

## CASE JURY VERDICT INFORMATION

Submitted by:

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Bicycle Accident - Personal Injury

**TOTAL JURY VERDICT - \$722,800.00**

1. **Case Name:** *Kenneth Mercurio v. BiTech, Inc., dba Performance Bike Shops, Inc., et al.*
2. **Case No.:** 56-2008-00311756
3. **Judge:** Henry J. Walsh, Dept. 42
4. **Venue:** Ventura County Superior Court
5. **Dates of Trial:** Sept. 15 -24, 2009
6. **Prior Mediation:** The mediation before Judge Melinda Johnson (JAMS) resulted in a \$100,000 offer by defendants.
7. **Plaintiffs' Attorneys:**  
  
Charles M. Finkel, MAGAÑA, CATHCART & McCARTHY, Los Angeles, CA.
8. **Defense Attorneys:**  
  
Arthur J. Chapman, Esq., CHAPMAN, GLUCKSMAN, DEAN, ROEB & BARGER, Los Angeles, CA for defendant BiTech, Inc., dba Performance Bike Shops, Inc.;  
  
William Kelly, Esq., GOLDBERG SEGALLA, White Plains, NY for defendant Martec Industrial, Inc.
9. **Description of Case:**  
  
Plaintiff, a 58 year old retired manager for Nestle Foods was injured when the carbon fiber forks broke on his bicycle. He was riding with a pack of 80-100 other riders when the accident happened in Simi Valley. As a result of the forks breaking, he suffered fractures to his cervical and thoracic spine.

Plaintiff contended that the forks were defective in their design and manufacturing, with

post crash examination giving evidence of numerous defects within the structure.

The defense claimed that a foreign object entered the wheel, broke the forks, and then was ejected into the bushes never to be seen again.

10. **Particulars of Award:**

Jury out 4.5 hours.

**DAMAGES:**

Economic - \$202,800 was stipulated as the reasonable and necessary past medical expenses (\$75,000 is amount paid by insurance).

Non-Economic (pain and suffering, etc.) - \$520,000

No loss of earnings or property damage claimed.

11. **Nature of Injuries:**

Fractures to C2 requiring cervical fusion through C5, fractures to three thoracic vertebrae. After eight months plaintiff continued riding his bicycle up to 100 miles per day, five days a week, and participated in a 520 mile ride in the Blue Ridge Mountains. He recently purchased a boat and intends to cruise for up to a year.

No probability of future surgeries.

12. **Experts:**

Plaintiff:

Scott Ganaja, San Luis Obispo, CA. Mechanical Engineer with bicycle experience.

Scott Beckwith, PhD, Salt Lake City, Utah. Material science expert.

Anthony Virella, MD, Thousand Oaks, CA, treating doctor.

Defendant:

Jeff Archbold, Ontario, Canada, Mechanical Engineer and bicyclist.

13. **Outstanding Motions:**

Plaintiff intends to seek recoverable court costs which include attorney fees and expert witness fees and costs since defendant denied plaintiff's Request for Admissions. Defendant will be moving for a Hanif reduction in the medical costs.

14. **Settlement Discussions:**

Plaintiff made CCP §998 Offers of \$1M per defendant. Plaintiff offered to settle for \$1M before trial. Defendants offered \$100K at mediation, and \$250K after the jury retired to deliberate.