



Contributory negligence - it's 'an insurance company's dream'

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Your exuberant 7-year-old asks you if it's OK to ride his bike before supper. You live in a quiet, residential neighborhood that doesn't have much traffic, so why not?

"OK", you say. "But don't go too far. Stay where you can hear me."

A little while later, a nightmare unfolds. A Chevy Suburban with a drunk behind the wheel hits your child in an intersection. The boy dies later that night.

The drunk, who beat three previous DWI charges, is arrested. You wait for nearly a year before the man is sentenced to 18 to 22 months in prison. That's far less time than what you feel is just, but you accept it.

You try to move on with your life. A civil lawsuit is filed against the driver, his insurance company and others you believe contributed to your son's death.

A few months pass before the lawyers file answers to the lawsuit - legal documents that outline their defenses. They smack you right in the gut.

Translated from the legalese, they read: "It's the child's fault for riding his bike in the street and your fault for letting him. We're not paying one thin dime."

All on file

If that scenario sounds heartless, that's because it is. And it's true.

You can read it for yourself. Every word can be found in the case file for *Hayluri Beckles-Palomares v. Michael Logan, City of Winston-Salem, Flow Companies Inc. and Norman L. Moore*.

Lulu to her friends, Beckles-Palomares is the mother of Joshua Palomares-Beckles, the 7-year-old who died May 20, 2006, after being hit by Michael Andrew Logan Jr. Logan pleaded guilty on March 5, 2007, to involuntary manslaughter, felony death by motor vehicle and DWI. He was sent to prison for the aforementioned 18 to 22 months.

The reason Beckles-Palomares sued Logan (and his insurance company, Nationwide Mutual) is obvious. Joshua's death was mostly Logan's fault. Flow Motors was named because one of its dealerships used the street when Joshua died as an overflow parking lot, and that restricted sight lines.

The city of Winston-Salem was named because it didn't make sure that the bushes and trees along the street were trimmed enough to allow unobstructed vision. Moore was named because overgrown vegetation in his yard created the blind intersection where Joshua was hit.

None of the defense attorneys would talk about the lawsuit, which asks for "in excess of \$10,000." Nor would they discuss their answers, which were filed between Nov. 16 and Jan. 16.

"Perhaps it's best to do the commenting in court when it's litigated," said Ronnie Craig, an attorney from Charlotte who's defending Moore.

Blame the victim

With or without additional comment, the responses to the lawsuit say plenty.

First, all of the defendants' attorneys vigorously deny that their clients were negligent. Next, they all point the finger at the co-defendants, mostly Logan. The city, through hired counsel Jim Morgan, also claimed sovereign immunity, which basically means that you can't sue local government.

Standing out in the answers, though, is the fact that the defendants all try to blame Joshua and his mother. Joshua, they say, failed to maintain a proper lookout and rode into the intersection without stopping. His mother was to blame because she didn't teach her son about traffic laws.

Never mind that Joshua was 7 years old and was within 3 feet of the curb, or that Logan was drunk and driving on the wrong side of the road.

"By way of affirmative defense, Defendant Logan pleads the contributory negligence of the decedent Plaintiff Joshua Franklin Palomares-Beckles," wrote Rodney Guthrie, Logan's attorney.

Outrageous though it may be, the blame-the-victim defense might work. If a jury in North Carolina decides that you are even a tiny bit at fault in this sort of case, you are entitled to nothing under state law, under a concept called contributory negligence.

"In general, I'd say contributory negligence is an insurance company's dream," said Walter Holton Jr., the attorney who filed the lawsuit on behalf of Beckles-Palomares.

That's pitiful. Instead of offering a reasonable settlement (putting money in a college fund for Joshua's siblings, perhaps?) the defendants attack a dead child and his grieving mother.

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