

THE TOP TEN HIGHEST & LOWEST VERDICTS FOR 2015 & 2016

Presented By:

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Highest Ten Verdicts

1. Briones v. Zink : TO BE DISCUSSED BY PANEL
2. Kuhlmann v. Johnson & Johnson – products liability, medical malpractice; Superior Court of Alameda County, Oakland

Case Summary:

On Jan. 27, 2012, plaintiff Florence Kuhlmann, 59, underwent elective out-patient stapled hemorrhoidopexy surgery, which was performed by Dr. Rakhee Shah at Pleasanton Surgery Center, in Pleasanton. The procedure included the use of a Proximate PPH Procedure Set (PPH03) hemorrhoid stapler, manufactured by Ethicon Endo-Surgery, LLC, Inc., a subsidiary of Johnson & Johnson.

During the course of Kuhlmann's procedure, the PPH03 stapler fired an incomplete stroke on the first firing attempt made by Shah, causing the staples to partially deploy and the stapler became stuck in Kuhlmann. Unable to remove the stapler, Shah fired the stapler a second time and was then able to remove it. Since the stapler was opened and fired blindly the second time, it incorporated excess tissue, causing Kuhlmann's upper rectum to be stapled to the lower rectum.

On January 31, 2012, Kuhlmann presented to the emergency room with complaints of severe pain, distention of the abdomen, and an inability to move her bowels. She was ultimately diagnosed with a perforated bowel and sepsis, as well as an occlusion of the rectum. As a result, Kuhlmann underwent a laparotomy and remained in the Intensive Care Unit for three weeks. Kuhlmann then underwent additional procedures and claimed that her only two medical choices are to live with a permanent colostomy, or endure a full rectal removal and/or a coloanal anastomosis, which would result in her never again regaining full bowel function. She also claimed she would need a second surgery to repair a prolapsed stoma.

The PPH03 stapler was later recalled in 2012, after the subject procedure. Kuhlmann claimed injuries of her rectum, anus, intestines, necessitated the use of colostomy bags. She also claimed emotional distress. Kuhlmann sued Ethicon Inc.; Ethicon Endo-Surgery Inc.; Ethicon Endo-Surgery, LLC; Johnson & Johnson; and Johnson & Johnson Health Care Systems Inc. She also sued Dr. Shah and the surgery center where the procedure was performed, Pleasanton Surgery Center, LLC. Kuhlmann alleged that the stapler was defectively manufactured. She also

alleged that Shah failed to diagnose the rectal occlusion and that this failure constituted medical malpractice.

Kuhlmann's counsel contended that the PPH03 stapler had a manufacturing defect in that the force needed to fire the stapler exceeded the product's specifications due to a change in the lubrication, and that Ethicon knew the PPH03 stapler had defects – which included misfiring, incomplete firing strokes, and incomplete staple formation -- and that the stapler was being inadequately tested. Counsel also argued that Ethicon knew the defects were causing serious injuries, including sphincter dysfunction, rectal wall damage, sepsis, and bleeding, but that Ethicon continued to manufacture, sell and market the product.

In addition, plaintiff's counsel argued that Shah departed from the standard of care by failing to diagnose the rectal occlusion. Thus, counsel argued that when the stapler became stuck, Shah should have exercised extra caution in inspecting the stapler line.

The plaintiff's expert medical device engineer testified that the misfire Shah experienced using the stapler on Jan. 17, 2012, was a defect in the force of fire of the stapler. He further testified that the defect was the same reason the PPH03 was recalled six months later. Thus, plaintiff's counsel argued that Ethicon was 90 percent to 100 percent liable, while Shah was only 0 to 10 percent liable. After seven weeks of trial, the jury found for the plaintiff and also found that there was no negligence on the part of Shah.

Award: \$79,823,557 total

i. Florence Kuhlmann

1. \$212,623 past medical cost;
2. \$310,944 future medical cost;
3. \$4,000,000 past pain and suffering;
4. \$4,000,000 future pain and suffering;
5. \$70,000,000 punitive;

ii. John Perkins

1. \$400,000 past loss of consortium; and
2. \$900,000 future loss of consortium.

3. Jordan v. TGIFriday's – TO BE DISCUSSED BY PANEL

4. Casillas v. Landstar Ranger Inc. – Vehicular negligence; Superior Court of Los Angeles County

Case Summary:

On December 7 2012, plaintiff Alan Casillas, a 19 year high school student, was riding his bicycle on a sidewalk when a 55 foot trailer, operated by defendant Landstar Ranger Inc.'s employee, drove over the sidewalk and knocked plaintiff to the ground, and ran over his left leg which ultimately had to be amputated at the knee. Casillas was prescribed a prosthesis for walking and required more revision surgeries. He ultimately sued the driver and Landstar Ranger Inc. and alleged that the driver was negligent in the operation of the tractor-trailer and that Landstar was vicariously liable for the driver's actions.

Plaintiff's counsel contended that the driver caused the collision by driving the trailer over the sidewalk when he failed to allow enough room to safely make the right turn which was a violation of California Vehicle Code 22107, for unsafe turning movement, as confirmed by the responding CHP officer.

Defense counsel initially asserted that Casillas was comparatively at fault because he could have avoided the trailer if he was not inattentive due to being on his cell phone. They also asserted that the design of the intersection was a dangerous condition but the trailer driver admitted that he was solely at fault during jury selection.

Defense counsel noted that Casillas had recovered and had a bright future because after the accident, he was able to earn his GED diploma, was attending junior college, had gotten married, had a child, participated in family activities, was employed, and was able to drive a car. Defense counsel further challenged the amount of damages sought by Casillas and asked the jury to award between \$5 million to \$7 million. On the other hand, Casillas claimed that he could no longer do the things he loved such as running, biking, or working in construction, and that he was depressed and had nightmares. The jury found in favor of Casillas and after this verdict, a confidential settlement was reached between the parties.

Award: \$34,555,220

- i. \$5,187,230 future medical cost;
- ii. \$66,099 past lost earnings capability;
- iii. \$672,540 future lost earnings;
- iv. \$754,351 past medical cost;
- v. \$11,700,000 past non-economic damages; and
- vi. \$16,175,000 future non-economic damages.

5. Guilmette v. City of L.A. – wrongful death; Superior Court of Los Angeles County

Case Summary:

On February 23, 2013, Thomas Guilmette was riding his motorcycle to work when he was struck by another vehicle and died several days later from his injuries. The design of the intersection was allegedly such that vehicles on either road could not see vehicles on the other.

His representatives argued that the defective design of the intersection, including recessed location of the limit line, lack of traffic control, absence of proper road markings, and the allowance for parked vehicles blocking lines of sight caused the accident. A complaint was filed against the City of Los Angeles, Nevarez, and Does 1 through 50. Plaintiffs sued the City and Does 1-25 for wrongful death and dangerous condition on public property; and sued Nevarez and Does 26-50 for wrongful death due to negligence. The jury found the city 95% liable.

Award: \$23,700,000

6. Cardona v. Cortes – vehicular negligence; Superior Court of Los Angeles

Case Summary:

On February 6, 2011, Jose Cardona was driving with his wife and son in passenger seats, when defendant's car lost control, crossed into Cardona's lane of travel, and struck his vehicle head-on. The Cardona's suffered multiple injuries and sued defendant for negligently operating a sport utility vehicle by driving under the influence of alcohol. The expert testified that at the time of the accident, plaintiff was driving between 15 – 20 mph whereas defendant was driving at 50 mph. Cortes conceded liability.

Jose Cardona suffered multiple fractures and cerebral damage resulting in cognitive deficits including slurred speech, blurred vision and tremors. Irene Cardona suffered a traumatic brain injury, abrasion and fracture to her wrist which caused her chronic pain. Eduardo Cardona suffered abdominal bleeding and required surgical intervention. However, he was able to return to school, graduate and work full-time.

Plaintiff's counsel asked the jury to award \$33,547,067 for Jose Cardona's damages, and \$16,050,183 for Irene Cardona's damages, leaving Eduardo's damages to the discretion of the jury. Defense counsel contested the nature and extent of the alleged injuries. After 13 days of trial and 2 days of deliberation, the jury found for the plaintiffs'. The plaintiff's dismissed their claim for punitive damages to avoid a mistrial.

Award: \$20,968,903

- i. Eduardo Cardona, age 22
 1. \$400,000 past non-economic damages
 2. \$200,000 future non-economic damages
- ii. Irene Cardona, age 53
 1. \$1,734,000 future medical cost;
 2. \$56,075 past loss of home services;
 3. \$1,530,000 past non-economic loss;
 4. \$2,920,000 future non-economic loss;
- iii. Jose Cardona, age 59
 1. \$4,000,000 future medical cost;
 2. \$216,730 past lost earnings;
 3. \$347,750 future lost earnings;
 4. \$45,348 past loss of home services;
 5. \$3,700,000 past non-economic loss; and
 6. \$5,825,000 future non-economic loss.

7. Jun v. Chaffey Joint Union – wrongful death; Superior Court of San Bernardino County

Case Summary:

On December 6, 2010, plaintiff's decedent, a 15 year old high school student, was attempting to cross an unmarked crosswalk at the intersection to get to his bus stop, which was on the bus route established by the Chaffey Joint Union High School District, when he was struck by a vehicle driven by Imelda Hughes and died 15 days later.

Plaintiff's aunt and adoptive mother sued Hughes and the school district, among other parties, for creating a dangerous condition of public property when the district decided to move the bus stop at a location that required students to cross an uncontrolled five lane highway, where vehicles traveled at average speeds of 56 mph. Plaintiff's counsel argued that the bus stop change was illegal as it violated title 13 of California Code of Regulations, section 1238(b)(3) and constituted a dangerous condition of public property. Plaintiff's expert testified that the steps taken to ensure that bus stops are designated in a safe and legal manner were not taken in this case.

The school district denied every allegation claiming that it never removed any bus stops, that its bus stops were in effect for years with no prior incidents, and that the bus stop at issue was not in violation of the Code of Regulations because the bus did not stop on a multi-lane highway but stopped further up the road at a cross street that had traffic controls. The school district also claimed that there was another bus stop closer to the decedent's home and alleged that the driver and decedent were the only parties negligent.

The driver testified that she understood that the decedent was walking legally for at least seven seconds before she hit him but she never saw him or took efforts to avoid hitting him. She contended that the intersection was unsafe and the conditions of the street prevented her from properly seeing a student crossing. She also noted that the bus stop was only in existence four months prior to the accident and that in the prior years there was no need for students to cross the subject road.

Plaintiff's counsel argued that newly acquired evidence supported the plaintiff's contention that the school bus stop that the school district claimed the decedent could have used was not designated until after the decedent's death and the school district hid this fact and did not produce any documents during discovery. The school district later produced some documents that showed emails wherein they assert that every defense they raised throughout the litigation were false. The court found that the school district hid all evidence that it dangerously designated bus stops in violation of the Code of Regulations in the hopes to avoid liability. The court levied sanctions against the school district.

The school district's counsel disputed the value of the loss of the relationship between the decedent and his adoptive mother and suggested that the jury find the driver 50% liable and apportion remaining fault between the decedent and the school district. After 23 days of trial and 4 hours of deliberation, the jury found the school district 100% liable for creating and maintaining a dangerous condition on public property that caused the decedent's death.

Award: \$20,500,000

- i. \$4,500,000 past non-economic damages; and
- ii. \$16,000,000 future non-economic damages

8. Sheaffer v. NuCO2 – vehicular negligence; Superior Court of San Diego County

Case Summary:

On November 3, 2012 plaintiff, a 24 year old student, was on the freeway when a truck traveling at high speeds crashed into the rear vehicle of 5 vehicles. As a result, the plaintiff's vehicle was ultimately struck and caused him to propel into the sport utility vehicle in front of him, which resulted in multiple head injuries. Plaintiff sued the truck driver and the employer for being vicariously liable for the driver's negligence. The defendants admitted liability.

Plaintiff was able to obtain his PhD and a fellowship, as well as get married, and was recovering well. However, plaintiff alleged that trauma from the accident could lead to bone disease in his jaw and require future surgical procedures. Defense counsel asserted that plaintiff continued to be successful after the incident and his injuries did not impair his earning capacity and disputed his claim of permanent traumatic injury.

After 4 weeks of trial, the parties agreed to settle for a confidential amount. However, the jury determined plaintiff's damages totaled \$17,393,480.

Award: \$17,393,480

- i. \$2,746,470 future medical cost;
- ii. \$5,107 past lost earnings;
- iii. \$112,228 & \$29,675 past medical expenses;
- iv. \$2,000,000 future loss of earnings;
- v. \$7,000,000 past non-economic damages; and
- vi. \$5,500,000 future non-economic damages.

9. Evans v. Reagan – vehicular negligence; Superior Court of Los Angeles

Case Summary:

On June 7, 2012, plaintiff was riding his motorcycle when defendant's vehicle struck him and he sustained facial and skull fractures, and traumatic brain injury. Plaintiff sued the driver and the employer for negligently operating the vehicle. The driver was driving on her way home at the time of the accident but the jury determined that she was still in the course of employment. Counsel for the employer argued that the driver was not in the course of employment when the accident occurred as the employer did not have a policy mandating the driver to use their vehicle.

Plaintiff admitted that he was in violation of California Vehicle Code Section 27803 which required a motorcyclist to wear proper safety helmet. On the day of the accident, plaintiff was wearing a helmet not approved by the Department of Transportation. As a result, defense counsel

argued that plaintiff was solely responsible for his injuries. Defense counsel disputed plaintiff's nature and extent of injuries and contended that he would only require \$900,000 for damages.

Prior to being submitted to the jury, the parties reached an \$11.1 million/\$3.1 million high/low agreement by which the parties waived the option of filing an appeal. After 5 weeks of trial and 2.5 days of deliberation, the jury found the defendant driver to be 97.1% liable and that she was operating her vehicle in course of employment, and found plaintiff 2.9% liable for failing to wear a proper helmet.

Awards: \$16,162,429 total, reduced to \$15,693,719 after comparative - liability offset.

- i. \$440,000 past medical cost;
- ii. \$6,052,356 future medical cost;
- iii. \$58,827 past lost earnings;
- iv. \$861,246 future lost earnings;
- v. \$2,000,000 past non-economic damages; and
- vi. \$6,750,000 future non-economic damages

10. Ringdahl v. Alvardao Hosp. Med Center Inc. – wrongful death; Superior Court of San Diego

Case Summary:

On April 21, 2013, plaintiff's decedent was bicycling with a friend when a vehicle operated by Rafael Garcia drifted into the bicycle lane, striking Ringdahl, who died at the scene. The decedent's wife and children sued the driver and the hospital. The hospital settled the case and the complaint continued against the driver only. Plaintiff's counsel contended that the driver was negligent because he dozed off while driving when he struck the decedent. The driver admitted liability the day before trial.

Award: \$15,771,234

- \$4 million non-economic damages for wife;
- \$2.5 million non-economic damages for each child; and
- \$4.3 million in economic damages for family's loss of the decedent's support.

Lowest Ten Verdicts

1. Diaz v. Frerking – vehicular negligence; Superior Court of San Diego County

Case Summary:

On December 20, 2012, plaintiff was driving in the rain when defendant rear-ended her vehicle at a light. Plaintiff claimed back and neck injuries and sued the driver of the car and his parents. The matter was dismissed against the parents and the matter proceeded to trial against the driver. The expert opined that the speed of impact was between 6-8 mph. Defendant admitted liability.

Plaintiff sought recovery of \$16,365 in past medical costs for MRI's and chiropractic treatments, and sought recovery for general damages of pain and suffering. Defense counsel contested the cause, reasonableness and necessity of plaintiff's medical treatment and argued that any treatment should not have exceeded \$2,500. After 3 days of trial and one day of deliberation, the jury awarded \$334 to plaintiff.

Award: \$334

2. Jimenez-Smith v. Jamali - nuisance; Superior Court of Alameda County

Case Summary:

Plaintiffs owned a property that was subject to the rules of Arcadia Homeowners' Association. Defendant owned a unit in the same building. Plaintiff claimed that defendant engaged in a pattern of abusive behavior toward plaintiffs and their tenants that consisted of harassment and abuse with obscenities, physical threats, banging on the door, and hitting the ceiling with a broom to annoy plaintiff's tenants who owned the unit above. Defendant continued to harass even after plaintiffs and their tenants secured a civil harassment restraining order against him. Plaintiff alleged nuisance, negligence, breach of CC&Rs and interference with a contract. Defendant filed a cross-complaint against plaintiffs for private nuisance and intentional infliction of emotional distress.

The jury found for defendant on the intentional interference with contractual relations claim and found for cross-defendants on the cross-complaint.

Award: \$500 total

- i. \$250 for private nuisance; and
- ii. \$250 for negligence

3. Bills v. Welsh - vehicular negligence; Superior Court of San Diego County

Case Summary:

On March 28, 2013, plaintiffs were in their car at a stop when defendant lost control of his motorcycle and crashed into the back of plaintiff's vehicle. Plaintiff's alleged that defendant negligently operated the vehicle by being inattentive and defendant admitted negligence but disputed causation and plaintiff's damages.

Award: \$513 total;

- i. \$113 for medical expenses; and
- ii. \$400 for past non-economic loss.

4. Valentin v. Vahedi – property damage; Superior Court of Los Angeles County

Case Summary:

Plaintiffs were evicted in April 2013 by defendant, the owner of the property. After the eviction, defendant unilaterally moved plaintiff's property from the residence and plaintiffs lost several items of value. Plaintiffs allege that defendant failed to maintain the residence and that they had to live in a unit infested with vermin, the home did not have locks or proper ventilation, and had broken bricks in the stairway which caused plaintiff to fall and sustain injuries. Plaintiffs sued for nuisance, conversion, and loss of property and defendant cross complained for damage to property alleging that plaintiffs intentionally, carelessly, and recklessly caused unreasonable damage to the property while occupying it. Jury found for defendant.

Award: \$1,000 for property damage of defendant

5. Mikesell v. Chinol – vehicular negligence; Superior Court of San Diego County

Case Summary:

On November 20, 2013, plaintiff, a sixteen year old, was operating her mother's vehicle while her mother sat in the front passenger seat when they were rear-ended by defendant and suffered neck and back injuries. Plaintiff's counsel asked the jury to award almost \$100,000 in total damages. Defense counsel contented that plaintiff could not have been injured in the accident because the damage to the vehicle was minor. Defense further argued that there were gaps in treatment of the plaintiffs, that there was no documentation of alleged missed time from work, and that it was clear that the chiropractic bills were created for litigation since the physician admitted to charging the plaintiffs more than other patients who paid in cash.

Defendant admitted liability. After 3 days of trial and 2.5 hours of deliberation, the jury found for plaintiffs.

Award: \$1,125 total

- i. Madison Kirby
 1. \$375 past medical cost;
 2. \$375 pain and suffering; and
- ii. Molly Mikesell
 1. \$375 past medical cost.

6. Barnes v. Carranza – vehicular negligence; Superior Court of San Diego County

Case Summary:

Plaintiff was stopped in heavy traffic when his vehicle was struck from the vehicle that was directly hit by defendant's vehicle, which was going at a high rate of speed. Plaintiff reportedly suffered injuries to his neck and back and sued defendant for negligently operating his vehicle. Defendant admitted liability but disputed the extent of plaintiff's injuries. *Award:* \$1,200

7. Miglas v. A-Able Inc. - vehicular negligence; Superior Court of Los Angeles County

Case Summary:

Plaintiff reportedly suffered a herniated disc when his vehicle was struck by a truck owned by defendant. Plaintiff sued defendant for its employee's negligent driving. Defendant admitted liability but disputed the extent of plaintiff's injuries. Plaintiff's spouse brought a claim of loss of consortium and was awarded \$500.

Award: \$1,636

- i. \$1000 pain and suffering; and
- ii. \$136 past medical.

8. County of Ventura v. Regenstreif – vehicular negligence; Superior Court of Ventura County

Case Summary:

George Barrett was an employee at Plaintiff, County of Ventura, when his vehicle was struck by defendant. Plaintiff County alleged that defendant negligently operated her vehicle and sought subrogation from defendant after paying over \$40,000 for the employee's workers compensation. Defendant admitted liability but disputed extent of injuries to Barrett.

Award: \$2,500

9. Rust-Wise v. Camacho – vehicular negligence; Superior Court of San Diego County

Case Summary:

On June 9, 2012, plaintiff was driving when defendant's vehicle struck her vehicle. Plaintiff sued defendant for negligent driving. Defendant denied liability.

Award: \$2,620

- i. \$1,870 past medical cost; and
- ii. \$750 non-economic loss.

10. Tudor v. Cohen – vehicular negligence; Superior Court of San Diego County

Case Summary:

Plaintiff suffered a tear of his knee requiring knee replacement surgery when he was stopped in his truck and defendant rear-ended his vehicle. Plaintiff sued for negligent driving and defendant admitted fault but contested the extent of damages. Plaintiff claimed over \$110,000 in total damages.

Award: \$2,635 total - \$2,410 past medical; and \$225 compensatory

**TO BE
DISCUSSED
BY PANEL**

Martinez v. County of Ventura - Ventura County Superior Court; Judge Vincent O'Neil

Case Type: Dangerous roadway condition on public property

Case Summary:

Plaintiff suffered paraplegia following a motorcycle accident. He alleged a drain inlet constituted a dangerous condition that caused his injuries. Following a defense verdict, the Court of Appeal remanded, ordering an instruction that a dangerous roadway condition was a substantial factor in causing plaintiff's injuries and the County could not assert a design immunity defense.

WSHB was brought in for the re-trial. Faced with the appellate ruling, requiring a minimum of 1% liability, they argued that plaintiff bore significant fault for his accident. Counsel elicited expert testimony that plaintiff simply needed to stop to avoid the accident. Instead, his appetite for risk caused him to proceed full speed ahead.

For purposes of the re-trial, WSHB attorneys were faced with not only required liability, but an instruction from the Court of Appeal that there was a dangerous roadway condition which caused plaintiff's injuries. Counsel created a defense strategy whereby they sought to limit liability on behalf of the County of Ventura to only 1%. They successfully argued in pre-trial motions that if they could not present evidence re the appropriateness of the inlet drain and berm, then plaintiffs could not present evidence as to the condition either. This allowed counsel to focus the jury's attention on the motorcycle rather than the roadway condition.

In addition, each and every witness was examined to elicit testimony to support a theory that plaintiff was an inexperienced rider, who had a "high risk appetite," regularly participating in high-risk type activities. He chose to ride a speed bike along an extremely curvy, mountainous roadway, without proper experience or training and without appropriate attire and protective gear. In support of this strategy, WSHB was successful in seeking Court permission to have not one, but two "speed bikes" on display in the courtroom throughout the 4 week trial. Counsel combined this with expert testimony wherein rider demonstrations were performed on the motorcycles inside the courtroom.

By the time deliberations commenced, the jury had spent 4 weeks listening to evidence almost entirely focused upon motorcycle handling, safety training, and plaintiff's lack of experience and training, rather than evidence related to the roadway condition. As a result, the jury had no evidence to support a finding above the required 1% liability against County of Ventura.

Dollar amount and any other relief plaintiffs requested: Prior to trial, Plaintiffs demanded in excess of \$10 million to settle. In closing arguments, Plaintiffs' counsel requested a jury award in excess of \$14.5 million.

Briones v. Zink – CA Superior Court of Ventura County; Judge John Nho Trong Nguyen

Case Type: vehicular liability

Plaintiff Counsel: Gary Dordick and Diana Diskin from Gary A Dordick Law Offices; and Mark Flores from Crane Flores, LLP.

Defense Counsel: Bruce Fink from Benton, Orr, Duval & Buckingham.

Case Summary:

Shortly before 5:00 a.m. on March 23, 2013, plaintiff Francisco Briones, 21, was on his way to work in his parent's uninsured car when he was hit by a vehicle driven by defendant Christopher Lee Zink, while turning left on a green light. Defendant was drunk and had a blood alcohol level of 0.14. Defendant admitted that he had not slept in 24 hours and had fallen asleep at the wheel, when he entered the intersection on a red light, driving approximately 50 mph.

Briones spine was severed causing him to be immediately paralyzed from the neck down which resulted in him having difficulty breathing. A Good Samaritan stayed with plaintiff until the paramedics arrived and helped his airway remain open by stabilizing his neck. Briones underwent emergency surgery to stabilize his spine, followed by several more stabilization surgeries over the next three months. After Briones was stabilized, he was transferred to a medical center for several months of rehabilitation. Briones then returned home to Oxnard. Since his return, his mother and four younger siblings have cared for him 24 hours a day. Briones is unable to move his body except for his head and neck, and has limited movement of his left forearm. He suffers from uncontrollable spasms and frequent bladder and kidney infections. Before the accident, Briones was an award-winning athlete who took a break from college to support his family. On the day of the accident he was planning to leave early from work to take his family Little League opening ceremonies.

On April 25, 2013, Briones filed a complaint against Zink for negligence, negligence per se, negligent entrustment against unknown Doe defendants, and punitive damages. He sought recovery for past and future loss of earnings, past and future medical expenses, and past and future pain and suffering. The defense contended that plaintiff was partly to blame for the crash because he was inattentive to defendant's oncoming car and should have known from its speed that defendant would be unable to stop at the red light and so plaintiff had the last chance to avoid the collision. Trial lasted for nine days, with the jury deliberating for one day.

Defendant was charged with and pled guilty to violating *Vehicle Code* section 23153(a) for felony driving while under the influence of alcohol and causing bodily injury. He was also found guilty of *Penal Code* section 12022.7(b) for inflicting great bodily injury in the commission of a felony.

Post- Trial Insurance Issue:

In a post-trial hearing, the Court considered (1) whether Briones' general damages were barred by *Civil Code* section 3333.4(a)(3) which states that an injured party cannot recover non-economic losses to compensate for pain and suffering if the injured person was the owner of an uninsured vehicle which was involved in the accident; and (2) whether Zink's driving under the influence of alcohol conviction allowed Briones to recover general damages pursuant to *Civil Code* section 3333.4(c) even though Briones was a vehicle operator and not a vehicle owner.

Briones was uninsured at the time of the accident, but following the accident, he posted a deposit of \$35,000 with the DMV to comply with California's financial responsibility laws under *Vehicle Code* sections 16054.2 and 16056. The Court held that this deposit was sufficient to fulfill the financial responsibility laws and that Briones was entitled to recover general damages under *Civil Code* section 3333.4(c).

There was a pre-litigation demand for the limits of the defendant's applicable insurance policies, which totaled \$75,000. Nationwide Insurance did not timely tender those limits and consequently was responsible for the full compensatory damages, and Defendant was exposed to the punitive damages award.

Jordan v. TGIFriday's – Superior Court of Riverside County, Judge Sunshine S. Sykes

Case Type: wrongful death; workplace negligence – negligent service of alcohol; and premises liability.

Plaintiff Counsel: Nicholas Rowley from Carpenter, Zuckerman & Rowley; and Keith Bruno and Angela Bruno from Bruno Nalu.

Defense Counsel: Thomas Gmelich from Bradley and Gmelich; Stephan King from Rodriguez and King; and Larry Willis from Law Office of Larry Willis.

Insurer: Zurich North America

Case Summary:

On January 24, 2009, plaintiff's decedent Orlando Jordan, was dining with his girlfriend at T.G.I.Friday's and at around 1 p.m., decedent's girlfriend's adult son Michael Castillo and his friend, Louis Martinez joined them. The boys were both intoxicated and then proceeded to drink heavily after arriving at the restaurant. Half an hour later, Jordan and Castillo got into an argument and Castillo stabbed Jordan who ultimately died from this injury. Castillo and Martinez were both charged and incarcerated for the assault. The decedent's parents sued Castillo, Martinez, and T.G.I.Friday's franchise operator, Briad Restaurant Group, LLC. Briad Group filed a cross-complaint against Castillo and Martinez but dismissed Martinez prior to trial.

The plaintiffs had initially named the franchisee, TGI Fridays Inc., and Tyler Mall Limited Partnership as defendants but they were released on summary judgment prior to the commencement of trial. The mall's security contractor was also named as a defendant but was dismissed prior to trial. Once it was determined that the plaintiff's case was aligned with Martinez's position, plaintiffs' counsel dismissed their claim against Martinez but the jury was allowed to consider Martinez's percentage of fault. Castillo defaulted and was not present at trial.

Plaintiff's counsel contended that Briad Restaurant Group was negligent for knowingly serving alcohol to visibly intoxicated and underage Castillo and argued that the negligent service of alcohol led to Castillo's assault, resulting in the decedent's wrongful death. A bar tender on duty during the incident testified that he served the group a series of drinks including shots of tequila, beer, and cocktails over a period of 30 – 45 minutes.

Irasema Garcia v. O'Reilly Auto Enterprises LLC – Dallas County District Court; Judge Tonya Parker

Case Type: Wrongful Death; Motor Vehicle - Truck, Center Line, Tractor-Trailer, Weather Conditions; Worker/Workplace Negligence - Negligent Retention

Plaintiff(s):

Neida Galindo (Female, 48 Years),
Sophia Galindo (Female, 71 Years),
Irasema Hinoestroza Garcia (Female),
Estate of Manuel Galindo-Camacho (Male, 42 Years),
Yatzari Nohemi Galindo Hinoestroza (Female, 15 Years),
Jazmin Elizabeth Galindo Hinoestroza (Female, 18 Years).

Plaintiff Attorney(s):

Kevin W. Liles; Liles Harris White PLLC; Corpus Christi, TX, for Irasema Hinoestroza Garcia, Yatzari Nohemi Galindo Hinoestroza, Jazmin Elizabeth Galindo Hinoestroza;
Philip G. Bernal; Ketterman, Rowland & Westlund; San Antonio, TX, for Neida Galindo, Sophia Galindo, Estate of Manuel Galindo-Camacho;
Stuart R. White; Liles Harris White PLLC; Corpus Christi, TX, for Irasema Hinoestroza Garcia, Yatzari Nohemi Galindo Hinoestroza, Jazmin Elizabeth Galindo Hinoestroza.

Defendant(s): David Shoots, and O'Reilly Auto Enterprises LLC

Defense Attorney(s): Paul A. Bezney; Adkerson, Hauder & Bezney P.C.; Dallas, TX, for David Shoots, O'Reilly Auto Enterprises LLC and J. Kevin Kindred; Adkerson, Hauder & Bezney P.C.; Dallas, TX, for David Shoots, O'Reilly Auto Enterprises LLC

Insurer: Safety National Casualty Corp. for both defendants

Brief Summary:

Manuel Galindo-Camacho was killed instantly and was survived by his wife, two teenage daughters, and his mother, all of whom sought damages for past and future pecuniary loss, loss of companionship and society, and mental anguish. The decedent's wife was plaintiff Neida Galindo, 48, a housekeeping manager. His daughters were plaintiffs Jazmin Elizabeth Galindo Hinoestroza, and Yatzari Nohemi Galindo Hinoestroza, both students. The biological mother was initially a plaintiff as their next friend. However, by the time of trial, because Jazmin was 18 and could serve as her sister's next friend, their mother was no longer in the case. The decedent's mother, plaintiff Sophia Galindo, 71, retired, lived in Mexico. The estate sought damages for the decedent's mental anguish, which was limited to his anticipation of the impending accident.

Case Summary:

On Feb. 28, 2015, plaintiffs' decedent Manuel Galindo-Camacho, 42, a drywall laborer, was driving a minivan on Highway 29 at around 6 a.m. while it was drizzling and the roads were icy. Several miles to the east, David Shoots was traveling westbound in an 18-wheeler,

transporting hazardous materials. He allegedly crossed a railroad track at 51 mph without stopping and a quarter mile later lost control on a curve while traveling 57 to 59 mph. The 18-wheeler hit a guardrail and jackknifed. The trailer came to rest with its lights out and blocking Galindo-Camacho's lane. Galindo-Camacho collided with the unlit trailer and was killed.

Galindo-Camacho's daughters sued Shoots and Shoots' employer, O'Reilly Auto Enterprises LLC, operating as O'Reilly Auto Parts, with who Shoots was in the course and scope of his employment at the time of the accident.

The suit alleged that Shoots' driving was unsafe and that O'Reilly failed to take Shoots off the road months before the crash, due to an unsafe driving record. The suit alleged negligence and gross negligence. The decedent's widow, mother and estate later joined the suit.

Plaintiffs' counsel argued that Shoots was involved in prior unsafe-driving incidents during several years of employment with O'Reilly, which should have disqualified him from driving. Although O'Reilly had an internal driver review points system that was intended to keep unsafe drivers off the road, plaintiffs' counsel maintained that the points system was flawed and failed to identify problem drivers, such as Shoots. Plaintiffs' trucking industry expert opined that O'Reilly did not enforce its policies. This expert also mentioned that Shoots had a conviction for driving under the influence. However, this statement reportedly violated a defense motion in limine and, following objection by defense counsel, the court instructed the jury to disregard it. A mistrial was also requested by the defense, but the motion was denied.

The plaintiffs alleged that Shoots lost control of the truck because he was driving too fast for the existing conditions and using his cell phone. Accident reconstruction experts for both sides opined that Shoots was traveling 57 to 59 mph when he lost control, with plaintiffs' accident reconstruction expert stating that Galindo-Camacho was going 35 to 46 mph at the time of the accident. Shoots was also negligent, the plaintiffs argued, for leaving his unlit trailer blocking lanes of traffic without putting out warning cones or triangles to warn approaching motorists of the disabled vehicle in the roadway. Plaintiffs' counsel introduced police dash camera video showing the dark, low-visibility conditions. Plaintiffs' counsel also asserted that Shoots violated federal regulations by not stopping at the railroad crossing. Had he stopped, plaintiffs' counsel argued, he would not have been going as fast around the curve and would not have lost control.

The defense did not dispute that Shoots' negligence was a proximate cause of the accident, but it argued that Galindo-Camacho was also negligent in driving too fast for the existing conditions and not keeping a proper lookout. Defense counsel also argued that Galindo-Camacho should have been able to stop in time. The defense asserted that, because of reflective tape on the disabled trailer, Galindo-Camacho should have seen the trailer from 1,200 feet away. Also, defense counsel noted that several drivers arriving on the scene later were able to stop and avoid any collision.

In response, plaintiffs' counsel maintained that Shoots' loss of control resulted in a sudden emergency for Galindo-Camacho. O'Reilly argued that it was a safe company and that it met and exceeded all applicable motor carrier regulations. Defense counsel introduced a

company snapshot from the Federal Motor Carrier Safety Administration's website to support this argument. The defense also noted that most of Shoots' prior incidents took place on O'Reilly property. The defense further argued that weather conditions caused the accident. Police dash-camera video showed the investigating officer pulling up to the scene and losing control of her car on the ice. The video also showed the officer slipping on the ice when she exited her vehicle. The defense's accident reconstruction expert opined that, because the air bag control module in Galindo-Camacho's vehicle lost power in the accident, its data was incomplete. Therefore, the defense expert asserted that the calculations of the plaintiffs' accident reconstructionist were faulty and likely underestimated the decedent's speed. He agreed, though, that it was possible the decedent's speed was as low as 46 mph. Shoots did not attend trial. He testified in his deposition that he stopped at the railroad track and that he was going 45 mph when he lost control. Defense counsel reportedly acknowledged at trial that this testimony was not true.