

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2013

PHILADELPHIA, THURSDAY, MARCH 21, 2013

VOL 247 • NO. 55

An **ALM** Publication

## Phila. Jury Awards \$15.7 Mil. Verdict Against Toyota Dealer

BY AMARIS ELLIOTT-ENGEL

*Of the Legal Staff*

After a five-week trial, a Philadelphia jury awarded \$11.4 million Tuesday to a physician who says she has virtually no use of her left arm following a motor vehicle accident that occurred March 8, 2008. Jurors deliberated for a day-and-a-half before arriving at their decision on a 10-2 vote.

The jury also awarded \$4.3 million to five other plaintiffs in the case for a total finding of \$15.7 million in liability against Central City Toyota, which maintained the car in which the doctor was injured.

Dr. Noreen Lewis, a family physician, was driving a 2006 Toyota Sienna rented from local car-sharing service PhillyCarShare when the minivan's ball joint mechanically failed and rolled over down a ravine, according to court papers.

The minivan was maintained by Central City Toyota, which was the only defendant found liable in the case.

**Tom Duffy**

Plaintiffs counsel UFBFor Lewis BTMFECZPN Duffy.

Daniel S. Altschuler, chair of Post & Schell's casualty department, represented Lewis as a defendant in the claims asserted by the passengers.

Defense counsel for the Toyota dealership was William E. Schaefer of Zurich Insurance Group's Hendrzak & Lloyd in Center Valley, Lehigh County. Hendrzak & Lloyd represents Zurich's insured in Northeastern and Central Pennsylvania, according to Zurich's website.

Defense counsel for PhillyCarShare — a nonprofit organization through which members borrow cars at locations throughout the city — was Joseph J. McHale, chairman of Stradley

Ronon Stevens & Young's products liability/life sciences group.

Plaintiffs counsel for the five passengers in the PhillyCarShare vehicle was Dennis A. Pomo of Pasquarella, Kunnel & Pomo.

Schaefer declined comment.

The dealership sought to show that responsibility was shifted to Lewis and to PhillyCarShare, Altschuler and McHale said.

Lewis was being defended through PhillyCarShare's policy, Altschuler said.

"While the plaintiffs did not actively pursue PhillyCarShare, the dealership actively pursued PhillyCarShare," Altschuler said.

Altschuler said he did not call any witnesses for his part of the case, and McHale said he did not call experts for his parts of the case. Both said they prosecuted their cases through cross-examination.

PhillyCarShare moved for a nonsuit at the close of the plaintiffs' evidence, Duffy, McHale and Altschuler said, and the plaintiffs did not oppose that motion.

However, the dealership did

oppose PhillyCarShare's dismissal from the case and Philadelphia Court of Common Pleas Judge George W. Overton let the jury decide the issue of whether the organization should have told Lewis to stop driving the car when she called to report that the "check engine" light was on and that the car was "shimmying" while she was driving it, Duffy said.

"We were able to present evidence that PhillyCarShare met all of its obligations and provided the appropriate service to its members," McHale said.

The Sienna was inspected by Central City Toyota on December 3, 2007, and the accident occurred March 8, 2008, court papers said.

Central City Toyota argued in court papers that the ball joint was damaged when the car rolled.

The dealership also argued that there was no evidence that the ball joint was defective when the Toyota passed inspection, according to defense papers.

"Despite years of active discovery, plaintiffs have adduced no facts of record to show any functional problem with the steering, stability, stopping or acceleration of said vehicle after December 3, 2007, which would be indicative of any sort of problem with the right front ball joint dust cover or ball joint," defense papers said. "In this regard, the utter silence of plaintiff's proffered liability experts regarding the existence of any functional issue or operational

complaint indicative of a right front ball joint problem either before or after the December 3, 2007, inspection is deafening."

The dealership also argued that Lewis was at fault because the Toyota was being driven at too high of a speed for a wet roadway, court papers said.

When the lawyers talked with the jury, Duffy said they indicated that what persuaded them was that there was overwhelming evidence that the ball joint broke while it was being driven.

Duffy also said that he thinks the jury was influenced by his impeachment of the defense experts by cross-examining them on the fees they were paid and showing their "bias."

Michael James, a senior mechanical engineer from Orem, Utah, was paid \$100,000, and Lee Carr, a mechanical engineer from Houston, was paid \$300,000, Duffy said.

"I think it influences the jury's decisions about ... whether they are credible," Duffy said.

Pomo said they were able to speak to one of the dissenting jurors who stated that, while they were compelled by the damages, that they did not agree that there was enough causation evidence to show the ball joint had not yet failed.

The products liability claims against Toyota were dropped.

The case was referred from Pasquarella Kunnel, and the decision was made to have

Duffy represent Lewis, and for the referring firm to represent the passengers in order to avoid the conflict of interest, Duffy and Pomo said.

Under ethical rules, it would be a conflict for one firm to represent both the driver and the passengers of the vehicle when Lewis could have potentially been found at fault, Pomo said.

Altschuler and Pomo were "tantamount" to co-counsel in the positions they took in the litigation, Duffy said.

Pomo and Duffy said that Pomo did not put on any evidence that Lewis did anything wrong.

The entire case for liability was carried by Duffy and Fulginiti, Pomo said.

The jurors awarded \$862,000 to Evelyn Lewis, \$216,208 to Lashona Lewis, \$214,625 to Michael Lewis, \$1,561,650 to Bryanna McGinchee, and \$1,399,217 to Bridget McGinchee.

Lewis demanded \$15 million and the other plaintiffs demanded \$2.85 million in total, according to the dealership's pretrial memorandum.

Duffy said the car dealership offered \$1.7 million to settle the case during the trial.

*Amaris Elliott-Engel can be contacted at 215-557-2354 or [aelliott-engel@alm.com](mailto:aelliott-engel@alm.com). Follow her on Twitter @AmarisTLI.*