crack with the camera. Nevertheless, the supervisor improperly instructed Milstead to inspect it, and unnecessarily put him in a dangerous situation, which led to his injury.

The expert maintained that there had been previous problems with the loading arm, which involved the equipment becoming stuck, due to the barge's constantly moving on the water. The expert concluded that the loading arm was not flexible enough to withstand the movement of the barge, and created an unsafe condition.

This theory was supported by Milstead's expert in metallurgy, who said that the loading arm's pivot pin (which functions somewhat like a door hinge) jammed, which in turn put pressure on the arm and prevented it from rotating completely.

Milstead's expert in maritime loading faulted

FIFTY-THREE

INDUSTRY: MANUFACTURING

WORKER/WORKPLACE NEGLIGENCE

Negligent Supervision — Negligent Maintenance — Negligent Repair

Total for having Milstead perform two jobs at once: he was responsible for monitoring two cargo transfers simultaneously and for testing chemicals as they were transferred. Federal regulations dictate that dock workers are to monitor one transfer at a time, but Total obtained a waiver from the U.S. Coast Guard which allowed two, only for the purpose of saving money, the expert opined.

Total maintained that it properly adhered to all federal-maritime regulations and provided a safe working environment. The company's expert in maritime loading testified that the pin on the loading arm was not pulled prior to the transfer, which prevented the arm from being flexible, and in turn caused it to crack and caused the counter-weight to fall. It was Milstead's duty to disengage the pin, which he failed to do, and was therefore was contributorily negligent, the expert concluded.

Total faulted Fryoux and Milstead's employer for the accident, asserting that the companies created unsafe work conditions which resulted in Milstead's injuries.

Milstead's counsel argued that the loading-arm pivot pin had been shifted from its proper position by the barge's moveable forces, which prevented the arm from moving freely.

INJURIES/DAMAGES *amputation, leg (above the knee); catheterization; crush injury, leg; deep vein thrombosis; depression; embolism; emotional distress; epidural injections; fracture, ankle; fracture, femur; fracture, fibula; fracture, tibia; heart; herniated disc, lumbar; hip; infection; internal fixation; labrum, tear (hip); leg; lower back; open reduction; osteomyelitis; physical therapy; pins/rods/screws; post-traumatic stress disorder; prosthesis; pulmonary/respiratory; scar and/or disfigurement, leg; sepsis*

Milstead was trapped under the counterweight for an hour-and-a-half before he was freed and taken by ambulance to a hospital. He suffered a crush injury to his left leg, which included multiple fractures to his ankle, tibia, fibula, and femur. During his initial 20 days hospitalized, he underwent open reduction and internal fixation surgeries to his ankle, tibia, and femur (in which a rod was implanted). He was then transferred to a rehabilitation facility where he experienced severe complications. Over the course of seven months, Milstead suffered blood clots, deep vein thrombosis (one clot was nearly fatal), wound infections, osteomyelitis, a pulmonary embolism to both lungs, and sepsis. He underwent wound VAC (vacuum-assisted closure) treatment, blood-thinning medication, catheterization to his heart, and a reinstallation of a femur rod. In early July, his leg was amputated above the knee. In total, Milstead

spent approximately four months hospitalized.

In the ensuing years, Milstead treated with extensive physical therapy to learn how to walk with a prosthesis. According to Milstead, his impaired gait affected the alignment of his back, resulting in disc herniations in his lumbar spine. Physical therapy also focused on his back condition, and he treated with a pain-management specialist for his back and left hip, which sustained a labrum tear.

In addition to his physical condition, Milstead allegedly suffered from psychological injuries. He treated with a psychiatrist, who diagnosed him with major depressive disorder and post-traumatic stress disorder.

He sought to recover \$951,608.19 in medical costs.

Milstead's orthopedic surgeons outlined his injuries and treatment. His psychiatrist discussed what future treatment Milstead requires, which includes surgical repair of the labrum tear, lifelong pain medication, and epidural painkilling injections and radiofrequency ablations to his lumbar spine. Milstead sought to recover \$7,169,289 in future medical costs.

Milstead's psychiatrist testified that the accident caused an onset of major depressive disorder and post-traumatic stress disorder, resulting in the need of ongoing psychotropic medication.

According to his expert in life-care planning/vocational issues, Milstead could possibly be released to sedentary/light-duty work in the future, although he had not been released at the time of trial. Milstead sought to recover \$183,076 in past lost wages and \$2,181,131 in future lost earnings.

Milstead testified that he is in constant pain and spends most of his time in a wheelchair. He is unable to do things with his daughter, is unable to work, and his physical condition destroyed his relationship with his girlfriend. He also discussed battling depression and other forms of mental anguish.

Milstead sought to recover \$6 million to \$8 million for past pain and suffering, \$3 million to \$5 million for future pain and suffering, \$3 million to \$5 million for past and future mental anguish, \$6 million to \$8 million for past and future loss of enjoyment of life, \$1 million to \$2 million for disability, and an unspecified amount for scars and disfigurement.

Total did not dispute Milstead's injuries and damages, but maintained that the accident was due to his negligence.

RESULT The jury found Total 90 percent liable and Fryoux 10 percent liable. No liability was found against Milstead and his employer. Milstead was determined to receive \$37.09 million.

LOGAN

MILSTEAD

\$1,000,000 past medical cost
\$7,200,000 future medical cost
\$3,000,000 past loss enjoyment of life
\$2,000,000 future loss enjoyment of life
\$190,000 past lost earnings
\$2,200,000 future lost earnings
\$7,000,000 past pain and suffering
\$3,000,000 future pain and suffering
\$2,000,000 disability
\$3,000,000 past mental anguish
\$3,500,000 scarring and disfigurement
\$3,000,000 future mental anguish
\$37,090,000

INSURER(S)

Chubb Group of Insurance Cos. for Total Petrochemicals & Refining USA Inc.

TRIAL DETAILS

Trial Length: 7 days

PLAINTIFF

EXPERT(S)

Jeremy A. Comeaux Sr., M.D., physical medicine, Baton Rouge, LA (treating)
Nancy Favaloro, M.S., C.R.C., vocational rehabilitation/counseling, New Orleans, LA
John Fidanza III, Psy.D., psychiatry, Zachary, LA (treating)
Craig C. Greene, M.D., orthopedic surgery, Baton Rouge, LA (treating)
Ricardo J. Rodriguez, M.D., orthopedic surgery, Baton Rouge, LA (treating)
Maurice Ryan, docks, New Orleans, LA
Thomas C. Shelton, Ph.D., P.E., metallurgy, Baton Rouge, LA
Fred Vanderbrook, engineering, Covington, LA
Shael N. Wolfson, Ph.D., economics, New Orleans, LA

DEFENSE

EXPERT(S)

David Laughlin, loading/unloading, Houston, TX

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls. Turner Industries Group L.L.C., Brand Energy & Infrastructure Services Inc., Fryoux Barge Consultants Inc., Fryoux Consulting L.L.C., Fryoux Tankerman Service Inc., and Fryoux Marine L.L.C. were not asked to contribute.

—Aaron Jenkins

SIXTY-TWO

INDUSTRY: CONSTRUCTION CONTRACTOR

MOTOR VEHICLE

Pedestrian — Hit and Run

Walker hit by truck mirror, suffered brain damage

VERDICT **\$30,185,489**

CASE Stephanie Ming v. Gerelco Traffic Controls, Inc., a Florida corporation, No. 14-CA-011138

COURT Hillsborough County Circuit Court, 13th, FL

JUDGE Elizabeth G. Rice

DATE 12/15/2017

PLAINTIFF

ATTORNEY(S) Christopher D. Codling (lead), Givens Givens Sparks, PLLC, Tampa, FL
Robert D. Sparks, Givens Givens Sparks, PLLC, Tampa, FL

DEFENSE

ATTORNEY(S) Jeffrey M. Katz (lead), Dalan, Katz & Siegel, P.L., Clearwater, FL
Michael D. Siegel, Dalan, Katz & Siegel, P.L., Clearwater, FL

FACTS & ALLEGATIONS On Dec. 24, 2011, plaintiff Stephanie Ming, a 47-year-old unemployed woman, was walking north in a grassy area along the outside lane of U.S. Route 41 (South 50th Street, also known as South Tamiami Trail), in Tampa. When she was near the intersection with State Route 676 (Causeway Boulevard), Ming was struck on the back of the head by the passenger side mirror of

a truck that was northbound on US-41. Ming claimed she suffered a brain injury.

The truck left the scene of the accident, and the driver was not initially identified. However, a passerby wrote down the tag number on the truck, which was then identified as belonging to Gerelco Traffic Controls Inc.

Ming sued Gerelco Traffic Controls, alleging that the truck driver was negligent in the operation of the vehicle and that Gerelco was vicariously liable for the driver's actions.

The driver was eventually identified as Thomas Cox, a superintendent for Gerelco. However, by the time he was identified, the statute of limitations to pursue legal action against him had expired. So Ming could only pursue her claim against Gerelco.

Ming's counsel contended that Cox crossed over the line separating the road from the shoulder area where Ming was walking. Counsel also planned to argue that Cox would not have fled the scene unless he had acted negligently.

Defense counsel initially asserted that since the Gerelco office was closed on Christmas Eve, Cox must have taken the truck without the company's permission. However, Gerelco conceded liability prior to trial, so the trial solely addressed legal causation for Ming's injuries and damages.

INJURIES/DAMAGES *brain damage; closed head injury; cognition, impairment; concentration, impairment; concussion; head; headaches; incontinence; memory, impairment; neurological impairment; seizure; traumatic brain injury; unconsciousness*

Ming was placed in an ambulance, and she was transported to Tampa General Hospital, in Tampa.

Ming had briefly lost consciousness following the accident, but she was awake and sitting up by the time the ambulance came to the scene. The hospital performed CT scans and X-rays, but did not find any bleeding or swelling of the brain. Ming ultimately received seven staples for a laceration on the back of her head and was released.

Ming was suffering from mental health issues at the time of the accident and spent the next few months treating that condition. Her mental health issues eventually stabilized around nine months after the incident, but she claimed she was still suffering from headaches, seizure-like activity, memory loss, blackouts, confusion, and disorientation. Doctors then began to question if the accident was causing the alleged ongoing issues. After additional examination and treatment for the ongoing symptoms, Ming was diagnosed with a post-traumatic head injury related to the accident.

Ming claimed that her symptoms continued

to deteriorate in the ensuing years and that she also began to suffer from incontinence approximately three years after the accident.

As part of the treatment for her post-traumatic head injury, Ming started taking multiple medications, including anti-seizure drugs and Adderall to improve her concentration. She also began seeing a neuropsychiatrist and other medical providers to monitor her medications and the alleged changes in her brain. Ming additionally goes to an adult activity center during the day to allegedly help improve her memory and her ability to retain and understand information.

Ming claimed that she continues to have seizure-like activity despite the medications. She also claimed that she requires assistance with daily activities, such as dressing herself, bathing, and preparing meals. Ming additionally claimed that she continues to have problems with concentration and memory. After the accident, her daughter quit her job and relocated to Florida to be Ming's around-the-clock caregiver.

Ming's treating neuropsychiatrist testified that Ming's condition would get worse as she grew older and that Ming would likely end up with early-onset dementia or Parkinson's disease.

Thus, Ming sought recovery of \$28,168.05 in past medical expenses, \$5,157,320.84 in future medical expenses, \$6 million in damages for past pain and suffering, and \$23 million in damages for future pain and suffering.

Defense counsel presented an expert neuropsychologist and an expert psychiatrist who disputed the cause of Ming's injuries. The neuropsychologist opined that Ming's condition was the result of her premature birth or a lack of brain development that resulted in mental retardation. The psychiatrist agreed that the brain damage was the result of prematurity or mental retardation, and opined that Ming's symptoms resulted from the various medications she was taking to treat her mental health disorder. However, Ming's counsel disputed the defense's allegation that Ming was mentally retarded.

Defense counsel also produced an expert clinical psychologist who served as their life care and vocational rehabilitation planner. He maintained that Ming's condition was the result of her mental illness and that Ming did not need a life care plan.

Defense counsel argued that Ming did not suffer a permanent injury and that Ming only suffered a head laceration. Counsel also argued that if Ming did have a traumatic brain injury, it was just a mild concussion that would have resolved within a few months.

Thus, defense counsel argued that if the jury

found that Ming did have a permanent injury, Ming should only receive \$750,000 for her medical care and \$750,000 for her pain and suffering.

RESULT The jury determined that Cox's negligence, for which Gerelco was admittedly responsible, was the legal cause of Ming's injuries, and that those injuries were permanent. The jury also found that Ming's damages totaled \$30,185,488.89.

EDITOR'S NOTE: The jury made a mathematical error on the verdict sheet when adding up the total award. While the jury wrote that the total award was \$30,185,488.84, the sum was actually \$30,185,488.89.

STEPHANIE

MING \$28,168 past medical cost
\$5,157,321 future medical cost
\$6,000,000 past pain and suffering
\$19,000,000 future pain and suffering
\$30,185,489

DEMAND OFFER \$8,000,000
\$65,000

INSURER(S) Amerisure Insurance Co.

TRIAL DETAILS Trial Length: 5 days
Trial Deliberations: 2 hours
Jury Vote: 6-0
Jury Composition: 2 male, 4 female; 1 black, 2 Hispanic, 3 white

PLAINTIFF EXPERT(S) Walter E. Afield, M.D., neuropsychiatry, Tampa, FL (treating doctor)

DEFENSE EXPERT(S) Alex R. Rodriguez, M.D., psychiatry, Tampa, FL
Michael Shahnasarian, Ph.D., life care planning, Tampa, FL
Rodney D. Vanderploeg, Ph.D., neuropsychology, Tampa, FL

EDITOR'S NOTE This report is based on information that was gleaned from court documents and an interview of plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Melissa Siegel

SIXTY-FIVE

INDUSTRY: SERVICES - ENGINEERING & CONSTRUCTION

WORKER/WORKPLACE NEGLIGENCE

Negligent Training — Wrongful Death — Fall from Height

Failure to inspect utility pole led to fatal accident: plaintiff

VERDICT \$27,871,944

CASE Christa L. Jester, on behalf of the Estate of Keith A. Jester, Deceased v. Utilimap Corporation and Duke Energy Ohio, Inc., No. A 1500283
COURT Hamilton County, Court of Common Pleas, OH
JUDGE Timothy Hogan
DATE 6/7/2017

PLAINTIFF ATTORNEY(S) Stuart E. Scott, Spangenberg Shibley & Liber LLP, Cleveland, OH
Jeremy A. Tor, Spangenberg Shibley & Liber LLP, Cleveland, OH
Peter H. Weinberger, Spangenberg Shibley & Liber LLP, Cleveland, OH

DEFENSE ATTORNEY(S) Bryan E. Pacheco (lead), Dinsmore & Shohl LLP, Cincinnati, OH (Utilimap Corp.)
Kirk M. Wall (lead), Dinsmore & Shohl LLP, Columbus, OH (Utilimap Corp.)
Andrew B. Cassidy (co-lead), Dinsmore & Shohl LLP, Cincinnati, OH (Utilimap Corp.)
Maureen A. Bickley, Frost Brown Todd LLC, Cincinnati, OH (Duke Energy Business Services, Duke Energy Ohio Inc.)
Kevin C. Schiferl, Frost Brown Todd LLC, Indianapolis, IN (Duke Energy Business Services, Duke Energy Ohio Inc.)

FACTS & ALLEGATIONS On Feb. 27, 2014, plaintiff's decedent Keith Jester, 43, a senior lineman for Duke Energy Ohio Inc., and a coworker climbed a wood utility pole located on a farm in Morrow. This was an on-the-job training exercise. The pole broke and fell on top of the men. Both men suffered severe injuries. Jester's injuries were fatal.

Jester's widow, on behalf of Jester's estate and beneficiaries, sued Duke Energy Ohio Inc. for an intentional tort. She also sued Utilimap Corp. for negligence. She later added Duke Energy Business Services as a defendant, but both of the Duke defendants were dismissed on summary judgment before trial. The case went to trial against Utilimap only.

According to the lawsuit, in 2011, Duke, through its affiliate Duke Energy Business Services, contracted for Utilimap Corp., St. Louis, to inspect 30,000 of Duke's wood utility poles, four of which were on a farm in Morrow. Jester argued that Utilimap did not inspect those four poles, one of which was the pole that broke and fell on Keith Jester and his coworker. The suit alleged that the fatal accident occurred 28 months after the inspection was to have taken place and that the pole was found to have rotted from 6 to 46 inches below the ground.

Jester argued that Utilimap was understaffed and fell behind schedule on its inspections. Jester asserted that, although Utilimap hired more inspectors, it failed to train them properly and, therefore cut corners to meet its deadlines. Jester also argued that, under the contract between Duke and Utilimap, if a pole was inaccessible or could not be inspected for any reason, Utilimap was required to notify Duke immediately by phone and email. Duke said it had personnel and procedures to help inspectors who were having trouble getting access to poles. According to Jester, there was no record of Utilimap notifying Duke that the subject pole was inaccessible or had not been inspected. Plaintiff's counsel further argued that 67 of the 30,000 poles covered by the contract were not inspected, but Utilimap invoiced Duke and received payment for inspection of all of them.

Plaintiff's wood science expert testified that, if Utilimap had inspected the pole in 2011, it would have detected severe decay. He said that the pole would easily have held several men without breaking had it not been for the decay.

The defense argued that Duke and Jester were at fault. The defense disputed the claim that no phone or email notice was given. The defense argued that the email might have been destroyed in the ordinary course of Duke's business and that, regardless, the prior course of dealing between the companies required only a phone call, not an email, if a pole was inaccessible.

The defense further argued that, from the subject pole's inspection data, which Duke received from Utilimap in November 2011, it was immediately discernable that the pole was inaccessible and, therefore, unable to be inspected. (The data indicated a pole circumference of zero, meaning that it had not been inspected, and the comments section said "bean field.") Utilimap argued that the subject pole was in a bean field and that Duke had repeatedly warned Utilimap inspectors not to walk on cash crops of Duke customers. In response, plaintiff's counsel contended that the pole was not actually in the field and could be accessed by walking around the field.

Keith Jester was a Duke "Senior Lineman A" and in charge of the job site. As a result, the defense said it should have been obvious to him that the pole had never been inspected and might be rotten. The defense argued that he should have known that climbing the pole would be dangerous, especially for two men, in part because climbing a wooden utility pole is an inherently dangerous activity. The defense further argued that Jester should have instead ordered the pole excavated. Moreover, the defense maintained there was a green stain at the base of the pole, indicating fungus or algae, which Utilimap said Jester should have known was a sign that the pole might be rotten.

In addition, the defense argued that the pole had suddenly and unexpectedly leaned under the weight of wires connected to an adjacent pole. Therefore, the defense contended that Jester should have known the pole in question might be rotten and should have ordered it excavated. Plaintiff's counsel responded that the pole had leaned only slightly and not unexpectedly and that wires attached to the pole at the time were fairly light.

The defense also noted that Jester failed to take the normal precaution of probing the base of the pole with a screwdriver, to see if it was soft and therefore possibly rotten. In response, plaintiff's counsel argued that the pole was frozen and, therefore, probing it with a screwdriver would not have told Jester anything about whether the wood was rotten.

The defense also argued that the other man on the pole was a groundman, who had been instructed by Jester to climb the pole, even though the groundman was not authorized to do so and had never climbed a pole before. Further, the defense argued that, although the job required two men to climb the pole and the groundman climbed it properly, other linemen were present and Jester should have used one of them instead.

Regarding the amount it billed and was paid, Utilimap argued that it was paid for its time and that all parties to the contract understood that

there would be no deduction for inaccessible poles.

Six months before Jester's death, he and his wife had lost a son to complications of juvenile diabetes. However, the court did not allow evidence, if any, that Jester's grief and distraction over the death of his son were a causal factor in the on-the-job incident.

Utilimap sought unsuccessfully to have the Duke entities included on the jury charge. Also, the court excluded an OSHA citation against Duke, as well as Duke's root-cause analysis, both of which the defense said placed at least some fault on Jester.

INJURIES/DAMAGES *death; fracture, rib; fracture, sternum; internal bleeding; kidney; liver, laceration*

Jester was strapped to the pole about 20 feet up when it fell on top of him, causing blunt force trauma to his chest. He suffered a lacerated liver, lacerated kidney, fractured sternum and fractured ribs. He bled to death internally from the liver laceration.

Jester was survived by his wife, their three children and Jester's mother. The widow was Christa Jester, a dental hygienist, and the children were a girl, who was 16 at the time of the accident, and two boys, who were about 7 and 9 at the time.

Jester was reportedly conscious for about an hour after the incident. According to plaintiff's counsel, he was speaking and asked how his coworker was, but finally lost consciousness on the way to the hospital in the ambulance.

Plaintiff's counsel said Jester was one of the most respected linemen at Duke, extremely meticulous and hardworking, and selfless, as well. Counsel said he built his family's 4,000-square-foot house himself and that his family testified about an incident in which he risked his life to save a child.

Plaintiff's counsel also said Jester guided his family through the difficult time after his son's death and made sure they went to counseling and dealt with their grief. The court reminded the jury that they were not to award damages for the loss of the child, however.

Plaintiff's counsel said the family presented very well as witnesses.

On behalf of the estate, Christa Jester sought damages for Jester's conscious pain and suffering. On behalf of the beneficiaries, she sought the family's loss of support from his reasonably expected earning capacity; their loss of his household and other services; and non-economic damages, such as their mental anguish and loss of his companionship and society.

Plaintiff's counsel put on evidence that the damages for loss of support and loss of services

totaled about \$3.4 million.

RESULT The jury found that Utilimap was negligent in failing to inspect the pole and not notifying Duke that it was not inspected; Utilimap's negligence proximately caused Jester's injury and death and his beneficiaries' damages; Jester suffered permanent and substantial physical deformity or loss of a bodily organ system and physical functional injury that permanently prevented him from being able to independently care for himself and perform life-sustaining activities; and Jester was not negligent. The jury awarded compensatory damages of \$27,871,944.

The case then proceeded to the punitive damages phase, which lasted one day. Jurors finished deliberating in about three hours and did not award punitive damages.

Utilimap's counsel said that, in the first phase, the jury initially assigned 12.5-percent liability to Jester, but the judge made the jury keep deliberating because the verdict had inconsistent answers.

CHRISTA L.

JESTER \$2,897,191 loss of support from reasonably expected earning capacity
\$462,253 loss of household services
\$24,000,000 loss of society, mental anguish
\$27,359,444

ESTATE OF

KEITH A. JESTER \$512,500 past pain and suffering

TRIAL DETAILS

Trial Length: 3 weeks
Trial Deliberations: 8 hours
Jury Vote: 8-0
Jury Composition: 4 male, 4 female

PLAINTIFF

EXPERT(S) John Burke, Ph.D., economics, Cleveland, OH
Craig McIntyre, Ph.D., wood, Dayton, MT

DEFENSE

EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel, as well as counsel for Utilimap and Duke.

—John Schneider

INDUSTRY: CONSTRUCTION**WORKER/WORKPLACE
NEGLIGENCE**

Negligent Training

**Worker wasn't properly
using safety harness, fell
three floors****VERDICT** \$26,508,000
ACTUAL \$26,563,138**CASE** Fernando Canales v. Prestige Building Company LLC; Gera Construction Services, LLC; and Edwin A Martinez dba E Martinez Construction, No. DC-15-10405**COURT** Dallas County District Court, 68th, TX**JUDGE** Martin Hoffman**DATE** 10/4/2017**PLAINTIFF****ATTORNEY(S)** Clay Miller (lead), Miller Weisbrod LLP, Dallas, TX
Josh Birmingham, Miller Weisbrod LLP, Dallas, TX**DEFENSE****ATTORNEY(S)** Joseph P. Appelt, Joseph P. Appelt, P.C., San Antonio, TX (Gera Construction Services LLC)
Paul J. Goldenberg, Lorance & Thompson, P.C., Houston, TX (Prestige Building Co. LLC)
Rocky Little, Fanning, Harper, Martinson, Brandt & Kutchin, Dallas, TX (RJC Midwest L.P.)
Pro se (Edwin A. Martinez)**FACTS & ALLEGATIONS** On March 17, 2015, plaintiff Fernando Canales, 37, a laborer for a gypsum/sheathing subcontractor, was working on the construction of an apartment complex on Cable Ranch Road in San Antonio. Prestige Building Company LLC was the construction manager and RJC Midwest L.P. was the general contractor. Gera Construction Services LLC was a framing/carpentry subcontractor, and Edwin A. Martinez, doing business as E. Martinez Construction, was Canales' employer

and a subcontractor to Gera. Canales was installing exterior sheathing on the third floor. He was wearing a harness and lifeline for fall protection, but was not using it correctly; the end of the lifeline that was supposed to be connected to the building was connected to the harness. Canales slipped on a wet surface and fell to the ground. He was paralyzed.

Canales initially sued only Prestige, Gera and Martinez, but he later added RJC. RJC was the only defendant at trial as the others had been nonsuited.

Canales alleged that RJC was negligent and grossly negligent for failing to carry out its obligation to provide fall protection training. He alleged that RJC had such a duty because RJC exercised or retained some control over such matters, beyond the right to order the work to start or stop or to inspect progress or to receive reports.

Canales claimed that RJC's owner had specifically instructed its on-site safety coordinator and job superintendent to train the workers on the use of fall protection equipment, but that the coordinator and superintendent failed to carry out the instruction.

Canales testified that he was wearing the harness the same way he had worn it for seven years; that he believed he was wearing it the correct way; and that he had never seen anyone use it differently.

RJC denied the allegations and contended that Canales was negligent for failing to connect his harness properly. RJC also designated Gera and Martinez as responsible third parties, alleging that they were responsible for providing fall protection training and a safe workplace.

The defense denied that Canales had been using the harness improperly for seven years with no one noticing. Canales' employer testified that Canales knew how to use the harness properly, and a co-worker testified that Canales always connected the harness properly except on the date of the incident. The employer also testified that safety training was his responsibility, but that Canales had extensive experience and did not need such training. Gera's owner also testified that RJC was not responsible for training employees of subcontractors, and that such employees were professionals who did not need additional training.

INJURIES/DAMAGES *fracture, vertebra; incontinence; paralysis; paraplegia; urinary tract infection*

Canales sustained a thoracic vertebra fracture and was rendered permanently paraplegic. Complications included several urinary tract infections, and he has no bowel or bladder function.

His initial hospital stay lasted 30 days, during

which he underwent spinal stabilization surgery from T5 to T7. Outpatient rehabilitation was recommended, but Canales testified that he could not afford it.

He went back to the emergency room multiple times for the infections.

His life care planning experts opined that he would require attendant care for the rest of his life, as well as care for complications, such as infections and possible bedsores. He will also need catheters, bowel program equipment, transportation and home modifications. The total cost would be a little more than \$6 million, assuming an 11-year reduction in the normal life expectancy, his life care planning experts said.

He also claimed that he could no longer work.

He sought a little more than \$6 million for the life care plan. For lost earning capacity, he sought \$58,000 in the past and \$750,000 in the future. He also sought past and future physical pain and mental anguish, past and future physical impairment and punitive damages.

The trial was bifurcated. Phase two was on the amount of punitive damages, if any.

The defense suggested that he could obtain treatment from a county hospital at little to no cost. Also, Canales' life care planning experts acknowledged that paraplegics can be employable and that obtaining additional training and learning to read and write English would improve Canales' employment prospects.

RESULT The jury found that RJC exercised or retained some control over safety or training relative to fall protection on the job site, other than the right to order the work to start or stop or to inspect progress or to receive reports.

The jury found only RJC negligent and grossly negligent and awarded Canales \$26,508,000, including punitive damages.

FERNANDO**CANALES** \$7,000,000 future medical cost
\$200,000 past physical impairment
\$1,500,000 future physical impairment
\$15,000,000 punitive damages
\$750,000 future lost earning capacity
\$400,000 past physical pain and mental anguish
\$1,600,000 future physical pain and mental anguish
\$58,000 past lost earning capacity
\$26,508,000

DEMAND \$2,000,000 (RJC's policy limit)

INSURER(S) Cincinnati Insurance Co. for RJC Midwest

TRIAL DETAILS Trial Length: 4 days
Trial Deliberations: 8 hours
Jury Vote: 12-0

PLAINTIFF EXPERT(S) David Altman, M.D., life care planning, San Antonio, TX
Dan Bagwell, R.N., CLCP, life care planning, San Antonio, TX

DEFENSE EXPERT(S) None reported

POST-TRIAL RJC filed a motion for JNOV and a motion for a new trial.

EDITOR'S NOTE This report includes information that was gleaned from court documents and an interview of plaintiff's and RJC's counsel.

—John Schneider

COURT Superior Court of Los Angeles County,
Los Angeles, CA

JUDGE Randolph M. Hammock

DATE 7/21/2017

PLAINTIFF ATTORNEY(S) Paul R. Kiesel (co-lead), Kiesel Law LLP, Beverly Hills, CA (Solomon Mathenge)
F. Jerome Tapley (co-lead), Cory Watson, P.C., Birmingham, AL (Araceli Mendez, Estate of Hilda Cruz, Estate of Saida Juana Mendez-Bernardino, Estate of Stephanie Cruz, Hilario Cruz, Juana de la Cruz Bernardino)
Ryan Lutz, Cory Watson, P.C., Birmingham, AL (Araceli Mendez, Estate of Hilda Cruz, Estate of Saida Juana Mendez-Bernardino, Estate of Stephanie Cruz, Hilario Cruz, Juana de la Cruz Bernardino)
D. Brett Turnbull, Cory Watson, P.C., Birmingham, AL (Araceli Mendez, Estate of Hilda Cruz, Estate of Saida Juana Mendez-Bernardino, Estate of Stephanie Cruz, Hilario Cruz, Juana de la Cruz Bernardino)
Kirk J. Wolden, Carter Wolden Curtis, LLP, Sacramento, CA (Solomon Mathenge)

DEFENSE ATTORNEY(S) Mark V. Berry, Bowman and Brooke LLP, Torrance, CA (Nissan North America Inc.)
Thomas M. Klein, Bowman and Brooke LLP, Phoenix, AZ (Nissan North America Inc.)
None reported (Continental Automotive Systems Inc.)

FACTS & ALLEGATIONS At around 7:20 a.m. on Aug. 29, 2012, plaintiffs' decedent Saida Mendez-Bernardino, 27, was driving a Dodge Caravan, which was carrying her daughters, plaintiffs' decedent Stephanie Cruz, 4, and Hilda Cruz, 6, on Willoughby Avenue, in Los Angeles. As they entered the intersection with North Highland Avenue, their minivan was broadsided by a 2004 Infiniti QX56, which had entered the intersection from northbound North Highland Avenue, veered into the southbound lanes, passed through a red light, and struck the minivan. The driver of the QX56, plaintiff

Solomon Mathenge was unbelted at the time of the accident. As a result, he sustained injuries to his head, hip, and chest. However, all three occupants of the Caravan sustained fatal injuries.

Mathenge was charged with three counts of vehicular manslaughter after a Los Angeles Police Department mechanical inspection found no mechanical defects in the brake system of his vehicle, the QX56. As a result, the decedents' survivors initially sought criminal prosecution and a wrongful death civil lawsuit against Mathenge. However, an investigation revealed that Mathenge's brake-failure claim was not the first involving a similar class of Nissan and Infiniti vehicles. That class action, *Banks v. Nissan*, involved claims concerning a defect in the software for the braking system that could result in a reduction in braking power. The settlement offered up to \$800 in compensation to the owners of more than 250,000 Nissan-built Armadas, Titans and Infiniti QX56 models, who had paid for brake booster repairs.

Thus, the father of Stephanie and Hilda, Hilario Cruz, sued Mathenge (who was initially erroneously sued as "Methenge").

Mendez-Bernardino's daughter, Araceli Mendez, whom Mendez-Bernardino dropped off at school prior to the accident, brought a separate action against Mathenge; the manufacturer of Mathenge's QX56, Nissan North America Inc.; and the brake system designer and manufacturer, Continental Automotive Systems Inc.

In addition, Mendez-Bernardino's mother, Juana de la Cruz-Bernardino, brought a separate action against Nissan North America Inc. and Continental Automotive Systems Inc. (also known as Continental Teves).

When the investigation revealed that other similar class of Nissan and Infiniti vehicles had the same brake-failure problem that Mathenge's vehicle allegedly had, Cruz added Nissan North America and Continental Automotive Systems to his suit. In addition, the three separate suits were ultimately consolidated for trial. However, the charges against Mathenge were dropped in December 2016, after Nissan settled the class action suit and an inspection of Mathenge's QX56 in November 2015 indicated that the vehicle had the same fault code in the stored memory that was involved in the *Banks* class action. Thus, the decedents' survivors dismissed their wrongful death lawsuit against Mathenge, and Mathenge joined their lawsuit as a plaintiff against Nissan and Continental. However, Continental ultimately settled with all of the plaintiffs and was let out of the case, and Juana de la Cruz-Bernardino dropped her claim prior to trial.

Plaintiffs' counsel contended that Nissan

SEVENTY-SEVEN

INDUSTRY: MANUFACTURING

PRODUCTS LIABILITY

Design Defect — Automobiles — Wrongful Death

Plaintiffs: Company knew of faulty design of brake system

VERDICT \$24,931,109

CASE Hilario Cruz, an Individual, v. Solomon Methenge, an Individual, and Does 1-100 / Araceli Mendez v. Solomon Methenge, Nissan North America, Continental Automotive Systems Inc., and Does 1-20 / Juana de la Cruz Bernardino v. Nissan North America Inc., Continental Automotive Systems Inc. aka Continental Teves, and Does 1 to 25, No. BC493949; BC529912; BC577815

and Continental knew that a select class of Nissan and Infiniti vehicles had a problem with a component called the “delta stroke sensor,” which is a component of the brake control system that is designed to detect vacuum booster failure and if so, switch the brake system over to hydraulic boost provided by the ABS pump using a system called “optimized hydraulic braking” (OHB). Counsel further contended that a software fault was causing an unnecessary activation of the OHB system, which would cause a change in brake pedal feel and, to some, a perception of brake failure. Plaintiffs’ counsel argued that the companies knew that a problem with the delta stroke sensor could cause brake failure as early as 2003, but that Nissan and Continental had yet to issue a warning or recall by the time Mathenge purchased the used QX56 in 2012. Thus, counsel argued that Nissan and Continental knew that the brakes in the 2004 Infiniti QX56 driven by Mathenge were faulty, but withheld that knowledge from the public.

Counsel for Nissan and Continental contended that the QX56’s brakes were not defective, and noted that although Mathenge told the Los Angeles Police Department that his brakes had “failed,” he had also claimed that the QX56 had “sped up.” Accordingly, counsel argued that Mathenge was solely responsible for the accident because he had committed a pedal error, in that Mathenge was pushing on the accelerator pedal while believing he was pressing on the brakes.

INJURIES/DAMAGES *death; fracture, hip; fracture, rib; hip; loss of parental guidance; loss of society; multiple trauma; traumatic brain injury*

Hilda sustained multiple traumatic injuries and subsequently died at the scene. She was 6 years old. Stephanie and Mendez-Bernardino also sustained multiple traumatic injuries, but they both died later at the hospital. Stephanie was 4 years old and Mendez-Bernardino was 27.

The father of Stephanie and Hilda, Hilario Cruz, and Mendez-Bernardino’s 16-year-old daughter, Araceli, sought recovery of wrongful death damages for the loss of Stephanie, Hilda and Mendez-Bernardino.

Mathenge sustained a traumatic brain injury, a fractured hip, and fractured ribs. He was subsequently taken to a hospital, where he stayed for over a month. He ultimately underwent surgery for the fractured hip, and he currently walks with a cane. Thus, Mathenge sought recovery of medical costs and non-economic damages for his past and future pain and suffering.

In addition, the plaintiffs sought recovery of punitive damages against Nissan.

RESULT The jury found that the design of the brake system was a substantial factor in causing harm to Cruz, Araceli and Mathenge. It also found that the benefits of the design of the brake system did not outweigh the risks and that Nissan was negligent for failing to recall the 2004 Infiniti QX56. The jury further found that the failure of the brake system was a substantial factor in causing harm to Cruz, Araceli and Mathenge. In addition, it found that Mathenge was negligent, but that his negligence was not a substantial factor in causing harm to Cruz and Araceli. Thus, the jury apportioned 100 percent liability to Nissan.

The jury determined that the plaintiffs’ damages totaled \$24,931,109. Of the total damages awarded, Cruz was awarded \$14,000,040, Araceli was awarded \$7,431,019, and Mathenge was awarded \$3.5 million. However, the jury did find that Nissan was not engaged in the conduct with malice, oppression, or fraud, and, thus, the jury did not award any punitive damages.

TRIAL DETAILS Trial Length: 20 days
Trial Deliberations: 2 days
Jury Vote: 10-2 on key issues

PLAINTIFF EXPERT(S) **Robert W. Johnson, C.P.A.**, economics, Los Altos, CA
Ioannis Kanellakopoulos, Ph.D., electrical, Half Moon Bay, CA (software expert)
Steven E. Meyer, P.E., forensic engineering, Goleta, CA (accident reconstruction)

DEFENSE EXPERT(S) **Eldon G. Leaphart**, engineering, Houston, TX (software expert)
Andrew E. Levitt, accident reconstruction, Torrance, CA
James Walker, Jr., B.S.M.E., automotive, Houston, TX (brake expert)
Douglas E. Young, Ph.D., ergonomics/human factors, Los Angeles, CA

EDITOR’S NOTE This report is based on information that was provided by plaintiffs’ counsel and defense counsel for Nissan North America. Defense counsel for Continental Automotive Systems Inc. was not asked to contribute.

—Priya Idiculla

EIGHTY

INDUSTRY: SERVICES - LANDSCAPING

WORKER/WORKPLACE NEGLIGENCE

Negligent Maintenance — Negligent Repair

Tree-trimmer alleged faulty equipment caused disabling fall

VERDICT **\$23,065,991**

CASE Efrain Alamo-Cruz and Maria Alamo v. Affordable Treemen, Inc., a Florida profit corporation, and Robin A. Croce, No. 15-001098
COURT Broward County Circuit Court, 17th, FL
JUDGE Sandra Perlman
DATE 2/14/2017

PLAINTIFF ATTORNEY(S) **Jose A. Fuentes**, Fuentes & Berrio, L.L.P., Deerfield Beach, FL
Michael A. Hersh, Kelley Uustal, PLC, Fort Lauderdale, FL

DEFENSE ATTORNEY(S) **Alan D. Sackrin**, Law Office of Alan D. Sackrin, Hallandale Beach, FL

FACTS & ALLEGATIONS On June 1, 2011, plaintiff Efrain Alamo-Cruz, 51, was performing tree-trimming and maintenance on a palm tree on a property in Plantation when he fell 30 feet to the ground. He sustained severe head and bodily injuries.

Alamo-Cruz sued Affordable Treemen Inc. and owner Robin A. Croce, alleging negligence.

He had been working as an independent contractor for Affordable Treemen, which supplied equipment to him. According to Alamo-Cruz, he was trimming the tree with an electric saw supplied by the company when part of the saw became loose or otherwise malfunctioned, causing it to ricochet and cut the safety harness which secured him to the tree and he fell. He claimed the saw’s malfunction was the result of improper maintenance and/or repair, and the defendants were aware of the dangerous condition of the saw but failed to rectify it. As a result, the company and

Croce violated their duty to furnish equipment that was safe and to ensure a reasonably safe working environment.

Affordable Treemen and Croce failed to answer the complaint, and the court issued default judgements on liability against them. The trial proceeded on the issue of Alamo-Cruz' injuries and damages.

INJURIES/DAMAGES *arm; back and neck; blunt force trauma to the head; closed reduction; cognition, impairment; diaphragm, tear; fracture, bilateral superior fracture of the pelvis; fracture, distal; fracture, ilium; fracture, maxilla; fracture, orbit; fracture, pelvis; fracture, rib; fracture, wrist; head; internal fixation; laceration; laparotomy; myocardial infarction; neuropsychological; open reduction; sacroiliac joint; traumatic brain injury*

Alamo-Cruz was taken by ambulance to Broward General Medical Center's emergency room. He had sustained blunt force trauma to the head, a maxillary bone fracture, bilateral orbital wall fractures, fractured left ribs, a diaphragmatic tear, acute myocardial infarction, multiple pelvic-area fractures, comminuted fractures of left (dominant) scapular, laceration of the flexor carpi ulnaris tendon in the left forearm, and an open comminuted left distal fracture of the radius bone. He underwent continuous mechanical ventilation, repair of the flexor carpi ulnaris tendon with carpal tunnel release, open reduction and internal fixation surgery of the left distal radius with application of uniplanar external fixator, exploratory laparotomy with diaphragm repair, closed reduction and percutaneous fixation of the posterior pelvic ring and a left sacroiliac-joint fusion.

Alamo-Cruz was discharged from the hospital on June 17, 2011, and underwent six months of physical therapy and rehabilitation. His treating neurologist opined that he had sustained a permanent traumatic brain injury with significant cognitive deficits and that Alamo-Cruz is permanently disabled.

Alamo-Cruz' treating neuropsychologist opined that his cognitive deficits significantly altered the quality of his life. His treating orthopedist opined that he has multiple physical limitations, and that he is unable to work again. He opined that Alamo-Cruz has difficulty ambulating due to significant, constant pain in his hips and left arm.

Alamo-Cruz requires the constant care of his wife, who is his caretaker. He sought damages for past and future medical expenses and past and future pain and suffering. Alamo-Cruz' wife, Maria Alamo, joined the action on a consortium claim.

The defendants did not participate at trial.

RESULT The jury determined that Efrain Alamo-Cruz' damages totaled \$20,565,991. Maria Alamo's damages totaled \$2,500,000. Thus, the total award was \$23,065,991.

MARIA ALAMO \$1,250,000 past loss of comfort and society
\$1,250,000 future loss of comfort and society
\$2,500,000

EFRAIN ALAMO-CRUZ \$265,991 past medical cost
\$5,300,000 future medical cost
\$5,000,000 past pain and suffering
\$10,000,000 future pain and suffering
\$20,565,991

TRIAL DETAILS Trial Length: 8 days
Trial Deliberations: 2 hours

PLAINTIFF EXPERT(S) **Waden E. Emery, M.D.**, neurology, Fort Lauderdale, FL
Stephen J. Jacobs, M.D., orthopedics, Fort Lauderdale, FL (treating doctor)
Raphael Wald, PSY.D., neuropsychology, Boca Raton, FL (treating doctor)

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

—Gary Raynaldo

NINETY-FOUR

INDUSTRY: MANUFACTURING

PRODUCTS LIABILITY

Design Defect — Worker/Workplace Negligence — Automobiles

Tow truck's hood fell on driver, crushing his face and eye

VERDICT **\$20,000,000**
ACTUAL **\$19,500,000**

CASE Quentin Ravizza v. Paccar Inc., Miller Industries Distributors and District Rebuilders Inc., No. 2012-L-001503

COURT Cook County Circuit Court, IL

JUDGE Robert E. Senechalle

DATE 6/28/2017

PLAINTIFF ATTORNEY(S) **Christopher T. Hurley** (lead), Hurley McKenna & Mertz, P.C., Chicago, IL
Mark R. McKenna, Hurley McKenna & Mertz, P.C., Chicago, IL

DEFENSE ATTORNEY(S) **Michael J. Charysh** (co-lead), Charysh & Schroeder, Ltd., Chicago, IL (District Rebuilders Inc.)
Paul E. Wojcicki (co-lead), Segal McCambridge Singer & Mahoney, Ltd., Chicago, IL (PACCAR Inc.)
Matthew C. Jardine, Segal McCambridge Singer & Mahoney, Ltd., Chicago, IL (PACCAR Inc.)
Edwin J. Olson, Charysh & Schroeder, Ltd., Chicago, IL (District Rebuilders Inc.)

FACTS & ALLEGATIONS On Jan. 23, 2012, plaintiff Quentin Ravizza, 26, a tow truck driver, was driving a 1997 Kenworth T800 tow truck, which was designed and manufactured by Paccar Inc., Bellevue, Wash. While in Summit, he was stopped at a stop light and was unable to get the clutch to engage. Ravizza got out and lifted the hood to inspect the engine. The hood was designed to remain open at a 90-degree angle and did not require a person to manually hold it open. As he was looking down at the engine on the driver side, a gust of wind caused the hood to slam shut, striking him on the back of the head and slamming his face into the engine. He sustained several facial fractures and lost his right eye.

Miller Industries Inc., Miami, distributed the Kenworth truck and District Rebuilders Inc., in Justice, inspected the truck before he drove it.

Ravizza sued Paccar, alleging that the truck was negligently designed without a safety mechanism that would have prevented the hood from falling. Ravizza also claimed that Paccar was willful and wanton in its conduct since it had prior notice of the danger and chose not to act. He also sued District Rebuilders

Inc., alleging that the truck was negligently maintained and repaired because a safety hood device had been removed from the truck before Ravizza used it. He sued Miller Industries but the claims were dismissed on a motion for summary judgment before trial and the matter proceeded against Paccar and District Rebuilders.

Plaintiff's counsel argued that Paccar knew as early as 1991 that there were safety defects with the hood of the Kenworth T800 model tow truck. It knew the hood was prone to unintentionally collapsing onto drivers who opened it. A 1991 incident involving the hood's collapse onto a truck driver sparked the development of an alternative "rigid prop" design to prevent the hoods from falling, which the tow truck driver submitted to Paccar for consideration. The driver testified that he designed a safety bar that held the hood ajar and prevented it from closing unintentionally, and he provided the design to Paccar that was given to its chief engineer. The driver said that Paccar's top engineer sent him a letter in which he stated the rigid prop design had merit and would be incorporated into future Kenworth T800 designs, but failed to incorporate the design in its manufacturing, plaintiff's counsel noted.

Plaintiff's counsel asserted that in 1996, Paccar was in possession of an automatic hood safety mechanism, which also would have stopped the truck's hood from closing without warning, but never used it.

Plaintiff's counsel alleged that despite notice of the safety problem, Paccar used a cheaper safety mechanism in its Kenworth T800 tow trucks. Paccar continued to manufacture the Kenworth T800 trucks without the proper safety mechanisms after Ravizza's lawsuit was filed, plaintiff's counsel noted.

The plaintiff's expert mechanical engineer testified that Paccar knew that a dangerous condition existed; that it was aware of a solution to the problem; that the alternative automatic safety design would have removed any chance of human error; and that its failure to implement the design was unacceptable.

Paccar denied the claims of negligent design and manufacturing. It argued that the tow truck was safe and designed with a hook and cable safety device that prevented the hood from unexpectedly closing, but that District Rebuilders failed to notice the device was missing and failed to replace it.

Paccar argued that it had only received 20 injury claims due to safety complaints about the tow truck and argued that Ravizza was contributorily negligent because he was an experienced tow truck driver and knew the risks of opening the hood on a windy day.

The defense mechanical engineering expert

opined that the truck was safe as designed and most other manufacturers of large trucks only used a weight and balance design to keep hoods open.

Plaintiff's counsel countered that this argument was invalid because other trucking companies, such as Mack Trucks, have adopted the automatic design and set the industry standard.

District Rebuilders argued that the tow truck didn't come with a safety bar device installed in the hood and that it had no responsibility to replace the device because the company that owned the truck did not disclose it was missing.

INJURIES/DAMAGES *comminuted fracture; crush injury; eye; eye, loss of; face; fracture, facial bone; fracture, orbit; fracture, zygomatic arch; hardware implanted; internal fixation; open reduction; orbital socket; pins/rods/screws; prosthesis; scar and/or disfigurement, face; vision, impairment; vision, partial loss of*

Ravizza was taken by ambulance to the emergency department at Loyola University Medical Center, in Maywood, where he was admitted for an exploratory surgery to determine whether or not his right eye could be salvaged. He lost his right eye. He also sustained multiple comminuted fractures to his right orbital bone, facial bone, right zygomatic arch and a crushed right eye socket.

Ravizza also underwent an open reduction and internal fixation of the facial fractures on his right eye, and pins, plates and screws were installed to keep the broken bones together.

One week later, Ravizza underwent a surgery to have his right eye removed. He was fitted for a prosthetic eye, which was inserted but became infected 16 months later. The prosthesis was surgically removed, and he received a second prosthetic eye that was surgically inserted with an implant to hold the prosthesis in place.

He claimed that his face is disfigured due to his injuries. He alleged that his right eye has a collapsed appearance, that the prosthetic eye does not move like his natural eye and that his vision was significantly impaired.

Ravizza testified that he lost his license to drive a commercial vehicle because of his permanent vision deficiencies. He went back to school and later found gainful employment as an industrial electrician.

The defense contended that Ravizza made a good recovery and had no residual restrictions that impair his performance of daily life activities.

RESULT The jury found Paccar 70 percent at fault, District Rebuilders 25 percent at fault and Ravizza 5 percent at fault. It also found that Paccar was willful and wanton. It awarded

Ravizza \$20 million, which includes \$10 million in punitive damages against Paccar for its willful and wanton conduct. The comparative fault found against Ravizza reduces the \$10 million in compensatory damages to \$9.5 million, so Ravizza's total recovery is \$19.5 million.

QUENTIN

RAVIZZA \$1,250,000 past pain and suffering
\$2,500,000 future pain and suffering
\$10,000,000 punitive damages
\$2,500,000 disfigurement
\$1,250,000 past disability
\$2,500,000 future disability
\$20,000,000

DEMAND \$9,000,000 (global demand from all defendants)

OFFER \$0

INSURER(S) Western National Insurance Co. for District Rebuilders Inc. (\$3,000,000 policy)

TRIAL DETAILS Trial Length: 2 weeks
Trial Deliberations: 6.5 hours
Jury Vote: 12-0
Jury Composition: 3 male, 9 female

PLAINTIFF

EXPERT(S) Anand D. Kasbekar, Ph.D., mechanical, Raleigh, NC
Shuchi Patel, M.D., ophthalmology, Broadview, IL (treating ophthalmologist)
Kenneth C. Welch, M.D., plastic surgery/reconstructive surgery, Maywood, IL (treating surgeon)
David K. Yoo, M.D., ophthalmology, Maywood, IL (treating physician)

DEFENSE

EXPERT(S) Bruce Koepke, truck design, Portland, OR
Harri K. Kytomaa, Ph.D., P.E., mechanical, Natick, MA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and defense counsel for District Rebuilders. Defense counsel for PACCAR did not respond to the reporter's phone calls.

—Jacqueline Birzon

INDUSTRY: SERVICES - PUBLIC SECTOR

MOTOR VEHICLE

Passenger — Government — Municipalities

Trucker's wide turn caused accident, plaintiff claimed

VERDICT \$19,850,000

CASE Arthur McMillan v. City of New York New York City Department of Sanitation, John Poppas, Keisha Boa and HeartShare Human Services of New York, No. 9424/12

COURT Kings Supreme, NY

JUDGE Peter Paul Sweeney

DATE 5/15/2017

PLAINTIFF ATTORNEY(S) Raymond Panek, Elefterakis, Elefterakis & Panek, New York, NY (Keisha Baa)
William Schwitzer, William Schwitzer & Associates, PC, New York, NY (Arthur McMillan)

DEFENSE ATTORNEY(S) Yair S. Goldstein, Senior Counsel, Zachary W. Carter, Corporation Counsel, Brooklyn, NY (City of New York, John Poppas, New York City Department of Sanitation)
None reported (HeartShare Human Services of New York, Keisha Baa)

FACTS & ALLEGATIONS On Aug. 8, 2011, plaintiff Arthur McMillan, 41, a paraprofessional, was a passenger of a van that was being driven by plaintiff Keisha Baa, who was traveling in the left southbound lane of Third Avenue, near its intersection at 39th Street, in the Greenwood Heights section of Brooklyn. While Baa was proceeding through the intersection, her van collided with a southbound truck that was being driven by John Poppas, an employee of the New York City Department of Sanitation. Baa's van was propelled across the roadway, and it struck a concrete barrier. McMillan claimed that he

suffered injuries of his back and neck. Baa claimed that she suffered injuries of her back, a hip, a knee, a shoulder and her wrists.

Baa sued Poppas and his employer's parent, the city of New York. Baa alleged that Poppas was negligent in the operation of his vehicle. Baa further alleged that the city of New York was liable because the accident occurred during Poppas' performance of his job's duties.

In a separate filing, McMillan sued Poppas, the New York City Department of Sanitation, the city of New York, Baa and Baa's employer, HeartShare Human Services of New York. McMillan alleged that Poppas and Baa were negligent in the operation of their respective vehicles, that HeartShare Human Services of New York was liable because the accident occurred during Baa's performance of her job's duties, and that the remaining defendants were liable because the accident occurred during Poppas' performance of his job's duties.

The cases were consolidated, but McMillan discontinued his claims against Baa and HeartShare Human Services of New York. The matter proceeded to a trial against Poppas, the New York City Department of Sanitation and the city of New York.

Baa and McMillan claimed that the accident was a result of Poppas having attempted to execute a sudden left turn from Third Avenue's middle lane, from which left turns were not permitted. They also claimed that Poppas did not signal his turn. Baa claimed that she could not have avoided Poppas' truck.

Poppas claimed that the collision occurred while Baa was attempting to pass the left side of his truck. Defense counsel contended that Baa should not have attempted to pass the truck.

INJURIES/DAMAGES *acupuncture; aggravation of pre-existing condition; arthritis; bone graft; corpectomy; decreased range of motion; discectomy; epidural injections; facetectomy; foraminotomy/foraminectomy; fusion, cervical; fusion, cervical, two-level; fusion, lumbar; hardware implanted; herniated disc at C4-5; herniated disc at C5-6; herniated disc at C6-7; herniated disc at L5-S1; laminectomy; laminectomy, lumbar; nerve impingement; physical therapy; pins/rods/screws; radiculopathy; retrolisthesis*

McMillan was placed in an ambulance, and he was transported to Lutheran Medical Center, in Brooklyn. He claimed that his back and his right knee were painful. He underwent minor treatment. McMillan and Baa were working when the accident occurred. After McMillan had been discharged by the hospital, he resumed his workday.

McMillan ultimately claimed that he suffered herniations of his C4-5, C5-6 and C6-7

intervertebral discs. He also claimed that the accident aggravated a pre-existing herniation of his L5-S1 disc. He claimed that he developed residual impingement of spinal nerves and resultant radiculopathy that stemmed from his spine's cervical and lumbar regions. He further claimed that he developed retrolisthesis, which involved backward displacement of his L5 vertebra.

McMillan underwent about 12 months of conservative treatment, which comprised acupuncture, physical therapy and the administration of epidural injections of steroid-based painkillers. The injections were directed to his spine's cervical and lumbar regions.

On Jan. 5, 2012, McMillan underwent surgery that addressed his spine's L5-S1 level. The procedure included a discectomy, which involved excision of his L5-S1 disc; a facetectomy, which involved decompression of the root of a spinal nerve; a foraminotomy, which involved enlargement of a passage that housed a spinal nerve; a laminectomy, which involved excision of portions of his L5 and S1 vertebrae; fusion of his spine's L5-S1 level; application of a stabilizing graft of bony matter; and implantation of two stabilizing screws.

On Sept. 13, 2012, McMillan underwent surgery that addressed his spine's C5-6 and C6-7 levels. The procedure included a corpectomy, which involved excision of his C6 vertebra; a discectomy, which involved excision of his C5-6 and C6-7 discs; a foraminotomy; fusion of his spine's C5-6 and C6-7 levels; implantation of a stabilizing cage; application of a stabilizing graft of bony matter; and implantation of two stabilizing screws.

McMillan subsequently underwent a pain-management regimen.

McMillan claimed that his spine's cervical and lumbar regions have developed residual arthritic pain, that he suffers a residual diminution of each area's range of motion, that his residual effects are permanent, and that his residual effects prevent his performance of manual labor. He has scheduled surgery that would involve fusion of his spine's C3-4, C4-5 and C7-T1 levels, and he claimed that his spine's lumbar region may require further surgery. He also claimed that he requires further painkilling injections.

McMillan sought recovery of future medical expenses, past and future lost earnings, and damages for past and future pain and suffering.

Baa claimed that she suffered injuries of her back, a hip, a knee, a shoulder and her wrists. She underwent six surgeries, and she claimed that she suffers permanent residual pain that prevents her resumption of work.

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

Defense counsel contended that McMillan did not suffer a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). He contended that McMillan's injuries were not related to the accident.

RESULT The jury determined that Poppas, the city of New York and the New York City Department of Sanitation were liable for the accident.

After the determination of liability, the cases were severed. A jury determined that McMillan's damages totaled \$19.85 million. Baa's case resulted in an in-trial settlement. Terms were not reported to VerdictSearch.

ARTHUR MCMILLAN \$250,000 past lost earnings
\$4,000,000 past pain and suffering
\$5,000,000 future medical cost (30 years)
\$600,000 future lost earnings (12.5 years)
\$10,000,000 future pain and suffering (30 years)
\$19,850,000

TRIAL DETAILS Trial Length: 2 weeks
Trial Deliberations: 2 days
Jury Vote: 6-0

PLAINTIFF EXPERT(S) Karèn Avanesov, D.O., orthopedic surgery, Massapequa, NY (treating doctor)
Gary P. Thomas, M.D., pain management, New York, NY (treating doctor)

DEFENSE EXPERT(S) Carl E. Johnson, M.D., radiology, New York, NY
Jeffrey Passick, M.D., orthopedic surgery, Brooklyn, NY (did not testify)

POST-TRIAL Defense counsel has moved to set aside the verdict.

EDITOR'S NOTE This report is based on information that was provided by McMillan's counsel and counsel of the city of New York, the New York City Department of Sanitation and Poppas. Additional information was gleaned from an article that was published by the Brooklyn Daily Eagle. VerdictSearch did not obtain feedback from the remaining parties' counsel.

—Jacqueline Birzon

INDUSTRY: SERVICES - HOTEL/RESORTS

PREMISES LIABILITY

Dangerous Condition — Ski Slope — Recreation — Ski Slope

Girl collided with pole on ski slope, fractured leg

VERDICT ACTUAL **\$19,000,000**
\$19,061,224

CASE Judy Zhou, by Her m/n/g Ping Zhou and Ping Zhou, Individually v. Tuxedo Ridge, LLC., Tuxedo Ridge Ski Center and Tuxedo Ridge Adventure Tours LLC., No. 1229/14
COURT JUDGE Queens Supreme, NY Rudolph E. Greco, Jr.
DATE 8/21/2017

PLAINTIFF ATTORNEY(S) Souren A. Israelyan, Law Office of Souren A. Israelyan, New York, NY

DEFENSE ATTORNEY(S) Matthew J. Kelly, Roemer Wallens Gold & Mineaux LLP, Albany, NY

FACTS & ALLEGATIONS On Feb. 18, 2013, plaintiff Judy Zhou, 9, skied at Tuxedo Ridge Ski Center, which is located at 581 Route 17A, in the village of Tuxedo Park. While Judy was skiing on the resort's "Bunny Hill," she struck one of a group of upright, 5-foot-tall PVC pipes that were protecting a ski lift's access area. She suffered an injury of a leg.

Judy's mother, Ping Zhou, acting individually and as Judy's parent and natural guardian, sued the resort; its operator, Tuxedo Ridge, LLC; and an entity that was believed to be another operator of the resort, Tuxedo Ridge Adventure Tours LLC. The lawsuit alleged that the defendants negligently created a dangerous condition that caused Judy's accident.

Judy claimed that she did not see the PVC pipe that caused the accident. She claimed that the pipe, which was white, was camouflaged by the snow that covered the slope. Plaintiffs' counsel contended that the pipes extended across 20 feet of the width of the Bunny Hill, which is intended for beginning skiers. The plaintiffs' ski-safety expert contended that the

pipes did not satisfy requirements of New York Codes, Rules, and Regulations title 12, part 54, which addresses ski-slope safety. The code specifies that orange paint must be applied to any pole that is situated on a slope, and it also specifies that an orange disk must be affixed to the top of any pole whose height does not reach 6 feet. Judy was injured by a pole that was not marked by such a disk.

Defense counsel contended that Judy was solely liable for the accident. He claimed that an orange sign warned that Judy was entering a "slow skiing area," that bamboo poles were situated ahead of the pipes, and that two green "kids alert" signs also protected the area. He claimed that Judy ignored the warnings, skied between the bamboo poles, and struck the base of one of the signs. He argued that Judy violated New York Codes, Rules, and Regulations title 12, part 54.4(b)(4), which specifies that skiers must avoid clearly marked obstacles.

Defense counsel also attempted to argue that Judy's accident was a product of her having assumed skiing's associated risks, but Justice Rudolph Greco Jr. would not invoke the assumption-of-risk doctrine. Greco's decision was based on Judy's youthful age.

INJURIES/DAMAGES *fracture, Salter-Harris; fracture, femur; fracture, leg; internal fixation; leg, shortened; massage therapy; open reduction; pelvis; physical therapy; pins/rods/screws; scar and/or disfigurement, leg; scoliosis*

Judy suffered a type-II Salter-Harris fracture of the distal region of her right leg's femur. A type-II Salter-Harris fracture involves a growth plate and a bone's epiphysis, which is the rounded end of the bone.

Judy was transported to a hospital, where her fracture was addressed via open reduction, the internal fixation of two screws and the application of a cast, which was removed after six weeks had passed. Her hospitalization lasted three days. Judy subsequently underwent three months of physical therapy. During the ensuing two years, she utilized a brace.

Plaintiffs' counsel claimed that Judy's fracture arrested the functionality of a growth plate, and he claimed that Judy will suffer resultant impairment of her right leg's physical development. He claimed that she has developed a 5-to-7-degree angulation of her right leg, that she retains a 0.5-inch shortening of her right leg's length, that she has developed a residual tilt of her pelvis, and that she suffers residual scoliosis. He further claimed that she may require an osteotomy, which would involve shaving of bone, and he also claimed that she may require replacement of her right knee. Judy undergoes therapeutic massages, and she utilizes orthotic devices.

The parties stipulated that Judy's past medical expenses totaled \$61,223.68. Judy's mother sought recovery of that amount, Judy's future medical expenses, and damages for Judy's past and future pain and suffering. She also presented a derivative claim, but her claim was discontinued.

Defense counsel claimed that Judy does not suffer a residual limitation of her activity. He noted that she runs on her school's track team, and he claimed that one doctor has retracted his recommendation that Judy requires further surgery.

RESULT Tuxedo Ridge Adventure Tours was dismissed during the trial, and the jury found that the remaining defendants were liable for the accident. It determined that Judy's damages totaled \$19 million. After addition of the stipulated medical expenses, Judy's recovery totaled \$19,061,223.68.

JUDY ZHOU \$3,000,000 past pain and suffering
\$1,000,000 future medical cost (66.1 years)
\$15,000,000 future pain and suffering (66.1 years)
\$19,000,000

DEMAND OFFER \$5,000,000 (by Judy Zhou)
None

INSURER(S) Nova Casualty Co. for all defendants

TRIAL DETAILS Trial Length: 2 weeks
Trial Deliberations: 75 minutes
Jury Vote: 6-0
Jury Composition: 3 male, 3 female

PLAINTIFF EXPERT(S) Jon-Paul DiMauro, M.D., orthopedic surgery, New Hyde Park, NY (treating doctor)
Stanley Gale, skiing, Golden, CO
Herman Silverberg, P.E., engineering, Lido Beach, NY
Steven W. Winter, M.D., radiology, Melville, NY

DEFENSE EXPERT(S) None reported

POST-TRIAL Defense counsel has moved to set aside the verdict. The motion is based on the

rejection of his assumption-of-risk defense, and it also challenges the preclusion of evidence that was intended to impeach the credibility of the plaintiffs' ski-safety expert.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel. Additional information was gleaned from court documents.

—Melissa Siegel

NINETY-SEVEN

INDUSTRY: MANUFACTURING

PRODUCTS LIABILITY

Failure to Warn — Sports Equipment

Suit: Tree stand distributor failed to warn of weak straps

VERDICT ACTUAL **\$18,566,581**
\$9,243,290

CASE Kevin O'Bryan, Sante O'Bryan v. Primal Vantage Co., and Dick's Sporting Goods, Inc., No. 12-CI-6326

COURT Jefferson County Circuit Court, KY

JUDGE McKay Chauvin
DATE 8/10/2017

PLAINTIFF ATTORNEY(S) Ann B. Oldfather (lead), Oldfather Law Firm, Louisville, KY (Kevin O'Bryan)
Jeff W. Adamson, Paul A. Casi II, P.S.C., Louisville, KY (Sante O'Bryan)
Paul Casi, III, Paul A. Casi II, P.S.C., Louisville, KY (Sante O'Bryan)
R. Sean Deskins, Oldfather Law Firm, Louisville, KY (Kevin O'Bryan)
Michael R. Hasken, Oldfather Law Firm, Louisville, KY (Kevin O'Bryan)

DEFENSE ATTORNEY(S) Bishop Bartoni, Clark Hill PLC, Birmingham, MI
Casey W. Hensley, Frost Brown Todd, Louisville, KY

Milton S. Karfis, Clark Hill PLC, Birmingham, MI

FACTS & ALLEGATIONS On May 3, 2012, plaintiff Kevin O'Bryan, 41, was on a turkey hunt with his son, 10, and a friend in Louisville. They had arranged with a landowner to hunt on the property and to use a tree stand which had been attached to a tree on the property for five years.

The three climbed up to the tree stand but when they sat, all five straps of the stand broke, causing the stand to fall 20 feet to the ground. O'Bryan's son and friend had relatively minor injuries but O'Bryan was paralyzed from the waist down.

O'Bryan sued Primal Vantage Co., which distributed the Town House 2-Person Ladder Stand (model no. HEH0084). He also sued Dick's Sporting Goods Inc., the store that sold it.

The court dismissed Dick's Sporting Goods, finding no liability under Kentucky law. The court also dismissed the manufacturing and design defect claims against Primal Vantage Co., finding there was no defect in the stand or the polypropylene straps. The case went to a jury only on O'Bryan's failure to warn claim.

O'Bryan specifically alleged that the company knew that the polypropylene used in the straps degraded significantly with exposure to the elements but failed to provide a reasonable warning to users.

Primal Vantage Co. argued that the straps were strong, but were never replaced or maintained. Two of the five straps had already broken prior to the accident, which was noticed by the plaintiff's son on the day of the incident, while they were climbing the stand.

Counsel pointed out that each strap had more than 4000 strands. Only the outer layer of the strands would experience a reduction in strength within the first year of use. The vast majority of the strands are protected by the outer layer and thus the entire strap would not lose 50 percent of its strength in one year.

It would take five continuous years of exposure to the elements - a situation which would be contrary to the instructions and warnings -- and 6 inches of tree growth, before the straps would finally break with three people in the stand.

Counsel further asserted that O'Bryan was comparatively at fault, because the tree stand was designed for use by two people, not three, and O'Bryan failed to take precautions, such as inspecting the condition of the tree stand or the straps before climbing into it. Moreover, regarding failure to warn claim, the company maintained that neither the owner of the stand nor the plaintiff read the warning and instructions or watched the safety DVD.

O'Bryan's counsel stated that the three people in the tree stand were within the 500-pound rated limit of the stand.

INJURIES/DAMAGES *back; fracture; fracture, vertebra; loss of consortium; paralysis, partial*

O'Bryan was taken by ambulance to a local emergency room. He had sustained vertebrae fractures and was rendered paralyzed from his waist down. He remained hospitalized for about two weeks. After he was released, he had about one month of rehabilitation.

O'Bryan claimed he has permanent, constant pain in his hips and both legs. As a result of his injuries, he was unable to return to his job as an air marshal for United Parcel Service, directing cargo flights at the airport.

O'Bryan sought damages for past medical costs and for past and future loss of earnings capacity.

He also sought damages for past and future pain and suffering.

O'Bryan's former wife, Sante O'Bryan, brought a loss of consortium claim.

Defense counsel didn't actively dispute damages, and focused on liability. However, counsel did argue that O'Bryan's ex-wife, Sante O'Bryan, wasn't entitled to maintain a post-divorce loss of consortium claim under Kentucky law.

RESULT The jury found that Primal Vantage Co. did not provide reasonable warnings that the polypropylene straps were at risk of failure. However, it also found that found that O'Bryan was 50 percent liable for his injuries.

The jury awarded \$18,566,580.72. Because of O'Bryan's comparative negligence, the award was reduced by half, to \$9,243,290.36.

KEVIN O'BRYAN \$869,975 past medical cost
\$3,120,564 future medical cost
\$1,204,772 loss of earnings capacity
\$13,000,000 pain and suffering
\$291,270 past personal care costs
\$18,486,581

SANTE O'BRYAN \$80,000 loss of consortium

TRIAL DETAILS Trial Length: 2 weeks
Trial Deliberations: 7 hours

POST-TRIAL Primal Vantage Co. filed motions for judgment notwithstanding the verdict and for a new trial. Kevin O'Bryan filed a motion for a new trial against Dick's Sporting Goods Inc.

—Gary Raynaldo

NINETY-EIGHT

INDUSTRY: MANUFACTURING

WORKER/WORKPLACE NEGLIGENCE

Negligent Assembly or Installation

Fire at plywood plant killed one worker, injured three others

MIXED VERDICT \$18,460,279

CASE

Debra Morris, Individually and as representative of the Estate of Kenneth W. Morris, Ashley Morris, Amanda Morris Wright, Jimmy Williams, Rebecca Williams, Orlando Ordaz, Roy McCollough, v. AirCon Corporation, Grecon, Inc., Mid-South Engineering Company, and Global Asset Protection Services LLC, No. 9:16-cv-35-RC-ZJH United States District Court, Eastern District, Lufkin, TX
Ron Clark
11/1/2017

COURT

JUDGE

DATE

PLAINTIFF

ATTORNEY(S)

Jane S. Leger, The Ferguson Law Firm, LLP, Beaumont, TX
Mike Love, Mike Love & Associates, LLC, Lufkin, TX
Jill S. Pierce, Bradley & Steele, LLP, Port Arthur, TX

DEFENSE

ATTORNEY(S)

Cameron J. Asby, Duane Morris LLP, Houston, TX (Global Asset Protection Services LLC)
Jennifer D. Aufricht, Thompson, Coe, Cousins & Irons, LLP, Dallas, TX (Grecon Inc.)
David S. Brill, Tribble & Ross, Houston, TX (Mid-South Engineering Co.)
Michael E. Clark, Duane Morris LLP, Houston, TX (Global Asset Protection Services LLC)

Joseph M. Heard, Heard & Medack, P.C., Houston, TX (AirCon Corp.)

Sean R. Hicks, Thompson Coe Cousins & Irons, LLP, Dallas, TX (Grecon Inc.)

Wesson H. Tribble, Tribble & Ross, Houston, TX (Mid-South Engineering Co.)

Corey M. Weideman, Duane Morris LLP, Houston, TX (Global Asset Protection Services LLC)

FACTS & ALLEGATIONS On April 26, 2014, plaintiff's decedent Kenneth W. Morris, 58, an electrician, was working with plaintiffs Jimmy Williams, 50, Orlando Ordaz, 40, and Roy McCollough, 40, at the Georgia-Pacific plywood plant in Corrigan. At about 5:20 p.m., fire erupted in the plant's wood dust control system, resulting in an explosion shortly after 6 p.m. The bag house, a 25-foot tall silo-like structure, collects highly flammable wood dust when plywood is sanded. Dust at a sander in the bag house ignited, causing an explosion. The workers sustained burns and Morris died on June 6 as a result.

Global Asset Protection Services LLC, Chicago, is a fire and property loss prevention company that provided its services to Georgia-Pacific. Georgia-Pacific used an infrared sensors system for spark detection at the plant, which was manufactured by GreCon Inc., Tigard, Ore. AirCon Corp., based in Memphis, Tenn., performed the detail design and installation of the system, and GreCon sold its system directly to AirCon. Mid-South Engineering Co., Hot Springs, Ark., prepared the specifications for the dust collection system.

Debra Morris, individually and on behalf of husband Kenneth Morris' estate and their daughters, Ashley Morris and Amanda Morris Wright; Jimmy and Rebecca Williams; Ordaz; and McCollough sued AirCon, GreCon, Mid-South Engineering and Global Asset for products liability, alleging failure to warn.

AirCon and Mid-South Engineering settled prior to trial and were dismissed from the case. The matter proceeded to trial against Global Asset and GreCon only.

Plaintiffs' counsel argued that GreCon's sensors failed to detect the sparks traveling around the sander, which is where the sparks allegedly caused the fire, because the sensors were improperly placed.

Plaintiffs' counsel contended that the infrared sensors were placed too far apart (200 feet) from spark generating equipment. As a result, dust built up in over 200 feet of duct and caught fire. The sensors should have been much closer

to the sander in order to have extinguished any stray sparks moving around the sander. The fire happened 100 feet away from the sander, and the sensors were too far away to detect and extinguish sparks in time to prevent a fire, plaintiffs' counsel argued.

Plaintiffs' counsel argued that Global Asset failed to properly advise and warn Georgia-Pacific regarding potential loss of life from a defective fire prevention system.

Global Asset and GreCon denied negligence. Global Asset and GreCon added Georgia-Pacific, AirCon and Mid-South Engineering as non-party defendants to apportion any finding of fault.

GreCon argued that there was no defect in its infrared sensors system, and it wasn't responsible for installing and setting up the system inside the plant.

Global Asset argued that the Georgia-Pacific mill made the decision as to the setup and positioning of the infrared sensors. It also argued that it was hired to conduct annual fire and property loss prevention surveys. Each year, Global Asset evaluated the fire prevention system and sprinklers inside the sander room, but it had no responsibility to advise the plywood mill on potential loss of life. Global Asset claimed that it was the responsibility of Georgia-Pacific to protect its workers.

INJURIES/DAMAGES *burns; death*

Morris and Williams were airlifted by emergency helicopter and flown to Memorial Hermann's John S. Dunn Sr. Burn Center for severe burns over most of their bodies. Ordaz and McCollough also sustained burns and were taken by ambulance to Memorial Medical Center-Lufkin where they were treated and released the same day. Williams remained in hospital for two weeks and was discharged.

Morris died from his injuries June 6. He leaves a wife, Debra, and two daughters.

Ordaz, McCollough and Williams sought to recover damages for past and future medical expenses and past and future pain and suffering. Williams' wife, Rebecca Williams, claimed loss of consortium.

Debra Morris sought to recover damages for her husband's pain and suffering from the time of the incident to his death, as well as his medical and funeral costs. She also sought to recover damages for her own pain and suffering, and loss of society as a result of her husband's death. Morris' two daughters sought to recover damages for their loss of society and companionship as result of the death of their father. Counsel for the Morrises suggested the jury award \$5 million.

The defense did not actively dispute the issue of the plaintiffs' injuries.

RESULT The jury found Global Asset Protection 5 percent liable; non-party Georgia-Pacific 65 percent liable; non-party AirCon Corp. 20 percent liable and non-party Mid-South Engineering Co. 10 percent liable. The jury found that GreCon was not negligent. It awarded \$18,460,279, which was reduced to \$923,014 for the apportionments of fault to the non-parties.

ROY

MCCOLLOUGH \$10,793 past medical cost
\$26,356 past lost earnings
\$40,000 past pain and suffering
\$10,000 future pain and suffering
\$87,149

ASHLEY MORRIS \$1,000 past pain and suffering
\$1,000 future pain and suffering
\$5,000 past pecuniary loss
\$1,000 future pecuniary loss
\$1,000 past loss of companionship
\$1,000 future loss of companionship
\$10,000

DEBRA MORRIS \$150,000 past pain and suffering
\$350,000 future pain and suffering
\$250,000 past pecuniary loss
\$1,000,000 future pecuniary loss
\$250,000 past loss of companionship
\$500,000 future loss of companionship
\$2,500,000

ESTATE OF KENNETH W. MORRIS

\$2,000,000 pain and suffering
\$411,785 medical expenses
\$13,000 funeral and burial expenses
\$2,424,785

AMANDA MORRIS-WRIGHT

\$1,000 past pain and suffering
\$1,000 future pain and suffering
\$5,000 past pecuniary loss
\$1,000 future pecuniary loss
\$1,000 past loss of companionship

\$1,000 future loss of companionship
\$10,000

ORLANDO ORDAZ

\$14,861 past medical cost
\$9,308 past lost earnings
\$40,000 past pain and suffering
\$10,000 future pain and suffering
\$5,000 past disfigurement
\$79,169

JIMMY WILLIAMS

\$2,259,378 past medical cost
\$2,000,000 future medical cost
\$500,000 past physical impairment
\$500,000 future physical impairment
\$273,342 past lost earnings
\$316,456 future lost earnings
\$4,000,000 past pain and suffering
\$2,000,000 future pain and suffering
\$500,000 past disfigurement
\$500,000 future disfigurement
\$12,849,176

REBECCA WILLIAMS

\$100,000 past loss of consortium
\$400,000 future loss of consortium
\$500,000

TRIAL DETAILS

Trial Length: 9 days
Trial Deliberations: 3 hours

EDITOR'S NOTE

This report is based on information that was provided by plaintiff's counsel and GreCon's counsel. Global Asset Protection's counsel did not respond to the reporter's phone calls.

—Gary Raynaldo



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