

October 30, 2017

An ALM Publication

## NEW YORK

## FEATURED VERDICT

### NEW YORK COUNTY

### MOTOR VEHICLE

Passenger — Center Line — Head-On — Multiple Vehicle

## Teen fractured spine in minivan accident

**VERDICT** \$71,000,000

**CASE** Morgan C Wang v. Neil N Sexton, PV Holding Corp., Avis Budget Car Rental, LLC and Budget Rent a Car System, Inc., No. 155406/13

**COURT** New York Supreme

**JUDGE** James E. D'Auguste

**DATE** 9/28/2017

#### PLAINTIFF

**ATTORNEY(S)** Ben B. Rubinowitz, Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf, New York, NY

#### DEFENSE

**ATTORNEY(S)** Grant M. Meisels, Rubin, Fiorella & Friedman LLP, New York, NY

#### PLAINTIFF

**EXPERT(S)** Kristin K. Kucsma, M.A., economics, Livingston, NJ

Charles A. Kincaid, Ph.D., life-care planning, Hackensack, NJ  
Kristjan T. Ragnarsson, M.D., physical rehabilitation, New York, NY (treating doctor)

#### DEFENSE

**EXPERT(S)** Douglas Stephen Cohen, M.D., neurosurgery, New York, NY  
Joseph Pessalano, M.A., C.R.C., vocational rehabilitation, Garden City, NY

**FACTS & ALLEGATIONS** On Aug. 20, 2012, plaintiff Morgan Wang, 19, a student, was a rear-seat passenger

of a rented minivan that was being driven by a friend, Neil Sexton, who was traveling on the westbound side of Slaterville Road, near its intersection at German Cross Road, in Ithaca. After Sexton had passed the intersection, he lost control of the minivan. The minivan drifted across the roadway's dividing line, and it became involved in a head-on collision with an eastbound sport utility vehicle. Wang suffered injuries of her back, her head, a knee, her liver, a lung, her pancreas, her spleen and her sternum.

While being interviewed by a responding policeman, Sexton claimed that the accident was a result of him having become overcome by sleep. However, Sexton subsequently claimed that the accident was a result of a medical condition that causes lapses of consciousness. Wang claimed that Sexton suggested that the accident was a result of her having insisted that he would drive the minivan. Wang claimed that she rejected that contention, that Sexton became angry, and that Sexton retaliated by rumoring that Wang had falsely stated that he had committed rape.

Wang sued Sexton and the minivan's owners, Avis Budget Car Rental LLC, Budget Rent a Car System Inc. and PV Holding Corp. Wang alleged that Sexton was negligent in his operation of the minivan, that the remaining defendants were vicariously liable for Sexton's negligence, and that Sexton's rumoring constituted intentional infliction of emotional distress.

Wang's counsel discontinued the claims against Avis Budget Car Rental, Budget Rent a Car System and PV Holding. Justice Arlene Bluth rendered summary judgment that established that Sexton was liable for the accident. The matter proceeded to a trial that addressed



**Kristin Kucsma**  
Chief Economist  
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damages and the claim of intentional infliction of emotional distress.

**INJURIES/DAMAGES** *anxiety; cauda equina syndrome; cognition, impairment; concussion; depression; dislocated spine; emotional distress; fine motor skills, impairment; foot drop (drop foot); fracture, L1; fracture, back; fracture, sternum; fracture, vertebra; fusion, lumbar; fusion, thoracic; hardware implanted; head; incontinence; insomnia; internal fixation; leg; liver, laceration; lung, contusion; medial meniscus, tear; memory, impairment; numbness; open reduction; pancreas; paralysis, partial; pins/rods/screws; post-concussion syndrome; spasticity; speech/language, impairment of; spleen, laceration*

Wang suffered a fracture and dislocation of her L1 vertebra, disruption of ligaments of her spine's T12 and L1 levels, a concussion, a fracture of her sternum, a laceration of her liver, a laceration of her spleen, an injury of her pancreas, a contusion of a lung, and a tear of her right knee's medial meniscus.

Wang was airlifted to Upstate University Hospital, in Syracuse. She underwent fusion of her spine's T12, L1 and L2 levels. The procedure included implantation of stabilizing rods and screws. After 10 days had passed, Wang was transported to another facility, where she underwent six weeks of rehabilitative therapy. She also underwent treatment of post-concussion syndrome.

Wang's residual effects include numbness, spasticity and partial paralysis of her legs; foot drop, which involves weakness of muscles of her feet; impairment of the functioning of her bladder and bowel; numbness of her genitals; and cauda equina syndrome, which is an acute loss of function of nerves of the lumbar region. She ambulates via use of braces and crutches, but her ambulation is limited. She also utilizes a wheelchair.

Wang claimed that her concussion's residual effects include impairment of her fine motor skills, her memory, her speech and other elements of her cognition. She further claimed that she suffers residual emotional distress that includes anxiety, depression, insomnia and nightmares. She undergoes psychological counseling, physical therapy and the administration of injections of medication that limits the spasticity of her legs. She attempted to resume her education, but she claimed that her depression and her physical restrictions presented obstacles that could not be overcome.

Wang's expert physiatrist opined that Wang will experience progressive deterioration of her ambulatory abilities. He also opined that she will eventually require the constant presence of an aide.

Wang sought recovery of \$60 million for future medical expenses, \$5 million for past pain and suffering, and \$6 million for future pain and suffering.

Defense counsel contended that Wang does not require psychological counseling or physical therapy. He also contended that Wang's emotional distress is not a result of anything that Sexton may have intentionally done.

**RESULT** The jury determined that Wang's damages totaled \$71 million, but the damages did not include a punitive component. The jury found that Sexton intentionally inflicted emotional distress, but it also found that Wang's emotional distress entirely stems from her physical injuries.

#### MORGAN

<b>WANG</b>	\$5,000,000 past pain and suffering \$60,000,000 future medical cost (52 years) \$6,000,000 future pain and suffering (52 years) \$71,000,000
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**INSURER(S)** Liberty Mutual Insurance Co. for Sexton

**TRIAL DETAILS** Trial Length: 3 weeks  
Trial Deliberations: 1 day  
Jury Vote: 6-0  
Jury Composition: 3 male, 3 female

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.

—Jack Deming

