

**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 Hinostroza Garcia (Female),
Estate of Manuel Galindo-Camacho (Male, 42 Years),
Yatzari Nohemi Galindo Hinostroza (Female, 15 Years),
Jazmin Elizabeth Galindo Hinostroza (Female, 18 Years).

Plaintiff Attorney(s):

Kevin W. Liles; Liles Harris White PLLC; Corpus Christi, TX, for Irasema Hinostroza Garcia, Yatzari Nohemi Galindo Hinostroza, Jazmin Elizabeth Galindo Hinostroza;
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 Hinostroza Garcia, Yatzari Nohemi Galindo Hinostroza, Jazmin Elizabeth Galindo Hinostroza.

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 Hinostroza, and Yatzari Nohemi Galindo Hinostroza, 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.

VERDICT SUMMARY

Martinez v. County of Ventura

Net verdict in favor of plaintiffs for only \$15,672.95. The jury found plaintiff 99% responsible for causing his own accident, allocating only 1% liability against County of Ventura, which was the minimum fault allocation per the prior ruling of the Court of Appeal.

Briones v. Zink

The jury returned a verdict in favor of Briones, awarding him a total of \$125,168,202.00 in damages. The award included \$62,584,101.00 in punitive damages, based on a finding that Zink had acted with malice.

Award: \$125,168,202 total

- i. Past medical expense: \$740,017
- ii. Past Loss of Earnings: \$49,837
- iii. Future Medical Expense: \$17,989,849
- iv. Future Loss of Earnings: \$1,304,398
- v. Past Pain & Suffering: \$7,500,000
- vi. Future Pain & Suffering: \$35,000,000
- vii. Punitive: \$62,584,101

Jordan v. TGIFriday's

Jury found that Briad Group negligently provided alcohol beverages to an obviously intoxicated and underage Castillo and this was a substantial factor in causing decedent harm. Jury also found that Martinez aid and abetted Castillo in causing the harm. Trial lasted 6 weeks, jury deliberated for 2 days and found that Briad Group was 55% liable, Castillo was 40% liable, and Martinez was 5% liable. Since Castillo defaulted and Martinez was no longer a party at the time of trial, plaintiffs only recovered the \$22 million owed by Briad Group LLC.

Award: \$40,000,000 - \$10,000,000 for Past Loss of Society Companionship; and \$30,000,000 Future Loss of Society Companionship

Irasema Garcia v. O'Reilly Auto Enterprises LLC

A demand was made for \$17 million and an offer was made for \$750,000 (per defense counsel). Trial lasted for 6 days, the jury deliberated for 5 hours and found negligence and gross negligence on the part of the defendants, but no negligence on the part of Galindo-Camacho. The jury attributed 60-percent liability to O'Reilly and 40-percent to Shoots. The jury awarded \$37,945,000. However, the verdict was subject to a high/low agreement of \$9 million/\$3 million, which reduced the jury's award to \$9 million.

Neida Galindo:

- \$500,000 - Past Loss Of Society Companionship;
- \$4,000,000 - Future Loss Of Society Companionship;

- \$60,000 - Past Loss Of Pecuniary Contribution;
- \$1,800,000 - Future Loss Of Pecuniary Contribution;
- \$1,000,000 - Past Mental Anguish;
- \$3,000,000 - Future Mental Anguish.

Sophia Galindo:

- \$250,000 - Past Loss Of Society Companionship;
- \$1,000,000 - Future Loss Of Society Companionship;
- \$15,000 - Past Loss Of Pecuniary Contribution;
- \$600,000 - Future Loss Of Pecuniary Contribution;
- \$1,000,000 - Past Mental Anguish;
- \$2,000,000 - Future Mental Anguish.

Estate of Manuel Galindo-Camacho: \$2,000,000 - Past Mental Anguish.

Jazmin Elizabeth Galindo Hinostroza:

- \$500,000 - Past Loss Of Society Companionship;
- \$3,000,000 - Future Loss Of Society Companionship;
- \$60,000 - Past Loss Of Pecuniary Contribution;
- \$1,800,000 - Future Loss Of Pecuniary Contribution;
- \$1,000,000 - Past Mental Anguish;
- \$4,000,000 - Future Mental Anguish.

Yatzari Nohemi Galindo Hinostroza:

- \$500,000 - Past Loss Of Society Companionship;
- \$3,000,000 - Future Loss Of Society Companionship;
- \$60,000 - Past Loss Of Pecuniary Contribution;
- \$1,800,000 - Future Loss Of Pecuniary Contribution;
- \$1,000,000 - Past Mental Anguish; and
- \$4,000,000 - Future Mental Anguish.