

930 So.2d 657
District Court of Appeal of Florida,
Third District.

MANHEIM AUCTIONS GOVERNMENT
SERVICES, INC., a foreign corporation, and Florida
Auto Auction of Orlando, Inc. d/b/a Daytona Auto
Dealers Exchange, a Florida corporation, Appellants,
v.
Osbaldo MEJIA, etc., et al., Appellees.

No. 3D04-1967.

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Feb. 22, 2006.

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Rehearing and Rehearing En
Banc Denied June 16, 2006.

Synopsis

Background: Motorist who suffered significant brain damage when his automobile was crushed by truck owned by United States government that was being moved from one location to another brought personal injury action, along with his daughter who was also injured in the accident, against driver of truck, used car dealership that hired driver to relocate truck, and auction house that originally agreed with government to relocate truck and arranged for dealership to perform the relocation. After dealership settled with motorist and daughter, the Circuit Court, Miami-Dade County, [Jennifer D. Bailey, J.](#), awarded summary judgment against auction company, granted directed verdict against driver and, after entry of a jury verdict awarding \$1 million in non-economic damages to motorist, granted motorist's and daughter's motion for additur, and granted a new trial as to non-economic damages when auction company rejected the additur. Auction company appealed.

Holdings: The District Court of Appeal, [Fletcher, J.](#), held that:

[1] auction company had at least constructive possession of the truck, for bailment purposes;

[2] dealership was liable to indemnify auction company for driver's negligence; and

[3] trial court did not abuse its discretion by granting additur.

Affirmed in part, reversed in part, and remanded.

West Headnotes (3)

[1] [Automobiles](#)

🔑 [Persons Other Than Owners or Operators in General](#)

Auction company that agreed with United States government to move a government truck from one location to another, and which arranged for used car dealership to perform the relocation, had at least constructive possession of the truck and, thus, was a bailee that was vicariously liable for the negligence of driver who was hired by dealership to actually drive the truck to its new location.

[Cases that cite this headnote](#)

[2] [Automobiles](#)

🔑 [Persons Other Than Owners or Operators in General](#)

Used car dealership that agreed with auction company to move a truck owned by the United States government from one location to another was a bailee that was vicariously liable for the negligence of driver it hired to actually drive the truck to its new location and, thus, was also liable to indemnify auction company for driver's negligence; dealership took actual possession of the truck pursuant to auction company's instructions and transferred possession to driver, acting as part of the conduit from the government to the driver.

[Cases that cite this headnote](#)

[3] [Damages](#)

🔑 [Inadequate Damages in General](#)
[Damages](#)

🔑 [Brain Injuries in General; Mental Impairment](#)

Trial court did not abuse its discretion in personal injury action by motorist and his daughter against driver of truck that crushed their automobile, used car dealership that hired driver to relocate truck, and auction house that originally undertook to relocate truck and arranged for dealership to perform the relocation, by granting an additur of \$1.8 million for past pain and suffering and \$7.5 million for future pain and suffering to the \$1 million in non-economic damages awarded by jury to motorist, who suffered significant brain damage in the accident, and an additur of \$100,000 for past pain and suffering and \$500,000 for future pain and suffering to daughter's damages. [West's F.S.A. § 768.043](#).

[Cases that cite this headnote](#)

Attorneys and Law Firms

***658** Marlow, Connell and Joel D. Adler and [Walter G. Latimer](#), Coral Gables; Carlton Fields and [Robert E. Biasotti](#) and [Cristina Alonso](#) and [Allison Oasis Kahn](#), St. Petersburg, for appellants.

Kubicki Draper and [Caryn L. Bellus](#) and [Maria Kayanan](#), Miami, for appellee David's Used Cars.

Neufeld, Kleinberg & Pinkiert and David Kleinberg, for appellee Mejia.

Before [COPE](#), C.J., and [FLETCHER](#) and CORTIÑAS, JJ.

Opinion

[FLETCHER](#), Judge.

Manheim Auctions Government Services, Inc. and Florida Auto Auctions of Orlando, Inc., [collectively, Manheim] had a contract with the United States government [GSA] to auction government vehicles. On the occasion we are dealing with here, GSA requested Manheim to relocate a non-auction government vehicle from one government location at Cape Canaveral to another government location in the Keys. Manheim

arranged for David's Used Cars, an independent contractor, to relocate the government-owned container truck. David's Used Cars then arranged for Daniel Wayne Webb to do the actual driving.

Edwin Mejia was driving on I-95 with his wife and his daughter, Nelly, when he slowed to approach a slow-moving or stopped car¹ in his lane. Webb was driving the GSA truck behind Mejia and failed to observe Mejia slowing down. The truck rear-ended Mejia's vehicle and crushed it, killing Mejia's wife and leaving Mejia significantly brain damaged. Edwin Mejia and his daughter, through their legal guardian Osbaldo Mejia, sued Webb for negligence, and sued Manheim Auctions and David's Used Cars for vicarious liability for Webb's negligence.

¹ Driven by Carloe Levy Johnson, who was found by the jury to be negligent and had attributed to her 10% of Edwin Mejia's injuries.

Prior to trial, the court granted Mejia's motion for summary judgment and ruled that Manheim was the bailee of the GSA vehicle, and thus was vicariously liable for Webb's negligence.² At trial, the court granted Mejia's motion for directed verdict finding Webb, the driver, negligent as a matter of law.³ The trial court denied Manheim's cross-claim which had sought indemnification against David's Used Cars.

² The plaintiffs settled with David's Used Cars prior to trial.

³ The jury attributed 90% of the cause of Edwin Mejia's damages to Webb.

The jury found against Manheim and awarded Mejia \$1 million in non-economic damages over his projected 40-year life expectancy.⁴ Upon motion, the trial court awarded a non-economic additur of \$1.8 million for past pain and suffering and \$7.5 million for future pain and suffering. To Nelly Mejia the court added \$100,000 for past pain and suffering, and \$500,000 for future pain and suffering. Manheim then rejected the additur and the trial court granted a new trial limited to determining ***659** non-economic damages. This appeal ensued.

⁴ The jury awarded Edwin Mejia \$21 million in future medical expenses (present value).

[1] [2] As the record reflects, Manheim arranged for David's Used Cars to pick up the vehicle, and David's Used Cars arranged for Webb to drive it. Manheim was, at the very least, in constructive possession of the vehicle for bailment purposes. We thus affirm the trial court's pre-trial summary ruling that Manheim was a bailee and thus liable as a matter of law for Webb's negligence.⁵ We conclude from the facts that are not disputed that David's Used Cars also was a bailee. Acting pursuant to Manheim's express instructions and with Manheim's identification, David's Used Cars took actual possession of the truck from the GSA and transferred possession to the driver Webb to carry out the GSA/Manheim agreement. Manheim and David's Used Cars, acting in concert, together became a conduit of the vehicle from GSA to Webb. As such each is vicariously liable for Webb's negligence.⁶ We thus reverse the trial court's order denying Manheim's motion for a directed verdict on its cross-claim for indemnification against David's Used Cars.

⁵ We affirm the trial court's directed verdict finding Webb negligent as a matter of law.

⁶ See [Sunshine Dodge, Inc. v. Ketchem, 445 So.2d 395 \(Fla. 5th DCA 1984\)](#) as to the conduit from owner to negligent driver.

[3] We have reviewed the record and find no abuse of discretion in the trial court's thoroughly considered order granting an additur for the plaintiffs' non-economic damages pursuant to [section 768.043, Florida Statutes \(2003\)](#). We thus affirm the additur order. We also affirm the trial court's decision to set a new trial for the determination of non-economic damages suffered by the Plaintiffs because Manheim rejected the additur, see [ITT Hartford Ins. Co. of the Southeast v. Owens, 816 So.2d 572 \(Fla.2002\)](#); [Brant v. Dollar Rent A Car Sys., Inc., 869 So.2d 767 \(Fla. 4th DCA 2004\)](#), and we remand accordingly.

Affirmed in part, reversed in part and remanded.

All Citations

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