

**Brzozowy v. Elrac, Inc.**  
**Auto/Bicycle-Intersection**

Kings County

**VERDICT**        **\$290,000**  
**ACTUAL**        **\$116,000**

would have changed before Tzouralis had proceeded through the intersection.

**CASE**            Wladyslaw Brzozowy v.  
Elrac, Inc and  
Stylianos Tzouralis,  
No. 48543/02

Tzouralis contended that Brzozowy veered into the middle lane, that he entered his vehicle's path and that he did not signal his intention.

**COURT**        Kings Supreme  
**JUDGE**        Bruce M. Balter  
**DATE**         9/1/2005

**INJURIES/DAMAGES**        *arthroscopy; bimalleolar fracture; brachial plexus dysfunction; closed reduction; comminuted fracture; dislocated shoulder; facial fractures; fracture; L2; fracture, ankle; fracture, clavicle; fracture, femur; fracture, orbit; fracture, pubic ramus; fracture, scapula; fracture, sinus; internal fixation; leg shortening; meniscectomy; open reduction; physical therapy; torn lateral meniscus*

**PLANTIFF**  
**ATTORNEY(S)** **Dennis Breen**, Law Office of  
Samuel J. Lurie, New York,  
NY

**DEFENSE**  
**ATTORNEY(S)** **David W. Brand**, Brand Glick  
& Brand P.C., Garden City, NY  
**Claude N. Stuart**, Brand Glick  
& Brand P.C., Garden City, NY

Brozozowy was placed in an ambulance and transported to Lutheran Medical Center, in Brooklyn, where doctors determined that he had sustained facial injuries that included a fracture that spanned his right maxillary right sinus and his right infra-orbital rim, an associated fracture of his right orbit's medical floor, and a fracture of his frontal bone, which is the bone that forms the forehead. He also sustained an anterior, inferior dislocation of his right (dominant) arm's humeral head; a comminuted fracture of the distal portion of his right clavicle; a fracture of his right scapula's coracoid process; an injury of his right brachial plexus; a burst fracture of his spine's L2 level; a fracture of his right inferior pubic ramus; a comminuted fracture of his left femoral neck; a test of his left knee's lateral meniscus; and a bimalleolar fracture of his left ankle. A bimalleolar fracture is a fracture that involves the ankle's lateral and medial malleoli-the ankle's bony protuberances.

**FACTS & ALLEGATIONS** On Oct. 28, 2002, plaintiff Wladyslaw Brzozowy, 30, a Polish immigrant who worked as a materials transporter, was bicycling in the right southbound lane of Third Avenue, near its intersection with 25<sup>th</sup> Street, in Brooklyn. As he proceeded through the intersection, his bicycle collided with a southbound vehicle that was being operated by Stylianos Tzouralis. Brozowy claimed that he sustained ankle, face, hip, knee, leg, nerve and shoulder injuries.

Brzozowy sued Tzouralis and the owner of Tzouralis vehicle, Elrac Inc. He alleged that Tzouralis was negligent in the operation of his vehicle and that Elrac was vicariously liable for Tzouralis' actions.

Brozozowy's hospitalization lasted 22 days and included closed reduction of his shoulder dislocation and open reduction and internal fixation of his ankle and femur fractures. He subsequently underwent three months of intensive physical therapy.

Brzozowy claimed that Tzourlais' vehicle was trailing his bicycle and that it occupied Third Avenue's middle lane. He contended that the traffic signal turned yellow and that he arrived at the crosswalk, looked to his rear, noted that Tzouralis' vehicle was not close and proceeded into the intersection, where the collision occurred. Based on these contentions, Brozozwy argued that the signal

In November 2004, Brozozowy underwent arthroscopic repair of his left knee. The

procedure included a partial lateral meniscectomy. He also underwent removal of the hardware that had been used to set his femur fracture.

Brzozowy claimed that he suffered residual brachial plexopathy-nerve dysfunction that affects an arm and shoulder. His back injury produced an ongoing limitation of his back's motion range, and his femur fracture caused a permanent shortening of his left leg. He contended that he requires the assistance of a cane. He also contended that his injuries have prevented his resumption of work. His vocational-rehabilitation expert opined that the injuries would produce a lifelong 40% reduction of job access and income. The expert determined that Brzozowy would suffer economic losses that included \$352,462 of lost earnings, \$90,864 of lost Social Security retirement income and \$789,477 for lost household services.

Brzozowy's medical expenses totaled approximately \$24,000 more than the limit of his available no-fault insurance coverage. He sought recovery of \$7,368,568, which included his past and future medical expenses, his past and future lost earnings, \$1.5 million for his past pain and suffering, and \$4.5 million for his future pain and suffering.

Defense counsel contended that Brzozowy's ankle fracture healed anatomically and that it did not produce any residual arthritis. They claimed that his ankle hardware can be removed.

Defense counsel further contended that Brzozowy's femur hardware was removed because the associated fracture had healed and was stable. They claimed that his burst fracture preexisted the accident and that his meniscus injury and its associated surgery were not by-products of the accident.

The defendants' expert radiologist reviewed radiological studies that were performed two years after the accident and determined that Brzozowy's injuries had not resulted in any arthritic changes. Based on the radiologist's findings, defense counsel argued that Brzozowy's prognosis is excellent.

The defendants' vocational-rehabilitation expert opined that Brzozowy had substantially recovered by late 2002 and that his work activities could have been resumed at that time. She also opined that Brzozowy is intellectually capable of performing jobs that are not physically intensive and that those

jobs would pay more money than the work that he was performing at the time of the accident.

Defense counsel produced a surveillance videotape, which included a sequence in which Brzozowy walked a distance of approximately 42 blocks. Although Brzozowy used a cane, the defendants' expert orthopedic surgeon opined that the cane was not necessary and that Brzozowy was not limping.

Defense counsel also contended that Brzozowy's lost-earning estimations were greatly inflated and that they were based on flawed assumptions that included an inflation of his pre-accident earnings.

**RESULTS** The trial's liability phase concluded June 9, 2005. The jury rendered a plaintiff's verdict, but Brzozowy was assigned 60% comparative negligence. On Sept. 1, the jury found that Brzozowy's damages totaled \$290,000. The comparative-negligence reduction produced a net recovery of \$116,000.

**WLADYSLAW**

**BRZOWY** \$25,000 past medical cost  
\$25,000 future medical cost  
\$30,000 past lost earnings  
\$10,000 future lost earnings  
\$175,000 Past pain and suffering  
\$25,000 future pain and suffering  
\$290,000

**TRIAL DETAILS** Trial Length: 8 days (Liability); 7 days (damages)  
Jury Deliberations: 90 Minutes (damages)  
Jury Composition: 3 Males, 3 females (damages)

**PLANTIFF EXPERT(S)**

**Jeffery Kaplan, M.D.**, Orthopedic surgery, New York, NY (treating (Surgeon))  
**Nicholas Bellizzi**, Engineering, Holmdel, NJ

**Alan. M. Leiken, Ph. D.,**  
Economics, East Setauker,  
NY

**Richard J. Schuster, Ph.D.,**  
vocational rehabilitation,  
New York, NY

**DEFENSE  
EXPERT(S)**

**Dr. Robert Tantleff,**  
radiology, East Hills, NY

**Michael Carciente, M.D.,**  
neurology, Brooklyn, NY

**Jerry Lubliner, M.D.,**  
Orthopedics, New York, NY

**Joyce Mosch-Spinello, Ph.D.,**  
Vocational Rehabilitation,  
New York, NY

John A. Desch, P.E.,  
Engineering, Riverdale, NJ

**POST-TRIAL Judge** Bruce Balter denied  
plaintiff's counsel's motion to set aside the  
verdict.

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