

Summary of verdicts:

Vincent v. Harris Farms Inc., Harris Ranch Beef Company, FedEx Ground Package System Inc. et.al., 06/09/06

Contra Costa Superior Court, Case # C 04-02155
Dept. 33, Honorable Steven K. Austin Presiding

ATTORNEY: Plaintiff - Patrick W. Emery, Brendan M. Kunkle (Abbey, Weitzenberg, Warren & Emery, Santa Rosa).

ATTORNEY: Defendant - Kevin J. Gray (Harrington, Foxx, Dubrow & Canter, LLP, San Francisco) for Harris Farms Inc., Harris Ranch Beef Company, Dustin Hansen; Michael G. Lowe (Hanna, Brophy, MacLean, McAleer & Jensen, LLP, San Francisco) for FedEx Ground Package System Inc., Mario Sanchez, Richerland Martins Holl.

FACTS: On the afternoon of Dec. 26, 2003, the plaintiffs were traveling westbound on Highway 12 (Jameson Canyon Road) in Solano County, just east of the Napa County line. The Vincent family of three were seriously injured and Corey Vincent suffered numerous painful surgeries.

The plaintiffs contended that both the FedEx and Harris Farms vehicles were following the vehicles in front of them too closely and that the Harris Farms vehicle impacted the right rear of the FedEx vehicle. The FedEx truck collided with the Toyota Tacoma driven by Keasling and continued traveling in the westbound lane until it collided head-on with the Vincent vehicle. The combination of that impact with the "turn away" of the FedEx driver caused the FedEx van to cross the center line of the roadway and strike oncoming vehicles.

Defendant FedEx contended that the Harris Farms driver caused the accident by striking the FedEx vehicle and propelling it into oncoming traffic.

Defendant Harris Farms contended that its vehicle braked and jackknifed in order to avoid the collision with the FedEx truck and that there was no contact between the Harris Farms truck and the FedEx truck. According to Harris Farms' theory, the FedEx driver was solely responsible for the collision because he swerved into oncoming traffic to avoid a collision with the stopping vehicle in front of him.

SETTLEMENT DISCUSSIONS: Prior to trial, the plaintiffs offered to settle for a combined amount of \$850,000. Defendants collectively offered \$750,000.

After a three week trial, the Jury found in favor of plaintiffs. \$3,683,173 to Corey Vincent: \$3,269,156 (\$269,156 economic; \$3 million non-economic).

Gerald Vincent: \$295,150 (\$10,150 economic; \$285,000 non-economic).

Hayden Busch: \$118,867 (\$18,867 economic; \$100,000 non-economic).

Fontaine, Plaintiff v. Kivett, M.D., Defendant. 09/06

Sonoma County Superior Court, Case #SCV-235864

Department 21, Honorable Allan D. Hardcastle Presiding

ATTORNEY: Plaintiff - Douglas C. Fladseth (Law Offices of Douglas C. Fladseth, Santa Rosa)

ATTORNEY: Defendant - John Dodd (Law Offices of Steven Hillyard, San Francisco)

FACTS: Medical Malpractice case against a plastic surgeon who performed a failed breast reduction surgery. On August 29, 2003, defendant Dr. Kivett performed bilateral (i.e. both breasts) breast reduction surgery and axillary (“under arm area”) liposuction on plaintiff Kristina Fontaine. This was a “reconstructive” procedure rather than a “cosmetic” procedure. Mrs. Fontaine, age 25 at the time, was morbidly obese at 5'6 and 330 pounds. She had consulted with defendant to consider the possibility of breast reduction surgery. Mrs. Fontaine had been having neck and back pain which she thought might be alleviated. Defendant recommended the procedure and surgically removed the vast majority of plaintiff’s breasts in a prolonged eight hour procedure. Subsequently, both nipples “died.” Kristina lost further substantial breast tissue through necrosis and/or infection. Plaintiff alleged Defendant William Kivett, M.D. performed the wrong procedure on plaintiff Kristina Fontaine. Dr. Kivett performed the "pedicle graft" procedure which was too long and too risky. The standard of care required that Dr. Kivett perform a "free nipple graft" procedure. Further, plaintiff claimed lack of timely informed consent and loss of consortium. Defendant William Kivett, M.D. contended that his care and treatment of plaintiff Kristina Fontaine was all within the standard of care, was reasonable and that she was fully informed regarding the risks of the procedure.

SETTLEMENT DISCUSSIONS: Plaintiff demanded \$50,000 prior to trial pursuant to CCP Section 998. Defendant did not make an offer.

After a two week Jury Trial, Jury awarded plaintiff \$250,000.

Emily McAuliffe, Plaintiff, v. Chi Hay-Cheung, Defendant. 10/18/06

Sonoma County Superior Court Case# 234726
Dept. 19, Honorable Elaine T. Rushing, Presiding

Plaintiff Attorney(s): Charles D. Cochran, Esq. and Rachael Erickson, Esq., Hinton, Cochran, Borba & Beckwith, LLP. Santa Rosa (707)544-9006

Defendant Attorney(s): Paul A. Silver, Esq., Philip M. Andersen & Associates. San Francisco (415)267-3600. Ins. Carrier: State Farm Insurance Co.

Plaintiff, a professional dance instructor, age 53, was injured when Defendant struck plaintiff's vehicle resulting in under \$900.00 of property damage. Plaintiff sustained neck pain and some permanent loss of range of motion. Two dance instructors that covered classes for the plaintiff demonstrated for the jury, and the court, the limitations of the plaintiff and the abilities needed in plaintiff's occupation.

Defendant presented Bio-medical testimony and medical testimony and suggested no causation or eight weeks discomfort.

Defendant suggested zero damage or no more than \$10,000. Plaintiff requested six figures.

After 4-day trial, Jury awarded Plaintiff \$81,926.00.

Crawford, Plaintiff , v. Ahmad, Et Al., Defendants. 10/24/06

Sacramento County Superior Court Case No:04AS03240

Department 39, Honorable Gordon D. Schaber Presiding

Motor vehicle versus pedestrian accident.

ATTORNEY: Plaintiff - Russell Fields (Law Offices of Russell Fields, Sacramento)

ATTORNEY: Defendant - Michael G. Miller (Perry, Johnson, Anderson, Miller and Moskowitz LLP, Santa Rosa) Insurance Carrier: State Farm Insurance

FACTS: On August 25, 2003, Plaintiff was walking across Stockton Blvd. in Sacramento, California, not using the cross walk. She was subsequently cited violating California Vehicle Code section 21955, crossing a roadway at a place except in a crosswalk. Plaintiff alleged she was struck by Defendants' vehicle, driven by Samina Yasmeen, and suffered injury. She claimed \$27,882.50 in special damages arising from medical treatment. The Defendant, Samina Yasmeen, stopped to help the injured pedestrian and testified that she did not hit her. Plaintiff contended Defendant Yasmeen Ahmad struck Plaintiff with her automobile while Plaintiff was walking across the street. Plaintiff claimed more than \$100,000 in damages.

RESULT: After a 4-day Jury trial, Defense verdict as on causation.

Complete text of verdicts:

Vincent v. Harris Farms Inc., Harris Ranch Beef Company, FedEx Ground Package System Inc. et.al., 06/09/06

RESULT DATE: June 9, 2006

Corey Vincent, Gerald Vincent and Hayden Busch, a minor, by and through his Guardian ad Litem, Corey Vincent v. Harris Farms Inc., Harris Ranch Beef Company, Dustin Hansen, FedEx Ground Package System Inc., Mario Sanchez, Richerland Martins Holl (C 04-02155)

Hon. Steven K. Austin

Contra Costa Superior Dept. 33

TOPIC: Personal Injury

SUB TOPIC: Auto v. Truck

FURTHER DESCRIPTION: Rear-End/Multiple Vehicle Collision

VERDICT: \$3,683,173

ATTORNEY:

Plaintiff - Patrick W. Emery, Brendan M. Kunkle (Abbey, Weitzenberg, Warren & Emery, Santa Rosa).

Defendant - Kevin J. Gray (Harrington, Foxx, Dubrow & Canter, LLP, San Francisco) for Harris Farms Inc., Harris Ranch Beef Company, Dustin Hansen; Michael G. Lowe (Hanna, Brophy, MacLean, McAleer & Jensen, LLP, San Francisco) for FedEx Ground Package System Inc., Mario Sanchez, Richerland Martins Holl.

TECHNICAL:

Plaintiff - Toby Gloekler, accident reconstruction, Concord.

Defendant - Robert Lindskog, accident reconstruction, Santa Clara; Steven Rickard, accident reconstruction, Harrisburg, Pa..

FACTS: On the afternoon of Dec. 26, 2003, the plaintiffs were traveling westbound on Highway 12 (Jameson Canyon Road) in Solano County, just east of the Napa County line. At that location, Highway 12 is a two-lane road, divided by solid double yellow lines. Plaintiff Gerald Vincent was driving a 1999 Dodge Durango behind a Toyota Tacoma driven by Timothy Keasling. Approaching in the eastbound lane was a FedEx Ground Package System Inc., P1000 delivery van, driven by Mario Sanchez and owned by Richerland Martins Holl. Following behind the FedEx truck was a Harris Farms Inc., a tractor-trailer, driven by Harris Ranch Beef Company employee Dustin Hansen. Plaintiff Corey Vincent was a front seat passenger in the Dodge Durango driven by her husband and plaintiff Hayden Busch, the then 9-year-old son of Corey Vincent, was seated directly behind Gerald Vincent.

All four vehicles were traveling at approximately 55 mph when traffic in the eastbound lane began to slow. Hansen in the Harris Farms truck momentarily took his attention off the roadway in front of him and, when he looked forward,

he observed the FedEx truck slowing, but did not have enough time to avoid striking that vehicle. He slammed on his brakes, producing a 124-foot locked wheel skid. The FedEx delivery driver had also commenced a quick stopping maneuver and, according to the Harris Farms driver, had pointed his van toward the oncoming lane in an effort to avoid the car stopped ahead of him. The left front of the Harris Farms truck collided with the right rear of the FedEx truck, which impact allegedly pushed the FedEx truck into the westbound lane. The FedEx truck collided with the Toyota Tacoma driven by Keasling and continued traveling in the westbound lane until it collided head-on with the Vincent vehicle. All plaintiffs were wearing lap belts and shoulder harnesses. Both front airbags deployed and the SUV sustained major front end, engine compartment, windshield, dashboard and cab damage.

PLAINTIFFS' CONTENTIONS: The plaintiffs contended that both the FedEx and Harris Farms vehicles were following the vehicles in front of them too closely and that the Harris Farms vehicle impacted the right rear of the FedEx vehicle. The combination of that impact with the "turn away" of the FedEx driver caused the FedEx van to cross the center line of the roadway and strike oncoming vehicles.

DEFENDANTS' CONTENTIONS: Defendant FedEx contended that the Harris Farms driver caused the accident by striking the FedEx vehicle and propelling it into oncoming traffic.

Defendant Harris Farms contended that its vehicle braked and jackknifed in order to avoid the collision with the FedEx truck and that there was no contact between the Harris Farms truck and the FedEx truck. According to Harris Farms' theory, the FedEx driver was solely responsible for the collision because he swerved into oncoming traffic to avoid a collision with the stopping vehicle in front of him.

INJURIES: Corey Vincent underwent emergency laparotomy involving multiple small bowel resections, a small bowel laceration repair and partial omentectomy, as well as repair of facial lacerations to her forehead and left eyelid. She suffered cerebral concussion and serious dental injuries. She continues to suffer daily diarrhea related to her bowel surgery, left elbow pain, lower back pain, residual significant abdominal scarring, and post traumatic stress disorder, for which she continues to receive counseling. She additionally suffered emotional distress arising from her contemporaneous observation of her husband and son's injuries.

Gerald Vincent suffered soft tissue injuries to his neck, back, shoulder and knee. His physical injuries resolved, but he continues to suffer stress related to the accident. He additionally suffered emotional distress arising from his observation of his wife's injuries.

Hayden Busch suffered a fracture to his forearm which was resolved. He also suffered emotional distress arising from the observation of his mother's injuries.

SPECIALS IN EVIDENCE: MEDS: \$177,22 (Corey Vincent); \$4,197 (Gerald Vincent); \$18,867 (Hayden Busch); Future MEDS: \$12,900 (Corey Vincent);

LOE: \$16,933 (Corey Vincent); \$5,933 (Gerald Vincent); Future LOE: \$5,742 (Corey Vincent).

JURY TRIAL: Length, three weeks; Poll, 12-0 (liability), 10-2 (allocation of fault), 10-2 (damages); Deliberation, 3.5 hours

SETTLEMENT DISCUSSIONS: Prior to trial, the plaintiffs offered to settle for a combined amount of \$850,000.

The defendants disputed the apportionment of liability, but offered a total of \$750,000 to plaintiffs.

The plaintiffs each received judgment in excess of their C.C.P. Section 998 offers served on Harris Farms on May 8, 2006 in the following sums: \$999,999 to Corey Vincent; \$74,999 to Gerald Vincent; \$74,999 to Hayden Busch.

Defendant Harris Farms had responded with C.C.P. section 998 offers, dated May 8, 2006 of \$525,001 for Corey Vincent; \$25,001 for Gerald Vincent; and \$35,001 for Hayden Busch.

RESULT: Corey Vincent: \$3,269,156 (\$269,156 economic; \$3 million non-economic).

Gerald Vincent: \$295,150 (\$10,150 economic; \$285,000 non-economic).

Hayden Busch: \$118,867 (\$18,867 economic; \$100,000 non-economic).

OTHER INFORMATION: COMPARATIVE LIABILITY: The jury found that Harris Farms Inc., Harris Ranch Beef Company and Dustin Hansen were 80 percent liable and FedEx Ground Package System Inc., Mario Sanchez and Richerland Martins Holl were 20 percent liable for plaintiffs' injuries. The jury also found that Mario Sanchez was an agent of FedEx Ground Package System Inc. at the time of the accident.

MEDIATION: At a mediation in September 2005, the plaintiffs demanded \$2.2 million and defendants offered a combined total of \$100,000. The defendants were unable to agree upon an apportionment of liability.

EXPERT TESTIMONY: Toby Gloekler testified that defendant Hansen (the driver of the Harris Farms truck-trailer) caused the accident by following a FedEx delivery van too closely at an unsafe speed and striking it on the left rear corner.

Steven Rickard studied skid marks at the accident scene and testified there was no evidence that the Harris Farms tractor-trailer hit the FedEx truck. He postulated that FedEx driver Sanchez was entirely at fault by reason of his following the vehicle ahead too closely, causing him to "turn away" to his left to avoid traffic stopping ahead of him, thereby bringing him into the path of oncoming traffic.

Robert Lindskog testified that the Harris Farms tractor-trailer caused the accident by rear-ending the FedEx vehicle, propelling it into oncoming traffic.

Kristina Fontaine, David Fontaine v. William Kivett, M.D. (SCV-235864)

Honorable Allan D. Hardcastle
Sonoma County Superior Court Department 21

TOPIC: Medical Malpractice
SUB TOPIC: Plastic Surgery
FURTHER DESCRIPTION: Failed breast reduction

VERDICT: \$250,000

ATTORNEY: Plaintiff - Douglas C. Fladseth (Law Offices of Douglas C. Fladseth, Santa Rosa)
Defendant - John Dodd (Law Offices of Steven Hillyard, San Francisco)

TECHNICAL:

Plaintiff - John Shamoun, M.D., plastic surgery, Newport Beach, CA
Defendant - George Commons, M.D., plastic surgery, Palo Alto, CA

FACTS: On August 29, 2003, defendant Dr. Kivett performed bilateral (i.e. both breasts) breast reduction surgery and axillary ("under arm area") liposuction on plaintiff Kristina Fontaine. This was a "reconstructive" procedure rather than a "cosmetic" procedure. Mrs. Fontaine, age 25 at the time, was morbidly obese at 5'6 and 330 pounds. She had consulted with defendant to consider the possibility of breast reduction surgery. Mrs. Fontaine had been having neck and back pain which she thought might be alleviated. Defendant recommended the procedure and surgically removed the vast majority of plaintiff's breasts in a prolonged eight hour procedure. Subsequently, both nipples "died." Kristina lost further substantial breast tissue through necrosis and/or infection.

PLAINTIFF'S CONTENTIONS: Defendant William Kivett, M.D. performed the wrong procedure on plaintiff Kristina Fontaine. Dr. Kivett performed the "pedicle graft" procedure which was too long and too risky. The standard of care required that Dr. Kivett perform a "free nipple graft" procedure. Further, plaintiff claimed lack of timely informed consent and loss of consortium.

DEFENDANT'S CONTENTIONS: Defendant William Kivett, M.D. contended that his care and treatment of plaintiff Kristina Fontaine was all within the standard of care, was reasonable and that she was fully informed regarding the risks of the procedure.

SPECIALS IN EVIDENCE: \$50,000 for future reconstructive surgery.

JURY TRIAL: Length 2 weeks; Poll 9-3 (liability); 11-1 (damages); Deliberation, 1.5 days.

SETTLEMENT DISCUSSIONS: Plaintiff demanded \$50,000 prior to trial pursuant to CCP Section 998. Defendant did not make an offer.

The plaintiff received judgment in excess of her CCP Section 998 offer in the amount of \$250,000; \$175,000 for past pain and suffering, \$50,000 for future pain and suffering, and \$50,000 for future reconstructive surgery.

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(800) 237-6525 / FAX (212) 313-9145

County: Sonoma

City: Santa Rosa

Complete Title of Plaintiff(s): Emily McAuliffe

Complete Title of Defendant(s): Chi Hay-Cheung

Case Number(s): 234726

Ins. Carrier: State Farm Insurance Co.

Plaintiff Attorney(s), PH#: Charles D. Cochran, Esq. and Rachael Erickson, Esq., Hinton, Cochran, Borba & Beckwith, LLP. (707)544-9006

Defendant Attorney(s), PH#: Paul A. Silver, Esq., Philip M. Andersen & Associates.
(415)267-3600.

Plaintiff Doctor(s), Field, Address: Christina Dumbadse, DC, Chiropractic, 817 Second Street, Santa Rosa, CA 95404, Kaiser Permanente Santa Rosa (unavailable for testimony).

Defendant Doctor(s), Field, Address: Charles Stuart, Orthopaedic Surgeon

Plaintiff Expert(s), Field, Address: Gail Perry, Physical Therapist, 1212 Fourth Street, Suite C, Santa Rosa, California 95404, 707-570-1393 .

Defendant Expert(s), Field, Address: Rajeev Kelkar, biomedical engineering, Robert Mah, CPA.

Judge: Hon. Elaine T. Rushing

Date of Incident: June 3, 2003

Type of Action: personal injury

Location of Accident/Incident: Hoen Avenue extension road, in front of Montgomery High School, Santa Rosa, CA

Plaintiff(s) Age(s): 53 at time of incident **Occupation:** dance instructor

Residence: Santa Rosa, CA

Facts of Case: Plaintiff was injured when Defendant sped out of the parking lot of Montgomery High School in his 1998 Jeep Wrangler, striking plaintiff's Nissan Quest in the passenger rear quarter panel, resulting in under \$900.00 of property damage. Plaintiff sustained neck pain and some permanent loss of range of motion. Witnesses included other dance instructors and dance students that helped Emily McAuliffe after the incident in an attempt to keep her dance studio open. Witnesses for the plaintiff, including her physical therapist, her personal trainer, her dance

students and her husband, stated that plaintiff was never the same after the incident. Though she was able to turn her head to the side, she was never able to do so as well as necessary to teach some basic dancing moves. Two dance instructors that covered classes for the plaintiff demonstrated for the jury and the court, the limitations of the plaintiff and the abilities needed in plaintiff's occupation.

Plaintiff(s) Contention(s) as to Liability: Plaintiff, Emily McAuliffe, contended that Defendant was at fault for causing primarily neck injuries, with some low back pain and some memory loss.

Defendant(s) Contention as to Liability: Defendant admitted liability, but claimed that the impact was too minor to have caused any injury, or if there was an injury it should have resolved within four to eight weeks.

Jury Deliberated: 2 ½ days **Length of Jury/Court Trial:** 4 days

Plaintiff Attorney Asked the Jury to Award: six figures

Defendant Attorney Asked the Jury to Award: zero to \$10,000

Injuries/Damages: Plaintiff Doctor/Expert Stated: Plaintiff had no prior neck pain and there was no other explanation for the neck pain and loss of range of motion other than the incident at issue. Dr. Dumbadse, DC, also opined that Emily McAuliffe was a superior athlete, being a dancer and instructor, and that her injuries would negatively affect her ability to dance for her life expectancy.

Defendant Doctor/Expert Stated: Plaintiff's neck injuries could not have been caused by the incident, due to the fact that the impact was so minor. Plaintiff's injuries should have resolved within four to eight weeks. Rajeev Kelkar, Ph.D. stated that the forces involved in the impact would have been less than a sneeze. Robert Mah, CPA, opined that plaintiff's business did not lose income after the incident, but rather showed an increase in income.

Residuals: Continuous neck pain and loss of range of motion for the foreseeable future.

Specials/Damages: Medical expenses - \$18,426.02.

Settlement Discussions: Judicial Arbitration Award: \$60,000.00

Defendant's Offer: \$10,000.00

Results: \$81,926.00

Poll Result: Unanimous on liability, 10-2 on causation, 10-2 on damages

Verdict Date: October 18, 2006

PLEASE FILL OUT POST-TRIAL INFORMATION:

Post Trial Motions: Plaintiff, Emily McAuliffe filed a Memorandum of Costs, including interest from the time of the Judicial Arbitration Award, in the amount of \$19,797.00. Defendant has filed a Motion to Tax Costs to be heard on December 26, 2006.

Additional Information:

Submitted By: Charles D. Cochran and Rachael Erickson; Hinton, Cochran, Borba & Beckwith, LLP.

Phone: (707)544-9006

Crawford, Plaintiff , v. Ahmad, Et Al., Defendants. 10/24/06

Nancy Crawford v. Yasmeen Ahmad, Et Al (Case No:04AS03240)

Honorable Gordon D. Schaber

Sacramento County Superior Court Department 39

TOPIC: Personal Injury

SUB TOPIC: Motor Vehicle Accident

FURTHER DESCRIPTION: Negligence

ATTORNEY: Plaintiff - Russell Fields (Law Offices of Russell Fields, Sacramento)

Defendant - Michael G. Miller (Perry, Johnson, Anderson, Miller and Moskowitz LLP, Santa Rosa)

Plaintiff - Nancy Crawford, CA

Defendant - Rashid Ahmad and Samina Yasmeen (erroneously sued as Yasmeen Ahmad), Sacramento, CA. Insurance Carrier: State Farm Insurance

FACTS: On August 25, 2003, Plaintiff was walking across Stockton Blvd. in Sacramento, California, not using the cross walk. She was subsequently cited violating California Vehicle Code section 21955, crossing a roadway at a place except in a crosswalk. Plaintiff alleged she was struck by Defendants' vehicle, driven by Samina Yasmeen, and suffered injury. She claimed \$27,882.50 in special damages arising from medical treatment. The Defendant, Samina Yasmeen, stopped to help the injured pedestrian and testified that she did not hit her.

PLAINTIFF'S CONTENTIONS: Plaintiff contended Defendant Yasmeen Ahmad struck Plaintiff with her automobile while Plaintiff was walking across the street. Plaintiff maintained she suffered injury and the incident was the proximate cause of these damages, amounting to general damages of \$100,000 and special damages of \$10,000.

DEFENDANT'S CONTENTIONS: Defendants denied the allegations of Plaintiff in their entirety.

SETTLEMENT DISCUSSIONS: The case was arbitrated on June 14, 2005. The arbitrator found Plaintiff met her burden of proof, but found Plaintiff was 50% at fault for bringing about the accident. The arbitrator awarded Plaintiff \$19,419.86 in total damages; \$28,839.72 in special damages, plus \$10,000 in general damages, reduced by 50 % considering Plaintiff's comparative fault. After arbitration Defendant requested a Trial de Novo pursuant to Code of Civil Procedure 1141.20.

JURY TRIAL: 4 days.

RESULT: Defense verdict. At trial the Jury found the Plaintiff failed to carry her burden of proof, both as to causation and as to damages.