



# THE VERDICT REPORTER

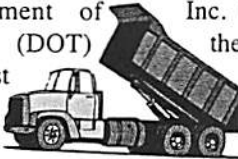
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## Leg Amputation Yields \$3.7M Verdict But Jury's Apportionment of Fault Reduces Plaintiff's Award

BY AMY OLIVA

A Waterbury jury awarded a \$3,691,879 verdict in a case involving a Department of Transportation (DOT) worker who lost her leg due to an injury sustained while working in the bed of a dump truck. The truck's manufacturer settled with plaintiff for a confidential amount prior to trial, but remained a defendant for the purpose of fault apportionment. The jury apportioned 26% fault to the manufacturer, 36% fault to the truck's distributor, and 38% fault to the plaintiff.



Plaintiff Amy Shopoy was preparing the dump truck

for winter snow operations. Her boot became caught in the moving conveyor chain during a maintenance operation. Defendant Heil Environmental, Inc. was the manufacturer of the truck and Defendant Park City Truck Equipment LLC was the distributor. Plaintiff argued that Park City, which sold and assembled the dump body, knew how the dump body was used and that Park City's own mechanics, who occasionally inspected the chain's operation, did so from inside the dump body while the chain was in motion. Plaintiff argued that the dump bed was defectively designed and that defendants were strictly liable for her injuries. She also claimed

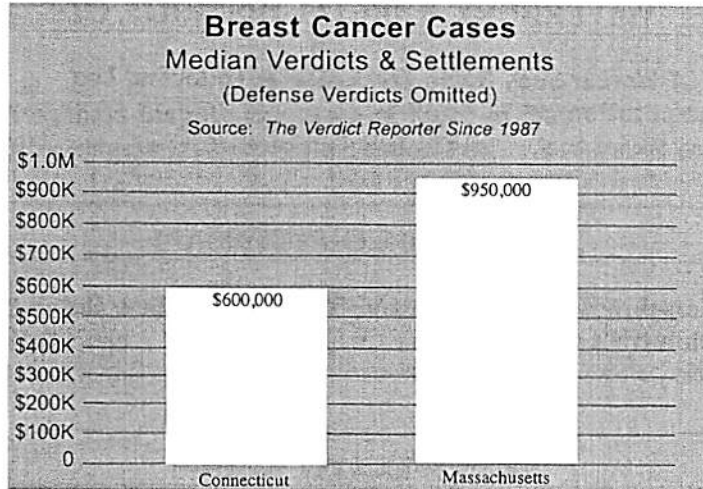
breach of the statutory duty to provide warnings and instructions, breach of warranty, and negligence. Plaintiff argued that the chain should have been guarded to preclude an accident such as this from happening.

Defendant Park City, which sold dump beds to the state under a procurement contract, contended that it complied with the required mandatory training and maintenance of the dump body, OSHA regulations and industry safety standards. Defendants both claimed that physical guarding of the chain during operation was implausible, as any such guard would necessarily tend to interfere with its intended purpose. Park City also maintained that it provided proper training and that the DOT, which operated a fleet of hundreds of similar trucks before the instant purchase, should have known how to train its own employees.

INJURIES: Leg amputation.

VERDICT: \$3,691,879.

For full details, see page 15.



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**\$3,000,000**

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## Norfolk County, MA

### Superior Court – Dedham

## Intersection Collision Leads to Lawsuit Against Multiple Drivers

#### Case Caption:

Karen DeRosa v. Wendy L. Vogel and Diana A. Ferman

**Verdict:** \$6,700 against Defendant Vogel. A defense verdict was entered for Defendant Ferman.

**Judge:** E. Susan Garsh

**Date of Verdict:** 10/27/2011

#### Attorneys:

**Plaintiff:** John J. St. Andre Jr., Southborough

**Defendant:** Thomas P. Brady, Worcester  
John R. Callahan, Boston

**Facts:** A motorist sought damages against two other drivers following a collision at an intersection. The defendants blamed one another for the accident. The case was presented to a Norfolk County jury, who returned a \$6,700 verdict for the plaintiff against Defendant Wendy Vogel. A defense verdict was entered for Defendant Diana Ferman.

Plaintiff Karen DeRosa was driving her vehicle on Route 288 in Hingham and had come to a stop at the intersection of Gardner and Whiting Streets. Vogel, who was attempting to make a left turn at the intersection, broadsided a vehicle driven by Ferman. Vogel then struck plaintiff's stopped vehicle.

Plaintiff alleged one or both defendants was responsible for this accident. Plaintiff alleged serious neck and back injuries as a result of the accident. She acknowledged some non-specific prior neck and back complaints, but argued that her headaches were the direct result of the collision and required occipital nerve blocks.

Each of the defendants claimed the other was responsible for causing the accident. Both defendants disputed causation of plaintiff's injury complaints on the basis that she had pre-existing similar complaints.

**Plaintiff Profile:** Plaintiff was a female in her 50s.

**Alleged Injury:** Soft tissue cervical and lumbar injuries with headaches. Plaintiff required transport to a local emergency room

following this accident. She was administered occipital nerve blocks by a neurologist. Plaintiff had ongoing complaints to the date of trial. She sought economic and non-economic damages.

**Jury Deliberations:** 5 hours

**Insurance Carrier:** Commerce (both defendants)

#### Expert(s):

**Plaintiff:** None

**Defendant:** Kirk H. Johnson, M.D.  
Orthopedist Worcester, MA

**Case Number:** NOCV2009-02220

## Norfolk County, MA

### Superior Court – Dedham

## Elderly Neighbor Ordered to Pay \$1M in Molestation Case

#### Case Caption:

Jane Doe v. John Starr

**Verdict:** \$1,007,143

**Judge:** Withheld

**Date of Verdict:** 12/10/2011

#### Attorneys:

**Plaintiff:** James F. White, Franklin

**Defendant:** Robert J. Zanello, Milton

**Facts:** A sexual assault and battery case was presented to a Norfolk County Superior Court jury. The jury awarded \$1,007,143 to the plaintiff, who claimed she was assaulted several times by an elderly neighbor.

Plaintiff Jane Doe was 10-years-old when Defendant John Starr allegedly sexually abused her on at least three occasions. Defendant was her 67-year-old neighbor at the time. Plaintiff, who was 14-years-old at the time of this trial, asserted that the alleged molestation occurred at defendant's home. Defendant was found guilty in Milford District Court on three counts of indecent assault and battery on a child under 14. Defendant did not appeal the criminal conviction. He was sentenced to 2.5 years. While defendant was incarcerated, plaintiff filed this civil action.

Plaintiff alleged that defendant was liable for assault and battery and intentional infliction of emotional distress. Plaintiff, her mother and a forensic psychologist testified regarding plaintiff's physical and emotional injuries, including post-traumatic stress disorder (PTSD), obsessive-compulsive disorder (OCD), generalized anxiety disorder, panic disorder, major depressive disorder, sexual hypoactive and sexual aversion disorders, as well as an identity problem. A claim of invasion of privacy was withdrawn by plaintiff at trial.

Defendant contended that he was wrongly convicted and refused to stipulate to liability until plaintiff filed a motion to invoke the doctrine of collateral estoppel. Defendant then stipulated to liability the day before trial.

**Plaintiff Profile:** Plaintiff was a 10-year-old female at the time of the alleged molestation. She was 14 years old at the time of trial.

**Alleged Injury:** Sexual assault and battery, resulting in severe ongoing emotional distress.

**Case Number:** NOCV2010-00749

**Editor's Notes:** Plaintiff's counsel reported that, because defendant did not stipulate to liability earlier, plaintiff went through the unnecessary stress of trial preparation and had to relive the sexual abuse she endured.

## Norfolk County, MA

### Superior Court – Dedham

## Neighbors Dispute Whether Right-of-Way Exists on Plaintiff's Property

**Case Caption:**  
Susan Tehranian v. Thomas Palo and Natasha Palo

**Verdict:** Bench trial verdict for defendants. The judge determined that defendants had a valid right-of-way.

**Judge:** Barbara A. Dortch-Okara

**Date of Verdict:** 12/30/2011

**Attorneys:**  
**Plaintiff:** Bruce A. Issadore, Norwell  
Walter B. Sullivan, Norwell

**Defendant:** Marshall F. Newman, Boston  
Benjamin Brooks, Washington DC

**Facts:** A landowner sued her neighbors after they chopped down a tree on her property. The primary dispute was whether the defendants had a valid right-of-way. A Norfolk County Superior Court judge determined that the defendants did have a valid right-of-way.

Plaintiff Susan Tehranian and Defendants Thomas and Natasha Palo owned adjoining houses on a narrow street in Quincy. Plaintiff sought damages when defendants cut down a tree on plaintiff's property.

Plaintiff alleged the tree was very old and valuable. She sought triple damages for violating the pertinent Massachusetts statute for intentionally chopping the tree. Additionally, plaintiff wanted to enjoin defendants from entering her property to access a parking area.

Defendants contended they had a right-of-way through the backyards of several people into a parking area behind the houses. The parking area offered no public access to the rear of the house. Defendants used an existing right-of-way across plaintiff's property to make their way between the home and parking area. They contended that plaintiff put up a fence and blocked part of the new location of the right-of-way, causing defendants to clear the original, rocky portion of the right-of-way along the side of the newly constructed fence. In order to do that, they had to chop down a tree.

Defendants counterclaimed for a declaration that they had a valid right to pass over plaintiff's property and to remove any obstacles which would impede passage to the parking area. Secondly, defendants contended that the right-of-way had moved a little over the years to the area where plaintiff erected her fence. According to defendants, the original right of way was rocky, so people would use the new dirt path instead, which was now blocked by the new fence.

**Alleged Injury:** Trespass, resulting in the loss of a tree. Plaintiff sought compensatory damages and also requested that defendants be enjoined from entering her property.

**Case Number:** NOCV2008-01441