



Advertorial

Text Size: A | A | A

# Parker Waichman Alonso: \$40 Million Wrongful Death Suit Against State of NY

By Ashley Cisneros Published Dec 13, 2009

[Add a Comment](#)

Landmark cases are the norm for the attorneys at Parker Waichman Alonso LLP. The attorneys handled the first case that claimed that AIDS can be transmitted by a blood transfusion. Jerrold S. Parker, a firm partner, handled the first case in the United States alleging the drug Prozac caused suicides; and more than four years before Vioxx was withdrawn from the market, the firm was retained by clients claiming that the drug caused an increased risk of heart attacks and strokes.

In addition to these and many other mass tort cases, the firm also handles traditional, single-event tort cases. While there are many memorable cases, a few stand out as game-changers. One of these cases involved a woman named Michelle Brey.

## Horrific Crimes

Brey was a loving mother who worked hard at a nursing home to support three young sons. Tragically, she went out to a Suffolk County bar one night, and never returned.

Brey's strangled body was found on Rocky Point Beach on Oct. 12, 1998. She was brutally raped and murdered after being seen leaving the bar with a man later to be identified as Franklin Scruggs.

"Another woman read a newspaper story about murder," Parker says. "She too had been raped a few weeks prior, but never reported it. After reading the article, she went to the police."

Scruggs was arrested on Oct. 16, 1998.

"The police looked up Scruggs' record and said, 'This can't be the guy because Franklin Scruggs is supposed to be in prison,'" Parker says.

But Scruggs was definitely not in prison.

---

## A Terrible Mistake

In 1997, Scruggs was seven years into serving two concurrent 20-year-to-life sentences at Great Meadow Correctional Facility in Washington County. One sentence was for assault and one was for reckless endangerment.

Scruggs told the warden that he wanted to appeal the reckless endangerment sentence. He was then transferred to Suffolk County. The appeals court reduced the sentence, and ordered a lower court to resentence Scruggs.

The inmate records coordinator at Great Meadow sent a letter reminding the lower-court judge that Scruggs still needed to return to prison to finish the 20-year-to-life sentence on his assault charge.

But that judge's clerk inaccurately recorded that both of Scruggs sentences had been reduced, and issued an order to release him. The release came 13 years too soon, and had devastating consequences.

---

"If Mr. Scruggs had not been improperly released from jail, this would not have happened."

---

## Damages

Scruggs went back to prison after receiving another 20-year-to-life sentence for the 1998 rapes and murder. The sentence starts in 2010, and Scruggs will be eligible for parole in 2029 at the age of 69.

Brey's mother, Linda Steel, hired Parker Waichman Alonso LLP to file a \$40 million wrongful death suit against the State of New York.

"I can't tell you how many lawyers turned down the case, or said that they had no case because of immunity," says Andres F. Alonso, a partner who worked with Parker on the

### See Also

- [A Methodology of the Best Lawyers in America List](#)
- [2010 Lawyers of the Year Spotlight](#)
- [The New York Area's Lawyers of the Year](#)
- [Cases That Can Make or Break Corporate America](#)
- [A Battle to Help a Man Pushed Off a Roof by Police](#)
- [How Child Relocation Raises New Custody Issues](#)
- [Current Trends in Immigration Law](#)
- [How Connecticut's Legal Community Fought Back](#)

case.

State governments are generally immune from lawsuits based on the official, discretionary actions of their employees.

Parker received a call from Steel on a Saturday, and met with her that same day.

“I knew it was a tough case,” Parker says. “I couldn’t find a successful case like this in any other jurisdiction in the United States. The immunity of New York State was a significant legal hurdle.”

Steel’s suit was joined with a second lawsuit from the victim who survived Scruggs’ attack two weeks prior to Brey’s death.

Parker and Alonso argued that the state did not have immunity because the release of Scruggs was not a conscious decision made by officials doing their governmental duties, but, instead, due to a series of reckless mistakes.

The attorney general’s office argued that the state had immunity and had no special duty to Brey. Further, the defense counsel argued that the state should not have to pay damages because it shared liability with Scruggs and with the victims. The state argued that Brey was partially responsible for what happened to her because she left the bar with Scruggs and had cocaine in her system.

“The fact of the matter is that if Mr. Scruggs had not been improperly released from jail, this would not have happened,” Parker says.

Court of Claims Judge Alan C. Marin ruled that governmental immunity did not apply because the clerical acts were ministerial, not discretionary. He found that the “ministerial wrong” proximately led to the attacks. Marin found that the state was more than two-thirds liable and that Scruggs was less than a third liable. He awarded \$5.5 million in damages—\$3.6 million in damages to Steel and another \$1.9 million to the surviving victim. Marin’s decision was upheld in the two appeals pursued by the State.

“The \$3.6 million award will have a tremendous impact on the children for the rest of their lives,” Parker says.

Alonso says that the award was bittersweet.

“You wish this kind of case never came through the door, but it is gratifying to know that the boys will be taken care of financially,” he says. “This case is a tribute to my partner’s ability to think outside of the box. This is a case that 99 out of 100 attorneys wouldn’t have touched with a 10-foot pole. Jerry jumped in with both feet.”

**Next: [William Brewer on Cases That Can make or Break Corporate America](#)**