

**CASE INFORMATION SHEET**  
**FLORIDA LEGAL PERIODICALS, INC.**  
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**COUNTY and COURT:**

Sarasota County Circuit Court

**NAME OF CASE:**

LAUREN ALTERMAN, as Personal Representative of the Estate of James P. Brashear, and KIM GUARINO, as Parent and Legal Guardian of TYLER BRASHEAR, a Minor v. ZEP CONSTRUCTION, INC. and TRAFFIC CONTROL PRODUCTS OF FLORIDA, INC.

**CASE/DOCKET NO.:** 58-2008-CA- 013208-NC

**JUDGE:** Rick De Furia

**PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:**

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Coral Springs, FL

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**DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:**

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Attorneys for TCP

**AGE/SEX/OCCUPATION OF PLAINTIFF or DECEDENT:**

Decedent, James Brashear, 42 years of age, delivery driver for Domino's Pizza.

**For WRONGFUL DEATH cases, please give age and relationship of survivors:**

Tyler Brashear, Decedent's son, age 11.

**DATE, TIME and PLACE OF ACCIDENT or OCCURRENCE:**

Approximately 12:25 a.m. on October 1, 2007 in the northbound lanes of I-75 near Bee Ridge Rd., in Sarasota, Florida.

**CAUSE OF INJURY:**

At the time of the accident, Zep Construction, Inc. was performing bridge redecking work on I-75 approximately 1½ miles north of Bee Ridge Rd. Traffic Control Products, Inc. was a subcontractor for Maintenance of Traffic. At the time of the accident a rolling road block was being utilized to facilitate a phase shift (including lane shifting) near the construction.

Northbound traffic had backed up near Bee Ridge Rd. At approximately 12:25 a.m., a semi-tractor driven by Pablo Merlos was travelling northbound on I-75, became distracted and did not notice the slowed or stopped traffic. His semi tractor-trailer collided with ten vehicles. The first vehicle he hit was the vehicle driven by James P. Brashear in which Tyler Brashear was a passenger.

**NATURE OF INJURY** [please be specific concerning injuries, treatment, and medical testimony]:

James P. Brashear died at the scene.

Tyler Brashear was transported to Bayfront Hospital by Bayflite. Tyler had injuries to his spleen, including internal bleeding, and various cuts and bruises on his head and body.

**PLAINTIFF'S EXPERT WITNESSES:**

1. John Bush, C.P.A., C.V.A.  
Plantation, Florida

Mr. Bush was utilized by Plaintiffs to project the future damages of both Tyler Brashear and the Estate of James Brashear. Plaintiffs attempted to have this expert project a substantial amount of future damages for a business which James Brashear had not yet even started. Defendants focused on the fact that James Brashear had never had a job that paid more than \$9 per hour.

2. Russell Lewis, Ph.D., P.E.  
New York, New York

Mr. Lewis was the Plaintiffs' primary witness. He was used by Plaintiffs to attack the plan for the rolling road block which was utilized by Zep Construction and TCP employees. The crux of his opinions was that if there had been more signs further out from the work zone, the accident never would have occurred. Defendants focused on the fact that the signs were already two miles from the work zone and approved by the Florida Department of Transportation. Further, another tractor-trailer that was driving nearly side-by-side with Pablo Merlos was able to stop based upon the signs that were already in position.

3. Kevin Breen, P.E.  
Ft. Myers, Florida

Plaintiffs' counsel only used portions of Mr. Breen's deposition transcript. Mr. Breen had been to the accident site nearly a year after it had occurred and had taken pictures. He created measurements from the pictures in an attempt to recreate the scene. In his deposition, Mr. Breen opined an approximate stopping distance and best guess on the truck's speed. The Court allowed Plaintiffs to use those figures. Defendants countered with the accident reconstruction done by its expert, Don Fournier, who had actually gone to the scene within days of the accident.

**DEFENDANT’S EXPERT WITNESSES:**

1. Don Fournier, P.E.  
Orlando, Florida

Don Fournier was the primary expert for all Defendants. Mr. Fournier had been to the accident site within days of the accident and had examined all physical evidence. During his testimony, he utilized a recreation of the accident showing the initial location of all vehicles in explaining how all vehicles came to their final resting position. He was able to show that the second tractor-trailer had plenty of time to stop and, therefore, had Pablo Merlos been paying attention, he would have been able to stop as well.

2. Paul Paxton  
Truck Driving  
Pensacola, Florida

Paul Paxton is a truck driving expert. He has been in the trucking business for over 35 years. He testified regarding how a professional truck driver should do his job. He was utilized to show negligence on behalf of Pablo Merlos based upon the fact that Pablo Merlos admitted to driving in cruise-control. Paxton testified that professional truck drivers should not be approaching blind crests while in cruise-control. He also testified that the food containers found in the cab were likely a distraction as well.

**VERDICT: For Plaintiff**

**Date of Verdict:** February 26, 2010

Compensatory Damages:	\$4.1 million
Punitive Damages:	\$ 100,000 ZEP \$ 50,000 TCP
Comparative Negligence:	65% Zep Construction, Inc. 30% Traffic Control Products, Inc. 5% Pablo Merlos (truck driver)

**JUDGMENT:** For Plaintiff in the amount of \$4,284,302

**DATE OF JUDGMENT:** April 9, 2010

**DEFENDANT'S OFFER:** \$650,000 Proposal for Settlement

**PLAINTIFF'S DEMAND:** \$34 million at trial

**ATTORNEY'S COMMENTS:**

The rolling road block was initiated on the blind side of an overpass on northbound I-75. Although there were signs two miles from the work zone, there were no warning signs south of the start of the rolling road block alerting drivers to a rolling road block in progress. Between the multiple defendants, it appeared that no one had actually taken charge of the rolling road block.

The tractor-trailer driven by Pablo Merlos came over the overpass at 75 mph and struck ten vehicles, all of which were stopped due to the rolling road block. There was some testimony that the tractor-trailer actually went airborne. Ultimately, there were two deaths and many other injured victims.

The vehicle driven by James Brashear, in which Tyler Brashear was a passenger, was the first vehicle impacted by the tractor-trailer. James Brashear was crushed to death and his son was inside screaming for his Dad throughout the rescue operation. Tyler Brashear testified on the stand that he recalled his father's bloody face in his lap and that his father said "I love you" just before dying.

The case received extensive press coverage, including the in New York Times. The actual trial was broadcast over the Internet.

Submitted by: Paul B. Fulmer III, Esquire Date: August 2, 2010

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