

# NEW YORK

## FEATURED VERDICT

### BRONX COUNTY

### MOTOR VEHICLE

Passenger — Driver Fatigue — Rollover — Single Vehicle

## Driver's snooze caused bus's crash, riders alleged

**MIXED VERDICT \$33,500,000**

**CASE** Gloria Doomes Indiv. and as m/n/g of Infant Plaintiffs, Travis Doomes & Gregory Doomes, Both Under the Age of 14 Years Old v. Best Transit Corp., Sim Corp., d/b/a Prison Gap, Wagner M. Alcivar, Ford Motor Company, Warrick Industries, Inc., d/b/a Goshen Coach & J & R Tours, Ltd., No. 16893/94

**CASE** Kelli Rivera v. Best Transit Corp, Wagner M. Alcivar, Operation Prison Gap. Inc, Ford Motor Company, Warrick Industries Inc d/b/a Goshen Coach and J & R Tours, Ltd., No. 17408/94

**CASE** Sharon Ann Rodriguez, Ann Lee Perez, an Infant by Her m/n/g, Maria Figueroa & Maria Figueroa Indv. v. Best Transit Corp. & Wagner Fifueroa, Indv., No. 17821/94

**CASE** Candida Santiago, Individually & as Administratrix of the Estate of Heriberto Santiago, Deceased v. Best Transit Corp., Sim Corp., d/b/a Prison Gap & Wagner M. Alcivar, Ford Motor Co, Warrick Industries, d/b/a Goshen Coach & J&R Tours Ltd., No. 6800/96

**CASE** Ana Jiminian Indiv., & as Parent of Alexander Nunez, an Infant & Karlenys Nunez, an Infant v. Best Transit Corp., Wagner M. Alcivar, Ford Motore Co., Warrick Industries, Inc., d/b/a Goshen Co., & J & R Tours, Inc., No. 16954/96

**COURT** Bronx Supreme  
**JUDGE** Howard H. Sherman  
**DATE** 2/7/2017

**PLAINTIFF**

**ATTORNEY(S)** David B. Corley (co-lead), Trolman, Glaser & Lichtman, P.C., New York, NY (Ana Jiminian)  
 Nicholas I. Timko (co-lead), Kahn Gordon Timko & Rodriques P.C., New York, NY (Gloria Doomes)  
 Adrienne DeLuca, Shramko & DeLuca, LLP, New York, NY (Kelli Rivera)  
 Jonathan D. Shramko, Shramko & DeLuca, LLP, New York, NY (Kelli Rivera)  
 None reported (Estate of Heriberto Santiago, Gregory Doomes, Sharon Rodriguez, Travis Doomes)



**Kristin Kucsma**  
 Chief Economist  
 Sobel Tinari Economics Group

**DEFENSE**

**ATTORNEY(S)** Michael G. Dempsey (co-lead), Leahey & Johnson, P.C., New York, NY (Best Transit Corp., Wagner M. Alcivar)  
 Alan Kaminsky (co-lead), Lewis Brisbois Bisgaard & Smith LLP, New York, NY (Warrick Industries Inc.)  
 None reported (Ford Motor Co., J&R Tours Ltd., Operation Prison Gap Inc., Sim Corp.)

**PLAINTIFF  
 EXPERT(S)**

Kristin K. Kucsma, M.A., economics, Livingston, NJ

Andrew Brown, M.D., physical medicine, New York, NY  
 Robert S. Goldstein, M.D., orthopedic surgery, New York, NY

**Anil V. Khadilkar, Ph.D.**, seat belts,  
Huntington Beach, CA

**Marcia Knight, Ph.D.**, neuropsychology, New  
York, NY

**John B. Lenox, M.D.**, biomedical,  
San Antonio, TX

**Elton Strauss, M.D.**, orthopedic surgery, New  
York, NY

**Eric J. Strauss, M.D.**, orthopedic surgery,  
New York, NY

#### **DEFENSE**

##### **EXPERT(S)**

**Dr. Roger L. McCarthy**, mechanical,  
Palo Alto, CA

**Carl E. Nash**, automotive rollovers,  
Washington, DC

**FACTS & ALLEGATIONS** On April 23, 1994, plaintiff Gloria Doomes, 29, a security guard, plaintiff Gregory Doomes, a pre-teen boy, plaintiff Travis Doomes, a pre-teen boy, plaintiff Ana Jiminian, a 34-year-old unemployed woman, plaintiff Kelli Rivera, 33, an administrative worker, plaintiff Sharon Rodriguez, a woman in her 30s, and plaintiff's decedent Heriberto Santiago, 62, a cook, were seated passengers of a 1992 Ford minibus that was being driven by Wagner Alcivar, who was traveling on the southbound side of Interstate 87, near its interchange at State Route 8, in Chestertown. Alcivar was utilizing a seat belt, but seat belts had not been provided to the passengers, who were part of a chartered excursion. Alcivar lost control of the bus. The vehicle careered off of the roadway, slid down an embankment, struck a boulder and rolled. Santiago was ejected, and he suffered a fatal injury. Gloria Doomes suffered injuries of an ankle, her diaphragm, her lungs, a shoulder and several ribs. Jiminian suffered injuries of her back, a lung, a shoulder, a thumb, a wrist and several ribs. Rivera suffered injuries of her chest, her face, her head, her knees, a leg and her spleen. Rodriguez, Gregory Doomes and Travis Doomes claimed that they also suffered injuries.

Gloria Doomes, acting individually and as parent and natural guardian of Gregory and Travis Doomes, sued Alcivar; the bus's owner and operator, Best Transit Corp.; the bus's prior owner, Mount Vernon-based J&R Tours Ltd.; the bus's manufacturer, Dearborn, Mich.-based Ford Motor Co.; a company that had reconfigured the bus; Elkhart, Ind.-based Warrick Industries Inc.; and a company that organized the excursion, Yonkers-based Sim Corp. The lawsuit alleged

that Ford Motor and Warrick Industries were negligent in their construction and/or reconfiguration of the bus, that their negligence created a dangerous condition that caused the plaintiffs' injuries, that Alcivar was negligent in his operation of the bus, that Best Transit was vicariously liable for Alcivar's actions, and that Best Transit, J&R Tours, and Sim negligently allowed use of a dangerous bus.

In a separate filing, Rivera sued Alcivar, Best Transit, Ford Motor, Warrick Industries, J&R Tours and a Sim affiliate, Operation Prison Gap Inc. The lawsuit alleged that Ford Motor and Warrick Industries were negligent in their construction and/or reconfiguration of the bus, that their negligence created a dangerous condition that caused the plaintiffs' injuries, that Alcivar was negligent in his operation of the bus, that Best Transit was vicariously liable for Alcivar's actions, and that Best Transit, J&R Tours, and Operation Prison Gap negligently allowed use of a dangerous bus.

In a separate filing, Rodriguez sued Alcivar and Best Transit. The lawsuit alleged that Alcivar was negligent in his operation of the bus, that Best Transit was vicariously liable for Alcivar's actions, and that Best Transit negligently allowed use of a dangerous bus.

In a separate filing, Santiago's estate sued Alcivar, Best Transit, Ford Motor, Warrick Industries, J&R Tours, and Sim. The lawsuit alleged that Ford Motor and Warrick Industries were negligent in their construction and/or reconfiguration of the bus, that their negligence created a dangerous condition that caused the plaintiffs' injuries, that Alcivar was negligent in his operation of the bus, that Best Transit was vicariously liable for Alcivar's actions, and that Best Transit, J&R Tours, and Sim negligently allowed use of a dangerous bus.

In a separate filing, Jiminian sued Alcivar, Best Transit, Ford Motor, Warrick Industries, and J&R Tours. The lawsuit alleged that Ford Motor and Warrick Industries were negligent in their construction and/or reconfiguration of the bus, that their negligence created a dangerous condition that caused the plaintiffs' injuries, that Alcivar was negligent in his operation of the bus, that Best Transit was vicariously liable for Alcivar's actions, and that Best Transit and J&R Tours negligently allowed use of a dangerous bus.

The cases were consolidated.

The plaintiffs and Ford Motor negotiated a pretrial settlement. Each plaintiff recovered \$50,000. J&R Tours was dismissed; Operation Prison Gap and Sim defaulted; and plaintiffs' counsel discontinued the remaining claims involving Gregory Doomes and Travis Doomes. The matter proceeded to a trial that addressed the remaining plaintiffs'

claims against Alcivar, Best Transit and Warrick Industries.

On March 2, 2006, a jury found that the defendants were liable for the accident. Warrick Industries was assigned 40 percent of the liability, and Alcivar and Best Transit were assigned a total of 60 percent of the liability. The jury was also asked to apportion liability for the bus's lack of seat belts. Warrick Industries was assigned 80 percent of the liability, and Best Transit was assigned 20 percent of the liability. The jury further found that the plaintiffs' injuries were entirely a result of a lack of seat belts.

Warrick Industries' counsel appealed. After the appeal had passed through the appellate division, First Department, the Court of Appeals ordered a retrial. Santiago's estate and Rodriguez subsequently settled their claims. Terms were not reported to VerdictSearch. The retrial addressed the claims of Gloria Doomes, Jiminian and Rivera.

Plaintiffs' counsel contended that the accident was a result of Alcivar having fallen asleep, but that the plaintiffs' injuries were a result of the lack of seat belts. The plaintiffs' biomedical-engineering expert opined that the injuries were caused by the plaintiffs having been ejected from their seats.

Plaintiffs' counsel contended that seat belts should have been installed during Warrick Industries' reconfiguration of the bus. They argued that the bus did not meet generally accepted standards of crashworthiness, and they also argued that the bus's condition breached its implied warranty of fitness. The plaintiffs' vehicular-safety expert claimed that Warrick Industries had conducted tests that revealed that the bus was predisposed to rolling, and he opined that that characteristic warranted installation of seat belts.

Plaintiffs' counsel also contended that Best Transit should not have permitted use of a bus that did not have seat belts.

Warrick Industries' counsel contended that the company was not legally required to install seat belts. He claimed that the company offered seat belts, but that J&R Tours refused the seat belts. He argued that J&R Tours and Best Transit were knowledgeable purchasers and operators of buses, that they were uniquely qualified to determine their buses' needs, and that they intentionally rejected the installation of seat belts.

Best Transit's counsel contended that Warrick Industries should have installed seat belts.

**INJURIES/DAMAGES** *back; bone graft; brain damage; catheterization; chest; cognition, impairment; collapsed lung; comminuted fracture; compression fracture; debridement; decreased range of motion; depression; diaphragm, tear; external fixation; facial laceration; fracture, T4; fracture, T5; fracture, T6; fracture, ankle; fracture, clavicle; fracture,*

*collarbone; fracture, displaced; fracture, distal fibula; fracture, fibula; fracture, knee; fracture, leg; fracture, proximal fibula; fracture, radius; fracture, rib; fracture, scapula; fracture, shoulder; fracture, thumb; fracture, tibial plateau; fracture, vertebra; fracture, wrist; fusion, ankle; fusion, thoracic; hardware implanted; head; headaches; hematoma; hypoxia; internal fixation; knee surgery; lateral meniscus, tear; leg, lengthened; lung, contusion; memory, impairment; meniscectomy; nondisplaced fracture; open reduction; osteoarthritis; physical therapy; pneumothorax; post-traumatic stress disorder; spleen, laceration; splenectomy*

Gloria Doomes suffered a fracture of her right, dominant shoulder's clavicle, which is the collarbone, a fracture of her left fibula's distal region, which is a component of the left ankle, a rupture of her diaphragm, fractures of ribs and contusions of her lungs. She also developed a retroperitoneal hematoma.

Doomes was placed in an ambulance, and she was transported to Glens Falls Hospital, in the city of Glens Falls. A tube was placed in her left lung, and a cast was applied to her left ankle and left leg.

Doomes subsequently underwent replacement of her cast. She ultimately required surgery that involved fusion of her left ankle, lengthening of her left leg's fibula, and the application of a graft of bony matter.

Doomes claimed that she suffers residual pain and limitations. She also claimed that she requires further treatment. She sought recovery of future medical expenses, damages for past pain and suffering, and damages for future pain and suffering.

Jiminian suffered a burst fracture of her T5 vertebra, compression fractures of her T4 and T6 vertebrae, a comminuted fracture of her right, dominant hand's thumb, a comminuted, transverse, impacted fracture of her right radius's distal region, which is a component of the right wrist, a displaced fracture of her left shoulder's scapula, fractures of seven ribs, and a contusion of her left lung. The latter injury caused a pneumothorax, which involved a minor collapse of her left lung.

Jiminian was placed in an ambulance, and she was transported to Glens Falls Hospital. A cast was applied to her right wrist. Her hospitalization lasted 13 days.

During the month that followed the accident, Jiminian underwent surgery that involved fusion of her spine's T1-2, T2-3, T3-4, T4-5, T5-6, T6-7, T7-8, T8-9 and T9-10 levels, application of a stabilizing graft of bony matter, and implantation of stabilizing hardware. The procedure necessitated a hospitalization that lasted 14 days. Jiminian also underwent open reduction and external fixation of the

fractures of her right thumb and right wrist. She subsequently underwent two years of physical therapy.

Jiminian claimed that her back remains painful, that she suffers a residual diminution of her back's range of motion, and that her residual effects also include depression, headaches and post-traumatic stress disorder. She claimed that she utilizes a prescribed antidepressant.

Jiminian sought recovery of past medical expenses, \$10 million for past pain and suffering, and \$10 million for future pain and suffering.

Rivera suffered a laceration of her spleen, a fracture of each leg's tibial plateau, which is a lower component of the knee, a nondisplaced fracture of the proximal region of her right leg's fibula, a tear of her right knee's lateral meniscus, a 19-centimeter-long laceration of her forehead and scalp, and a 15-centimeter-long laceration of her chest. Her chest's laceration exposed muscle.

Rivera was placed in an ambulance, and she was transported to Glens Falls Hospital. She underwent a splenectomy, open reduction and internal fixation of her right knee's fracture, debridement and closure of her lacerations, and insertion of a Foley catheter. Her hospitalization lasted 10 days, and she subsequently underwent six months of physical therapy. She also underwent a meniscectomy, which involved removal of her right knee's lateral meniscus.

Rivera claimed that her injuries' residual effects include hypoxic damage of her brain. She claimed that she suffers resultant impairment of her memory, her executive functions and other elements of her cognition. She also claimed that her spine's lumbar region has developed traumatic osteoarthritis.

Rivera further claimed that her injuries prevented her performance of five months of work. She claimed that she suffers permanent residual pain, that she suffers ongoing impairment of her cognition, that she will require replacement of each knee, and that her residual effects prevent her performance of any type of work. She stopped working in 2002, and she has not resumed work.

Rivera sought recovery of past and future medical expenses, past and future lost earnings, and damages for past and future pain and suffering.

**RESULT** The jury rendered a mixed verdict: It found that Alcivar and Best Transit were liable for the accident, and liability was not assigned to Warrick Industries.

The jury determined that the plaintiffs' damages totaled \$33.5 million.

**GLORIA**

**DOOMES** \$1,500,000 future medical cost  
\$4,000,000 past pain and suffering  
\$3,000,000 future pain and suffering  
\$8,500,000

**ANA**

**JIMINIAN** \$3,000,000 past medical cost  
\$4,000,000 past pain and suffering  
\$8,000,000 future pain and suffering  
\$15,000,000

**KELLI**

**RIVERA** \$350,000 past medical cost  
\$1,000,000 future medical cost  
\$1,000,000 past lost earnings  
\$1,000,000 future lost earnings  
\$5,000,000 past pain and suffering  
\$1,650,000 future pain and suffering  
\$10,000,000

**INSURER(S)**

Reliance Insurance Co. for Alcivar and Best Transit  
American International Group Inc. for Warrick Industries

**POST-TRIAL** Best Transit's counsel has moved to set aside the verdict.

**EDITOR'S NOTE** This report is based on information that was provided by Jiminian's counsel, Rivera's counsel, Warrick Industries' counsel, and counsel of Alcivar and Best Transit. Additional information was gleaned from court documents, from an article that was published by The New York Times and from a prior article that was published by VerdictSearch. Doomes' counsel did not respond to the reporter's phone calls, and the remaining parties' counsel was not asked to contribute.

—Jack Deming

