

Car crash suit yields \$12M award in Norfolk County

By Christina Pazzanese

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Two Needham brothers who were victims of a 2006 car crash that left one of the men permanently unable to walk or speak were recently awarded \$12 million in damages by a jury in Norfolk Superior Court.

While the collision was caused by a driver with a record riddled with citations, license suspensions and accidents dating back to 1997, it was the man's grandparents who proved to be the key to the big win, lawyers for the plaintiffs say.

The then-26-year-old Vittorio C. Gentile Jr. of Canton was driving his grandparents' sports utility vehicle at the time and had been found criminally responsible for the head-on collision in a separate suit.

But in *Silverio v. Gentile, et al.*, the jury found that it was his elderly grandparents, Lydia and Vittorio Gentile, who were responsible for negligently allowing him to use their 1999 Lexus SUV in the first place, after they had become aware of his extensive and poor driving record.

The plaintiffs' attorneys alleged Gentile had been hit with so many surcharges that the couple had him removed from their insurance policy even though other grandchildren were still covered and permitted to use their vehicles.

The grandparents also were found to have been negligent in their failure to secure the car from the younger Gentile by routinely leaving the keys out in the open, hanging on a rack in the kitchen.

Howard S. Goldman of Goldman, Goldman & Pease in Needham, who represented plaintiffs Douglas and Joseph Homs, said the basis of the award is unusual in that the damages stem from the vehicle

VERDICT SPOTLIGHT

owners' apparent consent to allow a dangerous driver use their car. He said the verdict is also notable for having been rendered in a state and county not always known for siding with plaintiffs in tort claims.

Earlier this month, Philip T. Tierney of Finnegan, Underwood & Ryan in Boston, who represented the grandparents, filed a post-trial motion seeking a new trial. Tierney did not respond to requests for an interview.

The grandson's attorney, Peter A. Palmer, of Fuller, Rosenberg, Palmer & Beliveau in Worcester, said his client stipulated to liability and offered all available coverage and has no plans to appeal the matter.

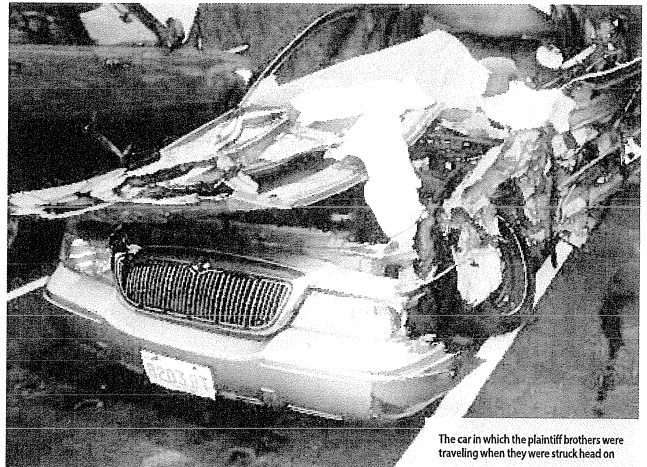
The family's personal attorney, Stuart D. Ravech of Norwood, did not respond to a request for comment.

"We're hopeful the verdict will hold," said Worcester attorney Brian P. Burke, who was co-counsel for the plaintiffs.

Going for coffee

The Homs brothers were driving on Blue Hill Avenue in Milton at around 2 a.m. on Dec. 10, 2006, on their way to a coffee shop, when the speeding SUV driven by Gentile veered across the double yellow lines in the roadway and collided with them head on.

The damage to their vehicle was so extensive that they had to be pried from the



The car in which the plaintiff brothers were traveling when they were struck head on

wreckage by emergency personnel using the Jaws of Life, according to the complaint.

Joseph Homs, the passenger, suffered a broken sternum and ribs, as well as internal injuries. The driver, Douglas Homs, bore the brunt of the impact, sustaining severe multiple bone fractures and injuries to his liver, spleen and other organs that left him unable to breathe or eat on his own. The confluence of traumas would later cause Douglas to suffer a stroke, leaving him unable to speak.

Their attorneys said that, before the accident, the men, both in their 60s, were constant companions and lived together in a house in Needham. Douglas, a retired machinist, served as an informal caretaker for Joseph, who has mental disabilities.

Deep pockets

Goldman said given the massive trauma Douglas suffered and the extensive medical care he needed, he and his colleague quickly moved to get a pre-judgment attachment for \$1.5 million against three properties the

defendant grandparents own in Massachusetts, including their Westwood home.

They also got an injunction to prevent the Gentiles from transferring assets, though the full extent of their non-real estate holdings is not yet known, he said.

Goldman said it was clear from the outset that the younger Gentile had little in the way of assets and that his grandparents, who own more than \$2 million in real estate, were going to be the deep pockets to target for the hospital bills and ongoing medical care Douglas Homsí will require the rest of his life.

"We knew the injuries were horrific. This guy was in the hospital for months," Goldman said.

Like most cases in which a driver causes harm using someone else's car, the case would be won or lost on the issue of whether the vehicle's owners consented to its use. In *Silverio*, Goldman said, the defendants' failed recollections and claims of ignorance about their grandson's lengthy driving rap sheet were critical.

"We needed to show the grandparents knew of his terrible driving record and failed to take any steps to keep him from using the car or to stop him," Goldman said.

Though the Gentiles insisted they had no idea that their grandson had their car on the night of the accident, Goldman said, there was plenty of evidence to show otherwise.

A private investigator uncovered evidence that Gentile often borrowed the Lexus with the tacit consent of his grandparents, Goldman said. In fact, Gentile had been using the SUV in the 48 hours leading up to the crash, but at trial, the grandparents insisted they didn't know who had the car or where it was. Nevertheless, they never reported it stolen or missing.

Goldman said video deposition testimony provided by the insurance agent who held multiple auto vehicle policies for the couple was especially damaging to the grandparents' claim that they had no idea their grandson was a high-risk driver.

The agent described an in-person meeting with the grandparents, who had asked why their premiums had suddenly skyrocketed. When told of surcharges being added as a result of the younger Gentile's checkered driving record, the couple and Gentile had signed an exclusion document that removed him from coverage, he said.

"The jury did not believe the grandparents," Goldman said.

A high hurdle

"These are very difficult cases for a plaintiff to win," said Francis J. Lynch III of Lynch &

Lynch, an attorney who frequently tries motor vehicle cases but was not involved in the suit.

Negligent entrustment is an especially high hurdle for lawyers to overcome, he said, because you have to show the defendants knew or should have known about something they claim they did not.

"It's a very difficult thing to prove with a licensed operator," Lynch said.

Goldman said the jury found the defendants' repeated claims that they were not aware their grandson was a risky driver were strongly undercut by his lengthy rap sheet for moving violations.

Gentile had been found guilty and served jail time for the collision involving the Homsí brothers. He also had been involved in prior accidents, including a 2001 suit in Norfolk County in which a woman died as result of injuries she suffered after Gentile collided with her car on Route 1 in Dedham.

He was found not negligent in that case, Palmer said.

Because the brothers were not able to testify, the jury was shown a 20-minute demonstrative video that depicted Douglas — who still cannot speak — going through his daily routine with the help of medical technicians and physical therapists at the Needham rehabilitation facility where he receives around-the-clock care.

Burke said the video was particularly effective in conveying to the jury how the Homsí brothers' lives were forever altered in the blink of an eye.

"You can be out one night driving with your brother for coffee, and the next minute you can lose half the use of your body," he said of Douglas Homsí. "He's a prisoner in his body, serving a sentence from which there'll be no parole."

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Verdict Report

Type of action: Motor vehicle negligence

Injuries alleged: Severe and permanent bodily injuries

Name of case: *Silverio v. Gentile, et al.*

Court/case no.: Norfolk Superior Court, No. 2007-212

Tried before judge or jury: Jury

Name of judge: Patrick F. Brady

Amount of verdict: \$12 million

Date: July 2010

Attorneys: Brian P. Burke of Worcester and Howard S. Goldman, Goldman, Goldman & Pease, Needham (for the plaintiff)



GOLDMAN & PEASE, LLC is comprised of attorneys having more than forty years of private practice experience, with extensive knowledge in corporate and business law, real estate and civil litigation. Located at 160 Gould Street, Suite 320, Needham, Massachusetts 02116, Goldman & Pease's attorneys are active members of the Massachusetts, Norfolk, and Rhode Island Bar Associations, CAL, IREM, and have also frequently lectured, written articles, and served as resources to other attorneys in their particular practice areas. The attorneys of Goldman & Pease can be reached at (781) 292-1080.

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