

Verdicts & Settlements

DANGEROUS CONDITION

Parkway's Acceleration Lane Too Short

Settlement: \$4.3 million

Antigua v. State of New York, 113299 (3/22/2011)

Court of Claims: Judge Favio A. Soto

Plaintiff Attorney: Frank Panetta of Massimo & Panetta in Garden City
Defense Attorney: Assistant Attorney General Robert Schwerdt

Facts & Allegations: At about 8:55 p.m. on Sept. 11, 2005, claimant Marggie Batista, 13, was a passenger of a motorcycle driven by Frederick Williams, traveling on the Grand Central Parkway. Williams veered onto a lane leading to a gas station located on the island separating eastbound and westbound traffic. Before he could resume travel, he was struck by a sport utility vehicle driven by Edwin Martinez, who veered to avoid a vehicle entering the left lane, from the gas station. Marggie fell off of the motorcycle and injured her head, leg and pelvis.

Marggie's mother, Raquel Antigua, sued the parkway's owner, the state of New York, alleging the gas station's entrance and exit constituted a dangerous condition.

Claimant's counsel contended the gas station's acceleration/deceleration lane did not allow room for motorists to merge onto the parkway. He contended, in 1964, the state permitted the city to shorten the lane to 420 feet. Claimant's counsel's expert engineer opined the lane should have spanned 1,100 feet. The defense's expert engineer suggested the length be 660 feet, exceeded the actual length of the lane.

Defense counsel contended the accident was a result of Martinez veering off of the parkway.

Injuries/Damages: Marggie's skull injury caused brain damage and a coma, and she underwent about seven surgeries. Marggie's coma lasted several weeks and she was hospitalized for seven months. She subsequently underwent 90 days of cognitive and physical therapy and six months of outpatient therapy.

Marggie claimed she suffers residual pain and impairment of her cognitive functions, which will limit her earning capacity. She also contended she will require lifelong medical care and assistance. Claimant's counsel's vocational-rehabilitation expert estimated those services would cost about \$64 million.

Marggie's mother sought recovery of Marggie's future life-care expenses, lost earnings and damages for past and future pain and suffering.

Defense counsel contended Marggie can ambulate easily, stand on one leg and run. Defense counsel also disputed Marggie suffers a residual impairment of her earning capacity, noting she was able to graduate

high school. Claimant's counsel contended Marggie graduated from a special-education program.

Result: Judge Favio A. Soto determined the gas station's acceleration/deceleration lane was of insufficient length, the state was aware of the hazard, and she rejected defense counsel's contention Martinez was negligent. Soto concluded the state was entirely liable for the accident.

During the trial, the parties negotiated a settlement in which the state agreed to pay \$4.3 million.

MEDICAL MALPRACTICE

Teen's Fatal Cancer Not Detectable

Verdict: Defense

Hare v. Donato, 100622/06 (3/16/2011)

Richmond Supreme: Justice Joseph J. Maltese

Plaintiff Attorney: Jason C. Molesso of Silberstein, Awad & Miklos in Mineola

Defense Attorney: Douglas J. FitzMorris of Kaufman, Borgeest & Ryan (Michael J. Donato, Orthodontic Specialists P.C.)

Facts & Allegations: On Dec. 19, 2003, plaintiff's decedent Stephanie Hare, 19, a student, was examined by her orthodontist, Dr. Michael Donato, of New York-based Orthodontic Specialists P.C. Hare had undergone the removal of four teeth and wore orthodontic braces. Donato performed a routine evaluation.

On Jan. 24, 2004, Donato administered minor treatment including the smoothing of one of Hare's orthodontic bands.

On April 5, 2004, Donato performed another exam in which he noted Hare was suffering a lesion on the left side of her tongue. He removed an orthodontic band that could have irritated the wound, and advised the use of a rinsing agent.

On April 17, 2004, Hare reported her tongue's irritation had not subsided. Donato referred her to an oral surgeon, Dr. Mark Stein.

After four days passed, Hare was examined by Stein, who opined Hare's lesion was infected. He prescribed antibiotics, which did not resolve the lesion.

On May 4, 2004, Hare learned her lesion was cancerous and the disease had spread and could not be eradicated. Hare died on Nov. 30, 2004.

Hare's mother, Rosemary Hare, administrator of her daughter's estate, sued Donato, Orthodontic Specialists, Stein, and Hare's general dentist, Dr. Raymond Remuzzi, alleging Donato, Remuzzi and Stein failed to diagnose the cancer, constituting malpractice, and Orthodontic Specialists was vicariously liable.

The claims against Remuzzi and Stein were discontinued, and the matter proceeded to a trial against Donato and Orthodontic Specialists.