

6 Trials Digest 11th 24 (Cal.Superior), 2008 WL 352339

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Superior Court, Fresno County, California.

Avila vs. Martin

TOPIC:

Synopsis: SETTLEMENT -- Man killed, son injured when driver fails to stop at intersection
Case Type: Vehicle Negligence; Motor Vehicle v. Motor Vehicle; Vehicle Negligence; Stop Sign; Vehicle Negligence; Intersection; Vehicle Negligence; Passenger; Vicarious Liability; Wrongful Death; Adult

DOCKET NUMBER: 07CECG02695(AMC)

STATE: California

COUNTY: Fresno

Verdict/Judgment Date: January 11, 2008

JUDGE: Not Applicable

ATTORNEYS:

Plaintiff: [Michael Marderosian](#), Marderosian, Runyon, Cercone, Lehman & Armo, Fresno.

Defendant: [Peter M. Callahan](#), Callahan, McCune & Willis, Tustin; [Daniel P. Lyons](#), McCormick, Barstow, Sheppard, Wayte & Carruth, Fresno.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$1,005,000

Range: \$1,000,000-1,999,999

On January 11, 2008, at a court-ordered mediation with mediator Lee M. Jacobson, Esq. of Jacobson, Hansen, Najarian & McQuillan, defendants settled the case in its entirety for \$1,005,000.

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: On June 14, 2007, decedent Sergio Avila Sr., who was 48 years old and disabled, was taking his son, plaintiff Sergio Avila Jr., to work when his vehicle was struck by another vehicle operated by defendant William Larry Martin. Plaintiffs Rosa Maria Avila, Elvira Avila, Sergio Avila Jr., Cesar Avila, and Rosa Elia Rivas alleged that defendant Martin failed to see a stop sign and negligently entered the intersection occupied by decedent's vehicle, striking it and killing decedent. The impact also injured plaintiff Sergio Avila Jr., who also witnessed his father's death. At the time of the collision, Martin was insured with minimum limits of \$15,000/\$30,000 and denied that he was in the course and scope of any employment.

A lawsuit was filed alleging damages for wrongful death and personal injuries. The suit was brought by the decedent's heirs, which included his wife, Rosa Maria Avila, and three adult children. The suit also included a claim for personal injuries and a claim for negligent infliction of emotional distress by plaintiff Sergio Avila Jr. A claim was also asserted for a step-daughter, plaintiff Rosa Avila's daughter from a previous marriage, who had been receiving minimal financial support from decedent at the time of his death.

During the course of discovery, it was learned that at the time of the accident, defendant Martin was working for defendant American Drywall Services and going to a work site. He was transporting two other workers and hauling tools and equipment in the vehicle. As a result, plaintiffs alleged he was in the course and scope of his employment due to the fact that his activities were for the benefit of the employer, [Yamaguchi v. Harnsmut \(2003\) 106 Cal.App.4th 472](#) and [Farmers Insurance Group v. County of Santa Clara \(1995\) 11 Cal.4th 992](#). Defendant American Drywall Services denied defendant Martin acted within the course and scope of his employment. Defendant Martin,

due to his low **insurance** limits, supported the allegation. The employer was insured with a liability policy of **insurance** in the amount of \$1,000,000. Plaintiff made a demand for the driver's limit of \$15,000/\$30,000 and the employer's limits of \$1,000,000.

CLAIMED INJURIES

According to Plaintiff: Sergio Avila Sr.: Death. Sergio Avila Jr.: Leg; back.

CLAIMED DAMAGES

According to Plaintiff: Plaintiffs alleged damages for the wrongful death of their husband, father, and step-father, who was 48 years of age at the time of his death. Plaintiff Sergio Avila Jr., age 21, was decedent's son and was a passenger in decedent's vehicle at the time of the subject accident; he recovered damages based on a claim for personal injuries and negligent infliction of emotional distress. Plaintiffs Rosa Maria Avila, Elvira Avila, Cesar Avila, and Rosa Elia Rivas recovered damages based on the wrongful death of decedent, who was disabled at the time of the accident.

SETTLEMENT DISCUSSIONS

According to Plaintiff: Not reported.

COMMENTS

According to Plaintiff: Daniel P. Lyons represented defendant Martin. Peter M. Callahan represented defendant American Drywall Services.

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