



NEW JERSEY

JURY VERDICT

REVIEW & ANALYSIS®

www.JVRA.com

FEATURED CASES

Volume 44, Issue 3
August 2023

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.

- \$4,100,000 RECOVERY** – Motor vehicle negligence – Intersection collision – Defendant disregards stop sign and strikes plaintiff’s vehicle broadside – L4-L5 post-traumatic disc herniation – Internal and external cervical scarring – Intractable cervicgia with radiculopathy – Cervical compression and radiculopathy – Surgery required . . . 2
- \$1,600,000 VERDICT** – Motor vehicle negligence – Head-on collision – Plaintiff’s vehicle struck head-on by defendant’s vehicle when defendant crosses center line – Complete rotator cuff tear which required shoulder arthroscopy – Several herniated discs in cervical spine – Neck pain – Back pain – Shoulder pain – Abrasions to face 3
- \$1,575,000 RECOVERY** – Premises liability – Fall down – Plaintiff injured after slipping and falling on icy outdoor stairway at town home residence – Trimalleolar fracture with dislocation of left ankle – Surgery required. . . . 4
- \$1,000,000 RECOVERY** – Country club negligence – Plaintiff sustains severe injuries after being struck by golf cart at defendant country club – Crush injury of bilateral legs – Crush injuries to left knee and ankle – Lumbar spinal compression – Post-concussion syndrome – Surgery required 4
- \$500,000 VERDICT** – School liability – Violation of NJLAD – Plaintiff student harassed by fellow student beginning in 6th grade and continuing into high school, resulting in assault and battery in school’s locker room – Fractured right orbital – Surgically installed plate underneath eye and plastic surgery – 5-day hospitalization – PTSD . 5
- \$34,375 VERDICT** – Medical malpractice – Obstetrics – Plaintiff contends defendant ob/gyn negligently caused decapitation of plaintiff’s baby during delivery of non-viable fetus and defendant failed to give informed consent as to anesthesia which would have prevented decapitation – Post-traumatic stress disorder and extreme emotional distress . . 7

VERDICTS BY CATEGORY

Medical Malpractice	Parking Lot Collision 14
Dermatology 10	Rear End Collision 15
Hospital 10	Sideswipe Collision 17
Civil Assault 11	Single Vehicle Collision 18
Contract 12	Personal Negligence 18
Insurance Obligation 12	Premises Liability
Motor Vehicle Negligence	Fall Down 19
Auto/Truck Collision 13	Hazardous Premises 20
Intersection Collision 14	Transit Authority Liability 20
	Supplemental Verdict Digest 21

FEATURED CASES

\$4,100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – PLAINTIFF’S VEHICLE STRUCK BROADSIDE BY DEFENDANT’S VEHICLE AFTER DEFENDANT DISREGARDS STOP SIGN – L4-L5 POST-TRAUMATIC DISC HERNIATION – INTERNAL AND EXTERNAL CERVICAL SCARRING – INTRACTABLE CERVICALGIA WITH RADICULOPATHY – CERVICAL COMPRESSION AND RADICULOPATHY – SURGERY REQUIRED.

Middlesex County, NJ

In this motor vehicle negligence action, the plaintiffs’ vehicle was struck broadside by the defendant’s vehicle after the defendant driver disregarded a stop sign. As a result, both plaintiffs sustained injuries. The defendant generally denied all allegations of negligence.

On December 18, 2019, the plaintiffs were traveling in their vehicle in a southbound direction on South Main Street in Cranbury, New Jersey. At this time, the plaintiff’s vehicle approached an intersection on South Main Street, which required a 4-way stop. The plaintiffs’ vehicle stopped to ensure clearance, and then proceeded into the intersection. At the time of the incident, the defendant’s vehicle was approaching the same intersection from a westbound direction. As the plaintiff’s vehicle attempted to proceed forward, the defendant driver disregarded the stop sign and entered the intersection, resulting in a broadside collision with the plaintiffs’ vehicle.

The plaintiffs maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey traffic signs and signals, failing to remain adequately attentive, failing to observe the plaintiffs’ vehicle, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiffs’ vehicle. Consequently, the plaintiffs both sustained injuries. The plaintiff driver sustained post-traumatic disc herniation at L4-L5, as well as internal and external cervical scarring, and intractable cervicalgia with

radiculopathy. The plaintiff passenger sustained cervical compression and radiculopathy. Both plaintiffs were required to undergo surgery to repair their injuries.

The parties entered into a settlement for \$4,100,000.

REFERENCE

Hoppe-Bermeo Orlando vs. Depena Wamndell.
Docket no. L000600-21; Judge Ana C. Viscomi, 04-22-23.

Attorney for plaintiff: Daniel N. Epstein of Epstein Ostrove, LLC in Edison, NJ. Attorney for defendant: Michael Lynch of Law Offices of Linda S. Baumann in Morristown, NJ.

COMMENTARY

Following the accident in this case, both plaintiffs were required to remain in the hospital for several weeks in order to undergo surgical procedures to repair their injuries. The plaintiff driver was required to undergo spinal fusion surgery at the C5-C6 level. The plaintiff passenger was required to undergo a lumbar epidural steroid injection, as well as a lumbar epidurogram for pain management. The plaintiff will also need a cervical radical discectomy surgery at C5-C6 in the near future.

Both plaintiffs were severely injured and continue to receive medical care as a result of the accident, and will need to continue treatment indefinitely. Additionally, both plaintiffs have needed psychological and neuropsychological care following the accident, as both have developed severe depression and anxiety since the crash. The settlement amount in this case was likely determined by the severity of the plaintiffs’ injuries, as well as their prolonged need for medical and emotional care.

**Founder**

Ira J. Zarin, Esq.

President

Jed M. Zarin

Contributing Editors

Brian M. Kessler, Esq.

Michael Bagen

Laine Harmon, Esq.

Cristina N. Hyde, J.D.

Deborah McNally, Paralegal

Ruth B. Neely, Paralegal

Cathy Schlechter-Harvey, Esq.

Julie L. Singer, Esq.

Tammy A. Smith, Esq.

Kate Turnbow, Paralegal

Susan Winkler

Business Development

Gary Zarin

Production Coordinator

Cathryn A. Peyton

Professional Search

Timothy P. Mathieson

Court Data Coordinator

Jeffrey S. Zarin

Customer Services

Meredith Whelan

Circulation Manager

Ellen Loren

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

Main Office:

973/376-9002 Fax 973/376-1775

Circulation & Billing Department:

973/535-6263

New Jersey Jury Verdict Review & Analysis is a trademark of Jury Verdict Review Publications, Inc.

Reproduction in any form without the express written permission of the publisher is strictly prohibited by law.

New Jersey Jury Verdict Review & Analysis (ISSN 8750-8060) is published monthly at the subscription rate of \$395/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081.

Periodical postage paid at Springfield, NJ and at additional mailing offices.

Postmaster: Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

\$1,600,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – PLAINTIFF’S VEHICLE STRUCK HEAD-ON BY DEFENDANT’S VEHICLE WHEN DEFENDANT CROSSES CENTER LINE – COMPLETE ROTATOR CUFF TEAR WHICH REQUIRED SHOULDER ARTHROSCOPY – SEVERAL HERNIATED DISCS IN CERVICAL SPINE – NECK PAIN – BACK PAIN – SHOULDER PAIN – ABRASIONS TO FACE.

Ocean County, NJ

In this motor vehicle negligence action, the plaintiff’s vehicle was struck head-on by the defendant’s vehicle after the defendant crossed the center line. As a result, the plaintiff sustained serious injuries including a complete rotator cuff tear which required shoulder arthroscopy, and several herniated discs in the cervical spine. The defendant generally denied all allegations of negligence.

On January 28, 2018, the plaintiff’s vehicle was traveling southbound on Route 9 in Berkeley Township, New Jersey. At this time, the defendant was also traveling on Route 9, in a similar location to the plaintiff, but in a northbound direction. At the time of the incident, the defendant’s vehicle suddenly and without warning drifted over the center line and entered the southbound travel lane. The defendant’s vehicle then struck the plaintiff’s vehicle head-on.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to remain adequately attentive, failing to keep the vehicle under proper and adequate control, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle head-on. Consequently, the plaintiff sustained injuries, including neck pain, back pain, shoulder pain, and minor abrasions to the face.

The jury found in favor of the plaintiff and awarded \$1,600,000.

REFERENCE

Hacker Keith vs. Jaime-Valdez Carlos. Docket no. L003112-19; Judge Walter H. Must, 08-02-23.

Attorney for plaintiff: John Borbi of Borbi, Clancy & Patrizi, LLC in Marlton, NJ. Attorney for defendant: Thomas Giardina of Goldberg, Miller and Rubin in Cherry Hill, NJ.

COMMENTARY

Following the accident in this case, the plaintiff refused medical care for nearly 5 months, until his back, neck, and shoulder pain became nearly unbearable. The plaintiff then visited a physician and was diagnosed with a complete rotator cuff tear. The plaintiff was then required to undergo a shoulder arthroscopy surgical procedure, and will likely need further surgical intervention to repair the tear. MRI testing also confirmed several herniated discs in the plaintiff’s cervical spine. The verdict amount in this case was likely determined by the severity of the plaintiff’s injuries, as well as his potential need for future surgical procedures.

\$1,575,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF INJURED AFTER SLIPPING AND FALLING ON ICY OUTDOOR STAIRWAY AT TOWN HOME RESIDENCE – TRIMALLEOLAR FRACTURE WITH DISLOCATION OF LEFT ANKLE – SURGERY REQUIRED.

Sussex County, NJ

In this premises liability action, the plaintiff was injured after she slipped and fell on an icy outdoor stairway at her own town home residence. The defendants generally denied all allegations of negligence.

On December 3, 2019, the plaintiff was lawfully inside her town home residence, located on the premises of 3 Davos Drive in Vernon, New Jersey. At this time, the premises was owned, operated, and maintained by the defendants. On this day, the plaintiff attempted to venture outside to her driveway, so that she could shovel her daughter's car out of snow, which had fallen in a snowstorm the day before. In order to reach her driveway, the plaintiff attempted to walk down a set of outdoor stairs. At this time, the stairs were covered in an accumulation of ice and snow. While trying to descend the stairs, the plaintiff slipped on ice and fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to remove ice and snow from the subject outdoor steps, failing to place salt or other measures to prevent icy conditions, failing to warn of icy conditions on the premises, failing to provide safe entry and exit from the plaintiff's residence, failing to prevent hazardous or unsafe conditions on the premises, and failing to regard for the health and safety of town home tenants, including the plaintiff. Consequently, the plaintiff sustained inju-

ries, including a trimalleolar fracture with dislocation of the left ankle, which required surgery to repair, including an open reduction and internal fixation procedure with the placement of hardware.

The parties entered into a settlement for \$1,575,000.

REFERENCE

Rigotty Sharon vs. All-American Landscaping. Docket no. L000142-20; Judge William J. McGovern, 05-10-23.

Attorney for plaintiff: William O. Crutchlow of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorney for defendant: Peter M. Perkowski, Jr. of Riker Danzig, LLP in Morristown, NJ.

COMMENTARY

Following her first open reduction and internal fixation surgical procedure, the plaintiff in this case continued to experience pain and swelling in the left ankle. Additionally, within a few months of the surgery, the plaintiff developed a wound infection at the incision site. The wound and resulting infection required another surgical procedure, during which medical professionals reopened the original surgical site and removed the hardware that had been placed inside the plaintiff's ankle, as it was believed that the hardware had caused the wound infection. The plaintiff then required a course of antibiotics, and was placed on a strict wound care regimen.

After this subsequent surgery, the plaintiff missed even more time at work, and was unable to ambulate on her left foot for several weeks. The settlement amount in this case was likely determined by the severity of the plaintiff's injuries, as well as her need for additional surgeries and medical care after the original accident.

\$1,000,000 RECOVERY – COUNTRY CLUB NEGLIGENCE – PLAINTIFF SUSTAINS SEVERE INJURIES AFTER BEING STRUCK BY GOLF CART AT DEFENDANT COUNTRY CLUB – CRUSH INJURY OF BILATERAL LEGS – CRUSH INJURIES TO LEFT KNEE AND ANKLE – LUMBAR SPINAL COMPRESSION – POST-CONCUSSION SYNDROME – SURGERY REQUIRED.

Essex County, NJ

In this personal injury action, the plaintiff sustained severe injuries after she was struck and run over by a golf cart at the defendant country club. The defendants generally denied all allegations of negligence.

On September 3, 2018, the plaintiff was a lawful visitor, business invitee, and member at the defendant country club, located on the premises of 555 Ridgewood Ave, Glen Ridge, New Jersey. On this day, the plaintiff was standing outside the pro shop on the country club premises, near an employee who was loading a cooler of ice and water onto a golf cart. At this time, the golf cart was parked facing the pro shop with its engine on. While the employee was filling the cooler, a case of water, which had

been placed onto the seat of the golf cart, fell forward and landed on the golf cart's accelerator. The golf cart then moved forward and struck the plaintiff, who fell sideways, causing the left side of her body to strike a wall. When she fell to the ground, the golf cart then ran over the plaintiff's legs, causing her to become severely injured.

The plaintiffs maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises of the country club, failing to ensure the safety of golf carts on the premises, failing to inspect golf carts, failing to hire competent employees, failing to properly train employees regarding golf carts and related safety procedures, failing to instruct employees to shut golf carts off after disembarking, in negligently allowing a golf cart to be

parked within ten feet of the pro shop and its visitors, and failing to regard for the health and safety of business invitees and members on the premises, including the plaintiff. Consequently, the plaintiff sustained injuries, including crush injuries to the bilateral legs, crush injuries to the left knee and ankle, lumbar spinal compression, and post-concussion syndrome. The plaintiff's injuries required surgery to repair.

The parties entered into a settlement for \$1,000,000.

REFERENCE

Sutton Deborah vs. Glen Ridge Country Club. Docket no. L002348-19; Judge Russell J. Passamano, 05-01-23.

Attorney for plaintiff: Bruce H. Nagel of Nagel Rice, LLP in Roseland, NJ. Attorney for plaintiff: Rocco Casale of Schwab Haddix & Millman in Berkeley Heights, NJ.

\$500,000 VERDICT – SCHOOL LIABILITY – VIOLATION OF NJLAD AND NEGLIGENCE – PLAINTIFF STUDENT HARASSED BY FELLOW STUDENT BEGINNING IN SIXTH GRADE AND CONTINUING INTO HIGH SCHOOL, ULTIMATELY RESULTING IN ASSAULT AND BATTERY IN DEFENDANT SCHOOL'S LOCKER ROOM – FRACTURED RIGHT ORBITAL TREATED WITH SURGICALLY INSTALLED PLATE UNDERNEATH EYE AND PLASTIC SURGERY – 5-DAY HOSPITALIZATION – ONGOING PHYSICAL AND PSYCHOLOGICAL ISSUES INCLUDING PTSD AND DEPRESSION.

Middlesex County, NJ

In this school negligence case, the plaintiff student asserted that the defendant school district, its employees and a specific student were negligent in failing to stop harassment, discrimination and ultimately an assault on the plaintiff. The plaintiff claimed violations of NJLAD, general negligence, assault and battery, and intentional infliction of emotional distress. The defendants denied negligence and argued that they had no notice of the issues with the co-defendant student as the plaintiff had never reported any harassment to his treating psychologist, either before or after the fight. Thus, the defendants could not have foreseen the fight occurring and the locker room was otherwise appropriately supervised.

The plaintiff contended that, while a student in the defendant school system, beginning in the sixth grade, he experienced harassment and discrimination by the co-defendant student based upon perceived sexual orientation. In addition, the plaintiff and co-defendant were involved in a physical altercation on November 25, 2015 in the high school locker room. The plaintiff alleged negligent supervision of the locker room by the school and negligence in the handling of the co-defendant student, specifically the lack of a referral to a Child Study Team or other supposed interventions, including expulsion.

Another primary theme of the plaintiff's case was the callousness of the school in the handling of the post-fight events, beginning with the allegation that the plaintiff not being attended to in the aftermath in the locker room incident, including the defendant's find-

COMMENTARY

Following the accident in this case, the plaintiff was required to undergo several surgeries to repair her injuries. The plaintiff remained in the hospital for weeks, during which time she underwent a lumbar spine laminectomy, posterior decompression and interbody fusion from L4 through S1 with placement of metal hardware including titanium cage, pedicle screws, and rods, left knee arthroscopic partial medial and lateral meniscectomy, and a mild chondroplasty of the left patella. These injuries and resulting surgical procedures left the plaintiff completely unable to ambulate on her own, forcing her to undergo several months of both inpatient and outpatient physical therapy.

Today, the plaintiff still experiences back pain as well as pain in the left leg, and may need further surgical intervention in the future. The settlement amount in this case was likely determined by the severity of the plaintiff's injuries, as well as her prolonged need for medical care.

ing that the plaintiff victim was in violation of the HIB rules and his suspension from school. Further, the plaintiff claimed the defendant school system failed to advise the plaintiff prior to the return of the co-defendant attacker to the school in September of 2016. At trial, the plaintiff called a school liability expert, who offered opinions regarding the alleged negligent handling of the situation by the defendants.

As a result of the assault, the plaintiff sustained a fractured right orbital which was treated with a surgically installed plate underneath his eye and plastic surgery. The plaintiff was hospitalized for five days. The plaintiff claimed that to this day, he still suffers from floaters in his vision and suffers from pain and swelling when he is having an allergic reaction. The plaintiff also claimed psychological injuries from the harassment and physical assault. The plaintiff presented testimony from his treating psychologist who diagnosed the plaintiff with PTSD and depression. The plaintiff made an initial demand for settlement in the amount of \$300,000.

The defendants asserted that the plaintiff engaged in the fight in the locker room and was contributorily negligent in causation of his injuries. The defendant also claimed that the plaintiff never reported any of the alleged harassment to his close confidante and faculty advisor for the Gay-Straight Alliance and the school's anti-bullying specialist. The defendant maintained that there were no records of any treatment for such emotional distress; nor was there any opinion offered by the plaintiff's expert regarding any permanent residual from the alleged harassment.

The jury unanimously found in favor of the plaintiff and against the defendant board of education as to the plaintiff's claim of discrimination and harassment; that the defendant board of education's discrimination was the proximate cause of the plaintiff's injuries; that the defendant board of education was negligent; that the board's negligence was a proximate cause of the plaintiff's injury; that the plaintiff was not negligent. The jury unanimously agreed that the plaintiff's injuries were permanent and awarded damages in the amount of \$500,000 broken down as follows: \$400,000 on the plaintiff's claim for discrimination and harassment; and \$100,000 in damages to compensate for the physical injuries he sustained as a direct result of the assault and battery that occurred due to the defendants' negligent supervision.

REFERENCE

S.M. O/B/O H.M. vs. Board of Education of the Township of Monroe, et al. Docket no. L-002756-17; Judge Alberto Rivas, 05-23-23.

Attorneys for plaintiff: R. Armen McOmber and Austin B. Tobin of McOmber McOmber & Luber, P.C. in Red Bank, NJ. Attorney for defendant: William S. Bloom of Methfessel & Werbel, Esqs. in Edison, NJ. Attorney for defendant: Ahmed M. Soliman of Soliman & Associates, P.C. in Cherry Hill, NJ.

COMMENTARY

The defendant filed a motion for new trial arguing that the verdict sheet as it related to the LAD claim was confusing, misleading, and failed to assist the jury in understanding the numerous prongs of the LAD claim including the affirmative defenses, rendering the jury's decision on the LAD claim invalid. The defendant also argued that the verdict was against the weight of the evidence. On May 21, 2021, the court entered an order granting partial summary judgment in favor of the defendant, dismissing counts 2 and 8 of the plaintiff's complaint, those counts sounding in LAD retaliation and intentional infliction of emotional distress.

On May 9, 2023, the court addressed various in limine motions, notably, including the defendants' motion to bar opinions regarding the defendant district's handling of the co-defendant student's disciplinary issues. That motion was denied, and conversely, the court partially granted the plaintiff's motion to admit certain items from the co-defendant's disciplinary record. Additionally, the court granted the defendants' motion to bar claim/opinion regarding the care provided to the plaintiff in the immediate aftermath of the incident.

The defendant argued that the claimed factual basis for the LAD claim was that the plaintiff, beginning in the sixth grade, had been regularly harassed by the co-defendant student based upon perceived sexual orientation. At trial, the only evidence in support of this claim was the plaintiff's own say-so. Conversely, there was a mountain of evidence militating against such a claim and the plaintiff's credibility overall was greatly undermined at trial. Additionally, the defendants argued, there was significant evidence of comparative fault presented at trial.

The jury viewed the video of the altercation which the defendants claimed showed the plaintiff repeatedly taunting the co-defendant student, and the student repeatedly asking him to stop doing so. The video also showed the plaintiff with his arm pulled back, about to throw a punch at the co-defendant student. However, before he can throw a punch, the other student punches the plaintiff with the punch

that fractures his orbital. At trial, the plaintiff admitted that he, in fact, was taunting, and thereby trying to embarrass and humiliate the co-defendant. He admitted that his taunting of the student was not having the effect of "defuse the tension" and testified that he does not know why he continued with this conduct.

At trial, the jury was played the recording of the plaintiff's interview with the police office in which he admitted that he had pursued the co-defendant after the initial flurry of punches with the intention of hitting him, which of course is in plain view on the video itself. With regard to the tort injury threshold, the defendants maintained that the plaintiff was last treated by a plastic surgeon in April of 2016, discharged with no restrictions and was last treated by an ophthalmologist in February 2017, discharged with a normal ocular examination. The plaintiff did not testify to any vision issues or loss of visual field. The defendants requested that (1) a new trial be granted on the LAD claim because verdict sheet was deficient and (2) a new trial be granted on those parts of the LAD and Tort claims on which the verdict was against the weight of the evidence, pursuant to R. 4:49-1.

The plaintiff maintained that there was no confusion as to the verdict sheet and that the jury charge broke down each and every element of the plaintiff's NJLAD-based claim, negligence claim, damages, the standard of proof, and role of the judge and jury in a trial such as the present matter. The defendant board of education initially asserted an objection to the jury charge, but subsequently withdrew it in writing. Along with the jury charge, the jury was provided a verdict sheet to assist in finding the necessary facts and making their ultimate determination. The verdict sheet focused on the essential elements of the plaintiffs' claims and provided the jury with clear and concise questions to consider in reaching its determination.

With respect to the plaintiff's NJLAD-based claims, the jury unanimously determined that the plaintiff was the victim of harassment and discrimination while a student and that the defendants' actions were the proximate cause of his injuries. With respect to the plaintiff's negligence claims, the jury's verdict was again, overwhelmingly in the plaintiff's favor. Again in a unanimous vote, the jury found that the plaintiff proved the defendants were negligent and that said negligence was the proximate cause of the plaintiff's injuries.

With respect to the defendants' defense that the plaintiff was contributorily negligent, the jury again found in the plaintiff's favor. The plaintiff refuted the defendants' claim that the verdicts were against the evidence pointing to the fact that the plaintiff elicited testimony from 13 parties, fact and expert witnesses, and presented extensive documents and audio/video evidence, with a total of 23 exhibits published to the jury, all on the issues of liability and damages. The plaintiff testified that the co-defendant student had a record of causing trouble with many students and had harassed the plaintiff since middle school, pushing him in the hallways, knocking him to the ground, stealing his book bag, and critically, repeatedly calling him slurs related to his sexuality.

The plaintiff went on to testify that the harassment and discrimination he endured was a constant theme throughout the time he matriculated in the defendants' schools. Indeed, in middle school, the plaintiff complained about the co-defendant student's discrimination and harassment between 5 and 10 times and each time, he was told "I'll see what I can do." As far as the plaintiff knew, the harasser was not punished by the defendant school district in any meaningful way. The harassment continued when the students advanced to the seventh grade, both physically and verbally, and into the eighth grade.

The plaintiff's testimony at trial was that in the eighth grade, he complained to employees in the front office of the school approximately once per month. Specifically, he told the employees in the front office that harassment and discrimination would make him late for the

school bus. He also testified that no remedial action was ever taken by the defendants. The plaintiff further testified that while he did not recall any specific interactions with the co-defendant in the ninth grade, the harassment resumed during the second day of school in his sophomore year. The plaintiff approached his teacher and asked permission to move his seat and for the harasser to be reprimanded for the harassment. The plaintiff detailed, with specificity, numerous other incidents of harassment.

With regard to the locker room attack, the plaintiff testified that he heard the co-defendant call his friend a "faggot" who "doesn't belong in the school." He tried to step in and prevent his friend from being bullied and as such, told the co-defendant to stop. The plaintiff explained that after that, the co-defendant's attention turned to him at which time he began harassing him by saying he and his friend are gay and are both "faggots." The plaintiff — then 15 years old — testified that he decided to try to defuse the situation by making a joke by stating "so what if I am gay?" In response, the co-defendant became increasingly angry, at which time the plaintiff tried to smooth things

over by joking with the co-defendant. Then, the attacker began walking closer to the plaintiff, until suddenly; he began brutally punching the plaintiff several times, with both of his fists, until he knocked the plaintiff to the ground. The plaintiff argued that his testimony was corroborated by the video recording of the incident. Furthermore, the plaintiff testified that at the time he was attacked, there were no teachers inside the locker room supervising the students. Importantly, this was fully corroborated by the testimony of the gym teachers present that day, and was blatantly contrary to the defendants' policy regarding supervision of students in the locker room.

As a result of being attacked, the plaintiff testified that he suffers from post-traumatic stress disorder, anxiety, and feels embarrassed and upset about the assault and battery. He further testified that still to this day, he has nightmares reliving the assault and battery he suffered nearly eight years ago as confirmed by his treating psychologist's testimony.

The defendants' motion is pending.

\$34,375 VERDICT – MEDICAL MALPRACTICE – OBSTETRICS – PLAINTIFF CONTENDS DEFENDANT OB/GYN NEGLIGENTLY CAUSED DECAPITATION OF PLAINTIFF'S BABY DURING DELIVERY OF NON-VIABLE FETUS AND DEFENDANT FAILED TO GIVE INFORMED CONSENT AS TO ANESTHESIA WHICH WOULD HAVE PREVENTED DECAPITATION – POST-TRAUMATIC STRESS DISORDER AND EXTREME EMOTIONAL DISTRESS DUE TO WITNESSING DECAPITATION.

Passaic County, NJ

In this medical malpractice case, the plaintiff, a pregnant woman, asserted deviation from the standard of care and lack of informed consent by the defendant obstetrician resulting in significant emotional distress following the decapitation of the plaintiff's baby during delivery performed by the defendant. The defendant denied negligence and argued that the unfortunate outcome was a known risk of the attempt to deliver a preterm 21-week gestation fetus.

On July 7, 2016, the plaintiff presented to the defendant obstetrician/gynecologist for medical care and treatment. The plaintiff presented to the hospital with complaints of super pubic and lower abdominal pain and cramping. She was evaluated and it was noted that she was starting to dilate. The plaintiff's pregnancy was 21 weeks and 2 days. At this point the fetus was not viable and the fetus needed to be delivered.

The plaintiff asserted that the defendant deviated from the accepted standard of care in the care and treatment he rendered to the plaintiff. The plaintiff also argued that the defendant failed to provide the plaintiff with all information that a reasonable person in the plaintiff's position would expect a doctor to disclose, so that the plaintiff might make an informed decision about anesthesia and that a reasonable person under the circumstances would have consented to anesthesia. The plaintiff maintained that the undisclosed risk of not being anesthetized and the consequential lack of anesthesia was a proximate cause in the plaintiff's baby's decapitation.

The plaintiff's maternal and fetal medicine expert asserted that, due to lack of anesthesia, the plaintiff was in extreme pain and pulling back from the delivery process, thrashing around on the bed and causing the decapitation. The plaintiff's expert noted that he had seen at least 3 other similar cases in his experience and the common factor in all 3 deliveries, and the plaintiff's, was lack of anesthesia.

The plaintiff's primary damages centered on the emotional, psychiatric and psychological pain, suffering and distress caused by the subject incident. During the trial, the plaintiff testified as to the emotional distress damages she sustained including testimony as to her pain and suffering and treatment sought. The jury also heard testimony from the plaintiff's treating psychotherapist, her former treating psychiatrist, and the plaintiff's expert, all of whom testified that the plaintiff suffered from psychiatric issues, either in whole or in part from the decapitation of her baby.

The defendant maintained that he followed all standard procedures in treating the plaintiff's intervillitis and vasculitis which caused infection of the placenta and necessitated delivery of the fetus which no longer represented a viable pregnancy. Due to the specifics of the manner in which labor developed, the defendant had to perform a double footling breech delivery. During the delivery, the plaintiff's cervix trapped the fetal head. The defendant maintained that, as a result of the plaintiff's sudden motion in response to a sharp pain, the trapped head was decapitated. At trial, the defendant presented testimony that the plaintiff's psychological pain and suffering were not attributable to the decapitation,

but rather, her issues more generally related to the combination of the entire scenarios involving the loss of this pregnancy, the loss of her subsequent pregnancy in 2018 at 18 weeks gestation, as well as an underlying personality pathology.

Prior to trial, the plaintiff made an offer to take judgment in the amount of \$1 million. The offer was not accepted and the matter proceeded. The plaintiff made a second offer to take judgment in the amount of \$250,000. This offer was also not accepted and the matter went to trial.

The jury returned a verdict in favor of the plaintiff, finding that the defendant failed to obtain the plaintiff's informed consent prior to undertaking the delivery of her baby. The jury awarded \$0 for psychiatric suffering, impairment, and loss of enjoyment of life, but awarded \$4,375 in past medical expenses and \$30,000 in future medical expenses. The jury did not find that the defendant deviated from the standard of care in treatment of the plaintiff.

REFERENCE

Villadiego vs. Cocozziello, M.D., et al. Docket no. L-002138-18; Judge Darren J. Del Sardo, 05-12-23.

Attorney for plaintiff: E. Drew Britcher, Leone & Sergio, LLC in Glen Rock, NJ. Attorney for defendant: Justin F. Johnson of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

COMMENTARY

Immediately following the reading of the verdict, and before discharge of the jury, plaintiff's counsel put forth to the court that the jury verdict was inconsistent in that the jury awarded the plaintiff medical expense for treatment, for psychological and psychiatric conditions, making it impossible to award zero for psychological or psychiatric suffering, disability and impairment. The court heard counsel's arguments and the parties agreed that the plaintiff would move for additur because the verdict was so low as to shock the judicial conscience and constitute a miscarriage of justice under the law. In the absence of granting additur, the plaintiff moved for a new trial on damages only.

The jury rendered a verdict in favor of the plaintiff finding that the defendant failed to obtain the informed consent of his patient, the plaintiff. As a result of the defendant's failure, the plaintiff suffered severe emotional distress damages, resulting in post-traumatic stress disorder, leading to prolonged suffering and continued psychological and psychiatric treatment. The plaintiff argued that, at trial, the jury heard testimony from the plaintiff's treating providers, the plaintiff's expert, and the defense expert, that the plaintiff suffered psychiatric issues related, in whole or in part, from the decapitation of her baby. Specifically, the plaintiff's treating psychologist since 2018, testified that she diagnosed the plaintiff with post-traumatic stress disorder that resulted from witnessing the decapitation of her baby.

The plaintiff's expert also testified that the plaintiff suffered from post-traumatic stress disorder due to her son's head being decapitated from his torso during delivery. The plaintiff's former treating psychiatrist testified that the plaintiff had post-traumatic stress disorder and prescribed various medications to treat the condition. Plaintiff's counsel noted that, even the psychiatric expert, who testified on behalf of the defendant, opined that the plaintiff suffered from complex depression as a result of the loss of her son, including the decapitation and her loss of a subsequent pregnancy. The plaintiff

experienced the horror of having her baby's head decapitated from his torso. Photographs of the baby introduced into evidence at trial depicted the mutilated body. The plaintiff experienced the tragic events that occurred on the date of delivery and observed her son in a decapitated state, having held him several times after the delivery. The plaintiff gave unrefuted testimony as to how the events unfolded on the day of delivery and that it caused her severe emotional distress that she still suffers from and seeks treatment for up to the present. The plaintiff argued that, having found that she was entitled to an award of damages, the jury awarded the plaintiff zero damages for her psychiatric suffering, impairment and loss of enjoyment of life, but awarded past and future medical expense totaling \$34,375, which the plaintiff asserted was woefully inadequate and could only be described as a miscarriage of justice.

In response, the defendant filed a brief in opposition to the plaintiff's motion and in support of a cross-motion for judgment N.O.V. The defendant held that the plaintiff's motion should be denied because the plaintiff waived consideration of this issue. After the jury returned the verdict upon which the plaintiff based her motion, plaintiff's counsel raised the issue of whether it was an inconsistent verdict based on the jury awarding a recovery for medical expenses, but determining that the amount of psychological and/or psychiatric suffering, disability and impairment damages was zero. The defense recognized that the jury's verdict might also be viewed as being inconsistent for awarding any medical expenses when the plaintiff had no compensable pain and suffering.

In response to the plaintiff's objection to the verdict as insufficient and inconsistent, the defendant maintained that the court's response would properly have been to address the issue with the jury, re-instruct them on the applicable law and direct them to deliberate further. However, after a short recess, the plaintiff and counsel conferred and she withdrew her objection to the verdict as it then stood. In light of that withdrawal, the defendant also accepted the jury's verdict. The defendant held that, in light of the acceptance of the jury's verdict by the plaintiff, the defendant submitted that the plaintiff waived any argument she might have had concerning the amount of the pain and suffering award and waived consideration of her additur motion. Defense counsel argued that, had the plaintiff not withdrawn her objection, it would have been proper for the court to have issued a curative instruction to the jury and to direct them to continue to deliberate, citing *Mahoney v. Podolnick*, 168 N.J. 202, 222 (2001).

The jury would have continued their deliberations and, perhaps, returned with an increased verdict for psychological and/or psychiatric suffering, disability and impairment (or perhaps a verdict of zero medical expenses) which would have eliminated the need for the present motion. In *Mahoney*, the plaintiff filed a medical negligence action against a number of physicians in connection with the delayed diagnosis and treatment of plaintiff's decedent's stomach cancer, per *Mahoney*, 168 N.J. at 205. When the jury returned its verdict, in response to question 3, it found that a breach was not a substantial factor in shortening the decedent's life, but in a separate question, the jury allocated 15 percent of the damages to the defendant. The trial court discussed the inconsistency with the jury and gave a curative instruction on the point to clarify the jury's confusion. In doing so, the court assumed that the jury would reapportion the verdict, but the foreperson correctly indicated that revising question 3, to indicate that the defendant's breach was a substantial factor, would also eliminate the inconsistency.

After retreating to the deliberation room, the jury returned with a change to question 3 in the verdict, indicating that the breach was a substantial factor. On appeal to the Supreme Court, after a new trial resulted in a verdict much less favorable to the plaintiff, the court ad-

dressed, *inter alia*, the plaintiff's argument that the initial verdict should be reinstated. The court found that the steps taken by the trial court to resolve the inconsistent verdict — giving the jury a curative instruction and sending them back to the deliberation room to resolve the inconsistency — was the correct and appropriate manner to address an inconsistent verdict. Here, the defendant argued, in response to the plaintiff's objection to the verdict, the next step would have been for the court to give the jury a curative instruction and to direct them to continue to deliberate. They would have then returned a ver-

dict which either granted additional damages for pain and suffering or amended the award of medical expenses to zero. However, by withdrawing her objection to the inconsistent verdict, the plaintiff waived her argument that the zero damages for pain and suffering was insufficient.

The motions are pending.

Verdicts By Category

MEDICAL MALPRACTICE

Dermatology

DEFENDANT'S VERDICT

Medical malpractice – Dermatology – Plaintiff claims delay in diagnosis of basal cell carcinoma led to invasive surgery and permanent scarring – Defendants deny any delay and argue diagnosis occurred when carcinoma appeared and end result would have been same.

Monmouth County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant dermatologists failed to timely diagnose and treat basal cell carcinoma leading to more invasive treatment later and permanent scarring. The defendants denied liability, arguing the plaintiff did not exhibit signs of basal cell cancer at any visit prior to 2018 and thus could not have been diagnosed sooner.

On May 19, 2014, the plaintiff was a patient of the defendant dermatologist and the defendant dermatology clinic. The defendant asserted that the defendants undertook to treat the plaintiff within the accepted standard of medical practice for dermatology in which they held themselves out as specialists. The plaintiff claimed that the defendants negligently and carelessly failed to exercise the degree of care and skill required of them in their treatment of the plaintiff including the following deviations from generally accepted standards of medical care; the defendant failed to render appropriate medical treatment and follow up; failed to diagnose and immediately render appropriate medical treatment to the plaintiff during a skin assessment and thereafter, resulting in basal cell carcinoma discovered on October 29, 2018, which directly necessitated protracted medical treatment, pain and suffering and permanent injury. The plaintiff asserted that, had the diagnosis been made earlier, other treatment options besides surgery would have been available to her and she would not have permanent scarring.

As a result of the defendants' malpractice, the plaintiff claimed permanent injuries including cancer, radical surgery, facial numbness, and severe facial scarring. The plaintiff suffered embarrassment, pain and suffering due to the scar left on her face by the surgery required to remove the carcinoma and follow up surgeries to correct the scarring. The plaintiff presented an expert dermatologist's affidavit that the defendant's treatment of the plaintiff fell outside acceptable professional occupational standard and treatment practices.

The defendants asserted that the plaintiff's MOHS surgery, or any other type of treatment, could not have been done sooner, since she did not have basal cell carcinoma until 2018 and that the surgery would have been the same, based on the diagnosis, at any point in time and would have left a similar scar regardless of when the surgery was done. The defendants denied any deviation from the standard of care and further contended that all care and treatment rendered met the accepted standards. Further, the defendants challenged the plaintiff's claim for pain and suffering, pointing to the plaintiff's active social and work life that did not appear inhibited by the scarring as claimed by the plaintiff.

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

REFERENCE

Levy vs. Sivanesan, M.D., et al. Docket no. L-002375-20; Judge David F. Bauman, 05-26-23.

Attorney for plaintiff: Frank S. Gaudio of Miller & Gaudio, P.C. in Red Bank, NJ. Attorney for defendant: Michael C. Pacholski of Stahl & DeLaurentis, P.C. in Runnemede, NJ.

Hospital

DEFENDANT'S VERDICT

Medical malpractice – Hospital – Surgeon negligence – Plaintiff's 82-year-old mother presented to defendant hospital with ischemic colitis – Delay in testing and surgery resulted in untimely death – Defendant surgeon denies any deviation from standard medical practices and asserts testing done on timely basis.

Monmouth County, NJ

In this medical malpractice case, the plaintiff asserted that the decedent, his 82-year-old mother, experienced a delay in treatment and surgery for ischemic colitis by the defendant hospital and its staff that ultimately led to her death. All defendants except the defendant surgeon were dismissed or settled prior to trial. The case went to trial as to the defendant surgeon only.

The plaintiff's decedent presented to the defendant hospital on June 12, 2016 and was ultimately diagnosed with ischemic colitis. The plaintiff contended that the defendants negligently delayed surgery for the plaintiff's decedent's ischemic colitis. The plaintiff alleged that the defendants ignored complaints, signs symptoms, made an erroneous diagnosis, afforded improper treatment, administered drugs in an incorrect dosage, failed to take or administer tests, and failed to obtain proper informed consent from the plaintiff. The plaintiff claimed that the defendants should have made the correct diagnosis and that the improperly performed tests and treatment delayed appropriate treatment of the decedent's condition. The plaintiff maintained that, had she been properly tested, diagnosed, and treated, she would have survived her underlying condition.

The plaintiff argued that, as a direct and proximate result of the negligence and professional malpractice of the defendants, the decedent suffered severe, painful and permanent injuries, required surgery, medical care and subsequently, after prolonged suffering, died on June 14, 2016. The defendant surgeon denied any breach of the standard of care and asserted that he presented the decedent's daughter-in-law, a nurse practitioner, with the plan of care for the decedent which included the appropriate testing, treatment and ultimately laparoscopy to evaluate her condition. These actions were taken and the defendant held that the plaintiffs were asserting

only that they thought the defendant was going to take the decedent to the operating room earlier than he did. The defendant maintained that all test results and attempts to stabilize the patient needed to, and were, made prior to performing any surgical procedure.

No one testified that the defendant told them that surgery would not be performed. By all accounts, the defendant stated that he was going to try to hydrate the patient and, if that did not work, then take her to surgery. The defendant never recommended against or delayed surgery. Non-invasive treatment was not chosen over surgical treatment. Rather, the defendant made the judgment to hydrate the plaintiff to see if she would improve before embarking on surgery. The defendant maintained that all of his actions were prudent, proper, and within the standard of care for the decedent's presentation.

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

REFERENCE

Mahalchick, Jr., et al. vs. Robert Wood Johnson University Hospital Rahway, et al. Docket no. L -002121-18; Judge Kathleen A. Sheedy, 05-25-23.

Attorney for plaintiff: Daniel N. Epstein of Epstein Ostrove, LLC in Edison, NJ. Attorney for defendant: Thomas J. Heavy of Grossman, Heavy & Halpin, P.C. in Brick, NJ.

CIVIL ASSAULT

\$150,000 RECOVERY

Civil assault – Assault and battery – Plaintiff assaulted in unprovoked attack while socializing with defendant at defendant's home – Facial fractures and left eye injury – Ongoing cognitive issues and permanent vision impairment – Defendant dies while case pending and insurer settles matter with plaintiff.

Middlesex County, NJ

In this assault and battery case, the plaintiff asserted that the defendant assaulted and injured him while the plaintiff was a visitor at the defendant's home. The defendant asserted that any injuries sustained by the plaintiff were caused by his own negligence.

The plaintiff was invited to the defendant's residence by the defendant on June 30, 2018. The defendant and his brother were residents in a house owned by their grandmother. When the plaintiff arrived at the defendant's residence both the defendant and his brother appeared intoxicated. After the plaintiff arrived at the residence, the defendant, along with his brother and the plaintiff, drove to a liquor store to purchase additional alcohol. After consuming the alco-

hol, the defendant's brother fell asleep on the couch while the plaintiff and defendant continued to watch T.V. The plaintiff contended that he went into the kitchen to retrieve his remaining beers in preparation to leave when he was struck from behind by the defendant with an unknown object, the plaintiff turned and the defendant struck him in the face, causing severe permanent injury. The plaintiff contended that the defendant assaulted and battered him resulting in serious, permanent injury.

As a result of the assault, the plaintiff sustained 3 fractures to the left side of his face and injury to his left eye. The plaintiff underwent surgery to repair the fractures and was hospitalized for several days. The plaintiff claimed ongoing cognitive and memory issues as well as permanent impairment in vision in his left eye. The plaintiff claimed he was unable to work for 6 months due to his injuries.

The defendant argued that the plaintiff knew that the defendant was intoxicated and continued to socialize with the defendant knowing he was in an altered state and unpredictable. The defendant died while

this case was pending and his estate, through his insurer, agreed to settle the matter with the plaintiff in the amount of \$150,000.

REFERENCE

Horn vs. Estate of Twist, et al. Docket no. L-007531-19; Judge Gary K. Wolinetz, 05-04-23.

Attorney for plaintiff: Nicholas J. Leonardis of Law Offices Stathis & Leonardis in Edison, NJ. Attorney for defendant insurer: Brent S. Usery of Reid & Associates in New York, NY. Attorney for defendant estate of defendant: Joseph M. Gaul, Jr. of Gaul, Baratta & Rosello, LLC in Cedar Knolls, NJ.

CONTRACT

\$200,000 RECOVERY

Contract – Plaintiff claims defendant failed to pay for goods delivered in amount of \$497,220 – Defendant counters plaintiff provided defective and damaged goods, delivered late, causing defendant loss of business.

Middlesex County, NJ

In this breach of contract case, the plaintiff asserted that the defendant failed to pay for goods delivered to the defendant per the terms of a contract between the parties. The defendant denied breaching the contract with the plaintiff and argued that the plaintiff delivered defective goods, damaged goods and incorrect goods to the defendant.

The plaintiff distributor sold and delivered to the defendant business, at its request, certain goods, wares and merchandise. The plaintiff performed all of its contractual obligations and tendered its required performance to the defendant. The plaintiff asserted that credit was given for all payments, and there remained a balance due and owing from the defen-

dant to the plaintiff in the amount of \$497,220, exclusive of pre-judgment and post-judgment legal interest, counsel fees and costs.

The defendant argued that the goods were delivered late causing the defendant economic loss and that goods were returned to the plaintiff for credit which was not received by the defendant. Thus, the defendant maintained, no sums were due to the plaintiff and that the plaintiff had no contractual or other right to the sum demanded.

The parties settled the matter prior to trial in the amount of \$200,000.

REFERENCE

Euler Hermes North America Insurance Company, et al. vs. Digital Gadgets, LLC. Docket no. L-003215-21; Judge Bruce Kaplan, 05-25-23.

Attorney for plaintiff: Joseph A. Molinaro of Law Offices of Joseph A. Molinaro, L.L.C. in Wyckoff, NJ. Attorney for defendant: Gary S. Redish of Winne, Banta, Basralian & Kahn, P.C. in Hackensack, NJ.

INSURANCE OBLIGATION

DEFENDANT'S VERDICT

Insurance obligation – Multi-vehicle rear end collision – Plaintiff seeks underinsured motorist damages after being rear-ended by tortfeasor and pushed into rear of third vehicle – Disc herniation at C4-5; cervical disc bulges; cervical radiculopathy; left knee meniscal tear – Orthopedic treatment and pain management evaluations – Defendant insurer argues plaintiff's injuries not related to subject accident and presents expert testimony plaintiff's subjective complaints not supported by objective findings.

Middlesex County, NJ

In this case, the plaintiff asserted that the defendant driver struck her vehicle with such force that it pushed her vehicle into the rear of the car in front of her and caused significant, permanent injury. The plaintiff claimed her

damages exceeded the policy limits of the tortfeasor driver's insurance and she brought a claim for underinsured motorist coverage against the defendant insurer. The defendant contested the plaintiff's damages. The defendant asserted that the plaintiff did not meet the verbal threshold for injury and that she exhibited degenerative and congenital issues, not traumatic injuries.

On November 24, 2017, the plaintiff was driving her vehicle when she was involved in a 3-car motor vehicle collision. The plaintiff claimed that the tortfeasor driver negligently failed to slow or stop behind the plaintiff's vehicle and struck her car in the rear, pushing it into a third car.

As a result of the collision, the plaintiff sustained disc herniation at C4-5 and cervical disc bulges confirmed on MRI. The plaintiff's EMG showed cervical

radiculopathy. The plaintiff claimed a left knee meniscal tear. Her treatment at the time of trial was conservative and included orthopedic and pain management evaluations. The plaintiff's treating physician recommended knee injections and surgery. The plaintiff claimed a delay in receiving treatment due to other health issues.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant's IME found cervical and lumbar disc desiccation and noted a congenital discoid meniscus in the right knee. The defendant's expert opined that the plaintiff's subjective complaints were not supported by objective findings.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the tortfeasor driver with damages of \$50,000. 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

Abanis vs. Epps, et al. Docket no. L-004826-19; Judge Bina K. Desai, 05-12-23.

Attorney for plaintiff: Rachel E. Holt of Rebenack Aronow & Mascolo, LLP in New Brunswick, NJ.

Attorney for defendant: Michelle M. O'Brien of Flanagan, Barone & O'Brien, LLC in Bernardsville, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Truck Collision

■ \$78,075 RECOVERY

Motor vehicle negligence – Truck/auto collision – Defendants' tractor-trailer truck drove directly into path of plaintiff's vehicle and plaintiff struck defendants' vehicle – Disc herniations at C4-5 and C5-6; disc bulges at L2-S1 – Cervical epidural injections – Non-binding arbitration assigns 80% liability to defendants and 20% to plaintiff.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 34-year-old man, asserted that the defendant driver caused an unavoidable collision wherein the plaintiff suffered significant, permanent injury. The plaintiff brought suit against the defendant driver and his employer, the owner of the vehicle involved in the collision. The defendants denied negligence, arguing that the plaintiff had 250-300 feet or approximately 4 seconds to avoid impact. The defendants argued that the plaintiff was at fault for the collision.

On June 6, 2020, the plaintiff was traveling southbound in the rear of the premises at 340 Middlesex Center Boulevard in South Brunswick. The defendant driver was operating a tractor-trailer truck in the course of his employment with the co-defendant employer and owner of the truck. The defendant driver was attempting to reverse into a loading dock and backed directly into the plaintiff's path. The plaintiff asserted that the defendant negligently operated the truck and that the defendant's actions left the plaintiff with no time for him to avoid collision. The plaintiff collided with the truck.

The plaintiff contended that the defendant driver negligently failed to ascertain that the way was clear to pull away from the dock. The plaintiff pointed to

the police report of the incident wherein the defendant driver stated that he never saw the plaintiff. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained disc herniations at C4-5 and C5-6; disc bulges at L2-S1. The plaintiff treated with cervical epidural injections. The plaintiff's treating physician opined that the plaintiff suffered permanent injury and will require future treatment. The defendant held that their truck was obvious to the plaintiff, and that he had time to avoid collision, but failed, and thus was responsible for his own damages.

The plaintiff offered to take judgment in the amount of \$60,000 but the offer was not accepted and the matter proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendants and 20% to the plaintiff with gross damages of \$95,000 reduced to \$76,000 for plaintiff's comparative negligence. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered \$76,000 in damages plus \$2,075 in interest for a total recovery of \$78,075.

REFERENCE

Alcantara vs. Avenel Truck, et al. Docket no. L-000912-22; Judge Joseph Rea, 05-12-23.

Attorney for plaintiff: Eugene S. Wishnic of Wishnic & Jerushalmy, LLC in New Brunswick, NJ. Attorney for defendant: Benjamin R. Zakarin of Barclay Damon, LLP in New York, NY.

Intersection Collision

\$14,000 RECOVERY

Motor vehicle negligence – T-bone intersection collision – Minor plaintiff passengers contend driver of their vehicle and second vehicle negligent and contributed to causation of collision – Plaintiff girl suffers sprain/strain and bruising of right hip and right leg – Plaintiff boy suffers sprain/strain and bruising of left knee – Both treated at emergency room and follow-up with physical therapy treatment – Defendants each contend other at fault for collision.

Cumberland County, NJ

In this motor vehicle negligence case, the plaintiffs, an 11-year-old girl and a 10-year-old boy, asserted that the defendant drivers were negligent in causing a broadside collision that resulted in significant injury to both minor plaintiffs. The defendants denied negligence and each claimed the other caused the collision.

On December 21, 2020, the minor plaintiffs were passengers in a vehicle being operated by the defendant driver traveling at the intersection of High Street and Broad Street in Millville. The co-defendant driver of a second vehicle was also traveling at the intersection. The plaintiffs contended that the defendant drivers negligently failed to yield; were negligently operating their vehicles while distracted; failed to keep a proper lookout; and failed to maintain a safe distance from each other. As a result of the defendants' negligence, the vehicles collided in the intersection

with the plaintiffs' vehicle being t-boned by the other vehicle. The plaintiffs alleged that the force of the impact resulted in serious injuries.

As a result of the collision, the plaintiff 11-year-old girl sustained a sprain/strain and bruising of her right hip and right leg. She was treated at the emergency room and received physical therapy. The plaintiff 10-year-old boy sustained a sprain/strain and bruising of his left knee. He was treated at the emergency room and received physical therapy.

The parties settled the matter prior to trial in the amount of \$7,000 to each minor plaintiff with the defendant driver of the plaintiff's vehicle contributing \$3,000 and the co-defendant driver of the second vehicle contributing \$4,000 to the plaintiff girl; and the defendant driver of the plaintiff's vehicle contributing \$3,500 and the co-defendant driver of the second vehicle contributing \$3,500 to the plaintiff boy. The plaintiffs' settlement funds were broken down as follows for each plaintiff: \$1,700 in attorney fees; \$125 in costs and disbursements and \$5,175 in net damages to each minor plaintiff.

REFERENCE

Ford, et al. vs. Dimaria, et al. Docket no. L-000127-23; Judge James R. Swift, 05-18-23.

Attorney for plaintiff: Michael R. Contarino, Esq. in Woodbury, NJ. Attorney for defendant driver of plaintiffs' vehicle: Daniel T. Lewbart of Gerolamo McNulty Divis & Lewbart, PC in Haddon Heights, NJ. Attorney for defendant driver of second vehicle: Joseph P. Bernhardt of Law Offices of Michael G. David in Marlton, NJ.

Parking Lot Collision

\$52,000 VERDICT

Motor vehicle negligence – Parking lot collision – Plaintiff injured when defendant's vehicle backs into plaintiff's vehicle in convenience store parking lot – Cervical protrusions – Cervical radiculopathy – Carpal tunnel syndrome.

Burlington County, NJ

In this motor vehicle negligence action, the plaintiff was injured when the defendant's vehicle backed into the plaintiff's vehicle in a convenience store parking lot. The defendant generally denied all allegations of negligence.

On July 2, 2017, the plaintiff was a lawful visitor and business invitee at a convenience store, located on the premises of 1611 Columbus Road in Burlington Township, New Jersey. At this time, the plaintiff was inside her vehicle in the store parking lot, and was preparing to leave the premises. At the same time, the defendant was also attempting to leave the store parking lot in his own vehicle. At the time of the inci-

dent, the defendant's vehicle suddenly backed into the plaintiff's vehicle, striking it on the rear driver's side.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain adequately attentive, failing to observe the plaintiff's vehicle, failing to wait before backing out of the parking lot, failing to obey traffic conditions, failing to yield, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical protrusions, cervical radiculopathy, and carpal tunnel syndrome.

The parties entered into a settlement for \$52,000.

REFERENCE

Haines Martha vs. Melendez Iii Felix. Docket no. L001331-19; Judge Eric G. Fikry, 04-08-23.

Attorney for plaintiff: James Herman of James Herman, Esq. in Cherry Hill, NJ.

Rear End Collision

\$120,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff’s vehicle struck in rear by defendant’s vehicle at red traffic signal – Cervical disc herniations – Cervical sprain/strain – Post-concussion syndrome – Post-traumatic cephalgia.

Burlington County, NJ

In this motor vehicle negligence action, the plaintiff sustained injuries when her vehicle was struck in the rear by the defendant’s vehicle while stopped for a red traffic light. The defendant generally denied all allegations of negligence.

On June 29, 2019, the plaintiff’s vehicle was traveling in a straight direction on Hartford Road, at or near its intersection with Route 70 in Medford Township, New Jersey. At this time, the plaintiff’s vehicle was stopped for a red traffic light at the aforementioned intersection. At the same time, the defendant’s vehicle was also traveling on Hartford Road, directly behind the plaintiff’s vehicle. At the time of the incident, the defendant’s vehicle approached the subject intersection and suddenly struck the plaintiff’s vehicle in the rear while it was stopped at the red traffic light. The plaintiff became injured as a result.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff’s vehicle, failing to obey traffic conditions, failing to obey traffic signals, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical sprain/strain, post concussion syndrome, and post-traumatic cephalgia.

The jury found in favor of the plaintiff and awarded \$120,000.

REFERENCE

Espinoza Jennifer vs. Grumet Herbert. Docket no. L001177-21; Judge James J. Ferrelli, 04-20-23.

Attorney for plaintiff: Victor M. Covelli of Escandon, Fernicola, Anderson, Covelli & McPherson in Allenhurst, NJ. Attorney for defendant: Giacomo Gattuso of Giacomo Gattuso, Esq. in Westmont, NJ.

\$75,000 VERDICT

Motor vehicle negligence – Rear end collision – Disc bulges at C3-T1 and L3-5; disc herniations at C6-7 and L2-3, and cervical and lumbar radiculitis – Treated at E.R. and then conservatively with no injections or surgery – Non-binding arbitration assigns 100% liability to defendant.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 43-year-old woman, asserted that the defendant driver struck her vehicle with such force that it caused significant, permanent injury. The defendant initially claimed that the plaintiff stopped short before turning into the parking lot and caused the accident but he eventually stipulated liability.

On October 28, 2018, the plaintiff was traveling northbound on Morris Avenue and attempting to make a right turn into a diner parking lot in Elizabeth. The defendant was traveling directly behind the plaintiff and failed to observe the plaintiff’s vehicle slow or stop in preparation to turn. The plaintiff asserted that the defendant negligently struck her vehicle in a heavy impact collision.

As a result of the collision, the plaintiff sustained disc bulges at C3-T1 and L3-5; disc herniations at C6-7 and L2-3, and cervical and lumbar radiculitis. The

plaintiff was treated at the E.R. and then conservatively with no injections or surgery. The plaintiff had no outstanding medical expenses or lost wages.

The defendant contested the plaintiff’s damages arguing that the plaintiff did not suffer a permanent injury caused by the subject collision but, rather, that she sustained a sprain/strain of the neck which resolved without permanency. The defendant presented expert testimony that the plaintiff sustained a cervical and lumbar strain that resolved. The defendant’s expert reviewed the plaintiff’s films and found degenerative changes with no permanent injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$45,000. The arbitration was not confirmed and the matter went to trial.

The jury found that the plaintiff had suffered permanent injury and awarded damages in the amount of \$75,000.

REFERENCE

Cenkner vs. James. Docket no. L 007781-19; Judge Aravind Aithal, 05-17-23.

Attorney for plaintiff: Christian P. Fleming of Jabin & Fleming, LLC in East Brunswick, NJ. Attorney for defendant: Roma Patel of Law Offices of Styliades & Jackson in Marlton, NJ.

■ \$45,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while slowing for traffic – Cervical disc bulge – Lumbar disc bulge – Lumbar radiculopathy.

Camden County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle when the plaintiff was slowing for traffic causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On October 29, 2020, the plaintiff's vehicle was traveling eastbound on State Highway 38, at or near its intersection with Rudderow Avenue in Maple Shade, New Jersey. At this time, there was heavy traffic present on the roadway. At the same time, the defendant's vehicle was also traveling eastbound on State Highway 38, directly behind the plaintiff's vehicle. At the time of the incident, the plaintiff's vehicle slowed down for traffic, and was suddenly struck in the rear

by the defendant's vehicle. The plaintiff became injured as a result, and the defendant fled the scene on foot.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain adequately attentive, failing to obey traffic conditions, failing to observe the plaintiff's vehicle slowing down, failing to remain at the scene of the accident, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulge, lumbar disc bulge, and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$45,000.

REFERENCE

Edwards Michael vs. Vega Alexander. Docket no. L001207-21; Judge Anthony M. Pugliese, 04-22-23.

Attorney for plaintiff: Herbert J. Stayton, Jr. of Stayton Law, L.L.C. in Cherry Hill, NJ.

■ \$25,000 VERDICT

Motor vehicle negligence – Rear end collision – 31-year-old plaintiff stopped at red light when defendant negligently collides with her from rear – Disc herniations at C6-7 and L3-4 – Extensive chiropractic care; 2 lumbar medial branch blocks and 2 radiofrequency ablations to lumbar spine.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 31-year-old woman, asserted that the defendant driver struck the rear of her vehicle with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On November 6, 2019, the plaintiff was lawfully and properly stopped at a red light southbound on Wilson Avenue in Matawan, New Jersey. The defendant was traveling southbound on Wilson Avenue. The plaintiff contended that the defendant negligently failed to observe stopped traffic and slow or stop behind the plaintiff's vehicle. As a result, the defendant struck the plaintiff's vehicle from the rear with enough force from the impact to cause the plaintiff permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C6-7 and L3-4. The plaintiff treated with extensive chiropractic care; 2 lumbar medial branch blocks; and 2 radiofrequency ablations to the lumbar spine. The plaintiff presented expert medical testimony for a certified pain management specialist that the plaintiff sustained permanent injuries to her neck and back as a result of the accident. The plaintiff claimed \$16,308 in out-of-pocket medical expenses. The plaintiff maintained that her injuries prevented her

from pursuing her desired career in law enforcement as well as limiting her ability to pursue and engage in customary activities she enjoyed prior to the accident, such as going to the gym and being active with her son.

The defendant argued that the subject accident occurred at low speed and offered photographic evidence showing minimal damage to both vehicles. The defendant argued that the plaintiff's injuries were not permanent and not caused by the subject collision. The defendant presented expert medical testimony from a board-certified orthopedic surgeon who disputed the extent and permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$76,308 inclusive of medical expenses. The arbitration was not confirmed and the matter proceeded to trial.

The jury awarded damages in the amount of \$25,000 for unliquidated damages of pain and suffering. The verdict was molded to add \$16,308 for unpaid medical bills, for a total judgment of \$41,308, with \$3,658 in pre-judgment interest, for a total recovery of \$44,966.

REFERENCE

Foxx vs. Martino. Docket no. L-004013-20; Judge Joseph Rea, 05-05-23.

Attorney for plaintiff: John D. Gagnon of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for defendant: Joseph V. Pinto of Bennett, Bricklin & Saltzburg, LLC in Livingston, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Cervical and lumbar disc herniations and post-concussive syndrome – Cervical and lumbar trigger point injections; lumbar and cervical epidural injections and Polk analysis – Defendant denies negligence and challenges the nature, extent and permanency of plaintiff's injuries.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle in the rear with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On May 24, 2019, the plaintiff was stopped for traffic while traveling northbound on SR 34 in Colts Neck. The defendant was traveling directly behind the plaintiff and operating a vehicle owned by his employer. The plaintiff contended that the defendant negligently failed to observe traffic and slow or stop behind the plaintiff's vehicle. The plaintiff alleged that the force of the impact from the rear-end collision resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical and lumbar disc herniations and post-concussive syndrome. The plaintiff treated with trigger point injections

at the cervical and lumbar levels; lumbar and cervical epidural injections and underwent Polk analysis.

The defendant argued that the plaintiff was contributorily negligent in causing the accident and that the plaintiff failed to meet the threshold for recovery on injury damages. The defendant argued that the plaintiff did not suffer injury or that any injuries suffered were not permanent and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$90,000 but also noted that there were verbal threshold issues with the case. The arbitration was not confirmed and the matter proceeded to trial.

After a 4-day trial, the jury returned a verdict in favor of the defendant.

REFERENCE

Hadley vs. Allen, et al. Docket no. L-002303-20; Judge Michael Toto, 05-16-23.

Attorney for plaintiff: Laura A. Rabb of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for defendant: Stephen Czeslowski of Campbell, Foley, Delano & Adams, LLC in Asbury Park, NJ.

Sideswipe Collision

\$33,750 VERDICT

Motor Vehicle negligence – Sideswipe collision – Plaintiff's vehicle sideswiped by defendant's vehicle exiting turning lane – Cervical disc herniations – Cervical radiculopathy – Lumbar radiculopathy.

Camden County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was sideswiped by the defendant's vehicle when the defendant attempted to exit an incorrect turning lane. As a result, the plaintiff sustained injuries. The defendant generally denied all allegations of negligence.

On August 9, 2019, the plaintiff's vehicle was traveling in a straight direction on Voorhees Avenue, at or near its intersection with Executive Drive in Voorhees, New Jersey. At this time, the defendant's vehicle was also traveling on Voorhees Avenue at the aforementioned intersection, and was preparing to make a right turn into a shopping plaza. At the time of the incident, the plaintiff attempted to proceed straight through the intersection, when the defendant driver realized she was turning into the wrong plaza. The defendant made a quick maneuver in an attempt to exit the

right turn lane and merge back into the straight lane, where the plaintiff's vehicle was traveling. In doing so, the defendant's vehicle sideswiped the plaintiff's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to observe traffic conditions, failing to yield, failing to wait for clearance before changing lanes, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical radiculopathy, and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$33,750.

REFERENCE

Grossmick Christoph vs. Majkut Natalia. Docket no. L000581-21; Judge Michael J. Kassel, 06-13-23.

Attorney for plaintiff: Marc F. Greenfield of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Marlton, NJ.

Single Vehicle Collision

\$50,000 VERDICT

Motor vehicle negligence – Single vehicle collision – Plaintiff passenger injured when host vehicle strikes guardrail in attempt to avoid collision with another vehicle – Cervical disc herniations – Cervical radiculopathy – Lumbar disc herniations.

Camden County, NJ

In this motor vehicle negligence action, the plaintiff passenger was injured when the host vehicle struck a guardrail after the defendant driver swerved to avoid a collision with another vehicle. The defendant generally denied all allegations of negligence.

On April 4, 2019, the plaintiff was a restrained, front seat passenger in the host vehicle, which was being operated by the defendant driver. At this time, the host vehicle was traveling northbound on the Garden State Parkway, near mile post 123.5 in Sayreville Boro, New Jersey. While the host vehicle was traveling in a straight direction, another vehicle suddenly entered the host vehicle's travel lane, cutting directly in front of the host vehicle and nearly causing a collision. In order to avoid such a collision, the defendant driver made an "evasive maneuver," swerving to avoid strik-

ing the rear of the other vehicle. During this maneuver, however, the defendant driver lost control of the vehicle, causing it to strike a guardrail, and causing the plaintiff passenger to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to operate the vehicle at a reasonable rate of speed, failing to keep the vehicle under proper and adequate control, failing to remain in the correct lane of travel, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking a guardrail. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical radiculopathy, and lumbar disc herniations.

The jury found in favor of the plaintiff and awarded \$50,000.

REFERENCE

Hall Lisa vs. Miranda Evelyn. Docket no. L000772-21; Judge Michael J. Kassel, 06-30-23.

Attorney for plaintiff: John D. Borbi of Borbi, Clancy & Partrizi in Marlton, NJ.

PERSONAL NEGLIGENCE

\$95,000 VERDICT

Personal negligence – Plaintiff injured when knocked down by defendant's dog at public park – Failure to leash dog – Left shoulder tear – Left lateral meniscus tear – Exacerbation of bilateral knee osteoarthritis.

Burlington County, NJ

In this personal injury action, the plaintiff was injured when she was knocked down by the defendant's dog in a public park. The defendant generally denied all allegations of negligence.

On February 27, 2019, the plaintiff was lawfully walking within the premises of Hainesport Municipal Park, a public park located in Hainesport, New Jersey. At this time, the defendant was also visiting the park, and was doing off-leash training exercises with her dog. At the time of the incident, the plaintiff was walking near the defendant and her dog when the dog suddenly became excited and ran toward the plaintiff. The dog then ran into the plaintiff, knocking her to the ground and causing her to become injured.

The plaintiff maintained that the defendant was negligent in failing to leash the dog, failing to control the dog, failing to properly train in the dog, in negligently allowing the dog to roam off-leash in a public place, in failing to prevent the dog from charging at people, failing to warn of the dog's behavior, and failing to stop the dog from knocking the plaintiff to the ground. Consequently, the plaintiff sustained injuries, including left shoulder tear, left lateral meniscus tear, and exacerbation of bilateral knee osteoarthritis.

The jury found in favor of the plaintiff and awarded \$95,000.

REFERENCE

Garloff Teresa vs. Martin Kellie. Docket no. L000289-21; Judge Aimee R. Belgard, 04-24-23.

Attorney for plaintiff: Gary Brownstein of Brownstein Vitale & Weiss in Cherry Hill, NJ.

PREMISES LIABILITY

Fall Down

\$86,000 VERDICT

Premises liability – Fall down – Plaintiff trips and falls over unpainted speed bump in defendants' parking garage – Failure to provide adequate lighting – Right shoulder rotator cuff tear – Cervical disc bulges – Cervical disc herniations – Lumbar disc bulges – Surgery required.

Bergen County, NJ

In this premises liability action, the plaintiff was injured when she tripped and fell over an unpainted speed bump in the defendants' parking garage. The defendants generally denied all allegations of negligence.

On February 2, 2018, the plaintiff was a lawful resident of the defendant condominium building, located on the premises of 200 Winston Drive in Cliffside Park, New Jersey. On this day, the plaintiff was traversing the underground parking garage on the premises, and was walking toward her own vehicle. While she was walking through the parking garage, which was dimly lit, the plaintiff encountered a raised, unpainted speed bump. The plaintiff, unable to fully see it, tripped over the speed bump and fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the parking garage on the premises, failing to paint a speed bump on the premises, failing to warn of the presence of a speed bump, failing to provide adequate lighting in the parking garage, failing to provide safe passage, failing to repair or replace a hazardous speed bump, failing to prevent hazardous or unsafe conditions on the premises, and failing to regard for the health and safety of building residents and visitors including the plaintiff. Consequently, the plaintiff sustained injuries, including a right shoulder rotator cuff tear, which required surgery to repair. The plaintiff also sustained cervical disc bulges, cervical disc herniations, and lumbar disc bulges.

The jury found in favor of the plaintiff and awarded \$86,000.

REFERENCE

Djangirir Soheila vs. Winston Towers 200 Association. Docket no. L000212-20; Judge Gregg A. Padovano, 05-22-23.

Attorney for plaintiff: Damon A. Vespi of The Vespi Law Firm, LLC in Totowa, NJ.

\$37,125 VERDICT

Premises liability – Fall down – Plaintiff injured after tripping and falling on unsecured floor mat at defendant store – Lumbar disc herniations – Lumbar sprain/strain – Right knee pain.

Camden County, NJ

In this premises liability action, the plaintiff was injured after she tripped and fell on an unsecured floor mat at the defendant store. The defendants generally denied negligence.

On December 5, 2019, the plaintiff was a lawful visitor and business invitee at the defendant store, located on the premises of 500 White Horse Pike in Waterford Township, New Jersey. At the time of the incident, the plaintiff was attempting to exit the store through the main doorway. While exiting the store, the plaintiff's foot became caught under a large rubber floor mat that was not secured to the floor. The plaintiff then tripped and fell into the doors, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to properly install a

floor mat, failing to secure the subject mat to the floor, failing to inspect the premises, failing to prevent a tripping hazard on the premises, failing to warn of a potential tripping hazard, failing to provide safe passage, failing to remove or replace an unsafe floor mat, failing to prevent hazardous or unsafe conditions on the premises, and failing to regard for the health and safety of business invitees at the store including the plaintiff. Consequently, the plaintiff sustained injuries, including lumbar disc herniations, lumbar sprain/strain, and right knee pain.

The jury found in favor of the plaintiff and awarded \$37,125.

REFERENCE

Hahn Kathaleen vs. Dollar General Corporation. Docket no. L003786-21; Judge Judith S. Charny, 04-25-23.

Attorney for plaintiff: Patrick J. Reilly of Malamut & Associates, LLC in Cherry Hill, NJ.

Hazardous Premises

■ \$900,000 GROSS VERDICT

Premises liability – Hazardous premises – Plaintiff falls forward onto exposed fence wire on defendant’s property striking wire with eye – Loss of vision in right eye.

Morris County, NJ

The plaintiff in this premises liability action sued his parents for negligence when he fell into an exposed fence wire on the property striking the wire with his eye resulting in loss of vision in the eye. The defendants denied negligence and argued that it was the actions of the plaintiff that caused the incident.

On November 18, 2019, the male plaintiff was sitting in a chair on the concrete patio of the property owned and controlled by the defendants, his parents, located on North Street in Chatham Borough in New Jersey. The plaintiff suffered a coughing fit which prompted him to stand up at which point the plaintiff fell forward onto a protruding and exposed fence wire.

The wire went into the plaintiff’s right eye causing severe injury resulting in loss of vision in the right eye. The plaintiff maintained that the defendants were negligent in installing the fence with protruding, exposed, and loose wiring, maintaining hazardous premises, failing to warn of the hazardous condition, and other negligence without limitation.

The arbitrator found that the defendants were 50% liable and the plaintiff was 50% liable. The arbitrator awarded the plaintiff \$900,000 which was reduced to \$450,000.

REFERENCE

Aniello Nigro vs. Rocco and Maria Nigro. Docket no. MRSLO00164-21; Judge James F. Sullivan, Arbitrator, 10-13-22.

Attorney for plaintiff: Michael F. Lombardi of Lombardi & Lombardi, P.A. in Edison, NJ. Attorney for defendant: David McHale of Langsam Stevens Silver & Hollaender, LLP in Pennington, NJ.

TRANSIT AUTHORITY LIABILITY

■ \$96,000 VERDICT

Transit Authority liability – Bus negligence – Plaintiff falls down bus stairs after public transport vehicle makes sudden stop – Full thickness tear of left rotator cuff – Left bicep tendon tear at shoulder – Neck sprain/strain – Surgery required.

Camden County, NJ

In this Transit Authority liability action, the plaintiff was injured when she fell down the entry stairs of a public bus, after the bus came to an abrupt stop. The defendants generally denied negligence.

On April 19, 2019, the plaintiff was a lawful passenger on a public bus, which was traveling on White Horse Pike in Somerdale, New Jersey. At this time, the bus was crowded and all of the seats were taken, so the plaintiff was standing in the aisle toward the front of the bus. At the time of the incident, another vehicle cut in front of the bus in traffic, causing the bus to quickly brake and make an abrupt stop. When the bus stopped short, the plaintiff fell backward down the bus’s entry steps, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to keep a proper lookout, failing to exercise due care, failing to ensure the safety of pas-

sengers on the bus, failing to hire competent bus drivers, failing to properly train bus drivers, failing to inspect the bus, failing to ensure that the bus was safe for standing passengers, failing to operate the bus at a reasonable rate of speed, failing to properly brake and stop the bus, and failing to regard for the health and safety of public transportation passengers including the plaintiff. Consequently, the plaintiff sustained injuries, including a full thickness rotator cuff tear of the left shoulder, a left bicep tendon tear at the shoulder, and neck sprain/strain. The plaintiff’s injuries required surgery to repair, including a left shoulder arthroscopy.

The jury found in favor of the plaintiff and awarded \$96,000.

REFERENCE

Cummings Yvonne vs. New Jersey Transit. Docket no. L000800-21; Judge Judith S. Charny, 07-22-23.

Attorney for plaintiff: John P. Borbi of Borbi, Clancy & Patrizi, LLC in Marlton, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

\$77,119,162 VERDICT – MEDICAL MALPRACTICE – PSYCHIATRIC TREATMENT FACILITY NEGLIGENCE – DEFENDANTS DISCHARGE PLAINTIFF’S DECEDENT FROM FACILITY AFTER REMOVING/ALTERING DECEDENT’S MOOD STABILIZING DRUGS – DECEDENT COMMITS SUICIDE SEVERAL DAYS LATER – FAILURE TO SPEND SUFFICIENT TIME WITH PLAINTIFF’S DECEDENT TO PROVIDE PROPER TREATMENT AND EVALUATION – WRONGFUL DEATH OF 29-YEAR-OLD MALE.

Dekalb County, GA

In this action for medical malpractice, the plaintiff’s decedent, with a long history of mental illness, had been a patient of the defendants and was discharged from their facility for rule violations after the defendants removed and adjusted the decedent’s medications. The decedent committed suicide several days after discharge. The defendants denied all allegations of negligence.

The plaintiff’s decedent was killed on September 22, 2017, at approximately 4:00 a.m. when he was struck by several vehicles while lying naked in the fetal position on Interstate 85 in Atlanta, Georgia. The decedent had been receiving mental health treatment at the defendant’s facility from August 29, 2017 until September 19, 2017 when he was kicked out for allegedly having a cell phone. On September 5, 2017, while at the defendant’s facility, the defendant doctor had discontinued the decedent’s prescription for Lithium and reduced his amount of Seroquel. The de-

cedent had been on these medications for mood stabilization and sleep. At the time of his death, he had no illegal drugs or alcohol in his system. He was 29 years old.

The decedent is survived by his parents, a minor son, and his fiancée.

The jury found that the plaintiff was entitled to recover compensatory damages in the amount of \$60,593,787.50 against the facility and 16,252,375 from the defendant doctor for a total verdict of \$77,119,162.50.

REFERENCE

The Estate of Nicholas Carusillo, by and through Michael and Tina Carusillo, III vs. Metro Atlanta Recovery Residences, Inc., Richard A. Waldman, M.D. Case no. 19A73528, 09-28-22.

Attorney for plaintiff: Natalie Woodward in Atlanta, GA. Attorney for defendant: Ryan Ingram in Doraville, GA.

\$6,900,600 VERDICT – MEDICAL MALPRACTICE – ORTHOPEDIC SURGEON NEGLIGENCE – DEFENDANT PERFORMS UNNECESSARY AND CONTRAINDICATED SURGERY ON PLAINTIFF RESULTING IN INJURY – FAILURE TO RECOMMEND CONSERVATIVE TREATMENT FOR PLAINTIFF’S NECK PAIN – LIMITED RANGE OF MOTION – SEVERE PAIN.

Southern District County, OH

The plaintiff in this medical malpractice action maintained that the defendant doctor was negligent and fraudulent in performing a cervical procedure on the plaintiff which was contraindicated, and fabricated the severity of the plaintiff’s condition. Consequently, the plaintiff has been left with permanent limitations in her

cervical spine due to the procedure and the hardware used. The defendant denied all allegations of negligence and injury.

In October of 2011, the defendant performed the surgery. He dictated in the operative report that the arch of C1 was so thinned out that while drilling a pilot hole for C1 screw, he noticed a fracture. All prior diagnostics preoperatively report no fractures. The procedure included the placement of hardware, fusion, and bone grafting.

Following the procedure, the plaintiff continued to experience severe pain in her neck and suffered from decreased range of motion and inability to turn her head. She relies on canes and walkers to assist with walking and keeping her balance. For long distances, the plaintiff requires a wheelchair and has chronic and acute, unbearable pain.

The jury found that the defendant overstated the radiological findings, fabricated the diagnosis, miss diagnosed the plaintiff, performed unnecessary surgery, selected improper surgical procedure and improperly placed surgical hardware. The jury

awarded the plaintiff medical expenses in the amount of \$50,300, compensatory damages in the amount of \$1,350,300, and punitive damages in the amount of \$5,500,000 for a total of \$6,900,600.

REFERENCE

Tara Brown vs. Abubakar Atiq Durrani, M.D. and Center for Advanced Spine Technologies. Case no. 18cv785; Judge Michael R. Barrett, 02-08-22.

Attorney for plaintiff: Robert Albert Winter, Jr. in Fort Mitchell, KY. Attorney for defendant: James Foley Brockman of Lindhorst & Dreidame in Cincinnati, OH.

\$8,000,000 VERDICT – MEDICAL MALPRACTICE – OB/GYN – PLAINTIFF SUFFERS LACERATIONS OF BILATERAL UTERINE ARTERIES BUT DEFENDANTS ONLY REPAIR ONE ARTERY CAUSING INTRAABDOMINAL HEMORRHAGE – FAILURE TO TIMELY DIAGNOSE UTERINE ARTERY BLEED POST C-SECTION – EMERGENCY HYSTERECTOMY.

Montgomery County, PA

The plaintiff in this medical malpractice action maintained that she suffered cardiac arrest and is now infertile following care provided by the defendants during her labor with her second child. The plaintiff maintained that the defendants failed to appreciate bilateral uterine artery lacerations and only repaired one artery necessitating an emergency hysterectomy. The defendants denied being negligent and maintained that the care provided to the plaintiff was within all medical standards.

The plaintiff suffered several post-surgical complications. The plaintiff maintained that the defendants were negligent in failing to promptly and adequately evaluate and monitor the plaintiff mother given the bilateral extension of the uterine incision following C-section, failing to evaluate the left uterine artery during the repair of the uterine incision, failing to recognize that the left uterine artery had been completely

transected, failing to recognize that the left uterine artery was bleeding profusely, failing to recognize that the left uterine artery was not hemostatic during the C-section repair, and care falling below standards.

The jury found that the defendant Jiang was 100% liable for the injuries sustained by the plaintiff. The jury awarded the plaintiff wife \$5,500,000 and her husband \$2,500,000 for loss of consortium.

REFERENCE

Laura and Randy Rongione vs. Abington Memorial Hospital, Karli Jiang, M.D., Ph.D., Victoria Myers, M.D., Amanda Rhodes Michael, M.D., Maria Roman Evidente, M.D. Case no. 2014-27658; Judge Steven C. Tolliver, 06-14-23.

Attorney for plaintiff: Thomas R. Kline of Kline & Specter in Philadelphia, PA. Attorney for defendant: Benjamin Post of Post & Post, LLC in Berwyn, PA.

\$1,800,000 RECOVERY – MEDICAL MALPRACTICE – RADIOLOGIST NEGLIGENCE – DEFENDANT RADIOLOGIST FAILS TO PROPERLY INTERPRET DOPPLER ULTRASOUND AND MISSES DECEDENT'S DVT WHICH RESULTS IN FATAL PULMONARY EMBOLISM – WRONGFUL DEATH OF 61-YEAR-OLD MALE.

Montgomery County, PA

In this action for medical malpractice, the estate of the decedent maintained that their decedent died of a pulmonary embolism when the defendants failed to diagnose and treat the decedent's deep vein thrombosis. The defendants denied being negligent and alleged that the decedent was treated properly in accordance with all standards.

The estate maintained that the defendants were negligent in failing to possess the degree of care and skill ordinarily exercised in similar cases by other physicians and technicians, failing to exercise the requisite degree of care and skill, failing to properly diagnose and treat the untoward condition(s) that resulted in

the death of the decedent, failing to perform necessary medical testing in a proper manner and failing to properly perform, read, interpret, and report medical tests and procedures, including but not limited to the Doppler ultrasound study performed on July 24, 2014.

The decedent is survived by his wife and 3 adult children.

The only 2 defendants that remained on the docket were the radiologist and the hospital. The estate settled with those defendants for \$1,800,000 with 75% allocated to the wrongful death claim and 25% to the survivorship claim.

REFERENCE

The Estate of Daniel Drobins by Theresa Drobins vs. Pottstown Memorial Medical Center, Thomas Devanna, M.D., Kimberly A. Petruso, D.O. and Mark A. Schwartz, M.D. Case no. 2016-10514; Judge Steven C. Tolliver, 04-21-23.

Attorney for plaintiff: Christian Perrucci of Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC in Easton, PA. Attorney for defendant: Howard Stevens

of Gross McGinley, LLP in Allentown, PA. Attorney for defendant: James P. Kilcoyne of Kilcoyne & Nesbitt, LLC in Blue Bell, PA.

MOTOR VEHICLE NEGLIGENCE

\$10,456,250 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – INSURANCE OBLIGATION – PLAINTIFF’S DECEDENT KILLED BY UNDERINSURED MOTORIST – WRONGFUL DEATH OF 62-YEAR-OLD MALE.

Philadelphia County, PA

In this case, the estate of the decedent maintained that the defendant driver was speeding when he lost control of his vehicle and struck and killed the decedent. At the time of the accident, the decedent was personally insured through Progressive and commercially insured through the defendant insurance entities. The estate alleged that the defendant insurance entities failed to adequately advise the decedent regarding his insurance needs. All defendants denied all allegations of negligence and injury.

The defendant Fonner had sold the decedent the insurance. The plaintiff argued that the defendants breached their duties in failing to keep the decedent appropriately and timely advised of his insurance needs by failing to ensure that the decedent had sufficient underinsurance coverage. The defendant driver was charged with vehicular homicide.

The jury found that the defendant driver was negligent and that his negligence was a factual cause of bringing harm to the plaintiff. The jury awarded the plaintiff wrongful death damages of \$1,000,000 and survival damages of \$9,000,000 with regard to the Ramadan claims. In addition, the jury found that the insurance defendants were also negligent and awarded the plaintiff and additional \$456,250.

REFERENCE

The Estate of Neil Lipschutz by Nancy Rosenberg vs. United Financial Casualty Company, Fonner Insurance Associates, Eric Fonner and Hatim Ramadam. Case no. 210101684; Judge Michael Erdos, 06-30-23.

Attorney for plaintiff: Brian Chacker of Gay & Chacker in Philadelphia, PA. Attorney for defendant: Richard Margolis of Margolis Edelstein in Philadelphia, PA. Attorney for defendant: Timothy Ventura of Marshall Dennehey in Philadelphia, PA.

\$1,100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF LIVERY DRIVER STRUCK IN REAR – LUMBAR HERNIATION REQUIRING SURGERY – MINOR PROPERTY DAMAGE.

Kings County, NY

In this action for motor vehicle negligence, the plaintiff livery driver, in his early 60s, contended that he was struck in the rear, suffering a lumbar herniation which required surgery. The defendant failed to appear for his deposition, and the plaintiff had previously filed a self-executing motion for preclusion. This motion was granted and the defendant was barred from producing testimony. The defendant would have presented a biomechanical engineer expert who pointed to photographs that showed extremely limited damage.

The defendant pointed out the plaintiff returned to work as a livery driver with diminished hours. The plaintiff asserted that he was more concerned with help-

ing his family than the pain working caused. The plaintiff maintained that the pain is permanent and interferes with his day-to-day functioning.

The case settled after jury selection and before openings for \$1,100,000.

REFERENCE

Plaintiff’s orthopedic spinal surgeon expert: Michael Gerling, M.D. from Brooklyn, NY.

Plaintiff livery driver in his early 60s vs. Defendant driver.

Attorney for plaintiff: Stephen D. Wagner, III of Wingate Russotti Shapiro & Halperin, LLC in New York, NY.

\$335,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – MINOR PLAINTIFF PEDESTRIAN STRUCK BY DEFENDANT’S VEHICLE WHILE CROSSING STREET – OPEN TRANSVERSE LEFT HUMERAL FRACTURE – SURGERY REQUIRED INCLUDING OPEN REDUCTION AND INTERNAL FIXATION WITH PLACEMENT OF HARDWARE.

Nassau County, NY

In this motor vehicle negligence action, the minor plaintiff pedestrian sustained injuries, including an open transverse fracture of the left humerus, which required surgery to repair, after being struck by the defendant’s vehicle while crossing the street. The plaintiff underwent open reduction and internal fixation with the placement of hardware, as well as a following procedure to remove the hardware. The defendant generally denied all allegations of negligence.

On October 28, 2019, the minor plaintiff was a pedestrian walking on Peninsula Boulevard at or near its intersection with Arlington Place in Hempstead, New York. At this time, the minor plaintiff was attempting to cross Peninsula Boulevard in the crosswalk at the aforementioned intersection. At the same time, the

defendant’s vehicle was traveling on Arlington Place, toward the aforementioned intersection. While the minor plaintiff was crossing the street, the defendant’s vehicle proceeded straight through the intersection, and struck the minor plaintiff.

The parties entered into a settlement for \$335,000.

REFERENCE

J. S. An Infant, By His m/n/g, Eblin Samayoa vs. Justin Jacobs, Rochelle Jacobs. Index no. 600234/2020; Judge David P. Sullivan.

Attorney for plaintiff: Evans D. Prieston of Law Office of Evans D. Prieston, P.C. in Queens, NY. Attorney for defendant: Francis J. Scahill of Scahill Law Group, P.C. in Bethpage, NY.

PREMISES LIABILITY

\$6,000,000 VERDICT – PREMISES LIABILITY – FALLING OBJECT – PLAINTIFF STRUCK ON HEAD BY METAL PLATE IN CEILING OF ELEVATOR ON DEFENDANTS’ PROPERTY – DISC HERNIATION AT C3-4; TRAUMATIC BRAIN INJURY WITH POST-TRAUMATIC EPILEPSY AND SEIZURES – PERMANENT DISABILITY FROM EMPLOYMENT AS VETERINARY SURGEON; PROHIBITION FROM DRIVING, SWIMMING, AND OTHER ACTIVITIES – DISCECTOMY AND ARTHROPLASTY – LIFELONG SEIZURE MEDICATION AND MEDICAL CARE.

Palm Beach County, FL

In this premises liability case, the plaintiff, a veterinary surgeon, asserted that the defendant property owners failed to maintain a safe elevator in their parking garage and that the plaintiff was struck on head by metal plate in the ceiling of the elevator. As a result of the incident, the plaintiff sustained a traumatic brain injury with secondary onset of post-traumatic epilepsy; and cervical disc herniation at C3-4 requiring discectomy and arthroplasty. Prior to trial, the plaintiff settled with the elevator manufacturer and the matter proceeded only as to the defendant property owners. The defendants argued that the elevator company, with whom the plaintiff had settled, was solely responsible for the maintenance and safety of the elevator per a continuing services contract with the elevator company for the service and maintenance of the elevator.

The plaintiff can no longer perform his work as a veterinary surgeon due to the seizures he suffers as a result of the subject injury as well as being unable to

drive, swim, operate machinery or perform many other activities of daily living because of the risk of seizure during those activities. The plaintiff also must take anti-seizure medication for the remainder of his life and lives with a risk of injury or death from his seizures.

The jury found that there was negligence on the part of the defendant property owners and non-party elevator company. The jury found the defendant property owners 70% liable and the non-party elevator company 30% negligent and awarded damages in the amount of \$6,000,000 broken down as follows: \$300,000 in past non-economic damages; and \$5,700,000 in future non-economic damages.

REFERENCE

Rayment vs. Mizner Park Venture, LLC, et al. Case no. 2017-CA-007543; Judge G. Joseph Curley, 12-12-22.

Attorney for plaintiff: Sagi Shaked of Shaked Law Firm in Miami, FL. Attorney for defendant: Steven Jones of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP in Miami, FL.

\$3,750,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT MAINTENANCE – LONG-TERM FAILURE TO COMPLY WITH NATIONAL ELECTRICAL CODE FOR INSULATING RODS – WORKER FOR NON-DEFENDANT COMPANY SUFFERS FATAL ELECTRICAL INJURY AFTER CONTACT WITH DEFENDANT’S CABLES.

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

This premises liability case involved the death of a 51-year-old worker, who did not work for the defendant company, and who was electrocuted when working near defendant’s cables because of the absence of proper insulation on a cable. The defendant maintained that the Rural District Exception applied and denied liability.

The plaintiff countered that the Rural District Exception exemption from the 1961 Electrical Code did not apply to insulators. The plaintiff’s electrical safety expert concluded that the Code had been amended a number of times since 1918, none of which supported the defendant’s position. The plaintiff asserted that the conduct of the defendant warranted punitive damages.

The decedent left a wife and 2 teenage children. He was earning approximately \$150,000 per year.

The case settled at mediation before Hon. Dennis F. Carey, III, P.J.Cv.D. (retired) for \$3,750,000.

REFERENCE

Plaintiff’s anesthesiologist expert: Peter Salgo, M.D. from Nutley, NJ. Plaintiff’s economic expert: Kristin Kucsma from Livingston, NJ. Plaintiff’s electrical safety expert: William Patrick from Moravia, NY.

Fatal electrocution of 31-year-decedent vs. x.; Settled after mediation before Judge Dennis F. Carey, II.

Attorney for plaintiff: William S. Greenberg of Greenberg Minasian, LLC in West Orange, NJ.

\$281,250 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS ON WATER LEAKING FROM REFRIGERATED FOOD DISPLAY CASE AND FALLS – DISPLACED EVULSED FRACTURE OF LEFT PATELLA – SURGERY REQUIRED.

Bergen County, NJ

In this premises liability action, the plaintiff slipped and fell on water leaking from a refrigerated food display case at the defendant supermarket. Consequently, the plaintiff sustained injuries, including a displaced, evulsed fracture of the left patella, which required open reduction and internal fixation surgery with the placement of hardware to repair. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to adequately clean the premises, failing to remove water from the floor, failing to erect signs or otherwise warn of a wet

floor, failing to hire adequate janitorial staff, failing to inspect the premises, failing to warn of a drain leak on the premises, failing to provide safe passage, and failing to regard for the health and safety of visitors on the premises including the plaintiff.

The jury found in favor of the plaintiff and awarded \$281,250.

REFERENCE

Zisser Jaime vs. Inserra Supermarkets, Inc. Docket no. L007056-21; Judge Peter G. Geiger, 04-08-23.

Attorney for plaintiff: Steven R. Hymowitz of Steven R. Hymowitz, Esq. in New City, NY.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

\$48,000,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF FALLS FROM UNSECURED LADDER/STAIRCASE WHILE WORKING ON CONSTRUCTION SITE – SPINAL CORD INJURY – EXTENSION TEARDROP FRACTURE OF CERVICAL SPINE – FRACTURES OF T2, T3, AND T4 IN THORACIC SPINE – THORACIC EDEMA AND HEMATOMA – FUSION OF THORACIC VERTEBRAL BODIES – FRACTURES OF LUMBAR SPINE – WHITE MATTER DISEASE – SURGERY REQUIRED.

Kings County, NY

In this construction site negligence action, the plaintiff, working as an employee at a construction site, fell from an unsecured ladder/temporary staircase. Consequently, the plaintiff sustained severe injuries, including spinal cord injury, extension teardrop fractures of the cervical vertebrae, acute anterior inferior teardrop fractures of the cervical vertebrae, fractures of T2, T3, and T4 in the thoracic spine, thoracic edema and hematoma, fusion of thoracic vertebral bodies, fractures of the lumbar spine, and white matter disease. The plaintiff's injuries required numerous surgeries to repair. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe conditions at the construction site, failing to secure the temporary stairs, failing to inspect construction equipment, fail-

ing to keep the stairs from falling, failing to equip the staircase with protective guardrails or handrails, failing to prevent the stairs from falling, failing to ensure the safety of the stairs, failing to warn that the staircase was not secured, and failing to regard for the health and safety of construction workers at the site including the plaintiff.

The jury found in favor of the plaintiff and awarded \$48,000,000.

REFERENCE

Dariusz Hrychorczuk vs. 1677 43rd St Llc, Bbm Construction Corp. Index no. 502912/2017; Judge Wayne Saitta, 05-24-23.

Attorney for plaintiff: Michael L. Taub of The Platta Law Firm in New York, NY. Attorney for defendant: Joseph T. Redd of O'Connor Redd Orlando, LLP in Port Chester, NY.

Homeowners' Association Negligence

\$11,000,000 PRE-SUIT RECOVERY – HOMEOWNERS' ASSOCIATION NEGLIGENCE – FAILURE TO INSTALL WINDOW SAFEGUARDS – 7-STORY FALL FROM WINDOW – CATASTROPHIC INJURIES TO 9-YEAR-OLD BOY.

Miami-Dade County, FL

This action arose from the minor plaintiff's 7-story fall out the bedroom window of a condominium unit owned and managed by the defendant homeowners association and management company. The plaintiff alleged that the fall resulted from the defendants' negligence in failing to install proper window safeguards and caused the minor plaintiff life-altering injuries. Although initially raising several defenses, the defendants ultimately recognized the preventable nature of the incident and the severity of the boy's injuries.

The boy was rushed to the hospital. Evidence showed that his injuries were so severe that his parents were instructed by doctors to say their goodbyes, anticipating the child would not survive through the night. However, the next morning the youngster's arms were moving. The minor plaintiff was diagnosed with a severe traumatic brain injury as a result of the fall. He now requires around-the-clock care and is unable to speak or walk.

The defendants and their insurers ultimately agreed to tender the \$11,000,000 policy limits as a pre-suit resolution. The agreement included a structured settlement with a portion of the funds to be placed in a special care trust.

REFERENCE

Jouset vs. Greenwich Condominium Association, Inc., et al. Case no. 2022-024432-CA-01 (approving settlement); Judge Vivianne Del Rio, 01-05-23.

Attorneys for plaintiff: Michael Haggard and Adam Finkel of The Haggard Law Firm in Coral Gables, FL.