



## And The Defense Wins

Published 03-24-10 by DRI



DRI members [Susan J. Levy](#) and [Jonathan A. Barash](#), partners with **Levy & Pruett** in Atlanta, Georgia, obtained a defense verdict recently for DeKalb County, Georgia. The plaintiff, a 41-year-old phlebotomist, was a front-seat passenger in a vehicle traveling north on Clairmont Road. A DeKalb County, Georgia, police officer was driving southbound in a DeKalb County police unit on his way to back-up a fellow officer. At approximately 2:30 a.m., the plaintiff's vehicle attempted to make a left turn into an apartment complex across the southbound lanes of Clairmont and was struck by the police officer.

The plaintiff, who sustained a traumatic brain Injury and multiple fractures requiring surgery, sued DeKalb County, alleging that the officer was speeding without his blue lights and sirens activated. At trial, he claimed past medicals of \$1 million, past wage losses of \$125,000 and future wage losses of \$480,000.

Though the police officer testified that he was traveling "around the speed limit," there was expert testimony from both plaintiff and defense experts that the police officer may have been traveling 3 to 5 miles above the speed limit. This evidence authorized the judge to charge the jury that the police officer was guilty of negligence per se.

Nevertheless, DeKalb County argued successfully that the sole proximate cause of the collision was the negligence of the driver of plaintiff's vehicle. Specifically, defense counsel argued that the driver was impaired from drinking all night, that he failed field sobriety testing, and that he recklessly turned in front of the police officer who had the right of way. Under Georgia law, DeKalb County's liability was capped at the limits of its liability insurance. Because the plaintiff's special damages far exceeded the amount of the cap, DeKalb County decided for strategic reasons to waive its right to have the jury apportion liability between the County and non-party driver.

Although this decision allowed the plaintiff to argue that the county was 100% responsible even if the officer was only 1% negligent, the jury deliberated for approximately four and a half hours and returned a verdict in favor of the defendant, DeKalb County.

**To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit [www.dri.org](http://www.dri.org).**