

Westlaw

2003 WL 21369718

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Superior Court, San Diego County, California

**PATRICIA GARCIA, A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, LEONOR RAMIREZ
V. CITY OF SAN DIEGO, ORTIZ CONSTRUCTION COMPANY AND ARTURO RODRIGUEZ**

No. G1F5396

DATE OF VERDICT/SETTLEMENT: January 31, 2003

TOPIC: PREMISES LIABILITY - DANGEROUS CONDITION OF PUBLIC PROPERTY - MOTOR
VEHICLE - PEDESTRIAN YOUNGSTER HIT BY CAR WHILE CROSSING ALONE MID-BLOCK

SUMMARY:

AWARD: \$1,675,000

RESULT: Settlement

The plaintiff entered into a global settlement with Ortiz and the city for \$1,650,000 present value, with a guaranteed payout of \$3,282,080 over the next 30 years of Patricia's life. After 30 years, Patricia will still receive \$3,318 monthly and \$1,842 quarterly for as long as she lives.

The city was an additionally named insured under the Ortiz policy. Patricia separately settled with Rodriguez for his policy limits of \$25,000.

The settlement was achieved prior to trial after the plaintiff successfully opposed Ortiz' summary judgment motion.

ATTORNEYS:

Plaintiff: R. Michael Bomberger; Estey and Bomberger; San Diego, CA Richard B. Koskoff; Booth and Koskoff; Torrance, CA

Defendant: Kenneth H. Moreno; Murchison and Cumming; San Diego, CA Ian Fusselman; Murchison and Cumming; San Diego, CA Mark M. Gnesin; Koester and Beavers; Anaheim, CA

JUDGE: Luis R. Vargas

RANGE AMOUNT: \$1,000,000-1,999,999

STATE: California

COUNTY: San Diego County

Her past medicals, which exceeded \$1 million, were paid for by Medi-cal. The bill has been discounted in an unknown amount due to hardship. Issues of potential gainful employment in the competitive labor market remain unresolved.

INJURIES: Patricia sustained a head injury and substantial orthopedic injuries requiring hospitalization and rehabilitation for several months. She was diagnosed as having cognitive dysfunction with memory impairment.

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She has returned to school under an individualized education plan.

SUMMARY:

FACTS:

On April 24, 2000, **Patricia Garcia**, then 8-years-old, was a passenger in a car driven by Trinidad Romero, her babysitter. Romero had picked Patricia up at school and they were traveling southbound on Euclid Avenue in San Diego during rush hour.

Romero had intended to turn left into a market/liquor store but since traffic in the opposing northbound lane was at a standstill, Romero could not turn to pull into the open parking space directly in front of the store. Instead, she parked in a no parking zone directly across the street. While Romero searched the trunk of her car to locate her purse, she let Patricia cross the street alone.

Arturo Rodriguez and his passenger were driving southbound on Euclid toward the liquor store. They claimed to have seen a construction sign and orange construction cones protruding into the northbound lane of Euclid about a quarter of a mile north of the store. The cones allegedly narrowed the width of the northbound lane and created a bottleneck for northbound vehicular traffic. As a result, Rodriguez claimed that northbound traffic on Euclid was backed up all the way beyond the liquor store.

After Patricia had crossed Euclid to reach the market and bought candy, she prepared to cross the street in the other direction. The adjacent intersections to the north and south were not controlled by traffic control devices. Before she entered the street, a northbound driver in a stopped vehicle waved her on. In front of this car was a large SUV or van, which allegedly obstructed her view of Rodriguez' approaching vehicle. As Patricia started to cross again, she was struck by Rodriguez' vehicle.

The plaintiff sued Rodriguez, the city of San Diego and Ortiz Construction Co. She alleged against Rodriguez vehicular negligence and against the city and Ortiz that they breached their respective duties because they increased the risk of harm to pedestrians and failed to provide for their safety. Specifically, according to the plaintiff's attorney Richard B. Koskoff, the standing traffic on northbound Euclid caused solely by the construction cones, combined with the cresting of the hill, created a severely restricted sight distance and constituted a dangerous condition of the roadway for pedestrians crossing at or near the liquor store. The defendants failed to remedy this dangerous condition and failed to warn against it, Koskoff said.

The defendants contended that this was a classic dart out. Defense counsel Ian Fusselman said that witnesses reported to the police that Patricia simply ran from the store into the street without looking for oncoming traffic.

The defendants further contended that there is always standing traffic on Euclid during rush hour and that the traffic was not increased in any way whatsoever due to construction because the construction on Euclid had not yet started and there were no construction cones present.

The city contended that there was no road design defect, that existing site distance which allowed for an unobstructed view of the area for 10 seconds was more than adequate, and that there were no dangerous conditions giving rise to statutory government liability.

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Superior Court of California, San Diego County, at Chula Vista

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