

COOK COUNTY

JURY VERDICT REPORTER

TRAFFIC--CARPOOL VAN PASSENGER KILLED IN REAR-END CRASH ON THE DAN RYAN
(EEE 22/1) *Estate of George F. Harris, Jr., deceased v United Road Towing Inc., E & R Towing & Garage Inc., Nicolas Nieves* 09L-8841 Tried Jan. 15-25, 2013 (1L)

Verdict: \$7,365,000 v all defts (\$1,250,000 past and future loss of economic support; \$165,000 past and future loss of household services; \$450,000 grief and sorrow of next of kin; \$4,500,000 past and future loss of society; \$1,000,000 survival/conscious pain & suffering). Special Interrogatories: Was defendant Nicolas Nieves negligent in one or more of the ways claimed by the plaintiff as stated to you in these instructions? "Yes." Was the negligence of Nicolas Nieves a proximate cause of George Harris' injuries and death? "Yes."

Judge: Patrick F. Lustig (IL Cook-Law)

Pltf Attys: James D. Montgomery, Jr. and John K. Kennedy of *Cochran, Cherry* Demand: \$6,900,000 Asked: \$18,880,000

Deft Attys: Alton C. Haynes, Mark G. Poulakidas and Brian P. O'Neill of *Haynes, Studnicka* for all defts (Zurich Excess Casualty) Offer: \$4,000,000 - \$5,000,000 (indicated)

Pltf Medl: Dr. James Doherty (Trauma Surgeon)

Pltf Experts: John Goebelbecker (Accident Reconstruction), Michael L. Williams (Trucking Safety) and Malcolm S. Cohen, Ph.D. (Economist)

July 10, 2009, George Harris was a passenger seated in the third row of a 2004 Chevy Ventura van returning home from work at Union Pacific Railroad with five other carpoolers. The van was traveling southbound on the Dan Ryan Expressway (Interstate 90/94) in the local lanes just north of 63rd St. during the Friday afternoon rush hour when it came to a standstill at 4:36 pm due to traffic congestion just before the split to the Skyway entrance. The van was in the third lane from the left; the two left lanes led into the Skyway entrance 1200 feet ahead. Deft Nieves had been traveling behind the van while driving a flatbed tow truck transporting two vehicles. When Nieves saw the traffic stopped ahead in his lane (lane 3), he decided to move to the lane on his left (lane 2), allegedly in order to jump in front of lane 3 traffic with a plan to re-enter lane 3 before the Skyway split. Nieves sped up, increasing his speed to 48 mph, in order to change into lane 2 where the traffic was moving fast. As he started to move to his left to lane 2, he claimed a "dark car" jumped from lane 3 behind him to lane 2 and then sped up beside him, forcing him to abort his lane change. As he straightened his truck in lane 3, he saw the stopped van and hit his brakes, but was unable to stop in time and plowed into the rear of the van. The force of the impact left the tow truck embedded in the back of the van with 3.5 feet intrusion. The third row of the van disappeared, leaving Harris pinned between the hood of the tow truck and the roof of the van, gasping for air. Harris M-40 was taken to Christ Hospital, where he was diagnosed with a cervical spine subluxation at the C-1 level, which was described by the trauma surgeon as an "internal decapitation." He also suffered a comminuted fracture of the left fibula, a broken rib, fractured clavicle, fractured hip wing at S-1, and bilateral transverse fractures at S-3. Harris died 4.5 hours later, survived by his wife and two children (\$1,254,826 lifetime LT as union machinist for Union Pacific Railroad, \$339,381 loss of household services). Nieves was employed by deft E & R Towing, a wholly owned subsidiary of deft United Road Towing. Pltf contended Nieves acted in the scope of his employment and/or agency with the corporate defts when he drove too fast for conditions, attempted an improper lane change, and failed to maintain proper distance from the vehicle ahead. Pltf's accident reconstruction expert testified Nieves' speed was approximately 25 mph at impact. Pltf's counsel reports that defts admitted agency against United to cause the dismissal of a negligent entrustment claim against United, as the negligent entrustment claim would have enabled pltf to introduce evidence of M-26 Nieves' negative driving history. The defense argued Nieves' attempted lane change was lawful, the driver of the unidentified dark car who cut Nieves off was the sole proximate cause of the crash, and a dark car was visible in post-occurrence scene photos. The crash gave rise to nine personal injury claims, including four consolidated lawsuits. All other claims and suits settled prior to this trial, including a \$14 million settlement with another van passenger (M-59 Jerry Powers) who was rendered a T-4 paraplegic (09L-8948).