

XVI/25-12 MOTOR VEHICLE JACKKNIFED AIRLINE TRACTOR FAILURE TO PROVIDE
FLAGPERSON TO DIRECT TRAFFIC AROUND SEWER WORK FRACTURED TIBIA, FIBULA, AND
LUMBAR VERTEBRA

Winston and Yvonne Barzy v. Port Authority of New York and New Jersey 24475/95 3-week trial Verdict
11/17/98 Queens Supreme

Judge: Janice A. Taylor

Verdict: \$919,129 for Winston B., reduced to \$753,685.78 for 18% comparative negligence of Pltf. (6/0).
Breakdown: \$261,166 for past pain and suffering; \$21,166 for past lost earnings; \$28,149 for past medical expenses
(stipulated); \$420,846 for future pain and suffering; \$30,010 for future lost earnings; \$157,792 for future medical
expenses.

\$154,705 for Yvonne B., reduced to \$126,858.10 for 18% comparative negligence of Pltf. Breakdown:
\$50,333 for past loss of services; \$104,372 for future loss of services. Jury: 3 male, 3 female.

Pltf. Atty: Richard N. Slater of Cardali & Cardali, P.C., Manhattan

Def't. Atty: Stephen E. Powell of Milton H. Pachter, Manhattan

Facts: Pltf., a 49-year-old fleet service clerk for American Airlines, claimed that on 6/22/95 he was injured
at JFK Airport while driving an airline tractor that was pulling dollies loaded with freight. Pltf. claimed that the lane
he was traveling in was closed while Def't.'s employees performed sewer work. Pltf. testified that as he was driving
in the opposite lane, he saw oncoming traffic, and he applied the brakes, but the tractor jackknifed, hitting one of
Def't.'s vehicles, which was stationed at the worksite. Pltf. claimed that Def't. failed to have a flagman on the road to
warn of oncoming traffic.

Def't. argued that there was no oncoming traffic at the time Pltf. was on the road, and contended that he was
speeding and that the tractor went out of control. Def't. argued that it was not necessary to have a flagperson at that
location because there were signs warning the drivers that the lane was closed.

Injuries: compound fracture of the right tibia and fibula requiring external fixation; nondisplaced fracture at
L-2. Pltf. underwent skin grafting and surgery to remove the hardware. He claimed that he has an antalgic gait,
surgical scarring, and experiences back pain. Pltf. returned to work 8 months after the accident and performed light
duty for an additional 5 months. Def't. argued that Pltf. made an excellent recovery. Def't.'s seat belt defense was
precluded for failure to properly advise of the nature of the claim in the Bill of Particulars. Pltf. supplemented the
Bill of Particulars while the case was on the trial calendar to include osteoarthritis of the right knee that would
require a knee replacement. The trial judge ruled this to be a new injury, not a sequelae of the original injury, and
that an amended Bill of Particulars was required. The judge precluded testimony concerning arthritis of the knee
and the need for a future knee replacement. Demonstrative evidence: aerial photographs; police report; model of the
leg and knee; charts of the muscles and ligaments; X-rays; hospital records. Offer: \$200,000; demand: \$600,000;
amount asked of jury: \$1,000,000 for past pain and suffering. Jury deliberation: 1 day.

Pltf. Experts: Dino Rossini, engineer, West Hempstead; Dr. Daniel O'Connor, treating orth. surg., Elmhurst.

Def't. Expert: Steven Estrin, engineer, Mahopac.