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Jury Awards \$5M On Claims Bus Was Defectively Designed

Chin v. SEPTA \$5M Verdict

The Legal Intelligencer

January 26, 2016

Date of Verdict: Dec. 14, 2015.

Court and Case No.: C.P. Philadelphia No. 130900933.

Judge: Marlene F. Lachman.

Type of Action: Unjust enrichment.

Injuries: Fractures, crush injury, degloving.

Plaintiffs Counsel: Joseph Z. Traub and Mark J. LeWinter of Raynes McCarty, Philadelphia.

Defense Counsel: Wesley R. Payne and Tonya M. Harris of White and Williams, Philadelphia. None reported for Southeastern Pennsylvania Transportation Authority.

Plaintiff's Experts: Guy Fried, physical medicine, Philadelphia; Tom Flanagan, car design, San Diego, Cal., Joshua Cohen, photograph analysis, Portland, Ore.; Steven Raikin, orthopedic surgery, Philadelphia; Patrick Greaney Jr., plastic surgery/reconstructive surgery, Philadelphia.

Defense Experts: Lance Watt, mechanical, Lancaster; Jeremy Bauer, injury biomechanics, Corvallis, Ore.; Richard Mandel, orthopedic surgery, East Norristown.

Comment: On Sept. 5, 2012, plaintiff Steven Chin, 25, an employee at a catering business, was crossing Sixth Street at Arch Street in Center City, Philadelphia, when he was struck by a city bus. The bus was on Arch Street, turning left onto Sixth Street when it struck Chin, who fell, and the bus ran over his right foot, causing a degloving injury and fractures to multiple bones in his ankle and foot.

Chin sued the bus company, Southeastern Pennsylvania Transportation Authority (SEPTA), alleging negligence, and sued the bus manufacturer, New Flyer of America Inc., on claims of negligence and strict liability. He asserted that New Flyer defectively designed the bus by improperly mounting the driver's side rear-view mirror, which allegedly had obstructed the driver's view and prevented him from seeing Chin as he walked in the crosswalk.

Prior to trial, Chin settled with SEPTA for its statutory cap amount of \$250,000. Chin's claims against New Flyer proceeded to trial, and SEPTA remained on the verdict form.

According to Chin's counsel, although measurements and locations of the mirror were not provided by SEPTA in its extensive specifications to New Flyer about the design and manufacture of its buses, SEPTA did direct the manufacturer to position the driver's side rear-view mirror to minimize the driver's blind spots in front of the mirror. Testimony demonstrated that it was solely New Flyer's responsibility to determine the best position of the mirror and minimize blind spots. Chin's counsel faulted New Flyer for failing to adhere to SEPTA's specifications.

Chin's expert in bus design determined that the bus was defective and New Flyer was negligent in its lack of methodology in mounting the side mirror. The expert faulted New Flyer for failing to accord to SEPTA's specifications and faulted the manufacturer for failing to conduct an analysis of the mirror's position, either by using computer-aided design drawings to mock up the mirror or by looking at sightlines to determine how the mirror affected the driver's view. According to the expert, had the mirror been lowered just four inches, the bus driver would have been able to see Chin over the top of the mirror without having to move his body side-to-side to see around the mirror. The expert cited industry standards dating back to 1992, which required that a mirror's position be as low as possible, in order to give the driver the best possible view.

Chin's expert in 3-D imaging presented a 3-D model of the intersection and the accident to show that, had the mirror been lowered four inches, most of Chin's body would have been visible at the beginning of the bus's turn and to the point of impact.

Counsel for New Flyer faulted the SEPTA driver for failing to see Chin and maintained that the bus was not defective. Counsel asserted that the driver failed to use the "rock and roll" technique, which drivers learn and are required to implement. The technique requires the driver to bend forward, backward, and side-to-side to see over or around any objects (like a mirror) obstructing his or her view.

New Flyer's expert in engineering concluded that the bus was not defective and that it was the driver's responsibility to clear the obstruction by making sure there is nothing in his path to make a turn. There was no issue with the mirror or its mounting location, the expert said.

New Flyer's expert in biomechanics, who offered his own 3-D renderings of the accident, opined that had the bus driver used the rock-and-roll technique and bent sufficiently to see around the mirror's obstruction, he would have seen Chin. The imaging purported to show what the bus driver would have seen had he bent to his left, right, front, and back.

Chin was taken by ambulance to a hospital, where he was diagnosed with a crush injury to his right foot, in which he suffered multiple fractures from his ankle to near his toes. All layers of skin had been removed from Chin's foot, exposing tendons and muscles. Extensive

wound care was administered and an external fixator was implanted and remained through January 2013, during which time Chin remained non-weight-bearing. (Due to the extensive injury to his skin, an internal fixation, which was needed, was unable to be inserted.)

Chin's fractures eventually healed but his bones misaligned, which caused a heel arch and his foot to slope downward. With the density of hard scar tissue that replaced his skin, Chin's foot is virtually immobile, as he cannot flex or point his foot, resulting in a discernible impaired gait which affects his knee, hip, and back.

Following his discharge, on Sept. 14, Chin moved into a house in Philadelphia rented by his parents, who moved from South Florida to assist in Chin's recovery. His mother administered daily wound-care for months, in which she changed his dressings and sanitized his wounds. About six months post-accident, Chin began a course of physical therapy which he treated through 2014 (by which time he reached maximum medical improvement). He continued to see his orthopedic and plastic surgeons through April 2013. At the time of trial, Chin continued to treat with over-the-counter pain medication.

Chin's orthopedic and plastic surgeons discussed what physical limitations and capabilities he faced in the future. His orthopedic surgeon opined that he could develop arthritis in his knee and hip due to his impaired gait.

Chin's expert in physical medicine also testified about how Chin's impeded gait affects the physiology of his body.

Chin was an athlete who, at the time of the accident, ran on his college's cross-country team. His coach testified that Chin, since joining the team, had made dramatic improvements within five weeks, and he had anticipated that Chin would finish in the top 10 at meets. Chin said that his injury caused him to lose his identity as a serious athlete and a runner.

Chin's mother and two sisters talked about Chin's recovery and limitations. Chin discussed how he went from being self-sufficient to dependent on his family in every aspect of his life. At the time of trial, Chin was working as a runway agent for an airline. He said that he experiences significant pain in his foot after work. He sought damages for past and future pain and suffering.

The defense's expert in orthopedic surgery acknowledged Chin's injuries but disputed the potential of his developing arthritis.

The jury found New Flyer was 25 percent liable and SEPTA was 75 percent liable. New Flyer was found negligent but not strictly liable.

Chin was determined to receive \$5 million, with New Flyer responsible for \$1.25 million of the amount.

The trial lasted six days, and the jury deliberated for four hours.

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