

# LAW REPORTER

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## SPOTLIGHT

**Woman's traumatic highway accident exposes dangers of unsecured loads, inspires new laws, 65**

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AMERICAN  
ASSOCIATION *for*  
**JUSTICE**

~ ENDOWED BY SIDNEY GILREATH ~

Book, vocational rehabilitation, Apalachin, N.Y.; Tyler A. Kress, engineering and accident reconstruction, Knoxville, Tenn.; and William Neale, computer animation, Denver, Colo.

*Plaintiffs' Counsel*

**Brian H. Breedlove**, Clifton Park, N.Y.  
**Daniel Stewart**, Queensbury, N.Y.

**Truck crosses center line, crashes with vehicle in ditch: Failure to maintain proper lookout: Negligent hiring: Wrongful death: Settlement.**

*Blagg v. Shale Tank Truck, L.P.*, Tex., Johnson Co. 18th Dist., No. C-2006-00442, June 20, 2007.

Blagg, 33, was driving his pickup truck when a tanker truck driving in the opposite direction crossed the center line. In an effort to avoid the other truck, Blagg drove his vehicle into a ditch on his side of the road, but the tanker did as well, and the two collided. Blagg died a few hours later of his injuries. A supervisor at an oilfield services company earning about \$36,000 annually, Blagg's estate claimed about \$900,000 in estimated future lost wages. He is survived by his minor twin daughters.

Blagg's former wife, on behalf of his minor daughters; Blagg's mother, individually; and his brother, as administrator of his estate, sued the truck driver and the driver's employer. Plaintiffs alleged that the employer was vicariously liable for the driver's actions, which included operating a vehicle at an unreasonable rate of speed and failure to maintain a proper lookout and brake in a timely manner. Plaintiffs also alleged that the employer failed to perform an appropriate background check, which would have revealed that the driver's criminal history included public intoxication, possession of marijuana, and several citations for excessive speed. Plaintiffs further alleged that the employer failed to have appropriate policies, procedures, and standards for the safe operation of its trucks and that it allowed an unqualified driver to operate its trucks, as the driver was restricted from operating trucks with air brakes, which all of the employer's trucks possessed.

The parties settled at mediation for a confidential amount.

Plaintiffs' experts were Dave Stopper, federal motor carrier safety regulations, Broad Run, Va.; Danny Phillips, accident reconstruction, Dallas, Tex.; and Allyn Needham, economics, Fort Worth, Tex.

*Plaintiffs' Counsel*

**R. Dean Gresham**, Dallas, Tex.  
**Joel M. Fineberg**, Dallas, Tex.  
**Jeff Steinhauser**, Flatonina, Tex.

**Truck runs red light, striking vehicle: Failure to stop at red light: Vicarious liability: Wrongful death: Verdict.**

*Schumacher v. Phoenix Corp.*, Ga., Fulton Co. Super., No. 04VS074400E, Aug. 22, 2007.

Kuntoaji, 26, was a passenger in a vehicle traveling on a highway. As the vehicle attempted to make a left turn on a green arrow signal, a tractor-trailer traveling in the opposite direction ran a red light and collided with Kuntoaji's vehicle, killing him. Kuntoaji was an Indonesian exchange student at the time of his death, and his estate claimed about \$1 million in estimated future lost earnings.

The administrator of Kuntoaji's estate, individually and on Kuntoaji's behalf, sued the driver of the tractor-trailer and the driver's employer, alleging the employer was vicariously liable for the driver's negligence. Specifically, plaintiffs alleged the driver failed to stop at a red light and drove too fast for the road conditions.

Defendants admitted fault but argued that decedent's life should be valued based on what he could have earned in Indonesia instead of in the United States.

A jury awarded plaintiffs about \$4.41 million, which was paid by the employer's insurance.

Plaintiffs' expert in this case was John Brown, economics, Atlanta, Ga.

Defendants' experts were Bob Coston, economics, Statesboro, Ga.; and Dale Schwartz, immigration, Atlanta, Ga.

*Plaintiffs' Counsel*

**Peter A. Law**, Atlanta, Ga.

**E. Michael Moran**, Atlanta, Ga.

A document in this case is available through the Court Documents section in the back of this issue.

**Driver struck by bullet during random, drive-by shooting entitled to uninsured motorist coverage.**

*Livsey v. Mercury Ins. Group*, 934 A.2d 61 (N.J. Super. App. Div. 2007).

A New Jersey appellate court held that when a driver is shot in a random, drive-by shooting, it is an accident arising out of the operation or use of an uninsured vehicle, entitling the driver to uninsured motorist coverage (UM).

Here, Livsey was getting into her car when she was struck by a bullet in an apparently random, drive-by shooting. Livsey sued her automobile insurer after it