

# File QCounty \$,Uprior QCourt 3Jury rial\$

THE TRIAL REPORTER of Southern Arizona

January, 2019

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1/11/19 - Judge BRYAN B. CHAMBERS -  
CV 2016-00102 - ELLISON (Ricky J. Horton of  
Lloyd Baker Injury Attorneys) v COPPER STAR  
TRANSPORTATION, L.L.C.; and RATKEVICH  
(Douglas W. Glasson of Curl, Glasson &  
Patrascioiu, P.L.C.) - WRONGFUL DEATH -  
FALL - WHEELCHAIR LIFT MISHAP.

Decedent, male, age 71, was survived by his  
son, who brought suit for his wrongful death.  
Plntf, male, age 51, unemployed, alleged Dfnt  
Ratkevich, male, age 24, who was in the course  
and scope of his occupational duties as a driver  
for Dfnt Copper Star Transportation, negligently  
allowed Decedent's power chair to fall from the  
wheelchair lift to the ground. Plntf also alleged  
Dfnts negligently used a transport van which  
they knew had no electric control for the lift  
mechanism, parked the transport van on an  
incline to load Decedent, and failed to use a  
strap to secure Decedent's power chair to the  
lift. Dfnts denied liability, advancing the  
defense that the wheelchair lift mechanism was  
in good condition, with no defects, and the  
default status of the braking system on  
Decedent's power chair was engaged. Dfnts  
argued that, because the hand-held electric  
control for the hydraulic wheelchair lift on the  
transport van was not working, Dfnt Ratkevich  
used the manual backup system to raise the  
wheelchair lift while loading Decedent into the  
transport van. Dfnts also argued Dfnt Ratkevich  
had parked the transport van in a designated  
handicapped space and Dfnts were not  
responsible if there was a slight incline to the  
parking space. Additionally, Dfnts argued the  
wheelchair lift, as it was manufactured, was not  
equipped with a strap to fasten Decedent's power  
chair to the lift. Dfnts alleged Decedent was  
comparatively at fault for activating his power  
chair and driving it in reverse after the wheel-  
chair had been fully raised for loading into the

transport van. Dfnts called Michael J. Kuzel,  
P.E., a biomechanical, human factors, and safety  
engineer, who was of the opinion there were no  
defects with the transport van, the lift, and/or  
the power chair. It was also Mr. Kuzel's  
opinion that the wheelchair lift was safe as  
manufactured without a restraining strap to  
secure the power chair as the lift was being  
operated. Additionally, it was Mr. Kuzel's  
opinion that manually raising the wheelchair lift  
with the backup system was normal, and did not  
contribute to the fall. It was Mr. Kuzel's  
opinion that the incline of the handicapped  
parking space may have been a factor. It was  
also Mr. Kuzel's opinion that some action or  
input by Decedent could not be ruled out as the  
cause of his fall. Plntf alleged that the injuries  
Decedent sustained in the fall resulted in his  
death. Plntf used the videotape deposition of  
N. Perryman Collins, Jr., M.D., an internist, of  
Albuquerque, New Mexico, who was of the  
opinion that Decedent had pneumonia at the time  
of the fall. Dr. Collins testified that the frac-  
tured rib sustained in the fall required more  
aggressive treatment for his pneumonia and a  
prolonged hospital stay. It was Dr. Collins'  
opinion that the more aggressive treatment for  
Decedent's pneumonia led to worsening kidney  
function, requiring dialysis. It was also Dr.  
Collins' opinion that the dialysis and a gastro-  
intestinal bleed led to severe anemia, requiring  
multiple blood transfusions. Additionally, it was  
Dr. Collins' opinion that all of these factors  
combined led to Decedent's ultimate death. Dr.  
Collins was also of the opinion that Decedent  
was within one or two days of requiring  
hospitalization for pneumonia at the time of the  
accident. Dfnts argued Decedent did not die  
from injuries sustained in the fall, but rather  
from his multiple preexistent comorbidities, which  
included complications of congestive heart failure,

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due to, or as a consequence of, arteriosclerotic cardiovascular disease. Dfnts also argued that Decedent's diabetes mellitus was a significant condition which contributed to his death. Additionally, Dfnts argued Decedent was hospitalized after the fall for a scrape on the back of his head, but was treated for thirty-six days for other comorbidities. Dfnts also argued that Decedent's death, ninety-six days post-accident, and sixty days after his release from the hospital, was too remote in time to be caused by the fall from the wheelchair lift. Dfnts called Frederick T. Strobl, M.D., a neurologist, who focused on the nature and extent of Decedent's prior treatment and preexistent comorbidities, including congestive heart failure, chronic kidney disease, diabetes, hypertension, hyperlipidemia, morbid obesity, and severe deconditioning. It was Dr. Strobl's opinion that morbid obesity takes seventeen to

twenty-one years off a patient's life, and that the life expectancy of someone with congestive heart failure is less than two years. Additionally, Dfnts called Peter P. McKellar, M.D., an infectious diseases specialist, who was of the opinion that Decedent did not have pneumonia and did not have a fever or a high white blood count at the time of the fall, but rather had another condition known as tracheomalacia. It was also Dr. McKellar's opinion that Decedent's fractured rib did not affect his respiratory recovery or his life expectancy. Additionally, it was Dr. McKellar's opinion that the pneumonia treatment Decedent received was very aggressive, but not necessary. Prayer: Just and reasonable compensatory damages. Plntf made a pretrial demand for policy limits - Dfnts refused to make an offer (D). (Carrier: Seema Insurance.) Four day trial. Jury out less than one hour. FOUND FOR DFNTS. UNANIMOUSLY.

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