

# TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

OCTOBER 16, 2006

Vol. 9, No. 42

**SETTLEMENT RESULT: \$850,000**

## VEHICLE NEGLIGENCE

42 TD 9th 32

### **SETTLEMENT—Eight-year-old boy struck and killed by vehicle while crossing busy thoroughfare**

#### **VEHICLE NEGLIGENCE**

Motor Vehicle v. Pedestrian/Inattention/Phantom Vehicle

VICARIOUS LIABILITY

WRONGFUL DEATH

Minor

#### **LOS ANGELES COUNTY SUPERIOR COURT**

*Confidential v. Confidential*, No. NC041311, Long Beach.  
Elizabeth Allen White. Settlement date: 7/28/2006.

#### **SETTLEMENT RESULT: \$850,000**

The mediator was the Hon. Enrique Romero (Ret.).

#### **COUNSEL**

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

Defendant: Confidential.

#### **FACTS/CONTENTIONS**

According to plaintiff: On March 25, 2003, plaintiffs' decedent, their eight-year-old son, was playing along the north sidewalk of 25th Street in San Pedro with his older brother and two friends. Decedent and his companions saw a puppy across the street and crossed the street to play with it. After a brief interaction with the puppy, decedent ran back across the street, outside of the crosswalk, and across four lanes of east and west traffic. Decedent made it across both eastbound lanes and the number one westbound lane and was just a few feet from the north curb when he was struck and killed by defendant, who was driving a 2000 Ford Ranger, traveling westbound on 25th Street. Defendant was an employee of a Fortune 500 company, in the course

and scope of his employment, and, in violation of company policy, had his five-year-old son in his vehicle, sitting in the front seat with him. Defendant was subsequently fired from his employment with the company.

Plaintiffs alleged that defendant was negligent in the operation of his motor vehicle and was distracted by his five-year-old son sitting in the front seat, in violation of defendant's employer's policy. Plaintiffs alleged defendant was traveling in excess of 45 mph in a 25 mph zone.

Defendant disputed liability. Defendant contended plaintiffs' decedent was negligent and darted out into the street. Defendant further contended plaintiffs were comparatively negligent for permitting their child to play unsupervised on a busy four-lane street.

Defendant's employer further disputed that defendant was in the course and scope of his employment. Defendant further contended that decedent was struck by a "phantom" vehicle traveling eastbound on 25th Street and was thrown across the street and into the westbound lanes of travel before being struck by defendant's vehicle. Defendant contended decedent was already dead from the force of the impact with the phantom vehicle. Defendant's support for the phantom vehicle claim was a lone witness who claimed to have seen the phantom vehicle. As a result of this claim, the LAPD embarked on a lengthy investigation, a Los Angeles City Councilwoman took to the airwaves to attempt to locate the phantom vehicle, and, after three months, the LAPD subjected the witness to a lie detector test, as the LAPD did not believe the witness. After the test the LAPD ceased looking for the phantom vehicle.

#### **CLAIMED INJURIES**

According to plaintiff: Death. Loss of comfort and society of plaintiffs' eight-year-old son. Decedent's older brother, who observed the accident, had a claim for emotional distress.

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**42 TD 9th 32 (continued)**

**CLAIMED DAMAGES**

Not reported.

**SETTLEMENT DISCUSSIONS**

According to plaintiff: Plaintiffs' demand at mediation was \$2 million. Defendant initially offered \$250,000 and the case ultimately resolved at the mediation for the reported sum of \$850,000, less than one month prior to the date the case was set for trial.

**EXPERTS**

None.

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