



HARRIS COUNTY

MOTOR VEHICLE

Center Line — Truck — Sideswipe — SUV

Insurance offers nothing pretrial; but jury awards \$734,191 in truck accident lawsuit

Vol. 10 Issue 38 | October 4, 2010

VERDICT
of the **WEEK****Motor Vehicle****Insurance offers nothing pretrial; but jury awards \$734,191 in truck accident lawsuit****\$734,191***Garza v. EMS USA Inc.*

Harris Co. Dist. Ct.

Plaintiff Counsel Vuk S. Vujasinovic and Sean Chichowski, Vujasinovic & Beckcom, Houston**Defense Counsel** Tim Casper, Van Gardner, Kevin Shaw and Robin Taylor, Handlin & Associates, Houston**Full report on page 12****VERDICT** **\$734,191****CASE** Alfonso Garza v. EMS USA Inc. and Octavio Vega, No. 2009-60719**COURT** Harris County District Court, 151st, TX**JUDGE** Michael Englehart**DATE** 8/26/2010**PLAINTIFF****ATTORNEY(S)** Vuk S. Vujasinovic (lead), Vujasinovic & Beckcom, Houston, TX
Sean Chichowski, Vujasinovic & Beckcom, Houston, TX**DEFENSE****ATTORNEY(S)** Tim Casper, Handlin & Associates, Houston, TX
Van Gardner, Handlin & Associates, Houston, TX
Kevin Shaw, Handlin & Associates, Houston, TX
Robin Taylor, Handlin & Associates, Houston, TX**FACTS & ALLEGATIONS** On April 29, 2009, plaintiff Alfonso Garza, 60, retired, was driving a sport-utility vehicle west on Hopper Road in Houston. Octavio Vega was driving east in a pickup owned by his employer EMS USA Inc. There were two lanes each way, divided by a yellow line. Vega crossed the line and sideswiped Garza. Vega was not on the job but had his employer's permission to drive the truck.

Garza sued Vega for crossing the center line and sued EMS for negligent entrustment. The entrustment claim was dropped mid-trial.

Vega stipulated to liability mid-trial.

Garza does not speak English.

INJURIES/DAMAGES *back and neck; fusion, 2-level neck; fusion, cervical*

Garza claimed a cervical herniation and a lumbar herniation. He underwent one session of physical therapy and a series of cervical and lumbar injections. About a year after the accident, he underwent a two-level cervical fusion, and he claimed to need a lumbar fusion, as well. Past medical expenses were

\$179,191. He claimed future medical expenses of \$235,000. He sought unspecified damages for past and future pain and suffering and physical impairment. He said he could not ride a bicycle anymore, but did not know if this impairment was permanent.

Defense counsel argued that Garza was not injured as severely as he claimed. Garza hired a lawyer the day after the accident, before seeing a doctor, and the lawyer referred Garza to his first doctor. Also, Garza said he did not feel any pain until three to four days after the accident.

Defense counsel argued that Garza had age-related degeneration throughout his spine.

The police report indicated no injury and stated that Garza declined an ambulance at the scene, defense counsel noted.

The defense neurology expert said no future surgery was needed, among other opinions. Garza moved to strike only this opinion based on unreliability, arguing that the expert didn't examine him or view the diagnostic films and was not qualified to testify on surgical matters. The court granted the motion after a hearing during trial. Garza then called the expert adversely, whose remaining opinions supported Garza's case. The defense questioned the expert during the plaintiff's case in chief, but did not call him during the defense part of the case.

RESULT The jury found that Garza's damages were \$734,191.

With prejudgment interest and taxable costs, the award is expected to exceed \$800,000.

ALFONSO GARZA \$179,191 past medical cost
 \$225,000 future medical cost
 \$40,000 past physical impairment
 \$80,000 future physical impairment
 \$70,000 past pain and suffering
\$140,000 future pain and suffering
 \$734,191

DEMAND \$900,000
OFFER \$0 (pre-trial); \$350,000 (mid-trial)

INSURER(S) Chartis (formerly AIG) for both defendants

TRIAL DETAILS Trial Length: 4 days
 Trial Deliberations: 1.75 hours
 Jury Vote: 10-2

PLAINTIFF EXPERT(S) None reported

DEFENSE EXPERT(S) Leonard Hershkowitz, M.D., neurology, Houston, TX

-John Schneider