



NEW JERSEY

JURY VERDICT

REVIEW & ANALYSIS®

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**SUMMARIES
WITH TRIAL
ANALYSIS**

**Volume 42, Issue 9
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A monthly review of New Jersey State and Federal Civil Jury Verdicts with professional analysis and commentary.

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

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SUMMARIES WITH TRIAL ANALYSIS

\$2,500,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – FAILURE TO PROVIDE FALL PROTECTION AT CONSTRUCTION SITE – PLAINTIFF ATTACHING FLAT ROOF TO FACTORY FALLS 45 FEET, STRIKING TREE ON WAY DOWN – BURST LUMBAR FRACTURE – FUSION SURGERY AND SUBSEQUENT LUMBAR SURGERY BECAUSE OF SEGMENTAL DISEASE – PELVIC FRACTURE – SHOULDER FRACTURE.

Somerset County, NJ

This negligence case involved a construction worker, in his mid 30s, who was involved in placing a flat roof over a factory. The plaintiff contended that the defendant's owner and G.C. failed to provide fall protection. The plaintiff maintained that as a result, he fell some 45 feet, striking a tree on the way down. The plaintiff suffered a fractured pelvis, a fracture to the left, dominant shoulder and a burst lumbar fracture. The surgeries included a lumbar fusion and subsequent surgery to an adjacent level because of stress placed on this level. The defendant denied that the plaintiff's claims should be accepted.

As the plaintiff was installing the roof, the cord of the electric screw gun he was using became caught. The plaintiff then attempted to free the cord and it whipped back on him and he lost his balance and fell. The plaintiff asserted that on a job this large, a significant cost associated with providing adequate fall protection is required and that the defendant failed to provide such protection. The plaintiff's OSHA expert would have testified that a "sled," which is a large wagon that could be placed on a roof and serve as a base from which workers could attach their lines and harnesses, needed to be purchased. Additionally, the expert would have concluded that safety harnesses for each worker and safety warning line needed to be placed around the exterior of the roof 3 feet from the edge to warn workers when they were getting close to falling off the roof. The plaintiff's expert would have further testified that a guardrail system could be placed along the edge of the roof for additional protection.

The plaintiff also maintained that he had no safety training. The plaintiff would have introduced evidence that the defendant was involved in a "rush" job in which the work would be completed within 10 days with people working 7 days a week. The plaintiff also asserted that several days before the accident, the defense had received an anonymous call in which

the individual calling recounted hazards that the caller observed. The plaintiff pointed out that despite such advisements no steps were taken.

The plaintiff maintained that he suffered a burst lumbar fracture and underwent an emergency fusion the following day. The plaintiff maintained that he continued to suffer significant pain and difficulties ambulating and that because of segmental disease, he subsequently needed surgery at an adjacent level. The plaintiff claimed that he is at risk for requiring future surgery because of this factor. The plaintiff further contended that the pain will permanently be increased because of the pelvic fracture.

The plaintiff asserted that he will be permanently unable to work. The history, however, did not reflect substantial prior earnings and the plaintiff made no income claims.

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

REFERENCE

Plaintiff's OSHA expert: Vincent Gallagher from Audubon, NJ.

Plaintiff working on factory roof vs. Defendant factory owner, et al.

Attorneys for plaintiff: Timothy E. Dinan and Meghan L. Steingall of Laddey Clark & Ryan, LLP in Sparta, NJ.

COMMENTARY

The plaintiff's expert's testimony reflected that with a job as large as the subject one, significant costs associated with providing adequate fall protection must be effectuated and the plaintiff stressed that such investments had not been made. Additionally, the defendant's case would in all probability be further hindered by evidence that an anonymous tip about the hazards was received several days earlier and that no steps were taken.

Regarding damages, as has often been noted in this publication, such traumatic incidents would be expected to prompt a large jury award if the case was tried. Further, the plaintiff, who claimed that he is permanently unemployable, had a history of modest earnings and the plaintiff did not make income claims, which, the plaintiff was concerned, might well minimize the worth of the case.

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\$2,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER/PEDESTRIAN COLLISION – PLAINTIFF LONGSHOREMAN AT PORT OF ELIZABETH STRUCK BY DEFENDANT TRACTOR-TRAILER DRIVER – PLAINTIFF FALLS UNDER VEHICLE WHICH CONTINUES UNTIL MOMENTS LATER WHEN FLAGGED DOWN BY OTHER WORKER – FRACTURES TO PELVIS AND MULTIPLE RIBS – LACERATIONS TO LIVE AND SPLEEN – INABILITY TO CONTINUE VERY ACTIVE LIFE.

Essex County, NJ

This action for motor vehicle negligence involved a plaintiff longshoreman who was in his early 40s and who was using a handheld device to find shipments when he was struck by the defendant driver of a tractor-trailer. The plaintiff asserted that he sustained a fractured pelvis, multiple rib fractures, bruises to both lungs, and lacerations to his liver and spleen. The plaintiff asserted that the injuries were a substantial factor in his being unable to resume a very active recreational life, which included running in 5K and 10 K races. The defendant maintained that the plaintiff made an excellent recovery and that any continuing difficulties stemmed from a motorcycle accident that occurred approximately 9-months later in which he fractured his ankle.

The evidence disclosed that the plaintiff's duties included tracking down shipping containers throughout the terminal and uploading their locations on a handheld device. The plaintiff related that as he was searching for a specific numbered container, he was struck by the right rear tire of the chassis, which the truck was pulling, fell under the truck which continued over him. The defendant driver did not initially realize which then ran over the plaintiff until he was flagged down by another worker. The plaintiff would have argued that the defendant clearly failed to make observations, causing the accident.

There were no eyewitnesses to the actual incident. The defendant maintained that the plaintiff was walking backwards and failed to make observations, causing the accident. The plaintiff would have pointed out that the defendant did not see the plaintiff before he fell under the tire and the plaintiff would have argued that the defendant's position was highly speculative in nature.

The plaintiff was hospitalized for almost a month and underwent 2 surgeries. The plaintiff was then transferred to a rehab hospital where he was a patient for approximately 10 days. The plaintiff asserted that he will suffer very significant pain and limitations. The plaintiff contended that prior to the accident, he was very recreationally oriented, was involved with different types of sports, including running a long distance race. The plaintiff maintained that because of the injuries, he must lead a much more sedentary lifestyle than before the accident, and that the limitations are permanent in nature.

The defendant took the position that the plaintiff made an excellent recovery from the injuries sustained in the accident and that any continuing difficulties, especially recreational limitations, stem from a fractured ankle suffered approximately 9-months later when the plaintiff had a motorcycle accident. The plaintiff would have maintained that the fact that he was riding a motorcycle underscored the plaintiff's contentions that he was making every attempt to return to his previous lifestyle. The plaintiff would have also contended that the jury should consider that riding a motorcycle was significantly less physically stressful than running races or participating in other sports.

The plaintiff has not returned to work.

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

REFERENCE

Etta vs. Mora-Briones, et al., 12-21-22.

Attorney for plaintiff: Peter Chamas of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

It is felt that the plaintiff commanded a very significant award, especially in view of the fact that the plaintiff, who claimed that he can no longer participate in races and other strenuous activities, suffered a fractured ankle in a motorcycle accident 9-months later. In this re-

gard, the plaintiff endeavored to minimize this factor by arguing by riding the motorcycle, it was clear that the plaintiff was trying his best to resume his prior lifestyle.

Additionally, it is also felt that the highly traumatic nature of the accident in which after the plaintiff fell under the rear wheels of the tractor-trailer chassis, the truck continued, clearly provided extensive leverage to the plaintiff. Finally, the defendant had argued that the primary cause of the accident was the negligence of the plaintiff who failed to make adequate observations and whom, the defendant argued, probably walked backwards into the truck. The plaintiff endeavored to counter this position by emphasizing that the defendant was not aware of the incident until he was flagged down by another worker moments later, arguing that the defense liability contentions should be significantly questioned.

\$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF FRONT-SEAT PASSENGER IN CAR STRUCK IN REAR BY DEFENDANT TOW TRUCK DRIVER WHILE STOPPED AT LIGHT – CERVICAL HERNIATION REQUIRES 2 SURGICAL INTERVENTIONS – BILATERAL SHOULDER INJURIES – ARTHROSCOPIC SURGERY – SOFT TISSUE LUMBAR INJURIES – PLAINTIFF SURGICAL NURSE IS ABLE TO RETURN TO WORK AND IS PAID FOR TIME OFF.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff front-seat passenger in her husband's car in her 30s, contended that the defendant tow truck driver struck the host vehicle in the rear as it was stopped at a red light. The plaintiff maintained that as a result, she suffered a cervical herniation that initially required a microdiscectomy and subsequently necessitated disc replacement surgery. The plaintiff further contended that she sustained bilateral partial shoulder tears that were treated by arthroscopic surgery. The plaintiff was ultimately able to return to her job as a surgical nurse and was paid for the time missed during her recuperation. The husband/driver was a plaintiff whose case was not addressed in this article. The defendant contended that any injuries were preexisting, due to the plaintiff's work as a nurse. The plaintiff countered that she had no prior complaints and the plaintiff would have argued that the defendant's position should clearly be rejected.

The evidence disclosed that after the host vehicle stopped for a red light on Route 1, it was struck in the rear by the defendant tow truck driver. The plaintiff asserted that she developed radiating pain and weakness shortly after the accident and that a cervical herniation was confirmed by MRI. The evidence disclosed that some months after the accident, the plaintiff underwent a microdiscectomy. The plaintiff maintained that she continued to suffer extensive symptoms, and ultimately underwent surgery in which the disc was replaced by an artificial disc.

The plaintiff asserted that she suffered bilateral shoulder injuries and underwent bilateral shoulder arthroscopic surgery. The plaintiff further contended that she suffered soft tissue lumbar sprains and strains which will cause permanent pain and restriction of motion. The plaintiff would have also argued that the jury should consider that the plaintiff will experience extensive pain and suffering for the remainder of an approximate 50-year life expectancy.

The case settled prior to trial for \$1,500,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Gregory Lane, M.D. from Edison, NJ.

David vs. Puleio's Service Center; Settled following mediation with Judge Frank M. Ciuffani (retired), 03-11-20.

Attorney for plaintiff: Brett R. Greiner of Levinson Axelrod in Edison, NJ.

COMMENTARY

The plaintiff was able to command this recovery, irrespective of the absence of income claims that were brought by the plaintiff surgical nurse, who was ultimately able to return to full duty, and who was paid for time off during her recuperation. The plaintiff's arguments that the defendant was improperly attempting to attribute the difficulties to the plaintiff's work should be clearly rejected, pointing to the absence of related complaints in the plaintiff's history. Additionally, the plaintiff would have emphasized that she faces pain and restriction for the remainder of an approximate 50-year life expectancy.

\$1,325,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – MULTIPLE-VEHICLE REAR END COLLISION – STOPPED PLAINTIFF DRIVER STRUCK IN REAR AFTER DEFENDANT STRIKES NON-PARTY MIDDLE DRIVER IN REAR – MINIMAL IMPACT DAMAGE – LUMBAR HERNIATION – 3 LUMBAR SURGERIES – PLAINTIFF PREVIOUSLY ESSENTIALLY ASYMPTOMATIC AFTER CONSERVATIVE TREATMENT FOLLOWING COLLISION 10 YEARS EARLIER.

Bergen County, NJ

In this motor vehicle negligence case, the 56-year-old driver contended that the defendant driver struck a non-party middle driver in the rear, propelling it into the stopped plaintiff's car. The plaintiff maintained that as a result, she suffered a lumbar herniation that required an initial surgery that did not provide significant relief which was followed by a fusion surgery. The plaintiff suffered a known complication in which the anterior screw backed out, requiring a third surgery. The plaintiff maintained that she will suffer very significant symptoms and will not be able to work. The defendant pointed out that the collision caused minimal property damage and denied that it caused the claimed injuries. There were no liability issues.

The plaintiff asserted that she developed severe radiating pain after the accident. The plaintiff initially underwent a myelogram which was followed by a 2-level arthroplasty. The plaintiff's proofs reflected that the plaintiff had minimal relief and that she then underwent fusion surgery. The plaintiff asserted that she then needed a third cervical surgery because the screw backed out.

The plaintiff maintained that despite the interventions, she will permanently suffer extensive symptoms.

The plaintiff was working as a concierge at a motor vehicle dealership at the time of the accident. She was earning \$10/hr. The plaintiff asserted that she was unable to return and has been found totally disabled by SSA.

The defendant denied that the subject accident caused the need for these surgeries, pointing out that there was minimal property damage. The plaintiff

maintained that with the exception of some minor lumbar pain after an accident approximately 10 years earlier, she had been asymptomatic and that it was clear that the need for the surgeries was causally related to the subject accident. The plaintiff would have also stressed that the extent of property damage does not necessarily correlate to the severity of the injuries.

The defendant had a total of \$2,500,000 in coverage. The case settled prior to trial for \$1,325,000.

REFERENCE

Plaintiff's neurosurgeon expert: Rajnik W. Raab, M.D. from Wayne, NJ.

Tropp vs. Gabay. Docket no. BER-L-8101/18, 11-21.

Attorney for plaintiff: Evan D. Baker of Davis Saperstein & Salomon, P.C. in Teaneck, NJ.

COMMENTARY

The defendant had taken the position that the subject accident could not have caused the claimed complaints, pointing to the fact that only minimal property damage was involved. The plaintiff, who nonetheless obtained a substantial settlement, stressed that with the exception of some short term lumbar conservative treatment following an accident approximately 10 years earlier, she had essentially been asymptomatic.

The plaintiff would have argued that this history, and the willingness of the plaintiff to undergo surgeries, clearly reflected that she was suffering severe symptoms, and that there was no other reasonable explanation for the surgeries. Additionally, the plaintiff anticipated receiving the jury instruction in which the jury is charged that the extent of property damage may not correlate to the extent of injury.

\$1,600,000 RECOVERY – TRANSIT AUTHORITY NEGLIGENCE – BUS/BICYCLE COLLISION – 9-YEAR-OLD BICYCLIST STRIKES SIDE OF LEFT TURNING TRANSIT BUS AND DRIVEN OVER BY REAR OF BUS – FATAL INJURIES – VIDEO SHOWS DECEDENT BRIEFLY SITTING UP AND SPEAKING TO PASSERBY – NO EVIDENCE OF CONSCIOUSNESS DURING AMBULANCE RIDE – VIDEO SHOWS DRIVER SPEAKING TO PASSENGER AS SHE APPROACHED INTERSECTION.

Bergen County, NJ

In this action, the plaintiff contended that the defendant driver of a NJ Transit Bus negligently failed to make observations before turning left from a roadway with one lane in each direction. The plaintiff maintained that as a result, the 9-year-old decedent, who had been on the sidewalk to the left of the bus and rode into the relatively

wide street, struck the side of the bus and fell under the rear of the bus. The plaintiff asserted that the child, who suffered fatal crush injuries, sat up on the impact, exclaimed that he was in great pain and wanted to go to the hospital. The defendant would have argued that the major cause for the collision was the negligence of the infant plaintiff.

The incident was captured on a video from a nearby firehouse. In the video, the infant plaintiff was seen riding on the sidewalk and entering the street without observing traffic. The plaintiff would have argued that the jury should consider that no parking was permitted on the left side of the street for 150 feet before the curb line, and therefore, the bus driver had an unimpeded view as she approached the intersection and that if she had been paying adequate attention, the incident would not have occurred. The plaintiff would have also pointed out that bus video showed the driver speaking with a passenger as the bus approached the intersection. The driver was not aware of the child's presence until she heard a thump on the side of the bus.

The video from the firehouse also showed the child sitting up for a brief period after the impact and speaking to a bystander. The bystander would have testified that when the child sat up, he realized that he was badly hurt and in great pain. The plaintiff would have discussed the alleged loss of guidance and advice in a very low key manner.

The case settled prior to trial for \$1,600,000.

\$1,175,000 RECOVERY– PREMISES LIABILITY – HAZARDOUS PREMISES – PLAINTIFF PEDESTRIAN STRUCK IN SUPERMARKET PARKING LOT – ABSENCE OF CROSSWALKS AND SIGNAGE – CERVICAL HERNIATION SUPERIMPOSED ON FUSION PERFORMED 10 YEARS EARLIER AND WHICH REQUIRED EMERGENCY SURGERY – CLOSED HEAD INJURY – COGNITIVE DEFICITS.

Bergen County, NJ

This action for premises liability involved a then-72-year-old man in which the plaintiff contended that the defendant supermarket negligently failed to place painted crosswalks and signage in its parking lot. The plaintiff asserted as a result, he was struck by a driver, sustaining a mild TBI, a cervical fracture and cervical herniations that were superimposed on a cervical fusion that was performed approximately 10-years earlier, and which required new emergency surgery. The driver settled for his \$100,000 policy limit prior to the institution of suit. The defendant supermarket and property owner contended that the negligence of the driver was the major factor. These defendants would have also maintained that the plaintiff failed to pay adequate attention and was comparatively negligent.

The plaintiff pointed out that the parking lot did not contain designated walkways or signage. The plaintiff's expert traffic engineer would have opined that the premises were in violation of the ADA. The plaintiff's engineer would have also testified that such safeguards are required for people walking in the lot and to provide motorists that they had to yield when pedestrians were present. The plaintiff would have testified that he routinely follows signage and walkways

REFERENCE

Plaintiff's accident reconstruction expert: Walter Suhaka from Wayne, NJ.

Jimenez vs. NJ Transit, et al. Docket no. BER-L-3283-20, 11-29-21.

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

COMMENTARY

This case shows the importance of videos, which have become ubiquitous. In this regard, although the video taken from a nearby firehouse showed the decedent riding onto the side street on without looking, it also showed that after the impact, the decedent actually sat up and spoke to a passerby, confirming that the child, who was not conscious in the ambulance experienced pain and suffering for a brief period. Additionally, the bus video showing the bus driver engaged in conversation with a passenger as the bus approached the intersection, clearly would have evoked a particularly strong jury reaction if the case had been tried. Finally, the plaintiff would have argued the loss of guidance and advice in a very low key manner, rather emphasizing the pain and suffering and avoiding the potential loss of persuasiveness which may well have stemmed from a more vigorous pursuit of the arguably speculative nature of guidance and advice involving such a young child.

and that had the supermarket and its co-defendant property owner provided such safeguards, he would have followed them.

The plaintiff maintained that he suffered a closed head injury and a mild TBI that caused significant difficulties with short term memory and concentration and the plaintiff's neuropsychologist maintained that these injuries are permanent in nature. The plaintiff further contended that he suffered a cervical herniation that required surgery.

The plaintiff had undergone fusion surgery approximately 10 years earlier and the defendant would have maintained that any continuing orthopedic injuries stemmed from this factor. The plaintiff would have countered that he had fared well after the prior fusion and had been essentially asymptomatic for years. The plaintiff would have argued that in view of this evidence, the defendant's position should clearly be denied. The plaintiff would have also contended that the jury should consider that he required immediate emergency surgery because of the concern of paralysis.

The plaintiff was retired and made no income claims. The case against the supermarket settled prior to trial for \$1,175,000 in addition to the \$100,000 policy previously obtained from the driver.

REFERENCE

Plaintiff's traffic engineering expert: Lee Klein, PE from West Orange, NJ.

Kunzweiler vs. Acme Markets, et al. Docket no. BER-L-8560-18, 11-15-21.

Attorneys for plaintiff: Edward Capozzi and Corey Dietz of Brach Eichler, LLC in Roseland, NJ.

COMMENTARY

The plaintiff emphasized that the parking lot contained no crosswalks or signage, arguing that it was clear that these factors substantially contributed to the incident. The plaintiff took the position that in addition to guiding the driver, such safeguards are necessary to permit patrons to walk in the lot as safely as possible. In this regard, the plaintiff would have stressed that it was his habit and custom to follow these safety features when provided. Additionally, the evidence that the configuration of the lot did not comply with the ADA would also be expected to contribute to a jury reaction, notwithstanding that the plaintiff was not disabled as of the time of the accident.

DEFENDANT'S VERDICT – BREACH OF CONTRACT – LEGAL FRAUD; EQUITABLE FRAUD AND CONSPIRACY TO DEFRAUD – PLAINTIFF CLAIMS DEFENDANTS BREACHED TERMS OF SECURITY AGREEMENT AND USED FUNDS PROVIDED BY PLAINTIFF FOR PURPOSES PROHIBITED BY TERMS OF AGREEMENT – PLAINTIFF SEEKS TO FORECLOSE ON MORTGAGE PER REMEDIES PROVIDED BY AGREEMENT – DEFENDANTS ASSERT AGREEMENT BETWEEN PARTIES FAILED TO IMPOSE ANY PERSONAL LIABILITY ON DEFENDANTS.

Monmouth County, NJ

In this breach of contract and fraud case, the plaintiff LLC asserted that the defendants breached a business agreement and owed the plaintiff the return of its \$500,000 investment in the defendants' business. The defendants denied the plaintiff's claims and asserted that they could not be found personally liable because there was no privity of contract establishing personal liability and they did not engage in any acts or omissions which would impose personal liability.

The defendants owned and operated certain developed real property at 800-802 Main Street and 806 Main Street in Bradley Beach. A restaurant was operated at the subject property. The defendants were the sole members of the LLC. The plaintiff's principal and one of the defendants had developed a social friendship and often talked business over golf. The plaintiff asserted that the defendant boasted about his construction businesses and business prowess. The plaintiff maintained that, based in large part on this relationship, the plaintiff agreed to enter into a contractual relationship with the defendants. In early 2010, the defendants and a principal of the plaintiff LLC had discussions regarding the plaintiff investing in a New York-based LLC. The defendants and one other individual were, originally, the sole members of the subject LLC, a construction/development company.

The defendants asked for a loan of \$500,000. The payback of the loan was secured by a 5% interest in the subject construction LLC and a mortgage on the subject restaurant property in Bradley Beach. The agreement provided that, if the plaintiff did not receive back its \$500,000 on or before June 1, 2012, it would have the right to foreclose on the mortgage in order to receive the payback of the loan. The plaintiff claimed that the parties executed a Security Agreement which provided in part that the defendants, in

their individual and corporate capacities, would give the plaintiff a mortgage of \$500,000 and that the mortgage would only be cancelled and the agreement satisfied once the money was repaid and, if it was not, the plaintiff was entitled to pursue all legal remedies and recover all reasonable attorney fees plus costs.

The plaintiff also claimed that the defendants made certain representations and warranties to the plaintiff concerning the expected success of the company and the expected return of the plaintiff's investment plus additional profit from the company's expected success. They also represented that the company was going to use the money to develop new properties in New York, New Jersey and Florida and claimed to have contracts in place to perform the developments. The plaintiff claimed that, at the time that the defendants made these representations, they knew they were not true and that the plaintiff was relying on them as an inducement to give the defendants \$500,000. The subject construction company thereafter filed bankruptcy.

The plaintiff claimed that the defendants' breach of the mortgage agreement caused the plaintiff to suffer damages and entitled it to the right to the return of the \$500,000 given to the defendants. The plaintiff claimed that the defendants represented to the plaintiff that none of its investment monies would be used to pay any past debts of the company or them individually. The plaintiff later discovered that the subject company was insolvent at the time that the \$500,000 was wired to the defendants and that the defendants used the money to pay past debts and to pay the defendants, other members of the subject construction company, and family members of the defendants.

The plaintiff asserted that the money was used to pay legal and other expenses of the company and the defendants individually as well as expenses that the defendants could not substantiate at depositions. The plaintiff maintained that all of the money was used up within a matter of weeks whereupon the company then filed for bankruptcy. The defendants argued that there were no clauses or language in the contract that created a personal obligation by the defendants and, as such, the plaintiffs could not recover damages from the individual defendants.

After a 3-day bench trial, the court found that the plaintiff did not meet its burden of proof and returned a verdict in favor of the defendant.

REFERENCE

Katie Flaherty, LLC vs. Lewis, et al. Docket no. L-001790-17; Judge Lourdes Lucas, 05-19-20.

Attorney for plaintiff: Alexis L. Gasiorowski of Gasiorowski & Hologinko in Red Bank, NJ. Attorney for defendant: Gary L. Mason of Garland & Mason, LLC in Manalapan, NJ.

COMMENTARY

Defense counsel submitted a lengthy and dramatic brief at the conclusion of the bench trial. Counsel wrote that, "Echoing through the courtroom, with the devastation of a bomb, but producing the silence of a grave, was the testimony of John B. Hall, Esq., the attorney who represented [the plaintiff] in connection with its purchase of five percent of defendants' equity interests in Anlar, L.L.C." On cross-examination, the plaintiff's attorney was asked if there was anything in the agreement document that clearly and unambiguously stated that the defendants were personally responsible to return the \$500,000 in question. The plaintiff's attorney responded that a lawyer would see an obligation in the document but admitted that the document did not spell out specifically the personal obligations of the defendants. The defendant argued that, in other words, neither the Security Agreement nor the Membership Interest Purchase Agreement conveyed, to anyone reading them, that either was intended to impose personal liability to return the plaintiff's \$500,000 investment in the event the plaintiff's investment did not turn a profit.

Indeed, the defendant posited that, contrary to the plaintiff's attorney's testimony, not even the defendants' attorneys believed that the Security Agreement could be interpreted in such a fashion. Thus, de-

fense counsel claimed, "...the plaintiff's "smoking gun" in this case, comprised of two ambiguous words in the Security Agreement... is not a "smoking gun" but, rather, smoke and mirrors." The defendant argued that the sole issue in this case was whether the defendants could be found personally liable for the return of the plaintiff's investment. The plaintiff suggested that the Security Agreement imposed a personal liability. And, significantly, that was the only document upon which the plaintiff relied in asserting this claim. Thus, the defendant claimed, in order for the Court to make such a finding, the plaintiff was required to prove, by a preponderance of the evidence, that the defendants knowingly and purposely intended to bind themselves personally – to personally guaranteed the return of the plaintiff's \$500,000 investment in the event of a loss – when they executed the Security Agreement.

The defendants argued that, based on the documents and the evidence adduced during trial, the plaintiff failed in proving that claim, and the Court simply could not make such a finding. And, contrary to the plaintiff's arguments, the Court certainly could not make that finding by simply reading the Security Agreement, which defense counsel characterized as "the definition of ambiguity and multiple interpretations." According to defense counsel, the balance of the plaintiff's case "Was no more than inconsequential distraction." Although the plaintiff included in its complaint causes of action for fraud, there was no fraud on the part of either defendant, and the plaintiff failed to prove at trial, by clear and convincing evidence, any fraudulent conduct by either act or omission, according to the defendant. The plaintiff was provided with all of the due diligence and financial information he requested and dove into the subject agreement with eyes wide open. He was represented by counsel. He had the opportunity to review, modify and incorporate into the pertinent documents any term or condition he believed was important to this transaction.

It appeared that the plaintiff failed at trial to point out any warranty or representation in the Purchase Agreement or the Security Agreement which was either false, misleading, or breached, and further failed to prove that either defendant acted inconsistently with any warranty or representation. Accordingly, the plaintiff failed to prove any claim of fraud or breach by clear and convincing evidence. Therefore, the defendant argued, judgment must be entered in favor of the defendants on all counts of the plaintiff's Complaint.

The court agreed and found in favor of the defendants on all counts and dismissed the plaintiff's Complaint in its entirety.

VERDICTS BY CATEGORY

CONTRACT

\$20,025 ARBITRATION CONFIRMATION

Breach of contract – Plaintiff homebuyers assert defendant sellers concealed known defects in property they sold to plaintiffs and defendant inspector failed to discover those identifiable defects when inspecting property on behalf of plaintiffs – Non-binding arbitration finds plaintiffs due damages for undisclosed defects from both defendant sellers and defendant inspection company.

Camden County, NJ

In this breach of contract case, the plaintiff homebuyers asserted that the defendant sellers breached the covenant of good faith and fair dealing and engaged in unjust enrichment when they intentionally concealed known defects during the sale of real property to the plaintiffs. The plaintiffs also brought action for consumer fraud based on misrepresentations made by the defendants. The plaintiffs brought action against the defendant inspection company for breach of the covenant of good faith and fair dealing, unjust enrichment, and professional malpractice with regard to the inspection performed on the property.

On March 30, 2016, the plaintiffs and defendant sellers entered into a contract for the sale of real property at 1001 Park Avenue in Collingswood. The plaintiffs made a visual inspection of the property prior to closing. During the inspection, the plaintiffs were limited in what they could visibly observe due to the fact that the property was still occupied, including furniture and other items in the home and, at the time, were unable to discover any defects that were the subject of this action. The plaintiffs also hired the defendant inspection company to perform a home inspection and charged them with the responsibility of inspecting the property prior to the plaintiff's purchase. The plaintiff proceeded with the purchase of the property based on their limited observations, representations made to them by the defendant sellers or their agent, and the home inspection performed by the defendant home inspector.

Upon taking possession of the property, the plaintiff began discovering defects that were either concealed by the defendant sellers or that should have been discovered during the home inspection by the defendant inspection company. The defects included mold; furnace failure resulting in environmental contamination; leaking roof; defective plumbing that caused damage throughout the property; de-

fective dishwasher; roof defects allowing infiltration of water over the garage; and asbestos in heating covers. The plaintiffs claimed that, due to the defects, they were not able to occupy the home for an extended period after taking ownership. The plaintiffs contacted the defendants in an attempt to correct the issues but had no success. Based on the defendants' refusal to cooperate and make the plaintiffs whole, the plaintiffs brought the subject action.

The defendant sellers denied liability, arguing that they were not professional sellers of real estate or brokers but, rather, regular homeowners selling their home in the normal course with the assistance of an agent. The defendant seller asserted that the plaintiffs, as is the standard, relied on the professional expertise of the home inspector and that the defendant sellers were not responsible for any conditions the plaintiffs and their inspector failed to observe or that the conditions did not exist when the plaintiffs and their inspector observed the property.

The defendant inspection company argued that any and all damage alleged by plaintiffs occurred after the defendant's inspection, were concealed at the time of the inspection, or were items outside the scope of the agreement among the parties. The defendant inspector asserted that the damages alleged were not the result of any acts or omissions on the part of the defendant inspector.

The parties submitted to non-binding arbitration prior to trial. The arbitrator determined that the plaintiffs were entitled to damages for the failure of the inspector to find clearly identifiable defects and sellers' failure to disclose defects. The arbitrator found the defendants jointly and severally liable for damages of \$20,025. The plaintiffs and defendant sellers each made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered \$20,025.

REFERENCE

Dimasi vs. Smeltzer, et al. Docket no. L-001100-18; Judge Morris G. Smith, 01-24-20.

Attorney for plaintiff: Matthew R. McCrink of McCrink, Kehler & McCrink in West Berlin, NJ. Attorney for defendant inspection company: Jared T. Hay of Salmon, Ricchezza, Singer & Turchi, LLP in Sewell, NJ. Attorney for defendant sellers of the property: Trish L. Wilson of McGivney, Kluger & Cook, P.C. in Florham Park, NJ.

DAYCARE CENTER NEGLIGENCE

\$15,000 RECOVERY

Daycare center negligence – Negligent supervision – Infant plaintiff injured while under care of defendant daycare center – 2.5 cm laceration of eyelid – Emergency room care.

Mercer County, NJ

In this negligent supervision case, the infant plaintiff, a 3-year-old boy, asserted that the defendant daycare center staff failed to adequately supervise children in its care such that the plaintiff suffered injury on the defendant's playground. The defendant filed a notice of appearance and settled the matter with the plaintiff without further proceedings.

On June 26, 2018, the infant plaintiff was under the care of the defendant daycare center in Trenton. The plaintiff contended that the defendant negligently cared for the plaintiff so as to allow him to become injured. The plaintiff maintained that the defendant had a duty to take reasonable action, both precautionary and remedial in nature, to provide for the safety of those children in its care at its facility.

The plaintiff argued that the defendant failed in its duty of care to the plaintiff while he was on the defendant facility's playground, resulting in permanent injuries to the minor plaintiff. As a result of a playground incident, the plaintiff sustained a 2.5 cm laceration of the right eyelid and periocular area. The plaintiff was taken to the hospital for emergency treatment and repair of the wound.

The parties settled the matter prior to trial in the amount of \$15,000 broken down as follows: \$3,605 in attorney fees; \$581 in costs and disbursements; \$302 in medical lien and \$10,512 in net damages to the minor plaintiff.

REFERENCE

J.F., a minor vs. Jann, LLC d/b/a The Learning Depot. Docket no. L-001607-19; Judge F. Patrick McManimon, 01-30-20.

Attorney for plaintiff: Jeffrey S. Simons of Jacobs, Schwalbe & Petruzzelli, PC in Cherry Hill, NJ. Attorney for defendant: Todd S. McGarvey of Bodell Bove, LLC in Philadelphia, PA.

DOG BITE

\$100,000 RECOVERY

Dog bite – 6-year-old girl suffers bites to face by defendants' dog while at baseball game in public park – Severe tears and lacerations to facial area with disfigurement and scarring – Emotional trauma – Parties settle shortly after filing of plaintiff's complaint.

Union County, NJ

In this dog bite case, the plaintiff, a 6-year-old girl, asserted that the defendants' dog bit the minor plaintiff causing significant, permanent injury. The defendant did not file an answer and settled the matter with the plaintiff.

On July 13, 2019, the minor plaintiff was at Tamaques Park with her father and grandparents to watch a baseball game. The defendants were also in attendance and had in their possession and control a white Labrador retriever. The plaintiff contended that, without provocation, the defendants' dog lunged at the minor plaintiff and bit her face. As a result of the incident, the plaintiff sustained severe tears and lacerations to her facial area leaving the plaintiff with se-

rious physical injury and disfigurement. The plaintiff also suffered extreme emotional distress of a permanent nature.

The plaintiff maintained that the defendants negligently failed to supervise, restrain, and otherwise confine their dog and had knowledge of the vicious propensities of the dog but failed to remedy those conditions thereby causing the ensuing bite of the minor plaintiff. The plaintiff asserted that the defendants were liable for damages caused by the dog's bite to the plaintiff who was lawfully in a public place.

The parties settled the matter prior to trial in the amount of \$100,000 broken down as follows: \$25,000 in attorney fees; \$75,000 in net damages to the minor plaintiff.

REFERENCE

King vs. Splawn. Docket no. L-004318-19; Judge John G. Hudak, 01-30-20.

Attorney for plaintiff: Paul Faugno of Faugno & Associates, LLC in Hackensack, NJ. Attorney for defendant: Judith L. Korolewicz of Law Office of Pamela D. Hargrove in Cranford, NJ.

INSURANCE OBLIGATION

\$10,000 RECOVERY

Insurance obligation – Parking space collision – Underinsured tortfeasor driver pulls from curbside parking space into roadway, striking plaintiff's vehicle – Cervical disc herniations and bulges – 5 months chiropractic treatment – Non-binding arbitration assigns 0% liability to defendant with gross damages of \$30,000 reduced to \$15,000 after credit.

Bergen County, NJ

In this insurance obligation case, the plaintiff, a 20-year-old woman, asserted that the tortfeasor driver struck her vehicle while pulling out of a parking space causing her to sustain injury. The plaintiff collected the tortfeasor's policy limit of \$15,000 and then brought the subject action against the defendant insurer for underinsured motorist coverage. The defendant stipulated liability but contested the plaintiff's damages.

On October 24, 2015, the plaintiff was traveling north on First Street in Hackensack. The tortfeasor driver was pulling out from a parking space on First Street. The plaintiff contended that the defendant negligently

failed to wait for a time when it was safe to enter the roadway and pulled away from the curb, striking the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc herniations and bulges. The plaintiff treated with 5 months of chiropractic treatment. The defendant presented expert testimony refuting the permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of \$30,000 reduced to \$15,000 after credit for funds received from the tortfeasor's insurance policy. Following arbitration and prior to trial, the parties settled for \$10,000.

REFERENCE

Foster vs. Plymouth Rock Assurance, et al. Docket no. L-006378-18; Judge Lisa Perez-Friscia, 02-18-20.

Attorney for plaintiff: Thomas A. McCarter of Law Office of Thomas A. McCarter in Hackensack, NJ. Attorney for defendant: Susan E. Huffman of Law Office of Patricia A. Palma in Woodbridge, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

\$100,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff struck by defendant's vehicle while crossing Rt. 70 – Defendant maintains plaintiff was not in crosswalk and darted in front of defendant's vehicle without warning – Complex fracture dislocation of left ankle joint involving the tibia, fibula and talus – Open reduction and internal fixation of left distal tibiofibular joint syndesmotic dislocation and open reduction and internal fixation of left displaced bimalleolar ankle fracture.

Ocean County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian asserted that the defendant driver struck him with his vehicle with such force that it caused significant, permanent injury.

On January 2, 2017, the plaintiff pedestrian was crossing Route 70 walking south. The defendant was traveling west on Route 70 in traffic. The plaintiff contended that the defendant negligently failed to stop and allow the plaintiff to cross and struck the plaintiff in the roadway. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant denied liability and asserted that the plaintiff

darted into the roadway in front of his vehicle and he was unable to stop before striking him. The defendant also asserted that the plaintiff was crossing the road where there was not a crosswalk for pedestrians.

As a result of the collision, the plaintiff sustained a complex fracture dislocation of the left ankle joint involving the tibia, fibula and talus. The injury was associated with an angulated fracture of the distal fibular metaphysis. The plaintiff underwent open reduction and internal fixation of the left distal tibiofibular joint syndesmotic dislocation and open reduction internal fixation of the left displaced bimalleolar ankle fracture. The plaintiff may need future surgery to remove hardware and has a permanent limp from the injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of \$350,000 reduced to \$175,000 for plaintiff's comparative negligence. The arbitration was not confirmed. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of \$175,000. The offer was not accepted and the matter proceeded.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of \$250,000 in the event of the jury awarding damages above that amount, and a minimum of \$75,000 in the event of a defendant's verdict or an award below that amount. The matter settled prior to trial in the amount of \$100,000.

■ \$50,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Disc herniation at C5-6; disc bulge at C6-7 – Right shoulder supraspinatus tendon tear – Non-binding arbitration assigns 100% liability to defendant.

Passaic County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian asserted that the defendant driver struck him with his vehicle as he was crossing the street and that the force of the impact caused significant, permanent injury. The defendant denied liability and claimed the plaintiff was solely negligent in causation of the subject incident.

On December 21, 2015, the plaintiff was a pedestrian lawfully crossing at the intersection of Passaic Street and Wall Street in Passaic. The defendant was driving through the intersection. The plaintiff contended that the defendant negligently failed to stop

REFERENCE

Cortes vs. Palermo. Docket no. L-000836-17; Judge Robert E. Brenner, 01-21-20.

Attorney for plaintiff: Stephen F. Lombardi of Lombardi & Lombardi, P.A. in Edison, NJ. Attorney for defendant: Jamie L. Barron of Law Offices of Pamela D. Hargrove in Wall Township, NJ.

for the plaintiff pedestrian in the roadway and struck him causing permanent injuries. As a result of the collision, the plaintiff sustained disc herniation at C5-6; disc bulge at C6-7; and right shoulder supraspinatus tendon tear.

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

REFERENCE

DeJesus vs. Lopez, et al. Docket no. L-003645-17; Judge Thomas J. Laconte, 01-20-20.

Attorney for plaintiff: Robert S. Maider of Birkhold & Maider, LLC in Nutley, NJ. Attorney for defendant: Mario A. Batelli of Foster & Mazzie, LLC in Totowa, NJ.

Head-on Collision

■ \$88,750 RECOVERY

Motor vehicle negligence – Head-on collision – Disc herniations at C5-6 and C6-7; disc bulges at C3-4, C4-5; and bilateral C5-6 radiculopathy confirmed on EMG – Plaintiff claims \$51,355 in unpaid medical damages – Non-binding arbitration assigns 100% liability to defendant.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 64-year-old man, asserted that the defendant driver crossed the centerline and struck his vehicle with such force that it caused significant, permanent injury. The defendant denied liability claiming both that he lost control of the vehicle for unknown reasons and the collision was unavoidable or, in the alternative, that the collision was caused by the negligence of a third party, not the defendant.

On September 7, 2016, the plaintiff was traveling westbound on Belleville Turnpike in Kearny. The defendant was traveling eastbound on Belleville Turnpike. The plaintiff contended that the defendant negligently crossed the center line into the plaintiff's lane

of travel striking the plaintiff head-on. 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 C5-6 and C6-7; disc bulges at C3-4, C4-5; and bilateral C5-6 radiculopathy confirmed on EMG. The plaintiff claimed \$51,355 in unpaid medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$118,000. Following arbitration and prior to trial, the plaintiff offered to take judgment in the amount of \$100,000. The parties ultimately settled for \$88,750.

REFERENCE

Halabi vs. Vila, et al. Docket no. L-002638-18; Judge Joseph A. Turula, 02-04-20.

Attorney for plaintiff: Kevin E. Kruse of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: Glenis L. Perez of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ.

Intersection Collision

■ \$72,500 RECOVERY

Motor vehicle negligence – Intersection collision – Disc herniations at C4-5, C6-7 and L4-5 – 2 cervical injections and 1 lumbar injection – Non-binding arbitration finds defendant driver liable..

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff passenger, a 46-year-old man, asserted that the defendant driver struck his vehicle with such force that it caused significant, permanent injury. The defendant denied liability, arguing the plaintiff's comparative negligence caused or contributed to the happening of the collision.

On May 3, 2016, the plaintiff was a passenger in a vehicle traveling west on Inman Avenue at the intersection with Linda Lane in Edison. The plaintiff maintained that the defendant entered Inman Avenue from Linda Lane and collided with the plaintiff's vehicle. The plaintiff contended that the defendant entered the plaintiff's lane of travel without the right-of-way, or without ascertaining that it was safe to enter. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C4-5, C6-7 and L4-5. The plaintiff treated with 2 cervical injections and one lumbar injection. The plaintiff claimed ongoing limitations to lifestyle and activities due to his injuries.

The defendant asserted that he stopped on the side street and attempted to turn left onto Inman Avenue and that his view of the plaintiff's vehicle was blocked by another vehicle passing by. The defendant also contested the plaintiff's damages. The defendant presented expert medical disputing the extent of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$80,000. Following arbitration and prior to trial, the parties settled for \$72,500.

REFERENCE

Goncziik vs. Beer-Newman, et al. Docket no. L-002410-18; Judge Bruce J. Kaplan, 01-17-20.

Attorney for plaintiff: Andrew S. Maze of Andrew S. Maze, Esq., P.C. in Woodbridge, NJ. Attorney for defendant: Donna E. Geoghan of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

■ \$5,640 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff maintains defendant failed to stop at stop sign and entered intersection, striking plaintiff's vehicle broadside – Disc herniations and disc bulges confirmed on MRI – Left shoulder labral tear confirmed on MRI – Epidural injections, chiropractic treatment and pain management.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 51-year old woman, asserted that the defendant driver ran a stop sign and struck her vehicle with such force that it caused significant, permanent injury. The defendant stipulated liability, but contested the plaintiff's damages.

On December 8, 2014, the plaintiff was traveling southbound on Easton Avenue and the intersection with Castleton Avenue in Franklin. The defendant was traveling on Castleton Avenue approaching the intersection with Easton Avenue. The plaintiff contended that the defendant negligently and carelessly failed to stop at the stop sign controlling the intersection and struck the plaintiff's vehicle on the front passenger side. 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 C5-6, C7-T1, L5-S1; disc bulges at C4-5, C6-7, L3-4, L4-5 confirmed on MRI; and left shoulder

labral tear confirmed on MRI. The plaintiff treated with cervical epidural injections, pain management, and chiropractic treatment.

The defendant argued that the plaintiff did not sustain herniations, only soft tissue injuries and that the vehicle damage indicated a collision not significant enough to cause serious injury.

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

The jury found, by a vote of 7-1, that the defendant was 60% negligent and the plaintiff 40% negligent that that negligence was a proximate cause of the collision wherein the plaintiff was injured. By a vote of 8-0 the jury awarded gross damages in the amount of \$8,500. The verdict was reduced by the plaintiff's apportionment of negligence for a net verdict of \$5,640 broken down as follows: \$5,100 in damages; \$540 in interest.

REFERENCE

Gomez vs. Fritsche. Docket no. L-003014-16; Judge Lisa Vignuolo, 02-28-20.

Attorney for plaintiff: T.K. Shamy of Shamy & Shamy, Esqs. in New Brunswick, NJ. **Attorney for defendant:** Mario C. Colitti of Law Offices of Viscomi & Lyons in Morristown, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff contends defendant ran red light and struck plaintiff's vehicle in intersection – Cervical disc herniations and lumbar disc herniations confirmed on EMG – 2 lumbar epidural injections – Non-binding arbitration assigns 0% liability to defendant with damages of \$72,037.

Bergen County, NJ

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

On February 18, 2017, the plaintiff was traveling on First Street at the intersection with Central Avenue in Hackensack with a green traffic light in her direction. The defendant driver was operating a taxicab traveling on Central Avenue. The plaintiff contended that the defendant negligently failed to stop for a red light controlling her entry into the intersection. The defendant struck the plaintiff's vehicle and, the plaintiff alleged, the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc herniations; and lumbar disc herniations. The plaintiff treated with two lumbar epidural injections. The plaintiff presented expert testimony from the phy-

sician who confirmed the plaintiff's injuries on EMG. The plaintiff claimed \$9,537 in unpaid medical expenses.

The defendant argued that the plaintiff's injuries were pre-existing, degenerative and not caused by the subject collision. The defendant presented expert testimony from an IME who found that the plaintiff had degenerative bulging discs, not trauma-related disc herniations.

During discovery, the plaintiff made an offer to take judgment in the amount of \$100,000 in settlement of the case. The offer was not accepted and the matter proceeded.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$72,037. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Givens vs. Murphy. Docket no. L-003124-18; Judge Estela M. DeLaCruz, 03-06-20.

Attorney for plaintiff: Kate Carballo of Davis, Saperstein & Salomon, PC in Teaneck, NJ. **Attorney for defendant:** Mario A. Batelli of Foster & Mazzie, LLC in Totowa, NJ.

Left Turn Collision

\$250,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Left turn collision – Defendant attempts to pass plaintiff on left as plaintiff is turning left into gas station – Cervical herniation – Plaintiff undergoes surgery 1 ½ years after accident, pausing treatment because of pregnancy and COVID-19 fears.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver, age 33 at the time of the accident and 36 at the time of the settlement, contended that after she stopped and began turning left into a gas station, the defendant driver attempted to pass her on the left, causing the accident in which she sustained injury.

The plaintiff contended that she developed extensive neck pain that radiated down the right arm. The plaintiff commenced a course of conservative therapy but the pain continued to increase. Ultimately, the plaintiff underwent an MRI and EMG which were

positive. The plaintiff then became pregnant and ceased treatment until after the birth because of concerns, including COVID-19.

The plaintiff asserted that she will suffer permanent symptoms. The defendant did not retain medical experts.

The plaintiff made no wage claims.

The defendant had \$250,000 in coverage. The case settled prior to trial for the policy.

REFERENCE

Plaintiff's neurosurgeon expert: Jeffrey S. Oppenheim, M.D. from West Nyack, NY. **Plaintiff's orthopedic surgeon expert:** Frank Capecci, M.D. from Denville, NJ. **Plaintiff's radiology expert:** Lisa Sheppard, M.D. from Flemington, NJ.

Shakil vs. Gomes. Docket no. MRS-L-1008-19, 07-27-21.

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

■ **\$65,420 VERDICT**

Motor vehicle negligence – Left turn collision – Thumb fracture – Closed reduction – Impediment using devices while working in health field – Difficulties with hobbies, including drawing – Bench trial.

Camden County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her late 20s, contended that the defendant driver made a left turn into her path, causing the collision in which she sustained injury. The defendant asserted that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff asserted that she suffered a fracture of the dominant thumb. The fracture was treated by way of closed reduction. The plaintiff maintained that she will suffer permanent pain and difficulties. The plaintiff further contended that she has problems engaging in favorite hobbies, such as drawing.

The plaintiff, who works in the health field, contended that everyday tasks at work, such as using devices now require 2 hands while she was previously able to do so with one hand only. The plaintiff made no income claims. The defendant maintained that the plaintiff made a good recovery, that any residuals are very minor and denied that the plaintiff met the verbal threshold.

The court found the defendant 100% negligent and awarded \$65,420.

REFERENCE

Plaintiff's orthopedic hand surgeon expert: Eric Strauss, M.D. from Voorhees, NJ. Defendant's orthopedic surgeon expert: Gary Goldstein, M.D. from Voorhees, NJ.

Eisenger vs. Bozarth. Docket no. CAM- L-4231-18; Judge Sherri L. Schweitzer, 02-21.

Attorney for plaintiff: Andrew A. Wenker of Law Office of Michael J. Glassman in Voorhees, NJ.

■ **DEFENDANT'S VERDICT**

Motor vehicle negligence – Left turn collision – Left shoulder rotator cuff tear and aggravation of spinal condition – Physical therapy and aquatic therapy – Defendant contests causation and permanency of plaintiff's injuries – Plaintiff recovers \$5,000 per high/low agreement.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 56-year-old man, asserted that the defendant driver struck his vehicle, while making a left turn, with such force that it caused significant, permanent injury.

On November 16, 2015, the plaintiff was proceeding northbound on Plainfield Avenue in Edison. The defendant was proceeding southbound on Plainfield Avenue and, the plaintiff contended, negligently made a left turn across the plaintiff's lane of travel and struck the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained left shoulder rotator cuff tear and aggravation of spinal condition. The plaintiff treated conservatively with physical therapy and aquatic therapy. The plaintiff had an expert orthopedist and neurologist to testify as to the plaintiff's injuries, treatment and perma-

nency. The defendant argued that the plaintiff's injuries were limited to degenerative disc disease and morbid obesity which precluded surgical repair of the shoulder.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$70,000. The arbitration was not confirmed and the matter proceeded to trial.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of \$70,000 in the event of the jury awarding damages above that amount, and a minimum of \$5,000 in the event of a defendant's verdict or an award below that amount. The jury found 5-1 that the plaintiff failed to prove a permanent injury and returned a verdict in favor of the defendant, thus the plaintiff recovered \$5,000 in damages.

REFERENCE

Filippone, et al. vs. Abbas, et al. Docket no. L-006764-17; Judge Dennis V. Nieves, 12-03-19.

Attorney for plaintiff: Leonard D. Weiss of The Weiss Group, LLC in Metuchen, NJ. Attorney for defendant: Karen B. Miller of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Parking Spot Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Parking spot collision – Disc herniations C2-3, L5-S1 and L4-5; annular tear L4-5; left shoulder tear of the supraspinatus; cervical and lumbar radiculopathy – 4 months of chiropractic treatment, pain management and lumbar injections – Pre-trial arbitration found defendant liable with \$17,500 in damages.

Passaic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the parked vehicle in which she was a passenger with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On September 26, 2016, the plaintiff was a passenger in a vehicle lawfully parked in a Dunkin Donuts parking lot on Union Avenue in Paterson. The defendant attempted to pull into a parking spot in the parking lot negligently failing to make a proper turn into the spot and negligently failing to maintain control of her vehicle. The defendant struck the stationary vehicle in which the plaintiff was a passenger. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff passenger sustained disc herniations at C2-3, L5-S1 and L4-5; annular tear at L4-5; left shoulder tear of the supraspinatus; and cervical and lumbar radiculopathy. The plaintiff underwent 4 months of chiropractic treatment, pain management and lumbar injections.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant presented IME testimony that there were no disc bulges on MRI, only desiccation of C2-3, L4-5, and L5-S1; and intact labrum of the left shoulder with hypertrophy.

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

Frias vs. Garcia, et al. Docket no. L-002851-17; Judge Frank Covello, 10-16-19.

Attorney for plaintiff: Nicholas A. Mattera of Law Offices of Nicholas A. Mattera in Paterson, NJ.

Attorney for defendant: Philip N. Baker of Law Offices of Cindy L. Thompson in West Orange, NJ.

Rear End Collision

\$125,000 RECOVERY

Motor vehicle negligence – Rear end collision – Aggravation of cervical herniation that required C-6 fusion 5 years earlier – New surgery involving 3 cervical levels.

Morris County, NJ

This motor vehicle negligence case involved a plaintiff driver in his late 70s who was struck in the rear. The plaintiff had undergone surgery at C5-6 after a collision that occurred approximately 5 years earlier. The plaintiff contended that he sustained a severe aggravation and that he now suffered severe pain and difficulties turning his head. After a course with a chiropractor and pain management physician, it became clear that he required additional surgery. The defendant denied that the plaintiff suffered the claimed injuries and maintained that any difficulties were related to the earlier injury and/or degeneration.

The plaintiff countered that he was essentially asymptomatic from the prior injuries sustained in the earlier accident until the subject collision occurred. The

plaintiff's neurosurgeon performed a posterior cervical 3-level right C4-C5, C5-C6 and C6-C7 decompressions by lamino-foraminotomies surgery. The plaintiff asserted that he will nonetheless suffer permanent symptoms.

The case settled prior to trial for \$125,000.

REFERENCE

Plaintiff's chiropractor expert: Jay Brecker, D.C. from Rockaway, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's pain management expert: Roman Kosiborod, M.D. from Fairlawn, NJ.

Figueroa vs. Tamboer, et al. Docket no. MRS-L-2617-19, 10-09-20.

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

■ \$55,000 VERDICT

Motor vehicle negligence – Rear end collision – Lumbar disc herniations L4-5 and L5-S1– Post-traumatic lumbar facet joint syndrome – Treated with epidural injection.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 35-year-old woman, asserted that the defendant driver struck her vehicle from behind and caused significant, permanent injury. The defendant denied liability and contested the nature, extent and causation of the plaintiff's claimed damages.

On March 19, 2015, the plaintiff was traveling on Joyce Kilmer Avenue in New Brunswick. The defendant was traveling on the same road, behind the plaintiff's vehicle. The plaintiff maintained that the defendant negligently failed to stop her vehicle behind the plaintiff and caused a collision between the front of the defendant's vehicle and the rear of the plaintiff's vehicle. The plaintiff claimed permanent injury as a result of the collision.

■ \$40,000 RECOVERY

Motor vehicle negligence – Rear end collision – Disc herniations at C4-5 and L4-5 and disc bulges at C6-7 and L5-S1 – Parties settle after arbitration finds defendant liable and sets damages at \$40,000.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 58-year-old man, asserted that the defendant driver struck his vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On June 28, 2016, the plaintiff was the operator of a motor vehicle traveling east on Interstate 78 towards the ramp for Diamond Hill Road in Somerville. The defendant was also traveling east on I-78 directly behind the plaintiff. The plaintiff contended that the defendant was negligent in striking the plaintiff's vehicle from behind. The plaintiff alleged that the force of the impact resulted in permanent injuries.

■ DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Cervical and lumbar disc herniations – Defendant denies causation; low impact collision; plaintiff has multiple prior, similar injuries – \$2,000 recovery per high/low agreement.

Cumberland County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused

As a result of the collision, the plaintiff sustained lumbar disc herniations at L4-5 and L5-S1; post traumatic lumbar facet joint syndrome. The plaintiff was approved for one epidural injection to treat her injuries. There was no lost wage claim.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of \$55,000 in net damages together with prejudgment interest in the amount of \$3,440 for a total judgment of \$58,440.

REFERENCE

Garcia vs. Freindlich. Docket no. L-001109-17; Judge Lisa M. Vignuolo, 07-12-19.

Attorney for plaintiff: Patrick J. Flinn of Levinson Axlerod, P.A. in Edison, NJ. Attorney for defendant: Mark Trudeau of Law Office of Cindy L. Thompson in West Orange, NJ.

As a result of the collision, the plaintiff was taken to the emergency room and diagnosed with disc herniations at C4-5 and L4-5 and disc bulges at C6-7 and L5-S1. The defendant argued that the plaintiff's injuries were not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$40,000. Following arbitration and prior to trial, the parties settled for \$40,000.

REFERENCE

Fernandes vs. Tsotsoria. Docket no. L-001516-18; Judge Mark P. Ciarrocca, 12-06-19.

Attorney for plaintiff: John M. Piro of Ginarte, Gallardo, Gonzalez & Winograd, LLP in Newark, NJ. Attorney for defendant: Andrew M. Horun of Gregory P. Helfrich & Associates in Summit, NJ.

significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On August 28, 2015, the plaintiff was traveling north on Cedar Street and was stopped in traffic as she approached the intersection of Howard Street in Millville. At the same time and place, the defendant was also traveling north on Cedar Street directly behind the plaintiff. The defendant failed to stop behind the

plaintiff's stationary vehicle and struck the plaintiff from the rear. As a result of the collision, the plaintiff sustained disc herniations in the neck and back.

The plaintiff asserted that the defendant was following the plaintiff's automobile in the same lane of traffic and was negligent in failing to maintain a reasonably safe distance behind the vehicle ahead, failing to have due regard to the speed of the preceding vehicle and the traffic and condition of the highway. The plaintiff maintained that the defendant's negligence resulted in a collision wherein the plaintiff was injured.

The defendant argued that the impact was very minor as confirmed by the police report which also indicated that neither party claimed injury at the scene. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant pointed to the plaintiff's prior similar neck injuries in 2000, 2007, and 2012.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$25,000. The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a minimum of \$2,000 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 \$2,000 in damages.

REFERENCE

Damico-Hansen, et al. vs. McDermott, et al. Docket no. L-000624-17; Judge James R. Swift, 11-06-19.

Attorney for plaintiff: Alexander J. Wazeter of Helmer, Conley & Kasselmann, P.A. in Turnersville, NJ. Attorney for defendant: Toni M. Gheen of Law Offices of Styliades and Jackson in Marlton, NJ.

Sideswipe Collision

■ \$50,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Defendant exits donut shop into plaintiff's lane of travel and strikes plaintiff's vehicle – Cervical and lumbar sprain/strain with herniated discs at L1-2 and L5-S1 – Chest wall contusion – Aggravation of degenerative left knee and prior right hip quiescent avascular necrosis, leading to full hip replacement – Non-binding arbitration assigns 100% liability to defendant with damages of \$60,000.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 59-year-old woman, asserted that the defendant driver struck her vehicle with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On February 26, 2017, the plaintiff was traveling west on Raritan Street in Sayreville. The defendant was exiting a donut shop and entering Raritan Street. The plaintiff contended that the defendant negligently pulled into the plaintiff's lane of travel without waiting

until it was safe to do so, causing a collision with the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff claimed cervical and lumbar sprain/strain with herniated discs at L1-2 and L5-S1; chest wall contusion and aggravation of a degenerative left knee and prior right hip quiescent avascular necrosis, leading to a full hip replacement. The defendant argued that the plaintiff's injuries were pre-existing, age-related and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$60,000. Following arbitration and prior to trial, the parties settled for \$50,000.

REFERENCE

Griffith vs. Tresidder. Docket no. L 004379-18; Judge Bruce J. Kaplan, 02-21-21.

Attorney for plaintiff: George F. Hendricks of Hendricks & Hendricks in New Brunswick, NJ. Attorney for defendant: Courtney E. Darmofal of Law Office of Cindy L. Thompson in Piscataway, NJ.

■ DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – L2-3 diffuse disc bulge; L4-5 disc bulge and lumbosacral sprain and strain – Plaintiff treated conservatively.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver sideswiped his vehicle causing a collision and resulting in

significant, permanent injury. The defendant initially denied liability contending that the plaintiff was guilty of a greater degree of negligence than the defendant.

On September 24, 2015, the plaintiff was the operator of a vehicle traveling on East Market Street near Clinton Avenue in Trenton. The plaintiff claimed that the defendant driver was merging onto East Market Street and failed to wait for an appropriate time to

merge. The plaintiff maintained that the defendant driver, suddenly and without warning, struck the passenger side of his vehicle.

As a result of the collision, the plaintiff sustained painful and severe injuries including L2-3 diffuse disc bulge with superimposed small broad-based central disc protrusion; L4-5 disc bulge and spondylotic ridging to the left with a superimposed small central disc protrusion; and lumbosacral sprain and strain. The plaintiff treated conservatively with no pain management. The plaintiff claimed that some or all of these injuries were permanent.

The defendant argued that the plaintiff was negligent in failing to monitor traffic and see vehicles merging into the roadway and allow for the defendant to en-

ter the roadway without colliding. The defendant also claimed that the plaintiff's sole remedy for this incident was Worker's Compensation. The defendant ultimately stipulated liability and the matter went to trial on damages.

The parties agreed to try the case on an expedited basis with a cap on any jury award of \$50,000. The cap was inclusive of all interests and costs. The jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Garafalo vs. Ji. Docket no. L-002022-17; Judge William Anklowitz, 07-24-19.

Taxi Negligence

DEFENDANT'S ARBITRATION CONFIRMATION

Motor vehicle negligence – Taxi negligence – Auto/pedestrian collision – Plaintiff claims defendant taxi pulled away from curb before plaintiff was inside vehicle and knocked plaintiff to ground – Cervical, thoracic and lumbar strain and sprain; lumbar radiculopathy; lumbar disc disruption; pain and emotional anguish.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver caused the plaintiff pedestrian to fall out of a taxi to the ground, causing him significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant asserted that the plaintiff was at fault for failing to fully close the vehicle door and was negligent in causing the condition that resulted in his injury.

On January 27, 2017, the plaintiff attempted to enter the defendant's cab when, the plaintiff claimed, the defendant suddenly and without warning pulled away, causing the plaintiff to be violently and forcefully thrown against the defendant vehicle and to the ground. The plaintiff asserted that the defendant taxi

was negligently operated when it pulled away before the plaintiff was completely inside the vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result, the plaintiff sustained cervical, thoracic and lumbar strain and sprain; lumbar radiculopathy; lumbar disc disruption; pain and emotional anguish. The defendant argued that the plaintiff had a history of back pain and had been on disability for the same claimed injuries in 2010.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 0% liability to the defendant. The defendant made a motion to confirm the arbitration order and the motion was granted resulting in an entry of no cause of action against the plaintiff and in favor of the defendant.

REFERENCE

Gilbert vs. Ali and All Star Cab Co., LLC. Docket no. L-001577-18; Judge Mary C. Jacobson, 01-10-20.

Attorney for plaintiff: Craig A. Altman of Law Offices of Craig A. Altman in Vineland, NJ. Attorney for defendant: Brian J. Levine of Law Office of Brian J. Levine in Somerville, NJ.

POLICE LIABILITY

DEFENDANT'S ARBITRATION CONFIRMATION

Police liability – Plaintiff claims he suffered injury due to unnecessary force applied during arrest by defendant officer in course of duties on behalf of defendant municipality – Left shoulder and wrist injury with ongoing pain and limitations in use of left arm – Non-binding arbitration finds no cause of action in favor of defendant.

Camden County, NJ

In this personal injury case, the plaintiff alleged he was injured due to the actions or inactions of the defendant police officer in the course of his employment with the defendant municipality. The plaintiff maintained that the negligent or intentional actions of the defendant officer caused him significant, permanent injury. The plaintiff claimed the defendant municipality was liable for the actions of its employee.

On April 17, 2016, the plaintiff was the operator of a motor vehicle traveling westbound on U.S. Route 30 at the intersection with Vassar Avenue when the defendant assaulted the plaintiff while placing him under arrest. The plaintiff maintained that, while he was handcuffed, the defendant, without warrant or justification, applied undue, extra and unnecessary force on the plaintiff's arm and wrist, causing significant injury to the plaintiff.

As a result of the infliction of extreme tortious pressure to the left arm and wrist, the plaintiff sustained a left shoulder and wrist injury with ongoing pain and limitations in ability to use the left arm. The defendant denied causing the plaintiff's injury and pointed to the

lack of an expert opinion confirming a permanent injury. Thus, the defendant argued, the plaintiff failed to meet the requirement of the Tort Claims Act.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause of action in favor of the defendant. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Jackson vs. Gagliardi, et al. Docket no. L-001247-18; Judge Michael J. Kassel, 02-13-20.

Attorney for plaintiff: David S. Rochman, Esq. in Voorhees, NJ. Attorney for defendant: John D. McCarthy of Schenck, Price, Smith & King, LLP in Florham Park, NJ.

PREMISES LIABILITY

Fall Down

■ \$85,000 RECOVERY

Premises liability – Fall down – Slip and fall on spilled detergent on supermarket floor – Recent spill partially cleaned and sign placed nearby, but not in specific area off fall – Lumbar and cervical herniations – Injections – TMJ.

Bergen County, NJ

In this action for premises liability, the 50-year-old plaintiff supermarket shopper contended that she slipped and fell on spilled detergent in the aisle, sustaining injuries. The spill had been partially cleaned by the defendant. The plaintiff maintained, however, that the floor remained hazardous and that a nearby sign was not in the specific area the plaintiff fell. The defendant asserted that the plaintiff should have been alerted by the sign and was comparatively negligent.

The plaintiff maintained that she developed radiating lumbar and cervical pain and that herniations were confirmed by MRI and which will cause permanent symptoms despite a lumbar and a cervical injection. The plaintiff also asserted that she suffered TMJ dys-

function that will cause permanent pain and difficulties eating hard foods despite the use of a bite plate. The defendant maintained that any conditions resolved.

The plaintiff missed several days from her job as a nurse's assistant.

The case settled prior to trial for \$85,000.

REFERENCE

Plaintiff's chiropractor expert: Kenneth Ermann, D.C. from Teaneck, NJ. Plaintiff's dental expert: Robert Federman, D.D.S. from Ft. Lee, NJ. Plaintiff's pain management expert: Steven Waldman, M.D. from North Bergen. Defendant's dental expert: Philip Geron, D.M.D. from Westfield, NJ. Defendant's orthopedic surgeon expert: Charles Carozza, M.D. from Roseland, NJ.

Bell vs. Shop Rite. Docket no. BER-L-1102-18, 11-10-21.

Attorney for plaintiff: Todd Siegel of Siegel & Siegel in Teaneck, NJ.

■ \$45,000 RECOVERY

Premises liability – Fall down – 76-year-old plaintiff visitor trips and falls on water valve hidden by grass on town home owned by defendant condo association – Deep laceration to knee – Plaintiff makes good functional recovery – Small knee scar.

Bergen County, NJ

This case of premises liability arose from an incident which occurred on August 9, 2019 when the plaintiff was leaving a friend's town home

located in the defendant landlord's condo development. The plaintiff claimed that as a result of the defendant's negligence, she fell, sustaining injuries.

On August 9, 2019, plaintiff, age 76, was leaving a friend's town home located in the Franklin Heights condo development in Mahwah, New Jersey. There is a grass strip between the sidewalk and the condo parking lot. The plaintiff contended that a water valve owned by the non-party municipal water company

was hidden in the grass, creating a hazard which should have prompted a warning. The plaintiff contended that as a result, she tripped on the metal water valve and fell, landing against her parked car.

The plaintiff suffered a deep cut requiring 14 stitches to her left knee. She was placed in a knee immobilizer and used crutches for 3 weeks. She went for physical therapy for 3 months. She has a small scar on her knee, but otherwise made a good recovery.

■ **UNDISCLOSED RECOVERY**

Premises liability – Fall down – Plaintiff falls in pot hole in defendant’s parking lot – Non-displaced left ankle fracture – Treated conservatively with splint and physical therapy – Plaintiff claims \$10,000 in unpaid medical expenses – Arbitration sets liability at 90% defendant and 10% plaintiff with gross damages of \$190,000.

Morris County, NJ

In this premises liability case, the plaintiff asserted that the defendant hotel allowed a dangerous condition to exist on its property and that condition caused the plaintiff to fall and sustain significant, permanent injury. The defendant denied liability claiming that the plaintiff fell due to her own carelessness and assumption of risk.

On May 28, 2016, the plaintiff was lawfully in the premises of the defendant hotel in Morristown. The plaintiff asserted that the defendant negligently maintained the premises so as to cause a dangerous condition to exist. In the subject case, the plaintiff claimed that there was a hole in the defendant hotel’s parking lot that the defendant failed to remedy. On the date in question, the plaintiff stepped into the

The case settled for \$45,000 several weeks after filing suit and no report on either liability or damages was filed by the defense.

REFERENCE

Plaintiff’s family medicine expert: Steven Nickles, D.O. from Ramsey, NJ.

Evans vs. Franklin Heights Condo Association. Docket no. BER-L-5186-21.

Attorney for plaintiff: Bert Siegel of Siegel & Siegel in Teaneck, NJ.

pothole in the defendant hotel’s parking lot and fell. The plaintiff alleged that the fall resulted in permanent injuries.

The plaintiff sustained a non-displaced left ankle fracture. The plaintiff treated conservatively with a splint and 4 months of physical therapy. The plaintiff claimed \$10,000 in unpaid medical expenses. The defendant contested the plaintiff’s damages, arguing that the plaintiff’s injuries were pre-existing and not caused by the subject collision.

The parties submitted to arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff. The arbitrator set damages at \$190,000 gross, \$171,000 after reduction for the plaintiff’s negligence. The defendant rejected the arbitration award and the parties settled the matter for an undisclosed sum.

REFERENCE

Hooley vs. The Madison Hotel. Docket no. L-000510-18; Judge Peter A Bogaard, 09-11-19.

Attorneys for plaintiff: James S. Lynch and Arthur V. Lynch of Lynch Lynch Held Rosenberg, P.C. in Hahsbrouck Heights, NJ. Attorneys for defendant: David J. Varriale and John J. Leo, III of Kaufman Borgeest & Ryan, LLP in Parsippany, NJ.

Hazardous Premises

■ **\$200,000 RECOVERY**

Premises liability – Hazardous premises – Defective door – Top portion of 16-month-old plaintiff’s left pinky finger amputated by defective storm door – Plaintiff undergoes successful reattachment surgery; finger is shorter – Ongoing pain – Defendant denies notice of defective door – Non-binding arbitration assigns 100% liability to defendant with damages of \$85,000.

Cumberland County, NJ

In this premises liability case, the plaintiff, a 16-month-old tenant of the defendant’s property, asserted that the defendant owner, and subsequently his estate, failed to properly inspect, maintain, install, replace or repair the premises where the minor plaintiff resided. The plaintiff asserted that she was permanently injured by a

defective storm door on the property. The defendant denied liability, arguing that they had no notice of defect or opportunity to remediate it due to the lack of notice.

On July 21, 2016, the infant plaintiff was inside the home accessing a storm door at the side entrance to the rental property where she resided with her mother. The plaintiff maintained that the storm door suddenly closed and the infant plaintiff’s finger was caught and pinched between the closing storm door and the door frame. As a result of the incident, the infant plaintiff suffered an amputation of the top portion of her left pinky finger.

The plaintiff mother found the amputated portion of the finger outside the closed door and the plaintiff was on the inside of the door. The infant plaintiff and

her finger were taken by ambulance to the hospital and later transferred to another hospital where the finger portion was reattached. The plaintiff's finger is different in appearance than the corresponding finger on the other hand due to it being shorter because of the reattachment of the top portion.

The plaintiff contended that the defective storm door on the property had an excessive closer speed and force and, without the required deceleration, due to improper maintenance, the door was a foreseeable hazard in an unsafe condition. The plaintiff asserted that the door did not decelerate as it closed and, instead, closed with speed and force enough to slam shut. The plaintiff mother maintained that the door was defective since she moved into the premises and that she first reported the issue to the defendant approximately 6 weeks after moving in. The plaintiff mother testified that the defendant did not make any changes or repairs to the door after she complained directly to him, prior to her daughter's injury.

The plaintiff alleged that the defendant property owner did not provide reasonably safe living conditions free from foreseeably hazardous conditions. The plaintiff presented expert testimony that the storm door was defective due to the improperly adjusted closer function that did not afford people using the door, especially small children, an opportunity to

move their fingers from the door frame and avoid the type of injury that occurred to the infant plaintiff. The defendant questioned the facts of the case as there were no witnesses to the accident and the plaintiffs presented no evidence as to how the incident occurred. The defendant argued that, while the plaintiff's expert deemed the door defective, his opinion that it caused the injury to the infant plaintiff was unwarranted and not based on any evidence.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$85,000. Following arbitration and prior to trial, the parties settled the matter in the amount of \$200,000 broken down as follows: \$48,009 in attorney fees; \$7,962 in costs; and \$144,029 in net damages to the infant plaintiff.

REFERENCE

Marshall, et al. vs. Estate of Herbert Robinson, Sr., et al. Docket no. L-000776-17; Judge James R. Swift, 05-01-20.

Attorneys for plaintiff: Lee D. Rosenfeld and Jessalyn Gillum of Messa & Associates, P.C. in Collingswood, NJ. Attorney for defendant: Ryan W. Kelly of Law Offices of Martin, Gunn & Martin, P.A. in Westmont, NJ.

Negligent Security

■ \$650,000 RECOVERY

Premises liability – Negligent security at tavern – Dram shop – Inadequate number of guards in high crime area – Plaintiff stabbed in neck by fellow patron – Spoliation – Keloidal scarring.

Essex County, NJ

In this action for premises liability, the 38-year-old patron contended that when he became embroiled in a physical altercation with a fellow patron, he was stabbed in the neck. The plaintiff asserted that the tavern employed too few guards and failed to have them adequately trained. The plaintiff also maintained that the tavern served alcohol to the assailant when he was visibly intoxicated. The defendant contended that the plaintiff was the aggressor and that the stabbing occurred after they left the bar. The defendant had \$1,000,000 in general liability insurance and \$100,000 in dram shop coverage.

The altercation went on inside the bar for 4-5 minutes and then moved outside. There was no claim that the tavern negligently delayed interceding. The plaintiff contended that he was cut towards the beginning of the altercation. The plaintiff indicated that he was not aware that he was stabbed until he and the other patron went on the sidewalk. Another patron, who did not follow the altercation outside, testified that she

had blood on her shirt and the plaintiff would have argued that the only way her shirt would have been so soiled is if the stabbing happened in the bar.

The plaintiff further asserted that security cameras were operational but that the defendant failed to keep the tape, which was overridden in the normal course of business. The plaintiff pointed out that when the tavern owner was asked by the police to give them the video, he requested that they return and the video was ultimately unavailable. The plaintiff would have made a spoliation claim.

The plaintiff maintained that he suffered a large Y-shaped scar on the neck which became keloidal despite some four injections. The plaintiff did not claim other than cosmetic damages. The plaintiff made no income claims.

The case settled at mediation for \$650,000, including \$550,000 from the general liability carrier and \$100,000 from the dram shop carrier.

REFERENCE

Plaintiff's security expert: Paul Calandra from Little Falls, NJ.

38-year-old plaintiff vs. defendant tavern.

Attorney for plaintiff: Kelly Castor of Law Office of Katherine Houghton in Paramus, 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

\$9,926,704 GROSS VERDICT – MEDICAL MALPRACTICE – SURGERY – PRODUCT LIABILITY – NEGLIGENT USE OF DEFECTIVE DEVICE FOR TREATMENT OF RADIATION NECROSIS ASSOCIATED WITH PRIOR TREATMENT OF MENINGIOMA – SEVERE BRAIN DAMAGE SUFFERED BY 71-YEAR-OLD – EXTENSIVE MOTOR DEFICITS.

Philadelphia County, PA

This medical malpractice/product liability action involved a 71-year-old plaintiff who contended that the defendant neurosurgeon, who was treating the plaintiff for radiation necrosis that was a known complication of the prior radiation treatment of the benign brain tumor, (meningioma) negligently used a surgical device known as a NeuroBlate, notwithstanding that this device, which had also had a 3.3 mm probe, was a new device that incorporated a 2.2 mm probe which the plaintiff contended was inappropriate for use in the treatment of the meningioma suffered by the plaintiff because the tough tissue of the meningioma. The plaintiff maintained that the narrow 2.2 mm sapphire tip of the probe broke during use, causing extensive brain damage in which although he comprehends everything, has severe difficulties expressing himself and showed a number of errors to which the neurosurgeon responded by restarting the system and continuing with the surgery. The plaintiff also named the hospital in which the use of the device occurred, contending that the device with the smaller tip should not have been used at its hospital. Finally, the plaintiff named the device's manufacturer on a products liability theory. The case against the manufacturer settled

prior to trial for \$12,750,000. The jury did not know about the settlement or that the plaintiff had previously sued the manufacturer.

The plaintiff asserted that he suffered extensive brain damage which primarily affected motor skills and which also caused emotional lability. The evidence disclosed that the brain damage does not reduce the ability of the plaintiff to perceive and the plaintiff contended that he is aware of the nature of his plight.

The jury found that that the defendant physician failed to obtain the informed consent of the patient, which was causally related, that he was casually negligent, that the hospital was causally negligent and that the defective product contributed to the damages. The jury assessed 43% against the physician, 15% against the hospital and 42% against the settling manufacturer. They then rendered a gross award of \$5,000,000 to the plaintiff, \$1,600,000 to the wife and \$3,326,704 for future medical expenses, for a total of \$9,926,704.

REFERENCE

Brassoff vs. Judy, et al. Case no. Aug Term 2016 no. 3335; Judge Ann Butchart, 11-12-21.

Attorneys for plaintiff: Shahin Specter and Kila B. Baldwin of Kline & Specter, P.C. in Philadelphia, PA.

\$1,500,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – EMERGENCY ROOM PHYSICIAN NEGLIGENTLY APPLIES CAST TOO TIGHTLY AFTER NON-DOMINANT HAND FRACTURE – DEVELOPMENT OF COMPARTMENT SYNDROME – INFANT PLAINTIFF REQUIRED TOTAL OF 11 SURGERIES, INCLUDING MULTIPLE PAINFUL DEBRIDEMENTS AND SKIN GRAFT SURGERY – SIGNIFICANT SCARRING.

New York County, NY

This action for medical malpractice involved a 5-year-old infant plaintiff who had fractured her left, non-dominant hand in an accident at a park. The plaintiff contended that the defendant emergency room physician, who performed a closed reduction, negligently applied a splint with Ace bandages that ran up the forearm too tightly, resulting in the development of compartment

syndrome within several days. The plaintiff asserted that as a result, the child required a total of some 11 surgeries, including multiple debridements and a skin graft from the thigh. The plaintiff maintained that she was left with significant scarring on the hand and the donor site which is permanent in nature. The plaintiff also contended that the infant plaintiff will permanently suffer reduced grip strength and some difficulties with extension of the fingers. The

defendants denied that the splint with Ace bandage was applied incorrectly or that the treatment was causally related to the development of compartment syndrome.

The case settled before the exchange of experts for \$1,500,000.

\$1,000,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE NEGLIGENCE – PRIMARY CARE PHYSICIAN NEGLIGENT IN FAILING TO DISCLOSE TEST RESULTS AND ORDER FOLLOW-UP TESTING – LOSS OF CHANCE TO MORE AGGRESSIVELY TREAT CANCER – LESSENERD LIKELIHOOD OF SURVIVAL.

Withheld County, MA

In this medical malpractice matter, the plaintiff patient alleged that her primary care physician was negligent in failing to disclose test results and order follow-up testing for her cancer diagnosis. The plaintiff alleged that the defendant's negligence caused her to lose her chance to more aggressively treat her cancer. The defendant physician denied the allegations and disputed causation and damages.

The plaintiff brought suit against the defendant physician alleging negligence and seeking damages. The defendant physician denied the allegations. The de-

REFERENCE

Gray vs. NCHHA, et al. Index no. 805400/17, 10-21.

Attorneys for plaintiff: Matthew T. Gammons and Udeyveer Singh Brar of Rosenbaum & Rosenbaum, PC in New York, NY.

endant disputed that there was a deviation from acceptable standards of care in the defendant's treatment of the plaintiff.

The parties agreed to resolve the plaintiff's claim for the sum of \$1,000,000 in a confidential settlement between the parties.

REFERENCE

Cancer Patient vs. Primary Care Physician. 06-15-21.

Attorneys for plaintiff: James D. O'Brien, Jr., Katherine A. Bagdis and Patricia F. Gates of Mountain Dearborn & Whiting in Worcester, MA.

PRODUCT LIABILITY

\$3,081,121 VERDICT – PRODUCT LIABILITY – MANUFACTURING DEFECT – DEFECTIVE DESIGN – TIRE MANUFACTURED BY DEFENDANTS FAILS CAUSING PLAINTIFF'S TRUCK TO CAREEN OUT OF CONTROL AND EJECT PLAINTIFF – CATASTROPHIC INJURIES – TRAUMATIC BRAIN INJURY – MULTIPLE FRACTURES – MULTIPLE SURGERIES.

Allegheny County, PA

This product liability action was brought by the plaintiff following a single vehicle collision that he maintained occurred when a front tire, manufactured and distributed by the defendants, failed, causing the vehicle the plaintiff was operating to go out of control, ejecting the plaintiff from the vehicle. The plaintiff suffered catastrophic injuries with neurologic damage. The defendants denied all allegations of negligence and argued that it was the plaintiff and the plaintiff's employer who were negligent in failing to inspect the tires on truck.

The plaintiff sustained traumatic injury to his head, brain, and body which included concussion, fracture of seventh cervical vertebra, damage at C7-T1 spinal area, fracture of malar and maxillary bones, fracture of nasal bones, orbital fractures, right frontal sinus fractures and right eye injury. He underwent surgical fixation of the spine with posterior C5-T2 fusion instrumentation with graft and a C7-S1 laminoforaminotomy.

The only defendant remaining at trial was defendant Kumho Tire U.S.A. The jury found that there was not a defect in the tire when it was manufactured but that the tire was defectively designed by either a Consumer Expectation Standard or a violation of The Risk Utility Standard and that the defect caused the plaintiff's incident and injuries. The jury awarded the plaintiff past medicals of \$220,833, future medicals of \$534,001, past and future pain and suffering of \$1,886,000 and past and future household services of \$440,287, for a total of \$3,081,121.

REFERENCE

Plaintiff's neuropsychologist expert: Edward Maitz, M.D. from Philadelphia, PA. Plaintiff's tire expert expert: Troy Cottles from Metairie, LA.

Milford E. Stevens vs. Good Tire Service, Inc. and Kumho Tire U.S.A. Case no. GD-15-13492; Judge Philip Ignelzi, 09-21-21.

Attorney for plaintiff: Daniel J. Sherry, Jr., Esquire of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C. in Philadelphia, PA. Attorney for defendant: John Polena of Walsh Barnes Collis & Zumpella, P.C.

MOTOR VEHICLE NEGLIGENCE

\$1,535,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – DEFENDANT DRIVER FAILED TO YIELD AT STOP SIGN – MULTIPLE SURGERIES – DEATH 17-DAYS AFTER SURGERIES.

Los Angeles County, CA

This motor vehicle negligence case involved the death of 59-year-old plaintiff's decedent in which the plaintiff contended that the defendant driver negligently failed to yield before turning left, causing the accident. The defendant was en route to his place of employment at a plant care company and was using his personal vehicle. The plaintiff contended, however, that the collision occurred approximately 35 minutes after the driver began being paid and that he was, therefore, acting within the scope of his employment.

The plaintiff further contended that the intersection was designed in a faulty manner and the plaintiff also named the municipality and the township engineers as defendants. These defendants maintained that they were shielded from liability by design immunity and that the plaintiff's proofs did not overcome this claimed immunity. The court dismissed the case against these defendants.

The decedent underwent a number of surgeries, including surgeries to control internal bleeding; she none-the-less succumbed 17-days after the surgery. The decedent was not working outside of the home

at the time of the accident. The decedent left a husband and 5 children, including one who was 17 at the time of the death and 4 older children. All of the children, except for the eldest, lived at home. The plaintiff would have contended that the loss of companionship, love, and guidance was great.

The employer had \$1,000,000 in primary coverage and a \$2,000,000 umbrella. The plaintiff would have contended that the loss of companionship, love, and guidance was great. The case settled prior to trial for \$1,535,000 including \$1,500,000 from the employer, the \$15,000 policy limits from the driver and \$10,000 each from the co-defendants municipality and traffic engineer (settled while appeal of their dismissal was pending).

REFERENCE

Ramirez vs. Garcia, et al. Case no. BC668662, 11-08-21.

Attorneys for plaintiff: John S. Hinman and Seth Workman of Hinman Law Group in Long Beach, CA.
Attorneys for plaintiff: Jeffrey A. Milman and Benjamin T. Ikuta of Hodes Milman Ikuta, LLP in Irvine, CA.

\$1,250,000 CONFIDENTIAL RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/MOTORCYCLE COLLISION – DEFENDANT DRIVER ATTEMPTS LEFT TURN ACROSS PLAINTIFF MOTORCYCLIST'S LANE OF TRAVEL CAUSING COLLISION – PLAINTIFF EJECTED FROM MOTORCYCLE – WRONGFUL DEATH.

Suffolk County, MA

In this motor vehicle negligence matter, the plaintiff alleged that the defendant driver was negligent in causing the collision and resulting death of the plaintiff's decedent when making a left turn in front of the defendant's motorcycle and failing to yield the right-of-way. The defendant driver denied the allegations.

The 75-year-old male motorcycle driver was operating his vehicle proceeding lawfully on the roadway where the collision occurred. The defendant driver attempted to make a left turn across the plaintiff's lane of travel without yielding the right-of-way and caused a collision where the motorcyclist was ejected from the motorcycle and died shortly after the collision from the blunt force trauma sustained in the head-on collision between the vehicles and resulting ejection.

The plaintiff brought suit against the defendant driver alleging negligence and seeking damages. The plaintiff provided evidence in the form of witness testimony that the motorcyclist was not at all at fault for the collision. The defendant driver denied the allegations and disputed causation and damages.

The parties, however, agreed to resolve the plaintiff's claim for damages in the wrongful death matter for the sum of \$1,250,000 in a confidential settlement.

REFERENCE

Estate of Motorcyclist vs. Defendant Driver. 09-01-21.

Attorney for plaintiff: Paul Leavis of Tetzl Law in Boston, MA.

\$820,000 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – PLAINTIFF CLAIMS DEFENDANT FAILED TO STOP AT TRAFFIC LIGHT AND STRUCK PLAINTIFF’S VEHICLE WITH SIGNIFICANT FORCE – DISPLACED PILON FRACTURE OF RIGHT TIBIA; LEFT ACROMIOCLAVICULAR JOINT SPRAIN – 2 SURGERIES WITH HARDWARE – PHYSICAL THERAPY.

Miami-Dade County, FL

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle after running a red light, causing the plaintiff significant, permanent injury. The defendant argued that some of the plaintiff’s injuries were pre-existing and not caused by the subject collision and that others were not permanent.

As a result of the collision, the plaintiff sustained displaced pilon fracture of the right tibia; left acromioclavicular joint sprain. The plaintiff underwent 2 ankle surgeries and multiple courses of physical therapy. He treated conservatively for his shoulder injury. The jury found in favor of the plaintiff and awarded damages in the amount of \$820,000 bro-

ken down as follows: \$400,000 in past and future medical expenses; \$420,000 in past and future non-economic damages. After offsets of \$125,623, the plaintiff’s net verdict was \$694,377.

REFERENCE

Sorondo vs. Krome BP, Inc., et al. Case no. 2020-003890; Judge Antonio Arzola, 09-21-21.

Attorneys for plaintiff: H.K. Skip Pita and Shannon DelPrado of Pita Weber DelPrado in Miami, FL.

Attorneys for defendant: Jeanne K. Spital and Richard B. Adams, Jr. of Cole, Scott & Kissane, P.A. in Miami, FL. Attorney for defendant: Joseph R. Giaramita of Hankin & Giaramita, P.A. in Davie, FL.

Attorney for plaintiff: Paul Leavis of Tetzal Law in Boston, MA.

PREMISES LIABILITY

\$3,300,000 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF PLUMBER DESCENDING STEPS IN DEFENDANT APARTMENT HOUSE SLIPS ON RECENTLY MOPPED STEPS AND REACHES FOR HANDRAIL, WHICH IS LOOSE – PLAINTIFF FALLS 6-8 STEPS – MEDIAL MENISCUS TEAR – ARTHROSCOPIC SURGERY – CERVICAL HERNIATION – FUSION SURGERY – ANKLE DERANGEMENT – ARTHROSCOPIC SURGERY.

Bronx County, NJ

In this premises liability case, the plaintiff plumber’s assistant, in his mid 40s, contended that the defendant landlord of a multiple-family apartment building negligently failed to place a warning sign cautioning against wet interior steps shortly after mopping. The plaintiff also contended that the handrail connection was loose. The plaintiff maintained that as a result, he lost his footing as he was descending the interior steps, reached instinctively for the handrail and it lifted out of its connection, causing him to fall 6-8 steps. The plaintiff asserted that he suffered a tear of the medial meniscus of the right knee which resulted in the development of arthritis despite an arthroscopic intervention, a derangement of the ankle that required an arthroscopic repair, and a cervical herniation that required a discectomy and fusion with plating. The defendant denied that any code violations occurred. The defendant further argued that the plaintiff should have used the elevator.

The plaintiff countered that workers were not permitted to use the elevator if they were carrying supplies. The plaintiff related that he was carrying a 10-inch long pipe and as such could not use the elevator.

The jury found the defendant 100% negligent and awarded \$3,300,000, including \$100,000 for past medicals bills, \$200,000 for past lost earnings, \$100,000,000 for past pain and suffering and \$2,000,000 for future pain and suffering over 15 years.

REFERENCE

Plaintiff’s engineer expert: Robert Fuchs, P.E. from Wantagh, NY. Plaintiff’s orthopedic surgeon expert: Barry M. Katzman, M.D. from Floral Park, NY. Plaintiff’s orthopedic surgeon expert: Jeffrey D. Klein, M.D. from New York, NY. Plaintiff’s podiatrist expert: Steven M. Yager, D.P.M. from Floral Park, NY.

Pagan vs. Goldberg Properties, et al. Docket no. 302599/16; Judge Wilma Guzman, 02-10-20.

Attorney for plaintiff: Candice A. Pluchino of Woodbury, NY, trial counsel to of The Levy Law Firm in New York, NY.

\$4,200,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – ROBBERY ATTEMPT – DECEDENT CHASED THROUGH APARTMENT COMPLEX – FATAL SHOOTING – WRONGFUL DEATH AT AGE 24.

Broward County, FL

The decedent, in this action for premises liability, was a 24-year-old single male who was visiting the defendant's Lauderhill Point, Florida, apartment complex when he was shot and killed by 4 armed robbers. The plaintiff alleged that the death was caused by the negligence of the defendants (apartment owners and management company) in failing to provide adequate security at the site. The defendants denied responsibility for the shooting and asserted a number of defenses.

The plaintiff alleged that security was wholly inadequate at the defendant apartment complex on the night of the subject incident in light of the long history of both violent and non-violent crime at the property. This included, but was not limited to, 3 shootings in the 3 months leading up to the decedent's murder. Despite this history of crime, the plaintiff alleged that

the apartment complex did not have functional control of access to the property nor any form of manned security.

The case was settled prior to trial for \$4,200,000.

REFERENCE

Plaintiff's forensic accounting expert: Stuart Appelrouth from Coral Gables, FL. Plaintiff's property management expert: Paul Kastes from Young Harris, GA. Plaintiff's security expert: John Villines from Cleveland, GA.

Verona Coote-Janes, as Personal Representative of the Estate of Dwight Higgins vs. Driftwood Preservation Ltd and Interstate Realty Management Co. Case no. CACE-19-006040; Judge Mily R. Powell, 11-30-21.

Attorney for plaintiff: Pedro P. Echarte, III of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Michael Flanagan of Flanagan & Bodenheimer in Coral Gables, FL.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Employer Liability

\$21,000,000 RECOVERY – EMPLOYER LIABILITY – 21-YEAR-OLD PLAINTIFF FALLS APPROXIMATELY 15 FEET WHILE WORKING AT PRUDENTIAL CENTER – SEVERED SPINAL CORD AND PARALYSIS FROM CHEST DOWN – CASE AGAINST OWNER AND GENERAL CONTRACTOR REMAINS PENDING.

Essex County, NJ

This case involved a 21-year-old plaintiff who fell from the rafters to the floor approximately 15 feet below while pulling wire for the installation of a helipad on the roof of the Prudential Center, suffering a severed spinal cord which left him paralyzed from the chest down. The plaintiff initially brought the case against Devils Arena Entertainment ("DAE"), the owner of the Prudential Center and Phelps Construction Co. Inc., the general contractor, arguing that they violated their non-delegable duty to provide a reasonably safe workplace. The general contractor hired various subcontractors including plaintiff's employer. The employer entered into contractual indemnification with the general contractor and the employer also agreed to name Phelps and DAE as an additional insured on its \$22 million insurance policy. The plaintiff initially brought against the owner of property and general contractor. The settlement only pertained to the plaintiff's claims against his employer and the case against the owner and general contractor remains pending.

The plaintiff maintained that he was not furnished with appropriate training or fall protection as he was pulling cables above a drop ceiling 15 feet off the ground. The plaintiff suffered multiple cervical, lumbar and thoracic fractures, and was rendered paralyzed below the waist.

The plaintiff would have introduced evidence of an approximate \$21,000,000 life care plan. The plaintiff would have also presented a day-in-the-life video depicting the myriad of difficulties faced by the plaintiff on a daily basis.

The case against the employer settled for \$21,000,000. The case against the owner and G.C. remains pending.

REFERENCE

Plaintiff's economist expert: Sobel Tinari Economics Group from Livingston, NJ. Plaintiff's physiatrist expert: Howard Choi, M.D. from New York, NY.

DePhillips vs. Mehl Electric, et al. Docket no. ESX-L-1371-19, 09-21.

Attorneys for plaintiff: Bruce H. Nagel and Greg Kohn of Nagel Rice, LLP in Roseland, NJ.

Labor Law

\$2,700,000 RECOVERY – SEC 241 (1) LABOR LAW – PLAINTIFF UNION PLUMBER AT RENOVATION SITE TRIPS OVER METAL FORM WHEN TRANSPORTING ACETYLENE TANK ON HAND TRUCK – MENISCAL INJURY AND TEAR OF DOMINANT ROTATOR CUFF – INABILITY TO CONTINUE AS PLUMBER.

New York County, NY

This was a 241 (1) Labor Law case involving a 27-year-old union plumber at a major renovation site who tripped over a metal form and fell to the concrete floor, suffering a meniscal injury that required surgery and dominant shoulder tear that was treated with an injection. The plaintiff contended that he will permanently be unable to work as a plumber. The plaintiff asserted that the incident occurred in a passageway and that the defendants violated provisions of the Industrial Code specifically dealing with passageways and also violated provision regarding more generally about keeping the work area free of obstructions. The defendant denied that the incident occurred in a passageway and also asserted that the materials over which the plaintiff tripped were integral part of the work performed at that location and that the defendants could not be liable.

The plaintiff maintained that he sustained a micro-trabecular fracture to his right knee for which he underwent meniscectomy surgery. The plaintiff asserted that despite the procedure, he continues to experience pain and restriction and is at risk for future arthritis. The plaintiff also asserted that he suffered a rotator cuff tear on the dominant side. The plaintiff has not worked since the incident.

The case settled before any motions were filed for \$2,700,000.

REFERENCE

Gach vs. 730 SD, LLC, et al. Index no. 151165/20, 09-21.

Attorney for plaintiff: Pawel P. Wierzbicki of Block, O'Toole & Murphy, LLP in New York, NY.

Sexual Assault

\$3,300,000 VERDICT – SEXUAL ASSAULT – MASSAGE PARLOR NEGLIGENCE – DEFENDANT'S MASSEUSE SEXUALLY ASSAULTS PLAINTIFF DURING SCHEDULED AND PAID FOR 90 MINUTE MASSAGE – NEGLIGENT HIRING, TRAINING AND SUPERVISING OF MALE MASSEUSE – SEVERE EMOTIONAL DISTRESS.

Harris County, TX

In this negligence action, the plaintiff maintained she was lawfully getting a massage at the defendant's franchise massage parlor when she was sexually assaulted by her masseuse. The defendants denied all allegations of negligence and injury.

The plaintiff maintained that the defendant massage company had a history of failing to address and correct allegations of sexual assault and was negligent in creating a condition on their premises that posed an unreasonable risk of harm to individuals such as the plaintiff.

The defendant masseuse is currently serving prison time for the criminal case associated with this civil case.

The jury found that all the defendants were negligent and apportioned liability at 50% against Mario Rubio, 15% against Massage Height Franchising, 15% MH-Alden Bridge, 10% against Eric Over and 10% against Elijah Enterprises. The plaintiff was awarded past and future compensatory damages of \$1,500,000 and punitive damages of \$1,800,000 against Massage Heights Franchising, for a total award of \$3,300,000.

REFERENCE

Danette Hagman vs. Mario Rubio, Massage Heights Franchising, Massage Heights-Alden Bridge, Elijah Enterprises, LLC dba Massage Heights-Alden Bridge and Eric Oliver. Case no. 201802795; Judge Lauren Reeder, 11-12-21.

Attorney for plaintiff: Anjali Nigam of The Nigam Law Firm in Houston, TX. Attorney for defendant: Patrick Scott of Scott Law Firm in Conroe, TX.

Truck Unloading Negligence

\$950,000 RECOVERY – TRUCK UNLOADING NEGLIGENCE – PLAINTIFF IN TRACTOR DURING FACILITY’S OFF-LOADING COMES OUT TO FIND OIL UNLOADED, BUT TANKER AIR PRESSURE SEVERELY ELEVATED – CONFUSED BY AIR PRESSURE, PLAINTIFF GOES ON TOP OF TANKER, OPENS VALVE AND BURST OF AIR KNOCKS HIM APPROXIMATELY 10 FEET TO GROUND – PILON FRACTURE – KNEE TEAR – 3 SURGERIES WITH OPEN REDUCTIONS AND INTERNAL FIXATIONS.

Somerset County, NJ

The plaintiff in this case was a career truck driver in his early 60s; he held a CDL and had a milk truck endorsement. He was making a delivery of safflower oil from California to a facility in New Jersey. During the unloading process, which can take hours, plaintiff was in the sleeper berth of his tractor. After some time, he came out of the tractor and found that the facility’s personnel had finished the unloading, but never notified him. Confused about whether there was air in the tank or the pressure relief valve gauge was broken, he loosened the bolts on the hatch on top of the tank trailer. He was perched on the tank trailer ladder at the time. A blast of air from the hatch caused him to fall from the ladder sustaining serious injuries.

The plaintiff fell approximately 10 feet. He suffered a pilon fracture to an ankle and a fracture of the femoral condyle to his other leg/knee, so both legs were affected. The plaintiff made a fairly good recovery has returned to work, but contended that he will nonetheless suffer permanent pain and restriction. The plaintiff underwent 3 surgeries with open reductions and internal fixations to stabilize the ankle and knee.

The case settled prior to trial for \$950,000, including \$650,000 from the trucking company and \$300,000 from the facility.

REFERENCE

Henning vs. Idaho Milk Transport, et al. Docket no. SOM-L-452-19, 02-21.

Attorney for plaintiff: Craig Aronow of Rebenack Aronow & Mascolo, LLP in Somerset, NJ.