

# PROFILES & PRECEDENTS

This Report Summarizes Cases Concluded from August 2007 to November 2007



THE LAW FIRM OF  
**Pajcic & Pajcic**  
Since 1974

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periodic report of  
Pajcic & Pajcic.*

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## Homebuilder Agrees to Confidential Settlement for Quadriplegic Mexican Laborer

Four Mexican laborers were trying to lift a 780 pound beam into the rafters of a house when the beam fell onto John and broke his neck. Because his co-workers were too scared to call 911, they put John in their van and took him to the nearest emergency room.

The accident left John a complete quadriplegic. He cannot walk, has no bowel or bladder function and only a little movement of his arms and hands.



*continued on page 2*



## Trucker Pays \$2.4 Million for Death of Husband/Great Uncle

John Doe was helping a friend by driving his backhoe to another location. Even though it was a bright, clear, dry day, a tractor trailer rammed into the backhoe and propelled it off to the right of the highway.

John was rushed to Shands. The family drove by the accident scene and arrived at the hospital just before John died.

The defense argued comparative negligence because John was not wearing the seatbelt and did not have

*continued on page 3*



### Ben and Sarah Richard

Key West Florida was the venue for the wedding of Pajcic & Pajcic appellate attorney Ben Richard and his beautiful bride Sarah. Ben and Sarah celebrated the occasion with 25 friends and family members who joined them barefoot in the sand for the intimate oceanfront ceremony. On their first date Ben had been so nervous he crashed his motorcycle into a curb, sending Sarah catapulting off the back. Fortunately, Ben's pride took the brunt of the impact, and Sarah walked away from the accident. Sarah reluctantly agreed to let Ben take her out again — although she insisted on driving — and the two have been together ever since. The couple is eagerly anticipating the arrival of their first child, a son, in late April. Sarah, however, has made it clear that, if Ben ever comes home with another motorcycle, it's "bye bye" Ben.

## Homebuilder Agrees to Confidential Settlement for Quadriplegic Mexican Worker *(continued)*

When the hospital's charges exceeded half a million dollars, it decided to bill Medicaid and discharge John, but he had nowhere to go and nothing to live on. Like so many immigrant workers, John had been paid in cash off the books with no provisions for worker's compensation or social security.

Pajcic & Pajcic found a rehabilitation hospital willing to accept John on a letter of protection and filed suit against the homebuilder. It denied all responsibility and, incredibly, even though John never received any benefits, claimed immunity from civil suit under Florida's workers compensation law.

In denying the homebuilder's motion for summary judgment, the trial court accepted both of Pajcic & Pajcic's arguments against immunity. First, under *Cuero v. Ryland Group, Inc.*, 849 So.2d 326 (Fla. 2d DCA 2003), the homebuilder was not a general contractor for someone else, but an owner and developer building houses for its own account. Second, under *Byerly v. Citrus Publishing, Inc.*, 725 So.2d 1230 (Fla. 5th DCA 1999), since the homebuilder did not provide John with worker's compensation benefits, it was estopped from claiming the immunity defense.

Two subcontractors paid their policy limits on demand, but the case against the homebuilder was not resolved until the third mediation when it was settled for a confidential amount to the mutual satisfaction of the parties. The settlements not only covered reimbursement of Medicaid, the rehabilitation hospital lien and other medical bills, but have also given John financial security for life. He hopes to gain legal residency in the United States so that he can buy a home in Florida for his family.

*Tad Griffin  
with model  
of accident  
scene.*





## Trucker Pays \$2.4 Million for Death of Husband/Great Uncle *(continued)*

his flashers on, but most of the dispute centered on damages.

John's widow Jane was heartbroken by the loss of her husband of 38 years, even though he admittedly had a shortened life expectancy because of his heart condition.

While John was involved and instrumental in the lives of his adult children and their families, their claims depended upon the application of Florida's impact rule to this case.



*However, there was one child whom John and Jane were still raising - John's great niece. For the first six years of her life she suffered from child abuse, abandonment by parental figures, incarceration of her biological father, and frequent changes in care givers. After John and Jane took her in at age seven, she blossomed under John's guidance as her constant companion. His death three years later was devastating to her.*

Pajcic & Pajcic argued for an extension of Florida's equitable adoption doctrine to John's great niece and presented authoritative psychiatric testimony about her counseling needs following John's death and about how her suffering compounded Jane's loss.

The \$2,400,000 settlement allows Jane to devote more time and resources to John's little companion and is John's way of providing for both of them even in his death.

## PAJCIC PROFILE



### The Spirit of the Holidays

In addition to dealing with the pain and suffering from injury or death, many Pajcic & Pajcic clients must also cope with unexpected financial losses. The Holiday season not only magnifies blessings and cheer, but also sorrow and losses. These clients seem grateful for even small gestures. Pajcic & Pajcic employees are encouraged to select as many needy and deserving clients as they can for holiday food certificates. Each employee is also encouraged to deliver \$500 worth of Christmas gifts to one family. The program has not only proven the old adage that it is more blessed to give than to receive, but it also helps spread the spirit of the holidays around the firm.



### Melanie Homer

AIEG, the premier national association of plaintiff lawyers focusing on automotive defects, has selected Melanie Homer for its inaugural Outstanding Paralegal Award. Melanie first started with Pajcic & Pajcic 25 years ago. She has gradually become more and more specialized and now works exclusively on crashworthiness cases – those cases which involve the failure of the motor vehicle structure to protect the occupants from the effects of the crash, resulting in death or serious injury. These cases include rollover, tire detread, roof crush, door latch failure, and cargo intrusion, among others. She is a valuable source of current information on crashworthiness issues and expert qualifications. The chaos of files and banker's boxes in Melanie's office belies both her organizational skills and her computer savvy.

## Insurance Companies for Fatigued Trucker Pay Limits to Police Sergeant

John Doe not only drove a rock truck for Tarmac America, he also delivered pizza several nights a week. By Friday afternoon on February 18, 2005 John had driven more than 90 hours over the prior eight days, way over the maximum permitted by federal law and Tarmac's own policies.

Sergeant Jane Roe had that Friday off and had just picked up her son Baby Roe from school when the tractor trailer turned left in front of her. It was so sudden that Jane hit the back tire of the tractor before the trailer even entered her lane.

Fortunately, Baby Roe suffered no permanent injury, but Jane fractured her right leg, knee and ankle, along with her left knee. The right leg injury required surgical implant of rods and screws, and Jane had to have carpal tunnel surgery on both wrists and epidural injections in her back.

The trucking company fought hard on liability as well as damages. They claimed Sergeant Roe was speeding and unbelted. Doe testified that he had made a complete stop before initiating his turn, but Pajcic & Pajcic found eyewitness contradiction of his version.

*The fight over liability also meant that all the evidence about the trucker's excessive hours would come before the jury.*

Q So that would put us somewhere over 90 hours for the time frame that we're talking about; is that correct?

A Yeah.

While Sergeant Roe looks wonderful after her treatment, she has significant physical limitations which forced her to take early retirement. The primary carrier finally tendered its limits a month before trial, and the first excess carrier five days before trial. While Roe cannot ride horses like she used to, at least she has more time for her children and the champion Catahoulas on the family farm in North Jacksonville.



## Punitive Damages Against Trucking Company

Two friends and co-workers, who were given the ticket for an accident on I-95 with a big truck, have recovered almost a million dollars from the trucker.

The trooper never got the friends' version of the crash because they were rushed to Flagler Hospital by rescue.

Both John Doe and John Roe ended up having shoulder surgery, but made good recoveries and returned to work. Because they knew the crash was not their fault, Doe and Roe looked for a lawyer to represent them against the trucker. After two law firms turned them down because they were charged with the accident, they finally found Pajcic & Pajcic.

*Pajcic & Pajcic found an indentation on the friend's trailer which matched the Kenworth logo and proved that the big truck hit them from the rear.*



Pajcic & Pajcic's investigation not only proved that the truck actually hit the friends' trailer in the rear, but they also found compelling evidence of egregious misconduct and cover-up by both the trucker and his employer.

*The truck driver Luis Fontanez had an awful record:*

- **11 prior suspensions of his driver's license**
- **Four felony convictions including sale of heroine**
- **Four prior accidents while driving a tractor trailer**
- **Two prior firings by trucking companies**

*The trucking company L & S Logistic Services, Inc. had an equally appalling record:*

- **Failed 39 out of 40 roadside inspections**
- **Bindly hired Fontanez without any background check**

L & S and Fontanez continued their bad conduct in the lawsuit filed by Doe and Roe. The trial judge found that they intentionally destroyed critical evidence and ruled that L & S could be responsible for punitive damages.

Faced with all the evidence against it, the trucking company finally admitted liability and paid \$900,000 to Doe and Roe to settle their cases. Doe and Roe still wish the crash had never happened, but at least feel that justice has been served.

### PAJCIC PROFILE



#### Mike Moran

Mike Moran is the latest addition to the second generation of Pajcic Lawyers. He is actually rejoining Curt and Curry Pajcic and Raymond Reid. Those four all started out together in the state attorney's office where Mike went on to win the award for trying the most cases to verdict while maintaining an almost 100% conviction rate. Like Curt and Curry, Mike also coaches his sons Dylan and Jake. In fact, Mike was a pitcher when Dylan's team won the state championship (It was T-ball. Yes, coaches pitch to their own team and, yes, there is a state tournament for six year olds). Mike met his wife Judy when he was a junior at FSU (go Noles!). They are both avid skiers. Mike barefoot skies on Black Creek and Judy skies black diamonds. Mike is happy to rejoin Curt, Curry and Raymond and says, if only he had played on the flag football team with Gary like the others, he would have been in the firm five years earlier.





### Stephanie Schaap

Stephanie Schaap first worked for Steve Pajcic as a five year old wearing a Pajcic for Governor T-shirt campaigning around the state with her dad. She has brought that same infectious enthusiasm to her work as a legal intern with Pajcic & Pajcic for the last three years.

*In the John Doe case Stephanie discovered correspondence from the prosecutor telling the crime lab to minimize unknown hairs found on the victim's body.*

Her main mission at the firm has been digging out the dirty details about bad truckers. Stephanie has a disarming combination of cheerful poise and dogged determination. On one hand, she owns over 100 pairs of shoes and the biggest smile in the firm. On the other hand, she can hold her own at any position in whatever kind of football the guys want to play. In other words Stephanie will make the perfect trial attorney – she can run right over you with a big smile on her face.

## DNA Exonerates Man Wrongly Convicted of Rape/Murder

*Pajcic & Pajcic is pleased that its pro bono efforts have assisted in the exoneration of an innocent person.*

John Doe had served 12 years of a life sentence for rape and murder when his letters to the Innocence Project led to a petition for DNA testing. The testing showed DNA from skin under the victim's fingernails and from pubic hair on her body did not match John's DNA. Remarkably, however, the skin and hair DNA did match each other, which suggested a different, unknown assailant. The judge ordered a new trial for John, and the state announced its intention to retry him.



*Holland & Knight pro bono co-counsel Bob Beckham with John Doe and Bob Link.*

At this point the Innocence Project asked Pajcic & Pajcic attorney Bob Link to act as lead counsel for trial. After approximately a year of legal maneuvering, it was determined that a stain on the victim's bed sheet had never been tested. DNA testing in November 2007 showed that the stain on the sheet was semen. The donor of the semen had the same DNA as the donor of the pubic hair and the skin under Jane's fingernails. Additionally, a former cellmate of two informants who had testified against John in the original trial admitted that he and they had initially fabricated the story of John's confession in order to gain favorable treatment in their own cases.

Finally, on December 4, 2007, the state attorney's office agreed that the charges against John Doe should be dismissed. John is now a free man, and was able to spend Christmas with his parents and children in Wisconsin.

## Delivery Truck Pays \$1 Million for Sticking Out Into Highway

John and Jane Doe met when he was a fire marshall teaching Jane at firefighter school. After their marriage John encouraged and supported Jane in her pursuit of the elusive veterinarian degree. When Jane became a big animal vet, John retired to run the office, cut the six acres and feed the eight horses.

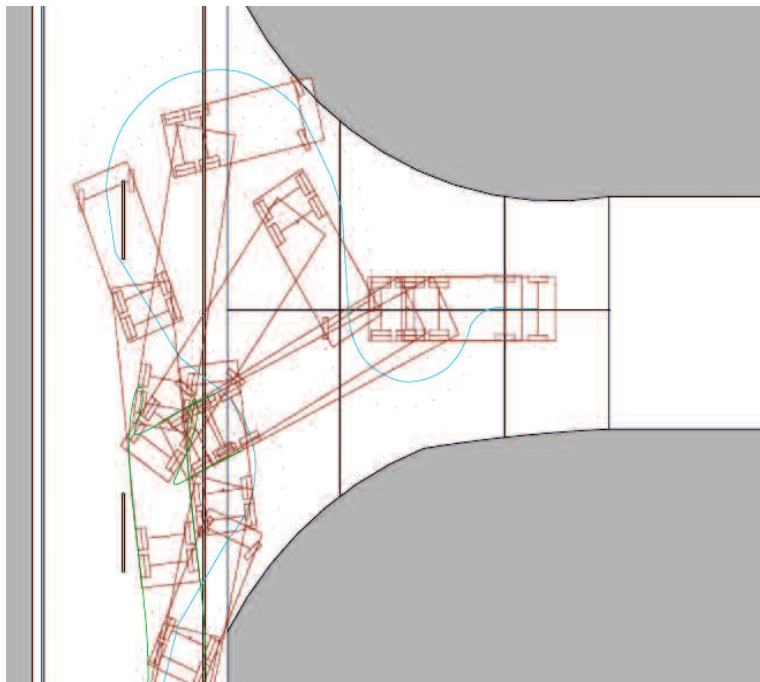
Before sunrise on September 30, 2005 John was headed North along US17 in Volusia County when the front of his car struck the rear of a truck making a delivery to the Hay Place. John suffered brain and spinal cord injuries from which he never recovered.

The truck driver claimed he was still turning when John hit him, and because of his brain injury John could never dispute his testimony.

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*However, through meticulous reconstruction of the truck's path to the gate of the Hay Place, Pajcic & Pajcic was able to prove the driver's testimony did not compute. If he had actually stopped where he said he always did, his truck had to be sticking out into the highway.*

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Despite the conflict on liability and comparative negligence and John's shortened life expectancy because of his significant pre-existing health problems, the case settled for \$1 million.

## Gary Pajcic

Since Gary Pajcic loved animals almost as much as he loved children and had enjoyed many trips to the Jacksonville Zoo with his grandchildren, his widow Sallyn thought a major gift to the zoo would be a nice memorial. The new fountain connecting the river to the exhibits seemed the perfect location, especially since Sallyn often feels Gary's presence in the dolphins who frequent the intracoastal near their home. Anne and Steve Pajcic have made a matching gift for the area surrounding the fountain.





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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

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