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Injured Security Guard Denied Damages After Crash

Defense prevails in lawsuit focusing on parking lot light poles

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Lynn Marchetti v. Branson Ultrasonics Corp.: A Danbury jury has ruled that a local business was not liable for the alleged injuries suffered by a security officer who crashed into a light pole in its parking lot.

On the night of Sept. 28, 2010, Lynn Marchetti was making her fourth round of the night through the parking lot at Branson Ultrasonics Corp. on Eagle Road in Danbury. Branson is a global technology and manufacturing company that has been headquartered in Danbury since 1946.

Marchetti and her husband's company, Commerce Security, were hired by Branson's landlord to patrol the property, which was a multitenant commercial facility, though Branson did undertake some of the property maintenance.

While driving in the parking lot, Marchetti came upon a group of deer that darted out in front of her. Marchetti swerved her Ford Explorer to avoid hitting the animals but ended up crashing into a light pole. The pavement was still slick from a heavy rainstorm that night.

Marchetti claims that the next thing she remembers is talking to doctors at Danbury Hospital. However, according to defense lawyers, Marchetti told first responders at the scene that she swerved to the right while braking hard to avoid the deer and her vehicle began to skid on the wet pavement. Without enough dis-



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Law Tribune File Photo

Defense attorneys Leonard Lesser and Paul Geraghty said they prevailed because the plaintiff changed her story several times and her husband performed a 'self-serving' investigation of the accident scene.

**verdicts &
settlements**

...tance to brake safely, she struck the pole. Marchetti said she was traveling approximately 15 to 20 mph when she first hit the brakes.

Marchetti suffered injuries to her right shoulder, left ankle and right hand. She also suffered a head injury. Marchetti's medical expert claimed that she had suffered a traumatic brain injury from

the accident with associated memory loss and irritability.

Marchetti, through her lawyer, Michael McCarroll of Alan Barry & Associates in Danbury, later sued Branson for five separate premises liability-type claims. The lawsuit alleged that the overall design, creation and maintenance of the parking lot led to factors that caused the accident and that Branson had prior knowledge of the deer population that would cause sudden stopping of vehicles.

A number of those claims were thrown out by the trial judge, Sheila Ozalis, following a motion for directed verdict by the defense lawyers. Branson was defended by Leonard Lesser, of Simon Lesser in New York City, and Paul Geraghty, of Geraghty & Bonnano in New London. The remaining two claims, which became the focus of the trial, were that there was insufficient lighting in the parking lot and that the light pole was inexplicably painted brown rather than a brighter color, such as yellow, that would better alert drivers of its presence.

The defense lawyers said the case ultimately came down to whether the jury believed Marchetti. "Credibility was one of the biggest factors," said Lesser. "It was a single-vehicle situation, and no witnesses. It was all her."

The plaintiff claimed that she had passed one of the light poles when the deer 'darted out' in front of her SUV. She said even after engaging in evasive maneuvers, she would have had enough room to avoid the second pole had it been painted a brighter color.

Lesser said Marchetti changed her story about what happened a few times, and the defense was able to attack her credibility in other ways too.

During her depositions, she was confronted by Lesser about her statements to first responders about braking hard and skidding to avoid the deer. According to the defense, she changed her story. She

first claimed that she neither braked nor skidded, but rather "tapped" the brake pedal and "steered to the right" to avoid the deer, and then "corrected her direction" and continued to drive straight.

She further claimed that she had passed one of the light poles when the deer "darted out" in front of her patrol car. She said even after engaging in evasive maneuvers, she would have had enough room to avoid the second pole had it been painted a brighter color.

The defense lawyers said that when Lesser later cross-examined Marchetti at a deposition about the distance between the two poles and her own expert's calculations on required stopping distances, she changed her story again to say she did not know where she was when she undertook the deer-avoidance maneuvers.

Lesser said the plaintiff's husband also did extensive investigations of the crash scene, creating "self-serving" reports, photos and videos all in an effort to support his wife's damages claims against Branson. These moves would come back to haunt the plaintiffs, according to the defense lawyers, because they supported the original story that

she told first responders.

When deposing the plaintiff's accident reconstruction expert, Lesser was able to get him to admit that if the accident occurred the way Marchetti described it to police and first responders, then it was an unavoidable accident resulting from Marchetti's speed and evasive maneuvers on the wet pavement, and the color of the light poles made no difference.

Additionally, Lesser got Marchetti's expert to admit that if Marchetti was driving at the speed she testified to, given the rainy conditions that night, then she was driving in an unsafe manner.

Lesser and Geraghty also were permitted to show to the jury social media posts made by Marchetti after her accident reflecting normal injury-free activities, including vacation photos and photos from social events.

Also, the lawyers got Marchetti, while on the stand, to discuss just how familiar she was with that parking lot. She had patrolled it for 20 years.

"With a simple calculator we were able to do the math," said Lesser. "She admitted on the stand that she had been through that parking lot 16,000 times and 3,000 to 4,000 times after the light pole bases were painted. That was a key part of the evidence. If anyone had knowledge of the layout of the parking lot ... it was her."

Evidence presentation lasted about a week in Danbury Superior Court, and the jury deliberated for less than two hours before rendering a defense verdict. Additionally, the judge later ruled that the plaintiffs should pick up the defendants' costs, which totaled \$7,912. That included expert witness fees, but not attorney fees.

The plaintiff's lawyers said that at one point during the litigation, the plaintiff sought \$1.5 million, but McCarroll did not specifically ask for that from the jury. McCarroll, who no longer works at Alan Barry & Associates, could not be reached for comment. ■