

**JANE DOE vs.  
XYZ  
BASEBALL CLUB**

On March 14, 1997, Jane Doe was struck by an automobile in the 500 block of Vine Street in Kissimmee, Florida. She was near the curb and adjacent to the right outside lanes for eastbound traffic. The accident occurred at approximately 10:00 p.m. following a Major League Baseball spring training game. The vehicle was rented by XYZ Baseball Club and was being driven by their sports information director. At the conclusion of the game, he intended to return to XYZ's spring training site located approximately forty-five miles away. Upon leaving the game, he became confused as to which direction he should be going. He initially drove west on Vine Street, then stopped and turned to head east. As he proceeded to drive eastward, looking from side to side for landmarks to determine his location, he struck 43-year-old pedestrian Jane Doe at or near the right-hand curb, causing her massive head injuries.

Jane Doe was transported from the accident scene to Orlando Regional Medical Center where she underwent a craniotomy to remove a large subdural hematoma. After remaining in the hospital for three months, she was transferred to a nursing home in Oklahoma near her parents' residence. Although medically stable, she was determined to be severely neurologically impaired as a result of the head injuries and required around-the-clock nursing care, supervision and care to provide maximum assistance in all activities of daily living. She was also wheelchair dependent. Unfortunately, Jane's rehabilitation needs were not able to be met by the facility in Oklahoma. She was eventually transferred back to Florida to attend and participate in an intense neurologic rehabilitation program where she re-

mained for an additional eight months, focusing on basic skill development.

The day of the accident, upon her admission to Orlando Regional Medical Center, Jane Doe was found to have a blood alcohol level of .267. She had no health insurance, was not employed, and had no permanent residence. Her doctors determined that she would forever require 24-hour care to assist her with even the most basic of daily activities such as eating, grooming, dressing, etc. The hospital lien exceeded \$250,000.

There was only one witness to this accident. Initially, the witness indicated that she saw the pedestrian cross the roadway which consisted of seven lanes of travel and, upon reaching the curb, turned as though to go back across the street. The witness stated, and later signed an affidavit, that the pedestrian had one foot on the curb and one foot on the roadway when she was struck by the driver. She also had stated that she heard the driver admit that he never saw the pedestrian prior to impact and that he was not looking forward at the time his vehicle struck her. The witness even agreed to be photographed at the accident scene, posing in the position

in which the pedestrian would have been at the time she was struck by the automobile. However, at her deposition, the witness recanted her statement and affidavit, and testified that Jane Doe was obviously intoxicated and had stumbled into the path of the automobile driver, and that the driver had no opportunity to avoid contact with the pedestrian.

The insurers for the driver vigorously defended the case, relying heavily on the plaintiff's blood alcohol results at Orlando Regional Hospital and the deposition testimony of the only witness, asserting that the driver of the automobile maintained his speed within the speed limit and never wavered outside his lane of travel. They asserted that the accident was unavoidable and that the pedestrian darted out or stumbled into his lane of travel.

In order to overcome the assertions made by the defense, plaintiff's counsel conducted an extensive accident scene investigation. Photographs were taken in both daylight and at night showing the width of the lanes of travel and the distances between the solid white line marking the right lane of travel and the curb. The investigation revealed

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## **Decisions...***(Cont. from Page Eight)*

that the location of the accident typically has a considerable amount of pedestrian traffic at that time of night. A review of the street lights along Vine Street by plaintiff's accident reconstruction expert showed the area to be extremely well-lit, allowing a driver to see an object in the roadway at a considerable distance in order to avoid it. Finally, the plaintiff was able to make significant use of the driver's statement to police at the accident scene when he admitted that he had been looking from side to side trying to determine his location immediately prior to impact with the pedestrian.

Despite having the only witness to the accident recant her earlier statement of facts, and the assertions of the defense that Jane Doe herself was responsible for her injuries, Greg Barnhart was able to settle Jane Doe's claim against the Defendant driver at mediation for \$3.5 million. ■