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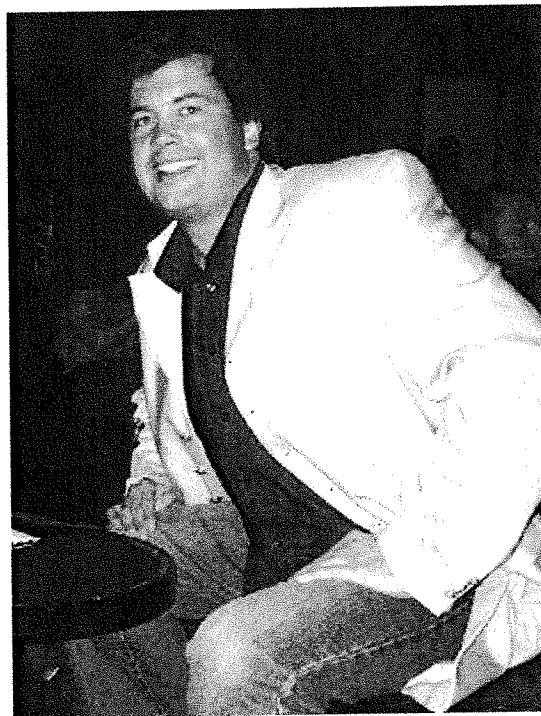
Verdict Spotlight

by Kathleen J. St. John

On October 9, 2013, forty-three year old Mark Soberay was returning by Greyhound bus to Cleveland from New York City. Soberay, the owner of a Cleveland music studio, had been in New York to cast actors for a music video.

The bus driver, Sabrina Anderson, was doing a back-to-back nighttime route from Cleveland to New York and back. At 1:30 a.m., heading west on I-80 in Pennsylvania, about 190 miles from New York City, the bus crashed into the rear of a tractor-trailer hauling trash.

Soberay, asleep in the front passenger seat, was pinned by the front right side of the bus, and lay trapped and conscious for three hours until rescue workers freed him. His injuries include a below-the-knee amputation of his right leg, fractures of almost every bone in his left leg which is disfigured and largely unuseable, a pseudo-aneurysm in his aorta requiring placement of a stent, fractured humerus and socket of his right shoulder severely limiting motion in that arm, bilateral hip displacements and fractures with the left femur intruding into the pelvis, and a severed urethra requiring catheters and a bag for more than a year. The urethra was subsequently reattached, but he now suffers incontinence and impotence. He also suffered two fractured vertebrae, an injury to his spleen, removal of his gall bladder, and a severe eye laceration. He has undergone 30 surgeries, with more to come; and is in constant pain. Medical bills were roughly \$1.5 million; the life care plan was about \$4.5



Mark Soberay

million. There was no wage loss since he had a business which he still maintains.

The bus driver (who also lost a leg) refused to give a statement to police at the hospital. When she finally gave a statement, two months later, she attributed the accident to her right foot and right arm going numb, followed by her blacking out. She denied falling asleep.

The bus was full, resulting in numerous injuries, including one death. As such, the NTSB would ordinarily have investigated this accident. But on the morning of the accident the government

was in sequester (shut down), so the accident was investigated instead by the Pennsylvania Highway Patrol.

The patrolman in charge had only been on the Investigation Unit for five months, and had never investigated a bus accident, or one involving two large commercial vehicles. Using a conservation of momentum formula, he concluded the crash was caused by the truck driver going 16 mph. The truck driver (Gubica) was charged criminally in Pennsylvania, but was found not guilty. In Soberay's civil trial, the judge found the patrolman not qualified under the Daubert standard, and excluded his testimony. That did not stop Greyhound from getting its own expert, Steven Schorr, to essentially offer the same opinion. At trial, however, Schorr agreed that if the bus driver was not conscious, the speed of the truck did not matter, and the bus driver was the sole cause of the accident.

An important aspect of plaintiff's case against Greyhound concerned its failure to enforce a fatigue safety rule requiring its drivers to stop every 150 miles or every three hours. Greyhound maintained this rule was merely a "guideline" that drivers did not have to follow. Greyhound also maintained (and hired an expert to testify) that its driver did not fall asleep, but suffered a TIA that did not cause her to lose consciousness. The defense expert opined that the driver suffered a concussion *after* the accident, which caused her to have retrograde amnesia, presumably causing her to mistakenly recall blacking out prior to the accident. Plaintiff's nationally recognized stroke expert, Dr. Mark Levine, could not find any medical text to support defendant's theory.

Plaintiff's evidence, on the other hand, supported the conclusion that the bus driver fell asleep. One witness, a life-long truck driver trained in fatigue

issues, had observed both the trash truck and the Greyhound bus at different points prior to the accident. He noticed Gubica's truck because it was so well-kept, with its tarps and lights all in working order. Later, this same witness noticed the Greyhound bus passing him about five minutes before the crash at 67 mph. The bus almost hit him, then veered to the left onto the rumble strips. His impression was the bus driver was either texting or falling asleep.

Numerous passengers on the bus, including the plaintiff, also observed the bus driver weaving earlier in the trip and going over the rumble strips. Two of the passengers testified they actually saw her fall asleep.

The camera installed on the bus was an event recorder that records the 10-20 seconds before the event. It was broken on impact, as has been the case in numerous other Greyhound rear-end accidents.

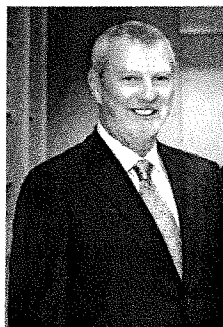
Another device on the bus was a D-deck which the State Trooper and defendant's expert used to calculate Gubica's speed prior to the accident. The overwhelming testimony from the experts, however, was that the D-deck is not reliable after an accident.

A third piece of equipment on the bus was a satellite monitoring device, known as a Cadec, which records the latitude and longitude of the bus each second. There were eight satellites interacting with the Cadec, making it extremely reliable. Greyhound initially denied having the Cadec since the computer card was sent by the State police to the manufacturer in New Hampshire. Plaintiff got an out-of-state commission to depose the Cadec personnel, who turned over only one portion of the Cadec file. The other portion – a mapping placed on Google Earth showing the bus's route – was not given to the plaintiff. Later depositions revealed emails from Greyhound

personnel to Cadec telling Cadec they "would prefer" plaintiff not be given the mapping.

The jury returned a verdict in the amount of \$23,018,790 for compensatory damages. In response to a narrative interrogatory, the jury found Greyhound failed to enforce its rules. The following week the jury returned a verdict of \$4,000,150 for punitive damages. Greyhound had a number of past rear-end accidents where it blamed the speed of the vehicle its drivers hit, or alleged sudden medical excuses for its drivers, even if the NTSB found the bus driver at fault or the bus passengers testified the bus driver had fallen asleep.

In its punitive finding, the jury indicated Greyhound demonstrated reckless indifference to the safety of its passengers and drivers in failing to enforce its rule requiring rest stops every three hours or 150 miles. The \$150 portion of the punitive award was designed to send a message to Greyhound to enforce its rule.



Chuck Kampinski

but will hopefully cause Greyhound to enforce its safety policies in the future. ■

The plaintiff's attorneys were Chuck Kampinski, Kent B. Schneider, and Robert M. Weber. Their efforts not only obtained justice for their client,