



BY Courtney L. Davenport

Courtney L. Davenport is senior editor with AAJ's Law Reporters and a contributing editor for Trial.

Spotlight

# Parents Recove Lost Consortium for Adult Son's Death

*Bachrach v. Covenant Transp., Inc., No. 2010-cv-00315 (D. Ariz. Mar. 13, 2012).*

**W**hen adults die in avoidable accidents, their parents' losses are often overshadowed or ignored in subsequent lawsuits. After Carrie and Randy Bachrach lost their son Matthew, they refused to accept a low settlement offer for their lost consortium claim and instead put the case before a jury. Despite several setbacks, their attorneys were able to obtain more than \$13 million for them.

Matthew Bachrach, a 31-year-old musician, was driving on an Arizona highway one night in September 2008. Farther ahead, a tractor-trailer driven by Alfred Simister veered off the road and overturned, blocking the left lane. Bachrach was unable to see the trailer and slammed into it. He was killed instantly. Two other vehicles struck the truck, and one woman died.

In addition to his parents, Bachrach left behind two young sons and a wife who was pregnant with their third son, born two months after his father's death.

Bachrach's wife and parents filed a wrongful death suit against Covenant Transport Inc., the trucking company that owned the tractor-trailer and had hired Simister. Police speculated that Simister fell asleep behind the wheel. Bachrach's wife, other injured people, and the family members of the woman who died settled their claims at mediation. Bachrach's parents felt that Covenant's settlement offer did not reflect the extent of their loss. They hired Michael Leizerman of Toledo, Ohio, to file a separate loss of consortium claim. He brought in Christopher Stombaugh of Platteville, Wis., and Chicago attorney Kenneth Levinson to help.

The attorneys faced challenges in pursuing justice for the Bachrach's. The Bachrach's initially requested punitive damages because Covenant hired

a driver who had twice been denied a commercial license and had been fired by other employers. Despite this evidence, the court granted summary judgment on the punitive damages issue. When Covenant later admitted liability, the attorneys found themselves with very little admissible evidence.

"The liability admission is something that always concerns me because the defendant is recognizing that the facts can anger the jury and increase the verdict, so it admits liability to keep the facts out," said Leizerman. "We fought to get the underlying facts in, but the judge wouldn't allow it because it was only a damages trial."

The attorneys realized there could be a conflict of interest between Bachrach's parents, who had been divorced for years, because the mother's relationship with Bachrach had been much stronger. The lawyers decided that Stombaugh would represent Bachrach's father at trial, while Leizerman and Levinson represented Bachrach's mother. The three disputed whether the father should settle his claims so that the jury would have only the mother's grief to focus on, but eventually decided against it.

The attorneys were again stymied at voir dire, where the court questioned the jury and limited each party to only 10 minutes of their own questioning. Stombaugh spent his time trying to

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discover whether any potential jurors would have a bias against the Bachrachs, who are Mormons. Leizerman's job was to find out whether any jurors would have a hard time evaluating the cost of losing a child. Before the attorneys could decide who would be most sympathetic, however, the court dismissed any potential juror who showed emotion while Leizerman talked about the Bachrachs' loss.

At trial, the attorneys followed what Leizerman calls the "stripped and naked" approach. They first stripped the case down to its barest elements, deciding that because it was now based solely on their clients' loss of love and affection, the only witnesses they needed were the clients themselves and the mother's best friend to testify about the mother's close relationship with her son. The father explained to the jury how he and his son had "peaks and valleys," and the accident destroyed his chance to reconnect with his son. The defense did not call any witnesses or present any evidence, and cross-examined the father but not the mother.

The attorneys were then "emotionally naked" before the jury during opening and closing, admitting that they too had struggled with how to value the loss of affection of an adult child. Leizerman told the jury that although they might like an easy formula or algorithm to help them come up with a dollar amount, they were the evaluators who must decide how much they felt the parents' loss and grief were worth.

The jury awarded \$9.5 million to the mother and about \$3.72 million to the father. Leizerman said that large lost consortium verdicts are a lesion to trial lawyers.

"I hope it helps change the conversation to the fact that consortium claims are and should be the most valuable claims we handle because we talk about loss of love in every case," he said. "That's what they're really about." ■