

VERDICTS & SETTLEMENTS

Woman killed by tractor-trailer while waiting for tow truck

\$3,400,000 Settlement

Crystal A. Burgsteiner, a 27-year-old wife and mother of two young sons, was driving to her recently acquired job as a house cleaner when her car experienced mechanical problems. She proceeded to pull over safely, very close to the guardrail in the emergency lane of I-664 in Chesapeake, just prior to the Portsmouth Boulevard exit. She activated her emergency flashers and immediately called family members, who called for a tow truck.

Shortly after the decedent pulled over into the emergency lane, and while waiting for the tow truck to arrive, the driver of a tractor-trailer truck lost control of his truck and swerved into the emergency lane, colliding with decedent's vehicle at approximately 66 mph. Decedent and her vehicle were pushed completely over a guardrail and into a ravine. Medical personnel arrived on the scene shortly after the crash and attempted to administer life-saving medical treatment, but ultimately, decedent died at the collision site from blunt force trauma to her head and chest.

State Police arrived on the scene shortly after the collision and began their investigation. In speaking with the driver of the truck, troopers were informed by the

driver that he had recently been diagnosed with diabetes. The driver told the troopers that he must have experienced a black out brought on by a diabetic coma. He also told the troopers that he did not recall advising his employer of his diagnosis. The driver was immediately taken to Sentara Norfolk General Hospital and held for approximately four days for observation and testing. During his stay, no medical symptom supportive of a diagnosis of diabetes was found, nor was there any indication that the driver suffered from a diabetic coma.

Plaintiff's counsel, while taking the driver's deposition, discovered that the driver had not produced certain medical records responsive to plaintiff's requests for information and/or documents regarding sleep studies performed on the driver after the collision. As a result, it was ultimately discovered that the driver had undergone a "sleep study" in Richmond just weeks after the collision. The resulting records showed that the driver suffered from obstructive sleep apnea and hypersomnia. The driver provided a history to his doctor where he complained of snoring, snorting, periods of not breathing associated with excessive daytime sleepiness, and falling asleep while driving and during conversation. Medical records also confirmed that the driver advised his doctor that these symptoms began several years ago and gradually worsened over time.

Over and above the issues of liability and a claim for punitive damages, an intense defense was asserted on the issue of damages. With virtually no medical bills, low funeral expenses, a history of low-paying jobs and long periods of unemployment, plaintiff emphasized the non-economic damages as set forth in Virginia Code sections 8.01-52 (1) and (2)(ii). This prompted aggressive discovery from the defendants seeking to show that plaintiff's decedent had been separated from her spouse in excess of two years and was an unfit mother to her children. Allegations of alcohol and drug abuse were introduced. A loss of primary custody of each child by order of the Chesapeake Juvenile and Do-



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mestic Relations Court was highlighted. Relational issues of depression and a long-running divorce proceeding were asserted, along with evidence of the decedent living with another man who was thought to be a bad influence upon the children.

More than 20 depositions were completed including family, friends and decedent's employer. As a result, a picture of the decedent emerged showing a troubled but loving person who, despite bouts of depression and a difficult marriage, continued to be a loving mother to her children. Just prior to her death, decedent had successfully secured a residence and employment, and was in the process of completing steps to obtain her GED and apply for additional educational programs.

Statutory beneficiaries included a surviving husband, an 8-year old son and 18-month-old son. The decedent was also four months pregnant at the time of her death. The date of the collision, June 14, 2012, was just prior to the change in the Wrongful Death Act allowing for an additional claim regarding the lost pregnancy. [13-T-204]

Type of action: Wrongful death - auto/tractor-trailer accident

Name of case: Beeler, Adm'r v. Johnson, et al.

Court: Norfolk Circuit Court

Case no.: 12-6357

Resolved by: Mediation

Mediator: Robert L. Harris Sr.

Date: Nov. 13, 2013

Special damages: No medical damages; loss of earnings estimated to be less than \$8,000/year; funeral expenses of \$3,943.75

Verdict or settlement: Settlement

Amount: \$3,400,000

Attorneys for plaintiff: William H. Monroe Jr. and Richard S. Glasser, Norfolk

Plaintiff's experts: Ikshvanku (Dimi) A. Barot, M.D., neurology and sleep medicine, Chesapeake; Mila Ruiz Tecala, MSW, ACSW, LICSW, DCSW, grief counseling, Washington