

## Meticulous Collision Reconstruction Seen as Key to Victory

### ■ \$36.5 Million Verdict

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Jury deliberations had begun when the settlement offer came in. For the defendant school transportation company, the time was right. The eight-week trial had raised serious questions about the cause of the school bus crash, and rulings from the bench had alerted jurors to discovery violations and potential spoliation of video evidence.

First Student and the other defendant in the case reached a confidential settlement with three plaintiffs who sustained catastrophic injuries when the BMW they were passengers in collided head-on with one of the company's buses.

The settlement was finalized just before a Plymouth Superior Court jury on Aug. 28 returned a verdict finding both the driver of the BMW and the bus company negligent in the March 30, 2012, crash. The jury assessed the damages suffered by the plaintiffs and their families at \$36.5 million.

The judge, Mark A. Hallal, permitted the jury to return the verdict even though the parties had settled, raising the inference that the amounts awarded by the jurors helped set the amounts to be paid to the individual plaintiffs under the terms of the deal.

Brian P. Voke, the lead trial attorney for First Student, informed the media about the existence of the confidential settlement after the verdict was returned. The Boston defense attorney declined a request for an interview. Plaintiffs' counsel, meanwhile, declined to discuss the terms of the settlement.

The jury awarded the lion's share of the damages to plaintiff Eva Lipton, who suffered a permanent brain injury in the accident. Her damages were assessed at \$21 million, with \$2 million awarded to each of her parents for loss of consortium.

"[First Student] made many mistakes, and we capitalized on all of them," said Boston attorney Robert S. Sinsheimer, who represented the Liptons with co-counsel Lisa A. Parlagreco.

#### Catastrophic injuries

Lipton and two other teens, Aliza Nantais and Brendan McGilley, were passengers in a car driven by defendant Monica Knight. Her BMW and a bus operated by Catherine Dennis collided head on at a curved section of road in Kingston, near Lake Regional High School.

Claiming they suffered catastrophic injuries in the wreck, Lipton, Nantais and McGilley sued Knight, Dennis and First Student for negligence.

"[Lipton] sustained unimaginably horrific injuries," Parlagreco said. "This young woman's body was broken from head to leg."

According to Parlagreco, the medical evidence established that, as a result of her brain trauma, Lipton remains in a "minimally conscious state" to this day.

First Student's lawyers argued at trial that the company and its employee bore no liability because the accident was solely the result of Knight's distracted driving, which



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— Jeffrey S. Beeler, HBMH Law

caused her to drift across the center line. The defendant's case was bolstered by the fact that Knight pleaded guilty to reckless driving in her criminal case.

Moreover, it was undisputed that the two vehicles came to rest on the bus's side of the road — on its face powerful evidence that it was Knight who was in the wrong lane.

The jury found both First Student and Knight negligent. In addition to awarding the Liptons \$25 million, it awarded \$6 million to Nantais and \$750,000 to her mother, and \$4 million to McGilley and \$750,000 to his mother.

Framingham attorney Jeffrey S. Beeler represented the Nantais plaintiffs. Beeler said Aliza Nantais sustained several broken bones and a serious head injury after being partly ejected from the vehicle. According to Beeler, his client's head injury has resulted in serious, lifelong brain deficits, though not as severe as Lipton's.

Benjamin D. Stevenson, counsel for McGilley and his parent, said his client suffered traumatic brain damage in the form of a shearing injury to the frontal lobe. McGilley also suffered permanent injuries to his back.

"Undoubtedly, Eva Lipton far and away suffered the worst injuries," Stevenson said. "The jury properly recognized that."

#### Corporate corruption?

During closing argument, Sinsheimer made the case that the evidence exposed a clear case of "corporate corruption" that he maintained included a "bribe" to a State Police officer who assisted First Student's investigator in taking measurements at the accident scene.

"The problem was that, at the time, the State Police was still investigating the accident," Sinsheimer told Lawyers Weekly.

Attorneys for First Student argued that there was no bribe and that the officer in question was merely paid for doing off-duty work.

Defense counsel objected to Sinsheimer's use of the word "bribe," and the judge sustained the objection.

But Sinsheimer continued to make his point in his closing.

"When the ... commander of the [reconstruction] unit is on the street two weeks after an accident in which people might have died ... [and] there's only two cars in that accident, and that commander takes money on behalf of [the operator of] one of them — you call it whatever you want," Sinsheimer told the jury.

The case took a critical turn earlier in the trial when the judge found that, during



The accident scene in Kingston

discovery, First Student had "intentionally withheld" training documents that raised questions about the qualifications of the bus driver.

Hallal wrote in his remedial order that the plaintiffs were clearly prejudiced by the late disclosure of the records.

"The plaintiffs and Ms. Knight would undoubtedly have prepared for trial differently, had they known that Catherine Dennis had received unsatisfactory results on her behind the wheel training in close proximity to the time of the collision at issue in this case," the judge wrote.

Parlagreco said it was critical that the disclosure of the training records ultimately led to discovery of evidence that Dennis suffered from a pre-existing shoulder injury. According to Parlagreco, First Student accommodated the shoulder injury even though it hindered the bus driver's ability to steer.

"It raised the question of why was she even behind the wheel," Parlagreco said. "They opened the door to additional medical information about this woman."

Another irregularity was an unexplained gap in the security video of the inside of the bus for the seconds leading up to the crash. The issue came to a head during trial when testimony revealed that certain First Student officials had not been truthful in their answers during discovery concerning the maintenance history of the bus's VCR system.

That disclosure led to the judge issuing a spoliation instruction to the jury. In addition, he entered an order allowing counsel to introduce evidence concerning the circumstances surrounding the missing videotape, including evidence that an attorney representing First Student had possibly handled the video at the crash scene.

"The inference is that they destroyed the video at the scene," Sinsheimer said. "We didn't prove that. We just proved that more likely than not somebody at First Student at some time destroyed the video."

Sinsheimer said he believes First Student's litigation conduct made jurors more open to the plaintiffs' damage claims.

"It made the jury more receptive to providing reasonable compensation that otherwise might have seemed too high," he said.

#### Accident reconstruction

Parlagreco said a key to the case was the meticulous reconstruction of the accident from all available evidence. The plaintiffs were able to establish that photographs showing where the bus and the BMW came to a final stop did not tell the whole story, she said.

"The case was about what happened before those two vehicles came to a rest," she said. "Why did that little red vehicle cross the road?"

The plaintiffs were able to show that the bus driver was driving too fast to navigate the curve and had drifted into the BMW's lane, Parlagreco said. Upon contact, the bus pushed the BMW into its own lane as the bus driver tried to correct course.

"There was no question that once the contact happened between the 18,000-pound bus and the 3,000-pound BMW, the bus had its way with the BMW," Beeler said. "From the point of impact, the BMW was traveling backwards whichever way the bus wanted to take it."

Beeler said post-accident photographs of the bus showing yellow paint transfer on the sidewall of the front tire supported the plaintiffs' case.

"That suggested to us that the bus's tire was deflated during the collision but crossed the yellow center line," Beeler said. "That suggested the bus intruded into the wrong lane prior to the collision."

Beeler noted that the bus driver in a written statement to police two days after the accident said she was traveling at 30 to 35 mph when she entered the curve in the road and hit the brake when she saw the BMW enter her lane. However, in a later deposition, Dennis said she was traveling at 20 to 25 mph with her foot over the brake when the accident occurred.

One of the ironies of trial, according to Parlagreco, stemmed from evidence that First Student had touted the "pinpoint" accuracy of its GPS tracking system for its buses when marketing its services to school districts.

However, the bus company found itself forced to downplay the accuracy of the system at trial when the GPS evidence supported the plaintiffs' theory of how the accident occurred.

"When I plotted the GPS data that was presented to us in discovery, the rough data points showed the school bus was in the oncoming lane," she said.