

FEATURED VERDICT

Motor Vehicle

Driver killed,
passenger fractured
ankle in rollover

\$3,351,008

Hearn v. New Prime Inc.

McLennan Co. Dist. Ct.

Plaintiff Counsel Christopher S. Ayres, The Law Offices of R. Jack Ayres, Jr., P.C., Addison; Craig D. Cherry, Haley & Olson, P.C., Waco

Defense Counsel Gregory W. Carboy and Jacqueline Clark, Cowles & Thompson


Full report on page 24

CASES of NOTE

- Motor Vehicle – Broadside – Intersection – Stop Sign** Fort Bend County
Plaintiff claimed internal derangement of knee 5
- Motor Vehicle – SUV – Rear-ender** Fort Bend County
Plaintiff claimed soft-tissue injuries in rear-ender 6
- Motor Vehicle – Road Defect – Work Zone – Motorcycle** Matagorda County
Motorcyclist fractured face in construction zone crash 10
- Motor Vehicle – Left Turn – Question of Lights** Dallas County
Plaintiff claimed neck, back, wrist and knee injuries 15
- Motor Vehicle – Sideswipe** Dallas County
Plaintiff pulled into traffic without warning, defense argued. 16
- Medical Malpractice – Failure to Test – Delayed Diagnosis** Tarrant County
Ball point pen cap was lodged in boy’s throat for three days 18
- Dram Shop – Head-On – Center Line – Wrongful Death** Tarrant County
Two in plaintiff’s vehicle were killed in head-on collision 19
- Motor Vehicle – Motorcycle – Tractor-Trailer – Wrongful Death** Wise County
Motorcyclist fell under wheels of 18-wheeler, killed instantly 21
- Breach of Contract** Bexar County
Miss Bexar County terminated for weight gain, she claimed. 22

HOTSHEET

Carpets and Rugs 4



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that Fuentes' retroreflectorized tape was in poor condition; that Fuentes had been driving on the flat tire for longer than a safe distance (more than 11 miles); that Splawn was driving too fast; and that Splawn's driving log contained misrepresentations prompted by unreasonable delivery schedules.

The plaintiffs also sued Robert and Sandra Montelongo, on a theory of alter ego. The plaintiffs also asserted fraudulent transfer against the Montelongs, but that claim did not go to the jury.

The defendants denied the allegations and maintained that O'Teter failed to keep a proper lookout.

INJURIES/DAMAGES *death*

O'Teter was survived by son Christopher, 20; son Steven, 20; wife, Diana, 53; father, Tyler; and mother Nancy, 73; Steven is autistic. The plaintiffs' attorneys said the family was a solid, hardworking and Christian family that lost its breadwinner and leader.

They sought damages for wrongful death. The estate sought survival damages.

The defense argued that Christopher's life care plan, which was very expensive, would be inadmissible.

RESULT The case settled for \$950,000 from Alamo's carrier and \$750,000 from the Montelongo defendants' carrier.

INSURER(S) Sentry Select Insurance for Alamo and Splawn
Occidental Fire & Casualty for the Montelongo defendants and Fuentes

PLAINTIFF EXPERT(S) Roger Allen, trucks, Friendswood, TX
James Lock, accident reconstruction, College Station, TX
James P. Mandel, Ph.D., economics, Houston, TX
Dennis Seal, human factors -- see also technical-engineering-ergonomics, Dallas, TX
Ginny Stegent, R.N., life care planning, Houston, TX

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

-John Schneider

MCLENNAN COUNTY

FEATURED VERDICT

MOTOR VEHICLE

Wrongful Death — SUV — Negligent Supervision

Driver killed, passenger fractured ankle in rollover

VERDICT \$3,351,008

ACTUAL \$3,015,907

CASE Rebecca Hearn, Randy Hearn, Julie Hearn, and Joel Fudge, Individually and Joel Fudge, as Permanent Administrator of the Estate of Alaina Fudge. v. New Prime, Inc., No. 2008-3763-3

COURT JUDGE McLennan County District Court, 74th, TX
Gary Coley

DATE 3/3/2011

PLAINTIFF

ATTORNEY(S) Christopher S. Ayres, Law Offices of R. Jack Ayres Jr., P.C., Addison, TX (Estate of Alaina Fudge)
Craig D. Cherry, Haley & Olson, Waco, TX (Joel Fudge, Julie Hearn, Randy Hearn, Rebecca Hearn)

DEFENSE

ATTORNEY(S) Gregory W. Carboy, Cowles & Thompson, Dallas, TX
Jacquelyn Clark, Cowles & Thompson

FACTS & ALLEGATIONS On March 25, 2007, plaintiff's decedent Alaina Fudge, 22, and her 17-year-old sister, plaintiff Rebecca Hearn, were traveling in Fudge's sport utility vehicle. They were heading south on Interstate 35, near Pauls Valley, Okla. Both were wearing three-point restraints, and Rebecca was a frontseat passenger. A tractor-trailer owned and operated by New Prime Inc., entered into the Fudge's traffic lane. In an attempt to avoid a collision, Fudge took evasive action and tried to slow down and steer the car away from the tractor-trailer. The plaintiffs veered off road and rolled over in the median separating the north and southbound lanes. The tractor-trailer never stopped. Fudge died at the scene.

Rebecca Hearn, her parents Randy and Julie Hearn, and Joel Fudge, as the permanent administrator of the estate of Alaina Fudge sued New Prime Inc. for its driver's motor vehicle negligence. The plaintiffs claimed the negligence of the New Prime driver was a proximate cause of the accident. New Prime was independently, and institutionally, negligent

in the hiring, training, supervision and retention of the driver of the tractor-trailer, plaintiffs' counsel claimed.

New Prime Inc. argued that it was not the cause of the wreck because its trucks were not present at the scene. Specifically, New Prime pointed to its Qualcomm (GPS) data to demonstrate none of its trucks could have been in the area or involved. Defense counsel maintained that Rebecca was confused, or mistaken, as to the information she saw on the truck next to them. She did not remember many other things at the accident site and delayed in telling anyone about the Prime logo for approximately two weeks. Defense counsel argued that Fudge was the cause of the accident, she was not properly restrained and she was liable for the injuries of her sister.

INJURIES/DAMAGES *death; fracture, ankle*

Fudge died at the scene while still seated inside the SUV. Rebecca was taken by helicopter to a hospital in Norman, Okla. She sustained a severely fractured right ankle. The bond in her ankle was smashed. She underwent four surgeries and ultimately her ankle was fused. She no longer has any flexion in her foot. While she can walk, running is no longer possible. Due to her injuries and mental trauma, Rebecca was unable to finish high school, she claimed. Her treating doctor said she will need two more ankle surgeries. Past medical expenses were \$136,000. In addition to her claims for medical expenses, pain and suffering and physical impairment, Rebecca sought mental anguish damages as a bystander. Joel Fudge (as the surviving spouse) and the Hearn's (surviving parents) claimed mental anguish and loss of companionship and society. Fudge claimed for pecuniary loss, funeral and burial costs, and for the mental anguish of Alaina Fudge prior to her death.

RESULT The jury found Fudge 10 percent liable and New Prime 90 percent liable. The award was \$3,351,007.87, which was reduced to \$3,015,907.08.

ESTATE OF

- ALAINA FUDGE** \$9,188 funeral burial expense
\$100,000 past mental anguish
 \$109,188
- JOEL FUDGE** \$250,000 past loss of society companionship
 \$100,000 future loss of society companionship
 \$450,000 past loss of pecuniary contribution
 \$250,000 past mental anguish
\$125,000 future mental anguish
 \$1,175,000
- JULIE HEARN** \$250,000 past loss of society companionship
 \$100,000 future loss of society companionship
 \$250,000 past mental anguish
\$125,000 future mental anguish
 \$725,000

- RANDY HEARN** \$250,000 past loss of society companionship
 \$100,000 future loss of society companionship
 \$250,000 past mental anguish
\$125,000 future mental anguish
 \$725,000

- REBECCA HEARN** \$136,820 past medical cost
 \$50,000 future medical cost
 \$30,000 past physical impairment
 \$100,000 future physical impairment
 \$100,000 past pain and suffering
 \$50,000 future pain and suffering
 \$50,000 past mental anguish as a bystander
\$100,000 future mental anguish as a bystander
 \$616,820

- DEMAND OFFER** \$2 million
 \$50,000
- INSURER(S)** Self-insured
 Liberty Mutual Insurance Company (excess)

- TRIAL DETAILS** Trial Length: 9 days
 Trial Deliberations: 12 hours
 Jury Vote: 10-2
 Jury Composition: 4 male, 8 female

- PLAINTIFF EXPERT(S)** Kent Gilbreath, Ph.D., economics,
 Bryan, TX

- DEFENSE EXPERT(S)** Steven Field, federal motor carrier safety administration (fmcsa),
 Michael Hein, engineering,
 Edward Ingram, accident reconstruction,
 Austin, TX
 Steve Irwin, accident reconstruction,
 Dallas, TX
 Helen Reynolds, Ph.D., economics,
 Dallas, TX

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

-James Withers

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