

# JURY VERDICT REPORTER

NEW YORK

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## MOTOR VEHICLE

### Motorcycle

### Headline Unknown.

**Settlement** \$4,300,000

**Case** Marggie Batista, an infant by her mother and natural guardian, Raquel Antigua v. the State of New York, No. 2010/09647

**Court** Court of Claims, New York

**Judge** Faviola A. Soto

**Date** 3/22/2011

### Plaintiff

### Attorney(s)

Frank C. Panetta, Massimo & Panetta, Garden City, NY

### Defense

### Attorney(s)

Eric Schneiderman, Attorney General of the State of New York by: Robert Schwerdt, Assistant Attorney General for the State of New York

### Facts & Allegations

At about 9 p.m. on September 11, 2005, an unidentified motorist exited the Mobile gas station located between the 19th and 20th exits of the Grand Central Parkway in Queens County. The gas station is located in the center of the highway. The motorist entered the GCP into the left-hand eastbound lane. The motorist was moving at a slower pace than the traffic in the left lane, and cut off an SUV being driven by Edwin Martinez. To avoid the vehicle, Martinez moved left into the acceleration lane. Martinez's vehicle collided with the rear of the motorcycle being driven in the acceleration lane by Frederick Williams. Plaintiff Marggie Batiste, a 13 year-old high school student, was a passenger on the motorcycle. Batiste fell off the motorcycle and sustained injuries to the head, leg and pelvis. Acting as mother and natural guardian for Batiste, Raquel Antigua sued to the State of New York, alleging that it was negligent in the maintenance of the roadway. Batiste alleged that in 1964 the state allowed the City of New York to shorten the acceleration ramp to a distance that is roughly 500 feet short of the federal minimum requirement for entrance and acceleration ramps.

A related trial found the state was found that the state had a non-delegable duty to maintain the roadway and was thus 100 percent liable for the accident. The trial moved to damages.

### Injuries/Damages

fracture, skull; fracture, pubic ramus; fracture, tibia; subdural hematoma; physical therapy; traumatic brain injury; brain damage; external fixation; coma frontotemporal craniotomy/craniectomy, her lower abdomen was cut and a pocket was created for implantation of her skull in her lower right abdomen and concomitant stitches and an approximate eight (8) inch abdominal scar. She was ultimately affixed with a prosthetic skull

Marggie sustained a Salter-Harris type fracture of the tibia, which is a fracture through the growth plate in her tibia. She also sustained a skull fracture, a fracture of the pubic ramus bone and a subdural frontotemporal hematoma, which resulted in a traumatic brain injury and brain damage. While in her rehabilitation facility, she experienced lower abdominal pain from the site that stored her skull. She developed an infection with "greenish discharge" in the lower abdomen. After said infection, the surgeon abandoned replacing the skull plate.

Batista was taken by ambulance to Long Island Jewish Schneider Children's Hospital, where she underwent some seven surgeries. A roughly four-by-four inch section of her skull was removed and replaced with a plastic prosthetic

skull. She also underwent closed reduction, external fixation to her leg, which included the application of a metal scaffold.

Batista was in a coma for a few weeks and remained in the hospital for some seven months. She was unable to speak for over two months. After her discharge, she treated at Blythedale Children's Hospital as an in-patient for some 90 days where she underwent physical and cognitive therapy. She subsequently treated as an out-patient for six months. Batista sought recovery of past and future pain and suffering as well as past and future lost earnings. The plaintiff's expert vocational specialist argued that Batista's life plan would require \$64 million.

The defense erroneously argued that she received a high school diploma

Defense: Eric Schneiderman by Robert Schwerdt Assistant Attorney General,

### **Result**

The parties settled prior to trial. The state agreed to pay \$4.3 million to Batista.

### **Plaintiff(s)**

**Marggie Batista**  
**\$4,300,000 plaintiff's total award**

**Demand** None reported

**Offer** None reported

### **Insurer(s)**

Self-insured State of New York

### **Plaintiff**

#### **Expert(s)**

Omid S. Barzideh, M.D., orthopedic surgery, Bethpage, NY (Frank C. Panetta)  
Jason W. Brown, M.D., neurology, New York, NY (Frank C. Panetta)  
Brian Holmes, neurosurgery, (Frank C. Panetta)  
Charles Kincaide, life care planning, (Frank C. Panetta)  
Allan Leiken, Ph.D., economics, East Setauket, NY (Frank C. Panetta)  
Leigh Sumter, M.A., Teacher and Educator (Frank C. Panetta)

### **Defense**

#### **Expert(s)**

None reported

#### **Post-Trial**

None reported

### **Editor's Note**

None reported

### **Plaintiff(s)**

#### **Demographics**

**Marggie Batista**

**Age:** 13 Years

**Occupation:** None reported

**Gender:** Female

**Married:** No

**Children:** No

**Children Description:** Injured party

**Written By** --Max Mitchell