

**\$1,800,000 GROSS VERDICT – UPS TRACTOR-TRAILER/AUTO REAR END COLLISION – 24-YEAR-OLD AUTO DRIVER DIES IN RESULTING FIRE – CLAIMED INJURIES TO BROTHER DURING RESCUE ATTEMPT – 25% COMPARATIVE NEGLIGENCE FOUND.**

**Philadelphia County, PA**

**The plaintiff's decedent was returning home on Interstate Route 95 south when his vehicle experienced engine problems. The plaintiff claimed that the decedent was driving slowly in the right lane when his vehicle was negligently struck in the rear by a tractor-trailer owned by the defendant, United Parcel Service, and driven by the defendant driver. The decedent died as a result of injuries sustained in the accident. The decedent's brother also made a claim for personal injuries, including smoke inhalation sustained when he pulled the decedent from the fiery crash and emotional injuries as a result of witnessing his brother's death. The defendants argued that the accident was caused solely by the negligence of the decedent who was stopped in the right travel lane, at night, without hazard lights and with headlights and running lights on, so that his vehicle appeared to be moving.**

On December 16, 2008 at approximately 1:06 a.m., the decedent was operating a 1996 KIA Sportage on Interstate 95 Southbound in Philadelphia. The decedent's brother testified that he was traveling ahead of the decedent and noticed that his brother's vehicle was moving slowly so he pulled to the shoulder of the highway. The decedent's brother testified he parked his vehicle on the shoulder, turned around and saw the decedent's vehicle moving toward him in the right lane with what appeared to be mechanical problems. The plaintiff contended that the decedent was moving slowly and attempting to get to the shoulder of the road.

The decedent's brother testified that he noticed the defendant's truck was not moving out of the right lane or slowing down. This UPS tractor-trailer then struck the rear of the decedent's KIA causing a fireball collision. The decedent's brother pulled the decedent from the flaming vehicle, but the decedent was pronounced dead a short time later from the blunt force trauma sustained.

Two witnesses, a driver and passenger, testified that they were also traveling south in a lane other than the right lane on the three-lane highway and saw the decedent's vehicle stopped in the right lane. The witnesses testified that the decedent's vehicle had no lights on at all. The witnesses further stated that the nearby bridge was dark. The witness were able to safely pass the decedent's car, but stated that they were only able to do so because they had not been in the same lane as the decedent's vehicle. The witnesses testified that the situation was very dangerous and they believed that the accident was inevitable. The witness who was driving looked in his rear-view mirror after hearing the collision and saw the explosion.

The plaintiff's accident reconstruction expert testified that the defendant truck driver had more than sufficient time, sight and distance to perceive and react to the decedent's vehicle in the right travel lane. This

expert opined that the defendant driver was negligent in failing to control and stop his vehicle before colliding with the rear of the decedent's car, regardless of whether the decedent's KIA was moving or not, and that the defendant driver violated the assured clear distance rule. The plaintiff contended that the hard brake event records indicated that the defendant driver did not apply the truck's brake until after impact and, in fact, accelerated into the impact.

The plaintiff's forensic pathologist, the county medical examiner, testified that medical evidence showed that the decedent suffered central nervous system-derived suffocation and significant chest injuries. This expert concluded that the defendant undoubtedly suffered extreme conscious pain with shortness of breath, as well as endogenous suffocation prior to his death.

The plaintiff alleged that the defendant driver was not properly trained by UPS and that a supervised "safety ride" resulted in notations concerning the driver's poor driving ability and his failure to maintain a proper distance from vehicles in front of him. The plaintiff initially sought punitive as well as compensatory damages from the defendant; but the punitive damage claim did not go to the jury.

The decedent was employed as a teacher with the Lakeside Alternative School at the time of his death. He had completed his private academic teacher's certification with the State of Pennsylvania and was an active member of his church and community. The plaintiff's economist testified that the decedent's net lifetime earning capacity would have been \$1,569,700 to \$1,766,600 and that the value of his household services for the next five to ten years was \$29,100 to \$58,200.

The plaintiff's psychiatrist testified that the plaintiff brother sustained significant emotional injuries as a result of the accident. He cries uncontrollably and has become an introvert, spending much of his free time in his bedroom away from his family, according to testimony offered. The plaintiff brother also sustained smoke inhalation during the attempted rescue, which his treating physician characterized as "mild inflammation" of the lungs.

The defendant truck driver testified that he moved to the center lane due to a police vehicle on the right shoulder. He testified his attention was then drawn to the four-way flashers of the vehicle driven by the decedent's brother which was approximately 100 feet further up the highway. The defendant driver contended that he signaled to move from the center back to the right lane and moved to the right lane before realizing that the decedent's car was stopped in the right lane in front of him. The defendant contended that the decedent's head lights and tail lights made it appear as though the car was moving in the right lane.

The defense argued that the decedent's vehicle was illegally stopped in the right lane and that the decedent was negligent in failing to move his car off the road when he began to experience car trouble and in failing to activate his emergency flashers or otherwise warn other motorists of his stopped vehicle. Photographs taken of the interior of the decedent's vehicle after the accident showed that the Kia's gear shifter was in the "PARK" position. The defendants argued that this was proof that the vehicle was in park at the time of the crash.

The defense argued that the assured clear distance rule does not apply where an object in the driver's path ahead is indiscernible to the driver and the rule does not require a driver to anticipate the negligence of other drivers on the road in front of him. Experts for both sides agreed that the UPS truck was not operating at an excessive speed. The defense argued that the truck driver was qualified and well-trained as a UPS driver.

The defendants claimed that the defendant driver was faced with a sudden emergency caused by the decedent's vehicle being stopped in the right travel lane without emergency flashers or other warnings. Evidence showed that the defendant truck driver was not cited in connection with the accident. The Pennsylvania State Police accident report indicated that the decedent was "illegally stopped" in a travel lane and that no action on the part of the defendant driver contributed to the accident. The defendant also contended that a reasonable person, in the decedent's situation, would have exited the vehicle when it became disabled.

The defendant's liability experts performed an accident reconstruction/recreation of the collision in Colorado. They testified that, based on the overall conditions of visibility on the night of the accident, the defendant driver could not have perceived the decedent's vehicle in time to avoid the collision. The defendant's economist estimated the decedent's net lost earnings to be approximately \$358,856 to \$847,523 and his household services to be \$18,735.

The defendant's pathologist testified that it was impossible for the decedent to have experienced pain after the collision because his injuries (chiefly a broken neck) resulted in instantaneous unconsciousness and most likely immediate death. The defendant's psychiatric expert opined that there was no evidence that the plaintiff brother sustained significant emotional injuries and stressed that he only went to one appointment with a psychiatrist.

The jury found the defendant driver 75% negligent and the decedent 25% comparatively negligent. The plaintiffs were awarded \$1,800,000 in damages, which were reduced accordingly. The award included \$1,750,000 for the survival action and \$66,538 for the wrongful death claim. An additional \$14,000 in delay damages and costs were added to the award. The jury declined to award damages to the plaintiff brother.

## REFERENCE

**Plaintiff's accident reconstruction expert: Ronald Baade from Mifflin, PA. Plaintiff's accident reconstruction expert: Roger E. Rozsas from Media, PA. Plaintiff's economic expert: Andrew C. Verzilli from Lansdale, PA. Plaintiff's pathology expert: Fredric N. Hellman from Swarthmore, PA. Plaintiff's psychiatric expert: Burton Weiss from Philadelphia, PA. Plaintiff's psychology expert: Brian Raditz from Philadelphia, PA. Defendant's accident reconstruction expert: Stephen J. Fenton from Greenwood Village, CO. Defendant's accident reconstruction expert: William T.C. Neale from Greenwood Village, CO. Defendant's economic expert: Gregory Cowhey from Plymouth Meeting, PA. Defendant's pathology expert: Richard Callery from Newark, DE. Defendant's perception and reaction time expert: Thomas J. Ayres from Kensington, CA. Defendant's psychiatric expert: Bijan Etemad from Villanova, PA. Defendant's trucking safety expert: Stephen B. Chewing from Richmond, VA.**

Skinner vs. United Parcel Service, Inc., et al. Case no. 09-02-000971; Judge Gary F. DiVito, 05-05-10.

**Attorneys for plaintiff: Michael V. Tinari and Christopher P. Fleming of Leonard, Sciolla, Hutchinson, Leonard & Tinari, L.L.P. in Philadelphia, PA. Attorneys for defendant: Michael J. O'Neill and Roman T. Galas of Ansa Assuncao, L.L.P. in Philadelphia, PA.**

## COMMENTARY

This trial involved a dramatic rear end collision which engulfed the decedent's car in flames. He was pulled from the wreckage by his brother (also a plaintiff in the case), who happened to be driving in front of him and witnessed the accident. The main issue on liability centered on the amount of comparative negligence which would be assessed against the decedent and the trial presentation featured accident reconstruction experts on both sides.

Although the decedent's brother testified that the decedent's car was moving at the time of the impact; defense evidence seemed to indicate that it was actually stopped in the right travel lane. The defense position was supported by an eyewitness, as well as photographs showing the car's gear shifter in the "PARK" position after the accident. Investigating police officers also indicated that the decedent was "illegally stopped" in the travel lane and that there was "no contributing action" on the part of the truck driver. All accounts were consistent that the decedent's emergency flashers were not on at the time of the collision.

However, the plaintiff's experts maintained that, regardless of whether the vehicle was stopped or slowly moving, the UPS truck had ample opportunity to avoid the impact and violated the assured clear distance rule. The defendant truck driver had filed a separate personal injury claim against the decedent's estate. The jury ultimately assessed 25% comparative negligence against the decedent.

On damages, plaintiff's counsel introduced and personalized the young decedent to the jury by highlighting his academic achievements, teaching career and his role in the community assisting troubled youths and those with disabilities. The decedent had given much of his time and energy to assist others and this fact was well developed during the trial presentation through photographs and testimony of those with whom he had worked. A juvenile program director and church pastor made an appearance to give the dece-

dent a glowing and inspirational characterization. Testimony also established that the decedent was the first in his African American family to complete college and he had a promising future. Under Pennsylvania's wrongful death act, the recovery to the plaintiff father was limited to lost contributions or the monetary value of services, society and comfort which would have been provided by

his son. The \$1.75 million survival claim award included damages for the decedent's conscious pain and suffering which was vehemently contested by the defense. Interestingly, the jury declined to award damages to the decedent's brother who pulled the decedent from the flames and learned of his death on the roadside.

**\$687,500 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO STOP FOR STOP SIGN – FEMUR FRACTURE – OPEN REDUCTION – INTERNAL FIXATION – NON-UNION OF BONE – SECOND SURGERY REQUIRED – CLAIMED SCIATIC NERVE INJURY – DAMAGES/CAUSATION ONLY.**

**Chester County, PA**

**This action arose from a motor vehicle accident which occurred after a vehicle driven by the defendant driver and owned by the defendant pizzeria drove through a stop sign and collided with the plaintiff's car. The defendant stipulated to negligence in causing the collision and the case proceeded on the issue of damages/causation only.**

On July 25, 2008, the 42-year-old plaintiff was operating his car in Nottingham Township, Chester County. As he approached an intersection, the defendant ran a stop sign and traveled directly into the path of the plaintiff's car. The front of the plaintiff's car impacted the driver's side of the defendant's vehicle.

The defendant driver was delivering pizza at the time of the accident for a pizzeria, which is owned by the defendant company. The defendant-driver, age 17, testified in his deposition that he was looking at his GPS system located on the dashboard, and did not see the stop sign.

The plaintiff was transported by helicopter from the accident scene to Christiana Hospital. He sustained a segmental fracture of the right femur. The plaintiff initially underwent an open reduction and internal fixation, which included a rod and two locking bolts and he was strictly non-weight bearing for three months. Five months later, when the X-rays showed a delay in the healing of the bone, the plaintiff was given a bone stimulator. Several months later, it was discovered that the broken bone was still not healing and plaintiff was referred for a specialist for treatment of the non-union.

On May 7, 2009, the plaintiff underwent a second operation to remove the hardware and insert a larger rod plus placement of an osteogenic protein (#1 bone morphogenic protein) for the right femur non-union, a protein designed to stimulate bone regeneration. The operation was successful in that the fracture was healed and several months later, the plaintiff was released from his surgeon's care. The plaintiff contended that approximately a month following the second surgery, he developed a sciatic nerve injury, which his pain management specialist causally related to the initial femur fracture and surgeries.

The plaintiff was cleared to return to work in the fall of 2009. He had been fired from his job as a machinist a month after the accident. While recovering from his

first surgery, the plaintiff enrolled in a Microsoft Network Technology Program and took out a loan of \$27,000 for the cost of the program.

The defendant maintained that the plaintiff had made a good recovery from his fracture and suffered no loss of future wages. The defendant disputed that the plaintiff's claimed sciatic nerve injury was causally related to the subject automobile accident. The defense cited the plaintiff's treating orthopedic records which did not causally related the claimed sciatic nerve injury to the accident.

The parties agreed to proceed to binding arbitration with a damage award of \$687,500 to the plaintiff. The award was based on \$500,000 for pain and suffering and \$187,500 for medical bills (ERISA and HMO lien), wage loss, Microsoft training program, and additional COBRA medical payments.

**REFERENCE**

**Plaintiff's orthopedic surgery expert: Eric Johnson from Wilmington, DE. Plaintiff's orthopedic surgery expert: Douglas Palma from Wilmington, DE.**

Ankney vs. Boyd, et al. 06-10-10.

**Attorney for plaintiff: Stephen M. Karp of Karp & Hart, P.C. in West Chester, PA.**

**COMMENTARY**

The outcome of this case, which was resolved through binding arbitration, was a significant \$685,500 damage award for the plaintiff for what was, essentially, a femur fracture and a disputed sciatic nerve injury. There was no issue regarding liability and the arbitrator was asked simply to determine a monetary value for the plaintiff's injuries. Plaintiff's counsel stressed that there were several medical complications which greatly increased the level of pain and suffering endured by the plaintiff. Evidence showed that the plaintiff could not walk for three months after the initial surgery, suffered a non-union of the bone and required a second surgery. The plaintiff claimed that he was unable to return to his prior employment as a machinist, but he mitigated his wage loss by enrolling in a computer training program. The defense stressed that the plaintiff did not suffer a loss of future earning capacity and was able to continue most normal activities.

The single arbitrator hearing the case indicated, in his findings of fact, that there was insufficient evidence to link the plaintiff's claimed sciatic nerve injury to the underlying femur fracture. The defendant offered \$500,000 to settle the case prior to arbitration.