

Daily Journal

JANUARY 19, 2011

TOP VERDICTS OF 2010

TOP DEFENSE VERDICTS

Eubanks v. KBC America Inc.

When the family of 17-year-old Kevin Eubanks, who suffered a traumatic brain injury during a 2007 motocross jumping accident in Ventura County, turned down a large settlement offer from a helmet manufacturer, the lawsuit's mediator had ominous words for defense lawyer James J. Yukevich.

His client's case was doomed, Yukevich recalled the mediator saying. Jurors would sympathize with a grieving family over a Korean helmet manufacturer, he said. Other observers agreed.

"The consensus was we wouldn't successfully defend," Yukevich said.

The Eubanks family had sued KBC America Inc. for \$18 million, alleging the helmet Kevin wore was defectively designed because its shell was made of inferior material. They had settled lawsuits with five other defendants in relation to Kevin's crash.

At trial, the strategy of KBC's lawyers was to focus the jury's attention on the extreme sport of motocross rather than the quality of the helmet. Eubank's helmet had passed government safety standards as well as other, more strenuous standards, defense experts testified at trial.

The defense argued that Eubanks' lengthy background in motocross (he had been active in the sport since age 4) and contended he was a "sophisticated user" of the helmet and knew of the sport's dangers.

"He and his brother were kind of like the Venus and Serena [Williams] of motocross," said defense co-counsel Delmar S. Thomas.

A critical moment during the trial, Yukevich said, was when Eubanks' father — an experienced motocross devotee who introduced his children to the sport



Delmar S. Thomas and James J. Yukevich

— admitted he knew of motocross' inherent risks.

Other plaintiffs' witnesses who were moto-cross veterans testified they accepted the very realistic possibility of serious injury or death that comes with the sport, Yukevich recalled.

In the end, the jury awarded Eubanks' family nothing.

"It tells some plaintiffs' lawyers that when there is a reasonable offer maybe it's better to hit the double than go for the home run," Yukevich said.

— Ciaran McEvoy

Products Liability

Los Angeles County Superior Court
Los Angeles

Judge John Shepard Wiley Jr.

Defendant's attorneys: Yukevich Calfo & Cavanaugh, James J. Yukevich, Delmar S. Thomas and Robert L. Kelly in San Diego

Plaintiff's attorneys: Raymond Paul Johnson — A Law Corporation, Raymond P. Johnson, Cory G. Lee in El Segundo; Law Offices of Lyle F. Greenberg, Lyle F. Greenberg in Los Angeles