



And The Defense Wins

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DRI member [Paul Caleo](#) of **Burnham Brown** in Oakland, California, teamed with an associate recently to successfully defend a traumatic brain injury case with claimed damages in excess of \$3 million in a four-week jury trial in Sonoma County. The jury rejected the claims of brain injury and future lost earnings of almost \$1.8 million and returned a verdict just above the statutory pretrial offer of \$510,000. Liability was not disputed, just the nature and extent of the plaintiff's claimed injuries and damages.

The plaintiff, a 30-year-old exhibiting artist and art teacher, claimed injuries that included a comminuted fracture of his left humerus; multiple rib fractures (bilaterally); post-traumatic stress disorder; traumatic brain injury with permanent cognitive impairment that severely impacted his vocational and social functioning; a concussion; and chronic pain in his left arm and ribs.

The plaintiff claimed that, as a result of the accident, he suffered chronic pain in his left arm and ribs, and his treating orthopedic surgeon testified that the plaintiff would require an arthroscopic rotator cuff repair in the future. He missed one year of work after the accident and claimed that the injury prevented him from taking a more lucrative job teaching art at a private high school. The plaintiff's retained neuropsychologist and treating psychologist concluded that he suffered from permanent cognitive impairments as a result of the traumatic brain injury suffered in the accident, and that he could no longer return to work as a teacher, as he had done prior to the accident. Through his retained vocational rehab expert and economist, the plaintiff made a claim for future lost earnings of almost \$1.8 million. Plaintiff's counsel told the jury in his opening statement that he would ask them to award \$3 million in total damages; during closing argument, he suggested approximately \$4 million in total damages, but asked them to award \$3 million, based on the request made in opening statement.

Defense counsel contended that the plaintiff did not suffer a concussion or traumatic brain injury in the accident, and that he could return to work as a teacher and artist within 12 months of the accident, so he had zero future lost earnings. The defendants' expert neuropsychologist and psychiatrist both contended that the plaintiff did not sustain a concussion/traumatic brain injury in the accident based, in part, on the results of all of the neuropsychological testing, as well as the detailed examinations of the plaintiff performed by the EMT and the two experienced emergency department doctors who all testified that the plaintiff did not suffer a loss of consciousness and/or an alteration of consciousness as a result of the accident, and did not show any signs of amnesia or confusion during the almost six and half hours they treated and observed him after the collision. Defendants' experts diagnosed the plaintiff with a somatoform disorder, where he exaggerated and embellished his subjective complaints of cognitive impairments and physical limitations.

The defendants agreed that the accident caused the plaintiff's orthopedic injuries and post-traumatic stress disorder, which had largely resolved within 12 months of the accident, and that he was unable to

work during those 12 months. They recommended a verdict in the range of \$250,000 to \$300,000.

The jury did not deliberate on liability and awarded the plaintiff a total of \$535,109.40 in damages, just in excess of the statutory pretrial offer of \$510,000.

After the verdict, several of the jurors spoke to Mr. Caleo and confirmed that they agreed with them that the plaintiff did not have a traumatic brain injury and that he could return to teaching and making art as he had done before the accident. They also stated that it was significant in their deliberations on these issues that the plaintiff's retained neuropsychologist who testified that his functioning was impaired was never told about his post-accident work at an artist's residency program. Although this same group of jurors wanted to award the plaintiff total damages in the range of \$300,000, only one of them voted against the total verdict when polled in open court.

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