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SUMMARIES WITH TRIAL ANALYSIS

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A monthly review of New Jersey State and Federal Civil Jury Verdicts with professional analysis and commentary.

The New Jersey cases summarized in detail herein are obtained from an ongoing monthly survey of the State and Federal courts in the State of New Jersey.

VERDICTS BY CATEGORY

Summaries with Trial Analysis

$3,648,000 GROSS VERDICT – PREMISES LIABILITY – HAZARDOUS PREMISES – FALL DOWN – DEFENDANT STORE'S EMPLOYEE LEAVES BOX ON FLOOR WHEN CALLED TO REGISTER – PLAINTIFF SHOPPER TRIPS AND FALLS OVER BOX – LUMBAR HERNIATION – ENDOSCOPIC DISCECTOMY AND OPEN LAMINECTOMY INSUFFICIENT – PLANS TO UNDERGO LUMBAR FUSION.

Mercer County, NJ

In this premises liability action, the male plaintiff, age 55 at the time, contended that the defendant Staples' employee negligently left a box containing batteries on the floor after the employee, who was working next to a laptop display, was called to the cash register. The plaintiff maintained that as a result, he tripped and fell over the box, suffering a lumbar herniation with radiculopathy. The plaintiff asserted that an initial endoscopic discectomy was inadequate, that he underwent a laminectomy and plans on having a lumbar fusion in the foreseeable future. The defendant maintained that the plaintiff's complaints stemmed from degenerative disc disease only. The plaintiff countered that he had no prior lumbar symptoms or treatment and that the defendant's contention that age-related degeneration was the source of the plaintiff's difficulties should be rejected.

The plaintiff maintained that as the worker was placing batteries that were contained in the box, which was slightly larger than a shoe box, the worker was called to the register and left the box on the floor next to the laptop display. The plaintiff related that he tripped over the box and fell onto his side. The defendant asserted that the condition was open and obvious and that the primary cause of the incident was the negligent failure of the plaintiff to observe and avoid the box. The plaintiff countered that the defendant, who agreed that customer safety was its highest priority, failed to follow its own procedures to provide for such safety and that the jury verdict should assign responsibility to the defendant if the jury believed Staples failed to follow its own procedures for maximizing customer safety.

The plaintiff, who fell onto his right side, related that he developed radiating lumbar pain shortly after the accident. The plaintiff underwent conservative care, including physical therapy, as well as a series of injections. The plaintiff maintained that these modalities did not alleviate his symptoms. Subsequently, he underwent an endoscopic discectomy. The plaintiff related that this procedure provided improvement that lasted several months only and that he then had an open laminectomy. The plaintiff's neurosurgeon testified that although the surgery helped, the continued symptoms render a lumbar fusion necessary. The plaintiff indicated that he plans to undergo the surgery.

The evidence revealed that after the plaintiff's wife died unexpectedly some years earlier, he ceased working in order to raise the children. The plaintiff related that although he planned on returning to work, he never did and the plaintiff made no income claims. The plaintiff related that everyday tasks and activities are painful and difficult. The plaintiff testified that he formerly enjoyed activities such as using his ride-on mower and has been forced to stop doing so.

The jury found the defendant 80% negligent, the plaintiff 20% comparatively negligent and rendered a gross award of $3,648,000 including $96.000 for future medical bills, $52,000 for past medical bills and $3,500,000 for past and future pain and suffering.

REFERENCE

Plaintiff's neurosurgeon expert: Nirav Shah, M.D. from Princeton, NJ. Plaintiff's pain management expert: Baher Yanni, M.D. from East Windsor, NJ.

Simmons vs. Staples, Inc. Docket no. MER-L-714-17, 12-16-19.

Attorney for plaintiff: David M. Schmid of Stark & Stark in Lawrenceville, NJ.

COMMENTARY

It is felt that the plaintiff obtained a very significant award despite the absence of any income claims. The plaintiff argued that although the defendant did not dispute that the incident occurred in the manner claimed by the plaintiff, it contended that the primary cause of the incident was the failure of the plaintiff to observe and avoid the box next to the display. In this regard, the plaintiff argued that if the defendant would not acknowledge that its failure to observe safety policies led to the fall, it was up to the jury to impress upon the defendant to be aware of its responsibilities.

Additionally, the defendant argued that the sole cause of the plaintiff's disc difficulties was degenerative disc disease. The plaintiff countered this position by stressing that although the films showed age-related degenerative disc disease, he had no prior symptoms or treatment to his lower back, In this regard, the plaintiff illustrated this position by presenting the jury with a timeline of the plaintiff's treatment, stressing that it showed that until the accident occurred, there were no issues with the lower back and shortly thereafter, when the incident occurred, very significant complaints and treatment began.

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$1,175,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – UNSAFE INTERIOR STAIRWAY IN APARTMENT BUILDING OWNED BY DEFENDANT LANDLORD – PLAINTIFF WALKING DOWN STAIRS AFTER BEING GIVEN PAPER PLATE WITH FOOD BY SISTER/TENANT FALLS DOWN ALMOST FULL FLIGHT OF STAIRS – LUMBAR HERNIATIONS – 2 FUSION SURGERIES – TEAR OF NON-DOMINANT SHOULDER – ARTHROSCOPIC SURGERY.

Essex County, NJ

In this premises liability action, the plaintiff in his mid 40s, who was leaving the apartment in which his sister resided, contended that the interior stairway was dangerous, resulting in his falling down a flight of stairs and suffering a tear to the non-dominant shoulder and a lumbar herniation that ultimately required several surgical interventions after more conservative avenues were inadequate.

The plaintiff's engineer would have testified that the stairway was not in compliance with the code. The expert would have related that the treads were of uneven height, were inadequately wide, that the treads of each step improperly sloped downwards, that one of the handrails was missing and that the other was loose. The expert would have also contended that the lighting was inadequate.

The plaintiff related that as walking down the stairs, he lost his balance, reached instinctively for the handrail, that it gave way, and that he fell to the landing below. The defendant would have argued that the jury should consider that the plaintiff had been at the premises many times in the past and that he was carrying a paper plate with food on it when he fell. The plaintiff would have maintained that he was simply bringing food home which his sister had given him and contended that the incident would not have occurred if the stairway was in compliance. The plaintiff would have also argued that the jury should consider that the plaintiff was taking the only means of ingress and egress that was available.

The plaintiff suffered a tear to the non-dominant shoulder which he maintained will cause permanent pain and limitations despite arthroscopic surgery. The plaintiff also asserted that he suffered a lumbar herniation that was confirmed by MRI. The plaintiff claimed that conservative care, pain management injections and a rhizotomy were insufficient and that he underwent a fusion at L4-5. The plaintiff's proofs would have also reflected that it became apparent that the fusion had to be extended and that he had a final surgery in which the L5, S1 levels were fused as well. The plaintiff contended that he will suffer permanent pain and is at risk for further difficulties because of segmental disease associated with the multilevel fusions.

The evidence disclosed that the plaintiff's history reflected that he held a number of jobs, including warehouse worker, cook, and furniture assembler. The plaintiff had made as much as $31,000 per year. The plaintiff contended that his talents and inclinations gear towards physical labor, that he can no longer work in this capacity and that he will suffer extensive future income losses. The defendant would have contended that the highest salary the plaintiff attained was not realistically related to his claimed losses, pointing out that he often earned significantly less. The defendant further stressed that the plaintiff had relatively long periods of unemployment. The plaintiff would have countered that in view of the evidence that the defendant's negligence deprived the plaintiff of the chance of reaching as far as he otherwise would have done, the defendant's position should not be accepted.

The parties settled for $1,175,000.

REFERENCE

Plaintiff's economist expert: Kenneth Betz from Livingston, NJ. Plaintiff's economist expert: Kristin K. Kucsma from Livingston, NJ. Plaintiff's engineer expert: Charles Witczak, P.E. from Brick, NJ. Plaintiff's orthopedic surgeon (herniation) expert: Scott Katzman, M.D. from NJ Spine & Orthopedics, LLC, Bridgewater, NJ. Plaintiff's orthopedic surgeon (herniation) expert: Douglas Slaughter, M.D. from NJ Spine & Orthopedics, LLC. Bridgewater, NJ. Plaintiff's orthopedic surgeon (shoulder) expert: James Lee, Jr., M.D. from West Orange, NJ. Plaintiff's vocational expert: Edmond Provder from Lodi, NJ.

Chavers vs. Realty Management Associates Inc., et al. Docket no. ESX-L -8203-17, 02-16-20.

Attorneys for plaintiff: Richard A. Greifinger and Alfred Giannella, Jr. of Law Office of Richard A. Greifinger in Newark, NJ.

COMMENTARY

The plaintiff would have emphasized that because of the failure of the defendant to comply with code provisos as to the risers and treads, he lost his balance and when he reached for the handrail to steady himself, the loose manner that it was attached culminated in his falling the rest of the way down the flight of steps. In this regard, it is felt that the evidence of longstanding difficulties which the plaintiff maintained could and should have been correct, undermined the defendant's case and would render its attempts to assess blame on the part of the plaintiff very difficult to achieve.

Additionally, the plaintiff argued that his income claims should be based upon his highest salary of $31,000 per year. The defendant would have argued that this amount was not realistic because the plaintiff had earned less in all other years and because of a relatively spotty work history. The plaintiff would have countered this position by arguing that the jury should take into consideration that he had been deprived of reaching this goal because of the injuries caused by the defendant's negligence.

$1,700,000 RECOVERY – TRANSIT AUTHORITY NEGLIGENCE – DEFENDANT DRIVER OF TRANSPORTATION AUTHORITY TRUCK FAILS TO YIELD BEFORE ENTERING ATLANTIC CITY EXPRESSWAY THROUGH U-TURN CUT OUT – PLAINTIFF DRIVER SLAMS INTO BUS AND DATA FROM VEHICLES BLACK BOX REFLECT THAT PLAINTIFF TRAVELING BETWEEN 86 AND 89 MPH – PLAINTIFF ALSO ALLEGEDLY INEBRIATED AT TIME OF 5:00 A.M. CRASH – RUPTURED GLOBE- EYE ENUCLEATION – BILATERAL WRIST FRACTURES – MULTIPLE FACIAL FRACTURES – SURGERIES TO RIGHT WRIST AND FACIAL BONES – NOTICEABLE FACIAL SCARRING.

Camden County, NJ

In this Transit Authority negligence case, the plaintiff driver, in his late 30s, contended that the defendant driver for The South Jersey Transportation Authority, who was using a cut-out to turn around on the Atlantic City Expressway, negligently entered the highway, cutting off the plaintiff and causing the collision. The defendant maintained that the cause of the accident was the inebriation and excessive speed of the plaintiff. The plaintiff asserted that he suffered a severe trauma to the left eye which required an enucleation, multiple facial fractures that required surgery and which left moderate facial scarring, and fractures to both wrists.

The accident occurred at approximately 5:00 a.m. as the plaintiff, who was playing music at a nightclub, was returning home. The defendant had advised the police at the scene that she observed headlights a very significant distance down the highway and that she believed that it was safe to enter. The defendant pulled partially into the left lane and partially into the left shoulder when the accident occurred.

Both vehicles had "Black boxes." The defendant maintained that based upon the data, the plaintiff was traveling between 86 and 89 mph at the time of the accident. The plaintiff pointed out that in her deposition, the defendant indicated that she did not see headlights before the impact. The State Police investigation reflected that the roadway was straight for a significant distance and the plaintiff would have argued that it was clear that the defendant entered the highway without making observations. The plaintiff further established that the defendant had told the police that she made observations for 2-3 minutes before entering the highway.

The defendant's toxicologist would have asserted that the plaintiff was inebriated. The defendant would have maintained that extrapolations from the blood serum taken at the hospital and taking into consideration that the accident occurred approximately 2 hours earlier, the plaintiff had the equivalent BAC of between.106 and.136. The plaintiff denied that he was intoxicated. The plaintiff indicated that he consumed 4 drinks over the course of the evening. The plaintiff would have also argued that there was an absence of adequate chain of custody relating to the taking and processing of the blood sample at the hospital.

The plaintiff would have further argued that the jury should consider that the police did not begin a DUI investigation and that the medical staff on board the helicopter that evacuated the plaintiff administered Fentanyl, stressing that such medication would not be given if alcohol inebriation was suspected. The plaintiff would have also argued that the use of this medication, together with the advisements by the plaintiff

that he consumed several drinks, accounted for the medical staff's suspicion that alcohol consumption by the plaintiff might have been involved.

The plaintiff contended that he suffered a severe trauma to the eye and that it could not be saved, necessitating an enucleation and the use of a prosthetic eye. The plaintiff contended that periodic maintenance and cleaning and other maintenance will be required at a cost of approximately $40,000.The plaintiff also suffered bilateral fractures to the wrists. The fracture on the right, dominant side was displaced and required surgery. The left side was not displaced and was treated via a closed reduction. The plaintiff maintained that he will permanently suffer and weakness, as well as difficulties with use.

The plaintiff further suffered multiple facial injuries, including a rupture to the left globe. The eye could not be saved and the plaintiff required the enucleation. The plaintiff also suffered multiple facial fractures, including a nasal fracture and a fracture to the zygomatic arch. The plaintiff underwent surgery and the installation of hardware. The plaintiff contended that he will suffer permanent pain and exhibit moderate scarring.

The plaintiff worked for a University as he was going to school at the institution, obtaining his Master's degree. The plaintiff made no income claims.

The case settled prior to trial for $1,700,000.

REFERENCE

Cannon vs. South Jersey Transportation Authority, et al. Docket no. CAM-L-1274-17, 11-19.

Attorneys for plaintiff: José W. Hernandez and Adam M. Kotlar of Kotlar Hernandez & Cohen, LLC in Mt. Laurel, NJ.

COMMENTARY

The plaintiff was able to command a substantial settlement despite the difficulties in the case, which included his speed of 86-89 as per the black boxes in the defendant's and plaintiff's vehicles and the evidence of intoxication, which the defendant's toxicologist extrapolated was between.106 and.136 at the time of the collision. The plaintiff, who denied that he was inebriated, undermined the defendant's use of the blood serum taken at the hospital by pointing out that the hospital personnel could not point to evidence establishing a chain of custody. Additionally, the plaintiff emphasized that the medical personnel administered Fentanyl during transport to hospital, arguing that such medication would clearly not be given if alcohol involvement was suspected. Moreover, the plaintiff would have argued that the administration of this medication could well render the hospital staff, who were also advised by the plaintiff that he consumed four drinks over a significant number of hours, suspicious of intoxication. Finally, with respect to the issue of inebriation, the plaintiff would have emphasized that the investigating troopers did not suspect inebriation on the part of the plaintiff.

Regarding the other issues of alleged comparative negligence, including the speed of the plaintiff, the plaintiff undermined the defendant's case by stressing that although she advised the police at the scene that she observed headlights in the distance and that she waited at the cut out for 2-3 minutes before proceeding, she did not indicate in her deposition that she saw headlights. Finally, the plaintiff would have argued that in view of her statement that she waited for 2-3 minutes at the cutout, it was abundantly clear that the accident should not have occurred.

$1,075,000 RECOVERY – MEDICAL MALPRACTICE/WRONGFUL BIRTH – OB/GYN – FAILURE TO ADVISE PLAINTIFF OF INCREASED AMNIOTIC FLUID NOTED ON 2 SUCCESSIVE ULTRASOUND TESTS – PLAINTIFF CLAIMS SIGN INDICATIVE OF LIKELY FETAL ABNORMALITY AND INFORMATION WOULD HAVE LED TO ADDITIONAL TESTING THAT WOULD HAVE PROVIDED DIAGNOSIS OF BECKWITH-WIEDERMAN SYNDROME, OVERGROWTH DISORDER ASSOCIATED WITH MULTIPLE BIRTH DEFECTS – EXTRAORDINARY MEDICAL EXPENSES AND EMOTIONAL DISTRESS.

Bergen County, NJ

This was a medical malpractice/wrongful birth case in which the plaintiff mother, age 31 at the time, contended that the defendant ob/gyn negligently failed to advise her of abnormalities involving increased amniotic fluid in 2 successive ultrasounds. The plaintiff maintained that the increased amniotic fluid was a sign of potential abnormalities and that she should have been so informed, enabling her to consult with a geneticist, which would have led to a finding that the child would likely suffer from Beckwith-Wiedemann Syndrome (BWS) which is an overgrowth disorder characterized by a wide range of abnormalities, including developmental and neurologic issues. The plaintiff is single and a medical assistant. The plaintiff asserted that had she been aware of the abnormality, she would have avoided continuing the pregnancy. The plaintiff made a claim for extraordinary medical expenses, including multiple surgeries, and for emotional distress.

The plaintiff maintained that the increased amniotic fluid was worrisome and that such information should have been conveyed to the plaintiff during office visits. The defendant claimed that he did, in fact, advise the plaintiff orally of the finding during an office visit. The defendant contended that a handwritten note in the chart memorialized that such information was provided. The defendant, who indicated that at the time in 2014 that he took hand written notes during the October14, 2014 visit, but it was the only handwritten note in the entire chart. He testified at deposition that it was scanned into the computer the day after the visit. The plaintiff would have presented a computer forensics expert who would have testified that the note was, in fact, scanned into the computer

on August 24, 2018, after plaintiff's deposition, and the plaintiff would have argued that the defendant's position should be rejected due to the discrepancy.

The child suffered from Beckwith-Weidman Syndrome, which involves overgrowth of parts of the body that included the head and the tongue. The plaintiff contended that the child already has required multiple surgeries, including tracheotomy, repair of right, left and umbilical hernias, appendectomy, gastrostomy, g-tube placement, and complications from chronic airway obstruction due to macroglossia, urosepsis, tracheitis, hydronephrosis of left kidney, and pneumonia. He will likely need numerous additional surgeries and full time nursing care for the rest of his life.

The plaintiff asserted that with proper care, the child should expect a near-normal life expectancy despite his condition. The defendant denied that this position should be accepted and countered that life expectancy would be shortened due to complications from his ailments. The plaintiff contended that in view of relatively modest means, the single parent would not have opted to continue the pregnancy if she had been aware of the consequences of the chromosomal abnormalities associated with Beckwith-Wiederman Syndrome. The plaintiff would have also argued that this position should be given especially great weight in view of the fact that she was a medical assistant with some appreciation for the challenges which she would face under the circumstances of the medically complicated condition with scant hope to avoid future pain and suffering.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $1,070,000, including the policy and $70,000 from the defendant personally.

REFERENCE

Plaintiff's computer forensic expert: Scott Greene from Tucson, AZ. Plaintiff's economist expert: Kristin Kuscma from Livingston, NJ. Plaintiff's geneticist expert: Bryn Webb, M.D. from New York, NY. Plaintiff's life care planning expert: Harold Bialsdki from Jersey City, NJ. Plaintiff's ob/gyn expert: Daniel Small, M.D. from Lawrenceville, NJ.

Graham vs. Shorman. Docket no. BER-L- 8769-16. 02-20.

Attorneys for plaintiff: Bruce H. Nagel and Susan F. Connors of Nagel Rice, LLP in Roseland, NJ.

COMMENTARY

In this wrongful birth case, the damages revolved around the extraordinary medical expenses and emotional distress stemming from the single parent not being advised of the amniotic abnormalities noted on ultrasound and the need for follow up. In this regard, the plaintiff would have argued that she should have been given the choice of whether to more fully explore the potential for genetic abnormality, and that upon learning of the condition, she clearly would opted to avoid subjecting the unborn fetus to a life of painful surgeries, neurologic difficulties, and congenital abnormalities requiring 24/7 care. The issue of whether the plaintiff was advised of the likely abnormality was hotly disputed and the defendant pointed to a note in the record purporting to reflect such advisement. The plaintiff severely undermined the defendant's position by claiming that while she could not directly pinpoint the date the handwritten note was created, plaintiff's computer/forensics expert concluded that the note was scanned into the defendant's computer approximately 4 years after the date claimed by the defendant in his deposition testimony, and shortly after plaintiff's deposition was completed. This undermined the defense's claim that the note was contemporaneously created with the date of the office visit.

$846,523 VERDICT – BREACH OF CONTRACT AND CONSUMER FRAUD – CONSTRUCTION – DEFENDANTS FAIL TO COMPLETE WORK ON TWO RESIDENTIAL CONSTRUCTION PROJECTS – PLAINTIFF CONTENDS BREACH OF CONTRACT AND FRAUD – DEFENDANTS CONTEND PLAINTIFF DID NOT PROVE CONTRACT EXISTED.

Hudson County, NJ

In this breach of construction contract case, the plaintiffs were a residential property business entity that bought, renovated and sold properties; and the defendants were the 2 business partners and the construction company owned by one of them. The parties entered into an agreement with the defendants in February, 2017, wherein the defendants would renovate several residential properties in Madison and Westfield owned by the plaintiffs. Emails were exchanged between the defendants and plaintiffs and architectural designs were exchanged. The scope of the work was discussed and permits of approval were obtained. In March of 2017, a proposed final scope of the work was circulated via email for each of the properties. The budget for the property in Madison was $45,000 and the budget for the Westfield property was $135,000.

Completion dates for both projects were set. There was no written agreement signed by the parties or presented to the plaintiffs. One of the defendants was involved with negotiations of the various terms of the agreement between the parties and the construction work was primarily done by the other defendant through his construction company.

By August 1, 2017, the Madison property budget was paid in full and the Westfield project budgets had been paid to the defendants. The plaintiff principal contended that, despite payment and agreement to extend the completion dates a number of times, neither project was near completion by August 1. Therefore, the plaintiffs terminated both jobs. The plaintiffs then had to retain new contractors to complete the work. The plaintiff testified that he attempted to locate an acceptable contractor at the best price pos-

sible to complete both projects. The plaintiffs asserted that they made reasonable efforts to mitigate their damages.

The plaintiff's principal also testified that the defendant who handled negotiations had verbally referred on a number of occasions to the other defendant as his "Partner" and the plaintiffs believed that the defendant was representing the defendant contractor and his construction company. The plaintiffs also maintained that the defendants periodically represented that they would provide a written contract to the plaintiffs but never did. As a result of the construction delays, the plaintiffs were unable to list the properties for sale until 6 to 8 months after the original, anticipated completion dates.

The plaintiffs asserted that the defendants breached a contract between the parties to do the construction work for a specified budget and by a specified due date causing the plaintiffs significant monetary losses. The plaintiffs sought triple damages and attorney's fees under the Consumer Fraud Act because the renovations agreed to by the defendants for both properties were "Home improvement" as that term is utilized in the CFA administration regulations.

The defendant contractor and construction company denied that the defendant agent was acting on its behalf or that there was a partnership between the defendants. The defendants also asserted that without a written contract, the terms of the obligations between the various parties were not clear and that the defendants did not breach their duty to the plaintiff. The defendants argued that the plaintiff did not satisfy their burden of proof because the plaintiffs presented no expert testimony.

The court found in favor of the plaintiffs and found that, following termination of the projects, the total cost to the plaintiffs to complete the construction work on the Madison project was $61,957.53 together with carrying costs of $29,352.96 for the 162-day delay in completion. On the Westfield project, the court found costs to complete construction were $159,330.24 plus carrying costs of $44,489.14 incurred as a result of a 211-day delay in completion. The total economic damages for breach of contract on both projects were found to be $276,905.02. The court then tripled those damages under the Consumer Fraud Act for a total award of $830,715.06 plus attorney fees of $15,808, for a total award of $846,523.

REFERENCE

Rock Real Estate Ventures, LLC, et al. vs. Tom Riley, et al. Docket no. L-001235-18; Judge Anthony V. D'Elia, 07-30-19.

Attorney for plaintiff: Alexander Schachtel of Law Office of Alexander Schachtel in Hoboken, NJ. Attorney for defendant Justin Schneider: Francis P. Alai of Francis P. Alai Attorney at Law in Morristown, NJ.

COMMENTARY

The court found that there was uncontroverted evidence that the plaintiffs and defendants entered into a contractual agreement. The agreement was ironed out and reflected in written electronic correspondence from January through March of 2017. The plaintiffs' principal testified that this culminated with an in-person meeting on or around April 1, 2017 wherein terms were formally agreed to orally by the agent of the defendants. After which, some work was done and payments were made in a timely fashion. Target completion due dates were missed on several occasions and on the date of the ultimate termination of the agreement, the work was not nearly finished. The court stated that, under these circumstances, it was clear that the defendants breached their contractual obligations to the plaintiffs.

The court determined that the plaintiffs were forced to retain new contractors and to absorb outstanding supply, labor and materials invoices that had not been paid by the defendants. The court found that the plaintiffs incurred added carrying costs which were the result of a 162-day delay between the expected contractual work completion date and the actual work-completion date on one property and a 211-day delay on the second property. Further, the court agreed with the plaintiffs' contention that the defendants were persons engaged in the business of making or selling home improvements as defined in N.J.A.C. 13:445 (a)16.2 and that the defendants committed unlawful practices as defined in that regulation by making misrepresentations regarding the price of work or material, failing to complete work by the contractual end date, failing to give timely notice of reasons for a delay in completion, and failing to record in a written contract any agreements for work exceeding $500.

The court concluded that the plaintiffs demonstrated by a preponderance of the evidence that a valid contract existed, that the defendant's agent breached the contract, and that the plaintiffs sustained damages as a result. The court also found that the plaintiff had proven that the defendants committed the unlawful acts referenced and awarded triple damages and reasonable attorneys' fees. There were issues during discovery whereby the defendants avoided providing evidence in the form of emails between the defendant partners/agents. At the conclusion of the bench trial, the defendants requested a case management conference. The court also denied the request stating that allowing the defendants a case management conference post-trial would allow the defendant to supply information it had previously been ordered to supply and that, if granted, the defendants would ".. then be entitled to a new trial on all issues and will make a mockery of the discovery process and the Court Rules regarding discovery."

DEFENDANT'S VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – MULTIPLE HERNIATIONS IN CERVICAL AND LUMBAR SPINE – NO INVASIVE TREATMENT; 6 MONTHS CHIROPRACTIC TREATMENT – PLAINTIFF UNSUCCESSFULLY MOVES FOR NEW TRIAL AFTER DEFENSE VERDICT.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 48-year-old woman, asserted that the defendant driver struck her vehicle from behind with such significant impact as to cause significant, permanent injury. The defendant denied that the plaintiff met the threshold for permanent injury.

On February 29, 2016, the plaintiff was operating her motor vehicle north on Gotham Parkway near the intersection with Veterans Boulevard in Carlstadt and had stopped at the stop sign controlling the intersection. At the same time, the defendant was operating a motor vehicle traveling directly behind the plaintiff's vehicle heading north on Gotham Parkway. The defendant carelessly, recklessly, and negligently operated his vehicle by failing to make proper observations and attention to surrounding traffic such that he suddenly, and without warning, struck the rear of the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained multiple herniations in the cervical and lumbar spine. The plaintiff received no invasive treatment and treated with a chiropractor for 6 months. The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent and not caused by the subject collision. The defendant pointed to multiple prior accidents in which the plaintiff had been involved and the medical records for injuries she sustained in those prior incidents as evidence that the injuries claimed in the present case were not related to the subject collision, but were, in fact, preexisting.

The jury found no cause of action and returned a 5-1 verdict in favor of the defendant.

REFERENCE

Alava vs. Novy. Docket no. L-001704-17; Judge Mary K. Costello, 06-05-19.

Attorney for plaintiff: J. Andrew Velez of Alonso & Navarete, LLC in North Bergen, NJ. Attorney for defendant: William Novy of Styliades and Jackson in Marlton, NJ.

COMMENTARY

Post-trial, the plaintiff unsuccessfully moved for a new trial. It appears the plaintiff did not present strong evidence in her motion for new trial. Defense counsel argued that the plaintiff did not provide any detail in her support of her claim that the evidence she presented was sufficiently weighty for the jury verdict to be considered a miscarriage of justice. Indeed, the jury only deliberated for 10 minutes before returning a verdict in favor of the defendant. The defendant argued that the plaintiff's evidence was not convincing as evidenced by the swiftness of the jury's deliberations. The defense claimed that the plaintiff's trial testimony was full of inconsistencies from her deposition testimony and likely impacted her credibility. Further, the defendant claimed that the plaintiff's expert did not testify well either. In contrast, the defendant presented strong evidence in rebuttal of the plaintiff's claims, with the highlight being the convincing expert opinion of defendant's witness Dr. Hutter as to the nature, extent and causation of the plaintiff's injuries.

In addition, the defense argued that there were no issues during trial with evidence or inappropriate rulings on objections, nor did the plaintiff allege any. According to the defendant, the plaintiff's motion for new trial did not raise any issues of fact or law, or the proceedings of the trial. Defense counsel argued that the jury had ample opportunity to observe the witnesses and to determine their credibility, and the defense opined that it was not surprising that the jury did not find the plaintiff's testimony credible given the inconsistencies in her statements. The defendant argued that the plaintiff did nothing to hint, let alone clearly establish a miscarriage of justice warranting a new trial. The court agreed and denied the motion.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Ob/Gyn

$400,000 VERDICT

Medical malpractice – Ob/gyn – Resectoscope used by defendant reproductive endocrinologist to remove uterine fibroids breaks during procedure – Part of device remains in pelvic cavity for 3 months and needs to be removed by laparoscopy.

Mercer County, NJ

In this medial malpractice action, the plaintiff, in her 40s, contended that as the defendant reproductive endocrinologist was using a resectoscope to remove uterine fibroids, a piece of the device broke and became lodged in her pelvis. The plaintiff named the physician, her group and the hospital as defendants.

The plaintiff maintained that in this case involving a section of a medical device that broke during a procedure involving a total innocent plaintiff, the burden of proof shifted to the defendants, at least one of whom had to be found negligent. The plaintiff did not present expert testimony. The plaintiff maintained that due to the defendant's negligence, she suffered intermittent pain for approximately 2 months. The plaintiff made no claim for a further physical injury. The plaintiff testified that she continues to feel distrustful of medical providers.

The device had to be put together. The surgical technician testified in discovery that as she was doing so, the physician grabbed it from her and jammed the wrong parts of the instrument together. The physician indicated that she did take the device from the technician, but denied placing it in an inappropriate receptacle. The surgical technician testified at trial that she did not recall the incident.

The jury found the defendant hospital 80% negligent, the defendant physician 20% negligent and awarded $400,000 to the plaintiff and $0 to her husband.

REFERENCE

Plaintiff patient in her 40s vs. Defendant reproductive endocrinologist.

Attorney for plaintiff: Alan Jacob Weinberg of Lomurro Davison Eastman & Munoz, PA in Freehold, NJ.

Ophthalmology

UNDISCLOSED RECOVERY

Medical malpractice – Ophthalmology – Surgery – Improper performance of strabismus surgery; failure to properly follow-up post surgery – Multiple eye injuries requiring various surgical repairs – Permanent blindness in right eye.

Bergen County, NJ

In this medical malpractice case, the plaintiff alleged that the defendant ophthalmologist negligently performed strabismus surgery on her right eye on June 16, 2015, which resulted in a perforation of the interior of the plaintiff's right eye. The plaintiff asserted that the defendant negligently inspected the interior of the plaintiff's eye for a perforation prior to conclusion of the surgery. The plaintiff also alleged that the defendant's surgical post-operative consultation with the plaintiff was not performed in a timely fashion. The plaintiff acknowledged a prior retinal detachment in the right eye, but claimed that the defendant's negligence increased the risk of harm and contributed to the plaintiff's injury. The plaintiff further claimed that the defendant's alleged negligence resulted in injury to her right eye requiring additional surgery. As a result of the alleged malpractice, the plaintiff suffered multiple injuries including blindness in one eye.

The defendant denied that he was negligent and maintained that his surgical treatment of the plaintiff was in accordance with the accepted standard of care at all times. The defendant also maintained that he properly inspected the plaintiff's inner eye prior to completion of the strabismus surgery and that his post-operative consultation with the plaintiff was timely and in accordance with the accepted standard of care. The defendant claimed that the plaintiff's eye condition was unrelated to any alleged negligent treatment. The defendant pointed to the plaintiff's pre-existing condition, a prior retina detachment in her right eye, which by itself had a risk of causing recurrent retinal detachment, cataract, in-

fection, bleeding, increased intraocular pressure, and severe vision loss. The defendant further asserted that the plaintiff failed to remove the bandage placed over her right eye within a day of her strabismus surgery and that the plaintiff failed to report any concerns to him in violation of his post-surgical instructions to her, thus delaying referral to a specialist.

Prior to trial, the plaintiff made an offer of judgment in the amount of $1,000,000. That offer was not accepted and the case proceeded. The parties settled the matter prior to trial for an undisclosed sum.

REFERENCE

Leesheng vs. Guterman. Docket no. L-000256-16; Judge Robert L. Polifroni, 09-09-19.

Attorney for plaintiff: Daniel J. Woodard of Phillips & Paolicelli, LLP. Attorneys for defendant: Jeffrey A. Krompier and Jason M. Altschul of Krompier & Tamn, LLC in Parsippany, NJ.

PRODUCT LIABILITY

Defective Product

$344,500 RECOVERY

Product liability – Defective product – Construction site negligence – Failure to properly attach temporary wooden board to component of mobile home – Plaintiff falls 13-15 feet to ground – Bilateral radius and ulna fractures – 4 surgeries.

Monmouth County, NJ

The 46-year-old plaintiff this case, a part of a set crew that assembled prefabricated modular home units to construct a completed house, contended that the defendant manufacturer supplied a defective product and negligently failed to affix a temporary board to the component, which comprised a portion of the entrance and a portion of the entrance. The plaintiff, whose weight was on the temporary board wrapped in a translucent package, contended that the temporary wooden piece broke and that he fell some 13-15 feet, suffering severe injuries.

The plaintiff, who was employed by a subcontractor, also contended that the defendant general contractor negligently failed to supply a safe workplace and the plaintiff, who was wearing a harness and lanyard, maintained that there was no place to tie the equipment off. The defendants maintained that the plaintiff could have tied his fall protection to the ceiling on the modular home unit on which he was working, and that his failure to do so constituted the sole cause of the incident. The plaintiff countered that any comparative negligence was significantly outweighed by the defendants' failure to properly nail the temporary board to the modular unit and failure to provide a safe work environment.

The plaintiff suffered bilateral fractures of the radius and ulna which required 4 surgeries. The plaintiff asserted that he will suffer permanent pain and weakness and be unable to work in a physical capacity. The plaintiff is now restricted to light-duty work. The plaintiff subsequently developed unrelated cardiac issues which impacted on his ability to earn.

The case settled prior to trial for $344,500.

REFERENCE

Plaintiff's construction engineer expert: David Gardner, P.E. from Pittsburgh, PA. Plaintiff's engineer expert: Anthony Volonnino, P.E. from Cedar Knolls, NJ.

Jumbelick vs. Pennkraft Building Systems, LLC, et al. Docket no. MON-L-1562-17.

Attorneys for plaintiff: Debra A. Jensen and Bradley R. Smith of Galfand Berger, LLP in Philadelphia, PA.

DAYCARE CENTER NEGLIGENCE

$20,000 RECOVERY

Daycare center negligence – Negligent supervision – Minor plaintiff bitten 21 times over 1.5-year period at defendant daycare.

Atlantic County, NJ

On May 18, 2015, the plaintiff, a 2-year-old boy, was allegedly bitten by another child at the defendant daycare he attended. The plaintiff's parents maintained that their child had been bitten 21 times in the course of his attendance at the defendant daycare from age 5 months to age 2 years. The plaintiff maintained that he was entitled to be protected and looked after by competent individuals and that his injuries were the result of negligent supervision and failure of the defendant to protect him.

After the subject event, the plaintiff presented to his pediatrician for multiple human bites on his left arm, one of which broke the skin. The plaintiff was evaluated and given antibiotics to prevent infection and his parents were instructed on daily cleaning of the bites.

The defendant did not dispute that the bites occurred, but argued that they were not negligent in supervision of the children in their care and that young children biting is a known risk of having young children together. The defendant also noted that the plaintiff's parents had the right to remove him at any time from the defendant daycare.

The defendant also pointed to the fact that the plaintiff's parents hired the defendant's employee (who had been in the room during several bite incidents) to baby sit privately in their home. The defendant apologized for the bites, but argued that it did not violate any standards; the plaintiff has no scars and was too young to remember the incidents.

The parties settled the matter prior to trial in the amount of $20,000 broken down as follows: $5,000 in attorney fees and $15,000 in net damages to the minor plaintiff.

REFERENCE

Hildebrand vs. Dreaming Tree Enterprises, LLC. Docket no. L-000278-18; Judge Mary C. Siracusa, 06-20-19.

Attorney for plaintiff: Danielle J. Walcoff of Lipari & Walcoff, LLC in Pleasantville, NJ. Attorney for defendant: Christopher J. O'Connell of Sweeney & Sheehan, PC in Westmont, NJ.

DISABILITY DISCRIMINATION

DEFENDANT'S VERDICT

Disability discrimination – Professor is allegedly victim of retaliation because of complaint that university failed to accommodate vision difficulties which prevented her from driving at night.

Union County, NJ

The plaintiff, a tenured professor in her early 80s, filed an EEOC complaint in which she contended Kean University failed to accommodate her request to no longer be assigned evening classes due to her deteriorating vision. The university agreed to provide a semester by semester review and attempt to accommodate her request, but could not provide a blanket accommodation moving forward.

The plaintiff filed this lawsuit, alleging a failure to accommodate her and further alleging retaliation under NJLAD as a result of her prior EEOC filing. The plaintiff further contended that the university reduced her summer classes and gave her other, less favorable assignments, along with unfavorable performance reviews

The defendant denied the plaintiff's claims and maintained that the same university-wide factors and considerations were followed with regard to the plaintiff's assignments. The complaint also alleged age discrimination. This claim was dismissed by the trial judge at the close of the plaintiff's case.

The jury found for the defendant on the remaining claims after deliberating approximately 1 hour.

REFERENCE

Christie vs. Kean University, et al. Docket no. UNN-L-739-17; Judge Alan Lesnewich, 03-06-20.

Attorney for defendant: Leonard Leicht of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

DOG ATTACK

$125,000 DEFAULT JUDGMENT

Dog attack – Strict liability – Minor plaintiff suffers dog bite injuries and permanent scarring.

Cumberland County, NJ

In this dog attack case, the minor plaintiff asserted that the defendant owner of the dog and the co-defendant owners of the property where the attack occurred, and where both the plaintiff and the defendant owner of the dog lived, were strictly liable for injuries that the plaintiff suffered as a result of the dog bite.

The minor plaintiff and her family resided at a multi-unit property owned by the co-defendant property owners. The defendant dog owner also resided at that property in Millville. On January 27, 2016, the minor plaintiff encountered the defendant's dog on the premises where she lived. The plaintiff maintained that the defendant's dog attacked and bit the plaintiff. As a result of the attack, the plaintiff sustained traumatic bite injuries and was left with permanent scarring.

The plaintiff argued that the defendants knew that a dangerous condition existed in the form of a dog with known vicious propensities and that their failure to uti-

lize due care or to warn the plaintiff of the dangerous condition caused the plaintiff to be permanently injured. The co-defendant property owners denied knowledge as to the dangerous condition of the vicious dog on the property and filed a claim for contribution and indemnification as to the defendant dog owner under the claim that she was primarily negligent for the plaintiff's injuries. The defendant dog owner failed to file an answer or appear.

The plaintiff settled and dismissed the complaint as to the co-defendant property owners and, in the absence of an answer, a default judgment of $125,000 was entered against the defendant dog owner.

REFERENCE

L.B. vs. Biggs, et al. Docket no. L-000569-18; Judge James R. Swift, 07-19-19.

Attorney for plaintiff: Richard M. Pescatore of Richard M. Pescatore, P.C. in Vineland, NJ. Attorneys for defendant Rocco Toto and Donna Caronaro: Janet L. Pisansky of Burke and Potenza in Parsippany, NJ.

$60,000 RECOVERY

Dog attack – Strict liability – Face and shoulder lacerations result in permanent scarring – Limited psychological treatment.

Cumberland County, NJ

On May 20, 2017, the plaintiff, a 6-year-old boy, was lawfully on the defendants' property located in Bridgeton. The plaintiff was playing with the defendants' children when their mixed-breed dog escaped from the defendants' house and viciously attacked the minor plaintiff, biting him on his face and right shoulder and causing permanent injury.

As a result of the attack, the plaintiff was initially treated at the emergency room where his wounds were evaluated, cleaned, treated and bandaged. He was discharged with an antibiotic for the lacerations and advised to follow up with a plastic surgeon. The plaintiff presented to the plastic surgeon one week later to have the lacerations on his left cheek and right shoulder evaluated. The plaintiff's plastic surgeon diagnosed permanent scarring.

2 years later, the plaintiff's treating pediatrician noted the scarring in the plaintiff's chart. The plaintiff also presented to a therapist for psychological evaluation after the dog bite. The plaintiff was initially diagnosed with adjustment disorder with anxiety but, on his last visit, was deemed to have improved.

The defendant stipulated liability and settled the matter with the minor plaintiff prior to trial in the amount of $60,000 broken down as follows: $15,301 in attorney fees; and $44,699 in net damages to the minor plaintiff.

REFERENCE

Bagley vs. Battiata. Docket no. L-000155-19; Judge James R. Swift, 06-14-19.

Attorney for plaintiff: Daniel E. Rosner of Rosner Law Offices, P.C. in Vineland, NJ. Attorney for defendant: Brielle K. Winkler of Marshall Dennehey Warner Coleman & Goggin in Mt. Laurel, NJ.

INSURANCE OBLIGATION

$60,000 VERDICT

Insurance obligation – Underinsured motorist claim – Motor vehicle negligence – Rear end collision – Multiple cervical disc bulges and myofascial pain.

Hunterdon County, NJ

On July 14, 2016, the plaintiff was the operator of a motor vehicle traveling north on Route 202/31 at the intersection with Reaville Avenue in Flemington. At the same time and place, the defendant was the operator of a vehicle traveling directly behind the plaintiff's vehicle. The plaintiff argued that the defendant negligently and carelessly operated her vehicle such that she failed to stop behind the plaintiff and collided with the rear of the plaintiff's vehicle causing serious injury to the plaintiff.

As a result of the collision, the plaintiff sustained multiple cervical disc bulges and myofascial pain. The plaintiff brought suit against the defendant driver and against her own insurer for underinsured motorist claim. The defendant driver denied liability and asserted that the plaintiff was at fault for the collision or at least contributorily negligent and thus, responsible for his own injuries and resulting expenses. The defendant also maintained that the plaintiff did not suffer injuries significant enough to pierce the verbal threshold necessary to recover damages.

The co-defendant insurer claimed that the plaintiff's claims were governed by the insurance policy contract between the parties and that the plaintiff breached the terms of that agreement and thus,

waived any claim. The co-defendant insurer also asserted that the defendant driver was solely responsible for all damages claimed by the plaintiff.

The jury found in favor of the plaintiff and against the defendants. The jury awarded the plaintiff $60,000 in damages plus pre-judgment interest, for a total award of $63,786.

REFERENCE

Bulwin vs. Larorre and AAA Insurance. Docket no. L-000056-17; Judge Michael F. O'Neill, 06-28-19.

Attorney for plaintiff: David A. Cook of Levinson Axelrod, P.A. in Flemington, NJ. Attorney for defendant Larorre: Georgette M. Wilton of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ. Attorney for defendant AAA Insurance: Cindy Newman of Barone Mooney Newman & Foreman in Edison, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Underinsured motorist claim – Rear end collision – Multiple cervical disc herniations; lumbar herniation at L3-4; torn right shoulder – Multiple epidural injections and recommendation for lumbar and shoulder surgery.

Bergen County, NJ

On November 2, 2013, the plaintiff sustained permanent injuries in a motor vehicle collision that occurred on Route 3 in Rutherford. The plaintiff's injuries resulted from the negligence of an underinsured vehicle, whose coverage did not adequately compensate the plaintiff for the injuries sustained. Thus, the plaintiff brought this action against the defendant, his insurer, under the underinsured motorist clause of his policy.

As a result of the collision, the plaintiff, a 60-year-old male, sustained multiple cervical disc herniations, a lumbar herniation at L3-4 and a torn right shoulder. The plaintiff underwent multiple epidurals and was recommended for lumbar and shoulder surgery. He also suffered a broken leg in a subsequent, unrelated accident.

The plaintiff claimed that he lost a $614,000 pension due to early retirement partially related to his injuries. The defendant denied the plaintiff's claim and asserted that the pension loss was not related to the subject incident. The defendant questioned whether the plaintiff could have continued working.

The jury entered a verdict of no cause of action in favor of the defendant.

REFERENCE

Baglieri vs. New Jersey Manufacturers Insurance Company. Docket no. L-003927-17; Judge Robert C. Wilson, 01-09-20.

Attorney for plaintiff: Jacqueline Rosa of Seigel Law, LLC in Ridgewood, NJ. Attorney for defendant: Daniel J. Pomeroy of Pomeroy, Heller, Ley, Digasbarro & Noonan, LLC in New Providence, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$100,000 RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Displaced oblique fracture of left tibia with open reduction and internal fixation – Left proximal third tibial shaft fracture with closed reduction – Bladder rupture requiring surgery – Right pubicrami fracture; pubic symphysis diastasis; scrotal laceration requiring repair; testicular contusion – 2 rib fractures; scapula fracture – Right pulmonary contusion; right pneumothorax.

Cape May County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the plaintiff who was riding a motorcycle. On March 6, 2017, the plaintiff was operating a motorcycle on Shunpike Road in Lower Township. The plaintiff asserted that the defendant driver negligently failed to keep a proper lookout and struck the plaintiff on his motorcycle causing extensive, serious, traumatic and permanent injuries. The plaintiff was rushed to the emergency room from the scene of the collision. The defendant denied liability and asserted that the plaintiff was at least contributorily negligent in causing the collision in which he was injured.

As a result of the collision, the plaintiff sustained a displaced oblique fracture of the left tibia with open reduction and internal fixation; left proximal third tibial shaft fracture with closed reduction; bladder rupture requiring surgery; right pubicrami fracture; pubic symphysis diastasis; scrotal laceration requiring repair; testicular contusion; 2 rib fractures; scapula fracture; right pulmonary contusion; right pneumothorax and

pain and suffering. The plaintiff's injuries required multiple surgeries and hospitalization. The plaintiff claimed a medical lien of $167,000.

The parties settled the matter prior to trial in the full amount of the defendant's insurance policy limit of $100,000.

REFERENCE

Murphy vs. Mellem, et al. Docket no. L-000153-17; Judge J. Christopher Gibson, 07-23-19.

Attorney for plaintiff: Christopher Lipari of Lipari & Walcoff in Pleasantville, NJ. Attorney for defendant: Erin R. Thompson of Birchmeier & Powell, LLC in Tuckahoe, NJ.

Auto/Pedestrian Collision

$500,000 VERDICT

Motor vehicle negligence – Auto/pedestrian parking lot collision – Disc bulges at L4-5 and L5-S1 with radiculopathy; disc herniation at C6-7 with radiculopathy – Torn meniscus in right knee – Epidural injections, physical therapy, laminectomy and discectomy of lumbar spine – Recommendation for fusion surgery.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the plaintiff pedestrian in the parking lot of a supermarket, causing him to sustain severe injuries. The plaintiff made a claim for negligence and the plaintiff wife made a per quod claim. Negligence was decided prior to trial and the matter went to trial on the issue of damages only.

On March 9, 2015, the plaintiff, a 68-year-old male, was walking in the parking lot of a supermarket in Manalapan. While he was walking, the plaintiff was struck from behind on his right leg by a vehicle driven by the defendant. The plaintiff and the plaintiff wife alleged that the defendant was negligent and that her negligence caused the plaintiffs' damages.

As a result of the collision, the plaintiff sustained injury to his neck, lumbar spine and right knee. The plaintiff suffered disc bulges at L4-5 and L5-S1 with radiculopathy; disc herniation at C6-7 with radiculopathy and a torn meniscus in the right knee. The plaintiff treated with epidural injections, physical therapy, laminectomy and discectomy of the lumbar spine. The plaintiff's physician made a recommendation for fusion surgery. The plaintiff did not have surgery for the knee injury.

The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were preexisting and not caused by the subject collision. The defendant argued that the plaintiff had spinal degeneration and suffered, at most, an aggravation of a preexisting condition rather than traumatic injury. The defendant also pointed to the fact that the plaintiff had had prior ACL reconstruction. The defendant's expert assigned permanency to the neck and back, but not the knee.

The defendant made an offer of judgment in the amount of $250,000 prior to trial and the plaintiffs made a counter-offer of $800,000. No agreement was reached and the matter went to trial. The jury found in favor of the plaintiffs and awarded the plaintiff $300,000 in damages plus pre-judgment interest, for a total award of $318,160. The jury awarded the plaintiff wife $200,000 in per quod damages plus pre-judgment interest, for a total award of $212,107.

REFERENCE

Muzio vs. Feldman. Docket no. L-000910-17; Judge Thomas J. Buck, 06-06-19.

Attorneys for plaintiff: J. Silvio Mascolo and Matthew G. Bonanno of Rebenack, Aronow & Mascolo, LLP in New Brunswick, NJ. Attorney for defendant: Jeffrey D. Noonan of Pomeroy, Heller & Ley, LLC in New Providence, NJ.

Intersection Collision

$175,000 VERDICT

Motor vehicle negligence – Intersection collision – Multiple cervical and lumbar disc herniations with no prior history – Chiropractic treatment and 2 spinal epidurals – Plaintiff alleges 5 months of lost work.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, a 44-year-old masonry worker, asserted that the defendant driver negligently failed to stop for a stop sign, thus causing a collision wherein the plaintiff suffered significant, permanent injury. The plaintiff sustained heavy property damage to his vehicle, which he pointed to as evidence of the violent nature of the collision.

As a result of the collision, the plaintiff was taken to the emergency room. The plaintiff sustained multiple cervical and lumbar disc herniations. The plaintiff had no prior history of motor vehicle accidents or injuries. The plaintiff treated with a chiropractor treatment and underwent two spinal epidurals. The plaintiff alleged 5 months of lost work due to his injuries.

The defendant contested the plaintiff's damages. The defendant disputed the nature and extent of the plaintiff's claimed injuries.

The jury returned a verdict in favor of the plaintiff and awarded $175,000 in damages. Together with interest, the plaintiff's total recovery was $188,228.

REFERENCE

Baptiste vs. Brown. Docket no. L-005151-16; Judge Bahir Kamil, 07-10-19.

$5,000 RECOVERY

Motor vehicle negligence – Intersection collision – First minor plaintiff sustains cervical sprain and strain; left TMJ sprain; post-traumatic headaches; trigeminal neuralgia and nerve irritation; left thoracic sprain and strain; bilateral lumbar sprain and strain – Second minor plaintiff sustains cervical thoracic sprain and strain – Injuries treated conservatively.

Middlesex County, NJ

On April 22, 2017, the infant plaintiffs were passengers in a vehicle operated by their father traveling northbound on Somerset Street at the intersection with Henry Street in New Brunswick. The plaintiffs asserted that the defendant negligently operated her vehicle such that she struck the vehicle in which the minor plaintiffs were passengers and caused them serious injuries requiring medical treatment.

As a result of the collision, the first minor plaintiff sustained cervical sprain and strain; left TMJ sprain; post-traumatic headaches; trigeminal neuralgia and nerve irritation; left thoracic sprain and strain and bilateral lumbar sprain and strain. The first plaintiff was treated conservatively. The second minor plaintiff sustained cervical thoracic sprain and strain. The plaintiffs' injuries were not considered permanent.

The defendant settled the matter with the plaintiffs prior to answering the complaint. The parties settled the matter prior to trial. The first minor plaintiff received gross damages of $2,500 of which $1,275 went to legal and medical costs, with a net recovery of $1,225 to the plaintiff. The second minor plaintiff received gross damages of $2,500 of which $1,606 went to legal and medical costs, with a net recovery of $894 to the plaintiff.

REFERENCE

Ocansey vs. Hernandez. Docket no. L-003157-19; Judge Carlia M. Brady, 05-30-19.

Attorney for plaintiff: Frank Lazzaro of Lutz, Shafranski, Gorman and Mahoney, P.A. in New Brunswick, NJ.

Rear End Collision

$190,000 RECOVERY

Motor vehicle negligence – Rear end collision – Lumbar herniation superimposed on prior lower back complaints – Lumbar discectomy – Inability of LPN to continue working.

Monmouth County, NJ

This motor vehicle negligence case involved a 50-year-old woman who was struck in the rear by the defendant. The plaintiff maintained that she suffered a herniation at L5-S1 and that after a course of chiropractic care and several injections proved to be inadequate, she underwent a lumbar discectomy. The plaintiff's orthopedist concluded that the plaintiff will nonetheless suffer permanent symptoms. The defendant maintained that any current difficulties were preexisting.

The defendant pointed out that the plaintiff had made 3-4 prior claims regarding her low back. The plaintiff countered that she had been asymptomatic and required no treatment in the approximate 8-year period preceding the subject collision and the plaintiff would have argued that the defendant's position should be rejected.

The plaintiff further established that at the time of her last treatment from the prior claims, she was a Certified Nursing Assistant, subsequently earned her degree as an LPN and working in a nursing-home type facility in a physically demanding job until the subject accident occurred. The plaintiff maintained that she can no longer work in a physical capacity.

The defendant had $300,000 in coverage. The case settled prior to trial for $190,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Cary Glastein, M.D. from Shrewsbury, NJ.

Polynice vs. Abbruzzese. Docket no. MON-L-3769-18, 12-19.

Attorney for plaintiff: Joseph Perone of Deitch & Perone, P.C. in West Long Branch, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Post-traumatic cervical, thoracic and lumbar strain/sprain – Chronic S1 radiculopathy; multi-level bulging discs –AC joint arthralgia of right shoulder – AC joint injections and physical therapy – Loss of consciousness – Headaches – Plaintiff recovers $10,000 per high/low agreement.

Gloucester County, NJ

On May 19, 2015, the plaintiff, a 23-year-old male convenience store cashier, was stopped at a traffic light at Sicklerville and Garwood Road in Gloucester. The defendant was operating a vehicle owned by his mother and was traveling to pick up his friend from work. The defendant was behind the plaintiff in traffic. The defendant stated to the responding police officer that his foot slipped off the brake and stepped on the accelerator causing him to rear end the plaintiff's vehicle. Both vehicles were towed from the scene. The police report found the defendant responsible for the collision and the defendant stipulated liability in the subject action.

As a result of the collision, the plaintiff sustained post-traumatic cervical, thoracic and lumbar strain/sprain; right mid-cervical dorsal root irritation; right distal median sensory neuropathy; acute and chronic L5 right radiculopathy; chronic S1 radiculopathy with the right worse than the left and multi-level bulging discs most marked at L4-5. He also sustained AC joint arthralgia and mild impingement of the right shoulder, cubital tunnel syndrome on the left with concurrent clinical carpal tunnel syndrome on the left; loss of consciousness and headaches.

The plaintiff claimed that his injuries were permanent and that he has continuous and ongoing pain in the right shoulder, ongoing headaches, and sharp and continuous pain in his buttocks and lower extremities all of which inhibit his abilities at work and at home performing daily activities. The plaintiff treated with AC joint injections and physical therapy. The plaintiff claimed $600 in lost wages.

The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent and not caused by the subject collision. The defendant pointed to the fact that the plaintiff was involved in 1 prior and 2 subsequent accidents.

The parties entered into a high/low agreement prior to trial wherein the plaintiff would receive a minimum recovery of $10,000 in the event of a defendant's verdict and a maximum of $60,000 in the event of a plaintiff's verdict in excess of that amount. The jury found no cause of action and returned a verdict in favor of the defendant, thus the plaintiff recovered $10,000.

REFERENCE

Arons vs. Antonini. Docket no. L-000625-17; Judge Samuel J. Ragonese, 06-10-19.

Attorney for plaintiff: Gregory C. Dibsie of Law Office of Gregory C. Dibsie in Turnersville, NJ. Attorney for defendant: Toni M. Gheen of Law Offices of Styliades and Jackson in Marlton, NJ.

Sideswipe Collision

$5,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Traumatic neck and back injury – Decreased spinal range of motion; paravertebral muscle spasms – Prognosis guarded.

Essex County, NJ

On March 11, 2017, the plaintiff was the 10-year-old minor passenger in a vehicle traveling westbound on Route 3 in Clifton when the vehicle was struck by a vehicle operated by the defendant. The defendant was the operator of a motor vehicle owned by the co-defendant which was also traveling westbound on Route 3 in Clifton. The plaintiff maintained that the defendant driver negligently sideswiped the plaintiff's vehicle causing an accident to occur wherein the plaintiff was injured.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and back causing decreased range of motion and paravertebral muscle spasms. The plaintiff's physician deemed the plaintiff's final prognosis as guarded.

The defendant did not answer the plaintiff's Complaint prior to settlement of the case.

The parties settled the matter prior to trial in the amount of $5,000 broken down as follows: $1,494 in attorney fees and $3,506 in net damages to the minor plaintiff.

REFERENCE

Sewnath vs. Yuranni and Movilla. Docket no. L-001816-19; Judge Thomas M. Moore, 05-01-19.

Attorney for plaintiff: Anthony R. Fattell of Lord, Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ. Attorney for defendant: Regina D. Geise of Law Offices of Pamela D. Hargrove in Cranford, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Herniated discs with fracture at L5-S1 – L1 compression fracture.

Ocean County, NJ

On June 3, 2016, the plaintiff was operating his vehicle on the Garden State Parkway southbound near milepost 112. The plaintiff was traveling in the right lane when, he contended, the defendant driver made an illegal lane change and struck the rear passenger side of plaintiff's vehicle and caused the plaintiff to lose control of the vehicle and hit a guardrail, ending up in the ditch on the side of the roadway. As a result of the collision, the plaintiff sustained injuries to his head, back, chest, knee and neck.

The plaintiff's injuries included herniated discs with fracture at L5-S1 and an L1 compression fracture. The plaintiff claimed that he remained unable to work from the time of the incident through the time of the trial. He made a lost wage claim of $53,488.

The defendant disputed liability and contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not caused by the subject collision and that the plaintiff's injuries were not permanent.

The jury returned a verdict of No Cause for Action in favor of the defendant.

REFERENCE

Miljus vs. Tanis. Docket no. L-002551-16; Judge Mark A. Troncone, 06-03-19.

Attorney for plaintiff: Michael Berliner of Rothenberg, Rubenstein, Berliner & Shinrod, LLC in Livingston, NJ. Attorney for defendant: Erin E. Mullen of Ronan, Tuzzio & Giannone, PA in Tinton Falls, NJ.

PREMISES LIABILITY

Fall Down

$200,000 RECOVERY

Premises liability – Fall down – Trip and fall over mirror left on floor in shoe department – Knee laceration superimposed on prior bilateral knee replacements – Infection – Need for antibiotics and knee stabilizing device on lower leg until infection ultimately resolves – Significant cosmetic deficit.

Union County, NJ

The plaintiff, approximately age 70, contended that the defendant's premises were dangerous because of a mirror that was on the floor in the shoe aisle which caused her to sustain a knee laceration when she tripped over it. The plaintiff contended that since the mirror could easily be moved by customers and since customers' gazes were directed to the shoes; the defendant should have attached the mirrors to the walls or columns, rather than leave a loose mirror on the floor. The defendant maintained that the plaintiff failed to pay adequate attention and make appropriate observations, asserting that she was comparatively negligent.

The plaintiff had undergone bilateral knee replacement surgery approximately 5 years earlier. The plaintiff suffered a laceration to the left knee and contended that because of the superimposition of the laceration on the prior condition, the laceration became infected.

The plaintiff's infectious disease specialist contended that the infection was very painful, took approximately 1 year to resolve and required antibiotics, extensive gauze to fill the gaping wound and left her with a very substantial cosmetic deficit. The defendant would have argued that the jury should consider that the pre-incident cosmetic deficit of the knee was substantial.

The case settled prior to trial for $200,000.

REFERENCE

Plaintiff's engineer expert: John Tedoriero, P.E. from Cherry Hill, NJ. Plaintiff's infectious disease expert: Reza Momeni, M.D. from Berkley Heights, NJ.

Viscardi vs. Lord & Taylor. Docket no. UNN-L-004247-18, 02-03-20.

Attorney for plaintiff: Marc J. Rogoff of Law Office of Marc J. Rogoff in Fords, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Hazardous premises – Bimalleolar ankle fracture – Surgery with open reduction and internal fixation.

Bergen County, NJ

On January 17, 2016, the plaintiff, a 57-year-old woman, was lawfully present on the property of the defendants' business, a variety home center, in Cliffside Park. On the date in question, the plaintiff slipped or tripped on tread that comprised a portion of the means of egress from the store situated on the subject property. The plaintiff fell to the ground and as a result of the fall, the plaintiff sustained a bimalleolar ankle fracture and underwent surgery with open reduction and internal fixation. The defendants' medical expert opined that the plaintiff made a good recovery and had no residual injury or disability.

The plaintiff maintained that the fall and consequential injuries were directly and proximately caused by raised landing from the sidewalk to the front of the store. The plaintiff contended that there was a lack of any markings, warning informing pedestrians that there is a change in grade, elevation of the tread and riser fro the sidewalk to the front of the store. The plaintiff asserted that the defendants were aware of the presence of a change in grade, elevation or the tread and riser or raised landing from the sidewalk to the front of the store, that they failed to warn or otherwise inform pedestrians of the same, that they failed to maintain the property in a reasonably safe condition and failed to rectify the situation.

The plaintiff brought suit against the business entity (a tenant of the property), the co-owners of the business, and the property owners. The plaintiff presented expert testimony that indicated that there were code violations at the subject property and that those violations included the condition that caused the plaintiff's fall. The defendants claimed that the plaintiff was contributorily negligent in failing to keep a proper lookout where walking and that a reasonable person would have seen the change in grade and approached it appropriately and safely. The defendants also made cross-claims against each other with regard to the maintenance of the property. The defendant property owners presented expert testimony wherein the expert opined that the codes cited by the plaintiff's expert were not applicable to this matter.

The parties settled the matter prior to trial for an undisclosed sum.

REFERENCE

Manukian vs. Lofaro, et al. Docket no. L-000326-18; Judge Mary F. Thurber, 06-28-19.

Attorney for plaintiff: Aram Ingilian of Bakmazian & Associates in Ridgefield, NJ. Attorney for defendant Murillo/Mr. Varga Variety Home Center LLC/Carmine Lofaro: James H. Foxen of Methfessel & Werbel, Esqs. in Edison, NJ.

DEFENDANT'S VERDICT

Premises liability – Fall down – Failure to remove snow/ice – Disc protrusion/herniation L5-S1; severe foraminal stenosis L5-S1 – Emergency left-side hemilaminectomy; partial medial fasciotomy; foraminotomy; left-sided L5-S1 discectomy.

Essex County, NJ

In this premises liability case, the plaintiff, a 43-year-old male employee of the defendant university hospital, asserted that the defendant university and its co-defendant snow removal subcontractor failed to adequately clear the university's property of snow/ice following precipitation of snow. The plaintiff fell on the premises, sustaining injuries.

The plaintiff argued that the defendants violated sections of the BOCA property maintenance code, as well as other building and construction codes in failing to properly maintain the premises on which the plaintiff fell. The plaintiff brought suit against the defendant university and co-defendant snow removal company. The defendant university was released on summary judgment prior to trial based on its title 59 statutory defenses. The case proceeded solely against the defendant snow removal service contracted by the university.

On January 3, 2014, the plaintiff was lawfully on the premises of a university campus in Newark. The sidewalks of the campus were managed, supervised, maintained, treated and controlled by the university and the university's maintenance provider. The plaintiff argued that the defendants failed to properly clear and treat the sidewalks after a significant snowfall. The plaintiff fell on the premises that the plaintiff claimed was not properly cleared of snow and ice by the defendant. The plaintiff stated that he fell on snow that was on top of ice. University police were called to the scene where they found the plaintiff lying on the ground. A security officer witnessed the plaintiff's fall, stating that he was reporting to his assigned post for work when he observed the plaintiff fall to the ground, called university police and stayed with the plaintiff until they arrived. The plaintiff reported to the officer that he was walking with a walker in the direction of the defendant's dental school when he slipped and fell to the ground.

The plaintiff complained of pain throughout the left side of his lower extremities and hip. He stated that he could not get up. An ambulance was called and the plaintiff was transported to the hospital. As a result of the fall, the plaintiff sustained disc protrusion/herniation at L5-S1; severe foraminal stenosis to L5-S1 superimposed acute disc herniation left side L5-S1 and left lower extremity weakness; C6-7 radiculopathy and disc abnormalities at C5-6 and C6-7. The plaintiff he had to undergo an emergency left side hemilaminectomy at L5-S1; partial medial fasciotomy at L5-S1; foraminotomy of the L5 and S1 foramen; and left-sided L5-S1 discectomy. The plaintiff claimed that his injuries were permanent and caused significant disability.

The defendant snow removal company maintained that it had cleared the premises of snow on the day before and on the day of the plaintiff's fall. The defendant presented evidence in the form of timesheets and a "Snow log" indicating that the defendant snow removal company had performed its contracted duties removing snow and salting the area. The defendant asserted that the plaintiff fell on snow that melted and re-froze and that the defendant had no control or obligation with regard to changes in conditions after it performed the duty of snow removal and salting.

The jury rendered a no cause verdict in favor of the defendant.

REFERENCE

Fanor vs. Rutgers, et al. Docket no. L-008854-15; Judge Garry J. Furnari, 06-11-19.

Attorney for plaintiff: Jeffrey Kadish of Ginarte Gallardo Gonzalez Winograd, LLP in Newark, NJ. Attorney for defendant: David M. Blackwell of Donnelly Minter & Kelly, LLC in Morristown, NJ.

The following digest is a composite of additional significant verdicts reported in full detail in our companion publications. Copies of the full summary with analysis can be obtained by contacting our Publication Office.

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$30,550,000 VERDICT - MEDICAL MALPRACTICE - OB/GYN - TRAVELING NURSE FAILS TO PROPERLY MONITOR INFANT DURING EXTENDED LABOR - HYPOXIC ISCHEMIC ENCEPHALOPATHY - CEREBRAL PALSY - SPASTIC QUADRIPLEGIA.

Suffolk County, MA

In this medical malpractice action, the plaintiff contended that the defendants hospital, physicians, nurses and staffing agency were negligent in failing to properly monitor the fetus during labor and delivery, resulting in the infant child suffering catastrophic birth injuries. The plaintiff contended that following the delivery, the infant plaintiff was diagnosed with hypoxic ischemic encephalopathy, cerebral palsy and spastic quadriplegia. The plaintiff maintained that after arriving at the defendant hospital to deliver her first child, the plaintiff mother came under the care of the defendant traveling nurse, who was an employee of the defendant staffing agency, with over 30 years of experience in labor and delivery. The plaintiff contended that the subject delivery was the first time the defendant nurse performed a delivery without an instructor present. The plaintiff asserted that the mother was unaware that the defendant nurse was inexperienced or that this was her first labor and delivery without an instructor. The plaintiff contended that the second stage of labor was very lengthy and that during this time, the defendant nurse negligently failed to employ any continuous fetal monitoring, which the plaintiff asserted was in violation of the co-defendant hospital's own policies which require continuous fetal monitoring during any lengthy labor. Since there was no continuous fetal monitoring, the plaintiff contended that the nurse instructed her to push during the last 1.5 hours of labor without having any information as to the status of the infant or his heart rate. In fact, the plaintiff maintained that the umbilical cord had become caught on the infant's neck causing him to suffer oxygen deprivation during the last part of labor. The defendants denied any wrongdoing and disputed that there was any deviation from acceptable standards of care.

At the conclusion of a nine-day trial, the jury deliberated for seven hours before returning with a verdict in favor of the plaintiff and against the defendant staffing agency and traveling nurse. The jury awarded a total of $30,550,000 in damages consisting of $25,500,000 to the child and $5,050,000 to the plaintiff parents for their loss of consortium. A high/low agreement was reached while the jury was deliberating and the specific terms of this agreement, which were tied to the jury's verdict, have not been disclosed.

REFERENCE

Kimberly Kirkwood-Boulter, et al. vs. Cross Country Stafffing, Inc. et al. Case no. 1584CV02372; Judge Robert L. Ullman.

Attorneys for plaintiff: Benjamin R. Zimmerman and David P. McCormack of Sugarman & Sugarman in Boston, MA.

$5,000,000 VERDICT - MEDICAL MALPRACTICE/PRODUCT LIABILITY - SURGERY MALPRACTICE - MEDICAL DEVICE DEFECT - FOLLOWING CARDIAC CATHETERIZATION, FILTER DISLODGES FROM STENTING DEVICE AND ENTERS PATIENT'S BRAIN CAUSING SEVERE STROKE RESULTING IN DEATH TWO YEARS LATER - FAILURE TO PROPERLY PERFORM CARDIAC CATHETERIZATION - DEFECTIVE CATHETER - WRONGFUL DEATH OF 75-YEAR-OLD MALE.

Harris County, TX

In this product liability/medical malpractice case, the plaintiff contended that the 75-year-old male patient suffered a massive and ultimately fatal stroke while undergoing a cardiac catheterization procedure performed by the defendant surgeon using a catheter manufactured by the co-defendant medical device manufacturing company. The plaintiff asserted that the severity of the stroke caused the decedent's death some two years later. The plaintiff estate argued that the patient's catastrophic injuries and subsequent death were directly caused by the negligence of the defendant surgeon and the co-defendant's defective product. Both defendants denied the plaintiff's allegations and contended that any actions on their part were not a legal cause of the decedent's death.

Prior to deliberations, the plaintiff estate reached a settlement with three of the four defendants, the surgeon, the hospital, and the medical device distributor for an undisclosed amount. The only remaining defendant was the co-defendant manufacturer of the allegedly defective device. The jury was nonetheless instructed to assign percentages of responsibility to these parties. The jury found that the settling defendant surgeon 70% liable, the settling defendant hospital 10% liable, the settling defendant medical device distributor 10% liable and the non-settling defendant manufacturer 10% liable. The jury then awarded the estate a total of $5,000,000 in damages. The Court ruled that the remaining defendant would be responsible for 10% of the $5,000,000 verdict for a total of $500,000.

REFERENCE

The Estate of Charlie Acebo, Jr. by Gail Stephens Acebo vs. Abbott Laboratories, Tomball Regional Medical Center, Waqar Kahn, M.D. and Chris Davis. Case no. 201657965; Judge Steven Kirkland, 11-22-19.

Attorney for plaintiff: Timothy Dennis Riley of Riley Law Firm in Houston, TX. Attorney for defendant: Christopher Michael Raney of Gordon Rees Scully Mansukhani, LLP in Houston, TX.

PRODUCT LIABILITY

$46,000,000 RECOVERY - PRODUCT LIABILITY - DEFECTIVE DESIGN - DRESSER TIPS OVER SUFFOCATING TWO-YEAR-OLD BOY - WRONGFUL DEATH - INCIDENT OCCURS FOLLOWING RECALL OF DRESSER AND PLAINTIFF CONTENDS PARENTS WERE NEVER CONTACTED ABOUT RECALL.

Philadelphia County, PA

This product liability action involved the suffocation death of a two-year-old child which occurred when the defendant IKEA's three-drawer MALM dresser tipped over and trapped the child. The dresser was the subject of a recall in 2016 following several similar incidents involving the death of toddlers, but the parents, who had used a credit card issued by the defendant IKEA to purchase the product, contended that they were never informed of the recall and were never warned about the dresser's instability which could results in severe injury or death of minors. The plaintiffs asserted that the pain and suffering involved in the child's death by suffocation was extensive. The plaintiffs also made claims for lost earning capacity, loss of their child's society, guidance and support and for their emotional distress. The plaintiff asserted that the design of the dresser made it inherently unstable and maintained that it could have been designed and manufactured to be much more tip-resistant, as reflected by the fact that the defendant subsequently designed and marketed a much more stable tip-resistant dresser which met the ASTM standard.. The plaintiff pointed to the fact that the subject IKEA MALM dresser failed to comply with the ASTM F2057, a national voluntary safety standard for dressers. The defendant maintained that if the dresser had been anchored to the wall, as recommended in the installation instructions, it would not have tipped over. The plaintiff countered that the defendant did not advise that it was obligatory to anchor the dresser to the wall to prevent tip overs. The plaintiff also pointed out that the defendant did not supply hardware for anchoring the dresser and that wall anchoring is not always possible or effective.

The case settled prior to trial for a total of $46,000,000. The parents have agreed to donate $1,000,000 to three public safety organizations that are fighting to protect children from dangerous products.

REFERENCE

Dudek vs. IKEA. Case no. Dec term 2017, no. 4131, 01-20.

Attorneys for plaintiff: Alan M. Feldman, Daniel J. Mann and Edward S. Goldis of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig in Philadelphia, PA.

$900,000 RECOVERY - PRODUCT LIABILITY - DEFECTIVE DESIGN OF HEAVY-DUTY DECK OVER TRAILER - RAMP FALLS STRIKING PLAINTIFF IN LEG - MEDIAL MALLEOLUS FRACTURE - SHEATH TEAR OF POSTERIOR TIBIAL TENDON - THREE SURGERIES PERFORMED.

Lancaster County, PA

This product liability action was brought against both the manufacturer and distributor of a heavy-duty deck over trailer, which is a flat-bed trailer equipped with pneumatically controlled ramps to allow ease of loading and unloading cars. The male plaintiff driver contended that the subject deck-over trailer was defectively designed because it was unsafe for its intended uses due to the potential of the ramps to free fall in the event of low air pressure or the loss of air pressure to the pneumatic system built into the trailer. The plaintiff contended that as a result, one of the ramps unexpectedly fell and struck the plaintiff in the leg, causing him to sustain serious leg injuries. The defense maintained that when this flatbed truck trailer is used in accordance with the owner's manual and operating instructions, the equipment is safe for its intended uses.

The case settled following mediation for a total of $900,000.

REFERENCE

Warner vs. CAM Superline, Inc., et al. Case no. CI-18-02905, 01-14-20.

Attorney for plaintiff: Richard M. Jurewicz of Galfand Berger, LLP in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

$43,080,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - BUS NEGLIGENCE - 11-YEAR-OLD INFANT PLAINTIFF STRUCK BY RIGHT TURNING SCHOOL BUS - VIRTUAL OBLITERATION OF URETHRA - NEED TO CATHETERIZE THROUGH NAVAL AREA - SEVERE VAGINAL TEARS - SURGERY - SUBSTANTIALLY RESOLVING FRACTURES TO SEVERAL LUMBAR VERTEBRAE, TEMPORAL BONE, HIPS AND RIBS.

Kings County, NY

The plaintiff's motion for Summary Judgment on liability was granted in this school bus negligence case in which the then 11-year-old female infant plaintiff was struck by the defendant's school bus as the bus was turning right while she was crossing in the crosswalk. The plaintiff contended that the child suffered the virtual obliteration of her urethra, will permanently be required to catheterize, and that she also sustained severe tears to her vagina. The infant plaintiff also suffered bilateral hip fractures, a temporal bone fracture, several compression fractures in the lumbar area and several fractured ribs. The hip, vertebral, rib and temporal bone fractures ultimately substantially resolved. The plaintiff also asserted that because of her vaginal injuries, she will have difficulties becoming pregnant and that if she is able to do so, it is probable that she will be required to deliver through C-section only. The defendant school bus company made a general denial of liability and disputed the nature and extent of the plaintiff's alleged permanent injuries.

The jury awarded $43,080,000 including $580,000 for past medical bills, $10,000,000 for past pain and suffering, $27,000,000 for future pain and suffering over 70 years and $5,500,000 for future medical bills over 70 years.

REFERENCE

K.C.C. vs. United Lubavitcher Yeshiva, et al. Index no. 504065/17; Judge Peter Paul Sweeney, 12-18-19.

Attorney for plaintiff: Scott E. Rynecki of Rubenstein & Rynecki in Brooklyn, NY. Attorney for plaintiff: John K. Avanzino of Avanzino & Moreno, P.C. in Brooklyn, NY.

$16,426,488 VERDICT INCLUDING $2,970,000 PUNITIVE DAMAGES AWARD - MOTOR VEHICLE NEGLIGENCE - STOPPED VEHICLE COLLISION - AUTO/PEDESTRIAN COLLISION - FIRST VEHICLE STRIKES BEAR BECOMING DISABLED - SECOND VEHICLE STRIKES DISABLED VEHICLE AND PEDESTRIANS AT SCENE - WRONGFUL DEATH FIVE PEOPLE.

Broward County, FL

This motor vehicle negligence action involved a scenario in which the vehicle being driven by the first defendant, Carolyn B., struck a bear causing her vehicle to become disabled. The plaintiff contended that the second defendant, Gary M., struck the defendant Carolyn B.'s disabled vehicle while a number of pedestrians were stopped at the scene in an attempt to assist her. The plaintiff contended that the defendants' combined negligence resulted in the death of, or severe injury to, a total of five pedestrians. The liability portion of this case was tried on behalf of all the injured and dead, but the damages portion of the case applied only on behalf of the plaintiff's decedent. The plaintiff contended that the decedent was a 44-year-old husband and father of two minor children. The plaintiff asserted that the defendant Carolyn B. was negligent in failing to take proper care in view of impaired visibility due to darkness and the fact that large animals crossing this roadway was common in the area and that multiple signs were posted warning of such. The plaintiff further asserted that the second defendant Gary M. was grossly negligent in traveling at a speed of between 80 and 100 mph on the winding road with a single lane in each direction and a 45 mph posted speed limit. The plaintiff argued that this defendant operated his vehicle in a manner that was so reckless and wanton that it constituted a conscious disregard and indifference for the life, safety or rights of others on the roadway warranting punitive damages. The judge agreed and charged the jury regarding the punitive damages statute.

The initial defendant driver and the co-defendant vehicle owner maintained that the bear suddenly and unexpectedly ran out in front of the car and could not be avoided. The second defendant driver and the co-defendant owner of the vehicle argued that the collision was caused by the negligence of the first defendant driver who struck the bear and left her disabled vehicle in the travel portion of the roadway on a curve at night. The plaintiff made a motion of a punitive damages claim against the first defendant driver, which was denied.

The jury found the second defendant Gary M. 75% negligent and the initial defendant Carolyn B. 25% negligent. The jury also found that punitive damages were warranted against defendant Gary M. The jury awarded compensatory damages in the amount of $13,456,488. The following day, the same jury awarded $2,970,000 in punitive damages against Gary M. for a total damage award of $16,426,488. Damage trials for the remaining four plaintiffs, including an additional wrongful death action and serious injury to three others, are currently pending.

REFERENCE

Estate of Yoel Menendez vs. McInturff, et al. Case no. CACE 15-010151; Judge Carlos A. Rodriguez, 10-25-19.

Attorney for plaintiff: Hyram M. Montero of Montero Law Center in Fort Lauderdale, FL.

$7,465,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - MULTIPLE VEHICLE COLLISION - PLAINTIFF PASSENGER SERIOUSLY INJURED WHEN VEHICLE STRUCK FROM BEHIND AND PROPELLED INTO TRACTOR TRAILER - PELVIS FRACTURE - HIP FRACTURE - LEG FRACTURE - CHRONIC PAIN - INCONTINENCE - REDUCED MOBILITY FOR 34-YEAR-OLD FEMALE.

Worcester County, MA

In this motor vehicle negligence action, the 34-year-old female plaintiff front seat passenger in a car being driven by her then fiancé contended that the defendant driver of a commercial pick-up truck and the co-defendant corporate owner of that vehicle were negligent in causing a collision that resulted in the plaintiff suffering significant injury. Specifically, the plaintiff contended that the defendant's vehicle collided at approximately 63 mph into the rear of the plaintiff's stopped car, propelling it forward into the rear of a tractor-trailer. The plaintiff asserted that she had to be extricated from the host vehicle by first responders and was then immediately airlifted from the scene to a hospital trauma center. The plaintiff claimed that as a result of the collision, she suffered multiple arm, leg, and rib fractures, incontinence, and maintained that she has been left with permanent, chronic pain. The defendants did not dispute liability, but they did dispute causation and damages. The matter proceeded to trial solely on the issue of the plaintiff's damages as liability had already been conceded.

At the conclusion of a 13-day trial, the jury deliberated for over four hours before returning with a total verdict of $7,465,000 to the plaintiff, including $828,000 in past medical expenses and lost wages as well as $5,000,000 in future medical expenses and

lost wages. The balance of the verdict was for the plaintiff's pain and suffering and loss of enjoyment of life.

REFERENCE

Paula A. Appleton vs. Thomas L. Breault, et al. Case no. 1785CV00196; Judge William J. Ritter, 03-27-19.

Attorneys for plaintiff: Katherine A. Bagdis, Patricia F. Gates and James D. O'Brien, Jr. of Mountain Dearborn & Whiting in Worcester, MA. Attorneys for defendant: James M. Campbell, Jacob J. Lantry and David M. Rogers of Campbell Conroy & O'Neil, PC in Boston, MA.

PREMISES LIABILITY

$1,025,000 RECOVERY - PREMISES LIABILITY - FALL DOWN - EMPLOYEE SLIPS AND FALLS NEXT TO SELF-SERVE SODA MACHINE IN CAFETERIA MANAGED BY DEFENDANT COMPANY - NON-DOMINANT SHOULDER TEARS - ARTHROSCOPIC SURGERY - CERVICAL HERNIATION - FUSION - PLAINTIFF RETURNS TO WORK - EXTENSIVE DIFFICULTIES FACED BY SINGLE PARENT OF TWO TEENAGED DAUGHTERS.

Hudson County, NJ

This premises liability action involved a then 42-year-old female managerial employee of a financial consulting company. The plaintiff contended that the defendant company, which had been hired by her employer to manage the cafeteria, did so in a negligent manner, resulting in a wet floor located directly in front of the soda machine. The plaintiff maintained that as a result, she slipped and fell, suffering a lumbar herniation requiring fusion surgery and left, non-dominant shoulder tears that required surgery as well. The plaintiff testified that she works despite continuing pain and limitations and also related that she is a single parent of two teen-age daughters and that keeping up with her children is very challenging due to her injuries. The defendant maintained that the incident was unwitnessed and questioned whether it had, in fact, occurred. The defendant further contended that the first it learned of the alleged incident when it was contacted by plaintiff's counsel. The plaintiff asserted that the nearby cashiers must have seen the fall occur. There was no incident report and the plaintiff alleged that she had, in fact, reported the fall to her employer the day it occurred. The defendant further maintained that the plaintiff failed to pay proper attention and was comparatively negligent. On damages, the defendant contended that the plaintiff made a good recovery from the shoulder surgery and pointed out that she has been able to return to work.

The case settled against the defendant cafeteria management company for $1,000,000. The plaintiff had also named a second company which was hired by the building owner to provide assistance. This co-defendant contended that it was only required to assist during catastrophic type events, and only when asked. This party further pointed out that it was not requested to help. The case against the co-defendant settled for $25,000.

REFERENCE

42-year-old managerial employee of financial consulting company vs. Defendant hired by employer to manage cafeteria.

Attorney for plaintiff: Paul K. Caliendo of Gill & Chamas in Woodbridge, NJ.

ADDITIONAL VERDICTS OF INTEREST

Amusement Park Negligence

$6,525,000 VERDICT INCLUDING $215,000 IN PUNITIVE DAMAGES - AMUSEMENT PARK NEGLIGENCE - NEGLIGENT OPERATION OF CARNIVAL RIDE - FALL FROM RIDE - SKULL FRACTURE TO 11-YEAR-OLD PLAINTIFF - COGNITIVE DEFICITS - BILATERAL LEG FRACTURES - DAMAGES ONLY.

Broward County, FL

This amusement park negligence action arose out of 2011 incident in which the minor plaintiff, then age 11, fell from a carnival ride owned and operated by the defendant amusement park owner, sustaining multiple fractures including a fractured skull with cognitive deficits. The plaintiff contended that the fall resulted from the defendant's negligent operation of the ride and failure to use required safety devices. The plaintiff was granted summary judgment on liability in

regards to the defendant's negligent operation of the amusement ride and the case proceeded on the issue of damages only. The plaintiff sought punitive damages as well as compensatory damages. The defendant argued that its actions did not rise to the level of gross negligence warranting punitive damages and maintained that the plaintiff had made a good recovery from her injuries. The co-defendant which leased the ride to the defendant settled with the plaintiff prior to trial for $1,000,000.

The jury found the defendant grossly negligent warranting punitive damages. The plaintiff was awarded $6,300,000 in compensatory damages. In a second phase of the trial, the jury awarded an addition $225,000 in punitive damages for a total verdict of $6,525,000. The defendant's post-trial motion for new trial is pending. The defendant has also moved for a set-off of the prior settlement and collateral sources. The plaintiff has moved for attorney fees and costs based on a proposal for settlement in the amount of $1,000,000.

REFERENCE

Frank vs. The Celebration Source. Case no. CACE15007393; Judge Nicholas Lopane, 12-06-19.

Attorneys for plaintiff: Bryan S. Hofeld and David E. Silverman of Schlesinger Law Offices in Fort Lauderdale, FL.

Construction Site Negligence

$2,260,000 VERDICT - CONSTRUCTION SITE NEGLIGENCE - PLAINTIFF INJURED DURING INSTALLATION OF HEAVY EQUIPMENT AT DEFENDANT'S JOB SITE - BICEPS TEAR REQUIRING MULTIPLE OPERATIVE REPAIRS - NEUROLOGICAL INJURY INCLUDING ENTRAPMENT OF MEDIAN NERVE - ENDOBUTTON FIXATION - RECURRENT TEAR OF LEFT DISTAL BICEPS WITH RADIAL TUNNEL SYNDROME - MULTIPLE SURGERIES - PERMANENT DISABILITY - INABILITY TO PERFORM DAILY FUNCTIONS.

Monmouth County, NJ

In this construction site negligence case, the 37-year-old plaintiff apprentice electrician asserted that he suffered serious and permanent injury to his left arm while in the course of his work as an electrician on a construction site operated by the defendant general contractor involved with the renovation of a hospital emergency room. The plaintiff contended that the defendant G.C. allowed a dangerous workplace to exist resulting in injury to the plaintiff. Specifically, the plaintiff contended that he was instructed to manually hoist and install a heavy electrical switch gear, which weighed between 600 and 800 pounds, into one of the electrical rooms without the proper safety tools, equipment or gear necessary for a safe installation of such a heavy piece of equipment. The plaintiff maintained that as the switch gear box was being lifted vertically off of dollies, it swung out of position, causing the plaintiff to instinctively attempt to stabilize it. The plaintiff claimed that as a result, he sustained a significant traumatic injury to his left arm including a complete separation of the tendon from the bone and a biceps tear requiring multiple surgical repairs. The plaintiff claimed that he also suffered a neurological injury including the entrapment of the median nerve as well as carpal tunnel syndrome. Surgical repairs included endobutton fixation. The plaintiff contended that he cannot return to work as an electrician and his expert economist set the plaintiff's total wage loss damages at between $2,460,590 and $2,736,597.

The defendant denied negligence, arguing that the plaintiff failed to specify how the injury occurred and, therefore, could not hold the defendant responsible for any action or inaction taken to cause the incident. The defendant further denied any violation of applicable OSHA regulations at the job site and asserted that the plaintiff failed to prove violation of any applicable rules or regulations leading to his injury. The defendant also strongly contested the amount of plaintiff's claimed damages.

The jury found in favor of the plaintiff and awarded $660,000 for pain, suffering, disability, impairment and loss of enjoyment of life, and $1.6 million for economic damages for a total award of $2,260,000.

REFERENCE

Bracken vs. Torcon, Inc. Docket no. L-000116-15; Judge Linda Grasso Jones, 02-13-19.

Attorney for plaintiff: Donna H. Clancy of The Clancy Law Firm, PC in New York, NY. Attorney for plaintiff: Vincent P. Manning of Manning Caliendo & Thomson in Freehold, NJ. Attorneys for defendant: Darren C. Audino and Ryan J. Mowll of Bardsley, Benedict & Cholden, LLP in Philadelphia, PA.

Fraud

$72,500,000 RECOVERY - EMISSIONS FRAUD - AUTOMAKER FAULTED FOR INSTALLING COMPUTER DEVICES DESIGNED TO CHEAT STATE EMISSIONS TESTS - ALLEGED VIOLATION OF STATE LAW.

Albany County, NY

In this auto manufacturer's fraud action, the State of New York sued a prominent automaker for installing cheat devices designed to bypass national emissions standards in respect to their popular diesel vehicles. The claims made by several states and municipalities were resolved in this multi-million dollar settlement. The plaintiff State contended that in the fall of 2015, German automaker Volkswagen was found to have marketed and sold over 500,000 vehicles in the United States that did not meet U.S. emissions standards. The vehicles were found to have included a "Cheat device" specifically designed to fool U.S. emissions tests as it relates to particulates being emitted. In the year that followed, state and federal regulators made similar allegations against other automakers, including defendants FCA US LLC, Fiat Chrysler Automobiles N.V., VM Motori S.p.A. and VM North America, Inc.

The case was resolved with a multi-state settlement totaling $72.5 million to paid to 49 states, Puerto Rico, the District of Columbia and Guam. The state of New York will receive more than $4.85 million in civil penalties, including nearly $2.94 million under New York environmental laws, and more than $1.9 million under New York consumer protection laws.

REFERENCE

Attorney General Letitia James vs. Fiat Chrysler Automobiles N.V., et al. Index no. 900207-19, 01-10-19.

Attorney for plaintiff: David E. Nachman, Danielle Fidler, Noah Popp & Channing Wistar-Jones of Office of the Attorney General - State of New York in New York, NY. Attorney for plaintiff: Morgan Costello of The Capitol in Albany, NY.

Sexual Harassment

$321,000 RECOVERY - SEXUAL HARASSMENT - CIVIL RIGHTS - PLAINTIFF CONTENDS THAT DEFENDANT AIRLINE FAILED TO PREVENT OR CORRECT A PILOT'S ACTIONS IN POSTING EXPLICIT PHOTOGRAPHS OF EMPLOYEE FLIGHT ATTENDANT ON SOCIAL MEDIA WITH SEXUALLY DISPARAGING REMARKS - EMBARRASSMENT - HUMILIATION - EMOTIONAL DISTRESS.

U.S.D.C., Western District of Texas

In this sexual harassment action, the female plaintiff flight attendant contended that the defendant airline failed to prevent or correct the actions of its male pilot in posting sexually explicit photographs of the plaintiff employee to various social media sites with condescending commentary which was shared with and amongst co-workers. The plaintiff asserted that the actions of the pilot and the defendant airline caused her to suffer severe embarrassment, humiliation and emotional distress. The plaintiff and the pilot had been in a consensual relationship. The plaintiff contended that she had approached the defendant airline complaining about the actions of the pilot and sought its assistance in reprimanding him. However, according to the plaintiff's allegations, the defendant airline failed to take any action to stop the sexual harassment by the pilot. In fact, despite a long record of complaints and the airline's knowledge of the offending sexual harassment, the defendant permitted the pilot to retire with his full benefits. The defendant airline denied wrongdoing and disputed the plaintiff's allegations on damages.

The parties were able to resolve the plaintiff's claim for a total sum of $321,000 paid to the female employee for her damages, plus a consent order whereby the defendant agreed to provide notice to employees of their protection rights under Federal Civil Rights Laws. As part of the settlement, the defendant is also required to revise its sexual harassment policies to reflect this type of conduct maintained through a social media platform campaign whether it occurred on or off duty constitutes sexual harassment which could result in termination.

REFERENCE

Equal Employment Opportunity Commission vs. United Airlines, Inc. Case no. 5:18-cv-817, 12-20-19.

Attorneys for plaintiff: Philip Moss, Edward Juarez and Robert Canino of Equal Employment Opportunity Commission in San Antonio, TX. Attorney for plaintiff Jane Doe: Colin W. Walsh of Wiley Walsh, P.C. in Austin, TX.