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DAILY REPORT

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Mom of teen killed in drag racing crash wins \$2.5M verdict

Gwinnett jury divides fault between two drivers; a yaw mark on road became critical piece of evidence

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THE MOTHER OF A TEEN-AGE passenger killed in a wreck while drag racing won a \$2.5 million verdict against two drivers in Gwinnett County Superior Court in June.

“It was a credibility case. That’s what all jury trials are about. We were able to establish ours and undermine theirs,” said Matthew Cook of Cook Law Group in Gainesville.

He tried the case with his partner and wife, Kate Cook. Both former Butler Wooten lawyers, they started their own firm in North Georgia, moving from Cornelia to Gainesville this week. Their team for the five-day trial also included Carlos Corless, who originated the lawsuit.

They represented Eunice Marrero, a Dominican Republic native whose son, Emmanuel, died in a June 2010 crash on Hamilton Mill Parkway in Gwinnett County. Emmanuel, 17, was riding in the back seat of a 1992 Honda Civic owned by the father of driver Jason Polo,



then 18, according to Cook. Emmanuel was ejected and killed when the Civic crashed into a tree.

Emmanuel’s mother sued Polo and his father, plus another driver who, according to the plaintiff’s theory of the case, was drag racing with the Civic and caused it to crash. Joseph Evancho, then 25, was the second driver. He was driving his father’s 2007 Mercedes ML63, a sport util-

ity vehicle. The complaint said the Mercedes was owned by a company called Oasis Management, in which his father, Michael Evancho, was a part owner.

Both drivers were speeding through a residential neighborhood, according to the complaint. Cook estimated their speed at 65 miles per hour in a 40 mph zone.

The verdict placed 60 percent of the

fault on Polo and 40 percent on Evancho. The case was tried before Judge Randy Rich. Polo had a \$100,000 insurance policy with GEICO that Polo's lawyer, Craig Terrett of Cruser & Mitchell, said was offered to settle his part of the case.

Cook said his side rejected the offer to avoid an "empty chair" at trial—referring to how Polo's absence at the trial would have made it easier for the Mercedes driver to blame Polo for the crash.

Keeping the Mercedes driver on the hook from shifting blame was important, as the Mercedes driver had a \$1.5 million State Farm Insurance policy. State Farm never made an offer to settle, denying that Evancho had any role in the wreck, according to Cook.

The challenge for the plaintiff's side was to place fault for the crash on both drivers, said Cook. To do that, the trial team had to convince the jury that the Mercedes cut in front of the Civic, forcing it off the road in a curve where the Civic hit a tree, even though there were no eyewitness to that effect. Cook compared the effort to proving the existence of a rabbit with "rabbit tracks but no picture of a rabbit."

Evancho denied the charge, placing all the fault for the crash on Polo. Evancho's defense summary in the consolidated pre-trial order said Polo simply lost control while in pursuit of the Mercedes.

Evancho's attorney, Jay Eidex of Sharon Ware & Associates, forwarded an inquiry to State Farm. A company spokesman offered this statement: "This is a difficult case involving the

tragic death of a young man and differing accounts given by witnesses about the accident. While we are confident in the jury system, there are additional legal issues remaining for the court's determination. It would be inappropriate for us to comment further at the present time."

Polo's defense shared the plaintiff's contention that the Mercedes ran the Civic off the road. This was a challenging position, since Polo's head hit the windshield and he couldn't remember the crash, according to his attorney, Terrett.

Instead of Polo's testimony, his defense relied on a witness who saw the crash in a rear-view or side-view mirror, turned around and went to the scene to give aid. Terrett said the witness reported hearing Polo repeating, "Did you see him cut me off?"

Another witness testified to seeing the Mercedes attempting to run the Civic off the road shortly before the crash, according to Cook and Terrett. Polo and Evancho did not know each other. They began interacting with each other while speeding through the neighborhood, attracting the attention of residents.

Terrett hired an accident reconstruction expert who testified that the Civic's crash appeared to be the result of "left steering input," which was consistent with an evasive maneuver. In other words, a driver would steer sharply to the side only to avoid hitting another car or something else that suddenly came into the path, rather than just hitting the brakes to slow down.

A key piece of evidence for the plaintiff and the defense for Polo was a mark on the highway—not a skid mark but a yaw mark, which indicates sideways wheel movement, according to Cook and Terrett.

The plaintiff did not hire an accident reconstructionist but instead relied on the testimony of the Gwinnett County Police investigating officer, who interpreted the yaw marks and other evidence from the scene to conclude the Mercedes cut in front of the Civic, forcing it off the road, according to Cook. Police charged both Polo and Evancho with vehicular homicide and reckless driving, according to the complaint.

"We were pleased with the outcome of the trial, holding fault to 60 percent" for Polo and placing the rest on the other driver, Terrett said.

Jurors stayed after the trial for 45 minutes talking to lawyers for the plaintiff and for Polo. Cook and Terrett said jurors told them they didn't find Evancho's defense convincing.

"We tried not to be too self-righteous in front of the jury," Cook said, having no evidence that his client's son objected to the drag racing. But, he added, "It's a crime of a different character to cut someone off at 65 miles per hour."

The case is *Marrero v. Polo*, No. 10A07862-4.

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