

# Father suddenly and violently killed walking across a highway

Case settled for over \$1.5 million for the loss of the father and the trauma suffered by his wife and daughter as witnesses to the violence.

In February 2021, Tom Smith, his wife, Mary, and their adult daughter Jane (not their real names) had just finished a family dinner and were crossing US 1/Federal Highway near SE Third Street in Boca Raton, Florida. Tom began to cross US 1, heading eastbound in the crosswalk against a Do Not Walk sign. No cars were in sight. Jane and Mary were walking behind Tom. Suddenly, a vehicle appeared out of nowhere heading northbound on US 1. Tom made it all the way to the bicycle lane at the curb when Jane and Mary saw the vehicle strike Tom so violently that his legs flew up behind his head as he slammed head-first onto the pavement. The driver never applied his brakes before the crash.

Mary and Jane screamed and ran to Tom who was gasping for air. With blood pooling around him, they held his hands as he took his last breath.

Mary and Tom had been happily married for 43 years. They had a beautiful family and a wonderful life together. The horror of Tom's sudden violent death severely traumatized the entire family. Mary's shock and grief was compounded by the fact that her daughter had witnessed this horribly violent crash which killed her dad. Mary and Jane both suffered emotional distress and nightmares caused by constantly reliving the scenes of Tom's death. The grief for her husband was intensified by the suddenness and the violence that had occurred right before her. Jane was diagnosed with Post-Traumatic Stress Disorder and sought treatment for recurrent nightmares and the inability to sleep. She remains in intense therapy today.

Following the initial shock and grief of losing her husband, Mary contacted Searcy Denney attorney **Karen Terry** for advice and assistance in seeking accountability and recovery. Ms. Terry began by filing claims with the pertinent insurance companies on behalf of Mary as a survivor of her husband under Florida's Wrongful Death Act and an individual claim for negligent infliction of emotional distress (NIED). Jane asserted a claim for NIED as a result of witnessing the violent death of her father.

Florida's legislation regarding such NIED claims includes an "impact" rule that states that before a party can recover for emotional distress caused by the negligence of another, the emotional distress must flow from "physical injuries" sustained in an impact (*R.J. v. Humana of Fla., Inc.*, 652 So. 2d 60, 362 (Fla. 1995)). Florida courts, however, have recognized



***The intersection where the crash occurred.***

some narrow exceptions to the rule. For example, no impact is required in cases where a party suffers a discernable physical injury caused by the psychic trauma of seeing a loved one negligently injured by another. Elements for this argument include: plaintiff must suffer a discernible physical injury; the injury must be caused by psychological trauma; the plaintiff must see or hear the event causing negligent injury to another; and the plaintiff must have a close personal relationship with the person injured. In *Champion v. Gray*, the Florida Supreme Court concluded that the price of death (or significant, discernable injury), when caused by psychological trauma resulting from a negligent injury imposed upon a close family member within the sensory perception of the physically-injured person, is too great a harm to require direct physical contact ["impact"] before a cause of action exists.

## The physical trauma from witnessing a violent death of a loved one supports negligent injury.

The family of Tom Smith clearly suffered great psychological trauma in witnessing the sudden and violent death of their husband and father caused by the negligence of the driver. Each clearly suffered the physical impact of those traumas. The defense disputed that neither Mary nor Jane had claims of NIED. Eventually, the claims were settled prior to suit being filed for a total of \$1,550,000 which was the total available coverage. This settlement will enable the family to continue to gather medical and psychiatric support to help them move forward. ♦