



VERDICTS & SETTLEMENTS

Jury: Police Officer Injured in Off-Duty Crash Gets \$2M *Nalls v. DeCaro*

\$2.65 Million Verdict

Date of Award:

June 11, 2009.

Court and Case No.:

C.P. Philadelphia September Term 2007 No. 000691.

Judge:

Joseph A. Dych.

Type of Action:

Motor vehicle crash.

Injuries:

Left arm degloving, broken bones in the arm, hand and ankle, compartment syndrome.

Plaintiff's Attorneys:

Thomas Duffy, Ken Fulginiti, Duffy + Partners, Philadelphia, Pa.

Plaintiff's Experts:

John Taras, Wen Chao, medical, Philadelphia, Pa.; Irene Mendelsohn, vocational, Penn Valley, Pa.; Frank Costanzo, accident cause and analysis, Chester Springs, Pa.; David Hopkins, economics, King of Prussia, Pa.

Defense Counsel:

David M. McCormick, Anna M. Darpino, McCormick & Priore, Philadelphia, Pa.

Defense Experts:

David L. Glaser, medical; Donald E. Jennings, Jane Mattson, vocational; Chad Staller, economics; Robert Miller, Peter Stock, accident cause and analysis.

Comment:

A jury reached a gross verdict of \$2.65 million in June 11 a case involving a former Philadelphia police officer whose motorcycle collided with another vehicle that crossed his path.

Because the jury found plaintiff Christopher Nalls to be 25 percent at fault in his claim against local businessman Frank DeCaro, Nalls will receive only \$2 million of the verdict.

Nalls, 36, was off-duty Dec. 11, 2006, driving his motorcycle near 15th Street and Passyunk Avenue in Philadelphia when a vehicle operated by defendant Frank DeCaro collided with his motorcycle, according to a June 12 press release from Duffy + Partners.

DeCaro was on his way to work at Dental Care



Alliance when the collision occurred. The news release stated the defendant was first in line waiting at the red light; the plaintiff was third, behind another vehicle.

Plaintiff's counsel maintained Nalls, while waiting at the red light, noted that both DeCaro and the car directly behind DeCaro's were signaling left-hand turns. Nalls decided to pass the motor vehicles on the right when the light turned green. But when the light changed, instead of turning left, the defendant's car drove straight ahead before attempting to turn right into a parking space.

According to the plaintiff's pretrial memorandum, the defendant testified, "as he pulled from the light, and intended to pull into the parking spot on his right, he never looked in his side view mirror to see if anyone was present. The memorandum also stated that DeCaro "denies ever having his left turn signal on and claims he always intended to turn right."

The defense's pretrial memorandum summarized the case by stating, "Mr. DeCaro was in the process of making a right-hand turn into a head-on parking space on the westbound side of Passyunk Avenue when plaintiff, while traveling in the parking lane, attempted to illegally pass him on the right and struck Mr. DeCaro's vehicle with such impact that the passenger side window exploded."

Plaintiff's attorney, Ken Fulginiti said the defense argued that DeCaro never intended to turn left, but did illuminate his right turn signal after passing through the intersection. Fulginiti explained the theory of defense further by adding, the defendants insisted there was no reason for DeCaro to turn left at the intersection because his place of business was nearby.

Expert witnesses for both sides included accident cause and analysis specialists.

According to Ken Fulginiti, accident reconstructionist Frank Costanzo could neither confirm nor disprove DeCaro's claim that he put his right turn signal on 100 feet after leaving the intersection.

He said however, because the accident resulted in the plaintiff being vaulted from his motorcycle, Costanzo was able to calculate the speed at which the motorcycle had been traveling by imputing the distance that separated the motorcycle

from its driver. Fulginiti said Costanzo's calculations confirmed that Nalls was operating his motorcycle at a reasonable speed.

Along with other photographs taken of the crash, the defense included a photograph taken with DeCaro's cell phone in their evidence. Fulginiti said that the defense pointed out that the picture, after being enhanced and highlighted, showed a skid mark on the pavement. But he added that it was not proven whether or not this image was the result of a vehicle or if it was a flaw on the road's pavement.

The plaintiff's pretrial memorandum claims among other injuries, Nalls suffered broken bones in his ankle, arm and hand.

It also states Nalls, a Navy veteran and former member of the Army Reserve, has now undergone five separate surgeries and has limited use of his left arm.

Injuries and damages listed in the plaintiff's pretrial memorandum estimate past medical expenses to amount to approximately \$125,000 and future medical expenses to be an estimated \$700,000.

Also included in the plaintiff's memorandum was a brief summary of the defendant's expert opinions. Donald Jennings indicated, "As a result of his injuries, and the considered medical opinions, [Mr. Nalls] would not be able to return to his normal occupation as a Philadelphia Police Officer."

Although the police department placed Nalls in a position doing "light work," positions such as these are generally reserved for officers that have been injured in the line of duty, said Fulginiti.

According to the plaintiff's memorandum, Nalls continued to do this "light duty from approximately April 2007 until April 2008, after which time he was no longer eligible to maintain that position and has been forced to leave the police force." His wife, Rene, a physical therapist at the University of Pennsylvania must now work extra hours to help support her family.

Fulginiti said he believes the jury related well with both sides, but it came down to the fact that DeCaro admitted he never turned and looked, before advancing right toward the parking space. Fulginiti said in his opinion, the jury felt this was inexcusable and "should have been done no matter what."

This report is based on information that was provided by the plaintiff's counsel. Defense counsel declined comment.

— Stephanie Zielinski, for the Law Weekly