

## CASES of NOTE

## Recreation

## Woman died after water-drinking contest at radio station

**\$16,577,118**

*Strange v. Entercomm Sacramento LLC*

Sacramento Co., Calif., Super. Ct.

**Plaintiff Counsel** Roger A. Dreyer, Dreyer Babich Buccola Callaham & Wood, LLP, Sacramento, Calif.

**Defense Counsel** Donald W. Carlson, Carlson, Calladine & Peterson LLP, San Francisco

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## GREATER METRO AREA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

—Tim Heinz

## VERDICT *of the* WEEK

### MOTOR VEHICLE

#### Pedestrian — Bus

## Teen fell near bus, wasn't struck, defense contended

<b>VERDICT</b>	<b>Defense</b>
<b>CASE</b>	Zachary A. Strassner an Infant by His Mother and Natural Guardian, Jennifer Marinello and Jennifer Marinello v. Garden City Union Free School District and Linda Laird, No. 22647/07
<b>COURT</b>	Nassau Supreme
<b>JUDGE</b>	John M. Galasso
<b>DATE</b>	10/7/2009
<b>PLAINTIFF ATTORNEY(S)</b>	Anthony J. Rattoballi, Mineola, NY
<b>DEFENSE ATTORNEY(S)</b>	Edward J. Donlon, Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, Uniondale, NY

**FACTS & ALLEGATIONS** On Sept. 6, 2007, plaintiff Zachary Strassner, 14, approached a school bus that was stopped on Carlfield Street, alongside its intersection at Yale Street, in Garden City. The bus departed before Zachary could board it, and Zachary ran in pursuit. He fell, and he sustained an injury of a hip, injuries of a knee, and fractures of a foot, a leg, his pelvis and his sacrum. He claimed that he was struck by the bus.

Zachary's mother, Jennifer Marinello, acting individually and as Zachary's parent and natural guardian, sued the bus's driver, Linda Laird, and the bus's operator, the Garden City Union Free School District. The plaintiffs alleged that Laird was negligent in her operation of the bus. They further alleged that Garden City Union Free School District was vicariously liable for Laird's actions.

Plaintiffs' counsel moved for a unified trial, and the motion was granted.

Zachary claimed that he reached the bus while it was stopped and slapped its side, but that Laird did not open the door. He contended that the bus moved forward, toward Yale Street, as he ran alongside it, slapping its right side. He contended that

Laird executed a right turn onto Yale Street and that the bus's right front wheel ran over his legs. He claimed that he was easily visible in the bus's rear-view mirror.

The plaintiffs' accident-reconstruction expert noted that Zachary was found lying against the bus' right rear wheel, and he agreed that Zachary was struck by the bus.

Zachary also claimed that the tire's impression marked his legs. Plaintiffs' counsel attempted to present medical records that apparently confirmed the presence of those marks, but the records were precluded.

Defense counsel contended that Zachary simply fell and that he was not struck by the bus. A witness agreed. Laird claimed that she properly checked the bus's mirrors and that Zachary must have been running in a blind spot. The defense's accident-reconstruction expert agreed that Zachary could have been out of the mirrors' range.

Defense counsel noted that Zachary was wearing flip-flops at the time of the accident. He contended that the footwear did not provide sufficient support or stability, and he suggested that they contributed to the mechanics of Zachary's injuries.

The defense's expert biomechanical engineer opined that Zachary's foot, knee and leg injuries were consistent with injuries that could occur if a person wearing flip-flops suddenly stopped running near one side of the bus.

**INJURIES/DAMAGES** *comminuted fracture; fracture, acetabulum; fracture, fibula; fracture, foot; fracture, hip; fracture, leg; fracture, metatarsal; fracture, pelvis; fracture, sacrum; fracture, tibia; internal fixation; intramedullary fixation; knee; open reduction; physical therapy; soft-tissue injury; torn medial meniscus*

Zachary sustained comminuted fractures of his right leg's fibula and tibia; three pelvic fractures, including a sacral fracture that extended to one acetabulum, which is the hip's rounded cavity that receives the head of the femur; a fracture of one foot's second metatarsal; injuries of soft tissue of his left hip; a tear of his right knee's medial meniscus; and other injuries of the same knee. His right leg's fracture was addressed via open reduction and the internal fixation of an intramedullary rod, which was removed after about 12 months had passed. He also underwent about four months of occupational and physical therapy that was administered several times a week.

Zachary claimed that he suffers chronic, mild-to-moderate residual pain. He also claimed that his injuries produced a limp.

Zachary's mother sought recovery of a total of \$750,000 for Zachary's past and future pain and suffering. She also presented a derivative claim.

**RESULT** The jury rendered a defense verdict. It found that the defendants were not liable for Zachary's injuries.

<b>DEMAND</b>	\$3,500,000 (total, by both plaintiffs)
<b>OFFER</b>	None
<b>INSURER(S)</b>	New York Schools Insurance Reciprocal for both defendants

**TRIAL DETAILS**  
 Trial Length: 10 days  
 Trial Deliberations: 2.5 hours  
 Jury Vote: 6-0  
 Jury Composition: 3 male, 3 female

**PLAINTIFF  
 EXPERT(S)**  
 John T. Gaffney, M.D., orthopedic surgery,  
 Mineola, NY (treating surgeon)  
**Robert E. Genna, accident reconstruction,  
 Commack, NY**

**DEFENSE  
 EXPERT(S)**  
 Charles Coren, M.D., pediatric surgery,  
 Garden City, NY  
 Eric L. Freeman, M.D., orthopedic surgery,  
 Cedarhurst, NY  
**Richard S. Hermance, accident  
 investigation & reconstruction/failure  
 analysis/products liability, Tillson, NY**  
**James C. Otis, Ph.D., biomechanical,  
 Stamford, CT**

**POST-TRIAL** Judge John Galasso denied plaintiffs' counsel's motion to set aside the verdict. Plaintiffs' counsel has expressed an intention to file an appeal.

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel.

—Kristen Brown

## PREMISES LIABILITY

### Dangerous Condition — Slip and Fall — Snow and Ice

## Icy snow tubing course a hazard, resort's patron alleged

**VERDICT** **Defense**

**CASE** James Azzara and Grace Azzara v. Rocking Horse Ranch Corp., d/b/a Rocking Horse Ranch Resort, No. 20144/06

**COURT** Nassau Supreme

**JUDGE** R. Bruce Cozzens Jr.

**DATE** 9/30/2009

**PLAINTIFF  
 ATTORNEY(S)** Louis J. Cerrato, Frommer & Cerrato, LLP,  
 Garden City, NY

**DEFENSE  
 ATTORNEY(S)** Matthew J. Kelly, Roemer, Wallens &  
 Mineaux, L.L.P., Albany, NY

**FACTS & ALLEGATIONS** At about 8 p.m. on Feb. 15, 2006, plaintiff James Azzara, 45, a video editor, slipped on the snow tubing course of Rocking Horse Ranch Resort, in Highland. He fell, and he sustained an injury of an ankle.

Azzara sued the resort's operator, Rocking Horse Ranch Corp. He alleged that the snow tubing course constituted a dangerous condition.

Azzara claimed that he slipped on ice while he was exiting one of the tubes. He contended that the incident occurred in a designated unloading area. Azzara's counsel argued that the resort's operators were aware of the icy conditions, but that they failed to apply hay or any other type of material that would have improved traction.

One of the resort's supervisors contended that she inspected the area some two hours prior to the incident. She claimed that the area was in good condition and that the temperature was greater than 32 degrees Fahrenheit. An assistant supervisor contended that she responded to Azzara's accident, and she claimed that she did not observe ice. She also claimed that hay had been spread about the area.

**INJURIES/DAMAGES** *bimalleolar fracture; decreased range of motion; fracture, ankle; fracture, malleolus; internal fixation; open reduction; physical therapy*

Azzara sustained a bimalleolar fracture—a fracture of both sides of the ankle's malleolus, which is the ankle's bony protuberance. The injury involved his left ankle, and it was addressed via open reduction and internal fixation. He subsequently underwent about eight weeks of semi-weekly physical therapy.

Azzara claimed that he was restricted from work during the two months that followed the accident. He contended that he suffers a permanent residual reduction of his left ankle's range of motion, and he claimed that the limitation constitutes a moderate disability.

Azzara's lost earnings were reimbursed by his employer. He sought reimbursement of medical-expenses liens that totaled about \$18,000, and he also sought recovery of damages for his past and future pain and suffering. His wife presented a derivative claim.

Defense counsel contended that Mr. Azzara was not substantially active prior to the accident, thus suggesting that Azzara's injury produced a minimal loss of enjoyment of life. Defense counsel also contended that Azzara is able to commute via rail without limitation.

**RESULT** The jury rendered a defense verdict. It found that Rocking Horse Ranch was not liable for the accident.

**DEMAND** \$250,000  
**OFFER** None

**INSURER(S)** Wells Fargo Insurance Services Inc.  
**TRIAL DETAILS** Trial Deliberations: 1 hour  
 Jury Composition: 6 female