

## **SPRING 2015 NEWSLETTER**

### **AUTOMOBILE / TRUCKING LITIGATION UPDATE**

**By Gerald B. Lotzer**

**1. *In Re: Bridgestone Americas Tire Operations, LLC*  
(Tex. Sup. Ct., No. 12-0946, November 5, 2014)**

This case arises from a June 2009 car accident in Mexico. Armando Alvarado was driving a 1996 Ford Explorer on a highway near Monterrey in the State of Nuevo Leon. His wife, Maria Isabel Rodriguez, and their two minor children were passengers. The Explorer's left rear tire allegedly failed, causing a rollover that killed Armando and Maria and injured the two children. At the time of the accident the family resided in Nuevo Leon, Mexico, and subsequently, the children's maternal grandparents became the children's' legal guardians by operation of Mexican law and took custody of the children in Nuevo Leo.

Gilberto Rodriguez, a Texas resident who is the children's maternal uncle, filed a wrongful death lawsuit "as next friend" of the children in Montgomery County, Texas, against Bridgestone Americas Tire Operations, LLC (Bridgestone), a Delaware company that manufactured the allegedly defective tire. Other defendants included Gutierrez Brothers, Inc., doing business as Gutierrez Auto Sales, and the company's individual owners, Juan, Jaime, and Manuel Gutierrez. Gutierrez Auto Sales is located in Hidalgo County, Texas. Gutierrez Auto Sales originally purchased the used Explorer from a New Jersey Acura dealership through New Jersey auction house on July 12, 2007. Gutierrez Auto Sales subsequently sold the Explorer to a wholesaler, Librado Leal, a company based in Nuevo Leon, "For Export Only." The accident occurred almost two years later. The records do not reflect when or where the tire at issue was put on the Explorer. Nothing in the record suggests that the tire was manufactured in Texas.

Bridgestone filed a motion to dismiss for forum non conveniens, arguing that the case belonged in Mexico, not Texas. The trial court denied the motion and Bridgestone filed a petition for Writ of Mandamus in the Court of Appeals. The Court of Appeals denied relief holding that Texas had proper venue because the Plaintiff, as next friend of Rodriguez, is a Texas resident.

The Court addressed the Texas resident exception to the forum-non-conveniens statute. The exception allows a Plaintiff residing in Texas to maintain a lawsuit here even when the suit would otherwise be subject to dismissal for forum non conveniens. In this particular case, the minors themselves reside in Mexico with their grandparents, who are the minors' legal guardians under Mexican law. The Court held that the Texas resident exception does not apply and that the trial court abused its discretion in refusing to dismiss the case on forum-non-conveniens grounds. Accordingly, they conditionally granted mandamus relief.

**2. *JLG Trucking, LLC v. Lauren R. Garza*  
(Tex. Sup. Ct., No. 13-0978, February 26, 2015)**

On July 16, 2008, Lauren Garza was traveling south on U.S. Highway 83 in Zapata County, Texas when an 18-wheeler driven by JLG Trucking, LLC's employee rear-ended her truck. Although an ambulance was called to the scene, Garza had her aunt take her to a nearby emergency clinic where X-rays were taken. The record contains no medical records from the clinic regarding that visit. Five days later, Garza saw Dr. Guillermo Pechero, an orthopedic surgeon, complaining of neck and back pain. An X-ray showed some straightening of the lordotic curve which Dr. Pechero concluded was associated with muscle spasms in the neck. Dr. Pechero prescribed physical therapy which Garza underwent for roughly eleven weeks. On October 9, 2008, after ceasing physical therapy, Garza was involved in a second car accident. This time she was taken by ambulance from the scene of the accident to a hospital on an immobilization board with a hard collar to prevent movement of her neck. At the hospital she complained of pain in her head, neck, and chest. On October 31 she returned to Dr. Pechero for a follow-up visit complaining of continuous pain in her neck that radiated into her shoulders. Dr. Pechero ordered an MRI which revealed that she had two herniated disks in her neck. In March 2009 nerve study revealed that a nerve at the site of the herniations had become compressed and a second MRI in August 2011 showed two additional herniated disks in her neck. Garza subsequently underwent spinal fusion surgery in January 2012. At the time of trial, Garza was "doing well." She testified that she had a scar on her neck, reduced mobility, the permanent presence of hardware from the surgery and the possibility of future surgery.

Garza sued JLG alleging that the employee driver's negligence proximately caused her injuries and sought damages for past and future medical expenses, loss of earning capacity, physical pain, mental anguish, physical impairment, and disfigurement. Dr. Pechero testified as her "expert witness" that the July 2008 automobile accident caused the herniated disks. JLG designated Dr. Bruce Berberian, neuroradiologist, as their expert to testify that Garza was suffering from degeneration of her disks and not a traumatic-related injury at all. JLG also intended to introduce evidence of the October accident as an alternative cause of Garza's injury although JLG did not designate an expert to testify in support of that theory.

In pretrial motions, Garza asked the Court to exclude any evidence of the second accident on the grounds that such evidence was not relevant or that its probative value was substantially outweighed by the unfair prejudice or confusion it would cause the jury, because "there is no causal connection between the injuries [Garza] is complaining of and the subsequent collision." The trial court granted Garza's motion to exclude. Dr. Pechero testified by deposition at trial that the July accident caused Garza's injuries and that the October MRI revealed injuries consistent with a rear-end collision. JLG submitted an offer of proof as to the testimony that would have been elicited from Dr. Pechero and the evidence that would have been presented in support of the second accident as an alternative cause. This offer of proof included the police report regarding the second accident, photos of Garza's vehicle after the second accident, medical records documenting Garza's emergency room treatment after the accident, and Dr. Pechero's testimony that he not reviewed those medical records. Garza responded with an offer of proof consisted of Dr. Pechero's testimony that he had relied on Dr. Berberian's testimony that the second accident did not cause Garza's injuries to rule out that possibility.

The jury found that JLG's employee's negligence proximately caused the July accident and awarded the Plaintiff \$108,135.48 in past medical expenses, \$110,000.00 for future medical expenses, \$583,693.00 for future loss of earning capacity, \$42,048.00 for past physical pain, \$252,288.00 for future physical pain, \$5,000.00 for past physical impairment, \$57,600.00 for future physical impairment, and \$7,500.00 for future disfigurement for a total of \$1,166,264.48. The jury awarded zero for past loss of earning capacity, past and future mental anguish, and past disfigurement.

The Supreme Court reviewed the trial court's exclusion of evidence on relevance grounds. The Plaintiff was involved in two car accidents approximately three months apart. After the second accident, she sued the opposing driver in the first accident and alleged that this collision caused her injuries. The Defendant, JLG Trucking, sought to present two alternative defense theories. First, the Defendant presented expert testimony that the Plaintiff's injuries were degenerative and thus not trauma-related at all. Alternatively, the Defendant contended that the second accident caused her injuries. On the Plaintiff's first pretrial request and because of lack of expert testimony supporting the Defendant's alternative theory, the trial court excluded all evidence of the second accident on relevance grounds. The trial court rendered judgment on the jury's verdict for the Plaintiff and the Court of Appeals affirmed. The Supreme Court held that the evidence of the second car accident was relevant to the central issue of whether the Defendant's negligence caused the Plaintiff's damages. They further held that the trial court committed harmful error in excluding the evidence, and particularly in refusing to allow cross-examination of Plaintiff's expert on the subject. Accordingly, they reversed the Court of Appeals judgment and remanded the case for a new trial.