

## SOUTHEAST

## HARRIS COUNTY

## MOTOR VEHICLE

Lane Change — Multiple Vehicle

## Defense argued plaintiff had tires with greatly reduced tread

**VERDICT** Defense

**CASE** Carlos Rodriguez v. Lee Roy Prince and Unlimited Trucking Inc., No. 201105858  
**COURT** Harris County District Court, 333rd, TX  
**JUDGE** Joseph James "Tad" Halbach  
**DATE** 3/25/2013

**PLAINTIFF**

**ATTORNEY(S)** Ryan B. Bormaster, D. Miller & Associates, Houston, TX

**DEFENSE**

**ATTORNEY(S)** Brian C. Lopez, Engvall & Lopez LLP, Houston, TX

**FACTS & ALLEGATIONS** On Dec. 29, 2010, plaintiff Carlos Rodriguez, 54, a self-employed upholsterer, was driving a pickup truck north on Interstate 610 East Loop in Houston in the rain when he was involved in a collision with a tractor-trailer owned by Unlimited Trucking and driven by Unlimited Trucking employee Lee Roy Prince.

Rodriguez sued Prince and Unlimited Trucking for motor vehicle negligence. The plaintiff's accident reconstruction expert testified that Prince, acting in his capacity as an employee of Unlimited, was driving to Rodriguez's left at approximately 55 mph when he crossed into Rodriguez's lane and collided with his truck. The plaintiff's trucking industry expert testified that by industry standards that speed was excessive for the weather conditions, and plaintiff's counsel argued this resulted in Prince losing control and leaving his lane.

The defense accident reconstruction expert testified that Rodriguez lost traction on his rear tires, spun out and struck Prince. Defense counsel argued that Rodriguez's rear tires had severely reduced tread at the time of the collision, making it more likely he would lose control on the wet pavement than Prince, who had tires that were in good repair.

**INJURIES/DAMAGES** *bone graft; chiropractic; fracture, clavicle; internal fixation; open reduction; strain, cervical; strain, lumbar*

Rodriguez sustained a closed left distal clavicle fracture. He was treated in the emergency room and underwent open reduction, internal fixation and a bone graft in July 2011. He also claimed cervical and lumbar strains and underwent four months of chiropractic treatment.

The plaintiff's medical expert testified that scar tissue at the fracture site will permanently limit the range of motion in his dominant left arm. He claimed that he was unable to work for 18 months after the collision.

The plaintiff's vocational rehabilitation expert testified that he will be unable to return to upholstery work, and plaintiff's counsel argued that this has resulted in a severe reduction of income from his upholstery business. He sought \$800,000 for past pain and suffering, physical impairment, medical expenses and lost income.

Defense counsel argued that Rodriguez's joint tax returns showed income from the period that he claimed he was unable to work. Defense counsel argued that while Rodriguez's wife testified at trial she had earned the money during pretrial depositions she claimed she had not worked.

**RESULT** The jury found that none of the parties were negligent.

**DEMAND** \$400,000  
**OFFER** \$30,000

**INSURER(S)** American Southern Insurance Co.

**TRIAL DETAILS** Trial Length: 5 days  
 Trial Deliberations: 1.5 hours  
 Jury Vote: 11-0

**PLAINTIFF**

**EXPERT(S)** James A. Acock, trucking industry, Phoenix, AZ  
 John J. DeBender, M.D., P.A., orthopedic surgery, Houston, TX (treating physician)  
 Gary Jernigan, P.E., accident investigation & reconstruction/ failure analysis/product liability, Tyler, TX  
 Karen E. Nielsen, Ph.D., vocational rehabilitation, Houston, TX

**DEFENSE**

**EXPERT(S)** Andrew D. Irwin, accident reconstruction, Dallas, TX  
 Kenneth Lehr, economics, Houston, TX

**POST-TRIAL** The plaintiff's motion for a judgment notwithstanding the verdict was denied.

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

—Rick Archer