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FEATURED CASES

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

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

VERDICTS BY CATEGORY

FEATURED CASES

$3,100,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – ABSENCE OF SAFETY TRAINING – PLAINTIFF ROOFER FALLS ASCENDING PALLET JACK PARTIALLY SUNK INTO SAND – SKULL FRACTURE – HEMATOMA – COMPLEX REPAIR OF SCALP DEGLOVING INJURY, LEFT-SIDED CRANIOTOMY AND CRANIOPLASTY TO RECONSTRUCT FRACTURED CALVARIUM.

Essex County, NJ

This action involved a plaintiff roofer who was working on a residential construction project. The plaintiff contended that the defendants owner, G.C. and subcontractor were liable for the failure to provide safety training or to have the workers follow the regulations for use of a pallet jack which the plaintiff was using. The plaintiff had initially placed the pallet jack soft ground and one side partially sank into the ground. The plaintiff was advised that this configuration was not safe and carried the pallet jack to the other side of the project where he placed the pallet jack in a similar manner and climbed. The pallet jack gave way, and the plaintiff fell. The plaintiff suffered a closed head injury and a TBI which caused extensive cognitive deficits in which the plaintiff is at danger if left alone. The plaintiff contended that he also suffered extensive facial fractures and has undergone a number of surgeries which have provided extensive cosmetic improvement.

The evidence disclosed that the plaintiff placed the pallet jack into the sand that one side sunk. The plaintiff was told such use was dangerous. He then went to the other side of the project. Although one side again sunk in the sand, he began to climb. The plaintiff fell while ascending the ladder jack scaffold carrying a bundle of roofing shingles. The plaintiff asserted that he had no safety training and maintained that if he had been taught properly, the incident would not have occurred. The plaintiff also established that the configuration violated the GC's rules.

The plaintiff suffered seizures at the scene and was airlifted to the where he was diagnosed with an epidural hematoma overlying the left frontal lobe. He was also suffering from multiple facial fractures including (a) a nondisplaced fracture of the left frontal bone, (b) a nondisplaced fracture of the inferior and lateral walls of the right orbit, (c) a depressed fracture of the right zygomatic arch, (d) a nondisplaced fracture of the left sphenoid bone extending to the temporomandibular joint and superiorly into the left temporal and left frontal bones. The plaintiff required incision and debridement with complex repair of a right scalp degloving injury, a left-sided craniotomy for evacuation of his epidural hematoma and a cranioplasty to reconstruct the fractured calvarium. The plaintiff was hospitalized for several months.

The plaintiff contended that although he made a good cosmetic recovery, he will permanently suffer very significant cognitive deficits. The plaintiff contended that he is permanently unemployable. The plaintiff contended that he will be required to have help around the house.

The defendant maintained that the level of cognition before the accident was relatively low and that the consequences of the head trauma were much less significant than would otherwise be expected. The plaintiff would have countered that in view of the pre-existing limitations of the plaintiff, the impact of the deficits were all-the-greater.

The case settled prior to trial for $3,100,000.

REFERENCE

Plaintiff's dental and facial fractures expert: Omar F. Suarez, D.M.D. from New York, NY. Plaintiff's economist expert: Michael Soudry, MBA from East Hanover, NJ. Plaintiff's life care planning expert: Harold Bialski from Paramus, NJ. Plaintiff's OSHA expert: Thomas Mizel, CSP from Houston, TX. Plaintiff's brain injury expert: Brian Greenwald, M.D. from Edison, NJ.

Caguana Guaman vs. Princton, et al. Docket no. ESX-L-5802-17.

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

COMMENTARY

The plaintiff was able to command this settlement; notwithstanding the evidence that he was warned a short time earlier of a similar hazard in which he placed the pallet jack into the sand and one side sank. The plaintiff stressed that there was no required safety training and would have argued that if these concerns had been formally addressed, the chances of a similar accident occurring would have been much less. Additionally, it is felt that it would be unlikely to the jury to decline to render an award to a worker suffering such a trauma on the job.

Regarding damages, the plaintiff emphasized that because of the hazards, including the danger of cooking, he cannot be left alone.

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$1,900,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – PLAINTIFF DRIVER CLAIMS BRIEF LOSS OF CONSCIOUSNESS AND NEUROPSYCHOLOGICAL DEFICITS REQUIRING NEUROCOGNITIVE THERAPY – 5 LUMBAR DISC INJURIES – MICRODISCECTOMY – 4 CERVICAL DISC INJURIES – FUTURE CERVICAL SURGERY.

Essex County, NJ

In this action for motor vehicle negligence, the plaintiff driver, age 36 at the time and currently age 41, contended that the defendant driver, traveling in the opposite direction, lost control and traveled over the double-yellow line, causing the head-on collision. The plaintiff maintained that she suffered a brief loss of consciousness and a significant closed head injury with permanent deficits involving short-term memory and concentration. The plaintiff also maintained that she suffered 2 lumbar annular tears, and 3 lumbar herniations as well as 4 cervical herniations. The plaintiff has already undergone a lumbar microdiscectomy, and will require future cervical surgery. The plaintiff also contended that despite neurocognitive therapy, she will permanently suffer difficulties with short-term memory and concentration. There was no significant dispute regarding liability.

The evidence disclosed that the plaintiff's airbag deployed upon impact and the plaintiff lost consciousness for a brief period. The plaintiff's neurosurgeon would have related that he believed that the closed head injury and associated deficits would benefit from neurocognitive therapy and the plaintiff's neuropsychologist maintained that the plaintiff will suffer such deficits permanently, despite such therapy. The plaintiff's neurosurgeon would have also testified that the despite the lumbar microdiscectomy, the plaintiff will suffer permanent symptoms. According to the expert, the plaintiff will probably require cervical surgery in the future.

The defendant denied that the plaintiff suffered the claimed disc injuries in the accident and would have asserted that the plaintiff suffered degenerative disc disease only. The plaintiff would have countered that the plaintiff had no prior symptoms or treatment. The plaintiff would have argued that in view of this history and the youthful age of the plaintiff, the defense position should be rejected.

The plaintiff held an administrative position prior to the accident. The plaintiff, who has not worked since the incident, contended that she cannot sit or stand for extended periods and maintained that she is permanently unemployable. The defendant asserted that the plaintiff could return to work and that the plaintiff's income claims should amount to approximately $6,000.

The case settled prior to trial for $1,900,000.

REFERENCE

Fan vs. Kern. 11-09-21.

Attorney for plaintiff: Sean M. Mahoney of Stathis & Leonardis in Edison, NJ.

COMMENTARY

Plaintiff's counsel is of the opinion that the plaintiff made a highly believable presentation and that this factor significantly expedited the ability of the plaintiff to resolve this case. Additionally, the plaintiff argued that in view of her relatively youthful age and the absence of any prior symptoms or treatment, the defendant's position that the alleged disc injuries were degenerative in nature only, should be rejected. Regarding the alleged continuing cognitive deficits, the evidence that the plaintiff suffered a brief loss of consciousness at the scene provided additional persuasiveness to the plaintiff's case. Finally, the plaintiff stressed, on the disputed income claim, that she can no longer sit or stand for extended periods; arguing that in light of this factor, the plaintiff's economic contentions should be accepted.

$675,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – PLAINTIFF CROSSWALK PEDESTRIAN STRUCK BY DEFENDANT DRIVER WHOM PLAINTIFF CONTENDS RAN STOP SIGN – FRACTURES TO ANKLE AND TIBIAL PLATEAU – SURGERY – PERMANENT PAIN AND LIMITATIONS.

Hudson County, NJ

In this action for motor vehicle negligence, the plaintiff pedestrian, age 33 at the time, contended that he sustained serious permanent injuries after he had crossed approximately 1/2 of the crosswalk of a one-way street, and the defendant driver negligently failed to stop at a stop sign, striking him. The defendant denied that the plaintiff's version was accurate. The defendant asserted that the plaintiff ran in front of his car shortly before the intersection and that he could not avoid the collision.

There was no independent eyewitness testimony. The accident occurred at approximately dusk. The defendant maintained that the combination of the lack of ambient lighting and the dark color of the plaintiff's clothes contributed to his not seeing the plaintiff earlier.

The plaintiff suffered an ankle fracture which required surgery. The plaintiff also suffered a fracture of the tibial plateau on the same leg. The plaintiff underwent surgery for this injury as well. The plaintiff contended that he will permanently suffer pain and limitations which are heightened upon spending extensive time on his feet.

The plaintiff was able to return to his job as a department manager in a retail store and asserted that the pain and swelling is heightened at the end of the day.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $675,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Jersey City, NJ.

Rojas vs. Openner. Docket no. HUD-L-2704-18.

Attorneys for plaintiff: Barry Eichen and Joseph Maradondo of Eichen Crutchlow Zaslow, LLP in Edison, NJ.

DEFENDANT'S VERDICT – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER NEGLIGENCE – REAR END COLLISION – DEFENDANT TRUCKER ALLEGEDLY STRIKES PLAINTIFF TRUCKER IN REAR – TBI AND PERMANENT COGNITIVE DEFICITS – CASE TRIED TWICE AND APP DIV HOLDS DEFENDANT SHOULD HAVE BEEN ABLE TO INTRODUCE EVIDENCE THAT FINDING OF FAULT BY DEFENDANT TRUCKING COMPANY WAS PRELIMINARY.

Ocean County, NJ

This was a motor vehicle negligence action involving a rear end collision between 2 tractor-trailers on an Interstate Highway. The plaintiff claimed that he suffered a closed head trauma and a TBI. The jury in the first trial found for the defendant 51%-49%. The trial court excluded evidence (characterized by the defendant as preliminary), in which the defendant's then Safety Dep't Manager placed the blame on the defendant. The plaintiff appealed the initial no cause and during the appeal, The App Div held that the defendant should have been permitted to present evidence that this finding was preliminary and that further investigation led to defense finding that plaintiff caused the accident.

The evidence revealed that the truckers collided on Route 78 near Clinton at around 4:00 a.m. in June. The plaintiff indicated as he had for 3 years, he was driving his normal route from Newark Airport to Allentown, Pennsylvania. The defendant denied that he was negligent and contended that the all of a sudden, he was confronted the presence of the defendant's truck in the right travel lane and although he attempted to move to the left, another vehicle prevented him from doing so. The defendant argued that the most likely scenario was that the defendant drifted to the right and into the accelerator lane, and prematurely moved to the right travel lane without making adequate observations, causing the accident.

The plaintiff maintained that he suffered a TBI and cognitive deficits that are permanent in nature. The defendant asserted that any difficulties were unrelated and caused by Alzheimer's disease. The plaintiff had no previous diagnosis of Alzheimer's disease. The defendant contended that the jury should consider that the plaintiff had been taking medication used to combat the disease and that white matter on the brain was caused by Alzheimer's.

At the second trial, the plaintiff introduced evidence that the then Safety Department manager found that the defendant had caused the accident and discharged him. The defendant produced this individual who indicated that who testified that at the time the original decision was made, creating a sudden emergency. The defense witness testified that had he been aware of the exculpatory evidence, he would have exonerated his driver.

The jury in the second trial found that the plaintiff was 40% negligent and the defendant was 60% negligent.

REFERENCE

Plaintiff's accident reconstruction expert: James Crawford from Port St. Lucie, FL. Defendant's expert: Robert Lynch from Abington, PA.

Hassan vs. Williams, et al. Docket no. OCN-L-0213-16.

Attorney for defendant: Jerald F. Oleske of Oleske & Oleske, LLP in Stirling, NJ.

COMMENTARY

The decision of the APP. Div to allow in such preliminary findings of fault may have otherwise have had a chilling effect on the trucking industry which is required by State and Federal regulations, as well as union rules, to promptly make preventability decisions, often before full investigations can be conducted. The jury, however, found that the defendant was primarily responsible for the collision. In this regard, the jury in the retrial apparently found that the defendant trucking company's preliminary determination of fault was just that-preliminary-and did not stand up to the forensic evidence established at trial.

$550,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – DEFENDANT SNOW REMOVAL CONTRACTOR ALLEGEDLY PERFORMS SUBSTANDARD WORK WHEN CLEARING PARKING LOT AFTER STORM – SLIP AND FALL ON ICE PATCH – 2 ELBOW TEARS – BICEPS TENDON TEAR – SURGERY – ALLEGED AGGRAVATION OF ROTATOR CUFF INJURY WHICH REQUIRED PRIOR SURGERY.

Middlesex County, NJ

In this premises liability action, the plaintiff, age 66 at the time of the settlement, contended that the defendant snow removal contractor did a poor job when it did work at the parking lot following a snow fall the prior day. The plaintiff maintained that as a result, he slipped and fell on an ice patch sustaining multiple injuries. The defendant asserted that the work was completed properly and that the main cause of the incident was the comparative negligence of the plaintiff who failed to avoid the ice path.

The plaintiff would have countered that the ice patch was obscured by a dusting of snow and that although there was not sufficient snow to require the defendant to visit under its contract, the evidence was highly probative on the issue of comparative negligence. The plaintiff asserted that he suffered 2 elbow tears and a biceps tear on the dominant arm which will cause permanent pain and limitations despite surgical intervention.

The plaintiff also contended that he suffered an aggravation of a rotator cuff tear on the same side which had required prior surgery. The defendant denied that the alleged shoulder injury was related and contended that any shoulder difficulties were pre-existing. The plaintiff pointed out that his shoulder surgery was 8 years earlier.

The case settled prior to trial for $550,000.

REFERENCE

Plt in his mid-60s vs. Deft snow removal contractor.

Attorney for plaintiff: Frank Lazzaro of Lutz Shafranski Gorman & Mahoney in New Brunswick, NJ.

$475,000 RECOVERY ($500,000 POLICY) – DOG ATTACK – NEGLIGENT FAILURE OF DEFENDANT NEIGHBORS TO CLOSE GATE DESPITE HISTORY OF LARGE DOGS ATTACKING NEIGHBORS – BILATERAL KNEE INJURIES REQUIRING ARTHROSCOPIC SURGERY – LUMBAR AND CERVICAL HERNIATIONS – SURGERY – INFECTION FOLLOWING LUMBAR SURGERY.

Somerset County, NJ

In this case, the plaintiff in her late 60s contended she sustained injuries when as she was walking up her sloped driveway, she was knocked down the 2 large dogs owned by the defendant's, her neighbors. The plaintiff maintained that despite the history of the dogs attacking other neighbors, the defendants negligently failed to keep the gate closed.

The plaintiff suffered bilateral knee injuries which will cause permanent pain and a relatively slight limp permanently. The plaintiff also suffered cervical and lumbar herniations that required surgery. The plaintiff maintained that she has been left with permanent pain and limitations. The plaintiff also suffered an infection following the lumbar surgery that ultimately substantially resolved.

The defendant had $500,000 in coverage. The case settled approximately one year after the incident for $475,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ.

DiStafano vs. Chalker. Docket no. SOM-L-154-22, 11-25-22.

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

Verdicts By Category

CONTRACT

$15,000 VERDICT

Contract – Plaintiff attorney representing defendant on criminal charges seeks additional $100,000 fee under quantum meruit theory – Case tried on Zoom.

Sussex County, NJ

This case was brought by an attorney who had represented the defendant twice in criminal charges that resulted in hung juries. The plaintiff had already received $196,000. The plaintiff asserted that he did not obtain a retainer for anything above that because he believed the defendant would be going to prison and that there was no point of entering into an additional retainer agreement.

The plaintiff, who testified as his own expert in addition to being the attorney, proceeded under a quantum meruit theory and sought an additional $100,000. The defendant denied that the plaintiff's claims should be accepted, and maintained that if the parties contemplated a greater fee, it would have been in a retainer agreement.

The jury found for the plaintiff and awarded $15,000. The case was tried entirely on Zoom.

REFERENCE

Plaintiff's attorney expert: George T. Daggett, Esq. from Sparta, NJ.

Daggett vs. DeLorenzo. Docket no. SSX L 142-16; Judge William McGovern, 07-21.

Attorney for plaintiff: George T. Daggett of Law Office of George T. Daggett in Sparta, NJ.

DISABILITY DISCRIMINATION

$100,000 RECOVERY

Disability discrimination – Violation of Americans with Disabilities Act – Worker allegedly fired because of Autism Spectrum Disorder.

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

The U.S. Equal Employment Opportunity Commission (EEOC) brought this lawsuit against the defendant, with owns numerous McDonald's franchises in New Jersey. The plaintiff claimed that the defendant violated the Americans with Disabilities Act when it fired a worker because of his Autism Spectrum Disorder.

According to the EEOC's complaint, the defendant fired an employee who worked at several McDonald's restaurants for 37 years because of his autism spectrum disorder. The plaintiff argued that the employee's performance remained excellent throughout his decade-long employment at the Deptford, New Jersey McDonald's and he received numerous awards and accolades acknowledging his excellent job performance. However, 2 months after the defendant assumed ownership of this McDonalds, it abruptly terminated the employee from his position as grill cook.

The plaintiff maintained that the defendant's conduct violated the Americans with Disabilities Act (ADA), which requires employers to provide reasonable accommodations to employees with disabilities and prohibits employers from taking adverse employment actions based on an individual's disability or need for accommodations.

The case was settled with the defendant agreeing to pay the former employee $100,000 in monetary relief. In addition, the 2-year consent decree settling the suit provides for systemic relief intended to prevent further disability discrimination, periodic reporting to the EEOC, and training for all management personnel in responding to reasonable accommodation requests.

REFERENCE

EEOC vs. JDKD Enterprises, LP. Docket no. 1:21-cv-16441; Judge Joseph H. Rodriguez, 12-16-22.

Attorney for plaintiff: Joshua Zugerman of EEOC in Philadelphia, PA.

DISCRIMINATION

$15,000 RECOVERY

Discrimination – Harassment – White, male plaintiff contends he has been harassed with derogatory racial terms and accusations of drug use – Plaintiff claims reports of harassment ignored by management – Defendant denies harassment or retaliation.

Middlesex County, NJ

In this LAD case, the plaintiff employee asserted that the defendant and its employees and managers engaged in racial harassment and perception of disability harassment against the plaintiff. The defendant denied the plaintiff's claims of harassment and denied that management for the defendant company aided or abetted any harassment.

The plaintiff commenced employment with the defendant transportation company as an office manager and driver on August 1, 2014. The plaintiff is a Caucasian man. Beginning in February 2016, the plaintiff claimed he had been subjected to ongoing and regular harassment because of his race and because of perceptions that he is disabled, to wit, the false perception, according to the plaintiff, that he was a drug addict. The plaintiff claimed that he had been addressed with derogatory racial terms, subjected to profanity, and falsely accused of using drugs while at work. The plaintiff argued that the harassment was engaged in by employees of the defendant and that, although he had made multiple complaints of the harassment to the defendant managers of the company, the defendants failed to stop the harassment. The plaintiff maintained that the actions of the defendants aided, abetted and ratified the harassment and discrimination against the plaintiff.

The plaintiff argued that the defendant company was further responsible for the harassment because the plaintiff notified members of upper management of the harassment and they failed to take prompt and effective remedial measures to end the harassment. The plaintiff engaged in protected conduct each and every time he complained of the racial and other harassment to which he was subjected. After engaging in such protected activity, the plaintiff was subjected to retaliatory harassment by the defendant company and the individual defendants when he was forced to endure multiple unnecessary and unwarranted drug testing events. As a result of the defendants' conduct, the plaintiff claimed he was forced to suffer emotional distress and harm. Because the discriminatory harassment and retaliatory harassment were knowing, intentional and purposeful, and undertaken with a wanton and willful disregard for the rights of the plaintiff, and were participated in or willfully ignored by members of upper management, the plaintiff argued that punitive damages were warranted.

The defendants counterclaimed for tortious interference, malicious prosecution, trade libel, defamation, unjust enrichment, unfair compensation, and intentional infliction of emotional distress. The defendants put forth that the plaintiff himself engaged in harassment of other employees and exhibited worrisome and inappropriate behaviors in the workplace such as openly telling clients and other employees that he was "connected to law enforcement" and that he could search the criminal records of other employees and clientele before they entered his vehicle during work. The defendants also claimed that the plaintiff would send employees with whom he had conflicts to "phantom" pick-ups where the client had already cancelled their pick-up and would tamper with GPS equipment in the vehicles. The defendants maintained that the plaintiff was caught changing the schedules of employees in a manner that would send drivers many miles out of a region or into a pick-up and drop-off pattern that was inefficient in order to cause them annoyance and the defendant company paid by the hour so inefficient routing cost the company money. The plaintiff, according to the defendants, engaged in the very behaviors he asserted were perpetrated against him. He engaged in "trash talk" and the spreading of rumors about other employees having served prison time or being drug addicts, despite warnings from the defendants to stop. Further, within a period of 14 months the plaintiff had three accidents with company vehicles for which he was found at fault yet did not pay for repairs.

The parties settled the matter prior to trial, on January 6, 2020, with an agreement for the defendants to pay the plaintiff $15,000 via a monthly payment plan of $1,000 per month with the total to be paid within 15 months. The parties agreed to exchange formal resolution documents.

REFERENCE

Campbell vs. Ambi Trans, LLC, et al. Docket no. L-005698-17; Judge Patrick J. Bradshaw.

Attorney for plaintiff: Daniel T. Silverman of Costello & Mains, LLC in Mount Laurel, NJ. Attorney for defendant: Lorraine M. Medeiros of Law Offices of Lorraine M. Medeiros, Esq., LLC in Newark, NJ.

EMINENT DOMAIN

$964,000 VERDICT

Eminent domain – Taking of beach easement – Plaintiff DEP contends no loss because Homeowners' Association can continue to sell badges – Homeowners' Association points out that it can no longer earn profit from badges.

Ocean County, NJ

This was an eminent domain case involving an easement for public access to a beach which the DEP took from the Homeowner's Association in 2017 in order to build a sand dune. The DEP's appraiser estimated that the value before the taking approximated $880,000 and the Association's expert appraiser estimated approximately $1,500,000. The regulations permitted the Association to continue to sell beach badges and the DEP denied that the taking diminished the value. The Association countered that although it could continue selling badges, it was prohibited from making a profit and if the Association was to sell the property on the open market, the value would be significantly less because of this encumbrance.

The jury found the value of the property before the taking was $1,205,000 and that the value after was $241,000, awarding $964,000.

REFERENCE

Defendant's real estate appraiser (for owner) expert: Robert Gagliano from Little Silver, NJ.

NJ DEP vs. Bay Point Dunes Homeowners' Assn. Docket no. OCN-L-2998-17; Judge Mark Troncone, 09-27-22.

Attorney for defendant owner: Peter H. Wegener of Bathgate Wegener & Wolf in Lakewood, NJ.

FRAUD

$25,000 AND PERFORMANCE SETTLEMENT

Fraud – Plaintiff claims defendant fraudulently entered into loan agreement for $2,350,000 with plaintiff and then failed to repay loan – Defendant claims plaintiff owed $500,000, not $2,350,000 – Parties agree to sale of property with $25,000 proceeds to plaintiff and return of Mercedes Benz vehicle to plaintiff.

Essex County, NJ

In this fraud and breach of contract case, the plaintiff asserted that the defendant engaged in racketeering when she made misrepresentations in order to coerce the plaintiff to lend her money, jewelry and a car which she then did not repay. The defendant denied the claims by the defendant and asserted that the aggregate value of cash and jewelry lent by the defendant to the plaintiff in the first loan was at most $100,000 rather than $900,000 as claimed by the plaintiff.

The plaintiff contended that, beginning in early 2017, the defendant made multiple urgent requests for money and the defendant lent her cash and jewelry with an aggregate approximate value of $900,000. On April 7, 2017, the defendant provided to the plaintiff an amended promissory note in the principal sum of $2,350,000.

The plaintiff claimed that the defendant falsely and fraudulently stated to the plaintiff that she had won a very large cum of money while gambling in an Atlantic City casino and that she was then actively engaged in receiving the disbursement of those funds via an attorney in New York. The plaintiff later learned that said attorney did not represent the defendant and knew nothing about the supposed gambling winnings. Per the promissory note, the defendant agreed to repay the loans in full no later than November 30, 2017.

The plaintiff accepted the written repayment representation and other assertions of the defendant and reasonably relied on those representations. The defendant failed to repay the loans in part or in whole. On December 14, 2017, the defendant tendered a mortgage note and mortgage to the plaintiff in the amount of $25,000 as a supposed good faith effort to begin to cure her default and repay the debt. The mortgage note was purportedly secured by a mortgage on a property in Livingston which the defendant averred that she owned. It was later determined that the property did not nor had ever owned the property.

The plaintiff brought suit claiming that the plaintiff committed fraud, breach of contract, and violation of the New Jersey Racketeer Influenced and Corrupt Organizations Act by virtue of her having worked in concert with one or more other persons to develop an enterprise and scheme to defraud people she met in Atlantic City casinos and that the plaintiff enacted this scheme on the defendant causing her to sustain damages in the loss of $2,350,000.

The defendant denied that the promissory note submitted by the plaintiff was not a true copy and that the true promissory note was for $500,000, not $2,350,000. The defendant also claimed that the mortgage note to which the plaintiff referred was incorrect and that she replaced it with a corrected version including the defendant as a first party on the

mortgage. The defendant made a counterclaim that the plaintiff acted in bad faith, fraud and engaged in a frivolous lawsuit pursuant to the racketeering charge, and provided false documents in support of the subject lawsuit.

The parties resolved the matter in dispute at mediation on October 16, 2019. The parties agreed to terms wherein the matter was dismissed and both parties' claims were satisfied by the plaintiff receiving $25,000 from the sale of the property originally proffered in December 2017 and the defendant's return to the plaintiff of a 2007 Mercedes Benz 450.

REFERENCE

Tolentino vs. Espiritu. Docket no. L-001071-18; Judge Robert H. Gardner.

Attorney for plaintiff: Kenneth W. Thomas of Lanza Law Firm in South Plainfield, NJ. Attorney for defendant: Terance J. Bennett, Esq. in Port Elizabeth, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$25,000 RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Left turn collision – Multilevel thoracic and lumbar fusion for 2 burst fractures at T7-L5; concussion and fractured ribs – Chiropractic care, physical therapy, pain management and ongoing psychiatric therapy.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff motorcyclist asserted he sustained serious injuries when the defendant driver struck him in the roadway while the defendant was making an illegal left turn. The defendant driver denied liability, claiming that the plaintiff appeared suddenly and struck the defendant's vehicle, thus causing the accident.

On June 30, 2016, the plaintiff was operating a motorcycle traveling southbound in the left lane of Route 27 in Franklin. The defendant was operating a motor vehicle making a left hand turn from the Franklin Town Center strip mall parking lot onto Route 27 and struck the plaintiff's motorcycle. The plaintiff claimed the defendant negligently made an illegal left turn onto the roadway and crossed the plaintiff's lane of travel when it was not safe to do so, causing the accident that injured the plaintiff. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was taken from the scene by ambulance and treated at the hospital for multilevel thoracic and lumbar fusion for 2 burst fractures T7-L5; concussion and fractured ribs. The plaintiff underwent lumbar fusion surgery the following day and was subsequently treated with chiropractic care, physical therapy, pain management and psychiatric therapy. The plaintiff did not return to work since the subject accident. The plaintiff claimed a medical lien in the amount of $135,134 at the time of discovery with ongoing treatment.

The defendant denied that there was any indication that a driver could not make a left turn out of the parking lot and that he did not knowingly make an illegal turn. The plaintiff did, however, plead guilty to a charge of careless driving in response to a ticket issued regarding the subject collision, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties settled the matter prior to trial in the amount of the defendant driver's bodily injury coverage limit of $25,000.

REFERENCE

Perjesy vs. Tufaro, et al. Docket no. L-002755-17; Judge Michael V. Cresitello, Jr..

Attorney for plaintiff: Barry R. Eichen of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorneys for defendant: Jonathan Angelo and Thomas Schoendorf of Law Offices of Robert A. Raskas in Marlton, NJ.

Auto/Pedestrian Collision

$200,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Crosswalk plaintiff struck by left turning defendant driver – Fracture of left wrist and left wrist ligament damage – 2 surgeries.

Middlesex County, NJ

In this motor vehicle negligence action, the plaintiff in her late 40s contended that the defendant driver failed to make adequate observations as she turned left (from behind her) striking her, knocking her down and causing injury, after she crossed most of the crosswalk.

The defendant maintained that the plaintiff failed to pay adequate attention and was comparatively negligent.

The plaintiff suffered a fracture and a torn ligament to the left non-dominant wrist. The plaintiff underwent an initial ORIF and she required a second surgery to remove hardware.

The plaintiff claimed that despite such interventions, she will permanently suffer some pain and restriction. The defendant contended that the injuries substantially resolved.

The plaintiff made no income claims.

The defendant had $250,000 in coverage. The case settled after the completion of discovery for $200,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: John Smith, M.D. from East Windsor, NJ. Defendant's orthopedic surgeon expert: Warren Hammerschlag, M.D. from Maywood, NJ.

Viray vs. Persaud. Docket no. Mid-L-2387-19, 08-01-21.

Attorney for plaintiff: J. Silvio Mascolo of Rebenack, Aronow & Mascolo in New Brunswick, NJ.

Intersection Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Intersection collision – Failure to obey stop sign – Cervical herniation with surgery.

Morris County, NJ

In this action or motor vehicle negligence, the 27-year-old plaintiff driver contended that the defendant driver negligently failed to obey a stop sign as the defendant exited a highway, causing the collision. The plaintiff asserted that she sustained a herniation at C-6-7.

The plaintiff maintained that after conservative care was inadequate, she underwent fusion surgery with instrumentation. The plaintiff maintained that she will nonetheless suffer permanent symptoms.

The plaintiff was subject to the verbal threshold.

The case settled prior to trial for the $100,000 policy.

REFERENCE

Plaintiff's chiropractor expert: Jay Brecker, D.C. from Dover, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ.

Stank vs. Zavala. Docket no. MRS- L-1541-21, 06-14-22.

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

SUMMARY JUDGMENT DISMISSAL

Motor vehicle negligence – Intersection collision – Plaintiff passenger brings suit against defendant driver of plaintiff's vehicle and co-defendant driver of second vehicle that ran red light and collided with plaintiff's vehicle – Disc herniation at C4-5; disc bulge at L5-S1; and L5 radiculopathy confirmed on EMG – Non-binding arbitration assigns 100% liability to co-defendant driver of second vehicle and 0% to defendant driver of plaintiff's vehicle.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, a front-seat passenger in a vehicle operated by the first defendant driver, asserted that the first and second defendant drivers collided in an intersection, causing the plaintiff significant, permanent injury. The defendant driver of the second vehicle failed to answer or appeared and was found in default in this action.

On July 31, 2015, the plaintiff was a passenger in a vehicle traveling on Fabyan Place at the intersection of Nye Avenue in Newark. The defendants were the driver of the plaintiff's vehicle and the driver of a second vehicle that collided in the intersection. The plaintiff contended that the defendants negligently operated their vehicle such that they caused a collision with each other. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained disc herniation at C4-5; disc bulge at L5-S1; and L5 radiculopathy confirmed on EMG.

The defendant driver of the plaintiff's vehicle argued that the co-defendant driver of the second vehicle was the only party at fault as he had failed to stop at a red light and the defendant driver of the plaintiff's vehicle was proceeding through the intersection on a green light with the right-of-way. The defendant driver of the plaintiff's vehicle moved for summary judgment.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the co-defendant driver of the second vehicle and 0% to the defendant driver of the plaintiff's vehicle. Following arbitration and prior to trial, the defendant driver of the plaintiff's vehicle moved for and was granted summary judgment dismissal.

REFERENCE

Coley-Hughes vs. Shipman, et al. Docket no. L-008472-16; Judge Garry J. Furnari.

Attorney for plaintiff: John J. Pisano, Esq. in Cranford, NJ. Attorney for defendant driver of plaintiff's vehicle: A. Charles Lorenzo of Tango, Dickinson, Lorenzo, McDermott & McGee, LLP in Millburn, NJ.

Left Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Left turn collision – Herniated cervical disc at C2-3 and C4-5 effacing thecal sac; lumbar disc bulges and carpal tunnel syndrome – Lost wage claim of $38,914 – Parties settle after arbitration.

Burlington County, NJ

This was motor vehicle negligence case which arose on January 6, 2016 when the plaintiff was the restrained driver of a vehicle traveling eastbound on New Brooklyn Road in Winslow. The defendant was operating her vehicle traveling westbound on New Brooklyn Road. The plaintiff asserted that the defendant negligently attempted a left turn into a driveway while failing to yield to the plaintiff's oncoming vehicle causing a collision in which the plaintiff sustained serious injuries. The defendant stipulated liability but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent.

As a result of the collision, the plaintiff sustained herniated cervical disc at C2-3 and C4-5 effacing the thecal sac; lumbar disc bulges; and carpal tunnel syndrome. The plaintiff asserted wage loss of approximately $38,914. The plaintiff presented a certification of permanency from his treating chiropractor indicating that the plaintiff's cervical, lumbar and thoracic injuries from the subject accident had not healed to function normally and likely would not. The defendant's IME denied permanency related to the subject collision.

Following arbitration that found the defendant 100% liable and recommended $40,000 in damages, the parties settled for an undisclosed sum.

REFERENCE

Murray vs. Hollingshead, et al. Docket no. L-002766-17.

Attorney for plaintiff: Robert LaRosa of LaRosa Law, P.C. in Moorestown, NJ. Attorney for defendant: Anthony Young of Parker Young & Antinoff, LLC in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Left turn collision – Plaintiff, making left turn across traffic, waved ahead by unknown driver and claims defendant, traveling in on shoulder, passes unknown driver and collides with plaintiff – Defendant denies traveling on shoulder and claims plaintiff at fault for collision – Concussion, headaches, cervical and lumbar herniations – Plaintiff recovers $22,500 per high/low agreement.

Gloucester County, NJ

This motor vehicle negligence case arose out of a 2 vehicle automobile accident that occurred on April 15, 2016 on Delsea Drive in Franklin Township. The plaintiff maintained that she sustained permanent injures which will require surgery as a result of the collision. The defendant denied liability and contested the plaintiff's damages.

Just prior to the impact occurring, the plaintiff, a 29-year-old woman, was a restrained driver who was traveling southbound on Delsea Drive. Her intention was to enter the McDonalds that was located to her left, on the opposite side of Delsea Drive. Traffic was stopped in the opposing lane of Delsea Drive, for the nearby red traffic light. An unidentified operator of a vehicle stopped and waived the plaintiff forward, permitting her to pass in front of that vehicle. As the plaintiff began to make her left turn, in front of the unidentified vehicle, a vehicle being operated by the defendant suddenly, and unexpectedly, approached the plaintiff as it sped down the shoulder of Delsea Drive and around the unidentified driver who had stopped to let the plaintiff make a left turn. The defendant driver negligently passed the unidentified vehicle on the right and then crashed into the front passenger side of the plaintiff's vehicle, with the front driver-side of his Mercedes. The plaintiff's vehicle began to spin and her body was thrown aggressively about the vehicle, causing her face, head and body to strike the deployed air bag and interior of her car.

The plaintiff claimed permanent injuries as a result of the collision, including traumatic injury to the head, neck, and lumbar spine, a concussion, headaches, and cervical and lumbar herniations. The plaintiff was recommended for cervical fusion, lumbar laminectomy and wrist surgeries totaling approximately $80,000.

The defendant asserted that the plaintiff was at fault for making a left turn across lanes of traffic without ascertaining that it was safe to do so. The defendant denied that he was traveling on the shoulder of the road and pointed to the police report which indicated that the plaintiff stated to officers at the scene that she did not see the defendant in the northbound lane. Additionally, the defendant asserted that the plaintiff struck his vehicle not vice versa as claimed by the plaintiff. The defendant also argued that the plaintiff's surgeries were recommended in the future but challenged the medical necessity of the surgeries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $275,000. 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 minimum of $22,500 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the defendant thus the plaintiff recovered $22,500 in damages.

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REFERENCE

Labree vs. Fransko. Docket no. L-001392-17; Judge Samuel J. Ragonese.

Attorney for plaintiff: Catherine J. Mesiano of Grungo Colarulo in Cherry Hill, NJ. Attorney for defendant: Queen N. Stewart of Law Offices of Styliades and Jackson in Marlton, NJ.

Rear End Collision

$750,000 RECOVERY

Motor vehicle negligence – Rear end collision – Lumbar and cervical herniations – Lumbar fusion – Light impact damage – Plaintiff pianist unable to continue volunteer work.

Bergen County, NJ

In this action for motor vehicle negligence, the 54-year-old plaintiff contended that the defendant driver struck her in the rear while she was stopped. The plaintiff maintained that as a result, she suffered lumbar and cervical herniations that were confirmed by MRI. The defendant denied that the plaintiff suffered the claimed injuries in the accident and pointed out that there was very little property damage.

The plaintiff countered that the fact that vehicles were built to keep actual property damage to a minimum did not reflect that a driver would be likely to be twisted and thrown about in such a manner that the claimed herniations occurred. The plaintiff asserted that treatment modalities, including chiropractic care and injections were insufficient and that she required a lumbar fusion. The plaintiff maintained that despite the surgery, she will suffer extensive pain and limitation.

The plaintiff, who is a pianist, asserted that she can no longer continue her volunteer work. The plaintiff made no income claims.

The defendant had $300,000 in primary coverage and a $2,000,000 umbrella. The case settled prior to trial for $750,000.

REFERENCE

Plaintiff's neurosurgeon expert: Edward Scheid, M.D. from Morristown, NJ. Plaintiff's pain management expert: David Adin, D.O. from Woodbridge, NJ.

Park vs. Weiss. Docket no. BER-4278-19, 08-22.

Attorney for plaintiff: Jae Lee of Law Offices of Jae Lee in Ft, Lee, NJ.

$175,000 COMBINED RECOVERY

Motor vehicle negligence – Rear end collision – Elderly wife and husband struck in rear – Plaintiff husband/passenger claims concussion and cervical herniation – Plaintiff driver/wife claims exacerbation of pre-existing cervical and lumbar degenerative disc disease as well as spondylosis.

Essex County, NJ

This motor vehicle negligence case involved a plaintiff driver/wife and passenger/husband in their 80s in which the host vehicle was struck in the rear. The plaintiff wife contended that she suffered an aggravation of lumbar and cervical degenerative disc disease that will cause extensive symptoms. The plaintiff husband asserted that he sustained a concussion and post concussion syndrome which will cause permanent occasional headaches,

The plaintiff husband also maintained that he suffered a cervical herniation which was confirmed by MRI and which will cause permanent symptoms despite conservative care. The defendant maintained that the plaintiff husband suffered soft tissue injuries that essentially resolved, denied that he had long time sequalae from the alleged concussion and that all of the wife's difficulties were preexisting.

The defendant had a $15,000/$30,000 policy. The case settled for the policy limits and the plaintiffs proceeded under a $500,000 UIM policy with $470,000 available.

The cases settled prior to trial for $125,000 to the husband and $50,000 to the wife for a total of $175,000.

REFERENCE

Orlando vs. Shore Rentals. Docket no. ESX-L-05819-17.

Attorney for plaintiff: Lisa A. Lehrer of Davis Saperstein & Salomon, PC in Teaneck, NJ.

$6,000+ RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff driver sustains meniscus tear; labral tear of left shoulder; disc herniation at L3-4, L2-3, L5-S1; aggravation of prior disc bulge, now herniation at L1-2 – Adult plaintiff passenger suffers aggravation of tear of right ACL; disc bulge at C4-5; aggravation of bulges at C3-4, C5-6, L4-5 and L5-S1 – Minor plaintiff passenger suffers disc bulge at C4-5.

Passaic County, NJ

In this motor vehicle negligence case, the plaintiffs were the driver, an adult passenger, and a minor passenger, who asserted that the defendant driver struck their vehicle from behind with such force that it caused significant, permanent injury. The minor plaintiff passenger suffered a disc bulge at C4-5. The defendant denied liability, claiming the plaintiff driver was solely at fault for the collision. The defendant also contested the plaintiff's damages.

On September 14, 2015, the plaintiff driver and passengers were traveling on Monroe Street at the intersection with First Street in Passaic. The defendant driver was traveling directly behind the plaintiffs' vehicle. The plaintiffs contended that the defendant negligently failed to stop behind the plaintiffs. The defendant struck the plaintiffs' vehicle from the rear. The plaintiffs alleged that the force of the impact resulted in permanent injuries to all 3 of them.

As a result of the collision, the plaintiff driver sustained a meniscus tear; labral tear of the left shoulder; disc herniation at L3-4, L2-3, L5-S1; aggravation of prior disc bulge now a herniation at L1-2. The adult plaintiff passenger suffered an aggravation of a tear of the right ACL; disc bulge at C4-5; aggravation of bulges at C3-4, C5-6, L4-5 and L5-S1. The defendant argued that the plaintiffs' claims for aggravation injuries were not confirmed by Polk analysis. The defendant disputed the extent and causation of the plaintiffs' injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $10,000 to the plaintiff driver, $10,000 to the plaintiff passenger, and $6,000 to the minor plaintiff passenger. Following arbitration and prior to trial, the adult parties settled for an undisclosed sum.

The minor plaintiff passenger settled in the amount of $6,000 broken down as follows: $1,462 in attorney fees; $150 in costs and disbursements; and $4,388 in net damages to the minor plaintiff.

REFERENCE

Pagan vs. Sandoval. Docket no. L-002557-17; Judge Frank Covello, 10-09-20.

Attorney for plaintiff: Dennis G. Polizzi of Pitts & Polizzi, LLP in Clifton, NJ. Attorney for defendant: Carl Mazzie of Foster & Mazzie, LLC in Totowa, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniations at L3-4 and T11-12 with impingement at T11-12; disc bulges at L4-5 and L5-S1 – 6-7 months of chiropractic treatment and physical therapy – Non-binding arbitration assigns 100% liability to defendant.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff, a 43-year-old woman with no prior injuries, asserted that the defendant driver struck her vehicle from behind causing her significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On July 11, 2017, the plaintiff was traveling south on Brunswick Pike in Lawrence. The defendant was traveling directly behind the plaintiff. The plaintiff contended that the defendant negligently failed to stop behind the plaintiff and struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at L3-4 and T11-12 with impingement at T11-12; disc bulges at L4-5 and L5-S1. The plaintiff treated with 6-7 months of chiropractic treatment and physical therapy. The plaintiff claimed unpaid medical expenses.

The defendant asserted that the collision between the vehicles was low impact, with only $700 in property damage, and not significant enough to cause the injuries claimed by the plaintiff. The defendant argued that the plaintiff's injuries were degenerative as evidenced on MRI findings, or limited to cervical and lumbar strain/sprain.

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

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

REFERENCE

Williams vs. Naqvi. Docket no. L-001362-18; Judge Anthony M. Massi, 02-27-21.

Attorney for plaintiff: Martin J. Hillman of Joseph D. Kaplan & Son, P.C. in Trenton, NJ. Attorney for defendant: Sungkyu Lee of Law Offices of Styliades and Jackson in Marlton, NJ.

Sideswipe Collision

$275,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Plaintiff driver struck by defendant traveling in same direction on 2-lane roadway after defendant cut off by phantom driver – Cervical herniations and cervical bulge – Concussion and post-concussion syndrome.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her mid 40s contended that as she was proceeding in the left lane, the defendant, who had a $250,000 policy, was cut off at an entrance ramp by the phantom driver who did not stop causing an accident in which she sustained injuries. The plaintiff had a $25,000 UM policy. The plaintiff also contended that the defendant driver failed to make adequate observations.

The plaintiff maintained that she was initially struck by the defendant, she struck a guardrail and spun about back into the roadway where she was struck by the defendant a second time. The plaintiff contended that she suffered 3 cervical herniations and a cervical bulge and ultimately underwent surgery. The plaintiff maintained that she will nonetheless suffer permanent symptoms. The plaintiff further asserted that she suffered a concussion and post-concussion syndrome which will permanently cause periodic headaches.

The plaintiff made no income claims.

The case settled prior to trial for $275,000, including $250,000 policy from the defendant and $25,000 from the UM carrier.

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ.

Stankus vs. McCarney, et al. Docket no. MRS-L-1864-20, 11-10-21.

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

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$11,000,000 VERDICT – MEDICAL MALPRACTICE – INFECTIOUS DISEASE SPECIALIST NEGLIGENCE – FAILURE TO ORDER IMAGINING STUDY WHEN ELDERLY PATIENT IS ADMITTED WITH RECENT HISTORY OF BACTERIAL INFECTION, SEVERE NECK PAIN, AND ONSET OF URINARY RETENTION – QUADRIPLEGIA.

New York County, NY

This was a medical malpractice action involving an 84-year-old patient in which the plaintiff contended that the defendant infectious disease consulting physician negligently failed to order or recommend a timely MRI when worsening symptoms of neck pain and weakness were present, and a finding of a blood born bacterial infection was previously noted at a non-party hospital's E.R. several weeks earlier. The plaintiff maintained that the worsening of symptoms prior to and during his admission and the onset of urinary retention should have alerted the defendant to realize that an infectious disease process was ongoing and that and that an MRI at that time would have disclosed a cervical spinal abscess, allowing for emergency surgery. The plaintiff asserted that the abscess caused quadriplegia. The patient died from unrelated causes approximately 5 years later. The defendant maintained the care was proper.

The evidence disclosed that the patient initially visited a non-party E.R. approximately 2 weeks earlier with complaints of weakness and fever. The plaintiff contended that he began to suffer from excruciating neck pain just prior to his admission to the subject Emergency Room. The pain continued, and the patient began to suffer worsening weakness and neurological symptoms, including paresthesia and numbness in his hands, culminating, just prior to the examination by the defendant, with urinary retention.

The 6 person jury, after just over 2 hours of deliberation, found for the plaintiff on 6 separate claims of malpractice from the standard of care, concluding that each particular deviation was a substantial factor in bringing about Mr. Grey's injuries, and awarded $11,000,000, including $5,500,000 for pain and suffering for the decedent, Mr. Grey, and $5,500,000 for past loss of consortium for his wife. The plaintiff did not pursue a claim for wrongful death.

REFERENCE

Plaintiff's infectious disease expert: Chester Smialowicz, M.D. from Medford, NJ. Plaintiff's neuroradiology expert: Gregg Zoarski, M.D. from Belaire, M.D. Plaintiff's neurosurgeon expert: Steven Bloomfield, M.D. from Skillman, NJ. Plaintiff's physical therapist expert: Thatcher Duni, M.D. from Shelton, CT. Defendant's infectious disease expert: William Mandell, M.D. from New York, NY.

Grey vs. Spicehandler. Index no. 805548/16; Judge David B. Cohen, 10-20-22.

Attorney for plaintiff: Ari L. Taub of Phillips & Paolicelli, LLP in New York, NY.

$2,243,104 VERDICT – MEDICAL MALPRACTICE – PRIMARY CARE – PLAINTIFF PRESENTS TO DEFENDANT DOCTORS SEVERAL TIMES WITH COMPLAINTS OF RIGHT PALPABLE BREAST MASS WHICH DEFENDANTS DISMISS AS CYST – PLAINTIFF DIAGNOSED WITH BREAST CANCER 5 YEARS LATER – BILATERAL MASTECTOMY WITH BREAST RECONSTRUCTION – CHEMOTHERAPY – DECREASE IN LIFE EXPECTANCY.

Philadelphia County, PA

The plaintiff in this medical malpractice negligence action maintained that she presented to the defendants repeatedly from 2010-2015 with complaints of the palpable right breast mass. The plaintiff was assured that it was a simple cyst and the mass was not investigated until 2015 when the plaintiff was diagnosed with breast cancer. The defendants denied all allegations of negligence and maintained that the plaintiff did not make repeated complaints of the mass.

In July of 2015, a mammography was done at the defendant hospital which revealed an area of distortion in her right breast and nodular density. A few

days later another mammography was performed, along with an ultrasound and reported with suspicious findings. A biopsy was ordered. On July 29, 2015, the plaintiff was diagnosed with ductal carcinoma, grade IIa. She underwent a bilateral mastectomy with breast reconstruction. She has undergone chemotherapy.

The jury entered a verdict in favor of the plaintiff totaling $2,243,104. The jury specifically awarded damages of $897,241.60 against defendant, Stephen Cowen; $897,241.60 against defendant Robert Biggans and $448,620.80 against defendant Cowen & Biggans Medical Associates.

REFERENCE

Josette and Ronald Springer vs. Stephen Cowen, M.D. Robert P. Biggans M.D. and Cowen & Biggans Medical Associates. Case no. 170701032; Judge Michael Erdos, 08-05-22.

Attorney for plaintiff: Leon Aussprung of Law Office of Leon Aussprung, M.D., LLC in Philadelphia, PA. Attorney for defendant: George Knoell, III of Kane, Pugh, Knoell, Troy & Kramer, L.L.P. in Norristown, PA.

$2,000,000 RECOVERY – MEDICAL MALPRACTICE – URGENT CARE NEGLIGENCE – DECEDENT PRESENTS TO DEFENDANT URGENT CARE WITH COMPLAINTS OF RASH ON HER FACE, TRUNK AND EXTREMITIES AND IS TOLD IT WAS HARMLESS REACTION TO ASPIRIN AND DISCHARGED WHEN IN FACT DECEDENT SUFFERING FROM THROMBOTIC THROMBOCYTOPENIC PURPURA – DELAY IN TREATMENT OF TTP RESULTING IN DEATH – WRONGFUL DEATH OF 33-YEAR-OLD FEMALE.

York County, PA

In this action for medical malpractice, the plaintiff's decedent died from thrombotic thrombocytopenic purpura after being told by the defendant physician's assistant at the defendant urgent care that her rash was a harmless reaction to aspirin. The decedent was discharged from urgent care without any further instruction or guidance regarding her rash. 5 days after she presented to the defendant urgent care, she presented to a nonparty emergency department where she was diagnosed with thrombotic thrombocytopenic purpura and died. All defendants denied all allegations of negligence.

The estate maintained that the defendant physician's assistant and doctor were negligent in failing to take proper cognizance of the generalized petechial rash of the decedent, failing to take a thorough and complete history of present illness of decedent, failing to perform lab testing on decedent, failing to perform a complete blood count and a complete metabolic panel on decedent, failing to perform a PT/PTT test on decedent and failing to consider that the decedent was at an increased risk for having TTP due to her African-American race. The defendants raised the defenses of contributory negligence, comparative negligence, the 2 schools of thought doctrine, and pre-existing condition.

The parties settled their dispute for $2,000,000.

REFERENCE

The Estate of Sabine Brice by Serge Brice vs. Expresscare of East Manchester, LLC, MNR Industries, Expresscare Urgent Care Centers, Samuel Feinstein PA and Michael Tholen, M.D. Case no. 2020-SU-01211; Judge Clyde Vedder, 11-19-21.

Attorney for plaintiff: Marc Brecher of Wapner Newman in Philadelphia, PA. Attorney for defendant: Thomas Chairs of Gordon & Rees in Harrisburg, PA.

$1,500,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – SURGEON NEGLIGENCE – NURSING NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE AND TREAT INJURY TO SPLENIC ARTERY DURING SURGERY – WRONGFUL DEATH OF PLAINTIFF'S DECEDENT.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant surgeon and the nursing staff were negligent in their care and treatment of the plaintiff's decedent which resulted in his untimely death following surgery. The defendant nursing staff failed to timely alert the surgery team of the patient's deteriorating condition. The plaintiff's decedent suffered a cut to his splenic artery during the procedure which was untreated and resulted in significant loss of blood and death. The defendants denied the allegations and disputed that there was any deviation from acceptable standards of care.

The plaintiff brought suit against the defendant surgeon and the hospital nursing staff alleging negligence and failure to timely recognize and treat the patient's complaints in a timely manner particularly when the surgeon knew that the splenic artery has been cut during the surgery. The plaintiff contended that earlier action by the nurses and surgeon would have resulted in the patient not dying. The defendants maintained through their proposed expert that

the blood loss was minor until just prior to the code event which precipitated the return to the operating room.

The parties agreed to resolve the plaintiff's claims for the sum of $1,500,000 in a confidential settlement between the parties which took into account the patient's shortened life expectancy due to his cancer prognosis.

REFERENCE

Estate of Decedent vs. Surgeon et al., 02-28-22.

Attorney for plaintiff: Robert M. Higgins of Lubin & Myer in Boston, MA.

MOTOR VEHICLE NEGLIGENCE

$23,965,999 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/ MOTORCYCLE COLLISION – DEFENDANT MAKES NEGLIGENT LEFT TURN IN FRONT OF PLAINTIFF MOTORCYCLIST CAUSING COLLISION – VICARIOUS LIABILITY OF EMPLOYER – TRAUMATIC BRAIN INJURY – STROKE – HEMIPLEGIA – FACIAL FRACTURES – RIGHT HIP FRACTURE – BLOOD CLOTS.

San Joaquin County, CA

The plaintiff in this action for motor vehicle negligence suffered catastrophic injuries when the defendant driver, operating a vehicle owned by the defendant railroad company, made a left turn in front of the plaintiff's motorcycle causing a collision. The defendants denied all allegations of negligence and argued it was the comparative negligence of the plaintiff that caused the collision.

The plaintiff was wearing a helmet at the time of the accident but still sustained a severe traumatic brain injury, left hemiplegia secondary to a stroke, facial fractures, right hip fracture, blood clots, double vision, frontal lobe syndrome, and post traumatic depression and anxiety.

The jury found in favor of the plaintiff and awarded past and future damages totaling $23,965,999. Following the verdict, the plaintiff and the defendant settled for $29,000,000. The railroad was held liable under alter-ego doctrine for actions of an employee of a subsidiary.

REFERENCE

Felipe Leon, Jr. vs. Vernon John Draper and Central California Traction Company and Union Pacific Railroad Company, Inc. Case no. STK-CV-UAT-2017-5113; Judge George J. Abdallah, 04-16-22.

Attorney for plaintiff: Shafeeq Sadiq of Sadiq Law Firm, P.C. in Stockton, CA. Attorney for defendant: Jacob D. Flesher of Flesher, Schaff, and Schroeder in Rocklin, CA. Attorney for defendant: Charles H. Horn of Freeman, Mathis, & Gary, LLP in Los Angeles, CA.

$7,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – MINOR PLAINTIFF PEDESTRIAN STRUCK BY DEFENDANT'S TRACTOR TRAILER WHILE CROSSING STREET – LEFT PUBIC RAMUS FRACTURE – COMMINUTED SACROCOCCYGEAL FRACTURE – PERINEAL LACERATION – LEFT LEG INTERNAL DEGLOVING INJURY – OPEN WOUND TO LEFT CALF – HEMATOMAS OF PELVIS AND LOWER BACK – MULTIPLE SURGERIES REQUIRED.

Nassau County, NY

In this motor vehicle negligence action, the minor plaintiff pedestrian sustained serious injuries including a left pubic ramus fracture with distasis of the left sacroiliac joint, comminuted sacrococcygeal fracture, perineal laceration, left leg extensel Morel Lavallee internal degloving injury, open wound to the left medial calf, hematoma of the pelvis, and hematoma of the lower back, after being struck by the defendant's tractor trailer vehicle while crossing the street. The minor plaintiff's injuries required several surgeries. The defendant generally denied all allegations of negligence.

The plaintiffs maintained that the defendant was negligent in failing to keep a proper lookout, failing to properly operate a tractor trailer truck, failing to exercise due care, failing to observe the minor plaintiff pedestrian, failing to observe traffic conditions, failing to obey traffic signals, failing to remain adequately alert and attentive, failing to operate the vehicle at a reasonable rate of speed, failing to keep the vehicle under proper and adequate control, failing to apply the brakes in a timely manner, failing to decelerate before approaching an intersection, failing to slow or stop, and failing to avoid striking the minor plaintiff. Consequently, the minor plaintiff's injuries required several surgeries, including open reduction and inter-

nal fixation of the left acetabulum, complex repair of perineal laceration, and irrigation and debridement of Morel Lavallee lesion.

The parties entered into a settlement for $7,000,000.

REFERENCE

Plaintiff's physical medicine and rehabilitation expert: Edwin F. Richter, III, M.D. from Stamford, CT.

A. C. An Infant Under The Age Of Fourteen Years By Her Parent And Natural Guardian Ana G. Castillo-Martinez, Ana G. Castillo-Martinez Individually vs. Ricardo Franco, Awesome Trucking, Inc. Index no. 618049/2019, 06-23-22.

Attorney for plaintiff: Daniel O'Toole of Block O'Toole & Murphy in New York, NY. Attorney for defendant: Nicholas Eliades of Stevens & Lee in New York, NY.

$2,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – DEFENDANT DECEDENT OPERATES VEHICLE UNDER INFLUENCE OF ALCOHOL AND CROSSES OVER CENTER LINE STRIKING PLAINTIFF DECEDENT'S VEHICLE HEAD ON RESULTING IN FATAL INJURIES – UNLAWFUL AND UNLICENSED OPERATION OF VEHICLE – NEGLIGENT ENTRUSTMENT OF VEHICLE TO DECEDENT DEFENDANT – WRONGFUL DEATH.

Harris County, TX

The parents of the plaintiff decedent brought this wrongful death action against the defendants involved in owning, controlling and insuring a vehicle driven by the decedent defendant. The decedent was operating a vehicle under the influence of alcohol when he veered into oncoming traffic striking the plaintiff decedent's vehicle head on resulting in death. All defendants denied being negligent and argued that it was the actions of the defendant decedent only that caused the collision.

The vehicle at the center of this incident was purchased and driven for the benefit of Five Star Services, Inc. d/b/a Five Star Roofing. Therefore, Five Star is vicariously liable for the negligence of Defendants' Perez, Silvia and Benitez, who all owned, controlled and insured the vehicle and negligently entrusted the vehicle to the defendant decedent who was an unlicensed and unsafe driver. The estate of the plaintiff decedent maintained that the defendant decedent negligently operated a vehicle under the influence of alcohol and in the wrong direction causing the fatal crash.

The jury found that the decedent was 70% liable, defendant Benitez who owned the truck 20% negligent and Five Star Roofing 10% negligent. The jury awarded the plaintiffs $1,000,000 each.

REFERENCE

Jose Martinez and Claudia Martinez as administrators of the Estate of Gabriel Martinez vs. The Estate of Jose Perez, Five Star Roofing, LLC, Rios Silva, Mario Benitez. Case no. 201805171; Judge Kyle Carter, 10-10-22.

Attorney for plaintiff: Farrah Martinez of Farrah Martinez, LLC in Houston, TX. Attorney for defendant: Karl Douglas Drews of Cooper, Jackson & Boanerges, PC in Houston, TX. Attorney for defendant: Andrew M. Williams of Andrew M. Williams & Associates in Bellaire, TX.

$1,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – PARKING LOT COLLISION – PLAINTIFF DRIVER COLLIDES WITH DEFENDANT DRIVER WHO FAILS TO STOP AT STOP SIGN IN SHOPPING CENTER PARKING LOT – CERVICAL AND LUMBAR HERNIATIONS – LUMBAR FUSION WITH EXTENSIVE HARDWARE.

Bergen County, NJ

In this motor vehicle negligence action, the 52-year-old plaintiff driver contended that as she was driving in a shopping center parking lot, the defendant driver negligently failed to stop at a stop sign at the end of an aisle, causing the accident. The plaintiff maintained that as a result, she sustained 2 cervical and 2 lumbar herniations necessitating lumbar fusion surgery with extensive hardware after having had conservative care and injections. The plaintiff asserted that she will suffer permanent pain and limitations. The plaintiff had the lumbar fusion approximately one year after the injections. The defendant would have maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The defendant denied that the plaintiff suffered the claimed injuries in the accident or that she was as injured as claimed. The defendant pointed out that approximately 6 months earlier, she told her primary care physician that she was suffering chronic low

back pain. The plaintiff countered that she did not require treatment until after the accident and did not undergo an MRI until after the accident occurred. The plaintiff would have also introduced approximately $600,000 in unpaid medical bills.

The defendant had a $500,000 primary policy and had a $5,000,000 umbrella. The case settled prior to trial for $1,000,000, including $497,093 paid by the primary carrier (after reduction of property damage payments) and $502,907 paid by the excess carrier.

REFERENCE

Fernandez vs. Jaroslav. Docket no. BER-2626-20, 06-22-22.

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

PREMISES LIABILITY

$40,250,000 VERDICT – PREMISES LIABILITY – NEGLIGENT SECURITY – PLAINTIFF SHOT MULTIPLE TIMES IN VEHICLE IN PARKING LOT OF DEFENDANT APARTMENT COMPLEX – 3 GUNSHOT WOUNDS – BILATERAL ABOVE-THE-KNEE AMPUTATIONS.

Harris County, TX

The plaintiff in this premises liability action maintained that he suffered catastrophic injuries as a result of being shot by two gunmen in the parking lot of the defendant apartment complex. The plaintiff maintained the defendant complex provided inadequate security measures resulting in the assault. The defendant denied all allegations of negligence and maintained that the plaintiff was shot by gunmen hired by the plaintiff's girlfriend who was jealous of the plaintiff's other female companions.

At the hospital, the plaintiff was in critical condition and was intubated. He was observed to have 2 gunshot wounds to his left lower abdomen near his left hip and an exit wound to his left back, 3-4 inches from his midline spine. Due to a combination of acute hemorrhagic shock and interruption of blood flow, he developed compartment syndrome to both lower extremities. Despite significant medical interventions, the plaintiff's lower legs could not be saved and he required bilateral above the knee amputations.

The jury found that the defendant apartment complex was 90% negligent and each unidentified gunmen 5% negligent. The jury awarded the plaintiff $38,000,000 in non-economic ("soft") damages and $2,250,000 in economic ("hard") damages for a total of $40,250,000.

REFERENCE

Samuel Bonilla vs. Tarantino Properties, Inc. dba Green Arbor Apartments, USAPD, LLC, John Doe 1 and John Doe 2. Case no. 201771801; Judge Michael Gomez, 11-02-22.

Attorney for plaintiff: Michael Goldman of Goldman Law, PC in Dallas, TX. Attorney for defendant: Andrew H. Katon of Lewis Brisbois Bisgaard & Smith, LLP in Dallas, TX. Attorney for defendant: Marshall S. May of Law Office of Marshall May, LLC in Dallas, TX.

$840,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – SIDEWALK CELLAR DOOR ABUTTING COMMERCIAL PROPERTY BENT UPWARDS, CAUSING PLAINTIFF TO TRIP AND FALL – DOMINANT ELBOW TEARS – SURGERY – AGGRAVATION OF HERNIATION THAT REQUIRED LAMINECTOMY 10 YEARS EARLIER – FUSION AND INTER-BODY CAGE AT LEVELS THAT INCLUDED PRIOR HERNIATION.

Essex County, NJ

In this action for premises liability, the 63-year-old plaintiff contended that the defendant owner of a 5-unit strip mall negligently failed to repair the sidewalk cellar door after it became bent, apparently from use. The plaintiff also named the commercial tenant directly behind the cellar door, asserting that repeated use probably caused the danger to develop. The plaintiff contended that as a result, she tripped and fell, suffering a tendon tears to the right dominant elbow, a flexor tendon tear near the right elbow, a right rotator cuff tear, right-sided carpal tunnel syndrome, an aggravation of previous lumbar herniations which prompted a 2008 laminectomy and now necessitated fusion surgery and the implantation of a cage. Finally, the plaintiff maintained that she suffered a compression fracture at T-5. The defendants contended that the plaintiff failed to pay adequate attention and was comparatively negligent.

The plaintiff underwent a medial epicondylar debridement and repair of common of a torn flexor tendon of the right elbow, an arthroscopic debridement repair and decompression of right rotator cuff tear; a carpal tunnel release of right wrist. The

plaintiff asserted that she will permanently suffer pain, restriction and difficulties with everyday activities from these activities and a compression fracture at T5.

The husband pursued a loss of consortium claim. The Medicare lien was $65,049.

The case settled prior to trial for $840,000, including 1/2 from each defendant.

REFERENCE

Plaintiff's engineering expert: Charles Witczak, PE from Brick, NJ. Plaintiff's orthopedic surgeon expert: Steven Nehmer, M.D. from Union, NJ. Defendant's neurosurgeon expert: Robert Heary, M.D. from Newark, NJ. Defendant's orthopedic surgeon expert: Kevin Eagan, M.D. from Livingston, NJ.

York vs. Anshah, LLC, et al. Docket no. ESX-L-7671-20; Mediated before Dennis F. Carey, 08-29-22.

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

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

$20,000,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – WALL AROUND CONSTRUCTION SITE COLLAPSES ON 14-YEAR-OLD PLAINTIFF PEDESTRIAN ON SIDEWALK OUTSIDE OF WALL – PROXIMAL TIBIAL PLATEAU FRACTURE/CRUSH INJURY WITH COMPARTMENT SYNDROME – MULTIPLE SURGERIES REQUIRING SKIN GRAFTS – PERMANENT INJURY WITH RECOMMENDATION FOR 3-4 KNEE REPLACEMENTS OVER PLAINTIFF'S LIFETIME – DEFENDANTS DENY NEGLIGENCE AND EACH CONTEND OTHER RESPONSIBLE.

Miami-Dade County, FL

In this personal injury action brought by the plaintiff, he claimed that the defendants were negligent in failing to maintain a safe construction site. As a result, the minor plaintiff sustained serious, permanent injuries including a proximal tibial plateau fracture/crush injury with compartment syndrome. The plaintiff underwent emergency fasciotomies; multiple subsequent surgeries with skin grafts and has extensive, permanent scarring. The plaintiff brought suit against the construction project manager, the construction company, the general contractor, the lessees of the property and the city that owned the property. Summary judgment was entered in favor of the defendant construction project manager, and the plaintiff settled his claims against the defendant lessees and the defendant city. The case proceeded to trial solely against the defendant construction company and the defendant general contractor.

The plaintiff claimed ongoing pain, permanent restricted movement, and instability in the left knee due to a valgus deformity. The plaintiff's treating physician testified that the plaintiff would need 3 or 4 knee replacement surgeries over the course of his life. The plaintiff did not seek past medical expenses or any other economic damages.

After a 7-day trial, the jury returned a verdict for the plaintiff against both the defendant construction company and the defendant general contractor. The jury apportioned 40% of the fault to the defendant construction company and 60% of the fault to the general contractor. The jury apportioned no fault to any of the Fabre defendants. The jury awarded damages in the amount of $20,000,000 in compensatory damages, comprising $1,500,000 for future medical expenses, $8,500,000 for past pain and suffering, and $10,000,000 for future pain and suffering.

REFERENCE

Pierre vs. Consolidated Construction Services, LLC, et al. Case no. 2017-003495 CA 22; Judge Beatrice Butchko, 09-30-22.

Attorney for plaintiff: Meranda Reifschneider of Rubenstein Law, P.A. in Miami, FL. Attorneys for defendant general contractor: Barry A. Dubinsky and David M. Massey of Galloway, Johnson, Tompkins, Burr & Smith, PLC in Fort Lauderdale, FL. Attorney for defendant construction company: Daniel Nagler of Lewis Brisbois Bisgaard & Smith, LLP in Coral Gables, FL.

Contract

$1,661,072 JUDGMENT INCLUDING $1,100,000 PUNITIVE AWARD – BREACH OF CONTRACT – CONVERSION – FRAUD – DEFENDANT EMBEZZLED MONIES FROM PLAINTIFF WHILE WORKING PERFORMING ACCOUNTING SERVICES.

Washington County, VT

In this contract matter, the plaintiff alleged that the defendant accountant, an independent contractor, embezzled more than $500,000 in funds from the plaintiff over a period of time while performing accounting services for the plaintiff telecommunication company. The defendant failed to respond to the allegations.

Following the discovery of the embezzlement, the defendant disappeared and his not yet been located. The plaintiff brought suit against the defendant alleging breach of contract, conversion, fraud and consumer fraud. The plaintiff sought punitive as well as compensatory damages. The matter proceeded to hearing on damages.

At the conclusion of the hour-long hearing, the Court awarded the sum of $561,072 in compensatory damages and then trebled the compensatory damages awarding punitive damages of $1,100,000 since the effect of the embezzlement was to deprive the non-profit plaintiff of funds necessary for it to build out its telecommunication network.

REFERENCE

ValleyNet, Inc. vs. John Van Vught. Case no. 22-CV-02438; Judge Timothy Tomasi, 01-17-23.

Attorneys for plaintiff: Evan Barquist and Andrew Montroll of Montroll Backus Oettinger, PC in Burlington, VT.

Retaliatory Termination

$5,808,575 VERDICT– RETALIATORY TERMINATION – WHISTLEBLOWER ACT – PLAINTIFF CITY MANAGER CLAIMS WRONGFULLY TERMINATION IN RETALIATION FOR PROVIDING STATEMENT IN INVESTIGATION INTO DEFENDANT CITY'S COMMISSIONER – FAILURE TO PAY SEVERANCE PER PLAINTIFF'S CONTRACT.

Broward County, FL

In this wrongful termination case, the plaintiff asserted that the defendant city terminated his employment because of protected actions taken by the plaintiff and further breached his employment contract by firing him without cause and refusing him his due severance. The defendant denied that the plaintiff was retaliated against for whistleblower action and asserted that there was no connection between the plaintiff's statements to a law firm regarding an investigation into allegation of discrimination by a city commissioner and the plaintiff's termination. As to the breach of contract claim, the defendant maintained that it did not breach its employment agreement when it terminated the plaintiff's employment for cause as the contract stated that, in the event that the plaintiff was terminated for misconduct, the defendant would have no obligation to pay any severance.

Ultimately, a vote was taken by the defendant city counsel wherein, by a vote of 3-2, the plaintiff was not reappointed to his position. The plaintiff claimed that the defendant violated the Florida Whistleblower's Act in retaliation for the plaintiff reporting a city commissioner's alleged violation of the defendant's Charter and Florida's Sunshine Law. The plaintiff also claimed that the defendant breached its employment contract with the plaintiff by firing him for reasons other than misconduct and failing to pay him severance.

The jury found that the plaintiff had engaged in protected activity, suffered an adverse employment action, and that the defendant took adverse employment action against the plaintiff because of the plaintiff's protected activity. The jury found that the plaintiff should be awarded damages for lost wages, benefits or other lost remuneration and set that amount at $1,325,154. The jury also awarded damages for emotional pain and mental anguish in the amount of $3,000,000. The jury determined that the defendant breached the employment contract with the plaintiff for reasons other than misconduct and awarded damages of $92,907.

Final judgment was granted in favor of the plaintiff and the defendant was ordered to pay the total damages of $5,463,154 together with pre-judgment interest of $252,514. After the jury found that the defendant violated the PWA, the plaintiff's claim for front pay proceeded to a non-jury trial wherein the court awarded an additional $1,138,000 for a total sum of $5,808,575.

REFERENCE

Rosemond vs. City of Hallandale Beach, Florida. Case no. CACE17001355; Judge Michael A. Robinson, 09-02-22.

Attorneys for plaintiff: Brian L. Lerner and Robert C.L. Vaughan of Kim Vaughan Lerner, L.L.P. in Fort Lauderdale, FL. Attorneys for defendant: Christopher J. Stearns and Jonathan H. Railey of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, PA in Fort Lauderdale, FL.