

Novak v. Pizza Hut

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If your life is destroyed by someone else's carelessness and the cost of your past and future medical care totals almost \$5 million, would \$10 million be too much to compensate you for all of your harms and losses? Would it be enough?

It is Sunday, the day you and your mother regularly spend together. You like to go shopping at Trader Joe's, have Sunday brunch, and then go shopping again. On the way to your brunch at Applebee's, an 18 year-old Pizza Hut driver with a history of seizure-like activity, driving on cruise control at 40 miles per hour in the opposite direction of traffic, on the route to deliver pizzas to Pizza Hut customers, crosses three lanes of traffic to crash head-on into your vehicle. Your car is crumpled – Jaws of Life has to cut you out of it. You are reduced to the mental capacity of a three-year-old child in many respects. Your mother suffers a broken neck in three places requiring surgery described by her neurosurgeon at trial as immensely complicated and life threatening, and requiring fusion of three levels of your mother's neck and grafting of a part of her hip bone to her cervical spine to protect against future failure of the surgical site. "Endure."

The 18 year-old driver of the Pizza Hut vehicle, when she was 16 to 17 years of age, experienced more than 25 episodes of altered consciousness and is taken by her folks to Kaiser for medical treatment. After a year or so of testing, the Kaiser doctors conclude she might have acid reflux and prescribe Prilosec. Three months or so later, this future delivery driver for Pizza Hut, Nicole, and her folks, report to the doctors that since Nicole started taking Prilosec she no longer has these episodes. The neurologist at Kaiser writes a letter to the DMV stating that Nicole's driver's license should no longer be withheld because "there is no compelling evidence of a neurological disorder." Unbeknownst to Nicole's Kaiser neurologist and other doctors, she has a similar episode **after** going on Prilosec. Following the Kaiser neurologist's letter to the DMV, Nicole continues to have episodes of altered consciousness of one sort or another, and also stops taking the Prilosec.

Nicole is told by her Kaiser neurologist and instructed by the DMV--if she has any recurrence of symptoms she must report this to the DMV and return to see the Kaiser neurologist. She does neither.

After the crash Nicole tells a police officer at the scene and several of the healthcare providers treating her at the hospital that she has had other seizures and "black outs" **after** seeing her doctors at Kaiser and **after** she applied to get her driver's license and up to within a month **before** the car crash. At trial, when asked about these statements while testifying, Nicole bolts off the witness stand and leaves the courtroom yelling obscenities.

Imagine your life is destroyed and your 88 year-old mother is now afraid to leave her home. Before the crash your mother was completely alert and independent, walking three miles per day and working full time doing what she loved and had done for 46 years, assisting those with hearing loss.

Your mother loves her work helping the hearing disabled which she can no longer do because of her injuries. "Endure."

You are a single woman in your early sixties with your share of ups and downs in life but you are now living with your mother in her home, with each of you enjoying and taking care of the other. You love reading, talking about politics, visiting with your family, particularly your two nieces in their twenties who love to spend time with you, their aunt. Now you will spend the rest of your life in bed in a convalescent center, unable to feed, bathe or otherwise take care of your most basic needs, including control of your bowel or bladder. You are only able to speak a word or two at best, but sometimes the words you speak are powerful, such as when the jury heard you on the video from your hospital bed saying "endure, endure."

You need specialized care for your brain injuries to give you dignity and your best chance of improvement. The experienced and capable attorney Pizza Hut brought down from Los Angeles to try this case* agrees you and your mother suffered all of these injuries in the crash, and all of the past medical expenses, over \$3 million for both of you, but objects to the cost of your future medical care. Pizza Hut doesn't think you are going to live as long as your doctor and experts have testified and does not believe you can appreciate the quality care provided by your proposed treatment plan, such as a private room, because you are so badly brain damaged you won't know the difference. "Endure."

In addition to the agreed-upon past medical expenses for you and your mother totaling more than \$3 million, your neurologist estimates your future medical expenses to be an additional \$3.5 million based on your life expectancy of 11 more years (less than half of what it was before the crash). The jury decides you will probably only live another seven years and provides for you to receive \$2.4 million for past medical expenses and \$1.75 million for future medical expenses, and for your mother to receive \$588,000 for past medical expenses and \$93,000 for past and future loss of income.

The jury verdict calls for you to receive \$4.5 million and your mother to receive \$1.5 million for all of your past (two years) and future (the rest of your lives) "pain and suffering," what the law in California defines as, "past and future physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, grief, anxiety, humiliation, and emotional distress." You think about what each of these human losses means to you and your mother and wonder if this is fair.

Is it an unjust verdict? Did you or your mother receive more compensation in the jury verdict than you are entitled to? Did Pizza Hut live up to its responsibility to fully compensate you and your mother for all of your harms and losses?

Is the verdict fair to Pizza Hut since the company did not know of Nicole's previous episodes of altered consciousness? Should an employer in San Diego, California, be responsible for the conduct of its employees in the course and scope of their employment, as the law requires in every state in the nation?*** Do you think companies such as BP should not be responsible for the acts of their employees who fail to take proper precautions in drilling for oil off our coast, whether or not BP

management knows about this in advance? Based on these facts should Pizza Hut not be responsible to compensate those gravely injured by the negligence of Pizza Hut employees who drive on our roadways delivering pizzas for the benefit and profit of Pizza Hut?

Is it fair for Pizza Hut to contest this jury verdict on appeal delaying payment of compensation to you and your mother for one to two or more years? Without compensation during this time will you be able to obtain better quality care so you can continue to “endure”? Will you be forced to negotiate with Pizza Hut to reduce the amounts provided to you and your 88 year old mother by the jury in order to get some money now? Does this mean Pizza Hut is still not being held fully responsible and accountable for the harm done by its employees?

It has been my privilege to represent Shari Novak and her mother, Olena Novak, as a consultant pertaining to the brain injuries suffered by the Novaks in this case. Judging by most of the comments to the article in the San Diego Union-Tribune of July 28, 2010, “Pizza Hut must pay mother and daughter \$10.8 million,” many of you believe the jury verdict is unfair to Pizza Hut. Would it be unfair if these injuries were suffered by you or your loved ones? One of Pizza Hut’s managers testified at trial the company’s rules require all of its drivers to put “safety first,” because “it could be your family or mine that is hurt by the unsafe driving.” Isn’t this what happened to the Novaks?

In trial, lawyers are not permitted to argue the “golden rule,” that is, to ask the jurors to place themselves in the same position as the litigants. I have phrased my comment this way because so many of your comments are so personal. But here’s another way for you to look at this case. If you were on the jury and knew these facts and law, would you decide this case any differently than 11 of the 12 jurors who voted for this verdict? If so, why don’t you tell us how you would have achieved justice in this case.

*The Pizza Hut attorney has an explanation for almost anything: Nicole flees the court exhaling profanity—she was intimidated by plaintiffs’ counsel; Nicole didn’t report back to her neurologist and other doctors when she continued to have symptoms—she was only told to report back if she had “different” symptoms, not the same symptoms she had experienced before; the Pizza Hut manager lied on the witness stand—the law requires you to treat a corporation like any other person and Pizza Hut is showing you, members of the jury, the faces of the men and women of Pizza Hut.

**The concept in the law is called vicarious liability or “respondeat superior.” Fortunately, the Judge presiding over the trial, San Diego Superior Court Judge Richard Strauss, was fair to both sides, the Novaks and Pizza Hut, and explained the law clearly to the jury.