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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.

VERDICTS BY CATEGORY

Summaries with Trial Analysis

$4,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SINGLE VEHICLE COLLISION – DEFENDANT DRIVER/AUTOMOBILE SALESMAN PROVIDED DEALERSHIP CAR 24 HOURS PER DAY – DEFENDANT DRIVER WITH .13 BAC LOSES CONTROL AND TRAVELS INTO HOUSE – PLAINTIFF FRONT-SEAT PASSENGER SUFFERS BURST THORACIC FRACTURE – LAMINECTOMY AND FUSION – SEVERE LEG FRACTURE – KNEE INJURIES – SEVERE LEG SCARRING AND DIFFICULTIES AMBULATING – PTSD – MULTIPLE RIB FRACTURES – NASAL FRACTURE.

Gloucester County, NJ

In this motor vehicle negligence action, the 35-year-old plaintiff front-seat passenger contended that the defendant driver, who was an automobile salesperson, and who was driving a car provided by the dealership, which he was permitted to use 24 hours per day, lost control and traveled off the roadway and into a small house. The plaintiff asserted that she suffered an open fracture to the left femur that required 2 surgeries and which left her with severe scarring, a pelvic fracture, a burst fracture at T-12 which necessitated both a laminectomy and fusion from T-10-T-12 a fracture of the left tibial plateau with an avulsion injury to a knee ligament, and which also required surgery, a nasal fracture, multiple rib fractures and PTSD. The plaintiff was a respiratory therapist prior to the accident and contended that she will be permanently unable to work. The defendant driver was inebriated and had a .13 BAC. The defendant driver consumed alcohol at a non-party tavern, but the plaintiff did not attempt to prove service while visibly intoxicated. The carrier defended the action under a reservation of rights.

The plaintiff contended that in view of the fact that the defendant driver had permission to drive at all times, the fact that he became inebriated before driving did not defeat coverage. The defendant lost control in a rural area and traveled into a house

The plaintiff contended that because of the femur fracture, she required surgery in which a rod was installed and a second operation in which the rod was removed. The plaintiff also suffered a left tibial plateau fracture and an avulsion injury to the left knee which was surgically addressed as well. The plaintiff asserted that the resulting permanent scar is severe and that this injury substantially contributes to problems ambulating.

The plaintiff further maintained that the severe impact caused a burst fracture at T-12. The plaintiff required both a decompressive laminectomy and a fusion from T-10-T-12. The plaintiff asserted that she will suffer permanent pain and additional difficulties ambulating. The plaintiff further sustained multiple rib fractures and a nasal fracture. The plaintiff also claimed that she suffered PTSD which required psychotherapy, and which will cause permanent symptoms. The plaintiff alleged that she will permanently require extensive medical care and the plaintiff's life care plan approximated $2,000,000.

The plaintiff had been a respiratory therapist earning approximately $60,000 per year. The proofs reflected that the plaintiff had ceased working because she was caring for her boyfriend's young child. The plaintiff contended that if the accident did not occur, she would have returned and that she is now precluded from working. The plaintiff's proofs reflected that she will probably be restricted to more sedentary work in the future.

The defendant dealership had $1,000,000 in primary coverage and a $5,000,000 umbrella. The case settled prior to trial for $4,000,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Kenneth Graf, M.D. from Camden, NJ. Plaintiff's orthopedic surgeon expert: Matthew Kleiner, M.D. from Camden, NJ.

Plaintiff 35-year-old passenger vs. Defendant host driver.

Attorneys for plaintiff: John Morelli and Jeffrey Simons of Jacobs Schwalbe & Petruzzelli, PC in Cherry Hill, NJ.

COMMENTARY

The highly unusual and traumatic nature of this event in which the host automobile left the road and struck a house would have clearly evoked a particularly strong jury reaction. Additionally, the carrier indicated that it was defending the action under a reservation of rights relating to the driver operating the vehicle while he was inebriated. The plaintiff would have argued that in view of the fact that the driver was provided the dealership car on a 24/7 basis, his failure to drive sober did not defeat coverage, and it is felt that the recovery in this case was not reduced because of this factor.

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$1,250,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – PLAINTIFFS SIDESWIPED BY DEFENDANT DRIVER OF TRACTOR PULLING EMPTY TRAILER – PLAINTIFF DRIVER SUFFERS 3 CERVICAL HERNIATIONS REQUIRING SURGERY AND 2 LUMBAR BULGES REQUIRING ABLATION PROCEDURES – DAUGHTER/PASSENGER SUFFERS LUMBAR BULGE NECESSITATING ABLATION.

Union County, NJ

In this action for motor vehicle negligence, the plaintiff driver, age 50 at the time, contended that the defendant driver of a tractor pulling an empty chassis trailer negligently sideswiped her as he was passing her on the left. The plaintiff contended that as a result, she suffered 3 cervical herniations that required an anterior fusion and will cause permanent symptoms. The plaintiff also maintained that she suffered 2 lumbar bulges which will cause some permanent pain and limitations despite 2 ablation procedures. The plaintiff driver's daughter, in her 20s, was a passenger and she asserted that she sustained a lumbar bulge which will cause permanent pain and restriction irrespective of an ablation. The defendant denied that the plaintiff driver's claims were accurate and contended that she sideswiped him while passing on the right at a high rate of speed.

The plaintiffs denied doing so. The plaintiffs also maintained that the defendant driver did not comply with provisions of the CDL regulations that addressed changing lanes when in a blind spot. The defendant owner denied that the defendant driver would have such a blind spot. The plaintiff countered that the defendant driver acknowledged that he did have a blind spot. The plaintiff would have also presented evidence that the defendant driver exceeded the maximum permissible driving time.

The plaintiff driver claimed she developed radiating pain and weakness shortly after the accident that led to the diagnosis of 3 cervical herniations. The plaintiff driver maintained that after more conservative modalities were insufficient, she underwent an anterior cervical fusion. The plaintiff driver further contended that she suffered 2 lumbar bulges. This plaintiff asserted that an initial ablation provided only relatively short-term improvement prompting a second ablation. The plaintiff driver maintained that the bulges will nonetheless continue to cause difficulties permanently.

The defendant denied that the force was sufficient to cause the claimed injuries. The defendant also pointed out that the medical records taken 10 days before the accident reflected complaints of cervical pain. The plaintiff would have countered that this prior visit was for a cold and that the mention of neck pain was contained at the end of the records and the plaintiff would have argued that the records reflected the interpretation of the illness that prompted the visit, especially since the records did not indicate that the complaints were separate from the cold-like complaints.

The plaintiff driver had been declared disabled because of unrelated complaints involving a trigger finger some years earlier.

The case settled prior to trial for $1,150,000 to the plaintiff driver and $100,000 to the plaintiff passenger, for a total combined award of $1,250,000.

REFERENCE

Plaintiff's Forensic psychologist expert: Gianni Pirelli, Ph.D. from Verona, NJ. Plaintiff's medical billing expert: Alexandra Archibald from Flemington, NJ. Plaintiff's neurosurgeon expert: Matthew J. Tormenti,

M.D. from Oakhurst, NJ. Plaintiff's orthopedic surgeon expert: Sheref E. Hassan, M.D. from Jersey City, NJ. Plaintiff's trucking expert: Michael K. Napier from Macon, GA.

Cuevas vs. EZ Trans Corp., et al. Docket no. UNN-L-3347-17; Judge Rosemarie Williams, 01-21-21.

Attorney for plaintiff driver: Edward J. Rebenack of Rebenack Aronow & Mascolo, LLP in Somerville, NJ. Attorney for plaintiff passenger: Bryan M. Roberts of Stark & Stark in Lawrenceville, NJ.

COMMENTARY

It is felt that if the case had proceeded to trial, the conflicting testimony between the defendant driver and the trucking company owner regarding the question of whether the driver, who was operating a tractor pulling an empty chassis trailer, would have had a blind spot would have significantly undermined the defense. Additionally, the plaintiff would have pointed to records reflecting that over the recent past, the defendant driver exceeded the limit a driver could operate on short hauls.

Finally, the defendant would have pointed to medical records taken 10 days earlier, which mentioned a complaint of cervical pain. The plaintiff driver, who related that she had visited a physician with complaints of a cold, stressed that the sole mention of neck pain was at the end of the records, had no further explanation, and the plaintiff would have argued that the records were probably the result of the recording of her complaints that brought her to the physician.

$1,250,000 RECOVERY – POLICE LIABILITY – DEFENDANTS' OFFICERS RESPOND TO DOMESTIC CALL AND INSTRUCT MAN INVOLVED TO LEAVE SCENE, NEGLIGENTLY ALLOWING HIM TO DRIVE AWAY – SHORTLY AFTER DRIVING AWAY, MAN, WITH BLOOD-ALCOHOL LEVEL OF .142 AND MARIJUANA IN SYSTEM STRIKES AND ULTIMATELY CAUSES DEATH OF PLAINTIFF PEDESTRIAN.

Ocean County, NJ

In this police liability case, the plaintiff asserted that the defendants' police officers allowed an intoxicated party to leave the scene of a domestic dispute whereupon he struck the plaintiff's decedent pedestrian and caused his death. The plaintiff argued that the defendants had a duty to protect the plaintiff's decedent against the negligent and careless actions of its employees and that the defendant's employees had caused the injuries and the death of the deceased plaintiff. The defendants denied liability arguing that the drunken driving incident was not foreseeable by the officers.

On November 10, 2014, a woman contacted the defendant police department regarding a domestic dispute she was having with her boyfriend. The defendant's patrolmen reported to the scene where, the plaintiff maintained, the boyfriend was present and visibly intoxicated. The plaintiff claimed that the defendant's officers negligently advised the boyfriend to get into his motor vehicle and drive away. The boyfriend then drove his motor vehicle away from the premises, subsequently striking, maiming and ultimately causing the death of the plaintiff's decedent who was walking home from work.

The boyfriend's alcohol level was .142 and contained marijuana when he was arrested after striking the decedent. The plaintiff alleged that the defendants' officers were negligent, grossly negligent, and palpably unreasonable in allowing the boyfriend to drive away from the premises and were thus liable for the death of the plaintiff's decedent. The plaintiff further claimed that the defendant police department failed to properly train and supervise its employees in proper police procedure and protocol and as a result caused the death of the decedent.

The plaintiff's decedent, after being struck by the intoxicated party, endured intense pain and suffering and subsequently died one week later. The plaintiff claimed that, due to the negligent actions of the defendants' officers, the plaintiff's decedent incurred serious injuries and resulting death, as well as losses, damages and expenses with respect thereto.

The defendants asserted that, when they received the call from the girlfriend, she made no mention of alcohol nor stated that the boyfriend had been drinking. She also did not tell the police operator that he was going to or had physically harmed or threatened to harm her. She only stated that she needed her boyfriend removed from their home. The defendants maintained that that was the only information they had when they arrived at the scene.

When they arrived on the scene, the boyfriend was upset and yelling, but informed the officers that he just wanted to leave. The officers did not smell any odor of alcohol on him, or observe signs of intoxication, nor did anyone at the scene indicated that he was intoxicated. Thus, the officers controlled the scene while the defendant found his keys, shook the officers' hands and left. The defendants argued that the decision to allow him to drive away was based on their past experience with the boyfriend, their expertise in assessing intoxication, was reasonable under the presenting circumstances, and was within their purview and under the protection of the Tort Claims Act.

The plaintiff made an offer to take judgment in the amount of $3.5 million. The parties settled the matter prior to trial in the amount of $1.25 million.

REFERENCE

Moeller vs. Township of Little Egg Harbor, et al. Docket no. L-002914-16; Judge Arnold B. Goldman, 10-17-19.

Attorney for plaintiff: Andrew J. D'Arcy of D'Arcy Johnson Day in Egg Harbor, NJ. Attorney for defendant: Thomas E. Monahan of Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Conners in Forked River, NJ.

COMMENTARY

In the course of this case, the defendants filed a motion for summary judgment on the argument that no genuine issue of material fact existed to be tried before the court and that the defendants were immune from liability pursuant to the Tort Claims Act (N.J.S.A. 59:1-1 et seq.) which extends immunity to public employees for various activities including the exercise of judgment or discretion vested in him or her, good faith execution or enforcement of law, and the failure to enforce any law. The defendants asserted that they were immune because the officers' decision to allow the boyfriend to drive away from his home was discretionary in nature. The plaintiff had made no assertions in her call for assistance that her boyfriend had been drinking, had harmed or threatened to harm her. When they arrived on the scene, the boyfriend was loud and upset, but said he just wanted to leave. The officers maintained that they were trained to detect signs of intoxication and that the boyfriend did not exhibit signs of drug or alcohol intoxication. The defendants argued that, if he had, they would not have let him drive.

Further, an early intervention therapist who was present working with the couple's son at the time of the incident testified that she did not smell any alcohol on him, he was not slurring his speech, he did not have bloodshot eyes, was not stumbling or exhibiting any other symptoms that would lead her to believe he was intoxicated and, if she had thought he was intoxicated, she would have spoken to the plaintiff about it and possibly notified DYFS. The therapist's observations were consistent with that of the officers on the scene and supported their decision to allow the boyfriend to leave. The situation called for the exercise of personal deliberations and judgment, which the officers, within their right, made the operational decision to diffuse the situation and allow the party, who they did not believe to be intoxicated, to drive away from the home. The defendant argued that the defendants acted in good faith in their execution of the law and thus were immune from the plaintiff's claims against them.

The plaintiff opposed the defendants' motion arguing that there were issues of material fact to be decided including evidence that the officers had been told that the boyfriend was intoxicated including testimony from the girlfriend who stated that she called police to remove the boyfriend from the home because he had come home intoxicated and that he was shoving and pushing her and was verbally abusive, as well as her testimony that, while she was relieved that he left, she was in disbelief that the defendant officers were going to let him drive drunk. There was also testimony from another party who was present at the home stating that it was her impression that the boyfriend was drunk when she arrived at the home that evening and that, in fact, she recalled one of the officers telling the boyfriend to "settle down, you're drunk…" and that she suggested to others after the defendants allowed the boyfriend to leave, that they should let him drive to the stop sign and then arrest him for drunk driving. The witness also stated that the boyfriend sat on the stairs and had no interaction with the early intervention therapist while she finished the lesson with his son and, therefore, had no opportunity to assess his intoxication.

The plaintiff also disputed the defendants' claim that they "allowed" the boyfriend to leave, arguing that they specifically "instructed" him to leave. The plaintiff also questioned the defendants' officers' statements that none of them smelled alcohol on his breath or saw signs of intoxication in reports that were written 4 months after the subject incident. In the boyfriend's deposition, he testified that he had consumed a 12 pack of Fireball nips, as well as whiskey shots, beer and smoked marijuana during the afternoon prior to the incident.

The plaintiff also noted a call to police 36 minutes after the boyfriend was instructed to leave his home from a caller who reported the boyfriend's vehicle driving on the wrong side of the road. The caller was traveling behind the vehicle and stated that he was drifting in and out of lanes and traveling on the shoulder and that the witness he had hit something which the witness first thought was a garbage can. When the officers were alerted to the erratic driver and when they located and stopped him, they saw a person hanging out of the vehicle's windshield. It was determined that the driver had traveled approximately 1.2 miles after striking the plaintiff's decedent and with the decedent impaled in his front windshield. Officers immediately detected a strong odor of alcohol on his breath and reported that his speech was slow and slurred and that his eyes were watery and bloodshot. Sobriety tests on the scene determined that the boyfriend/driver was intoxicated and he was placed under arrest. All of these incidents happened within an hour of the defendants' officers' interactions with the boyfriend, but the alleged observations of the boyfriend's demeanor and visible intoxication were wildly different.

The plaintiff argued that, while the Tort Claims Act establishes the general principle of sovereign immunity, it allows for liability for injury "...caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." The plaintiff put forth that the question before the court was whether or not the facts suggested that a reasonable juror might find the defendants' officers should have suspect that the boyfriend may have been intoxicated at the scene of the domestic call and, if so, not ordered him to drive his vehicle from his home. If yes, then, by the defendants' own admission, they woefully failed to perform their ministerial duty by ordering the party to drive from the scene while intoxicated. As such, the plaintiff argued, there was no applicable immunity for this negligence. Thus, the plaintiff asserted, given the genuine disputes of facts along with the inapplicable legal arguments advanced by the defendants, the defendants' motion should be denied.

The court denied the defendants' motion for summary judgment.

$1,032,000 VERDICT – UTILITY COMPANY NEGLIGENCE – DEFENDANT UTILITY AND POWER COMPANIES LEAVE LIVE VOLTAGE WIRE ON GROUND AT BASE OF UTILITY POLE – PLAINTIFF TOUCHES WIRE SUSTAINING SEVERE ELECTRICAL SHOCK – LOSS OF PULSE FOR 5-7 MINUTES – SEVERE BURNS – ANOXIC BRAIN INJURY – PERMANENT NEUROLOGICAL AND COGNITIVE IMPAIRMENT.

Monmouth County, NJ

In this utility company negligence case, the plaintiff, a 34-year-old construction worker, asserted that the defendant electrical utility company and supplier negligently left a live, charged wire on the ground at the base of a utility pole. The plaintiff was shocked by the wire sustaining severe permanent injuries. The plaintiff brought suit against the power company and the energy company. The defendants denied liability claiming that the plaintiff was at fault for his own injuries.

On September 3, 2013, the plaintiff was at his sister-in-law's home in Bridgewater doing siding and roofing work on her house. The sister-in-law advised the plaintiff that her power went out. After checking the circuit breakers in the house, the plaintiff walked down the driveway toward a utility pole to see if he could determine why the power went out. On a utility pole at the end of the driveway, a JCP&L wire attached to the pole had been cut and was bent outward from the pole at a 90-degree angle about one foot off the ground. The plaintiff somehow contacted the unprotected ground wire running down the pole sustaining a severe electrical shock. Emergency personnel were called to the scene where they revived the unresponsive, pulseless plaintiff and transported him to the hospital.

The plaintiff asserted that the defendants were negligent in allowing a live electrical ground line to be left bare and within potential contact of any passerby. The plaintiff pointed to the undisputed fact that the wire was a ground wire, also known as a down ground. The plaintiff also contended that it is undisputed that there is not supposed to be more than a trickle of electricity running through a ground wire. The plaintiff also argued that, in contravention of safety specifications, the wire was running down the utility pole without being protected by an insulating sheath which typically runs from ground level to a height of 8 feet.

The plaintiff presented a liability expert who testified that there was an improper connection within the transformer above, thereby electrifying the ground wire. The plaintiff presented several employees of the defendant who all testified that there should not have been any significant electricity running through the ground wire and one witness who stated that, if there the transformer on the pole was not properly connected to the ground wire, it could cause up to 7200 volts of electricity to run down the wire. The plaintiff argued that the only entities who could have caused the wire to be electrified when it should not have been, and who could have caused the wire not to be insulated were the defendants.

The plaintiff suffered a massive electrical shock which he survived after having been revived by a responding police officer who testified that the plaintiff's heart had stopped for several minutes. The records of the responding medical emergency squad indicated burn marks on the plaintiff's hands and feet and that his sneakers showed burn marks through the soles and toes. The plaintiff was without a pulse for 5 to 7 minutes, was in an induced coma for 3 days and hospitalized for 5 days. The plaintiff claimed severe, permanent, debilitating injuries including severe electrical burns, chronic pain and headaches, and anoxic brain injury with permanent neurological and cognitive impairment.

The defendants argued that the plaintiff, according to eyewitness testimony, did not accidentally come in contact with the wire, but rather, in searching for the cause of the power outage, stated, "I found the culprit" reached out and intentionally grabbed the wire with his hand. The defendants asserted that the plaintiff, in particular, being a construction worker, should have known not to touch any electrical wire.

The jury unanimously found in favor of the plaintiff and returned a gross verdict of $1,032,000. The jury unanimously found the plaintiff to have been comparatively negligent in the amount of 40%, leaving the gross verdict of $619,200 in favor of the plaintiff before prejudgment interest. The verdict was molded to reflect offsets for past and future earnings of $32,155 and $23,683 respectively, 60% of which resulted in a gross verdict before prejudgment interest of $585,697. Pre-judgment interest was $26,971, for a total award of $612,668. The jury awarded no damages as to the plaintiff wife's consortium claim.

REFERENCE

Meinheit vs. Jersey Central Power and Light, et al. Docket no. L-001921-15; Judge Owen C. McCarthy, 11-07-19.

Attorney for plaintiff: Bruce P. Fromer of Nelson, Fromer, Crocco & Jordan in Neptune, NJ. Attorney for defendant: Stephen A. Rudolph of Rudolph & Kayal Counselors at Law, P.A. in Manasquan, NJ.

COMMENTARY

There was a contentious battle over evidence during discovery in this case. The defendants asserted that they sent an employee from their claims department to the scene of the incident to investigate. The defendants maintained that the employee's job was to investigate various types of property damage or personal injury incidents that could be causally connected to the equipment or activities of the defendant.

The defendants argued that their claims department is not an insurance company, nor is it comparable to an insurance company. As such, all claims are investigated in anticipation of litigation. The defendant's employee consulted with the defendant's managers and legal staff, took notes on the incident, and exchanged emails with various parties. The defendants sought to protect their employee's work as privileged under both the attorney-client and work-product privileges. The defendants argued that the work of their employee was not discoverable.

The defendants opposed the plaintiff's motion to compel, and filed a cross-motion for protective order. The defendants cited United States Supreme Court decisions holding that communications made by mid and low-level employees within the scope of their employment to the corporation's attorney were protected by the attorney-client privilege, citing Upjohn, supra, 449 U.S. at 391, 101 S.Ct. at 683 as well as Hedden, supra, 434 N.J. In this case, the defendants argued, the claims department employee's work was certified by all involved parties to have been done at the direction or request of the defendant's attorneys, including all investigation, communications and note-taking. Accordingly, the defendants maintained, the employee's handwritten notes, which the plaintiff sought to discover, were privileged and confidential documents under the attorney-client privilege and were not discoverable.

The plaintiff countered that the notes were discoverable and were crucial to the persecution of the subject case. The plaintiff argued that the contemporaneous notes and personal observations taken by the defendant's employee were not work-product, and that the remainder should be reviewed by the court to determine if they were subject to privilege. The plaintiff also argued that pursuant to R. 4:10-2(c) the notes were discoverable because the plaintiff had a substantial need for the notes. The plaintiff argued that the notes of the employee concerning her inspection following the accident were necessary for the plaintiff's case and to contradict testimony from the defendant's lineman that no wire was left dangling at the pole.

The court conducted an in camera review and ruled that the documents sought by the plaintiff were discoverable, granting the plaintiff's motion and denying the defendant's application for a protective order. The defendant sought and was granted leave to appeal. The appellate division affirmed the court's decision. The defendants still refused to provide the documents and the plaintiff filed another motion to compel which the court granted as to the defendant's employee's claims notes, reports, photos, drawings, memoranda and any documents arising from the employee's investigation of the accident scene.

$70,000 RECOVERY – MEDICAL MALPRACTICE – NURSING NEGLIGENCE – PLAINTIFF'S DECEDENT KNOWN TO BE HIGH RISK FOR PRESSURE WOUNDS UNDERGOES HIP SURGERY AT DEFENDANT MEDICAL CENTER – DEFENDANT'S NURSING STAFF FAILED TO APPROPRIATELY TREAT PATIENT FOR RISK OF ULCERS – MULTIPLE PRESSURE WOUNDS, INFECTIONS, PAIN AND SUFFERING, MENTAL AND EMOTIONAL ANGUISH – DECREASED QUALITY OF LIFE – UNTIMELY DEATH.

Ocean County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant medical center knew or should have known that the plaintiff's decedent was at high risk for developing pressure wounds and yet failed to perform appropriate care to minimize the risk that outcome resulting in the patient developing multiple wounds, infections, and untimely death. The plaintiff asserted that the defendant's acts rose to the level of willful and wanton acts or omissions and, as such, warranted punitive damages. The defendant denied any violation of the standard of care or any negligence with regard to its care of the plaintiff patient/decedent.

The plaintiff's decedent experienced a fall at an assisted living facility which caused her to be admitted to the defendant medical center on April 16, 2015, at which time she had no pressure wounds. At the defendant medical center, an X-ray revealed that the patient had a fractured hip. The plaintiff underwent hip surgery on April 17, 2015. The patient was known to be at high risk for developing pressure sores by the defendant's staff as the patient had been assessed using the Braden scale and found to be at high risk on multiple occasions. Additionally, individuals who undergo hip surgery are unable to move the extremity that the surgical procedure was performed on.

Despite the fact that the plaintiff was known to be at high-risk for pressure wounds, the necessary precautions were allegedly not taken to prevent pressure wounds. During the time that she was hospitalized, the patient was under the defendant's exclusive care and control. The plaintiff asserted that the defendant employed and contracted with healthcare personnel who deviated from the standard of care in their treatment of the plaintiff's decedent. The plaintiff maintained that the defendant failed to provide the adequate level of skilled nursing care commensurate with the accepted standard of care by failing to allocate an adequate number of sufficiently trained nursing staff, developing and enforcing nursing policies and procedures and ensuring timely access to appropriate nursing equipment to protect the patient's well-being and safety. The plaintiff presented expert testimony alleging deviations from the nursing standards of care with regard to the prevention and treatment of pressure ulcers by the defendant's staff.

Due to the defendant's negligence, the patient experienced physical abuse and neglect including pressure wounds, infections, pain and suffering, mental and emotional anguish, decreased quality of life, costs and expenses for medical care and an untimely death.

The defendant denied any intentional or willful disregard for the patient's condition or care. The defendant presented expert testimony wherein the defendant's experts stated that none of the alleged deviations were reckless or were done in an intentional manner. The defendant also pointed to the plaintiff's own expert reports wherein, the defendant maintained, the plaintiff's experts alleged deviations from the nursing standards of care, but none suggested that any of the behavior of the defendant's staff was willful, wanton, or even reckless.

The parties settled the matter prior to trial in the amount of $70,000.

REFERENCE

Estate of Carmella Truisi vs. RWJ Barnabas Health, Inc. Docket no. L-000580-17; Judge Arnold B. Goldman, 10-07-19.

Attorneys for plaintiff: Denise M. Mariani and Jonathan F. Lauri of Stark & Stark in Princeton, NJ. Attorneys for defendant: James M. Ronan, Jr. and Lauren H. Zalepka of Ronan, Tuzzio & Giannone in Tinton Falls, NJ.

COMMENTARY

In the course of the case, the defendant filed a motion for partial summary judgment on the issue of punitive damages as a matter of law. The defendant argued that the plaintiff had not offered any evidence, let alone clear and convincing evidence, of actual malice or willful and wanton disregard on the part of the defendants. The plaintiff opposed the motion and argued that the summary judgment should be denied as there was a genuine issue of material fact which warranted its denial. The plaintiff argued that the defendant's nurses deliberately failed to follow through on requests to provide the appropriate care to the patient in order to avoid pressure ulcers. The plaintiff further argued that the nurses deliberately failed to act in providing the appropriate care, even after it was revealed that the patient was at the highest risk level for developing pressure wounds. Finally, the plaintiff asserted that such acts were deliberate omissions sufficient to show reckless indifference to the consequences of their failure to act.
The court found that there was a genuine dispute as to whether the defendant took part in acts or omissions rising to the level of wanton and willful disregard. The court opined that a jury could find the alleged deliberate omissions of the defendant rose to the level of willful indifference required by Davis v. Devereuz Foundation, 414 N.J. Super. 1,17 (App. Div. 2010), especially in light of the plaintiff's allegations that the patient had a high risk of developing ulcers. The court denied the defendant's motion for partial summary judgment on the issue of punitive damages.

DEFENDANT'S VERDICT – WHISTLEBLOWER – RETALIATORY TERMINATION – PLAINTIFF TEACHER ARGUES SHE WAS TERMINATED AFTER REPORTING ALTERATION OF STUDENTS' GRADES BY ADMINISTRATORS AT SCHOOL – DEFENDANTS ASSERT PLAINTIFF WAS TERMINATED FOR POOR PERFORMANCE.

Essex County, NJ

In this whistleblower action, the plaintiff contended that the defendant board of education and its agents fired the plaintiff in retaliation for the plaintiff complaining about fraudulent grade reporting in the defendant school district. The plaintiff brought suit under 2 sections of N.J.S.A. 34:19-3 of the Whistleblower Act. The defendants denied that the plaintiff's termination was retaliatory in any way. The defendants asserted that the plaintiff was subject to adverse employment actions because of her performance, not in retaliation for any communications she had with the district about grading policies.

The plaintiff was a chemistry teacher at one of the defendant board of education's high schools in Newark. She had also been a teacher at 2 other schools in the district. The plaintiff maintained that she had received good performance reviews throughout her tenure in the defendant district. The plaintiff gave a summer assignment to 5 of her high school classes. Few, if any, of the students completed the assignment and the plaintiff assigned a score of 0 for the assignment to those who did not complete the task and included that score in students' grade averages for the first marking period of the school year.

The plaintiff asserted that, without her knowledge or consent, administrators removed the "0" grades for the summer assignment from her calculation of students' grades and changed those grades. The plaintiff then sought to report this action to higher level administrators in the defendant district including the assistant superintendent. The plaintiff maintained that the defendants terminated her employment in the middle of the school year in retaliation for her multiple objections to and multiple attempts to report to the senior administration of the defendant school district her claim that grads had been falsified. The plaintiff claimed the alteration of grades was done without her knowledge or consent. The plaintiff argued that the defendant principal and defendant assistant superintendent admitted in sworn testimony that the plaintiff's grading was a factor in her termination. She asserted that they further admitted that her grades were calculated correctly according to the district-wide grading standards that she was mandated to follow. The plaintiff claimed that the defendants' actions violated the CEPA law.

The defendants argued that the plaintiff came to the high school on a Corrective Action Plan from her prior school, that she had had prior evaluations that were substandard, that there were numerous complaints about the plaintiff's teaching, classroom management, punitive grading, conduct and lack of professionalism from students, parents, staff, and administrators. The defendant noted that an overwhelming percentage of the plaintiff's students were

failing, that the plaintiff failed to comply with a Performance Improvement Plan and that she was ultimately terminated for cause.

The jury found no cause of action and returned a verdict in favor of the defendants. The plaintiff filed a motion for new trial that was denied by the court.

REFERENCE

Czukerberg vs. State-Operated School District of The City of Newark, et al. Docket no. L-008857-15; Judge Thomas R. Vena, 06-27-19.

Attorneys for plaintiff: Keith N. Biebelberg and Jay M. Nimaroff of Biebelberg & Martin in Millburn, NJ. Attorney for defendant: Marc D'Angiolillo of Riker Danzig Scherer Hyland & Perretti, LLP in Morristown, NJ.

COMMENTARY

The plaintiff asserted that, beginning on December 15, 2014, she engaged in multiple whistleblowing acts protected by law and that such whistleblowing acts were met with retaliation by the defendants, specifically, her termination from employment on December 29, 2014. The plaintiff contended that various facts proved that she had a "Reasonable belief" on December 15, 2014 and thereafter that the defendants were in violation of a law, rule, or public policy. Among the various facts she pointed to were late September - early October exchanges with the defendant principal regarding his directive that she remove all summer assignment grades from the Power Teacher GradeBook (software program used by the district to calculate grades) and his statement that failure to do so might be reflected in her teacher rating. The plaintiff also pointed to the Letter of Reprimand for Insubordination which the defendant principal issued to her and put in her employment file on October 6, 2014 when she did not change the grades as he had ordered. The plaintiff asserted that the withholding of her grades on December 4, 2014 by the administration and her email the following day to the assistant superintendent support her assertion that on December 15 and thereafter, when she reported the alteration of her grades to senior officials of the district, she had a reasonable belief that a law, rule or public policy was being violated by her supervisors and she would, thereby, be protected by CEPA when she brought these actions to the attention of the district.

The defendants did not deny that they altered the plaintiff's first marking period grades and thereafter attributed them to her, nor did they deny that the plaintiff's first marking period grades were calculated accurately by the Power Teacher GradeBook. However, they denied that the plaintiff had a reasonable belief that they violated any law, rule, or public policy. The defendants therefore asserted that the plaintiff was not "whistleblowing" because no law or rule was being broken. The defendants asserted simply that the plaintiff failed to follow directives from superiors and was insubordinate and therefore, rightfully terminated. The defendant argued that the plaintiff's action did not meet the standard for the whistleblower statute. The defendant asserted that merely complaining about an adverse employment action or complaining about an employer doing something that an employee doesn't like, does not rise to the level of whistleblower. The defendant asserted that the conduct that was the subject of the adverse employment action did not constitute whistleblowing activity.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Podiatry

DEFENDANT'S VERDICT

Medical malpractice – Podiatry – Plaintiff contends defendant cut her with saw when removing cast from leg – Lacerations with permanent scarring; emotional anguish; disfigurement – Defendant denies any deviation from standard of care.

Sussex County, NJ

In this medical malpractice case the plaintiff, a 64-year-old woman, asserted that the defendant podiatrist deviated from the standard of care in his treatment of the plaintiff resulting in permanent injury. The defendant denied liability and contended that all care and treatment rendered to the plaintiff met the accepted standard of care.

The plaintiff was under the care of the defendant on December 5, 2015 for left foot pain. On February 5, 2016, the defendant performed surgery on the left foot and applied a cast. On February 6, 2016, the plaintiff presented to the defendant podiatrist complaining that the cast was too tight. The defendant removed the cast from the plaintiff's lower left leg. The plaintiff maintained that the defendant injured her left leg while removing the cast.

The plaintiff testified that, when the cast was taken off, her leg was bleeding in the places where the cast had been cut. The plaintiff alleged that the defendant's manner of removal of the below-the-knee cast was negligent and caused permanent injury to the plaintiff. At trial, the plaintiff presented the expert report of a podiatrist who opined that the defendant had cut the plaintiff's leg in multiple places while removing the cast; thus, deviating from the standard of care. The plaintiff's expert also confirmed the presence of permanent scarring on the lower left leg.

As a result of the negligent cast removal, the plaintiff contended that she sustained multiple lacerations and permanent scarring. The plaintiff claimed emotional anguish and disfigurement. The defendant denied cutting the plaintiff and asserted that any marks on her leg were discolorations of unknown origin, not scars. The defendant testified that injuring a patient during cast removal was not malpractice but an "Adverse event."

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

REFERENCE

Bauer vs. Robertozzi, et al. Docket no. L-000531-16; Judge David J. Weaver, 10-02-19.

Attorney for plaintiff: Edward C. Lutz of Edward C. Lutz, LLC in Parsippany, NJ. Attorney for defendant: Dominic A. DeLaurentis, Jr. of Stahl & DeLaurentis, P.C. in Runnemede, NJ.

Surgery

DEFENDANT'S VERDICT

Medical malpractice – Surgery – Plaintiff contends defendant surgeon caused damage to urethra during attempts to place Foley catheter during hernia surgery – Defendant denies any violation of standard of care – 2 urethral reconstructive surgeries with possible future revision surgery needed – Urethral leakage requiring pads and sexual dysfunction as result of urethral perforation.

Bergen County, NJ

The plaintiff, 49-year-old man, brought this medical malpractice suit against the defendant hospital, its nursing and medical staff, and the defendant colorectal surgeon for breaches of the standard of care in performance of a hernia surgery that led to a permanent urethral injury when the defendant surgeon perforated the urethra during catheter placement. Prior to trial, all co-defendants were dismissed on summary judgment with the exception of the defendant surgeon who did not seek summary judgment. The case proceeded only as to the defendant surgeon.

On February 5, 2014, the plaintiff experienced severe abdominal pain and was admitted to the hospital in Ridgewood. Upon admission, the plaintiff was initially diagnosed with a small bowel obstruction. It was determined that the patient had a hernia and would require surgery. When the plaintiff was told he needed

surgery relating to a hernia, he contacted the defendant colorectal surgeon who had operated on the plaintiff in the past. The plaintiff met with the defendant the same day and the defendant scheduled the plaintiff for surgery that evening for small bowel incarcerated ventral hernia repair and reduction. The plaintiff and defendant had a lengthy conversation about the risks associated with the scheduled surgery. However, the plaintiff contended that at no time did the defendant inform the plaintiff that he would need to catheterize the plaintiff in preparation for the surgical procedure, nor did he inform the plaintiff of the risks associated with catheterization.

The plaintiff had been a patient of the defendant since 1991 and the defendant had prior knowledge of the great difficulty associated with catheterizing the plaintiff from a prior procedure to remove his appendix. During that procedure, the defendant encountered difficulty in attempting to pass a urinary catheter into the plaintiff's bladder and eventually, a urologist was called in and a cystoscope was used. At that time, the urologist using the cytoscope noted a urethral stricture in the plaintiff's anatomy.

In the subject case, during the procedure to repair the hernia and while the plaintiff was under anesthesia, a nurse instructed by the defendant attempted to catheterize the plaintiff using a Foley catheter. After several unsuccessful attempts, the defendant took over and was also unsuccessful. The defendant then unsuccessfully attempted with a Coude catheter. Finally, a urologist was called in. Using a cystoscope, the urologist located a puncture in the urethra caused by an unsuccessful attempt to insert a catheter that bounced off a stricture and went through the urethral wall. The urologist, for the purposes of surgery, placed a suprapubic urinary catheter.

The plaintiff awoke from the subject surgery with swelling and bleeding through the urethra. Because the plaintiff was unable to urinate after the surgery, the tube which had been placed during the surgery was left in place for an additional 45 days. The plaintiff continued to have intense pain and he presented to his primary care, a urologist, who was unable to place a catheter, and ultimately to a urologic surgeon. The plaintiff was required to undergo urethral reconstruction in 2016 given the extent of damage to his urethra.

Following the procedure, the plaintiff was able to empty his bladder, but continued to experience sexual dysfunction with associated numbness and swelling. The plaintiff required a second reconstructive surgery 16 months later, his only other option being permanent catheterization or permanent kidney damage. The plaintiff now has a lifelong urethral stricture disease and will likely need revision surgery in the future. Despite 2 reconstructions, the plaintiff still has leakage problems and must wear Depends pads. He is also unable to ejaculate.

The plaintiff contended that the defendant, knowing the plaintiff's history with regard to catheterization, breached the standard of care in failing to inform the plaintiff prior to surgery that catheterization would be involved. The plaintiff argued that the defendant again breached the standard by failing to document, review and chart the plaintiff' prior history of urethral stricture before surgery which would have led to having a urologist perform the catheterization using a cystoscope. The plaintiff maintained that the standard of care was breached by the defendant making multiple attempts with 2 different catheters resulting in permanent damage to the plaintiff's urethra. The plaintiff wife also made a claim for loss of consortium.

The defendant argued that the plaintiff's urethral issues were preexisting and congenital in nature; therefore, the defendant could not have foreseen the issues with placement of the catheter. Further, the defendant asserted that it was unknown when the perforation of the urethra occurred as the surgical nurse, the defendant, and the urologist made multiple attempts at insertion; therefore, there is no evidence that the defendant was the one who caused the damage. The defendant presented expert testimony indicating that it would be unlikely for the defendant to have had a recollection of the plaintiff's previous difficulties with catheterization 23 years prior and that the plaintiff failed to inform the defendant or any medical providers that he had experienced difficulty with insertion of a catheter in 1991.

The defendant's expert opined that, given the nature of the need for expeditious surgery on the day in question and the unavailability of electronic records would have prevented the defendant from having information about the 1991 surgery. The defendant's expert also opined that it was not a deviation from the standard to have a complication following insertion of the insertion of a urinary catheter. The defendant's expert also stated that it is not the standard of care to consult a urologist prior to the hernia surgery but rather, when a problem was encountered during the procedure, which is what occurred in this case. The defendant's expert held that the defendant took the appropriate action by requesting an urgent urological consultation when he encountered difficulty inserting the catheter.

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

REFERENCE

Dombrowski vs. Valley Hospital, et al. Docket no. L-000975-16; Judge Charles E. Powers, Jr., 12-04-19.

Attorney for plaintiff: Michael J. Noonan of Nowell, P.A. in Hackensack, NJ. Attorneys for defendant: Michael J. Heron and Jennifer N. Cortopassi of The Law Office of William L. Brennan in Shrewsbury, NJ.

CONTRACT

$6,104 ARBITRATION AWARD

Contract – Breach of contract for legal services – Plaintiffs contend defendant owes balance for legal services provided – Defendant asserts she does not have means to pay balance and was denied payment plan to repay debt.

Morris County, NJ

In this case, the plaintiff law firm brought suit against the defendant client for legal services rendered by the plaintiffs upon a promise by the defendant to pay the agreed amount as set forth in a retainer agreement dated March 31, 2017. The agreement also provided for interest on amounts not paid within 30 days of the billing date. The defendant admitted that she owed the debt and claimed that she had contacted the plaintiffs in an attempt to set up a payment plan, but was denied.

Between June 9, 2017 and December 18, 2017, the plaintiffs incurred a total expense of $15,012 in representation of the defendant in her divorce proceedings. During that time, the defendant paid a total of $9,900. The plaintiffs asserted that the defendant owed a balance of $5,112 plus interest. Payment was demanded and the defendant had been sent numerous invoices, but the balance remained unpaid at the time of filing. The defendant asserted that she did not have the means to pay the debt in full and requested a 6-month extension to get her affairs in order before making monthly payments of $50/month toward the debt.

The parties submitted to non-binding arbitration prior to trial. The arbitrator deemed that the defendant owed payment to the plaintiffs in the amount of $6,104. The plaintiffs made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $5,112 plus $992 in interest, for a total recovery of $6,104.

REFERENCE

Donahue, Hagan, Klein & Weisberg, LLC vs. Snyder. Docket no. L-001585-18; Judge Stuart Minkowitz, 10-10-19.

Attorney for plaintiff: David Scott Mack of Donahue, Hagan, Klein & Weisberg, LLC in Morristown, NJ.

DOG ATTACK

$37,500 RECOVERY

Dog attack – Minor plaintiff attacked and bitten by defendant's pitbull – Severe internal and external bite injuries – Extensive scarring and mental anguish – Parties settle prior to trial.

Monmouth County, NJ

In this dog attack case, the plaintiff asserted that the defendant dog owners failed to protect or warn the plaintiff of their dog's propensity to bite. The defendant's negligence resulted in the plaintiff sustain severe bites injuries.

On October 12, 2018, the minor plaintiff was lawfully on the premises of 3 Cannon Road in Old Bridge. The defendants owned and harbored a pitbull mix breed dog at the premises. The dog owned by the defendants attacked and bit the plaintiff. As a result of the attack, the plaintiff sustained severe internal and external injuries, extensive scarring and mental anguish. The plaintiff claimed that the defendants knew or should have known of the dangerous propensities of their dog and were negligent in not protecting or warning the plaintiff. The defendants initially argued that the plaintiff was at least partially responsible for the dog attacking him, but ultimately settled with the plaintiff.

The parties settled the matter prior to trial in the amount of $37,500 broken down as follows: $9,675 in attorney fees; $2,013 in medical expenses and $25,812 in net damages to the minor plaintiff.

REFERENCE

Esposito vs. Griffith. Docket no. L-001545-19; Judge Dennis R. O'Brien, 10-09-19.

Attorney for plaintiff: Brian E. Ansell of Ansell Grimm & Aaron in Ocean, NJ. Attorney for defendant: Patricia B. Adams of Campbell, Foley, Delano & Adams, LLC in Asbury Park, NJ.

INSURANCE OBLIGATION

$3,500 ARBITRATION AWARD

Insurance obligation – Rear end collision – Cervical and lumbar injury – Chiropractic treatment only – Plaintiff collects PIP damages from tortfeasor's policy and makes claim for underinsured motorist against defendant insurer.

Union County, NJ

In this underinsured motorist case, the 58-year-old female certified nursing assistant sustained injury in a collision with the tortfeasor driver. The plaintiff received PIP benefits from the tortfeasor's insurance and subsequently claimed unpaid damages against her insurer. The defendant denied all negligence and contended that the plaintiff was contributorily negligent.

On March 13, 2017, the plaintiff was slowing for traffic on Madison Avenue in Rahway. The tortfeasor driver was traveling behind the plaintiff. The plaintiff asserted that the tortfeasor operated her vehicle in a careless, reckless and negligent manner so as to strike the rear of the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained cervical and lumbar injuries confirmed on MRI and EMG/NCU testing. The plaintiff treated with chiropractic care only; no injections or surgery. The plaintiff claimed a total of $15,000 in damages of which $12,000 was paid by the underlying insurance carrier. She also claimed one week lost wages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the tortfeasor driver with gross damages of $18,500 and net damages of $3,500 after offset for PIP payment. Following arbitration, the defendant moved to confirm the arbitration and the motion was granted by the court resulting in a net recovery by the plaintiff of $3,500.

REFERENCE

Baptiste vs. Nobile, et al. Docket no. L-001792-18; Judge Karen M. Cassidy, 12-06-19.

Attorney for plaintiff: John J. Sheptock of John J. Sheptock, LLC in Union, NJ. Attorney for defendant: Robert T. Gunning of Morrison Mahoney, LLP in Parsippany, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$250,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff jogger struck in relatively dark conditions – Right-sided sinus fractures – Dominant shoulder tear and knee laceration – Conservative treatment.

Somerset County, NJ

This motor vehicle negligence case involved a plaintiff jogger in his mid 30s who was struck by the defendant driver sustaining permanent injuries. The plaintiff contended that the defendant failed to make adequate observations. The incident occurred shortly after sundown. The defendant maintained that because of an absence of street lighting and dark clothing worn by the plaintiff, he was difficult to see.

The plaintiff asserted that he sustained a nasal fracture which will permanently cause some breathing difficulties despite conservative treatment. The plaintiff further contended that he suffered a tear of the dominant shoulder that was treated conservatively and which will permanently cause some pain and a cosmetic prominence. The plaintiff also suffered a knee laceration which he maintained will permanently result in noticeable scarring.

The case settled prior to the institution of suit for the policy limits of $250,000.

REFERENCE

Beck vs. Boniakowski. 01-21.

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

Left Turn Collision

$15,815 RECOVERY

Motor vehicle negligence – Left turn collision – Both parties in left-turning lanes and each claims that driver crossed into other's lane and caused collision – C2-3 and C3-4 disc herniations; bulges at C3-4 and C4-5; left shoulder sprain/sprain and left knee contusion/strain – Arbitration finds each party equally liable – Parties enter into pretrial high/low agreement, but ultimately settle prior to trial.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle while making a left turn causing her to sustain significant, permanent injury. The defendant denied liability and asserted that, as the parties were making their respective left turns, the plaintiff turned too widely and entered the defendant's lane, causing the collision.

On January 16, 2016, the plaintiff was traveling on US Route 30 at the intersection with North Shore Road in Absecon. The defendant driver was also traveling on Route 30. The plaintiff was in the far left lane which was a left turn only lane. The defendant was in the second lane from the left which was a left turn and straight lane. The plaintiff asserted that she turned left and the defendant, also turning left, negligently entered into the plaintiff's lane and struck her vehicle.

As a result of the collision, the plaintiff sustained C2-3 and C3-4 disc herniations; bulges at C3-4 and C4-5; left shoulder sprain/sprain; and left knee contusion/strain. The police report indicated that there were no witnesses and, based on the evidence at the scene and the drivers' conflicting statements, he could not determine which driver was at fault.

The parties submitted to non-binding pretrial arbitration wherein the arbitrator found each party equally liable and set the plaintiff's gross damages at $77,500 reduced to $38,750 for the plaintiff's comparative negligence. The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $30,000 in the event of the jury awarding damages above that amount, and a minimum of $0 in the event of a defendant's verdict or an award below that amount. The high/low agreement stipulated that the defendant driver and her insurance would be responsible for any jury verdict up to $15,000 and the defendant underinsured motorist insurer would be responsible for any additional amount from $15,000 up to the cap of $30,000.

The plaintiff and defendant driver settled the matter prior to trial in the amount of $15,000 plus $50 in fees and $765 in attorney's fees, for a total recovery to the plaintiff of $15,815.

REFERENCE

Cutler vs. Figueroa, et al. Docket no. L-002651-17; Judge Christine Smith, 11-06-19.

Attorney for plaintiff: Robert A. Stacchini of Goldenberg Mackler & Sayegh in Atlantic City, NJ. Attorney for defendant driver: Lindsay Switzer of Law Office of Michael G. David in Marlton, NJ. Attorney for defendant underinsured motorist carrier: Erin E. Mullen of Ronan Tuzzio & Giannone in Tinton Falls, NJ.

Rear End Collision

$132,000 RECOVERY

Motor vehicle negligence – Rear end collision – Lumbar herniation – Surgery – Cervical herniation treated conservatively – UIM case – No income claims.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff driver, in his late 20s, contended that he was struck in the rear by the defendant driver sustaining permanent injuries. The defendant had a $15,000 policy. The plaintiff had $500,000 in UIM protection and $485,000 was available. The defendant maintained that the plaintiff made a good recovery. The plaintiff asserted that he suffered a herniation at L5, S-1 which was confirmed by MRI and which will cause permanent symptoms despite an injection and a discectomy. The plaintiff further maintained that he suffered a cervical herniation that was treated conservatively and which will nonetheless cause permanent pain and limitations.

The plaintiff made no income claims.

The case settled with the UIM carrier for $117,000, yielding a total recovery of $132,000.

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: Kevin Aurori, M.D. from Morristown, NJ. Plaintiff's radiology expert: Lisa Marie Sheppard, M.D. from Flemington, NJ.

Simmons vs. Junior. Docket no. MON-L-4002-18, 05-11-20.

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

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Insurance obligation – Disc herniations at L4-5, L5-S1, C3-4, C4-5; left C5-6 radiculopathy; disc bulges at C4-5, L1-2, L4-5 and L5-S1 – Pain management and chiropractic treatment – Plaintiff recovers $10,000 per pretrial high/low agreement.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the tortfeasor driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff brought suit against the defendant insurer for underinsured motorist coverage. The defendant stipulated that the tortfeasor was liable, but contested the plaintiff's damages.

On October 29, 2015 the plaintiff was traveling on Sicklerville Road in Gloucester Township. The tortfeasor, who was traveling behind the plaintiff, failed to stop behind the plaintiff. The tortfeasor struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at L4-5, L5-S1, C3-4, C4-5; left C5-6 radiculopathy; disc bulges at C4-5, L1-2, L4-5 and L5-S1. The plaintiff treated with pain management, and chiropractic treatment. The defendant argued that the plaintiff did not sustain permanent injury as a result of the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $50,000. The arbitration was not confirmed and the matter proceeded. Following arbitration and prior to trial, the plaintiff offered to take judgment in the amount of $50,000. The offer was not accepted.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $75,000 in the event of the jury awarding damages above that amount, and a minimum of $10,000 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the defendant; thus, the plaintiff recovered $10,000 in damages.

REFERENCE

Acquarolo vs. Kearse. Docket no. L-004232-17; Judge Sherri L. Schweitzer, 11-13-19.

Attorney for plaintiff: W. Robb Graham of Law Offices of Robert I. Segal, P.A. in Medford, NJ. Attorney for defendant: Robyn A. Barkow of Law Office of Michael G. David in Marlton, NJ.

Sideswipe Collision

$35,000 ARBITRATION AWARD

Motor vehicle negligence – Sideswipe collision – Multiple lumbar and cervical herniations – Lumbar epidural injection and chiropractic treatment.

Union County, NJ

In this motor vehicle negligence case, the 55-year-old plaintiff passenger asserted that the defendant driver struck the vehicle in which the plaintiff was a passenger in a sideswipe collision with such force that it caused significant, permanent injury. The defendants denied liability and each asserted that the other entered their lane of travel and caused the collision.

On July 11, 2017, the plaintiff was a passenger in a vehicle being driven by the first defendant which was traveling south on North Broad Street in Elizabeth. The plaintiff asserted that the second defendant, driving a recycling truck, negligently and carelessly crossed over into the lane of travel of the plaintiff's vehicle and collided with the vehicle causing serious injury to the plaintiff.

As a result of the collision, the plaintiff sustained multiple lumbar and cervical herniations. The plaintiff treated with one lumbar epidural injection and chiropractic treatment. The defendants contested the plaintiff's damages and presented the report of a medical expert who opined that the plaintiff sustained no herniations, only mild disc bulging not causally related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 40% liability to the defendant recycling truck driver and 60% to the defendant driver of the plaintiff's vehicle with damages of $35,000. The plaintiff made a motion to confirm the arbitration and the motion was granted. The plaintiff recovered $35,000 with $14,000 coming from the defendant truck driver and $21,000 coming from the defendant driver of the plaintiff's vehicle.

REFERENCE

Doly vs. Navarro, et al. Docket no. L- 001793-18; Judge Mark P. Ciarrocca, 10-25-19.

Attorney for plaintiff: John J. Sheptock of John J. Sheptock, LLC in Union, NJ. Attorney for defendant recycling company and driver: L. Patrick Dacey of Bolan Jahnsen Dacey in Shrewsbury, NJ. Attorney for defendant driver of vehicle in which plaintiff is passenger: Danielle Mastropiero of Law Offices of Robert A. Raskas in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Disc herniation at C6-7; disc bulges at C4-5, C5-6 and L2-5; cervical radiculopathy; annular tear at L5-S1 and lumbar radiculopathy – Plaintiff offers to take judgment of $15,000; declined – Arbitrator finds defendant liable with $35,000 in damages; arbitration not confirmed.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle on the passenger side when he suddenly, without warning, negligently swerved into her lane of travel, causing her to sustain injuries. The defendant denied liability and contended that the plaintiff was guilty of comparative negligence greater than the negligence of the plaintiff.

As a result of the collision, the plaintiff sustained disc herniation at C6-7; disc bulges at C4-5, C5-6 and L2-5; cervical radiculopathy; annular tear at L5-S1 and lumbar radiculopathy. Prior to arbitration, the plaintiff made an offer to take judgment in the amount of $15,000. The offer was not accepted.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $35,000. The arbitration was not confirmed and the matter went to trial.

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

REFERENCE

Bruscianelli vs. Thomas. Docket no. L-001896-17; Judge Alan G. Lesnewich, 10-02-19.

Attorney for plaintiff: Stephen A. Mennella of Lord, Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ. Attorneys for defendant: Judith L. Korolewicz and Derrick DiFrancesco of Law Offices of Pamela D. Hargrove in Cranford, NJ.

U-turn Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – U-turn collision – Aggravation of prior cervical and lumbar disc herniations; bilateral meniscal tears – Physical therapy; knee surgery recommended – Defendant contests nature, causation and extent of plaintiff's injuries.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 48-year-old male jeweler, asserted that the defendant driver made an illegal turn and struck the plaintiff's vehicle with such force that it caused him to sustain significant, permanent injury. The defendant stipulated liability, but contested the plaintiff's damages.

On December 7, 2015, the plaintiff was traveling in a southerly direction on Gorge Road in Cliffside Park, as was the defendant driver. The plaintiff claimed that the defendant driver negligently made a U-turn in the roadway and struck the plaintiff's vehicle. The defendant was cited for making an illegal turn. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained an aggravation of prior cervical and lumbar disc herniations from a motor vehicle accident 13 years prior; and new injury in the form of tears in the right and left knee. The plaintiff was recommended for knee surgery, but had not yet had the procedure at the time of filing. The plaintiff treated with physical therapy. The plaintiff's expert opined that the plaintiff's injuries are permanent and cause him difficulty in performing work tasks, such as bending his neck to look into a jewelry scope, and with activities of daily living.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant had an expert medical report indicating that the right knee tear was not a result of the subject collision and that it had happened more recently than the date of the accident. The defendant's expert also opined that the plaintiff's other knee complaints were degenerative based on his review of the MRI films.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $60,000. The arbitration was not confirmed. Following arbitration, the plaintiff made an offer to take judgment in the amount of $300,000. The offer was not accepted and the matter proceeded to trial.

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

REFERENCE

Araian vs. Lukabu. Docket no. L-007611-17; Judge Walter F. Skrod, 12-17-19.

Attorney for plaintiff: Jonathan L. Leitman of Law Offices Rosemarie Arnold in Fort Lee, NJ. Attorneys for defendant: Brian R. Lehrer and Daniel S. Suh of Schenck, Price, Smith & King, LLP in Paramus, NJ.

PREMISES LIABILITY

Fall Down

$30,000 ARBITRATION AWARD

Premises liability – Fall down – Slip and fall on ice – ACL tear of right knee – No surgery – Arbitrator assigns 35% liability to defendant property owner; 35% to co-defendant tenant and 30% to plaintiff with gross damages of $30,000 reduced to $21,000 for plaintiff's comparative negligence – Defendant moves for confirmation of arbitration.

Morris County, NJ

In this premises liability case, the plaintiff asserted that the defendants were negligent in failing to remove or warn the plaintiff of a hazardous condition on the property. As a result, the plaintiff fell and suffering significant, permanent injury. The defendant property owner denied liability and claimed that the co-defendant tenant was responsible either for contribution or indemnification to the defendant property owner.

On February 2, 2016, the plaintiff was lawfully on the premises owned and operated by the defendant property owner and for which the co-defendant tenant was also a party responsible for maintenance and operation. The plaintiff claimed that he slipped and fell on accumulated ice on the walkway and curb of the property. As a result of the fall, the plaintiff sustained an ACL tear of the right knee. The plaintiff treated conservatively with no surgery.

The plaintiff maintained that the defendants breached their duty to maintain the property in a safe condition for invitees, including the removal or mitigation of snow and ice on the premises. The co-defendant tenant asserted that the alleged negligence was not the cause of the plaintiff's injuries. The defendant tenant also asserted that the plaintiff was responsible for his own injuries in failing to exercise due care in navigating the walkway and curbing at the premises.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 35% liability to the defendant property owner; 35% to the co-defendant tenant and 30% to the plaintiff. The arbitrator set gross damages at $30,000 reduced to $21,000 for plaintiff's comparative negligence. The defendants made a motion to confirm the arbitration order and the motion was granted. Damages were divided equally between the co-defendants with each contributing $10,500 to the total amount.

REFERENCE

Ginarte vs. JIF Enterprises, Inc., et al. Docket no. L-000187-18; Judge Stuart A. Minkowitz, 11-22-19.

Attorney for plaintiff: Richard J. Isolde of Ginarte, Gallardo, Gonzalez, & Winograd in Newark, NJ. Attorney for defendant JIF Enterprises, Inc., property owner: Clifford J. Giantonio of Law Offices of Viscomi & Lyons in Morristown, NJ. Attorneys for defendant Uni-Rents, Inc., tenant: Michael A. Miranda and Kevin J. Donnelly of Miranda Sambursky Slone Sklarin Verveniotis, LLP in Mineola, NY.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Negligent maintenance – Plaintiff falls on ice and foot catches in defective step with missing mortar – Aggravation of prior right rotator cuff injury with new tendon tears; soft tissue injury to left foot and hallux with possible RSD – 2 surgical repairs of shoulder injury – Physical therapy – Injections for foot/toe injury – Possible need for future treatment/surgery – Arbitrator assigns 75% liability to defendant condominium association and 25% to defendant landscaping company with damages of $180,000.

Essex County, NJ

In this premises liability case, the 60-year-old male plaintiff, a former chiropractor now on disability, asserted that the defendant condominium failed to property salt and sand steps to units on the property. As a result of the defendant's failure to maintain safe premises, the plaintiff fell down exterior stairs and was seriously, permanently injured. The defendant condominium asserted that it contracted with an independent landscaping business for all snow removal. The defendant condominium presented its contract with the landscaping company and maintained that the contract clearly indemnified and held the condominium harmless for any loss or damage due to the injury of any person as a result of the performance, or lack thereof, of the landscaping company.

On February 19, 2015, the plaintiff was visiting his mother at the defendant property. The plaintiff's mother had lived on the first level of the defendant condominium property in East Hanover for approximately 20 years. While descending the steps from his mother's unit, the plaintiff slipped on accumulated ice and his foot got caught between bricks where, he contended, there was cement missing. As he fell, he flung out his right arm in an attempt to break the fall and his arm became lodged in the spindles of the handrail.

As a result of the incident, the plaintiff sustained an aggravation of a prior right rotator cuff injury and new tendon tears and soft tissue injury to his left foot and hallux with possible RSD. The plaintiff underwent 2 surgical repairs of the shoulder injury and physical therapy; and injections for the foot/toe injury. The plaintiff has continuing problems with the shoulder and may require further treatment or surgery.

The defendant condominium argued that the defendant landscaping company breached its contract with the defendant condominium company. The defendant landscaping company maintained that the plaintiff's testimony indicated that he fell on the ice, but that his injury resulted from his foot being caught in a gap between bricks in the stairs. The defendant landscaper asserted that the defendant condominium association was responsible for upkeep of the physical property and thus was at least partially responsible for the injury to the plaintiff. The plaintiffs also pointed to the plaintiff as having a significant history of the right shoulder, including prior surgery.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant condominium association and 25% to the defendant landscaping company. The arbitrator set damages at $180,000 plus an unknown medical lien amount. Following arbitration and prior to trial, the plaintiff settled with both the defendant condominium association and the defendant landscaping company for an undisclosed sum.

REFERENCE

Albanese vs. Hanover Park Condominium Association, et al. Docket no. L-001262-17; Judge Thomas M. Moore, 10-15-19.

Attorney for plaintiff: Benjamin M. DelVento, Jr. of Benjamin M. DelVento, P.A. in Livingston, NJ. Attorney for defendant Hanover Park Condominium Association, Inc.: Gregory J. Irwin of Harwood Lloyd, LLC in Hackensack, NJ. Attorney for defendant By Design Landscapes, Inc.: Frank D. DeRienzo of Leary, Bride, Mergner & Bongiovanni, P.A. in Cedar Knolls, NJ.

Hazardous Premises

$105,000 RECOVERY

Premises liability – Hazardous premises – Glass shower door shatters and causes injury to minor plaintiff in guest room of defendant hotel – Multiple lacerations to right hand and foot.

Somerset County, NJ

In this premises liability case, the plaintiff, a 15-year-old girl, asserted that the defendant hotel negligently installed or maintained a glass shower door such that it caused significant, permanent injury to the plaintiff when it broke. The defendant denied it violated any duty owed to the plaintiff and denied that it was guilty of negligence.

On April 28, 2017, the minor plaintiff was a guest on the premises of the defendant hotel on Rutherford Avenue in Rutherford. A glass shower door in the bathroom of the plaintiff's hotel room fell off its frame, shattered and caused injury to the plaintiff. As a result of the accident, the police and EMS were called to the scene and transported the plaintiff to the hospital. The plaintiff sustained lacerations to her right hand and right foot.

The plaintiff asserted that, as a direct and proximate result of the defendant allowing a dangerous condition to exist on its premises, the plaintiff sustained serious and permanent injuries and medical expenses.

The plaintiff contended that the defendant knew or should have known of the hazard since shower doors at the hotel had shattered in similar fashion on at least 3 other occasions. The plaintiff argued that the defendant failed to fix the issue with the glass shower doors or warn the plaintiff of the hazard. The defendant contended that the plaintiff was guilty of negligence or contributory negligence in that she failed to maintain a proper lookout, failed to exercise due regard for her own safety and failed to act in a prudent manner under the circumstances.

The parties settled the matter prior to trial in the amount of $105,000 broken down as follows: $27,109 in attorney fees; $19,919 in medical expenses and $57,972 in net damages to the minor plaintiff.

REFERENCE

Bernat vs. Renaissance Meadowlands Hotel, et al. Docket no. L-001114-18; Judge Thomas C. Miller, 10-10-19.

Attorney for plaintiff: Brett R. Greiner of Levinson Axelrod, P.A. in Edison, NJ. Attorney for defendant: Shoshana Hyman of Hendrzak & Lloyd in Parsippany, 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

$22,373,011 VERDICT IN BENCH TRIAL AGAINST V.A. – MEDICAL MALPRACTICE – SURGERY – NEGLIGENT PERFORMANCE OF ANTERIOR DISCECTOMY/FUSION – PLAINTIFF INITIALLY SUSTAINS INCOMPLETE QUADRIPLEGIA AND SUBSEQUENT UNFORESEEABLE DETERIORATION PREVENTS PLAINTIFF FROM WALKING.

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

This was a medical malpractice action in which the plaintiff contended that the defendant neurosurgeon, who was performing an anterior cervical fusion, negligently struck the spinal cord, causing severe neurological injury. The surgery was performed in 2004. The plaintiff was initially rendered an incomplete quadriplegic. During the course of the litigation, the plaintiff learned that he will never again walk. The case was bifurcated and following a determination that the defendant was negligent, a second trial was held on damages in 2012 and the court awarded $4,461,861, which included $500,000 for past pain and $1,500,000 for future pain and suffering, and the balance was for future medical costs. A series of damages appeals followed.

The defendant, in their motion papers on what would have been the third appeal to the U.S. Court of Appeals, argued that there had never been an award for pain and suffering approved by a New York appellate court that exceeded $12,000,000. The plaintiff was age 60 at the time of the settlement in September, 2020. The plaintiff was not working at the time of the negligence and the plaintiff did not make a claim for lost income.

The case was previously tried and settled after remand. On remand, the court awarded $22,373,011, including $5,332,728 for future costs of care, $7,500,000 for past pain and suffering, and $10,500,000 for future pain and suffering. The defendant appealed; and during the pendency of the appeal, the case settled for $21,500,000.

REFERENCE

Plaintiff's economist expert: Kenneth Reagles, Ph.D. from Syracuse, NY. Plaintiff's life care planning expert: Daniel McGowan, Ph.D. from Syracuse, NY. Plaintiff's neurosurgeon expert: Marc Soriano, M.D. from Bloomington, IN.

Malmberg vs. USA. Index no. 5:06-CV-1042, 09-20.

Attorney for plaintiff: Robert Nichols of Law Office of Robert Nichols in Buffalo, NY. Attorney for plaintiff: Alan Pierce (appellate attorney) of Hancock Estabrook, LLP in Syracuse, NY.

$2,002,500 VERDICT – MEDICAL MALPRACTICE – PEDIATRICS – FAILURE OF PEDIATRICIAN TO DIAGNOSE BACTERIAL PNEUMONIA – WRONGFUL DEATH OF 7-MONTH-OLD CHILD.

San Bernardino County, CA

This was a medical malpractice action involving the death of a 7-month-old child in which the plaintiff contended that the defendant non-settling pediatrician negligently failed to diagnose bacterial pneumonia. The plaintiff contended that as a result, the defendant negligently misdiagnosed the child with an inflammatory process and prescribed an inhaler rather than appropriate antibiotics. Consequently, the child died several days later from bacterial pneumonia. The defendant pediatrician did not present evidence against the settling defendants. The defendant maintained that the care was proper.

The evidence disclosed that the child had been to the settling defendant emergency room and the settling defendant urgent care center over the previous 9-day period. The settling defendants had taken X-rays referred the child to the defendant pediatrician. The plaintiff maintained that the defendant pediatrician should have ordered the records and X-rays from the settling defendant hospital and defendant urgent care center. The plaintiff further asserted that the presence of bacterial pneumonia should have been apparent from the clinical exam performed by the defendant.

The jury found the defendant pediatrician 100% negligent and awarded $2,000,000 for wrongful dearth and $2,500 for funereal expenses.

REFERENCE

Plaintiff's pediatrician expert: Kevin White, M.D. from Ventura, CA.

Plaintiff in death of 7-month-old child vs. Defendant pediatrician, et al. Case no. CIVDS1503504; Judge Gilbert G. Ochoa, 10-22-20.

Attorney for plaintiff: Elliott N. Tiomkin of Law Offices of Elliott N. Tiomkin in Encino, CA.

$350,000 RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE NEGLIGENCE – DEFENDANT PHYSICIAN FAILS TO RECOMMEND OR SCHEDULE FOLLOW-UP TESTING ON ADRENAL MASS RESULTING IN DELAY IN DIAGNOSING ADRENAL CANCER – WRONGFUL DEATH OF 76-YEAR-OLD FEMALE.

Montgomery County, PA

In this action for medical malpractice, the estate of the decedent maintained that the defendant primary care physician and defendant medical group provided substandard to their decedent by failing to order follow-up testing for an adrenal mass. Consequently, the mass grew and resulted in adrenal cancer which caused the decedent's death. The defendants generally denied all allegations of negligence and injury.

On July 17, 2014, the decedent presented to the defendant office complaining of abdominal pain and was seen by a nonparty doctor who ordered a CT-scan of the abdomen and pelvis which revealed a 7 centimeter mass and the decedent was diagnosed with adrenal cancer. She was admitted to a tertiary center and treated with surgery and chemotherapy. She died from her illness on January 24, 2015. She is survived by 4 adult children.

The parties settled their dispute for $350,000.

REFERENCE

The Estate of June Erb by Jace Erb vs. Dennis J. Schank and Pottstown Medical Specialists. Case no. 2015027687; Judge Lois E. Murhpy, 11-17-20.

Attorney for plaintiff: Frank P. Murphy of Murphy & Dengler in Norristown, PA. Attorney for defendant: Denise L. Juliana of McGilvery & Juliana in King of Prussia, PA.

PRODUCT LIABILITY

$4,054,500 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN OF WATER TANK SITUATED ON 3 LEGS – TANK WEIGHING APPROXIMATELY 2400 LBS TOPPLES ONTO PLAINTIFF'S LEG AS PLAINTIFF MOVES DEVICE TO FRONT END LOADER FOR TRANSPORT – SEVERE LOWER LEG FRACTURES – INITIAL NON-UNION AND CONSIDERATION GIVEN BELOW-THE-KNEE AMPUTATION.

U.S.D.C. - Western District of Texas

In this action for product liability, the plaintiff in his early 40s contended that the storage tank, designed and manufactured by the defendant, and which sat on 3 legs, was defectively designed, resulting in the storage tank, which weighed approximately 2400 lbs when empty, toppling and striking him in the lower leg and causing severe fractures. The plaintiff asserted that he required a number of surgeries, almost required a below-the knee amputation, will permanently suffer extensive pain and a pronounced limp and will permanently be unable to work as a in a physical capacity. The plaintiff also contended that he suffered PTSD. The defendant contended that the water tank was appropriately designed and manufactured.

The incident occurred when the employer had the device for approximately 1 year and after it had been used approximately 10 times. The plaintiff maintained that the design was such that 85% of the weight was placed on the front 2 legs, which increased the risk of the device toppling. The defendant claimed that misuse by the employer caused the incident. The plaintiff denied that there was physical evidence to support the defendant's position and that the defendant's contention should be rejected.

The jury found for the plaintiff and awarded $4,054,500, including $125,000 for past medical bills, $425,000 for future medical bills, $50,000 for past physical impairment, $925,000 for future physical impairment, $1500 for past disfigurement, $60,000 for past loss of earning capacity, $1,343,000 for future loss of earning capacity, $75,000 for past physical pain and suffering, $1,000,000 for future physical pain and suffering and $50,000 for past mental anguish.

REFERENCE

Plaintiff's economist expert: Robert W. Johnson from Los Altos, CA. Plaintiff's engineer expert: Michael Huerta, Ph.D. from El Paso, TX. Plaintiff's engineer expert: David Love, P.E. from College Station, TX. Plaintiff's labels and warnings expert: Gary Richetto from Tulsa, OK. Plaintiff's life care planning expert: Sasha Iversen, D.O. from San Antonio, TX. Plaintiff's orthopedic surgeon expert: David Laverty, M.D. from Austin, TX. Plaintiff's psychologist expert: Katy Fowler Sutton, Ph.D. from Waco, TX. Plaintiff's vocational rehabilitation expert: Joela Sanchez from Houston, TX.

Pruit vs. Asphalt Zipper, Inc. Case no. 6:18-CV-324; Judge Alan D. Albright, 10-28-20.

Attorneys for plaintiff: Muhammad S. Aziz, Karl P. Long and Angelina Wike of Abraham, Watkins, Nichols, Agosto, Aziz & Stogner in Houston, TX. Attorney for plaintiff: Robert Stem of Law Office of Robert Stem in Waco, TX. Attorney for plaintiff: Greg White of Gray, Reed & McGraw, LLP in Waco, TX.

$825,000 CONFIDENTIAL RECOVERY – PRODUCT LIABILITY – FAILURE TO WARN – DEFECTIVE DESIGN – WORKER'S COMPENSATION CLAIM – EMPLOYER'S FAILURE TO PURCHASE SAFETY DEVICE FOR TIRE INFLATION MACHINE – OVER-INFLATED TIRE EXPLODES AND CAUSES PLAINTIFF TO SUFFER TRAUMATIC BRAIN INJURY WHEN THROWN BACKWARD, STRIKING HEAD ON METAL BENCH – FACIAL FRACTURES.

Withheld County, MA

In this product liability matter, the plaintiff employee alleged that the defendant manufacturer was negligent in failing to warn users that the tire inflation equipment could cause over-inflation, which would result in the potential explosion of the tire. The plaintiff suffered facial fractures and a traumatic brain injury when he was struck in the head by the exploded tire. The defendant manufacturer denied liability and maintained that the employer was negligent.

The plaintiff was transported immediately to the hospital and was required to undergo emergency surgery to repair the damage to his face. He had sustained multiple facial fractures as a result of the explosion and required the insertion of metal plates into his face and head to repair the fractures. He was also diagnosed with a traumatic brain injury. The plaintiff has been deemed disabled and unable to work as a result of the incident.

The parties agreed to resolve the plaintiff's claim for the sum of $825,000 which represented the entire settlement consisting of the worker's compensation claim resolution, the third-party claim resolution and a waiver of the worker's compensation lien. The settlement was crafted following a day-long mediation involving all stakeholders.

REFERENCE

Mechanic vs. Defendant Manufacturer, et al., 03-10-20.

Attorneys for plaintiff: Kenneth Kolpan and Joseph Burke of Law Office of Kenneth I. Kolpan in Wayland, MA.

MOTOR VEHICLE NEGLIGENCE

$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 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 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.

$1,000,000 PRESUIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/ PEDESTRIAN COLLISION – PLAINTIFF STRUCK IN MIAMI CROSSWALK – EXTENSIVE DEGLOVING INJURIES – INJURIES TO SPINE, ARM AND HEAD.

Miami-Dade County, FL

In this action for motor vehicle negligence, the plaintiff pedestrian sustained extensive de-gloving injuries from his upper right buttocks to his right knee and foot when he was struck by a truck driven by the defendant truck driver and owned by the defendant trucking company. He also claimed catastrophic injuries to his leg, spine, arm and head. The plaintiff alleged that the defendant driver was negligent in striking him as he crossed a Miami, Florida, street. The defendant contended that the plaintiff walked in front of the truck against the light and was comparatively negligent.

The plaintiff was a 62-year-old unemployed male at the time of the accident on March 5, 2020. Evidence established that the defendant truck driver, driving a "Bobtail" tractor with no trailer attached, stopped at the traffic signal located at the intersection in Miami. The intersection is located in a highly-traversed area with a number of surrounding businesses. The plaintiff argued that pedestrians crossing the street to and from these businesses is common and to be expected.

The case settled prior to filing suit for $1,000,000.

REFERENCE

Anduray vs. DHC Trucking, et al. Case no. n/a; Judge n/a, 12-18-20.

Attorney for plaintiff: Douglas J. McCarron of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Jorge A. Rodriguez of Law Office of Jorge A. Rodriguez in Miami, FL.

PREMISES LIABILITY

$14,000,000 VERDICT – PREMISES LIABILITY – LARGE PORTION OF BEDROOM CEILING IN APARTMENT AND WATER FROM RECURRING LEAKS FALL, STRIKING PLAINTIFF ON BACK OF HEAD AND NECK – LUMBAR HERNIATION REQUIRING FUSION SURGERY – ALLEGED NEED FOR FUTURE SURGERY – ACHILLES' TENDON RUPTURE.

Bronx County, NY

This premises liability action involved a plaintiff tenant in her 30s. The plaintiff contended that the landlord negligently failed to properly correct a recurrent leaking condition from her bedroom ceiling. The plaintiff maintained that as a result, a large section of the roof collapsed, striking her in the neck and back of the head. The plaintiff asserted that as she rose, she slipped and fell on the water, heightening the injuries. The plaintiff claimed that she suffered a lumbar herniation that required surgery and which will probably necessitate future surgery, and an Achilles tendon rupture. The evidence disclosed that the prior landlord had sold the building approximately one week before the incident began. The prior landlord was named as a defendant and defaulted. The court directed the jury that this defaulting defendant was at least 1% negligent. The recent purchasers of the building denied that they had actual or constructive notice of the condition of the ceiling.

The plaintiff claimed that she will suffer permanent symptoms. The plaintiff also contended that in view of the fact that she is only in her 30s and the likely pressure on levels above and below the fusion, she will probably need additional disc surgery in the future. The defendant denied that the plaintiff's claims regarding additional disc surgery should be accepted.

The jury found the defaulting defendant 1% negligent, the current landlord 99% negligent and awarded $14,000,000, including $1,000,000 for past pain and suffering, $6,000,000 for future pain and suffering and $7,000,000 for future medical bills.

REFERENCE

Plaintiff's economist expert: Debra Dwyer, Ph.D. from Stony Brook, NY. Plaintiff's orthopedic surgeon expert: Jerry Lubiner, M.D. from New York, NY. Plaintiff's physiatry expert: Ali Guy, M.D. from New York, NY. Defendant's orthopedic surgeon expert: Jeffrey D. Klein, M.D. from New York, NY. Defendant's orthopedic surgeon expert: Herbert Sherry, M.D. from New York, NY.

Register vs. SAS Morrison, LLC, et al. Index no. 303391/14; Judge Fernando Tapia, 05-16-19.

Attorneys for plaintiff: Seth A. Harris and Jason M. Bateman of Burns & Harris in New York, NY.

ADDITIONAL VERDICTS OF INTEREST

Daycare Center Negligence

$950,000 RECOVERY – DAYCARE CENTER NEGLIGENCE – MINOR PLAINTIFF SUSTAINS BURNS TO 14% OF BODY WHEN HOT TEA SPILLS FROM TEACHER'S DESK –HOSPITALIZATION – PERMANENT SCARRING.

Montgomery County, PA

This negligence action was brought by the parents of the minor child who sustained serious burns to 14% of his body when he was in the care of the defendant daycare and hot tea spilled on him. The defendant daycare generally denied all allegations of negligence and injury.

He was rushed to St. Christopher's hospital where he treated for serious burns to his face, arms and torso. He spent 5 days in the hospital. He continued with outpatient care for several months and has since been discharged from care with scarring remaining on his cheeks and chest.

The parties settled for $950,000.

REFERENCE

Plaintiff's plastic surgery expert: Howard S. Caplan, M.D. from Philadelphia, PA.

F.M. a minor by and through his pngs Anthony and Christina Maffei vs. Fairview Village Church and Fairview Academy. Case no. 2019-04550; Judge Steven C. Tolliver, 12-08-20.

Attorney for plaintiff: Gerald Baldino of Sacchetta & Baldino in Media, PA. Attorney for defendant: Suzanne Mintzer of Clark & Fox in Blue Bell, PA.

Dog Attack

$915,671 VERDICT – DOG ATTACK – PREMISES LIABILITY – PLAINTIFF ATTACKED BY DEFENDANT'S PITBULL WHILE OUTSIDE IN COMMON AREA OF DEFENDANT APARTMENT COMPLEX – FAILURE TO ACT AS REASONABLE ANIMAL OWNER/ ALLOWING DOG OWNERS TO KEEP DANGEROUS DOG ON PREMISES – SEVERE BITE WOUNDS TO LEGS – HOSPITALIZATION – NERVE AND MUSCLE DAMAGE.

Galveston County, TX

The plaintiff in this personal injury negligence action maintained that she suffered serious and permanent injuries to her legs when she was attacked by the defendant's Pitbull while she was walking her own dog in a common area of the defendant apartment complex. Both defendants denied all allegations of negligence.

The plaintiff suffered severe bite wounds and lacerations to the lower legs with injuries to the muscles and the nerves. The plaintiff was rushed to the emergency room following the attack and was hospitalized from January 22, 2018 to February 1, 2018. She continues to receive medical treatment for the injuries.

The court found the defendant dog owners only negligent and awarded the plaintiff $805,670.63 for damages sustained in the past and $110,000 for future damages, for a total of $915,671.

REFERENCE

Lindsey Himsel vs. Nicola, Janie and Anna Notarnicola and G&I VIII The Club of The Isle dba Club Of The Isle and Marquete Management, Inc. Case no. 18-CV-0246; Judge Patricia Grady, 10-01-20.

Attorney for plaintiff: Donald H. Kidd of Perdue & Kidd in Houston, TX. Attorney for defendant: Justin P. England of Wood, Smith, Henning & Berman, LLP in Dallas, TX.

Landlord/Tenant

$1,440,768 COMBINED VERDICT – FAILURE OF LANDLORD TO PROVIDE ADEQUATE FIRE PROTECTION – INTERNAL INHALATION INJURIES TO PLAINTIFFS – FRAUDULENT TRANSFER OF PROPERTIES TO AVOID CREDITORS – NEW TRIAL GRANTED.

Miami-Dade County, FL

This was a negligence action brought against 2 corporations and their president pursuant to Florida's Residential Landlord and Tenant Act. The plaintiff claimed that the defendants violated the statute by failing to provide adequate smoke detection devices in a unit rented by the plaintiffs. As a result, the 2 plaintiffs, uncle and nephew, claimed they sustained serious injuries in a fire. The plaintiffs also claimed the defendants violated Florida's Fraudulent Transfer Act by transferring properties after the fire in an attempt to avoid creditors. The defendants denied the allegations and argued that functioning smoke detectors were installed and the plaintiffs were instructed to replace the batteries as needed, but failed to do so.

There was no written lease between the parties. The defense argued that, at the beginning of the lease, the individual defendant installed smoke detectors in the unit in question. He testified that he tested the smoke detector batteries, found them to be in good working order and instructed the plaintiffs that it was their responsibility to replace the batteries as needed.

The jury found that both the defendant corporation and the plaintiffs were negligent. However, it did not assign a percentage of negligence to the plaintiffs.

The jury awarded the plaintiff uncle $626,853 in damages and the plaintiff nephew $93,915 in past damages only, for a total combined verdict of $720,768.

On the fraudulent transfer claim, the jury found that the defendants transferred properties with the intent to defraud the plaintiffs and that the plaintiffs had a right to payment from each of the 3 the defendants. It found that the individual defendant controlled the companies so that the corporations lacked an existence independent from the individual president. The jury determined that the plaintiffs were not harmed by the fraudulent use of corporate forms. On the other hand, the jury then went on to award $360,000 to each plaintiff for the fraudulent transfers for an additional $720,000 in damages, making a combined total award of $1,440,768. The defendant's post-trial motion for new trial was granted based on inconsistency of the verdict.

REFERENCE

Casimir vs. Unity Investments & Rentals, Inc., et al. Case no. 2018-023704CA01; Judge Abby Cynamon, 04-10-20.

Attorney for plaintiff: Daniel W. Courtney of Daniel W. Courtney, P.A. in Miami, FL.

Sports & Recreation

$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 – 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. 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 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 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.