

SOUTHERN CALIFORNIA**L O S A N G E L E S C O .****MOTOR VEHICLE****Bus — Tractor-Trailer****While backing out of driveway, pickup hit by bus****VERDICT (P)** **\$11,907,000**
ACTUAL **\$5,953,500****CASE** Ramon S. Melendez v. Los Angeles County Metropolitan Transit Authority; Mashana Rochelle Starkey and Does 1 through 20, inclusive, No. VC 042307**COURT** Superior Court of Los Angeles County, Norwalk, CA**JUDGE** Colin Robert J. Higa
DATE 8/2/2005**PLAINTIFF ATTORNEY(S)** **Arash Homampour**, The Homampour Law Firm, PLC, Beverly Hills, CA
Philip K. Kaufler, Beverly Hills, CA**DEFENSE ATTORNEY(S)** **Paul O'Reilly**, O'Reilly & McDermott, Torrance, CA

FACTS & ALLEGATIONS On Sept. 14, 2003, plaintiff Ramon S. Melendez, a 61-year-old construction worker, was visiting a friend who lived on a narrow residential street in Southgate. Melendez claimed he was there to help his friend get his car started, which included replacing the alternator. During the several hours he was there, the men had had lunch and, later, an afternoon snack. They also had some beers. At about 6:30 p.m., Melendez claimed that he climbed into his pick-up truck, which was parked in the driveway, put on his seatbelt, and proceeded to back slowly out of the driveway. However, his vision was obstructed by vehicles parked adjacent to the driveway, and when his car was halfway into the street, a city bus came along and struck the rear passenger side, causing the bus to spin 270 degrees.

After the impact, the bus continued out of control, going another 60 feet and up onto the curb on the other side of the street before the operator was able to stop it using the emergency hand brake.

Claiming multiple injuries, Melendez sued the bus driver, Mashana Starkey, and Starkey's employer, the Los Angeles

Metropolitan Transit Authority, claiming vehicular negligence and respondeat superior.

Melendez's counsel called an accident reconstruction expert who, based on video footage taken by three interior security cameras located on the bus at the time of the incident, opined that the bus was traveling at between 35 and 40 mph in the 25 mph zone. The cameras time-stamped the images they captured in one-second intervals, and the plaintiff's expert based his opinion on markings on the street shown in the footage taken from outside the driver's window.

Other footage from inside the vehicle showed Starkey driving with only one hand (her right) holding the bottom of the steering wheel—including at the time of the incident—and at other times driving with no hands at all.

Melendez's counsel entered into evidence portions of the MTA operator rule book, which instructed its drivers to never exceed the posted speed limit and to always drive with two hands on the steering wheel. It also advised the drivers that buses are harder to control and stop than passenger cars, and provided a braking distance chart. That chart showed that it will take the bus 56 feet to stop at 20 mph, an additional 50 feet to stop at 30 mph, and an additional 100 feet to stop at 40 mph.

The MTA denied liability, maintaining that Starkey was traveling within the speed limit, and that it was Melendez who backed out at a high rate of speed, either causing or contributing to the accident.

The defense presented an investigating sheriff who, using skidmark analysis, determined that the bus was traveling 22.84 mph at the time of impact. (However, another MTA accident reconstruction expert put the bus's speed at 38.7 mph according to video camera analysis.)

Meanwhile, the accident reconstructionists determined the pickup back-out speed to be between 3 and 6 mph.

Starkey admitted that because of the longer breaking distance for buses, it was not safe for her to drive faster than 15 to 20 mph on this residential street, which is what she was doing, video analysis and expert opinions notwithstanding. As to specifics, Starkey pleaded memory problems, testifying that she hit her head on the windshield, resulting in a concussion and brain injury.

The MTA, for its part, argued that Melendez violated three separate vehicle code sections: driving while impaired, backing out into a public highway, and failing to yield the right of way.

The MTA called an eyewitness who, on direct examination, claimed that she saw the accident and that the pick-up sped out of the driveway and the bus was traveling slowly. On cross-examination, however, a tape-recorded statement of the witness was played for the jury, wherein she stated that she actually did not see the pick-up until the impact. During her deposition it was revealed that she based her speed perception on the fact that she heard screeching tires and was certain the sound had come from the pick-up, but Melendez's expert argued that the sound came from the bus.

The bus video footage also captured when the bus driver

S O U T H E R N C A L I F O R N I A

started steering in an attempt to avoid the collision. Based on this footage, Melendez's expert stated that the bus was 110 feet away when the driver first saw the pickup, based on an argument that it was the bus's front tires that laid down 38 feet of skids.

The defense expert argued that the bus driver was in fact just 83 feet away when she first saw Melendez, as evidenced by the skid marks, which he argued were left by the back tires. The defense expert claimed that the bus driver would not have been able to stop prior to impact, even if she was traveling within the speed limit, and that therefore she was not a substantial factor in causing the accident. He claimed that the braking occurred simultaneously with the collision.

At trial, Melendez's counsel showed the portion of the footage where the bus driver was knocked out of her seat on impact. He argued that the driver would not have been knocked out of her seat if her foot were on the brakes, and that therefore the skid marks had to be pre-impact.

The MTA also brought a human factors expert, who testified that Melendez must have been intoxicated because the "average person inches out" and that Melendez's failure to inch out was a signature for drunk driving.

The sheriff's office conducted a blood alcohol test on Melendez while he was unconscious after the accident, which showed a .17 blood alcohol level. The MTA had a forensic toxicologist who testified that Melendez had a high blood alcohol content.

Melendez's counsel countered that Melendez's blood alcohol content was about .11 at the time of the accident, when he had just eaten, and that two hours later, when the alcohol had gotten into the blood stream after being delayed by food in the stomach, the BAC level rose to .17.

INJURIES/DAMAGES *closed head injury; fracture, cervical; memory loss; permanent partial paralysis; traumatic brain injury*

Melendez was knocked unconscious in the accident and was taken to the hospital, where he was diagnosed with a brain injury and a fracture of the cervical spine at C5-6. Melendez's orthopedist testified that a CT scan taken on the day of the accident showed a large disc space between C5-6, which, the plaintiff claimed, confirmed that the disc was torn straight through.

Melendez spent approximately two months in the hospital before being transferred to another hospital for two months of convalescence and rehabilitation. Melendez claimed that the spinal injury left him tetraplegic, with limited use of his upper and lower extremities, that have left him confined to a wheelchair, although with assistance he can get up and take a few steps at a time. He claimed that the brain injury caused short-term memory loss.

Melendez claimed medical specials of \$807,000 and also requested an award for future medical expenses and past and future general damages.

The MTA claimed that the CT scan taken on the day of the accident was normal. Therefore, the defense expert testified

that the plaintiff must have suffered some sort of injury at the hospital. He admitted, however, that a fall from his bed or anything major would have been documented.

Melendez's expert claimed that while the CT scan could have been read as normal, Melendez had degenerative changes with narrow disc spacing throughout his cervical discs and a large osteophyte spurring at C5-6, and that therefore there should have been narrow disc spacing at that level; the large spacing could only be attributable to the disc being torn straight through.

RESULT The jury reached a plaintiff's verdict on liability, but found Melendez 50% contributorily negligent. The jury awarded Melendez \$11,907,000, for a net award of \$5,953,500.

R.S. MELENDEZ \$807,000 past medical cost
\$5,000,000 future medical cost
\$1,000,000 past pain and suffering
\$5,100,000 future pain and suffering
\$11,907,000

DEMAND \$1.5 million
OFFER \$750,000

TRIAL DETAILS Trial Length: 11 days
Trial Deliberations: 2 days
Jury Vote: 11-1 on liability and on damages

PLAINTIFF EXPERT(S) **Darell O. Clardy**, toxicology, Brea, CA (not called)
Peter R. Francis, Ph.D., biomechanical, Poway, CA
Lawrence E. Miller, M.D., physical rehabilitation, Beverly Hills, CA
Joyce E. Pickersgill, Ph.D., economics, Santa Ana, CA
Marcel O. Ponton, M.D., neuropsychology, Pasadena, CA
Jan Roughan, R.N., life care planning, Calabasas, CA
Gregory Stephens, accident reconstruction, Gig Harbor, WA
Jacob E Tauber, M.D., orthopedic surgery, Beverly Hills, CA

DEFENSE EXPERT(S) **Edwin C. Amos, M.D.**, neurology, Santa Monica, CA
Gerry Aster, R.N., M.S., C.R.C., life care planning, South Pasadena, CA
Arthur Kreitenberg, M.D., F.A.C.S., orthopedics, Beverly Hills, CA
Peter Orner, M.D., Ph.D., biomechanics of injury, San Diego, CA

Timothy J. Reust, accident reconstruction,
Newhall, CA
Vina Spiehler, Ph.D., toxicology,
Newport Beach, CA
Anthony C. Stein, Ph.D.,
ergonomics/human factors, La Canada, CA
Theodore Vavoulis, M.S., economics,
Pasadena, CA

EDITOR'S NOTE Defense counsel did not respond to a faxed draft of this report or a phone call.

—Amy Bourne

MEDICAL MALPRACTICE

Childbirth — Post-Operative Care

OB-GYN blamed for multiple interloop abscesses

VERDICT	Defense
CASE	Guadalupe Ortega and Salvador Ortega v. Cedars Sinai Medical Group, and Norman Schulman, M.D., No. BC310673
COURT	Superior Court of Los Angeles County, Central, CA
JUDGE	Victor H. Person
DATE	8/2/2005
PLAINTIFF ATTORNEY(S)	Steven J. Freeburg , Freeburg, Judy & Nettles, Pasadena, CA
DEFENSE ATTORNEY(S)	Kristin L. Kelso , Reback McAndrews & Kjar, Manhattan Beach, CA Robert C. Reback , Reback, Hulbert, McAndrews & Kjar, Manhattan Beach, CA

FACTS & ALLEGATIONS Plaintiff Guadalupe Ortega underwent a cesarean section on Feb. 11, 2003 at Cedars Sinai Medical Center. Before the procedure she was given prophylactic antibiotics (Ampicillin). She remained afebrile throughout her admission and was discharged from the hospital on Feb. 16.

On Feb. 18, Ortega went to defendant Norman Schulman, M.D, of Cedars Sinai Medical Group, complaining of abdominal pain and fever. Schulman examined her, ordered labs, obtained a cervical culture and prescribed oral antibiotics for possible endometritis (an infection that sometimes occurs following a C-section).

When Ortega returned for a follow-up on Feb. 20, Schulman found her to be improving. He advised her that the cervical culture had been negative thus far.

On Feb. 27, Ortega went to the emergency room at Riverside Community Hospital after a seroma that had developed at her incision site spontaneously opened and drained. She was examined and found to be stable, nontoxic and afebrile. The ER physician prescribed oral antibiotics and also administered antibiotics intramuscularly. Ortega was discharged and was advised to follow up with her treating physician the next day.

On Feb. 26, Ortega saw Schulman. Finding her condition to be improving, he instructed her on how to care for the seroma.

On March 5, Ortega returned to Cedars Sinai Medical Group for a follow-up appointment and was seen by another physician. Finding a questionable mass in her uterus, the physician performed an ultrasound, which showed hemorrhagic cysts, so he ordered a CT scan.

On March 10, the day before the CT scan was to take place, Ortega went to the ER at Cedars Sinai Medical Center complaining of abdominal pain and fever. She was admitted and a CT scan performed later that day showed multiple interloop abscesses.

On March 11, Ortega underwent a laparotomy, involving lysis of adhesions and drainage of the abdominal and pelvic abscesses.

Ortega sued Schulman and his practice group, alleging that their negligent post-operative care caused the complications she experienced after her C-section. An OB-GYN who testified as an expert for the plaintiffs contended that she should have been hospitalized on Feb. 20 and given antibiotics intravenously. They argued that had this been done, the subsequent laparotomy, scarring and pain she suffered would have been avoided.

Schulman and Cedars Sinai Medical Group denied any negligence and argued that Ortega's alleged injuries were not caused by their treatment. They claimed that their treatment of endometritis through monitoring the patient and prescribing oral antibiotics was within the standard of care.

INJURIES/DAMAGES *abdomen; back; laparotomy*

Ortega had to undergo a laparotomy that involved extensive lysis of adhesions and drainage of multiple abdominal and pelvic abscesses. She also claimed to suffer from abdominal, back, and vaginal pain, as well as scarring from the laparotomy. She alleged that her injuries caused her to miss 19 months of work.

Her husband, Salvador, claimed loss of consortium.

Ortega sought \$123,000 for past medical expenses, \$136,000 for past lost earnings, and a total of \$708,000 for pain and suffering and loss of consortium, for a total claim of \$967,000.

RESULT The jury found no negligence on the part of the defendants.

DEMAND	\$149,999 (by each plaintiff) pursuant to C.C.P. Section 998
OFFER	None
INSURER(S)	The Doctors Co. both defendants