

No Evidence of Vehicle-to-Vehicle Contact Leads to Defense Verdict

December 2008. Mark Giannamore (Junior Partner/Los Angeles) in a recent binding arbitration in front of Joe Thielen represented Mercury Insurance in a claim by one of their insureds. Claimant was traveling westbound on the 10 Freeway near Palm Desert. Claimant alleged that a hit-and-run driver traveling in the number one lane, struck her vehicle which was in the number two lane, causing her to lose control of her vehicle, and careen off the freeway, rolling over several times. Claimant had approximately 20 birds in 2 or 3 cages in the back seat of her vehicle. Claimant sustained soft tissue injuries to her neck and back.

Through lay and expert testimony, the defense was able to establish that there was no contact between the alleged hit-and-run vehicle and claimant's vehicle (notwithstanding the extensive rollover damage to claimant's vehicle) and that at best, she over-reacted to the vehicle in the number one lane. The deposition of the reporting CHP officer was taken, and it was established that there was no evidence of a vehicle-to-vehicle contact. The deposition of the driver of a big-rig, was also utilized and although he testified that it appeared the vehicle in the number one lane may have come over into claimant's lane, he too did not see any vehicle-to-vehicle contact. The arbitrator agreed that claimant had not met her burden of proof with regard to this necessary vehicle-to-vehicle contact, and a defense award was rendered. As a side note, although many of the birds were retrieved by Animal Control, the San Bernardino Desert now has a few more parakeets to its name.