

# Margarita Ortegon v. Roderick Legier and First Student Inc; 2015 Jury Verdicts LEXIS 11739

2012-47786

October 13, 2015

**Headline:** School Bus Driver Was Properly Hired, Defense Argued

**Published Date:** February 01, 2016

**Topic:** Gross Negligence - Worker/Workplace Negligence - Negligent Hiring - Transportation - Bus - Motor Vehicle - Truck - Motor Vehicle - Lane Change

**Injury:** Supraspinatus Muscle/tendon, Tear, Rotator Cuff, Injury (tear), Shoulder, Meniscus, Tear, Knee, Physical Therapy, Knee Replacement, Steroid Injection, Arthroscopy

**Practice Area:** Education Law

**State:** Texas

**Court:** Harris County District Court, 127th

## **Plaintiff Counsel**

Mark T. Murray

Firm Name: John Stevenson & Associates, P.C.

Address: Houston, TX

Plaintiff Name: (Margarita Ortegon)

## **Defendant Counsel**

**Glenn J. Fahl**

Firm Name: Fahl & Takeuchi

Address: Houston, TX

Defendant Name: (1, First Student Inc.)

**Judge:** [R. K. Sandill](#)

## **Case Summary**

On May 31, 2011, plaintiff Margarita Ortegon, 53, was driving a Chevrolet Tahoe in the 8500 block of Galveston Road near South Shaver Street, in Houston. Galveston Road had a speed limit of 35 mph and two lanes in each direction. Ortegon was in the left lane, and Roderick Legier was driving a school bus in the right lane for First Student Inc. Ortegon was passing the bus on the left, and the bus' left front bumper caught the right rear wheel well of the Tahoe. Ortegon claimed knee and shoulder injuries.

Ortegon sued Legier and First Student for Legier negligently changing lanes when it was unsafe. She also sued First Student for negligent hiring and gross negligence. The investigating officer cited Legier for changing lanes unsafely.

In 2004, Legier had been terminated from a job as a school bus driver, and safety violations were the reason. When he applied to First Student in 2008 he denied prior terminations or safety violations.

Also circa 2004, Legier was in a severe accident with a tractor-trailer. He sustained a gash to the head, and he later developed post-traumatic stress disorder. However, when he applied to First Student, he denied any head injury.

Plaintiff's counsel argued that First Student was grossly negligent for not checking Legier's employment references more diligently. In addition, plaintiff's counsel argued that Legier sustained a traumatic brain injury in the 18-wheeler accident, which made him unfit as a bus driver.

Legier maintained that he was in the process of changing lanes, but had not yet begun to cross the line into Ortegon's lane, when she suddenly slammed on her brakes and caused the impact. Ortegon acknowledged seeing the bus in her mirror and slamming on her brakes, and the investigating officer said that, based on this testimony, he would not have given Legier a ticket or faulted him for the accident.

First Student argued that when it contacted Legier's prior employers they gave only neutral references as a matter of policy, and didn't disclose safety violations or the fact that Legier was fired. Defense counsel argued that First Student acted as a reasonably prudent prospective employer.

The defense further argued that, when Legier applied to First Student, he had fully recovered from his prior head injury.

### **Injury Text:**

Ortegon claimed a torn meniscus in her right knee and a full-thickness tear of the supraspinatus tendon of the right (dominant) rotator cuff.

The day after the accident, she went to her primary care doctor, who ordered a knee MRI that showed degeneration only. About two months after the accident, Ortegon complained of shoulder pain, and the doctor ordered a shoulder MRI, which the MRI report said showed degeneration only.

Ortegon's complaints continued, and she was referred to an orthopedic surgeon, who diagnosed the meniscus tear and rotator cuff tear. Ortegon underwent steroid injections to her knee and later underwent arthroscopic surgery, followed by physical therapy. In August 2015, she underwent total replacement of the knee. She used a walker at trial.

The plaintiff sought \$150,000 in past medical bills and sought three to five times that amount for past and future physical pain, mental anguish, disfigurement and physical impairment. She also sought punitive damages of \$6 million.

The defense denied that the injuries were caused by the accident.

The defense emphasized the fact that the initial MRIs were negative for any tears and showed degenerative conditions only. Also, in 2008, Ortegon underwent arthroscopic surgery on both knees, for severe degenerative conditions, and she was a candidate for total right knee replacement before the accident. The defense also emphasized the two-month delay before Ortegon complained of shoulder pain. Also, Legier noted that Ortegon was walking around at the scene of the accident and did not appear to be injured.

The defense orthopedic surgery expert said Ortegon's obesity contributed to her knee problems and that she was malingering some. He also testified that he saw no rotator cuff tear in the photos from Ortegon's shoulder operation.

The defense also noted that, according to Ortegon's treating orthopedic surgeon, Ortegon probably hurt her knee when she slammed on her brakes, which was before the impact with the bus. Also, her primary care doctor's notes about Ortegon's first complaint of shoulder pain said she was reaching for her hairbrush.

The defense also argued that the impact was minor.

The defense further noted that Ortegon did not try conservative treatment before undergoing the steroid injections and arthroscopies.

Defense counsel argued for an award of zero. If anything, the jury should award only the bills from the primary care doctor and the MRIs he ordered, assuming that "everyone should get checked out after an accident." Those bills totaled \$7,122.

### **Trial Length**

2.0 weeks

### **Jury Poll**

10-2

### **Plaintiff Expert(s)**

[Jose Rodriguez, M.D.](#)

Address: Houston, TX

Specialty: Orthopedic Surgery

Affiliation: treatervideo deposition, Mark Murray

### **Other Expert(s)**

[Mike James, Ph.D.](#)

Address: College Station, TX

Specialty: Accident Reconstruction

Affiliation: Glenn Fahl

[Eric Berkman, M.D.](#)

Address: Houston, TX

Specialty: Orthopedic Surgery

Affiliation: video deposition, Glenn Fahl

**Award: \$ 0**

**Award Details:** The jury found negligence and comparative responsibility of 49 percent on Legier and 51 percent on Ortegon and did not find negligent hiring by First Student. Therefore, Ortegon took nothing.

The damages question was not conditioned, and the jury awarded \$7,270, for past medical bills only, but Ortegon took nothing.

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