

AUTO LIABILITY

Zarach Morgan and Deann Fuller v. Capp Custom Builders and Juan Luis Raya

Defense Verdict



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Plaintiff Counsel: Newlin Law (Richard Dellinger and Maxwell Karrick)

Four-day jury trial (Brevard County); Plaintiff requested multimillions in damages — the Jury returned a complete Defense Verdict

On June 2, 2023, Partners Benjamin Pahl, Esq. and Nora Bailey, Esq., obtained a complete defense verdict after a four-day jury trial in an auto liability matter styled *Zarach Morgan and Deann Fuller v. Capp Custom Builders and Juan Luis Raya*. The lawsuit arose out of a claim by the Plaintiffs, a motorcyclist and his passenger/girlfriend, wherein it was alleged that Defendant, Juan Luis Raya, acted negligently in operating a pick-up truck and enclosed trailer, owned by Capp Custom Builders, on US-1 in Brevard County, Florida. Mr. Raya denied liability and asserted that Plaintiff Morgan had acted negligently by failing to observe traffic, causing him to rear-end the back of Mr. Raya's trailer as he slowed to make a legal U-turn.

The Defendant driver, Mr. Raya, testified throughout litigation and at trial that he stopped and looked for at least five seconds before leaving the job site to turn into US-1, and never saw the Plaintiffs' motorcycle. The Plaintiffs, however, changed their story multiple times. Initially, Plaintiffs claimed that Mr. Raya had made a U-turn illegally in front of them, causing the crash. Prior to trial, they testified that Mr. Raya cut into their lane from right to left, or that he swung too wide when making the U-turn and "clipped" the motorcycle. Finally, at trial, Plaintiffs testified to a new theory of liability – namely, that they could not recall what Mr. Raya had done wrong, but that he "appeared" in the roadway like a "flash." Defense counsel, Mr. Pahl, was able to secure testimony from Plaintiff Morgan that he ultimately did not know what the Defendant had done wrong, and that he appeared in the road "like magic." Additionally, the jury heard testimony and saw evidence that Plaintiff Morgan did not have a motorcycle endorsement, despite testifying otherwise, and both Plaintiffs admitted they were not wearing helmets. The defense was also able to elicit testimony and introduce evidence that the Plaintiffs had been to at least three restaurant/bars prior to the accident, where Plaintiff Morgan – the driver – had been drinking. There was no evidence submitted to the jury of Mr. Morgan's impairment. Ms. Bailey elicited testimony from the passenger, Ms. Fuller, that she could not recall how many beers Mr. Morgan had drank, though she admitted it was at least two.

Following this testimony, the defense's medical expert, Dr. Ronald Tolchin (pain and rehabilitation specialist), walked the jury through extensive medical records from Mr. Morgan's PCP, which showed that he had reported drinking four beers daily years prior to and after the accident, had chronically elevated liver enzymes, and had been repeatedly told by his doctor to cut back.

Additionally, Defendants' biomechanical engineer, Charles Proctor, Ph.D., testified at trial that the motorcyclist would have had 14.86 seconds with clear view of the trailer and more than adequate time to stop or evade the crash, and rear-ended the Defendant due to a simple lack of inattentiveness, worsened by the fact he had no motorcycle endorsement and therefore lacked the proper training to respond to an impending hazard. Despite extensive argument and objection from Plaintiffs' counsel, Ms. Bailey was successful in securing the accident reconstruction animation, prepared by Dr. Proctor, to be shown as a demonstrative aid during trial.

Despite the clear liability issues, it was undisputed that the two motorcyclists were catastrophically injured, both requiring emergency trauma surgeries and sustaining mild traumatic brain injuries. Both underwent extensive rehabilitation stays and post-operative therapy, and Mr. Morgan required additional, subsequent surgeries to repair damage caused by the accident. Nonetheless, Dr. Tolchin opined that a right hip replacement, done more than three years after the accident, was unrelated to the crash given the severe degenerative osteoarthritis present on the day of the incident. Additionally, Ms. Bailey was successful in striking both Plaintiffs' future medical expense claims, as Plaintiffs failed to produce anyone to testify as to medical care they would need on an ongoing basis.


Over the course of four days, the jury listened to the Plaintiffs testify about the devastating impact of the incident and the injuries on their lives. In fact, the Plaintiffs called the defense CME physician (Dr. Tolchin) during their case to explain the gruesome nature of the injuries, which included pelvic, rib, and sternum fractures, extensive lacerations, and scrotal tears. Plaintiff's testimony that the Defendant driver appeared in the roadway like "magic" became the theme of the defense case, and it was argued by Mr. Pahl in closing that "more than magic" was necessary for Plaintiffs to meet their burden of proof. The jury was instructed on Florida's rear-end presumption at the request of the defense, over objection and after substantial briefing on the issue by Ms. Bailey, that Mr. Morgan rear-ending the Defendant was presumptive evidence of his own negligence.

Plaintiffs' counsel, Lead Trial Counsel for Dan Newlin, asked the jury in closing for an award of \$7.4M (approximately \$312,000 in total past medical expenses; the rest in pain and suffering). After deliberating for about two hours, the jury rendered a complete defense verdict in favor of Mr. Raya and Capp Custom Builders.

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