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## Sample Case Report

### Workplace

**Brakes disengaged while truck driver was repairing them**

<b>Verdict:</b>	(P) \$8,590,000.00
<b>Case Type:</b>	Workplace Safety, Motor Vehicle - Tractor-Trailer, Motor Vehicle - Pedestrian, Motor Vehicle - Truck
<b>Case Name:</b>	Larence Rene Montoya v. Ben E. Keith Co., No. 2010-19831
<b>Venue:</b>	Harris County District Court, 55th, TX
<b>Judge:</b>	Jeff Shadwick
<b>Date:</b>	06-26-2012

### Plaintiff(s):

#### Attorney(s):

Jason A. Gibson; The Gibson Law Firm; Houston, TX, for Larence Rene Montoya  
Clifford D. Peel; The Gibson Law Firm; Houston, TX, for Larence Rene Montoya  
Andrew C. Smith; The Gibson Law Firm; Houston, TX, for Larence Rene Montoya

#### Expert(s):

David Wainwright; Plastic Surgery/Reconstructive Surgery; Houston, TX called by: Jason Gibson, Clifford Peel, Andrew Smith

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### Defendant(s):

#### Attorney(s):

Nicholas Bettinger; McDonald Sanders; Fort Worth, TX, for Ben E. Keith Co.  
Stuart Lumpkins Jr.; McDonald Sanders; Fort Worth, TX, for Ben E. Keith Co.

#### Expert(s):

None

### Facts:

On the afternoon of June 23, 2009, plaintiff Larence Rene Montoya, 42, a truck driver in training, went underneath his trailer to use a ballpoint pen to repair a stuck air-brake valve. While he was doing so, the air brake disengaged, and Montoya was dragged 16 feet. The incident occurred in Missouri City. Montoya's employer was Ben E. Keith Co., a food distributor and nonsubscriber to workers' compensation. He sustained multiple severe injuries.

Montoya sued Ben E. Keith Co. for negligently allowing and instructing its drivers to climb under trailers and perform brake maintenance in violation of Federal Motor Carrier regulations. According to Montoya, on the morning of the accident, a supervisor had shown him how to repair a stuck brake valve with a ballpoint pen. Montoya alleged that this supervisor had been shown and instructed on the technique by other supervisors and mechanics to save the company time and money; that this technique was a common practice; and the company allowed it. Montoya alleged ordinary and gross negligence.

According to Montoya, the company was aware of the sticking brake valve on this particular trailer and failed to fix it or perform preventive maintenance for more than 500 days. A day or two before the incident, another driver had complained about this trailer's brake valve sticking.

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Ben E. Keith Co. did not have a written policy prohibiting drivers from performing brake maintenance under tractor-trailers, plaintiff's counsel noted. Montoya also alleged negligent training.

Ben E. Keith Co. denied the allegations. According to the defense, the valve issue is common in the trucking industry, and the procedure to correct it is not complex and does not violate Federal Motor Carrier Safety Regulations. The defense argued that Montoya was shown the steps to correct the issue, but that Montoya negligently failed to set his tractor brakes before performing the correction. This negligence, the defense argued, was the sole proximate cause of the accident. The court instructed the jury on sole proximate cause.

As a nonsubscriber to workers' compensation, the company could not assert contributory negligence or negligence of a "fellow servant."

#### Injury:

Montoya was dragged under and in front of the tires for 16 feet as he struggled to escape. He sustained third-degree burns to his face, underarm and chest; seven broken ribs; a broken left scapula; and a collapsed lung. After undergoing emergency treatment, Montoya was sent by Ben E. Keith Co to a medical clinic at a strip mall. He still had asphalt embedded in his skin. The clinic performed debridements to his face and recommended immediate treatment by a burn doctor.

On July 2, Montoya was admitted to the hospital and began treatment with a burn doctor/plastic surgeon. He underwent multiple procedures for debridement and excision, harvesting, and grafting and was discharged from the hospital on July 13. He had an additional 16 doctor visits and more than 50 physical therapy sessions.

Montoya is under no restrictions, other than keeping his scar tissue out of sunlight. He said he still experiences daily physical pain and recurring nightmares about the incident and he developed a claustrophobic disorder.

Montoya claimed past medical bills, past and future pain and suffering, past and future disfigurement and past physical impairment. He sought \$89,642.92 for past medical bills, \$1.5 million for past physical impairment, \$5 million for past pain and suffering, \$2.5 million for future pain and suffering, \$1.5 million for past disfigurement, and \$1.5 million for future disfigurement.

The company's safety manager testified on cross-examination that Montoya should be compensated for his pain and suffering, if the defendant was found negligent.

Ben E. Keith Co. paid \$33,731 in wages and \$89,642.92 in medical bills on behalf of Montoya and sought a credit for these amounts against any judgment. Montoya continued to work for the defendant.

According to Montoya's counsel, Ben E. Keith Co. had a \$1 million self-insured retention and \$105 million in excess coverage.

#### Verdict Information:

The jury found that BEK's negligence alone was the proximate cause of the occurrence and that Montoya's damages were \$8.59 million.

The jury found gross negligence, but not unanimously. Thus, the punitive damages phase was not reached. Prejudgment interest was \$739,927.50.

BEK plans to move for a new trial and, if necessary, to appeal. The verdict was 10 to 2 on negligence. The two dissenters told the court that, because they did not join in the verdict on negligence, they did not deliberate or vote on the damages or gross negligence issues.

#### Larence Rene Montoya

\$90,000 Personal Injury: Past Medical Cost

\$2,500,000 Personal Injury: Past Physical Impairment

\$2,500,000 Personal Injury: Past Pain And Suffering

\$1,000,000 Personal Injury: Future Pain And Suffering

\$1,500,000 Personal Injury: Past Disfigurement

\$1,000,000 Personal Injury: Future Disfigurement

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