

# VERDICTS & SETTLEMENTS

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A20 dailybusinessreview.com  
THURSDAY, DECEMBER 2, 2010



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## PRODUCTS LIABILITY

U.S. DISTRICT COURT, TAMPA

### Jury finds fungicide did not cause cancer

A jury found DuPont's negligence was not the cause of a farmer's cancer.

During the farm season of 1990-1991, Guillermo Ramirez used the fungicide product Benlate 50 DF made by DuPont. He found the product damaged his crops, causing DuPont to confidentially settle with him. In 2007, Ramirez was diagnosed with kidney cancer, which spread to his pancreas and brain. He claimed Benlate contaminated his soil and his handling of the soil caused the cancer.

DuPont denied any impurities in its product and claimed there was no proof of exposure. Defense also argued any alleged exposure did not cause Ramirez's cancer.

**Case:** Ramirez v. E. I. DuPont de Nemours and Co.

**Case No.:** 8:09-cv-00321-WMC-TBM

**Plaintiff lawyer:** Kennan G. Dandard, Dandard & Dandard, Tampa  
**Defense lawyers:** Edward A. Moss, Eileen Tilghman Moss, Daniel B. Rogers, Alfred J. Saikali and Thomas M. Sherouse, Shook Hardy & Bacon, Miami

## MOTOR VEHICLE

BROWARD CIRCUIT COURT

### Passenger recovers \$21,000 for injuries

A passenger recovered \$20,533 for spinal injuries she claimed after her vehicle crashed into a house.

In November 2005, Marius Disla, then 32, was a passenger in Joseph Blanco's car. Disla claimed cervical injuries, requiring two anterior fusion surgeries. Blanco denied liability, claiming he suffered an epileptic seizure, which was not reasonably foreseeable. Plaintiff counsel argued Blanco had a history of seizures and offered evidence of a previous accident.

Defense counsel argued Disla's injuries would have been significantly lessened if she was wearing a seatbelt and her second surgery wasn't warranted. A jury found Disla 90 percent negligent, reducing the \$205,325 award.

**Case:** Disla v. Blanco

**Case No.:** 06-002192 (18)

**Plaintiff lawyers:** Jason D. Weisser and William D. Zoeller, Schuler Halvorson & Weisser, West Palm Beach

**Defense lawyers:** Thomas J. Gibbons and Daniel J. Santaniello, Lukis Santaniello Perez Petrillo Gold & Jones, Fort Lauderdale

BROWARD CIRCUIT COURT

### Woman recovers \$17,500 for collision injuries

A woman who collided with a turning car recovered \$17,500 for her injuries.

In January 2008, Jessica Lauren, then 26, collided with a sedan driven by Lynn Lambert as it was turning in front of her. Lauren claimed Lambert was negligent for attempting the turn. The accident caused tendon damage to Lauren's right dominant wrist, requiring surgery. She also claimed cervical and lumbar sprains and strains.

Lambert claimed Lauren could have avoided the collision but failed to do so. Defense counsel argued Lauren's claimed loss of income had nothing to do with her injuries. The jury found each party 50 percent liable, and Lauren's \$35,000 award was reduced accordingly.

**Case:** Lauren v. Lambert

**Case No.:** 08018936(12)

**Plaintiff lawyer:** Kenneth S. Sandler, Kenneth S. Sandler P.A., Hollywood

## Jury awards \$4.3 million to injured Miami port worker

**Case:** Willie R. Walker v. Florida Power & Light Company, et al.

**Case no.:** 08-20760-CA-15

**Description:** Negligence

**Filing date:** May 28, 2008

**Trial dates:** Sept. 16-Oct. 4, 2010

**Jury award:** \$2.99 million

**Judge:** Miami-Dade Circuit Judge Israel Reyes

**Plaintiff attorney:** Michael Winkelman and Jason Margulies, Lipcon Margulies Alsina & Winkelman, Miami

**Defense attorneys:** Stephen A. Smith, Pallo Marks Hernandez Gochijan & Demay, Palm Beach Gardens for FPL and Danella; William Reese and J. Daniel Ennis, Lane Reese Summers Ennis & Perdomo, Coral Gables, for Delta

**Details:** Willie Walker's decades-long career as a longshoreman at the Port of Miami came to an end July 31, 2004. While operating a 167,000-pound top loader moving cargo for shipping company Maersk, the pavement collapsed under him.

Walker, then 49, was tossed like a rag doll inside his driver's cage 14 feet above the ground. He had just driven over the open end of a tunnel being built to carry underground electrical lines from an FPL substation at the port to Fisher Island. The drilling had just been completed, and construction was still under way to run cables beneath Biscayne Bay. The violent shaking inside the cage injured his back, requiring surgery to fuse three vertebrae and leaving him with a restricted range of motion.

Walker filed a worker's compensation claim against Maersk, and his attorneys reached a settlement that allowed him to receive weekly payments for the rest of his life. But his attorneys, Michael Winkelman and Jason Margulies, also filed a negligence suit against the companies that built the pipeline.

**Plaintiff case:** Winkelman and Margulies sued drilling company Delta Directional, construction company Danella and FPL. The power company maintained it was free of all responsibility after hiring Danella, which hired Delta as a subcontractor.

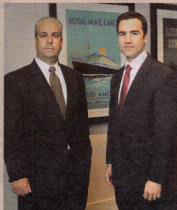
Winkelman, working on his first trial since joining the firm as an associate, assumed there was an agreement between FPL and Miami-Dade County, the port owner, making the company liable for what happens on land where it has projects.

"We anticipated that the document had to exist because FPL can't just go on properties and just start doing work. We knew there had to be some sort of easement," Winkelman said.

Winkelman made no agreement with the county. So Winkelman instead subpoenaed county officials in July. Weeks later, he received the agreement.

"In terms of keeping FPL on the hook, that was the smoking gun," he said.

Winkelman argued for sanctions, claiming the



ALBERT DIAZ

Jason Margulies and Michael Winkelman successfully argued their client was not at fault for collapse.

company intentionally withheld the document. Reyes imposed sanctions on FPL, holding the company responsible for all plaintiff fees and costs.

In trial, Walker's two-man team argued Danella was responsible for failing to keep traffic away from the site. They brought in a port supervisor to testify barricades were brought to the site days after Walker's accident, which they argued showed the company knew it was in the wrong.

**Defense case:** Delta argued it left the site days earlier and wasn't to blame. Smith, who represented FPL and Danella, maintained Maersk was to blame for moving barricades that marked the point where the pipeline went underground. Smith also blamed Walker for driving into an area he shouldn't have. Before the case went to jury, the judge determined FPL was not actively negligent, Smith said.

**Outcome:** The judge held a two-phase trial, one for liability and another for damages. Jurors awarded \$4.3 million and found the injured worker and Delta were without fault. The jury assigned 53 percent liability to Danella, 15 percent to FPL, and 32 percent to Maersk, which was not a defendant at trial. That reduced the award to \$2.99 million.

**Post-verdict:** As the jury reached its verdict, attorneys from both sides settled for an undisclosed amount. Smith said the judge dismissed his sanctions order once the settlement was reached.

—Jose Pagnier

**Q What the heck is a "Resort Tort?"**

**A** Resort torts are cases of civil liability for negligent or criminal acts that arise out of a resort, vacation or recreational setting. Examples include hotel safety, cruise ship litigation, criminal assaults, boating and plane crashes, and jet ski and parasailing injuries.

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