

SAN FRANCISCO COUNTY

MOTOR VEHICLE

Rear-ender — Taxi / Livery Vehicle

Plaintiff claimed rear-end crash caused traumatic brain injury

VERDICT \$1,373,866
ACTUAL \$1,504,171

CASE Marie Busalacchi v. Fermino Rodrigues, Yellow Cab AAA Co., Jeffrey P. Browning, Param Dhillon, Acme Yellow, LLC, No. CGC-11-514310

COURT Superior Court of San Francisco County, San Francisco
JUDGE Anne-Christine Massullo
DATE 12/10/2013

PLAINTIFF ATTORNEY(S) Jeffrey R. Smith, Abramson Smith Waldsmith, LLP, San Francisco, CA
 R.J. Waldsmith, Abramson Smith Waldsmith, LLP, San Francisco, CA

DEFENSE ATTORNEY(S) Richard M. Kelly, Kelly Litigation Group, Redwood City, CA

FACTS & ALLEGATIONS On Sept. 29, 2010, plaintiff Marie Busalacchi, 80, a retiree, was driving north on the Embarcadero Street in San Francisco, on her way to a weekly card game with friends. At approximately 11:50 a.m., when she was just north of the intersection with Folsom Street, Busalacchi was rear-ended by a taxicab operated by Fermino Rodrigues. The low-speed impact resulted in minor damage to Busalacchi's vehicle, but it sent Busalacchi's head into the steering wheel, causing a subdural hematoma. She claimed a traumatic brain injury as a result of the accident.

Busalacchi sued the operator and lessee of the taxicab, Rodrigues; the taxicab company, Acme Yellow, LLC, which was doing business as Yellow Cab AAA Co.; and the company's owners, Jeffrey Browning and Param Dhillon. Busalacchi claimed Rodrigues was negligent in the operation of his vehicle. She also alleged that since Rodrigues was an employee of Browning and Dhillon, acting within the course and scope of his employment at the time of the collision, Acme Yellow, Browning and Dhillon were vicariously liable for Rodrigues' actions.

Acme Yellow, Browning and Dhillon argued that Rodrigues was an independent contractor, and not an employee.

INJURIES/DAMAGES *craniotomy; subdural hematoma; traumatic brain injury*

Busalacchi was taken by ambulance to an emergency room, where she was diagnosed with a subdural hematoma. She

subsequently underwent an emergency craniotomy, but she suffered a traumatic brain injury. Busalacchi initially struggled during her recovery, including an episode where a Code Blue had to be called, but she ultimately recovered relatively well over time.

Busalacchi claimed that due to suffering a traumatic brain injury, she could no longer live independently in her San Francisco apartment, as she did prior to the accident. She now lives in a retirement facility in San Jose, requiring minor assistance with everyday activities.

Plaintiff's counsel asked the jury to award Busalacchi \$299,511.52 in past medical costs and damages for her pain and suffering.

Counsel for Acme Yellow, Browning and Dhillon argued that the future costs for the retirement facility and in-home care were not related to the injury Busalacchi sustained from the subject accident.

RESULT In a bifurcated bench trial on the issue of alter ego, Judge Anne-Christine Massullo found that Browning and Dhillon were alter egos of Acme Yellow.

In the jury trial, the jury found that Rodrigues was negligent in causing the collision and that Rodrigues was an employee of Acme Yellow at the time of the accident, acting within the course and scope of his employment. Thus, the jury determined that Busalacchi's damages totaled \$1,373,866.

MARIE BUSALACCHI \$773,866 economic damages
 \$600,000 non-economic damages
 \$1,373,866

DEMAND OFFER \$99,999 (C.C.P. § 998) to each defendant
 \$150,000 from Acme Yellow, Browning and Dhillon

TRIAL DETAILS Trial Length: 5 days
 Trial Deliberations: 4 hours

PLAINTIFF EXPERT(S) Nancy E. Fraser, R.N., nursing, Los Angeles, CA
 Maureen D. Miner, M.D., physical medicine, Gilroy, CA

DEFENSE EXPERT(S) None reported

POST-TRIAL Massullo awarded costs, prejudgment interest and attorney fees, resulting in a final judgment in the amount of \$1,504,170.83.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Dan Israeli