

1. COMPENSATORY AND PUNITIVE DAMAGES AGAINST TEDESCHI

A Similar Case in New Mexico settled for \$21.2 million in compensatory damages.

In the case of Estate of Store Clerk Elizabeth Garcia vs. Allsup's Convenience Stores Inc. chain over Lack of Security¹, **it was claimed that the store had lack of cameras and no second staff member during late-night robbery** and murder of a store clerk in New Mexico on January 16, 2002.

- The case was filed in state district court in Santa Fe on January 2005 by attorney Mary Ann McConnell representing the estate of Elizabeth Garcia and Garcia's three young children. The lawsuit sought full compensation for Garcia's estate and children and aggravating circumstances damages, punitive damages, costs of litigation, and other relief.
- **The case listed a couple of incidents where Allsup's clerks were killed while working alone on the graveyard shift and requests by an employee to have two clerks on the shift.**
- Before Elizabeth's murder, the Hobbs Police Department's COP STAT crime-tracking program revealed that the **Allsup's stores were a large component of the total crime occurring in Hobbs, New Mexico. This case and other violence prompted the state to approve regulations requiring stores open after 11 p.m. to have two workers on duty or limit access through bulletproof glass windows.** Stores that can't afford the security measures must close at 11 p.m. in New Mexico. Garcia's murder was the 12th homicide that has occurred at Allsup's stores in 30 years.
- On April 7, 2008 it was reported that Santa Fe jury began deliberating whether to award damages to the three children of Elizabeth Garcia, who was murdered six years ago. The attorney said in her closing statement that Garcia's children currently get only \$271.88 every two weeks from their dead mother's workers' compensation insurance. **McGinn suggested the jury award \$60 million to the children.** *Not only will this prove their mother's life was valued, she said, but it might force convenience stores to develop better security.*
- On April 8, 2008 the Lawyers settled her estate's wrongful-death lawsuit, minutes before a Santa Fe jury was to return a \$51.2 million verdict. Jury decided to assess Allsup's Enterprises **\$21.2 million in compensatory damages** and \$30 million in punitive damages.

Observation and Opinion: I find this case similar to our case for damages based on the following:

- i. Tedeschi lacked adequate security camera. The cameras publicly released do not show clear and identifiable image of the criminal and it also fails to show the car's license plate, with which the criminal could have been captured by now. Tedeschi incident occurred in broad daylight, further making its security measures questionable. Tedeschi did not have a second staff available that could have prevented the death or alerted the law enforcement officers. Tedeschi did not have security measures such as limit access through bulletproof glass windows.
- ii. Tedeschi has a history of violent and dangerous work environment, known to more than 4 incidents of store hold up, threatening the life of the clerks has happened in 1 year. Tedeschi also has a history of police investigation in sales of alcohol to minors, which further establishes a criminal and dangerous working environment. See below for list of such Tedeschi's incidents:

¹ <http://www.jrrobertssecurity.com/security-news/security-crime-news0015.htm>

Tedeschi Food Shops store Incidents

- Tedeschi Robbed 4 times since October 2008: Oct. 17, 2009²- After viewing the video from a store security camera, police said they recognized the gunman who robbed more than \$300 from the Tedeschi Food Shops store at 390 S. Union St.. Armed with an arrest warrant, police went looking for George Colon Jr., 27, of 54 Melvin St. **This is the third time in a year that the store has been robbed since last October.**
 - Clerk injured in armed robbery: December 11, 2009: Police are investigating three armed robberies that occurred at Tedeschi's convenience store, 1237 Pleasant St.³, within a week. A clerk was injured in one incident. *Fall River* is a city in Bristol County, Massachusetts.
 - Tedeschi's Dangerous Environment: Owners of Pop's Fine Wines and Liquors, Dynasty Convenience Shops and Tedeschi's Food Shops⁴ admitted their employees served alcohol to a minor. On October 30, 2008 Police conducted checks of Tedeschi's and Dynasty Convenience Shops.
- iii. If Tedeschi considers Mr. Dangol an employee, it may try to avoid litigation based on workers compensation solely, which is insufficient. The family is entitled to full compensation and justice.
- iv. A possible case can demand (1) full compensation for Late Dangol's estate and children and aggravating circumstances damages, (2) punitive damages to force Tedeschi opt for better security measures (3) costs of litigation, and other relief.

² <http://www.allbusiness.com/crime-law/criminal-offenses-crimes-against/13229668-1.html>

³ http://www.heraldnews.com/news/local_news/x1669485106/Pleasant-Street-Tedeschis-held-up-three-times-in-a-week-police-say

⁴ <http://www.gettips.com/NEWS/MA013108.pdf>

2. WORKERS COMPENSATION CASE AGAINST TEDESCHI

Boston Supreme Judicial Court recently decided a No Case against CVS Store on death of a clerk

Parents Can't Sue Son's Employer for Wrongful Death⁵ - November 14, 2008: The parents of a store clerk stabbed to death by a shoplifter cannot sue the store for wrongful death, the state's high court ruled. The parents sued Massachusetts CVS Pharmacy, the owner of the Boston store that employed the high school student. In February 2004 he was fatally stabbed outside the store when he confronted a shoplifter who had stolen several boxes of toothpaste.

- On November 13, 2008, Supreme Judicial Court (MA) ruled that the parents of a young CVS clerk who was stabbed to death in 2004 in Boston Longwood Avenue store cannot sue the store's owners **in the wrongful death case** brought by the parents of Cristian Ribeiro Giambrone⁶ against Massachusetts CVS Pharmacy LLC.
- The court said **the suit was barred by a provision in the workers' compensation law that prohibits lawsuits against employers for work-related injuries.**
- The provision was intended as a tradeoff in which workers would give up their rights to sue in exchange for receiving workers' compensation benefits.

Observation and Opinion: I find this case similar to our case based on the following:

- This case may be applicable to Late Dangol if Tedeschi considers him as an employee with Workers Compensation benefit.
- If that's the case, we do not have a Litigation Case for Wrongful death but only workers compensation for his wife and children.
- If Tedeschi does not consider Mr, Dangol as an employee under workers compensation, we have a case for wrongful death.

What is Workers' Compensation?⁷

- When an employee is injured in the course of his or her employment, the injured worker is entitled to a number of statutory workers compensation benefits. The workers' compensation benefits include:
 - Permanent and Total Incapacity Benefits
 - Vocational Rehabilitation Services
 - Reasonable Burial Expenses up to \$4,000 where Injury Results in Death
 - Weekly Benefits to Surviving Spouse until she remarries
 - Weekly Benefits to Dependent Children

⁵ <http://southeastern-massachusetts.injuryboard.com/wrongful-death/parents-cant-sue-sons-employer-for-wrongful-death.aspx?googleid=252574>

⁶ http://www.boston.com/news/local/breaking_news/2008/11/sjc_throws_out.html

⁷ <http://www.radulskilaw.com/practice.htm#WorkersComp>

Massachusetts Workers' Compensation⁸

- In Massachusetts, workers' compensation benefits usually include coverage of your medical costs, disability payments, 60% of your average income (or greater if your injury resulted in a disability),
- Compensation for permanent disfigurement or scars,
- Compensation for loss of function,
- Vocational retraining if the injury prevents the worker from returning to their original job, and
- **Death benefits for immediate family members** if the worker was killed on the job. In return for this "guarantee," an employee is not allowed to sue his or her employer for any work-related injuries.

Massachusetts Workers Compensation IS DESIGNED TO AVOID LITIGATION⁹

- Workers' compensation laws provide money for people (or their families, in the case of a fatality) that are injured on the job, regardless of who is at fault. The laws are designed to eliminate the need for litigation.
- Therefore, **those who receive workers' compensation usually cannot sue their employers,** BUT they **maintain the right to sue third parties involved in the accident** (i.e. the manufacturer of a failed piece of equipment). *[If Tedeschi claims the **Pakistani Franchisee** grounds, we can counter claim with this **right to sue Tedeschi as the third party.**]*
- Workers' compensation laws cover almost all United States ' workers, with the exception of some federal employees.
- In most states, it is illegal for an employer to retaliate against an employee who files for workers' compensation.

⁸ <http://www.altmanllp.com/lawyer-attorney-1226007.html>

⁹ <http://www.workerscompattorneys.tv/>

GENERAL LAWS OF MASSACHUSETTS

CHAPTER 152: WORKERS' COMPENSATION¹⁰ PROCEDURE

Chapter 152: Section 7A. Presumptions; employee unable to testify

Section 7A: **In any claim for compensation where the employee has been killed or found dead at his place of employment** or, in the absence of death, is physically or mentally unable to testify, and such testimonial incapacity is causally related to the injury, **it shall be prima facie evidence that the employee was performing his regular duties on the day of injury or death** and that the claim comes within the provisions of this chapter, **that sufficient notice of the injury has been given** and that the injury or death was not occasioned by the willful intention of the employee to injure or kill himself or another.

- Tedeschi has a SUFFICIENT NOTICE of the death and therefore there is an AUTOMATIC CLAIM FOR WORKERS COMPENSATION.
- Tedeschi should be providing the first weekly check to the spouse and the child each, under Workers Compensation within 7 to 15 days. If not, it is considered a violation.
 - **If the weekly check comes from the Franchisee**, we have a third party claim to sue Tedeschi for Wrongful death
 - **If the weekly check comes from Tedeschi**, we have additional claim with them under their Employee Health and Life Insurance Policy.

Tedeschi Life Insurance Policy for Employees: The following is mentioned in their website:

- Working at Tedeschi's¹¹ provides a competitive compensation plan with a generous benefit package. ***We need to know the following:***
 - ***When did he join Tedeschi?***
 - ***How long has he been receiving the checks and from whom?***
 - ***Who issued his previous pay checks and 2007-2008 tax returns and W-2?***
 - ***Did he get paid from Tedeschi or the Franchisee?***
- After sixty days, management personnel and full-time employees are eligible for Major Medical and Dental insurance
 - **A major medical insurance carries repatriation costs and health insurance.**
- After ninety days short-term disability insurance, long-term disability insurance, life insurance
 - **If we can prove through his previous pay stubs and an approved leave or vacation in October when he visited Nepal, he qualifies for the Life Insurance**
- After one-year 401(k) retirement plan and paid vacation.
 - **If we can prove his employment for more than a year, there is a retirement fund as well.**
- Part Time personnel are eligible for the Starbridge Health Plan, which offers limited medical and dental coverage. – **This carries a life insurance of about \$15000.**

¹⁰ <http://www.mass.gov/legis/laws/mgl/152-7a.htm>

¹¹ <http://www.tedeschifoodshops.com/careers.php>

3. WRONGFUL DEATH AGAINST TEDESCHI

What is a Wrongful Death¹²?

- In contrast with murder and manslaughter, which involves the taking of a human life without legal justification, which are criminal acts punishable by imprisonment or death, claims for “wrongful death” are civil actions, by which **the estate of the decedent seeks monetary compensation for death brought about by negligence.**
- The law, which allows the estate of a deceased person to recover monetary damages, is **Massachusetts General Laws, Chapter 229, the so-called “Wrongful Death Statute”**. According to the statute, where the death of an individual is due to either the negligence or to the “willful, wanton or reckless” **conduct of a third party**, the person(s) designated by the Probate Court as the estate’s legal representative (referred to as the “Executor/trix” (where a Last Will and Testament exists) or the “Administrator/trix” (where no such will exists) may bring a civil action against the responsible parties to recover damages on behalf of all legal heirs or beneficiaries of the decedent.
- **The amount of monetary compensation** to which the estate is legally entitled to recover is set forth in G.L. c. 229 §2, which states: **A person (Tedeschi) who (1) by his negligence causes the death of a person, or (2) by willful, wanton or reckless act causes the death of a person under such circumstances that the deceased could have recovered damages for personal injuries if his death had not resulted, shall be liable in damages in the amount of:**
 - (1) **the fair monetary value of the decedent** to the persons entitled to receive the damages recovered, as provided in section one, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered; +
 - (2) **the reasonable funeral and burial expenses** of the decedent; +
 - (3) **punitive damages in an amount of not less than five thousand dollars** in such case as the decedent’s death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant; **except that (1) the *liability of an employer to a person in his employment shall not be governed by this section,* [this means workers compensation applies]**
 - **A person shall be liable for the negligence or the willful, wanton or reckless act of his agents or servants while engaged in his business to the same extent and subject to the same limits as he would be liable under this section for his own act. [This means Tedeschi is liable thorough his agent, the Pakistani Franchisee]**
 - Damages under this section shall be recovered **in an action of tort by the executor or administrator of the deceased. An action to recover damages under this section shall be commenced within three years from the date of death**

¹² http://www.parkerscheer.com/wrongful_death_lawyer.html