

## **Jury Finds No Cause in Complex, High Profile Wrongful Death Case**

The defense team of Pat Kenney, Jim Duggan and Melissa Burke tried an interesting wrongful death case in Cattaraugus County against noted Buffalo attorney, Francis Letro. The plaintiff was the driver of a car that was attempting to cross Route 16 in Machias, New York, and was hit by a 16-wheel tri-axle dump truck traveling north on Route 16 at 55 mph. The impact occurred between the right front of the dump truck and the passenger side of the plaintiff's vehicle. After impact, the plaintiff's car was run over by the dump truck, causing the car to become trapped underneath the truck. As a result, the truck driver lost control of the truck, and the car was dragged 250 feet down the roadway. When the truck left the roadway, it hit a mailbox, a tree, and came to rest in an adjoining bean field. The car was dislodged from underneath the truck when the truck left the roadway. The car burst into flames, killing the plaintiff driver.

The plaintiff's estate claimed that the driver of the dump truck was speeding, failed to keep a proper lookout, and was operating the vehicle while impaired as a result of ingesting prescription Lortab. The plaintiff also claimed that the trucking company was negligent in hiring the driver because the driver had previously been on disability for a spinal surgery, and was taking prescription pain medication. Our defense team claimed that the plaintiff driver failed to yield the right of way, and pulled out into the path of the oncoming dump truck.

Immediately following this extremely violent accident, the New York State Police conducted an extensive accident reconstruction, and concluded that the plaintiff's vehicle, which was traveling in a westerly direction, failed to stop at the stop sign controlling the intersection, failed to yield the right of way, and pulled out directly into the path of the oncoming dump truck. The State Police concluded that the manner in which the plaintiff operated his vehicle caused this motor vehicle accident. **However, three years after this motor vehicle accident, the New York State Police re-opened this investigation and amended their report. They concluded that the plaintiff was traveling in an easterly direction rather than a westerly direction.**

This new conclusion permitted plaintiff's counsel to argue that the plaintiff was able to cross the southbound lane of Route 16 before entering the northbound lane of Route 16, where the impact occurred. Plaintiff's counsel argued that the defendant driver was speeding, failed to keep a proper lookout by not observing the plaintiff's car crossing the southbound lane, and that the prescription Lortab distorted his ability to see, perceive and react. The State Police investigator based his amended report on the photographs that appeared to show that the crush evidence to the plaintiff's car was located on the passenger side, and the vehicle came to rest off of the roadway, on its roof, and facing in an easterly direction.

After Pat's vigorous cross-examination of the State Police accident reconstruction expert, we were able to establish that the scrape markings on the roadway and the roof of the vehicle were consistent with the vehicle being dragged on its roof as the dump truck proceeded in a northerly direction on Route 16. Cross examination established that the car, after being dislodged from the truck, rotated on its roof before coming to rest, facing in an easterly direction.

The State Police accident reconstruction expert was forced to admit during cross examination that the dirt and grass located on the car's roof, inside on the dashboard

and in the rear seat area, would be consistent with the vehicle rotating in the grass, on its roof, after it separated from the truck. It was further established that the entire car was crushed, and that the second and third rear axles of the truck rolled over the car in its entirety, and that the damage to the passenger side of the car could have been caused while the car was trapped underneath the truck, rather than by the initial impact as testified to by the State Police and the plaintiff's crash reconstruction expert.

In an effort to establish that our driver was under the influence of Lortab, plaintiff's counsel called a medical expert who testified that common side effects of Lortab included drowsiness, confused thinking and delayed reaction time. This same expert admitted on cross-examination, however, that these common side effects are, in fact, only *possible* side effects, rather than *probable* side effects. He further admitted that not everyone is affected by a drug's possible side effects, and that he had no personal knowledge whatsoever regarding whether our client's driver was suffering from any of the possible side effects of Lortab at the time of this accident.

This testimony, when coupled with the testimony of the State Trooper who administered field sobriety tests to the driver and concluded the driver was not under the influence of alcohol or drugs at the time of this accident, enabled the jury to conclude that the driver's ingestion of Lortab prior to the accident was not a cause of this accident.

After a three week trial, the jury deliberated for approximately two hours before returning a verdict in favor of our clients.