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SUMMARIES WITH TRIAL ANALYSIS

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

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

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$4,000,000 RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE – PLAINTIFF'S DECEDENT, WITH HISTORY OF BLOOD CLOTTING DISORDER, PRESENTS TO DEFENDANTS WITH SHORTNESS OF BREATH DISCHARGED HOME 3 TIMES BEFORE FINALLY SUCCUMBING TO DEEP VENOUS THROMBOSIS – WRONGFUL DEATH OF 45-YEAR-OLD FATHER.

Middlesex County, NJ

In this medical malpractice case, the defendants were a family practice physician, a specialist in internal medicine and a family care practice. The plaintiff contended that the defendants breached the standard of care in their treatment of the plaintiff's decedent, a 45-year-old father of 2 children, resulting in his premature death. The defendants denied any breach of the standard of care and contended that all treatment of the plaintiff's decedent was within the bounds of reasonable medical care.

In October 2010, the decedent, Danzy, began treating as a patient at the defendant medical practice. Shortly after becoming a patient of MedEmerge, it was discovered that Danzy had a blood clotting disorder known as Factor V Leiden, which was initially noted in Danzy's medical records. On July 29, 2016, the decedent presented to defendant practice with complaints of shortness of breath. Despite advising doctors that he did not have any allergies or history of asthma and was a non-smoker, he was prescribed Singular oral tablets.

On September 12, 2016, the decedent returned to the defendant practice with continued complaints of shortness of breath and was treated by the defendant internal medicine specialist. Despite his history and symptoms, the decedent was discharged home and instructed to return in one week if the problems persisted. On September 22, 2016, the decedent returned to MedEmerge and was treated by the defendant family practice physician, advising that his shortness of breath had not improved. He also complained of a cough. Despite his history and symptoms, he was again discharged home and instructed to return to the office in one week if the condition worsened.

On September 23, 2016, the decedent was transported via ambulance to Robert Wood Johnson University Hospital after EMS workers found him on the floor of his bedroom at home complaining of severe respiratory distress. While at Robert Wood Johnson University Hospital, the decedent went into cardiac arrest. Despite extensive efforts by hospital doctors and staff, Danzy was pronounced dead. The decedent's cause of death was listed as deep venous thrombosis of the lower extremities with pulmonary thromboembolism.

The plaintiff contended that the defendants failed to exercise the degree of care commonly exercised by other medical and/or healthcare professionals in like cases having due regard to the existing state of knowledge of medicine. Specifically, they were negligent, inter alia, when they failed to recognize a potential blood clotting event – despite being aware of the patient's known history of Factor V Leiden, a blood clotting disorder. The plaintiff argued that the negligence of the defendants led to Danzy not being diagnosed or treated for the deep venous thrombosis of the lower extremities with pulmonary thromboembolism, which caused his death. The plaintiff presented expert testimony wherein experts in internal medicine and family practice opined that the care, skill and knowledge exercised by the defendants in his treatment of the plaintiff fell below the standard of care.

After all fact and expert discovery was completed, and prior to trial, the parties settled for $4 million.

REFERENCE

Danzy vs. Carrieri, et al. Docket no. L-003634-17; Judge Thomas J. Buck, 01-29-20.

Attorneys for plaintiff: David A. Mazie, Matthew R. Mendelsohn and Adam M. Epstein of Mazie Slater Katz & Freeman in Roseland, NJ. Attorneys for defendant family medicine practice and family medicine physician: Julie E. Gendel and James B. Sharp of Schenck, Price, Smith & King, LLP in Florham Park, NJ. Attorney for defendant internal medicine physician: E. Burke Giblin of Giblin Combs Schwartz Cunningham & Scarpa in Morristown, NJ.

COMMENTARY

Following the settlement, the plaintiff applied for award of attorney fees on the net amount recovered in excess of $3 million. Plaintiff's counsel sought an award of an attorneys' fee of 1/3 of all net amounts recovered in excess of $3 million. This case was settled after all fact and expert discovery was completed, and all trial preparation has been completed. This included full and complete analysis, by plaintiff's counsel, of all fact witnesses depositions; all expert witness depo-

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sitions; preparation of all trial exhibits; identification of all legal issues for the trial; preparation of all trial "read-ins"; preparation of timelines and other visual aids for the jury; and all other necessary trial preparation.

In this case, there were also very sophisticated issues involving the decedent's death and the medical malpractice which caused it. Because of the complex nature of the medical malpractice, the parties hired 10 experts from many different disciplines such as pathology, internal medicine, family medicine and pulmonology; each expert was deposed at length, and each deposition was analyzed and counsel fully prepared for cross examination of each defense expert. Counsel also prepared each expert for their trial testimony and expended great time and expense in videotaping the depositions of all witnesses, culling through the testimony of each, cutting video clips from each, and having each ready for direct and cross-examination for trial. Due to the significant time commitment required by this case, plaintiff's counsel was compelled to turn down other potential matters. The firm took a substantial risk on out-of-pocket disbursements expended during the case. In all, counsel expended approximately $71,000 in out-of-pocket disbursements in litigating and preparing this case for trial.

There was no certain recovery in this case; medical malpractice cases are difficult and risky propositions, and a jury could have accepted the defense's theories and come back with a "no cause." As stated by the Supreme Court, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions." Rendine v. Pantzer, 141 N.J. 292, 333 (1995), citing John Leubsdorf, The Contingency Factor in Attorney Fee Awards, 90 Yale L.J. 473, 480 (1981).

Plaintiff's counsel requested a fee of 33 1/3 % of the net amounts recovered in excess of $3 million due to the significant work performed on the case, the resources expended (in both attorney time and out of pocket expenses), the risk taken by the law firm, and the excellent result. Plaintiff's counsel asserted that an award of 33 1/3 % was consistent with other fee awards they had received in other cases. For example, in Gross v. Gynecare, Docket No. MID-L-9131-08, a pelvic mesh case that resulted in an $11.1 million verdict, counsel was granted 33 1/3% of the net recovery above $2 million. In Mechin v. Carquest, Civil Action No.: 07-5824(SDW/ES), a product liability case that resulted in a $4.7 million settlement, they were granted 33 1/3% of the net recovery in excess of $2 million. In Ramos v. Goodyear Tire and Rubber Co., Civ. Action No. 05-3077 (U.S. District Court, District of New Jersey), a product liability case that resulted in a settlement of $5 million, they were granted 33 1/3 % of the net recovery in excess of $2 million. In Basilio v. City of Newark, ESX-L-5610-06, an automobile accident caused by engineering errors that resulted in a $3.1 million settlement, they were awarded 33 1/3 % of the net recovery in excess of $2 million. In Floyd v. City of Newark, ESX-L-8652-06, an automobile death case which settled for $3.18 million, they were awarded 33 1/3 % of the net recovery in excess of $2 million. In Salifu vs. University Hospital, Docket No.: ESX-L-4255-15, a case that settled for $4.5 million, they were awarded 33 1/3 % of net recovery in excess of $3 million. In Cito v. Yoder, PAS-L-4220- 11, a "rear-end hit" car accident case, they obtained a settlement of $5 million in the weeks leading up to a trial and were awarded 30% of the net recovery in excess of $2 million. A copy of this application was served on the plaintiff and she was advised that she could oppose the application for attorneys' fees. The plaintiff was asked if she would sign a certification consenting to the 1/3 legal fee for amounts recovered over $3 million, and she agreed to do so.

The court granted the application and awarded plaintiff's counsel 33 % of the net monies recovered in excess of $3 million.

$2,500,000 RECOVERY – TRACTOR-TRAILER NEGLIGENCE – 52-YEAR-OLD BICYCLIST STRUCK AND KILLED BY TRACTOR-TRAILER AFTER RIG FAILS TO STOP AT STOP SIGN – DEFENDANT THEN BACKS UP AND STRIKES DECEDENT SECOND TIME – INCIDENT CAPTURED ON LOCAL BUSINESSES' CAMERA.

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

In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver negligently failed too stop at a stop sign, striking and killing the 52-year-old decedent bicyclist. The decedent left a wife and 3 adult children who remained in his native Brazil after the decedent moved to this country approximately 1 ½ years before his death. The defendant contented that he came to a "rolling stop," and that he struck the decedent only because his view was obstructed by his side view mirror.

The plaintiff obtained in discovery dash cam video from a local business and was well into the marked crosswalk. The impact was captured on the defendant's dash cam video. The plaintiff asserted that the video of the accident shows the defendant running into the decedent and knocking him from the bicycle. In the video, the decedent was seen falling to the ground and reaching out with his arms to break his fall. The decedent died from massive trauma. The plaintiff's pain management specialist would have testified that the decedent probably experienced approximately one minute of conscious pain and suffering after impact.

The plaintiff further maintained that when the decedent fell under the truck, the defendant panicked and backed up, striking the decedent a second time. The plaintiff's pain management specialist would have testified that the decedent's pelvis and sternum were fractured at this time. The plaintiff would have argued that the decedent was probably conscious. The defendant denied that this position should be accepted.

The decedent had come to this country approximately 1 ½ years earlier. He worked for an auto parts company. He left a wife and 3 adult children in Brazil. The plaintiff contended that the decedent made regular contributions of approximately $2,000 per month to his wife. The plaintiff also maintained that the decedent remained close to his family, speaking to them on the phone regularly.

The case settled prior to trial for $2,500,000.

REFERENCE

Plaintiff's pain management expert: Peter Salgo, M.D. from New York, NY. Defendant's accident reconstruction expert: Robert Lynch, P.E. from Abington, PA. Defendant's trucking expert: Donald L. Hess from Abington, PA.

Gomes vs. Bozali. Docket no. 2:19-cv-07985, 05-21.

Attorneys for plaintiff: Michael Gallardo and Robert Baumgarten of Ginarte Gallardo Gonzalez Winograd, LLP in Newark, NJ.

COMMENTARY

The surveillance camera from a nearby business captured the defendant running the stop sign, coming to a "rolling" stop well after the stop line and the defendant striking the decedent, resulting in his falling from the bike and under the truck, as well as the truck backing up, striking the decedent a second time. In this regard, such video evidence, frequently available in recent times would clearly have been very significant if the case had proceeded to trial. Additionally, the evidence that the decedent moved here from Brazil and left his family to send earnings back to them would be expected to have a strong effect on the jury.

$931,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF'S DECEDENT STRUCK IN REAR AND CRUSHED BETWEEN DEFENDANT'S TRUCK AND VEHICLE IN FRONT – DEATH OF 47-YEAR-OLD HUSBAND AND FATHER – NO EVIDENCE OF CONSCIOUS PAIN AND SUFFERING.

Middlesex County, NJ

This was a death action that involved a 47-year-old driver who was struck from behind by the defendant box truck driver as the decedent was slowing on Route 46. The plaintiff contended that the decedent's vehicle was crushed between the defendant's truck and the vehicle in front. The decedent worked in the computer field and was earning approximately $75,000 per year before taxes. He left a wife and two children, including a daughter, currently age 16 and a son, currently age 19, and who also resides home. The decedent died at the scene from severe trauma and there was no evidence of conscious pain and suffering.

The plaintiff's economist would have discussed the losses, including net earnings, less self consumption, contributions to the family and guidance and advice that was given. According to the plaintiff's expert, the loss was slightly less than $1,400,000. The defendant would have claimed that the loss was significantly less than claimed by the plaintiff. The plaintiff would have countered that the family was very close and that in view of this factor, and the nature of the relationship involving children in their teens, the plaintiff's claims regarding the loss of guidance and advice should be given especially great weight.

The defendant had a $1,000,000 CSL policy, payments of $54,000 were made and the defendant reserved $25,000 for payments for other plaintiffs, leaving insurance proceeds of $921,000. The case settled prior to trial for $931,000 with the defendant contributing $10,000 out of personal funds.

REFERENCE

Plaintiff's economist expert: Michael Soudry from Roseland, NJ.

Scala vs. TMS Logistics, Inc., et al. Judge Thomas McCloskey, 03-19-20.

Attorney for plaintiff: Barry D. Epstein of The Epstein Law Firm, PA in Rochelle Park, NJ.

COMMENTARY

There was no evidence of conscious pain and suffering, in this rear end collision case and the major dispute in the case revolved around the value of the wrongful death of the 47-year-old husband and father of two teenage children. In this regard, the plaintiff was able to resolve the case for $10,000 more than the available coverage, which was paid out of the personal funds of the defendant, and it is felt the if the case had proceeded to trial, the particularly sensitive nature of the guidance and advice afforded by a parent to his teenage children could well have evoked an especially strong jury reaction.

$1,000,000 RECOVERY – PREMISES LIABILITY – LANDLORD'S NEGLIGENCE – PLAINTIFF TENANT SLIPS AND FALLS ON ICE ON WALKWAY – ANKLE FRACTURE – FOUR SURGERIES – PLAINTIFF ADVISED LANDLORD OF PRIOR FALL TWO DAYS EARLIER AND LANDLORD FAILS TO CALL LANDSCAPING COMPANY TO RETURN – PLAINTIFF GENERALLY USES WALKER WHEN OUTSIDE – INABILITY OF INSURANCE ADJUSTER TO RETURN.

Burlington County, NJ

This premises liability case involved a 48-year-old plaintiff tenant who slipped and fell on ice on the walkway leading to the parking lot, suffering a severe ankle fracture. The accident occurred on a Sunday morning as the plaintiff was about to go to church. A major snowstorm had occurred earlier in the week and the plaintiff had earlier fallen on Friday, leaving a message on the apartment complex's voice mail. The plaintiff contended that despite this notice, the defendant landlord failed to conduct inspections and negligently failed to call the co-defendant landscaping company, who after initial snow removal was not contractually required to return unless called. The landlord denied that it was apparent that slippery conditions continued and denied that it had an obligation to call the landscaper.

The plaintiff further contended that the co-defendant negligently failed to place an adequate amount of de-icing chemicals when it removed snow a few days earlier. The plaintiff underwent four surgeries but has been left with a ¾ inch height differential, has difficulties ambulating without a walker and that the plaintiff, who had been an insurance adjuster working on PIP claims, is permanently unemployable.

The evidence disclosed that on Tuesday, a state of emergency was declared because of the impending snow storm. The landscaping company visited the premises the following day. The evidence disclosed that the plaintiff fell on the walkway to her car on Friday and left a message on the landlord's voice mail about the fall. The plaintiff received a voice mail message from the landlord to visit their office and fill out an incident report on Saturday or Monday. The plaintiff planned on going to the office on Monday. She suffered the fractured ankle on Sunday morning.

The plaintiff asserted that after she complained on Friday, the landlord conducted an inspection and nonetheless failed to call the landscaper. The plaintiff would have contended that based upon her observations after the second fall that no de-icing chemicals were apparent, the landlord should have been in touch with the landscaper. The landscaper contended that because of melting and refreezing, and the fact that it was not called back, it clearly did not contribute to the fall. The defendants also would have contended that since the plaintiff fell in the same location as the first fall, it was clear that she was comparatively negligent. The plaintiff would have countered that the melting and refreezing after the Friday fall rendered the area much more hazardous.

The plaintiff suffered an ankle fracture and ultimately required some four surgical interventions that included the placement of hardware and the plaintiff also suffered an approximate ¾ in. height differential. The plaintiff contended that she generally uses a walker when outside of her home.

The plaintiff was an insurance adjuster. The plaintiff's vocational expert contended that the plaintiff will be permanently unable to work. The plaintiff had been found to be found totally disabled by SSA. The plaintiff's economist would have projected approximately $900,000 in lost wages, after taking SSA into account.

The case settled prior to trial for $1,000,000, including $800,000 from the landlord and $200,000 from the co-defendant landscaping company.

REFERENCE

Plaintiff's economist expert: Andrew Verzilli, MBA from Philadelphia, PA. Plaintiff's engineer expert: Scott D. Moore, PE, CSP from Voorhees, NJ. Plaintiff's orthopedic surgeon expert: I. David Westband, D.O. from Cherry Hill, NJ. Plaintiff's psychologist expert: Elliot Atkins, Ed.D. from Marlton, NJ. Plaintiff's vocational expert: Sonya M. Mocarski, M.S. from Philadelphia, PA.

Tate vs. Westover Co., et al. Docket no. BUR-L-002448-18, 05-07-21.

Attorney for plaintiff: Jeffrey Hark of Hark & Hark in Cherry Hill, NJ.

COMMENTARY

It is felt that the evidence that the hazard lasted almost a week would be expected to heighten the jury's reaction if the case had been tried. Additionally, the defendants would have argued that in view of the evidence that the fall occurred in the same approximate location, the failure of the plaintiff to walk more carefully significantly contributed to the incident.

The plaintiff endeavored to undermine this position by emphasizing that in the two-day period between falls, the hazard heightened because of melting and refreezing of snow. In this regard, although the landscaper maintained that this evidence supported it's denial of negligence, especially since it was not called to return, the plaintiff's testimony reflected that there was an absence of chemicals at the time of the first fall. However, it is also felt the nature of the case involving such severe ankle fractures that required four surgeries rendered the risk to the co-defendant very substantial.

$453,636 RECOVERY – BREACH OF CONTRACT – PLAINTIFF CLAIMS DEFENDANT 9/11 FIRST RESPONDER ASSIGNED SOME OF HIS VICTIM COMPENSATION FUND AWARD TO PLAINTIFF BUT DEFENDANT AND DEFENDANT LAW FIRM REFUSED TO RELEASE MONEY TO PLAINTIFF – DEFENDANT CLAIMS HE DID NOT INTEND TO ASSIGN AWARD TO PLAINTIFF AND DEFENDANT LAW FIRM CLAIMS IT HELD FUNDS WHILE PLAINTIFF INVESTIGATED FOR DECEPTIVE PRACTICES.

Bergen County, NJ

In this breach of contract case, the plaintiff asserted that the defendants, a disabled NYPD officer and September 11th responder and the law firm representing him, failed to pay sums of money owed to the plaintiff under an Assignment and Sale Agreement for funds obtained from the September 11th Victim Compensation Fund. The plaintiff brought suit for breach of contract, conversion, fraud, breach of implied covenant of good faith and fair dealing, tortious interference, breach of fiduciary duty, and breach of duty to pay assignee after proper notification. The defendant asserted that he believed he had engaged the plaintiff to facilitate the VCF process and cut through red tape to get his VCF award; he did not intend to assign his funds for less than their full value. The defendant law firm argued that it paid the plaintiff the full amount borrowed by the defendant individual immediately upon having received the award funds.

The defendant law firm filed a claim with the September 11th Victim Compensation Fund on behalf of the defendant individual who was subsequently awarded the sum of $3,920,351 on June 17, 2014. Recipients of VCF Awards received 10% of their award within a relatively short time and were informed that any remaining portion of the award would not be distributed until at least 2016/2017. In mid-2014, the defendant individual contacted the plaintiff about the prospect of selling and assigning a portion of the defendant's award. The defendant and the plaintiff entered into an Assignment and Sale Agreement on August 22, 2014 wherein the defendant sold his interest in $625,000 of his VCF award in exchange for $250,000. The defendant made representations and warranties to the plaintiff that there were no setoffs, that the award was unencumbered, and that he had the authority to assign the award. The agreement included terms for equitable relief in the event of a breach.

On March 19, 2015, the defendants entered into a second agreement wherein the defendant sold his right to an additional $87,500 portion of his VCF award for $35,000 with similar provisions and representations as the first agreement. There were a third and fourth agreement as well, whereby the defendant sold his right to another $87,500 (for $35,000) and an additional $63,636 (for $35,000). Collectively, the plaintiff purchased $863,636 of the defendant's VCF award in exchange for purchase prices totaling $355,000.

The plaintiff asserted that the defendants then refused to pay the plaintiff the monies to which it was entitled once the defendant received his award. In February 2016, the defendant received the entire award of nearly $4 million and, per the terms of their agreements, was obligated to turn over full payment of the purchased portion of the award to the plaintiff. On April 1, 2016, the defendant law firm wired the plaintiff the sum of $355,000 which it represented to be the total amount due but which, in fact, left a balance of $508,636 due to the plaintiff. The plaintiff filed suit to recover the outstanding balance.

The defendant law firm contended that the disputed funds were held in escrow and had not been disbursed to the defendant individual or to anyone pending research into the legality of the agreement with the plaintiff. The defendants argued that they were not refusing to pay the plaintiff, but merely performing due diligence to ensure that the amount claimed by the plaintiff was in accordance with the laws under which the VCF was administered.

The parties agreed to settle prior to trial. Pursuant to the agreement of the parties, $509,636 of disputed funds were deposited into the Superior Court of New Jersey Trust Fund and, per consent order, were to be paid as follows: $55,000 to counsel for representing the defendant individual in the subject case, and $453,636 to the plaintiff.

REFERENCE

RD Funding Partners, LP vs. Barasch & McGarry, P.C., et al. Docket no. L-004254-17; Judge Estela M. DeLaCruz, 02-25-20.

Attorney for plaintiff: Eric T. Kanefsky of Calcagni & Kanefsky, LLP in Newark, NJ. Attorney for defendant recipient of the VCF award: Noah H. Kushlefsky of Kreindler & Kreindler, LLP in New York, NY. Attorney for defendant law firm representing recipient of VCF award: Andrew S. Turkish of Clausen Miller, P.C. in Parsippany, NJ.

COMMENTARY

The defendants filed a motion for summary judgment claiming that, it was holding the funds pending litigation against the plaintiff for deceptive practices with regard to victims of September 11th who were allegedly duped into assigning their VCF funds to the plaintiff, not knowing that they would receive their full payments from the fund in short order. The facts of the case were as follows:

On February 20, 2016, the defendant individual received notification that the VCF was preparing to issue him his final VCF award payment, in the amount of $3,528,316. On March 15, 2016, the defendant law firm received $3,528,316 from the VCF for the defendant individual's second 90% award payment, which was directly deposited into the

defendant law firm's trust account, which was an escrow account. On March 23, 2016, the defendant law firm distributed a check to the plaintiff in the amount of $355,000, the total amount of the funds paid to the defendant individual by the plaintiff. On March 26, 2016, the defendant law firm sent an email to the principal and managing member of the plaintiff entities, explaining the law firm's reasoning for questioning the four agreements between the plaintiff and the defendant law firm's client, the defendant individual, and advising that the disputed funds were held in escrow and had not been disbursed to anyone. The defendant law firm's principal explained that he was not refusing to pay the plaintiff's lien, but "merely doing our due diligence." He explained to the plaintiff that he had "an ethical obligation to make sure that the amount claimed (by the plaintiff) is in accordance with the law."

The defendant law firm wanted to verify the loan's legality with the Department of Justice, the department under which the VCF is administered. On March 29, 2016, the defendant law firm mailed a check to the defendant individual in the amount of $2,311,848, representing the balance of his share of his VCF proceeds. After consulting with a New York attorney specializing in ethics and who was also a Professor of Ethics at Cardozo Law School, the defendant law firm questioned the plaintiff's right to immediate payment of the $508,636 held in escrow, representing the claimed compensation due to the plaintiff, pursuant to the terms of the four agreements with the defendant individual.

On April 6, 2016, the plaintiff filed a Summons and Verified Complaint in the New York Supreme Court. On October 14, 2016, the defendant law firm, through its counsel, filed a Motion requesting the Court's permission for the firm to deposit the disputed amount of $508,636, into the Court. On January 23, 2017, the Court denied the motion to deposit the disputed funds into Court and granted the plaintiff's cross-motion to voluntarily discontinue the action. On June 22, 2017, the plaintiff filed a Complaint in the Superior Court of New Jersey, Bergen County, against the defendant individual and the defendant law firm alleging Tortious Interference, Breach of Fiduciary Duty against the plaintiff, Conversion, and Breach of Duty to pay the plaintiff the entire amount claimed under the defendant individual's agreements, against the defendant law firm. The defendant law firm filed an Answer, denying all claims against it, requesting the Court's permission to deposit the disputed funds into Court, Affirmative Defenses, and Jury Demand. On December 5, 2017, the Court entered a Consent Order to Deposit the disputed amount of $508,636, into the Superior Court of New Jersey. The disputed funds were thereafter deposited into the Court's escrow account where they remained.

On February 7, 2017, the Consumer Financial Protection Bureau and the Attorney General for the State of New York filed a federal Complaint against the plaintiff, in the United States District Court, Southern District of New York containing 11 separate counts, alleging deceptive practices, material misrepresentations, abusive practices, violations of civil and criminal New York State usury laws, repeated illegal conduct, false advertising, and repeated fraudulent conduct. On June 21, 2018, the District Court for the Southern District of New York issued a decision in, Consumer Fin. Prot. Bureau v. the plaintiff Funding, LLC, 332 F. Supp. 3d 729 (S.D.N.Y. 2018). The Southern District of New York held that the Anti-Assignment Act, 31 U.S.C. § 3727, precluded the assignment of compensation that is awarded to the VCF Claimants. The Southern District of New York held that the assignments in the plaintiff's Agreements with VCF Claimants were impermissible pursuant to the Anti-Assignment Act and were void, as a matter of law. On November 1, 2018, the New York Attorney General filed a lawsuit in the New York Supreme Court, County of New York, captioned, The PEOPLE OF THE STATE OF NEW YORK, by BARBARA D. UNDERWOOD, Attorney General for the State of New York, vs. RD LEGAL FUNDING, LLC, RD LEGAL FINANCE, LLC, RD LEGAL FUNDING PARTNERS, LP, and RONI DERSOVITZ, Index Number: 452091/2018, alleging 9, separate causes of action including: violations of New York State's civil usury laws, violations of New York State's criminal usury laws, fraud, deceptive practices, persistent illegal conduct, false advertising, violation of 31 U.S.C. § 3727, the Anti-Assignment Act, and violations of 15 U.S.C. § 1602(f), the Truth In Lending Act ("TILA"). On July 21, 2016, Lenders Funding, LLC filed a UCC-1 Statement for a lien against the plaintiff's present and future assets.

The defendant law firm retained Professor Michael Ambrosio, a leading ethics scholar and Professor of Ethics at Seton Hall University Law School. He wrote a report opining that the defendant law firm's conduct in this matter was free from fault, complied with ethical standards applicable to attorneys, and that plaintiff's lawsuit was without merit. The plaintiff did not produce a responsive expert report. The defendant law firm sought a dismissal with prejudice of all claims against it. The defendant law firm argued that there were absolutely no factual issues in dispute relevant to the plaintiff's claims of Tortious Interference, Breach of Fiduciary Duty, Conversion, and Breach of Duty to pay the plaintiff the entire amount claimed under the agreements with the defendant individual. The defendant stated that, regardless of the Court's disposition as to the entitlement of the disputed escrow funds between the defendant individual, a disabled first responder and war hero, and the plaintiff, the lender who preyed upon sick and desperate victims of 9/11 and then capitalized on their misfortunes, the defendant law firm was entitled to summary judgment, in its favor, as a matter of law.

The defendant law firm maintained that it did everything it thought was right and did nothing wrong, and that the plaintiff's entire claim was without merit and should be dismissed with prejudice. The defendant ultimately withdrew its motion for summary judgment and entered into a consent agreement to deposit the funds with the Court for disbursement per the outcome of the subject case.

DEFENDANT'S VERDICT – VIOLATION OF CIVIL RIGHTS – EMPLOYMENT DISCRIMINATION – AGE DISCRIMINATION – RETALIATION; HOSTILE WORK ENVIRONMENT – 26-YEAR VETERAN OF POLICE FORCE CLAIMS DEFENDANTS DISCRIMINATED AGAINST HIM DUE TO AGE AND DEMOTED HIM FOR COMPLAINING ABOUT HOSTILE WORK ENVIRONMENT – DEFENDANTS DENY ANY HARASSMENT OCCURRED AND CLAIM PLAINTIFF LOST NO STATUS OR SALARY AND CONTINUES TO BE EMPLOYED BY DEFENDANTS.

Union County, NJ

In this employment discrimination case, the plaintiff sought damages and injunctive relief to redress the defendant employer's and supervisor's continuing violation of the plaintiff's civil rights based upon his relationship with co-workers of another ethnicity/nationality. The plaintiff, a then 58-year-old Caucasian male, claimed he was subjected to adverse acts including demotions and threats regarding his continued employment even though he was compliant with his supervisor's directives. He was not taken out of the hostile environment nor were his complaints addressed and the defendant supervisor, who acted adversely against the plaintiff, was left in charge of the plaintiff. The plaintiff asserted that he was belittled in front of his coworkers, held to fear for his safety, his work environment was hostile, and he suffered a mental toll on his well-being. The plaintiff asserted that the defendant city knew, before it brought in the defendant supervisor, of his issues with treating women with respect and that he had a history of not adhering to anti-discrimination laws. The plaintiff maintained that the defendant supervisor also had a known reputation for being a bully if his actions were questioned; however, the defendant city still placed him in a supervisory position. The plaintiff brought suit against the defendant city, police department, supervisor and Director of the Department of Safety for Deprivation of Constitutional rights under the NJ Constitution; Age Discrimination; Hostile Work Environment; Retaliation; and Continuing Violation Doctrine. The defendants denied taking any action at any time to deprive the plaintiff of any federal or state constitutional right.

The defendants asserted that they exercised reasonable care to avoid and eliminate harassment if it might occur, and that the plaintiff failed to act with like reasonable care to take advantage of the defendants' safeguards and otherwise prevent harm that should have been avoided. The defendants maintained that the plaintiff failed to show any actions or inactions by the defendant City which resulted in "tangible employment action" taken against him. As to the ultimate transfer that the plaintiff claimed was a demotion, the defendants asserted that the transfer was simply a transfer and did not change the plaintiff's standing or compensation, thus could not be considered a demotion.

Prior to trial, the defendants were granted summary judgment dismissal as to the counts of Deprivation of Rights Under the NJ Constitution; Violation of NJ Law Against Discrimination; and Retaliation, as well as dismissal of the plaintiff' claim for punitive damages. The matter went to trial as to the plaintiff's claim of Hostile Work Environment.

The jury returned a verdict in favor of the defendant. The plaintiff has filed a Notice of Appeal.

REFERENCE

Gotllick vs. Plainfield Police Division, et al. Docket no. L-001300-16; Judge James Hely, 06-13-19.

Attorney for plaintiff: Yvette C. Sterling of Sterling Law Firm in Mt. Laurel, NJ. Attorney for defendant: John F. Gillick of Rainone Coughlin Minchello, LLC in Iselin, NJ.

COMMENTARY

The plaintiff started his employment with the defendant police department on August 6, 1992 and was employed with the department for 24 years. The plaintiff asserted that he worked alongside a majority of African Americans during his employment with the defendant and maintained a good working relationship with several of his African-American coworkers. The plaintiff alleged that, throughout his employment, he treated his African-American coworkers with respect. The plaintiff alleged that this, at times, caused tension with his defendant supervisors.

Beginning in November 2014, the plaintiff claimed there were numerous incidents wherein the plaintiff was subjected to an increasing conduct of relentless harassment. The plaintiff was subjected to derogatory comments about his age and retirement. The plaintiff was also subjected to increasingly demeaning verbal actions after the defendant supervisor was installed. The plaintiff received an email in which his loyalty, dedication and enthusiasm for the division was questioned. Retaliatory actions by the defendants included not being allowed to attend training classes.

The plaintiff made verbal and written complaints to the defendant Director of the Department of Public Affairs and Safety about the demeaning and overtly aggressive behavior of the defendant supervisor towards him. The plaintiff asserted that nothing was done to curtail the harassment. The situation escalated with the plaintiff being effectively demoted from the position he had held for more than 18 years. The plaintiff put forth that, despite extensive experience and training, the defendant supervisor began to question the plaintiff's integrity and skills as a trainer and undermined the authority of the plaintiff to reprimand an auxiliary officer, as was his purview. The plaintiff complained that nothing was done to bridle the attacks of the defendant supervisor who continued to write negative memos and belittling reviews in a tracking system for all to see. The defendant asked the plaintiff to do a self-audit, which was not asked of any other officers and verbalized his age-related harassment by making derogatory re-

marks about the plaintiff's age such as saying that he was a dinosaur in the office; that he needed to go because he'd been there too long; and asking when he was going to retire.

Throughout this time, the plaintiff asserted that he continued to do his job consistently and thoroughly. The culmination of these actions was the plaintiff being reprimanded. On November 13, 2015, whereupon the plaintiff received a call regarding a job task that did not fall under his required responsibilities, due to the plaintiff having been reassigned/demoted. The plaintiff informed the caller that he would forward all pertinent information to the defendant Director to assist further. On November 18, 2015, the plaintiff received a reprimand for neglect of duty regarding his handling of the phone call. The plaintiff alleged that the accusations in the reprimand by the defendant supervisor were false, egregious and only served to further harass and retaliate against the defendant. In response, the plaintiff wrote to the defendant Director informing him of the unfair and disparate treatment, and false accusations. The plaintiff maintained that the treatment only accelerated and escalated. At the time of his complaint, the plaintiff had not been returned to his administrative position, but instead he had been effectively demoted for complaining and was at that time assigned to patrol.

The defendants' version of events was that, prior to his transfer to the same department as the plaintiff, the defendant supervisor had never worked with the plaintiff and that, upon being assigned to the Administrative Bureau, the defendant Direction informed the defendant supervisor that he wanted to revamp the hiring process and ramp up and change some training. Moreover, the defendant Director told the defendant supervisor to "change some things in his bureau" and that "he could run it how he sees fit." The defendant Director asserted that he first learned of issues between the defendant supervisor and the plaintiff when the supervisor was trying to implement changes to the Bureau. The defendant Director testified that the defendant supervisor told him that the plaintiff was not being productive and conducive to the changes being implemented for the division to move forward. The defendant supervisor, in response to the plaintiff's allegations of his inquiries as to when the plaintiff would retire, stated that officers ask each other all the time about retirement when they are approaching the time when they can retire.

As to the other comments alleged by the plaintiff, the defendant supervisor denied making them and stated that the plaintiff was only in his fifties and the defendant didn't view that as old. The defendant Director also denied every having heard the defendant supervisor make any comments about the plaintiff's age. As to the email the plaintiff alleged questioned his loyalty and dedication, the defendants presented an email that simply instructed the plaintiff to wrap up a task that the plaintiff, in deposition testimony, admitted had been open for five months.

Additionally, the plaintiff sent the defendant Director an email regarding an incident in which the plaintiff claimed that, after receiving a text from the defendant supervisor stating that he was not going to be allowed to teach certain classes at the police academy, the defendant supervisor met him in the parking lot of headquarters and began to yell at him when the plaintiff asked why he pulled the plaintiff from teaching the class. The plaintiff alleged that the defendant continued to scream at him as the plaintiff walked to the defendant Director's office and said to the plaintiff, "You've been here too long." The defendants contended that the Director then ordered them both to his office where the defendant supervisor stated that he [the plaintiff] would not work for the supervisor. Whereupon the Director told both parties to work it out.

The defendant supervisor sent an email to the plaintiff on July 30, 2014 wherein he asked the plaintiff about the status of various tasks and telling the plaintiff that they needed to be completed. The defendants pointed to this email as evidence that the plaintiff was not performing his job to standard and that the language of the email was professional and not at all harassing or discriminatory. The defendants pointed to a series of emails that indicate the defendants' concern with the plaintiff's time management. These emails spanned several years and showed a pattern of concern over the plaintiff's job performance, without any indication of harassment or derogatory comments or language.

The defendants put forth that the email evidence presented showed a clear picture of an employee, over the course of a long period of time, having some performance issues, and being managed by his supervisors as to specific tasks and actions and without any evidence of any type of discriminatory or harassing actions. Further, the defendants point to the fact that the plaintiff was asked to return to the Police Division by the defendant Director, that the plaintiff accepted the offer and was, at the time of this action, employed by the department and was in charge of the police garage, the property room, and maintenance workers.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Nursing

$260,000 RECOVERY

Medical malpractice – Nursing – Emergency Department – Elderly plaintiff falls when defendant hospital nurse lowers bed rail and leaves plaintiff unattended – Fractured hip requiring hospitalization – Surgery and rehabilitation – Defendant asserts plaintiff voluntarily got out of bed without requesting assistance.

Ocean County, NJ

In this medical malpractice case, the 86-year-old plaintiff asserted that the defendant medical center nurses deviated from the standard of care in their treatment of the plaintiff resulting in significant, permanent injury. The defendant denied liability and argued that the plaintiff was guilty of contributory negligence.

On May 5, 2016, the plaintiff was brought by ambulance to the defendant medical center's emergency room due to possible cardiac problems, abdominal pain and shortness of breath. The plaintiff was of advanced age, on numerous prescription medications and suffering from several medical conditions. In contravention of the standard of care, and despite the plaintiff's condition, he was not identified in triage as a fall risk. The plaintiff was placed on a bed in a room of the E.R. He required assistance to use the restroom while in the E.R., yet was still not made a fall risk.

While the plaintiff was in the E.R., a nurse put down the side rail of the plaintiff's bed; the nurse then left the plaintiff unattended and left the room for an extended period of time. Due to needing the restroom again, the plaintiff, wearing socks provided by the defendant hospital, attempted to get out of bed unassisted and fell on the slippery, tile floor. As a result of the fall, the plaintiff sustained a fractured hip requiring extensive hospitalization, medical care, surgery, and rehabilitative care.

The plaintiff asserted that, as a result of the deviation from acceptable medical/nursing standards by the defendant nurses, the plaintiff fell while in the emergency room of the defendant hospital. The plaintiff alleged that the force of the fall resulted in permanent injuries. The defendant asserted that the plaintiff was aware he required assistance, as he had earlier in his stay at the E.R., yet did not wait or ring for help and attempted to get out of bed unassisted; thus, causing his fall and resulting injuries.

The parties settled the matter prior to trial in the amount of $260,000.

REFERENCE

Wheeler vs. Jersey Shore University Medical Center, et al. Docket no. L-002368-17 01-21-20; Judge Arnold B. Goldman, 01-21-20.

Attorney for plaintiff: Eugene C. Hendrickson of Hendrickson & Edelstein in Lakewood, NJ. Attorney for defendant: Robert A. Ballou of Garvey Ballou, PC in Toms River, NJ.

Rehab Facility

$95,000 RECOVERY

Medical malpractice – Rehab facility negligence – Nursing – Plaintiff suffers fall while unsupervised at defendant rehabilitation facility – Rupture of extensor mechanism – Permanent disability of right knee.

Atlantic County, NJ

In this medical malpractice case, the plaintiff patient asserted that the defendant rehabilitation facility and its nursing staff were negligent in the care provided to the plaintiff while she was a patient. The plaintiff claimed that she fell due to a breach of the standards of care by the defendants, and that the fall caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

On September 26, 2014, the plaintiff suffered a fall while she was a resident at the defendant rehabilitation center following knee replacement surgery. The plaintiff was left alone by the defendant's nursing aide as she was transferring into the shower, using a rolling walker. While the plaintiff was waiting for the

aide to return with towels for the shower, her leg felt unstable and she attempted to sit on a nearby bench to wait. The plaintiff's right leg buckled and she fell to the floor. The plaintiff alleged that she fell due to the defendants' negligence in leaving her to navigate the transfer into the shower by herself. The plaintiff suffered re-injury of the knee on which she had just had surgery. The plaintiff sustained a permanent knee injury due to rupture of the extensor mechanism. The plaintiff claimed the injury resulted in permanent disability, preventing her from being able to bend her knee or walk on uneven surfaces or surfaces that are not solid.

The defendant asserted that the plaintiff had managed the transfer from bed to bathroom independently every day leading up to the date in question and that it was part of her rehabilitation to take such actions. On the day of her fall, the plaintiff followed the same process of transferring to the shower, without the support of an aide, as she had on the preceding days at the defendant facility. The defendant denied a connection between the plaintiff's fall and the condition of her knee and argued that the condition of the knee was likely due to the underlying condition for which she had had the knee surgery from which she was recovering. The defendant also denied the permanency and limitations claimed by the plaintiff and planned to present video evidence of the plaintiff walking for a cumulative period of over 45 minutes, contradicting the plaintiff's claims of permanent limitations and injuries that prevented her from performing such activities as walking for extended periods of time.

Following discovery, the defendant made an offer of judgment in the amount of $60,000 and the plaintiff made a counter-offer in the amount of $125,000. The parties ultimately settled the matter prior to trial in the amount of $95,000.

REFERENCE

Olivo vs. Bacharach Institute for Rehabilitation, Inc. Docket no. L-002123-16; Judge John C. Porto, 02-03-20.

Attorney for plaintiff: Bard L. Shober of Cooper Levenson, P.A. in Atlantic City, NJ. Attorney for defendant: Timothy M. Zanghi of Crammer, Bishop & O'Brien in Absecon, NJ.

CONTRACT

DEFENDANT'S VERDICT

Breach of contract – Plaintiff towing company contends defendant truck dealership delivered truck that did not conform to plaintiff's specifications per contract for sale between parties – Defendant dealership contends truck did conform to specifications of contract and, even if it did not, plaintiff obligated to allow defendant to cure non-conformity.

Ocean County, NJ

In this breach of contract case, the plaintiffs were a towing business and its principal/owner. The plaintiffs had been in the towing business since June 2005. As of late 2010, the plaintiffs were using 3 tow vehicles in their fleet to perform mostly light-duty towing work and some medium-duty towing work. The plaintiff owner researched several trucks manufactured by various manufacturers and ultimately decided to purchase an International brand truck. The plaintiff also independently researched the type of tow body that he desired to have affixed to the truck and chose a Dynamic brand 801 tow-body. The plaintiff located the defendant dealership that was in the business of truck sales, parts and service with a facility in Pennsylvania and exclusively sold International brand trucks. The plaintiff contacted the defendant in late 2010 and advised its salesperson that he was interested in an International 4x4 truck and a Dynamic 801 auto-loader tow body to perform medium-duty towing work.

The plaintiff towing company contended that it signed a proposal with the defendant for the sale and purchase of a 2012 International Workstar 7300 truck cab and chassis, together with a Dynamic 801BTW series conventional wrecker body. The plaintiffs argued that the truck delivered by the defendant was non-conforming to the contracted specifications on each of 4 delivery attempts. The plaintiffs argued that they made it clear that they were rejecting the truck for the non-conformities and that the principal subsequently requested a refund in person, on the phone, and in writing.

The defendant argued that the plaintiff principal had no standing because he was not a party to the contract at issue and that the contract was solely between the plaintiff towing company and the defendant dealership. The defendant further argued that the plaintiffs had not provided evidence that the plaintiff principal intended to use the tow truck for personal reasons. Finally, the defendant noted all of the damages the plaintiffs sought were allegedly sustained by the plaintiff towing company, not the plaintiff principal. As to the breach of contract claim by the plaintiff towing company, the defendant argued that truck and tow body were in conformance with the contract. The defendant contended that, even if the truck were non-conforming, the defendant had the right to cure the non-conformity under the statute and, further, that the plaintiffs failed to state that the

rejection of the truck was for a particular defect, thus their cause of action for breach of contract was preempted.

The defendant moved for, and was granted, summary judgment as to the individual standing of the plaintiff principal. The defendant also moved for summary judgment dismissal of the complaint in its entirety claiming there was no established breach. The court denied that motion and the case proceeded as to the genuine issues of material fact as to whether the truck delivered was non-conforming and whether the plaintiffs properly notified the defendant of such alleged non-conformities so as to justify the rejection of the truck.

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

REFERENCE

All the Way Towing, et al. vs. Bucks County International, Inc., et al. Docket no. L-001865-12; Judge Mark A. Troncone, 01-30-20.

Attorneys for plaintiff: Jay J. Rice and Bradley L. Rice of Nagel Rice, LLP in Roseland, NJ. Attorney for defendant: Stephen A. Corr of Begley, Carlin & Mandio, LLP in Langhorne, PA.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$35,000 RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Left turn collision – Disc herniations at T7-8 and T9-1 – Positive EMG – Right carpal tunnel syndrome – Epidural injections and chiropractic treatment – Non-binding arbitration finds defendant driver liable with $50,000 in damages.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant denied liability and claimed that the plaintiff was comparatively at fault for the accident.

On September 23, 2016, the plaintiff was the operator of a motorcycle traveling southbound on State Highway 34 in Matawan. The defendant was driving a vehicle traveling northbound on State Highway 34. The plaintiff contended that the defendant driver negligently made a left turn across the plaintiff's lane of travel causing a collision between the defendant's vehicle and the plaintiff's motorcycle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at T7-8 and T9-10; positive EMG and right carpal tunnel syndrome. The plaintiff treated with epidural injections and chiropractic care. The defendant also maintained that the plaintiff's injuries did not cross the verbal threshold for permanent injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $50,000. Following arbitration and prior to trial, the parties settled for $35,000.

REFERENCE

Bossick vs. Donaghue. Docket no. L-003199-18; Judge Kathleen A. Sheedy, 01-17-20.

Attorney for plaintiff: Mark F. Casazza of Rudnick, Addonizio, Pappa & Casazza in Hazlet, NJ. Attorney for defendant: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ.

Auto/Truck Collision

$60,000 RECOVERY

Motor vehicle negligence – Auto/truck collision – Plaintiff claims he was stopped when defendants' dump truck struck his vehicle – Right knee tear – Cervical and lumbar disc herniations – Knee treated with arthroscopic surgery – Non-binding arbitration assigns 50% liability to defendant and 50% to plaintiff with gross damages of $50,000 reduced to $25,000 for plaintiff's comparative negligence.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendants' commercial dump truck driver struck his vehicle with such force that it caused significant, permanent injury. The defendants stipulated liability and contested the plaintiff's damages.

On October 10, 2016, the plaintiff was traveling past the defendants' business premises at 864 Julia Street in Union. On the day in question, a commercial

dump truck owned by the defendant waste management company and driven by the defendant driver, in the course of his employment, struck the plaintiff's vehicle. The plaintiff maintained that he stopped in front of the defendant's premises to allow the defendants' truck to proceed, whereupon his vehicle was struck by the defendants' truck. As a result of the collision, the plaintiff sustained a tear to the right knee requiring arthroscopic surgery; and cervical and lumbar disc herniations. The plaintiff claimed $43,080 in Medicaid liens.

The plaintiff asserted that the defendant driver operated the vehicle in an inattentive manner in that he operated the vehicle at an excessive speed; failed to properly yield, slow down or stop the vehicle; failed to have the vehicle under control; and failed to avoid striking the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendants argued that the plaintiff was contributorily negligent in causation of the subject collision and that the occurrence was unavoidable insofar as the defendant was concerned and resulted from circumstances outside the control of the defendant driver. The defendants asserted that the plaintiff tried to squeeze past the truck in a space that was too small, and thus, the collision occurred.

The defendant also argued that the plaintiff's complaints were pre-existing from a prior back injury. The defendant's medical expert confirmed herniations but, based on prior studies, opined that the plaintiff's condition was due to degeneration and not causally related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of $50,000 reduced to $25,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $60,000.

REFERENCE

Basov vs. Munoz, et al. Docket no. L-001172-18; Judge Thomas Moore, 01-13-20.

Attorney for plaintiff: Dmitry Levitsky of Levitsky Law Firm in Brooklyn, NY. Attorney for defendant: David A. Herman of Nicolson Law Group, LLC in Princeton, NJ.

$50,970 RECOVERY

Motor vehicle negligence – Auto/truck collision – Rear end collision – Plaintiffs assert defendant driver, rental truck company, and lessee of truck liable for collision wherein plaintiffs were injured – First plaintiff sustains lumbar disc displacement; lumbar strain; cervical strain – Second plaintiff sustains facial contusions with no permanency and head injuries.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiffs, 8-year-old and 13-year-old passengers, asserted that the defendant driver, driving a truck rented by the defendant laundry service, struck their vehicle from behind with such force that it caused them significant, permanent injury.

On April 4, 2016, the minor plaintiffs were passengers in a vehicle traveling on Route 18 in New Brunswick. The plaintiffs asserted that a rental truck carrying textiles for the defendant laundry company and driven by the defendant driver negligently XX. The plaintiffs alleged that the force of the impact resulted in permanent injuries. The defendants asserted that the first minor plaintiff had sustained a soccer injury that produced similar symptoms to the claimed injuries from the subject accident. The defendants maintained that the second minor plaintiff did not suffer any significant injuries in the collision.

As a result of the collision, the first minor plaintiff suffered lumbar disc displacement; lumbar strain; cervical strain. The plaintiff had 4 medical visits and incurred $6,470 in medical expenses. The second minor plaintiff sustained facial contusions with no permanency and head injuries that had resolved. The minor plaintiff had $1,123 in medical expenses related to treatment of her injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant for the injuries suffered by both minor plaintiffs and assigned damages of $46,470 as to the first plaintiff and $4,500 as to the second defendant. Following arbitration and prior to trial, the parties settled for $28,000 to the first minor plaintiff, broken down as follows: $27,500 from the defendant truck rental company and defendant laundry service; and $500 from the defendant driver. From the proceeds of the settlement were deducted: attorney fees of $8,399 leaving a net recovery to the first minor plaintiff of $19,601. The second minor plaintiff settled for $5,250 broken down as follows: $5,000 from the defendant truck rental company and defendant laundry service; and $250 from the defendant driver. From the proceeds of the settlement were deducted: attorney fees of $1,441 leaving a net recovery to the first minor plaintiff of $3,809.

REFERENCE

Alvarez vs. Ryder Truck Rental, Inc., et al. Docket no. L-007257-17; Judge Dennis V. Nieves, 08-13-20.

Attorney for plaintiff: Patricia Zangrilli Boguslawski of Davis Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant: Robert A. Ballou, Jr. of Garvey, Ballou, P.C. in Toms River, NJ.

Lane Change Collision

$725,000 RECOVERY

Motor vehicle negligence – Lane change collision – Sideswipe collision – Defendant driver of oil truck suddenly moves to right on Route 9, striking plaintiff's vehicle – Cervical herniations – Surgery – Lumbar herniation and lumbar bulges – Plaintiff does not undergo recommended lumbar surgery – No income claims.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her mid 40s, contended that the defendant driver of an oil truck negligently failed to signal or otherwise indicate that he was about to change lanes on Route 9. The plaintiff maintained that as a result, her vehicle was struck as the defendant moved to his right causing her to sustain serious injury. The defendant company was unable to locate the driver, who did not testify in discovery.

The plaintiff asserted that she suffered cervical herniations at 3 levels that were confirmed by MRI and which required fusion surgery. The plaintiff maintained that she will nonetheless suffer permanent pain and significant restriction. The plaintiff also would have related that although lumbar surgery was also recommended, she declined because of difficulties following the cervical surgery.

The plaintiff had helped her husband who owned a deli and can no longer do so. The plaintiff made no income claims. The defendant asserted that the plaintiff made a better recovery than claimed.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $725,000.

REFERENCE

Antonini vs. Ibragimove, et al. Docket no. MID-L-4920-19, 10-20.

Attorney for plaintiff: Joseph G. Perone in West Long Branch, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Lane change collision – Plaintiff and defendant each contend other made improper lane change and caused collision between vehicles – Plaintiff claims cervical herniations at C3-4, C4-5, C5-6, and L4-5 – Lumbar discography and percutaneous decompression at L4-5 – Non-binding pretrial arbitration assigns 75% liability to the defendant and 25% to plaintiff with gross damages of $125,000 reduced to $93,750.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff, a 28-year-old woman, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The plaintiff argued that it was the plaintiff who improperly merged into the defendant's lane, causing the collision. The defendant also maintained that the plaintiff had preexisting degenerative disc disease and suffered no injuries caused by the subject collision.

On May 18, 2016, the plaintiff was XX. The plaintiff asserted that the defendant was negligent in changing lanes without first determining that it was safe to do so and without first signaling, in operating her vehicle in a careless and unsafe fashion, and in failing to make proper observations. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical herniations at C3-4, C4-5, C5-6, and L4-5 with positive EMG at L5. The plaintiff treated conservatively for her cervical injuries and underwent a lumbar discography and percutaneous decompression at L4-5.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant and 25% to the plaintiff with gross damages of $125,000 reduced to $93,750 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Alvarez vs. Glemaud, et al. Docket no. L-003300-17; Judge Henry P. Butehorn, 02-19-20.

Attorney for plaintiff: Amanda Wolf of Wolf Law, PC in Red Bank, NJ. Attorney for defendant: Jessica D. Wachstein of Marshall Dennehey Warner Coleman & Goggin in Mt. Laurel, NJ.

Left Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Left turn collision – C5-6 disc protrusion confirmed by MRI – Plaintiff claims $15,000 in unpaid medical expenses – Arbitrator assigns 100% liability to defendant with damages of $40,000.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver negligently made a left turn in front of the plaintiff's vehicle and caused a collision wherein the plaintiff was injured. The defendant stipulated liability but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

On November 2, 2015, the plaintiff was traveling north on Sicklerville Road at the intersection of Thousand Oak Drive in Winslow. Simultaneously, the defendant was traveling south on Sicklerville Road at the same intersection. The plaintiff asserted that the defendant attempted to make a left turn at the intersection and struck the plaintiff's vehicle causing a collision resulting in severe and permanent injuries to the plaintiff. As a result of the collision, the plaintiff sustained C5-6 disc protrusion confirmed by MRI. The plaintiff claimed $15,000 in unpaid medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $40,000 inclusive of outstanding medical expenses. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Butler vs. Khan. Docket no. L-004233-17; Judge Sherri L. Schweitzer, 10-08-19.

Attorney for plaintiff: Dean F. Owens, II of The Killino Firm, P.C. in Philadelphia, PA. Attorney for defendant: Danielle M. Smith of Law Office of Michael G. David in Marlton, NJ.

Rear End Collision

$3,500,000 VERDICT

Motor vehicle negligence – Rear end collision – Aggravation of pre-existing herniations C5-6 and C6-7; C6 radiculopathy; new herniation at L5-S1 – Post-concussion syndrome – Multiple spinal bulges – Multiple epidural steroid injections; branch blocks – Recommendation for C6-7 anterior cervical discectomy and fusion surgery – Plaintiff recovers $325,000 per high/low agreement.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 46-year-old administrative assistant, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff claimed she has been unable to work since the accident and is disabled by her injuries. The defendant stipulated liability but contested the plaintiff's damages.

On July 8, 2016, the plaintiff was stopped to allow a pedestrian to cross the road while she was waiting to make a left hand turn from Route 1 onto Brunswick Pike in Lawrence. The defendant was traveling directly behind the plaintiff's vehicle and negligently failed to observe the plaintiff stopped with her blinker on indicating that she was turning. The defendant did not slow or stop behind the plaintiff and carelessly struck the rear of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in aggravation of prior injuries, and creation of new injuries, escalating them to permanent.

As a result of the collision, the plaintiff sustained aggravation of pre-existing herniations at C5-6 and C6-7, as well as a new herniation at L5-S1; C6 radiculopathy; post-concussion syndrome; and multiple spinal bulges. The plaintiff treated with multiple epidural steroid injections and branch blocks. The plaintiff's treating physician recommended C6-7 anterior cervical discectomy and fusion surgery.

The defendant argued that all of the plaintiff's claimed injuries were pre-existing and not caused or changed by the subject collision. The defendant also pointed to the plaintiff's involvement in a prior collision in 2013 which produced similar injuries.

During discovery, the plaintiff offered to take judgment in the amount of $150,000. The offer was not accepted and the matter proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $175,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $3,500,000 broken down as follows: $2,500,000 for past and future pain, suffering, disability, impairment and loss of enjoyment of life; $100,000 for past lost wages; and $900,000 for future lost wages. Per the terms of a pre-trial high/low agreement, the plaintiff recovered $325,000 from the defendant.

REFERENCE

Bennett vs. Hill. Docket no. L-006522-17; Judge Thomas Daniel McCloskey, 01-29-20.

Attorney for plaintiff: Max J. Stagliano of Gill & Chamas, LLC in Woodbridge, NJ. Attorneys for defendant: Jessica Rabkin and Kurt Dzugay of Lewis Brisbois Bisgaard & Smith, LLP in Newark, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniation at L5-S1; disc bulges at C3-4 and C4-5 – Cervical and lumbar epidural injections, chiropractic treatment and lumbar surgery – Non-binding arbitration assigns 100% liability to defendant with damages of $35,000.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 44-year-old woman, asserted that the defendant driver negligently failed to observe traffic and control his vehicle. On February 16, 2015, the defendant struck the plaintiff's vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained disc herniation at L5-S1; disc bulges at C3-4 and C4-5. The plaintiff's injuries and permanency were objectively confirmed by medical testing. The plaintiff received chiropractic treatment; pain management with one cervical epidural injection, three lumbar epidural injections; and a scheduled lumbar spine surgery.

The defendant argued that the plaintiff's lumbar injury was pre-existing from a prior, similar rear end collision and was not caused by the subject collision. The defendant argued that the plaintiff's claimed cervical spine injuries were degenerative.

The parties submitted to non-binding arbitration wherein the arbitrator assigned 100% liability to the defendant with damages of $35,000. The arbitration was not confirmed and the matter proceeded to trial. Prior to trial, the plaintiff made an offer to take judgment in the amount of $100,000. The offer was not accepted and the case proceeded.

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

REFERENCE

Bedoya vs. Perez. Docket no. L- 000255-17; Judge James Hely, 01-28-20.

Attorney for plaintiff: Robert A. Lord of Lord Kobrin Alvarez & Fattell, LLC in Mountainside, NJ. Attorney for defendant: Brittany S. Hale of Law Offices of Viscomi & Lyons in Morristown, NJ.

Sideswipe Collision

DEFENDANT'S VERDICT ON LIABILITY

Motor vehicle negligence – Sideswipe collision – Defendant loses control in rainstorm – Lumbar and cervical herniations.

Burlington County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her mid 60s, who was in the left lane of an Interstate Highway, contended that the defendant driver in the center lane, lost control and struck her causing her to sustain injury. The defendant contended that she was driving appropriately in view of rainy conditions and lost control as the rain turned into a downpour. The defendant denied that the happening of the accident reflected negligence.

The plaintiff asserted that she suffered a lumbar and a cervical herniation. There was no evidence that disc surgery is necessary. The plaintiff made no income claims.

The case was tried via zoom. The jury found that the defendant was not negligent.

REFERENCE

Armston vs. Davis-Oates. Docket no. BUR-L-1702-18; Judge James Ferrelli.

Attorney for defendant: Brad Parker of Parker Young & Antinoff, LLC in Marlton, NJ.

Tractor-Trailer Negligence

$32,500 RECOVERY

Motor vehicle negligence – Tractor-trailer negligence – Sideswipe collision – Defendant commercial tractor trailer sideswipes plaintiffs' motor home – Plaintiff driver suffers torn left meniscus and aggravation of cervical disc condition; plaintiff passenger sustains concussion – Non-binding arbitration assigns 100% liability to defendants with damages of $27,500 for plaintiff driver and $5,000 for plaintiff passenger.

Ocean County, NJ

In this motor vehicle negligence case, the plaintiffs, a husband and wife, asserted that the defendants were negligent in their ownership and operation of a commercial tractor trailer that struck the plaintiffs' vehicle with such force that it caused significant, permanent injury to the plaintiff driver and passenger. The defendants argued that the subject accident was caused by

unknown third parties and that the defendant driver took evasive action but could not avoid collision with the plaintiffs' vehicle. The defendants also challenged the plaintiff's economic damages pointing to the plaintiff's lack of an appraisal and inability to remember how much was paid for the motor home.

On September 30, 2016, the plaintiff driver was operating a 40-foot motor home on I-95 north, with the co-plaintiff as a passenger. The motor home was stopped in traffic on the roadway near Dunn, North Carolina. The defendant driver was operating a commercial tractor trailer owned by the defendant company in the course of his employment. The plaintiff asserted that the defendant driver negligently and carelessly operated the vehicle such that he failed to reduce speed and, when he tried to stop, the truck jackknifed and sideswiped the plaintiff's motor home, forcing it into a ditch.

The plaintiffs alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff driver sustained aggravation of a left knee and cervical disc condition. The plaintiff denied any prior complaints but the plaintiff's expert found that his meniscus tear was degenerative. The plaintiff passenger alleged a concussion for which she had minimal treatment. The plaintiffs alleged a total of $37,638 in economic damages including loss of value, continued loan payments, and incidentals. The defendants maintained that the plaintiff driver's complaints were pre-existing and not caused by the collision and the plaintiff passenger's injury resolved without permanency.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of $27,500 for the plaintiff driver and $5,000 for the plaintiff passenger. Following arbitration and prior to trial, the parties settled for $32,500.

REFERENCE

Bruno vs. Mayflower Transit, Inc., et al. Docket no. L-000997-18; Judge Robert E. Brenner, 01-13-20.

Attorney for plaintiff: Richard B. Stone of Stone Mandia, LLC in Neptune, NJ. Attorney for defendant commercial truck company: Gary M. Price of Law Office of Gary M. Price, LLC in South Plainfield, NJ.

PREMISES LIABILITY

Fall Down

$150,000 RECOVERY

Premises liability – Fall down – Disc herniation at L2-3 – Fractured right ankle – Open reduction and internal fixation on ankle – Laminectomy at L2-3 – Plaintiff claims $65,843 in unpaid medical expenses – Non-binding arbitration assigns 70% liability to defendant and 30% to plaintiff with gross damages of $260,000 reduced to $182,000 for plaintiff's comparative negligence.

Union County, NJ

In this premises liability case, the plaintiff asserted that the defendant property owners negligently maintained a set of steps that caused the plaintiff to fall and suffer significant, permanent injury. The defendant disputed liability and contested the plaintiff's damages.

On October 6, 2016, the plaintiff was lawfully on the defendants' premises located at 128 Stiles Street in Elizabeth. The defendants owned and maintained the property, where they also resided. The plaintiff contended that the defendant negligently maintained the premises such that they allowed defective steps to exist. The plaintiff asserted that the defect in the steps caused the plaintiff to fall and resulted in permanent injuries.

The plaintiff sustained disc herniation at L2-3 and a fracture of the right ankle. The plaintiff underwent open reduction and internal fixation for the ankle fracture and laminectomy at L2-3. The plaintiff claimed $65,843 in unpaid medical expenses.

The defendant denied that there was any defect in the stairs and pointed to the plaintiff's testimony that she was not using the available handrail when descending the steps. The defendant admitted the plaintiff's ankle injury, but disputed the plaintiff's back injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant and 30% to the plaintiff with gross damages of $260,000 reduced to $182,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $150,000 inclusive of all medical liens and outstanding medical expenses.

REFERENCE

Azcuy vs. Court. Docket no. L- 001598-18; Judge Mark P. Ciarrocca, 01-13-20.

Attorney for plaintiff: Yafresie Feliz of Fusco & Macaluso Partners, LLC in Passaic, NJ. Attorney for defendant: Monique D. Moreira of Moreira & Moreira, P.C. in Kearny, NJ.

$150,000 RECOVERY

Premises liability – Fall down – Plaintiff claims she fell on defective walkway outside defendant bank – Fractured right shoulder repaired with surgery and insertion of hardware – Plaintiff claims Medicare lien of $30,000 and additional $3,000 in unpaid medical expenses.

Monmouth County, NJ

In this premises liability case, the plaintiff asserted that the defendant allowed a dangerous condition to exist on its property that caused the plaintiff to fall and suffer significant, permanent injury. The defendant denied liability, asserting that the defendant's branch manager witnessed the plaintiff attempt to get into a large pickup truck without a step-up bar and fall backwards to the ground. Additionally, the defendant contended that the plaintiff was walking with a cane on the date of the accident.

On February 6, 2018, the plaintiff was a business invitee at the defendant bank. The plaintiff fell on the premises of the defendant bank at 3001 Route 9 in Howell. The plaintiff claimed she fell on the defendant's walkway that was in a hazardous, dangerous and irregular condition. The plaintiff contended that the defendant negligently maintained the walkway in a condition that exposed the public traveling along the walkway to an unreasonable risk of harm. The plaintiff alleged that the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a fractured right shoulder repaired with surgery and insertion of hardware. The plaintiff claimed a Medicare lien of $30,000 and an additional $3,000 in unpaid medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $200,000 reduced to $120,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $150,000.

REFERENCE

Ambrosino vs. Wells Fargo & Company. Docket no. L-002686-18; Judge Lourdes Lucas, 01-17-20.

Attorney for plaintiff: Glen J. Vida, Esq. in Westfield, NJ. Attorney for defendant: Heather L. Aquino of Wade Clark Mulcahy, LLP in Freehold, NJ.

Falling Object

$38,812 RECOVERY

Premises liability – Falling object – Infant plaintiff injured when defendant's fire extinguisher fell on her hand – Laceration of right hand requiring stitches – Fracture of right thumb – Defendant asserts plaintiff pulled extinguisher off wall causing it to strike her – Nonbinding arbitration assigns 100% liability to the defendant with gross damages of $38,812.

Bergen County, NJ

In this premises liability case, the plaintiff, a 17-month-old girl, asserted that the defendant restaurant allowed a dangerous condition to exist on its premises that caused significant, permanent injury to the plaintiff.

On May 8, 2017, the plaintiff was a patron at the defendant restaurant, housed in the defendant commercial building. The plaintiff's father was holding the minor plaintiff in his arms as he proceeded to the counter towards the back of the establishment and continued to hold the plaintiff when placing the family's food order. The plaintiff's father then handed the plaintiff to the plaintiff's mother and completed the order. The plaintiff's mother took the plaintiff to a table at the front of the restaurant. The defendant restaurant denied any negligence and argued that the plaintiff failed to establish that there was a hazardous or defective condition on the premises, or that the defendant restaurant had actual or constructive notice of any defect.

The plaintiff asserted that a defectively installed fire extinguisher spontaneously came away from its wall bracket and fell on the minor plaintiff's hand. When the plaintiff's mother looked down, the minor plaintiff's hand was bleeding. As a result of the incident, the minor plaintiff sustained a laceration of the right hand requiring 5 stitches and fracture of the right thumb. The plaintiff claimed Medicaid liens of $542 and $3,270.

The defendant pointed to the fact that the family had been on the premises on multiple prior occasions without issue. Further, the defendant argued that the plaintiff's mother testified that she was not looking when the extinguisher allegedly came off the wall and fell on her daughter. The defendant argued that the plaintiff's mother was not supervising the plaintiff and that the extinguisher is designed to come quickly and readily off the bracket holding it on the wall. Thus, without supervision, the minor plaintiff could remove the extinguisher creating a potential for injury caused by the lack of supervision, not by any defect in the premises. The defendant denied the plaintiff's mother's version of events, that the extinguisher fell on the plaintiff's hand, and asserted that the minor plaintiff removed the extinguisher and then cut herself on the metal bracket.

The plaintiff offered to take judgment in the amount of $75,000. The offer was not accepted and the matter proceeded.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $38,812. Following arbitration and prior to trial, the parties settled prior to trial in the amount of $38,812 broken down as follows: $14,199 in attorney fees and $24,614 in net damages to the minor plaintiff.

REFERENCE

Butkhuzi vs. Smashburger Corporation, et al. Docket no. L-001834-18; Judge John D. O'Dwyer, 10-21-20.

Attorney for plaintiff: Lisa A. Lehrer of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant: Michael J. Alivernini of Chartwell Law in Philadelphia, PA.

Hazardous Premises

$8,500 RECOVERY

Premises liability – Hazardous premises – Minor plaintiff bicyclist rides into water-filled pothole on defendant diocese's school property and thrown forward from bicycle – Contusions to head – Left wrist sprain – 2 fractured teeth – Cosmetic repair.

Atlantic County, NJ

In this premises liability case, the minor plaintiff, a 16-year-old boy, asserted that the defendant property owner allowed a dangerous condition to exist on its driveway, in the form of a defect in the asphalt, which caused the plaintiff to fall off his bicycle and sustain significant, permanent injury. The defendant denied actual or constructive notice of the defect in the driveway prior to the subject incident and, therefore, disputed liability for the plaintiff's injuries.

On July 25, 2018, the minor plaintiff was riding his bicycle northbound on Route 9 in front of the defendant-owned and maintained private high school in Absecon. The plaintiff rode his bicycle into a large, water-filled pothole in the defendant's driveway, causing him to fall from his bicycle and sustain significant injuries. The plaintiff maintained that the pothole existed for a sufficient length of time prior to the date of the incident such that the defendants knew or should have known of its existence and that it posed a danger to bicyclists and pedestrians. As a result, the plaintiff sustained contusions to his head; left wrist sprain; and 2 fractured teeth requiring cosmetic repair.

The parties settled the matter prior to trial in the amount of $8,500 broken down as follows: $1,984 in attorney fees; $815 in medical liens; $515 in costs and fees and $5,185 in net damages to the minor plaintiff.

REFERENCE

McNair vs. Diocese of Camden, et al. Docket no. L-001691-19; Judge John C. Porto, 01-17-20.

Attorney for plaintiff: Robert T. Fendt of Robertson & Fendt, LLC in Northfield, NJ. Attorney for defendant: Francis X. Donnelly of Turner, O'Mara, Donnelly & Petrycki, P.C. in Cherry Hill, NJ.

SALON NEGLIGENCE

$800,000 RECOVERY

Salon negligence – Minor plaintiff suffers chemical burns while undergoing hair treatment at defendant hair salon – Wound care, excision and closure of 3 x 4 cm area – Permanent scar.

Monmouth County, NJ

In this negligence case, the minor plaintiff was having her hair dyed at the defendant salon. The plaintiff maintained that the defendant negligently created a hazardous condition by failing to take precaution as to the safety and maintenance of the premises causing the plaintiff to suffer a chemical burn resulting in serious personal injury. The defendant denied that any of its actions or inactions caused the plaintiff's alleged injury. The defendant also argued that the plaintiff assumed the risk inherent in having her hair dyed with chemicals.

As a result of the July 25, 2017 incident, the plaintiff sustained a chemical burn to her scalp that was initially treated with local wound care leaving her with a 3 x 4 cm circular scar devoid of hair. The scarring and hair loss caused the plaintiff embarrassment and concern regarding disfigurement. She was referred for potential plastic surgery.

The plaintiff's plastic surgeon diagnosed permanent scar alopecia and recommended a direct excision of the scar with primary closure to remediate the bald spot. The plaintiff underwent the procedure in 2018.

The parties settled the matter prior to trial in the amount of $800,000 broken down as follows: $3,099 in disbursements; $199,225 in attorney fees; $44,434 in medical expenses and $553,242 in net damages to the minor plaintiff.

REFERENCE

Carozza vs. Trio Salon. Docket no. L-003656-18; Judge Linda Grasso Jones, 03-06-20.

Attorney for plaintiff: Patrick M. Metz of Dario, Albert, Metz & Eyerman, LLC in Hackensack, NJ. Attorney for defendant: Suzanne D. Montgomery of Law Offices of Stephen C. Cahir in Hartford, CT.

SCHOOL LIABILITY

$125,000 RECOVERY

School liability – Plaintiffs contend 15-year-old plaintiff suffered severe bullying by soccer team members and students in defendants' middle and high school and administration failed to take measures to prevent it – Parents remove minor plaintiff from defendant school system and place him in private school at great expense – Both minor plaintiff and plaintiff mother undergo extensive psychological therapy to cope with traumatic experience.

Union County, NJ

In this school liability case, the plaintiffs, a 15-year-old boy and his parents, asserted that the defendant school, school administrators, school board, failed to prevent the plaintiff from being systematically bullied by other students. The defendant denied liability and argued that the plaintiffs had not set forth sufficient facts to establish any liability attributable to the defendants.

The minor plaintiff had always had an interest in playing soccer and, in the summer of 2017, was made a member of the freshman soccer team at the defendant high school. Contemporaneous with the plaintiff making the soccer team, he experienced severe and pervasive bullying at the hands of his fellow soccer teammates, as well as certain students at the high school. The plaintiff claimed that the defendant middle school principal was made aware of the bullying, by the plaintiff mother, prior to the plaintiff entering the defendant high school; yet, the plaintiff asserted, the school failed to take appropriate measures to prevent the plaintiff from experiencing further bullying despite being placed on notice.

The plaintiff claimed that the repeated and systematic pattern of bullying commenced in the defendant middle school and followed the plaintiff into the defendant high school without regard to the ongoing complaints lodged by the plaintiff's parents to individuals including the defendant high school principal, as well as employees and supervisors at the middle and high schools. The plaintiffs claimed that the bullying and torment suffered by the plaintiff were so severe in nature that it resulted in the plaintiff parents enrolling the plaintiff in a private high school to their financial detriment.

The minor plaintiff began and was continuing to treat with a therapist in connection with his emotional well-being due to the bullying, harassment and intimidation he experienced at the defendant institutions. In addition, the plaintiff mother also treats with a therapist due to the continued bullying of her son causing her own personal trauma from the ordeal the minor plaintiff endured while being ignored by the defendants.

The defendants asserted that they acted at all times with good faith and without malice and that the plaintiffs' claims were frivolous and without any reasonable basis in law or facts. The defendants also argued that the plaintiffs' claims were barred by the New Jersey Tort Claims Act.

The parties settled the matter prior to trial in the amount of $125,000.

REFERENCE

JK, a minor, et al. vs. Berkeley Heights Board of Education, et al. Docket no. L-001839-19; Judge Alan G. Lesnewich, 01-24-20.

Attorney for plaintiff: Paul S. Foreman of Law Offices of Paul S. Foreman, PC in Roseland, NJ. Attorney for defendant: Nathaniel Brand of Zirulnik, Sherlock & DeMille in East Hanover, NJ.

SEXUAL ASSAULT

$300,000 RECOVERY

Sexual assault – Defendant teacher has repeated sexual contact with 15-year-old plaintiff high school student – Plaintiff seeks damages for pain and suffering; mental anguish.

Monmouth County, NJ

In this sexual misconduct case, the plaintiff was a 15-year-old student and the defendant was a teacher at the defendant school in the defendant district. Criminal charges were brought against the defendant teacher as a result of sexual contact with the minor plaintiff. The defendant pled guilty to criminal charges, his teaching license was revoked, and he was imprisoned, and is on the New Jersey Sex Offender Registry. He was released from custody in 2018.

The plaintiff sought damages for the repeated sexual assault of the minor plaintiff, causing her pain and suffering, and mental anguish. A default judgment was entered as to liability against the defendant teacher, given that he had pled guilty to the criminal charges related to the same cause of action brought in the civil suit. The defendant disputed the amount of damages sought by the plaintiff.

Prior to trial, the plaintiff settled as to the defendant school district and its associated parties for a confidential sum and as to the defendant teacher for $300,000.

REFERENCE

Anonymous vs. Monmouth Regional School Board, et al. Docket no. L-002872-16; Judge Henry P. Butehorn, 01-21-20.

Attorney for plaintiff: Donald F. Burke, Jr. of Law Office of Donald F. Burke in Brick, NJ. Attorney for defendant teacher: Harry Jay Levin of Levin Cyphers Attorneys at Law in Toms River, NJ. Attorney for defendant school board, school district and administrators: Michael S. Mikulski, II of Connor, Weber & Oberlies in Morristown, NJ.

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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

$3,000,000 VERDICT – MEDICAL MALPRACTICE – OB/GYN NEGLIGENCE – FAILURE TO DIAGNOSE BOWEL PERFORATION WHEN 43-YEAR-OLD RETURNED TO HOSPITAL COMPLAINING OF SEVERE PAIN APPROXIMATELY 12 HOURS AFTER UNDERGOING LAPAROSCOPIC SURGERY PERFORMED BY DEFENDANT GYNECOLOGICAL ONCOLOGIST – DEATH FROM SEPSIS 2 ½ DAYS LATER.

Hall County, GA

This was a medical malpractice/wrongful death action involving a 43-year-old decedent in which the plaintiff contended that the defendant gynecological oncologist negligently failed to conduct adequate testing when the decedent returned to the hospital approximately 12 hours after she underwent laparoscopic surgery to remove a mass, which was subsequently determined to be benign. The plaintiff contended that the severe pain was caused by a bowel perforation that occurred during the surgery and the plaintiff maintained that she developed fatal sepsis from the failure to address the perforation when she returned to the hospital. The defendant maintained that he ran the bowel after the surgery and that no perforation was present.

There was no claim that the physician was negligent during the surgery, causing the perforation or that he was negligent before the decedent returned to the hospital complaining of severe pain. The decedent was not working. The decedent left 2 adult children who lived in the vicinity of their mother. The plaintiff contended, on the wrongful death aspect, that under Georgia Law, the jury should evaluate the intrinsic value of life and the closeness and affection she would have received from her children.

The jury found for the plaintiff and awarded $3,000,000. The jury did not break the award down between pain and suffering and wrongful death.

REFERENCE

Plaintiff's general surgery expert: Alan P. McMahan, M.D. from Ocila, GA. Plaintiff's pathology expert: Stacey N. Desamours, M.D. from Decatur, GA. Defendant's general surgery expert: Adam M. Shiroff, M.D. from Philadelphia, PA. Defendant's pathology expert: Louis R. DiBernardo, M.D. from Durham, NC.

Metcalf vs. Northeast Georgia Health System, Inc., et al. Case no. 2018CV000076, 03-23-21.

Attorney for plaintiff: Kenneth J. Lewis of Lewis & Murphy, LLP in Winder, GA.

$1,950,000 VERDICT – FEDERAL TORT CLAIMS ACT CASE – MEDICAL MALPRACTICE – RADIOLOGY – COURT FINDS DEVIATION STEMMING FROM 20-MONTH DELAY IN DIAGNOSIS OF LEFT-SIDED TONSIL CANCER – NEED FOR RADICAL TONSILLECTOMY TO PATIENT WHO WOULD HAVE REQUIRED CHEMOTHERAPY AND RADIATION TREATMENTS – RECURRENCE AND INCREASED RISK OF ADDITIONAL RECURRENCES.

U.S.D.C. - Western District of New York

This was a medical malpractice action brought by a plaintiff in his 70s against defendant United States for the alleged negligence of the Buffalo VA. The case was brought under the Federal Tort Claims Act and tried before the court. The plaintiff contended that when he presented with pain and a growth on his neck and tonsils, the defendants negligently failed to diagnose tonsil cancer. The plaintiff asserted that as a result of the negligence, the tonsil cancer progressed to Stage IV when ultimately diagnosed 20 months later.

The plaintiff required the removal of a relatively small portion of the tongue. It was undisputed that the plaintiff would have required chemotherapy and radiation even if the tonsil cancer had been timely diagnosed, but the plaintiffs contended that the 20-

month delay significantly increased the chances of a recurrence, which ultimately happened and required surgery.

The court found that the defendant VA did not deviate with respect to the misdiagnosis of the melanoma, but did deviate as to the delay in the tonsil diagnosis. The court then awarded $1,950,000, including $1,250,000 for past pain and suffering, $600,000 for future pain and suffering and $100,000 to the wife for loss of consortium.

REFERENCE

Plaintiff's dermatology expert: Marc D. Brown, M.D. from Rochester, NY. Plaintiff's internal medicine expert: Sarah G. Thompson, M.D. from Batavia, NY. Plaintiff's oncology expert: Stuart Packer, M.D. from Bronx, NY. Plaintiff's otolaryngology expert: Thom Loree, M.D. from Buffalo, NY. Plaintiff's pathology expert: Terence Harris, M.D. from Cambridge, MA. Defendant's dermatology expert: Gary Goldenberg, M.D. from New York, NY. Defendant's otolaryngology expert: Barry L. Wenig, M.D. from Chicago, IL.

Culhane vs. USA. Index no. 17-cv-00005; Judge Elizabeth Wolford, 12-20.

Attorneys for plaintiff: John T. Loss and Andrew M. Debbins of Connors, LLP in Buffalo, NY.

$1,000,000 RECOVERY – MEDICAL MALPRACTICE – ONCOLOGY CENTER NEGLIGENCE – PLAINTIFF'S DECEDENT UNDERGOES FIRST RITUXAN INFUSION AT DEFENDANT CANCER AND SUFFERS ANAPHYLACTIC REACTION NOT PROPERLY ADDRESSED BY DEFENDANTS – FAILURE TO STOP INFUSION IN TIMELY MANNER – WRONGFUL DEATH OF 67-YEAR-OLD MALE.

Allegheny County, PA

In this action for medical malpractice, the two adult sons of the decedent maintained that their father suffered a wrongful death when he underwent his first infusion therapy at the defendant cancer center and suffered an allergic reaction to the medicine that the defendants failed to properly treat. The defendants denied all allegations of negligence.

Shortly after the infusion began, the decedent complained of nausea. A nurse checked on the decedent, but did not take his vitals. The infusion continued and the decedent complained of feeling light all over and nauseous. The decedent slumped over and the Rituxan infusion was stopped. A code was called and resuscitation efforts began. After approximately 15 minutes, the decedent was resuscitated and sent to the E.R. for further treatment. Over the next few days the decedent's condition deteriorated and he died on April 26, 2017. The cause of death was listed as anaphylactic reaction leading to cardiac arrest causing anoxic brain injury and death.

The estate and the defense settled for $1,000,000.

REFERENCE

The Estate of Gerard Petro by Justin and Robert Petro vs. University of Pittsburgh Cancer Institute dba Hillman Cancer Center, Oncology Hematology Associates and Magee Womens Hospital. Case no. GD-18-006429; Judge Alan Hertzberg, 09-01-20.

Attorney for plaintiff: Leon Aussprung of Law Office of Leon Aussprung, M.D., LLC in Philadelphia, PA. Attorney for defendant: Brian M. O'Connor of Matis Baum O'Connor, PC in Pittsburgh, PA.

$235,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PLAINTIFF'S DECEDENT LEFT UNATTENDED AND FALLS DOWN AFTER BEING PUSHED BY ANOTHER PATIENT– ACUTE, ANGULATED AND DISPLACED SUBCAPITAL FRACTURE OF RIGHT PROXIMAL FEMUR – WRONGFUL DEATH OF FEMALE PATIENT.

Bucks County, PA

In this medical malpractice action, the plaintiff's decedent was an Alzheimer's patient in a hospital where she was left unattended and caused to fall down sustaining injuries which led to her death. The defendant hospital generally denied all allegations of negligence.

The plaintiff's decedent was a behavioral health patient at the defendant hospital and was being treated for Alzheimer's. While unattended in the early morning, the plaintiff's decedent was approached by another behavioral health patient and was pushed causing the decedent to fall to the ground, and sustain injuries. While being treated for her injuries and undergoing intensive medical procedures, the plaintiff's decedent passed away.

The parties entered into a settlement for $235,000.

REFERENCE

William Albertson, Individual and as Executor of the Estate of Dorothy E Albertson, Deceased vs. Lower Bucks Hospital. Case no. 2018-02342; Judge Robert Baldi, 03-09-21.

Attorney for plaintiff: Leonard G. Villari of Villari, Lentz & Lynam, LLC in Philadelphia, PA. Attorney for defendant: Jacquelyn Reynolds of Kilcoyne & Nesbitt, LLC in Blue Bell, PA.

PRODUCT LIABILITY

$14,000,000 GROSS VERDICT – PRODUCT LIABILITY – EXPOSURE TO ASBESTOS IN DRYWALL JOINT COMPOUND – MESOTHELIOMA – WRONGFUL DEATH.

Miami-Dade County, FL

The plaintiff claimed that asbestos sold by the defendant Union Carbide was dangerously defective and that the defect caused the death of her father from mesothelioma in 2009. The defendant denied the claims and asserted a number of defenses, including the claim that the decedent's death was caused by exposure to asbestos produced by a number of other defendants listed on the verdict for as Fabre defendants.

The plaintiff claimed that the decedent was exposed to Georgia-Pacific joint compound that contained dangerous Calidria asbestos supplied by the defendant Union Carbide. The exposure occurred between October 1976 and May 1977 when the decedent assisted the work of his son as a drywall finisher. The decedent's son was also listed on the verdict form as a Fabre defendant and the defense argued that he failed to warn his father regarding warnings contained on the product can. The plaintiff alleged that, as a result of the decedent's exposure to the defendant's product, he contracted mesothelioma and died on September 15, 2009, at the age of 75.

After a 10-day trial, the jury apportioned negligence against the defendant and Fabre defendants as follows: 35% to Defendant Union Carbide Corporation; 45% to Fabre defendant Georgia-Pacific; 15% to Fabre defendant Johns Manville Corporation; 5% to Decedent David Torres, decedent's son. The jury awarded the plaintiff gross damages of $14,000,000. Final judgment was entered against the defendant Union Carbide Corporation in the amount of $4,900,000 plus interest.

REFERENCE

Paula Font, Individually and as Personal Representative of the Estate of Luis Torres vs. Union Carbide. Case no. 2010-41578-CA01; Judge Jose Rodriguez, 04-22-21.

Attorneys for plaintiff: Juan P. Bauta, II and Steven E. Valdes of The Ferraro Law Firm in Miami, FL.

MOTOR VEHICLE NEGLIGENCE

$7,011,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – DEFENDANT TAXI DRIVER DISREGARDS STOP SIGN AND ENTERS INTERSECTION LAWFULLY OCCUPIED BY PLAINTIFF – CERVICAL DISC HERNIATIONS – FUSION SURGERY – PERSISTENT CERVICALGIA.

Harris County, TX

The plaintiff in this vehicular negligence suffered serious and life-altering neck injuries when her vehicle was lawfully proceeding through an intersection and it was T-boned by a taxi that entered the same intersection without stopping for a stop sign. The plaintiff will likely suffer neck pain and limitations of movement for the rest of her life. The defendant taxi company denied being liable and denied the nature and extent of the plaintiff's injuries. The defendant yellow cab maintained that the driver was an independent contractor and motioned the court for summary judgment. The trial court granted that motion, but the plaintiff appealed, and the order was reversed, and the case remanded back to the trial court.

The plaintiff did not report injuries at the scene, but presented for neck pain two days after the accident. Diagnostic testing revealed disc herniations at C5-6 and C6-7 with bilateral radiculopathy at C6-7. The plaintiff eventually underwent disc fusion surgery.

The jury found that the defendant driver was negligent and that at the time of the accident the defendant driver was acting as an employee of the defendant Yellow Cab Company. The jury awarded the plaintiff past damages totaling $1,135,000 and future damages totaling $5,876,000. No award for loss of consortium was given by the jury. According to the plaintiff's attorney interest and settlement credit brings the total award to $7,377,250.

REFERENCE

Plaintiff's chiropractic expert: Timothy Zeller, D.C. from Houston, TX. Plaintiff's family medicine expert: Gordon Sack, M.D. from Houston, TX. Plaintiff's orthopedic surgeon expert: Stephen Esses, M.D. from Houston, TX. Plaintiff's pain management expert: Basem Hamid, M.D. from Houston, TX. Defendant's orthopedic surgeon expert: Allen Deutsch, M.D. from Houston, TX.

Diane and Ricky Perez vs. Greater Houston Transportation Company d/b/a and/or a/k/a Yellow Cab Company and/or Yellow Cab and/or United Cab Company and/or United Transportation Services and/or United Transportation Services, Inc. Case no. 201632437; Judge Lauren Reeder, 05-18-21.

Attorney for plaintiff: Joe B. Stephens in Katy, TX. Attorney for defendant: Martyn B. Hill of Pagel, Davis & Hill, P.C. in Houston, TX.

$2,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – MULTIPLE-VEHICLE REAR END COLLISION – DEFENDANT TRUCK STRIKES SUV WHICH STRIKES CAR BEHIND PLAINTIFF AND IS THEN PROPELLED INTO PLAINTIFF'S CAR – LUMBAR AND CERVICAL HERNIATIONS WHICH REQUIRE SURGERY – TEAR TO BOTH SHOULDER AND BOTH KNEES WITH EFFUSION – REDUCED HOURS AND LIMITATION OF WORK-LIFE EXPECTANCY OF PLAINTIFF DENTIST.

Suffolk County, NY

The plaintiff's motion for summary judgment on liability against the rear striking truck driver was granted in this motor vehicle negligence case. The plaintiff contended that he suffered lumbar and cervical herniations that required surgery, bulges in the lumbar and cervical areas, as well as tears to both shoulders and both knees which resulted in effusion. The plaintiff maintained that the injuries will shorten his career as a dentist. The defendant denied that the incident caused the claimed injuries, pointing to barely visible damage to the plaintiff's vehicle.

The plaintiff contended that he will suffer significant pain and limitations for the remainder of his life. The plaintiff related that he has cut back on the amount he works and that his work-life expectancy is reduced.

The case settled prior to trial for $2,000,000.

REFERENCE

Mathur vs. Kleet Lumber Co., Inc. Index no. 604853/19, 03-16-21.

Attorneys for plaintiff: Christopher F. Holbrook and Michael Reiner of Schwartzapfel Lawyers, PC in Garden City, NY.

$1,491,000 RECOVERY PLUS SIGNIFICANT REDUCTION OF ERISA LIEN – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – MULTIPLE LEG AND ARM FRACTURES – INABILITY TO CONTINUE AS NURSING ASSISTANT.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her mid 40s contended that the on-coming defendant driver suddenly traveled across the center line, causing the head-on collision. The plaintiff suffered fractures of her left femur, left ilium, left patella, right humerus and right patella. The plaintiff required the performance of some 14 surgeries and remains vulnerable to a below-the-knee amputation of the right leg because of blood supply difficulties. The defendant had $500,000 policy that was reduced for $9,000 property damage payments. He also had a $1,000,000 umbrella.

The plaintiff ambulates with the use of a walker. The evidence reflected that she continues to suffer extensive pain with discomfort and the plaintiff contended that even if she can avoid the amputation, she will suffer extensive pain and difficulties ambulating for the remainder of her life.

The case settled prior to trial for $1,491,000, plus a significant reduction of the ERISA lien and release language that her lost wage claim was not compensated by the settlement to try to avoid her disability carrier from reducing her future payments.

REFERENCE

Van Orden vs. Stampoe. Docket no. MRS–L224-20, 11-24-20.

Attorney for plaintiff: John E. Molinari of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

$1,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT SCHOOL MINIVAN DRIVER CONTAINING NO STUDENTS – CERVICAL AND LUMBAR DISC INJURIES – TWO-LEVEL LAMINECTOMY AND ARTIFICIAL DISC REPLACEMENT SURGERY – NO SIGNIFICANT FUTURE INCOME CLAIMS.

Essex County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her late 40s contended that she was struck in the rear by a minivan driven by the defendant employee of a school transport company. The plaintiff contended that as a result, she suffered two herniations each in the lumbar and cervical disc areas which required a two-level laminectomy and an artificial disc replacement. The defendant did not dispute that the accident occurred when the plaintiff stopped to avoid a pedestrian at the intersection. The defendant asserted, however, that the impact was insufficient to cause the claimed injuries.

The plaintiff would have countered that she had no history of significant back or neck difficulties, and that in view of this factor and the evidence that the diagnoses were made shortly after the accident, the defendant's position should be rejected. The plaintiff, who has not worked since the accident, made no significant future income claims. The plaintiff's life care plan approximated $1,300,000 - to over $4,000,000 including the anticipated use of a home health aide. The case settled prior to trial for $1,000,000.

REFERENCE

Defendant's biomechanical expert: Calum McRae from AARCA, Penns Woods, PA.

Rafael vs. Williams. Docket no. ESX-L-1513-19, 10-20.

Attorney for plaintiff: James Vasquez of Law Office of James Vasquez in Clifton, NJ.

PREMISES LIABILITY

$370,000 RECOVERY – PREMISES LIABILITY – FALLING OBJECT – HAZARDOUS PREMISES – PLAINTIFF TODDLER STRUCK BY TELEVISION THAT FELL FROM STAND WHILE MINOR WAS GUEST AT DEFENDANT HOTEL – FAILURE TO PROPERLY SECURE STAND AND TELEVISION TO WALL – CRUSHED AND BROKEN FOOT – MULTIPLE SURGERIES REQUIRED.

Dallas County, TX

The plaintiffs in this premises liability action were guests at the defendant hotel when they alleged a large television fell and landed on their minor child who was playing in the area of the television causing him to sustain serious injury. The defendants denied all allegations of negligence maintaining that the plaintiff parents failed to properly supervise their child resulting in the incident.

As a result of being struck by the dresser and television, the minor sustained a severely broken foot requiring surgery and has permanent limitations due to his injuries.

The parties settled their dispute for $370,000.

REFERENCE

A.C. a minor by and through png Kenney Chiu vs. Homewood Suites Management, LLC Park Hotels & Resorts, Inc., Apple Ten Hospitality Ownership. Case no. CC-18-04909-A; Judge D'Metria Benson, 04-29-21.

Attorney for plaintiff: Todd Ramsey of Payne Mitchell Ramsey in Dallas, TX. Attorney for defendant: Douglas D. Fletcher of Fletcher, Farley, Shipman & Salinas, L.L.P. in Dallas, TX.

ADDITIONAL VERDICTS OF INTEREST

Civil Assault

$9,550,000 VERDICT – CIVIL ASSAULT – PLAINTIFF HUSBAND SHOT IN KNEES BY DEFENDANT WIFE FOLLOWING DOMESTIC DISPUTE – ASSAULT – BATTERY – FALSE IMPRISONMENT – COMPLEX REGIONAL PAIN SYNDROME.

Pinellas County, FL

The plaintiff and defendant in this action were husband and wife. The plaintiff arrived at the marital home where he was greeted by the defendant holding a firearm. The defendant held the plaintiff imprisoned in the home with the gun pointed at the plaintiff before the defendant fired the gun into each leg of the plaintiff. The defendant answered the plaintiff's petition denying all allegations of negligence and injury.

After holding the plaintiff prisoner at gun point for an extended period of time, the defendant pointed the gun at the plaintiff's knees and pulled the trigger. The plaintiff was able to wrestle the gun out of the defendant's hands and escaped outside where he was assisted by a swimming pool technician who was at the house. The defendant was eventually arrested for attempted murder.

The court instructed the jury that the defendant committed an assault and battery on December 8, 2014, which was legal cause of the loss, injury or damage to plaintiff. The jury then assessed punitive damages of $6,000,000 and compensatory damages of $3,500,000.

REFERENCE

Robert P Albergo vs. Marianne Albergo. Case no. 15-002388-CI; Judge George Jirotka, 08-21-19.

Attorney for plaintiff: Wil H. Florin of Florin Roebig in Palm Harbor, FL. Attorney for defendant: David Maney of Maney, Damsker & Jones, P.A. in Tampa, FL.

Dram Shop

$1,250,000 CONFIDENTIAL RECOVERY – DRAM SHOP – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – INTOXICATED DRIVER – UNBELTED REAR-SEAT PASSENGER PLAINTIFF SUFFERED NUMEROUS INJURIES UPON BEING PROPELLED INTO WINDSHIELD UPON IMPACT – EXTENSIVE FACIAL AND HEAD INJURIES – HOSPITALIZED IN INTENSIVE CARE FOR OVER A MONTH.

Withheld County, MA

In this motor vehicle negligence/dram shop action, the plaintiff passenger alleged that the defendant driver was negligent in causing the collision where the plaintiff was seriously injured and the defendant tavern was liable under dram shop laws for over serving the driver. The plaintiff was propelled from the rear seat into the front windshield and sustained serious injuries which required extensive hospitalization. The defendant tavern denied the allegations and refused to negotiate with the plaintiff's counsel stating that there was no proof that the defendant driver had been at its tavern or had been intoxicated when he left the tavern.

The plaintiff brought a claim against both the driver and the tavern alleging negligence and dram shop law violations for over serving the defendant driver. The defendants denied liability and disputed the nature and extent of the plaintiff's injuries and damages, citing the fact that she was unrestrained in the vehicle at the time of the collision.

The parties were, however, able to facilitate a confidential settlement of the plaintiff's claim for the sum of $1,250,000.

REFERENCE

68-year-old vs. Defendant Driver. 01-31-20.

Attorney for plaintiff: Darin M. Colucci of Colucci Colucci Marcus & Flavin in Milton, MA.

Police Liability

$1,800,000 GROSS AWARD REDUCED BY 22% COMPARATIVE NEGLIGENCE – POLICE LIABILITY – EXCESSIVE FORCE – PLAINTIFF CONTENDS AFTER DECEDENT RUNS FROM POLICE WHEN THEY APPROACH HIM ON STREET FOLLOWING 911 CALL REGARDING SOMEONE ATTEMPTING TO BREAK INTO CARS, GROUP OF OFFICERS PINNED PLAINTIFF TO GROUND AND OFFICER KNEELED ON HIS NECK – FATAL POSITIONAL ASPHYXIATION.

Orange County, CA

This was a wrongful death/police liability action brought under state law. The case involved a 35-year-old decedent who ran from the police when he was approached on the street after a 911 call reported somebody was attempting to break into cars. The plaintiff contended that a group of officers pinned the plaintiff to the ground and that an officer kneeled on his neck, causing fatal positional asphyxiation. The decedent left both parents. The defendant denied that such force or any untoward restraints were used, contending that the police only used reasonable force that was justified because the decedent was resisting arrest.

The plaintiff also argued that the video angles and quality from the body cameras was very poor, accounting for the inability to clearly see the actions of the officers. The plaintiff further contended that the decedent exclaimed to the officers that he couldn't breathe. The defendant contended that the statements made at the time by the decedent were not clearly audible and the defendant denied that the decedent said he couldn't breathe.

The jury found the defendant 78% negligent, the decedent 22% negligent and rendered a gross award of $1,800,000.

REFERENCE

Plaintiff's police procedures expert: Scott A. DeFoe from Huntington Beach, CA. Defendant's emergency medicine/in-custody deaths expert: Gary M. Vilke, M.D. from San Diego, CA.

Eisinger vs. City of Anaheim. Case no. 30-2018 01035259 CU-PA-CJC, 04-29-21.

Attorney for plaintiff: Eric J. Dubin of Dubin Law Offices in Irvine, CA. Attorney for plaintiff: Annee Della Donna of Law Offices of Annee Della Donna in Laguna Beach, CA.