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FEATURED CASES

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A monthly review of New Jersey State and Federal Civil Jury Verdicts.

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

VERDICTS BY CATEGORY

FEATURED CASES

$1,125,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – CERVICAL HERNIATION AND SEVERE CORD COMPRESSION – 3-LEVEL FUSION – LIMITED PRIOR EARNINGS.

Union County, NJ

This motor vehicle negligence case involved a 60-year-old plaintiff driver who was stopped at a yield sign waiting to enter Route 22 West in Mountainside when he was struck from behind. The plaintiff contended that the defendant failed to keep a proper following distance. The plaintiff asserted that as a result of the accident, he developed unrelenting neck pain with radiating, shooting pain and numbness into his left hand. The plaintiff maintained that he suffered herniated discs at C4-5, C5-6 and C6-7 with resulting cord compression. The defendant maintained that the accident did not cause herniations, and that the plaintiff's cervical complaints were attributable to pre-existing degenerative disease.

The plaintiff underwent conservative care, which included physical therapy, injections, acupuncture and chiropractic care. This conservative care provided short-term relief only and the plaintiff then underwent a 3-level anterior cervical discectomy and fusion at C4-5, C5-6 and C6-7. The defendant produced a biomechanical expert who opined that the forces suffered by Plaintiff were insufficient to cause the injuries complained of. The plaintiff countered that he had no prior symptoms or complaints and maintained that the defendant's position of degenerative disc disease should be rejected.

The plaintiff asserted that while his radiating, tingling and numbing sensations had subsided since the surgery, he still experienced intermittent pain and loss of range of motion. The plaintiff contended that these symptoms will continue permanently.

The defendant had $500,000 in primary coverage and a $5,000,000 umbrella. The case settled prior to trial for $1,125,000.

REFERENCE

Plaintiff's biomechanical expert: Steven C. Batterman, Ph.D. from Cherry Hill, NJ. Plaintiff's life care planning expert: Linda Lajterman, RN, CCM from Stockholm, NJ. Plaintiff's orthopedic surgeon expert: Gregory Charko, M.D. from Union, NJ.

Sillecchia vs. Wyman. Docket no. UNN-L-3399-18, 05-16-22.

Attorney for plaintiff: Raymond A. Gill, III of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

The defendant denied that the impact damage was sufficient to cause the claimed injuries and claimed that the plaintiff suffered degenerative disc disease only. The plaintiff, who overcame this factor, stressed that he had no prior symptoms or treatment that would account for the difficulties, and argued that the need for the surgery was clearly the collision. It should be noted that the plaintiff's history reflected very limited earnings and the recovery primarily reflected the need for surgery and intermittent pain and loss of range of motion.

$90,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – STATE LIABILITY – AUTO/PEDESTRIAN COLLISION – MINOR PLAINTIFF CROSSING 6-LANE ROAD WITH FATHER STRUCK BY DEFENDANT DRIVER – DISPLACED AND NON-DISPLACED FRACTURES OF FEMUR AND HUMERUS – CONCUSSION – CONTUSIONS AND ABRASIONS – SIGNIFICANT SCARRING – SURGICAL INTERVENTION WITH PLATES AND RODS.

Camden County, NJ

In this motor vehicle negligence case, the minor plaintiff, an 8-year-old boy, asserted that the defendant driver negligently passed a vehicle that had stopped to allow the plaintiff to cross the road and struck the plaintiff in the roadway, leaving him permanently injured. As a result, the plaintiff sustained displaced and non-displaced fractures of the femur and humerus; concussion; contusions; and abrasions. The plaintiff underwent surgery with placement of pins and rods and was left with significant scarring. The plaintiff brought suit against the defendant State, which owned and controlled the intersection, for negligent design and the defendant driver for negligently failing to observe and allow the plaintiff pedestrian to safely cross the road. The defendant driver denied liability asserting that the

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accident was due to the negligence of the plaintiff's father in the care, custody, and supervision of the minor plaintiff as the light changed to red while they were in the middle of the open intersection.

On January 31, 2015, the plaintiff was crossing Route 73 at the intersection of Franklin Avenue in Berlin with his father. Route 73 is a road that is 6 lanes wide with a grassy median strip in the center, and regulated by traffic lights. The plaintiff successfully crossed the southbound lanes with his father and then was stopped on the median in the middle of the roadway. The plaintiff's father waved his hands and an SUV stopped in the passing lane of northbound Route 73 to allow the plaintiff and his father to cross. The plaintiff argued that he began to cross the road when the defendant driver negligently overtook the stopped vehicle in the middle of the intersection and struck the mirror plaintiff in the curb lane. The plaintiff pointed to the defendant's testimony that he was traveling at 25 mph when he entered the intersection, a rate of speed too high for the situation. The plaintiff alleged that the force of the impact resulted in permanent injuries.

The plaintiff presented an expert report indicating that the intersection was poorly maintained by allowing an obvious worn walking path to appear where pedestrians were exiting a convenience store parking lot without going to the actual corner of the intersection, which further view was blocked by a hedge row and a 3-foot retaining wall. He further opined that the pedestrian button was facing south on the south side of the pole and that the worn path was putting pedestrians 20 to 25 feet north of the pole where the button was placed. He also reported that the State was negligent for not placing signage to point to where the pedestrian button was located, for not placing a warning sign not to cross, and for pedestrian signal boxes that could not be seen across the span of the intersection.

The defendant driver maintained that the plaintiff's father was careless in failing to obey traffic signals and, instead, electing to wave his hands at the oncoming traffic while the minor plaintiff attempted to run for the safety on the other side of the road. The defendant driver argued that the plaintiff's father negligently created a situation where the minor plaintiff, guided by his father, ran into the path of the defendant driver creating a dangerous situation where the defendant did not have time to react and stop before striking the plaintiff. The defendant State argued that there was no evidence that the plaintiff or his father exercised due care in using the pedestrian crossing buttons located at the intersection. The defendant State maintained that the plaintiff could not prove the first of the five elements necessary to establish dangerous condition liability under the Tort Claims Act ("TCA"), N.J.S.A. 59:4-2. Specifically, the plaintiff could not prove the presence of a physical defect in State property. The defendant State moved for, and was granted, summary judgment dismissal from the case.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 30% liability to the defendant driver; 10% to the State of New Jersey; and 60% to the plaintiff's father with damages of $300,000.

Following arbitration and prior to trial, the plaintiff and defendant driver settled the matter in the amount of $90,000 broken down as follows: $25,749 in attorney costs and fees; $10,000 in medical liens and $54,251 in net damages to the minor plaintiff.

REFERENCE

Watson vs. Jusko, et al. Docket no. L-000456-17; Judge Anthony M. Pugliese, 01-27-20.

Attorney for plaintiff: Everett F. Simpson, Attorney at Law in Audubon, NJ. Attorney for defendant driver: Robert R. Nicodemo, III of Law Offices of Nicodemo & Connell in Haddonfield, NJ. Attorney for defendant State of New Jersey: Joseph Neal, Deputy Attorney General of State of New Jersey in Trenton, NJ.

COMMENTARY

In the course of discovery in this case, the defendant driver filed a motion to bring in the plaintiff's father as a third-party defendant, arguing that he negligently failed to safely cross the road with the minor plaintiff and caused the subject accident by not holding the boy's hand and by allowing him to enter the roadway when it was not safe to cross.

The plaintiff filed a motion for summary judgment to dismiss the father from the case asserting that the plaintiff's father was immune from liability in this instance due to parental immunity based on case law. The plaintiff cited Foldi v. Jeffries, 93 N.J. 533, 551 (1983) and Buono v. Scalia, 179 N.J. 131, 145 (2004). The plaintiff also maintained that there was no evidence to pierce parental immunity that the parent's actions or omissions were willful, wanton and reckless. The plaintiff pointed to evidence such as the police report, expert and eyewitness testimony that there was nothing to suggest that the plaintiff's father had an indifference to the consequences or intentionally did or did not do anything that resulted in the minor plaintiff's injury.

The expert's report indicated that the pedestrian signal boxes were not properly accessible to pedestrians and that the traffic lights only provided a fraction of the time needed for any pedestrian to cross the wide span. Nothing in the expert's report suggested that the plaintiff's father did or did not do anything that led to his injury. Likewise, the minor plaintiff's testimony is that he and his father were in the crosswalk and only began to cross when the light indicated it was safe to cross but that the "walk" signal did not allow enough time to get across and the plaintiff's father attempted to stop traffic to make it safe for the plaintiff to cross but the defendant driver passed the stopped vehicle and struck the plaintiff. The plaintiff's testimony provided no evidence of negligence by his father and, in fact, indicated that his father attempted to mitigate the presenting danger by waving his hands and trying to get vehicles to stop. No other eyewitness testimony supported an argument that the plaintiff's father had acted without regard for the safety of his son.

The plaintiff requested that the father be dismissed from the case as a defendant. The defendant driver filed a cross-motion for summary judgment arguing that the act of a parent negligently walking a child across a street was not protected by parental immunity. The defendant cited Mancinelli v. Crosby, 247 N.J. Super. 456 (App. Div. 1991). The defendant argued that the plaintiff's father attempted to cross Route 73 with his son against the traffic light. The defendant maintained that the plaintiff's father allowed his son to attempt to enter and cross the northbound lanes of the roadway when the light was already green for oncoming vehicles and, not only allowed this action, but allowed the child to dart out into the roadway directly in front of the defendant's vehicle.

Further, the defendant pointed to witness testimony that the plaintiff's father was not holding the plaintiff's hand and that neither party was in the crosswalk. The defendant also noted numerous statements by witnesses who described thinking the situation was extremely dangerous, that the minor plaintiff was 8 to 10 feet away from his father, and that they questioned why the father was allowing the plaintiff to proceed ahead without him and against the traffic light.

The court granted the plaintiff's motion as to parental immunity and dismissed the plaintiff's father from the case. The case proceeded only as to the defendant driver.

$525,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS AND FALLS AT BAR – DOMINANT ELBOW FRACTURE – SURGERY – PLAINTIFF THEN DEVELOPS CELLULITIS – NO INCOME CLAIMS.

Bergen County, NJ

In this action for premises liability, the plaintiff, who was at the defendant bar for a celebration of his 40th birthday, contended that he slipped and fell on a wet floor near the bar sustaining serious injury. There was no evidence that the plaintiff was inebriated. The plaintiff brought the action under a $1,000,000 general liability policy. The defendant denied that it was negligent and contended that the cause of the incident was the failure of the plaintiff to be more careful.

The plaintiff asserted that the fall occurred in an area where bartenders retrieved drinks from the bar and that it was highly likely that an employee caused the condition. The plaintiff asserted that he suffered a fracture of the right, dominant elbow and required an ORIF. The plaintiff maintained that cellulitis developed after the surgery and that the plaintiff required anti inflammatory medication and antibiotics.

The plaintiff contended that he will permanently suffer extensive pain and limitations. The defendant maintained that the plaintiff made a good recovery.

The plaintiff made no income claims.

The case settled prior to trial for $525,000.

REFERENCE

Strasser vs. Sea Shell Club Inc. Docket no. BER-L-2461-18, 12-08-21.

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

$40,000 VERDICT – PREMISES LIABILITY – FALLING OBJECT – 10-YEAR-OLD PLAINTIFF SPINS WHEEL OF CHANCE WHEREUPON WHEEL COMPLETELY COLLAPSES ON TOP OF PLAINTIFF STRIKING HIS HEAD – POST-CONCUSSION SYNDROME WITH RELATED SYMPTOMATOLOGY – PLAINTIFF FILES MOTION FOR NEW TRIAL OR ADDITUR – MOTION DENIED.

Ocean County, NJ

In this premises liability case, the minor plaintiff, a 10-year-old boy, asserted that the defendant allowed a hazardous condition to exist on its property and that the hazard caused injury to the plaintiff. As a result of the incident, the plaintiff sustained a concussion and was subsequently diagnosed with post-concussion syndrome with related symptomatology including eye rolling tics, trauma-induced Tourette's disorder, adjustment disorder, vertigo, migraines, vision disturbances, tinnitus, anxiety and depression. The defendant conceded that the plaintiff was injured as a result of the incident, but it denied that the plaintiff suffered either a concussion or post-concussion syndrome and asserted that the symptoms associated with those conditions were present prior to the incident. Further, the defendant argued that the degree of the plaintiff's symptoms was not aggravated as a result of the subject incident.

On July 13, 2014, the minor plaintiff was a patron at the defendant baseball stadium. There was a prize wheel at the game and the plaintiff took a turn spinning the wheel. As he spun the wheel, the entire apparatus fell over striking the plaintiff in the head, knocking him to the ground with the wheel landing on top of him. The plaintiff maintained that the 24-pound Wheel of Chance owned and operated by the defendant caused the plaintiff serious injury.

The court granted a directed verdict as to liability and the matter went to trial on damages only. The only question before the jury was which and to what degree the plaintiff's claimed injuries were caused by the defendant's negligence and the amount of damages for those injuries. After a 9-day trial, the jury awarded $40,000 in damages.

REFERENCE

Silverman vs. Lakewood Industrial Commission. Docket no. L-001545-16; Judge Mark A. Troncone, 10-21-19.

Attorney for plaintiff: Matthew A. Schiappa of Lomurro, Munson, Comer, Brown & Schottland, LLC in Freehold, NJ. Attorney for defendant: Richard M. Darnall of Reger Rizzo Darnall, LLP in Mt. Laurel, NJ.

COMMENTARY

Following the jury verdict, the plaintiff filed a motion for new trial or additur to increase the amount awarded by the jury. This case turned primarily on whether the plaintiff's claimed injuries were the result of a pre-existing medical condition. During the trial, both parties presented substantial evidence from various experts on the plaintiff's medical condition. In seeking a new trial, the plaintiff asserted that the jury verdict of $40,000 was inadequate as against the weight of the evidence and so disproportionate to the plaintiff's injury and consequent disability.

In addition to its claim of inadequate damages, the plaintiff asserted that the jury verdict should be vacated as a result of cumulative errors made during trial including: a mention of the minor's parents' bankruptcy by defense counsel; reference to a motor vehicle accident on a defense exhibit in violation of the court's ruling on a motion in limine; the display of a high school video to the jury depicting the plaintiff bowling on the school's bowling team; and a reference by defense counsel of a change in the statute of limitations for minor victims of sexual assault during closing arguments.

The court denied the plaintiff's motions stating that to grant a new trial the court must find that the jury award was plainly wrong or shocking to the conscience. The court noted that both parties presented substantial evidence as to the plaintiff's medical condition, with the defendant offering a vigorous defense as to the claim of concussion and post-concussion syndrome. Specifically the defendant presented the expert testimony of a neurologist and neuropsychologist both of whom opined the plaintiff did not suffer a concussion or resulting post-concussion symptomatology. Both related the plaintiff's symptoms to pre-existing medical conditions. The plaintiff also presented expert medical testimony asserting just the opposite, claiming that the plaintiff had indeed suffered a concussion and consequent post-concussion symptomology unrelated to any prior medical condition. In addition, there was the lay testimony of the minor himself and his family to support the claim of significant injuries.

In awarding the amount of $40,000, the court found based on its "feel of the case," that the jury believed he sustained an injury and perhaps even a concussion as a result of the accident but did not believe the plaintiff sustained the more debilitation and potentially permanent injury of post-concussion syndrome. In that circumstance, the court found the jury award to be in accord with other verdicts and settlements for similar non-permanent injuries and that the award was certainly not plainly wrong or shocking to the conscience. The court opined that there was no clear and convincing evidence that there had been a miscarriage of justice.

As for the plaintiff's claim of cumulative errors during trial, the court found that the first error, regarding the parents' bankruptcy, was cured via immediate instruction to the jury not to consider the parents' financial condition in arriving at a verdict. As far as the second claimed error, the reference to a prior motor vehicle accident appeared momentarily in a timeline exhibit used by defense counsel in opening statements. The accident was not referenced any further during the trial. In a sidebar discussion, the court asked plaintiff's counsel whether he would request a curative instruction to the jury and he declined. The third error claimed by the plaintiff was the court's ruling to permit the display of a video of the plaintiff bowling. The court found that the video was listed as a potential exhibit on the defendant's pretrial exchange and was relevant to the plaintiff's claim that his injuries had affected his quality of life.

Finally, the plaintiff asserted that defense counsel's reference to a recently enacted statute extending the period of limitation to bring civil claims related to sexual assault was inappropriate. The minor plain-

tiff had been the victim of a sexual assault years before the subject accident. One of the theories advanced by the defense at trial was that the plaintiff's psychological symptoms were the result of the sexual assault. When defense counsel made the remark during closing statements, plaintiff's counsel objected and a sidebar conference was conducted.

The court ruled that the issue of sexual assault had been part of the case and allowed the comment to stand. No specific request for a curative instruction was requested and none was given. The court found that the claimed errors did not materially affect the outcome of the trial or deprive the plaintiff of a fair trial on the issues.

$500,000 POLICY LIMITS RECOVERY – DOG BITE CASE – DEFENDANTS' DOG BIT PLAINTIFF ON FACE – LACERATIONS TO BOTH SIDE OF FACE – NOTICEABLE PERMANENT SCARRING – PARTIAL LOSS OF SENSATION.

Essex County, NJ

In this case, brought under the strict liability Dog Bite Statute, the plaintiff contended that as she was visiting the defendants, the defendants' Australian Shepherd bit her on the face casing her to sustain serious, permanent injuries. The defendant would not have presented medical testimony.

The plaintiff's physical examination revealed a complex laceration of the left cheek, nasal ala, and lip with traumatic flap and a deep complex laceration to the right cheek. The laceration was down to facial musculature. The dimensions of the wound were 7 cm x 5 cm on the left and 4 cm on the right, for a total length of 21 cm. The plaintiff was also numb on a portion of the left side of her face.

The plaintiff underwent a surgical exploration and complex repair and contended that although somewhat improved, which improvement might continue, the injuries are permanent to some extent notwithstanding anticipated rich plasma (PRP) injection therapy and laser scar revision surgery.

The plaintiff was not working at the time and made no income claims.

The defendants had a combined single limit policy of $500,000. The case settled approximately 1 ½ years after the incident for the policy.

REFERENCE

Plaintiff's plastic surgeon expert: Ashley Ignatiuk, M.D. from Newark, NJ. Plaintiff's plastic surgeon expert: William Rosenblatt, M.D. from New York, NY. Plaintiff's plastic surgeon expert: Ross LS. Zbar, M.D. from Glen Ridge, NJ.

Rose-Bronner, et al vs. McMorrow. Docket no. ESX-L-668-20, 01-09-21.

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

$215,329 VERDICT – BREACH OF CONTRACT – SUCCESSOR LIABILITY; LEGAL FRAUD; FRAUDULENT TRANSFER AND CIVIL CONSPIRACY – PLAINTIFF CLAIMS DEFENDANTS CONSPIRED TO CIRCUMVENT LEASE COMMISSION AGREEMENT WHEREBY DEFENDANT PROPERTY OWNER AND SUCCESSORS OWED PLAINTIFF LEASE COMMISSIONS FOR SECURING LESSEE TO LONG-TERM LEASE AT DEFENDANTS' PROPERTY.

Camden County, NJ

In this breach of contract case, the plaintiff commercial real estate firm asserted that the defendant property owner breached an agreement to pay the plaintiff a commission in the event that the plaintiff was able to sell or lease the property. The plaintiff claimed breach of contract; successor liability; legal fraud; fraudulent transfer; and civil conspiracy. The defendants denied all of the plaintiff's claims. The defendants claimed that neither the defendant property owner nor the lessee of the property breached the commission agreement.

The plaintiff asserted that the defendants conspired to illegally break an agreement for lease commissions due the plaintiff by transferring the subject property to a third party and issuing a termination of the agreement without standing to do so. Further, the plaintiff maintained that the defendants ended and initiated various LLCs in order to avoid their obligations to the plaintiff.

The plaintiff maintained that the defendant property owner, as managing member of the property-owning LLC, was individually liable for the obligations of the LLC to the plaintiff under the original Lease Commission Agreement and that the defendant development company was liable under successor liability. The plaintiff claimed that all defendants engaged in fraud, fraudulent transfer of the property and civil conspiracy. The plaintiff made an offer to take judgment in the amount of $70,400. The offer was not accepted and the matter proceeded.

The defendants argued that the agreement between the plaintiff and the defendant property owner entitled the plaintiff to commissions arising from a lease entered into more than 10 years ago between the defendant property owner and the original lessee.

The defendants maintained that lease was properly terminated and, as a result, none of the defendants owed the plaintiff any compensation. The defendant property owner, lessee, and defendant development company had no successor liability because they were separate entities who engaged in a series of arms-length transactions, whereby the property owner sold the property to the development company, which sold it to a third party at a profit, and that the lessee, which owns but is a separate entity from the prior lessee, entered into a new and different lease for the property than the lease between the property owner and the original lessee.

The defendants further denied defrauding the plaintiff, arguing that the allegation that the defendants negotiated with the plaintiff and its representatives up to the date of closing on the property was plainly false and that the plaintiff's assertion that the development company conveyed the property to the third party "for no or minimal consideration" was also false. Finally, regardless of when the plaintiff learned that the third party had taken title to the property, it could not claim to have relied on its prior understanding that the development company had taken title to its detriment.

The jury found in favor of the plaintiff and against the defendant property owner as to civil conspiracy with $0 in damages; against the defendant owner of the development company for fraud, fraudulent transfer of property and civil conspiracy with $0 in damages; and against the defendant development company itself for successor liability with damages of $100,979, fraud with damages of $67,314, and fraudulent transfer with $0 in damages. The plaintiff was awarded a total of $168,293 with additional attorney's fees and interest in the amount of $47,036, for a total judgment amount of $215,329.

REFERENCE

Markeim Chalmers, Inc vs. Goddard Development Partners IV, LLC, et al. Docket no. L-001575-17; Judge Donald J. Stein, 04-01-20.

Attorney for plaintiff: Andrew P. Chigounis of Saldutti Law Group in Cherry Hill, NJ. Attorney for defendant property owner: Stuart A. Wilkins of Law Offices of Stuart A. Wilkins, LLC in Marlton, NJ. Attorney for defendant development company and its owner: David E. Miller of Law Office of David E. Miller, LLC in Maplewood, NJ.

COMMENTARY

The facts and plethora of issues in this case were so complex that the arbitrator assigned to the non-binding, pretrial arbitration opined that it was not appropriately resolvable by a jury or by arbitration and declined to reach a finding in the case. Following which, the matter ultimately went to trial. The facts of the case are as follows.

On October 17, 2003, the defendant property owner engaged the plaintiff real estate firm to find a tenant for a commercial property owned by the defendant and located at 801 Shrewsbury Avenue, Shrewsbury. The property was constructed and built for the purposes of operating a retail tire and auto repair facility. The plaintiff and defendant owner entered a written agreement, and subsequent amendment whereby the defendant agreed to pay the plaintiff 5% of any rent paid for the property in the event that plaintiff found a suitable tenant for the property. Under the terms of the Commissions Agreement, the parties agreed that the plaintiff would continue to be paid the commission in the event that a tenant sourced by the plaintiff renewed or extended any lease agreement. On February 27, 2004, the defendant entered into a commercial lease of the property with a retail tire store, for an initial period of 10 years; however, the lease further provided that the tenant shall have the option to renew the lease for four successive 5-year terms, providing the total term of the lease would be for a period of 30 years.

On August 5, 2015, the tire store was purchased by another tire company whereby the former tire company became a wholly owned subsidiary of the new one. The new company assumed the terms of the lease and continued to make rent payments to the defendant in accordance with the lease. The defendant, in turn, continued to pay the plaintiff the 5% commission for the rent payments received. On October 17, 2016, the property manager for the defendant owner notified the plaintiff that the defendant owner wished to sell the property "free and clear" of any rental commission obligation due and owing to the plaintiff over the next 20 years. The plaintiff advised the defendant under what terms and conditions it would accept a "buy out" of its remaining commission.

The defendant did not respond and no party ever contacted the plaintiff again regarding the buyout demand. On November 14, 2016, the defendant owner and defendant development company entered into an Agreement of Sale whereby the defendant owner agreed to sell the property to the defendant development company for the sale price of $1,050,000. Prior to the execution of the Agreement of Sale, the defendant development company's managing member and the defendant property owner began discussing the Commission Agreement and how to get the plaintiff and their Commission Agreement out of the equation.

Ultimately, the defendant development company became a successor to the defendant property owner with respect to the Commissions Agreement, by way of their agreement to assume all liability for the Commission Agreement. According to the terms of the November 14 Agreement of Sale, the defendant development company agreed to assume all liability for all future commissions owed under the Commissions Agreement At the time that the defendant development company entered the Agreement of Sale to purchase the property from the defendant owner, the tire retailer was continuing to pay rent in accordance with the lease it had assumed in the merger.

On December 19, 2016, the defendant development company entered into a lease extension agreement with the tire retailer agreeing to lease the property subject to its terms and conditions including renewals extending for forty years from the date of signing, and also subject to the defendant development company acquiring the property pursuant to the Agreement of Sale with the defendant property owner.

On December 16, 2019, having secured the existing tenant to a long-term lease, the defendant development company entered an Agreement of Sale with a third party for the transfer of the property to the third party. The defendants agreed, without the knowledge of the plaintiff, that they would terminate the lease in an attempt to take the plaintiff out of the equation. Accordingly, at the February 6, 2017 closing, the property passed from the defendant owner to the third party with the defendant development company never taking possession and the plaintiff never being made aware of the third-party transfer.

On February 8, 2017, the plaintiff was advised that the defendant owner had sold the property to the development company. No mention of the transfer to the third party was made and no mention of the lease extension was made to the plaintiff. Rather, on February 15,

2017, the defendant development company provided the plaintiff with a Lease Termination Agreement dated February 3, 2017 by which the defendants purported to terminate the lease all with the intent and purpose of avoiding the lease commission obligations to the plaintiff.

The defendant principal of the development company notified the plaintiff that the lease had been "terminated" and that the defendant development company was "willing" to pay to the plaintiff the sum of $10,032 for the remaining commission that would have been due to the plaintiff under its original commission agreement, and the defendant development company delivered a check in the amount of $10,032 to the plaintiff, which was being held in escrow at the time of filing of the plaintiff's complaint. On February 27, 2017, the plaintiff sent a letter to the defendants rejecting the termination and unilateral settlement payment. On February 21, 2018, the defendant property owner dissolved its LLC pursuant to a Certificate of Dissolution and Termination filed with the State of New Jersey Department of Treasury. The defendant property owner, after the subject lawsuit was filed, formed a new LLC with a different state registration number than the original LLC that owned the property and entered into the agreement with the plaintiff.

Verdicts By Category

CONTRACT

$23,878 JUDGMENT

Breach of contract – Plaintiff maintains it had contract with defendants for removal of hurricane debris and defendant ceased payment and manipulated plaintiff to position defendant company as "prime" contractor with county – Issuance of bad check; breach of contract; breach of oral agreement; unjust enrichment and tortious interference – Court finds for plaintiff on unjust enrichment claim but for defendant on all other claims.

Miami-Dade County, NJ

The plaintiff subcontractor brought action against the defendant contractor and the defendant individual associated with the defendant contractor. The plaintiff performed debris removal services under an agreement between the parties for which he was not paid. The plaintiff brought suit for issuance of a bad check; breach of contract; breach of oral agreement; unjust enrichment; and tortious interference by the defendant individual. The defendant denied any breach of the agreement with the plaintiff and maintained that the plaintiff breached the implied provision of good faith and fair dealing by failing to timely pay truck drivers which endangered payments from the prime contractor and the County to the defendant.

The plaintiff was a transport trucking service and entered into a series of contracts with the defendant in October of 2017 to provide debris removal services after Hurricane Irma as a subcontractor. The plaintiff was already performing debris removal in Miami-Dade County for a prime contractor when the defendant individual approached the plaintiff's principal with an offer, purportedly on behalf of the defendant company, to do additional work as a subcontractor of the defendant. The plaintiff agreed and entered into the various contracts with the defendant. Unbeknownst to the plaintiff at the time, the defendant individual held no position with the defendant company at all. Indeed, he was not an officer, director, member, employee or independent contractor of the defendant. However, the defendant individual had a verbal agreement forming a partnership with the defendant company to share equally in the profits gained from removing debris in Miami-Dade County. The purpose of this arrangement, according to the plaintiff, was to insulate the defendant company from any liability towards subcontractors like the plaintiff.

Sometime in late 2017, the plaintiff became embroiled in a dispute with another company it had contracted with to assist in debris removal services. Miami-Dade County received word of this dispute and issued a mandate to the "prime contractor" and all subcontractors below the "prime" that no further monies were to be released to defendants or plaintiff until the plaintiff resolved its dispute with the third party and secured a release. Desperate to get paid and being pressured by the defendants, the plaintiff entered into a settlement agreement with the third party which contained the necessary release. At that time, the defendant individual, recognizing the plaintiff's desperation to be paid, attempted to leverage a release for the defendant from the third-party company and the plaintiff for any and all claims either had against the defendant.

The plaintiff was owed approximately $40,000 from the defendant so it was reluctant to execute any release in favor of the defendant. The plaintiff performed certain debris loading services for the defendant in reliance on the defendant's oral promise to pay for such services. The defendant has refused to pay for the debris loading services as well.

To induce the plaintiff to execute the settlement and release with the third party, the defendant promised to and did write a check to pay the amounts due to the third party and a separate check for $20,124 payable to the plaintiff as partial payment for money due. The plaintiff executed the settlement with the third party, paid the settlement proceeds, and delivered a copy of the release to the defendants thus enabling the defendants to be paid from the "prime." All the while, the defendant individual kept pressuring the plaintiff for a release of all claims it had against the defendant company. When the plaintiff refused to sign the release, the defendant put a stop payment on the check it issued to the plaintiff for $20,124.

The plaintiff maintained that the defendant had no legal or factual justification for placing a stop payment on the check. The plaintiff argued that the defendant intended to and did defraud the plaintiff into entering into a settlement agreement and release with so that the defendant would be paid from the "prime". The plaintiff asserted that the defendant has failed to and or refused to pay amounts due to the plaintiff over and above the bad check it issued for its debris removal services performed by the plaintiff pursuant to the written contracts with the defendant.

The defendant asserted that the plaintiff was guilty of fraud in misrepresenting that it had insurance in place as required by the agreement between the parties. Further, the defendant maintained that the plaintiff was estopped from bringing its claims due to its actions, including failing to pay drivers who performed services for the plaintiff.

After a non-jury trial, the court found in favor of the plaintiff and against the defendant on the plaintiff's count for unjust enrichment in the amount of $23,878, with interest accruing at the statutory rate. As to the counts for bad check, breach of contract, breach of oral agreement and tortious interference, it was adjudged that the plaintiff take nothing for those claims and judgment be entered in favor of the defendant.

REFERENCE

West Calypso Transport, Inc. vs. Aguilas Trucks, LLC, et al. Docket no. 2018-003540-CA-01; Judge Barbara Areces, 09-14-21.

Attorney for plaintiff: George W. Wickhorst, III of The Law Offices of George W. Wickhorst, P.A. in Miami, FL. Attorney for defendant: Irv J. Lamel of Lamel Law in Miami, FL.

CONTRACTOR'S NEGLIGENCE

$550,000 RECOVERY

Contractor's negligence – Hazardous premises – Defendant G.C. at residential construction site negligent for providing access to uninsured subcontractor/employer – Plaintiff falls 3 floors down open elevator shaft – Thoracic and lumbar fractures – Fusion surgery – Plaintiff claims he will be unable to return to physical work.

Monmouth County, NJ

In this negligence case, the plaintiff, in his 40s, contended that as he was working on a residential project, he fell some 3 stories down an open elevator shaft sustaining serious injuries. The plaintiff worked for a subcontractor who was uninsured and could not be located. The plaintiff named the general contractor. The defendant G.C. denied that it knew the subcontractor would be working that day.

The plaintiff maintained that he suffered several fractures at T11-12. The plaintiff contended that despite a fusion from T10-L2 he will suffer permanent pain and be unable to work in heavy labor. The plaintiff asserted that the G.C. was negligent for allowing an open elevator shaft on the premises, in violation of OSHA, and contended that it negligently provided the access code to the subcontractor despite the absence of insurance.

The defendant denied that the plaintiff's claims should be accepted. The defendant would have introduced a surveillance video taken approximately 6 months after the accident which showed the plaintiff performing landscaping work, quickly entering the bed of a pick-up truck and shoveling dirt from the pick-up truck.

The case settled prior to trial for $550,000. The defendant, who had hired an uninsured employer-subcontractor, was also liable for approximately $180,000 in worker's compensation benefits.

REFERENCE

Plaintiff's engineer expert: David Gardner from Robson Forensics, Lancaster, PA.

Valdivia-Salinas vs. Meccia Building & Remodeling Inc. Docket no. MON-L-4033-18, 11-04-21.

Attorney for plaintiff: Richard A. Reinartz of The Reinartz Law Firm, LLC in Hackensack, NJ.

DOG ATTACK

$50,000 RECOVERY

Dog attack – Minor plaintiff in own yard when 2 dogs enter and attack him – Dogs being cared for by second set of co-defendants on property adjacent to plaintiff's home – Puncture, bite and tearing of flesh from left thigh – Bruising and 4 cm permanent scar – Psychological trauma – Suturing, antibiotics, 3 months of wound care and counseling.

Salem County, NJ

In this dog attack case, the minor plaintiff asserted that the defendant dog owners and dog caretakers were negligent and allowed the plaintiff to sustain serious injuries by being bitten by 2 dogs in their control and care. The defendants denied liability or negligence and argued that they did not breach any duty of care with regard to control or ownership of the dogs.

gust 29, 2016, the plaintiff was lawfully on the premises of his parents' home on Richwood Road in Elmer. While the minor plaintiff was lawfully on his own property, two Australian Shepherds crossed the property lines onto the property of the plaintiff's home and viciously attacked and bit the minor plaintiff. The plaintiff asserted that he, in no way, provoked or contributed to the biting by the dogs.

The defendants were the husband and wife owners of the dogs and the parents of the defendant husband who were, at the time, caring for the dogs in their home adjacent to the plaintiff's home. The plaintiff contended that the defendants negligently owned, controlled and allowed the dogs to roam unleashed and untethered while on the property adjacent to the plaintiff's home, creating a foreseeable risk of harm to adjoining property owners, including the plaintiffs. The plaintiff maintained that the defendant dog owners were strictly liable and the defendant caretakers of the dogs were negligent and that they all were responsible for the attack on the minor plaintiff.

As a result of the attack, the minor plaintiff sustained a puncture bite and tearing of a chunk of flesh from his left medial thigh. The laceration required suturing, performed at the emergency department of the hospital, and caused bruising to the left medial thigh. The wound was monitored by the plaintiff's pediatric practice for 3 months, where he was treated with antibiotics and noted to have increased anxiety due to the dog attack. He was referred for psychological counseling. The plaintiff was last seen for stitch removal in November 2016 where he was deemed to have a 4 cm, L-shaped, visible scar to the left medial thigh.

Prior to trial, the parties settled for $50,000 with $25,000 contributed by the defendant dog owners; and $25,000 from the defendant caretakers. The settlement funds were broken down as follows: $12,000 in attorney fees; $1,995 in costs and disbursements; $1,103 in reimbursement of medical expenses and $34,902 in net damages to the minor plaintiff.

REFERENCE

Valente vs. Redrow, et al. Docket no. L-000179-18; Judge Jean S. Chetney, 01-03-20.

Attorney for plaintiff: Daniel J. Hetznecker of Harp Cohn, P.C. in Cherry Hill, NJ. Attorneys for plaintiff dog caretakers/homeowners: G. Samuel Hoffman of Law Offices of Styliades and Jackson in Mount Laurel, NJ. Attorney for defendant dog owners: Kevin G. Dronson of Kent/McBride, P.C. in Cherry Hill, NJ.

INSURANCE OBLIGATION

$142,339 GROSS VERDICT

Insurance obligation – Plaintiff injured in collision with tortfeasor driver brings claim for underinsured motorist against defendant insurance carrier – Multiple cervical and lumbar disc herniations – $92,650 in lost wages – Defendant insurer denies causation of plaintiff's injuries.

Atlantic County, NJ

In this insurance obligation case, the plaintiff, a casino worker, asserted that the defendant insurer was liable for damages from a motor vehicle accident in which the plaintiff was struck by an underinsured motorist, causing significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On May 2, 2014, the plaintiff was a front seat passenger in a vehicle stopped at a traffic light at the intersection of Rt. 9 and East Delilah Road in Pleasantville. The underinsured tortfeasor driver negligently failed to stop behind the plaintiff. The tortfeasor struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc herniations at C3-4, C4-5 and C6-7; lumbar disc herniations at L2-3 and L3-4; a lumbar annular tear at L4-5 and left shoulder impingement. The plaintiff also claimed $92,560 in lost wages. The defendant contested the plaintiff's claim of permanent injuries and denied that the plaintiff was entitled to compensatory damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $90,000, inclusive of lost wages claim. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $142,339 broken down as follows: $125,000 in damages to the plaintiff; $15,000 to the plaintiff husband for his consortium claim, plus $2,089 in interest and $250 for fees. After the credit for $100,000 received from the tortfeasor in the underlying case, the plaintiff recovered net damages of $42,339.

REFERENCE

Pak vs. New Jersey Manufacturers Insurance Group. Docket no. L-001797-18; Judge James P. Savio, 02-21-20.

Attorney for plaintiff: Thomas J. Vesper of Westmoreland Vesper Quattrone & Beers, P.A. in West Atlantic City, NJ. Attorney for defendant: Robert M. Kaplan of Margolis Edelstein in Mount Laurel, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Underinsured motorist claim – Plaintiff injured in collision – 2-level lumbar disc bulges confirmed on MRI – Trigger point injections.

Camden County, NJ

In this insurance obligation case, the plaintiff asserted that the defendant auto insurance carrier was liable for damages the plaintiff sustained as a result of a collision with an underinsured driver. The defendant stipulated liability but contested the plaintiff's damages.

On June 16, 2014, the plaintiff was involved in a rear end collision with an underinsured driver. The plaintiff's vehicle sustained significant damage indicative of the severity of the collision. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained lumbar disc bulges at 2 levels confirmed on MRI. The plaintiff treated with three trigger-point injections and was out of work for 10 weeks.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the tortfeasor/defendant with damages of $45,000. 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

Walls vs. Allstate New Jersey Property And Casualty Ins. Co. Docket no. L-000008-18; Judge Anthony M. Pugliese, 02-21-20.

Attorney for plaintiff: Alexander J. Wazeter of Helmer, Conley & Kasselman, P.A. in Moorestown, NJ. Attorneys for defendant: Mary C. Brennan and Andrew Reiners of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$25,000 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Disc bulge effacing anterior epidural space at L5-S1; broad based disc bulges effacing anterior thecal sac at C5-6 and L4-5 – Chiropractic treatment.

Union County, NJ

In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver struck him on his bicycle while he was in a crosswalk causing him to sustain injury. The defendant initially denied liability, arguing that the plaintiff was contributorily negligent in causation of the collision.

On February 21, 2018, the minor plaintiff was a lawful bicyclist traveling in an easterly direction in the crosswalk of St. Georges Avenue at the intersection with Highland Parkway in Roselle. The defendant was driving south on Highland Parkway. The plaintiff contended that the defendant negligently failed to stop for a stop sign controlling the intersection. The plaintiff put forth that the defendant driver failed to make proper observations and crossed into the crosswalk, striking the minor plaintiff on his bicycle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained lumbar disc bulge effacing the anterior epidural space at L5-S1; broad based disc bulges effacing the anterior thecal sac at C5-6 and L4-5; and lumbar strain and sprain. The plaintiff's injuries were confirmed on MRI and X-ray. The plaintiff underwent with chiropractic treatment. The defendant disputed the permanency of the plaintiff's injuries.

The parties settled the matter prior to trial in the amount of $25,000 broken down as follows: $6,128 in attorney fees; $488 in costs and disbursements; $7,534 in medical expenses and $10,850 in net damages to the minor plaintiff.

REFERENCE

Williams vs. Sejas. Docket no. L-003632-18; Judge Mark P. Ciarrocca, 01-16-20.

Attorney for plaintiff: Michael Percario of Percario Nitti & Struben in Linden, NJ. Attorney for defendant: Steven I. Greenberg of Steven I. Greenberg Law Office of Debra Hart in Mount Laurel, NJ.

Auto/Bus Collision

$24,750 RECOVERY

Motor vehicle negligence – Auto/bus collision – Plaintiff passenger on public transit bus injured when bus and third-party vehicle collide – Cervical disc bulges at C4-5, C5-6 and C6-7 with radiculopathy.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff public bus passenger, an exterminator and tutor/mentor for youth with disabilities, asserted that the defendant drivers of the bus and a third-party vehicle negligently caused a collision wherein the plaintiff suffered significant, permanent injury. The defendants denied liability and contested the plaintiff's damages. Each driver claimed the other caused the collision.

On April 1, 2016, the plaintiff was a passenger on a public transit bus traveling North on Ridge Road at its intersection with Valley Brook Avenue in Lyndhurst. The bus was owned by the defendant transit company and operated by the defendant driver. A third-party vehicle, owned by the defendant rental company and driven by the defendant third-party driver, was also traveling at the same intersection. As the defendant bus pulled away from the curbside after a passenger stop, the bus and the third-party vehicle collided. The plaintiff alleged that the force of the impact resulted in permanent injuries to his cervical spine.

As a result of the collision, the plaintiff sustained cervical disc bulges at C4-5, C5-6, and C6-7 with radiculopathy. The plaintiff's injuries were confirmed on MRI and EMG. The plaintiff claimed medical bills of $17,866. The defendants' IME disputed the plaintiff's injuries.

The defendant bus driver asserted that the co-defendant third-party driver attempted to make a right turn around the bus onto Valley Brook Avenue, colliding with the front, driver's side bumper of the bus. The defendant third-party driver asserted that the bus pulled into traffic without warning, cutting him off and causing the collision. The defendants argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant bus driver and 30% to the defendant driver of the vehicle that struck the plaintiff's vehicle. Arbitration set damages at $12,000 plus any liens and unpaid medical expenses, apportioned per the percentage of liability.

Following arbitration and prior to trial, the parties settled for $24,750 with $10,000 contributed by the defendant transit company and $14,750 from the third-party driver's insurance.

REFERENCE

White vs. Hertz Vehicle, LLC, et al. Docket no. L-000569-18; Judge Robert Polifroni, 01-24-20.

Attorney for plaintiff: Thomas A. McCarter of Law Office of Thomas A. McCarter in Hackensack, NJ. Attorney for defendant third party driver: Susan E. Huffman of Law Offices of Patricia A. Palma in Berkeley Heights, NJ. Attorney for defendant transit company and bus driver: Jamera Sirmans of Deputy Attorney General of New Jersey in Newark, NJ.

Auto/Pedestrian Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Auto/pedestrian Collision – Defendant, plaintiff's wife, drives over plaintiff's foot as plaintiff is slightly in roadway and defendant pulls from curb in front of plaintiff's home – Crush injuries to foot – Removal of metatarsal sesamoid bone

Monmouth County, NJ

In this action for motor vehicle negligence, the plaintiff, in his mid 30s, contended that the defendant, his wife, negligently failed to make observations as she pulled out from in front of the plaintiff's home, causing him server injuries by running over his foot. The incident occurred as the parties were in the course of a divorce. The defendant did not dispute that the incident occurred in the manner advanced by the plaintiff and the defendant had sent a text message to the plaintiff in which she admitted running over his foot.

The plaintiff maintained that he suffered crush injuries to his left foot. The plaintiff's injuries included a fracture of the metatarsal sesamoid, which bears weight on the ball of the foot. This bone was surgically removed. The plaintiff also underwent surgery to address tears. The defendant's orthopedist contended that the plaintiff should continue to improve.

The plaintiff made no income claims.

The defendant had a combined single limit policy of $100,000. The case settled for the policy limits.

REFERENCE

Plaintiff's podiatrist expert: Brendan Kane, D.P.M. from Red Bank, NJ. Defendant's orthopedic surgeon expert: Toby Husserl, M.D. from Toms River, NJ.

Waltsak vs. Waltsak. Docket no. MON-L-1776-20, 07-14-21.

Intersection Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Disc bulges at L2-3, L3-4, L4-5; degenerative disc disease at C4-5, C5-6 and C6-7 – Chiropractic treatment.

Cumberland County, NJ

This motor vehicle negligence case arose from a collision which occurred On November 16, 2016 when the plaintiff was proceeding on West Delilah Road at the intersection of North New Road in Pleasantville. The plaintiff contended that the defendant negligently failed to observe the plaintiff's vehicle and struck him in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained disc bulges at L2-3, L3-4, L4-5; degenerative disc disease at C4-5, C5-6, and C6-7. The plaintiff's injuries were confirmed on MRI, EMCT and x-ray. The plaintiff's treating physician certified that the plaintiff's injuries were permanent. The plaintiff treated with chiropractic care. The defendant argued that the plaintiff's injuries were pre-existing or not permanent.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $10,000. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of $30,000. The offer was not accepted and the matter proceeded to trial.

The jury unanimously found that the plaintiff had failed to prove through credible medical evidence that he sustained a permanent injury proximately caused by the subject collision. The jury returned a verdict in favor of the defendant.

REFERENCE

Wallace, III vs. Phan. Docket no. L-000094-18; Judge James R. Swift, 02-20-20.

Attorney for plaintiff: G. Harrison Walters of Robert I. Segal, P.A. in Medford, NJ. Attorney for defendant: Anthony Young of Parker Young & Antinoff, P.A. in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Broadside collision – Cervical disc displacement at C6-7; cervical radiculopathy; post-traumatic cervical facet joint pain syndrome and post-traumatic lumbar strain and sprain with L4-5 disc herniation and left L5 lumbar radiculopathy – Plaintiff recovers $2,500 per high/low agreement.

Camden County, NJ

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

On March 10, 2016, the plaintiff was traveling on Somerdale Road at the intersection with Eaton Place in Somerdale. The plaintiff claimed that the defendant suddenly, negligently, and without warning failed to stop at a stop sign controlling his entry into the intersection and failed to yield the right-of-way to the plaintiff. The plaintiff asserted that the defendant struck the driver's side of the plaintiff's vehicle and that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical strain and sprain with post-traumatic cervical disc displacement at C6-7; cervical radiculopathy; post-traumatic cervical facet joint pain syndrome and post-traumatic lumbar strain and sprain with L4-5 disc herniation and left L5 lumbar radiculopathy. The defendant disputed the nature, extent and severity of the plaintiff's injuries and damages. The defendant contended that the plaintiff only sustained strain and sprain injuries which have resolved and the plaintiff's alleged injuries were pre-existing and not causally related to the motor vehicle accident in question.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $37,500. The arbitration was not confirmed and the matter proceeded.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $35,000 in the event of the jury awarding damages above that amount, and a minimum of $2,500

in the event of a defendant's verdict or an award below that amount. The jury found in favor of the defendant thus the plaintiff recovered $2,500 in damages.

REFERENCE

Turchi, Jr. vs. Heim. Docket no. L-000573-18; Judge Donald J. Stein, 11-20-19.

Attorney for plaintiff: Salvatore LaRussa, Jr. of Law Offices of Stephen W. Bruccoleri in Voorhees, NJ. Attorney for defendant: Brittany McCloskey of Law Offices of Michael G. David in Marlton, NJ.

Lane Change Collision

$17,500 RECOVERY

Motor vehicle negligence – Lane change collision – Sideswipe collision – Shoulder, lumbar and cervical spine injuries with impingement syndrome and tendinopathy of shoulder; cervical disc bulges and lumbar strain – Treated conservatively with activity limitations and physical therapy.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver caused a spin-out accident when she made an illegal and abrupt lane change into the plaintiff's lane of travel. The plaintiff claimed permanent injuries as a result. The defendant stipulated liability but contested the plaintiff's damages.

On April 13, 2015, the plaintiff was operating a motor vehicle traveling southbound on Route 130 in Bordentown. The defendant was also traveling southbound on Route 130. The plaintiff asserted that the defendant made a sudden lane change into the plaintiff's lane causing the plaintiff's vehicle to spin out of control.

As a result of the incident, the plaintiff sustained traumatic injury to the shoulder, lumbar, and cervical spine with impingement syndrome and tendinopathy of the shoulder, cervical disc bulges and lumbar strain. The plaintiff treated conservatively with activity limitations and physical therapy. The plaintiff claimed a workers compensation lien of $8,153.

The defendant argued that the plaintiff's injuries were minor in nature and not permanent and that the plaintiff failed to meet the threshold to qualify for damages. The defendant also pointed to the fact that the police report indicated no injuries at the scene, the plaintiff was unable to obtain a certification of permanency from her treating physician and she had been released from any work limitations and deemed to have recovered per medical records. Further, the defendant pointed to the plaintiff's subsequent work-related injury with similar symptoms/injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $17,500. Following arbitration and prior to trial, the parties settled for $17,500.

REFERENCE

Vasquez vs. Dombrowski. Docket no. L-000467-17; Judge Robert T. Lougy, 01-18-20.

Attorney for plaintiff: Victor S. Broccoli of Epstein Ostrove, LLC in Edison. Attorney for defendant: Sheri M. Nelson of Amy F. Loperfido and Associates in Philadelphia, PA.

Left Turn Collision

$33,000 RECOVERY

Motor vehicle negligence – Left turn collision – Plaintiff contends defendant failed to stop at stop sign and entered intersection attempting left turn causing collision – Disc herniations at C3-4, C5-6, C6-7, L5-S1 and L4-5; disc bulges with positive EMG – Epidural injection.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 44-year-old man, asserted that the defendant driver struck his vehicle in an intersection with such force that it caused significant, permanent injury. The plaintiff collected the $15,000 PIP policy limit and continued suit as to the defendant driver. The defendant denied liability, asserting that he came to a full stop at the stop sign, looked both ways and was making a left turn when he noticed the plaintiff driver traveling at a high rate of speed.

On June 7, 2016, the plaintiff was traveling north on Valley Road at the intersection with Nelson Street in Clifton. The defendant was traveling west on Nelson Road. The plaintiff contended that the defendant negligently failed to stop at a stop sign controlling his entry into the intersection and attempted to make a left turn without the right-of-way, causing the plaintiff's vehicle to collide with the defendant's vehicle in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant maintained that the plaintiff slammed on his brakes

to avoid contact but was unsuccessful. The defendant argued that the plaintiff was solely at fault for the collision.

As a result of the collision, the plaintiff sustained disc herniations at C3-4, C5-6, C6-7, L5-S1, and L4-5; disc bulges at L2-3 and L3-4 with positive EMG. The plaintiff treated with one epidural injection.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of $75,000 reduced to $60,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for $18,000. Together with the $15,000 PIP coverage, the plaintiff recovered $33,000.

REFERENCE

Ventura vs. Waddell, et al. Docket no. L-003855-18; Judge Estela M. De La Cruz, 02-11-20.

Attorney for plaintiff: David T. Ercolani of Fusco & Macaluso Partners, LLC in Passaic, NJ. Attorney for defendant: John C. Ciabattari of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Multiple Vehicle Collision

$42,000 RECOVERY

Motor vehicle negligence – Chain-reaction rear end collision – Torn shoulder ligament and multiple cervical and lumbar disc herniations – Arbitration finds first defendant in chain of collisions 100% liable.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant drivers caused a chain reaction of rear-end collisions resulting in the plaintiff's vehicle being struck from behind with such force that it caused significant, permanent injury. The second defendant and the driver of the plaintiff's vehicle claimed that the first defendant was at fault for setting off the chain reaction of collisions. The other drivers argued that, had the first defendant not struck the second defendant, the plaintiff's vehicle would not have been struck and the plaintiff would not have been injured.

On August 16, 2015, the plaintiff was a passenger in a vehicle traveling north in the deceleration lane approaching the ramp to the New Jersey Turnpike near milepost 99.3 in Elizabeth. The second defendant was traveling directly behind the plaintiff's vehicle. The first defendant was traveling behind the second defendant. The plaintiff asserted that the defendants were negligent in colliding with each other setting off a chain reaction wherein the first defendant struck the rear of the second defendant, who struck the rear of the plaintiff's vehicle, pushing it into the rear of the vehicle in front of her. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained traumatic injury to the right shoulder, neck and back. The plaintiff claimed a tear in the shoulder ligament and multiple disc herniations and bulges in the cervical and lumbar spine. The first defendant presented an IME who disputed causation and permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the first defendant with damages of $75,000.

Following arbitration and prior to trial, the plaintiff settled with the primary defendant for $42,000.

REFERENCE

Ward vs. Bekauri, et al. Docket no. L-002797-17; Judge Mark P. Ciarrocca, 11-12-19.

Attorney for plaintiff: Craig A. Borgen of Miller & Borgen in Spotswood, NJ. Attorney for defendant: Amanda M. Rochow of Tango, Dickinson, Lorenzo, McDermott & McGee, LLP in Millburn, NJ.

Rear End Collision

$45,893 VERDICT

Motor vehicle negligence – Rear end collision – Cervical and lumbar disc herniations – Epidural injections.

Middlesex 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, claiming that the plaintiff cut over into the defendant's lane without warning and created an emergency situation where the defendant could not possibly stop in time.

On March 12, 2016, the plaintiff was stopped for traffic on the New Jersey Turnpike southbound in Moorestown when the defendant failed to stop behind the plaintiff, striking the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and lumbar spine with bulging discs. The plaintiff treated with 5 epidural injections. The defendant contested the plaintiff's damages, asserting that the plaintiff had prior and subsequent injuries and no permanent injuries from the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $37,500. The plaintiff settled with the defendant driver in the amount of $30,000 prior to trial.

The jury rendered a verdict in favor of the plaintiff in the amount of $45,000 reduced to $15,000 after a $30,000 credit representing a settlement with the defendant prior to commencement of the subject trial plus interest of $893 for a total recovery of $15,893.

REFERENCE

Wilson vs. Ahmad, et al. Docket no. L-006016-17; Judge Bruce J. Kaplan, 11-06-19.

Attorney for plaintiff: Michael B. Fusco of Levinson Axelrod, PA in Edison, NJ. Attorneys for defendant Liberty Mutual Insurance Company: Debra Wilson and Colin Gibson of Viscomi and Lyons in Morristown, NJ. Attorney for defendant: John Raymond of Law Offices of Pamela D. Hargrove in Cranford, NJ.

PREMISES LIABILITY

Fall Down

$500,000 RECOVERY

Premises liability – Fall down – Plaintiff resident in condo slips and falls on ice on walkway – Trimalleolar fracture – Meniscal tears – ORIF– Prior leg and knee injuries.

Monmouth County, NJ

In this premises liability case the plaintiff condo resident, in her early 60s, contended that she fell after it had snowed 2 days earlier in an amount which was sufficient to trigger a visit from the snow removal contractor, the contractor asked the condo association if they should attend to the walkways in addition to the roadway. The plaintiff contended that the defendant association declined and also declined a suggestion for the snow removal contractor conduct an ice watch on the morning of the fall. The plaintiff asserted that she suffered a trimalleolar fracture that required an ORIF and a tear of the medial meniscus that was treated conservatively. The defendant contended that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff maintained that she will suffer permanent pain and limitations and that the impact of the injury was heightened by a history of a meniscal tear that was treated conservatively and the relatively minor injuries that occurred number of prior falls which also had been treated conservatively. The defendant maintained that the plaintiff made a good recovery and that any continuing difficulties were largely preexisting.

The plaintiff was not working at the time of the accident.

The case settled prior to trial for $500,000, including $490,000 from the condo association and $10,000 from the contractors which were also named as defendants.

REFERENCE

Smith vs. Wellington Place Association, Inc., et al. Docket no. MON-L-4100-19, 06-17-21.

Attorney for plaintiff: Andrew L. Chambarry of Gill & Chamas in Woodbridge, NJ.

$70,000 RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on black ice at defendant's property – Bimalleolar fracture of right ankle – Non-binding arbitration assigns 70% liability to defendant and 30% to plaintiff.

Middlesex County, NJ

In this premises liability case, the plaintiff asserted that the defendant property complex allowed ice to exist on its premises, creating a hazard for the public and causing the plaintiff to fall and suffer significant, permanent injury. The defendant denied negligence arguing that snow was adequately and appropriately removed from the premises and that the plaintiff either did not fall on residual snow/ice or, alternatively, there was a small amount of melt and re-freeze of which the defendant had no notice

On March 17, 2017, the plaintiff was on the defendant's premises located at 31 Wedgewood Drive in Carteret. The plaintiff slipped and fell on black ice on the grounds of the premises. The plaintiff contended that the defendant property and the defendant management company negligently operated and maintained the premises so as to cause a dangerous condition to exist thereon. The defendant struck the plaintiff's vehicle XX.

The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result, the plaintiff sustained bimalleolar fracture of the right ankle. The defendant also asserted that the plaintiff was comparatively negligent in not taking care while walking in the area under the given conditions.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant property and 30% to the plaintiff with gross damages of $100,000 reduced to $70,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $70,000.

REFERENCE

Tyndall, Jr. vs. Carteret Garden Associates, et al. Docket no. L-003801-18; Judge Alberto Rivas, 02-12-20.

Attorney for plaintiff: Jeffrey T. Kampf of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, PC in Newark, NJ. Attorney for defendant: Patrick C. Lamb of Post & Schell, P.C. in Philadelphia, PA.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls due to hazardous condition in auto parts store – Disc herniations at L4-5 and L5-S1; fracture of vertebrae – Surgery to mitigate injuries – Arbitration finds defendant 66% liable and plaintiff 33% liable with gross damages of $300,000.

Burlington County, NJ

In this premises liability case, the plaintiff asserted that the defendant failed to properly remove or warn patrons of the defendant auto parts store of a dangerous condition in an area where patrons would customarily walk. The plaintiff claimed that the hazardous condition caused her to fall and sustain significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant argued that it breached no duty of care owed to the plaintiff and that there was no breach that was the proximate cause of the plaintiff's accident and damages.

On September 29, 2016, the plaintiff was lawfully on the defendant's premises in Voorhees. The defendant owned, occupied, operated and maintained the premises as an auto parts shop. The plaintiff asserted that the defendant allowed certain dangerous and hazardous conditions to exist on the premises where the defendant knew or should have known that customers would walk. The plaintiff alleged that the impact of her fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained disc herniations at L4-5 and L5-S1 and a fracture of vertebrae. The plaintiff underwent surgery for the disc herniations. The defendant asserted that any injuries or damages were caused by the plaintiff's own actions or inactions. The defendant disputed the plaintiff's diagnosis as to vertebral fracture.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 66.66% liability to the defendant and 33.33% damages to the plaintiff. The arbitrator set gross damages at $300,000 with net damages of $200,000 after reduction for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Willie vs. Micciche Auto Parts, et al. Docket no. L-001505-18; Judge Aimee R. Belgard, 11-19-19.

Attorney for plaintiff: Robert LaRosa of Larosa Law, PC in Moorestown, NJ. Attorney for defendant: John R. Hewlett, Jr. of Capehart & Scatchard, PA in Mount Laurel, NJ.

Hazardous Premises

$14,265 RECOVERY

Premises liability – Hazardous premises – Minor plaintiff burned when defendant convenience store's employee spills hot coffee on plaintiff's face – Severe and permanent burn injuries, pain and suffering, disability and impairment – Loss of enjoyment of life.

Cumberland County, NJ

In this premises liability case, the plaintiff asserted that the defendant convenience store's employee caused injury to the minor plaintiff that was significant and permanent. The defendant denied liability and asserted that the plaintiff and his father were negligent in causation of the plaintiff's injuries.

On February 21, 2019, the minor plaintiff was a business invitee at the defendant convenience store with his father. The plaintiff's father placed a hot cup of coffee on the store counter while paying for the coffee. An employee of the defendant knocked over the cup, causing the hot coffee to run off the counter and spill on the face of the minor plaintiff. As a result

of the hot coffee spill, the plaintiff sustained severe and permanent burn injuries, pain and suffering, disability, impairment, and loss of enjoyment of life.

The plaintiff contended that the defendant's employee was negligent in spilling the coffee on the minor plaintiff. The plaintiff alleged that the incident resulted in permanent injuries. The defendant argued that the plaintiff's action was barred or recovery should be reduced pursuant to the Comparative Negligence Act. The defendant also maintained that the accident resulted from risks of which the plaintiff and his father had full knowledge and had assumed.

The parties settled the matter prior to trial in the amount of $14,265 broken down as follows: $4,786 in attorney fees; $354 in costs and disbursements; $94 in medical expenses and $9,031 in net damages to the minor plaintiff.

REFERENCE

Tedesco vs. Wawa, Inc. Docket no. L-000786-19; Judge James R. Swift, 02-20-20.

Attorney for plaintiff: Adam M. Epstein of Mazie Slater Katz & Freeman, LLC in Roseland, NJ. Attorney for defendant: William J. Kohler of Hurvitz & Waldman, LLC in Pleasantville, NJ.

TRANSIT AUTHORITY LIABILITY

$191,250 RECOVERY

Transit Authority liability – Tort Claims Act – Palpably unreasonable failure to correct approximately 1 ½ inch differential between sidewalk slabs at defendant's train station – Fall down – Patella fracture – 2 surgeries.

Monmouth County, NJ

In this case, the plaintiff, age 58 at the time and currently age 62, contended that as she was walking in the station and about to board a train, she tripped and fell, sustaining injury, on an approximate 1 ½ inch elevation between the slabs. The plaintiff maintained that the tripping hazard was extensive and the failure of the defendant to effectively repair the area was palpably unreasonable. The defendant denied that it acted in a palpably unreasonable manner.

The plaintiff further established that the defendant had previously attempted effectuate repairs but did so in an improper manner, resulting in the hazard returning. As a result, the plaintiff suffered a left comminuted intra-articular patella fracture that required an ORIF as well as a second surgery to remove hardware.

The plaintiff further maintained that she is at risk for requiring a total knee replacement in the future. The defendant denied that the plaintiff pierced the Tort Claims Act threshold.

The case settled prior to any motions for $191,250.

REFERENCE

Plaintiff's architect expert: Bruce Corke, AIA from Cedar Knolls, NJ. Plaintiff's orthopedic surgeon expert: Steven Friedel, M.D. from Red Bank, NJ.

Tartaro vs. NJ Transit. Docket no. MON-L-2159-20, 01-22.

Attorney for plaintiff: Craig S. Laughlin of Gale & Laughlin, LLP in Hazlet, NJ.

WAGE THEFT

$187,000+ RECOVERY

Wage theft – Class Action – Labor law – Plaintiff brings suit on behalf of class of employees who were not paid per labor laws for overtime work performed on behalf of defendant pool company – Plaintiff claims laborers routinely worked well in excess of 40 hours/week but were not paid for overtime as required by law.

Middlesex County, NJ

In this class action employment case, the plaintiff asserted that the defendant employer violated state wage laws in failing to pay overtime to employees such as the plaintiff and other Class Members. The defendant generally denied the plaintiffs' claims prior to reaching a settlement.

The plaintiff was employed by the defendant as a laborer performing and assisting with various labor-intensive pool services or tasks. The defendant was in the business of installing swimming pool liners, performing swimming pool renovations and other swimming pool related services. The defendant employed the plaintiff and other similarly situated employees as defined by the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to 56a38. The Class was defined as: All individuals that performed manual labor for [the defendant] from March 2016 through to the present within and throughout the State of New Jersey. The plaintiff contended that the defendant assigned the plaintiff and members of the Class to perform overtime non-exempt tasks.

The plaintiff asserted that he and the Class Members routinely worked far in excess of forty hours per week for the defendant, sometimes as many as 75 hours per week, and were not paid the appropriate or lawful overtime rate under the NJWHL when they worked over 40 hours per week. The plaintiff maintained that the defendant's ongoing illegal policy of failing to pay for time worked resulted in the plaintiff and the Class Members being denied substantial legally required compensation and/or overtime payments given that the plaintiff and the Class Members routinely worked in excess of 40 hours per week.

The court approved the terms of the Class Action Settlement Agreement in the amount of $7,000 in damages to each member of the Class and court-approved payment of $180,000 in attorneys fees to Class Counsel.

REFERENCE

Sigcha, et al. vs. Mid State Pool Liners, Inc. Docket no. L-001693-18; Judge Thomas Daniel McCloskey, 08-07-20.

Attorney for plaintiff: Ravi Sattiraju of The Sattiraju Law Firm, P.C. in Princeton, NJ. Attorney for defendant: Tracy A. Armstrong of Wilentz Attorneys at Law in Woodbridge, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$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 RITUXAN INFUSION AT DEFENDANT CANCER CENTER 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 – – 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.

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 de-

fendant'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 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.