



INSURANCE & REINSURANCE | NOVEMBER 2021

\$353 MILLION JURY AWARD IN TEXAS AND THE THIRD HIGH-PROFILE VERDICT IN 2021: WILL WE SEE MORE IN 2022?

On 25 October 2021, a Texas jury awarded a \$353 million verdict to a pedestrian - United Airlines wing walker Ulysses Cruz - who was struck by a van at Houston's Bush Intercontinental Airport in September 2019. Cruz was left paraplegic as a result of the accident. Cruz filed a lawsuit against Allied Aviation Fueling Co of Houston Inc (the owner of the van) and Reginald Willis (the driver of the van) in November 2019 in Houston (the "Defendants").

Jury Trial

The case was initially set for trial for January 4, 2021. In November 2020, the Court issued an order continuing the trial to May 17, 2021. The Defendants filed a writ of mandamus after the Judge denied a jury trial and ordered a bench trial. The First Court of Appeals in Houston granted the petition to vacate the Judge's rulings denying their request for a jury trial.

The trial Judge then set the case for a virtual jury trial, but admitted she had not conducted virtual jury trials previously. The defendants complained that the Judge did not give them any "rules, procedures or process" to follow for conducting a virtual jury trial and argued that a virtual jury trial would deprive them of the ability to effectively select a jury panel, present evidence, and confront and examine witnesses.

The Defendants filed a writ of mandamus that the "unilateral, arbitrary and unauthorized" decision by the trial court to force the parties to hold a virtual jury trial was not in line with the emergency orders of the Texas Supreme Court issued during the pandemic, which did not authorize a virtual jury trial be held without the consent of all parties. In June 2021, the Texas Supreme Court stayed the virtual jury trial.

The case was presented to an in-person jury on October 8, 2021, after being transferred to another Harris County Judge.

Damages

The jury found Allied 70% and Willis 30% responsible for the accident; the jury allocated no fault to the Cruz. The jury found Allied was negligent for its failure to properly train Willis and Willis for negligently operating the van.

Economic Damages	
Medical Costs (Past)	\$2,000,000
Medical Expenses (Future)	\$30,000,000
Loss of Earning Capacity (Past)	\$290,000
Loss of Earning Capacity (Future)	\$2,600,000
Loss of Household Services (Past)	\$32,000
Loss of Household Services (Future)	\$100,000
Subtotal	\$35,022,000

Non-Economic Damages	
Physical Pain (Past)	\$15,000,000
Physical Pain (Future)	\$70,000,000
Mental Anguish (Past)	\$15,000,000
Mental Anguish (Future)	\$70,000,000
Physical Impairment (Past)	\$15,000,000
Physical Impairment (Future)	\$35,000,000
Disfigurement (Past)	\$10,000,000
Disfigurement (Future)	\$22,500,000
Loss of Consortium (Past)	\$150,000
Loss of Consortium (Future)	\$25,000,000
Loss of Parental Consortium (Past)	\$50,000
Loss of Parental Consortium (Future)	\$20,000,000
Loss of Parental Consortium (Past)	\$50,000
Loss of Parental Consortium (Future)	\$20,000,000
Subtotal	\$317,750,000

House Bill 19

The Texas legislature enacted House Bill 19 ("HB 19") to end exorbitant verdicts in Texas relating to commercial vehicle accidents by bifurcating the driver's liability from any liability argument against the driver's employer. However, HB 19 only applies to cases filed after September 2021. If HB 19 applied to the *Cruz* case, the jury would need to find Willis, the driver, liable in a first trial before a second trial against Allied, the employer, would be heard. In doing so, a jury would not know which company employed the driver and the extent of their fault, unless the trial advanced, after which damages of the employer would be assessed. It would be purely speculative to suggest that the liability findings would have been different. However, the separation of liability findings from the damage award could provide a buffer and lead to lower damage awards.

Verdict Impact and Future of Texas Litigation

The *Cruz* verdict follows a trend in Texas jury verdicts awarding absurdly excessive damages for non-economic damages. While in the past non-economic awards totaled between one to three times economic damages (with a multiple of three being found only in the most distributing of injuries), juries are now awarding upwards of ten time economic damages seemingly without much concern. While such awards were seen in smaller accidents (e.g., work slip-and-falls; automobile "fender benders"), the trend in larger cases such as *Cruz* highlights the issue moving forward. It defies reason for a jury to award \$35 million in economic damages and more than \$317 million in non-economic damages.

This trend is due in large part to the plaintiffs' bar finding ways to sidestep past tort reform measures, which placed limitations on the amount of punitive damages that could be awarded in a particular case. Rather than plead and ask the jury to award punitive damages in personal injury and wrongful death cases, plaintiffs' counsel are using pleas to jurors' emotion under what is a variation of the Reptile Theory (having the jury place themselves in the place of the injured plaintiff). When presenting their case, plaintiffs ask the jury to award specific amounts for the duration of the plaintiff's pain and suffering. Asking for \$1 million for each minute of suffering is now the norm, and recent jury verdicts suggest such requests are becoming more than acceptable in Texas Courtrooms.

We are monitoring appeals to the Texas Courts of Appeal and Texas Supreme Court asking those courts to set aside such verdicts as "excessive". With the recent trend of juries to award nine-figures for non-economic damages, we are cautiously optimistic that these courts will put a stop to the excessiveness and afford the Texas Legislature time to react with further, appropriate tort reform.

Our extensive experience overseeing complex, high exposure cases such *Cruz* places us at the forefront of defending and monitoring similar cases for our commercial and insurer clients. Please let us know if we can be of assistance.

For more information, please contact the author(s) of this alert

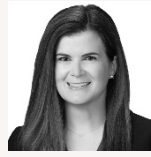


JACOB ESPARZA

Partner, Houston

T +1 (713) 706 4904

E jacob.esparza@hfw.com



AMANDA KUJDA

Partner, Houston

T +1 (281) 305 5157

E amanda.kujda@hfw.com



MICHAEL CARRER

Counsel, Houston

T +1 (281) 305 5151

E michael.carrer@hfw.com



MELANIE FRIDGANT

Associate, Houston

T +1 (281) 305 5154

E melanie.fridgant@hfw.com

hfw.com

© 2021 Holman Fenwick Willan LLP. All rights reserved. Ref:

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

Americas | Europe | Middle East | Asia Pacific