



VERDICTSEARCH

TEXAS

MOTOR VEHICLE

Passenger — Rear-End — Wrongful Death

Rider thrown from bed of pickup when it hit truck

**MEDIATED
SETTLEMENT**

\$2,300,000

CASE

Estate of Nestor Fabian Villastrigo Suarez,
Deceased, No. 337,036,401

COURT

Harris County Probate Court No. 1, TX

JUDGE

Russell P. Austin

NEUTRAL(S)

Ronald Wardell

Terry Fry

DATE

12/10/2004

PLAINTIFF

ATTORNEY(S)

James B. Lewis, Glover, Miller, Lewis & Prebeg, P.C., Houston, TX (Ruth Barajas, Estate of Nester Fabian Villastrigo Suarez, Melissa Yvonne Villastrigo Sanchez, Nestor Fabian Villastrigo Sanchez)

Michael D. Miller, Glover, Miller, Lewis & Prebeg (Ruth Barajas, Estate of Nester Fabian Villastrigo Suarez, Melissa Yvonne Villastrigo Sanchez, Nestor Fabian Villastrigo Sanchez)

GUARDIAN

AD LITEM

Roy A. Camberg, Guardian Ad Litem for Minor Children, The Camberg Law Firm, P.C., Houston, TX (Melissa Yvonne Villastrigo Sanchez, Nestor Fabian Villastrigo Sanchez)

DEFENSE

ATTORNEY(S)

Walter F. "Trey" Williams III, Lorange & Thompson, Houston, TX (FFE Transportation Services Inc., and Larry Kyle – until 10/01/03)

Brian Coolidge, Lorange & Thompson, Houston, TX (FFE Transportation Services Inc., and Larry Kyle – until 10/01/03)

Don Jackson, Ware, Snow, Fogel & Jackson, Houston, TX (FFE Transportation Services Inc., Larry Kyle – until 10/01/03)

Jeffrey N. Diamant, Ware, Snow, Fogel & Jackson, Houston, TX (FFE Transportation Services Inc., Larry Kyle – until 10/01/03)

Mari Gianukos, Ware, Snow, Fogel & Jackson, Houston, TX (FFE Transportation Services Inc., Larry Kyle – until 10/01/03)
Mike Terry, Hartline, Dacus, Barger, Dreyer & Kern, Corpus Christi, TX (AIG)
Brock C. Akers, Phillips & Akers, Houston, TX (after 10/01/03) (Larry Kyle)
William J. Collins III, Sheehy, Serpe & Ware, Houston, TX (Cummins Engine Co.)
John W. Weber Jr., Fulbright & Jaworski, San Antonio, TX (Freightliner LLC)
Steven D. Jansma, Fulbright & Jaworski, San Antonio, TX (Freightliner LLC)
Jim Barker, Giessel, Barker & Lyman, Houston, TX (TA Operating Corp. d/b/a Travel Center of America)

FACTS & ALLEGATIONS On May 26, 2001, plaintiffs' decedent Nestor Fabian Villastrigo Suarez, 23, a day laborer, was riding in the open bed of a Chevy S-10 pickup that smashed into a flat-bed truck which stopped in order to avoid a collision with a stalled 18-wheeler Freightliner commercial motor vehicle on I-10 East near the 610 Loop in Houston.

Witnesses testified that the driver of the pickup, Terry Ulmer, who was uninsured, had been driving erratically, swerving in and out of traffic. Larry Kyle was the driver of the Freightliner vehicle.

Suarez's survivors sued Kyle's employer, FFE Transportation Services Inc., Dallas, and its related companies, alleging that the stalling of the Freightliner vehicle was the result of an engine protection shutdown system which was predictable, given the history of the vehicle and the engine protection shut-down system. Further, they claimed, the vehicle could have been moved off the road if Kyle had known how to override the engine protection shut-down system. A flashing light was supposed to notify the driver that the truck's coolant level was low and that the truck would automatically shut down in 30 seconds. Kyle stated that he did not get a flashing light, and the truck shut down without a warning. Kyle tried to re-start the truck but he did not know all of the steps needed to re-start it for 30 seconds to give him time to pull over. The truck sat on the highway for 14 minutes without safety cones around it. The plaintiffs also

sued Freightliner LLC, Portland, Ore., manufacturer of the FFE vehicle; Cummins Engine Co., Columbus, Ind., which manufactured the vehicle's engine; and TA Operating Corp., operating as TravelCenters of America, Ohio, provided the vehicle's inspection and preventative maintenance.

FFE and its related companies denied the allegations, contending that, on the night before the accident, the Freightliner truck had obtained a clean bill of health following a complete Texas Department of Transportation inspection of the vehicle by TravelCenters of America. FFE added that its drivers were properly trained and that the accident was caused solely by the negligence of Ulmer, also a claimant, who was made a third-party defendant. Further, the defendants asserted that Suarez's own negligence, by riding in the open bed of a pickup in Houston freeway traffic, was a cause of his injuries and death.

This cause, No. 2001-27559, Guadalupe Chavez Calzada Villastrigo, Individually and as Representative of the Estate of Jorge Villastrigo, Deceased; and Ruth Sanchez Barajas, Individually and a Representative of the Estate of Nestor Fabian Villastrigo Suarez, Deceased and a/n/f of Melissa Yvonne Villastrigo Sanchez and Nestor Fabian Villastrigo Sanchez v. FFE Transportation Services, Inc., In the 334th Judicial District Court of Harris County, was transferred to Harris County Probate Court No. 1.D.

INJURIES/DAMAGES *loss of consortium; death*

Suarez was killed instantly. He had no medical expenses or treatment.

Regarding potential economic damages, Suarez was an undocumented alien residing, illegally, in the United States. He had earned less than minimum wage in Mexico and was earning a maximum of \$60 a day, when he could get work, as a day laborer during the approximately two months in which he resided in the U.S. His wife, 21, and their children, ages 4 and 6, still reside in Mexico.

Defense attorney Brian Coolidge explained that Suarez was only 23 and his survivors would have made very sympathetic witnesses for non-economic damages.

RESULT After one mediation before Terry Fry and two mediations with Ronald Wardell, the parties settled for a sum of \$2.3 million (\$2 million from FFE and Kyle; \$130,000 from Travel Centers of America; \$110,000 from Freightliner; and \$60,000 from Cummins) plus taxable costs, which exceeded \$33,000, and all ad litem fees. A final judgment was entered for those figures.

DEMAND None reported
OFFER None reported

INSURER(S) AIG (FFE's excess carrier)

PLAINTIFF
EXPERT(S) Jon O. Cook, trucks, Birmingham, AL
 (James B. Lewis, Michael D. Miller)

Whitney G. Morgan, trucking industry, Birmingham, AL (James B. Lewis, Michael D. Miller)
Randall Dodd, accident reconstruction, Houston, TX (James B. Lewis, Roy A. Camberg, Michael D. Miller)

DEFENSE
EXPERT(S)

Paul Earl, B.S., P.E., fleet management, Houston, TX (Brock C. Akers, Jim Barker, William J. Collins III, Brian Coolidge, Jeffrey N. Diamant) (De-designated by FFE after his deposition)
Dirk E. Smith, Ph.D., P.E., accident reconstruction, Houston, TX (Walter F. "Trey" Williams III)
David Hedgpeth, auto safety, Dallas, TX (Walter F. "Trey" Williams III, de-designated by FFE after his disposition)
Randy Mitchen, accident investigation, Dallas, TX (Walter F. "Trey" Williams III, de-designated by FFE after his disposition)
Barry Wilbratte, Ph.D., economics, Houston, TX (Walter F. "Trey" Williams III)
William L. Quintanilla, rehabilitation counseling, Houston, TX (Walter F. "Trey" Williams III)
Lance Davis, accident investigation, San Antonio, TX (Jim Barker)
John McRea, accident reconstruction, San Antonio, TX (Jim Barker)
Leroy Chavez, accident reconstruction, San Antonio, TX (Jim Barker)
Phillip J. Smith, mechanical, Houston, TX (Jim Barker)
Christopher L. Shewmake, accident investigation & reconstruction/ failure analysis/ product liability, Columbus, IN (William J. Collins III)
Rick Gian, accident investigation & reconstruction/ failure analysis/product liability, Houston, TX (Steven D. Jansma)
Don Barnes, electrical, Portland, OR (John W. Weber Jr.)
Mike Forster, accident investigation & reconstruction/ failure analysis/product liability, Houston, TX (William J. Collins III)

EDITOR'S NOTE Counsel for defendant FFE Transportation Services Inc. and its related entities contributed to this report. Counsel for other defendants did not respond to a faxed draft of this report and a phone call.

—Don Maines