



### DENTON COUNTY

#### MOTOR VEHICLE

##### Tractor-Trailer — Intersection — Insurance

## Signal light repairman hit, ejected from 'cherry picker'

### SETTLEMENT \$1,900,000

**CASE** Enrique J. Villagomez v. David Owen Frisby, Hurricane Waste Systems, LLC, a/k/a Hurricane Waste System, LLC, Hurricane Waste Systems and Hurricane Transportation, No. 2005-60283-393

**COURT** Denton County District Court, 158th, TX

**JUDGE** Vicki Isaacks

**NEUTRAL(S)** Edwin Wright III

**DATE** 3/7/2007

**PLAINTIFF**

**ATTORNEY(S)** Jeff Springer (lead), Springer & Lyle, LLP, Denton, TX  
Frank Lyle, Springer & Lyle, LLP, Denton, TX

**DEFENSE**

**ATTORNEY(S)** Marc Hedges Fanning, Fanning, Harper & Martinson, PC, Dallas, TX

**ATTORNEY FOR INSURANCE**

**CARRIER** J. Kevin Kindred, Wilson, Elser, Moskowitz, Edelman & Dicker, L.L.P., Dallas, TX (Fireman's Fund (excess carrier))

**ATTORNEY FOR THIRD PARTY** William W. Krueger, III, Fletcher & Springer LLP, Dallas, TX (city of Denton)

**FACTS & ALLEGATIONS** On Feb. 19, 2004 at 3:45 p.m., plaintiff Enrique Villagomez, 55, a signal light repairman for the city of Denton, was servicing a tether line for signal lights over the southwest-bound traffic lane at an intersection in Denton. The

intersection was at the 1700 block of South Loop 288, about 35 feet southwest of its intersection with Brinker Road. Villagomez was working from a "cherry picker," an elevated crane designed for that purpose. It was attached to a utility truck parked on the shoulder and out of the lane of traffic. The elevated crane bucket was several feet above traffic on the loop, but not high enough for an 18-wheeler to pass underneath. The work Villagomez was doing required him to be positioned facing away from oncoming traffic.

When a semi pulling a flatbed trailer collided with the crane bucket, Villagomez was ejected. Because he was tethered to the crane bucket by a safety harness, he was dragged along the load of the semi-truck, and eventually he struck the "stinger" forklift being transported at the rear of the trailer.

Claiming negligence, Villagomez sued the driver, David Frisby, and the owner of the semi-truck tractor, Hurricane Waste Systems LLC, a/k/a also known as Hurricane Waste System LLC, Hurricane Waste Systems and Hurricane Transportation, Irving. The plaintiff claimed that Frisby had a direct line of sight to Villagomez and knew or should have known that his load was stacked too high for him to pass under the crane, yet he continued through the intersection. (Villagomez also sued the owner of the flatbed semi-trailer, but that company was dismissed from the litigation.) Villagomez alleged that Frisby was traveling southwest on the Loop. After being stopped at an intersection well north of where Villagomez was positioned, Frisby approached the intersection where Villagomez was working. Traffic ahead consisted only of cars, which proceeded quickly beneath Villagomez, through the intersection, and Frisby followed.

The defendants denied the allegations. They claimed that the city and its employees were primarily responsible for Villagomez's injuries because the workplace was not properly set up, and because no attempt was made to control the flow of traffic under Villagomez.

Plaintiff's liability expert stated that the Frisby had a clear line of sight to Villagomez for several hundred yards, so plaintiff

should have been clearly visible.

Defense liability experts faulted the city for the way the work site was set up, and for failing to have policies and procedures that required work crews to divert traffic around work sites, or to control traffic so that workers were not required to work over open lanes of traffic.

**INJURIES/DAMAGES** *face; facial fractures; facial laceration; fracture, neck; fracture, sinus; fracture, skull; fracture, vertebra; lacerations; laminectomy; neck; subdural hematoma; traumatic brain injury*

Villagomez was taken by a CareFlite air ambulance to a hospital in Dallas, where he was in a coma for about two weeks. His injuries included a depressed skull fracture; sinus fracture; subdural hematoma; traumatic brain injury; complex scalp and facial lacerations; facial fractures of the right frontal and right orbital bones; vertebral fractures; and neck fracture at C-2 with spinal cord injury.

Villagomez required five surgeries, including evacuation of the subdural hematoma; elevation of the skull fracture; reconstruction of the right orbital facial fracture; placement of screws in his neck at the C-2 fracture; and laminectomy.

On March 10, 2004, Villagomez was transferred to a medical center in Irving for several weeks of rehabilitation. For a month thereafter, he was an inpatient at a neurological skills center, where he was subsequently placed in the outpatient program for more than a year. Villagomez underwent speech, physical and occupational therapy, but continues to have severely limited cervical range of motions, loss of mobility and short-term memory problems. He has weakness and numbness in his arms, shoulders, hands and legs. He has had problems with double vision and other vision problems due to his cranial nerve and interior oblique muscle weakness caused by the facial/orbital fractures. He has loss of hearing, sleep disorder and cognitive and motor disorders. He is unable to perform many daily functions, and in all probability will not be able to drive a car again. He requires daily assistance and care.

Villagomez has been unable to return to his job at the city, and is being evaluated to determine whether he will be able to perform any type of job for future employment. His medical management and daily care requirements are ongoing, and much of his care is expected to be permanent.

Villagomez claimed \$396,272 in medical specials. Plaintiff's life care planner estimated Villagomez's future medical expenses at about \$2 million. He claimed \$120,292 in past lost wages.

The defense claimed that Villagomez's past medical expenses were limited to the amount of subrogation claimed by the city's attorneys, and that the expected cost of his future medical needs were overestimated by more than \$1 million.

**RESULT** A mediation was held just a few weeks before the trial was scheduled to begin. The case was resolved when plaintiff's Stowers demand expired, after being extended to within a few days of trial.

The case settled for \$1.9 million present value, including a cash payment of \$1.2 million and a structured settlement of monthly payments and future lump sums with an expected total payment of \$1,474,184.

Liability claims were resolved several weeks before the city's subrogation claim was resolved. The issue was the percentage of the city's fault. The defendants had named the city and two of its employees as "responsible third parties." The statute allowing responsible third parties to be named provided that the city's subrogation recovery would be reduced by its percentage of fault. The issue of the city's fault had to be resolved before the subrogation claim could be settled. The issue was never set for trial, however, because the city ultimately accepted a 40% reduction in its lien. The responsible third parties are pending dismissal from the suit.

**INSURER(S)** Home State County Mutual Insurance Co.  
(primary liability for Hurricane Waste)

Fireman's Fund Insurance Co. (excess  
carrier for Hurricane Waste)

**PLAINTIFF  
EXPERT(S)**

Barbara Dunlap, life care planning,  
Fort Worth, TX

James R. Lock, accident reconstruction,  
College Station, TX

Michael L. Nieswiadomy, Ph.D., economics,  
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**DEFENSE  
EXPERT(S)**

Joe Montgomery, accident investigation &  
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Richard C. Senelick, M.D., P.A., life care  
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Joe Thornhill, Ph.D., life care planning,  
Leander, TX

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

—Don Maines