

# No Negligence for Cement Driver

March 2008, Frank D'Oro (Senior Partner/Los Angeles Office). The rear left quarter panel of plaintiff's vehicle was struck by defendant's cement mixer after she made a lane change and stopped her vehicle partially in the cement mixer's lane. According to plaintiff, traffic was merging at the point of impact because of construction immediately ahead of her and that she was simply following the vehicle in front of her. Upon feeling something hit the rear of her vehicle, plaintiff immediately got out of her vehicle on the driver's side. The driver of the mixer did not feel the impact and continued moving forward at a slow rate of speed, eventually crushing plaintiff's lower extremities before coming to a stop. Plaintiff claimed the driver negligently operated the mixer and that National Ready Mixed was negligent for failing to equip the mixer with a right fender mirror. The driver of the mixer testified that there was a curve in the road that directed his attention to the left and the center of the road as he crossed the intersection immediately prior to the accident. He also testified that from a stopped position before starting forward after the light changed to green, he checked his mirrors and the traffic to his right and confirmed that all was clear. The accident reconstructionist expert for the defense established that the only visible portion of plaintiff's vehicle prior to the mixer starting forward would have been the roof, which would have only been visible through the lower right-hand portion of the windshield of the mixer and it would appear as simply a straight line at the bottom of the windshield. The defense argued that with the driver's attention directed to the bend in the road to the left, he would not reasonably have seen plaintiff's vehicle. The defense further argued that the driver of the mixer had established his "right of way" and therefore, plaintiff was not entitled to make a lane change unless she could do so with reasonable safety and then only after signaling. Finally, the defense argued that the driver of the mixer was entitled to rely upon the "good conduct of others". Plaintiff's medical specials were approximately \$270,000 and she claimed future medical costs of nearly \$1,000,000. She suffered significant injuries to her lower extremities as a result of the accident, and was still unable to walk without assistance over two years after the accident. Plaintiff's husband also made a claim for loss of consortium. The defense did not dispute the extent of plaintiff's injuries and produced no witnesses for the damages portion of the case.

Plaintiff initially demanded \$2,000,000 in late 2007 and decreased the demand to \$1,000,000 the week prior to the start of trial. Defendant offered \$400,000 in late 2007 and then served a 998 offer in the sum of \$600,000 in February 2008.

After less than one hour of deliberation, the jury returned a defense verdict. The jury found no negligence on the part of the driver of the mixer or National Ready Mixed.

