

Why Did The Horse Cross The Road?

To Get To The Other Side With \$137,500

BY TRISHA RENAUD
STAFF REPORTER

It was not a run-of-the-mill traffic accident case that came before Fulton State Court Judge Jerry W. Baxter for trial last week.

The Jan. 16, 1988 collision left a 1986 Pontiac Sunbird with \$1,120 in damages, while the "other vehicle"—a trotting horse—emerged unscathed.

The horse's rider, Earl G. Patterson, also got the better end of the deal last week, when he walked out of Judge Baxter's courtroom with a \$137,500 jury award as compensation for two broken wrists he sustained in the accident. *Patterson v. Shepard*, Civil Action 246610 (Fult. State Ct. verdict March 1, 1990).

The encounter between machine and beast took place at the intersection of Sylvan Rd. and Dill Ave. in Atlanta. Patterson was following another friend, also mounted, down Sylvan Road when they approached the intersection of Dill Ave.

According to Patterson's lawyer Michael J. Warshauer, the first rider passed the intersection under a green light, while Patterson crossed under a yellow signal.

However the driver of the car on Dill, Patricia Shepard, maintained that she had a green light to proceed, Warshauer says.

A police officer who testified for Shepard claimed that Patterson had confessed to galloping through a red light. But on the other hand, Warshauer says, the officer could not even recall how many horses were involved in the incident. "I would think you would remember," the lawyer remarks.

Patterson's horse clearly left its mark on the Sunbird—a hoofprint on the trunk and a dent in the pillar supporting the rear windshield caused by the impact of the animal's chest. Patterson was knocked over the horse's head, as well as over the car. The injuries to his wrists required several rounds of surgery, his lawyer says.

Warshauer, of Warshauer & Lewyn, says Shepard's insurer, State Farm, had originally sued Patterson on a subrogation claim for damages to the Sunbird. Patterson in turn sued Shepard as a third party defendant, demanding \$250,000 for his injuries.

State Farm dropped its claim prior to trial.

Warshauer says he argued the case on two grounds: the "last clear chance" theory and comparative negligence. He told the jury, composed of six women, that Shepard could have avoided the accident, and that while his client may have been at fault to a degree, Shepard was more negligent. "I admitted some liability in closing," he adds, speculating that the jury's award indicates "... they just said my guy was only half responsible."

Shepard's attorney, J. Blair Craig of Harper, Waldon & Craig, was on vacation and could not be reached for comment on the case.

Warshauer admits he's never had a case quite like it, adding that the judge confessed the same in court.

The case provided some wry humor during voir dire, he adds, explaining that in Georgia, "... a horse is treated just like a car." Consequently, Judge Baxter charged the jury to regard



Michael J. Warshauer won a \$137,500 award for a client who was hit by a car while on horseback.

FILE PHOTO

horses and cars as equals—under the traffic laws.

Warshauer says he tried to keep the horse out of the trial, treating him as a

vehicle for legal purposes. He especially made sure not to mention the animal's name in court—"Leo's Thrill Seeker." □

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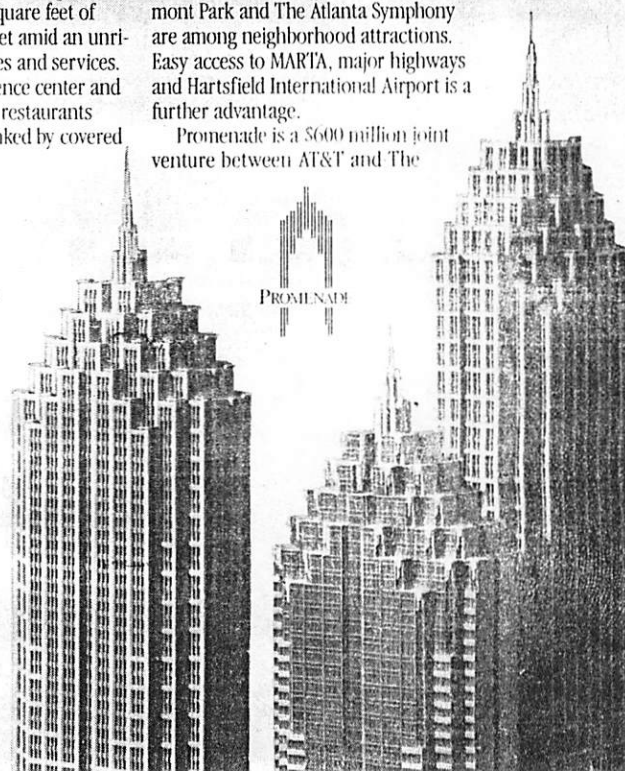
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