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And The Defense Wins

DRI member [Kenneth C. \("KC"\) Ward](#) of the California law firm of **Archer Norris** obtained a defense verdict in a vehicular death case, *Escamilla v. Cox Petroleum Transport* in the Fresno County Superior Court of California. It all started when a drunk driver rolled his vehicle, which landed upside down in the middle of a rural unlit highway near Fresno, California. The defendant, the driver of a Cox Petroleum double tanker, braked sharply in an effort to avoid an overturned car. Unable to stop in time and prevented by oncoming traffic from moving to the left, he drove off road into a vineyard. By this action, the driver inadvertently struck the decedent who had abandoned his vehicle and was standing by the side of the road.

The evidence hinged on several critical factors. The defense presented evidence that the decedent had been drinking. He rolled his car, which he subsequently abandoned with no lights in the middle of the road. His blood alcohol level of 0.15 undoubtedly contributed to the accident and his subsequent actions.

The defendant driver was speeding. The plaintiff's attorney claimed that the driver of the tanker could have avoided the accident if he had not been speeding. The truck's black box clocked the speed at 63.5 miles per hour. Calibration testing established that the driver had in fact been driving 59.5 mph, 4.5 miles over the posted speed limit. The evidence further established that a human being walks at approximately that pace, showing that the excess speed was insignificant and the driver would have been unable to stop even if he had been driving at the posted speed limit of 55 miles per hour.

Plaintiff's counsel presented witnesses who claimed they had tried to warn the truck driver of the decedent's position in the roadway. Witnesses further stated that the truck could have veered to the left in the roadway, thus avoiding both the decedent and the overturned vehicle. Defense established that the truck driver could not have seen the witnesses signaling him, nor could the witnesses have been aware of the oncoming cars in the other lane that prevented the truck driver from moving in that direction.

Damages, including loss of income and support for the plaintiff's wife and three children, were estimated at \$1.35 million. Plaintiff's counsel asked for \$3.4 million. The jury found the defendant driver not negligent by a vote of three negligent and nine not negligent. The jury foreman stated that all 12 felt that the driver's negligence was not a substantial factor in the injury and awarded a defense verdict. The plaintiff received nothing.



**Kenneth C.
("KC") Ward**