

MEDICAL MALPRACTICE

BROWARD CIRCUIT COURT

Error by Radiologist Led to Unnecessary Surgery: Lawsuit

A jury awarded wound care specialist and retired surgeon John MacDonald \$453,141 for unnecessary surgery. His wife received \$50,000 on a derivative claim.

MacDonald had a CT scan after experiencing chest pain. The scan was misread to show aortic dissection, a life-threatening condition. The surgeon saw no dissection, so open heart surgery was aborted. Five days later, MacDonald developed atrial fibrillation and was placed on blood thinners. Four days later he had surgery for cardiac tamponade. For three months he could not drive, perform chores or visit a wound care clinic in Haiti.

Holy Cross Hospital reached a confidential pretrial settlement. At trial, the remote radiologist was determined to be negligent. The defense is challenging the verdict.

Case: MacDonald v. Holy Cross Hospital

Case No.: CACE18002884

Plaintiffs attorney: Paul C. Buckley, Panza, Maurer & Maynard, Fort Lauderdale

Defense attorneys: Lori B. Lewellen and Jonathon P. Lynn, La Cava & Jacobson, Fort Lauderdale

MOTOR VEHICLE

MIAMI-DADE CIRCUIT COURT

\$800,000 Settlement Reached by Driver Hit in Rear-Ende

A woman who claimed neck injuries after her car was rear-ended settled before trial for \$800,000.

Sarah Correa Arcila, 23, said she was hit when she slowed down after a driver in the lane to her left pulled over. Liability was disputed. Arcila asserted the defendant claimed intoxication, but he denied both being drunk and saying he was. She recovered well after spinal fusion surgery for a herniated disc.

Medical records obtained by the defense showed she had been in two motorcycle collisions, one of which resulted in the same injury. The defense claimed the recent surgery was unnecessary and maintained the collision did not cause her injury.

Case: Arcila v. Osechas

Case No.: 2017-008390-CA-15

Plaintiffs attorney: Michael T. Flanagan, Flanagan Personal Injury & Wrongful Death Law Firm, Coral Gables

Defense attorney: Jaime J. Baca, Wicker Smith O'Hara McCoy & Ford, Coral Gables



Attorneys Michael Holt, Heather Counts, Richard Mueller and Scott Sarason represented Yamaha Motor Corp.

How Miami Lawyers Swerved Yamaha Away From \$15M Products Liability Suit

by Raychel Lean

A team of Miami lawyers steered Yamaha Motor Corp. USA and its Japanese parent company away from claims that insufficient warnings on its WaveRunner watercraft contributed to the injuries of a teenage rider who fell off in Biscayne Bay.

Plaintiffs attorneys asked the jury for between \$13 million and \$15 million in damages, but they found Yamaha owed nothing.

WaveRunners are personal watercraft, similar in appearance to jet skis, that can seat up to three people. 16-year-old Dariana Mizrahi was riding with friends in January 2017 when she slipped off the back and into the water.

The fall exposed her to a high-pressure water jet system, which pushes out water to propel the watercraft forward. That damaged Mizrahi's rectum and internal organs, according to the lawsuit, which said she had to have multiple surgeries, a temporary colostomy bag and was hospitalized for complications.

Mizrahi's father sued on her behalf for negligence and strict liability, claiming Yamaha's warnings weren't sufficient. Defense attorneys Richard Mueller and Heather Counts of Thompson Coburn and Scott Sarason and Michael Holt of Rumberger, Kirk & Caldwell begged to differ, arguing the watercraft, owners manual and other documents featured clear warnings.

Case: Dariana Mizrahi v. Yamaha Motor et al

Case no.: 1:17-cv-24484-RNS

Description: Personal injury, products liability

Filing date: Dec. 12, 2017

Verdict date: July 29, 2019

Judge: U.S. District Judge Robert M. Scola in the Southern District of Florida

Plaintiffs attorneys: Curtis Miner, Denise Georges and Stephanie Casey, Colson Hicks Edison, Coral Gables; Albert Levin, Albert Z. Levin P.A., Miami

Defense attorneys: Richard Mueller and Heather Counts, Thompson Coburn, St. Louis, Missouri; Scott Sarason and Michael Holt, Rumberger, Kirk & Caldwell, Miami

Verdict amount: Defense verdict

"There's a warning on the craft that says that this is a possibility," Mueller said. "That, if you fall into the water at speed, you can receive this kind of water intrusion injury, and that you should wear wetsuit bottoms or clothing that essentially provides the same kind of protection as that."

Mizrahi described herself as an expert operator of personal watercraft and owned a wetsuit, but she was wearing Nike Dri-FIT shorts when she fell off. The plaintiffs argued they were similar to a wetsuit, but Sarason says there's no comparison.

"The Dri-FIT, you can hold it up to the light and see the light coming through it," Sarason said. "The wetsuit is a thick, heavier material and it has been tested and proven to prevent this type of injury from occurring."

One plaintiffs expert posited that even a wetsuit wouldn't have protected Mizrahi from an orifice injury, but defense lawyer Counts argued there was no evidence to support that claim. U.S. District Judge Robert Scola agreed, granting a partial directed verdict on the issue.

A UNIFORM WARNING

The plaintiff testified that she had read Yamaha's warning, which is the same one all personal watercraft manufacturers have used for 15 years, according to Mueller, because the U.S. Coast Guard's Boating Safety Advisory Council made it mandatory.

"Our first response was, to the extent you're criticizing the warning, every safety organization that's ever looked at it has approved of this warning, including the state of Florida, which includes it in their boating safety course," Mueller said.

Defense experts explained the history of personal watercraft and testified about what makes a warning label good or bad. One expert, Nathan Dorris in Atlanta, has chaired the American National Standards Institute, which develops consensus standards for warnings and safety communications.

Miami attorneys Curtis Miner, Denise Georges and Stephanie Casey of Colson Hicks Edison handled Mizrahi's case with solo practitioner Albert Levin in Miami and are weighing their options for appeal. Miner said his client is recovering but will have permanent problems with her digestion.

"A loss at trial is always tough, but it was particularly tough for our team in this case because we really felt sympathy for our client and she will be left with lifelong consequences from the serious injuries she sustained, unfortunately," Miner said.

The defense team couldn't tell the jury, but they had two similar wins under their belt. Yamaha has warded off two lawsuits challenging its uniform warning label, both of which were affirmed on appeal. Defense attorney Mueller said he was sympathetic to Mizrahi's injuries, but he felt the facts of the case ran against her.

"I think that [Yamaha] feels as though they make good products, and that these injuries are very rare but that they won't occur to people who comply with the warnings," Mueller said. "And if people won't comply with the warnings, it seems like that's more kind of on them than it is on the product."

SHOW AND TELL

Mueller, Counts, Sarason and Holt took the unusual step of bringing in the same WaveRunner model Mizrahi rode to show jurors. During deliberations, jurors could sit on it, hold it, turn the handlebars and do whatever else they wanted to, according to Mueller.

"We cut out the bottom, pulled out the engine and all those flammable things to it, and we put it on rollers and we brought it into the courtroom," Mueller said. "I think it helped the jury in terms of where the warnings were, and how visible they were and how obvious it was."

Jurors took just three hours to deliberate, which Mueller said included a lunch break.

Injuries like Mizrahi's are a rare event, experienced by one or two people in the U.S. a year, according to Mueller, who said that's not much considering how many people use water skis and personal watercraft every day.

"If you've got a million craft out there, and even if they're just being operated 50 hours a year, that's 50 million use hours," Mueller said. "If you just get one incident a year, you're safer than flying on a plane."

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via @raychellean.