

# VERDICTS & SETTLEMENTS

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Friday, February 16, 1996

## CASE IN FOCUS

### LITIGATOR PROFILES

## To Panish, Client's Most Important

**Name:** Brian J. Panish.

**Name of firm:** Greene, Broillet, Taylor, Wheeler & Panish

**Location of firm:** 100 Wilshire Blvd., 21st Floor, Santa Monica, CA 90401.

**Education:** Southwestern University School of Law (J.D., 1984); Fresno State University (B.S., 1980).

**Affiliations:** California Bar Association, Consumer Attorneys of California, Consumer Trial Lawyers Association and Attorney Information Exchange Group.

**Length of time practicing law:** 12 years

**Types of cases:** Plaintiff personal injury and business litigation specializing in wrongful death, wrongful termination and complex business litigation.

**Background:** A native Angeleno, Panish and his family now reside in Santa Monica. He is one of five siblings and the only sibling remaining in Los Angeles. He attended Fresno State University where he played football on several conference championship teams. At Fresno State, he majored in agricultural business. He became interested in a career in the law as his father was a trial lawyer and he became exposed to the practice of law. His father once practiced law with Panish's partner, Browne Greene many years ago. After graduating from Southwestern University School of Law, Panish began his career with an insurance defense firm. After three years of practice, he joined the firm of Greene, O'Reilly, Broillet, Paul, Simon, McMillan, Wheeler & Rosenberg. In 1990, Greene, Broillet, Taylor, & Wheeler was formed and Panish became a name partner in 1993. Prior to becoming a partner, he worked with Browne Greene and tried a number of cases with him. Panish made the transition from defense to plaintiff work because he wanted to represent clients that he felt were "the true victims" against large corporate interests.

**Keys to success:** Panish attributes his



HUGH WILLIAMS / The Daily Journal

**TEAMMATES** — Attorneys Brian J. Panish, left, and Browne Greene joined forces to win \$22 million for their clients in *Lusik Pogosyan and Konstantin Aktsiklou v. Southern California Rapid Transit Division, et al.*, a police-pursuit case.

success to three basic qualities. First, he believes that solid preparation is crucial. He wants to be completely familiar with all aspects of the facts, witnesses and evidence so that he has control of the case. Second is his ability to cross-examine witnesses and prepare his witnesses for opposing counsel's cross-examination. Panish believes that most attorneys can successfully handle direct examination but if a witness "can withstand cross-examination, he will probably be believed." Finally, Panish credits his success to representing deserving clients. Panish strongly believes that the client is the important player in any lawsuit and should be the primary concern of the attorney.

**Favorite trial moment:** There are two moments that stand out to Panish. The first occurred in a two month trial against a city involving alleged civil rights violations by the city's police department and an accepted practice of covering up police misconduct. Panish represented the family of an 18-year-old

boy who was killed by an off duty police officer who was allegedly drunk (and had a history of alcohol abuse) when his vehicle struck the boy's motorcycle, killing the boy. The police department did not test the officer's blood alcohol level and prepared a report on the accident that placed fault for the accident on the deceased boy. Discovery disclosed thousands of documents evidencing police misconduct and lack of discipline. While cross-examining the deputy police chief, Panish admitted the "smoking gun" memorandum, which established a cover up of criminal conduct by a high ranking member of the police department. That case resulted in a \$6 million dollar verdict. Panish's other favorite moment came in the Case in Focus, *Pogosyan v. Southern California Rapid Transit Division, et al.*, previous page, when he cross-examined the transit authority police captain. During his examination, the police captain

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## Panish

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admitted that the transit authority's police pursuit policies were inadequate. Two days later, the same witness changed his testimony. Panish played back audiotapes of the prior testimony for the jury.

**Personal:** A family man, Panish spends much of his free time with his wife, Rose Marie who is also a lawyer, and their two daughters, Diana, age 2 and Kathryn, age 4. He enjoys participating and watching all sports, especially Fresno State football. Panish often travels to Fresno

State's football games to cheer on his alma mater. He also loves to travel, go deep sea fishing in Mexico and Costa Rica and vacation with his family.

**What other lawyers and judges say about this attorney:** The Hon. Paul Boland of the Los Angeles Superior Court, Central District, said, "I was impressed with the relationship that [Panish and Browne Greene] forged with their clients." He added, "it was clear that the clients understood both the facts and legal aspects of the case and appreciated the strengths and weaknesses of the case as it entered litigation." Jeff Davidson of Kirkland & Ellis, Los Angeles, said, "he's very tough but he develops a good relationship with opposing counsel. He was very effective on cross-examination."

# VERDICTS & SETTLEMENTS

## THE CASE

### \$22 Million Awarded for Injuries in Police-Pursuit Crash

**Type:** Personal injury, negligence, police negligence.

**Verdict:** \$22,000,000

**Case/Number:** *Lusik Pogosyan and Konstantin Aktsiklou v. Southern California Rapid Transit Division, et al.* / BC070359

**Court/Date:** L.A. Superior Central / December 15, 1995

**Contributions:** \$13,000,000 net verdict including \$3,250,000 (economic damages to Lusik Pogosyan), \$17,000,000 (non economic damage to Lusik Pogosyan) and \$1,250,000 (loss of consortium to Konstantin Aktsiklou).

**Attorneys:** Plaintiff — Brian J. Panish, Browne Greene (Greene, Broillet, Tay-

lor & Wheeler, Santa Monica); Robert Scott Shtofman (Law Offices of Robert Scott Shtofman, L.A.). Defendant — Carol Ann Rohr, Spencer C. Krieger (Franscell, Strickland, Roberts & Lawrence, Pasadena).

**Technical experts:** Plaintiff — G. Thomas Ganz, police practices and accident reconstructionist, Huntington Beach; Robert W. Johnson, economist, Los Altos. Defendant — Wes Pabst, accident reconstructionist, Los Alamitos; Joseph Callanan, police procedures, Morro Bay.

**Medical experts:** Plaintiff — Thomas Knapp, M.D., orthopedic surgeon, Santa Monica; Bernard Bochner, M.D., urologist, L.A.; Jan Roughan, life care plan,

Pasadena; Leonard N. Matheson, vocational rehabilitation, Santa Ana. Defendant — Gene Bruno, life care plan, L.A.; Michael Morris, vocational rehabilitation, San Clemente.

**Facts:** On December 16, 1991, plaintiff, Lusik Pogosyan, a 45-year-old student, was entering her car after completing classes at Los Angeles City College on Heliotrope Street. At approximately 1:00 p.m., she was struck by a vehicle driven by Yousef Elgahoor (not a party to this action), who claimed he was heading to his bank. The plaintiffs alleged that Elgahoor's vehicle was fleeing from the Rapid Transit Division police and a vehicle driven by two women with whom he had been in-

involved in a minor accident at a gas station located at the intersection of Vermont and Melrose, approximately one half mile from the accident scene. The plaintiffs also alleged that the Rapid Transit District police, officers Grimes and Evans, were in pursuit of Elgahoor without authority and using lights and sirens that were not in compliance with the district pursuit policy. A captain of the Rapid Transit District police indicated that the pursuit policy in effect at the time of accident was deficient. The plaintiff, Lusik Pogosyan, made a claim for general damages and her husband, Konstantin Aktsiklou, made a claim for loss of consortium. The plaintiffs brought this action based

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## Pursuit

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on a negligence theory of recovery.

**Contentions:** The plaintiffs contended that the defendants, Southern California Rapid Transit District and Officers Grimes and Evans, were in pursuit of Elgahoor in violation of their pursuit policy. The plaintiffs further contended that the defendants, Southern California Rapid Transit District, Grimes and Evans, caused the fleeing vehicle to strike the wife plaintiff. The plaintiffs also contended that the pursuit was undertaken in front of a college during school hours with heavy pedestrian foot traffic without proper safety considerations. The defendants contended that they were never in pursuit, that they arrived shortly after the accident had occurred and never used lights or sirens. The defendants asserted that neither Elgahoor, nor the two women in pursuit of Elgahoor, had seen flashing lights or heard sirens. The defendants also contended that the plaintiffs' claimed damages were excessive.

**Injuries:** Left leg amputation through the knee. Degloving of skin on remaining stump. Crushing injuries with multiple fractures to the lower extremities resulting in multiple surgeries. Degloving of skin to right leg. Internal injuries including ruptured bladder and crushed pelvis requiring a celiotomy surgery.

**Specials in evidence:** MEDS \$157,000; Future MEDS \$2,700,000; LOE \$40,000; Future LOE \$500,000.

**Trial jury:** Length 30 days; Poll 10-2 liability, 12-0 economic damages, 11-1 non-economic damages (per plaintiff), 9-3 non-economic damages for plaintiff wife (per defendant) and 10-2 non-economic damages for plaintiff husband (per defendant); Deliberation 20 hours (liability) and 9 hours (damages); Comparative Liability The jury attributed 52% fault as to Southern California Rapid Transit District; 34% as to Yousef Elgahoor and 14% to Pamela Seghetti.

**Settlement discussions:** The plaintiffs made a C.C.P. §998 demand of \$435,000 for the wife plaintiff and \$65,000 for the husband plaintiff. Per the plaintiffs, plaintiffs' C.C.P. §998 offer was accepted subject to Board Approval, Board Approval was obtained; but defendant denied the existence of a settlement ten days later. (Plaintiffs filed a motion to enforce settlement which was opposed and denied.) Per the defendant, the defendants accepted the C.C.P. §998 offer contingent upon Board approval which was not received prior to plaintiff's withdrawal of their demand. The defendants made a C.C.P. §998 offer of \$500,000 at the time of trial.

**Other information:** The verdict was reached approximately three years after the case was filed. The case was trifurcated on defendants' motion and was set to be tried in three phases: immunity, liability and damages. The immunity phase was tried and the plaintiffs prevailed. The court held that the pursuit policy did not meet the criteria set forth in Vehicle Code 17004.7. Liability and damages, respectively, were then tried. Post trial motions for a new trial and judgment notwithstanding the verdict are scheduled for February 29, 1996, before Judge Baker.