

Top New York Verdicts of 2011

MOTOR VEHICLE ACCIDENT - PEDESTRIAN

CASE	DATE	COURT	TYPE OF ACTION	PLAINTIFF'S COUNSEL	AMOUNT
Zeiset v. Trenway Wagar Inc	2/17	Livingston Supreme	Pedestrian: Fatal highway crash blamed on bus driver having fallen asleep	Edith A. Pearce, Philadelphia, PA of The Pearce Law Firm; Richard J. Barnes, Buffalo, NY of Cellino & Barnes, P.C.; Alfred J. Monte, Jr., Blue Bell, PA of Fox Rothschild LLP; Mark J. Valerio, Rochester, NY of Valerio & Kufta	\$2,627,500

AMOUNT \$2,627,500**MEDIATED SETTLEMENT**

Fatal highway crash blamed on bus driver having fallen asleep

Thomas W. Bender; Bender & Bender, LLP; Buffalo, NY, for Coach USA LLC, Ryan A. Comfort, Coach Canada Inc., Erie Coach Lines Co., Stagecoach Group PLC

CASE Pamela Zeiset and Lindsey Harnish as Co-Administratrix of the Estate of Ernest D Zeiset and Pamela Zeiset Individually v. Trenway Wagar Inc; Coach Canada Inc; Coach USA; Erie Coach Lines Company; Stagecoach Group PLC, and Ryan A Comfort, No. 1662/06

VENUE Livingston County
JUDGE Thomas M. Van Strydonck
James Morris

DATE February 17, 2011

PLAINTIFF

ATTORNEY(S) Edith A. Pearce; The Pearce Law Firm; Philadelphia, PA, for Estate of Ernest D. Zeiset Jr.
Richard J. Barnes; Cellino & Barnes, P.C.; Buffalo, NY, for Pamela Zeiset
Mark J. Valerio; Valerio & Kufta; Rochester, NY, for Estate of Ernest D. Zeiset Jr.
Alfred J. Monte Jr.; Fox Rothschild LLP; Blue Bell, PA, for Pamela Zeiset

DEFENSE

ATTORNEY(S) Glenn E. Pezzulo; Culley, Marks, Tanenbaum & Pezzulo; Rochester, NY, for J & J Hauling Inc., Estate of Ernest D. Zeiset Jr.

FACTS & ALLEGATIONS On Jan. 29, 2005, plaintiff's decedent Ernest Zeiset Jr., 42, a truck driver, was driving on the southbound side of Interstate 390, in Geneseo. His wife, plaintiff Pamela Zeiset, 41, a clerk, was a passenger. As Mr. Zeiset approached Groveland Road's overpass, he stopped near the edge of the highway, so that the couple's dogs could exit their vehicle, a tractor-trailer, and relieve themselves. Mr. Zeiset stood alongside the vehicle and observed the dogs, but Ms. Zeiset remained in the tractor's cabin. The trailer's left side was struck by a bus that was being driven by Ryan Comfort, and the trailer struck and killed Mr. Zeiset. The bus's passengers were also injured.

Ms. Zeiset, acting individually and as co-administrator of her husband's estate, and Mr. Zeiset's prior wife, Lindsey Harnish, acting as co-administrator of Mr. Zeiset's estate, sued Comfort and his bus's owners, Coach Canada Inc., Coach USA LLC, Erie Coach Lines Co., Stagecoach Group PLC and Trentway Wagar Inc. The plaintiffs alleged that Comfort was negligent in the operation of his vehicle. They further alleged that the remaining defendants were vicariously liable for Comfort's actions.

The defendants counterclaimed against Mr. Zeiset's estate and his tractor-trailer's owner, J & J Hauling Inc. The defendants alleged that Zeiset was negligent in the operation of his vehicle. They further alleged that J & J Hauling was vicariously liable for Zeiset's actions.

Plaintiffs' counsel claimed that the accident was a result of Comfort having fallen asleep while driving.

They noted that Comfort had begun his trip some 12.5 hours prior to the accident, and they contended that the trip's length exceeded the legal amount of continuous on-duty time that a bus driver may log in New York. They also claimed that Comfort had merely four weeks of bus-driving experience when the collision occurred. They contended that he had not been adequately trained.

Defense counsel contended that Comfort had not exceeded the allowed number of driving hours. He also contended that the collision occurred while Zeiset's rig was illegally parked.

In a companion case filed by the occupants of Comfort's bus, the parties stipulated that Comfort and his bus's owners bore 90 percent of the liability, and they stipulated that Zeiset and J & J Hauling bore the remainder of the liability. This case's parties agreed to adopt that apportionment of liability. The matter proceeded to damages.

INJURIES/DAMAGES Zeiset was crushed by his trailer, and he died before an ambulance could arrive. The estate's accident-reconstruction expert opined that Zeiset was able to see the accident unfolding and thus experienced several moments of pre-impact terror. A witness claimed that Zeiset registered a pulse for three to four minutes before dying, and the estate's expert pathologist opined that Zeiset endured several minutes of conscious pain and suffering.

Zeiset, 42, was survived by his wife and six children, ages 4 to 20, from his previous marriage. Zeiset's estate sought recovery of wrongful-death damages that included Zeiset's past and future

lost earnings; damages for Zeiset's pain, suffering and fear of impending death; and damages for his children's loss of guidance and financial support. Zeiset's wife sought recovery of zone-of-danger damages for her residual emotional distress.

Comfort's counsel contended that the Zeisets had not been married long at the time of the accident and that, as such, Ms. Zeiset was not fully financially dependent upon Mr. Zeiset. He also contended that Mr. Zeiset was estranged from his children and had not seen them during the 12 months that preceded the accident. Thus, he challenged the estate's claim that the children had been receiving their father's guidance and support. Comfort's counsel also challenged the claimed extent of Zeiset's conscious pain and suffering.

RESULT The parties negotiated a pretrial settlement, which was finalized via the guidance of mediator James Morris, of Morris & Morris Attorneys, in Rochester. The plaintiffs recovered a total of \$2,627,500. The estate's share totaled \$2,227,500, which included \$137,500 for Zeiset's pain and suffering, a total of \$1.85 million for his children's loss of parental guidance, and a total of \$240,000 for his children's loss of financial support. Ms. Zeiset's share totaled \$400,000. The insurer of Mr. Zeiset's estate and J & J Hauling agreed to contribute 10 percent of Ms. Zeiset's recovery.

EDITOR'S COMMENT This report is based on an article that was published by The Livingston County News, a prior VerdictSearch report, and information that was provided by plaintiffs' and defense counsel.