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SUMMARIES
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 ANALYSIS

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

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

\$2,645,000 VERDICT – County liability – Motorcycle/van collision – Palpably unreasonable failure of county to effectuate permanent repairs of potholes over 2-year period – Plaintiff motorcyclist loses control upon striking pothole and travels into on-coming lane colliding with minivan operated by non-party driver – Collapsed lungs – Concussion – Crush fractures to lumbar and sacral area – Neurogenic bladder and bowel 2

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\$2,645,000 VERDICT – COUNTY LIABILITY – MOTORCYCLE/VAN COLLISION – PALPABLY UNREASONABLE FAILURE OF COUNTY TO EFFECTUATE PERMANENT REPAIRS OF POTHOLES OVER 2-YEAR PERIOD – PLAINTIFF MOTORCYCLIST LOSES CONTROL UPON STRIKING POTHOLE AND TRAVELS INTO ON-COMING LANE COLLIDING WITH MINIVAN OPERATED BY NON-PARTY DRIVER – COLLAPSED LUNGS – CONCUSSION – CRUSH FRACTURES TO LUMBAR AND SACRAL AREA – NEUROGENIC BLADDER AND BOWEL.

Passaic County, NJ

This was a Tort Claims Act case in which the 67-year-old plaintiff motorcyclist, a machine technician, who was on his way to work, contended that the defendant county acted in a palpably unreasonable manner in repeatedly using temporary hot patches to temporarily repair a series of potholes over a distance of approximately 125 feet. The plaintiff contended that as a result, he lost control when he struck a pothole and traveled into the on-coming lane where he collided with a minivan. The plaintiff maintained that he suffered a concussion, severe fractures to the lumbar and sacral areas, bilateral collapsed lungs, as well as a neurogenic bladder and bowel.

The plaintiff contended that the defendant had notice of recurring problems with the temporary repairs failing for at least 2 years and a neighbor testified as to the recurring problem with potholes. The defendant denied that a pothole caused the plaintiff to lose control and maintained that he was speeding.

The evidence revealed that one of the first responders was also in the employ of the county. The witness related that the plaintiff excitedly told him at the scene that he lost control upon striking a pothole and the plaintiff argued that the defendant's position should be rejected. The non-party driver of the minivan that collided with the plaintiff on the on-coming lane testified that it initially appeared as if the plaintiff was regaining control and the plaintiff maintained that this testimony was especially probative on the issue of whether he initially lost control upon striking a pothole rather than speeding.

The plaintiff fell into a coma for a short period and was hospitalized for approximately 1 ½ months. He developed deep veined thrombosis. The plaintiff also suffered a neurogenic bladder and bowel. He must catharize himself and manually evacuate his bowels. The plaintiff further maintained that he cannot walk

long distances and usually utilizes a cane. The plaintiff contended that future surgery is probable. He also contended that he will require modifications of his home. The plaintiff, who has not worked since the accident, asserted that he would have worked for several more years.

The jury found for the plaintiff and awarded \$2,645,000, including \$465,000 for past medical bills, \$950,000 for future costs of care, \$330,000 for past and future lost earning, 680,000 for non-economic damages and \$220,000 for future health insurance.

REFERENCE

Plaintiff's economist expert: Kristin Kuscma from Livingston, NJ. Plaintiff's engineer expert: Robert T. Lynch, P.E. from Penns Park, PA. Plaintiff's life care planning expert: Valerie Parisi from Doylestown, PA. Plaintiff's neurologist expert: David H. Rosenbaum, M.D. from Englewood, NJ. Plaintiff's orthopedic surgeon expert: Sheref E. Hassan, M.D. from Englewood Cliffs, NJ. Plaintiff's pulmonology expert: Robin S. Lucas, M.D. from Somerset, NJ.

Gates vs. County of Passaic, et al. Docket no. PAS-L-002925-17; Judge Frank Covello, 01-20.

Attorney for plaintiff: Jeffrey M. Patti of Patti & Patti in Sparta, NJ.

COMMENTARY

The plaintiff was able to establish that the county acted in a palpably unreasonable manner in repeatedly using temporary hot patches to address the potholes and the plaintiff's proofs included the presentation of a neighborhood resident who testified that there were recurring difficulties in which the repairs continued to fail for at least a 2-year period. Additionally, one of the first responders was also employed by the county and the plaintiff argued that the comments at the scene that the plaintiff lost control as a result of striking a pothole constituted an excited utterance. Regarding damages, the plaintiff, who related that he would have worked several more years had it not been for the accident, stressed that the incident occurred as he was on his way to work.

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\$2,063,681 VERDICT – CONTRACTOR’S NEGLIGENCE – NEGLIGENT PLACEMENT OF PORTA-JOHN AT RENOVATION SITE FACING CURB – PLAINTIFF TILE FINISHER FALLS LEAVING FACILITY – SEVERE KNEE INJURIES – 4 ARTHROSCOPIC INTERVENTIONS – INABILITY TO WORK.

Camden County, NJ

This case involved a plaintiff, who was age 50 at the time, and who was working as a tile finisher at a warehouse undergoing major renovations, who contended that the defendant general contractor negligently had the one available Porta-John placed in such a manner that it exited onto a curb, creating a tripping hazard. The plaintiff asserted that as a result, he fell as he was exiting the facilities, suffering severe tears of the knee, including the ACL and PCL, as well as tears to the lateral and medial menisci of the same knee. The plaintiff claimed that despite some 4 arthroscopic surgeries, he will be unable to work. The defendant’s engineer denied that there was a tripping hazard.

The plaintiff maintained that because of work in progress at other portions of the warehouse, the only facility available at the time was the one in question. The plaintiff related that after he used it, he stepped out and fell. The plaintiff contended that he suffered severe injuries to his knee, including tears to the ACL, PCL, and tears to the lateral and medial menisci. The plaintiff asserted that despite some 4 surgeries, including a nerve transposition that was a part of the final procedure, he will suffer extensive pain and a moderate limp.

The plaintiff’s construction safety expert concluded that the john could have easily been swiveled 90 degrees to avoid facing the curb and should have done so. The defendant also asserted that the plaintiff, who had just entered the facility, was aware of the curb, and was overwhelmingly comparatively negligent.

The plaintiff claimed that his talents, inclinations and educational level gear him towards physical labor, that he will permanently be unable to engage in such physical work and that the plaintiff is permanently unemployable. The plaintiff further maintained that everyday activities and tasks are painful and difficult.

The defendant contended that the jury should consider that the plaintiff suffered a subsequent accident in which he banged his knee on a Jacuzzi tub. This incident occurred after the second arthroscopic knee surgery. The plaintiff argued that the jury should consider that he was using the tub to help his knee pain and that he wouldn’t have had this event if he hadn’t been injured because of the defendant’s negligence.

The jury found the defendant 100% negligent and awarded \$2,063,681, including \$101,981 for past medical bills, \$111,720 for future medical bills, \$220,000 for past lost earning, \$680,000 for future lost earnings, \$625,000 for pain and suffering and \$625,000 to the wife on her per quod claim.

REFERENCE

Plaintiff’s construction safety expert: Stephen A. Estrin from Cooper City, FL. **Plaintiff’s economist expert:** Andrew C. Verzilli, MBA from Lansdale, PA. **Plaintiff’s functional capacity expert:** Margaret Flynn from Richmond, PA. **Plaintiff’s life care planning expert:** Chava Goskschmidt from Bala Cynwyd, PA. **Plaintiff’s orthopedic surgeon expert:** Matthew D. Pepe, M.D. from Egg Harbor Twp., NJ. **Plaintiff’s pain management expert:** Alan F. Kwon, M.D. from Marlton, NJ. **Plaintiff’s vocational rehabilitation**

expert: Sonya M. Mocarski, from Atco, NJ. Defendant's engineer expert: Micahel Cronin, P.E. from Edison, NJ. Defendant's orthopedic surgeon expert: Jeffrey Lakin, M.D. from Clifton, NJ.

O'Connell vs. Network Construction, Inc., et al. Docket no. CAN-L-001222-17; Judge Michael J. Kassel, 11-01-19.

Attorneys for plaintiff: Sean M. McMonagle and John T. Dooley of Law Office of John T Dooley in Pennsauken, NJ.

COMMENTARY

The defendant had argued that since the plaintiff had just entered the porta-john he was clearly aware that it was facing the curb, and his inability to exit without falling, clearly reflected comparative negli-

gence on his part. The jury, however, declined to find any comparative negligence, and it is felt that the fact that the incident occurred when the plaintiff was in the middle of a work day was a significant factor in this result.

Regarding damages, after the first 2 of 4 arthroscopic knee surgeries, the plaintiff slipped and banged his knee as he was in the course of using a Jacuzzi and the defendant maintained that this incident caused many of the plaintiff's complaints, including those leading to nerve transposition surgery. The plaintiff effectively countered this position by stressing that he was rendered more vulnerable because of the subject accident and that he was only using the Jacuzzi because of the knee injuries sustained because of the defendant's negligence.

\$1,500,000 RECOVERY – MEDICAL MALPRACTICE – RADIOLOGY – DELAY IN DIAGNOSIS OF BREAST CANCER – PLAINTIFFS' DECEDENT SUCCUMBS TO BREAST CANCER AFTER DEFENDANT RADIOLOGIST FAILS TO IDENTIFY CANCER THAT HAD ALREADY SPREAD TO LYMPH NODES – DIAGNOSIS DELAYED BY 10 MONTHS – WRONGFUL DEATH CLAIM – CASE COMPLICATED BY PLAINTIFF'S CLAIM FOR LOSS OF CONSORTIUM BY ADULT DISABLED CHILDREN.

Ocean County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants failed to timely diagnose breast cancer in the plaintiffs' decedent resulting in a lowered survivability rate and ultimately her death. The plaintiffs brought suit against the defendant radiologist and primary care physician and their respective practices. The defendants denied liability and denied violating any duty owed to the plaintiffs. Each defendant asserted that the co-defendants were responsible for any delay in diagnosis and treatment.

For some time prior to being diagnosed with cancer on September 14, 2015, the plaintiffs' decedent was a patient of the defendants. The plaintiff argued that the defendant radiologist negligently interpreted and reported as normal a mammogram performed December 11, 2014, instead of reporting breast cancer which had already spread to the patient's axillary lymph nodes. The misreading of the mammogram resulted in a 10-month delay in diagnosis of the patient's breast cancer.

The plaintiffs maintained that the defendants were negligent and careless in the medical treatment rendered to the plaintiffs' decedent, in failing to properly work up the decedent's symptoms and complaints, and diagnose cancer while they were treating the decedent, and deviated from accepted standards in rendering medical care as a result of which the plaintiffs' decedent sustained serious, painful, permanent and disabling injuries resulting in her death, experienced great pain, suffering and medical and physical disabilities, was unable to work and lost large sums of money for income she would have earned. The plaintiffs maintained that the negligence of the defendants deprived their patient of an earlier diagnosis of cancer, allowed her cancer to grow and

spread, decreased her chances of survival, caused her anxiety and distress over her loss of an earlier diagnosis and treatment and resulted in her death.

The jury unanimously found no cause of action and returned a verdict in favor of the defendant primary care physician and practice on November 11, 2019. The defendant radiologist and radiology practice settled the matter prior to trial, via mediation, in the amount of \$1.5 million with 25% of the award allocated to the survival claim and 75% to the wrongful death claim.

REFERENCE

Estate of Paula Kirby vs. Shore Medical Specialists, et al. Docket no. L- 000786-17; Judge James Den Uyl, 03-26-20.

Attorney for plaintiff: Dennis M. Donnelly of The Donnelly Law Firm in Summit, NJ. Attorney for defendant radiologist and radiology practice: Lauren H. Zalepka of Ronan, Tuzzio & Giannone in Tinton Falls, NJ. Attorney for defendant primary care facility and physician: Thomas J. Heavey of Grossman, Heavey & Halpin, P.C. in Brick, NJ.

COMMENTARY

During the course of the case, the plaintiff moved to file an amended complaint to add a count for loss of consortium and services as to the plaintiff's individual children caused by the plaintiff's disability and diminished capacity to care for them. The defendants opposed the motion, citing case law which made it clear that there was no recognized cause of action for loss of consortium on behalf of children of an injured plaintiff. The plaintiff responded arguing that the abstract legal discussion of old case law did not conform to the contemporary facts of this case. The plaintiff maintained that there were unique, specific, and indisputable facts in the subject case which supported a claim for loss of consortium. 2 of the plaintiff's children were chronologically adults but remained developmentally housebound, and

thus, were completely dependent upon their mother to cope with their special needs. Because the children, age 26 and 29, were autistic and had ADHD, respectively, the plaintiff mother home-schooled them and they never worked outside the home, where they continued to reside at the time of filing.

The plaintiff argued that her delay in diagnosis led to terminal cancer and multiple chemotherapy trials rendering her completely unable to fulfill the role she previously filled for both children. The plaintiff argued that the case law cited by the defendants was outdated, having been decided 45 years prior. The plaintiff asserted that not only were contemporary "Family values" far different in *Russell v. Salem Transportation Co.* 61 N.J. 502, 504 (1972), but that the very claims and facts were significantly different. Plaintiff's counsel put forth that a carefully tailored claim for lost services of dependent children due to a catastrophic permanent injury to their parent was a different claim than the blanket, consortium claim for all children the Russell court rejected. Following oral argument, the court denied the motion to permit a claim for loss of consortium on behalf of the children. In so ruling, the court cited *Russell*, noting that the New Jersey Supreme Court expressly opted against recognizing a cause of action for a child's loss of parental consortium.

Prior to trial, the plaintiff patient died. The plaintiff's husband and children then filed a motion to amend the complaint to name the decedent's husband as representative of her estate. The plaintiffs also again sought to add a count to the complaint for loss of consortium by the decedent's children. At the time of her death, the decedent, a mother of 4, was the primary care and support of 2 adult children with disabilities. The plaintiffs moved to file an amended complaint with

an additional count for damages on behalf of the individual children on the premise that the decedent's children were entitled to file for loss of support, society, companionship, love, solace consortium, services and more.

The plaintiffs, in their second amended complaint, alleged the same claim. The defendants argued that the court had already ruled on the matter and that the plaintiffs had not filed any motion for reconsideration, thus the count for loss of consortium must be denied. In addition, the defendants argued that the body of any amended complaint should not include individual claims on behalf of the children or the husband because both a claim for wrongful death and a claim for survivorship, by statute, can only be brought by the appropriate representative of the estate (citing *Kern v. Kogan*, 93 N.J. Super. 439 Law Div. 1967). The defendants maintained that the plaintiff husband should be ordered to prepare and submit an appropriate amended complaint alleging claims for wrongful death and survivorship of the decedent in his representative capacity only.

The court granted the plaintiff's motion to file an amended complaint and did not address the issue of the addition of the count for loss of consortium, thus the defendants filed a motion for partial summary judgment to dismiss just that count from the amended complaint. The plaintiff responded that they were not, in fact, seeking to reestablish the loss of consortium claim in the newly amended complaint, but rather to assert individual wrongful death claims by naming the decedent's children individually in the complaint. The court denied the defendants' partial motion for summary judgment and permitted the plaintiffs to file a third amended complaint to clarify the claims asserted.

\$763,165 VERDICT – MEDICAL MALPRACTICE – ORTHOPEDICS – FAILURE TO TIMELY DIAGNOSE AND TREAT – PLAINTIFF COMPLAINS OF SYMPTOMS OF DVT POST ORTHOPEDIC SURGERY AND TREATMENT BY DEFENDANTS AND CLAIMS DELAY IN DIAGNOSIS RESULTED IN NECESSITY FOR MULTIPLE SURGERIES – DEFENDANTS COUNTER THAT ALL TREATMENT WAS APPROPRIATE, DVT IS KNOWN RISK OF SURGERY, AND PLAINTIFF'S OUTCOME WOULD NOT HAVE CHANGED WITH EARLIER DIAGNOSIS.

Morris County, NJ

In this medical malpractice case, the plaintiff, a 69-year-old woman, asserted that the defendant physicians negligently failed to diagnose and treat her for blood clots in a timely fashion leading to the necessity for surgical intervention which could have been avoided. The defendants denied liability claiming that deep vein thrombosis is a known complication of any surgical procedure on the lower extremity.

The plaintiff presented to the defendants in May 2014, with a several-week history of pain and swelling on the outer aspect of the left ankle. Over the course of several weeks, the defendant orthopedist suggested treatment including compressive stockings and anti-inflammatory medication. An MRI confirmed a diagnosis of a peroneal tendon tear; however, physical therapy failed to relieve the pain and discomfort. The plaintiff was recommended for, and received surgery, including PRP injection and postoperative splint on October 13, 2014. In the weeks following the surgery, the plaintiff had her cast replaced twice due to complaints of it being too

tight. The plaintiff asserted that the defendant orthopedist did not return to the room after the cast was applied by the defendant physician's assistant.

The plaintiff called the office to state that she had fallen and had a lot of bruising and inquired about stopping aspirin therapy. The plaintiff argued that she did not receive a call back, but stopped taking the aspirin anyway. 5 days later, the defendant saw the plaintiff again for her complaint of swelling and bruising. She was prescribed physical therapy and a Doppler study. The Doppler study noted "Extensive deep venous thrombosis involving the femoral and popliteal veins of the left lower extremity and extending into the calf." She was then directed to the Emergency Room and admitted. The Emergency Room record mentioned that she was a month after surgery and had 4 days of swelling and pain in the left lower extremity. A repeat ultrasound was performed with an Impression of "Acute major left lower extremity DVT involving the external iliac, common femoral, femoral, popliteal, gastrocnemius, posterior tibial, peroneal and soleal veins." There was "no evidence of right lower extremity DVT."

A venogram was performed with placement of a thrombolytic catheter and the plaintiff was given TPA. The next day, following the thrombolysis, another venogram was performed which showed "Continued extensive thrombosis within the femoral and iliac system." The vascular surgeon decided to perform an angioplasty of the left femoral and iliac veins with placement of 2 iliac vein stents at the levels of the external iliac and common iliac veins. A repeat venogram showed "Resolution of most of the thrombus," However, because of the loss of the lumen, a stent was placed.

The plaintiff maintained that her extensive left leg DVT and ensuing surgical intervention could have been avoided or reduced had treatment for blood clots been instituted earlier. The plaintiff asserted that the defendant orthopedist deviated from the standards of accepted care in failing to obtain venous Doppler examination of the left lower extremity in an expedient manner. The plaintiff presented expert testimony from multiple sources indicating that there were indications to obtain the Doppler within the first few visits because of the continuing complaint of tightness of the cast, as well as swelling, which are primary symptoms of DVT. The plaintiff's experts opined that, if the plaintiff had been fully examined and appropriately examined, Doppler/ultrasound would have been performed with an early diagnosis of DVT which would have obviated the need for the subsequent extensive treatment she later required.

Further, the plaintiff's experts noted that, if the defendant had seen the plaintiff after application of the cast each time, it is more likely than not, that appropriate examination and treatment would have ensued. In addition, the defendant deviated in not returning the call from the patient soon after she called to complain of bruising and swelling, not 4 or 5 days later. In addition, According to the patient and the chart, the defendant also deviated from the standard of care in not closely supervising a very inexperienced physician's assistant.

The plaintiff's experts opined that, if the plaintiff had been treated within standards, it is more likely than not that that a diagnosis of early venous thrombosis would have been made in several days and probably weeks earlier and, at that time, she could have been treated with anticoagulants. Because of the late diagnosis which resulted in extension of the thrombus toward the pelvis, she required hospitalization, as well as 2 different operative procedures resulting in stents being placed in the proximal veins of the left lower extremity.

The defendants presented expert testimony that, prior to the plaintiff proceeding with her elective procedure, the risks involved with the surgery and immobilization were thoroughly discussed, as well as the risk of development of a DVT pursuant to the office notes reviewed by the defendants' expert. Further, the defendants' opined that there is no standard for more aggressive DVT prophylaxis after surgery than that prescribed by the defendants. The defendants asserted

that the plaintiff was seen by the defendant physician's assistant 4 times and each time was appropriately supervised. The defendants asserted that, each time the plaintiff was seen, she was counseled regarding weight bearing status and as to the importance of continuing the DVT prophylaxis as prescribed. However, the defendants note, the plaintiff discontinued the medication on her own accord, and at each visit the cast applied was always bivalved for her comfort due to her description of the cast being "tight." Thus, the defendants argued, the plaintiff could have removed the cast if necessary.

As to the defendants not returning the plaintiff's call in a timely fashion, the defendants asserted that there was no record of the plaintiff having called or left a message. At the plaintiff's one-month post operative appointment, when there was a high clinical suspicion for DVT, the plaintiff was referred for the appropriate study and treatment. The defendants' expert opined that the defendants' treatment of the plaintiff had no effect on the plaintiff's outcome and that all care and treatment provided was within the standard of care without negligence or malpractice.

The jury found in favor of the plaintiff and awarded damages in the amount of \$550,000, plus \$162,923 in attorney fees; and \$50,242 in pre-judgment interest, for a total award of \$763,165 to the plaintiff.

REFERENCE

Scott vs. Goldberger, M.D., et al. Docket no. L-002185-16; Judge W. Hunt Dumont, 10-25-19.

Attorneys for plaintiff: Bruce H. Nagel and Susan F. Conners of Nagel Rice, LLP in Roseland, NJ. Attorney for defendant: Heather M. LaBombardi of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

COMMENTARY

Following trial, the defendants filed a motion for mistrial arguing that the plaintiff had changed her testimony at trial by changing the name of the person to whom she claimed she spoke complaining of bruising and swelling prior to a 4-day delay in being seen by the defendants. The plaintiff claimed in pretrial testimony that she spoke with "Mercedes" on November 14th and 15th of 2016 and that she did not receive a call back from the defendants, and therefore, stopped taking aspirin on November 16th. At trial, the plaintiff changed the name of the person to whom she spoke to "Tiffany." This was after the defendants indicated that there was no one named Mercedes working in the defendant's office. The defendants asserted that the plaintiff testified that she never called the defendants' office main number or their answering service and that she always spoke with Mercedes. At trial, on direct examination, for the first time, the defendants argued, the plaintiff testified that the individual that she communicated with at the defendants' office was Tiffany, the defendant physician's assistant, despite never having mentioned that name in her deposition or throughout the pendency of the case and produced Tiffany's business card during trial which was never provided during discovery. Defense counsel was not able to attempt to corroborate or dispute the plaintiff's new assertion since it was brought up during her testimony at trial. The defendants argued that this was clearly trial by surprise as defense counsel was not afforded the opportunity to meet with Tiffany and consult with her to determine the truthfulness of the plaintiffs'

new assertions. As such, the defendants argued that a mistrial must be granted since no curative instruction would suffice to cure the plaintiffs' clear discovery violation.

The plaintiff argued that the defendants' expert offered the opinion in his report that it was appropriate for the plaintiff to have stopped aspirin and thus the issue of phone calls was completely neutralized by the defendants' own expert. This, coupled with the Court's curative instruction on aspirin and how it played no role on liability and causation, rendered the phone call episode irrelevant to any material issue. Thus, the plaintiff argued, the defendants' position that the correction of a name impacted liability or credibility issues is without merit and should be rejected. Further, the argument that a mistrial should result from this minor identification issue must be rejected as the name was completely insignificant to core liability and causation issues presented to the jury. The plaintiff maintained that the verdict was clearly sound as based upon competent and relevant admissible evidence re-

garding the defendant orthopedist's failure to recognize symptoms of a DVT and follow up on continued complaints of cast tightness, discomfort, increased foot swelling and calf irritation. The complaints lodged at each visit over an extended period of time (from October 17, 24, 29 and November 7), according to the testimony, required a Doppler study which, according to the un rebutted testimony of the plaintiff's expert, would have shown development of clots.

Plaintiff's counsel asserted that the issue of misidentification of the defendants' office staff in phone calls placed after those office visits which formed the basis of the plaintiff's negligence claims is unrelated to issues of liability and, as such, the motion for a mistrial should be denied. The defendants' motion for mistrial was denied. The defendants subsequently filed a motion to stay the judgment while they filed an appeal of the jury's verdict and the court's denial of a mistrial. The stay of judgment was granted and the case continues on appeal.

\$1,385,534 VERDICT – BREACH OF CONTRACT – PLAINTIFF ASSERTS DEFENDANT COMPANY INDUCED PLAINTIFF TO LEAVE EMPLOYMENT AND FORM COMPANY WITH SUPPORT AND INTENT TO SEEK PUBLIC SECTOR PROJECTS AS WOMEN'S BUSINESS ENTERPRISE THEN RENEGED ON DEAL – DEFENDANT COMPANY ASSERTS THERE WAS NEVER CONTRACT BETWEEN PARTIES BECAUSE THERE WAS NO MEETING OF THE MINDS OR EXCHANGE OF CONSIDERATION.

Monmouth County, NJ

In this breach of contract case, the plaintiff engineer asserted that the defendant architecture firm failed to pay certain contractual debts owed to the plaintiff. The plaintiff brought suit against the defendant and its agents for breach of contract, breach of implied covenant of good faith and fair dealing, fraudulent inducement, civil conspiracy, estoppel, violation of N.J. Limited Liability Act, unjust enrichment, and unfair competition. The defendant denied failing to pay or refusing to pay any contractual debts owed to the plaintiff.

Per the terms of an agreement between the plaintiff and defendant, the plaintiff was induced to, intended to, and did resign her employment as a Vice President and shareholder in an engineering firm of 15 years and, with purported support of the defendant, started an engineering and consulting firm that would seek certification as a Women's Business Enterprise majority-owned and controlled by the plaintiff. As marketed to and understood by the plaintiff, this "partnership" offered the plaintiff the opportunity to lead and aggressively develop public sector relationships and pursue contracts and projects subject to preferential considerations afforded by the public sector to WBEs and would "Open the door" for the defendant to branch into New Jersey's lucrative public sector where it had neither notable experience nor reputation at the municipal, county or state level.

The defendant agreed in writing, among other material terms, to pay the plaintiff \$350,000 which equated to 2 years of annual salary as the new entity's Chief Executive Officer, President, and majority shareholder. The plaintiff claimed that, to extinguish any reservation, the defendant also expressly agreed,

in writing, that the plaintiff's compensation was a "Guaranteed and unconditional and irrevocable obligation of [the defendant] to pay you." Despite the defendant's express assumption of these payment obligations to the plaintiff and additional financial and resource obligations to the new entity, the plaintiff claimed that the defendant failed and refused to fund these contractual obligations. The defendant refused to fund the new entity, to support and resource its growth, to start the WBE certification process, or to make any of the contractual payments to the plaintiff despite that she was actively identifying, developing, and sourcing contracts for the new entity and potential business opportunities. The plaintiff claimed that she was duped into resigning her employment, cutting off her financial support, and causing her to drain her limited savings to keep the new entity afloat until she had no choice but to abandon the express terms of her contract and agree to serve as the "face" of the defendant in the public sector - not a bona fide owner of a WBE.

The defendant denied that the plaintiff had any right to recover monetary damages against them. The defendant denied the existence of a binding agreement as the term was used by the plaintiff. The defendant asserted that there was never a finalized agreement with respect to the creation of a business venture between the plaintiff and the defendant. The only binding agreement between the plaintiff and defendant was an offer of employment which, the defendant claimed, the plaintiff initially accepted, but later rejected. The defendant maintained that the plaintiff's claim for breach of contract failed because it lacked consideration and specificity as to its terms and obligations of the parties, and that it failed be-

cause the plaintiff repudiated the offer of employment memorialized in a June 2016 offer letter. The defendant argued that the business opportunity portion of the June 2016 letter was executory and the plaintiff and defendant never reached a binding agreement with respect to the business venture.

The jury unanimously found in favor of the plaintiff defendant as to the courts of breach of contract and breach of the implied covenant of good faith and fair dealing. The jury awarded the plaintiff damages in the amount of \$1,279,000, plus pre-judgment interest in the amount of \$106,534, for a total of \$1,385,534.

REFERENCE

Flor, et al. vs. Greenberg Farrow Architecture, Inc. Docket no. L-001021-17; Judge Owen C. McCarthy, 10-21-19.

Attorneys for plaintiff: Owen A. Kloter and Daniel Scott Furst of Sichenzia Ross Ference, LLP in New York, NY. Attorney for defendant: Matthew N. Fiorovanti of Giordano, Halleran & Ciesla, P.C. in Red Bank, NJ.

COMMENTARY

Following the verdict, the defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, a new trial, or remittitur. The defendant argued that such relief was appropriate because the letter that the plaintiff asserted was a contract was not a contract as a matter of law due, in part, to a lack of a meeting of the minds and consideration exchanged. Further, the defendant argued, the jury was not instructed on the appropriate and necessary governing law in New Jersey relating to the meeting of the minds requirement and other requirements for a breach of contract claim. Additionally, the jury heard impermissible evidence relating to a dismissed claim that substantially prejudiced the defendant; evidence that was relevant in this case was not permitted to be presented at trial. The defendant asserted that the jury's awarded damages were not supported by the governing law in New Jersey, and was not supported by equitable considerations and yielded a windfall to the plaintiff. Lastly, the defendant maintained that the jury's verdict was impermissible as a matter of law because it would force the defendant to perform its purported obligations under the letter, but did not correspondingly give the defendant its benefit under the letter of an ownership interest in the new entity. The defendant argued that, if the jury verdict stood in any form, the defendant was entitled to a declaration that it was a member and part owner of the new entity created by the plaintiff. The plaintiff opposed the defendant's motions and argued that the findings challenged by the defendant were made by the jury after hearing testimony, weighing the credibility of the witnesses and considering the evidence presented during approximately 7 days of trial. The findings were made in accordance with the instructions given and were irrefutably based upon the substantial record evidence presented. In such circumstances, there is no basis for disturbing or modifying the verdict, granting a new trial, or, in the alternative, ordering a remittitur. The plaintiff pointed to the fact that the jury received doc-

umentary and testimonial evidence that demonstrated that the defendant understood what it had agreed to do pursuant to the contract. The defendant set up an email account system for the plaintiff on a new domain for the new entity and a new bank account for at Sun Trust Bank. The parties looked for office space to lease together and the defendant's staff constructed the new entity's website, reviewed potential hires for the start-up and then posted those positions on the website.

While the jury would have considered this consideration, it also could, and did, construe it as evidence that the parties had agreed to do what the contract said. The triers of fact heard testimony about the contract and were free to consider it and the credibility of the witness that gave it. The trial record for the jury was clear and, in part thanks to the unequivocal testimony of the defendant's own witnesses, there was a meeting of the minds on the terms of the contract. Accordingly, the plaintiff asserted, on this evidentiary record, there was no basis to grant the defendant's motion for judgment notwithstanding the verdict.

The plaintiff further noted that the defendant made a series of payments to the plaintiff in the same amounts that corresponded to her annualized salary, car allowance, and sign-on bonus, which were material terms of the contract. Further, the defendant paid third-party vendors for payroll and marketing services, as well as computer equipment for the new entity. And, when it came time for the new entity to prepare and remit its qualifications submissions for RFQs throughout New Jersey, the defendant provided - and the new entity presented - the defendant's projects and employees as part of the new entity's engineering team to demonstrate the new start-up's combined experience and ability. The plaintiff claimed that this was the very type of consideration sought by the defendant.

The jury, having had the opportunity to view the evidence, hear the testimony, and weigh the credibility of the witnesses, had substantial evidence from which to conclude that the contract was supported by consideration on both sides. On this evidentiary record, there is no basis to grant the defendant's motion for judgment notwithstanding the verdict. Nor did the jury verdict meet the high evidentiary standard for a new trial, as it neither resulted in a miscarriage of justice, nor was the verdict itself conscience shocking. To the contrary, notwithstanding the defendant's assertion that the "Verdict, itself, demonstrates the impact of this type of evidence[.]" the jury heard conflicting evidence as to many events, and then duly made credibility assessments as to each witness, including the plaintiff, and the defendant's principals, in rendering its verdict.

As to remittitur and specific performance, the plaintiff argued that the defendant failed to establish grounds for relief. The plaintiff sought a damage remedy - money damages - not an equitable remedy of specific performance, which would be an inconsistent remedy with the damages sought, charged and awarded. Of course, the defendant's attorneys may not make an election of remedies for the plaintiff. For this reason, the plaintiff maintained, the defendant's "straw man" argument was irrelevant and should be rejected by the Court in its entirety as outside of the pleadings and trial record. The plaintiff filed a cross-motion to enter judgment per the jury verdict. Oral arguments were heard and a decision on the plaintiff's and defendant's motions is still pending.

DEFENDANT'S SUMMARY JUDGMENT – WRONGFUL TERMINATION – WHISTLEBLOWER – PLAINTIFF CONTENDS HE WAS TERMINATED FOR COMPLAINING ABOUT ILLEGAL PRACTICES IN WHICH DEFENDANT EMPLOYER ENGAGED – DEFENDANT POINTS TO LACK OF EVIDENCE OF ANY COMPLAINTS BY PLAINTIFF AND PLAINTIFF'S LONG HISTORY OF POLICY VIOLATIONS IN WORKPLACE.

Essex County, NJ

The plaintiff brought this action pursuant to the New Jersey Conscientious Employee Protection Act claiming that he was wrongfully terminated due to complaints he made about illegal actions by his employer. The defendant denied any illegal activities, any complaints of such by the plaintiff and maintained that the plaintiff was terminated for reasons having to do solely with his job performance.

The plaintiff was an individual who was interviewed and submitted an application for employment as a farm worker at the defendant farm on June 10, 2016. The plaintiff was hired by the defendant on September 8, 2016 to be a farm worker. As a farm worker, the plaintiff's job duties included working as a production employee, construction employee, and in the packaging department. As a condition of the plaintiff's employment with the defendant, the plaintiff agreed to follow the defendant's policies and procedures. The plaintiff testified that he never violated any of the defendant's time and attendance policies or any other policies established by the defendant.

The plaintiff brought the subject civil action against the defendant arising from his termination of employment with the defendant purportedly due to complaints he made to management about alleged illegal activity at the defendant farm. After he made complaints, the plaintiff alleged, the defendant began a campaign to terminate him. The plaintiff testified that the defendant made up the time and attendance violations, write-ups for inappropriate behavior toward other employees and safety infraction reports. The plaintiff testified that the defendant fabricated a sexual harassment complaint against him and commenced an investigation, the result of which found that he had made sexually harassing comments to a co-worker and to coworkers about the victim. On June 7, 2017, the plaintiff was issued a final written warning regarding the sexual harassment claim which he refused to sign. The plaintiff was subsequently written up for 2 safety violations and was terminated on July 18, 2017.

The plaintiff testified that the warnings and write-ups he received were in retaliation for complaints he made oral to an unnamed Human Resources employee about illegal activities in the defendant workplace. The plaintiff claimed he complained of being asked to operate a forklift without a license; complaints about the defendant engaging in unlawful processing and production of agriculture and that the defendant transferred or sent home employees in advance of local and state inspections and complaints about the defendant engaging in the alleged

unlawful processing and production of agriculture and the transferring of employees between 2 locations because one of the defendant's location did not have a license to have people working on the premises. The plaintiff also maintained that he was asked to move acid without the proper protections for this hazardous material and that he made complaints to a supervisor and an individual in Human Resources concerning this complaint. All of the plaintiff's complaints were purportedly made verbally. There were no written complaints made by the plaintiff.

The defendant argued that during the plaintiff's employment, the plaintiff repeatedly violated the defendant's policies and procedures for time and attendance, employee conduct, and employee safety. The defendant asserted that the plaintiff was notified of each of the violations and that each violation was recorded. The defendant claimed that the plaintiff was ultimately terminated due to the cumulative complaints and violations against him and not due to any complaints he allegedly made about illegal activities by the defendant. The defendant argued that it had a clear policy for employee complaints and that, if the plaintiff in fact made any complaints, he did not follow the defendant's procedures for doing so. The defendant pointed to the fact that the defendant asserted that all of the plaintiff's complaints were made verbally, that he could not identify to whom he made those complaints and that there was nothing in writing in the defendant's files or witness testimony to indicate that the plaintiff had made any complaints whatsoever. The defendant argued that the plaintiff was terminated for poor job performance and there was no retaliation, because there were no complaints made by the plaintiff.

The defendant moved for summary judgment. The court affirmed the defendant's Motion for Summary Judgment and the case was dismissed.

REFERENCE

Cobo vs. Aerofarms Corp. Docket no. L-000730-18; Judge Jeffrey B. Beacham, 10-25-19.

Attorney for plaintiff: Raymond J. Seigler of Chasan Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ. Attorneys for defendant: Michael R. Miller and Christopher J. Gilligan of Margolis Edelstein in Philadelphia, PA.

COMMENTARY

Per the defendant's employee records, issues with the plaintiff's job performance began within a month of commencing employment with the defendant and continued repeatedly until his termination in July 2017. The history of issues with the plaintiff, according to the defendant, is as follows: On October 11, 2016, the plaintiff was notified of a

time/attendance infraction and he signed a corrective action form indicating that a verbal warning had been given to him for failing to clock in on time; on May 2, 2017, the plaintiff again violated the defendant's time and attendance policies by clocking in to work, but not performing his job duties; during the plaintiff's employment with the defendant, a coworker of the plaintiff made a verbal complaint to the Human Resources Manager on May 18, 2017 and followed up with a written complaint on May 23, 2017, that on May 18, 2017, the plaintiff had made sexually harassing comments to her; on June 7, 2017, the plaintiff was issued a final written warning about the incident; on July 11, 2017 and again on July 12, 2017, the plaintiff was observed by a supervisor violating the defendant's policies and procedures regarding employee safety by failing to wear his safety glasses in a production area; on July 13, 2017, the plaintiff was issued a written warning for violating the defendant's safety policies and was suspended effective July 13, 2017 until an investigation and determination could be made on his work status.

As a result of the plaintiff's multiple violations of the defendant's policies and procedures for time and attendance, employee conduct, and safety, on July 18, 2017, the plaintiff was notified verbally of his termination with an effective date of July 18, 2017 and a written termination notice was sent to him. The defendant filed a Motion for Summary Judgment pursuant to N.J. R. 4:46 because, the defendant argued, the plaintiff failed to adduce sufficient evidence to support any claim for retaliation under New Jersey's Conscientious Employee Protection Act (CEPA). Specifically, the plaintiff had not produced any evidence to show that any of the underlying alleged illegal conduct occurred or existed or that the plaintiff made complaints about this underlying alleged illegal conduct. Rather, the defendant opined, this was merely an instance of a disgruntled former employee attempting to establish liability against the defendant for terminating him for repeated violations of the defendant's policies and procedures as related to time and attendance, employee conduct, and employee safety. Defense counsel argued that the plaintiff made no attempt to prove his allegations through the discovery process as he didn't send any requests for answers to interrogatories, requests for production of documents, requests for admissions, or seek to take any depositions of any individual employed by the defendant or otherwise. The defendant maintained that the plaintiff could not establish a prima facie claim of CEPA, let alone show any pretext by the defendant that the plaintiff was terminated for anything but legitimate and non-discriminatory reasons pursuant to the defendant's progressive discipline policies.

Further, the defendant argued, the plaintiff did not have a reasonable belief that the defendant was violating a clear mandate of public policy for his alleged complaints, and thus, could not establish prong one for a prima facie complaint under CEPA. The plaintiff alleged generally that he complained about 3 different activities at the defendant being violations of the Occupational Safety and Health Act of 1970 (OSHA). (1) he was asked to operate a forklift without a license; (2) there was unlawful production and processing of agriculture at an the defendant facility and the defendant transferred or sent home employees in advance of local and state inspections, and (3) he was asked to move acid without the proper protections.

The defendant maintained that while the plaintiff may have had a reasonable belief that being asked to operate a forklift without a license could be an OSHA violation, he could not and did not provide any support for his beliefs that the other 2 alleged illegal acts were violations of OSHA. As it pertains to plaintiff's second allegation concerning the growing of agriculture without a license to do so, the plaintiff failed to provide any support that this would be a violation of OSHA other than conclusory allegations. While OSHA could apply to

his concerns about being asked to move acid without proper protections, at the plaintiff's deposition, when he was asked what proper protections he should have been given, he didn't know. The defendant questioned how the plaintiff could assert that he had a reasonable belief that this activity was a violation of OSHA when he did not even know what additional protections he should have had. Since the plaintiff could not point to a rule, law, or public policy for his allegations regarding the alleged unlicensed growing and moving of acid, the defendant argued that those 2 allegations must be dismissed.

Additionally, according to the defendant, the plaintiff did not perform a whistle-blowing activity that would establish prong two of a prima facie claim under CEPA. The plaintiff alleged that he made complaints concerning being asked to operate a forklift without a license to an unnamed individual in Human Resources. The plaintiff alleged that he made those complaints orally, and never made any written complaints. The plaintiff also alleged that he made oral complaints that the defendant was engaging in the illegal processing and production of agriculture and the transferring of employees between two of the defendant's locations because one of the defendant's locations did not have a license to have people working there. The plaintiff alleged that he made oral complaints to an unknown supervisor and unknown individual in Human Resources that he had been asked to move acid without proper protections. There is no evidence that the plaintiff made complaints to anyone concerning these 3 alleged issues.

At the plaintiff's deposition, he admitted that the defendant had policies and procedures that direct employees on how to make complaints, but that he did not follow them. He admitted that did not make complaints to the CFO of the defendant or to the complaint system per the defendant's procedures. The defendant denied that the 3 underlying conditions even existed. The plaintiff could not point to anywhere in the record that these conditions existed, let alone, that he made complaints concerning them. The plaintiff was unable to remember the simplest of facts concerning his alleged repeated complaints as to whom they were made or when he made these complaints. The defendant argued that, if he had truly made these complaints or had actual concerns that these conditions were illegal, he should be able to provide this type of information. As such, the defendant put forth that the plaintiff did not establish that he performed any whistle-blowing activity to establish a prima facie claim under CEPA.

Lastly, the defendant argued that the plaintiff could not establish a prima facie case under prong four of CEPA as there was no causal connection between his alleged complaints and his termination. Assuming that the plaintiff even made complaints, he was unable to establish that there was any suggestive temporal proximity between his complaints and his termination. The defendant pointed to evidence that the plaintiff could not remember when he made any of his complaints for any of the 3 alleged illegal activities committed by the defendant. The plaintiff testified that he could not recall the last complaint that he made at the defendant before being terminated. The plaintiff testified that he could not recall making a complaint in June or July 2017 before he was terminated on July 18, 2017.

The defendant concluded that the plaintiff could offer no proofs to the Court in support of his claims that his alleged complaints were connected in any way to his termination. The defendant argued that it met its burden to show that the plaintiff was terminated for legitimate and non-discriminatory reasons and, given that the plaintiff was unable to show that the defendant's decision to terminate the plaintiff for his multiple violations of the defendant's policies and procedures was pretextual.

VERDICTS BY CATEGORY

DOG ATTACK

\$150,000 RECOVERY

Dog attack – Minor plaintiff attacked by defendant’s dog – Significant suturing of full thickness lacerations to face – Permanent scarring with hypo-pigmentation and scar tissue – Future scar revision surgery recommended.

Morris County, NJ

In this dog attack case, the plaintiff, a 4-year-old girl, asserted that the defendant dog owners negligently and recklessly failed to maintain control, custody and supervision of a dog which then permanently injured the plaintiff. The defendants initially claimed that the plaintiff was guilty of contributory negligence in failing to exercise due and proper care under the circumstances.

On June 24, 2016, the minor plaintiff was lawfully on the premises at Seneca Avenue in Lincoln Park. The defendants were the owners and had control of an Akita dog. While the dog was under the custody, control and supervision of the defendants, the dog attacked the plaintiff, bit her and caused serious bodily injuries to the plaintiff.

As a result of the attack, the plaintiff was taken to the emergency room for sterilization and suturing of her wounds, which included full thickness laceration to the right corner of the mouth and left cheek and left lower eyelid. The plaintiff sustained permanent facial scarring and palpable scar tissue on the left supraorbital rim and right lower lateral lip, both with hypo-pigmentation. The plaintiff was recommended for future scar revision surgery.

The parties settled the matter prior to trial in the amount of \$150,000 broken down as follows: \$37,270 in attorney fees; \$922 in fees and disbursements and \$111,809 in net damages to the minor plaintiff.

REFERENCE

Lang vs. Coleman. Docket no. L-001206-18; Judge Philip J. Maenza, 10-21-19.

Attorney for plaintiff: Denis F. Driscoll of Inglesino, Webster, Wyciskala & Taylor in Parsippany, NJ.

Attorney for defendant: Steven I. Litvak of Litvak & Trifoliis, P.C. in Cedar Knolls, NJ.

GENDER DISCRIMINATION

DEFENDANT’S SUMMARY JUDGMENT

Gender discrimination – Violation of civil rights – Plaintiff bar patron contends that defendant bar refused him service on basis of gender while continuing to serve female former friend – Defendant bar claims it refused service to plaintiff, not on basis of gender, but on basis of his behavior and potential “drama” with another bar patron – Defendant granted summary judgment on basis that plaintiff failed to establish prima facie case for discrimination.

Monmouth County, NJ

In this gender discrimination case, the plaintiff alleged that his civil rights were violated under the New Jersey Law Against Discrimination N.J.S.A. §10:5-1 because, as a male, he was refused service, while his former friend, a female, was not. The defendant argued that the plaintiff had not, and could not, identify any conduct or statements that evidenced gender-based, or any other type of, unlawful discrimination, under the

New Jersey Law Against Discrimination. N.J.S.A. §10:5-1, et. seq., or any other anti-discrimination law.

On October 31, 2019, the plaintiff was refused service by the defendant sports bar in Bradley Beach that caters primarily to soccer fans. The plaintiff was a regular patron of the defendant bar. On the date in question, the plaintiff was told that he was excluded from the bar and asked to leave. The plaintiff alleged that the exclusion violated his civil rights not to be discriminated against based on gender. The plaintiff claimed that he was the victim of unlawful reverse discrimination.

The defendant maintained that the plaintiff did not point to anything that would show he was discriminated against because he was a male. Rather, he only pointed to facts and statements that showed that he was discriminated against because of his conduct in relation to another, female, patron. The 2 had had a falling out outside of the defendant bar approximately 2 weeks prior. On October 31, 2019,

the defendant bar's manager informed the plaintiff that he was excluded from the bar because the bar's management "Did not want drama" - referring to the plaintiff's reaction to his falling out with the female patron. At no time was the plaintiff excluded because of his gender, but rather for his behavior and the defendant's perception of a possible altercation between the parties. The defendant asserted that, just because the plaintiff was denied some benefit, while his cohort was not, did not in and of itself equal gender discrimination.

The defendant moved for summary judgment on the argument that the plaintiff could not demonstrate a prima facie case for reverse gender discrimination. The court granted the motion.

REFERENCE

Wander vs. D'Arcy's Tavern. Docket no. L-000757-19; Judge Linda Grasso Jones, 10-25-19.

Attorney for defendant: Thomas Hall of McGill and Hall, L.L.C. in Belmar, NJ. Attorney for defendant Michael Wander: pro se.

INSURANCE OBLIGATION

\$95,000 VERDICT

Insurance obligation – Rear end collision – Disc herniations at C3-4, C5-6, C6-7 and T2-3 – 8 months of chiropractic treatment and 12 physical therapy sessions.

Burlington County, NJ

In this insurance obligation case, the plaintiff asserted that the tortfeasor driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff brought an underinsured motorist claim against her insurer. The defendant stipulated liability, but contested the plaintiff's damages.

On October 15, 2015, the plaintiff, a 54-year-old woman, was stopped at a stop sign on Monmouth Road in Trenton. The plaintiff asserted that the tortfeasor driver negligently failed to stop behind the plaintiff and forcefully struck her vehicle from behind. The tortfeasor admitted fault for the collision. The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff brought this claim against her insurer under the underinsured motorist clause of her insurance policy.

As a result of the collision, the plaintiff presented to a chiropractor with complaints of neck pain on the left side radiating towards the left shoulder, left arm and left hand. The plaintiff also complained of pain and spasm in the upper left back as well as bilaterally in the low back radiating to both hips with pain and clicking as well. The plaintiff was diagnosed with central disc herniation at C3-4 indenting the thecal sac with disc herniation at C4-5 distorting the cord and

lateral recesses with ventral cord and left lateral recess disc herniation at C5-6 with C6-7 disc herniation distorting the ventral cord and left lateral recess with a right paracentral disc herniation at T2-3. The plaintiff treated with 8 months of chiropractic treatment and 12 physical therapy sessions.

The defendant argued that the impact of the collision was not significant enough to have caused the permanent damages claimed by the plaintiff. The defendant pointed to the fact that the plaintiff was released from the hospital following the accident with a diagnosis of neck and back sprain. The defendant's IME reported an opinion that there were no objective findings of any ongoing injury process which could have causal relationship to the subject motor vehicle accident. The IME stated that although the plaintiff may have experienced temporary myofascial discomfort, there was no evidence of any permanent injury.

The jury found in favor of the plaintiff and awarded damages in the amount of \$137,037 which reflects a jury verdict of \$95,000 plus all interest, costs and attorneys' fees.

REFERENCE

Wyatt-Krause vs. New Jersey Manufacturers Insurance. Docket no. L-001888-17; Judge Aimee R. Belgard, 07-23-19.

Attorney for plaintiff: Vanessa P. Patrizi of Borbi, Clancy & Patrizi, LLC in Marlton, NJ. Attorney for defendant: Brad A. Parker of Parker Young & Antinoff, LLC in Marlton, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Intersection collision – 2 lumbar disc herniations and partial right shoulder rotator cuff tear – Arbitrator assigns 100% liability to defendant insurer with damages of \$35,000.

Middlesex County, NJ

In this case, the plaintiff asserted that the tortfeasor driver struck her vehicle in an intersection. As a result of the collision, the plaintiff sustained 2 lumbar disc herniations and partial right shoulder rotator cuff tear. The plaintiff settled with the tortfeasor for the policy limit of \$15,000 and brought this cause of action against the defendant insurer for underinsured

motorist benefits. The defendant asserted that the plaintiff was comparatively negligent, and therefore, not entitled to collect damages.

On March 27, 2015, the plaintiff was the driver of a school bus being driven at the intersection of Ernston Road and Route 9 in Middlesex. The tortfeasor violated the traffic controls of the intersection and collided with the plaintiff's vehicle. At the time, the plaintiff was insured with an insurance policy through the defendant with an underinsured/uninsured insurance policy limit of \$50,000. The plaintiff alleged that the force of the impact resulted in permanent injuries.

The tortfeasor driver had a policy limit of \$15,000 which was tendered to the plaintiff prior to this action. The plaintiff claimed that the value of her injuries ex-

ceeded the tortfeasor's policy limit. The defendant challenged the nature, extent and causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial wherein the arbitrator assigned 100% liability to the insurer with damages of \$35,000.

At trial, the jury found no cause for action and returned a verdict in favor of the defendant.

REFERENCE

Blanco vs. Allstate Insurance Company. Docket no. L-007605-17; Judge Dennis Nieves, 10-21-19.

Attorney for plaintiff: David P. Pepe of Wilentz, Goldman & Spitzer, P.A. in Woodbridge, NJ. Attorney for defendant: Mary Lou Dennis-Suckow of Law Offices of Pamela D. Hargrove in Cranford, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

■ \$285,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff parking lot pedestrian struck by defendant backing out of space – Plaintiff propelled to ground – Rib fracture – Left hip tendinopathy – Lumbar disc disruptions requiring surgery.

Passaic County, NJ

In this action for motor vehicle negligence, the plaintiff, 67-years-old at the time, contended that the defendant driver negligently failed to make proper observations as she was backing out of a space in a parking lot. The plaintiff, who was walking towards her parked vehicle, was struck on her right side, causing her to fall to the ground and onto her left hip and lower back, sustaining multiple injuries which required surgery. The defendant claimed that the plaintiff failed to pay adequate attention and was comparatively negligent.

The plaintiff asserted that she suffered several fractured ribs that ultimately essentially resolved. The plaintiff further claimed that she suffered left hip tendinopathy which will cause permanent pain de-

spite physical therapy and injections. The plaintiff maintained that the pain intensifies from walking extended distances or standing in the same location for prolonged periods.

The plaintiff also contended that she suffered disruptions at 3 lumbar levels. The plaintiff would have advanced that despite surgery, she will suffer symptoms for the remainder of her life. The defendant's orthopedist denied that there was any objective evidence of continuing injury.

The defendant had \$1,000,000 in coverage. The case settled prior to trial for \$285,000.

REFERENCE

Plaintiff's neurosurgeon expert: Rajnik W. Raab, M.D. from Wayne, NJ. Plaintiff's orthopedic surgeon expert: Frank Capecci, M.D. from Denville, NJ. Defendant's orthopedic surgeon expert: Alan R. Miller, M.D. from Westwood, NJ.

DeMaio vs. Garbaccio, et al. Docket no. PAS-L-2421-18, 01-30-20.

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

Auto/Truck Collision

■ \$220,000 RECOVERY

Motor vehicle negligence – Auto/truck collision – Plaintiff's 5-year-old daughter killed in rear end collision in which her father, who also died, rear-ended truck driven by defendant driver and owned by defendant companies – Wrongful death and survivorship.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant drivers were responsible for a collision that killed the plaintiff's decedent, her 5-year-old daughter. The defendant driver of the decedent's vehicle was insured for \$100,000 and the defendant driver and

employer/owners of the truck were insured for \$750,000. The defendants stipulated liability and settled the case.

On June 14, 2017, the plaintiff decedent was a passenger in a motor vehicle, being driven by her father, which was involved in a collision. The plaintiff's vehicle rear-ended a truck stopped in the left lane on I-95 North, on the New York side of the George Washington Bridge. The defendant truck was broken down on in the left travel lane of the bridge. The plaintiff asserted that the truck was blocking the lane of travel without warning signs that it was disabled. The plaintiff alleged that the accident was caused by the negligence of the defendant driver of the truck and vicariously his employer/owner of the truck, as well as the driver of the decedent's vehicle.

■ \$70,000 PRE-SUIT RECOVERY

Motor vehicle negligence – Truck/auto collision – Lane change collision – Defendant driver of double-trailer truck suddenly changes lanes, striking plaintiff automobile driver – Lumbar herniation – Cervical and lumbar bulges – 6 months of chiropractic care until outbreak of virus.

Bergen County, NJ

In this case of motor vehicle negligence, the 31-year-old plaintiff automobile driver contended that as she was proceeding in the left lane of Route 17, the defendant driver of a double trailer and tractor suddenly changed from the right to the left lane, striking the passenger side of the plaintiff's car, totaling it and causing the plaintiff to sustain injury.

The plaintiff advised the police that she did not believe that she was injured. The plaintiff maintained that she developed severe neck and back pain and visited the emergency room 2 days after the accident. The plaintiff then came under the care of the

treating chiropractor. The plaintiff maintained that MRIs revealed a herniated disc at L3-4 and bulging discs at L2-3, L4-5 and C6-7. The plaintiff treated with the chiropractor for 6 months at which time she stopped treating due to the Coronavirus outbreak. She discussed a referral to a pain management doctor with the chiropractor.

The parties settled the matter prior to trial in the amount of \$220,000 broken down as follows: \$73,473 in attorney fees; \$146,527 in net damages to the plaintiff mother as heir to the decedent's estate. The settlement consisted of the \$100,000 policy limit of the insurance on the vehicle in which the decedent was a passenger and \$120,000 from the defendant truck's insurance coverage.

REFERENCE

Amstutz, Administrator vs. Battiste, et al. Docket no. L-002173-19; Judge Henry P. Butehorn, 10-21-19.

Attorney for plaintiff: John J. McDermott, III of Maggs & McDermott, LLC in Wall, NJ.

The plaintiff is a student and missed 1 week of classes. She also works as a dispatcher and missed 2 days from work.

The case settled approximately 6 months after the accident for \$70,000.

REFERENCE

Plaintiff's chiropractor expert: Kenneth Ermann, DC from Teaneck, NJ.

Williams vs. UPS, et al., 04-17-20.

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

Intersection Collision

■ \$200,000 RECOVERY

Motor vehicle negligence – Intersection collision – Traumatic injury to neck, back and right shoulder – Epidural injections to back and shoulder – Plaintiff claimed \$106,000 in medical expenses.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle in an intersection after failing to stop at a stop sign. The plaintiff claimed the collision caused significant, permanent injury and extensive medical expenses. The defendant driver denied liability claiming that there was a vehicle blocking the defendant's view of the plaintiff

entering the intersection and that, at most, the defendant rolled through the stop sign, but did not enter at more than a low, rolling speed, not significant enough to cause injury to the plaintiff.

On February 4, 2016, the plaintiff was operating a vehicle westbound on West Lake Avenue approaching the intersection of Jefferson Avenue in Rahway. The defendant was operating a vehicle traveling northbound on Jefferson Avenue towards the intersection of West Lake Avenue. The plaintiff maintained that he entered the intersection with the right-of-way and that the defendant negligently failed to stop at a stop sign controlling her entry into the intersection. The plaintiff

argued that the defendant's negligence caused a collision between the vehicles wherein the plaintiff suffered permanent injuries.

As a result of the collision, the plaintiff claimed traumatic injury to the neck, back and right shoulder. The plaintiff received epidural injections in her back and shoulder. The plaintiff claimed \$106,000 in medical expenses.

The parties submitted to arbitration prior to trial. The arbitrator assigned 90% liability to the defendant driver and 10% to the insurers for the plaintiff's underinsured motorist claim. The arbitrator set damages at \$200,000. The court ordered the case dismissed following arbitration.

■ \$15,000 PARTIAL RECOVERY

Motor vehicle negligence – Intersection collision – Defendant driver fails to yield at intersection – Plaintiff's decedent passenger killed in collision with defendant commercial vehicle – Plaintiff settles with defendant driver and owner of commercial vehicle for policy limit – Case continues as to defendant third-party company.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver, driving a commercial vehicle owned by the defendant flooring company, struck the decedent's vehicle at an intersection and caused his death. In deposition testimony, the defendant driver stated that he was working for a third-party company on the day he was driving the vehicle. The plaintiff filed an amended complaint to include the third-party company in the suit. The defendants initially denied liability, claiming that the driver of the plaintiff's vehicle was comparatively negligent.

On September 8, 2017, the plaintiff's decedent was a front-seat passenger in a vehicle operated by his wife that was traveling southbound on Florence Avenue at the intersection with Atlantic Avenue in Long Branch.

REFERENCE

Johnson vs. Dreesen, et al. Docket no. L-000279-18; Judge Alan G. Lesnewich, 07-23-19.

Attorney for plaintiff: Anthony R. Fattell of Lord Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ. Attorney for defendant driver: Edwin J. McCreedy of Law Offices of Edwin J. McCreedy in Cranford, NJ. Attorney for defendant National Union Fire Insurance Co.: Rocco T. Casale of Law Offices of Schwab, Haddix & Millman in Berkeley Heights, NJ. Attorney for defendant Geico Insurance Company: Chad Weiss of Law Offices of Cindy Thompson in West Orange, NJ.

A commercial vehicle owned by the defendant flooring company and operated by the defendant driver was traveling eastbound on Atlantic Avenue at the same intersection. The plaintiff asserted that the defendant company's driver negligently failed to yield at the intersection and struck the vehicle in which the plaintiff's decedent was a passenger causing him severe and irreversible physical injuries resulting in his death.

The plaintiffs settled the matter prior to trial as to the defendant driver and defendant owner of the commercial vehicle in the amount of \$15,000 which represented the limit of the defendants' insurance policy.

REFERENCE

Dolan, et al. vs. ASAP Floors, LLC, et al. Docket no. L-001241-18; Judge Andrea I Marshall, 10-22-19.

Attorney for plaintiff: Norman M. Hobby of Hobbie, Corrigan & DeCarlo, P.C. in Eatontown, NJ. Attorney for defendant commercial vehicle and driver: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ.

Rear End Collision

■ \$85,000 RECOVERY

Motor vehicle negligence – Rear end collision – Deviated septum – Nasal Fracture – Plaintiff unable to undergo recommended surgery because limited PIP and Medicaid – No income claims.

Essex County, NJ

In this action for motor vehicle negligence, the 18-year-old plaintiff driver contended that the defendant driver struck her in the rear while stopped at a light. The plaintiff maintained that the impact was substantial, propelled her across the intersection, and that although she was

wearing her seat belt, she struck her nose on the steering wheel sustaining serious injury. The defendant admitted negligence.

The plaintiff asserted that she suffered a nasal fracture and a deviated septum. The plaintiff's ENT specialist contended that the injury warranted surgery, but the plaintiff had \$15,000 in PIP medical benefits, was receiving Medicaid and could not undergo the surgery.

The plaintiff asserted that she will permanently suffer breathing difficulties and a slight slanting of the nose. The plaintiff was a high school senior at the time of the accident, was not working, and the plaintiff made no income claims.

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

REFERENCE

Plaintiff's otolaryngology expert: Zarina S. Sayeed, M.D. from Parsippany, NJ. Defendant's otolaryngology expert: Howard Berg, M.D. from West Orange, NJ.

Sayay vs. Willigus, et al. Docket no. ESX-L-1942-19, 08-20.

\$22,019 VERDICT

Motor vehicle negligence – Parking lot collision – Disc herniations at C2-3 and C4-5 with cervical facet joint symptom – Disc bulges at C5-6 and C6-7 – 6 months of chiropractic treatment – Parties enter into pretrial high/low agreement of \$30,000/\$0.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 53-year-old woman, asserted that the defendant driver struck her vehicle in a parking lot with such force that it caused significant, permanent injury. The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent and not caused by the subject collision.

On February 10, 2016, the plaintiff was parked in a transit parking lot at 750 Somerset Street in New Brunswick. The plaintiff contended that the defendant driver, while traversing the parking lot, negligently struck the plaintiff's vehicle causing the plaintiff permanent injuries. As a result of the collision, the plaintiff sustained disc herniations at C2-3 and C4-5 with cervical facet joint symptoms and disc bulges at C5-6 and C6-7. The plaintiff received no injections or sur-

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Right hip labral tear – Disc herniation at L4-5 with positive EMG – Epidural injections – Pre-trial arbitration assigned liability to defendant and set damages at \$35,000.

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 November 2, 2015, the plaintiff was operating her vehicle proceeding on a Madison Avenue ramp to Route 80 in Paterson when she was struck in the rear by a vehicle negligently operated by the defendant. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff alleged a right hip labral tear and disc herniation at L4-5 with positive EMG. Both injuries were treated with injections.

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

gery. She was treated with 6 months of chiropractic treatment and claims ongoing, intermittent pain and stiffness which she treats with over-the-counter meds. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$17,500 reduced. The arbitration was not confirmed and the matter went to trial. The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of \$30,000 in the event of the jury awarding damages above that amount, and a minimum of \$0 in the event of a defendant's verdict.

The jury found in favor of the plaintiff and awarded damages in the amount of \$22,019 broken down as follows: \$800 in attorney fees; \$250 in costs; \$969 in interest and \$20,000 in net damages to the plaintiff.

REFERENCE

Kploanyi vs. Bangura. Docket no. L-000908-18; Judge Michael V. Cresitello, Jr., 10-10-19.

Attorney for plaintiff: Richard D. Romano of The Law Office of Richard D. Romano in Spring Lake, NJ. Attorney for defendant: Cory Bonk of Law Offices of Robert A. Raskas in Piscataway, NJ.

The defendant argued that the plaintiff's injuries were not significant or permanent. The defendant's IME opined that the plaintiff's injuries were all sprains/strains, but did indicate that they were causally related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$35,000. Prior to trial, the plaintiff made an offer to take judgment in the amount of \$35,000. The offer was not accepted and the matter proceeded to trial. At trial, the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Buevas vs. Korszen. Docket no. L-006110-17; Judge Peter Geiger, 10-18-19.

Attorney for plaintiff: Glenn Z. Poosikian of Flores Sternick Poosikan, LLC in Hawthorne, NJ. Attorney for defendant: Peter L. Aragona of Law Offices of Pamela D. Hargrove in Cranford, NJ.

PREMISES LIABILITY

Fall Down

■ \$177,766 GROSS RECOVERY

Premises liability – Fall down – Plaintiff falls on accumulated ice at defendant shopping center – Full thickness tear of left shoulder rotator cuff – Neck and back disc herniations – Surgical repair of shoulder – Plaintiff claims \$27,766 in medical liens.

Gloucester County, NJ

In this premises liability case, the plaintiff asserted that the defendants were negligent in failing to remove or remediate ice or snow from their parking lot and that the negligence of the defendants caused the plaintiff to suffer significant, permanent injury. The plaintiff brought suit against the defendant shopping center and property management company. The defendants denied liability and contested the plaintiff's damages.

On January 8, 2017, the plaintiff was shopping in the defendant shopping plaza at 1800 Clements Bridge Road in Deptford. The plaintiff was walking back to her car in the parking lot of the shopping area when she slipped and fell on ice accumulated in the parking lot. As a result of the fall, the plaintiff sustained a full thickness tear of the left shoulder rotator cuff; neck and back disc herniations. The plaintiff underwent surgical repair of the shoulder. The plaintiff claimed \$27,766 in medical liens.

The plaintiff maintained that the defendants failed to remediate a dangerous condition on the property and that the hazard was the cause of serious injury to

the plaintiff. The defendants argued that the plaintiff fell due to her own failure to keep a lookout where she was walking. The defendants maintained that the snow and ice had been adequately removed. The defendants also pointed to the plaintiff's prior history of similar neck and back injuries with regard to her claims of disc herniations. The defendants asserted that those injuries were not related to the subject incident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant property management company, 10% to the defendant shopping center and 10% to the plaintiff. The arbitrator set gross damages at \$177,766 (inclusive of medical liens) reduced to \$160,000 for plaintiff's comparative negligence. The plaintiff made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Morrison vs. Deptford Commons, LLC, et al. Docket no. L-001089-17; Judge John C. Eastlack, Jr., 10-25-19.

Attorney for plaintiff: Steven M. Petrillo of Petrillo & Goldberg Law in Pennsauken, NJ. Attorney for defendant: James J. Law of Campbell, Lipski & Dochney in Philadelphia, PA.

■ UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff claimed defendant hospital failed to warn of change in height of pavement on premises – Compound fracture of the 5th metatarsal and peroneal tendon tear – Open reduction with internal fixation and screw removal surgery – Plaintiff claims ongoing pain and swelling – Medicaid lien of \$24,335 – Arbitrator assigns each party 50% liability with gross damages of \$200,000 reduced to \$100,000 for plaintiff's comparative negligence.

Hudson County, NJ

In this premises liability case, the plaintiff, a 55-year-old woman, asserted that the defendant hospital premises was negligently designed and that the defendant failed to warn visitors to the hospital of a change in pavement height. As a result, the plaintiff fell and was injured. The

defendant denied liability and claimed that the plaintiff's expert did not cite to authoritative sources in claiming the pavement was defective.

On July 20, 2016, the plaintiff was exiting the defendant-owned hospital facility in Secaucus when she tripped on a change in the height of the pavement just outside the hospital doors. The plaintiff contended that the defendant negligently failed to warn of the 2-inch step down and that the defendant's negligence was the cause of the plaintiff's fall. As a result of the fall, the plaintiff sustained a compound fracture of the 5th metatarsal and peroneal tendon tear. The plaintiff underwent open reduction with internal fixation with screws and screw removal surgery due to pain. The plaintiff claims ongoing pain and swelling of the foot. The plaintiff claimed a Medicaid lien of \$24,335.

The defendant pointed to the plaintiff's testimony that she was shielding her eyes from the sun when she exited the building and was, therefore, not looking

where she was going and was responsible for her own failure to take care. The defendant had never been cited for a problem with the curb and had no prior reports of issues with the pavement. Additionally, the defendant contested the plaintiff's damages citing a prior ankle injury in 2011 with permanency and surgery for that injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff. The arbitrator set gross damages at \$200,000, inclusive of the medical

lien, reduced to \$100,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

August vs. MHR Investments, LP, et al. Docket no. L-001002-18; Judge Anthony V. D'Elia, 10-30-19.

Attorney for plaintiff: David Wendel of Starr, Gern, Davison & Rubin, P.C. in Roseland, NJ. Attorney for defendant: Sam Rosenberg of Rosenberg, Jacobs, Heller & Fleming, P.C. in Morris Plains, NJ.

SPORTS & RECREATION

■ \$122,500 RECOVERY

Sports & Recreation – Negligent supervision at trampoline facility – Minor plaintiff injured from “bounce-back” of another child exiting trampoline – Salter-Harris type III fracture of distal end of right tibia – 2 surgeries with open reduction and internal fixation and scar revision.

Ocean County, NJ

In this negligent supervision case, the minor plaintiff, a 10-year-old girl, asserted that the defendant trampoline facility failed and neglected to provide and to meet accepted and recommended safety standards, practices, policies and procedures, failed to properly warn, failed to properly instruct invitees to safely exit the trampolines, failed to avoid a bounce-back in direct violation of industry safety standards, and failed to provide a safe environment for the plaintiff resulting in the minor sustaining serious injury requiring multiple surgeries. The defendant filed an appearance in lieu of answer prior to settling with the minor plaintiff.

On May 18, 2016, the plaintiff was a business invitee at an indoor bounce-type trampoline facility in Lakewood. The plaintiff asserted that the defendants said that invitees participating in the activities in the trampoline facility would be separated into groups by age and size for the safety of the participants. The plaintiff argued that, on the day in question, the de-

fendant's employee told a child, who was bouncing on the same trampoline as the plaintiff, to leave the area thereby causing a bounce-back and causing the plaintiff to slip and fall.

The plaintiff maintained that the defendant was negligent in allowing another child to enter and then exit without proper instruction and in a negligent manner under the circumstances. As a result of the incident, the plaintiff sustained a Salter-Harris type III fracture of the distal end of the right tibia requiring 2 surgeries with open reduction and internal fixation and scar revision. The plaintiff continued to have pain and discomfort and contended that the injury was permanent.

The parties settled the matter prior to trial in the amount of \$122,500 broken down as follows: \$35,723 in attorney fees and costs and \$86,777 in net damages to the minor plaintiff.

REFERENCE

Cohen vs. Buckingham Investment Group, Inc., et al. Docket no. L-001951-19; Judge Arnold B. Goldman, 10-18-19.

Attorney for plaintiff: John A. Underwood of Underwood & Micklin, LLC in Cherry Hill, NJ. Attorney for defendant: Deborah Davidson of Wood, Smith, Henning, Berman in Berkeley Heights, NJ.

Supplemental Verdict Digest

MEDICAL MALPRACTICE

\$1,750,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – EMERGENCY ROOM NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE KIDNEY INFECTION – WRONGFUL DEATH OF PATIENT.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant emergency room physician failed to timely diagnose and treat the plaintiff's bacterial infection which resulted in renal failure and death. The defendant physician denied that there was any deviation from acceptable standards of care.

The female patient presented to the emergency department with complaints of left-sided kidney pain, nausea and vomiting that came on suddenly. The patient came under the care of the defendant emergency room physician. A CT-scan indicated left hydronephrosis secondary to a distal ureteral calculus. She also had an extremely high white blood cell count indicative of infection. Despite these findings, the defendant diagnosed her with kidney stones and she was discharged home with instructions and medications.

10 days later, the decedent was found barely alert at home and transported to the hospital where she was diagnosed with an infected stone, acute renal failure and urosepsis. Due to difficulty breathing, she was intubated the following day and suffered arrest. She was deemed brain dead and removed from life support some 14 days after her initial presentation to the emergency room.

The parties agreed to resolve the plaintiff's claim for the sum of \$1,750,000 in a confidential settlement between the parties prior to the trial in this matter.

REFERENCE

Decedent's Estate vs. Defendant ER Physician. 08-30-18.

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

\$900,000 RECOVERY – MEDICAL MALPRACTICE – CARDIOLOGIST AND INTENSIVIST NEGLIGENCE – DEFENDANTS FAIL TO APPRECIATE AND TREAT POST-SURGICAL ONGOING MYOCARDIAL INFARCTION FOLLOWING BYPASS SURGERY – WRONGFUL DEATH OF 73-YEAR-OLD MALE.

Bucks County, PA

In this action for medical malpractice, the estate of the decedent maintained that the defendant doctors failed to properly recognize and treat an ongoing myocardial infarction following bypass surgery. The estate brought suit against the defendant cardiologist and intensivist who treated the decedent post operatively, along with the doctors groups associated with the doctors and the hospital where the surgery took place. The defendants all denied being negligent and maintained that the decedent suffered a known and accepted complication of bypass surgery.

The decedent is survived by his wife and 2 adult children. The estate settled with the defendants for a total of \$900,000.

REFERENCE

Plaintiff's cardiology expert: Emil Hayek, M.D. from Hudson, OH. Plaintiff's oncology and critical care expert: R. Scott Stephens, M.D. from Baltimore, MD.

The Estate of David C. Detweiler by Barbara Detweiler vs. Mitchell Greenspan, M.D., Buxmont Cardiology Associates, Hao Nguyen, M.D., Sound Inpatient Physicians, Inc. and Grand View Health Physicians, LLC. Case no. 2018-02600; Judge Robert O. Baldi, 12-09-20.

Attorney for plaintiff: David John Caputo of Youman & Caputo, LLC in Newtown Square, PA. Attorney for defendant: James P. Kilcoyne of Kilcoyne & Nesbitt, LLC in Blue Bell, PA. Attorney for defendant: Michael O. Pitt of O'Brien & Ryan in King of Prussia, PA.

MOTOR VEHICLE NEGLIGENCE

\$15,029,363 VERDICT – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER/ PEDESTRIAN COLLISION – 50-YEAR-OLD PEDESTRIAN STRUCK BY DEFENDANT TRACTOR-TRAILER DRIVER WHILE WALKING ON SIDE OF HIGHWAY – PRE-IMPACT TERROR RECORDED BY SECURITY CAMERA OF NEARBY BUSINESS – DECEDENT UNMARRIED WITH NO CHILDREN – WRONGFUL DEATH VALUED ON BASIS OF DECEDENT’S LIFE FROM HIS POINT OF VIEW.

U.S.D.C. - Northern District of Georgia

This action involved the death of a 50-year-old pedestrian who was struck by the defendant tractor-trailer driver as the decedent walked on the side of the highway. The defendant driver subsequently died from unrelated causes. The plaintiff contended that the driver falsified his history in order to obtain his license to drive a tractor-trailer and continued driving for more than a mile after feeling ill. The plaintiff maintained that the tractor-trailer driver’s actions constituted “Bad faith in the transaction” and that under Georgia law, the plaintiff, who could not proceed against the tractor-driver’s estate for punitive damages, should be awarded litigation expenses. The defendant driver had testified in depositions that he had a coughing fit for over a mile before the accident, and the plaintiff contended that this factor also justified an award for litigation expenses.

The plaintiff also contended that the decedent turned and saw the rig approaching and contended that he experienced a brief period of pre-impact terror. The decedent had been intellectually impaired and as a result, had not been working and was receiving Social Security Disability for some time prior to the death. The decedent was unmarried and left no children,

The jury found the defendant 100% liable and awarded \$15,029,363, including \$2,000,000 for pain and suffering, \$13,000,000 for wrongful death and \$29,363 for medical and funeral expenses. The jury then awarded \$6,000,000 for litigation expenses.

REFERENCE

Holland vs. Bell, et al. Case no. 2:17-cv-00120-RWS; Judge Richard W. Story, 02-20.

Attorney for plaintiff: R. Shane Lazenby of Lazenby Law Group; in Gainesville, GA.

\$2,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – LUMBAR DISC INJURIES REQUIRING DOUBLE-LEVEL FUSION – SHOULDER INJURIES – LIGAMENT INJURIES TO AREA OF LOWER LEG – PLAINTIFF STRESSES LENGTHY LIFE EXPECTANCY – NO FUTURE INCOME CLAIMS.

Queens County, NY

This motor vehicle negligence case involved a plaintiff passenger in her mid 30s in which the host vehicle was struck in the rear by the defendant driver. The plaintiff contended that she sustained lumbar herniations that required a 2-level fusion, tears to the non-dominant shoulder that were addressed arthroscopically, and a ligament tear in the area of the foot that required surgery. The plaintiff’s motion for summary judgment on liability was pending at the time of the settlement and deposition of the plaintiff was pending. The defendant contended that any injuries in the collision essentially resolved.

The plaintiff maintained that despite the double-level fusion, the disc injuries will cause permanent pain and require treatment, including physical therapy. The plaintiff also asserted that she will permanently require treatment for the shoulder and lower leg injuries. The plaintiff’s life care plan exceeded \$750,000.

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

REFERENCE

Lopez vs. ECCO Enterprises. Index no. 710352/19, 03-20.

Attorney for plaintiff: Darren T. Moore of Law Offices of Darren T. Moore, P.C. in New York, NY.

\$525,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – DRAM SHOP – DEFENDANT DRIVER CONSUMES ALCOHOL AT DEFENDANTS’ BARS AND OPERATES VEHICLE WRONG WAY ON HIGHWAY STRIKING DECEDENT’S VEHICLE HEAD ON CAUSING FATAL INJURIES – WRONGFUL DEATH OF 24-YEAR-OLD MALE.

Bucks County, PA

The estate of the decedent brought this negligence action against the defendant driver and the 2 bars where the defendant consumed alcoholic beverages before operating her vehicle the wrong way on a highway, striking the decedent’s vehicle head on causing him to suffer fatal injuries. The defendants all denied negligence.

The estate made claims for wrongful death and survival. The defendant driver denied all allegations in the civil suit, but in the criminal case was found guilty of homicide by vehicle and driving under the influence. She is serving a 6 and 1/2 - 24 year sentence.

The estate settled with the defendant driver for \$25,000 and JT Bankers for \$500,000, for a total recovery of \$525,000. A default judgment against the defendant TGIFridays for \$3,000,000 was stricken by the court.

REFERENCE

The Estate of Damian Toalombo by Jacqueline Scarr vs. Noelle Theresa Chew, JT Bankers Saloon and Eatery, Inc. dba JT Bankers and Lehigh Valley Pubs, Inc. dba TGIFridays. Case no. 2017-04948; Judge Wallace Bateman, 12-09-20.

Attorney for plaintiff: Andrew Young of England and Young, P.C. in Doylestown, PA. Attorney for defendant: John J. Barr of Palmer & Barr in Willow Grove, PA. Attorney for defendant: Patrick Lamb of Post Schell in Philadelphia, PA. Attorneys for defendant: Theodore M. Schaer and Noah Shapiro of Zarwin Baum DeVito Kaplan Schaer Toddy in Philadelphia, PA.

PREMISES LIABILITY

\$5,000,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – PLAINTIFF SHOT IN THE BACK OUTSIDE MIAMI APARTMENT BUILDING – CATASTROPHIC INJURIES TO 33-YEAR-OLD FATHER OF 4 – PERMANENT PARAPLEGIA.

Miami-Dade County, FL

The plaintiff in this negligent security action alleged that the defendant apartment complex and management company failed to implement adequate security at its Miami, Florida, apartments. As a result, the plaintiff claimed he was shot in the back in the parking lot, sustaining catastrophic injuries. The defendants denied the allegations and argued that the plaintiff was comparatively negligent. The defendant asserted that its security was adequate and that the plaintiff instigated the incident by chasing the men down with a machete, instead of retreating into his home and calling police.

The plaintiff alleged that the defendant property owners and managers did nothing to prevent or curtail the many burglaries, car thefts, and assaults on the property. The plaintiff was diagnosed with a spinal cord injury which rendered him a permanent paraplegic. The plaintiff is permanently confined to a wheelchair and sustained \$612,240 in on-going medical expenses.

The case was settled pre-suit for \$5,000,000.

REFERENCE

Barry-Austin vs. Cornerstone Development Corp., et al. Case no. n/a; Judge n/a, 12-03-20.

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

ADDITIONAL VERDICTS OF INTEREST

Civil Rights

\$1,454,059 VERDICT – CIVIL RIGHTS – WRONGFUL IMPRISONMENT – PLAINTIFF CONVICTED OF BEING ACCOMPLICE TO MURDER AND SENTENCED TO 2 LIFE SENTENCES – PLAINTIFF SERVES 17 YEARS BEFORE CONVICTION OVERTURNED – PLAINTIFF BRINGS SUIT TO RECOVER DAMAGES FOR LOSS OF LIBERTY DUE TO WRONGFUL CONVICTION.

Mercer County, NJ

In this wrongful imprisonment case, the plaintiff asserted that the defendant state mistakenly accused and convicted him of being an accomplice to murder and that he was owed damages for his loss of liberty for a crime he did not commit. The plaintiff moved for summary judgment as to liability on his claim for civil damages brought under the "Mistaken Imprisonment Act Claim." The defendant opposed the plaintiff's motion for summary judgment.

The crimes at issue in this action were 2 counts of first degree murder and 1 count of felony murder stemming from September 1983 homicides and theft of 3 kilograms of cocaine from the victims. The plaintiff was convicted of these crimes under the theory of accomplice liability. The plaintiff argued that he was entitled to summary judgment on his Mistaken Imprisonment Act Claim because he could demonstrate by requisite standard of proof that he did not commit the Murder Crimes as charged.

The plaintiff's motion for summary judgment was denied and the matter went to trial. The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of \$1,454,059 broken down as follows: \$998,673 in attorney fees; \$31,314 in litigation expenses and \$344,000 in damages to the plaintiff, with interest in the amount of \$80,072.

REFERENCE

Kamienski vs. State of New Jersey, Department of the Treasury. Docket no. L-002106-10; Judge Douglas H. Hurd, 07-24-20.

Attorney for plaintiff: Jerome A. Ballarotto of Law Office of Jerome A. Ballarotto in Trenton, NJ.

Attorney for plaintiff: Timothy J. McInnis of McInnis Law in New York, NY. Attorney for defendant: Robert J. McGuire of Deputy Attorney General New Jersey in Trenton, NJ.

Construction Site Negligence

\$1,600,000 CONFIDENTIAL RECOVERY – CONSTRUCTION SITE NEGLIGENCE – GENERAL CONTRACTOR NEGLIGENCE – FAILURE TO KEEP WORK SITE SAFE – PLAINTIFF SLIPS ON FOOD DEBRIS AND INJURIES ROTATOR CUFF – SURGERY – FUTURE NEED FOR SHOULDER REPLACEMENT.

Withheld County, MA

In this construction site negligence matter, the plaintiff, an iron worker, alleged that the defendant general contractor was negligent in failing to keep the work site in a safe manner. The plaintiff slipped on food debris, fell and injured his rotator cuff which required surgery. The defendant general contractor denied liability and disputed causation and damages, arguing it had no prior notice.

The plaintiff also suffered injuries to his wrist in the fall. The plaintiff has been advised by his treating physician that he will require a shoulder replacement sur-

gery in the future. The plaintiff was deemed disabled and unable to continue working as a result of the injuries sustained.

The parties agreed to resolve the plaintiff's claim for the sum of \$1,600,000 in a confidential settlement between the parties prior to the trial in this matter.

REFERENCE

Iron Worker Plaintiff vs. Defendant General Contractor. 08-15-20.

Attorneys for plaintiff: Brian C. Dever and George N. Keches of Keches Law Group, P.C. in Taunton, MA.

Daycare Center Negligence

\$180,000 VERDICT – DAYCARE CENTER NEGLIGENCE – HAZARDOUS PREMISES – MINOR PLAINTIFF SUFFERS BURNS TO ARM WHEN SCALDING HOT WATER FROM BOTTLE WARMER FALLS ON MINOR AT DEFENDANT DAYCARE CENTER – SERIOUS BURNS TO RIGHT ARM – EXTENSIVE SURGERY REQUIRED – SCARRING – DAMAGES ONLY.

Harris County, TX

The minor in this daycare negligence action was injured when she was being cared for at the defendant daycare center and hot water fell on the minor's arm causing burns which required surgery. The defendant day care did not dispute liability.

The minor was hospitalized at Memorial Hermann Burn Center where she underwent extensive surgery to her right arm. She remains scarred from the incident.

The jury found that the minor was entitled to recover \$60,000 in past physical pain, \$60,000 in past disfigurement and \$60,000 in future disfigurement, for a total verdict of \$180,000.

REFERENCE

Janelle Moye, a minor by and through her png Sharniaqa Smith vs. Tri Star Property, LLC Individually and dba Elite City Kids. Case no. 201781728; Judge Fredericka Phillips, 09-26-19.

Attorney for plaintiff: Thomas Scott Rowatt in Houston, TX. Attorney for defendant: Ian R. Beliveaux of Donato, Brown, Pool & Moehlmann, PLLC in Houston, TX.

Dram Shop

\$4,425,000 RECOVERY – DRAM SHOP LIABILITY – INEBRIATED DEFENDANT DRIVER STRIKES MINIVAN IN REAR SHORTLY AFTER LEAVING TAVERN – DRAM SHOP ASPECT SETTLES SOME MONTHS AFTER SETTLEMENT WITH DEFENDANT DRIVER – SKULL FRACTURE – SUBDURAL HEMATOMA – PARTIAL LEFT-SIDED PARALYSIS.

Passaic County, NJ

In this action, the plaintiff contended that the defendant driver of a Mercedes struck the host vehicle in the rear while inebriated. The plaintiff maintained that as a result, the 10-year-old infant plaintiff, who was a rear-seat passenger, struck his head on the back of the car seat situated directly in front of him suffering a skull fracture, a subdural hematoma and TBI that will cause permanent partial paralysis of the left non-dominant arm and partial paralysis of the left leg. The plaintiff also asserted that the infant plaintiff, although returning to full time matriculated school, has difficulty with patience and social filters and fatigues more easily. The infant plaintiff has been able to maintain good grades in school and has strong social support from friends. The accident occurred shortly after the defendant driver left the co-defendant tavern, where, the plaintiff contended, the driver was served while visibly intoxicated. The defendant driver had \$250,000 in primary coverage with a \$2,000,000 umbrella. The defendant tavern had \$1,000,000 in dram shop protection.

The evidence disclosed that the defendant driver had been present at the defendant tavern for approximately 2 ½ hours and that she lived in the immediate vicinity. The accident occurred shortly after she left the tavern and the defendant driver was found to have a .141 BAC. The infant plaintiff was in a coma for several weeks and then transferred to a rehabilitation hospital where he was a patient for several months.

The case settled for a total of \$4,425,000, including the \$2,475,000 auto insurance liability limits, and \$1,000,000 personally from the defendant driver. Some months later on the eve of trial, the dram shop carrier settled for \$950,000, including \$800,000 to the infant plaintiff, \$100,000 for the mother's Portee claim and \$50,000 to the father for loss of services.

REFERENCE

Polifonte vs. D'Amario-Aubin, et al. Docket no. PAS-L-4200-17, 06-12-20.

Attorney for plaintiff: Christopher DiGirolamo of Maggiano, DiGirolamo & Lizzi in Fort Lee, NJ.

FELA

\$412,500 VERDICT – FELA – PLAINTIFF INJURED IN COURSE AND SCOPE OF JOB WITH DEFENDANT RAILROAD – WHILE INSPECTING LOCOMOTIVE, PLAINTIFF STRIKES HEAD ON THRESHOLD BULKHEAD – VIOLATION OF FELA AND FRSA – CERVICAL SPINE INJURY – CERVICAL DISC FUSION SURGERY REQUIRED.

Harris County, TX

The plaintiff in this railroad negligence action maintained that he suffered serious injuries to his neck which required surgery when he struck his head on a bulkhead on a train threshold while inspecting trains in the course of his employment with the defendant railroad. The defendant denied violating any federal railroad laws and argued that the plaintiff's neck condition was not traumatically induced, but degenerative in nature.

The plaintiff required cervical disc fusion surgery in November of 2016. The plaintiff is no longer able to perform the necessary duties of his job and he suffered a loss of work. The plaintiff alleged that the defendant railroad violated FELA laws in failing to provide the plaintiff with a reasonably safe place to

work and failing to properly illuminate or mark the bulkhead hatchway properly to enable safe egress from the locomotive.

The jury found that the defendant railroad was 65% negligent and the plaintiff 35% negligent. The jury awarded the plaintiff \$412,500 in past and future pain and suffering.

REFERENCE

Curtis Radick vs. Union Pacific Railroad. Case no. 201686844; Judge Elaine Palmer, 01-30-19.

Attorney for plaintiff: Kevin M. Camp of Camp Trial Firm in Houston, TX. Attorney for defendant: Fred Stuart Wilson of Union Pacific Railroad Company in Spring, TX.

Insurance Obligation

\$308,335 VERDICT – INSURANCE OBLIGATION – AUTO/BICYCLE COLLISION – PLAINTIFF BRINGS UNINSURED MOTORIST CLAIM AFTER BEING STRUCK BY TORTFEASOR WHILE RIDING BICYCLE – TRAUMATIC BRAIN INJURY – PERMANENT NEUROLOGICAL AND NEUROPSYCHOLOGICAL DAMAGE.

Broward County, FL

In this motor vehicle negligence case, the plaintiff asserted that the tortfeasor driver violated traffic laws and struck him on a bicycle with such force that it caused significant, permanent injury. The plaintiff brought a claim against this insurer for underinsured motorist benefits. The defendant denied liability and contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained a traumatic brain injury. The plaintiff alleged permanent injuries in the form of neurological and neuropsychological deficits from the subject incident. The defendant argued that the plaintiff's injuries were significant, but not permanent.

The jury found the tortfeasor 65% negligent and the plaintiff 35% negligent. The jury awarded the plaintiff damages in the amount of \$308,335 broken down as follows: \$32,535 for past medical expenses; \$100,000 for future medical expenses; \$75,800 for past pain and suffering; and \$100,000 for future pain and suffering.

REFERENCE

Tsang vs. Geico General Insurance Company. Case no. CACE18007410; Judge William W. Haury, Jr., 05-17-19.

Attorney for plaintiff: Jeffrey A. Vivo, Esq. in Jupiter, FL. Attorney for defendant: Viktor Klajn of The Law Office of George L. Cimballa, III in Plantation, FL.

Labor Law

\$5,000,000 RECOVERY – LABOR LAW SEC. 240(1) – PLAINTIFF FALLS APPROXIMATELY 6 FEET FROM SCAFFOLD WHILE ENGAGING IN CONSTRUCTION OF NEW MUSEUM – BILATERAL CALCANEUS FRACTURES – INABILITY TO CONTINUE PHYSICAL WORK.

Westchester County, NY

This Labor Law case involved a plaintiff laborer in his mid 40s who fell approximately 6 feet from a platform when the scaffold gave way as he was engaged in building a new museum. The plaintiff

sustained bilateral calcaneus fractures which he contended will cause permanent pain a noticeable limp and prevent him from working. The plaintiff's motion for summary judgment on liability under the absolute liability provisions of

Labor Law 240(1) was granted. The defendant did not dispute that the plaintiff will be unable to work in a physical capacity. The defendant contended, however, that the plaintiff could approach his prior earnings by working in a more sedentary type job.

The plaintiff maintained that everyday activities, such as walking up stairs will permanently be painful and difficult. The plaintiff, who has not worked since the accident, maintained that he is permanently unemployable. The plaintiff was earning approximately \$70,000 per year. The plaintiff would have also contended that the jury should consider that the plaintiff had always taken great pride in his work and that his ability to remain independent had been taken from him, significantly increasing the emotional pain and suffering.

The case settled prior to trial for \$5,000,000.

REFERENCE

Plaintiff's economist expert: Debra Dwyer, Ph.D. from Stony Brook, NY. Plaintiff's orthopedic surgeon expert: Katherine Ma, M.D. from Caremount, NY.

Smith vs. City of Peekskill, et al. Index no. 51322/18; Judge Joan B. Lefkoitz, 10-20.

Attorneys for plaintiff: Joseph S. Bavaro, Jeffrey M. Kimmel and Steve Z. Gokberk of Salenger Sack Kimmel & Bavaro, LLP in Woodbury, NY.