



THE  
*Art*  
OF RISK

# Reverse Reptile Theory

Presented by:

John Toohey: [jtoohey@bremerwhyte.com](mailto:jtoohey@bremerwhyte.com)

Rachel Mihai: [rmihai@bremerwhyte.com](mailto:rmihai@bremerwhyte.com)

Caryn Siebert: [caryn\\_siebert@gbtpa.com](mailto:caryn_siebert@gbtpa.com)





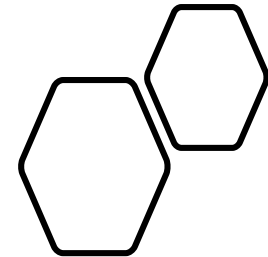
# Family of man shot by Fresno police awarded \$ [redacted] by federal civil jury

BY YESENIA AMARO MARCH 06, 2019 01:30 PM



A federal jury on Wednesday awarded \$ [redacted] to the family of a [45-year-old man who was fatally shot by Fresno police](#) in 2015.

The family of Casimero “Shane” Casillas sued the city over his death. In its lawsuit it alleged that Fresno police Officer Trevor Shipman violated



AMAZING IS CLOSER THAN YOU THINK.

New Homes Just North of River Park from the \$300s



10:06



AA

google.com



# Family of man shot by Fresno police awarded \$4.75 million by federal civil jury

BY YESENIA AMARO MARCH 06, 2019 01:30 PM



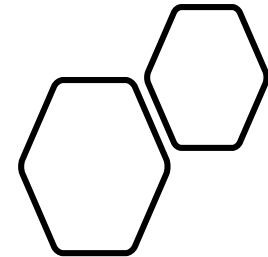
A federal jury on Wednesday awarded \$4.75 million to the family of a [45-year-old man who was fatally shot by Fresno police](#) in 2015.

The family of Casimero “Shane” Casillas sued the city over his death. In its lawsuit it alleged that Fresno police Officer Trevor Shipman violated



**AMAZING IS CLOSER  
THAN YOU THINK.**

New Homes Just  
North of River Park  
from the \$300s



# Woman Killed by Long Beach Police Office

Published on Thursday, 28 March 2019 14:37

Written by LAWT News Service



2017



382



88



March 28, 2019

LAWT News Service

Concluding a four day trial, on Friday, March 23, 2019, a United States District Court for the Central District of California jury awarded \$ [REDACTED] to the family of a mentally ill Long Beach woman who suffered fatal injuries on March 15, 2017.

# Woman Killed by Long Beach Police Office

Published on Thursday, 28 March 2019 14:37

Written by LAWT News Service



2017



382



88



March 28, 2019

LAWT News Service

Concluding a four day trial, on Friday, March 23, 2019, a United States District Court for the Central District of California jury awarded \$9,800,000 to the family of a mentally ill Long Beach woman who suffered fatal

10:08



AA

google.com



ocregister.com



# Jury awards \$ [REDACTED] [REDACTED] to children of man who died after 2016 confrontation with Anaheim police officers

Alma Fausto

PUBLISHED: November 20, 2019 at 5:23 pm |

UPDATED: November 22, 2019 at 7:54 am

[Crime + Public Safety](#), [Local News](#), [News](#)



10:08



AA

google.com



ocregister.com



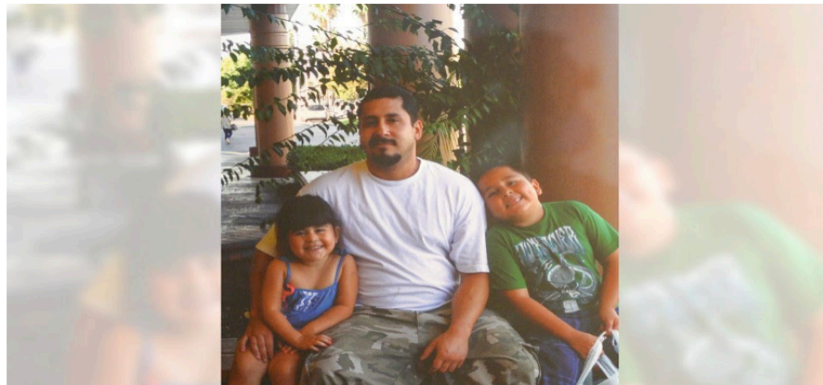
# Jury awards \$13.2 million to children of man who died after 2016 confrontation with Anaheim police officers

Alma Fausto

PUBLISHED: November 20, 2019 at 5:23 pm |

UPDATED: November 22, 2019 at 7:54 am

[Crime + Public Safety](#), [Local News](#), [News](#)





10:06



AA

🔒 google.com



Free Consultation: 866-966-5240

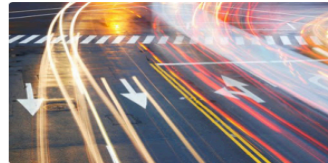
TAP TO CALL

TAP TO TEXT

July 08, 2016

## \$ [REDACTED] Jury Verdict in Los Angeles Dangerous Intersection Case

by [Steven M. Sweat](#)



A recent case in Los Angeles, California (Lani Guillmete, et.al. vs. City of Los Angeles, et. al. – L.A. Superior Court Case Number BC523080)

illustrates the responsibility cities hold to take action once they learn that intersections or roadways are in dangerous conditions. If a city does nothing to correct the problem and someone is seriously injured or killed because of it, the city may be held liable to pay damages for the losses caused by the accident.

### Background of the case

On Feb. 27, 2013, Thomas Guilmette, a 59-year-old rocket scientist, was riding his motorcycle on



10:06



AA

🔒 google.com



Free Consultation: 866-966-5240

TAP TO CALL

TAP TO TEXT

July 08, 2016

## \$23.7 Million Jury Verdict in Los Angeles Dangerous Intersection Case

by [Steven M. Sweat](#)



A recent case in Los Angeles, California (Lani Guillmete, et.al. vs. City of Los Angeles, et. al. – L.A. Superior Court Case Number BC523080)

illustrates the responsibility cities hold to take action once they learn that intersections or roadways are in dangerous conditions. If a city does nothing to correct the problem and someone is seriously injured or killed because of it, the city may be held liable to pay damages for the losses caused by the accident.

### Background of the case

On Feb. 27, 2013, Thomas Guilmette, a 59-year-old rocket scientist, was riding his motorcycle on

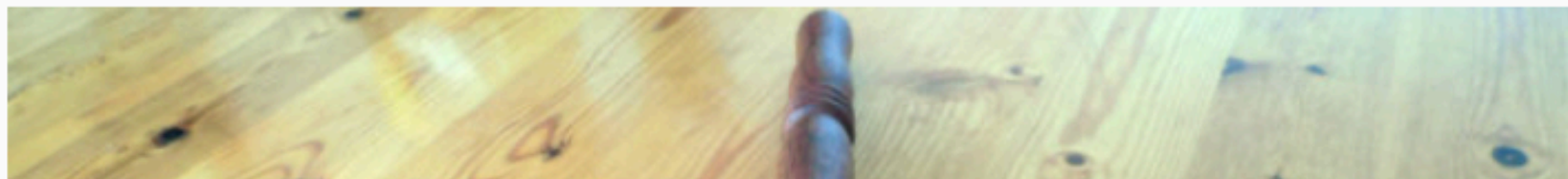


# Jury awards \$ [REDACTED] to Southland brothers injured in head-on crash with semi-truck

POSTED BY DEBBIE L. SKLAR ON FEBRUARY 23, 2018 IN CRIME | 1,361 VIEWS | LEAVE A RESPONSE

---

Share this article:



# Jury awards \$53.7 million to Southland brothers injured in head-on crash with semi-truck

POSTED BY DEBBIE L. SKLAR ON FEBRUARY 23, 2018 IN CRIME | 1,361 VIEWS | LEAVE A RESPONSE

---

Share this article:



5:18



AA

google.com



wsj.com



# THE WALL STREET JOURNAL.

BUSINESS

## Roundup Verdict

California couple blamed non-Hodgkin lymphoma diagnoses on Bayer's weedkiller



Bayer has come under fire from investors after losing three trials in California tying Roundup to cancer. PHOTO:

DANIEL ACKER/BLOOMBERG NEWS

SHARE



## THE WALL STREET JOURNAL.

BUSINESS

# Roundup Verdict Cut to \$87 Million From \$2 Billion

California couple blamed non-Hodgkin lymphoma diagnoses on Bayer's weedkiller



Bayer has come under fire from investors after losing three trials in California tying Roundup to cancer. PHOTO:

DANIEL ACKER/BLOOMBERG NEWS

SHARE



# INTRODUCTION



# Reverse Reptile– Overview of Presentation

- What is Reptile Strategy?
- Defending Against Reptile Using Reverse Reptile
- When to use Reverse Reptile
- Sequencing of Safety Rule Questions
- Reverse Reptiling of Plaintiff's (or co-defendant's) Expert and Witness
- Four Psychological Weapons To Use During Reverse Reptile
- When to Avoid Using Reverse Reptile





# What is Reptile Strategy?

- **A trial technique used by Plaintiff's attorneys to convince jurors that they are the only ones whose actions can and should prevent catastrophic harm and injuries to them and their loved ones.**
  - **The theory is based on the concept that the reptilian complex of the brain controls our basic life functions:**
    - **Breathing**
    - **Hunger**
    - **Survival**
  - **When those functions are threatened, that part of the brain will control emotional function.**
- **Goal: To frame each case in a way to shift each juror's brain into survival mode when he/she decides a case.**



## Employing Reptile Strategy

- A plaintiff's attorney must show the immediate danger of the kind of thing the defendant did, and how fair compensation can diminish that danger within the community.
- The argument in regards to the appropriate measure of damage is not the amount of harm actually caused in the case, but rather the maximum harm a defendant's conduct could have caused.



## The Reptile at Work

- Fear/Danger Based Strategy
- General “Rules” of the Road
- Defendants “Rules” Violations
- Not a Focus on a Single Past Injury: On-Going Danger to the Entire Community
- Not One Past Wrong: Reach a Conclusion that makes the Community Safer from Many On-Going Risks



# Case Study – Big Bad Public School

- **THEME:** School Fails to Act with Ordinary Prudence
- **LIABILITY:** Failed to Maintain Discipline and Protect Students
- **DAMAGES:** Caused the Harmed Injury
- **JURY:** Make Public Pay Harmed Damages

---

## Reptile Attack!!!

- **RULES:** Schools **MUST** Identify, Guard and Warn Against Every Identifiable Hazard Using ALL Available Information
- **VIOLATION:** Dangerous Conditions All Over
- **DANGER:** Caused Many Injuries and Threatens Many More...
- **JURY:** A Large Verdict is Needed to Change Behavior AND Make Community Safer



# Reptile Rules

## SECURITY/PREMISES LIABILITY

Traditional Negligence: How would a person use reasonable care to keep the property in a reasonably safe condition?

## REPTILES ATTACK!!!! – PROPERTY OWNERS MUST

- Take every precaution to make and keep the location safe, including regular, recorded inspection
- Ensure the property is entirely code compliant
- Anticipate and guard against every foreseeable danger, including criminal misconduct, by using lighting, gating and patrolling guards



# Reptile Rules

## PRODUCT LIABILITY

Traditional Strict Liability: Did the defendant distribute/manufacture/sell a product with a defect, defective design, in sufficient instructions or warning?

## REPTILES ATTACK!!!! – MANUFACTURERS MUST

- Develop and follow written safety procedures and record compliance;
- Identify potential hazards and as much as possible, eliminate, guard or warn against them;
- Conduct pre-and post production tests to monitor product safety using all available data and re-deign to eliminate hazards



# Reptile Rules

## INSURANCE BAD FAITH

Traditional: Did the insurer unreasonably or without proper investigation act or fail to act in a manner that deprives the insureds of the benefits of the policy?

## REPTILES ATTACK!!!! – INSURERS MUST

- Fully, fairly and promptly investigate and evaluate each claim;
- Look for evidence supporting coverage, disclose benefits and coverage;
- Communicate and explain coverage decisions promptly and honestly, and fully pay covered claims



## Defend Against Reptile Using Reverse Reptile

- One way to defend against Reptile is to meet it with a similar tactic: Reverse Reptile.
- Rule #1: Never say “Yes”.
  - Avoid the Rhythm of Saying “Yes”
  - Offer a Complete Sentence Response that Restates the Question
  - “It depends”





## Defend Against Reptile Using Reverse Reptile

- One way to defend against Reptile is to meet it with a similar tactic: Reverse Reptile.
- Rule #2: The “Safety Rule” is Never Simple.
  - No rule is simple and absolute
  - Hard to say that safety is always NOT a top priority
  - “Knife Rule”



# Defend Against Reptile Using Reverse Reptile

- One way to defend against Reptile is to meet it with a similar tactic: Reverse Reptile.
- Rule #3: The Defendant's Conduct was Reasonable.
  - Hypothetical Questions create vulnerability
  - Create a Message
  - Stay on Message
  - Negligence Requires Reasonableness
    - Avoid Vague Definitions
    - "Training, Testing, Regulated..."



## Defend Against Reptile Using Reverse Reptile

- One way to defend against Reptile is to meet it with a similar tactic: Reverse Reptile.
- Rule #4: Do Not Answer Damages Questions
  - Any Reference to Damages should be deferred to Counsel
  - “Sounds like a question for my lawyer...”



# Type of Cases Appropriate for Reverse Reptile

- Medical Malpractice
- Schools – Playgrounds, Molestation
- HOA's
- Roads
- Products Liability
- Trucking and Transportation
- Premises
- Construction Matters



# Reverse Reptiling of the Plaintiff's (or co-defendant's) Witness

- Use simple, straightforward answers to show how the plaintiff (or co-defendant) was not safe and how they ignored the hazard.
  - You would agree that a safe worker is a careful worker?
  - And that safe workers are aware of their surroundings at all times while they are doing their work?
  - You would agree that a safe worker develops a safe lifting plan?
  - And a safe lifting plan would take the weight of the package into consideration before beginning to lift?
  - Would you agree that the worker knows what he is lifting before he lifts it?



# Reverse Reptile Theory

**THANK YOU!**

**Caryn Siebert**

**[Caryn\\_Siebert@gbtpa.com](mailto:Caryn_Siebert@gbtpa.com)**

**John H. Toohey**

**[jtoohey@bremerwhyte.com](mailto:jtoohey@bremerwhyte.com)**

**Rachel A. Mihai**

**[rmihai@bremerwhyte.com](mailto:rmihai@bremerwhyte.com)**



# NEW THIS YEAR – Surveys on the App

Find the App, Click on Events, Click on Browse by Day, Click on the Specific Session, Click on Rate Event. See Below for Screen Shots.

