

## Greyhound driver on cell phone results in verdict of more than \$18.5M

By Correy Stephenson

A 12-person jury in Texas has awarded more than \$18.5 million to two women injured when the Greyhound bus they were riding flipped over while the driver was making calls on his cell phone.

Ashley Reedy and Janie Reeves filed suit against Greyhound and driver Rashad Nichols after they were both seriously injured in the 2007 accident.

Despite the defendants' contention that the accident was unavoidable due to an icy road and poor weather conditions, the plaintiffs presented evidence that Nichols shouldn't have been hired in the first place given his poor driving record, and that he made 17 calls on his personal cell phone on the night in question, said Reedy's attorney, Ryan Zehl, who practices at Fitts Zehl in Houston.

Zehl said he emphasized for jurors the number of its own rules that Greyhound and its driver broke.

"If somebody violates the rules, especially transportation companies, it's not just the passengers but all the other drivers on the road who are at risk," he said. "You have to motivate the jury to enforce the rules and show companies consequences for violating them."

D. Bradley Dickinson, a partner at Dickinson Bartlett in Dallas who represented the defendants, did not return a call requesting comment on the case.

### Distracted driving, broken rules

Ashley Reedy was 20 years old in December 2007 when she boarded a Greyhound bus in Oklahoma destined for Amarillo, Texas. Janie Reeves was on her way from Virginia to Eugene, Ore. to visit her grandson, who had just been diagnosed with leukemia, according to her attorney, Ron McCallum of the Law Offices of Ted Lyon in Mesquite, Texas.

Heading west on Interstate 40, the bus crashed at about midnight on an icy road, causing Reedy to suffer a herniated disc. Reeves sustained a fractured pelvis, ruptured spleen, several broken ribs and a collapsed lung.

The defense argued that the accident was inevitable, given the weather conditions and the state of the road. While the road in Oklahoma was made out of concrete and therefore retained some heat that kept it from icing over, the Texas highway was made of asphalt and had about three inches of ice on it.

To support this argument, the defense presented evidence that within a four-mile radius of the accident site, 186 other accidents happened in Texas, while just four accidents occurred in nearby Oklahoma.

"They argued that the roads in Oklahoma were fine but that the Texas roads were so icy nobody could control their vehicles," Zehl said.

However, tipped off by a passenger sitting immediately behind the driver, the plaintiffs' attorneys subpoenaed the driver's cell phone records. They discovered he had made or received a total of 17 calls during the three hours prior to the accident, including a call just before or during the accident itself.

Those phone calls "were a violation of Greyhound's own rules," Zehl said.

The driver had sufficient notice of the weather conditions and the need to drive carefully, Zehl said.

One of the calls he exchanged was with another Greyhound driver who had taken the exact same route earlier in the evening, warning him about snow and ice on the roads, Zehl said. The bus also made a stop just before crossing from Oklahoma into Texas, where two other Greyhound buses were putting chains on their tires due to the weather conditions.

Nichols violated another Greyhound rule by failing to put chains on his own tires, something the company requires when traveling on roads with snow or ice, Zehl said.

### Driver's history

In addition to negligence, the plaintiffs also made a claim against Greyhound for negligent hiring of the driver.

Despite a company rule against hiring applicants with more than two convictions for moving violations in a three-year period, Greyhound hired Nichols, who had received three speeding tickets just eight months earlier.

Further, each of the tickets was for driving 15 mph or more over the speed limit, which constitutes a "serious offense" under the federal Motor Carrier Safety Rules, Zehl said. A driver with more than two serious offenses within three years is supposed to lose his or her license for 60 days. Not only did Nichols not lose his license, Greyhound "hired him anyway."

Greyhound told jurors that Nichols' background check only revealed two of the three tickets, but Zehl said it took the plaintiffs "five minutes" to get the records.

Nichols was also cited for an improper lane change during his Greyhound drivers' training, Zehl said, in an incident where he essentially ran another car off the road. That incident, to which he pled guilty, constituted yet another serious violation under the federal regs.

"If Greyhound spent as much time out of the courtroom trying to be safe and make sure its drivers are qualified as it did in the courtroom trying to avoid responsibility, we wouldn't be here," Zehl told the jury.

In addition to Nichols' driving history, his own testimony damaged the defendants' case, Zehl said. During a deposition, Nichols told McCallum he made just two phone calls on the night of the accident.

But at trial, he admitted during cross-examination that the records showing his



Ron C. McCallum

17 calls were accurate, and he acknowledged that "talking on the phone while it is snowing, at night, with a bus full of passengers is one of the most dangerous things you can do as a driver," Zehl said.

Zehl and McCallum declined to provide jurors with statistics about distracted driving.

"Everybody knows that if a driver has a bus full of passengers he should be focused on the road ahead of him and that a cell phone is a distraction," Zehl said. "I wanted to keep it simple and didn't want to dilute the argument with a bunch of statistics."

Jurors heard testimony from both the plaintiffs and two other passengers – one who saw the driver on his phone "pretty much the whole trip," Zehl said, and another who saw other buses putting chains on their tires at the rest stop. Treating doctors and life care planners as well as an economist and an expert on the federal regulations took the stand.

State troopers, who investigated the accident and ticketed the driver for driving at an unsafe speed under the conditions, also testified.

### Damages

The three-week trial was bifurcated, with jurors first determining liability. After about a day of deliberations, they found for the plaintiffs, apportioning 20 percent of the fault to the driver and 80 percent to Greyhound.

Zehl said he asked jurors for \$2.35 million in both compensatories and punitive damages.

After presenting jurors with a life care plan and past medical costs, McCallum suggested a dollar amount for Reeves' pain and suffering and emotional distress damages by referring to Greyhound's refund of the cost of Reeves' ticket, which was \$218. He suggested jurors multiply \$218 per day for 37.9 years, her life expectancy, for a total of just over \$3 million.

The jury awarded Reedy \$2.12 million in compensatory damages and Reeves \$6.87 million.

Jurors also determined that the defendants had committed gross negligence and deliberated for another day before awarding each plaintiff \$4.8 million in punitives.

Combining the awards of both plaintiffs, the verdict totaled almost \$18.6 million.

After the trial, the plaintiffs' lawyers took eleven of the 12 jurors out to lunch.

The reason they deliberated longer on the punitive award, jurors said, was because 11 of the 12 wanted to award \$500 million in punitives but couldn't persuade the holdout juror to go that high. In Texas, punitive awards must be unanimous.

**Plaintiffs' attorneys:** Ryan Zehl of Fitts Zehl in Houston; Ron McCallum of the Law Offices of Ted Lyon in Mesquite, Texas.

**Defense attorney:** D. Bradley Dickinson of Dickinson Bartlett in Dallas.

**The case:** *Reedy v. Greyhound Lines, Inc.*; Dec. 19, 2011; 193rd District Court of Dallas County, Texas; Judge Carl Ginsberg.

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