

Daily Journal

FEBRUARY 20, 2019

TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP DEFENSE VERDICTS

Linares v. Crown Equipment Corp.

Plaintiff Jose Linares claimed the steering malfunctioned on his Crown Equipment Corp. “stand-up rider” forklift and caused it to strike a metal guard-rail so that his foot was crushed as it extended outside the operator compartment. He sought \$3 million for injuries including Complex Regional Pain Syndrome, post-traumatic stress disorder and the inability to work.

Linares contended that the forklift was defective because it lacked a door in the entryway to the operator compartment and that Crown negligently serviced the steering system. But following a seven-day trial, a federal jury took less than 45 minutes to deliver a unanimous defense verdict in March 2018.

Todd A. Cavanaugh of Yukevich Cavanaugh, Crown’s California counsel, said a key to the defense was detective work that led to his discovery of Linares’ Facebook pages, posted under an alias, that contradicted many of his claims.

“At deposition, we learned Mr. Linares’ cell phone number,” the defense attorney said. “That led us to a Spanish-language newspaper in San Bernardino County where he was operating a parcel service specializing in deliveries between the U.S. and El Salvador. That undercut his claims he couldn’t work.”

As for Linares’ assertion that he couldn’t travel or even walk through an airport, the Facebook posts showed photos of him on vacation abroad. They included statements that he called United Airlines’ Presidents Club his “second home.”

Plaintiff’s attorney Roger L. Gordon did



TODD A. CAVANAUGH

not reply to a message seeking comment. There has been no appeal. *Linares v. Crown Equipment Corp.*, 16-CV01637 (C.D. Cal., filed July 27, 2016).

Thomas J. Cullen Jr., Crown’s national counsel, cross-examined Linares. “I’ve used Facebook before at trial, but I had never encountered the fictitious name angle,” he said.

“There’s such an incentive for people to be in the social media world — but their lawyers usually warn them to be careful what they say,” Cullen said. “I was somewhat worried that the judge would make a decision to rule out the material. But we were ready for that. Mr. Linares had used the names of his dogs

case
INFO

Product liability
Central District
U. S. District Judge
Jesus G. Bernal

Defense Lawyers:
Todd A. Cavanaugh, Raymond H. Hua, Yukevich Cavanaugh; Thomas J. Cullen Jr., Goodell, DeVries, Leech & Dann LLP

Plaintiff’s Lawyers:
Roger L. Gordon, Vincent V. Bennett, Gordon, Edelstein, Krepack, Grant, Felton & Goldstein LLP

and family members in his fictitious name posts, so those were indices of reliability we could present if we’d had to.”

Linares admitted that the posts were his.

“We had established with his doctor that he wasn’t supposed to travel internationally, and there he was in first class,” Cullen said. “In the courtroom, you could feel the effect. You could see a look of contempt in the jurors’ eyes that he had misrepresented his capabilities.”

Defense teamwork was key, Cullen said. “This was a combination of handling discovery appropriately and using it at trial pretty effectively.”

— Andy Serbe

Daily Journal

FEBRUARY 20, 2019

TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP DEFENSE VERDICTS

Capps et al. v. Safariland LLC et al.

After plaintiff Sandra Capps, a Los Angeles County sheriff's deputy, accidentally shot herself in the calf, she claimed the strap of her backpack fell into her duty holster — manufactured by defendant Safariland LLC, which makes police and military equipment — and triggered her service weapon.

Her case was combined with that of another deputy, Michael Lorenzi, whose gun discharged in a separate incident that caused no physical injury. They sought a combined \$7.5 million in damages for design defect, emotional distress and, in Capps' case, loss of consortium.

In March 2018, following an eight-day trial and 90 minutes of deliberation, the jury returned a unanimous defense verdict. *Capps et al. v. Safariland LLC et al.*, BC629050 (Los Angeles County Sup. Ct., filed Aug. 1, 2016).

"We argued that sheriff's deputies undergo massive amounts of training and that the plaintiffs ignored their training and were therefore responsible for their injuries," said Safariland's defense lawyer, Steven D. Smelser of Yukevich Cavanaugh.

Added colleague Bobbie N. Eftekar, regarding the court's ruling that the consumer expectations test applied in the case, "When jurors try to think about what ordinary consumers expect of a product, we contended that these are not ordinary consumers, but highly trained professionals."

Plaintiffs' lawyer Robert W. Walters did not return a message seeking comment. Among his arguments at trial was that the Safariland 6280 holster, designed to carry a Smith & Wesson police handgun with a laser sight and a flashlight, left too much space near the trig-



STEVEN D. SMELSER

ger so that accidental discharge was possible. There has been no appeal.

Smelser called that contention "ludicrous." "It's simple geometry, you have to have room in there for the light on the gun," he

said. "Both plaintiffs testified that they had never really noticed the extra space. It made for a moment where the jury understood that the plaintiffs were overreaching."

The sheriff's department furnished an expert on training who testified that deputies are warned frequently, from their first day, to be careful not to carry anything on their gun-side and to not allow any foreign objects near their trigger guards. Smelser said he ar-

case
INFO

Product Liability
Los Angeles County
Superior Court Judge
Frederick C. Shaller

Defense Lawyers:
Steven D. Smelser, Bobbie N. Eftekar,
Mitchell R. Charchalis, Yukevich
Cavanaugh

Plaintiff's Lawyers:
Robert W. Walters, Burbank

gued that the plaintiffs ignored their training and could not have expected any other outcome.

Also impressive, Smelser said, was the Safariland company representative who tes-

"We argued that sheriff's deputies undergo massive amounts of training and that the plaintiffs ignored their training and were therefore responsible for their injuries."

Steven D. Smelser

tified for the defense.

"He's a professional shooter who has been with the company for 35 years," Smelser added. "He stood in front of the jury box with a replica non-firing gun. He drew it, re-holstered it and showed all its safety features. It was fascinating for jurors to see him do it, and they really could see that the holster was doing its job."

— John Roemer