

Parents Decline \$22 Million Offer and Win Three Week Trial

The Jenkins family in 1996.
Front l. to r. Landon, Jasmine, and Jordan.
Back l. to r. Kathy and Torrey



On May 6, 1997, at 10:40 p.m., Kathy Jenkins was driving her children home from her mother's house when she made a left turn from Blue Heron Boulevard to head southbound on Congress Avenue in West Palm Beach. While making her turn, she was broadsided by a car owned and operated at high speed by Andrew Cohan, a uniformed Riviera Beach Police Officer on his way to report for roll call. Though both drivers were paying careful attention to oncoming traffic, neither could see the other until it was too late to avoid the collision. Defective design of the roadway and intersection, which were under construction at the time, caused the mutual view impairment.

Kathy Jenkins, then 26, was rendered temporarily unconscious by the collision. When she awakened, her first thought was her three children. As she checked on them, each appeared lifeless within the car. Concerned that the car may burst into flames, she extricated her children from the car by placing them by the roadside one-by-one. By the time rescue vehicles had transported the children to the hospital, 6-year-old Jasmine Jenkins was dead. Her 3-year-old twin brothers, Landon and Jordan Jenkins, were catastrophically injured. Landon Jenkins was paralyzed from the bottom of the skull down (c-1/c-2 quadriplegia) with mild to moderate brain injury.

Jordan Jenkins was hemiplegic and was also mildly to moderately brain injured.

Kathy Jenkins spent the next 11 months of her life in intensive care units and rehabilitation facilities helping her sons fight for their lives. Torrey Jenkins, Kathy's husband and the children's father, kept his job during that time, but spent all his off-duty time in the hospital with his sons and his wife.

According to medical experts and an economist involved in the case, Landon will require future medical care at a present value cost of \$27 million. Medical care needed by Jordan in the future has a present value cost of \$6 million.

One of the defendants in the case is Ranger Construction Industries, Inc., a company which was in charge of road construction underway at the intersection where this collision occurred. Ranger was responsible for the "Maintenance of Traffic Plan," which was supposed to provide for the safe movement of traffic on Blue Heron Boulevard while it was under construction. Another defendant is Palm Beach County, which owned Blue Heron Boulevard and which hired Ranger Construction to widen it from a four-lane to a six-lane divided highway. Although Palm Beach County hired Ranger to develop and implement the Maintenance of Traffic Plan, the County retained the right to supervise and approve the design and implementation of the Maintenance of Traffic Plan. The third defendant in the case is Andrew Cohan, the off-duty Riviera Beach Police Officer who was **Continued on page ten**

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speeding through the construction zone. The fourth and final defendant was the City of Riviera Beach itself, which would only be responsible for the actions of Officer Cohan if he was ultimately deemed to be in the course and scope of his employment at the time of the collision. Andrew Cohan never answered the Complaint, and was therefore in default throughout the case. Officer Cohan chose to file for bankruptcy protection rather than defend himself.

Ranger Construction carried a total of \$102 million in insurance coverage, with St. Paul Insurance Company having the first \$27 million in coverage. General Star Indemnity Company is responsible for the next \$25 million in coverage, and Cigna Insurance Company has the remaining \$50 million in excess coverage. Palm Beach County was insured under Ranger's policies pursuant to the construction contract signed with Ranger.

It became clear during settlement negotiations that Ranger and Palm Beach County believed they could convince the jury that Andrew Cohan, who was uninsured and bankrupt, was responsible for the majority of the negligence in this case for speeding through a construction zone. The defendants also intended to argue that Kathy Jenkins was comparatively negligent for failing to see the oncoming Cohan vehicle and for failing to yield the right-of-way. Ranger and Palm Beach County, believing the jury would find Officer Cohan and/or the plaintiff at least 90% responsible for the collision, felt their collective exposure would be limited to \$15 million, even if the damages of the three cases combined amounted to \$150 million. Accordingly, the Defendants' last offer prior to trial was \$15 million.

Over the plaintiffs' objection, the judge hearing the case bifurcated the trial. The first jury selected would therefore only decide the respective percentages of negligence attributable to each of the parties involved in the collision. In order to obtain the bifurcation, the defendants stipulated that all damages were caused by the collision, and that no causation defenses would be raised in the subsequent damage trial.

The trial on liability lasted three weeks. Christian Searcy, Darryl Lewis, and Harry Shevin tried the case on behalf of the plaintiffs. Roy Watson and Catherine Kasten represented Ranger Construction Industries, Bryan Boysaw represented Palm Beach County, and Lonniell Olds and Bernard Lebedeker represented the City of Riviera Beach. Andrew Cohan remained unrepresented.

During the course of the trial, the defendants increased their collective offers. On the day final arguments took place, Ranger Construction and Palm Beach County, who were the only remaining solvent defendants, offered a combined total of \$22 million. The Jenkins family declined the offer and received the jury's verdict, which broke down liability as follows:

Ranger Construction Industries, Inc.-	50%
Palm Beach County-	43%
Andrew Cohan-	7%
Kathy Jenkins-	0%

After the verdict was rendered, the judge scheduled the trial on damages to begin on March 26, 2001. The jury's verdict on liability means the plaintiffs will be able to collect 93% of the damages awarded in the upcoming trial on damages. The plaintiffs believe that the case now has a jury verdict value in excess of the \$102 million in insurance coverage against Ranger Construction and Palm Beach County.

The expert witnesses who testified for the plaintiffs regarding the defective nature of the construction zone were Russell Lewis, Ph.D. from Cazenovia, NY; Archie C. Burnham, Jr., PE from Ellenwood, GA; and Gerson J. Alexander, CPE from Rockville, MD.

Kathy Jenkins found it terribly hurtful for Ranger Construction and Palm Beach County to contend that she was partly responsible for the death of her daughter and the catastrophic injuries to her twins. She was relieved and gratified when the jury vindicated her by finding that she was free of negligence in the crash. ■