

## And The Defense Wins

### Melissa Richardson and Darrin O'Connor



**Melissa Richardson** of **Walters Meadows Richardson PLLC** and **Darrin O'Connor** of **Porteous Hainkel & Johnson** successfully defended Sindle Trucking, its

driver, Tyrone Kilgore, and its insurer, HDI Gerling America Insurance in a rear-end accident between Mr. Kilgore's loaded tanker truck and Plaintiff Farrag's semi. Farrag blew a tire while travelling north on I-55 in Tangipahoa Parish, near Hammond, Louisiana. He testified that he pulled over to the shoulder to check on the tire but returned to the right lane of the roadway because he did not believe it would be safe to remain on the shoulder. After driving at a reduced speed of 35 mph for 20 minutes, and possibly passing at least one exit, he was struck in the rear driver's side corner of his trailer by Defendant Kilgore as he was attempting to change lanes to avoid Plaintiff's slow moving semi. Plaintiff contended that, because this was a rear-end accident in which Defendant Kilgore was given a traffic ticket for "careless operation," Defendant Kilgore was 100 percent at fault. Defendants argued that Plaintiff was totally at fault because, by his testimony, he had 20 minutes to avoid this accident by (1) remaining parked on the shoulder and waiting for a service truck; (2) taking one of the exits he likely passed; or (3) calling for an escort. Plaintiff presented Sgt. Pittman and Sal Fariello, both of whom handled various aspects of the accident reconstruction. Defendants relied on expert testimony from Kelly Kennett (biomechanical), Dr. David Curry (human factors and safety), and Larry Baareman (DOT expert). Defendants also retained an accident reconstructionist, Bill Messerschmidt, who ultimately did not testify because favorable testimony was secured from the Plaintiff's two accident reconstructionists on cross examination.

Plaintiff reported no injury to the police and, in fact, did not start treating until two weeks after the accident. He was initially diagnosed with sprains/strains to his neck, low back, and knees. After receiving treatment for about six months in his home state of Tennessee, Plaintiff was cleared to return to work without any restrictions. Plaintiff then hired an attorney from New Orleans, and subsequently began flying from Tennessee to New Orleans for treatment. Plaintiff's attorney referred him to Dr. F. Allen Johnson and Dr. Rand Voorhies. He eventually underwent five surgeries with these two doctors: two knee arthroscopies, neck fusion, low back fusion, and hardware removal. Plaintiff incurred approximately \$510,000 in medical bills.

Testimony from Dr. Shelly Savant, a life care planner, projected Plaintiff's future medical treatment (despite limited testimony of the need for same from both Dr. Johnston and Dr. Voorhies) would cost approximately \$330,000. Defendants called Dr. Ralph Katz, orthopedic surgeon, who examined Plaintiff prior to any surgery, was in agreement with the Tennessee physicians who initially treated Plaintiff and testified that none of the surgeries were causally related to this accident.

The trial began on Monday and the jury was released to deliberate on Saturday afternoon. After approximately an hour and a half, they returned with a decision that split fault equally between the two drivers. \$250,000 was awarded for medical expenses. \$50,000 was awarded for past physical pain and suffering. \$50,000 was awarded for past mental pain and anguish. Plaintiff's total verdict is \$175,000. Plaintiff Farrag's wife, Ms. Hammad, also had a loss of consortium claim, but no damages were awarded.

In January 2017, an offer of judgment was made for \$400,000. Plaintiff's demand at all points prior to trial never came below \$3.2 M. During trial, a demand of \$1.8 M was made. Plaintiffs asked the jury to award between \$2.4-4 million.