

RESULT The jury found that Welcome Market owned, leased, occupied and controlled the subject store, and that it was negligent in the maintenance or use of the property. It also found that Welcome Market's negligence was a substantial factor in causing harm to Jong.

The jury awarded Jong \$1,077,063 in damages.

AMY JONG	\$227,063 past medical cost \$150,000 future medical cost \$450,000 past non-economic loss, including physical pain/mental suffering \$250,000 future non-economic loss, <u>including physical pain/mental suffering</u> \$1,077,063
DEMAND OFFER	\$499,999.99 (CCP 998) \$130,000 (CCP 998)
INSURER(S)	Argonaut Great Central Insurance for Welcome Market Inc. (\$1,000,000 policy limit)
TRIAL DETAILS	Trial Length: 11 days Trial Deliberations: 4 hours Jury Vote: 11-1 liability, 10-2 damages
PLAINTIFF EXPERT(S)	Brad P. Avrit, P.E., safety, Marina del Rey, CA Lawrence R. Lievense, coding & billing (medical), Camarillo, CA Thomas P. Vail, M.D., orthopedic surgery, San Francisco, CA
DEFENSE EXPERT(S)	Ted M. Kobayashi, M.S., engineering, Livermore, CA Terence J. McDonnell, M.D., coding & billing (medical), Berkeley, CA

POST-TRIAL The defendant has filed a motion for new trial.

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

—Priya Idiculla

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NEVADA COUNTY

MOTOR VEHICLE

Dangerous Condition — Motorcycle — Passenger — Roadways

Plaintiffs blamed motorcycle crash on missing warning signs

VERDICT **\$4,169,822**

CASE Thomas Savage and Elisa Savage v. State of California, No. 76110

COURT Superior Court of Nevada County, Nevada City, CA

JUDGE Sean P. Dowling

DATE 6/27/2011

PLAINTIFF

ATTORNEY(S) Arash Homampour (lead), The Homampour Law Firm PLC, Sherman Oaks, CA
Aimee E. Kirby, Kirby, Kirby and Kirby, Redondo Beach, CA
Steven C. Kirby, Kirby, Kirby and Kirby, Redondo Beach, CA

DEFENSE

ATTORNEY(S) Lauren A. Machado, Department of Transportation, Sacramento, CA
Jeremy C. Thomas, Department of Transportation, Sacramento, CA

FACTS & ALLEGATIONS On Oct. 10, 2009, plaintiff Thomas Savage, 48, a mechanic, was riding his motorcycle northbound on California State Road 49, along with his wife, plaintiff Elisa Savage, 47, a bank teller, as a passenger. They were following another couple on a motorcycle on SR 49, in the unincorporated area of Yuba City. Approximately one mile south of Moonshine Road, the motorcycles encountered a sharp turn, which caused the first couple to veer to their left, into the southbound lane of traffic, but they were able to regain control and avoid a serious accident.

However, Thomas Savage was unable to negotiate the turn. He crossed over the southbound lane and down an embankment to the side of the road. The accident caused him to become ejected from the motorcycle and crash into a tree. Elisa Savage was also thrown from the bike. Thomas Savage sustained injuries to his head, lower back, neck, coccyx and ribs, while his wife sustained an injury to her right thumb.

The Savages sued the state of California, alleging it created a dangerous condition of public property, in regard to missing signage on northbound SR 49 about the sharp approaching curve. They further claimed that the state had notice of the dangerous condition and missing signs.

The plaintiffs claimed that two critical signs, which were supposed to be mounted on one post approximately 300 feet

before the curve, were missing at the time of the accident. They claimed the signs - one to reduce speed from 55 mph to 30 mph, and one alerting of the curve ahead - were missing as early as 2007, as confirmed by photographs of the subject road. Thomas Savage claimed that as a result of the lack of warning, he was unable to negotiate the sharp, blind curve as he was traveling at a speed of roughly 45 mph. He contended that had he been given adequate warning, he could have reduced his speed to 30 mph and avoided the accident.

The state argued that the curve was safe without the two signs and that the signs were unnecessary. It claimed that 1.2 million drivers had passed the curve over the past five years with no prior incident, and that a speed survey showed that motorcycles were able to negotiate the turn successfully at speeds as high as 45 mph. The state also claimed that it was not a blind curve, since roadway striping should have signaled to the plaintiffs that a curve was coming.

INJURIES/DAMAGES *chronic capsular injury; chronic pain syndrome; coccyx; cognitive defects; concentration deficits; contusions; fracture, L1; fracture, ankle; fracture, malleolus; fracture, multiple ribs (bilaterally); fusion, lumbar; memory loss; physical therapy; sprain, cervical; thumb; traumatic brain injury; vision impairment*

The plaintiffs were taken by ambulance to the emergency room from the scene of the accident.

Thomas Savage sustained multiple bodily injuries, including an L1 burst fracture, for which he underwent fusion surgery the next day. He also sustained a malleolar fracture to his left ankle, bilateral rib fractures, neck sprains and a contusion to his coccyx.

He treated his orthopedic injuries with six months of physical therapy.

Thomas Savage also claimed a mild traumatic brain injury from the accident, specifically a contracoup injury in which his brain was thrusted, causing cognitive defects.

He has not returned to work since the accident, and claimed he now suffers from chronic pain throughout his body due to his orthopedic injuries, causing discomfort and difficulty ambulating. He said he used to be very active, but can no longer ride his motorcycle, plant trees, go waterskiing or partake in church activities due to his condition. He also claimed residual cognitive defects, including vision impairment, and memory, retention and concentration problems.

Thomas Savage asked the jury for \$23,808 for past medical costs, \$2.8 million for future medical costs, \$81,303 for past lost earnings, \$715,000 for future lost earnings, and \$4 million for pain and suffering.

Elisa Savage claimed a capsular injury to the thumb of her right, dominant hand, for which she received physical therapy

She claimed the thumb injury caused her to lose her job as a bank teller, since the position was no longer available when she was ready to return to work.

Elisa Savage asked the jury for \$23,808 for past medical costs, \$24,000 for past lost earnings, \$15,000 for future

lost earnings, \$50,000 for past pain and suffering, \$25,000 for future pain and suffering, and \$250,000 for loss of consortium.

The state did not contest Thomas Savage’s claimed injuries, but argued that six weeks of outpatient rehabilitation and pain management was sufficient treatment, and that he would be able to return to work within a year. It further argued that Elisa Savage did not sustain a serious injury and that she was able to make a quick return to work.

RESULT The jury found the state 100 percent liable for the accident, and awarded the plaintiffs \$4,169,822 in total damages.

ELISA SAVAGE \$23,808 past medical cost
 \$24,000 past lost earnings
 \$15,000 future lost earnings
 \$50,000 past pain and suffering
 \$12,500 future pain and suffering
\$180,000 loss of consortium
 \$305,308

THOMAS SAVAGE \$390,214 past medical cost
 \$928,000 future medical cost
 \$81,300 past lost earnings
 \$715,000 future lost earnings
 \$875,000 past pain and suffering
\$875,000 future pain and suffering
 \$3,864,514

DEMAND OFFER \$2,000,000
 \$25,000

TRIAL DETAILS Trial Length: 2 weeks
 Trial Deliberations: 2 days
 Jury Vote: 12-0 on liability

PLAINTIFF EXPERT(S) Michael M. Klein, M.D., orthopedics, Carmichael, CA
 Charles R. Mahla, Ph.D., economics, Sacramento, CA
 Dawn Osterweil, Ph.D., neuropsychology, San Francisco, CA
 Jan Roughan, R.N., B.S.N., life care planning, Monrovia, CA
 Thomas Shultz, Ph.D., highway/street design, Morgan Hill, CA
 Joseph G. Yates, motorcycles, Yorba Linda, CA

DEFENSE EXPERT(S) None reported

POST-TRIAL A defense motion for a collateral source offset is pending.