THE NATIONAL
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THE TOP 100 VERDICTS OF 2011

VERDICTSEARCH

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Every year, *The National Law Journal*'s VerdictSearch affiliate scours the nation's court records in search of the largest verdicts; it also consults with practitioners and with additional ALM Media LLC publications. The key here is what the jury awarded; this list does not account for judicial reductions, offsets or appeals.

TOP 100 VERDICTS OF 2011

Top verdict categories

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

		2011			2010
1	Wrongful death	150,434	1	Intellectual property	2,424
2	Intellectual property	5,324	2	Products liability	1,808
3	Toxic torts	1,901	3	Breach of contract	1,142
4	Products liability	1,381	4	Consumer protection	1,049
5	Fraud	613	5	Motor vehicle	438
6	Breach of contract	478	6	Employment	281
7	Medical malpractice	430	7	Fraud	230
8	Motor vehicle	297	8	Nursing homes	229
9	Medicaid fraud	170	9	Civil theft	195
10	Sexual assault	139	10	Wrongful death	141

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

Exporter: Bayer to blame for modified rice sent to Europe

Case Type: Deceptive Trade Practices Act — Damages — Reckless and Willful Misconduct

Case: Meins v. Bayer A.G., Arkansas Co., Ark., Cir. Ct., cv-2008-108, 3/18/2011

Plaintiffs' Attorney: Barry Deacon, Barrett & Deacon P.A., Jonesboro, Ark.

Defense Attorney: Philip S. Beck, Bartlit Beck Herman Palenchar & Scott LLP, Chicago

Jury verdict: $141,900,000

FACTS & ALLEGATIONS In January 2006, cross-claimant Riceland Foods, an Arkansas-based exporting cooperative for rice farmers in the southern United States, was notified by a French customer that rice purchased from Riceland had tested positive for genetic modification, an agricultural practice forbidden within the European Union.

Riceland ultimately concluded that German company Bayer CropScience had caused the contamination by allowing several varieties of its genetically modified "Liberty Link" rice to be cultivated alongside conventional rice during field trials in the early 2000s that were commissioned by Bayer and conducted on farmland belonging to Louisiana State University.

The economic blowback stemming from the revelation that Riceland had exported genetically modified rice to Europe prompted lawsuits by Riceland-affiliated farmers against both Riceland and Bayer, with litigation being initiated in both state and federal courts.

The instant case centered on Riceland's claim that Bayer had negligently failed to take measures that would have prevented the underlying contamination from occurring, and then had intentionally avoided immediate investigative testing upon first being alerted that a contamination may have taken place. Originally listed as plaintiffs in the instant action were more than two dozen individual farmers and farm-ownership entities that alleged that both Riceland and Bayer had been negligent with respect to the exporting of genetically modified rice to Europe.

Riceland contended that Bayer had rushed its LSU breeding trials in an effort to gain a competitive advantage over rival agricultural companies. Riceland claimed that Bayer had told companies in the rice industry in the early 2000s that random tests for the presence of genetically modified grain were not necessary, and that Bayer was aware by at least 2006 that a contamination had occurred.

Bayer responded that it and the personnel working under its authority during the LSU field trials had been responsible during the underlying period of experimental breeding. Bayer argued that the findings of an investigation by the U.S. Department of Agriculture supported Bayer's theory that an unavoidable pollen drift had caused the contamination in 2001.

An expert in agronomy retained by Bayer opined that the underlying field trials had featured sufficient safeguards, but that contamination from events such as pollen drifts cannot be protected against.

Bayer argued that any economic loss suffered by Riceland-affiliated farmers was attributable to Riceland's failure to proactively test rice it was shipping to Europe for the presence of genetic modification. Given the EU's strict prohibition on genetically modified agricultural products, Bayer argued, Riceland's failure to conduct such testing constituted negligence. Bayer also argued that there was evidence that Riceland had continued shipping rice to Europe after it had reason to believe that a contamination may have occurred.

Bayer called the jury's attention to the fact that it had willingly settled with numerous rice farmer-plaintiffs – those who controlled the several farms involved in the instant litigation – but that a settlement with Riceland itself was not warranted given the cooperative's own negligence. Bayer lodged a claim against Riceland, seeking a declaration that Riceland was obligated to contribute to the settlement in favor of the farmer-plaintiffs involved in the instant litigation.

INJURIES/DAMAGES

An expert in economics retained by plaintiffs' counsel concluded that the effective inability to export rice to Europe had cost Riceland and its affiliated farmers economic losses totaling nearly $380 million. Defense counsel cross-examined the plaintiffs' expert as to apparently unsubstantiated leaps of logic involved in creating the economic model used in arriving at that figure.

In addition, Riceland asked the jury to award punitive damages in regard to Bayer's allegedly malicious or reckless conduct.

With respect to the settlements paid by Bayer to farmer-plaintiffs in the instant litigation, evidence was presented at trial suggesting that the value of those payments totaled roughly $4 million.

RESULT The jury found that Bayer had been negligent, but not fraudulent or deceptive, in regard to the damages sustained by Riceland; however, the jury also found that Riceland had been negligent with respect to its own damages. Liability was apportioned at 70 percent for Bayer and 30 percent for Riceland.

Compensatory damages of $16.9 million were awarded; with comparative fault factored in, that amount will be reduced to $11.83 million.

The jury also found that punitive damages were warranted against Bayer, and awarded $125 million on that claim.

Finally, the jury found that negligence by Riceland had not been a substantial factor in causing the farmer-plaintiffs' loss of the EU market, and that Bayer was 100 percent responsible for that loss.

POST-TRIAL Defense counsel indicated it intends to seek modification of the punitive damages portion of the jury's verdict on the ground that, under Arkansas law, such an award cannot total more than $1 million. Plaintiff's counsel intends to argue in response that the Arkansas Supreme Court, in December 2011, issued a decision in a separate genetically modified rice litigation in which the justices declared Arkansas' punitive-damages cap unconstitutional.

Man claimed priest abused him when he was a teen runaway

Case Type: Sexual Assault — Intentional Torts — Sexual Battery — Damages — Punitive

Case: Doe v. Doherty, Miami-Dade Co., Fla., Cir. Ct., 11-10986 CA 05, 11/10/2011

Plaintiffs' Attorney: Jeff Herman and Jessica Arbour, Herman Mermelstein & Horowitz, Miami

Defense Attorney: Not represented

Jury verdict: $100,650,000

FACTS & ALLEGATIONS The plaintiff, a 14-year-old boy, claimed that he was sexually abused in 1987 by Father Neil J. Doherty. The boy had met Doherty in Little Haiti's Keystone Trailer Park. Keystone was a haven for runaways. The boy claimed that he grew to trust the Catholic priest who offered him advice and free meals. He claimed that Doherty used this trust to sexually abuse him numerous times throughout 1997.

The victim sued Doherty for sexual assault and battery.

Doherty is being held on charges related to another case. He was not represented at trial. The court granted the plaintiff's motion for directed verdict on liability. Portions of Doherty's video deposition testimony were read at trial. Doherty frequently invoked the Fifth Amendment in regard to the allegations.

INJURIES/DAMAGES *depression; post-traumatic stress disorder; sexual assault*

The plaintiff claimed that he has post-traumatic stress disorder. Every aspect of his life has been affected. He stated that he has nightmares, flashbacks and difficulty sleeping as a result of the abuse. He described his abuser's face as having been burned in his mind. He has been prone to anxiety and depression. He stated that sometimes he remains in his home for several days. He has attempted suicide on two occasions.

As a result of his abuse he developed substance abuse problems, he claimed. He engaged in crime including robbery and grand theft and has had several run-ins with police.

The plaintiff contended that he has had trouble with trust issues and developing relationships with male peers. This has led to isolation.

Plaintiff's expert in psychology opined that the victim will need counseling throughout his life, which costs about $650,000.

The victim also sought punitive damages.

RESULT The jury awarded the plaintiff $100,650,000.

High on marijuana, driver plowed into parked car, officer

Case Type: Parked Car — Motor Vehicle — Pedestrian — Motor Vehicle — Drug Use — Motor Vehicle — Truck

Case: Pedeferri v. White, Ventura Co., Calif. Super. Ct., 56-2009-00357429-CU-PO-VTA, 1/25/2011

Plaintiffs' Attorney: Michael Alder, AlderLaw P.C., Beverly Hills, Calif.; Erik B. Feingold, Myers, Widders, Gibson, Jones & Schneider LLP, Ventura, Calif.

Defense Attorney: James E. Siepler, Pollard, Mavredakis, Cranert, Crawford & Stevens, Pasadena, Calif. (RJS Financial LLC, Seidner Enterprises LLC); Kurt U. Boyd, Law Offices of Kurt Boyd, Woodland Hills, Calif. (Jeremy White)

Jury verdict: $49,644,258

FACTS & ALLEGATIONS On Dec. 19, 2007, plaintiff Anthony Pedeferri, 36, a California Highway Patrol officer, stopped behind plaintiffs' decedent Andres Parra, who had pulled his vehicle to the shoulder of Highway 101, north of Ventura. While Pedeferri was standing next to Parra's vehicle on the shoulder of a curve in the highway, both he and the vehicle were struck by a pickup truck driven by Jeremy White. White's truck was carrying two motorcycles loaded by employees of Bert's Mega Mall, a Covina store owned by RJS Financial and Seidner Enterprises. Parra sustained fatal injuries and was pronounced dead at the scene. Pedeferri sustained paralyzing injuries.

In 2008, White pleaded guilty to driving while intoxicated and transportation of marijuana and was sentenced to 15 years in prison.

Parra's parents, Pedeferri and Pedeferri's wife sued White, RJS Financial and Seidner, alleging negligence. The plaintiffs claimed that White admitted to smoking marijuana prior to the collision and then negligently drove in an unsafe manner. The plaintiffs also argued that the motorcycles in the back of White's truck came loose and distracted him just prior to the collision, contributing to the collision, and that they came loose because employees of RJS and Seidner placed them in the truck in an improper and unsafe backwards-facing manner. The plaintiffs argued that White, RJS and Seidner bore equal liability.

White argued he was distracted by the motorcycles and that RJS and Seidner bore comparative liability.

RJS and Seidner denied their loading of the motorcycles contributed to the accident in any way and that White was solely liable.

INJURIES/DAMAGES *bone graft; brain damage; death; double vision; fracture, C3; fracture, collarbone; fracture, multiple ribs; fracture, scapula; fracture, shoulder; fracture, skull; fractured teeth; fusion, cervical; incontinence; internal fixation; loss of consortium; loss of society; nerve damage, optic nerve; paralysis; paraplegia; plate; speech impairment; traumatic brain injury; vocal cord damage*

Parra sustained fatal injuries and was pronounced dead at the scene of the collision. His parents sought $74,400 for past loss of financial support, $588,093 for loss of future financial support, $12 million for past and future loss of companionship and society, and $13,020.55 for funeral expenses.

Pedeferri sustained fractures at C3 and C8, with the C8 fracture severing and destroying between 3 and 4 centimeters of the spinal cord. The C8 fracture resulted in permanent paralysis below the shoulders with no prospects of recovery. He also sustained multiple fractures on 18 ribs, three collarbone fractures, two left shoulder fractures, a fractured left scapula, a skull fracture and multiple fractured teeth.

The C3 fracture required a bone graft, plate and fusion, while the shoulder injury required surgical repair. He also sustained brain damage, with particularly severe damage to the brain stem. His vocal cords were paralyzed for five months and required surgical repair, and he continues to exhibit a speech impediment. He sustained damage to the nerves and muscles of his eyes, resulting in continual double vision. He has no fine motor control in either hand, and has no bowel or bladder control.

Pedeferri sought $987,338 for past medical expenses; $10,270,100 for future medical expenses; $288,300 for past lost earnings; $1,898,000 for future lost earnings; $5 million for past pain and suffering, physical impairment and disfigurement; and $19 million for future pain and suffering, physical impairment and disfigurement.

Anthony Pedeferri's wife, Carrie Pedeferri, sought $5 million for past and future loss of consortium.

RJS and Seidner disputed the damages, arguing the plaintiffs' lost income claims were excessive.

RESULT The jury found White 67 percent liable and RJS and Seidner 33 percent liable. The Pedeferris were awarded $39,443,738 and the Parras $10,200,513.55.

POST-TRIAL White offered his $15,000 policy limits to settle with the Parras.

Restaurant chain accused of lax security during 'bar rush' hours

Case Type: Negligent Security — Premises Liability — Restaurant — Damages — Punitive

Case: Tolenoa v. Denny's Inc., King Co., Wash., Super. Ct., 09-2-19511-1, 2/7/2011

Plaintiffs' Attorney: Ron Perey and Douglas T. Weinmaster, Perey Law Group PLLC, Seattle

Defense Attorney: Thomas R. Merrick, Merrick and Thomas J. Collins, Hofstedt & Lindsey, P.S., Seattle

Jury verdict: $46,417,739

FACTS & ALLEGATIONS In the early-morning hours of Jan. 21, 2007, plaintiffs Steven Tolenoa, 27, a mail sorter, and Lisa Beltran-Walker, a homemaker in her 40s, were struck by gunfire during a shooting inside a Denny's on North Central Avenue in Kent.

Tolenoa and Beltran-Walker were among five Denny's patrons shot by Frank Evans, who had arrived at the Denny's after a night out drinking with friends. According to witness statements and police reports, Evans was overhead saying, "I'm going to smoke everything moving" upon entering the restaurant. After Evans attempted to start confrontations with two separate groups of patrons, a server told him the police had been called. Evans then punched a nearby patron, only to be beaten by other patrons. He was let up and allowed to leave the restaurant.

Evans then went to his vehicle and retrieved a Glock 23 semiautomatic pistol. He fired 11 rounds; Tolenoa was struck in the neck and chest, while Beltran-Walker suffered a wound to the right leg.

Tolenoa and Beltran-Walker sued Denny's Inc. and Linda Hoffert, the area manager in charge of the Kent Denny's. The suit accused the restaurant chain of having negligently failed to prevent the shooting despite knowing that violent incidents were likely to occur on the premises after 2 a.m. on weekends due to an influx of patrons coming from recently closed bars and nightclubs.

Also named as a plaintiff in the suit was Beltran-Walker's husband, Carl Walker, who was not struck during the shooting, but witnessed his wife being shot.

The plaintiffs claimed that Denny's South Carolina-based corporate management was aware of the prospect of late-night weekend violence at the Kent Denny's and other locations in its chain of 24-hour eateries, but failed to take adequate safety precautions at all of its restaurants. They noted the existence of hundreds of calls to 911 from the Kent Denny's in the years before the shooting. They also presented testimony from Kent Denny's employees who stated that their complaints to regional management about safety problems at the restaurant during bar-rush hours fell on deaf ears.

The plaintiffs' security expert testified that Denny's should have either closed its Kent location during "bar rush" hours, or hired security guards or off-duty Kent police to ensure safety during that timeframe.

Denny's argued that the large volume of 911 calls from the Kent location were not necessarily proof of repeated instances of violence there, as the calls could have been placed by callers who happened to be using the restaurant's phone, but were not phoning police about incidents related to the restaurant. Defense counsel unsuccessfully moved for a mistrial on the ground that plaintiffs' counsel had repeatedly attempted to mislead the jury as to what could be properly inferred from the 911-calls data.

Responding to evidence that the staff had complained to management about lack of late-night weekend safety at the Kent Denny's, defense counsel argued that though there were reports of occasional fisticuffs at the location, violence on

the scale of that committed by Evans was totally unforeseeable.

The defense's criminology expert testified about the unpredictable nature of the type of shooting committed by Evans, but Judge Laura Gene Middaugh ruled that the expert would be precluded from classifying Evans' conduct as a rage-induced rampage.

Plaintiffs' counsel unsuccessfully requested that Middaugh apply South Carolina law as to punitive damages, which were deemed unconstitutional by the Washington Supreme Court in its 1891 decision in Spokane Truck & Dray Co. v. Hoefer. Middaugh ruled that a premises liability tort occurring in Washington should not subject a South Carolina-based corporation to the punitive-damages laws of its home state.

Prior to trial, the parties engaged in mediation before Spokane litigator Gary Bloom, but no settlement agreement was reached at that time.

INJURIES/DAMAGES *emotional distress; gunshot wounds; numbness; quadriplegia*

Tolenoa suffered a severing of his cervical vertebra at the C6 level, rendering him permanently quadriplegic. He spent three months in a hospital and then nearly four years in a nursing home.

The plaintiffs' experts in physical capacities, physical rehabilitation, vocational rehabilitation and life-care planning testified that Tolenoa will no longer work again in any capacity, and that his best chance for reaching his full life expectancy would be to receive round-the-clock care in a specially outfitted private residence.

The plaintiffs' expert economist testified that, based on the conclusions reached by the other experts who evaluated Tolenoa, Tolenoa's future care costs would total roughly $17 million.

Beltran-Walker suffered a flesh wound to her lower right leg during the shooting, and complained of permanent numbness in that leg. Carl Walker claimed that witnessing his wife's shooting caused him emotional distress.

Plaintiffs' counsel asked the jury to award the plaintiffs at least $20 million in economic damages, and an unspecified amount in non-economic damages.

Defense counsel disputed the cost of care for Tolenoa. The defense's physical rehabilitation expert testified that Tolenoa lacked the necessary skill and motivation to live in his own home, and opined that he would be better off in an institution. An economics expert retained by defense counsel testified that it would cost roughly $7 million to pay for Tolenoa's stay in a long-term-care facility for the rest of his life.

Thus, defense counsel argued that the jury should award no more than $5 million, to be used to purchase an annuity for Tolenoa.

RESULT Middaugh allowed the jury to consider the percentage of liability of an unidenitified, non-party individual who two witnesses allegedy saw handing the gun to Evans outside the restaurant. She also instructed the jury that if they found the shooter, Evans, solely responsible for the damages involved, then they could find that any negligence on the part of Denny's had not caused the plaintiffs' injuries. However, the judge refused to allow apportionment or allocation of damages between the defendants and Evans, who was not a party to the lawsuit. Defense counsel contested the structure of the judge's instructions to the jury. They acknowledged that Middaugh explained the circumstances via which Denny's could bear all of the liability, but contended that it was addressed later, when damages were being explained.

The jury concluded that Denny's and Hoffert were both negligent, and that the non-party individual who allegedly handed Evans the gun was not negligent. However, it found that only the negligence of Denny's was a proximate cause of the plaintiffs' injuries. Thus, the jury found that Denny's was 100 percent liable and awarded the plaintiffs damages totaling nearly $46.5 million.

POST-TRIAL As a result of a $13 million/$5 million high/low agreement reached shortly before closing arguments, the plaintiffs will receive $13 million from Denny's $21 million primary insurance policy.

Truck driver allegedly ran stop sign, killing two in pickup truck

Case Type: Intersection — Motor Vehicle — Tractor-Trailer — Agency/Apparent Agency — Vicarious Liability — Wrongful Death — Motor Vehicle — Head-On

Case: Foster v. Landstar Ranger Inc., Cobb Co., Ga., State Ct., 09-A-1698-2, 9/23/2011

Plaintiffs' Attorney: William S. Stone, Boone & Stone, Atlanta

Defense Attorney: Christopher T. Byrd and Y. Kevin Williams, Weinberg Wheeler Hudgins Gunn & Dial LLC, Atlanta

Jury verdict: $40,231,069

FACTS & ALLEGATIONS On Feb. 11, 2007, plaintiff's decedent William Foster, 45, owner of a firearms supplies business, his employee, plaintiff's decedent Jerry DeMott, 40, and his wife, plaintiff Theresa Foster, 43, were in a pickup truck on their way home from a quail-hunting trip. Mr. Foster was driving and DeMott was in the front passenger seat. Mrs. Foster was in one of the rear seats. At the intersection of U.S. Route 27 and State Route 62 in Blakely they were struck by a tractor-trailer driven by Stephen Collins who was employed by Landstar Ranger Inc., a transportation company. Mr. Foster and DeMott were killed. Mrs. Foster sustained a head injury and multiple fractures. Collins was convicted on two counts of vehicular homicide.

Mrs. Foster, individually and as surviving spouse, and Monica U. Demott, individually and as surviving spouse and administrator of her husband's estate, sued Landstar Ranger, Landstar System Holdings Inc. Landstar System Inc. and Collins for his motor vehicle negligence. They claimed that Collins ran his stop sign and the Landstar defendants were vicariously liable. Foster's company, Dixie Shooters Supply, was also a plaintiff because the pickup truck was company property that was destroyed in the crash.

The family sought punitive damages, maintaining that Landstar was vicariously liable for the driver's recklessness because he consciously disregarded an obvious and known peril. He made no effort to stop as he went through the intersection, counsel argued.

Prior to trial, plaintiffs' counsel voluntarily discontinued the claims against Collins, and the litigation proceeded against the Landstar defendants. Monica DeMott reached a settlement on her claims prior to trial.

INJURIES/DAMAGES *conscious pain and suffering; death; fracture, multiple ribs; fracture, sternum; fracture, vertebra; head; loss of services; zone of danger*

Mr. Foster was killed in the crash. Plaintiff's counsel argued that Mr. Foster had experienced significant mental anguish in the short amount of time between when he first noticed the tractor-trailer pull into the intersection and the moment of impact. The state troopers who investigated the accident testified that their analysis revealed that Foster slammed on his brakes and took evasive steering action in the seconds before the collision.

The suit filed on behalf of Foster's estate also alleged that Foster's tax filings in the several years prior to his death were not an accurate reflection of his true economic worth at the time of the accident, or of what he would have earned had he survived it. Foster's longtime accountant testified that Foster, as sole stockholder of a business categorized as an S corporation for tax purposes, had made use of a variety of legitimate income-realization deferment techniques to reduce his taxable income.

The plaintiffs' economist opined that Foster's future earnings would have totaled at least $14.3 million. However, the economist stated, that figure could reasonably be estimated at as high as $42 million if one took into account that, following Foster's death, Dixie Shooters had landed a lucrative importation deal with a Russia-based source of ammunition that had led to contracts with retailers across the United States.

Foster's family sought punitive damages, as well as damages for Foster's funeral expenses and property damage and for damage done to property of Foster's business.

Mrs. Foster sustained a head injury, causing loss of consciousness, and fractures to her sternum, several ribs and multiple vertebrae during the accident. Her individual claim sought damages for pain and suffering, medical costs, and the emotional trauma she has experienced as a result of witnessing her husband's death.

The defense did not call to the stand at trial any damages-related experts. (Defense counsel did, however, retain a jury consultant who oversaw the analysis reactions of a "shadow" panel that was permitted to sit through the trial.) Defense counsel argued that the express statements of Foster's tax filings should be followed – and any unrealized business relationships disregarded – in placing a value on the loss of earnings caused by Foster's death.

RESULT The jury found that punitive damages were not warranted. It awarded $40,231,069.

POST-TRIAL After the verdict was rendered, a judgment was entered that granted post-verdict interest of 6.25% and reserved the right to award attorney's fees and costs.

The defense intends to appeal the jury's award.

Plaintiff: Car's defective restraint caused teen's ejection

Case Type: Design Defect — Products Liability — Seat Belts — Motor Vehicle — Rollover — Wrongful Death — Survivorship Action

Case: Estate of Stabler v. Kia Motors America Inc., Mobile Co., Ala., Cir. Ct., cv-06-2263, 6/23/2011

Plaintiffs' Attorney: Toby D. Brown and George W. "Skip" Finkbohner III, Cunningham Bounds LLC, Mobile, Ala.

Defense Attorney: Michael D. Knight, McDowell, Knight, Roedder & Sledge, L.L.C., Mobile, Ala.; Chris Spencer, O'Hagan Spencer LLP, Richmond, Va.

Jury verdict: $40,000,000

FACTS & ALLEGATIONS On July 4, 2004, plaintiff's decedent Tiffany Stabler, 16, was driving a 1999 Kia Sephia (VIN KNAFB1213X5797 127) on Ben Hamilton Road in Mobile County. At the time, her friend was sitting in the front passenger's side seat.

Tiffany's administratrix alleged that the teen was traveling 55 miles per hour in accordance to the posted speed limit when the vehicle's right tires drifted off the shoulderless roadway. In response, Tiffany overcorrected her steering which caused the vehicle to veer across the two-lane highway, at which time the teen counteracted by steering to the right, and, in doing so, the Kia Sephia turned over and rolled 2.5 to 3.5 times to the left of the highway.

The administratrix alleged that at some point during the rollover sequence, Tiffany's A97 seat belt buckle unlatched and allowed her to be ejected from the vehicle. The minor landed on the roadway and suffered multiple traumas to her head and upper torso. She later died at the scene of the accident. Tiffany's friend survived the crash, suffering only minor injuries.

Tonya Leytham, acting as the administratrix and personal representative of her daughter's estate, sued Kia Motors America Inc., Kia Motors Corp. and Celltrion DBI Inc. (which allegedly provided engineering service and/or expertise, and/or provided parts and components, which were incorporated in the subject Kia Sephia) for products liability and wrongful death.

According to the plaintiffs' mechanical engineering/design expert, the A97 seat belt buckle was produced in model years 1995 through 2000 in the Kia Sephia and Sportage vehicles. The seat belt buckles had a safety defect that caused them to be susceptible to "false latching" so that the user thinks she is properly belted when in reality she is not. In an accident, the false latch condition can allow the buckle to unlatch and substantially increase the risk of serious injury or death. The expert attempted to further reiterate his opinions via evidence that showed him testing multiple A97 exemplar belts. According to the expert, the A97 belt would unlatch in significant collisions, similar to the one Tiffany was in.

Plaintiffs' counsel maintained that, in 2002, the U.S. Government inquired about the problem, and in late December 2002 Kia issued a safety defect recall, but only for model years 1995 through 1998 vehicles. The model year 1999 and 2000 cars were not recalled, even though they had the same seat belt buckle with the same safety defect as the cars that were recalled. The 2002 recall resulted in 189,000 cars being recalled, but 251,000 cars with the same defective buckle were not recalled and the owners of those cars were not notified of the safety defect.

Later, in April 2004, the U.S. Government inquired as to the scope of the recall, and why 1999 and 2000 model year cars had not been included in the recall. The government also asked that Kia deliver more than a dozen of the seat belt buckles for testing to be conducted by the U.S. Government. Kia did not deliver the buckles for testing, and instead advised the government in June 2004 that it would expand the recall in August 2004 to include model year 1999 and 2000 cars, according to plaintiffs' counsel.

Plaintiffs' counsel claimed that when Tiffany turned 16 on May 6, 2004, her father purchased the used 1999 Kia Sephia as a birthday gift. Before giving it to her, he had the car serviced at the local Kia dealership, had all recall work done, he changed the tires and did all maintenance needed to make the vehicle safe. He had no idea the car had defective seat belts in it and, although Kia corporate officials knew there was a safety defect, a recall of the seat belt buckles in this model year car had not issued, counsel contended. Therefore, the original defective seat belt buckles remained in the vehicle, even after it was inspected and serviced by the Kia dealership, asserted plaintiffs' counsel.

Counsel maintained that Tiffany was belted

at the time of the accident. The plaintiffs' kinematics/biomechanical engineering/injury pattern expert discussed the survivability rate of a rollover accident when an occupant is belted versus when an occupant in unbelted. Citing various literatures and governmental studies (i.e., the National Highway Traffic Safety Administration), the expert concluded that if an occupant is belted in a vehicle that rolls less than three times, the vehicle does not hit another object in the rollover sequence (such as the subject accident), there is a greater than 97-percent chance that the occupant will survive. If the vehicle rolls more than three times, there is still a greater than 90-percent chance of surviving and only sustaining moderate to less-than-moderate injuries. Therefore, had Tiffany been secured in the vehicle during the rollover, she would have survived, said the expert.

To support the plaintiffs' theory that the minor was wearing her seat belt at the time of the accident, the plaintiffs' accident reconstruction expert testified that there were markings on the seat belt that were consistent with belt usage: fraying, grime on the webbing that had been transferred onto the D ring, and some dirt on the tongue portion of the restraint's latch plate.

The plaintiffs' forensic pathology expert opined that Tiffany's body exhibited "classic" seat-belt usage signs in the form of rope-like burns across her neck and left shoulder. The pathologist reiterated the opinion that the teen would have survived the accident had she been secured inside the vehicle during the rollover.

The defendants denied the allegations and maintained that Tiffany was not wearing her seat belt prior to the crash. The defense's experts testified about how the physical evidence demonstrated that she could not have been wearing her seat belt in this crash. The belt itself was free of any load marks, as well as free of any scratches, scuffing and debris that one would certainly find had the minor been wearing the belt before she was ejected. The experts also demonstrated that the marks on Tiffany's shoulder, which the plaintiffs' counsel attributed to the seat belt, were in fact caused by interaction with the vehicle's body as she was ejected from it.

Defense counsel demonstrated that the buckle could not be "false latched" in anything remotely approaching ordinary use. Using, among other things, the plaintiffs' expert's own video, the defendants demonstrated that the plaintiffs' expert had to consciously and deliberately manipulate the latch and buckle with two hands to get it into a position of partial engagement. The expert even had to depress the ejector button at the same time he was inserting the latch plate, which no ordinary occupant would ever do.

The defense's accident reconstruction expert testified that Tiffany was driving well over the speed limit, in a range as high as 82 mph.

As for the recalls, the defendants showed that certain 1995 to 1997 buckles had been the subject of customer complaints and warranty claims, but that running changes completed in 1997 had drastically reduced such complaints and claims. Kia maintained that the recalls were performed for business and government relations reasons, not because of any actual defects, and noted that no technical defect has ever been found in any of these buckles. Although the plaintiff pointed to customer complaints regarding 1998 to 2000 model year buckles, Kia asserted that virtually all of those complaints had either been investigated and found to be baseless, or that the complaints themselves showed that they were unrelated to any problem with latching. In one case, the complainant was admittedly drunk. In another, the investigation showed that the buckle had not unlatched, but rather it had held in that particular crash and had to be cut off by rescue personnel.

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

Tiffany was ejected from her vehicle and landed on the roadway, suffering multiple traumas to her head and upper torso. She later died at the scene of the accident.

Tiffany died on July 4, 2004. She was 16. She left behind a mother and father.

Due to the state's wrongful-death statute, the plaintiffs could only seek to recover punitive damages, and the jury was presented with limited information as to Tiffany as an individual. The teen, who would have become a junior that upcoming school year, babysat and was regarded as a well-liked person.

RESULT The jury found in favor of the plaintiffs and against Kia Motors Corp., Kia Motors America and DBI Celltrion. It awarded the estate $40 million.

Defective throttle caused WaveRunner crash, plaintiffs alleged

Case Type: Design Defect — Products Liability — Warnings — Recreation — Watercraft — Wrongful Death

Case: Perez v. Yamaha Motor Corp., Palm Beach Co., Fla., Cir. Ct.; 50 2006 005301 XXXXMB, 6/10/2011

Plaintiffs' Attorney: Eric L. Ansel, Ansel & Miller LLC, Hollywood, Fla. (Daniel Perez, Estate of Jaysell Perez, Ivonne Perez); Robert B. Baker, Baker & Zimmerman P.A., Parkland, Fla. (Samantha Archer, Daniel Perez, Estate of Jaysell Perez, Ivonne Perez); David A. Kleinberg, Law Offices of Neufeld, Kleinberg & Pinkiert P.A., Aventura, Fla. (Samantha Archer)

Defense Attorney: Richard A. Mueller, Thompson Coburn LLP, St. Louis, Mo.; Scott M. Sarason, Rumberger Kirk & Caldwell, P.A., Miami

Jury verdict: $39,840,270

FACTS & ALLEGATIONS On Easter Sunday in March 2005, plaintiffs Jaysell Perez, 14, and Samantha Archer, 15, borrowed a 2001 Yamaha WaveRunner XL 800 from Eugene Jolly. The plaintiffs took off on the WaveRunner and collided with a boat in the Intercoastal waterway. Jaysell was killed in the accident and Samantha was severely injured.

Jaysell's father, Daniel Perez, acting individually and on behalf of his daughter; Jaysell's mother, Ivonne Perez, acting individually; and Samantha Archer sued Yamaha Motor Corporation U.S.A. and Yamaha Motor Manufacturing Corporation of America. They alleged that the defendants were liable for a design defect in the WaveRunner and were negligent for failing to warn of this defect.

Plaintiffs' counsel contended that the accident was caused by a defective throttle that was negligently designed. Samantha, who was driving, claimed she took her hand off the throttle to slow the watercraft for a turn, but found that once she released the throttle, she could not steer.

Plaintiffs' counsel stated that Yamaha was one of the last watercraft manufacturers to correct the problem with the steering, having done so in 2003. Counsel further noted that Yamaha had been sued multiple times previously. They also contended that a 1998 BTSB report noted a number of accidents involving the defendants' products and urged Yamaha to investigate it.

In addition, plaintiffs' counsel argued that the warnings offered by Yamaha were insufficient, in that the 2001 owner's manual omitted refer-

ences of the need to accelerate when turning. They also contended that warnings placed on the actual watercraft were insufficient as they were located near the area where one places their feet.

Defense counsel brought in Samantha's mother, Nicolette Archer, and the owner of watercraft, Jolly, as Fabre defendants. Counsel denied there being any problems with the watercraft and, instead, argued the accident was avoidable. They noted that the legal age to drive a watercraft in Florida is 16, and that Samantha was only 15 at the time of the accident. Defense counsel further noted the plaintiffs had little to no experience in operating a watercraft, nor did they take any training courses or read the owner's manual.

Defense counsel contended that three eyewitnesses said that Archer did not release the throttle before the accident. Counsel further contended that nobody besides Samantha ever stated that she slowed or tried to evade the boat. In addition, defense counsel contended that no matter what the design of the watercraft, Samantha could not have avoided the boat as she reacted less than three seconds before the impact with the other boat.

INJURIES/DAMAGES *crush injury; death; degloving injury; emotional distress; fracture, pelvis; lacerations; patellar tendon; scar and/or disfigurement; shoulder, separation; tooth loss; traumatic brain injury*

Jaysell was crushed and sliced by a propeller in the accident, resulting in her death at the scene.

Jaysell was 14 years old. She left behind both parents, a younger sibling and an older brother. Her family claimed they were extremely close. Her parents alleged they kept their Jaysell's room the way it was before the accident and the family visits their daughter's grave every Sunday. Jaysell's mother also stated that she wears a locket with her daughter's picture in it.

Samantha sustained numerous injuries and her lungs filled with salt water, requiring her to be taken to a hospital after the accident. Her teeth were knocked out and she suffered a traumatic brain injury, a fractured pelvis, and deep gashes to her stomach, legs and groin. She also suffered a right patella tendon rupture, degloving injuries and a separated right shoulder.

Samantha underwent over a dozen surgeries, including a hip and knee replacements. She was left with severe scarring throughout her body.

Samantha claimed she is a candidate for multiple hip replacements as the average hip replacement lasts only 16 years. She also has a metal ring placed in her pelvis and claimed that, should she have children, she would be unable to have a vaginal delivery. Samantha further claimed that she now walks with a limp and that, based on her age, she will need multiple surgeries in the future on her right knee.

According to plaintiff's counsel, Samantha is battling a traumatic brain injury, resulting in a change in her personality. They contended that Samantha is now prone to lashing out in anger and other volatile behaviors. Samantha also battled substance abuse after the accident, and was sent to a drug rehabilitation program in California and a center for rehabilitation of traumatic brain injuries in Virginia. Counsel contended that Samantha lacks the mental and emotional capacity to have steady employment, live on her own or start a family.

The plaintiffs' expert economist testified that Samantha would require about $6.7 million in medical care throughout her life.

Defense counsel contested the extent of Samantha's traumatic brain injury and the size of the life-care plan offered by the plaintiff.

RESULT The jury found that the WaveRunner had a defective design and warnings. It determined that Yamaha was 88 percent liable for the accident, that Samantha's mother was 10 percent liable, that Samantha, herself, was 1 percent liable, and that the Holly, the vehicle owner, was 1 percent liable.

The jury awarded a total of $39,840,270.34. However, the plaintiffs would only recovery the amount owed by Yamaha. Thus, the total would be reduced to $35,059,437.90.

Of the total amount awarded, Samantha was awarded $18,325,270.34 in damages. After reductions, she would recover $16,126,237.90. Daniel Perez was awarded $9.5 million in damages. After reductions he would recover $8.36 million. Ivonne Perez was awarded $12 million in damages. After reductions she would recover $10.56 million. And Jaysell's estate was awarded $15,000 in funeral expenses, which would be reduced to $13,200.

Motorcyclist: Negligence by driver caused accident

Case Type: Motorcycle — Premises Liability — Negligent Repair and/or Maintenance — Motor Vehicle — Stop Sign

Case: Nummela v. Cantu, Palm Beach Co., Fla., Cir. Ct., 5/31/2011

Plaintiffs' Attorney: Jeff Vastola, Vastola & Associates, North Palm Beach, Fla.; J. Stuart Kirwan III, North Palm Beach, Fla.

Defense Attorney: Not represented

Jury verdict: $38,000,000

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

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

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

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

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

The case was retried solely against Cantu in 2011.

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

INJURIES/DAMAGES *amputation, below-the-knee; amputation, finger; fracture, fibula; fracture, pelvis; fracture, tibia; prosthesis*

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

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

RESULT The jury awarded Nummela $38 million.

Intoxicated restaurant worker fatally shot police officer: survivors

Case Type: Dram Shop — Wrongful Death — Survivorship Action

Case: Estate of Golden v. Las Americas LLC, Madison Co., Ala., Cir. Ct., cv-07-900512, 4/19/2011

Plaintiffs' Attorney: Matthew C. Minner and James R. Moncus III, Hare, Wynn, Newell & Newton LLP, Birmingham, Ala.

Defense Attorney: Benjamin R. Rice, Wilmer & Lee P.C., Huntsville, Ala.

Jury verdict: $37,500,000

FACTS & ALLEGATIONS On Aug. 29, 2005, plaintiffs' decedent Daniel Golden, 27, a Huntsville Police Department officer, was called to Taqueria Jalisco Mexican Restaurant in response to a domestic violence report arising from an intoxicated employee.

Reportedly, the wife of the restrauant manager, Benito Albarran, called 911 and told an emergency operator that her husband was drunk, fighting her and acting crazy. When Golden arrived, the intoxicated Albarran, who was an illegal immigrant from Mexico and armed with two .38-caliber revolvers, came out of the front door and began firing. The officer returned the fire, walking backward in the parking lot outside Taqueria Jalisco, when his gun jammed. Golden was shot in the abdomen, knocking him to a seated position on the ground and rendering him defenseless. While Golden was on the ground, holding his hands up in a gesture of surrender, pleading for his life, Albarran, walked toward him and fatally shot him twice in the face.

In 2008, Albarran was convicted of murder and sentenced to the death penalty.

Under the Alabama Dram Shop Law, Golden's widow, individually and on behalf of Golden's parents, sued Albarran, who was on death row, and Las Americas LLC, which does business as Taqueria Jalisco Mexican Restaurant and is also known as Jalisco Grocery, for wrongful death. She also sued Beretta USA Inc., the manufacturer of the decedent's gun, alleging products liability. However, the action against Beretta was immediately dismissed.

Plaintiffs' counsel asserted that Taqueria Jalisco allowed Albarran to drink alcohol while on the job, and drink to the point of intoxication.

Plaintiffs' counsel argued that Albarran became violent and that his intoxication caused him to kill Golden. Counsel presented evidence from an emergency room doctor, showing that Albarran was intoxicated and smelled of alcohol when he was examined roughly nine hours after the shooting.

Defense counsel argued that alcohol didn't force Albarran to shoot Golden, and that nobody could have predicted how Albarran would react to the police presence at the restaurant.

Taqueria Jalisco claimed that it didn't serve alcohol to Albarran because he served himself, and that its owners weren't aware that Albarran was intoxicated.

Albarran refused to answer questions in a video deposition from prison, as he was appealing his criminal conviction.

INJURIES/DAMAGES *death; gunshot wounds*

Golden was shot twice in the face and died.

Golden died on Aug. 29, 2005. He was 27 years old. He was survived by his wife, Donessa Golden, who was in her 20s; his mother, Diannah Golden, who was in her 50s; and his father Kenneth Golden, who was also in his 50s. His family made an unspecified demand for punitive damages. As per Alabama law, they were prohibited from seeking damages related to loss of consortium.

Plaintiffs' counsel argued that a large punitive damages award would send a message that ignoring the Dram Shop laws would not be tolerated in the Huntsville community, and that it would support Golden's survivors, current and future police officers and the law-abiding Huntsville community.

RESULT The jury returned a plaintiffs' verdict, finding the defendants liable for Golden's wrongful death and for dram shop violations.

The jury awarded Golden's survivors $37.5 million, which included $25 million against Albarran and $12.5 against Taqueria Jalisco.

City didn't slow speeding drivers, accident's victim alleged

Case Type: Speeding — Motor Vehicle — Bicycle — Transportation — Roadways — Government — Municipalities

Case: Turturro v. New York, Kings Co., N.Y., Sup. Ct., 37657/0, 5/26/2011

Plaintiffs' Attorney: Robert J. Walker, Gallagher, Walker, Bianco & Plastaras LLP, Mineola, N.Y.

Defense Attorney: Jennifer A. Coyne, Michael A. Cardozo, New York City Law Department (City of New York); Rosario M. D'Apice, Longo & D'Apice, Brooklyn, N.Y. (Beatrice and Louis Pascarella)

Jury verdict: $36,161,798

FACTS & ALLEGATIONS During the evening of Dec. 5, 2004, plaintiff Anthony Turturro, 12, was bicycling on Gerritsen Avenue, near its intersection at Florence Avenue, in the Gerritsen Beach section of Brooklyn. He was struck by a car that was being driven by Louis Pascarella, who was traveling on the southbound side of Gerritsen Avenue. Anthony sustained injuries of an ankle and his head.

Anthony's mother, Elida Turturro, acting individually and as Anthony's parent and natural guardian, sued Pascarella; the owner of Pascarella's vehicle, Beatrice Pascarella; and Gerritsen Avenue's maintainer, the city of New York. The plaintiffs alleged that Louis Pascarella was negligent in the operation of his vehicle, that Beatrice Pascarella was vicariously liable for Louis Pascarella's actions, and that the city negligently failed to address persistent dangerous conditions that ultimately caused the accident.

Anthony claimed that he retains no memory of the circumstances that led to the accident. A witness contended that Anthony was bicycling toward the west side of Gerritsen Avenue. She estimated that Louis Pascarella was maintaining a speed of 50 mph. That speed would have been 20 mph faster than the posted limit. The witness also contended that Anthony was propelled onto the windshield of Pascarella's car, that the windshield shattered and that Anthony was tossed onto the pavement. Plaintiffs' counsel noted that investigators calculated that Pascarella was maintaining a speed of 54 mph.

Plaintiffs' counsel claimed that Pascarella's excessive speed caused the accident, but he also claimed that the city had failed to address persistent reports that Gerritsen Avenue was being plagued by speeding motorists. He noted that politicians had also submitted complaints that addressed the issue. He presented an expert engineer, who opined that the speeding motorists would have been deterred by any one of several measures that included the creation of a wide median. However, during cross-examination, the expert acknowledged that speeding cannot be entirely prevented.

The city's counsel contended that the city had studied the issue of controlling Gerritsen Avenue's speeding motorists, and she noted that policemen had been repeatedly directed to arrest the speeding motorists. She claimed that the directive sufficiently addressed the problem, and she contended that the area became comparable to other areas in which a motorist's speed may not exceed 30 mph.

The city's counsel also presented an expert who studies biomechanics. The expert noted that Anthony sustained severe injuries of his head, but he opined that similarly severe injuries would have resulted from being struck by a vehicle whose driver was maintaining a speed of 30 mph. The expert also contradicted the testimony that was provided by the plaintiffs' eyewitness. The expert suggested that the collision occurred while Anthony was bicycling toward the east side of Gerritsen Avenue. Pascarella corroborated that suggestion, and he contended that Anthony suddenly emerged from behind a cluster of double-parked vehicles. Pascarella claimed that he could not have avoided the accident. He also claimed that his vehicle's speed did not exceed 35 mph.

INJURIES/DAMAGES *brain damage; coma; contracture, knee; craniotomy; diminished cognitive ability; fracture, ankle; fracture, skull; head; hip; hydrocephalus; seizure disorder; subdural hematoma; swelling*

Anthony sustained fractures of his skull, a fracture of his left ankle and damage of his brain. He also developed a subdural hematoma, and he became comatose.

Anthony was transported to a hospital, where doctors detected that his brain was swollen. The condition was addressed via performance of a craniotomy, which involved the long-term removal of a portion of his skull. The extracted bone was implanted in his abdomen, and it was removed and replaced when his brain's swollenness had subsided.

Anthony subsequently developed hydrocephalus: the brain's retention of an excessive amount of cerebrospinal fluid. The condition was addressed via the implantation of a shunt that allowed drainage of the fluid. Anthony also underwent the implantation of a filter that was intended to prevent the formation of a pulmonary embolism.

Anthony's coma persisted through the four months that followed the accident. After he had regained consciousness, he underwent about 19 months of physical rehabilitation. During his rehabilitation, his right knee developed a contracture. In January 2006, that condition was addressed via surgery that involved the lengthening of a tendon. In February 2007, doctors determined that Anthony was suffering residual ossification of his right hip.

Anthony also developed a disorder that produced seizures, though the condition is greatly controlled by medication.

The plaintiffs' expert neurologist opined that Anthony sustained permanent damage of his brain. Anthony suffers residual impairment of his cognitive functions, and he is schooled in special classes. He also suffers residual impairment of his balance, so his ambulation is guided by a specially trained dog.

The plaintiffs' vocational-rehabilitation expert opined that Anthony's residual injuries will greatly impair the boy's ability to work. The expert suggested that Anthony can perform part-time work that would provide a minimal salary. The plaintiffs' expert economist opined that Anthony's pre-accident academic performance suggested that the boy would have been able to earn a salary that equaled or exceeded the national average.

The parties stipulated that Anthony's medical expenses totaled $586,797.52. Anthony's mother sought recovery of that amount, about $15 million for Anthony's future medical expenses, about $6 million for Anthony's future lost earnings, $5 million to $10 million for Anthony's past pain and suffering, and $10 million to $15 million for Anthony's future pain and suffering. She also sought recovery of $100,000 to $200,000 for her loss of services.

Defense counsel contended that plaintiffs' counsel exaggerated the extent of Anthony's residual injuries, that doctors had previously determined that Anthony was emotionally disturbed and that doctors had previously determined that Anthony is a learning-disabled person.

RESULT The jury found that each party was liable for the accident. Beatrice Pascarella and Louis Pascarella were assigned a total of 50 percent of the liability; the city was assigned 40 percent of the liability; and Anthony was assigned 10 percent of the liability.

The jury determined that the plaintiffs' damages totaled $36,161,797.52. The comparative-negligence reduction produced a net recovery of $32,545,617.77, but the plaintiffs do not expect to recover that amount. Beatrice Pascarella and Louis Pascarella are not expected to contribute more than $50,000, which represents the limit of their insurer's obligation. The city must pay the remainder of the economic damages, but it does not have to pay more than 30 percent of the non-economic damages.

POST-TRIAL The city's counsel contended that the verdict contradicted the weight of the evidence, and she also contended that the damages awards are excessive. She has moved to set aside the verdict, and she reported that she may file an appeal.

Driver died in crash avoiding fiery car's blinding black smoke

Case Type: Underinsured Motorist — Motor Vehicle — Rollover — Wrongful Death — Negligence — Negligent Maintenance

Case: Estate of Bottini v. Geico General Insurance Co., Hillsborough Co., Fla., Cir. Ct., 08-08851, 2/3/2011

Plaintiffs' Attorney: C. Steven Yerrid and David D. Dickey, The Yerrid Law Firm P.A., Tampa, Fla.

Defense Attorney: James B. Thompson Jr. and Jason M. Stedman, Thompson, Goodis, Thompson, Groseclose, Richardson & Miller, P.A., St. Petersburg, Fla.

Jury verdict: $30,872,266

FACTS & ALLEGATIONS On March 3, 2007, plaintiff's decedent Gerard Bottini, 46, a business owner, was driving in the left lane on Interstate 75 in Hillsborough County (near Tampa), shortly after midnight at approximately 70 mph.

The vehicle in front of him allegedly blew its engine, caught fire and created a fog of black smoke that enveloped Bottini's Ford F-250 truck, which eliminated his ability to see. Bottini turned his truck to the left and onto the grassy median. The truck went into a swale, which resulted in a rollover, killing Bottini and injuring two passengers, who were business associates.

The owner of the vehicle ahead of Bottini was Anita Lloyd and the driver was her daughter, Katie Geisbert.

Bottini's family sued Lloyd and Geisbert and they settled for $25,000. The family then sued Bottini's insurer, Geico, after it denied their underinsured motorist claim

Plaintiffs' counsel asserted that the car which created the hazard was not properly maintained due to a lack of basic maintenance and absence of oil changes that caused a rod bearing to catastrophically fail resulting in a blown engine and oil fire that produced thick black smoke.

Plaintiff's counsel asserted that the car was negligently operated by the driver who continued to drive at a high speed and disregarded audible warnings of imminent engine failure. Counsel argued that Bottini acted in a reasonably prudent manner when faced with a sudden and unexpected emergency at interstate speeds by steering clear of the hazard.

According to the plaintiffs' accident reconstruction expert, Bottini's vehicle initially impacted the ground on the driver's side quarter panel and A-pillar, resulting in severe intrusion into the driver's compartment that inflicted fatal injuries to Bottini's head. Bottini, who was not wearing his seat belt, was then ejected as the truck continued to roll, and subsequent additional crush damage to the truck's roof resulted in massive intrusion into the driver's space. The plaintiffs' experts concluded that the crash was not survivable even if the decedent had been wearing his seat belt.

Defense counsel denied Lloyd and Geisbert did anything wrong. The defense argued that the engine failure was due to an unforeseeable and unexpected bearing failure rather than faulty maintenance. The accident was Bottini's fault because he panicked and over-steered, causing the rollover.

INJURIES/DAMAGES *blunt force trauma to the head; death; loss of consortium; loss of parental guidance*

Bottini, who owned and operated a family printing business, earned wages of almost $100,000 per year. Bottini is survived by his wife and three children. They all sought to recover approximately $30 million in damages pursuant to their claims.

The defense accounting expert testified that Bottini's business was heavily in debt, on the verge of collapse, and would not have continued in its ability to pay his wages. Geico's economic expert concluded that the family's damages claim was excessive.

Plaintiffs' counsel presented evidence that showed that Bottini's business was not failing and that it was making capital investments to purchase new printing equipment.

RESULT The jury found that Lloyd and Geisbert were negligent and it was a legal cause of Bottini's death, and that there was no negligence on the part of Bottini. The family was awarded $30,872,266.

POST-TRIAL GEICO's motions for new trial and remittitur were denied.

Fall through ice resulted in one child's death and injuries to others

Case Type: Dangerous Condition — Premises Liability — Failure to Warn

Case: Wolsieffer v. Lakes of the Four Seasons Property Owners Association Inc., Lake Co., Ind., Cir. Ct., 45C01-0303-CT-45, 2/25/2011

Plaintiffs' Attorney: Timothy S. Schafer, Schafer & Schafer, Merrillville, Ind.

Defense Attorney: Daniel W. Glavin, Beckman Kelly and Smith, Hammond, III.

Jury verdict: $30,700,640

FACTS & ALLEGATIONS On March 11, 2001, plaintiffs Christopher and Andrew Kennedy, both 11, and plaintiff James Kennedy, 10, were playing on property owned by the Lakes of the Four Seasons Property Owners Association Inc. in Crown Point. The property, which contains a lake created by an earthen dam, is open for use by neighborhood residents.

While there, Christopher and another child walked onto the ice near the dam's overflow crib when Christopher fell through the ice. James and Andrew attempted to aid their brother, but they both fell through the ice as well. Andrew drowned.

Imelda Wolsieffer, acting on behalf of her son Andrew; Thomas Kennedy, acting on behalf of his son James; and Christopher sued Lake of the Four Seasons, claiming negligence.

The plaintiffs claimed the overflow crib created currents that dangerously weakened the ice near the crib from below. They claimed this created a dangerous condition the plaintiffs could not reasonably have had knowledge of, as the ice was visibly safe for walking on at all other areas of the lake. The plaintiffs claimed that the defendant was aware of this condition, but that it failed to place warning signs or restrict access to the area in violation of standard dam safety practices. They also argued that the defendant should have anticipated an accident like this would occur, but that it failed to provide safety life preservers, rope or any other safety equipment near the crib.

Lake of the Four Seasons claimed that the crib was not in operation on the day of the accident and that the weakness of the ice was an unanticipated natural occurrence. Defense counsel argued that the children and their parents knew, or should have known, the ice was potentially hazardous and bore comparative liability.

Plaintiffs's counsel disputed the defense arguments, arguing that the lake would have overflowed if the pump was not in operation and that state law presumes children under 14 are incapable of contributory negligence.

INJURIES/DAMAGES *brain damage; death; diminished cognitive ability; emotional distress*

Andrew drowned. He died on March 11, 2001. He was 11 at the time of his death. He left behind his parents and two brothers.

James sustained severe irreversible brain damage. His parents claimed his mental functions remain at a third or fourth grade level, and that he will require care for the rest of his life.

Christopher claimed that witnessing the incident caused him severe emotional and psychological trauma.

The plaintiffs sought an unspecified amount for Andrew's wrongful death, and for Christopher's and James' past and future pain and suffering. The plaintiffs also sought recovery of damages for James' physical impairment and his future loss of income as a result of his brain injury.

Defense counsel disputed the damages alleged by the plaintiffs. The defense's psychiatric expert disputed the severity of Christopher's emotional and psychological trauma.

RESULT The jury found Lake of the Four Seasons negligent and awarded the plaintiffs $30,700,640. Of the total award, Wolsieffer was awarded $5 million for Andrew's wrongful death, Kennedy was awarded $25,500,640 on behalf of James, and Christopher was awarded $200,000.

Plaintiffs: Lack of median barrier resulted in head-on crash

Case Type: Dangerous Condition — Motor Vehicle — Head-On — Motor Vehicle — Road Defect — Motor Vehicle — Center Line — Motor Vehicle — Multiple Vehicle

Case: Hutchinson v. Bucci, Solano Co., Calif., Super. Ct., FCS030143, 7/18/2011

Plaintiffs' Attorney: Thomas J. Brandi, The Brandi Law Firm, San Francisco; Richard C. Bennett, Johnson & Galler, Oakland, Calif.

Defense Attorney: Karl H. Schmidt, Department of Transportation-Legal Division, San Francisco; Ian Gordon, Law Office of Ian Gordon, Santa Rosa, Calif.

Jury verdict: $29,277,391

FACTS & ALLEGATIONS On Nov. 17, 2006, plaintiff Regina Jackson, 42, a housecleaner, was driving her friend, plaintiff Kenya Hutchinson's children, plaintiffs' decedents and half-brothers DeMari Hutchinson, 12, and Immanuel Callison, 7, as well as their brother, plaintiff Jordan Callison, 10. They were heading west from Rio Vista, toward Suisun City, on California State Road 12. When they were near Shiloh Road, their vehicle was struck head-on by a sport utility vehicle operated by Nicola Bucci, who was eastbound, traveling from Fairfield toward Rio Vista, and passing in the westbound lane of the two-lane State Road 12. DeMari and Immanuel died at the scene, while Jackson and Jordan sustained multiple serious injuries.

DeMari; Jackson; Jordan; Immanuel's father, Timothy Callison; and Jordan's grandmother and guardian ad litem, Betty Hutchinson, sued Bucci and the state of California Department of Transportation. They alleged that Bucci was negligent in the operation of his vehicle and that the CalTrans was negligent for the roadway's dangerous condition due to the absence of a median barrier on State Road 12.

Though other parties were also initially sued, the case only proceeded against CalTrans and Bucci.

Plaintiffs' counsel contended that near the Shiloh Road intersection, Bucci pulled into the westbound lane to negligently pass another vehicle and ended up hitting Jackson's vehicle head-on at the crest of a hill. They noted that State Road 12 is a two-lane roadway with no median barrier and with rolling hills in the area for the subject accident. Thus, plaintiffs' counsel argued that there should have been a median barrier extending east of Suisun to Tio Vista and that if the barrier had been there, it would have prevented the accident. Counsel contended that a number of accidents previously occurred on the two-lane roadway due to the lack of a median barrier, including a cluster of 2006-2007 fatalities more than 10 years before. As a result, plaintiffs' counsel argued that the state was aware of problems with improper passing accidents and head-on collisions on the highway since 1994. In addition, counsel questioned whether CalTrans was following its own safety manuals in providing enough sight distance in stretches where passing is allowed.

The plaintiffs and Bucci claimed that Bucci pulled into the other lane to lawfully pass another vehicle, but could not return to his lane right away because he was blocked by trucks as he approached the top of the grade. Bucci admitted he was at fault, but claimed that the state shared responsibility due to the absence of a median barrier and inadequate sight distance.

Bucci was convicted of two counts of second-degree murder for DeMari and Immanuel's deaths, as well as for causing great bodily injury to Jackson and Jordan. He was sentenced to 23 years to life in prison and is serving time in Ironwood State Prison in Blythe.

CalTrans claimed that a median barrier was not warranted and denied there was any dangerous condition at the subject location. In addition, it claimed that Bucci was the sole proximate cause of accident.

INJURIES/DAMAGES *cognitive defects; coma; death; emotional distress; fracture, calcaneus; fracture, femur; head; knee; lacerations; liver, laceration; loss of society; memory loss; paralysis; spleen, laceration*

DeMari and Immanuel both sustained traumatic injuries and died at the scene. DeMari was 12 years old and Immanuel was 7. Their family subsequently sought recovery for their wrongful death damages.

Jordan and Jackson both sustained major injuries and had to be airlifted to UC Davis Medical Center.

Jordan suffered a severe head injury and was in a coma until Dec. 11, 2006. He was later airlifted to a Children's Hospital in Oakland, where he remained in the Intensive Care Unit until March 8, 2007. Jordan sustained multiple fractures, including a facial fracture and a right shoulder fracture. He also suffered a lumbar injury, causing him to be paralyzed from the waist down. Although Kenya Hutchinson was initially providing her son's care, Jordan ultimately required 24-hour-care as a result of being an L3-4 paraplegic. Thus, Jordan claimed $1,003,948 in medical specials.

Jackson sustained multiple fractures, internal injuries and a head injury. She had a lower extremity fracture of the right femur, a shattered right calcaneous, and multiple lacerations to the liver, spleen, and descending aorta. She also sustained injuries to her right knee. In addition, Jackson's head injury caused cognitive problems and memory loss. She subsequently underwent multiple surgeries. Jackson was working as a housecleaner at the time of the accident, but she claimed she now requires care on a part-time basis. Thus, Jackson sought recovery of $522,871.61 in medical specials.

RESULT The jury found that Bucci was negligent and that his negligence was a substantial factor in causing harm to the plaintiffs. It also found that the highway was in a dangerous condition at the time of the accident and that this dangerous condition created a reasonably foreseeable risk that the accident would occur, that the state had enough notice of the dangerous condition for a long enough time to have protected against it, and that the dangerous condition was a substantial factor in causing harm to the plaintiffs. Thus, the jury found that the state was 35 percent at fault for the harm to each Jordan, Kenya Hutchinson and Jackson, and that Bucci was 65 percent at fault for the harm to each Jordan, Kenya Hutchinson and Jackson. According to plaintiffs' counsel, the state is responsible for 35 percent of the noneconomic damages and is jointly responsible for the economic damages.

The jury awarded plaintiffs $29,227,391.12 in total.

18-wheeler struck pickup that was abandoned on highway

Case Type: Alcohol Involvement — Motor Vehicle — Tractor-Trailer — Motor Vehicle — Truck — Motor Vehicle — Passenger — Wrongful Death — Survival Damages — Motor Vehicle — Negligent Entrustment

Case: Thistlethwaite v. Gonzalez, St. Charles Parish, La., Dist. Ct., 66963, 2/18/2011

Plaintiffs' Attorney: Blake R. David, Broussard & David, Lafayette, La.; Robert Kleinpeter, Kleinpeter & Schwartzberg, L.L.C., Baton Rouge, La.

Defense Attorney: Robert E. Kerrigan Jr., Deutsch, Kerrigan & Stiles, New Orleans, La.; Timothy Schafer, Schafer & Schafer, New Orleans

Jury verdict: $29,100,000

FACTS & ALLEGATIONS A little after 3 a.m. on Jan. 13, 2007, plaintiff Jonathan Mouton, a man in his 40s, was driving an 18-wheeler west on Interstate 10 outside of New Orleans. His passenger was plaintiffs' decedent James Thistlethwaite, a trainee driver in his late 40s. They struck a pickup that had been abandoned in a lane of traffic near mile post 218 in St. Charles Parish. The road was unlit. The pickup was owned by Veolia Water North America Operating Services LLC and had been provided exclusively to Rodney Gonzalez, a Veolia centrifuge operator who was on call 24 hours a day, seven days a week, to service contracts in the New Orleans area.

On the night of Jan. 12, Gonzalez had been drinking at a bar in Kenner. He said he had four beers and four tequila shots within several hours (the exact length of time was disputed for this report). At around 3 a.m. on Jan. 13, he left the bar and drove the pickup onto westbound I-10. Near mile post 218, he lost control of the vehicle and struck the curb and guardrail. The vehicle came to rest in one of the lanes. The truck was dark in color and its lights were not on. Gonzalez left the truck and started walking east along the freeway. A few minutes later, Mouton and Thistlethwaite struck the pickup.

Police determined that Gonzalez was not impaired.

Mouton and the family of Thistlethwiate sued Gonzalez, state of Louisiana, Veolia and their respective insurance carrier. They alleged that Gonzalez was negligent for driving while intoxicated, losing control of the pickup and abandoning it. They also alleged that the state was liable for the officers' failure to test Gonzalez properly for intoxication, and that Veolia was vicariously liable for entrusting the truck to Gonzalez and failing to test him for drugs or alcohol after the accident.

The state was dismissed before trial.

The primary insurer for Gonzalez and Veolia settled before trial in a Gasquet settlement, and Gonzalez and Veolia were not parties at trial. The only defendants at trial were the two excess carriers, Lexington Insurance Co. and National Union Fire Insurance Company of Pittsburgh, Pa.

The plaintiffs claimed that Gonzalez had had at least four beers and four liquor drinks in his last few hours at the bar. They also claimed that he had multiple prior convictions for driving while intoxicated, other traffic offenses and delivery of cocaine. On May 11, 2005, Veolia terminated his employment for testing positive for cocaine, but he was rehired in June 2006.

The plaintiffs alleged that Gonzalez was going 90 mph when he lost control of the pickup and that, under Veolia's policies, his substance abuse and driving history made him ineligible for a company vehicle.

Defense counsel argued that Gonzalez was not in the course and scope of his duties for Veolia at the time of the accident and that Veolia had no duty to provide Gonzalez with flares or other warning devices for his vehicle. They also argued that Mouton was speeding and failed to keep a proper lookout. However, defense counsel argued that there was plenty of room to go around the pickup, and that Gonzalez passed a field sobriety test and was not intoxicated. The defense's expert toxicologist testified that Gonzalez's blood alcohol concentration was about .03 percent when the accident occurred.

INJURIES/DAMAGES *death; post-traumatic stress disorder; respiratory; second-degree burns; third-degree burns*

Thistlethwaite was trapped in the truck as it caught fire after the accident. He sustained second- and third-degree burns to 40 percent of his body, as well as inhalation burns. Emergency personnel were unable to reach him for about an hour. When they did, they noted singeing of his eyebrows, eyelashes and hair. They also noted swelling of Thistlethwaite's face, that his pants were melted to his legs, and that he was in critical and unstable condition. Over the following days, Thistlethwaite underwent several debridements, was in severe pain and experienced respiratory complications. He spent eight days in a burn unit before dying of his injuries.

He was survived by his daughter, Pamela, who was in her early 20s. She sought damages for her father's wrongful death. She claimed that although she had not seen her father in five years, they kept in touch by phone. She also sought recovery for her father's conscious pain and suffering. She sought, on behalf of herself and her father's estate, a total of about $8 million.

Mouton sustained no bodily injury, but claimed post-traumatic stress disorder and underwent counseling for about year. He sought recovery of about $600,000 or $700,000, including loss of income.

Defense counsel disputed the claims regarding Thistlethwaite's consious pain and suffering, arguing that sedation prevented the decedent from feeling much pain.

RESULT The jury found Gonzalez and Veolia negligent only. It found that plaintiff Mouton was not negligent in the operation of his vehicle, but found that Gonzalez was negligent in the operation of his vehicle and that this negligence was a cause-in-fact of the damages from the accident. It also found that Gonzalez was intoxicated at the time of the accident and that his intoxication was a cause-in-fact of the damages from the accident. The jury further found that Gonzalez was not acting in the course and scope of his duties with Veolia. However, it determined that Veolia was negligent for entrusting a vehicle to Gonzalez and that this negligence was a cause-in-fact of the accident. As a result, the jury determined that Gonzalez and Veolia were each 50 percent liable for the accident.

Thus, the jury awarded a total of $29.1 million. The award was for damages to Thistlethwaite's daughter for her father's wrongful death and his conscious pain and suffering. It was also for damages to Mouton for his injuries. The total award included punitive damages for Thistlethwaite's daughter and Mouton. The punitive damages question was conditioned on the jury's finding of Gonzalez's intoxication at the time of the accident and of his intoxication being a cause-in-fact of the damages from the accident.

Plaintiffs claimed failed safety valve led to fatal explosion

Case Type: Negligent Assembly or Installation — Wrongful Death — Survival Damages — Products Liability — Appliances — Negligence — Negligent Infliction of Emotional Distress — Products Liability — Manufacturing Defect — Products Liability — Failure to Warn

Case: Kindle v. SCI Propane LLC, Morgan Co., Ind., Super. Ct. 1, 55D01-0510-PL-658, 11/22/2011

Plaintiffs' Attorney: David K. Herzog and Jane Dall Wilson, Baker & Daniels LLP, Indianapolis

Defense Attorney: Kent Frandsen, Parr Richey Obremskey Frandsen & Patterson, Indianapolis

Jury verdict: $27,037,425

FACTS & ALLEGATIONS On May 13, 2004, a propane explosion and fire occurred in an apartment attached to a barn in Martinsville, killing plaintiffs' decedent Stephan Frederick, 32, a dock supervisor, and injuring his wife, plaintiff Courtney Frederick, 28; their son, plaintiff Samuel Frederick, 2; Courtney's cousin, plaintiff Ciera Davis, 2; and Courtney's uncle, plaintiff Lonnie Kindle, 42, a construction worker. White-Rodgers was the manufacturer of the gas control on the water heater; SCI Propane LLC was the propane service provider, and Midland-Impact LLP serviced the metered propane installation.

The property owners were William and Betty Kindle, who were away on an anniversary cruise at the time of the explosion. Courtney Frederick is their granddaughter, and Lonnie Kindle is their son.

The plaintiffs sued White-Rodgers for products liability alleging a manufacturing defect. They sued SCI Propane and Midland-Impact for negligent installation, alleging failure to make sure the propane installation was safe and failure to warn of the hazards of propane.

The plaintiffs later amended their pleadings, adding four more defendants after alleging that SCI Propane had no employees and very few assets. According to the plaintiffs, defendants SCI Services LLC and RSE Services Inc. were co-owners of SCI Propane, and defendants South Central Indiana Rural Electric Membership Corp. ("SCI REMC") and RushShelby Energy Rural Electric Cooperative Inc. ("RushShelby REC"), were the parent companies of SCI Services and RSE Services, respectively. The claim against these four defendants was the same as the claim against SCI Propane and Midland-Impact.

The parties disputed the cause of the leak that led to the explosion.

The plaintiffs argued that the safety valve on the water heater control failed and caused the leak.

The defense argued that copper tubing leading to an appliance in the office area of the apartment became disconnected and caused the leak.

The case was bifurcated. The liability phase took place in April 2010 and lasted about three weeks.

Before the liability phase, plaintiffs settled with Midland-Impact.

The following were submitted to the jury in the liability phase: SCI Propane, SCI REMC, SCI Services, RushShelby REC, RSE Services, White-Rodgers, Midland-Impact and William Kindle, a nonparty

The liability trial lasted three weeks and ended in April 2010. That jury found only SCI REMC, RushShelby REC, Midland-Impact, and Kindle negligent. The breakdown was: Midland-Impact, 30 percent; SCI REMC, 17.5 percent; RushShelby REC, 17.5 percent; and William Kindle, 35 percent.

The plaintiffs moved to assign Midland-Impact's 30 percent to SCI Propane, on the grounds that SCI Propane's duty to warn was non-delegable and that SCI Propane was contractually responsible for a safe propane installation. The court granted the motion and transferred 30 percent fault from Midland-Impact to SCI Propane.

The only defendants in the damages phase were SCI REMC, RushShelby REC and SCI Propane. The damages trial occurred in November 2011 and lasted a week.

INJURIES/DAMAGES *burns; death; debridement; skin grafts*

Stephan Frederick sustained burns to more than 50 percent of his body. About five days after the explosion, he died of complications resulting from his burns. Stephan was survived by his wife and son. The estate claimed Courtney's and Samuel's loss of Stephan's love, care, and affection, as well as the reasonable value of Stephan's medical and funeral and burial expenses.

Courtney, Samuel, and Ciera Davis sustained bodily injuries and sought damages for pain and suffering, medical bills and disfigurement.

Courtney sustained burns to 20 percent of her body. She underwent numerous surgical debridements and skin grafts, and she spent 22 days in the hospital.

Lonnie Kindle sustained burns to about two-thirds of his body. He underwent numerous surgical debridements and skin grafts, and spent six weeks in a hospital burn unit and two weeks in a rehabilitation hospital.

Samuel sustained burns to about 30 percent of his body. He underwent numerous surgical debridements and skin grafts, and he spent six weeks in the hospital. Because his father died and his mother was also hospitalized, Sam spent much of his hospitalization without a parent present.

Ciera sustained burns to about 20 percent of her body. She underwent two surgical debridements and skin grafts and spent three weeks in the hospital. Ciera's parents claimed loss of Ciera's services, and her mother also claimed negligent infliction of emotional distress.

Lonnie and Courtney testified about their own pain from the injuries and treatment, their impairment, and their emotional injuries.Courtney also testified about her son's pain and impairment, and Ciera's mother, Billie Joanna (Jodi) Davis, testified about her daughter's pain. Health care providers, including the treating surgeon, the adult plaintiffs' treating nurse and the minor plaintiffs' treating pediatric nurse, also testified about the pain of burn injuries, the painful treatment and their recollection of the plaintiffs' experiences.

Stephan's estate sought $73,727.56 in incurred medical bills, $2,257,062 in lost income, and about $7,000 in funeral and burial expenses.

Samuel sought $267,830 ($10 a day for his 26,783-day life expectancy) based on the nature and extent of the injury and its effect on his ability to function as a whole person; $4,108,040 for past and future pain and suffering; $535,660 ($20 a day for 26,783 days) for disfigurement; $319,731.12 for incurred medical bills; and $4,802,976 (one cent per second until age 18) for loss of his father's love, care and affection.

Courtney sought $195,530 ($10 a day for her 19,553-day life expectancy) based on the nature and extent of the injury and its effect on her ability to function as a whole person; $5,784,770 for past and future pain and suffering; $391,060 ($20 a day for 19,553 days) for disfigurement; $174,866 for incurred medical bills; and $3,310,200 ($200 a day for Stephan's 16,551-day life expectancy) for loss of Stephan's love, care and affection.

Ciera sought $285,280 ($10 a day for her 28,528-day life expectancy) based on the nature and extent of the injury and its effect on her ability

to function as a whole person; $2,392,770 for past and future pain and suffering; $570,560 ($20 a day for 28,528 days) for disfigurement; and $145,997 for incurred medical bills.

Lonnie sought $1,297,800 ($100 a day for his 12,978-day life expectancy after being released to work) based on the nature and extent of the injury and its effect on his ability to function as a whole person; $5,568,696 for past and future pain and suffering; $648,900 ($50 a day for 12,978 days) for disfigurement; $359,736 for past and future lost earnings; and $551,062 for incurred medical bills.

The defense argued that the amounts sought were excessive. The defense further argued that Courtney, Ciera and Samuel failed to mitigate their damages, in that they failed to obtain appropriate and timely psychological treatment for their emotional injuries.

RESULT The jury in the damages trial awarded $27,037,425.05. The jury then reduced those amounts by 35 percent, as instructed, based on the findings in the liability phase. Therefore, SCI Propane, SCI REMC and RushShelby REC are collectively liable for $17,574,326.20.

POST-TRIAL The trial defendants have filed a motion to set off the settlement with Midland-Impact.

The estate is entitled to attorney's fees and expenses for the wrongful death claim. The court will decide the amount.

The trial defendants are expected to appeal.

Muggers shot man at ATM, resulting in death

Case Type: Survivorship Action — Intentional Torts — Assault and Battery

Case: Estate of Gordon v. Smith, Orange Co., Fla., Cir. Ct., 08-CA-0002852-ORL (34),3/25/2011

Plaintiffs' Attorney: John Elliott Leighton, Leighton Law P.A., Miami; Daniel J. Newlin, Daniel J. Newlin P.A., Orlando, Fla.

Defense Attorney: Not represented

Jury verdict: $24,315,980

FACTS & ALLEGATIONS On Oct. 4, 2007, plaintiff Alfred Gordon, 42, an Orlando police officer, was robbed by David Smith and Hugo Terry after he had withdrawn $100 from an ATM located in the Pine Hills area of Orlando. Gordon was shot and killed next to the ATM.

Smith and Terry were convicted of the robbery and murder, and are serving life sentences.

Gordon's family, acting the personal representatives of the father's estate, sued Smith and Terry for wrongful death.

Since the decedent's son, Alfred Gordon II, was over 25 at the time of his father's death, he was not considered a survivor under the Florida Wrongful Death Act. Thus, the matter proceeded with the claims brought by the decedent's ex-wife, Beverly Gordon, as a representative of her husband's estate, and their two children, Kimberly Gordon and Alexandria Gordon.

One of the defendants appeared on the first day of trial, but then decided not to appear. Thus, the case proceeded in default.

INJURIES/DAMAGES *death; gunshot wounds; loss of parental guidance*

Alfred Gordon was shot in the chest arm and torso. He died at the scene.

Gordon was an Orlando police officer since 1989 and, at the time of his death, he was earning about $67,000 a year. He was survived by three children, two of whom were under 25.

Gordon's ex-wife claimed that she was rekindling her marriage with Gordon at the time of his death. She alleged that they had remained best friends prior to the incident.

Kimberly and Alexandria claimed that their family was close because they lived near their father and that the family always spent holidays together.

RESULT The jury awarded $24,315,980 in damages. Alexandria was awarded $12,831,200 in damages, Kimberly was awarded $10,807,200 in damages and the estate was awarded $677,580 in damages.

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

Case Type: Tractor-Trailer — Motor Vehicle — Rear-ender — Motor Vehicle — Multiple Vehicle

Case: Jones v. Moen Inc., Richmond city, Va., Cir. Ct., CL08-5037, 2/28/2011

Plaintiffs' Attorney: Christopher Guedri and Douglas A. Barry, Allen, Allen, Allen & Allen, Richmond, Va.

Defense Attorney: James W. Morris III, Morris & Morris, Richmond, Va.; H. Robert Yates III, LeClairRyan P.C., Richmond, Va.

Jury verdict: $23,700,000

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

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

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

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

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

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

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

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

INJURIES/DAMAGES *amputation, above-the-knee; anxiety; attention deficit disorder; cephalalgia; cognitive deficit; compartment syndrome; complex regional pain syndrome; concentration deficits; crush injury, pelvis; debridement; depression; dif-*

fuse axonal brain injury; diminished cognitive ability; erectile dysfunction; fracture, femur; groin; hallux valgus; impotence; incontinence; infection; internal bleeding; memory loss; nerve damage, peroneal nerve; nerve damage, sciatic nerve; neuropathy; phantom pain; post-concussion syndrome; post-traumatic stress disorder; respiratory distress; rotator cuff injury; shoulder impingement; skin grafts; traumatic brain injury

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

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

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

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

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

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

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

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

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

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

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

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

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

Suit: Safety line failed to hold weight when steel plate fell on it

Case Type: Warnings — Slips, Trips & Falls — Fall from Height — Products Liability — Equipment

Case: Bacon v. DBI/SALA, Douglas Co., Neb., Dist. Ct., 1047-091, 1/13/2011

Plaintiffs' Attorney: Robert G. Pahlke and Britany S. Shotkoski, The Robert Pahlke Law Group, Scottsbluff, Neb.

Defense Attorney: James W. Morris III, Morris & Morris, Richmond, Va.; H. Lindsay G. Arthur Jr., Arthur, Chapman, Kettering, Smetak & Pikale, P.A., Minneapolis; Francie Riedmann, Gross & Welch P.C., Omaha, Neb.

Jury verdict: $21,131,633

FACTS & ALLEGATIONS On July 28, 2003, plaintiff Ronald "Tim" Bacon, 48, was employed by Davis Erection Co. as an iron worker in the construction of the Quest Center in Omaha, Neb. While working on the second floor of the building and wearing a safety harness attached to a retracting lifeline manufactured by DBI/SALA, Bacon fell 12 feet after a crane operator dropped one or more steel plates on the safety line. The incident rendered him paraplegic.

Bacon sued DBI/SALA, a Red Wing, Minn.-based corporation, alleging product liability. He claimed the line failed to arrest his fall after being struck by a single plate weighing less than the 310-pound maximum load DBI claimed the line would hold. Bacon contended the line failed to include a warning it could fail to arrest a fall if struck by a heavy weight.

DBI contended that four plates weighing a total of 700 pounds struck the line, exceeding its listed capacity, and that even the one plate claimed by the plaintiff plus Bacon's weight would have exceeded the capacity. It argued that the line was not defective and could reasonably be expected to fail to arrest a fall under these circumstances.

DBI alleged the plates fell because the crane operator and Davis Erection violated state regulations and industry standards on the rigging and lifting of crane loads, and that DBI could not be reasonably expected to forsee this.

The defense further argued that Bacon was aware of the risk that the line could fail, that DBI had no duty to warn, and that Bacon voluntarily assumed the risk of working under the crane. The defense argued Bacon testified he had not read the label on the device for some time.

Defense experts argued a warning would not have influenced the conduct of any of the parties involved in the incident.

INJURIES/DAMAGES *fracture, T12; paraplegia*

Bacon, a divorced father of two, sustained a burst fracture at T12, rendering him paraplegic. He sought $21,131,633 for past and future pain and suffering, medical expenses, physical impairment and lost income.

RESULT The jury found the warning was inadequate and DBI was liable. Bacon was awarded $21,131,633 in damages.

Metal plate fell from door, causing severe facial injuries

Case Type: Negligent Assembly or Installation — Negligence — Negligent Supervision

Case: Blades v. Thermal Technologies Inc., Pike Co., Ala., Cir. Ct., CV09192, 3/24/2011

Plaintiffs' Attorney: S. Mark Andrews and Dan Talmadge, Morris, Cary, Andrews, Talmadge & Driggers LLC, Dothan, Ala.

Defense Attorney: John W. Clark Jr., Clark, Hair & Smith P.C., Birmingham, Ala.

Jury verdict: $21,000,000

FACTS & ALLEGATIONS On April 18, 2008, plaintiff Rebekah Blades, a 26-year-old mother of one, was working at the Wal-Mart distribution center in Brundidge, Ala. While she was standing in the doorway to one of the center's 30-foot-high banana ripening rooms, a 3- to 4-foot-tall metal plate covering the trim at the top of one of the room's doors fell. The 40-pound counterbalance cover for the door fell approximately 30 feet and struck her in the face.

Thermal Technologies designed and manufactured banana ripening systems and was contracted with Wal-Mart to install the systems at Wal-Mart's Distribution Centers. Thermal Technologies then hired Helsel Contracting to build the banana rooms along with their doors.

Blades sued Thermal Technologies and Helsel Contracting. She claimed the defendants were negligent in assembly and installation of the door.

The suit originally included a claim against Wal-Mart for worker's compensation coverage, but this claim was severed before trial. The suit also originally included product liability claims against Thermal Technologies, but they were dropped by the plaintiff prior to trial.

Blades claimed the metal plate fell because the counterbalance cover had been left unsecured from the door during its installation. She claimed that Helsel negligently installed the the door and counterbalance and that Thermal Technologies was negligent in its supervision of the installation.

Thermal Technologies argued that Hansel was solely to blame for failing to secure the cover during the door's installation.

Helsel did not file a response to the suit nor did it appear at trial, and a default judgment was issued against the defendant.

INJURIES/DAMAGES *brain damage; facial fractures; facial laceration; grand mal seizure; nerve damage, facial nerve; post-traumatic stress disorder; pseudoseizures; reconstructive surgery; seizure*

Blades claimed to have sustained severe facial lacerations, a fractured palate and nerve damage that had rendered her face permanently numb. She underwent reconstructive surgery on her palate immediately after her injury and reconstructive surgery on her facial scars ten months later. Blades also claimed brain injuries from the accident, which resulted in seizures at a frequency of between once a week and once a month, and life-threatening grand mal seizures. She claimed the seizures have not responded to medication, leaving brain surgery the only treatment option, but alleged that the surgery may not resolve the seizures.

Blades claimed to have post-traumatic stress disorder and associated pseudo-seizures. She alleged that the seizures prevent her from working and driving, and seriously impaired her ability to care for her child. She sought recovery of $19.5 million for past and future pain and suffering, medical expenses, physical impairment and lost income.

Defense counsel disputed the severity of the plaintiff's damages, arguing that the future damages claims were excessive. He also disputed the future earnings estimates. In addition, the defense's vocational rehabilitation expert testified that brain surgery will resolve Blades' seizures.

RESULT The jury rendered a plaintiff's verdict, finding Thermal Technologies liable for the accident. Thermal Technologies and Helsel, who had defaulted, were held jointly and severally liable for the accident.

The jury determined that Blades' damages totaled $21 million.

Inflatable pool slide led to spine fractures and death

Case Type: Failure to Inspect — Negligence — Breach of Duty of Care — Negligence — Gross Negligence — Negligence — Contracts — Breach of Warranty — Wrongful Death

Case: Aleo v. Toys "R" Us, Essex Co., Mass., Super. Ct., LLC, No. 2008-2149, 10/18/2011

Plaintiffs' Attorney: W. Thomas Smith and Benjamin R. Zimmermann, Sugarman and Sugarman P.C., Boston

Defense Attorney: David R. DiCicco, Powers, DiCicco & Sahagian, Lynnfield, Mass.

Jury verdict: $20,640,000

FACTS & ALLEGATIONS On July 29, 2006, plaintiff Robin Aleo, 29, a marketing employee, slid head-first down a six-foot-high inflatable Toyquest Banzai Falls In-Ground Pool Slide, manufactured by SLB Toys USA and purchased from Toys "R" Us via Amazon's Web site, during a pool party at a home in Andover. Near the bottom of the slide, the slide deflated and Aleo's head struck the edge of the pool. She suffered a fractured spine and died the following day from her injuries.

Michael Aleo, Robin's husband, sued Toys "R" Us Inc.; toysrus.com LLC; SLB Toys USA Inc. d/b/a Toyquest; and Amazon, alleging that SLB Toys USA negligently designed the slide and that Amazon and Toys "R" Us were negligent, breached their warranty and violated federal safety laws when importing the slide from a Chinese manufacturer and selling it.

Amazon and SLB Toys USA settled with the plaintiff individually for undisclosed amounts. The trial continued against the Toys "R" Us defendants.

Aleo contended that federal safety regulations require importers to inspect and test pool slides to insure that they meet minimum U.S. safety standards. The slides must be tested with repeated human sliders, traveling both feet- and head-first, and tested to insure they can support 350 pounds of weight. Aleo contended that Toys "R" Us did not perform any inspection or the required testing of the slide prior to selling it.

Seven witnesses to the accident testified that the deceased plaintiff descended the slide head-first, and that the slide deflated toward the bottom, causing her head to hit the pool deck before she entered the water.

A Toys "R" Us executive testified that the product was tested for other safety regulations, but admitted it had not been tested for compliance with the Consumer Product Safety Commission pool slide regulations.

The plaintiff's biomechanical engineering expert opined that the fan, intended to keep the slide fully inflated, was not capable of replacing the air lost as a rider ascended the slide, which created a risk of the slide bottoming out, and the rider striking the pool deck before reaching the water. He further opined that no matter how Aleo slid down the slide, the slide put riders at risk for striking the pool deck and injuring themselves before they entered the water.

Toys "R" Us argued that the federal regulations

did not apply to the slide because it was inflatable, and that it was not responsible for safety testing.

Toys "R" Us also argued that Aleo should not have slid down head-first and that she possibly misused the slide by not sliding straight down the slide, and therefore the accident was due to Aleo's own negligence.

The defendant's biomechanical engineering expert tested the slide with dummies and opined that the slide did not cause injurious forces to the dummies.

INJURIES/DAMAGES *death; fracture, C1; fracture, C2; odontoid process; quadriplegia*

Aleo sustained an odontoid fracture of the C1 and C2 vertebrae, and a fracture of the posterior arch of C1. She was instantaneously quadriplegic and unable to breathe on her own. She was airlifted to Brigham and Women's Hospital and put on life support. She died on July 30, 2006. Aleo was survived by her husband and her 18-month-old daughter.

The plaintiff sought recovery for wrongful death, including pre-death pain and suffering, and mental anguish on behalf of himself and his daughter, who both witnessed the accident. He also sought economic loss and punitive damages, arguing that Toys "R" Us was grossly negligent and knowingly violated the federal law.

The plaintiff's expert economist opined that Aleo was entitled to $2 million in economic wages.

Toys "R" Us contended that the company's action did not rise to the level that would qualify for punitive damages.

RESULT The jury awarded Aleo $20,640,000.

Man burned by downed live wire lost an arm and a leg

Case Type: Negligence — Breach of Duty of Care — Damages — Reckless and Willful Misconduct — Intentional Torts — Wanton Misconduct — Torts — Electric Shock — Public Utilities — Gas and Electric

Case: Hagerman v. Jersey Central Power and Light, Monmouth Co., N.J., Super. Ct., MON-L-4886-07, 11/4/2011

Plaintiffs' Attorney: Norman M. Hobbie, Hobbie, Corrigan & Bertucio P.C., Eatontown, N.J.; Thomas M. Comer, Lomurro, Davison, Eastman & Munoz P.A., Freehold, N.J.

Defense Attorney: Richard Amdur, Amdur, Maggs & Shor P.C., Eatontown, N.J. (Borough of Tinton Falls); Stephen A. Rudolph, Rudolph & Kayal, P.A., Sea Girt, N.J. (Jersey Central Power & Light)

Jury verdict: $20,500,000

FACTS & ALLEGATIONS At 8:04 p.m. on Feb. 15, 2007, plaintiff William Hagerman Jr., 48, a U.S. Postal Service employee, suffered a severe electrical shock from a downed electrical power line in the driveway of his Tinton Falls home.

Hagerman and his wife, Patricia, sued Jersey Central Power & Light (JCP&L), the borough of Tinton Falls, the Tinton Falls Borough Department of Public Works, the North Side Engine Company, the Tinton Falls Fire Department, and Monmouth County for negligence. Although myriad entities were named as defendants, it was quickly determined that the proper defendants were the West Side Engine Company, JCP&L and Tinton Falls vicariously for its police department. All other defendants were dismissed.

Earlier on the night in question, at 7:20 p.m., the local police had responded to a call for a down tree and a down wire. At 7:30 p.m., the West Side Engine Company, a volunteer municipal fire department, had responded to a report of downed wires on Pear Street, in front of the Hagerman home, that were sparking as a result of a severe winter storm. Upon arrival at the scene, the fire company immediately contacted JCP&L and warned several residents away from the area.

Upon the arrival of the firemen and police officers, William and Patricia Hagerman decided to leave their home and stay with relatives, having been without heat and electricity for the previous three days on account of the storm. When William Hagerman began to back his car out of the driveway, he noticed the car trunk was on fire, apparently due to contact with a downed wire. The Hagermans immediately ran to safety from the burning car, but the ignition was still running. Believing the car was about to explode, Hagerman ran back to shut off the burning car and was electrocuted, as the power line was still live.

In the meantime, the West Side Engine Company had left the scene after the arrival of the police and a JCP&L representative. The two responding police officers who remained were diverting traffic at the end of the street when they saw sparks and ran to Hagerman who was on the ground. An electrical current was radiating under Hagerman's body and his clothing had caught fire. The police officers used their fire extinguishers to put out the flames. The JCP&L supervisor called in and had power cut to the entire area.

At trial, the plaintiffs' primary contention was that JCP&L and the responding emergency personnel owed a duty to protect the Hagermans from the downed wire and had not responded appropriately to the danger posed by said wire. Plaintiffs' counsel faulted the fire company for leaving the scene while the wire was live and JCP&L for not cutting the power to the entire area sooner.

The defendants filed cross-claims against each other.

The fire company characterized the winter storm and its aftermath as a state of emergency due to the most severe storm in 30 years, resulting in hundreds of downed wires, trees and tree branches throughout the borough. The fire company contended that its personnel informed the responding police of the live wire and the danger it presented and it was the police's responsibility to assume the public safety function at the scene.

The plaintiffs countered the fire company's storm severity argument with a meteorologist expert, who demonstrated the storm had been over for many hours by the time of the evening incident.

The negligence claim against the fire company was dismissed prior to trial by way of summary judgment and the plaintiffs were required to assume the burden of proving willful or wanton conduct as to that defendant.

The responding police officers testified that they were simply dispatched to assist JCP&L and the fire company by diverting traffic as they attended to a down wire, and that no one ever advised them of any imminent danger.

The plaintiffs supported the police department's position and called the actions of the officers "heroic," once they became aware of the unfolding situation.

Counsel for JCP&L contended that the utility had acted according to proper protocols. After two weeks of trial the utility settled for a confidential amount.

INJURIES/DAMAGES *amputation, arm; amputation, leg; burns; emotional distress; physical therapy; prosthesis; third-degree burns*

Hagerman was initially taken to Jersey Shore University Medical Center and underwent the surgical amputation of an arm and a leg. He was subsequently transferred to the burn unit at St. Barnabas Medical Center, where he remained

for months. He followed up with months of rehabilitation.

A prosthesis specialist testified as to how William Hagerman would require newly-fitted devices for his arms and legs in approximate three-year intervals for the rest of his life.

Patricia Hagerman was not injured, but sought emotional distress damages for having witnessed her husband's shock injury.

RESULT The jury awarded the plaintiffs $20.5 million and apportioned liability 60-percent to North Side and 40-percent to JCP&L, while exonerating the police department.

POST-TRIAL Following the verdict and prior to the entry of judgment a settlement was reached with the West Side Engine Company for a confidential sum, obviating an appeal.

Woman hit by bus, underwent amputations of arm and leg

Case Type: Pedestrian — Motor Vehicle — Bus

Case: Kusz v. New York City Transit Authority, Queens Co., N.Y., Sup. Ct., 20460/2009, 8/17/2011

Plaintiffs' Attorney: Alan M. Shapey, Lipsig, Shapey, Manus & Moverman P.C., New York

Defense Attorney: Antonia M. Sciretta, Sciretta & Venterina LLP, Staten Island, N.Y.

Jury verdict: $20,316,049

FACTS & ALLEGATIONS On June 15, 2009, plaintiff Alfreda Kusz, 59, a housekeeper, was struck by a bus. The incident occurred on Jackson Avenue, alongside its intersection at 23rd Street, in the Long Island City section of Queens. Kusz sustained injuries of an arm, her buttocks, an eye, a foot and her head.

Kusz sued the bus's driver, Jose Mateo, and the bus's operators, the Metropolitan Transportation Authority, MTA Bus Co. and the New York City Transit Authority. Kusz alleged that Mateo was negligent in his operation of the bus. She further alleged that the remaining defendants were vicariously liable for Mateo's actions.

Kusz claimed that a green pedestrian traffic signal permitted her entrance to the intersection. Her counsel presented surveillance videotape that was recorded by a nearby diner's security system, and he contended that the tape established that the traffic signal was green. He claimed that Mateo should have yielded the right of way.

Defense counsel challenged the validity of Kusz's counsel's videotape. She claimed that Kusz was not identifiable in the recording. Defense counsel also retained a witness who contended that Kusz was crossing outside of the nearest crosswalk.

Kusz's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

INJURIES/DAMAGES *abrasions; amputation, above-the-elbow; amputation, arm; amputation, below-the-knee; amputation, leg; blindness, one eye; buttocks; contusions; crush injury; debridement; degloving injury; depression; detached retina; fracture, arm; fracture, femur; fracture, humerus; fracture, radius; fracture, ulna; head; physical therapy; post-traumatic stress disorder; prosthesis; psychiatric impairment; severed artery; severed nerve; skin grafts*

Kusz sustained a crushing, degloving injury of the upper portion of her right, dominant arm. The injury caused transections of arteries and nerves. She also sustained fractures of the same arm's humerus, radius and ulna; a crushing injury of her right foot; a degloving injury of her buttocks; and abrasions and contusions of her head.

Kusz was placed in an ambulance, and she was transported to Bellevue Hospital Center, in Manhattan. Her right arm was amputated above its elbow, and her right leg was amputated below its knee. Her hospitalization spanned about 3.5 months. She underwent 20 operations, including debridement procedures and the application of grafts of skin. After her hospitalization had concluded, she underwent about seven months of inpatient physical rehabilitation and therapy.

Kusz was given a prosthetic device for her right leg, but she later fell and sustained a fracture of the remaining portion of the leg. After undergoing surgical repair of the fracture, she stopped walking and began to use a wheelchair.

Some 13 months after the accident, one of Kusz's retinae detached, causing blindness of that eye. She contended that the injury was a residual result of the trauma of the accident. She also contended that she suffers residual depression and post-traumatic stress disorder. Kusz, a Polish-speaking woman, underwent about eight months of psychiatric treatment, but the treatment ended when her Polish-speaking doctor relocated. Kusz's expert psychiatrist opined that Kusz must undergo lifelong psychiatric treatment.

Kusz sought recovery of her past medical expenses, a total of $4,832,141.96 for her future medical and life-care expenses, $6 million for her past pain and suffering, and $15 million for her future pain and suffering. Her husband initially sought recovery of damages for his loss of consortium, but he ultimately discontinued his claim.

The defense's expert orthopedist opined that Ms. Kusz will soon be able to resume walking, and defense counsel contended that Kusz does not suffer daily pain. Defense counsel also contended that Kusz's depression predated the accident, and she suggested that Kusz's retinal injury was not related to the accident.

RESULT The jury found that Kusz's damages totaled $20,316,048.93.

POST-TRIAL Plaintiffs' counsel has moved to increase the award for past medical expenses. Defense counsel has appealed the finding of summary judgment. She has also moved to set aside the damages awards.

Award amounts reflect the jury's award and do not include increases or decreases resulting from contributory negligence, settlements or other post-trial activity.

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