

Michael A. Haggard, Haggard, Parks,
Haggard & Bologna, Coral Gables, FL

DEFENSE

ATTORNEY(S) Peter Murphy, Kubicki & Draper, Miami, FL

FACTS & ALLEGATIONS In November 2003, plaintiff Dwight Byrd, a 51-year-old scrap metal laborer who worked for a recycling business, was gathering material at the demolition of a bakery that was recently bought by Trujillo & Sons, a Miami food distribution business, which planned to turn it into a warehouse. Byrd and his employer, a Mr. R.V. Fowler, got permission from the supervisor of the demolition project, who was employed by Trujillo, to collect scrap from the site.

Fowler cut down one of the steel columns that was holding up a mezzanine. After the column was cut, it turned out to be filled with concrete. About 30 minutes after the steel was removed, the concrete collapsed, causing the mezzanine to fall on Byrd, causing a head injury.

Byrd sued Trujillo & Sons on a theory of premises liability for creating a dangerous condition. He argued that Trujillo failed to maintain a safe workplace, failed to use due care in hiring competent workers, failed to supervise its employees, failed to provide training and safety equipment, failed to properly perform a demolition and failed to hire a licensed supervisor and obtain permits. Byrd contended that the Trujillo supervisor was unlicensed, uninsured and had no experience in the construction business, noting that he was Trujillo's warehouse manager, and before that he sold cell phones at a mall. Byrd contended that without getting any permits, the supervisor sought bids and awarded the demolition contract to the lowest bidder, who didn't have any license or insurance. He argued that all of this combined to create unsafe conditions that led to his injuries.

The defense contended Trujillo wasn't responsible for Fowler's actions—he was acting on his own—and that Trujillo didn't ask him to cut the column. It also contended that Byrd had heard his boss warn him that the column was unstable and could fall at any time.

INJURIES/DAMAGES *brain damage; cognitive deficit; fracture, skull*

Byrd fractured his skull and suffered brain damage. He was in a coma for a week followed by a significant amount of time recovery in the hospital until he was placed in a nursing home for about a year. He struggled at first, but he's been able to relearn basic life skills, such as bathing himself. He'll continue to need cognitive rehabilitation in the future to better his memory and ability to focus. He'll also need assistance with various activities for the foreseeable future. For example, he's able to eat, but couldn't cook without help. He'll also need assistance to remember to take his various medications. Byrd claimed past medical expenses of about \$150,000. He claimed lost earnings for the future as he's no longer able to hold down a job. Throughout his life, Byrd has held various jobs as a laborer. He's a father to three children, of whom only one is a minor.

RESULT Trujillo & Sons settled with Byrd for the company's insurance policy limit of \$2 million.

INSURER(S) Zurich North America

PLAINTIFF

EXPERT(S) Stephen Estrin, construction safety, Hollywood, FL
Sharon Griffin, vocational rehabilitation, Stuart, FL
Kester Nedd, M.D., neurology, Miami, FL
George W. Zimmerman, building codes, West Palm Beach, FL

DEFENSE

EXPERT(S) Thomas Black, P.E., engineering, Miami, FL
Ray Lopez, M.D., neurology, Miami, FL

EDITOR'S NOTE Jessica M. Walker of the Daily Business Review contributed to this report.

—Jeff Skruck

MOTOR VEHICLE

Speeding — Stop Sign — Wrongful Death

No skidmarks from truck before it hit sedan with mother and son

SETTLEMENT \$950,000

CASE Eleasar Esquivel, individually and as personal representative of the Estate of Anna Maria Esquivel and as natural parent and guardian of Eleasar Esquivel Jr. v. Vito Strano, Rosario Strano and Strano Farms Inc., No. 03-29854 CA 30

COURT JUDGE Miami-Dade County Circuit Court, 11th, FL
Victoria Platzer

DATE 7/25/2005

PLAINTIFF

ATTORNEY(S) Paul A. McKenna, McKenna & Obront, Miami, FL
Curt D. Obront, McKenna & Obront, Miami, FL

DEFENSE

ATTORNEY(S) Mitchell L. Lundeen, George Hartz Lundeen Fulmer Johnstone King & Stevens, Miami, FL

FACTS & ALLEGATIONS On March 26, 2003, plaintiff's decedent Anna Maria Esquivel, 24, a convenience store clerk, was

D A D E

driving a sedan east on Davis Road in Florida City with her 7-year-old son, plaintiff Eleasar Esquivel Jr., at her side. After stopping at a stop sign at the intersection with Krome Avenue, she proceeded into the intersection and was broadsided by a Strano Farms field truck.

Ms. Esquivel was airlifted to a hospital where she died shortly after. Her son was also rushed to a hospital, where he was diagnosed with a brain injury.

Eleasar Esquivel Sr., individually and on behalf on his wife's estate and their son, sued Strano Farms Inc., Homestead, and its owners, Vito and Rosario Strano, for negligence and wrongful death on a vicarious liability theory. The plaintiff contended that their driver was speeding and was looking at the floor of the truck, trying to find something, right before he struck his wife's car.

The plaintiff's accident reconstruction expert, Martin Garcia, maintained that the truck was going 45 to 60 mph in a 30-mph zone.

A toll-booth collector who witnessed the crash stated in deposition that, right before the accident, she saw the driver's head dip down toward the floor.

Police didn't find any skidmarks leading up to the crash.

The defense contended that the truck driver had the right-of-way and wasn't speeding. The defense argued that Esquivel didn't stop for her stop sign.

INJURIES/DAMAGES *brain, internal bleeding; cognitive deficit; death*

Ms. Esquivel left behind four minor children. She never graduated high school and was making minimum wage when she died.

Eleasar spent several days in the hospital after doctors found bleeding in the brain, but he later had a clear MRI and a clear CT scan. However, the plaintiff's counsel contended that based on neurological testing, he sustained cognitive deficits. His father claimed that his schoolwork has suffered since the accident as well as his behavior.

The defense maintained that Eleasar may have suffered a brain injury, but has fully recovered, as noted in MRIs and CT scan, and doesn't have any cognitive deficits.

RESULT Strano Farms, which had a \$1 million policy with Nationwide Insurance, settled with Esquivel for \$950,000, with \$575,000 going to his wife's estate and \$375,000 going to his son.

INSURER(S) Nationwide Insurance \$1 million policy

PLAINTIFF EXPERT(S)
 Martin Garcia, accident reconstruction, Tallahassee, FL
 Robert Lopez, M.D., neurology, Miami, FL
 Michael Mandoki, M.D., child psychology, Coral Gables, FL
 Bernard Pettingill Jr., Ph.D., economics, West Palm Beach, FL

Susan Tanner, M.D., neuropsychology, Coral Gables, FL

DEFENSE EXPERT(S)

Charles E. Benedict, Ph.D., accident reconstruction, Tallahassee, FL
 Michael Duchovny, M.D., pediatric neurology, Miami, FL

—Jeff Skruck

VERDICT of the MONTH

PREMISES LIABILITY

Motor Vehicle — Pedestrian — Construction

Sidewalk on bridge closed, forcing teen onto lane of travel

VERDICT ACTUAL **\$163,591,939**
\$5,000,000

CASE Patricia McKinney, individually and as guardian of the person and property of Jaro S. Hladik, Ward v. Bob's Barricades, Inc. the Florida Department of Transportation, The Redland Co., Pan-American Construction Co., Homestead Concrete and Signal Service Inc., No. 00-18471 CA 31
COURT JUDGE DATE Miami-Dade County Circuit Court, FL
 Herbert Stettin
 7/21/2005

PLAINTIFF ATTORNEY(S) Arthur W. Tifford (lead), Tifford and Tifford P.A., Miami, FL
 Alexandra Tifford, Tifford and Tifford P.A., Miami, FL

DEFENSE ATTORNEY(S) James S. Usich (lead), Law Office of James S Usich P A, Miami, FL (Bob's Barricades Inc.)
 Steven Kellough, South Miami, FL (Bob's Barricades Inc.)
 Richard A. Warren, Hicks & Kneale, P A, Miami, FL (Bob's Barricades Inc.)
 Attorneys not disclosed (Florida Department of Transportation, Homestead Concrete, Pan-American Construction Co., Signal Service Inc., The Redland Co.)