

Lawrence sustained moderate injuries, including lacerations and abrasions to her upper and lower extremities, and back pain. She was discharged from the Lodi hospital the same day as the collision.

RESULT The jury returned a unanimous defense verdict and found that the 1997 Toyota Corolla's design was not a substantial factor in causing Mendez's injuries.

TRIAL DETAILS Trial Length: 2 months
Trial Deliberations: 5 hours
Jury Vote: 12-0

PLAINTIFF

EXPERT(S) Robert Anderson, Ph.D., P.E., accident investigation, Los Altos Hills, CA
Dean Jacobson, Ph.D., safety, Tempe, AZ
Sri Kumar, Ph.D., injury biomechanics, Goleta, CA

DEFENSE

EXPERT(S) Lee Carr, P.E., automotive, Houston, TX
Thomas R. Perl, Ph.D., P.E., accident reconstruction, Orem, UT
Dennis C. Schneider, Ph.D., M.D., injury biomechanics, Los Osos, CA

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.

—Priya Idiculla

NORTHERN**PLACER COUNTY****EMPLOYMENT**

Age Discrimination — Wrongful Termination — Retaliation

Car dealership: Workers were fired due to economy, not age

VERDICT Defense

CASE Donna Leek, Cynthia Buschmann, John Borden & Lawrence Leonardo v. Auburn Honda and Jay Cooper, No. 21570 & 21571
COURT Superior Court of Placer County, Placer, CA
JUDGE Jeffrey S. Penney
DATE 6/16/2011

PLAINTIFF

ATTORNEY(S) Martin Jennings, Law Offices of Martin Jennings, Granite Bay, CA

DEFENSE

ATTORNEY(S) John A. Britton, Wright & Britton, Roseville, CA
Daniel P. Costa, The Costa Law Firm, Gold River, CA

FACTS & ALLEGATIONS In 2006, plaintiffs Donna Leek, 49, Cynthia Buschmann, 51, John Borden, 66, and Lawrence Leonardo, 56, all employees of Auburn Associates Inc. (doing business as Auburn Honda) were terminated from employment.

Leek, who worked at the used car desk, was hired on Feb. 14, 2006 and fired on July 26, 2006. Buschmann, who worked at the new car desk, was hired on April 1, 2003 and fired on July 26, 2006. Borden, who worked as a used car manager, was hired on Jan. 10, 2005 and fired on March 15, 2006. Leonardo, who worked as general manager, was hired on July 1, 2002 and fired on May 30, 2006.

Leek, Buschmann, Borden and Leonardo sued Auburn Honda and Jay Cooper, its president, alleging age discrimination and wrongful termination. Leonardo also brought causes of action for violation of the California Family Rights Act and retaliation.

The cases were consolidated by stipulation between parties in May 2011. The original complaints were Leek, Borden and Buschmann v. Auburn Honda and Cooper (Case No. 21571, and Leonardo v. Auburn Honda and Cooper (Case No. 21570).

The plaintiffs alleged that Cooper discharged them as part of a scheme to decrease Auburn Honda's health insurance costs by terminating older employees. The plaintiffs based their allegation primarily on the declaration of Leonardo, who claimed he overheard Cooper indicate he needed to "get rid of the older long-term employees to reduce costs of wages, benefits and vacations."

Leonardo alleged that just prior to being terminated, he informed Cooper that he needed to take family leave to care for his mother and that Cooper became outraged. Leonardo claimed that the incident contributed to his termination, as an act of retaliation.

Cooper was effectively dismissed from the case pursuant to the court's order granting summary adjudication in his favor.

Auburn Honda alleged the defense of business necessity, arguing that due to the economy and sharp decline in sales it was necessary to restructure its workforce by consolidating positions in which existing employees assumed additional job duties to decrease payroll expenses.

Auburn Honda claimed the plaintiffs were each terminated for legitimate, nondiscriminatory reasons during this period of significantly declining sales at the dealership. It further claimed that it has continuously valued its older workforce, with a substantial number of employees over the age of 40.

In regard to Leonardo's individual claims, Auburn Honda argued that Leonardo had a number of paid unexcused absences and instances of tardiness over the last two years he was employed at the dealership. Auburn Honda argued

that Leonardo voluntarily quit his job in a fit of rage brought on by Cooper's inquiry about Memorial Day weekend sales figures. Auburn Honda claimed that neither Cooper nor anyone at the dealership received a request from Leonardo to take unpaid medical leave to take care of his mother, and as such, did not put his employer at reasonable notice of his need for unpaid leave.

INJURIES/DAMAGES *emotional distress*

The plaintiffs alleged that they suffered loss of wages and commissions, as well as emotional distress. They also sought their attorney costs and fees, and they further alleged that they were entitled to punitive damages. The plaintiffs asked the jury for more than \$2 million.

Auburn Honda contended that the plaintiffs were terminated for legitimate business reasons, and hence, were owed zero economic damages. It further contended that the plaintiffs all had vast auto-related experience, and either were able to find comparable employment or could have, and hence, were owed zero non-economic damages.

RESULT The jury rendered a unanimous defense verdict.

DEMAND \$440,000
OFFER \$50,000 (CCP 998)

INSURER(S) Federated Mutual Insurance Co. for Auburn Honda

TRIAL DETAILS Trial Length: 11 days
Trial Deliberations: 2.35 hours
Jury Vote: 12-0
Jury Composition: 6 male, 6 female

PLAINTIFF EXPERT(S) John D. Hancock, Ph.D., economics, Gold River, CA

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiffs' counsel declined to contribute.

—Dan Israeli

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SAN FRANCISCO COUNTY

MOTOR VEHICLE

Bus — Left Turn — Intersection — Bicycle

Bicyclist suffered brain injury in collision with municipal bus

SETTLEMENT \$5,360,000

CASE David Wheeler by and through his conservator Wanda F. Clifton v. City and County of San Francisco and Roy Timmons, No. CGC-09-490428

COURT Superior Court of San Francisco County, San Francisco, CA

JUDGE Charlotte Walter Woolard
DATE 6/21/2011

PLAINTIFF ATTORNEY(S) Gerard A. "Jerry" Hurtubise, Winslow & Hurtubise, San Francisco, CA
Greg Winslow, Winslow & Hurtubise, San Francisco, CA

DEFENSE ATTORNEY(S) David A. Delbon, San Francisco City Attorney's Office, San Francisco, CA

FACTS & ALLEGATIONS On Nov. 20, 2008, plaintiff David Wheeler, 47, was riding his bicycle across the Lower Great Highway in San Francisco after entering a crosswalk from a bicycle path. A municipal bus driven by Roy Timmons made a left turn without signaling or stopping at stop sign and struck Wheeler. Wheeler was thrown from his bicycle and struck his head on the asphalt.

Wheeler sued the city and county of San Francisco and Timmons. He alleged Timmons was negligent in his operation of the bus and that the city and county were vicariously liable for his actions.

Plaintiff's counsel acquired a surveillance tape from the bus which showed that the bus did not stop prior to entering the intersection where the accident occurred. Counsel reported the tape also showed Timmons failing to stop at three stop signs prior to the accident.

Defense counsel noted that Wheeler was not wearing a helmet. Counsel further noted the accident took place at night and Wheeler did not have a light for his bicycle. It is state law for bicycles operating at night to have lights.

INJURIES/DAMAGES *cognitive deficit; coma; loss of fine motor skills; physical therapy; swelling; traumatic brain injury*

Wheeler suffered a traumatic brain injury. He was taken from the scene via ambulance.

Wheeler was in a coma for six days and remained hospitalized for more than six months. He had multiple