

## CALIFORNIA

## FRESNO COUNTY

**MOTOR VEHICLE**

Pedestrian — Motor Vehicle — Automobile Insurance — Motor Vehicle — Single Vehicle — Motor Vehicle —  
Visibility

Verdict (P) \$23,295,000

Net \$21,120,000

Case Sandy Moua, Through Her Guardian Ad Litem and Father Leng Moua v. Karen Vardanyan, Erik Akers, No. 02 CE CG 03621 AMS

Court Superior Court of Fresno County, Fresno

Judge Alan M. Simpson

Neutral(s) James R. Gillen (arbitrator)

Date 1/9/2007

**Plaintiff****Attorney(s)**

Otto L. Haselhoff (lead), Law Offices of Otto L. Haselhoff PC, Santa Monica, CA  
Lara J. Haselhoff, Law Offices of Otto L. Haselhoff PC, Santa Monica, CA  
Jeffery R. Neubarth, Law Offices of Jeffery R. Neubarth, Daly City, CA

**Defense****Attorney(s)**

Confidential Lawyer (Karen Vardanyan)  
Confidential Lawyer II (Erik Akers)

**Facts & Allegations**

On July 26, 2002, plaintiff Sandy Moua, age 6, purchased from Karen Vardanyan's ice cream truck in Clovis. After Sandy got her ice cream, she ran across the street to return to her home, but she was struck by a van driven by Erik Akers, a minor who had permission from his parents, Daniel Akers and Mary Akers. Upon impact, Sandy flew through the air and struck the ground.

Claiming physical damages, Moua, through her father Leng Moua, sued the three Akers and Vardanyan for negligence. (Before trial, the Akers defendants settled out for \$50,000, the limit of their insurance policy.)

Plaintiff's counsel charged Vardanyan with negligent vending of ice cream products. The lawyers also claimed that Vardanyan was guilty of negligent parking of the ice cream truck, negligent failure to display proper signage affixed to the truck warning motorists of children and negligent construction and/or modification of the ice cream truck.

Vardanyan disputed the allegations, contending that Sandy darted out across the street without looking and was therefore at fault for the accident.

Defense counsel also argued that Sandy's parents were comparatively liable for failing to watch her and failing to train her to look before crossing the street.

1/22/2007

Vardanyan and Akers each blamed each other and filed counter claims against Sandy's parents for implied indemnity and comparative fault.

#### **Injuries/Damages**

Sandy sustained a massive brain injury with partial paralysis. At first, she was bed-ridden. Then, she was confined to a wheelchair for mobility. By trial, she could walk for short periods of time with great difficulty, and she still relied on her wheelchair. Moua also had reduced motor skills which was making communicating and studying very difficult for her. Moua asked for \$195,000 in medical specials with future medical expenses of \$6.7 million. Moua made a future loss of earnings capacity claim of between \$1.5 million and \$2.3 million. Moua also made a past pain and suffering claim of \$2.5 million and a \$10 million demand for future pain and suffering.

#### **Result**

The parties stipulated to a binding arbitration. Arbitrator James R. Gillen apportioned liability as follows: Sandy, 10%; Akers, 5%; and Vardanyan, 85%. Gillen then awarded \$23,295,000, reduced to \$21,120,000 after apportionment of liability.

#### **Plaintiff(s)**

##### **Sandy Moua**

\$195,000 past medical cost  
 \$6,700,000 future medical cost  
 \$1,900,000 future lost earnings  
 \$4,000,000 past pain and suffering  
 \$10,500,000 future pain and suffering  
**\$23,295,000 plaintiff's total award**

**Demand** \$50,000 to Akers defendants (accepted)<P> \$100,000 to Vardanyan from primary carrier (accepted)<P> \$1 million to Vardanyan on excess policy (rejected)

**Offer** \$50,000 by Akers defendants (accepted)<P> \$100,000 (underlying policy limits) by Vardanyan (accepted)<P> Nothing by \$1 million excess carrier for Vardanyan

#### **Insurer(s)**

All Confidential Insurers

#### **Trial Details**

**Trial Length:** 1 Day  
**Jury Deliberations:** None reported  
**Jury Poll:** None reported  
**Jury Composition:** None reported

#### **Plaintiff**

##### **Expert(s)**

Tracy Albee, R.N., nursing, Tracy, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Alex J. Bailan, retail safety, West Hills, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Alan M. Birnbaum, M.D., neurology, Fresno, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 George Y. Blair, accident investigation & reconstruction/ failure analysis/product liability, Fresno, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Kevan Z. Craig, D.O., physical medicine, Medera, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Matthew Halsey, M.D., orthopedic surgery, Medera, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Robert W. Johnson, M.B.A., economics, Los Altos, CA (Otto L. Haselhoff, Lara J. Haselhoff)  
 Rick A. Sarkisian, Ph.D., vocational rehabilitation, Fresno, CA (Otto L. Haselhoff, Lara J. Haselhoff)

#### **Defense**

##### **Expert(s)**

None reported

#### **Post-Trial**

Plaintiff's counsel will file a bad faith action against Vardanyan's excess carrier.

#### **Editor's Note**

After the lawsuit was filed, Vardanyan filed for bankruptcy, which imposed an automatic stay of the action. Plaintiff's counsel then moved to lift the stay and allow the case to continue as long as Sandy limited her recovery to the proceeds of Vardanyan's insurance plus any funds recovered due to an assignment of Vardanyan's bad faith rights against the carrier, which refused to tender its \$1 million limit.

**Plaintiff(s)****Demographics****Sandy Mouna****Age: 6 Years****Occupation: None reported****Gender: Female****Married: No****Children: No**