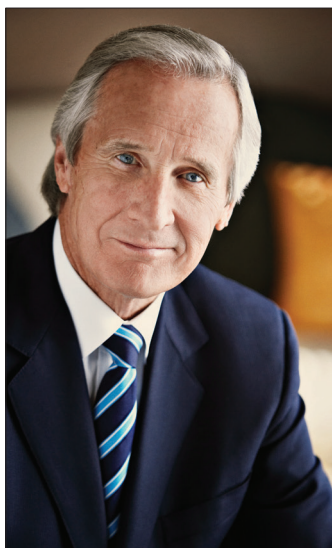


MISSOURI LAWYERS WEEKLY

Teen Driver's Family Wins Death Case Against County



Donald L. Schlappizzi

BY MO LAWYERS MEDIA STAFF

The parents of a 17-year-old girl who drowned when her car slid off a road into a creek have won a \$260,000 verdict against Franklin County.

The Milazzo family claimed that the county, which will pay the sovereign immunity cap of \$100,000, was negligent in its maintenance of curvy Robertsville Road and ignored evidence of 26 earlier accidents at the same spot.

Emily Milazzo's passenger, her friend Nicole Hendricks, also drowned in the accident — but in an interesting twist, the Hendricks family lost their case against Franklin County in December.

Attorneys involved in the cases attribute the different outcomes to several factors, including:

- The Milazzos dodged the remedial measures rule and were able to introduce the fact that the county straightened out the road after the accident.

- Since Nicole Hendricks was not the driver, her comparative fault was not at issue

— making it an all-or-nothing case for the jury which might have thought that Emily Milazzo's driving was partially to blame for the accident. In contrast, Milazzo's jury was able to consider her responsibility in the crash — and in fact assigned her 25 percent of the fault.

- After the accident the Hendricks family made public accusations against people involved in the case — including EMT personnel — which may have made them unsympathetic to the jury.

- The Milazzos' lawyer, Don Schlappizzi of St. Louis, was able to prepare his case after observing the county's strategy in the first trial.

“One thing the county tries to inject in these cases is that they didn't have the money to fix the road,” said Schlappizzi. “But our position was that this was a plea of poverty — and you can't get into the financial condition of a party in that way because it is just as prejudicial as evidence of insurance.” The evidence was excluded.

John Borbonus, who represented Franklin County in both cases, said, “The irony was that the family of the passenger with absolutely no fault collects nothing while the family of the driver, who clearly had some fault, collects.”

After a two-day trial, the jury deliberated for two hours before returning the \$260,000 verdict. A full verdict report in the case, *Milazzo v. Franklin County*, appears on Page 5.

Other Factors

Schlappizzi and Borbonus discussed the factors that led to different results in the two trials. Both agreed that public accusations made by the Hendricks family in the first case might have backfired against them.

“The plaintiffs [in the first case] were very public and very vocal in their attacks on the officials who reported to the accident scene, and at one point, the mother was even

charged with stalking,” said Borbonus.

He said derogatory words were painted on the driveway of a county official, who also received an e-mailed photo of the young girl in her coffin with a message that she was his victim.

“I had to bring in the fact that the mother had blamed a lot of others as admissions against interest,” he said. “That was not the case with the Milazzos, who were very private.”

Schlappizzi also said his case was bolstered because he was able to show the jury that the road had been straightened after the accident.

He explained how he was able to avoid the prohibition on subsequent remedial measures. “During the course of discovery we asked the highway administrator if there was any reason the road couldn't have been straightened in 1997, and he said no,” said Schlappizzi. “Without telling the jury that they actually straightened the road, we showed the diagram of what they could have done.”

Also crucial was evidence from the State Traffic Accident Report, which lists common accident sites. Schlappizzi found evidence that 26 vehicles had left the road at the same spot over the last 34 months. Some of the cars had entered the creek next to the curve and a couple had also overturned in the creek, as did the girls' vehicle.

“Nobody in this highway administrator's department had paid any attention to this list although they had access to it,” he said. “There was no place in the county with more previous incidents, yet they had never instituted a system of priorities for danger spots.”

Schlappizzi stressed that the police officers who prepared the reports of the earlier accidents were not allowed to testify to circumstances contributing to the accident.

“A lot of times this gets in when it shouldn't, but a witness cannot conclude the reason for the accident if they were not there — that