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NEW YORK

FEATURED VERDICT

QUEENS COUNTY

MOTOR VEHICLE

Pedestrian — Government — Municipalities — Wrongful Death

Worker fatally crushed by street-sweeping vehicle

VERDICT **\$41,500,000****CASE** Colombina Frosch as Executrix of the Estate of Steven A. Frosch, Deceased, and Colombina Frosch, Individually v. The City of New York Antonio G. DeCaro, No. 17285/14**COURT JUDGE** Queens Supreme
Joseph J. Esposito**DATE** 10/24/2017**PLAINTIFF****ATTORNEY(S)** Ben B. Rubinowitz (lead), Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, New York, NY
Peter J. Saghir, Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, New York, NY**DEFENSE****ATTORNEY(S)** Erin Berry, Assistant Corporation Counsel, Zachary W. Carter, Corporation Counsel, New York, NY
Jared J. Hatcliffe, Senior Counsel, Zachary W. Carter, Corporation Counsel, Jamaica, NY**PLAINTIFF****EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJCharles V. Wetli,
M.D., pathology,
Alpine, NJ**DEFENSE****EXPERT(S)** John C. McManus, P.E., accident reconstruction, Pleasantville, NY (did not testify)
Ronald Quintero, finance, New York, NYKristin Kucsma
Chief Economist
Sobel Tinari Economics Group**FACTS & ALLEGATIONS** On June 21, 2014, plaintiff's decedent Steven Frosch, 43, an operator of a street-sweeping vehicle, was struck by a vehicle. The incident occurred while Frosch was working at a depot that was located at 58-02 48th St., in the Maspeth section of Queens. Frosch was utilizing apparatus that greased street-sweeping vehicles. A co-worker, Antonio DeCaro, was operating another street-sweeping vehicle. DeCaro's vehicle was stopped alongside Frosch's vehicle and the greasing apparatus, but it unexpectedly lurched. It struck Frosch, and Frosch became pinned between the two vehicles. He suffered a fatal injury.

Frosch's widow, Colombina Frosch, acting individually and as the estate's executor, sued DeCaro and DeCaro's employer, the city of New York. The lawsuit alleged that DeCaro was negligent in the operation of his vehicle. The lawsuit further alleged that the city was liable because the accident occurred during DeCaro's performance of his job's duties.

Plaintiffs' counsel contended that the accident was a result of DeCaro having accidentally released his vehicle's brake. They contended that the vehicle had not been shifted to its "park" gear.

DeCaro claimed that the accident was a result of a malfunction that caused an unexpected, powerful surge of his vehicle.

Plaintiffs' counsel moved for summary judgment of liability. The motion was denied, but defense counsel ultimately conceded liability. Plaintiffs' counsel discontinued the claim against DeCaro, and the matter proceeded to a trial that addressed damages against the city of New York.

INJURIES/DAMAGES *crush injury; crush injury, abdomen; death; fracture, rib; kidney; spleen*

Frosch suffered crush-induced injuries of his abdomen, his diaphragm, a kidney, his spleen, his stomach and several ribs. He died during the 10 minutes that followed the accident. Plaintiffs' counsel claimed that Frosch experienced two to three minutes of conscious pain.

Frosch, 43, died on June 21, 2014. He was survived by his wife and four children. Plaintiffs' counsel claimed that Mr. Frosch would have retired after two years had passed, but that he would have become a financial adviser. They contended that Frosch would have earned \$9,796,373.

Frosch's estate sought recovery of wrongful-death damages that included Frosch's past lost earnings, Frosch's future lost earnings, and damages for Frosch's pain and suffering. Frosch's widow presented a derivative claim.

Defense counsel contended that Mr. Frosch did not experience pain. They contended that his injuries caused an immediate loss of consciousness.

Defense counsel also contested the extent of Frosch's loss of earnings. They contended that plaintiffs' counsel could not prove that Frosch would have become a financial adviser.

RESULT The jury determined that the estate's damages totaled \$41.5 million.

ESTATE OF STEVEN

FROSCH \$15,000,000 past loss of pecuniary contribution
\$25,000,000 future loss of pecuniary contribution
\$1,500,000 survival
\$41,500,000

DEMAND OFFER \$18,500,000 (total, by both plaintiffs)
\$6,000,000 (total, for both plaintiffs)

TRIAL DETAILS Trial Length: 7 days
Trial Deliberations: 1.5 hours
Jury Vote: 5-1 (past pecuniary loss);
6-0 (all other damages)
Jury Composition: 2 male, 4 female

POST-TRIAL Defense counsel has moved to reduce the damages.

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

—Melissa Siegel

