

# TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

JULY 31, 2006

Vol. 9, No. 31

**SETTLEMENT RESULT: \$1,000,000**

## VEHICLE NEGLIGENCE

31 TD 9th 28

### **SETTLEMENT—Driver injured in nighttime collision with overturned big rig on highway**

#### **VEHICLE NEGLIGENCE**

Motor Vehicle v. Motor Vehicle/Truck/Impaired Driver:  
Other/Parked/Stalled/Stopped Vehicle/Rollover/  
Unlit Vehicle

VICARIOUS LIABILITY

#### **No COURT/UNFILED SETTLEMENT**

*Neff v. Singh*. Settlement date: 5/14/2002.

**SETTLEMENT RESULT: \$1,000,000**

#### **COUNSEL**

**Plaintiff: Scott J. Corwin, Law Offices of Scott J.  
Corwin, Los Angeles.**

Defendant: None.

#### **FACTS/CONTENTIONS**

According to plaintiff: On November 9, 2001, at approximately 1:30 a.m., plaintiff, a 44-year-old school bus driver, was traveling westbound on I-80 in the number two lane about 30 miles east of Elko, Nevada. She was driving her 1994 Suzuki Swift. Defendant was driving a big rig tractor trailer combination westbound on I-80 several miles ahead of plaintiff. Plaintiff alleged defendant had been driving far more hours than permitted by law and apparently fell asleep. His vehicle drifted off the motorway and onto an embankment. Defendant apparently woke up and over-corrected to the left. He lost control of his rig, which flipped onto its right side across the westbound lanes and crashed into the center median guardrail, which penetrated the cab, killing defendant.

The collision destroyed the engine. All of the rig lights were inoperable and the rig was on its side with the underbelly facing oncoming traffic. It was a dark and "moonless" night, with no highway lighting. According to Nevada Highway Patrol, several minutes after defendant's rig flipped and crashed, plaintiff's vehicle, traveling at least 40 mph after attempting to brake, and putting down at least 75 feet of skidmarks, collided with the underbelly of the overturned rig.

Plaintiff had been traveling at 75 mph immediately prior to the collision, and she was unable to visualize the hazard until she was less than 100 feet away from the overturned rig. Plaintiff believed she was wearing her seat belt, but the Nevada Highway Patrol determined that plaintiff was not wearing her seat belt at the time of the collision. Plaintiff's face smashed through her front windshield.

Plaintiff was transported by helicopter to the Northeastern Nevada Medical Center for emergency medical attention. and then, the same day, she was flown to the University of Utah Medical center for emergency eye surgery. Plaintiff was hospitalized for a total of four days and then released.

Plaintiff alleged that defendant was negligent in the operation of his tractor trailer combination and that all of her claimed injuries were a direct result of the accident. Plaintiff further alleged defendant and his employer, defendant trucking company, were grossly negligent for violation of multiple state and federal laws relative to "compressing time" while driving (forging the driver's log book because the driver was driving more than the permitted number of hours per day).

Plaintiff further alleged that while her sight in her right eye recovered well following surgery, her best-corrected vision would be less than 20/40 in her right eye, meaning she could no longer work in her pre-accident capacity as a part-time commercial school bus driver.

Defendant initially disputed liability, contending that plaintiff should have been able to visualize the hazard and safely stop her vehicle. Defendant also raised the issue of

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## 31 TD 9th 28 (continued)

comparative negligence and that the plaintiff's failure to wear a seat belt was the direct cause of the vast majority of her facial and eye injuries. However, defendant ultimately conceded that, under Nevada Law, failure to wear a seat belt was inadmissible to prove comparative negligence.

Defendant disputed the full nature and extent of plaintiff's injuries as well as the need for the claimed future injuries. Defendant further disputed plaintiff's claim that she would be disabled in the future, contending she would be able to return to work in her pre-accident capacity, therefore also disputing the amount of her claimed future loss of earnings.

### CLAIMED INJURIES

According to plaintiff: Plaintiff sustained a right knee impaction fracture and right rib fracture requiring no treatment, a corneal laceration to her right eye requiring emergency surgery, left carpal tunnel syndrome, left brachial plexus injury, left rotator cuff partial tear, left cubital tunnel syndrome requiring physical therapy and possible future surgeries for the left shoulder, elbow, and wrist. Plaintiff was also left with several facial scars requiring one plastic surgery revision with several additional plastic surgeries possibly in the future; plaintiff was also recommended to undergo corneal incision and cataract surgery for her right eye, which were scheduled but not yet completed at the time of the reported settlement.

### CLAIMED DAMAGES

According to plaintiff: \$88,574 past medical; \$277,870 future medical; \$8,340 lost income; \$191,100 future income.

### SETTLEMENT DISCUSSIONS

According to plaintiff: Initially, defendant indicated that it felt the case had a value of between \$500,000 and \$750,000. On April 29, 2002, plaintiff made a settlement demand for defendant's \$1 million policy limits and gave defendant 15 days to tender its limits. On the last day of the demand, May 14, 2002, defendant tendered its \$1 million policy limits, resulting in the settlement. Defendant trucking company had no significant assets. No lawsuit was filed.

### EXPERTS

Plaintiff: Maureen K. Lundergan, M.D., ophthalmologist, Salt Lake City, UT (801) 281-2020. Karl Hapcic, M.D., plastic surgeon, Bozeman, MT (406) 582-1881. Douglas J. Seip, M.D., orthopedic surgeon, Elko, NV (775) 777-3535.

Defendant: Not reported.