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DAILY REPORT

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Plaintiff's lawyer Tommy Malone called the five-week trial "the most hard-fought legal battle of my career." Above: Malone stands in front of balloons with the exact amount he won in the case: \$49,123,375.87.

► VERDICTS & SETTLEMENTS

Trial nets \$49M verdict, \$12M in settlements

PRE-MED HOPEFUL WAS LEFT severely brain-damaged after a wreck sent a flatbed truck careening into the car in which he was a passenger

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A YOUNG MAN whose plans to enter medical school were shattered

by a car wreck that left him severely brain-damaged has been awarded almost \$50 million by a California jury after what attorney Thomas W. "Tommy" Malone calls "the most hard-fought legal battle of my career."

The award is in addition to a total of \$12 million in separate pretrial settlements for Drew Bianchi, now 23, who

was a passenger in a Toyota Avalon on a state highway near San Jose in May 2007 when a wreck between a tractor-trailer and a flatbed truck sent the latter vehicle careening into the small car.

"Highway 152 is a narrow, two-lane road that went from carrying about 5,000 cars a day 20 years ago to about 50,000 today, mostly commercial

vehicles,” said Malone.

According to trial documents, the Toyota was traveling behind the tractor-trailer when it met the flatbed, which its driver, Samuel Bimbela, had allowed to drift about a foot across the center line into the oncoming lane.

The semi driver, Michael Demma, attempted to avoid the flatbed but the two trucks sideswiped each other. The Toyota’s driver swerved onto the shoulder of the road, but the flatbed hit the left rear side of the car, where Bianchi was riding.

Other vehicles also were struck and other people injured, said Malone, but none as seriously as Bianchi, who suffered traumatic brain injuries that initially left him unable to move or talk.

In January 2008, San Francisco attorney Randall H. Scarlett filed suit on Bianchi’s behalf alleging negligence and other charges against Bimbela and the company that owned the flatbed, Salazar Equipment Co.; Demma and the company he was driving for, Gordon Trucking Inc.; Santa Clara County, where the wreck occurred; and the state of California and its Department of Transportation.

Scarlett, a longtime friend and occasional litigation partner of Malone, subsequently asked the Atlanta lawyer to join the case.

Prior to trial, according to a trial brief, California paid \$10 million to settle Bianchi’s claims, and Santa Clara County was dismissed as a defendant. Salazar, whose claims that Bimbela had been using the flatbed for his own private use at the time of the wreck were confirmed by the driver, settled for its \$2 million insurance limit.

The brief said that Gordon Trucking and Demma denied liabil-

ity, arguing that Bimbela had been asleep at the wheel, that their own driver had attempted to avoid the wreck and that a “reasonable person” would have responded as he did. But a firetruck driver traveling in front of Demma said the semi was following more closely than state traffic regulations allow for a commercial vehicle, and an investigation showed that he had been talking on his cell phone for 30 minutes up to and including the time of the wreck, another violation.

“Gordon Trucking tried to say [Demma] couldn’t do anything; maybe he could, maybe he couldn’t,” said Malone. “But he was so close that he couldn’t avoid it.”

During a lengthy trial before Santa Clara County Superior Court Judge Carrie Zepeda, Malone and Scarlett presented testimony and video evidence chronicling the progress Bianchi had achieved with intensive therapy.

Bianchi, a former high school tennis star who had been accepted by the University of California at Davis’ pre-med program, “has come a long way,” said Malone. “We have a video, ‘The Value of Therapy,’ where they’d start by throwing a balloon at him. At first, it would just bounce off; now, he’s popping it around the room.”

Bianchi is able to speak a bit, said Malone, but only a word or two and not very often.

Opposing counsel—Richard L. Alley of Hardy Erich Brown & Wilson of Sacramento and Guy D. Calladine of Carlson, Calladine & Peterson of San Francisco for the trucking company, and John S. Simonson of Hayes, Davis, Bonino, Ellingson, McLay & Scott for Bimbela—“did an excellent job,” said Malone.

“The trial took five full weeks,” he said. “The defendants, particularly

Gordon, argued everything: liability, medical expenses, the life-care plan ... this was probably the most hard-fought trial I’ve ever handled. You generally would not expect a road-wreck case to be so hard-fought.”

Jury deliberations took about five hours, he said, and on Sept. 21 the panel awarded Bianchi \$49,123,375, including \$31,086,645 in past and future medical bills, \$4,536,730 in future lost wages, and \$3.5 million for pain and suffering.

The jury allocated 60 percent of liability to Bimbela, 35 percent to Gordon Trucking and 5 percent to the state of California, which had already settled.

Bimbela has few resources, said Malone, but “Gordon is adequately insured, and they have joint and several damages for the economic damages; and they owe 35 percent of general damages, and we can collect on that.”

Alley referred questions to Gordon Trucking’s general counsel, Theresa E. Pruett, who forwarded a prepared release.

“Since this accident occurred,” it said, “Gordon Trucking has believed that our driver did nothing to cause or contribute to the accident or Mr. Bianchi’s injuries. ... The Santa Clara jury’s apportionment of 35 percent fault to Gordon Trucking in this civil action has not and will not change our mind.

“The tragedy for the Bianchi family will continue,” it said, “and for those reasons our thoughts and prayers are with them.”

The Pacific, Wash.-based company would have no comment on any possible plans for an appeal or other challenges to the judgment, she said.

Bimbela’s lawyer did not respond. The case is *Bianchi v. Gordon*, No. 1:08-CV-104548. ☞