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Asher Hawkins

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A settlement worth just under \$3.4 million has been reached in an action stemming from the 2003 death of a 37-year-old father of six in a roadside accident.

According to court papers filed in *Hernandez-Mendoza v. American Infrastructure Inc.*, seasonal laborer Fidel Hernandez, a native of El Salvador, was driving his Nissan sedan on Route 22 near Allentown early one morning in April 2003 when his car began to break down. He pulled over on the Lehigh River Bridge, but left his car at least partially in the right-hand lane.

As Hernandez was walking around from the passenger side to the front of the car, according to court papers, his car was clipped by the front of a pickup truck driven by Joseph Polczynski, an employee of American Infrastructure. Hernandez was found underneath his vehicle, dead from his injuries.

Polczynski claimed that immediately before the accident, he was traveling behind another pickup truck and was unable to see Hernandez's sedan pulled over on the bridge. According to court papers, Hernandez's survivors claimed Polczynski had been driving over the speed limit and was too close behind the truck in front of him to effectively respond once he saw Hernandez's car.

After the accident, Polczynski tested negative for drug and/or alcohol use, according to court papers.

Plaintiffs attorney [Tom Kline](#) of Kline & Specter said the \$3.375 million dollar settlement was reached April 6, about a day before jury selection in the case was scheduled to begin.

In a January pre-trial conference memorandum, the plaintiffs demanded \$12.5 million to settle the matter.

Kline, who worked on the case with Robert Ross and David Caputo of his office, said the negotiations in *Hernandez-Mendoza* took place during two sessions held in the courtroom of Philadelphia Common Pleas Judge Sandra Mazer Moss. After reviewing the filings in the case, Mazer Moss told the parties she believed they should negotiate within the \$3 million to \$3.5 million range, Kline said.

"This was another example of a case where the parties were able to settle with the court's assistance in providing an objective evaluation of the facts," Kline said.

There were a number of issues that Kline believes factored into Mazer Moss' evaluation of the case, he said.

Hernandez, as a seasonal worker from a foreign country, had a sparse earnings history, leaving his survivors with a limited wages claim, he said.

There was the possibility of a strong contributory negligence defense, since Hernandez's car sat at least partially in the right-hand lane at the time of the accident, and there was a factual dispute as to whether he had put his blinkers on when he pulled over.

The pickup truck driver who had been traveling ahead of Polczynski leading up to the accident was never located.

There was a factual dispute as to how much pain and suffering Hernandez experienced before he died: The plaintiffs contended he was alive for several seconds following the crash; the defense, citing a coroner's report, argued his death had been instantaneous.

The defendant's agency was at issue, as it was unclear whether Polczynski had been acting in the course of his employment when the accident occurred.

And finally, there was the possibility that a surviving spouse claim could not be brought, as Hernandez had a common law marriage with his partner, a practice that the Commonwealth Court effectively abolished in September 2003 - about the same time his survivors first filed their complaint.

Joseph Fowler of Post & Schell represented American Infrastructure in the matter.

"With the help of Judge Moss, we were able to reach a reasonable settlement in a case involving a very tragic accident," Fowler said, declining to comment further.

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