

Wife dead, husband injured after crash with drunk driver

SETTLEMENT **\$4,000,000**

CASE Shawn Jarvinen, individually, and as personal representative of the Estate of Pamela Rae Jarvinen, deceased, David McMillan, Drew McMillan, Jason McMillan and John McMillan v. Peter Lloyd Gilliam and John Wheatman & Associates Inc., No. CGC-07-465857

COURT Superior Court of San Francisco County, San Francisco, CA

DATE 11/18/2008

PLAINTIFF

ATTORNEY(S) Jeffrey A. Haas, Jeffrey A. Haas Law Corporation, San Francisco, CA (Shawn Jarvinen)
Darrel Cameron Horsted, Attorney at Law, San Francisco, CA (Shawn Jarvinen)
Clifford S. Weingus, McTernan, Stender & Weingus, P.C., San Francisco, CA (Shawn Jarvinen)

DEFENSE

ATTORNEY(S) Guy D. Borges, McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges & Brothers LLP, Fairfield, CA (Peter Lloyd Gilliam)
Charles S. Custer, Gordon & Rees LLP, San Francisco, CA (John Wheatman & Associates Inc.)
Gordon E. Hepler, Jackson & Wallace LLP, San Francisco, CA (John Wheatman & Associates Inc.)
Hugh Anthony Levine, Attorney at Law, San Francisco, CA (Peter Lloyd Gilliam)

FACTS & ALLEGATIONS On Feb. 17, 2007, plaintiffs' decedent Pamela Jarvinen, 49, a hospital radiology technician supervisor, was driving a van northbound on Highway 1 near Gualala. Plaintiff Shawn Jarvinen, 39, was riding as a passenger. Their van was struck head-on by a car that Peter Lloyd Gilliam had allegedly just driven across the center line.

Pamela was killed, Shawn was injured, and Gilliam was arrested after the accident with a blood alcohol level of 0.23.

Shawn and the four adult children he had with Pamela sued Gilliam and his employer, John Wheatman & Associates Inc.,

for wrongful death, alleging motor vehicle negligence based on Gilliam's intoxication. The plaintiffs argued that the accident occurred while Gilliam was in the course and scope of his employment.

Wheatman & Associates said that Gilliam was not employed to become intoxicated. Thus, he deviated from his employment by becoming intoxicated, then visited clients. After leaving clients, he consumed more alcohol on his way home when the accident occurred.

Wheatman & Associates informed that the company had an oral policy against drinking alcohol while working, insisting that it had no prior knowledge of an alcohol problem related to Gilliam.

INJURIES/DAMAGES *arm; chest; contusions; death; leg; neck*

The plaintiffs sought \$2 million for loss of Pamela's support, benefits and domestic services; \$7,000 for funeral and burial expenses; and \$3,000 for her medical expenses.

Shawn sustained open wounds on his left leg and left arm with pain in his joint, contusion of his chest wall, and neck strain. He was taken by ambulance to an emergency department, where he underwent a complete workup, including numerous radiographic studies. He followed up with his physician for treatment of his wounds.

Shawn was off work after the accident from Feb. 20 until March 16.

He sought \$38,000 for his medical expenses and \$3,000 for his lost earnings.

The defense would have argued that the plaintiffs overestimated Pamela's wages and benefits and deducted too little for her personal consumption in arriving at the plaintiffs' economic loss.

RESULT The case settled for \$4 million.

Gilliam's insurance policy paid \$200,000 (policy limit). The carriers representing Wheatman & Associates paid \$3.8 million.

Defense attorney Hugh Anthony Levine informed that the plaintiffs were seeking punitive damages due to Gilliam's high blood alcohol content, excessive speed, crossing the center line and other aggravating factors. Thus, there was a very real prospect that a jury would award significant punitive damages under the factual circumstances of the case. Levine said that Gilliam retained him for representation as to punitive damages only. The settlement involved insurance proceeds only, not any of Gilliam's personal funds.

INSURER(S) State Farm for Gilliam
Fireman's Fund Insurance Company for
Wheatman & Associates
The Hartford for Wheatman & Associates

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel and defense counsel.

—Joseph Falso