NEW JERSEY
JURY VERDICT REVIEW & ANALYSIS®
www.JVRA.com

SUMMARIES WITH TRIAL ANALYSIS

Volume 41, Issue 3
July 2020

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

$7,300,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – TRACTOR-TRAILER DRIVER LOSES CONTROL, TRAVELS UP UNDERPASS EMBANKMENT AND OVERTURNS ONTO ROOF OF CAR DRIVEN BY DECEDENT – DEATH FROM TRAUMATIC ASPHYXIA – EYEWITNESSES VIDEO URGES DECEDENT TO "KEEP TALKING" – PLAINTIFF ALSO DEMANDED PUNITIVE DAMAGES.

Middlesex County, NJ

This motor vehicle negligence case involved the death of a 27-year-old, which the plaintiff contended occurred due to several factors, including the defendant tractor-trailer driver failing to maintain control of his vehicle as he approached stopped traffic on an off ramp. The plaintiff maintained that as a result of the defendant driver losing control, his tractor-trailer traveled up an underpass embankment, overturned, and landed on the roof of the decedent's vehicle and a secondary vehicle located directly behind the decedent's automobile. The defendant driver asserted that he was unable to stop due to the brakes failing. The plaintiff made a claim for both compensatory and punitive damages.

The plaintiff alleged that the driver of said tractor trailer had reported to his employer on numerous occasions, over the preceding weeks and months prior to the accident, that he was having issues with the tractor-trailer's brakes. The plaintiff alleged that even with that information, the employer failed to properly repair the brakes. The plaintiff contended that the decedent, who died from positional asphyxia, as he was trapped in his car, wore a "Fitbit" watch which recorded a heart rate that decreased over a period of time. The plaintiff contended that a review of the data reflected that the heart rate steadily declined over a period of approximately 10 minutes. The plaintiff contended that this evidence was consistent with the decedent remaining conscious until his death from traumatic asphyxia.

The immediate aftermath of the incident was captured on video taken by a driver who was several car lengths ahead of the decedent. The decedent left a wife and no children. The decedent worked as a junior accountant and had recently been accepted into a Master's program. The plaintiff's economist would have discussed between $3.4 million - $5.6 million in economic loss. The defendants had a total of $10 million in insurance coverage, including both primary and excess coverage

The case settled prior to trial for $7,300,000.

REFERENCE

Plaintiff's economist expert: Royal Bunin from Philadelphia, PA. Plaintiff's IT expert: Cornerstone Discovery, Inc. from Philadelphia, PA. Plaintiff's pain management expert: Peter Salgo, M.D. from New York, NY. Plaintiff's pulmonology expert: Anthony Ricketti, M.D. from Trenton, NJ. Plaintiff's trucking expert: Scott Turner from Columbia, NJ.

27-year-old plaintiff vs. Defendant trucking company, et al., 06-20.

Attorneys for plaintiff: Joseph DiCroce and Jennifer McCann of Law Office of Joseph A DiCroce, LLC in Manasquan, NJ.

COMMENTARY

The bizarre nature of this incident, in which the defendant tractor-trailer driver could not stop, traveled up an embankment and then overturned onto the decedent's roof, would clearly have produced an unpredictable reaction if the case had been tried. Additionally, the evidence of the severe pain and suffering would clearly have evoked a very strong jury response. In this regard, the evidence of the declining heart rate that was recorded on the decedent's "Fitbit" watch, buttressed the testimony of other drivers that the decedent was conscious after the accident and was urged to hold on until help arrived. Further, the plaintiff, who pursued punitive damages, alleged that the driver's log book supported the claim that despite repeated complaints of difficulties with the brakes, they were not properly corrected during the months and weeks leading up to the accident, and that the driver was hired and retained despite numerous motor vehicle violations.

NEW JERSEY JURY VERDICT REVIEW & ANALYSIS
www.JVRA.com

Founder
Ira J. Zarin, Esq.

President
Jed M. Zarin

Contributing Editors
Brian M. Kessler, Esq.
Michael Bagen
Laine Harmon, Esq.
Cristina N. Hyde, J.D.
Deborah McNally, Paralegal
Ruth B. Neely, Paralegal
Cathy Schlecter-Harvey, Esq.
Julie L. Singer, Esq.
Tammy A. Smith, Esq.
Kate Turnbow, Paralegal
Susan Winkler

Business Development
Gary Zarin

Production Coordinator
Cathryn A. Peyton

Professional Search
Timothy P. Mathieson

Court Data Coordinator
Jeffrey S. Zarin

Customer Services
Meredith Whelan

Circulation Manager
Ellen Loren

Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081
www.jvra.com

Main Office:
973/376-9002 Fax 973/376-1775
Circulation & Billing Department:
973/535-6263

New Jersey Jury Verdict Review & Analysis (ISSN 8750-8060) is published monthly at the subscription rate of $395/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081. Periodical postage paid at Springfield, NJ and at additional mailing offices. **Postmaster:** Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

$900,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – PLAINTIFF CROSSWALK PEDESTRIAN STRUCK AND KNOCKED DOWN BY DRIVER TURNING LEFT FROM BEHIND HER – CLOSED HEAD INJURY – TBI –COGNITIVE DEFICITS INVOKING MEMORY AND CONCENTRATION – COGNITIVE DIFFICULTIES RESULT IN PSYCHOLOGICAL DEPRESSION – FRACTURES TO LEFT PATELLA, LEFT LOWER LEG AND LEFT ANKLE – ROTATOR CUFF TEAR ON DOMINANT SIDE – ARTHROSCOPIC SURGERY.

Bergen County, NJ

This was motor vehicle negligence case involving a 70-year-old plaintiff in which the plaintiff contended that as she was crossing in the crosswalk, the defendant driver, who turned left from behind her, negligently failed to make adequate observation, resulting in her being struck and knocked down. The plaintiff asserted that she suffered a close head injury that caused extensive cognitive deficits involving short term memory and concentration. The plaintiff further suffered fractures to the left tibia and fibula, the left patella and a bimalleolar fracture of the left ankle. The plaintiff maintained that despite surgical interventions, she will suffer permanent pain and significant difficulties ambulating. Finally, the plaintiff claimed that she suffered a partial rotator cuff tear on the dominant side that required arthroscopic surgery and which will cause permanent pain and limitations in the arm and shoulder. The defendant indicated that he did not see the plaintiff crossing because the sun was in his eyes.

The plaintiff's neuropsychologist and the plaintiff's neurologist would have testified that the plaintiff suffered a neuropsychological deficit largely involving short term memory and concentration and that the deficits were confirmed by a battery of neuropsychological tests. The plaintiff would have related that at times, she will watch a TV show and forget that she had recently seen it. The plaintiff also maintained that everyday activities are difficult because she becomes confused and forgetful easily. The plaintiff asserted that she has become very depressed and irritable because of the deficits.

The plaintiff had been married for approximately 50 years and the plaintiff also contended that the loss of consortium claim was very significant. The plaintiff would have also pointed out that the defendant had the plaintiff examined by a neuropsychologist, but the expert's testimony would have been favorable to the plaintiffs' case. The plaintiff further maintained that despite several surgeries, the left-sided leg and knee fractures will cause permanent pain. The plaintiff also contended that the shoulder problems will permanently affect her despite arthroscopic surgery.

The case settled prior to trial for $900,000.

REFERENCE

Plaintiff's neurologist expert: David H. Rosenbaum, M.D. from Englewood Cliffs, NJ. Plaintiff's neuropsychologist expert: George Carnavalle, Ph.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: Thomas Scalari, M.D. from Englewood, NJ.

Yim vs. Hamburger. Docket no. BER-L-3488-18, 04-20.

Attorney for plaintiff: Roosevelt Jean of Law Offices of Roosevelt Jean, LLC in Tenafly, NJ. Attorney for plaintiff: Conrad Park of Law Office of Conrad Park in Ft. Lee, NJ.

COMMENTARY

During negotiations, the plaintiff stressed that the defendant should consider that although a probable verdict that was based only upon the orthopedic injuries could be readily ascertained, a jury reaction to the cognitive deficits was more unpredictable. In this regard, the detailed testimony regarding the daily difficulties, including forgetting a recent TV show that was watched, and the manner in which the plaintiff frequently becomes irritable and depressed, could well have produced a strong jury response. Additionally, the plaintiff would have emphasized that the plaintiff and her husband had been married for approximately 50 years, and argue that the per quod claim was clearly very substantial.

$3,555,000 RECOVERY – MUNICIPAL LIABILITY – TORT CLAIMS ACT CASE – PALPABLY UNREASONABLE FAILURE TO REPAIR GUARDRAIL PROTRUDING ONTO ACCESS RAMP OF I-80 FOR 6 MONTHS DESPITE REPEATED VERBAL COMPLAINTS BY NEIGHBORHOOD RESIDENTS – PLAINTIFF DRIVER STRIKES GUARDRAIL AFTER TURNING ONTO ACCESS RAMP AFTER DARK – LUMBAR AND CERVICAL HERNIATIONS – FUSION SURGERIES – EXTENSIVE MEDICAL BILLS PRESENTED BY UNEMPLOYED PLAINTIFF WITH $15,000 IN PIP – SHOULDER AND KNEE TEARS TREATED CONSERVATIVELY.

Passaic County, NJ

The 58-year-old plaintiff driver contended that the defendant City of Paterson acted in a palpably unreasonable manner and failed to repair a broken guardrail on an I-80 access ramp despite repeated complaints of neighborhood residents. The plaintiff asserted that as a result, the guardrail protruded onto the ramp and resulted in the collision when the plaintiff turned right onto the highway after dark. The plaintiff maintained that as a result, she suffered cervical and lumbar herniations, each of which necessitated fusion surgery, as well as shoulder and knee tears that were treated conservatively. The evidence disclosed that the guardrail was struck approximately 6 months earlier and protruded onto the ramp. The evidence also reflected that during the relevant time frame, the area was under the control of the city. The defendant would have argued that the plaintiff should have seen the guardrail and was comparatively negligent. The plaintiff would have countered that she was suddenly confronted with the trap of the protruding guardrail when she turned right onto the highway after dark and that the defendant's position should be rejected.

The plaintiff contended that she suffered lumbar and cervical herniations which were confirmed by MRI. The plaintiff maintained that after more conservative care was inadequate, she required both a lumbar and a cervical fusion. The plaintiff also required non-surgical treatment to the knee and shoulder. The plaintiff would have maintained that she will permanently suffer extensive pain and limitations.

The plaintiff was not working at the time of the accident. She had $15,000 in PIP benefits, no health insurance and her physicians did not accept Medicaid. The plaintiff would have introduced $1,903,645 in past medical bills. The plaintiff further maintained that she will require extensive future medical care, including physical therapy, medication and that she may well require future surgery. The plaintiff would have introduced evidence of a life care plan which ranged from $1,124.410 - $1,534.094.

The defendant made an offer of judgment for $2,150,000, which was rejected. The case settled prior to trial for $3,555,000, including $545,000 directly from the City and $3,005,000 from its excess carrier.

REFERENCE

Plaintiff's engineer expert: Richard M. Balgowan, P.E. from Hamilton, NJ. Plaintiff's life care planning expert: Joanne Rodgers, R.N. from Montclair, NJ. Plaintiff's orthopedic surgeon expert: Joshua Rovner, M.D. from Englewood, NJ.

Garris vs. City of Paterson, et al. Docket no. PAS-L-1050-18, 05-04-20.

Attorneys for plaintiff: Edward Capozzi and Corey Dietz of Brach Eichler, LLC in Roseland, NJ.

COMMENTARY

The plaintiff, who would have maintained that the defendant acted in a palpably unreasonable manner, would have emphasized that the prior accident which resulted in the guardrail protruding onto the access ramp, occurred 6 months earlier, and that repeated oral complaints which were made by a neighborhood resident were ignored. Additionally, the plaintiff would have argued that she was confronted with a trap as she turned right onto the access road after dark. Regarding damages, it is felt that the plaintiff obtained a very large recovery. The plaintiff, who did not have health insurance, had only $15,000 in PIP and the medical bills were not covered by Medicaid. In this regard, the plaintiff would have introduced almost $2,000,000 in unpaid past medical bills.

$1,200,000 RECOVERY – PREMISES LIABILITY – SLIP AND FALL ON SUPERMARKET FLOOR WHICH IS WET FROM PATRONS TRACKING IN PRECIPITATION AFTER SEVERAL-INCH SNOW FALL – WARNING SIGNS ALLEGEDLY NOT PLACED WHERE EXITING CUSTOMERS WOULD SEE THEM – FRACTURE OF RIGHT, NON-DOMINANT HUMERAL SHAFT AND VERY SIGNIFICANT TEAR OF RIGHT ROTATOR CUFF – EXTENSIVE DIFFICULTIES WITH EVERYDAY ACTIVITIES – NO INCOME CLAIMS.

Hudson County, NJ

This premises liability action involved a plaintiff who was in her mid 60s at the time of the incident. The plaintiff contended that the defendant supermarket negligently failed to properly maintain the floor the day after a several inch snow storm, resulting in her slipping and falling on a wet floor as she approached the exit. The plaintiff sustained a fracture of the right humerus, underwent a closed reduction which was followed by an ORIF, did not achieve union, underwent a second surgery and suffered a known risk of radial nerve palsy. The plaintiff contended that she also suffered a major rotator cuff tear in the right shoulder and that arthroscopic surgery was not successful. The plaintiff is left hand dominant. The defendant further argued that the plaintiff failed to make proper observations and was comparatively negligent.

The exit and entrance doors were next to each other. The plaintiff's expert engineer would have testified that the hazards attendant to individuals tracking in snow were exacerbated by the fact the floor immediately inside the store sloped slightly down. The plaintiff elicited testimony from the owner of the store that there was a slight downhill slope in the floor and the plaintiff argued that this factor heightened the hazard. The plaintiff further testified that although there was a mat in front of the entrance, there were none in front of the exit that was next to the entrance. The plaintiff asserted that the mat in front of the entrance was very wet and that this factor rendered the floor leading to the exit more hazardous. The plaintiff also claimed that caution signs were placed in such a location that they were not visible to patrons exiting the store. The plaintiff further established that the manager was not present on the day of the incident and argued that safeguards should have been taken by the staff that was present.

The plaintiff suffered a fracture of the right, non-dominant humeral shaft. She underwent an initial closed reduction. The plaintiff did not achieve union and then underwent an initial ORIF. This surgery did not result in union. The plaintiff then underwent a second surgery and suffered a known risk of radial nerve palsy. The plaintiff also contended that surgery to the very significant rotator cuff tear to the right shoulder was only of limited benefit.

The plaintiff asserted that she will permanently suffer extensive loss of use of the right non-dominant arm and hand, has poor hand to eye coordination on this side, has great problems grasping object with her hand and that everyday activities, such as dressing, are painful and difficult. The plaintiff, who was a cashier, has not returned to work and had limited lost earnings. The plaintiff would not have made a claim for such a loss.

The case settled prior to trial for $1,200,000.

REFERENCE

Plaintiff's engineer expert: Scott Moore, P.E. from Voorhees, NJ. Plaintiff's functional capacity expert: Ellen Rader Smith from Towaco, NJ. Plaintiff's orthopedic surgeon expert: Louis Rizio, M.D. from Livingston, NJ.

Plaintiff supermarket shopper in her 60s vs. Defendant supermarket.

Attorney for plaintiff: Kathleen M. Reilly of Brady Brady & Reilly, LLC in Kearny, NJ.

COMMENTARY

The plaintiff would have argued that because of factors that included the tendency of precipitation to be tracked in after a several inch snowfall, and the owner's concession that he was aware that there was a slight downward incline on the store floor, which the plaintiff argued, heightened the danger, the defendant should have been well aware of the hazard. Additionally, the plaintiff would have emphasized that although a mat was in front of the entrance to the store, none was in front of the exit situated directly to the side of the entrance and argue hat the mat in front of the entrance was very wet, rendering the floor leading to the exit more slippery.

Regarding damages, the plaintiff stressed that because of the known surgical risk of radial nerve palsy, and the poor result from the rotator cuff surgery, she has lost much of the use of her non-dominant arm and hand, rendering everyday activities, otherwise taken for granted, such as dressing, painful and very difficult. Finally, the plaintiff, who suffered a relatively small income loss, would not have made a claim for such a loss, attempting to minimize the chances that the jury would use this evidence as a part of a multiple when assessing damages.

$575,000 RECOVERY – TOXIC TORT – RENOVATIONS MADE BY LANDLORD OF WAREHOUSE/OFFICE LEASED TO PLAINTIFF'S EMPLOYER ENTAIL INDOOR USE OF DIESEL POWERED EQUIPMENT – FUMES CAUSE RESPIRATORY DISTRESS AND IRRITANT-INDUCED ASTHMA – HISTORY OF CIGARETTE SMOKING AND CARDIAC ISSUES.

Camden County, NJ

This case involved a plaintiff, then in his mid 50s, who was a commercial property manager/ inspector who spent approximately 50% of his time doing paper/computer work and made phone calls in an office/warehouse rented to his employer from the landlord. The plaintiff and co-workers occupied the second floor and a renovation project involving the first floor was done over a 15-day period to accommodate an incoming tenant. The plaintiff maintained that the work entailed the use of diesel powered equipment and was improperly used indoors, causing RADS (Reactive airways dysfunction syndrome) irritant-induced asthma. The plaintiff named the landlord, the G.C. of the demolition project and 2 subcontractors engaged in the actual work. The plaintiff was a smoker and had a history of cardiac complaints.

The plaintiff's employer leased the office space that was on the 2nd floor. The plaintiff maintained that after the renovation project commenced, the subcontractors used the diesel equipment indoors on the first floor. The plaintiff asserted that despite complaints by himself and co-workers regarding the fumes, the defendants continued to use the equipment and the project continued for 15 days until it retained an air quality/OSHA specialist who indicated that the air was unhealthy. The plaintiff would also have presented an expert industrial hygienist who would have maintained that the use of this equipment inside during normal business hours was hazardous violated applicable workplace standards. The plaintiff also elicited testimony during the deposition of the construction manager that he was responsible for the air quality in the premises. The plaintiff would have argued that the deposition clearly reflected that this construction manager was not qualified.

The plaintiff's proofs reflected that the plaintiff developed severe respiratory symptoms and was hospitalized for 28 days. The plaintiff contended that although improved to some degree, he will permanently suffer extensive respiratory complaints, including shortness of breath and wheezing. The plaintiff maintained that one of the consequences of the exposure was the development of irritation-induced asthma and that he must frequently use an inhaler.

The plaintiff asserted that he is permanently unemployable. The plaintiff's vocational expert would have concluded that if the plaintiff would have worked until the age 63, the loss would approximate $600,000 and the economic loss would approximate $750,000 if he would have worked until age 66. The defendants denied that any long-term difficulties were causally related. The defendant contended that the plaintiff's history of cardiac problems was partially the cause and that because he was a smoker, he developed COPD. The defendant would have produced a surveillance video that showed the plaintiff smoking a cigarette.

The plaintiff related that he smoked approximately ½ pack a day, had no breathing difficulties before the incident and denied that he had COPD. The plaintiff further maintained that a simple test called spirometry, which measures how deeply a person can breathe and how fast air can move into and out of the lungs was inconsistent with COPD. The plaintiff also stressed that he did not have a diagnosis of COPD by treating doctors.

The case settled prior to trial for $575,000, with each of the four defendants contributing $143,750.

REFERENCE

Plaintiff's industrial hygienist expert: Jerry Roseman, M.Sc. from Philadelphia, PA. Plaintiff's pulmonology expert: Leon Ting, M.D. from Hackensack, NJ. Plaintiff's vocational rehabilitation expert: Andrew L. Gluck, M.A., M.S., M.Ed., Ed.D. from Gardiner, NY. Defendant's pulmonology expert: David Prince, M.D. from Bryn Mawr, PA.

Kibler vs. C.S. Builders, et al., 05-20.

Attorney for plaintiff: Melissa M. Baxter of Rossetti & DeVoto, PC in Cherry Hill, NJ.

COMMENTARY

Although the extent of the recovery was clearly limited by the plaintiff's history of some cardiac issues and the fact that he was a smoker, it is felt that the plaintiff was able to achieve a substantial settlement. In this regard, the plaintiff emphasized that prior to the exposure he was able to lead a full and active life, had no restrictions and now has extensive difficulties. Additionally, the extremely strong liability evidence reflecting that the diesel fumes were causing multiple complaints from co-workers that the fumes were causing respiratory difficulties during the renovation work rendered the risk to the defendants of proceeding to trial very great.

DEFENDANT'S SUMMARY JUDGMENT – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – FAILURE TO DIAGNOSE AND TREAT – BUTTOCK ABSCESS WITH NECROSIS – PLAINTIFF UNDERGOES SEVERAL SURGERIES TO DRAIN AND REMOVE DEAD TISSUE AND REMOVAL OF NECROTIC GLUTEAL MUSCLES – PERMANENT LOSS OF MAJORITY OF GLUTEUS MAXIMUS AND HALF OF GLUTEUS MEDIUS WITH LONG-TERM FUNCTIONAL AND COSMETIC INJURY TO RIGHT BUTTOCK AND HIP.

Burlington County, NJ

This matter arose out of a medical malpractice claim wherein the plaintiff alleged that the defendant, an E.R. physician, deviated from the accepted standards of care by failing to properly diagnose an infection resulting in the permanent loss of the majority of her gluteus maximus and half of her gluteus medius. The defendant E.R. physician denied any deviation from the standard of care and asserted that he, in fact, examined the plaintiff and found no pathology on the left or right buttock.

By way of medical history, the plaintiff presented to Virtua Health Memorial in Mt. Holly on October 13, 2014 (one day prior to seeing the defendant) reporting chronic pain related to osteosarcoma. She reported she had not been able to get oncology treatment due to insurance coverage. She reported her primary care physician was working her up for leukemia. She presented with an elevated white blood count. The plaintiff was arranged to be admitted to the hospital; however, she requested to leave. She reported to the E.R. physician that she had an appointment with a primary care physician and that it may be her last chance to get oncology care. The E.R. doctor agreed to discharge her and told her to return at any time for any acute reasons.

The following day, on October 14, 2014, the plaintiff presented to a different emergency room hospital where she was seen and examined by medical professionals, including the defendant. The plaintiff again reported that she had been diagnosed with osteosarcoma and had bilateral hip pain since the prior Monday. The defendant examined the plaintiff and found no pathology on the left or right buttock. The defendant discharged the plaintiff. On October 15, 2014, one day after seeing the defendant, the plaintiff went to a different emergency room hospital wherein she reported an allergic reaction to a B12 vitamin shot. Before being seen by a physician, the plaintiff decided to leave. The plaintiff presented to her primary care physician on October 17, 2014. During that visit, the primary care physician diagnosed the plaintiff with cellulitis and prescribed an antibiotic. The plaintiff's condition worsened and she presented to the E.R. again on November 6, 2014, at which time she was diagnosed with a severe infection and necrosis.

The plaintiff claimed that, as the result of a belatedly diagnosed infection under the skin of her right buttock, the plaintiff sustained traumatic injury. Although the plaintiff first sought treatment for her condition in ctober 2014, she was ultimately admitted to the hospital more than a month later with a right buttock abscess with necrosis, requiring several surgeries to drain and remove dead tissue. A large amount of her gluteal muscles were necrotic and had to be removed, resulting in the permanent loss of the majority of her gluteus maximus and half of her gluteus medius. The plaintiff sustained long-term functional and cosmetic injury to her right buttock and hip.

A CT-scan of the pelvis, ordered by the defendant, was initially unremarkable, with an addendum report showing some fullness in the soft tissue of the gluteus maximus muscle on the right. When the defendant discharged the plaintiff, he advised her to follow-up with her primary care doctor and a cancer doctor. He also advised her to see a pain management doctor and an infectious disease specialist. At no time did the plaintiff report to the defendant that she had received a vitamin shot in the buttock or that she had had an allergic reaction. After seeing the defendant, the plaintiff sought and declined treatment once again before finally going to her primary care physician, 3 days after seeing the defendant, when she was ultimately diagnosed with cellulitis.

The plaintiff had presented to 3 E.R.s and left each time, of her own free will, without complete treatment. The defendant maintained that there was no deviation from the standard of care and that the plaintiff failed to provide full information to the defendant and that all treatment she received, along with referrals was appropriate under the presenting circumstances. Any delay in diagnosis was caused by the plaintiff's failure to provide an accurate history and by her leaving each facility before allowing testing, diagnosis and treatment.

The defendant moved for summary judgment as to proximate cause, which was granted by the court and the plaintiff's case as to the defendant was dismissed.

REFERENCE

Weaver vs. Tsarouhas, M.D., et al. Docket no. L-001454-16; Judge John E. Harrington, 10-11-19.

Attorney for plaintiff: Alissa Pyrich of Bedwell & Pyrich, LLC in Saddle Brook, NJ. Attorney for defendant: Jennifer N. Cortopassi of The Law Office of William L. Brennan in Shrewsbury, NJ.

COMMENTARY

The defendant E.R. physician moved for summary judgment that there was no claim for causation of delay in diagnosis by the defendant when he saw her one time on October 14, 2014 at University Medical Center of Princeton at Plainsboro. By way of medical history, the plaintiff presented to Virtua Health Memorial in Mt. Holly, New

Jersey, on October 13, 2014 (one day prior to seeing the defendant) reporting chronic pain related to osteosarcoma. She reported she had not been able to get oncology treatment due to insurance coverage issues. She reported that her primary care physician was working her up for leukemia. The plaintiff presented with an elevated white blood count and it was arranged for her to be admitted to the hospital, however, she requested to leave. The plaintiff reported to the E.R. physician that she had an appointment with a primary care physician and that it may be her last chance to get oncology care. The ER doctor agreed to discharge her and told her to return at any time for any acute reasons. The following day, on October 14, 2014, plaintiff presented to a different emergency room hospital, University Medical Center of Princeton at Plainsboro, where she was seen and examined by medical professionals, including the defendant. The plaintiff again reported that she had been diagnosed with osteosarcoma and had bilateral hip pain since the prior Monday. The defendant examined the plaintiff and found no pathology on the left or right buttock. The CT-scan of the pelvis was initially unremarkable, with an addendum report showing some fullness in the soft tissue of the gluteus maximus muscle on the right. The defendant discharged the plaintiff and advised her to follow-up with her primary care doctor to be referred to a cancer doctor. He also advised her to see a pain management doctor and an infectious disease doctor. On October 15, 2014, one day after seeing the defendant, the plaintiff went to a different emergency room hospital, Lourdes Medical Center of Burlington County, wherein she, for the first time, reported an allergic reaction to a B12 vitamin shot. She reported to the triage nurse that she had an allergic reaction from a B12 injection she injected in her right buttocks the past Friday. Her symptoms included right hip and buttock pain and a lump in the buttocks. She reported the onset of numbness and tingling that began that morning and was gradually getting worse. She reported getting an injection once a week for the prior year, something she had not disclosed to the defendant. The E.R. records reflect that the patient was called to be seen by a physician and that a security guard reported witnessing her exiting the emergency room without incident.

The plaintiff did not seek medical treatment until October 17, 2014 when she went to her primary care physician, as recommended by the defendant. During that visit, the primary care physician diagnosed the plaintiff with cellulitis and prescribed Duricef 500 milligrams twice a day. The plaintiff filled the prescription on 10/17, 10/25 and 11/3/14. Despite the infection not getting better, plaintiff did not seek any medical treatment from any medical provider from October 17, 2014 until November 6, 2014. At no time did the plaintiff return to the emergency room or to the defendant or reach out and make any contact with the hospital or the defendant E.R. physician. It was learned during this litigation, that the plaintiff was never diagnosed with osteosarcoma. While the defendant did not concede standard of care in this case, the alleged negligence was not discussed.

This motion dealt solely with proximate cause. The plaintiff provided an expert report from an emergency room physician that opined the defendant deviated from the standard of care because he did not admit the plaintiff for treatment to the hospital on October 14, 2014. The plaintiff also provided an expert report from an infectious disease expert wherein he testified that the plaintiff had an infected hematoma on October 14, 2014 when the defendant saw the plaintiff. The plaintiff's infectious disease expert further testified that when the plaintiff saw her primary care physician on October 17, 2014, she most likely had the same diagnosis, being an infected hematoma, which would have required the exact same treatment had she been treated on October 14, 2014 by the defendant. Based on the plaintiff's expert testimony, the defendant argued that it was evident that the plaintiff's primary care physician was last in line to treat the plaintiff, and the delay of treatment from October 14 to October 17 had no impact since the plaintiff required the exact same treatment.

The plaintiff's expert in infectious diseases further testified at his deposition that the delay in treatment from October 17 until the plaintiff showed up at the E.R. on November 6, 2014, which was 21 days later, and 24 days after seeing the defendant, certainly contributed to a delay in diagnosis of medical treatment. Given all of these facts concerning the alleged delay and diagnosis of treatment, and the intervening causes, the defendant argued that Summary Judgment was warranted in regards to proximate cause.

The plaintiff countered that the defendant was among the first of the doctors she consulted, when she went to the emergency room on October 14, 2014. The plaintiff maintained that the defendant failed to detect the infection, despite the plaintiff's fever and elevated white blood count, and discharged her that same night without prescribing antibiotics. The defendant instructed the plaintiff to follow up with 2 specific doctors. However, those doctors did not take her insurance, so she followed up with her usual primary care physician instead on October 17, 2014. At that time, the plaintiff was prescribed oral antibiotics for a skin infection. Despite taking the antibiotics, the plaintiff's condition grew worse and she was admitted to the hospital with a necrotic abscess on November 7, 2014.

The defendant asked the court to find that he could not possibly be held liable because other events – the primary care physician's treatment or the plaintiff's actions – intervened to absolve him of liability. However, the plaintiff argued that New Jersey law was clear that there can be multiple causes of an injury. Liability is not limited to only one of these multiple causes, but can be imposed on any person whose actions or omissions were a substantial factor in bringing about the ultimate injury. According to the plaintiff, whether the defendant's failure to diagnose was a substantial factor in the plaintiff's full traumatic injury was a question of fact for the jury. There was evidence showing that the plaintiff's condition grew worse between seeing the defendant on October 14th and seeing her primary care physician on October 17th. The plaintiff argued that the court could not, as the defendant seemed to want, ignore the evidence. Instead, the evidence made clear that the causation question must be sent to the jury. Likewise, whether any of the events between October 14th and the plaintiff's admission to the hospital on November 7th superseded the defendant's liability was also a question for the jury. Only events that were not foreseeable could act as superseding causes. Whether an event was foreseeable required the kind of weighing of the evidence and assessment of overall fairness that could only be conducted by a jury. The plaintiff maintained that summary judgment on the issue of proximate and superseding causes was inappropriate and should be denied.

The court agreed with the defendant and granted summary judgment as to causation, thus dismissing the plaintiff's cause of action against the defendant E.R. physician.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Pharmacy

$12,500 RECOVERY

Medical malpractice – Pharmacy negligence – Wrong dosage of prescription – Infant plaintiff prescribed 75 ml of medication; defendant pharmacy fills prescription at 3.75 ml. – Infant plaintiff takes incorrect dosage for 7 days – Crying, vomiting and sleeplessness.

Passaic County, NJ

This pharmacy negligence action arose from an incident which occurred on March 22, 2019 when the minor plaintiff, a 5-month-old infant, received a prescription from Dr. Ralph Caprio for Ranitidine.75ml to be taken twice daily for treatment of reflux. The plaintiff brought the prescription to the defendant pharmacy in Totowa. The defendant incorrectly dispensed Ranitidine 3.75 ml twice daily. The minor ingested the incorrect dosage for 7 days causing the plaintiff to cry, vomit and not sleep.

When the prescription ran out, the plaintiff mother called the defendant pharmacy for a refill. At that time, the plaintiff mother was informed by the defendant pharmacy that there had been a dosing error. The plaintiff mother contacted poison control and the infant plaintiff's pediatrician who advised that, as long as the infant was awake and throwing up, that the medication would work its way out of her system.

The plaintiff was seen by her pediatrician who reported that there appeared to be no adverse results from the overdose of Ranitidine. The infant plaintiff continues to be followed by her pediatrician and there have not been any adverse sequelae at the time of the filing of the subject action.

The plaintiffs, the minor plaintiff and her parents, asserted that the defendant negligently, carelessly, and recklessly breached its duty of care to the minor plaintiff. The plaintiff parents brought action against the defendants for their own damages related to the incorrect medication given to the minor plaintiff. The defendant stipulated liability and settled the matter with the infant plaintiff and the plaintiff parents.

The parties settled the matter prior to trial in the amount of $7,500 to the infant plaintiff and $5,000 to the plaintiff parents, for a total recovery of $12,500.

REFERENCE

Wallace vs. New Jersey CVS Pharmacy, LLC. Docket no. L-001430-19; Judge Bruno Mongiardo, 06-21-19.

Attorney for plaintiff: Frank Wallace, guardian ad litem of pro se for minor plaintiff. Attorney for defendant: Kelley Brogan of McElroy, Deutsch, Mulvaney & Carpenter, LLP in Morristown, NJ.

Surgery

UNDISCLOSED RECOVERY

Medical malpractice – Surgery – Plaintiff claims peroneal nerve damage resulting in permanent foot drop due to violation of standard of care during surgery or post-operative care – Plaintiff offers to settle for $1 million.

Atlantic County, NJ

In this medical malpractice action, the plaintiff claimed that she suffered nerve damage resulting in a right foot drop as the result of negligent post-operative care following a total right hip replacement on February 4, 2015. The plaintiff claimed to have sustained a peroneal nerve injury that can only occur as a result of a post-operative complication such as extrinsic pressure on the nerve. The plaintiff claimed damages for past and future wage loss. The plaintiff applied for and was granted SSD. The plaintiff made an offer of judgment in favor of the plaintiff and against the defendants, jointly and severally, in the amount of $1 million. The defendants denied liability and claimed that there was no objective evidence to establish causation of the plaintiff's purported injury.

There was conflicting testimony of experts as to whether the injury occurred during the surgery, at the hip level, wherein the defendant surgeon would be responsible, or during post-operative care with the injury happening at the knee level, wherein the nursing staff would be responsible.

The parties settled the matter prior to trial, separately as to the defendant surgeon and the defendant hospital and nursing staff, for undisclosed sums.

REFERENCE

Murray vs. Harhay, M.D., et al. Docket no. L-000224-17; Judge James P. Savio, 10-02-19.

Attorney for plaintiff: Andrew A. Wenker of Michael J. Glassman & Associates, LLC in Voorhees, NJ. Attorney for defendant surgeon, Joseph Harhay, M.D.: Timothy B. Crammer of Crammer, Bishop & O'Brien in Absecon, NJ. Attorney for defendant Atlanticare Regional Medical Center and nursing staff: Erika L. Mohr of Blumberg & Wolk, LLC in Woodbury, NJ.

DOG ATTACK

$12,000 RECOVERY

Dog attack – Strict liability – Bite injuries both temporary and permanent – Past and future pain and suffering – Past and future medical expenses.

Ocean County, NJ

In this dog bite case, the minor plaintiff asserted that the defendant owner failed to control her dog and allowed it to bite the plaintiff causing significant, permanent injury. On June 30, 2018, the minor plaintiff was at a PetSmart store in Stafford. While lawfully at the premises, the plaintiff was caused personal injury as a result of being bitten and attacked by a dog owned and in the care of the defendant. The plaintiff maintained that the defendant was strictly liable for the conduct of her dog.

As a result of the incident, the plaintiff sustained traumatic bite injuries both temporary and permanent, as well as pain and suffering, and medical expenses, all of which are expected to continue in the future. The defendant did not answer the plaintiff's complaint and settled the matter before any further progress in the case.

The parties settled the matter prior to trial in the amount of $12,000 broken down as follows: $3,209 in attorney fees; $0 in medical expenses and $8,791 in net damages to the minor plaintiff.

REFERENCE

Coles vs. Muller. Docket no. L-001229-19; Judge Arnold B. Goldman, 07-12-19.

Attorney for plaintiff: Kevin M. Stankowitz of Rosenberg, Kirby, Cahill, Stankowitz & Richardson in Toms River, NJ.

INSURANCE OBLIGATION

$25,000 RECOVERY

Insurance obligation – Minor killed in motor vehicle collision wherein driver had insurance coverage for passengers with policy limit of $25,000 – Wrongful death.

Burlington County, NJ

On July 29, 2017, the minor decedent was riding in a motor vehicle involved in an accident at the intersection of Evergreen Mill Road and Hodgeland Mill Road in Leesburg, Virginia. At the time of the accident, the decedent was a passenger in a vehicle that left the roadway and was subsequently found overturned in a canal, killing the 4 occupants. At the time of the accident, the driver of the vehicle was insured by the plaintiff insurer pursuant to the terms of an automobile liability policy with limits of $25,000 per party and $50,000 per accident.

The plaintiff insurer sought the court's approval of a Wrongful Death Compromise wherein the defendants, the parents and siblings of the decedent, as the statutory beneficiaries of the decedent's estate, would receive the policy limit of $25,000. Upon inquiry, it was determined that there was no other known insurance policy or coverage, including underinsured motorist coverage or excess or umbrella policy, which would provide additional funds for a settlement.

The court approved the settlement of the matter prior wherein the minor decedent's estate recovered the policy limit of $25,000.

REFERENCE

State Farm Fire and Casualty Company, et al. vs. Russell, et al. Docket no. L-000823-19; Judge Janet Z. Smith, 07-19-19.

Attorney for plaintiff: Elizabeth Chierici of Elizabeth Chierici of Chierici, Chierici & Smith in Mount Laurel, NJ. Attorney for defendant: Mark S. Hochman of Law Offices of Stephen E. Gertler in Wall Township, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$650,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff struck while crossing otherwise uncontrolled intersection in crosswalk – Intracranial hemorrhage – Facial fractures – Non - displaced pelvic fractures – Conservative treatment – Plaintiff testifies in discovery he has absence of significant residuals – No facial scarring.

Sussex County, NJ

In this action for motor vehicle negligence, the 70-year-old plaintiff pedestrian contended that after he had crossed most of the near lane of the roadway that contains one lane in each direction, he was struck by the defendant driver, whom the plaintiff maintained, failed to make adequate observations. As a result of the defendant's negligence, the plaintiff sustained multiple serious injuries requiring hospitalization. The plaintiff was crossing in the crosswalk on the roadway which was otherwise uncontrolled. The defendant maintained that the plaintiff failed to pay adequate attention and was comparatively negligent at the time of the daylight accident.

The plaintiff suffered an intracranial hemorrhage and several facial fractures. The plaintiff also contended that he sustained a non-displaced pelvic fracture. The injuries were treated conservatively. The plaintiff was in the hospital for several weeks. The remainder of his 80-day in-patient stay was in a rehabilitation hospital. The plaintiff testified in discovery that the injuries substantially resolved. There was no noticeable facial scarring. The plaintiff made approximately $30,000 in income claims.

The defendant had $1,250,000 in coverage. The case settled for $650,000.

REFERENCE

Bencivenga vs. Kern. Docket no. SSX-L-334-19, 06-20.

Attorney for plaintiff: Edward J. Rebenack of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Aggravation of prior cervical and lumbar disc disease and spondylosis with disc bulge at L5-S1 – Right shoulder contusion; cervical and lumbar strain; cervical and lumbar radiculopathy – Physical therapy – High/low agreement of $75,000/$7,500 prior to settlement.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff, a 75-year-old woman, asserted that the defendant driver struck her while she was a pedestrian in a crosswalk. The plaintiff claimed significant, permanent injury. The defendant maintained that the plaintiff's injures were preexisting or degenerative in nature.

On April 29, 2015, the plaintiff was a pedestrian in a crosswalk attempting to cross Burton Avenue in Hasbrouck. The defendant was operating her motor vehicle and turning left from Madison Avenue onto Burton Avenue whereupon she struck the plaintiff on her left side, knocking her to the ground, causing her to sustain multiple injuries. A witness at the scene stated that he saw the plaintiff crossing in the crosswalk and then observed the defendant make a left turn and hit the plaintiff pedestrian. The defendant was cited for failure to stop for a pedestrian in a crosswalk.

The plaintiff was taken to the emergency room with a cervical collar to stabilize the cervical spine. She underwent a CT-scan and X-rays. An X-ray of the left knee indicated mild degenerative changes, but no fractures or tears. The plaintiff followed up with an orthopedic surgeon who diagnosed aggravation of prior cervical and lumbar disc disease and spondylosis with disc bulge at L5-S1; right shoulder contusion; cervical and lumbar strain and cervical and lumbar radiculopathy. The plaintiff's orthopedist opined that the injuries were traumatic and causally related to the subject incident. The plaintiff treated with physical therapy.

The defendant maintained that the plaintiff failed to prove permanent injury and, as such, was not entitled to damages. The defendant pointed to the plaintiff's CT-scan in the E.R. immediately after the accident and the radiologist's notes indicated moderate multi-level degenerative changes with no soft tissue swelling, acute fracture or dislocation. The defendant's IME opined that the plaintiff had suffered a cervical, thoracic and lumbar strain and exacerbation of significant preexisting cervical and lumbar degenerative disease with no permanency associated.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a minimum of $7,500 in the event of a no cause verdict or damages below that amount, and a maximum of

$75,000 in the event of an award above that amount. The parties subsequently settled the matter for an undisclosed sum.

REFERENCE

Azanedo vs. Poli. Docket no. L-001577-17; Judge Daniel L. Weiss, 08-26-19.

Attorneys for plaintiff: Marc P. Caswell and Michael J. Hanus of Hanus and Parsons, LLC in Middletown, NJ. Attorney for defendant: Sean M. Doherty of Law Offices of Pamela D. Hargrove in Wall, NJ.

Head-on Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Head-on collision – Temporary aggravation of right hip replacement – Permanent aggravation, exacerbation and acceleration of previously asymptomatic cervical condition – Arbitration finds defendant 100% liable with $57,500 in damages.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to observe, failed to stop her vehicle, was driving too fast for the conditions, and was otherwise negligent and in violation of motor vehicle statutes. As a result of the defendant's negligence, she lost control of her vehicle and struck the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendant denied negligence and asserted that the collision was, at least in part, due to the comparative negligence of the plaintiff and due to conditions beyond the control of the defendant, and thus, was unavoidable.

On February 24, 2016, the plaintiff was traveling in the right, outermost lane eastbound on Sicklerville Road in Gloucester. The defendant was traveling westbound on Sicklerville Road. The plaintiff maintained that suddenly, and without warning, the defendant lost control of her vehicle, skidded, and struck the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff suffered temporary aggravation of right hip replacement and permanent aggravation, exacerbation and acceleration of previously asymptomatic cervical condition.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $57,500. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Amato vs. Valdez. Docket no. L-000561-18; Judge Michael J Kassel, 11-14-19.

Attorney for plaintiff: Saul J. Steinberg of Zucker Steinberg & Wixted in Camden, NJ. Attorney for defendant: Emma K. Bradley of Law Office of Debra Hart in Mount Laurel, NJ.

Intersection Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Intersection collision – Failure to obey stop sign – Lumbar herniation with surgery – Right shoulder tear – UIM case.

Union County, NJ

In this motor vehicle negligence action, the plaintiff driver, age 19 at the time, contended that the defendant driver negligently failed to obey a stop sign, causing the collision in which the plaintiff was injured. The defendant had a 15,000 policy. The plaintiff had 100,000 in UIM protection, and $85,000 was available.

The plaintiff maintained that he suffered a lumbar herniation and that after a more conservative course, including injections, proved to be inadequate, he underwent surgery. The plaintiff asserted that he will, none-the-less, suffer pain and limitation. The plaintiff also claimed that he suffered a tear to the right, dominant shoulder which will cause permanent symptoms despite conservative care.

The defendant did not produce medical testimony. The plaintiff made no income claims.

The case settled before trial for $100,000.

REFERENCE

Plaintiff's radiology expert: Lisa Marie Sheppard, M.D. from Flemington, NJ.

Ciarczynski vs. Bonet, et al. Docket no. UNN-L-4426-19, 06-20.

Attorney for plaintiff: Christopher L. Musmanno of Einhorn Barbarito Frost & Botwinick, PC in Denville, NJ.

$22,492 VERDICT

Motor vehicle negligence – 2 separate collisions joined in this action – First collision causes cervical disc herniations; left side lumbar herniation and bulge – Wage loss claim of $2,600 – Second collision causes pain level increase and positive EMG at L5-S1.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff, a 49-year old man, was involved in 2 separate motor vehicle accidents within 5 months, both of which caused him to sustain injuries. The 2 cases were joined for purposes of this suit. In the first collision, the plaintiff maintained that the first defendant was negligent in pulling out into the roadway and striking the plaintiff's vehicle. In the second collision, the plaintiff asserted that the second defendant pulled out from a stop sign and struck the plaintiff's vehicle. Both defendants denied the permanency of the plaintiff's injuries and maintained that the plaintiff's injuries were degenerative in nature.

On March 13, 2015, the plaintiff was traveling south in the left lane of Princeton Avenue nearing its intersection with Mulberry Street in Lawrence Township. The first defendant was attempting to make a left turn from a gas station onto Princeton Avenue and struck the front passenger side of the plaintiff's vehicle. The plaintiff was involved in a second collision on August 4, 2015, wherein the plaintiff was traveling east on Jefferson Road at the intersection with Terhune Road in Princeton. The defendant pulled out from a stop sign and struck the front driver's side of the plaintiff's vehicle.

The first incident involved a fairly significant impact and as a result, the plaintiff sustained four cervical disc herniations and a left side lumbar herniation and bulge. The plaintiff alleged a wage loss claim of $2,600 as a result of this accident. The plaintiff was still under care for the first accident when the second accident occurred. The plaintiff asserted that his pain level increased as a result of the second incident and that he had an EMG that was positive at L5-S1. The plaintiff made no lost wage claim in the second case.

The defendant from the first collision denied any permanent injury; argued that the plaintiff's injuries were degenerative and asserted that the plaintiff incurred no lost wages per records entered into evidence. The defendant from the second collision also denied any permanency and asserted that the plaintiff had suffered only sprains/strains related to the subject collision and that any further injuries were the result of the first accident or were degenerative.

Just prior to trial, the plaintiff and the defendant from the first accident settled for an undisclosed sum. The matter continued to trial as to the second accident. The jury found in favor of the plaintiff and against the defendant from the second collision. The jury awarded damages in the amount of $22,492.

REFERENCE

Charles vs. Burrell, et al. Docket no. L-000428-17; Judge Douglas J. Hurd, 08-02-19.

Attorney for plaintiff: John G. Devlin of Devlin, Cittadino & Shaw, P.C. in Trenton, NJ. Attorney for defendant Andrey Galinov: G. Samuel Hoffman of Law Offices of Styliades and Jackson in Mount Laurel, NJ. Attorney for defendant: Eric Kuper of Martin Kane & Kuper in East Brunswick, NJ.

Left Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Left turn collision – Plaintiff with extensive history of similar injury contends injuries in collision wherein she was a passenger – Cervical and lumbar herniations – L5-S1 radiculopathy – Left ankle injury; right knee injury – Ankle surgery – Lumbar and cervical epidural injections – Arbitration finds defendant 75% liable and plaintiff 25% liable with gross damages of $75,000.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff, a 66-year-old female, asserted that the defendant driver struck the vehicle in which she was a passenger from the side with such force that it caused significant, permanent injury.

On August 22, 2015 the plaintiff was the passenger in a vehicle that was making a left turn when it was struck broadside by the defendant's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability, but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained cervical and lumbar herniations; L5-S1 radiculopathy; left ankle injury; right knee injury. The plaintiff treated with surgery on the ankle; one lumbar epidural injection and one cervical epidural injection.

The defendant argued that the plaintiff's injuries were preexisting and not caused by the subject collision. The defendant asserted that the plaintiff had prior injuries to the same body parts claimed in the subject

action from prior motor vehicle accidents in 1989 and 1996, some with ongoing issues documented in the years preceding the subject collision.

The plaintiff offered to take judgment against the defendant in the sum of $150,000 including costs and interest. The offer was not accepted and the matter proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant and set 25% to the plaintiff with gross damages of $75,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Birdsong vs. Wise-Elamin. Docket no. L-003261-17; Judge Michael J. Kassel, 10-25-19.

Attorney for plaintiff: Alfred J. Falcione of Flynn & Associates, P.C. in Cherry Hill, NJ. Attorney for defendant: John A. Dingle of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

Rear End Collision

$100,000 VERDICT

Motor vehicle negligence – Rear end collision – Alleged cervical herniation – Defendant points to minor impact damage and 5-week delay in medical care – No income claims – Damages only.

Middlesex County, NJ

The plaintiff's motion for a directed verdict on liability was granted in this rear end collision case. The plaintiff, in his 30s, contended that he suffered a cervical herniation with radiculopathy that was confirmed by MRI and EMG. The plaintiff maintained that will suffer very significant difficulties using his right, dominant arm. The plaintiff had denied recommended injections. The defendant denied that the plaintiff suffered permanent injury in the accident or that he met the verbal threshold.

The plaintiff asserted that the condition will be likely to progress and that he will probably need surgery in the future.

The defendant pointed to minor impact damage as well as the 5-week delay before plaintiff sought medical care.

The plaintiff countered that the extent of property damage is not necessarily indicative of the extent of personal injury. The plaintiff also argued that he initially believed that the injuries would resolve on their own, accounting for the delay in obtaining treatment. The plaintiff further stressed that he had no prior symptoms or treatment, arguing that the herniations were clearly caused by the collision.

The plaintiff made no income claims.

The jury found that the plaintiff met the verbal threshold and awarded $100,000, including $20,000 for pain and suffering and $80,000 for future medical bills.

REFERENCE

Plaintiff's neurosurgeon expert: Nirav K. Shah, M.D. from Princeton, NJ. Defendant's orthopedic surgeon expert: David Greinger, M.D. from Belleville, NJ.

Bhimani vs. Modhera, et al. Docket no. MID-L-004765-18; Judge Dennis Nieves, 02-12-20.

Attorney for plaintiff: Bhaveen R. Jani of Stark & Stark in Lawrenceville,, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc bulges at L2-3 and L4-5 – C4-5 central disc herniation – 16 months of chiropractic therapy and pain management – Parties agree to expedited trial with $50,000 cap on damages.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle from behind with such force that it him to sustain caused significant, permanent injury. The defendant stipulated liability, but contested the plaintiff's damages.

On January 11, 2017, the plaintiff was traveling eastbound on Moss Mill Road in Galloway. The defendant was traveling behind the plaintiff's vehicle. The plaintiff maintained that the defendant was negligent in failing to observe traffic and did not slow or stop behind the plaintiff's vehicle, striking him from behind. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff presented to his family physician 2 months after the subject collision for continued back pain since the accident. The plaintiff also sought treatment from a spinal rehab center where he underwent multiple evaluative tests. He also had an MRI which revealed disc bulges at L2-3 and L4-5; a C4-5 central disc herniation; C5-6 disc bulge; disc osteophyte formation in an irregular fashion centrally and to the left at C6-7; and a broad disc herniation to the right at C7-T1. The plaintiff had 16 months of chiropractic therapy and pain management, but continued to have pain.

The defendant argued that the plaintiff delayed treatment and had not made any complaints of injury at the scene of the accident. The defendant, therefore, asserted that there was no clear causation of the plaintiff's injuries.

Arbitration prior to trial set liability at 100% to the defendant with $20,000 in damages. The parties agreed to conduct an expedited jury trial with a $50,000 cap on damages. The jury found no cause of action pursuant to the verbal threshold and returned a verdict in favor of the defendant.

REFERENCE

Abitow vs. Reitano. Docket no. L-002100-17; Judge John C. Porto, 10-22-19.

Attorney for plaintiff: Gerald F. Miksis of Law Office of Gerald F. Miksis in Atlantic City, NJ. Attorney for defendant: Walter H. Iacovone of Margolis Edelstein in Mt. Laurel, NJ.

PREMISES LIABILITY

Fall Down

$600,000 RECOVERY

Premises liability – Fall down in commercial parking lot allegedly caused by crack in pavement – Aggravation of right (dominant) rotator cuff tear – Surgery – Need for revision surgery – Plaintiff also claims overuse of other shoulder, right wrist and right elbow.

U.S.D.C. - District of New Jersey

In this premises liability case, the plaintiff, age 56 at the time, contended that she tripped fell on a crack in the pavement in the defendant' owner's commercial parking lot, sustaining serious injury. The plaintiff also named a maintenance/snow removal company as a defendant, contending that the co-defendant had agreed to regularly inspect the lot and act as the "Eyes and ears" of the owner, recommending repairs as needed. The plaintiff maintained that the co-defendant negligently failed to do so. The defendants denied that the plaintiff fell because of a crack.

The incident was captured on a surveillance video and the defendant maintained that video showed that the fall occurred on the side of the lot where the defense denied a crack was present. The plaintiff would have countered that the cracks were present on both sides of the lot. The defendants also pointed out that the fall occurred because the plaintiff tripped over her "Flip flops." The plaintiff would have countered that her flip flop became stuck in the crack, causing the fall.

The plaintiff had sustained a rotator cuff tear on the same side in a car accident approximately one year earlier. The plaintiff asserted that the prior injury was treated conservatively and that although surgery was discussed, she did not feel it was necessary. The plaintiff underwent arthroscopic surgery and a revision to this shoulder after the accident. The plaintiff further maintained that because she was compensating for the shoulder injury, she suffered a tear to the other shoulder, carpal tunnel syndrome to the left wrist and ulnar neuropathy to the left shoulder. These conditions were treated by surgery. The defendant denied that the subsequent conditions were related.

The plaintiff claimed that following the elbow surgery approximately three years after the fall, the numbness to her fingers prevented her from continuing her job as an administrative assistant. The plaintiff was earning slightly more than $50,000 per year.

The case settled prior to trial for $600,000, including $300,000 from each defendant.

REFERENCE

Plaintiff's engineer expert: Wayne Nolte, P.E. from Hazlet, NJ. Plaintiff's orthopedic surgeon expert: Gregory Charko, M.D. from Union, NJ. Defendant's engineer expert: Ronald Cohen, P.E. from Malvern, PA. Defendant's orthopedic surgeon expert: Joshua Hornstein, M.D. from Mercerville, NJ.

56-year-old plaintiff vs. Defendant commercial parking lot, et al.

Attorney for plaintiff: Max Stagliano of Gill & Chamas in Woodbridge, NJ.

$365,000 RECOVERY

Premises liability – Fall down – Plaintiffs slips and falls on water accumulated on floor of defendant supermarket due to leak from refrigeration unit – Bilateral shoulder injuries – Disc herniations – Meniscus tear of right knee – Plaintiff claims $432,000 in damages – Arbitration sets damages at $200,000.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant supermarket failed to remediate a hazardous condition in the shopping area of its store where customers could reasonably expect a safe environment. As a result of the negligence of the defendant, the plaintiff fell and sustained permanent injury.

On July 16, 2016 the plaintiff was shopping at the defendant supermarket when she fell on water which she contended came from a nearby refrigeration unit. The plaintiff alleged that the defendant had constructive and actual notice of the defect and failed to remove or warn of the defect. The defendant asserted that the plaintiff was negligent or comparatively negligent for failing to take care and avoid the water on the floor. The defendant also denied notice of the defect sufficient to allow it to be remediated.

As a result of the fall, the plaintiff sustained bilateral shoulder injuries, disc herniations and a meniscus tear of the right knee. The plaintiff sought $432,000 in outstanding medical bills. The defendant challenged the causal relationship of the plaintiff's injuries to the subject fall.

Prior to arbitration, the plaintiff offered to take judgment against the defendants in the amount of $575,000. The defendants declined. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $200,000. Following arbitration and prior to trial, the parties settled for $365,000.

REFERENCE

Vasquez vs. Shoprite, et al. Docket no. L-008840-17; Judge Gregg A. Padovano, 10-30-19.

Attorney for plaintiff: Richard LaBarbiera of LaBarbiera & Martinez in North Bergen, NJ. Attorney for defendant: James N. Barletti of Gold, Albanese, Barletti & Locascio, LLC in Morristown, NJ.

Negligent Maintenance

UNDISCLOSED RECOVERY

Premises liability – Negligent maintenance – Fall down –Plaintiff slips and falls on ice at defendant-maintained building – Acute, impacted fracture of left distal radius with mild dorsal angulation at fracture site and fracture of ulnar styloid – Open reduction and internal fixation of left wrist with hardware – Bruises and contusions – Plaintiff claims $9,600 in lost income.

Morris County, NJ

In this negligent maintenance case, the plaintiff, a restaurant manager, asserted that the defendant or its agents failed to remove snow and ice from a walkway causing the plaintiff to fall and sustain serious injury. The defendant building owner denied liability and brought a cross-claim against the defendant contractor who the defendant had hired to do snow removal at the subject property.

As a result of the fall, the plaintiff sustained acute, impacted fracture of the left distal radius with mild dorsal angulation at the fracture site and fracture of the ulnar styloid. The plaintiff was splinted for 2-3 weeks and underwent an open reduction and internal fixation of the left wrist with hardware. She also suffered bruises and contusions from falling, pain, suffering and disability. The plaintiff claimed ongoing pain and limited range of motion in the wrist. The plaintiff claimed $9,600 in lost income.

The plaintiff argued that the defendant owned and maintained a property at 100 Rutgers Lane in Parsippany. The plaintiff asserted that the defendant or its agents were responsible to perform now and ice removal and salting and sanding of the sidewalks and walkways. The plaintiff was a resident of the defendant's apartment complex. The plaintiff maintained that there had been a heavy storm on January 2-3 and that temperatures subsequently fell, causing any wet area to freeze. On January 6, 2017, the walkways leading from the parking lots to the building were in a dangerous condition in that sections were covered with snow and ice, rendering them unsafe for pedestrian travel. The snow covered and icy sections of the sidewalks and walkways from the parking lots to the building constituted a hazard for pedestrians. The plaintiff maintained that the snow and ice remained on the walkways from a storm that had occurred some time prior to the day in question. On that day, the plaintiff was walking on the walkway leading to an entrance of the building where she slipped on accumulated snow and ice and fell sustaining serious injury.

The defendant owner asserted that the defendant contractor was responsible and had not done an adequate job of salting and sanding the property. The defendant snow removal contractor asserted that it was the defendant building owner's responsibility to call and request snow removal and/or follow-up sanding/salting. The defendant claimed that it had removed the snow from the original storm, but was not contacted to do any further salting or sanding between the date of the storm and the date of the plaintiff's fall.

The parties submitted to arbitration prior to trial. The arbitrator assigned 80% liability to the defendant building owner; 0% to the defendant snow removal company and 20% to the plaintiff. The arbitrator set gross damages at $75,000; $60,000 net after reduction for comparative negligence. The parties settled the matter after arbitration and prior to trial for an undisclosed sum.

REFERENCE

Chung vs. Rutgers Builders, LLC, et al. Docket no. L-002337-17; Judge Rosemary E. Ramsay, 08-05-19.

Attorney for plaintiff: Hugh M. Turk of Sullivan Papain Block McGrath & Cannavo in Hackensack, NJ. Attorney for defendant Rutgers Builders, LLC, building owner: Richard M. Tango of McDermott & McGee, LLP in Millburn, NJ. Attorney for defendant Frank Semeraro Construction, snow removal contractor: D. Scott Conchar of Law Offices of William E. Staehle in Morristown, NJ.

Negligent Security

UNDISCLOSED RECOVERY

Premises liability – Negligent security – Plaintiff casino patron contends that defendant's security personnel unlawfully detained and injured him – Arbitrator assigns 70% liability to defendant and 30% to plaintiff with gross damages of $65,000 – Defendant made offer of judgment in amount of $60,000.

Camden County, NJ

In this negligent security case, the plaintiff asserted that the defendant casino wrongfully detained him and that he suffered injury at the hands of the defendant's security personnel. The defendant argued that it had the right to detain the plaintiff based on observation of his disorderly conduct and that use of force was reasonable.

On May 18, 2016, the plaintiff was a patron of the defendant casino and was served alcohol to the point of visible intoxication. The plaintiff alleged that he was forcibly detained by the defendant's security personnel who unlawfully put handcuffs on him and forced him to the ground in an elevator while being transported. The plaintiff alleged facial injuries, post-concussion syndrome with brain damage and cervical radiculopathy. The defendant asserted that the plaintiff did not establish causation between the incident and his injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant and 30% to the plaintiff. The arbitrator set gross damages at $65,000 reduced to $45,500 for the plaintiff's comparative negligence. Following arbitration and prior to trial, the defendant made an offer of judgment in the amount of $60,000 inclusive of all damages, attorney's fees, interests, and costs. The parties settled the matter prior to trial for an undisclosed sum.

REFERENCE

Delussey vs. Trump Taj Mahal Hotel & Casino. Docket no. L-001942-17; Judge Sherri L Schweitzer, 10-25-19.

Attorney for plaintiff: David Rochman, Esq. in Voorhees, NJ. Attorney for defendant: Justin A. Britton of Cooper Levenson, PA in Atlantic City, NJ.

RACIAL DISCRIMINATION

UNDISCLOSED RECOVERY

Racial discrimination – Municipal liability – Harassment – Retaliation – Violation of Law Against Discrimination – Plaintiff laborers for defendant township assert that township, its manager and a co-worker of plaintiffs engaged in creating hostile work environment wherein plaintiffs were repeatedly harassed on basis of race and they were retaliated against after complaining – Non-economic damages in form of humiliation, stress, and anxiety causing severe mental and emotional distress and vocational disability.

Burlington County, NJ

In this racial discrimination case, the plaintiffs asserted that the defendants engaged in race discrimination, harassment, and retaliation against the plaintiffs in violation of the NJ LAD. The plaintiffs brought suit against the defendant township, the township manager, and a parks and recreation department laborer. The plaintiffs alleged violation of New Jersey Law Against Discrimination, disparate treatment, hostile work environment, retaliation, and intentional infliction of emotional distress as to all defendants; defamation, and false light claim as to the defendant township and the defendant co-worker. The defendants denied any discrimination against the plaintiffs and claimed that they acted reasonably and in good faith in all dealings with the plaintiffs.

The plaintiffs, both of whom are African-American, began working for the defendant township in permanent laborer positions in the parks and recreation department in December 2015 and January 2016 respectively. The plaintiffs worked with the defendant laborer who was a truck driver for the department, and who is white. The defendant had been removed from a prior position with the public works department after he threw a pitchfork at an African-American co-worker. After the November 2016, presidential election, the defendant approached several co-workers,

including the plaintiffs, and screamed, "You people came to this country and fucked it up! Trump is gonna fix all that!" The defendant referred to the plaintiffs as monkeys and told them to climb trees, accused them of stealing money from him, brought knowingly false charges against them for theft (the charges were found to be unsubstantiated by the police), left knives, large rocks and other potential weapons in common areas of the workplace with corresponding threatening notes and engaged in continuous and ongoing harassment of the plaintiffs.

The plaintiffs eventually filed formal complaints against the defendant co-worker and a meeting was held with the defendant township manager wherein the plaintiffs discussed the defendant's racially offensive behavior. The plaintiffs asserted that no remedial action was taken. Instead, the plaintiffs were reassigned to positions in the public works department where they no longer worked directly with the defendant, but were still forced to interact with him on a day-to-day basis. On March 24, 2017, the defendant violently kicked one of the plaintiffs in the leg. The Union Shop Steward was present and witnessed the assault, as did the other plaintiff. The police were called to investigate and filed assault charges against the defendant for bias crime and simple assault. The defendant was suspended with full pay.

The plaintiffs found the hostile work environment so intolerable that they both left on temporary disability leave for mental health treatment. They returned to work in May 2017, whereupon they were subjected to further harassment from co-workers. A meeting was held with the department supervisors, and the defendant township manager where the plaintiffs reported the continuing, and, in fact, expanding, harassment and requested transfer to a different department. The plaintiffs did not receive transfers to a different department and the defendant laborer who was suspended after kicking one of the plaintiffs continued to be employed by the defendants and followed the plaintiffs around town in a menacing manner.

The plaintiffs also asserted that they were denied a promised pay raise after complaining about the harassment. The plaintiffs believed this was in retaliation for their making complaints. One plaintiff was physically menaced and intentionally intimidated by the township manager after asking about the promised pay raise. The harassment and hostile workplace continued, at which point the plaintiffs filed the subject action. The plaintiffs claimed the co-worker racially harassed the plaintiffs and that the defendant township, its manager and its employees incited, aided and abetted each other's discriminatory conduct.

As a result of the discrimination and harassment, the plaintiffs alleged that they were caused to suffer non-economic damages in the form of humiliation, stress, and anxiety causing severe mental and emotional distress and vocational disability. The plaintiffs also asserted common law counts for intentional infliction of emotional distress, defamation, and false light. The defendants also claimed qualified and absolute immunity. The defendant co-worker argued that the plaintiffs' claims were frivolous, unreasonable and groundless and that he, at no time, acted with malice, or willfulness in regard to the plaintiffs' rights. The defendant township and its manager asserted that they took all appropriate actions when presented with the complaints by the plaintiffs including meetings, discipline of the defendant co-worker, and transfer of the plaintiffs as requested. The defendant township and its manager denied that they were the proximate cause of the plaintiffs' purported damages.

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

REFERENCE

Brown and Wilson vs. Township of Willingboro et al. Docket no. L-002523-17; Judge Janet Z. Smith, 10-11-19.

Attorney for plaintiff: Elizabeth M. Trottier of Mashel Law, LLC in Morganville, NJ. Attorney for defendant Township of Willingboro and township manager: Carmen Saginario, Jr. of Capehart & Scatchard, P.A. in Mount Laurel, NJ. Attorney for defendant co-worker: George J. Botcheos, Esq. in Voorhees, NJ.

RESTAURANT NEGLIGENCE

UNDISCLOSED RECOVERY

Restaurant liability – Foreign object in food – Ulcerative proctitis and constipation predominated by irritable bowel syndrome – Plaintiff claims $32,294 in unpaid medical expenses – Arbitrator assigns 100% liability to defendant with damages of $300,000 – Plaintiff makes offer of judgment for $300,000 – Defendant makes counter offer of $120,000.

Camden County, NJ

On October 2, 2015, the plaintiff was eating a piece of pizza purchased from the defendant restaurant. The plaintiff asserted that a foreign substance was present in the pizza due to the negligence of the defendant. The plaintiff consumed the foreign object, a piece of steel wire, which caused her injury.

As a result of consuming the steel wire, the plaintiff sustained ulcerative proctitis and constipation predominated by irritable bowel syndrome. The plaintiff claimed $32,294 in unpaid medical expenses. The plaintiff alleged that the defendant knew or should have known that the dangerous condition created a reasonably foreseeable risk of injury to consumers of the pizza. The plaintiff maintained that the defendant failed to take reasonable action to provide for the pizza to be free from foreign bodies and unadulterated. The defendant questioned causation, extent and permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $300,000 inclusive of outstanding medical expenses. The plaintiff made an offer to take judgment in the amount of $300,000. The defendant made a counteroffer of judgment in the amount of $120,000. The parties settled prior to trial for an undisclosed sum.

REFERENCE

Verzella vs. Stellato, LLC d/b/a Casa Di Roma. Docket no. L-003727-17; Judge Steven J. Polansky, 10-22-19.

Attorney for plaintiff: Michael Dennin of Vincent J. Ciecka, PC in Pennsauken, NJ. Attorney for defendant: Jessica D. Adams of Law Office of Nancy L. Callegher in Mt. Laurel, NJ.

SEXUAL HARASSMENT

UNDISCLOSED RECOVERY

Sexual harassment – Wrongful termination – Retaliation – Plaintiff claims termination due to good faith complaints of sexual harassment – Emotional upset, humiliation and embarrassment; psychological harm, injuries and losses – Intentional and malicious infliction of emotional distress warranting punitive damages.

Burlington County, NJ

In this law against discrimination case, the plaintiff claimed that she was terminated because of her good faith complaints of sexual harassment that she suffered while working at the defendant company. The plaintiff maintained that the harassment was in violation of the New Jersey Law Against Discrimination.

The plaintiff began working at the defendant company as a Customer Service Representative in May of 2014. Eventually, the plaintiff became a salesperson and was the only female salesperson at the company. The plaintiff was also the only salesperson required to still perform the duties of a customer service representative. The plaintiff claimed that she performed well at her job at all times. Throughout the winter and spring of 2015, the plaintiff maintained she was sexually harassed by a coworker. The plaintiff was subjected to unwelcome, inappropriate, and personal questions about her dating life, her appearance, and other personal topics.

The plaintiff asserted that the harassment reached its peak in the spring of 2015 when the plaintiff and her coworker were at a sales call at Princeton University. The plaintiff testified that, as they were walking down a stairwell, the coworker cornered the plaintiff against the wall, blocked her way out, and grabbed her on the rear end saying he had been wanting to do that all day. The plaintiff emphatically rejected this advance and made it clear that his advances were unwelcome. Subsequently, the plaintiff complained to her supervisor at the defendant company about what had occurred. The supervisor suggested that the 2 go to human resources together. The plaintiff and her supervisor met with a representative from human resources wherein the plaintiff described the harassment she faced. Human resources stated that the department would investigate the incident. The plaintiff never heard again from human resources. She followed up with her supervisor who told her not to worry about it.

The plaintiff asserted that, after her complaint, her employment changed. Prior to the harassment and her complaints, the plaintiff was excelling at her job, was promoted, and given positive reviews. Afterward, the plaintiff maintained, the defendant began retaliation against her. The plaintiff claimed sales opportunities that should have been hers were redirected to other employees, causing her to lose out on commissions, she was assigned to lower performing territories, and she stopped being treated fairly and stopped receiving good leads for future sales. Lastly, the upper management at the defendant company began taking inaccurate and immaterial customer complaints about the plaintiff and blowing them out of proportion in order to try to discipline the plaintiff and force her out of the company.

The plaintiff argued that the defendant's campaign of retaliation culminated in the plaintiff's termination in May of 2016. The plaintiff claimed that she was upset, humiliated and embarrassed by the discriminatory termination; she suffered psychological harm, injuries and losses as a result of her wrongful termination; and that the intentional and malicious nature of the defendants' actions justified the imposition of punitive damages. The defendant denied terminating the plaintiff in retaliation and asserted that the plaintiff's claims of good job performance were inaccurate. The defendant asserted that the plaintiff performed well at her job initially, but that issues quickly arose relating to the plaintiff's behavior with both customers and colleagues. The defendant also

denied the plaintiff's contention that she was the only female salesperson, stating that the defendant employed multiple other female salespersons, including at least one that reported to the same home office as the plaintiff.

The defendant denied that the plaintiff's meeting with human resources was for the purpose of complaining about harassment and stated that the meeting was to discuss the plaintiff's inappropriate conduct in the workplace and that no allegations of harassment were raised by the plaintiff. Further, the defendant maintained that the plaintiff never made a complaint about the coworker. The defendant also denied that any sales leads or deals were directed to other employees when they should have gone to the plaintiff. With regard to the plaintiff's claim that she was terminated in retaliation, the defendant countered that the plaintiff was terminated because of her multiple disrespectful and aggressive interactions with colleagues and a vendor, in addition to multiple customer complaints the defendant received about the plaintiff's behavior. The defendant denied that the plaintiff's gender played any role in the decision to terminate her employment

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

REFERENCE

Cunliffe vs. Eastern Lift Truck Co., Inc. Docket no. L-000878-18; Judge Aimee R. Belgard, 10-10-19.

Attorney for plaintiff: Leo B. Dubler, III of Law Offices of Leo B. Dubler, III in Mount Laurel, NJ. Attorney for defendant: Danielle Goebel of Dilworth Paxson, LLP in Cherry Hill, NJ.

TRANSIT AUTHORITY NEGLIGENCE

UNDISCLOSED RECOVERY

Transit Authority negligence – Bus negligence – Plaintiff claims bus moved suddenly and violently causing him to fall – Injuries to left shoulder, head and lower back including herniated disc at C3-4; L4-5 disc herniation; right paracentral disc herniation at L5-S1; disc bulges at C6-7 and L3-4 – One year of physical therapy.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant transit authority bus was operated in a negligent manner such that it caused the plaintiff to fall while a passenger on the bus, suffering significant injury.

On July 12, 2015 the plaintiff was boarding a public transit bus owned and operated by the defendant transit authority. The plaintiff alleged that, while boarding the bus, he asked the driver not to move until he was able to get to a seat. The plaintiff claimed that the driver nodded and the plaintiff proceeded to board. The plaintiff stated that the bus then suddenly pulled away before the plaintiff was able to sit down causing the plaintiff to fall forward. The plaintiff asserted that the bus jerked forward and he fell, hitting his head and shoulder on a pole and fell into people and onto another passenger.

As a result of the collision, the plaintiff sustained injuries to his left shoulder, head and lower back including a herniated disc at C3-4; L4-5 disc herniation; right paracentral disc herniation at L5-S1; disc bulges at C6-7 and L3-4. The plaintiff sought medical care the same day at the hospital where he was diagnosed with whiplash. The plaintiff sought further treatment two days later complaining of head and neck pain. Imaging was performed and it was determined that the plaintiff had a cervical strain. The plaintiff underwent physical therapy for one year and is no longer treating. The defendant denied liability and contested the plaintiff's damages.

The defendant asserted that its driver acted reasonably and not negligently. The defendant maintained that "Jerks and jolts" of a public bus do not constitute negligent conduct. The defendant argued that the plaintiff's injuries were not permanent and pointed to the plaintiff's testimony that no medical provider instructed him to refrain from doing any activities as a result of the subject incident. The defendant also noted the plaintiff's testimony that he does all of the activities he did prior to the subject accident, for example bowling, just less often. The defendant also claimed that the plaintiff was on the bus for approximately 10 minutes before exiting and did not speak with the driver, advise the driver he was hurt, request help or ask to make a report.

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

REFERENCE

Damon vs. New Jersey Transit Corporation, et al. Docket no. L-002767-17; Judge Steven J. Polansky, 01-22-20.

Attorney for plaintiff: Thomas Gosse, Esq. in Haddon Heights, NJ. Attorney for defendant: Meliha Arnautovic of Deputy Attorney General of New Jersey in Trenton, 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

$30,000,000 GROSS VERDICT – MEDICAL MALPRACTICE – ORTHOPEDICS – NEGLIGENT TREATMENT OF ANKLE FRACTURE – FAILURE TO TIMELY DIAGNOSE DVT – FAILURE TO GIVE ANTICOAGULANT MEDICATION – WRONGFUL DEATH.

Miami-Dade County, FL

This medical malpractice action involved the death of a 71-year-old female following an ankle fracture. The defendants at trial were an orthopedic surgeon, who treated the decedent in the hospital, and his practice group. An internist, who subsequently treated the decedent at a nursing home, settled the plaintiff's claims prior to trial and remained on the verdict form as a Fabre defendant. The plaintiff alleged that the defendant orthopedist failed to timely diagnose and treat signs of deep venous thrombosis ("DVT') and failed to make sure that the decedent received needed anticoagulant therapy. As a result, the plaintiff claimed that the decedent died from pulmonary embolism. The defendant argued that the plaintiff received an anticoagulant in the hospital and he recommended that the medication be continued, but he had no control over her care after she was transferred to the nursing home.

The plaintiff's claim against the nursing home was severed pursuant to an arbitration agreement and is in the process of being arbitrated.

The jury found the defendant orthopedist 5% negligent and the Fabre defendant internist 95% negligent. The plaintiff was awarded $30,000,000 in damages, reduced accordingly. All post-trial defense motions have been denied and the plaintiff's motion to amend the final judgment and renewed motion for directed verdict for the full $30,000,000 jury award are pending.

REFERENCE

Estate of Maria Elena Fernandez vs. Baptist Health Medical Group Orthopedics, et al. Case no. 2018-013104-CA-01; Judge David C. Miller, 03-06-20.

Attorney for plaintiff: Gary Alan Friedman of Friedman & Friedman in Coral Gables, FL.

$2,500,000 VERDICT – MEDICAL MALPRACTICE – PODIATRY – SURGERY – DEFENDANT PODIATRIC SURGEON PERFORMED BUNIONECTOMY ON PLAINTIFF CAUSING VASCULAR INJURY AND THEN FAILED TO TIMELY DIAGNOSE AND TREAT RESULTING INFECTION WHICH LED TO OSTEOMYELITIS NECESSITATING REMOVAL OF BONE FROM HALLUX AND METATARSAL – BONE LOSS – PERMANENT DISFIGUREMENT.

Monmouth County, NJ

In this medical malpractice case, the plaintiff, a 20-year-old woman, claimed that the defendant podiatric surgeon, who performed a bunionectomy on the plaintiff, caused vascular injury to the plaintiff and then failed to timely diagnose and treat a resulting infection which led to osteomyelitis, necessitating the removal of bone from the hallux and metatarsal. The parties disagreed as to how the vascular insult occurred with the plaintiff maintaining that the defendant surgeon caused the vascular injury during surgery and the defendant asserting that the occlusion occurred well away from the surgical site and was not caused by any action of the defendant surgeon. The plaintiff brought suit against the defendant surgeon and his practice. The defendants denied violation of the standard of care and argued that all actions taken by the defendants were appropriate to treatment of the plaintiff's condition. The defendants asserted that the plaintiff suffered a vasospasm which is a rare, but recognized complication of the surgery and not due to any malpractice by the defendants.

The jury found in favor of the plaintiff and against the defendant surgeon and awarded damages in the amount of $2,500,000 together with $266,114 in pre-judgment interest, for a total award of $2,766,114. Following the verdict, the defendants filed a motion for new trial. The motion was subsequently withdrawn upon settlement with the plaintiff for an undisclosed sum.

REFERENCE

Ronneberg vs. Sullivan DPM, et al. Docket no. L-000702-15; Judge Lourdes Lucas, 09-20-19.

Attorney for plaintiff: James D. Martin of Martin Kane & Kuper in East Brunswick, NJ. Attorney for defendant: Dominick DeLaurentis of Stahl & DeLaurentis, P.C. in Runnemede, NJ.

$1,500,000 RECOVERY – MEDICAL MALPRACTICE – SURGEON NEGLIGENCE/HOSPITAL NEGLIGENCE – FOLLOWING BYPASS SURGERY PLAINTIFF'S DECEDENT DEVELOPS ABDOMINAL SYMPTOMS CONSISTENT WITH BOWEL OBSTRUCTION WHICH DEFENDANTS FAIL TO ADDRESS – WRONGFUL DEATH OF 69-YEAR-OLD MALE.

Allegheny County, PA

This wrongful death case was brought by the plaintiff alleging that the defendants failed to properly address the decedent's abdominal complaints following bypass surgery. Consequently, the decedent suffered a bowel obstruction that caused a decline in condition and led to cardiopulmonary arrest causing death. The defendant surgeon denied all allegations of negligence and raised the defense of underlying condition. The defendant hospital denied all allegations of negligence and argued that those who tended to the decedent while at the defendant's facility were under the care and control of other entities who are liable to the plaintiff.

The case settled prior to trial for $6,500,000 as a result of the effort of a Judicial Settlement conference which took place after a failed mediation attempt.

The parties settled the dispute for $1,500,000.

REFERENCE

The Estate of Terry Matty by Christine Matty vs. Christopher Sciortino, M.D. and UPMC Presbyterian Hospital. Case no. GD-19-003270; Judge Alan Hertzberg, 08-01-19.

Attorney for plaintiff: Scott D. Glassmith of The Law Offices of Gismondi & Associates in Pittsburgh, PA. Attorney for defendant: Frederick Bode, III of Dickie, McCamey & Chilcote, P.C. in Pittsburgh, PA.

IAt the conclusion of the trial, the jury returned with a verdict in favor of the plaintiff. The jury then awarded a total sum of $2,487,759 in damages consisting of $382,732 in economic damages and $2,105,027 in non-economic damages. The jury also awarded the plaintiff's wife $720,000 in damages for her loss of consortium claim.

REFERENCE

Bruce Cockayne, et al. vs. The Bristol Hospital, Inc. et al. Case no. CV16-6034402S; Judge Lisa Morgan, 01-24-20.

Attorney for plaintiff: Thomas P. Cella of Howard Kohn Sprague & Fitzgerald in Hartford, CT. Attorney for defendant: Michael G. Rigg of O'Brien Tansky & Young in Rocky Hill, CT.

PRODUCT LIABILITY

$13,478,106 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN AND MANUFACTURE OF CAR SEAT– 2-MONTH-OLD SUSTAINS HEAD INJURY DURING T-BONE COLLISION – SKULL FRACTURE – CATASTROPHIC BRAIN INJURY.

Dallas County, TX

In this action for product liability, the plaintiffs alleged that their infant child suffered serious, permanent and catastrophic brain injuries when he was riding in the defendants' car seat in a vehicle that was struck broadside at an intersection. The force of the impact caused the infant's head to strike the interior of the protruding car door. The plaintiffs brought suit against the car seat manufacturer, the manufacturer of the car seat insert, and the driver who struck the plaintiffs' host vehicle. All defendants denied all allegations of negligence and the host driver was brought in as an additional defendant.

The plaintiffs settled out of court with the defendant Graco, but they remained on the verdict sheet. The plaintiffs offered evidence of indivisibility and the burden of proof shifted to Summer to offer competent evidence that the cause of injury to the infant could, in fact, be apportioned. But Summer Infant rested without offering any evidence that the cause of N.L.S.'s injury was capable of being apportioned. The jury found that Summer Infant, the maker of the "Snuzzler" insert, was 2% liable, Graco was 47% negligent and the defendant host driver was 51% negligent. The jury awarded damages of over $13,000,000.

REFERENCE

Jordan A. Stalnaker, Tyler L. Stalnaker, Individually and as next friends of N.L.S. minor vs. Michael David Valentine, Graco Children's Products, Inc., Summer Infant and Mackensie Kinsella. Case no. CC-I4-02235-C; Judge Sally Montgomery, 02-26-20.

Attorney for plaintiff: Frank Giunta of Giunta Law, P.C. in Dallas, TX. Attorney for plaintiff: Leon Russell of The Russell Law Firm in Dallas, TX. Attorney for plaintiff: R. Douglas Gentile of Rouse Frets Gentile Rhodes, L.L.C. in Leawood, KS.

MOTOR VEHICLE NEGLIGENCE

$43,080,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – BUS/PEDESTRIAN COLLISION – PLAINTIFF STRUCK BY DEFENDANT'S BUS WHILE ATTEMPTING TO CROSS STREET – SKULL FRACTURE – PULMONARY CONTUSIONS OF BRAIN STEM – FEMORAL FRACTURES – PELVIC FRACTURES – TRAUMATIC PNEUMOTHORAX – MANDIBLE FRACTURE – BLADDER RUPTURE – SURGERY REQUIRED.

Kings County, NY

In this motor vehicle negligence action, the minor plaintiff was attempting to cross the street as a pedestrian when she was struck by the defendant's bus, sustaining serious, life-threatening injuries. The plaintiff sustained injuries including traumatic subarachnoid hemorrhage and fracture to the base of skull, fracture to the neck of the left and right femurs, traumatic pneumothorax, acute respiratory failure, contusions to the lungs and the brain stem, fractures of the 2nd, 3rd, 4th, and 5th ribs, bilateral fractures of the pelvis, bladder rupture and laceration of the urethra, fracture of the mandible, fractures of the 4th and 5th lumbar vertebra, fracture of the sacrum, and hemorrhagic shock. The defendant generally denied allegations of negligence on the grounds that the accident was spontaneous and unavoidable, and therefore, could not have been caused by the defendant.

The jury found in favor of the plaintiffs, awarding $10,000,000 in pain and suffering, $580,000 in medical expenses, $27,000,000 in future pain and suffering, and $5,500,000 in future medical expenses, for a total award of $43,080,000.

REFERENCE

K.C.C. vs. United Lubavitcher Yeshiva. Index no. 504065/2017; Judge Peter Paul Sweeney, 05-28-20.

Attorney for plaintiff: Scott E. Rynecki of Rubenstein& Rynecki, Esqs. in Brooklyn, NY. Attorney for defendant: Kevin Zimmermann of Lewis, Brisbois, Bisgaard & Smith, LLP in New York, NY.

$10,050,000 CONFIDENTIAL RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – DEFENDANT'S DRIVER FAILED TO YIELD RIGHT-OF-WAY TO PLAINTIFF'S VEHICLE WHEN ENTERING INTERSECTION – FRACTURE OF C2 VERTEBRA – HEAD INJURY RENDERING PLAINTIFF UNCONSCIOUS.

Withheld County, MA

In this motor vehicle negligence matter, the plaintiff driver alleged that the defendant driver and his company were negligent when the defendant driver entered the roadway without yielding to the plaintiff's vehicle and collided with it. The plaintiff suffered a fractured vertebra in his cervical spine as a result of the incident. The defendant company maintained that the driver was operating a personal vehicle at the time of the collision, and therefore, the defendant company was not liable for the plaintiff's injuries and damages.

The parties mediated the plaintiff's claim and were able to arrive at a settlement of $10,050,000 for the plaintiff who was unable to return to many of his activities of daily living due to the fractured spine.

REFERENCE

Driver John Doe vs. Defendant Roe Company. 01-19-20.

Attorneys for plaintiff: Michael F. Mahoney, Ryan P. Gilday and William D. Keefe of Law Offices of Michael F. Mahoney in Lynn, MA.

PREMISES LIABILITY

$1,000,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY AT FOOD MARKET – ARMED ROBBERY – PLAINTIFF SHOT 3 TIMES – ABOVE-THE-KNEE LEG AMPUTATION.

Broward County, FL

This negligent security action was brought against the owner of a Fort Lauderdale commercial property, as well as the operator of a convenience store located there. The plaintiff alleged that the defendants failed to implement adequate security at the site, despite knowledge that the property was located in a high-crime area. As a result, the plaintiff alleged that he was shot 3 times and sustained permanent injuries including a left leg above-the-knee amputation. The defendants

denied negligence and denied that the criminal attack perpetrated against the plaintiff was foreseeable or preventable by the defendants.

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

REFERENCE

Barker vs. Fiesta Food Market, et al. Case no. CACE19025099; Judge David Haimes, 03-23-20.

Attorney for plaintiff: Todd Michaels of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Michael Lewenz of Zebersky, Payne, Shaw, Lewenz, LLP in Fort Lauderdale, FL.

ADDITIONAL VERDICTS OF INTEREST

Labor Law

$36,000,000 RECOVERY PLUS WAIVER OF $3,000,000 WORKER'S COMPENSATION LIEN – LABOR LAW SEC. 240 (1) – PLAINTIFF EMPLOYEE OF 3RD PARTY DEFENDANT CONTRACTOR ON NYC PROJECT STRUCK BY FALLING UTILITY LIGHT POLE OWNED BY NEIGHBORING 3RD PARTY DEFENDANT HOSPITAL AFTER ARM OF EXCAVATING MACHINE BECOMES ENTANGLED WITH OVERHEAD UTILITY LINE ATTACHED TO POLE – TETRAPLEGIA – TRAUMATIC BRAIN INJURY – INCIDENT CAPTURED ON HOSPITAL'S SURVEILLANCE CAMERA.

Kings County, NY

In this Labor Law case, the plaintiff, a journeyman construction worker in his mid-30s, was working just below the roadway in an open excavated trench when a mobile excavator machine operated by a co-worker struck and snagged an overhead utility line causing the supporting wooden utility pole and its light fixtures affixed to the top of the pole to fall and hit him in the head, knocking him approximately 15'-20' to the bottom of the excavation trench. The incident resulted in the plaintiff sustaining severe, life-altering injuries. The plaintiff suffered tetraplegia in which he was rendered totally paralyzed below the chest with limited feeling and ability to use his arms. The plaintiff's employer, Perfetto Enterprises, Co., Inc. was hired by the New York City Department of Environmental Protection to undertake a major sewer reconstruction project throughout the metropolitan area. The utility line and pole belonged to the Kingsbrook Jewish Medical Center, which maintains a parking lot and attendant's booth across the street from the hospital. The defense would have maintained that the plaintiff has a reduced life expectancy and that the life care plan is substantially less expensive than claimed by the plaintiff.

The case settled prior to trial for $36,000,000, including $27,000,000 from the 3rd party defendant employer and $9,000,000 from the 3rd party defendant hospital. The City did not participate in the settlement, which was paid by the employer and the hospital. In addition, the worker's compensation lien of approximately $3,000,000 was waived.

REFERENCE

Plaintiff's neurosurgeon expert: Ali Sadr, M.D. from Brooklyn, NY. Plaintiff's physiatry expert: Barbara T. Benevento, M.D. from West Orange, NJ. Plaintiff's private investigations expert: Matthew Zepnick from New Providence, NJ. Plaintiff's vocational expert: Charles Kincaid, Ph.D. from Hackensack, NJ.

Tavares vs. City of NY, et al. Index no. 517159/16; Judge Kenneth Sherman, 12-11-19.

Attorney for plaintiff: Glenn Faegenburg of The Edelsteins Faegenburg & Browne, LLP in New York, NY.

$6,206,945 VERDICT – NEGLIGENT SUPERVISION – FAILURE OF GROUP HOME TO PROVIDE ADEQUATE SUPERVISION OF AUTISTIC RESIDENT WITH KNOWN PROPENSITY TO WANDER OFF – AIDE LOOKING FOR VAN IN FAIR PARKING LOT AND PATIENT LEAVES – PATIENT STRUCK BY CAR AS PLAINTIFF RUNS ACROSS STREET AND AGAINST RED LIGHT – SEVERE "OPEN BOOK" PELVIC FRACTURES – DISPLACED TIBIA FRACTURE – SURGERY WITH EXTERNAL FIXATION DEVISES FOLLOWED BY SURGERY IN WHICH DEVICES PLACED INTERNALLY – LOWER LEG COMPARTMENT SYNDROME – FASCIOTOMY.

Orange County, CA

This was a case involving a then-24-year old resident of a group home who had previously been diagnosed with autism with a common propensity of "Elopement," or wandering from a group when taken on an outing. The resident had previously exhibited signs of agitation, which the plaintiff maintained rendered elopement more probable, as well as incidents of violent behavior. The plaintiff contended that the defendant aide negligently failed to follow the supervision plan when the plaintiff was brought to a fair. The plaintiff maintained that the resident fell behind the aide was walking through the parking lot, that the resident wandered off and that approximately 2 miles away, he was struck by a car as he ran across the roadway and against a traffic light. The plaintiff suffered extensive blood loss, an "Open book" pelvic fracture, a compound and displaced tibia fracture, an SI dislocation and compartment syndrome to the lower leg that required a fasciotomy. The other driver settled for her $15,000 policy, and the jury was unaware of this settlement. The defendant maintained that the aide was fully trained and acted properly. The defendant pointed out that state law prohibited the caretakers from restraining or even touching the patient in any way and he was free to leave at any time.

The jury found the defendant group home 100% negligent and awarded $6,206,945, including $106,945 for past medical bills, $600,000 for future medical bills, $2,000,000 for past non-economic damages and $3,500,000 for future non-economic damages.

REFERENCE

Plaintiff's orthopedic surgeon expert: P. Richard Emmanuel, M.D. from Culver City, CA. Plaintiff's psychologist (autism) expert: Josh McEachin, Ph.D., BCBA from Seal Beach, CA. Defendant's nursing expert: John Allen, RN from Detroit, MI. Defendant's orthopedic surgeon expert: Stuart Gold, M.D. from Torrence, CA.

Dotson vs. Aacres, LLC. Case no. 03-2017-00932576-CU-PO-CJC; Judge Linda S. Marks, 11-15-19.

Attorneys for plaintiff: Ricardo Echeverria and Charles Mayr of Shernoff Bidart Echeverria LLP in Claremont, CA. Attorney for plaintiff: Mike F. O'Brien of Law Offices of Mike F. O'Brien in Claremont, CA.

Personal Negligence

$3,864,000 VERDICT – PERSONAL NEGLIGENCE – GOLF CART COLLISION – DEFENDANT STRUCK PLAINTIFF GOLFER ON RIGHT KNEE WITH GOLF CART, KNOCKING HIM TO GROUND ON HIS BACK – TRAUMATIC LOW BACK INJURY AND RIGHT KNEE INJURY – L5-S1 FUSION – CLAIMS OF $2.5 MILLION IN LOST WAGES.

Bergen County, NJ

On July 24, 2015, the plaintiff, a 42-year-old financial analyst, was a business invitee at a golf course in Demarest. The plaintiff was standing at the 9th hole of the course and the defendant was the operator of a golf cart in the same area. The plaintiff claimed that, as a result of carelessness, recklessness, and negligence, the defendant struck the plaintiff on his right knee with the golf cart, knocking him to the ground on his back. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant maintained that the plaintiff had a prior condition of the low back and that the need for surgery was due to degeneration of the plaintiff's preexisting condition, not due to the subject accident.

As a result of the incident, the plaintiff sustained low back injury and right knee injury. The plaintiff underwent an L5-S1 fusion. The plaintiff was out of work on medical leave for a year and was laid off shortly before he was scheduled to return to work. The plaintiff claimed $2.5 million in lost wages.

The defendant admitted that the plaintiff sustained knee injury, but denied causation with regard to the plaintiff's claimed back injury and resulting surgery.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $1 million in non-economic damages; $150,000 in future medical expenses; $2.5 million for loss of earnings and $214,000 in prejudgment interest, for a total damage award of $3,864,000. Following the judgment, the defendant filed for a new trial or remittitur.

REFERENCE

Zaburski vs. Klein. Docket no. L-002879-17; Judge John D. O'Dwyer, 09-06-19.

Attorney for plaintiff: Evan J. Lide of Stark & Stark in Princeton, NJ. Attorney for defendant: Brian R. Lehrer of Schenk, Price, Smith & King LLP in Paramus, NJ.

Sexual Harassment

$14,000,000 CLASS ACTION RECOVERY – SEXUAL HARASSMENT – SEXUAL ASSAULT – TITLE IX – GENDER DISCRIMINATION – CLASS OF FEMALE PLAINTIFFS ALLEGED DEFENDANT COLLEGE KNOWINGLY PERMITTED 3 OF ITS MALE PROFESSORS TO ENGAGE IN SEXUAL HARASSMENT AND SEXUAL ASSAULT OF FEMALE STUDENTS FOR PERIOD OF YEARS.

U.S.D.C. - District of New Hampshire

In this matter, the plaintiffs were a class a female students who alleged that they were sexually harassed or sexually assaulted and discriminated against in violation of Title IX by 3 of the college's male professors. Despite complaints, due to the power held by these professors, the defendant failed to take any action. The defendant denied the allegations and disputed the plaintiff's allegations and damages.

The plaintiffs are female students attending Dartmouth College. The female students alleged that during the period of time in question, which spanned years, the 3 professors sexually assaulted and harassed female students by grabbing their breasts and their buttocks and those who refused the professors' advances and sexual overtures were denied opportunities within the department which negatively impacted their careers. The female students alleged that despite complaints to the college by female students, the professors were not reprimanded, no investigations were conducted and no actions were taken against the professors. In fact, the plaintiffs' suit pointed out that, after 2 of the complaints, the one professor was actually giving distinction and advancement by the college instead of being reprimanded and terminated.

The parties agreed to mediate the plaintiffs' claims. Following the mediation, the parties arrived at a cash settlement to the plaintiff class in the amount of $14,000,000 and establishment of a Dartmouth-funded initiative to address the issues raised by the female students around sexual harassment, hostility and discrimination.

REFERENCE

Kristina Rapuano, Vassiki Chauhan, Sasha Brietzke, Annemarie Brown, Andrea Courtney, Marissa Evans, et al. vs. Trustees of Dartmouth College. Case no. 1:18-cv-01070; Judge Landya B. McCafferty, 08-20-19.

Attorneys for plaintiff: Deborah K. Marcuse, Steven J. Kelley, Austin L. Webbert, David W. Sanford, Nicole E. Wiitala of Sanford Heisler Sharp, LLP in Baltimore, MD. Attorney for plaintiff: Charles G. Douglas, III of Douglas Leonard & Garvey, P.C. in Concord, NH.

State Liablity

$1,175,000 RECOVERY – STATE LIABILITY – PREMISES LIABILITY – HAZARDOUS CONDITION – PLAINTIFF'S DECEDENT CONTRACTS LEGIONNAIRES DISEASE FROM EXPOSURE TO LEGIONELLA BACTERIA ON PROPERTY OWNED AND CONTROLLED BY DEFENDANTS – PERMITTING DEFECTIVE WATER SYSTEM TO EXIST – WRONGFUL DEATH AND SURVIVAL ACTION OF 60-YEAR-OLD MALE.

Allegheny County, PA

The estate of the decedent brought this wrongful death suit against the defendants alleging that their decedent contracted and died from Legionnaires disease while the decedent was exposed to Legionella bacteria in his work as a doctor at the state prison. The defendants each denied all allegations of negligence and each claimed the other was liable.

In early August of 2016, the plaintiff's decedent developed a dry cough. The decedent traveled to Florida for his son's graduation. While in Florida the cough worsened, and the decedent developed shortness of breath. On August 5, 2016, the decedent presented to a hospital in Orlando, Florida. A chest X-ray revealed severe pneumonia in the left lung. A urinalysis tested positive for the Legionella antigen and the decedent was diagnosed with Legionnaires pneumonia. The disease process could not be arrested in the decedent and he died from the disease on August 8, 2016.

The parties settled for a lump sum of $1,175,000 with 70% apportioned to wrongful death and 30% apportioned to survival action.

REFERENCE

Maria Mollura, Individually and as Administratrix of the Estate of Joseph Mollura vs. Pennsylvania Department of Corrections t/d/b/a The State Correctional Institute of Pittsburgh a/k/a SCI Pittsburgh; and Capital Technologies, Inc. and Compliance Management International. Case no. GD-17-006868; Judge Christine Ward, 01-28-20.

Attorney for plaintiff: Neil R. Rosen of Rosen & Perry, P.C. in Pittsburgh, PA. Attorney for defendant: Josh Shapiro of PA Office of Attorney General in Harrisburg, PA. Attorney for defendant: Mark Kehoe of McElroy, Deutsch, Mulvaney & Carpenter, LLP in Philadelphia, PA.

Toxic Tort

$8,000,000 VERDICT – TOXIC TORT – IMPROPER APPLICATION OF CHEMICALS USED BY PESTICIDE COMPANY – NON-PARTY SHOP SHARING WALL WITH ADJOINING SALON IN WHICH PLAINTIFF WORKED – FAILURE TO WARN – LOSS OF SMELL AND TASTE BY PLAINTIFF WELL KNOWN FOR FRAGRANCE DEVELOPMENT – PLAINTIFF IN COURSE OF DEVELOPING NEW FRAGRANCES – PAIN AND SUFFERING AND LOSS OF ENJOYMENT OF LIFE.

Los Angeles County, CA

In this action, the plaintiff, in his late 30s, contended that the defendant pest control company negligently failed to issue warnings that it would be spraying pesticides at the coffee shop which was situated next door and which shared a wall with the plaintiff's salon/employer. The plaintiff contended that within a few hours he began bleeding from the nose and developed acute respiratory symptoms. The plaintiff maintained that he also developed frequent migraine headaches. The plaintiff contended that the toxic exposure deprived him of his sense of taste and smell. The plaintiff made no economic claims. The defendant denied that the plaintiff suffered any permanent effects from the chemical exposure.

The jury found for the plaintiff and awarded $8,000,000, including $3,000,000 for past pain and suffering and $5,000,000 for future pain and suffering.

REFERENCE

Plaintiff's ENT expert: Andrew F. Berman, M.D. from Beverly Hills, CA. Plaintiff's neurologist expert: Jan Merman, M.D. from Beverly Hills, CA. Plaintiff's pest control expert: Paul J. Bello from Alpharetta, GA. Plaintiff's toxicologist expert: Nachman Brautbar, M.D. from Los Angeles, CA.

Plaintiff exposed to cloud of chemicals during application of pesticides of business sharing common wall with plaintiff's salon/employer vs. Defendant pest control company.

Attorney for plaintiff: Brian J. Breiter and Chance J. Pardon of Law Offices of Brian J. Breiter; in Los Angeles, CA. Attorney for plaintiff: Steve Hoffman of Law Offices of Steve Hoffman in Los Angeles, CA.