

Caccuri sued the driver and his employer, alleging the driver was negligent in slamming on his brakes to "taunt" plaintiff because of road rage. Plaintiff sued the employer under a respondeat superior theory of liability.

The driver contended there was no road rage and that he had slowed his vehicle for a squirrel. The driver also argued that plaintiff had been speeding and following his vehicle too closely and was an inexperienced driver.

At a trial on liability, a jury found defendants 51 percent responsible and plaintiff 49 percent at fault. Before trial on damages, the parties settled for \$4.5 million.

Defendants' experts included William C. Houston, accident reconstruction, Patterson, N.Y.

*Plaintiff's Counsel*

\*James S. Lynch, Paramus, N.J.

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**Van and truck collide at intersection: Failure to stop: Improper lookout: Hip, ankle fractures: Knee injuries: Settlement.**

*Devoe v. Copart Int'l, Inc.*, Fla., Dade County Cir. Ct., No. 99-4628 CA 32, Nov. 29, 2000.

Devoe, 59, was driving a van north on a road. As he approached an intersection, a tow truck heading south made a left turn at the intersection. Devoe's vehicle collided with the truck. Devoe suffered a fractured right ankle and left hip and left knee injuries. He will require surgery in the future, including a hip replacement. His medical expenses totaled \$100,000.

A driver and maintenance man for a husband and wife, Devoe is limited in the amount of work he can now perform for them. He had been earning approximately \$40,000 annually. His total past and projected future lost wages are estimated at \$265,700.

Devoe sued the tow truck company and the driver, alleging the driver failed to stop and keep a proper lookout for traffic.

The parties reached a settlement for \$1.01 million, paid for by defendants' insurer.

Plaintiff's experts were Miles Moss, accident reconstruction, Miami, Fla.; Robert S. Kennedy, human factors, Orlando, Fla.; and Steven Wender, orthopedic surgery, Aventura, Fla.

Defendants' expert witnesses were Juan Pena, traffic control engineering, and Jay Stein, orthopedic surgery, both of Miami, Fla.

*Plaintiff's Counsel*

\*John H. Hickey, Miami, Fla.

Documents in *Devoe v. Copart Int'l, Inc.* are available through the Litigation Resources section in the back of this issue, courtesy of Mr. Hickey.

**Child struck by vehicle while crossing street: Excessive speed: Poor reaction: Broken femur: Multiple lacerations: Verdict.**

*Holloman v. Ebert*, Pa., Luzerne County C.C.P., No. 5045-C of 1998, Nov. 17, 2000.

Derby, 9, was crossing a street. A vehicle driven by Ebert struck Derby and collided with a parked car. Derby suffered a broken femur, fractured skull, and multiple lacerations requiring debridement. His past medical expenses total approximately \$43,800, and his future medical expenses are estimated at \$15,000. Derby now has an increased chance of developing arthritis in his leg and has scars that will require plastic surgery in the future.

Derby's mother, individually and on his behalf, sued Ebert, alleging he was speeding and reacted poorly when he noticed Derby crossing the street. Additionally, defendant admitted that after the collision he pulled Derby from under the parked car by his feet.

A jury awarded plaintiffs about \$1.56 million.

Plaintiffs' expert witnesses were James Druecker, accident reconstruction, Media, Pa.; Richard Lung, plastic surgery, Miami, Fla.; and Bruce Lafollette, orthopedics, Danville, Pa.

Defendant's experts were Joseph Tarris, liability issues, State College, Pa., and Peter Feinstein, orthopedics, Wilkes-Barre, Pa.

*Plaintiffs' Counsel*

\*Robert J. Powell, West Hazleton, Pa.

\*Stephen A. Seach, West Hazleton, Pa.

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**Vehicle leaves roadway, rolls over: Improper lookout: Vertebrae, skull fractures: Closed head injury: Cognitive deficits: Verdict.**

*Pesso v. Meyers*, Cal., Los Angeles County Super. Ct., No. SC055273, Aug. 19, 2000.

Pesso, 45, was a passenger in a vehicle traveling on a highway. The driver lost control of the vehicle, which left the roadway and rolled over several times. Pesso suffered vertebrae and skull fractures and a closed head injury. She now has chronic pain and cognitive deficits of her short term memory, concentration, and organization skills. Her past medical expenses were about \$97,500, and her future expenses are estimated at \$140,000. She had been a full-time teacher before the incident and is now only able to work parttime. Her past and future lost earnings total about \$1.2 million.

Pesso and her husband filed suit against the driver's estate, alleging the driver failed to keep a proper lookout and

was negligent in overcorrecting and causing the vehicle to lose control on the highway.

A jury awarded plaintiffs about \$2.83 million. With interest and costs, the total amount of the award is about \$3.23 million. Pessa's husband was awarded \$25,000 for loss of consortium.

Plaintiffs' experts were Stein Hushner, accident reconstruction, and John Nordstrand, economics, both of Santa Barbara, Cal.; Todd Lanman, neurosurgery, Beverly Hills, Cal.; Barry Ludwig, neurology, Los Angeles, Cal.; and Peter Formuzis, economics, Santa Ana, Cal.

Defendant's experts were Paul Lees-Haley, neuropsychology, and James Rosenberg, neuropsychiatry, both of Woodland Hills, Cal.; Irvin Gettleman, orthopedic surgery, Tarzana, Cal.; and Michael Weiner, neurology, Encino, Cal.

*Plaintiffs' Counsel*

\*Brian J. Panish, Santa Monica, Cal.

\*Frank J. O'Kane Jr., Santa Monica, Cal.

## AVIATION

### Warsaw Convention does not bar state tort action for statements made after passenger left plane.

*Turturro v. Continental Airlines, Inc.*, 128 F. Supp. 2d 170 (S.D.N.Y. 2001).

A U.S. district court held that an airline may be liable under state tort law for statements made by its employees after a passenger had disembarked, where those statements led to the passenger's involuntary confinement.

Here, an airline passenger who had lost her anti-anxiety medication asked to disembark an airplane bound for Costa Rica that was still at the departure gate. She caused a disturbance and was eventually allowed to leave the plane. The passenger and a flight attendant walked across a boarding bridge and passed through at least one gate into a waiting area of the airport terminal, where they were met by airline employees, medical personnel, and police employed by the local port authority. She was transported against her will to a psychiatric emergency room, where she was held for several hours.

The passenger sued the airline, among others, for her emotional distress and loss of liberty. The airline moved for summary judgment. The court observed that lawsuits arising from injuries suffered during international air travel are governed by the Warsaw Convention, 49 U.S.C. § 40105. The treaty also covers events that occur during "operations of embarking and disembarking," the court said. Since the convention requires a plaintiff to allege "bodily injury" rather than merely mental anguish, plaintiff is barred from

suing for any incidents that took place aboard the plane or during the act of disembarking, the court found.

In construing the phrase "operations of embarking and disembarking," the court noted, the Second Circuit has adopted a three-part test that examines (1) the location of the plaintiff when the accident occurred, (2) the activity in which the plaintiff was engaged, and (3) under whose direction the plaintiff was acting.

Here, crucial acts related to plaintiff's confinement took place after she disembarked, the court found. Alleged conversations between airline agents and the police led to plaintiff's involuntary conveyance to the psychiatric emergency room. These conversations, which form the basis for several of plaintiff's causes of action, happened after she had been placed under the control of the police and a medical team. These communications transpired in a waiting area of the terminal, rather than in a restricted area used only for the exiting of a particular airplane. Defendants spoke not about the deplaning process but rather about plaintiff's behavior and symptoms.

The relevant factors of location, activity, and control all confirm that plaintiff had fully disembarked before airline employees could have conspired with the police to have her detained in a mental hospital, the court held. Consequently, the Warsaw Convention does not apply, and plaintiff may proceed with her causes of action under state law, the court concluded.

*Plaintiff's Counsel*

Paul A. Shneyer, New York, N.Y.

## CIVIL RIGHTS

### City employees whose jobs were eliminated after budget cuts may sue city under § 1983.

*Langford v. City of Atlantic City*, 235 F.3d 845 (3d Cir. 2000).

The Third Circuit Court of Appeals held that city employees whose jobs were eliminated after budget cuts may sue the city under 42 U.S.C. § 1983.

Here, Langford and Marsh, school board employees, were fired after the city cut funding for their positions from the annual budget. Langford and Marsh sued the city under § 1983, alleging their positions were eliminated in retaliation for their political opposition to the successful candidate in a mayoral election. The trial court—relying on the U.S. Supreme Court's decision in *Monell v. Department of Soc. Servs.*, 436 U.S. 658 (1978)—granted defendant's motion to dismiss, holding that the passage of a budget does not constitute an official policy, custom, or practice triggering § 1983 municipal liability.