



Blame-Pedestrian Defense Leads To \$153K Verdict

Expert witnesses said pickup driver should have seen victim

By THOMAS B. SCHEFFEY

Phillip Torres v. Angel L. Torres: A former McDonald's employee who was hit by a pickup and seriously injured while crossing a dark road in Fairfield was awarded more than \$150,000 after a four-day trial.

Bridgeport resident Phillip Torres, 19, was struck by a 1999 Ford Ranger truck just before 10 p.m. on March 31, 2007. He was leaving work at the McDonald's in Fairfield, between the Post Road and the King's Highway Cutoff.

The truck's driver, Angel L. Torres, was celebrating his 21st birthday that night, and his mother was riding with him. The two men share a last name, but are not related.

Angel Torres, according to defense lawyer **Michael Dowling, of Holahan, Gumper & Dowling** in Fairfield, knew the area so well he could practically drive it blindfolded.

That sort of overconfidence may have been a problem here, countered plaintiff's attorney **Kimberly Andrade**.

Defendant Angel Torres claimed he never saw the plaintiff at all, and first noticed a black object on his hood. He said he didn't sound his horn, swerve, brake or slow down. "He testified that he just thought it was a black object. I think that really bothered the jury," said Andrade.

After the object—the unconscious Phillip Torres—fell off the hood 85 to 90 feet away from the point of impact, Angel made a U-turn and saw what he had hit. Another driver noticed Phillip in his rear view mirror, stopped to help and called 911.

Phillip testified he had no memory of anything that happened after he stepped off the curb. He suffered a broken ankle, bruised shoulder, injured finger, cuts and bruises and a cervical spinal injury.

Through Andrade, an associate at Bridgeport's **Adelman, Hirsch & Newman**, Philip Torres sued Angel Torres in Bridgeport Superior Court, and a four-day trial unfolded before and after Thanksgiving last year.

The defenses Angel raised were that Phillip failed to yield the right of way, crossed where there was no light or crosswalk, and was almost entirely dressed in black. His McDonald's uniform trousers were black, and he wore a black hooded jacket, a black Yankees baseball cap and a red backpack. He was carrying a McDonald's drink cup.

Because two of Phillip's cell phones were found on the ground, the defense asserted that he had been talking on the phone when hit.

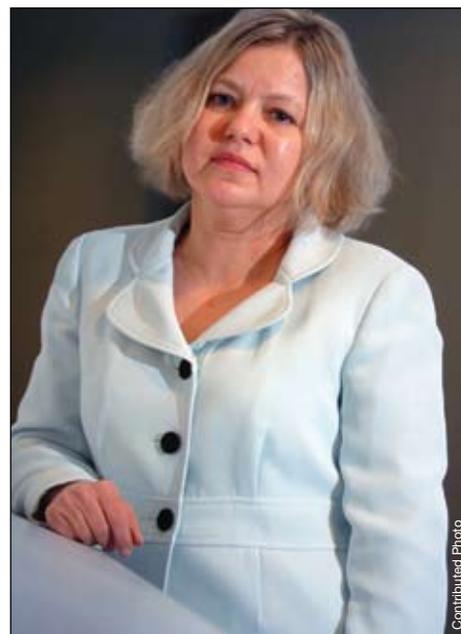
Phone records, however, did not show that Phillip was using his phones at that point, and Bridgeport Superior Court Judge **David R. Tobin**, in his instructions to the jury, told jurors not to consider the allegation Phillip was talking on his cell.

Andrade said her client required months of recuperation and care, and needed to walk with a cane for an additional period. Doctors rated Phillip's permanent partial disability of his spine and his ankle at 5 percent. She entered an offer of compromise for \$125,000.

Andrade used accident reconstruction engineer Daniel W. O'Neill, of Manchester's Vliet & O'Neil, who testified that the driver had enough time and distance to avoid Phillip. "I think [O'Neill] did a good job of walking the jury through this," Andrade said.

Andrade also called to the stand a Fairfield police officer who testified that, although the area was not well lit, drivers can see pedestrians crossing. The defense's only witness was the driver himself.

In her closing arguments, Andrade sought \$152,000 in pain and suffering dam-



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Plaintiff's attorney Kimberly Andrade says the judge discounted a defense theory that her client had been talking on a cell phone and not paying attention.

ages, and \$28,760 in economic damages. The jury gave the plaintiff every penny he asked for, but reduced his award 28 percent on account of his own negligence, which lowered the total to \$130,147.

That still exceeded the \$125,000 offer of compromise. With interest and negotiated costs, the total recovery came to \$153,407.

Dowling did not return a call for comment before press time. Andrade described her client as a compelling, credible witness. "I was happy for my client. He's a young guy, now 22, and works in a Rite Aid pharmacy. He can really use the help. He didn't have private medical insurance." ■