



And The Defense Wins

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DRI member [Gary Zipkin](#) of **Guess & Rudd PC** in Anchorage, Alaska, obtained a defense verdict for the defendant driver in an automobile/pedestrian accident that resulted in traumatic head injuries, including permanent facial paralysis and numerous facial fractures, requiring eye and jaw surgeries, and where the single liability issue for the jury to determine was legal causation.

The defendant driver was operating his vehicle at more than twice the legal blood alcohol limit at the time of the accident and therefore admitted that he was negligent as a matter of law. In addition, there was no dispute that the vehicle's rear tire drove over plaintiff's head as he lay on the ground after stumbling backwards and falling off of a smoking deck at a local strip club.

Following a two-week jury trial, the jury agreed with the defense that the unique circumstances surrounding the accident made it impossible for the defendant to have successfully avoided driving over the plaintiff's head, even if the defendant had been sober at the time.

Six of the eight eyewitnesses who were standing on the smoking deck at the time of plaintiff's fall confirmed that the plaintiff was laughing and that he fell backwards off of the deck at the very same moment that the defendant's pickup truck was passing by that deck on its way towards the parking lot exit. However, two eyewitnesses testified at trial that the plaintiff had already fallen out into the traffic lane and was laughing at his own folly when defendant's vehicle came around the corner of the building, hesitated, and then attempted to swerve around the plaintiff, only to run over his head with the rear driver's side wheel. All of the other witnesses testified that what happened was a freak accident and that the impact of the rear wheel and the plaintiff's head was virtually "instantaneous" and "unavoidable."

The police investigation into the accident supported the defendant's legal arguments, but the parties' respective liability experts argued over whether the defendant should have been able to observe the plaintiff either before his fall, or as he began to fall off of the smoking deck, and disagreed over whether his blood alcohol level impaired his peripheral vision and judgment, such that a sober driver would have been able to perceive and react in time to avoid striking the plaintiff.

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