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JURY VERDICT

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**SUMMARIES
WITH TRIAL
ANALYSIS**

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

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

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\$2,389,340 JUDGMENT – BREACH OF FIDUCIARY DUTY – UNJUST ENRICHMENT – PLAINTIFF HEIR AND DEFENDANT SHAREHOLDER/PARTNER DISPUTE CALCULATION OF VALUE OF PLAINTIFF’S DECEDENT’S SHARE OF SEVERAL JOINTLY-OWNED COMPANIES – DEFENDANT ASSERTS VALUATION METHODOLOGY SET FORTH IN AGREEMENT AMONGST ORIGINAL PARTNERS IN 1994.

Monmouth County, NJ

In this breach of fiduciary duty and unjust enrichment case, the plaintiff, son/heir of the decedent, asserted that the defendant breached his fiduciary duties and was unjustly enriched by retaining profits and compensation from the plaintiff’s decedent’s portion of several businesses following his death. The defendant asserted that only he was entitled to receive officer compensation and profits from the businesses, not the decedent’s heirs (including the plaintiff).

At the time of his death, the plaintiff’s decedent was a 50% owner of three businesses, all headquartered in the Township of Wall. The businesses were a disposal company, recycling company, and wrecking company. The other 50% owner of the businesses was the defendant. At the time of his death, the decedent was also a partner in a family limited partnership, the owner of various parcels of real property in Wall. There were 2 other partners, and all partners were equal. The plaintiff argued that in October 2015, 15 months after the decedent’s death, the defendant presented a proposal to the plaintiff regarding the purchase of the estate’s interest in the 3 subject businesses and one parcel of real property not owned by the family limited partnership. The valuations of the businesses in the proposal were based on valuations prepared by the regular accountant for the businesses based on a “Comparable market analysis” prepared by a real estate broker. Through counsel, the defendant proposed a payment to the estate of the proceeds of an insurance policy the businesses had on Joseph’s life in the amount of \$500,000, minus debt the estate had for loans the decedent had with one of the businesses in the amount of \$160,000. The remaining amount to the estate, purported to be approximately \$854,000, would be paid through a 10-year note.

The plaintiff asserted that a buy-back agreement and note were prepared by the defendant’s counsel with purchase figures that deviated from the prior proposal. The plaintiff did not accept the proposal, nor did he sign the agreement. In January 2016, the plaintiff first learned that there were stock purchase agreements for each of the 3 entities and he was provided with copies of those agreements. The plaintiff had concerns that the agreements understated

the valuations and retained an accounting firm to review them for accuracy. After numerous requests for documents to complete his review, the plaintiff was not provided with the documents. The plaintiff retained a real estate appraiser to appraise the land owned by the family limited partnership, as well as properties owned by the decedent in entities outside that partnership. That appraisal valued the land at \$2.2 million, more than \$1 million higher than the defendant’s appraisal. The plaintiff argued that, as a result of the delay in buying back the decedent’s interest in the businesses, the defendant was able to keep 100% of the officer compensation and profits from the businesses while, at the same time, not paying for the decedent’s interest. Thus, the defendant had an incentive to delay the sale. The plaintiff sought a full accounting of the business and operations of the businesses and rents from the decedent’s properties from the date of the decedent’s death.

The defendant argued that the plaintiff had suffered no damages. The defendant also argued that he was principally responsible for the business operations of the defendant entities for more than 35 years. Following the death of the decedent, the defendant was the sole remaining shareholder, member and partner of the companies. The defendant asserted that, in 1994, the then 3 partners executed stock purchase agreements to prepare for the event that any one of them retired, separated from the companies or died. The agreements were intended to provide a means of determining purchase price and buyout terms so as to avoid dispute, delay and unnecessary expense to the companies from uncertainty over buyout rights and obligations. The defendant maintained that the intent of the agreements was that no one, other than themselves, would have a say in the management and control of the companies. For that reason, the agreements prohibited the sale or transfer of the interests to anyone other than the remaining shareholder/partners. This prohibition included the sale of stock/interest to spouses or children. The agreements stated that the per share value of the stock for purposes of the agreements would be determined by the independent certified accountant “Regularly retained by the corporation” and that the date to be utilized for valuation purposes should be determined by the independent certified accountant

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as of the date of annual valuation on or about May 1 of the prior year, not any date in the future. Further, the agreement stated that the purchase of the deceased shareholder's stock was to be funded by the proceeds from the life insurance owned by the companies on the life of the deceased member. The defendant argued that he complied with all obligations under the agreements in connection with the purchase of the decedent's interests in the companies and that he negotiated in good faith with the plaintiff to purchase the estate's interests. The defendant argued that the plaintiff repeatedly and unjustifiably delayed, improperly refused to execute the buyout agreement and failed to negotiate in good faith.

The matter went to a bench trial wherein the court found in favor of the plaintiff and ordered that judgment be entered against the defendant and for the plaintiff for 50% interest in the recycling company in the principal amount of \$966,259. Judgment was entered against the defendant and for the plaintiff for 50% interest in the disposal company in the principal amount of \$130,581. Judgment was entered against the defendant and for the plaintiff for 50% interest in the wrecking company in the principal amount of \$676,070. Judgment was entered against the defendant and for the plaintiff for one-third interest in the family partnership company in the principal amount of \$549,342. In addition, the court entered judgment against the defendant and in favor of the plaintiff for compensation due to the decedent in 2014 from the wrecking and recycling companies as well as repayment of a loan the decedent made to the recycling company in the net principal amount of \$59,163 plus interest of \$7,925. The total award to the plaintiff was \$2,389,340.

REFERENCE

Lurch vs. Lurch, et al. Docket no. L-002259-17; Judge Linda Grasso Jones, 10-17-19.

Attorney for plaintiff: Joel N. Kreizman of Scarinci & Hollenbeck, LLC in Red Bank, NJ. **Attorney for defendant:** Daniel Jude Maxwell of Law Offices of Kathleen R. Wall in Manasquan, NJ.

COMMENTARY

During the course of litigation, the parties determined that an issue in dispute would be submitted to an arbitrator for resolution. The parties submitted the issue to be decided by the Honorable Thomas P. Oliveieri as arbitrator, as follows: Whether the Estate has all the rights of a Shareholder/member until the buyout is consummated or whether the issue is the amount of money due to the Estate for the purchase of its interest in the companies and Partnership as of the date of death. The arbitrator issued a decision set forth in an order dated October 1, 2018 as follows: 1) Plaintiff's claim that the Estate has all the rights of a Shareholder or Member of the Companies until the buyout is consummated be and hereby is DENIED; 2) The Estate's rights are limited solely to having its interest in the Companies and Partnership purchased by the defendant and the value of the Estate's interest in the Companies and Partnership shall be determined as of the date of death of the decedent.

The order of the arbitrator was presented to the court for signature and entry, on notice to the Estate. No objection was submitted to the court, and the court signed the order on October 12, 2018. In its trial brief to the court, the Estate contended that the inclusion of the Family Limited Partnership in the question to be answered by the arbitrator was an error and asked the court to correct the error. The Estate acknowledged that the issue was submitted to the arbitrator as to the Family Limited Partnership, as well as the other family businesses, but contended that the submission of this issue for arbitration was a mistake. The Estate contended that the Family Limited Partnership agreement did not contain a provision whereby a deceased partner's interest is required to be sold to the remaining partners, and that in making his decision as to the Family Limited Partnership, the arbitrator exceeded his authority. No objection was made to the form of the order, or the decision set forth therein, by counsel representing the Family Limited Partnership, or counsel for the Estate. No motion was filed with the court by the plaintiff after counsel received notice of the arbitrator's decision, requesting that the decision be vacated or otherwise disturbed. No motion for reconsideration was submitted by the plaintiff to the arbitrator requesting reconsideration of his decision. Plaintiff's counsel indicated that an email was sent advising that the plaintiff thought the arbitrator's decision was incorrect, but sending

correspondence to the arbitrator does not substitute for the filing of a motion. As stated by the court in *Ducey v. Ducey*, 424 N.J. Super 68, 73 n. 2 (App. Div. 2012), the use of correspondence is not a substitute for the filing of a motion when a party is presenting a specific request for relief. The submission of an expression of discontent with the arbitrator's decision in an email from plaintiff's counsel to the arbitrator did not substitute for the filing of a motion for reconsideration with that arbitrator, or with the court. The defendant contended that under N.J.S.A. 2A:23B-24 the plaintiff was out of time to present any objection to the court as to the arbitrator's award since more than 120 days had passed since the award was issued.

The arbitration in this matter was conducted after the complaint was filed in this matter, while this matter was pending with the court, and thus, there was no need for the filing of a separate summary action. The plaintiff failed to establish, however, that upon receiving the arbitration decision, it properly requested modification or correction of the October 1, 2018 decision or that the arbitration award was improperly confirmed by the court. The court was satisfied that the plaintiff did not file a motion for reconsideration with the arbitrator, did not object to the defendant's request that the court confirm the arbitrator's order, did not file a motion with the court to modify, vacate or correct the arbitrator's award, or otherwise file an appropriate opposition to the award within 120 days of notice of the award, or at any point in time. Additionally, no basis existed for the claim that the arbitrator made a decision on an issue not before him, and thus, exceeded his authority. The issue as to the Family Limited Partnership was placed squarely before him by the parties in this matter. Rather, it appears that the Estate did not agree with the arbitrator's decision. The arbitrator was specifically asked to decide the issue as to the Family Limited Partnership, and thus the arbitrator did not exceed his powers in rendering his decision, see N.J.S.A. 2A:23B-23. Judge Olivieri's

decision did not contain a mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award.

Finally, because no such application was filed, the court did not have before it a record of what was presented to the arbitrator, and even if it were procedurally appropriate for the court to review the substance of his decision, it would be unable to do so. No party submitted into evidence at trial the documents reflecting the transfer of partnership interest between the partners and no evidence was presented as to the nature of the partnership interests transferred to the brothers (i.e., whether they transferred general or limited partnership interests). Likewise, the court was not advised as to the evidence presented to the arbitrator upon which he based his decision. Finally, it is noted that the Uniform Limited Partnership Law, N.J.S.A. 42:2A-1, et seq., provides in N.J.S.A. 42:2A-31, titled "Events of withdrawal of a general partner," that upon the death of a general partner, that person "ceases to be a general partner of a limited partnership. . . ." N.J.S.A. 42:2A-42, titled "Distribution upon withdrawal, provides "[e]xcept as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal, based upon his right to share in distributions from the limited partnership." The court was satisfied that no basis was presented that would permit the court to disturb the arbitrator's decision, and the court was determining, as part of its decision in this matter, the amount of money that must be paid by the defendant to the Estate for the decedent's interest in the Lurch Family Limited Partnership, in accordance with the arbitrator's decision.

\$2,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF FRONT-SEAT PASSENGER IN HOST VEHICLE STRUCK BY DEFENDANT MERGING ONTO ROADWAY – PRIOR LUMBAR HERNIATION REQUIRING 2 SURGERIES – TRAUMA CAUSES DISABLING LOWER BACK PAIN AND MANDATES ADDITIONAL SURGERY – PLAINTIFF UNABLE TO CONTINUE WORKING.

Somerset County, NJ

In this action, the plaintiff passenger in his early 20s contended that the defendant non-host driver negligently failed to yield a was merging onto a main roadway, striking the host driver with significant force. The plaintiff further asserted that as the vehicles were pulling to the side, the defendant struck the host vehicle a second time. The plaintiff claimed that the subject accident caused an aggravation of a lumbar herniation that had necessitated 2 surgical interventions 3-4 years earlier, and from which he made a good recovery, resuming activities such as soccer. The plaintiff contended that because of the aggravation, he required the extension of fusion surgery to an adjacent level and will suffer extensive permanent symptoms, limiting him to sedentary type light work. The plaintiff had obtained a stock-person's job approximately 5 months before the subject accident and the plaintiff maintained that he has not been able to return.

The evidence disclosed that the defendant non-host driver failed to yield before merging onto the roadway, striking the host vehicle with significant force. As the vehicle pulled to the side of the road, the non-host struck the host a second time. The plaintiff had suffered a lumbar herniation 3-4 year earlier and required both a fusion and a revision surgery as of the time the subject accident occurred. The plaintiff maintained that he had made a good recovery from the surgeries, and the plaintiff would have introduced photographs and videos, including scenes of him engaging in activities such as soccer. The plaintiff contended that after the subject accident, he underwent significant additional therapeutic and diagnostic testing, including pain management and a discogram. The discography was performed in contemplation of surgery, which the plaintiff underwent.

The plaintiff would have related that approximately 5 months before the subject accident occurred, he had obtained a new job as a stockperson. The plaintiff would have asserted that he was faring well until

the subject accident occurred and that because of the severe pain and cramping commencing after the collision, he was unable to work. The plaintiff's vocational expert would have maintained that the plaintiff will permanently be limited to sedentary type work. The plaintiff's economist would have testified that the plaintiff, whose talents and inclinations gear him towards physical work, will suffer approximately \$1,000,000 in economic losses. The plaintiff would have also argued that the jury should consider that the plaintiff will experience extensive pain and suffering for the remainder of a lengthy life expectancy.

The defendant had a total of \$2,500,000, which was subject to reduction because of other payments which were made. The case settled prior to trial for \$2,000,000.

REFERENCE

Plaintiff's economist expert: Paul Gazaleh, CPA from Hightstown, NJ. Plaintiff's neurosurgeon expert: Matthew Tormenti, M.D. from Princeton, NJ.

Plaintiff's pain management expert: Michael O'Hara, M.D. from Woodbridge, NJ. Plaintiff's vocational expert: Ellen Radar Smith from Towaco, NJ.

Estrada vs. Sasso. Docket no. SOM-L-206-19, 03-30-20.

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

COMMENTARY

It is felt that the plaintiff was able to obtain a particularly significant recovery in this case involving a plaintiff who suffered prior herniations several years earlier and had already undergone 2 prior surgical interventions. The plaintiff, who stressed that he had fared well after the prior operations and resumed activities such as soccer, also maintained that because of the subject accident and the need for extension of the fusion, he was left with especially great pain and was unable to continue the stock-person job he commenced approximately 5 months earlier. In this regard, the plaintiff emphasized that his talents, inclinations, and experience gear him towards physical labor, which because of the combination of the initial injuries and the aggravations sustained in the subject accident, he can no longer performed. Finally, the plaintiff would have stressed that the pain and disability which will last for the remainder of a lengthy life expectancy.

\$1,185,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – DEFENDANT DRIVER FAILS TO OBEY STOP SIGN AFTER PULLING TO SIDE TO SEND TEXT – DEFENDANT FAILS TO OBSERVE PLAINTIFF'S POLICE SUV EMERGING FROM BEHIND BARRICADE COLLIDING WITH POLICE VEHICLE – OSTEOCHONDRAL DEFECT OF DOMINANT SHOULDER – DEFENDANT PLEADS GUILTY TO MOTOR VEHICLE CHARGES.

Morris County, NJ

This motor vehicle negligence case involved a plaintiff on-duty police officer/passenger in a police SUV who was, 46 years of age at the time. The plaintiff police officer was driving a coworker back to the DPW garage after setting up barricades due to a prior fire on Main Street in Madison. A barricade was placed at the intersection that contained a stop sign controlling perpendicular travel, and the defendant driver, who had pulled to the side a short distance before the stop sign in order to send a text, negligently resumed travel and failed to obey the stop sign, colliding with the police vehicle causing the passenger to sustain serious injuries requiring multiple surgeries. It was undisputed that the defendant had pulled to the side shortly before the stop sign, exchanged texts with his office and then resumed without stopping at the stop sign. The police vehicle had not activated the emergency signals. The evidence would have disclosed that the defendant pled guilty to failure to observe a stop sign without a civil reservation.

The plaintiff maintained that he suffered an osteochondral defect to the right, dominant shoulder which required 3 surgical interventions. The plaintiff suffered a rotator cuff tear to the same shoulder several years earlier that was arthroscopically repaired;

however, he was able to return to full police duty after each of the surgeries. He contended that he still suffered significant pain and limited range of motion and strength in the affected shoulder. The plaintiff indicated that he would have retired from the force within several years of the accident, irrespective of the collision.

The plaintiff's orthopedic surgeon would have testified that this accident involved a "new" injury to a different area of the right shoulder (the humeral head) and not the rotator cuff. He further would have testified that the plaintiff will experience very significant pain and suffering, that the plaintiff is at high risk for traumatic arthritis in the future in and that he may well require a future shoulder replacement.

The defendant denied that this position was accurate, and contended that any current complaints are related to the previously diagnosed rotator cuff tear. The plaintiff would have countered that he was able to perform his duties without limitation until this accident occurred. The plaintiff maintained that he can no longer do so, and that it was clear that the injuries sustained in the accident were caused by the subject collision. The plaintiff would have made a claim for approximately \$80,000 in lost wages, based largely on his inability to work overtime.

The plaintiff would have also argued that any award must compensate the plaintiff for future pain and suffering because he will not be permitted to return to court for future compensation. The plaintiff would have further reflected that the plaintiff had been the coach of the Little League team on which his 8-year-old son plays. The plaintiff asserted that he cannot even play catch with his son, and that everyday activities are painful and difficult.

The defendant had \$250,000 in primary coverage and a \$2,000,000 umbrella. The case settled prior to trial for \$1,185,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Andrew A. Willis, M.D. from Cedar Knolls, NJ.

Mitchko vs. Evangelista. Docket no. MRS-L-1987-18, 07-01-20.

Attorney for plaintiff: Kenneth W. Elwood of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

\$1,250,000 RECOVERY – SPORTS & RECREATION – FAILURE OF TRAMPOLINE PARK TO PROVIDE PROPERLY AFFIXED COVER TO PREVENT EXPOSURE TO SPRINGS – PLAINTIFF JUMPS FROM TRAMPOLINE AND FEET BECOME CAUGHT IN OPENING BETWEEN SPRINGS – WHEN TRAMPOLINE LAUNCHES HIM INTO AIR, FEET BECOME STUCK, SNAPPING LEGS IN HALF – BILATERAL LOWER LEG FRACTURES – MULTIPLE SURGERIES.

Middlesex County, NJ

This case involved a plaintiff in his 30s, who was a patron of the defendant trampoline park. The owner of the park was the franchisee of the franchisor, who was also the designer of the trampoline. The plaintiff maintained that the trampoline was dangerous because the skirt covering the springs was attached to the unit by Velcro and became exposed easily. The plaintiff asserted that he was injured in the area known as the Foam Pit, which consists of two side-by-side trampoline lanes with a pit of foam landing area. As the plaintiff jumped from the trampoline attempting to vault into the pit, both of his feet became caught in the opening between the springs. When the trampoline launched him into the air, his feet became stuck, which snapped both of his legs in half. The plaintiff required multiple surgical interventions, had a delayed union on one side and contended that he will permanently suffer extensive pain and difficulties ambulating. The defendants also maintained that the plaintiff's claim was barred by a waiver signed before use. The plaintiff countered that the waiver was signed only by the plaintiff's wife, with whom he subsequently separated, and that any waiver did not apply to him.

The plaintiff established that the ASTM International, formerly known as American Society for Testing and Materials, require that the trampoline springs are covered and never exposed. The plaintiff contended that the trampoline should have been designed in such a

COMMENTARY

The defendant driver, who failed to obey the stop sign after resuming travel upon completing texting with his office, for which he had pulled to the side, plead guilty to motor vehicle violations without a reservation. Additionally, the plaintiff would have argued that because the side road leading to the intersection had been barricaded, the defendant improperly assumed that traffic had stopped, resulting in the defendant entering the intersection without adhering to the stop sign. Regarding damages, the plaintiff, who suffered a previous rotator cuff tear to the same shoulder, stressed that the prior injury required limited care, and that he had made a full recovery and had been cleared to return to full duty prior to the subject accident. Additionally, the plaintiff stressed that future traumatic arthritis is probable and that he may well need a shoulder replacement in the future. In this regard, the plaintiff emphasized that he will not be permitted to return to court for additional compensation irrespective of his future course.

manner that the cover would not open so easily when the trampoline was used. The franchisor maintained that the design was appropriate and that it is the responsibility of the franchisee to observe if the Velcro is unfastened. The plaintiff would have countered that it was inevitable that the design involving Velcro would not be adequately secure and the franchisee fail to notice the hazard in the brief time between individuals using the device. The plaintiff further contended that the hazard posed by the exposed springs constituted gross negligence and that the waiver would not insulate the defendants from liability stemming from such gross negligence. The plaintiff had consulted with an engineer, but the case settled before a report was issued.

The plaintiff's orthopedic surgeon would have testified that the plaintiff suffered an open right tibia fracture with delayed union and a left tibial shaft fracture and comminuted fibula fracture with delayed union. In order to insert an intramedullary (IM) rod, a midline incision was made at the left patella tendon, and the tendon was split to allow the insertion of the rod. The plaintiff underwent insertion of IM rods in both tibias, on two different occasions. His leg length differential is now 1 cm less on the left than the right and the plaintiff maintained that the discrepancy is permanent in nature. The plaintiff also contended that the noticeable scars at the insertion of rods in the lower left extremities where the rod and screws were placed are permanent in nature. The plaintiff asserted that the because of the altered gait associ-

ated the injuries, the plaintiff has developed right patella tendonosis, as well as lower back pain with annular tears in the lumbar area. The plaintiff contended that these injuries are permanent as well. The case settled prior to trial for \$1,250,000 with each defendant paying \$625,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Andrew Hutter, M.D. from West Orange, NJ.

Vogt vs. Rebounderz Franchise & Development, Inc., et al. Docket no. MID-L-6578-16, 08-25-20.

Attorney for plaintiff: Lawrence D. Minasian of Greenberg Minasian, LLC in West Orange, NJ.

DEFENDANT'S VERDICT – APPELLATE CASE – INSURANCE OBLIGATION – NJ STATE TROOPER INJURED WHILE DRIVING NJ TURNPIKE AUTHORITY VEHICLE – PLAINTIFFS APPEAL LOSS OF AWARD FROM PERSONAL UIM COVERAGE DUE TO DISPUTE AS TO AMOUNT OF UIM COVERAGE HELD BY TURNPIKE AUTHORITY.

Middlesex County, NJ

This insurance obligation case was an appeal from an order dated December 4, 2015, denying the plaintiffs' motion for reconsideration of a September 24, 2015 order determining that the defendant insurer did not owe the plaintiffs UIM coverage for an automobile accident. The plaintiffs' appeal remands the matter to the trial court for a plenary hearing to decide material factual disputes concerning the coverage issue.

The facts of the underlying case are that the primary plaintiff, a NJ State Trooper, was injured in an auto accident while he was on duty, driving a vehicle owned and insured by the NJ Turnpike Authority. The other driver had a \$15,000 auto insurance policy. After settling with the driver for the \$15,000 limit, the plaintiffs sought UIM coverage from the defendant Turnpike Authority and from the plaintiffs' own personal auto insurance policy with the defendant insurer. There was no dispute that the plaintiffs' insurance policy provided \$300,000 in UIM coverage. The dispute arose as to whether the defendant Turnpike Authority provided \$15,000 or \$2 million in UIM coverage. The plaintiffs won a verdict of \$300,000 against their own personal auto insurer for UIM, but the verdict was negated after trial by the court's decision that the defendant Turnpike Authority carried UIM with a limit of \$2 million and that the plaintiff's policy was effective only in excess of that amount. The plaintiffs appealed that decision arguing that the language of the defendant Authority's policy was incorrect and that the language of an excess policy cannot legally determine the insured public entity's underlying coverage limit.

The Turnpike Authority supported the plaintiffs' position. The defendant Turnpike Authority's position was that the excess policy only covered third-party claims, not UIM claims. The defendant contended that the endorsement at issue, including the retained limit language concerning UIM coverage, was insurance

COMMENTARY

Each defendant, who was no longer viable, had a \$1 million policy. The franchisor's carrier pointed out that it was not advised of the claim for approximately 2 years and disclaimed coverage. The plaintiff was nonetheless able to obtain a substantial recovery. It is felt that if the case proceeded to trial, the highly traumatic nature of the incident, in which both legs snapped as the plaintiff jumped from the trampoline could have easily produced an unpredictable verdict, which would have exposed at least one of the carriers to a bad faith; failure to settle claim. Additionally, the defendants would have argued that any claim was barred by a waiver. The plaintiff, who stressed that the alleged waiver was only signed by the wife and not the plaintiff, would have also argued that the hazard was the result of gross negligence, and as such, any waiver was not enforceable.

company boilerplate which was not applicable to the type of coverage the defendant had purchased from the provider and should not have been included in the policy. The Authority argued, in the alternative, that it had no obligation to provide any UIM coverage and did not include such coverage in its self-insured retention, or that its UIM obligation was limited to \$15,000. The Authority conceded that an evidentiary hearing was required, while the plaintiffs' defendant auto insurer insisted that their respective positions would prevail without a hearing.

The court determined that the defendant Turnpike Authority's policy limit was \$2 million and dismissed the plaintiffs' complaint against their personal auto insurer. The plaintiffs are appealing the decision.

REFERENCE

Sanchez vs. Porfirio, et al. Docket no. L-008597-12; Judge Phillip L. Paley, 07-24-19.

Attorney for plaintiff: Thomas DeSeno of Thomas DeSeno, Esq., LLC in Neptune, NJ. Attorney for defendant New Jersey Manufacturers Insurance Company: John A. Camassa of Camassa Law Firm in Wall, NJ. Attorneys for defendant New Jersey Turnpike Authority: Cynthia A. Walters and Christopher R. Paldino of Chiesa Shahinian & Giantomasi, PC in West Orange, NJ.

COMMENTARY

The dispute over the amount of the defendant Turnpike Authority's coverage was based on an unusual set of facts. The Authority was self-insured, but had procured an excess policy for amounts over \$2 million. An endorsement of that policy could be construed to mean that Chartis was providing UIM coverage for occupants of the Authority's vehicles on an excess basis, and that the Authority was self-insured for \$2 million in UIM coverage. The endorsement included the following sentence: "Uninsured/Underinsured Motorists retained Limit \$2,000,000 INSURING AGREEMENT." While the UIM litigation was pending, the plaintiffs filed a motion to amend the complaint to add the provider from whom the defendant bought the policy as an addi-

tional defendant. The court did not decide whether the policy in fact provided UIM coverage or what amount of UIM coverage the defendant Authority provided. Rather, he reasoned that, even if the policy included UIM coverage, the plaintiffs failed to demonstrate that their damages exceeded \$2 million, so as to trigger any “umbrella coverage” provided by the policy. It appeared that this endorsement had created issues in other auto accident cases in the past as to the amount of coverage. In his deposition, the deputy executive director of the defendant Authority, testified that he believed the self-insured limit of \$15,000 for UIM was statutorily required and that the defendant had never had UIM excess coverage from the insurance company and that the endorsement at issue was “a mistake.” He noted that a section in the policy’s exclusions section stated that the policy did not apply to the insured’s UIM obligation. The deputy director also acknowledged that, in two prior cases involving injured State Troopers, the defendant had settled UIM claims for considerably more than \$15,000. The defendant also subsequently raised its own self-insured limit from \$15,000 to \$250,000 and had the endorsement at issue removed from its excess policy with the outside provider. Despite knowing that there was an issue of the defendant’s self-insured limit, the plaintiffs settled with the defendant for \$67,000. The settlement agreement was without prejudice to the defendant’s position at the time of the accident that it only provided \$15,000 in UIM coverage, regardless of the terms of any existing excess policy.

The plaintiffs then proceeded to trial against their personal insurer. Shortly before the trial, the plaintiffs’ defendant personal insurer filed a motion asking the trial court to declare that the Turnpike Authority’s UIM coverage was \$2 million, and that the defendant insurer’s policy was excess to the coverage provided by the Turnpike Authority. The judge declined to hear the motion and proceeded with the trial wherein the jury returned a verdict of \$300,000 for the plaintiffs. After the trial, the judge determined that the Turnpike Authority’s UIM limit was \$2 million, effectively violating the \$300,000 jury verdict against the plaintiffs’ auto insurer.

Ordinarily, the interpretation of an insurance policy is a contract matter that present solely a legal issue. However, in this case the plaintiffs argued, where the Authority was self-insured, the issue was not as simple. The plaintiffs asserted that there was a material factual issue concerning the Authority’s UIM coverage at the time of the 2011 accident. The excess policy purchased by the Authority only provided coverage that was excess to existing coverage. It neither provided primary coverage nor created any underlying coverage. The language of the policy, according to plaintiffs’ counsel, could not create such underlying coverage if it did not otherwise exist. The plaintiff also asserted that the record presented factual issues concerning the Authority’s policies and conduct with respect to providing UIM coverage to persons driving the Authority’s vehicles. Plaintiffs’ counsel maintained that it was difficult to comprehend how a public agency such as the Authority could have no records defining its self-insured UIM coverage. Because there is no statutory requirement for UIM coverage, it is also unclear whether or how the Authority could provide \$2 million in UIM coverage without a public vote of its Commissioners authorizing that coverage. It is further unclear why the Authority settled prior UIM claims for amounts so far in excess of what it claimed was its self-insured limit of \$15,000. Thus, in view of the amount of money at stake, the plaintiffs requested a plenary hearing on the issues.

At the hearing, evidence was presented wherein the Authority settled similar cases in amounts of the \$2 million excess policy in one case; and \$280,000, \$67,000, and \$400,000 in other cases. Evidence indicated that the Authority had, in fact, never settled a case at its purported \$15,000 limit. The court found that, even if inclusion of the \$2 million endorsement were a mistake, reformation of the insurance policy to remove the endorsement was inappropriate and, in fact, the Authority had never established a policy limiting UM/UIM benefits to \$15,000. Thus, according to the court, the inexorable conclusion is that the Authority’s self-insured UM/UIM limit in effect in 2011 was \$2 million.

DEFENDANT’S VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF FALLS ON DEBRIS FROM TREE ON DEFENDANT GOLF COURSE – CERVICAL DISC DISORDER WITH RADICULOPATHY OF MID-CERVICAL REGION – C4-5 DISC HERNIATION – TRIGGER POINT INJECTIONS; PHYSICAL THERAPY; PAIN MANAGEMENT AND SPINAL STIMULATOR – PERMANENT DISABILITY.

Monmouth County, NJ

In this premises liability case, the plaintiff asserted that the defendant golf course created a hazardous condition by cutting a tree on the golf course and leaving behind debris on which the plaintiff slipped and fell sustaining injury. The plaintiff asserted that the defendant knew or should have known about the condition as another golfer, 3 days prior, reported that she “Slipped down the slope on rotten berries” in the same location. The plaintiff asserted that the defendant failed to rope off, provide warning signs or take any other steps to protect the public from the active, ongoing work. The defendant denied liability claiming that, following the first golfer’s report of debris and a fall, they sent grounds crew out immediately to clean up.

On October 15, 2015, the plaintiff was playing golf at the defendant course owned and run by the County of Monmouth. The plaintiff observed a fruit-bearing

tree, which had been recently cut down, lying on its side, partially cut up with branches and other debris, berries for example, surrounding the area. The plaintiff was walking down a slight hill from the tee to the cart path when he slipped on debris from the tree and fell to the ground. The plaintiff discontinued his golf game and went to a medical center where he received an X-ray, CT-scan and pain medication.

As a result of the fall, the plaintiff sustained cervical disc disorder with radiculopathy of the mid-cervical region; spondylosis of the lumbosacral region; disc displacement; left cervical radiculitis; C4-5 left paracentral disc herniation; C3-4 disc protrusion with right foraminal stenosis; and L3-4 disc bulge. The plaintiff claimed new injuries and that any pre-existing condition was exacerbated by the fall, causing it to go from asymptomatic to symptomatic. The plaintiff treated with physical therapy for a period before discontinuing because it exacerbated his pain. The

plaintiff continued with pain management and trigger point injections and ultimately had a spinal stimulator installed. The plaintiff contended that he is left with persistent, chronic back pain with limitations on range of motion that inhibit his ability to do many activities such as mow the lawn, throw a baseball, lift grocery bags, or walk further than ¼ mile. The plaintiff claimed that, to date, he had incurred \$200,000 in medical bills as a result of his injury.

The defendant asserted that the area was in the process of being cleaned up and that the plaintiff noted the debris, thus he knew of the condition of the course and failed to exert care when walking in the area. The defendant also contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were pre-existing, degenerative and not caused by the subject incident. The defendant asserted that the plaintiff had age-related degenerative disc disease and arthritis which could not be causally tied to the subject fall.

The jury found no cause of action and returned a verdict in favor of the defendant. The plaintiff made a motion for new trial which was denied.

REFERENCE

Martin vs. Bel Aire Golf Course. Docket no. L-002349-16; Judge Lourdes Lucas, 07-23-19.

Attorney for plaintiff: G. John Germann of DeNoia, Tambasco & Germann, L.L.C. in Toms River, NJ.

Attorney for defendant: Robert M. Ford of Birdsall & Laughlin, LLC in Wall, NJ.

COMMENTARY

The plaintiff moved for a new trial on the grounds that the jury's decision was unreasonable. The plaintiff pointed to the jury charge 5.20A Dangerous Condition of a Public Property wherein there are 5 elements that establish a dangerous condition. The jury found that the plaintiff met 4 of the 5 elements of 5.20A. The jury did not find that the defendants' actions were "Palpably unreasonable" despite the fact that, the plaintiff argued, the evidence clearly showed that the defendants were palpably unreasonable in that they had the ability to put up warnings but failed to do so, which was not disputed by any of the defendants' representatives. The plaintiff maintained that the defendants' actions, specifically making the condition worse by cutting

down the trees and failing to place warnings at the location of the fall, were palpably unreasonable. The plaintiff's counsel submitted that they satisfied all of the elements required to prove the defendant was palpably unreasonable. Specifically, the County did not dispute (1) that its employee witnessed a prior golfer's fall 2 days before the plaintiff's accident; (2) that the County worsened the condition by cutting the trees down as it caused "Loads" of berries to cover the ground; (3) that it failed to rope off the dangerous condition despite having the means to do so; (4) that it placed a "Staging area" of slippery berries and other debris directly between the cart path and the most commonly used tees in the third tee box. Thus, the plaintiff submitted that by failing to find that the County was palpably unreasonable, there was a miscarriage of justice under the law.

The defendants countered that the plaintiff's motion should be denied because the unanimous jury verdict was supported by ample evidence and the plaintiff was accordingly unable to clearly and convincingly establish that the verdict constituted a miscarriage of justice. The defendants argued that the verdict was supported by ample evidence. The defendants pointed to the fact that its greens keeper witnessed a golfer slip on berries dropped from a tree and staff took immediate action thereafter working to clear the area that very day. At the time of the prior golfer's fall, the area was heavily covered with leaves and berries, as it was late fall. The grounds staff removed berries, leaves and other debris by using rakes, shovels and a cart to haul the debris away. The following day, grounds staff went further and cut down the tree and others like it and worked to clear the area. On the morning that the plaintiff fell, these efforts were still ongoing. By this point, according to the defendants, the hill near the front of the tee box where the initial golfer had fallen was clear. The remaining tree work was readily observable. The plaintiff admitted that he saw the work going on before walking up the hill to take his shot and acknowledged that he could have avoided it by walking several feet towards the front of the tee box where it was clear. The plaintiff's position, defense counsel argued, essentially amounted to the idea that the non-roping off of the work area conclusively established that the County's conduct was palpably unreasonable. This argument was presented at trial by the plaintiff. Notwithstanding, the plaintiff's theory of liability was unanimously rejected by the jury, which decision was appropriate in light of the totality of the circumstances and far from a miscarriage of justice.

The court denied the plaintiff's motion for new trial.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Pulmonology

DEFENDANT'S VERDICT

Medical malpractice – Pulmonology/primary care – Plaintiff contends failure to timely diagnose stage I lung cancer in decedent caused delay in diagnosis, treatment and survivability – Wrongful death of 74-year-old widow – Defendants contend no indication of malignancy on scans, primary tumor not in lung and plaintiff's decedent's prognosis would not have changed.

Middlesex County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants failed to timely diagnose and treat the plaintiff's decedent, resulting in years of pain and suffering and her untimely death from lung cancer. The plaintiff brought suit against the decedent's primary care physician and pulmonologist. The defendants denied any deviation from the standard of care and denied having failed to diagnose the decedent's lung cancer via the 2012 scans.

The plaintiff's decedent had a 30-year history of smoking discontinued in 1998 and a history of severe COPD and other serious health issues. The plaintiff was followed for her COPD by the defendant pulmonary specialist beginning in 2008 and was also followed by the defendant internal medicine primary care physician. In June of 2012, an incidental pulmonary nodule was discovered during a CT-scan ordered by the defendant primary care physician. Both defendants received the report which showed a 1.1 cm nodule in the upper right lobe of the lung. The decedent underwent CT and PET scans in July and August 2012 which, the plaintiff contended, indicated pathologic stage 1 lung cancer that ultimately led to extensive hepatic metastatic disease which culminated in the decedent's death on August 26, 2014.

The plaintiff asserted that the defendants failed to identify the lung cancer on those scans and failed to order a biopsy that would have uncovered the decedent's cancer 2 years prior to her eventual diagnosis; thus, the plaintiff's treatment was delayed and her chance of survival was diminished. The plaintiff's expert opined that, to a reasonable degree of medical probability, there were 2 primary tumors, a slow grow-

ing non-small cell lung cancer in the right upper lung and an aggressive rapidly growing poorly differentiated neuroendocrine tumor that likely arose in the GI tract, possibly in the sigmoid colon. This aggressive GI malignancy gave rise to the extensive metastatic disease that ultimately led to the patient's death. The plaintiff's expert believed that further evaluation of the lung lesion in July 2012 or via biopsy would have led to a diagnosis of pathologic stage I non-small cell lung cancer with a 70% 5-year survival.

The plaintiff contended that the decedent lost her life as a result of the defendants' failure to timely diagnose her primary, neuroendocrine lung cancer. At the time the diagnosis was missed, the decedent was an otherwise active 74-year-old widow with 2 adult children. The plaintiff claimed that the decedent unnecessarily suffered and was robbed of a chance of survival due to the two-year delay in diagnosis.

The defendants argued that the pathology of the metastatic tumor discovered in the decedent's liver had IHC staining that was not consistent with a primary carcinoma of the lung. The defendants maintained that an expert review of the records indicated that a UGI or pancreatico-biliary carcinoma was most likely and that the primary site could be in the sigmoid colon and would not have been diagnosable via the lung scans in 2012. The defendants claimed that surgical resection of the right upper lung lesion would not have influenced the ultimate prognosis which was entirely based on the second primary tumor in the GI tract.

The jury unanimously found no cause of action and returned a verdict in favor of all defendants.

REFERENCE

Hamedl vs. Singh, M.D., et al. Docket no. L- 001031-16; Judge Thomas Buck, 10-18-19.

Attorney for plaintiff: Erin P. Mullen Sala of Morelli Law Firm, PLLC in New York, NY. Attorney for defendant primary care physician: Maura Waters Brady of Vasios, Kelly & Strollo, P.A. in Union, NJ. Attorney for defendant pulmonologist: Beth A. Hardy of Farkas & Donohue, LLC in Florham Park, NJ.

Radiology

DEFENDANT'S VERDICT

Medical malpractice – Radiology – Plaintiff contends defendants' failure to diagnose breast cancer in timely fashion limited decedent's treatment options and shortened and diminished quality of life – Defendants deny any deviation from standard of care and assert no delay in diagnosis.

Middlesex County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants deviated from acceptable medical standards in their treatment of the plaintiff's decedent delaying the diagnosis of cancer, and thus, caused her death. The defendant healthcare center was dismissed on summary judgment after being determined not to have been the facility that performed the decedent's mammograms. The defendant radiologists denied that the plaintiff's mammogram at issue was misinterpreted.

On November 14, 2014, the decedent was patient at the defendant healthcare center with her mammograms under the review of the defendant radiologists. The plaintiff asserted that decedent learned on the date in question that she suffered from breast cancer that would have been earlier and effectively treated, but for the negligent and careless evaluation, diagnosis and treatment of the defendants.

As a result of the defendants' malpractice, the plaintiff's decedent ultimately succumbed to breast cancer that the plaintiff maintained that, had the patient been timely diagnosed, she would have had more treatment options, and would have had a longer and better quality of life, even if she still eventually succumbed to her cancer. By the time the decedent was diagnosed, by virtue of cervical lesions, she was not a surgical candidate and suffered spinal compression, paralysis and the inability to sustain even radiation treatment. The plaintiff's decedent lost bladder and bowel control, was confined to a wheelchair and required around-the-clock specialized nursing in the last months of her life.

The plaintiff presented the report of a board certified expert in radiology who opined that the medical care given to the plaintiff by the defendants fell outside acceptable professional standards. The plaintiff's expert opined that, if the decedent had been diagnosed over a year prior to her actual diagnosis, she would not have had the spinal cord compression or vertebral collapse that was found at the time of diagnosis. Further, without cord compression and vertebral collapse, the radiation she received would have kept her from experiencing spinal cord compression and its consequential neurological deficits. The plaintiff's expert opined that even a diagnosis of breast cancer 4 months earlier would have meant less tumor burden in her spine. The plaintiff's expert concluded that the delay in diagnosis by the defendants led directly and proximately to the decedent's permanent neurological deficits and neurological damage, paralysis of the lower extremities, inability to walk, loss of independence and her having to spend the remainder of her life in a skilled nursing facility.

The defendants presented expert testimony that there was no significant change on the subject mammogram as compared to prior mammograms nor was there any evidence of malignancy. The defendants' expert also noted that not all breast cancers are detected on mammography, particularly in the case of a patient with dense breast tissue, as in the case of the plaintiff's decedent.

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

REFERENCE

Estate of Flora Marie Comizzoli vs. Green, M.D., et al. Docket no. L- 006101-16; Judge Lisa M. Vignuolo, 10-31-19.

Attorney for plaintiff: Mitchell J. Makowicz, Jr. of Blume, Forte, Fried, Zerres & Molinari, P.C. in Chatham, NJ. Attorney for defendant physicians: Jessica Y. Ma of Buckley Theroux Kline & Petraske, LLC in Princeton, NJ. Attorneys for defendant healthcare center: Christine M. Jones and Beth A. Hardy of Farkas & Donohue, LLC in Florham Park, NJ.

CIVIL ASSAULT

DEFENDANT'S VERDICT

Civil assault – Altercation at wedding – Traumatic wrist injury – Arthroscopy, debridement and synovectomy – Plaintiff claims permanent injury.

Monmouth County, NJ

On May 14, 2016, the plaintiff and defendant were wedding guests at a ceremony in Huntington, New York. The plaintiff maintained that the defendant struck her on the wrist and arm during a verbal altercation at the wedding. The plaintiff claimed serious injury from the

negligent act of the defendant. The defendant denied liability, claiming that the plaintiff was negligent and that her negligence was the cause or a substantial contributing factor in causing the accident and personal injuries she sustained.

As a result of the assault, the plaintiff sustained traumatic injury to the wrist leading to wrist arthroscopy, debridement and synovectomy. The plaintiff claimed some permanency of her injury with residual complaints of pain and decreased mobility. The defendant also contested the plaintiff's damages claiming

that some or all of the plaintiff's condition and necessary surgery were not proximately caused by the subject incident but, rather, were degenerative in nature. The jury found in favor of the defendant.

REFERENCE

Schnitzer vs. Polotti. Docket no. L-004354-17; Judge Owen C. McCarthy, 07-16-19.

Attorney for plaintiff: Jeffrey J. Dunn of Weir & Associates in Ewing, NJ. Attorney for defendant: Ragged M. All of Law Offices of Nancy L. Callegher in Mt. Laurel, NJ.

CONSTRUCTION SITE NEGLIGENCE

\$750,000 RECOVERY

Construction site negligence – Absence of fall protection – Plaintiff worker falls from second floor of single-family home under construction – Fractured calcaneus – Ankle fracture – Multiple surgeries.

Monmouth County, NJ

In this case, the plaintiff employee of a subcontractor at a new home construction site contended that the defendant general contractor failed to provide required fall protection. The 39-year-old plaintiff asserted that as he was walking on an approximately 18-inch wide board while attempting to squeeze between 2 x 4s that were framing an entranceway that intersected with the board on which he was walking, he lost his footing and fell approximately 12 feet to the ground sustaining serious injuries which required multiple surgeries. The defendant contended that it was the employer of the plaintiff who was obligated to provide fall protection and this was the sole proximate cause of the accident.

The plaintiff maintained that the defendant general contractor negligently failed to comply with OSHA requirements for fall protection. The plaintiff, who was carrying a nail gun and framing square, contended

that he lost his footing and fell to the ground. The plaintiff asserted that he sustained a left calcaneal fracture and a right ankle comminuted fracture of the distal tibia with an oblique fracture of the fibula requiring multiple surgeries. The plaintiff contended that he will suffer permanent pain and some difficulties ambulating which are heightened because of the involvement of both legs. The plaintiff made no income claims.

The case settled prior to trial for \$750,000.

REFERENCE

Plaintiff's neurologist expert: David H. Rosenbaum, M.D. from Englewood, NJ. Plaintiff's orthopedic surgeon expert: Stephen L. Nehmer, M.D. from Union, NJ. Plaintiff's OSHA expert: Vincent. Gallagher from Audubon, NJ. Defendant's engineer expert: Joseph B. Mills, PE from Mantua, NJ. Defendant's orthopedic surgeon expert: Robert W. Morrison, M.D. from New Vernon, NJ.

Medina vs. River Point Properties, LLC, et al. Docket no. MON-L-1093.

Attorneys for plaintiff: John Ratkowitz and Michael Gallardo of Ginarte Gallardo Gonzalez & Winograd, LLP in Newark, NJ.

INSURANCE OBLIGATION

\$325,000 VERDICT

Insurance obligation – Underinsured motorist – Rear end collision – Aggravation of cervical disc condition – Lumbar disc herniation – Balance disorder – Lost wages – Verdict molded to \$235,000.

Ocean County, NJ

In this uninsured motorist claim, the plaintiff asserted that, on May 24, 2014, the tortfeasor struck her vehicle from behind with enough force

to cause significant, permanent injury. Because the tortfeasor was underinsured, the plaintiff filed this action to recover from her insurer with a credit of \$15,000 for the tortfeasor's policy limit. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained aggravation of cervical disc condition, and a lumbar disc herniation. The plaintiff also suffered a balance disorder which was confirmed by neuropsychological

examination. The plaintiff made a claim for lost wages. The defendant challenged the causal relationship of the plaintiff's injuries to the subject collision and denied there was any permanency associated with the alleged injuries.

The jury found in favor of the plaintiff and awarded damages for pain, suffering and disability in the amount of \$325,000 plus \$30,000 for lost wages for a total verdict of \$355,000. The verdict was molded to \$235,000 to conform to the plaintiff's underinsured

motorist policy limits of \$250,000, less a \$15,000 credit for payment received from the tortfeasor's policy.

REFERENCE

Lasher vs. Allstate Insurance Company. Docket no. L-001491-17; Judge James Den Uyl, 07-05-19.

Attorney for plaintiff: Joseph G. LePore of LePore Luizzi in Brick, NJ. Attorney for defendant: Jamie L. Barron of Law Offices of Pamela D. Hargrove in Wall, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Rear end collision – Underinsured motorist – Disc herniation at T11-12; bulging discs at L3-4, L4-5 and L5-S1 – Pain management and chiropractic care – Rhizotomy.

Mercer County, NJ

In this insurance obligation case, the plaintiff asserted that the tortfeasor driver struck her vehicle from behind with such force that it caused her to sustain significant, permanent injury. The tortfeasor tendered the policy limit of \$15,000 and the plaintiff pursued this underinsured motorist action against the defendant insurer. The defendant stipulated liability, but contested the plaintiff's damages.

On December 11, 2015, the plaintiff sustained permanent injuries in a rear end motor vehicle collision on Ewingville Road at the intersection of Heath Street in Hamilton. The plaintiff was stopped at a red light controlling the intersection and the tortfeasor driver negligently failed to stop behind the plaintiff and struck her vehicle from behind.

As a result of the collision, the plaintiff sustained a disc herniation at T11-12; and bulging discs at L3-4, L4-5 and L5-S1. The plaintiff treated with pain management and chiropractic care and ultimately underwent a rhizotomy. The defendant argued that the plaintiff's injuries were 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 \$75,000 reduced to \$60,000 for offset of tortfeasor's policy limit of \$15,000. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of \$75,000. The matter was not resolved and went to trial wherein the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Cataldi vs. State Farm Insurance Company. Docket no. L-002371-17; Judge Robert Lougy, 10-07-19.

Attorney for plaintiff: Anthony J. Vindigni of Brandon J. Broderick, LLC in Ewing, NJ. Attorney for defendant: James D. Blumenthal of Bennett, Bricklin & Salzburg, LLC in Marlton, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

\$650,000 GROSS RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Multiple rib and vertebral fractures – Surgery with installation of hardware – Blood loss – Permanent scarring.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, a 69-year-old woman, asserted that the uninsured defendant driver knocked her down and caused her serious injuries. The plaintiff brought suit against the defendant driver. The defendant driver contended that the plaintiff was walking in an unsafe manner, failed to keep a

proper look out and was negligent in causing or contributing to the subject incident wherein she was injured.

On August 30, 2016, the plaintiff was a pedestrian lawfully walking on 68th street in Guttenberg when the defendant driver struck the plaintiff. As a result of the collision, the plaintiff suffered multiple rib fractures with open reduction and hardware, blood loss, a fractured clavicle, fractured vertebrae at L2-3, pelvic fracture, multiple stitches on his scalp and scarring on her ear and shoulder. The plaintiff maintained that her injuries were severe and permanent and caused her to curtail her usual activities and pursuits.

The parties submitted to arbitration wherein the arbitrator found damages totally \$650,000 and allotted 75% liability to the defendant driver and 25% to the plaintiff pedestrian. The parties agreed to accept the arbitration decision and the plaintiff received a net recovery of \$487,500.

REFERENCE

Castro vs. Mella. Docket no. L-006514-16; Judge Dennis F. Carey, III, 04-27-18.

Attorney for plaintiff: Matthew V. Villani of Ginarte, Gallardo, Gonzalez & Winograd, LLP in Newark, NJ. Attorney for defendant: Antonio Gonzalez of Law Office of Antonio A. Gonzalez, LLC in Union City, NJ

Left Turn Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Left turn collision – Bilateral C6 radiculopathy; cervical bulges; tear in right knee; shoulder strain/sprain – Epidural spinal injections – Recommendation for arthroscopic knee surgery.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff, a 45-year-old woman, asserted that the defendant driver crossed the midline of the roadway and struck her vehicle with such force that it caused significant, permanent injury. The defendant denied liability stating that the plaintiff made a left turn into the defendant's lane and struck the defendant's vehicle.

On September 11, 2015, the plaintiff was traveling in the left lane on Black Horse Pike preparing to make a left turn. The plaintiff contended that the defendant, coming from the opposite direction, crossed the double-yellow line and struck the plaintiffs' vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained bilateral C6 radiculopathy; cervical bulges; a tear in the right knee; and shoulder strain/sprain. The plaintiff was

recommended for arthroscopic surgery for the knee injury and received epidural injections for the spinal injuries.

The defendant had witness testimony to corroborate her version of events. Further, the defendant claimed that the plaintiff's MRI showed degenerative disc disease and that the plaintiff's injuries were not related to the subject accident. The defendant also pointed to a 6-month gap in treatment by the plaintiff.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause for liability in favor of the defendant. The defendant filed to confirm the results of the arbitration. The court granted the defendant's motion and dismissed the plaintiff's complaint with prejudice.

REFERENCE

Montes-Ruiz vs. Andre. Docket no. L-001276-18; Judge John C. Porto, 10-25-19.

Attorney for plaintiff: Jose Hernandez of Kotlar, Hernandez and Cohen in Mt. Laurel, NJ. Attorney for defendant: Julie Smith of Chierici, Chierici & Smith, P.C. in Mt. Laurel, NJ.

Rear End Collision

\$140,000 RECOVERY

Motor vehicle negligence – Rear end collision – 2 accidents occurring on highway approximately 11 months apart – Lumbar and cervical herniations – Surgery following second accident – UIM case.

Morris County, NJ

This motor vehicle negligence case involved 2 accidents which occurred approximately 11 months apart on I-80. The plaintiff driver was in his early 50s. In the first accident, the plaintiff contended that the defendant driver lost control and struck him and that he was struck in the rear while he was in the center lane, striking the guardrail and travel back onto the highway, where he was struck by the non-party driver of a truck, sustaining serious injuries. The defendant in the first accident had a \$100,000 policy. The

driver in the second accident had \$15,000 in coverage. The plaintiff had a \$100,000 in UIM protection and \$85,000 was available.

The plaintiff contended that he suffered lumbar and cervical herniations that ultimately required surgery approximately 6 months after the second accident. The defendant driver in the first accident pointed out that the plaintiff had very limited treatment at one doctor's visit before the second accident occurred.

The plaintiff asserted that he had complaints of radiculopathy before the second accident, and an MRI was suggested, but not approved before the second collision. The plaintiff maintained that he has been forced to give up working overtime as he previously did.

The case as to the first driver settled prior to trial for \$40,000 and the case against the second driver settled for the \$15,000 policy and \$85,000 from the UIM carrier, for a total recovery of \$140,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Carl P. Giordano, M.D. from Morristown, NJ. Defendant's orthopedic surgeon expert: Robert F. Traflet, M.D. from Oradell, NJ.

Recanati vs. Thomas, et al. Docket no. MRS-L-547-19, 08-20.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff husband sustains disc herniations at C3-4 and C5-6; chiropractic treatment and physical therapy – Plaintiff wife sustains disc bulge at L4-5 and right side meniscus tear.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiffs, a 48-year-old husband and 43-year-old wife, asserted that the defendant driver negligently struck their vehicle from behind and caused them significant, permanent injury. The defendant stipulated liability but contested the plaintiffs' damages.

As a result of the collision, the plaintiff husband, who had no prior history of neck or back issues, sustained disc herniations at C3-4 and C5-6. He treated with chiropractic treatment and physical therapy. The

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

plaintiff wife, who also had no prior injuries or surgeries, sustained disc bulge at L4-5 and a right side meniscus tear.

The parties entered into a high/low agreement prior to trial wherein the plaintiff would receive a maximum of \$50,000 in the event of a jury award in excess of that amount to the plaintiff husband and a maximum of \$70,000 in the event that the jury awarded in excess of that amount to the plaintiff wife. There was no agreement for a minimum award for either plaintiff. The jury found no cause of action awarded no damages to the plaintiffs.

REFERENCE

Bhalla vs. Patel. Docket no. L-005258-15; Judge Carla Brady, 05-15-19.

Attorney for plaintiff: Daniel J. Williams of Harrell, Smith & Williams, LLC in Westfield, NJ. Attorney for defendant: Arthur Arnold of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Sideswipe Collision

\$30,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Minor plaintiff passenger sustains disc bulging at L2-3, L3-4 and L4-5; disc bulge with central annular tear at L5-S1; facet hypertrophy at L3-4 and L4-5 – 9 months of chiropractic treatment.

Middlesex County, NJ

In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver struck the vehicle in which she was a passenger with such force that it caused significant, permanent injury. The defendant initially denied liability, but ultimately settled the matter.

On October 22, 2016, the minor plaintiff was a passenger in a motor vehicle operated by the plaintiff's mother traveling south on Route 9 at the intersection with King George Road in Woodbridge. The defendant construction company was the owner of a commercial vehicle that the plaintiff maintained was negligently operated by their employee. The defendant's vehicle was also traveling south on Route 9 and negligently entered into the plaintiff's lane of travel and collided with the vehicle in which the minor plaintiff was a passenger.

As a result of the collision, the plaintiff was taken to an urgent care facility where she was evaluated and treated. She followed up with chiropractic care for approximately 9 months. The plaintiff suffered disc bulging at L2-3, L3-4, and L4-5 with compression of the thecal sac, and a disc bulge with central annular tear at L5-S1 and facet hypertrophy with fluid collected inside the joint at L3-4 and L4-5. The final diagnosis was post-traumatic lumbalgia, lumbar bulging disc with annular tear, lumbar facet syndrome and facetogenic pain.

The parties settled the matter prior to trial in the amount of \$30,000 broken down as follows: \$7,824 in attorney fees and costs and \$22,176 in net damages to the minor plaintiff.

REFERENCE

Christie vs. SSM Construction, Inc., et al. Docket no. L-006802-17; Judge James F. Hyland, 07-12-18.

Attorney for plaintiff: Michael A. Percario of Percario, Nitti & Struben in Linden, NJ. Attorney for defendant: David D. Duffin of Duncan MacDonald & Herforth in Moorestown, NJ.

U-Turn Collision

\$39,000 RECOVERY

Motor vehicle negligence – U-turn collision/rear end collision – 2 separate actions joined – Aggravation of preexisting neck and lower back conditions – Orthopedic treatment, pain management and physical therapy.

Middlesex County, NJ

This motor vehicle negligence case involved 2 separate accidents in which the plaintiff was injured. The first was a U-turn collision and the second a rear end collision. The collisions occurred approximately 10 months apart. The plaintiff suffered similar injuries and received the same treatment for her injuries from both collisions. The cases were joined for the purpose of determining and apportioning damages. The defendants stipulated liability, but contested the plaintiff's damages.

On September 26, 2015, the plaintiff, a 69-year-old woman, was a front-seat passenger in a vehicle traveling south on Woodward Road in Manalapan. The defendant was driving a vehicle traveling north, making a U-turn on Woodward Road in front of the plaintiff's vehicle. The defendant testified that he missed the entrance to the location he was traveling to and, when he realized this, attempted a U-turn to get back to the entrance. In the course of making his turn, the defendant struck the front passenger side of the plaintiff's vehicle, where she was sitting, causing her injury. The plaintiff's vehicle had to be towed from the scene because it was undrivable following the collision.

The second collision occurred on July 1, 2016 when the plaintiff was stopped in traffic on State Route 9 in Freehold. The defendant was traveling on Route 9 directly behind the plaintiff. The plaintiff asserted that the defendant negligently failed to observe traffic

and stop behind the plaintiff's vehicle. The defendant struck the plaintiff's vehicle from the rear causing serious injury to the plaintiff. The plaintiff had preexisting neck and back conditions since 1999.

Immediately after the first accident, the plaintiff experienced significant neck pain. She did not present to the E.R., but went home and put ice on her neck. Later, her shoulder, neck and back began to hurt. 2 days later, she presented to her treating orthopedist and underwent a lumbar MRI. The plaintiff contended aggravation of a preexisting neck and back condition. Following the second accident, the plaintiff continued to experience the same symptoms of pain in the shoulder, neck and back. The plaintiff treated with an orthopedist, physical therapy and pain management for both sets of injuries.

The defendants asserted that the plaintiff's injuries were not causally related to the subject collisions and each claimed the plaintiff was injured during the collision with the other. The defendants also pointed to a 2014 fall down and corresponding lawsuit filed by the plaintiff with similar claimed injuries. The defendants further asserted that the plaintiff's injuries were not permanent.

The plaintiff settled with defendants prior to trial in the amount of \$39,000 with \$19,500 being paid by each defendant driver.

REFERENCE

Chilkowitz vs. Goldfinger, et al. Docket no. L-003349-17; Judge Michael V. Cresitello, Jr., 06-17-19.

Attorney for plaintiff: Myzaire T. Duarte of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant Andrea S. Weiss: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ. Attorney for defendant Goldfinger and Chanin: John W. Harding of Martin, Kane & Kuper, Esqs. in East Brunswick.

PREMISES LIABILITY

Fall Down

\$225,000 RECOVERY

Premises liability – Fall down – Fall on lip between supermarket parking surface and drainage grate – Left elbow fracture – ORIF – Surgical screw backs out and causes additional pain – Left-sided carpal tunnel syndrome – Fracture of right patella.

Sussex County, NJ

In this action for premises liability, the 58-year-old plaintiff supermarket shopper contended that the lip between the parking lot and a drainage grate was the approximate size of a U.S. quarter

that was sitting on its edge and violated applicable codes. The plaintiff maintained that as a result, she tripped and fell over the lip after she had placed her purchases in her vehicle and while she was walking back to her car after returning the cart to in front of the supermarket sustaining multiple serious injuries. The defendant argued that the plaintiff had walked over the drain twice prior when she entered the store and when she returned her cart without difficulty and was clearly comparatively negligent.

The plaintiff suffered a fracture of the left, dominant olecranon. The plaintiff had elbow surgery consisting of open reduction and internal fixation with metal plates and screws. One screw that had backed out of position post-surgery and remains a very tender spot her on elbow. The plaintiff also fractured her right patella which she contended will cause permanent pain and restriction and that she developed left sided-carpal tunnel.

The plaintiff was in a long arm cast for approximately 8-12 weeks and then a mechanical cast for approximately 3 months. She utilized a strap and mechanical brace on her right knee for approximately 4 months following this accident. She required the use of a hospital bed, wheelchair, walker, braces and a commode all to navigate throughout my home and while out in public. She required home nursing care from 4/27/16 through 5/19/16. The plaintiff lost self-employment business opportunities as a "Leadership trainer" with major corporations due to her inability to take jobs.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff resident falls on spilled liquid at defendant community center – Right shoulder strain and sprain; disc herniation L3-4, L5-S1; bulges L1-2, L2-3 and L4-5 – Torn meniscus – Possible future surgery – Arbitrator assigns 80% liability to defendant and 20% to plaintiff with gross damages of \$60,000 reduced to \$48,000 for plaintiff's comparative negligence.

Essex County, NJ

In this premises liability case, the plaintiff, a 58-year-old resident of the defendant's building, asserted that the defendant community center negligently maintained its property such that there was a dangerous condition present which caused the plaintiff to fall and suffer significant, permanent injury. The defendant denied liability claiming that it had no actual or constructive notice of the dangerous condition that caused the plaintiff to fall; thus, there was no negligence.

On July 10, 2017, the plaintiff, while on the defendant's premises located at 20 Toler Place, Newark, contended that he was caused to slip and fall sustaining injuries as a result of the negligence of the defendants. The plaintiff was a resident of the defendant's facility and was lined up to receive lunch. He got a tray and utensils and was walking towards an overflow seating area in the gym of the building. The plaintiff claimed that there was a large spill that he speculated must have been a full cup of the liquid drink they were serving. The plaintiff contended that there were footprints from the liquid around the area leading him to believe that the spill had been there for some time.

The defendant stressed that they obtained the approval of the municipality for the construction of the driveway and associated drain. The defendant also claimed that the plaintiff made a better recovery than claimed and that her income claims should be rejected.

The case settled prior to trial for \$225,000.

REFERENCE

Plaintiff's engineer expert: Kelly-Anne Kimiciek, PE from Michael Natoli Engineering, Randolph, NJ. Plaintiff's orthopedic surgeon expert: Frank Corrigan, M.D. from Hackettstown, NJ. Plaintiff's orthopedic surgeon expert: William Sayed, M.D. from Cedar Knolls, NJ.

Lalk vs. Dale's Supermarket, et al. Docket no. SSX L-080-17, 12-19.

Attorney for plaintiff: Trevor Warden of Bongiovanni Collins & Warden, PC in Denville, NJ.

The plaintiff claimed he slipped and fell in the liquid, dropping his tray of food. The plaintiff reported the incident to the defendant's staff 15 or 20 minutes later. The plaintiff asserted that the defendant was negligent in failing to clean up the spill or place a warning sign, indicating that the floor was wet, for the safety of people using the area. The plaintiff asserted that spillage of food and drink from the residents' trays and tables on to the floor of the gym of the defendant's facility was foreseeable and a hazard inherent in operating a cafeteria food service for residents of the defendant's facility.

As a result of the fall, the plaintiff sustained right shoulder strain and sprain; disc herniation at L3-4, L5-S1; bulges at L1-2, L2-3 and L4-5; and a torn meniscus. The plaintiff may require surgery for the meniscus, but had not yet had surgery at the time of filing. The plaintiff claimed outstanding medical expenses of \$7,400.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff. The arbitrator set gross damages at \$60,000 reduced to \$48,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Al-Amin vs. Community Education Centers, Inc. Docket no. L-006746-17; Judge Thomas R. Vena, 09-30-19.

Attorney for plaintiff: Martin P. Convery of Druckman & Hernandez in Elizabeth, NJ. Attorney for defendant: Pauline F. Tutelo of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

SPORTS & RECREATION

■ \$26,943 RECOVERY

Sports & Recreation – Negligent supervision – 3-year-old boy injured at defendant trampoline park – Fractured right tibia.

Middlesex County, NJ

In this negligence supervision case, the 3-year-old plaintiff asserted that the defendant trampoline park employees failed to adequately supervise the plaintiff causing him to be injured.

On February 19, 2018, the minor plaintiff was an invitee on the premises owned, operated and maintained by the defendant, located in Woodbridge. The facility was an indoor trampoline park where the plaintiff was engaged in jumping on the indoor trampolines presumably under the supervision of the defendant's employees. The plaintiff contended that the defendant's employees failed to adequately supervise the guests of the facility, leading to the plaintiff's fall and injury. As a result of the incident, the minor plaintiff sustained traumatic orthopedic injuries including a fracture of the right tibia.

The parties settled the matter prior to trial in the amount of \$26,943 broken down as follows: \$8,500 in attorney fees; \$1,268 in satisfaction of Medicaid lien; \$202 to the plaintiff's guardian and \$18,443 in net damages to the minor plaintiff.

REFERENCE

Pinto vs. Altitude NJ, LLC. Docket no. L- 006008-19; Judge Bruce J. Kaplan, 10-04-19.

Attorney for plaintiff: Randall J. Richards of Wilentz, Goldman & Spitzer, P.A. in Woodbridge, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

\$11,882,175 VERDICT – MEDICAL MALPRACTICE – ORTHOPEDIC SURGERY – FAILURE TO CONSIDER PLAINTIFF’S EXTENSIVE HISTORY OF SURGERIES AND COMPLICATIONS, FAILURE TO ORDER PREOPERATIVE DIAGNOSTIC TESTING, AND NEGLIGENT POST-OPERATIVE CARE RESULTS IN PLAINTIFF SUFFERING SEVERE, UNCONTROLLABLE OSTEOMYELITIS AT SITE OF LEFT KNEE REPLACEMENT – ABOVE-THE-KNEE LEFT LEG AMPUTATION.

Broward County, FL

In this medical malpractice case, the plaintiff, a 51-year-old man, asserted that the defendant orthopedic surgeon failed to take an adequate history of the plaintiff’s prior osteomyelitis, skin grafts, and muscle harvests and failed to perform preoperative diagnostic testing including either a bone scan, MRI or CT. The plaintiff claimed the defendant failed to recognize that the plaintiff was likely not a candidate for elective surgery and failed to be alert to the likelihood of joint infection at an office visit and when the plaintiff ultimately presented to the emergency room. As a direct and proximate result of the defendant’s negligence, the plaintiff suffered postoperative infection, osteomyelitis, and the loss of his lower leg to amputation. The defendant denied any negligence or malpractice. The defendant asserted that preexisting conditions were the sole cause of the plaintiff’s injuries.

The plaintiff argued that the defendant’s deviations from the standard of care were causally related and responsible for the ultimate amputation which the plaintiff underwent. The plaintiff claimed pain, permanent disability, surgical repair, mental anguish, loss of

enjoyment of life, loss of income, loss of earning ability, expense of hospitalization, and follow-up medical care and treatment. The plaintiff’s wife made a claim for loss of consortium. The plaintiff’s past medical bills alone were \$1,372,175 at the time of trial.

The jury found in favor of the plaintiff and awarded damages in the amount of \$10,782,175 broken down as follows: \$1,273,175 in past medical expenses; \$2,410,000 in future medical expenses; \$4,000,000 in past pain and suffering; and \$3,000,000 in future pain and suffering. Additionally, the jury awarded damages for the plaintiff wife’s claim for loss of consortium in the amount of \$1,100,000 broken down as follows: \$600,000 for past loss of consortium and \$500,000 for future loss of consortium.

REFERENCE

Standley vs. Rech, D.O. Case no. CACE-16-019088; Judge William W. Haury, Jr., 04-09-19.

Attorney for plaintiff: David Sampedro of Panter, Panter, Sampedrom, P.A. in Miami, FL. Attorney for defendant: Jay S. Weiss of Jay S. Weiss, P.A. in Ft. Lauderdale, FL.

\$4,000,000 CONFIDENTIAL RECOVERY PRIOR TO TRIAL – MEDICAL MALPRACTICE – OBSTETRICAL NEGLIGENCE – BIRTH INJURY – INFANT PLAINTIFF SUFFERED HYPOXIC BRAIN INJURY DUE TO DELAYED DELIVERY – CEREBRAL PALSY.

Withheld County, MA

In this birth injury matter, the plaintiff alleged that the defendant obstetrician and other hospital employees were negligent in failing to recognize that the infant was in distress and failed to perform a timely emergency delivery. Instead, the child was born hours after it should have been delivered, with a hypoxic brain injury and now suffers from cerebral palsy. The defendants

denied any wrongdoing and disputed that there was any deviation from acceptable standards of care in their treatment and delivery of the child.

The plaintiff brought suit against the defendant obstetrician and the hospital staff alleging negligence. The plaintiff contended that when the child first showed worrisome decelerations, variability and increased fetal heart rate, an emergency delivery should have occurred instead of waiting another almost three

hours. The defendants denied the allegations. The defendants contended that there was no deviation from acceptable standards of care in their treatment of the mother and infant.

The parties agreed to resolve the plaintiff's claim for the sum of \$4,000,000 in a confidential settlement between the parties prior to any trial in this matter.

\$2,100,000 BINDING ARBITRATION AWARD – MEDICAL MALPRACTICE – PEDIATRIC NEGLIGENCE – FAILURE TO PROPERLY PERFORM ROUTINE “RED REFLEX” TEST TO SCREEN FOR EYE CANCER – APPROXIMATE 9-MONTH DELAY IN DIAGNOSIS OF RETINOBLASTOMA – CANCER DIAGNOSED SHORTLY BEFORE INFANT’S FIRST BIRTHDAY.

Lehigh County, PA

In this medical malpractice action, the plaintiffs alleged that the defendant pediatrician failed to properly conduct routine eye testing with an ophthalmoscope as the lights were dimmed to rule out indications retinoblastoma, a cancer of the eye. The plaintiffs maintained that the physician's negligence resulted in the cancer going undetected for approximately nine months, when it was diagnosed shortly before the baby's first birthday. The defendant contended that he did conduct the test and that the standard does not require that the lights be dimmed.

The plaintiffs claimed that as a result of the approximate nine-month delay in diagnosis, the child's retinoblastoma grew and worsened. By the time of diagnosis, it was massive and at the most advanced

REFERENCE

Baby Doe vs. Defendant Ob/Gyn, et al., 02-15-18.

Attorneys for plaintiff: Andrew C. Meyer, Jr. and Krysia J. Syska of Lubin & Meyer in Boston, MA.

stage (Group E) in the right eye. The cancer caused blindness, right retinal detachment, and the ultimate need for an enucleation of the right eye.

The parties agreed to submit the case to binding arbitration, and that during the hearing, expert reports could be introduced in lieu of expert testimony. The arbitrator found for the plaintiff and awarded \$2,100,000.

REFERENCE

Plaintiff in case involving failure to properly conduct routine eye screening at well baby visits during first year of life. vs. Defendant pediatrician.

Attorneys for plaintiff: Danielle George and Victoria E. Phillips of Phillips & Paolicelli, LLP in Lawrenceville, NJ.

\$2,000,000 RECOVERY – MEDICAL MALPRACTICE – NURSING – COUNTY LIABILITY – 42-YEAR-OLD MALE WITH HISTORY OF CONGESTIVE HEART FAILURE DIES WHILE INCARCERATED UNDER CARE OF DEFENDANTS – FAILURE OF INTAKE NURSE TO FORMULATE SPECIAL NURSING PLAN – NEGLIGENCE OF SECOND NURSE WHO ADVISES CONTRAINDICATED FLUIDS AFTER DECEDENT COMPLAINS OF DIZZINESS DAY PRIOR TO DEATH – NEGLIGENCE OF THIRD NURSE TO SEE DECEDENT AFTER GUARD REPORTED DECEDENT VOMITING – DECEDENT, WHO ALLEGEDLY DIES BETWEEN 2:00 AND 3:00 A.M., NOT DISCOVERED UNTIL APPROXIMATELY 7:00 A.M.

Morris County, NJ

This medical malpractice action involved the death of a 42-year-old man who had been incarcerated in the Morris County jail after multiple arrests for driving on the suspended list in which the plaintiff contended that Morris County Jail nurses negligently failed to treat his cardiac condition of an enlarged heart and congestive heart failure and actually exacerbated his condition when a nurse advised for contraindicated fluids when the decedent presented with dizziness and an unsteady gait shortly after he was incarcerated. The plaintiff further maintained that the guard failed to properly report the plaintiff's condition or follow the procedure for checking on inmates. The plaintiff contended that as a result, the decedent died from congestive heart failure.

The decedent died three days after he was incarcerated. The evidence disclosed that the decedent was placed in the county jail after the decedent, who had previously been arrested for driving on the suspended list, was charged again for driving while his license was suspended. The plaintiff maintained that since the decedent spent some days with his parents and some days with his younger children, it was not unusual or his family to not hear from him for a few days, and no one posted the \$1,000 bail.

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

REFERENCE

Plaintiff's cardiology expert: Bruce Charash, M.D. from New York, NY. Plaintiff's economist expert: Kristin Kusma from Livingston, NJ. Plaintiff's forensic pathologist expert: Michael Baden, M.D. from New York, NY. Plaintiff's nursing expert: Gail

Normandin-Carpio, RN from Coopersburg, PA.
Plaintiff's prison warden expert: Patrick MacManimon
from Trenton, NJ.

Attorney for plaintiff: Andrew Smith of Smith &
Schwartzstein in Morristown, NJ.

Petrock vs. County of Morris, et al. Docket no. MRS-L-
1173-16; Judge Louis Sceusi, 03-06-20.

\$1,000,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT NEGLIGENCE – HOSPITAL PERSONNEL FAIL TO APPRECIATE SIGNS AND SYMPTOMS OF SEPTIC ARTHRITIS AND ALLOW 10 HOURS TO PASS BEFORE STARTING ANTIBIOTIC THERAPY CAUSING INFECTION TO BECOME FATAL – WRONGFUL DEATH OF 73-YEAR-OLD MALE.

Montgomery County, PA

In this action for medical malpractice, the estate of the decedent maintained that the defendant doctor, nurse and emergency department personnel were negligent in failing to promptly recognize, diagnose and treat the decedent's septic arthritis allowing the infection to fester and worsen for 10 hours ultimately resulting in overwhelming sepsis and death. The defendant hospital made a general denial of all allegations of negligence.

The decedent is survived by his wife and four adult children. The estate alleged that the defendants were negligent in failing to timely order and administer antibiotics, failing to perform arthrocentesis, failing to

properly consider and diagnose sepsis, failing to treat an infected arthroplasty joint, and failing to diagnose infected right knee prosthetic.

The parties settled for a lump sum of \$1,000,000.

REFERENCE

The Estate of Henry Dixon by Della Dixon vs. Albert Einstein Healthcare Network, Jason Becker, M.D., Erin Newkirk, P.A. and GI Menin Associates. Case no. 2019-03878; Judge Steven C. Tolliver, 10-21-20.

Attorney for plaintiff: Jason Weiss of Saltz Mongeluzzi & Bendesky, P.C. in Philadelphia, PA.
Attorney for defendant: Michael Sabo of Rawle & Henderson, LLP in Pennsylvania, PA.

MOTOR VEHICLE NEGLIGENCE

\$1,300,000 (POLICY LIMIT) PRE-SUIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT VAN DRIVER DOUBLE PARKS IN FRONT OF CONVENIENCE STORE WITHOUT PLACING VAN IN PARK – VAN ROLLS, KNOCKING DOWN AND RUINING OVER PLAINTIFF – PILON FRACTURE TO LEFT ANKLE AND FRACTURE TO LEFT HUMERUS – PLAINTIFF DEVELOPS NECROSIS IN LEG NECESSITATING BELOW-THE-KNEE AMPUTATION.

Essex County, NJ

The 65-year old plaintiff, who was returning to his car, which was legally parked next to the curb, contended that the defendant van driver negligently failed to put his vehicle into park when he double parked to run into a convenience store a car length or so away from the plaintiff's parking spot. The plaintiff maintained that the van rolled forward struck him, knocked him to the ground and ran over him. The plaintiff maintained that suffered a pilon fracture to the left ankle that necessitated the attempt at an open reduction/internal fixation. The surgery failed, the plaintiff subsequently developed necrosis and required a below-the-knee amputation. The

plaintiff also suffered a fracture to the left humerus that required surgery as well. The defendant had a primary policy of \$300,000 and a \$1,000,000 umbrella with the same carrier.

The case settled for the policy limits before the filing of suit and approximately 6 months after the accident.

REFERENCE

Plaintiff's restoration orthopedic surgeon expert:
Julie Keller, M.D. from Maywood, NJ.

Thomas vs. Rodriguez, et al., 05-11-20.

Attorney for plaintiff: Andrew L. Statmore of Fredson Statmore Bitterman, LLC in Bloomfield, NJ.

\$700,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRACTOR TRAILER COLLISION – DEFENDANT TRUCK DRIVER SLOWS TRACTOR TRAILER TO BELOW 20 MPH ON 75 MPH HIGHWAY AND FAILS TO ACTIVATED HAZARD LIGHTS CAUSING PLAINTIFF TO STRIKE REAR OF TRACTOR TRAILER – TRAUMATIC BRAIN INJURY – INCAPACITATION.

Harris County, TX

The plaintiff in this motor vehicle negligence action is the wife of the incapacitated male. She maintained that the defendant driver and trucking company were negligent and operated a defective tractor trailer on a major highway at too slow a speed resulting in the plaintiff's husband crashing into the rear of the defendant's vehicle. The injury caused a traumatic brain injury that has left the plaintiff's husband incapacitated. The defendants denied all allegations of negligence, maintaining that the defendant driver had just turned his vehicle around and was traveling in the right lane, bringing the vehicle up to speed when the plaintiff crashed into the rear of the trailer.

The plaintiff's wife maintained that the accident caused her husband to suffer a traumatic brain injury resulting in cognitive deficits, memory loss, mood

swings, depression, anxiety, ADHD, insomnia and drug and alcohol abuse. Neuropsychological testing was performed and a full disability rating was given to the plaintiff. The plaintiff has 2 minor children, ages 1 and 3 and is unable to provide financially and emotionally for those minors.

The defendants settled with the plaintiff awarding each minor child \$350,000, for a total of \$700,000.

REFERENCE

Bridgett Womble Individually and as Next Friend of Adam Womble vs. Atlantic Trucking Co., Inc. and Gulf Consolidated Chassis Pool, LLC. Case no. 201723976; Judge Elaine H. Palmer, 03-21-19.

Attorney for plaintiff: Mason William Herring of Herring Law Firm in Houston, TX. Attorney for defendant: Roger D. Kirstein of Langley & Banack in San Antonio, TX.

\$10,600,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – BUS/PEDESTRIAN COLLISION – PLAINTIFF STRUCK BY BUS WHILE PEDESTRIAN AT INTERSECTION – CERVICAL DISC HERNIATIONS – CERVICAL RADICULOPATHY – LUMBAR DISC HERNIATION – LEFT KNEE MEDIAL MENISCUS TEAR – LEFT SHOULDER PARTIAL ROTATOR CUFF TEAR – LEFT KNEE TRABECULAR FRACTURE OF TIBIAL PLATEAU – RIGHT KNEE INTRAARTICULAR STEROID INJECTIONS – SURGERY REQUIRED.

Kings County, NY

In this motor vehicle negligence action, the plaintiff was a pedestrian at an intersection when she was struck by a bus, sustaining severe including cervical disc herniations, cervical radiculopathy, lumbar disc herniations, and a medial meniscus tear in the left knee, a partial rotator cuff tear in the left shoulder and a trabecular fracture of the tibial plateau in the left knee. She required right knee intraarticular steroid injections. Surgery was required on the plaintiff's injuries of the shoulder, left knee and right knee. The defendants generally denied negligence.

The jury found in favor of the plaintiff and awarded \$10,600,000.

REFERENCE

Yannet Barragan vs. New York City Transit Authority, Manhattan And Bronx Surface Transit Operating Authority, Metropolitan Transportation Authority, MTA Bus Company, Alonzo E. Crum. Index no. 500895/2017; Judge Reginald Boddie, 06-03-20.

Attorney for plaintiff: Seth A. Harris of Burns & Harris in New York, NY. Attorney for defendant: Kieran Francis Frail of New York City Transit Authority in Brooklyn, NY.

PREMISES LIABILITY

\$28,560,000 GROSS VERDICT – PREMISES LIABILITY – HAZARDOUS PREMISES – NEGLIGENT MAINTENANCE – FAILURE TO MAINTAIN POND IN SAFE CONDITION – PLAINTIFF STRIKE HEAD ON BOTTOM OF DEFENDANT’S POND – SPINAL CORD INJURIES RESULTING IN QUADRIPLÉGIA FOR 30-YEAR-OLD MALE.

Providence County, RI

In this premises liability matter, the plaintiff alleged that the defendant was negligent in failing to properly maintain a pond on its premises which it permitted guests to use for recreational swimming. The plaintiff dove into the pond and struck his head on a rock, causing significant spinal cord damage which rendered him quadriplegic. The defendant denied liability and maintained that the plaintiff was negligent and responsible for his own injuries and damages.

The plaintiff brought suit against the defendant alleging negligence, failure to warn, negligent maintenance and sought damages for himself and his wife. The defendant denied the allegations. The defendant maintained that the condition was open and obvious and that the plaintiff failed to use reasonable care. The defendant further disputed that it authorized the plaintiff and others to swim in the pond and failed to follow instructions from the establishment regarding swimming areas.

At the conclusion of the 3-week trial, the jury deliberated approximately 8 hours and returned their verdict in favor of the plaintiff and against the defendant. The jury assessed liability at 23% to the plaintiff and

77% to the defendant. The jury awarded a total of \$28,560,000 in damages. The damages consisted of \$18,000,000 in non-economic pain and suffering damages, \$1,060,000 in economic past medical damages; \$5,000,000 for future medical expenses; \$1,000,000 for past lost wages and \$500,000 compensatory damages. The jury also awarded the plaintiff's spouse the sum of \$3,000,000 for loss of consortium.

REFERENCE

Plaintiff's aquatic safety expert: Shawn DeRosa from Orlando, FL. Plaintiff's hotel and hospitality expert: Kenneth Free from Las Vegas, NV. Plaintiff's psychiatry expert: Jon Mukand, M.D. from North Providence, RI. Plaintiff's recreational safety expert: Edward E. Wenkel from Naples, FL.

Smith vs. University of Rhode Island dba Whispering Pines Conference Center. Case no. PC-2015-04812; Judge Kristin E. Rodgers, 05-31-18.

Attorneys for plaintiff: Patrick C. Barry, Marshall M. Raucci and Timothy J. Grimes of Decof Barry Mega & Quinn, P.C. in Providence, RI. Attorneys for defendant: John A. Tarantino, Patricia K. Rocha, Robert J. Humm, Todd White and Casey White Bassett of Adler Pollock & Sheehan, PC.

\$1,640,000 GROSS VERDICT – PREMISES LIABILITY – NEGLIGENT SECURITY – PLAINTIFF KIDNAPPED FROM BUILDING AND BRUTALLY BEATEN BY HUSBAND – CLOSED HEAD INJURY; CERVICAL AND LUMBAR DISC HERNIATIONS; KNEE INJURY – EPIDURAL INJECTIONS; ORTHOPEDIC TREATMENT; CHIROPRACTIC TREATMENT AND PHYSICAL THERAPY.

Broward County, FL

In this negligent security case, the plaintiff asserted that the defendant employer, co-defendant building owner, and co-defendant security company failed to meet their duty to employees, including the plaintiff, to exercise reasonable and ordinary care to keep and maintain its premises in a safe condition and to take such precautions as were reasonably necessary to protect its employees from criminal attacks. As a result, the plaintiff was kidnapped from the building and beaten. The plaintiff's employer was dismissed on summary judgment and the matter continued only as to the defendant security firm and defendant building owner.

The defendant's abusive husband made it through security and was allowed to enter without the plaintiff being notified. He appeared at the plaintiff's work

area and threatened to physically harm her if she did not follow him. After being kidnapped from the building, the plaintiff was brutally beaten beginning in the parking lot and then throughout Broward County for approximately an hour as an accomplice drove the vehicle. The plaintiff managed to escape, ran to a convenience store and called police. She was taken to a hospital for treatment of her injuries.

The jury found that the defendant security firm was negligent in causing the damage to the plaintiff. The jury found that the plaintiff was also negligent. The jury apportioned negligence as follows: defendant security firm 44% negligent; defendant building management 43% negligent; and the plaintiff 13% negligent. The jury awarded damages of \$1,640,000 broken down as follows: \$45,000 for past medical expenses; \$95,000 for future medical expenses; \$1,000,000 for past pain and suffering, disability, physical impair-

ment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life; \$500,000 for future pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life. The final award was \$1,410,249, reduced for plaintiff's comparative negligence.

REFERENCE

Boistol vs. Zimmerman Advertising, LLC, et al. Case no. CACE-16-022500; Judge Carol Lisa Phillips, 05-03-19.

Attorney for plaintiff: Herbert B. Dell of Herbert B. Dell, PA in Fort Lauderdale, FL. Attorney for defendant Universal Protection Service, LLC and CBRE Inc.: Asa B. Groves, III of Groves & Verona, PA in Miami, FL.

ADDITIONAL VERDICTS OF INTEREST

Construction Site Negligence

\$1,958,500 GROSS AWARD REDUCED BY 10% COMPARATIVE NEGLIGENCE – CONSTRUCTION SITE NEGLIGENCE – PLASTIC INADEQUATE TO HOLD PLAINTIFF ASBESTOS INSPECTOR'S WEIGHT CLOSED GAP CREATED BY REMOVAL OF DUCT WORK – APPROXIMATE ONE STORY FALL TO BASEMENT BELOW – MULTIPLE RIB FRACTURES – CLAVICLE FRACTURE – PNEUMOTHORAX – PUNCTURED DIAPHRAGM – INABILITY OF PLAINTIFF IN HIS LATE 60S TO WORK.

Brown County, TX

This construction site negligence case involved a plaintiff asbestos inspector in his late 60s who was inspecting work done during his absence from the site in an approximate one-week-period. During the plaintiff's absence, the defendant had removed supporting duct work, resulting in an approximate 10 foot by 3 foot gap that was covered by plastic only. The plaintiff stepped onto the plastic and fell through, landing in the basement approximately one story below. The plaintiff contended that he sustained fractures of 6 ribs that required surgery and the implantation of permanent hardware, a fractured clavicle that required surgery, and a pneumothorax which substantially resolved, as well as a puncture to the diaphragm. The defendant denied that it acted improperly and contended that the plaintiff was comparatively negligence in failing to check that the plastic sheet could accommodate his weight.

The plaintiff's safety expert testified that in order to comply with OSHA, the defendant should have placed plastic that could accommodate twice a worker's weight. The plaintiff asserted that in failing to do so, the defendant had acted in a grossly negligent fashion. The plaintiff asserted that he will permanently suffer pain and become easily fatigued. The

plaintiff was earning approximately \$50,000 per year. He maintained that he will be permanently unemployable.

The jury declined to find that the defendant was grossly negligent. They determined that the defendant was 90% negligent, the plaintiff 10% comparatively negligent and rendered a gross award of \$1,958,500 which was molded accordingly.

REFERENCE

Plaintiff's construction safety expert: David Rowe; from Cleveland, TX. Plaintiff's economist expert: Gary Kronrad, Ph.D. from Nacogdoches, TX. Plaintiff's life care planning expert: Dan M. Bagwell, BSN, R.N. from San Antonio, TX. Plaintiff's life care planning expert: Alex Willingham, M.D. from San Antonio, TX. Plaintiff's pain management expert: Mark D. Barhorst, M.D. from Houston, TX.

Plaintiff asbestos inspector vs. Waldrop Construction, et al. Case no. CV1712542; Judge Stephen Ellis, 10-09-20.

Attorney for plaintiff: Judson A. Waltman of Lanier Law Firm in Houston, TX.

Labor Law

\$4,241,911 VERDICT – LABOR LAW SEC. 240 (1) – WATER TOWER UNDER CONSTRUCTION – PLAINTIFF 70-YEAR-OLD LABORER KNOCKED TO GROUND AS OTHER EMPLOYEE FALLS AND STRIKES PLAINTIFF WORKING AT BOTTOM OF WATER TOWER – SHATTERED RIGHT LEG – INITIAL ORIF FOLLOWED BY HIP REPLACEMENT – APPROXIMATE 2-INCH LEG LENGTH DISCREPANCY – NEED FOR CRUTCHES.

Kings County, NY

The plaintiff's motion for summary judgment on liability under the absolute liability provisions of Labor Law Sec. 240 (1) was granted in this case that involved a 70-year-old laborer. The plaintiff, who was taking part in the construction of a new water tower, and who was working approximately 20 feet below another worker, contended that the other worker lost his balance and fell, knocking the plaintiff off the bottom of the water tower as the plaintiff was hunched over while performing his duties. The plaintiff suffered a shattered leg that required both an initial surgery with the installation of hardware and a subsequent hip replacement. The plaintiff sustained an approximate 2-inch leg length discrepancy, a foot drop and requires crutches to walk. The plaintiff further asserted that he clearly had been a very active individual and that he now must lead a much more sedentary lifestyle. The plaintiff maintained that he may well require additional surgery. The defendant denied that this position should be accepted.

The jury awarded \$4,241,911, including \$2,000,000 for past pain and suffering, \$104,500 for past lost earnings, \$370,724 for past medical bills, \$1,000,000 over 10 years for future pain and suffering, \$634,687 for future medical expenses over 13 years and \$132,000 for future lost earnings over 7 years.

REFERENCE

Plaintiff's economist expert: Debra Dwyer, Ph.D. from Stony Brook, NY. Plaintiff's examining orthopedic surgeon expert: Jerry Lubliner, M.D. from New York, NY. Defendant's life care planning expert: Wendy Cummings from Cos Cob, CT. Defendant's neurosurgeon expert: Richard Luchtemberg, M.D. from New York, NY. Defendant's orthopedic surgeon expert: Ronald Crelasmer, M.D. from New York, NY.

Fortune vs. NYCHA. Index no. 521950/17; Judge Kathy King, 02-10-20.

Attorney for plaintiff: Alison R. Keenan of Burns & Harris in New York, NY.

Transit Authority Negligence

\$6,000,000 RECOVERY – TRANSIT AUTHORITY NEGLIGENCE – BUS NEGLIGENCE – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT BUS DRIVER AS PLAINTIFF IS SLOWING FOR TRAFFIC ON FREEWAY – CLOSED HEAD INJURY – TBI AND NEUROPSYCHOLOGICAL DEFICITS.

Los Angeles County, CA

This Transit Authority negligence action involved a 40-year-old plaintiff driver in which the plaintiff contended that as she was slowing for traffic on a freeway, she was struck in the rear by the defendant driver of a Los Angeles MTA bus. The plaintiff contended that as a result, she suffered a closed head injury and a TBI that will permanently cause memory and concentration issues, as well as photosensitivity and hypersensitivity to sound. The plaintiff is a non-lawyer working in a law firm in a paralegal-type job dealing with intellectual property issues and the defendant asserted that in view of the fact that the plaintiff was promoted and had favorable reviews after the collision, it was clear that she made a very good recovery. The defendant did not dispute that its driver negligently caused the accident.

The collision involved significant impact damage and the plaintiff would have introduced photos. The plaintiff was brought to the hospital where a brain bleed

was seen on imaging studies. The brain bleed could no longer be seen on CT-scans within approximately 24 hours of the incident. The plaintiff was kept overnight and discharged. She returned several days later complaining of headaches, concentration issues and difficulty reading. The plaintiff maintained that the deficits were confirmed by a battery of neuropsychological testing and she underwent cognitive therapy. The plaintiff claimed that the deficits were permanent despite such treatment.

The case settled prior to trial for \$6,000,000.

REFERENCE

Watkins vs. Los Angeles County Transportation Authority, et al. Case no. BC704890, 04-23-20.

Attorneys for plaintiff: Kevin R. Boyle and Matthew J. Stumpf of Panish Shea & Boyle, LLP in Los Angeles, CA.