

## 85-Year-Old Wins \$23.9M in Ambulance Crash

A California jury has awarded \$23.9 million to an 85-year-old farmer who was severely injured when a speeding ambulance crashed into his car.

After a five-and-a-half-week trial, the 12-person jury ordered American Medical Response to pay \$14.9 million in economic and \$9 million in non-economic damages to Louis Del Barba, a longtime farmer in the Sacramento Delta.

Del Barba was left paralyzed and has been on a ventilator since the April 16, 2007 accident.

His medical care could cost more than \$20 million, according to his attorneys.

During the trial, medical experts clashed over Del Barba's life expectancy, with experts for the defendants saying he would likely live about one year

at most. Physicians for the plaintiffs testified he could live up to three years or more.

But no matter how long Del Barba lives, with the jury award he can return to his 110-year-old family home once it is refitted for his medical care, said his attorney, Terry O'Reilly.

"He is in a relatively nice acute-care hospital, but he's in a room with three walls and a television he can't operate because he's a quadriplegic," O'Reilly said. "He doesn't deserve to be where he is, and he deserves to choose where he wants to die."

While juries are often reluctant to award significant damages to elderly plaintiffs, testimony from those close to him depicted Del Barba as a healthy, active senior prior to the accident.

"We had a lot of eyewitnesses who testified to Mr.

Del Barba's health," said co-plaintiffs' counsel Nina Shapirshteyn.

"He was very active and incredibly self-sufficient at his age. He used to drive up to San Francisco all the time to go to all kinds of shows."

Defense attorney Steven Pratt declined comment

### Reckless driving

The accident occurred during morning rush hour traffic in Oakley, a small city in Contra Costa County, Calif.

Del Barba, who was wearing a shoulder and lap seat belt, was attempting to make a left turn onto a highway when he was rammed by an ambulance.

The ambulance, which was on its way to an emergency, had no patients

inside. During the trial, the plaintiffs' team showed jurors a reconstruction of the accident, using topographic imagery.

Although the siren was on, the ambulance was speeding at 65 miles an hour in a 35 mile-an-hour zone. Experts testified



that the excessive speed, in rush-hour conditions, was reckless and unsafe.

“I think at that point the jury just said, ‘That’s lunacy,’” O’Reilly commented.

According to O’Reilly, defense experts argued that the ambulance siren was audible 20 seconds before the crash, and that Del Barba shouldn’t have pulled onto the highway.

But O’Reilly countered that the ambulance was going so fast, it would have been impossible to avoid the crash.

“It’s the idea of trying to place the jury in Mr. Del Barba’s seat, rather than in the seat of the kid who’s driving the ambulance,” O’Reilly explained.

“Once they do that, they start thinking, ‘This could be me or my wife.’

“It’s one thing if you get hit by an ambulance doing 35 miles an hour; you’d probably be at fault, but not one doing 65 miles an hour,” he commented.

American Medical Response made only a nominal pre-trial settlement offer, according to O’Reilly.

Jurors deliberated five hours before voting unanimously to award \$4.5 million for past medical expenses; 11 to 1 for \$10.4 million in future medical expenses and 9 to 3 to award \$9 million for non-economic losses, including pain and suffering.

The jury, also by a vote

of 9 to 3, found the defendants 99 percent responsible for the accident, with Del Barba only 1 percent liable.

While the verdict was a victory for the plaintiffs, the final damages could be reduced significantly. In a pre-trial ruling, which was not disclosed to jurors, the judge held that any award would be subject to California’s \$250,000 cap on non-economic damages in medical malpractice cases.

Shapirshteyn said the cap usually applies in a situation where a health care provider provides services to a patient.

“This is obviously so far removed from this scenario,” she said. “Here we

have Mr. Del Barba, who is not being provided any services. He had nothing to do with this ambulance, so it’s very disturbing that this law can be stretched.”

O’Reilly’s firm is considering appealing that ruling.

**Plaintiffs’ attorneys:** Terry O’Reilly & Nina Shapirshteyn of O’Reilly & Danko in San Mateo, Calif.

**Defense attorney:** Steven Pratt of Gordon & Rees in San Diego.

**The case:** Del Barba v. American Medical Response; California Superior Court, Alameda County; Sept. 26, 2008; Judge Barbara J. Miller.