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SUMMARIES WITH TRIAL ANALYSIS

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

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

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SUMMARIES WITH TRIAL ANALYSIS

$17,165,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – TRUCK/PEDESTRIAN COLLISION – DEFENDANT SUBCONTRACTOR HIRES "INCOMPETENT" TRUCKER NOT REGISTERED OR INSURED – DRIVER FAILS TO YIELD TO PEDESTRIAN AT CONTROLLED INTERSECTION, STRIKING 56-YEAR-OLD PLAINTIFF IN CROSS-WALK – BILATERAL AMPUTATIONS – PLAINTIFF UNABLE TO USE PROSTHETIC – SEVERE ABDOMINAL INJURIES REQUIRE MORE THAN 25 SURGERIES – PERMANENT NEED FOR ILEOSTOMY BAG – VISION LOSS IN 1 EYE.

Essex County, NJ

In this negligence action, the 56-year-old plaintiff was struck by a dump truck while he was crossing in the crosswalk, suffering an amputation of both legs above the knee. The plaintiff cannot use prosthetics because of the site of one amputation near the hip. The plaintiff also suffered extensive abdominal injuries that required more than 25 surgeries, and which will permanently cause extensive difficulties, including the permanent use of an ileostomy bag. The plaintiff further lost vision in one eye. The defendants denied that they were liable for the actions of an independent contractor

The accident occurred as the plaintiff was crossing the street close to the gate of a construction project. The driver of the dump truck ran a yellow light to make a left turn and struck the plaintiff. The plaintiff contended that the dump truck was uninsured and unregistered, and the driver had an extensive history of traffic violations. The dump truck was also poorly maintained and was overloaded. There was no evidence, however, that such deficiencies contributed to the collision. The plaintiff contended that the construction site's contractors and subcontractors were liable for hiring an incompetent independent contractor, allowing the trucker access to the construction site, and using the trucker to transport materials on the public roadways without making any inquiry regarding qualifications or insurance status.

The defendants argued they were not liable for injuries sustained on the public roadways off the construction site premises. The plaintiff countered and primarily relied upon Puckrein v. ATI Transp. Inc., 186 N.J. 563 (2006) where a contractor was liable for the actions of an incompetent independent contractor retained to transport materials on the public roadway. In Puckrein, the Court held that a contractor is required to inquire whether its haulers have proper insurance and registration "because without those items the hauler had no right to be on the road". Puckrein, at 580. Only the state minimum of $15,000 was available from the driver of the truck who was acting as an independent contractor at the time of the collision making "agency" impossible – the driver was a first-time delivery person for that construction site, was not on the payroll of any contractor or subcontractor and was paid cash.

At one point during discovery, the plaintiffs' claims against many contractors and subcontractors were dismissed with prejudice. However, these claims were reinstated upon a successful motion for reconsideration. In the interim, the plaintiff had settled with the subcontractor that allegedly hired the incompetent trucker for its $6 million policy. Thereafter, and at the close of discovery, the remaining construction defendants reapplied for summary judgment, which was again successfully overcome by plaintiff's team of attorneys. The remaining defendants then applied for interlocutory appeal, which was also denied. The plaintiff then settled with the remaining defendant(s) resulting in a total recovery of $17,165,000.

REFERENCE

Plaintiff's economic expert: Kristin Kucsma from Livingston, NJ. Plaintiff's engineering expert: Richard Daniels, PE from Malvern, PA. Plaintiff's life care planning expert: Charles Kincaid from Lodi, NJ. Plaintiff's psychiatry expert: Steven Fayer, M.D. from New York, NY. Plaintiff's safety expert: Shawn Bradfield from Colorado Springs, CO. Plaintiff's trucking expert: Walter Guntharp from Pendleton, IN.

56-year-old plaintiff vs. Defendants Dump truck driver, Construction Site Contractors and subcontractors, et al.

Attorney for plaintiff: John S. Voynick, Jr. of Renda & Voynick in Cedar Grove, NJ. Attorneys for plaintiff: Scott A. Parsons and Alexandra Loprete of O'Connor Parsons & Lane, LLC in Springfield, NJ.

COMMENTARY

The plaintiff obtained this large settlement against construction site contractors and subcontractors who hired the truck driver, as well as gave him access to the construction and loaded it with material for transportation on the public roadways. It was alleged that the "incompetent" dump truck driver did not have registration or insurance, did not meet requirements for valid CDL and had an extensive history of

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President
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Circulation Manager
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Main Office:
973/376-9002 Fax 973/376-1775
Circulation & Billing Department:
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driving violations. In this regard, the plaintiff stressed under Puckrein v. ATI Transp. Inc., 186 N.J. 563 (2006), that the dump truck had no right to be on the road and that the defendants should be liable for plaintiff's injuries. Additionally, the plaintiff would have stressed that the dump truck driver failed to yield to a pedestrian at a controlled intersection. It should be noted that although the proofs would have reflected that the dump truck was overloaded and had maintenance issues, there was no evidence that these deficiencies were causally related to the incident.

Regarding damages, the plaintiff, who suffered bi-lateral lower extremity amputations, emphasized that he cannot use a prosthetic and uses a wheelchair. Additionally, the plaintiff would have established that in addition to the plaintiff's inability to work, his wife has become his full time caretaker.

$2,500,000 RECOVERY – BUS NEGLIGENCE – BUS/PEDESTRIAN COLLISION – 12-YEAR-OLD IN CROSSWALK RUN OVER BY BUS AFTER BUS DRIVER RESUMES FROM LEFT TURN LANE WHEN TRAFFIC LIGHT TURNS GREEN – PELVIC FRACTURES – SURGERIES – SIGNIFICANT SCARRING.

Somerset County, NJ

This negligence case involved a then-12-year-old infant plaintiff crosswalk pedestrian who contended that the defendant bus driver negligently failed to make to make proper observations as he proceeded from the left turn lane when his traffic light turned green. The plaintiff maintained that as a result, she was struck, suffering a pelvic fracture that required an open reduction and internal fixation. The infant plaintiff also suffered significant scarring to the hip and thigh, which will remain permanently despite revision surgery. The defendant indicated in discovery that when his light turned green and he resumed, he did not see any pedestrians, but realized the accident occurred when he heard a thump and screaming. The infant plaintiff was under a rear wheel.

The defendant would have presented an independent eyewitness who would have testified that the infant plaintiff was on her cell phone when the accident occurred. The plaintiff denied speaking on her cell phone. The case settled before the defendant obtained the cell phone records in discovery.

The plaintiff suffered a left sided pelvic fracture which required surgery and the installation of hardware. The plaintiff contended that she will suffer permanent pain and restriction for the remainder of a very lengthy life expectancy. There was no evidence that the injuries will interfere with the plaintiff ultimately conceiving a child. The plaintiff asserted, however, that it is likely that she would require a C-Section when giving birth. The plaintiff also suffered significant scarring to the thigh and hip which the plaintiff maintained is permanent despite some improvement from revision surgery.

The case settled for $2,500,000.

REFERENCE

Skwirut vs. Reed. 03-22-21.

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

COMMENTARY

The evidence that the 12-year-old minor was struck by a turning bus and found under a rear wheel would have created a very strong jury response if the case proceeded. It should be noted that the case settled before the defendant obtained the cell phone records which the defendant maintained would have confirmed the disputed evidence of whether the plaintiff was speaking on her phone at the time of the accident. In this regard, it is felt that the irrespective of the resolution of the cell phone issue, the highly traumatic nature of the incident provided extensive leverage to the plaintiff in obtaining this settlement. Additionally, the plaintiff would have stress that the plaintiff will sustain pain as well as hip and thigh scaring for a very long life expectancy.

$2,000,000 RECOVERY – TRANSIT AUTHORITY NEGLIGENCE – PLAINTIFF PEDESTRIAN STRUCK BY NJ TRANSIT BUS – CLOSED HEAD INJURY – TRAUMATIC BRIAN INJURY IMPACTS ABILITY TO FUNCTION AND PERFORM ACTIVITIES OF DAILY LIVING – BRAIN BLEED – SUBSEQUENT IMAGING SHOWS BRAIN TISSUE ATROPHY – PLAINTIFF RECREATES ACCIDENT TO SHOW BUS DRIVER'S UNOBSTRUCTED VIEW.

Essex County, NJ

This negligence case involved a then 25-year-old plaintiff who contended that the defendant NJ Transit's bus driver negligently failed to make observations of the intersection striking the plaintiff who maintained he was crossing in the crosswalk. The impact caused a closed head injury, a brain bleed and subsequent imaging studies showed atrophy of some brain tissue. The defendant denied plaintiff's claims and asserted he was outside of the crosswalk and walked into the front of the bus.

The plaintiff's accident reconstructionist and witnesses supported a finding that plaintiff had successfully completed crossing approximately ¾ on the street when struck by the bus and propelled 15 feet down the roadway. Due to traumatic brain injury and amnesia as to the accident, the plaintiff would have presented at trial several bus passengers who testified that plaintiff was crossing the street and visible as they yelled warnings to the driver as he started to enter the intersection.

The plaintiff also created a reenactment at the scene of the accident, using a truck which was the same height of a NJ Transit bus, which traveled at the same time (after dark) in the same conditions. The recreation was taped from the point of view of the bus driver. The plaintiff would have argued that the view of the bus driver was unobstructed and when stopped at the corner for passenger boarding, the bus driver should have seen him and could have stopped given he was traveling 10 to 15 mph.

The plaintiff's hospital records and initial imaging studies showed he suffered a brain bleed, he claimed he suffered from a traumatic brain injury that impacted his ability to function and perform activities of daily living. The plaintiff's neuroradiologist opined that results of a later imaging study showed atrophy of frontal lobe brain tissue. The plaintiff's neuropsychologist correlated the location of the loss of brain tissue with impaired executive functioning consistent with a traumatic brain injury.

The plaintiff had been employed as a teachers' aide for special-needs students. He also had a side business hosting painting and art parties for children. The plaintiff contended that he is permanently disabled from gainful employment. He was also unable to drive and had significant difficulties with every-day tasks otherwise taken for granted.

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

REFERENCE

Plaintiff's accident reconstruction expert: Shawn F. Harrington from Penns Park, PA. Plaintiff's life care planning and vocational expert: Edmond Provder from Lodi, NJ. Plaintiff's neuropsychologist/physical medicine expert: Wayne A Gordon, from New York, NY.

Anthony vs. NJ Transit. 04-21.

Attorney for plaintiff: Beth Baldinger of Mazie Slater Katz & Freeman, LLC in Roseland, NJ.

COMMENTARY

The defendant claimed that the plaintiff crossed outside of the crosswalk and ran into the side of the bus. The plaintiff would have augmented the observations of several passengers who yelled warnings to the driver by pointing to a recreation conducted by the plaintiff's accident reconstruction expert. In this regard, the plaintiff rented a truck which was the same height as a NJ Transport bus and the recreation was conducted under similar conditions as existed at the time of the accident. The jury would have seen the video taken from the perspective of the bus driver, and the plaintiff would have argued that the jury could well determine that the bus driver, who had stopped at the previous bus stop, had an unobstructed view for a significant distance down the roadway.

Regarding damages, the plaintiff would have pointed to the unusual finding of an actual atrophy of brain tissue seen on imaging studies approximately 8-months after the accident and this evidence would clearly have an impact on the jury.

$1,750,000 RECOVERY – NEGLIGENT OPERATION OF FRONT-END LOADER – WRONGFUL DEATH – DECEDENT CRUSHED BETWEEN REAR OF FRONT-END LOADER AND HOST TRUCK WHILE MAKING DELIVERY TO DEFENDANT RECYCLING FACILITY – PORTEE CLAIM OF OLDER BROTHER IN HOST TRUCK – DECEDENT EXPERIENCES BRIEF BUT SEVERE PAIN AND SUFFERING AT SCENE.

Hudson County, NJ

This negligence case arose from of the death of a 27-year-old unmarried decedent when the defendant driver of a front-end loader being driven in reverse struck and crushed him between the defendant's vehicle and the back of the truck in which older brother of the decedent was sitting. The plaintiff contended that the older brother sustained severe PTSD from watching his brother and best friend suffer extensively from the crush injuries while he suffered severe hemorrhaging and died in his arms, The older brother also contended that he suffered soft tissue injuries when the front-end loader struck the host truck.

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The older brother related he observed the front-end loader traveling in reverse directly towards the back of his truck. He indicated that there was not enough time for him to do anything, but he knew his little brother was standing at the back of the truck closing the back doors and would not be facing the loader. Before he could exit the truck, the loader struck, and the older brother was thrown about inside the cab, suffering relatively minor soft tissue injuries. The older brother indicated that he then rushed around the truck and saw his brother lying on the ground bleeding. His first instinct was to scream for help. He then gathered his brother in his arms.

The plaintiff related that he saw the fear in the decedent's eyes. He indicated that he saw him gulping for air and tried to scoop the bloody chunks out of the decedent's mouth. The plaintiff stressed that he then watched as the life of his little brother was stolen from him at only 27 years. The EMTs had to pull the older brother away from the body. The plaintiff maintained that he has been traumatized by the loss of his brother and suffers from post-traumatic stress disorder, flashbacks, nightmares, and depression. The plaintiff would have maintained that the symptoms will continue permanently. The older brother made no income claims.

The plaintiff also contended that the pain and suffering of the decedent was severe. The evidence reflected that the decedent's abdomen was so badly crushed that he began hemorrhaging massive amounts of blood while the older brother desperately attempted to clear the decedent's airway The decedent fell into hypovolemic shock and died. The plaintiff would have argued that the jury should consider that although the time frame was short, the jury should consider that the decedent suffered severe pain, fear, a sense of doom, angst and mental anguish that warranted substantial compensation.

The case settled globally for $1,750,000.

REFERENCE

AV, et al vs. Defendant recycling plant, et al.

Attorney for plaintiff: William S. Greenberg of Greenberg Minasian, LLC in West Orange, NJ.

COMMENTARY

The decedent was unmarried and had no children, the physical injuries suffered by the brother, who was in the host vehicle when his brother was killed suffered relatively minor soft tissue injuries and the claim for damages primarily revolved around the PTSD suffered by the brother and the severe pain and suffering experienced by the decedent at the scene. Regarding the pain and suffering experienced by the decedent at the scene, the description of the manner in which the decedent suffered severe physical pain and suffering and the testimony that, his fear of impending doom was evident, would have created a strong jury response. Further, in addition to the impact of the brother observing the decedent succumb while in his arms, the description of the helpless feeling as the brother watched the rear of the front end loader about to crush the decedent, but that there was insufficient time to do anything, would clearly have heightened this reaction.

$1,275,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK ON HIGHWAY AND PROPELLED INTO MEDIAN DIVIDER – LUMBAR AND CERVICAL HERNIATIONS – 3-LEVEL LUMBAR FUSION – CLOSED HEAD TRAUMA – NEUROPSYCHOLOGICAL DEFICITS – ALLEGED INABILITY OF 27-YEAR-OLD MARKETING EXECUTIVE TO WORK – DEFENDANT CLAIMS HE PASSED OUT IMMEDIATELY BEFORE ACCIDENT OF SUDDEN CARDIAC EVENT.

Bergen County, NJ

In this action for motor vehicle negligence, the plaintiff, age 27 at the time, contended that the defendant driver struck her car from behind with such force, she crashed s into the concrete median. The plaintiff maintained that she suffered lumbar herniations which required a 3-level fusion. The plaintiff also asserted that she suffered a closed head injury that resulted in deficits involving memory and concentration. The plaintiff, who worked in marketing, was earning approximately $28,000 per year. The plaintiff, who has not worked since the accident, asserted that she is permanently unemployable. The defendant contended that immediately before the accident, he passed out because of a sudden cardiac emergency.

The defendant had no prior cardiac illnesses. Abnormalities were noted during a sleep study approximately 1 month after the accident and the defendant had a cardiac pacemaker installed approximately 1 month thereafter. The plaintiff denied that this contention should be accepted. The plaintiff pointed out that that the defendant did not make this claim to the investigating officer, the EMT, or at the emergency room. The plaintiff also elicited testimony from the defendant's cardiac surgeon that although he believed that the defendant experienced a sudden cardiac emergency immediately before the accident, he would not state to a reasonable degree of medical probability that this was the case. The plaintiff argued that in view of this evidence, the defendant's position should be rejected.

The plaintiff maintained that she developed severe neck and lower back pain after the accident. The plaintiff asserted that lumbar and cervical herniations were confirmed by MRI. The plaintiff underwent physical therapy as well as injections to her neck and back. The plaintiff contended that the lumbar symptoms continued to be pronounced and that she required a 3-level lumbar fusion. Her initial lumbar

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surgery failed and she required a revision surgery. The plaintiff claimed that she will suffer lower back and some neck pain permanently.

The plaintiff's neuropsychologist concluded that the plaintiff suffered a very substantial head trauma and a "mild" TBI. The physician contended that the plaintiff suffered difficulties with memory and concentration as well as deficits involving executive functioning. The expert would have contended that the deficits have been confirmed by a battery of neuropsychological testing and are permanent in nature.

The plaintiff further asserted that she continues to experience severe anxiety and depression which began with the accident. The plaintiff's vocational expert would have testified that the plaintiff is permanently unemployable and the plaintiff would have pointed out that she has an approximate 40-year work-life expectancy.

The defendant had a $500,000 primary policy and a $1,000,000 umbrella. The case settled prior to trial for $1,275,000.

REFERENCE

Plaintiff's neuropsychologist expert: George Carnevale, Ph.D. from Clifton, NJ. Plaintiff's spinal surgeon expert: Andrew Hecht, M.D. from Mt. Sinai Hosp., New York, NY. Plaintiff's vocational expert: Edmond Provder from Lodi, NJ.

Abdelsalam vs. Cappucci. Docket no. BER-L-4707-19, 10-01-21.

Attorneys for plaintiff: Adam B. Lederman and Garry Salomon of Davis Saperstein & Salomon, P.C. in Teaneck, NJ.

COMMENTARY

The defendant had claimed that he passed out immediately before the accident because of an unforeseeable, sudden cardiac event and that he could not, therefore, be liable. The defendant moved for summary judgment on this issue and the plaintiff's arguments included the absence of such a mention to the investigating police officer, EMT or emergency room personnel, arguing that it was clear that an issue of material fact existed.

Additionally, the plaintiff elicited testimony from the treating cardiac surgeon that although he believed that the defendant suffered a sudden emergency, he could not state to a degree of medical probability that this was the case. The defendant's motion was denied. This issue would have remained before the jury and it is felt that in view of the claimed approximate 40-year life expectancy and the $1,500,000 coverage, the risk of an excess verdict was substantial and that the plaintiff had substantial leverage.

$780,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – LANDLORD OF COMMERCIAL PROPERTY USED AS STORE BY CO-DEFENDANT FAILS TO REPAIR LEAKING GUTTER, CREATING DANGEROUS CONDITION – PLAINTIFF SLIPS AND FALLS ON ICE UPON TAKING FIRST STEP FROM STORE – FRACTURED TIBIAL PLATEAU – EXTERNAL FIXATION DEVICE AND OPEN REDUCTION/INTERNAL FIXATION – THIRD SURGERY TO REMOVE HARDWARE – NO INCOME CLAIMS.

Sussex County, NJ

In this action for premises liability, the 58-year-old plaintiff contended that as he stepped out of a store owned by the defendant tenant, he slipped and fell on ice. The plaintiff contended that as a result, he suffered a fracture of the tibial plateau. The incident was captured on the store's video surveillance system. The plaintiff further named the store's snow removal contractor. The defendants asserted that the plaintiff was comparatively negligent. The defendant snow removal contractor denied that it contributed to the condition.

The plaintiff maintained that the ice formed as a result of a leaky gutter. The plaintiff elicited testimony that the tenant had made complaints about the faulty gutter to the defendant landlord for approximately 2 years and that repairs were not forthcoming. The plaintiff would have stressed that the incident was captured on the store's video surveillance system. The plaintiff would have played the video in front of the jury and argue that the jury could determine from watching the video that the plaintiff fell as he took the first step, arguing that he could not have avoided the incident.

The plaintiff suffered a fracture of the tibial plateau. The plaintiff's orthopedist would have related that the plaintiff underwent an initial procedure involving an external fixation device. The expert would have also testified that the plaintiff underwent an open reduction/internal fixation. The expert would have related that the plaintiff required a subsequent procedure in which the hardware was removed. According to the plaintiff's orthopedist, although the plaintiff made a relatively good recovery, he continues to experience pain and difficulties when he is on his feet for extended period of time. The plaintiff's orthopedist was of the opinion that traumatic arthritis has commenced and that the plaintiff is at risk for requiring a future knee replacement.

The plaintiff made no income claims.

The defendants store owner and landlord had $1,000,000 in coverage each. The snow removal contractor was owned by 2 entities and was covered by $1,000,000 each. The case settled prior to trial for

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$780,000, including $525,000 from the landlord, $250,000 from the store and a total of $10,000 from the snow removal contractors.

REFERENCE

Daly vs. Vernon Valley Investors, LLC, et al., 07-21.

Attorney for plaintiff: Steven T. Goldstein of Goldstein & Handwerker in Mountainside, NJ.

COMMENTARY

It is felt that the plaintiff was able to command a settlement which was particularly significant for Sussex County, especially in view of the absence of any income claims. In this regard, the evidence that the store owner had been attempting to have the defendant landlord repair the leaking gutter for approximately 2 years and that no action had been taken, would be expected to enhance a jury reaction and that this factor provided additional leverage to the plaintiff.

Regarding liability, the plaintiff would have countered the defense of comparative negligence, by playing the video that captured the incident on the store's surveillance system. The plaintiff would have argued that the jury could well observe that the fall occurred as the plaintiff stepped from the store and that he could not reasonably have avoided it.

$206,953 VERDICT – GENDER DISCRIMINATION – VIOLATION OF LAW AGAINST DISCRIMINATION – PLAINTIFF, WHITE FEMALE, CONTENDS DEFENDANT EMPLOYER AND ITS EMPLOYEES CREATED HOSTILE WORK ENVIRONMENT BASED ON PLAINTIFF'S RACE AND GENDER AND RETALIATED AGAINST HER WHEN SHE COMPLAINED – DEFENDANT DENIES ALL PLAINTIFF'S CLAIMS AND CONTENDS PLAINTIFF'S PERSONALITY CONFLICTS WITH COWORKERS DID NOT RISE TO LEVEL OF WORKPLACE HARASSMENT.

Mercer County, NJ

In this Law Against Discrimination case, the plaintiff alleged that she was subjected to a hostile work environment because of her race and gender, and retaliated against in violation of the New Jersey Law Against Discrimination. The defendant denied that the plaintiff was subject to harassment or retaliation.

The plaintiff began working at the New Jersey State Prison within the Department of Corrections on t August 22, 2011 on the second shift. In January 2016, the plaintiff was moved to first shift, and a different sergeant became the supervisor within her unit. The plaintiff claimed that the sergeant, who is Black, made racially and gender divisive comments to the plaintiff on a routine basis. The plaintiff also maintained that the defendant discriminated against the plaintiff and other White, female employees in assigning jobs and that he assigned the most physically taxing jobs to white female officers while assigning black, male officers easier, more desirable tasks. The plaintiff claimed that the defendant supervisors and coworker subjected the plaintiff to a hostile work environment because she is a white woman, and retaliated against her for complaining about it.

The plaintiff alleged gender discrimination in violation of the New Jersey law Against Discrimination (Count I), race discrimination in violation of the LAD (Count II), and retaliation in violation of the LAD (Count III). The plaintiff sought damages for emotional distress and did not see any economic damages for wage loss or other economic losses. The defendant argued that an employment discrimination law such as the NJLAD is not intended to be a "general civility code" for conduct in the workplace and that discourtesy or rudeness should not be confused with racial or ethnic harassment, and a "lack of racial or ethnic sensitivity" does not alone, amount to actionable harassment. Thus, the "simple teasing," offhand comments, and isolated incidents claimed by the plaintiff did not amount to discriminatory changes in the terms and conditions of employment. The defendant maintained that, although the plaintiff was legally entitled to a work environment free of hostility, she was not entitled to a perfect workplace, free of annoyances and disagreeable colleagues and that the personality conflicts the plaintiff experienced, albeit severe, did not equate to hostile work environment claims simply because the conflict was between members of different genders or races.

The jury found in favor of the plaintiff as to the plaintiff's claims for retaliation and violation of the LAD by the defendant. The jury awarded damages in the amount of $75,000 for emotional distress due to retaliation. The plaintiff ultimately recovered $206,953 after the court awarded attorney's fees, costs and interest post verdict. The plaintiff's award was broken down as follows: $75,000 in damages; $116,317 in attorney fees plus enhancement; $5,075 in costs; and $5,317 in interest.

REFERENCE

Schiavone vs. New Jersey Department of Corrections. Docket no. L-002099-17; Judge Janetta D. Marbrey, 09-01-20.

Attorney for plaintiff: Drake P. Bearden, Jr. of Costello & Mains, LLC in Mount Laurel, NJ. Attorneys for defendant: James M. Williams and Kimberly Williams of Deputy Attorneys General State of New Jersey in Trenton, NJ.

COMMENTARY

The plaintiff's version of the facts of the case was as follows: the plaintiff began working for the defendant as a corrections officer in 2011. In January 2016, the defendant transferred her to a unit where 2 of

her supervisors were Sergeants KW and AW. The plaintiff claimed that, starting in April 2016, Sergeants KW and AW, who are Black, harassed the plaintiff, who is White, because of her race and gender. In particular, Sergeant KW would routinely tell employees they needed to talk to the "White man" upstairs. Sergeant KW told White employees they were on "that White people shit," and said White females had it easy at the jail. Both Sergeants KW and AW disciplined white employees for things they did not discipline Black employees for and assigned the more favorable jobs to Black employees.

The plaintiff complained to one of her workers about the harassment, and the coworker told her to look at Sergeant KW's Facebook page. Sergeant KW's public Facebook page had numerous racial posts that stated things such as: "The police don't give a damn about your religion. If you're BLACK, they will shoot you like a dog!" During another incident, Sergeant KW began screaming and cursing at the plaintiff so much that she later broke down crying. The plaintiff complained about this and the other harassment, and Sergeant AW immediately retaliated against the plaintiff by writing her up.

When the plaintiff continued to complain about the harassment, Sergeant AW began intimidating her, and physically running into the plaintiff on multiple occasions. After the plaintiff made her initial complaint, another black officer, Officer D, began harassing the plaintiff. This harassment included contacting the plaintiff's landlord, her ex-husband and sending her a text message where she stated, "You c**t bitch white trashy DOC pass rag w***e." When the Equal Employment Division investigated the plaintiff's complaints, numerous officers corroborated the plaintiff's claim that Sergeants KW and AW discriminated against employees and made racist comments. Despite that, the defendant found that no one violated the anti-discrimination policy, nothing was done to correct the behavior, and the harassment continued.

Given these factors, the plaintiff brought the subject claim that her supervisors and coworker subjected her to a hostile work environment because she is a white woman, and retaliated against her for complaining about it. The defendant moved for summary judgment on the argument that the plaintiff, with regard to gender and race discrimination, failed to establish a prima facie claim as she could not show that she suffered an adverse employment action. Furthermore, the plaintiff could not show that she suffered an adverse employment action as a result of any protected activity that she engaged in as the plaintiff was still employed in the same position. The defendant maintained that the plaintiff thus could not show that she was entitled to punitive damages.

Turning to the facts of the case, the plaintiff alleged 2 separate periods of alleged harassment. First, she alleged that she was subjected to harassment by Sgt. KW and Sgt. AW roughly between January and April, 2016 (with one event a year later in May, 2017). Then, the plaintiff alleged that after her friendship with Officer D fell apart around the 2016 election; Officer D began discriminating and retaliating against her outside of the work environment.

With regard to Sergeants KW and AW, the defendant argued that the plaintiff could not show that she was subjected to a legally actionable hostile work environment. The plaintiff alleged that she was subjected to the following harassment because of her gender by being assigned nurse escorts; hearing Sergeant KW say "White women have it easy here;" Sergeant KW saying to her "This ain't second shift no more and don't work Center Control no more"; Sgt. AW allegedly bumped into her on two occasions; and a verbal reprimand by Sergeant KW for talking about him in a negative way with other correctional staff. However, the plaintiff offered no evidence that any of the alleged harassment was tied in any way to her gender.

In fact, when asked what evidence she had that any of the alleged harassment was tied to her gender, she generally testified that it was her belief and that it is how she felt. For example, when the plaintiff was asked what evidence she had that gender played any part in being assigned nurse escorts, she testified that it is how she felt at the time and that there were other females that could have done that job. This demonstrates the plaintiff's apparent misunderstanding of discrimination, and her seeming belief that the LAD was a remedy for everything at work she didn't like. The fact that the plaintiff was asked to do nurse escorts when there were other females that should have been picked proves that Sgt. KW chose nurse escorts not based on gender (otherwise he would have just picked the other females).

The plaintiff lacked any evidence other than own assumptions that any of the rudeness she attributed to Sgt. KW and Sgt. AW was motivated by her gender. While sexual harassment need not always be explicitly sexual, a plaintiff still must demonstrate that it did occur because of her sex. A hostile work environment claim "requires a showing of some causal connection between her membership in a protected class and her alleged mistreatment." Nardella v. Phila. Gas Works, 621 Fed. Appx. 105, 107 (3d Cir. 2015). The plaintiff wholly failed to offer any such evidence other than that "She felt like it" was because of gender. The plaintiff admitted that Sergeant KW was not talking to her when he said "Ya'll are on that White people shit," "You work for the White man upstairs," and "White women have it easy here." She testified that she did not know the context of the conversation nor did she know with whom he was talking.

Regardless of whether these comments are appropriate, they undoubtedly were not affected in any way by the plaintiff's race or gender. When the plaintiff was asked what evidence she had that her gender was a motivating factor for Sergeant KW yelling at her on April 28, 2019, she testified that she never saw him speak to anyone like that, only her. She also testified that "Men aren't supposed to talk like that to women." However, the LAD is not a general civility code of workplace conduct. See Faragher v. City of Boca Raton, 524, U.S. 775 (1998). As the New Jersey Supreme Court has clarified, being mean does not equate to an LAD violation. Furthermore, though the plaintiff testified that she thought Sgt. KW was yelling at her because of her race and gender "right away" when it happened. However, she made no discussions of race or gender when she complained to a supervisor that day or when she wrote a Special Custody Report about it that evening. When the plaintiff's only evidence is her own subjective feelings and beliefs, evidence that she doesn't truly harbor such a belief dooms the claims.

The defendant also argued that the plaintiff did show that she was subjected to a legally actionable hostile work environment. The plaintiff alleged several separate incidents but, even taken together, and even assuming all were true, these acts simply did not rise to the level of an illegal hostile work environment for which the defendant NJDOC could be held liable. Generally, rudeness, offhand comments, teasing, or insensitivity towards an individual do not rise to the level of such harassment. Shepherd v. Hunterdon Developmental Center, 336 N.J. at 416. "[D]iscourteous[ness] and rudeness... although annoying and frustrating, [are] insufficient to establish a prima facie claim of severe or pervasive... harassment creating a hostile work environment." Heitzman v. Monmouth County, 321 N.J. Super. 133,147 (App Div. 1999). An employment discrimination law such as the LAD is not a general civility code for workplace conduct. Id; Faragher, 524 U.S. 775. In this case, the plaintiff did not suffer a severe or pervasive hostile work environment. Sgt. KW never made any comments to the plaintiff referring to her gender and she only heard Sgt. KW make the

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comment, "White women have it easy here" one time, and did not know the context of that conversation. The reasonable person would not interpret that comment as severe harassment.

The plaintiff claimed that during the month of April 2016, she heard Sergeant KW make the comments "Ya'll are on that White people shit," and "You work for the White man upstairs" a couple of times, but he never said the comments to her. The plaintiff also claimed that her race and gender were motivating factors for being assigned nurse escorts and being reprimanded by Sergeant KW and Sergeant AW. The plaintiff testified several times that it was her subjective belief that the alleged conduct was motivated by her gender and/or her race. However, the case law is clear and this is insufficient to establish a prima facie case of discrimination or a hostile work environment.

The defendant maintained that summary judgment was warranted because the plaintiff could not show that she was subjected to any mistreatment because of her race or gender, nor any sufficiently severe or pervasive sufficient to alter the terms of conditions of her work environment. With regard to her allegations against Officer D, her allegations failed as they occurred entirely outside the work environment, and bore no nexus to the defendant. The court denied the defendant's motion for summary judgment and the case proceeded to trial.

SETTLEMENT IN FAVOR OF DEFENDANTS – VETERINARY MALPRACTICE – PLAINTIFFS CLAIM DEFENDANTS BREACHED STANDARD OF CARE IN FAILING TO TEST, DIAGNOSE AND TREAT DOG'S CANCER – DEFENDANTS DENY FAILURE TO TREAT, AS DOG WAS OVER 11 YEARS OLD AND CANCER WAS NOT CONFIRMED – DEFENDANTS FILE FOR SUMMARY JUDGMENT, FOLLOWING WHICH, PLAINTIFFS AGREED TO DISMISS COMPLAINT.

Burlington County, NJ

This malpractice case arose in September of 2015 when the defendants provided medical services to the plaintiffs' Lhasa Apso. The plaintiffs contended that the defendants negligently failed to act with the degree of competency generally possessed by veterinarians, committed malpractice, and breached their fiduciary duties to the plaintiffs by failing to diagnose, observe and properly treat the plaintiffs' dog for a cancerous tumor. The plaintiffs argued that the defendants failed to conduct proper testing and to inform the plaintiffs of the correct medical recourse for their dog's cancer. The plaintiffs alleged that the defendants' malpractice resulted in unnecessary expenses and the untimely death of the plaintiffs' dog. The defendants denied liability arguing that the plaintiffs' dog's condition was terminal, that all appropriate courses of treatment were presented to the plaintiffs, and that no action taken or not taken by the defendants would have changed the ultimate outcome for the dog.

The plaintiffs claimed loss of the companionship of their pet, emotional distress, and expense for grief counseling stemming from the loss of their dog. The plaintiffs brought suit for medical malpractice, breach of contract, and emotional distress. The defendants had last treated the plaintiffs' dog more than 2 years prior to their presentation to the defendants in September of 2015. The defendants argued that the plaintiffs' dog had a history of pancreatitis and cataracts with an abdominal mass, and was 11 ½ years old at the time of death. The defendants presented evidence that they had told the plaintiffs there was no way to know if the dog had cancer without doing a bone biopsy under anesthesia and also splenectomy. The defendants told the plaintiffs that the dog's splenic tumor could rupture if he were taken home and discussed the statistics and euthanasia of the dog. The defendants opted to euthanize the dog at that time. No post mortem diagnostic testing was done to confirm that cancer was present.

The defendants filed for summary judgment arguing that the plaintiffs' complaint was barred by the statute of limitations; that the plaintiffs were not entitled to any damages for emotional distress; and that there was no genuine issue of material fact. Following the defendants' motion, the plaintiffs agreed to dismiss the case against the defendants.

REFERENCE

Defranco vs. Cinnaminson Animal Hospital, et al. Docket no. L-001918-18; Judge Aimee R. Belgard, 02-14-20.

Attorney for plaintiff: Melissa Hoffman Spears of Hoffman Law Firm, PC in Laurel Springs, NJ.
Attorney for defendant: Alex W. Raybould of Lewis Brisbois Bisgaard & Smith, LLP in Newark, NJ.

COMMENTARY

This matter had a complex, confusing procedural history. The plaintiffs originally filed a complaint for veterinary malpractice, breach of contract and property damage September 12, 2018. The complaint was against the incorrect parties. Rather than correct this deficiency, the plaintiffs allowed that complaint to be dismissed without prejudice for lack of prosecution. Instead of correcting the caption to name the correct parties and reinstating the complaint, the plaintiffs filed a breach of contract action in the special civil part against the correct defendants. The plaintiffs represented to the court that this was done because of a statute of limitation issue and because an Affidavit of Merit could not be obtained.

The defendants filed a motion to dismiss in lieu of answer based on the obvious procedural issues with plaintiffs' actions, which was granted December 20, 2019. That order also, based on the court's own motion, reinstated the original law division complaint and tried to correct the caption. Although it was believed this action by the court was not procedurally correct it, was accepted for purposes of the defendant's motion for summary judgment.

It was further assumed, only for purposes of the motion, that the law division complaint was properly reinstated and that the amendment of the caption relates back to the filing date. Even with these assumptions plaintiffs' complaint was still barred by the statute of limitations because it was filed September 12, 2018 and the last date of treatment by the defendant was more than 2 years earlier on August 27, 2016. As such, it was barred by the statute of limitations. The complaint also seemed to make claims for emotional distress which are not recoverable in cases involving pets.

The defendants' first argument for summary judgment was as to the statute of limitations. Even though the case involved the veterinary care of a dog, the complaint pleaded for medical malpractice, though a dog is considered chattel and not a person. Even under this favorable framework, the plaintiffs' claims were still barred by the statute of limitations. "Statutes of limitations are essentially equitable in nature, promoting the timely and efficient litigation of claims." Montells v. Haynes, 133 N.J. 282, 292 (1993) (citing Ochs v. Federal Ins. Co., 90 N.J. 108 (1982)). They spare courts from litigating stale claims, penalize dilatoriness, and serve as measures of repose. Farrell v. Votator Div., 62 N.J. 111, 115 (1973); Rosenau v. City of New Brunswick, 51 N.J. 130, 136 (1968).

Here, the defendants last saw the dog August 27, 2016. The plaintiffs did not file the complaint until September 12, 2018, more than 2 years later. Consequently, the defendants argued, the complaint was out of time and must be dismissed. It was anticipated that the plaintiffs would argue that their breach of contract claim arising out of the same facts survived as it was governed by a longer statute of limitations. However, breach of contract required the plaintiffs "to show that the parties entered into a valid contract, that the defendant failed to perform his obligations under the contract and that the plaintiff sustained damages as a result." Murphy v. Implicito, 392 N.J. Super. 245, 265 (App. Div. 4836-5669-6753.1 2007). When the "essential factual allegations upon which [a plaintiff's claim] rests" are that the defendants' performance of the professional work for which the plaintiffs retained them fell short of the skill that an average member of the defendants' profession ordinarily possesses, and of the care that an average member ordinarily exhibits in similar circumstances, the claim is one for professional malpractice, even if the plaintiff denominated it as a claim for breach of contract. Charles A. Manganaro Consulting Eng'rs, Inc. v. Carneys Point Twp. Sewerage Auth., 344 N.J. Super. 343, 349 (App. Div. 2001). Here, the plaintiffs' complaint at Count 2 referred to the allegations of Count 1 (Medical Malpractice) for its foundation. The only breach of contract claimed was that, "Defendants breached the terms of the contract with plaintiffs by performing the aforesaid negligent actions." That left no question that the alleged medical negligence was the basis for the malpractice and the breach of contract claim. As such, they were both to be treated as medical malpractice claims subject to a 2 year statute of limitations.

Secondly, the defendants asserted that the plaintiffs were not entitled to damages for emotional distress. Count 3 of the plaintiffs' complaint referred to damages for emotional distress and therapy services that plaintiffs have allegedly required as a result of the death of their dog. While sympathetic to anyone for the loss of their pet, the defendants maintained that such damages were not permissible. In McDougall v. Lamm, 211 N.J. 203(2012) the court addressed whether emotional distress damages could be awarded in connection with the death of a pet. The court held such damages were not available. The court observed, "The majority of jurisdictions that have considered whether pet owners should be permitted to recover for emotional distress arising from the death of the pet have declined to authorize the cause of action. See, e.g., Kaufman v. Langhofer, 222 P.3d 272, 279 (Ariz. Ct. App. 2009) (holding that "we are unwilling to expand Arizona common law to allow a plaintiff to recover emotional distress or loss of companionship damages for a pet negligently injured or killed"); Nichols v. Sukaro Kennels, 555 N.W.2d 689, 691-92 (Iowa 1996) (electing to follow majority of jurisdictions in denying recovery for mental distress); Koester v. VCA Animal Hosp., 624 N.W.2d 209, 211-12 (Mich. Ct. App. 2000) (declining to recognize cause of action); Fackler v. Genetzky, 595 N.W.2d 884, 892 (Neb. 1999) (denying recovery for emotional damages for death of animal); Jason v. Parks, 638 N.Y.S.2d 170, 170 (N.Y. App. Div. 1996) (same); Strawser v. Wright, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992) (same); Miller v. Peraino, 626 A.2d 637, 640 (Pa. Super. Ct. 1993) (same); Kondaurov v. Kerdasha, 629 S.E.2d 181, 187 n.4 (Va. 2006) (collecting cases that decline to recognize cause of action because animals are deemed personal property); Pickford v. Masion, 98 P.3d 1232, 1235 (Wash. Ct. App. 2004) (denying recovery for loss of companionship); Carbasho v. Musulin, 618 S.E.2d 368, 371 (W. Va. 2005) (denying recovery for emotional damages for death of animal); Rabideau v. City of Racine, 627 N.W.2d 795, 802 (Wis. 2001) (same); see also William C. Root, Note, "Man's Best Friend": Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 Vill. L. Rev. 423, 426- 29 (2002) (summarizing jurisdictions that disallow cause of action based on emotional distress)."

Based on this precedent, and its own analysis, the court concluded that emotional distress type damages could not be awarded as a result of the death of a pet. Based on this precedent plaintiffs' request for these damages must be dismissed.

Lastly, the defendants argued that there was no genuine issue of material fact in the case. Courts are encouraged to grant summary judgment where, as in this case, the evidence is so one-sided that the relief requested is clearly warranted. In Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 666 A.2d 146 (1995), the court opined: "When deciding a motion for summary judgment under Rule 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." This assessment of the evidence is to be conducted in the same manner as that required under Rule 4:37-2(b). In this regard, it has been held that summary judgment is designed to provide a prompt, business-like and inexpensive method of disposing of any cause of action when a discriminating search of the merits of the case does not present any genuine issue of material fact requiring disposition at trial. The defendants asserted that, in this case, there were no facts in dispute. More significantly, the plaintiffs were either out of time or simply not legally entitled to the relief requested. As such, they maintained, summary judgment was appropriate and the complaint should be dismissed.

Before the court could rule on the motion, the plaintiffs agreed to dismiss their complaint against the defendants.

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VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Home Healthcare

$75,000 RECOVERY

Medical malpractice – Home healthcare negligence – Plaintiffs contend defendant home healthcare provider hired defendant home healthcare aide who neglected, abused and perpetrated theft and fraud against plaintiff patient – Defendant provider denied committing actions claimed – Defendant home health aide criminally charged but fled country.

Burlington County, NJ

In this medical malpractice case, the plaintiffs asserted that the defendants abused and stole from the plaintiff patient while they were supposed to be providing home health care to the plaintiff patient. The plaintiffs claimed negligence, gross neglect, negligent supervision, consumer fraud, assault and battery and punitive damages. The defendant home health care provider denied negligence, claiming the individual defendant home health care aide was solely responsible for any harm to the plaintiff patient and that the defendant agency did not know and could not have known of the actions of that individual. Criminal charges were filed against the defendant aide and it was believed that he had fled the country.

Beginning on June 9, 2017, the plaintiff patient was a homecare patient of the defendants. The plaintiffs contended that the defendants had control of and were responsible for the care and treatment of the plaintiff patient as well as the hiring and supervision of the specific employees who were assigned to be home health aides for the patient. The plaintiffs maintained that the plaintiff patient did not select or choose any of the professionals who rendered care to him.

The plaintiff contended that, while under the control, employment and supervision of the defendants, the defendant home health aide committed acts of assault, sexual abuse, identity theft and fraud against the plaintiff patient. The plaintiff patient, while under the care of the defendants, was injured, sustained severe physical pain and suffering, mental anguish, humiliation and other damages.

The plaintiffs settled the matter with the defendant home health care provider prior to trial in the amount of $75,000.

REFERENCE

Estate of Rambo vs. Parents First Homecare, Inc., et al. Docket no. L-001035-18; Judge Aimee R. Belgard, 02-26-20.

Attorneys for plaintiff: Michael A. Ferrara, Jr. and Megan P. Gable of The Ferrara Law Firm, LLC in Cherry Hill, NJ. Attorney for defendant: Jeffrey P. Resnick of Sherman, Silverstein, Kohl, Rose & Podolsky, PA in Moorestown, NJ.

Podiatry

UNDISCLOSED RECOVERY

Medical malpractice – Podiatric surgery – Plaintiff claims defendant podiatrist negligently deemed her candidate for surgery and performed surgery in such manner, outside standard of care, that she required 2 revision surgeries and suffers from permanent injury.

Camden County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant podiatrist was negligent in identifying the plaintiff as an appropriate candidate for surgical procedures performed by the defendant on August 17, 2015 and May 2, 2016; failing to perform the surgeries in an appropriate fashion; failing to properly position the joints in the left foot; removing an excessive amount of bone; and failing to perform the aforesaid surgeries within the standard of care. The defendant denied any deviation from the standard of care and maintained that he was not guilty of any negligence which was the proximate cause of the injuries alleged.

The plaintiff became a patient of the defendant podiatrist practice in 2012. During the course of the plaintiff's podiatric treatment by the defendant, the plaintiff was ultimately diagnosed with a left 4th hammertoe and left hallux limitus/bunion. Podiatric surgery was recommended to the plaintiff by the de-

fendant. On August 17, 2015, the plaintiff underwent a left 4th digit arthroplasty and left foot Keller bunionectomy based on medical consultations and recommendations. The surgery was performed by the defendant.

Following the surgery, the defendant examined the plaintiff and stated revisional surgery would be necessary. The plaintiff underwent a second procedure by the defendant on May 2, 2016 in which a left foot partial ostectomy of the proximal phalanx for the hallux was performed. The plaintiff was subsequently diagnosed with a severely shortened left hallux, rigid hammertoes 2,3 left and prominent metatarsals 2,3,4 left, hallux rigidus left foot and metatarsalgia left foot. These conditions required corrective surgery which was performed by a different podiatrist on January 8, 2018.

The plaintiff alleged that, due to the negligence of the defendant, as stated, the plaintiff was left with serious, painful and permanent physical injuries. The plaintiff presented an Affidavit of Merit from a board certified podiatrist who stated that there was a reasonable probability that the care exercised in the treatment of the plaintiff was outside acceptable professional standards and treatment practices and that such conduct was a cause in bringing harm to the plaintiff. The defendant argued that the plaintiff knew and assumed the risk inherent in the surgeries performed. The defendant also asserted that the plaintiff was barred from recovery by her own contributory negligence and pre-existing physical condition.

The parties settled the matter prior to trial for an undisclosed sum.

REFERENCE

Toomey vs. Levine et al. Docket no. L-004215-18; Judge Anthony M. Pugliese, 10-30-19.

Attorney for plaintiff: Jared N. Kasher of Kasher Law Group, LLC in Cherry Hill, NJ. Attorney for defendant: Dominic A. DeLaurentis, Jr. of Stahl & De Laurentis, P.C. in Runnemede, NJ.

PRODUCT LIABILITY

Manufacturing Defect

DEFENDANT'S VERDICT

Product liability – Manufacturing defect – Plaintiff contends defective valve assembly on washing machine failed, causing water damage – Defendant denies defective manufacture or assembly; asserts valve failed due to water freezing within valve assembly, for which defendant not responsible.

Morris County, NJ

In this product liability case, the plaintiff homeowner contended that the defendant's product, a washing machine, was defective and caused water damage to the plaintiff's home and property.

On February 18, 2016, a washing machine, manufactured by the defendant, malfunctioned as a result of a defect within the machine, causing severe and significant property damage to the plaintiff's property on Barkman Way in Chester. The defendant denied liability and contested the plaintiff's damages.

The plaintiff contended that the defendant was negligent in its failure to fully and properly control, inspect, maintain, repair and otherwise install its products in a safe manner such as would reasonably provide for the protection and safety of persons who would utilize those products and reasonably provide for the preservation of personal property. The plaintiff argued that the washing machine was not fit for use for its intended purpose and, as a result, the defendant breached its warranty of fitness for use. Specifically, the plaintiff maintained that a valve assembly suffered a premature failure, causing water to flood the home.

The plaintiff claimed that, as a direct and proximate result of the malfunction of the washing machine, the plaintiff sustained severe and significant property damage to his home. The defendant argued that the valve failed due to freezing water, not due to product defect.

Just prior to the onset of trial, the plaintiff offered to take judgment in the amount of $114,800; the offer was not accepted and the matter proceeded.

The jury returned a verdict in favor of the defendant.

REFERENCE

Holmes vs. Whirlpool Corporation. Docket no. L-001518-17; Judge Robert J. Brennan, 01-15-20.

Attorney for plaintiff: Michael C. Vaccaro of Kearns Duffy & Vaccaro, P.C. in Liberty Corner, NJ. Attorney for defendant: Matthew R. Harris of Mintzer Sarowitz Zeris Ledva & Meyers, LLP in Cherry Hill, NJ.

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CONTRACT

$216,256 RECOVERY

Breach of contract – Plaintiffs claim defendants committed fraud, embezzled money and breached fiduciary duty to contribute funds to property development company they formed jointly – Defendants deny all claims by plaintiffs and contend plaintiffs brought suit because they were unhappy about defendants' delay in making capital contribution payment to company.

Hudson County, NJ

In this breach of contract case, the plaintiffs entered into an agreement to form a company with the defendants. The plaintiffs brought suit against the defendants for fraud, embezzlement, breaches of fiduciary duty, legal malpractice and multiple breaches of contract. The defendant denied any breaches or unethical actions.

In the summer of 2017, the plaintiff individual claims he was fraudulently induced into forming a company with the defendant LLC for the purpose of acquiring and developing real property in Jersey City with the defendant individual and his LLC. To induce the plaintiff to enter into the deal, the defendant promised, among other things, an initial capital contribution of $500,000, not a dollar of which was ever paid.

The plaintiff claimed that the defendant lied about funding company transactions and produced fraudulently fabricated banking records to hide his misdeeds, resulting in the plaintiff, who was not a party to the transaction at issue, being threatened with arrest and prosecution in order to compel him to advance additional funds to account for the defendant's fraud and hide counsel's malpractice and commingling of funds. The plaintiffs maintained that the defendant owner of the defendant LLC, through manipulation and control of the company they jointly founded, abused his position for his own self interest and to the detriment of the company, and the plaintiffs involved in the company. The plaintiff asserted that the defendant, on his or on his other entities' behalf, used his managerial authority and power to steal at least $281,272 from the company, in which the plaintiff was an investor.

The defendant asserted that the parties entered into an agreement to develop properties together through their respective LLCs. The parties first attempted to purchase a property but the deal fell through. The defendant maintained that the parties decided to move on to their next project, the one ultimately closed on, located at 105 Brunswick Street in Jersey City. In doing so, the defendant had paid a $150,000 contract deposit on the first project and the plaintiff and defendant agreed to apply that as the contract deposit on the second project. The defendant maintained that the parties agreed to part ways principally for the reasons that the defendants were unable to remit their capital contribution of $500,000 in time for the closing of the subject real estate project.

The defendant asserted that the plaintiff then began making claims that the defendant had "stolen" money from the company which the defendant disputed and argued the plaintiff presented no proof to support. The defendant claimed that the plaintiff paid the $345,000 due at closing on the property at issue and then sought to eject the defendant from the company and take over the project because he was unhappy about the defendants' delay in contributing their capital payment.

Prior to trial, the parties settled the matter prior to trial in the amount of $216,256 to be paid by the defendants to the plaintiffs.

REFERENCE

D'Amico, et al. vs. Wolk, et al. Docket no. L-004619-18; Judge Joseph A. Turula, 04-17-20.

Attorneys for plaintiff: Jason R. Melzer, Eric S. Latzer and Elizabeth A. Carbone of Cole Schotz, P.C. in Hackensack, NJ. Attorney for defendant: Edward R. Bassetti of Bassetti Law, LLC in Saddle Brook, NJ.

COUNTRY CLUB NEGLIGENCE

$28,500 RECOVERY

Country club negligence – Plaintiff country club member contends defendants caused her injury when she was hit in face by football at country club pool – Concussion with residual concussion issues lasting 27 months – Whiplash – Dental issues – Non-binding arbitration.

Middlesex County, NJ

In this negligence case, the plaintiff asserted she sustained injuries when that the defendant country club member threw a football that struck the plaintiff in the face while at the defendant country club pool, managed by the defendant pool management company. The defendant country club denied liability and argued that it hired a pool management company that was responsible for staffing and maintaining the pool,

and thus, was responsible for the activity at the pool and any negligence that resulted in injury to the plaintiff. The defendant pool management company denied any negligence and asserted that the thrower of the football was solely responsible for the ball striking the plaintiff and causing injury. The defendant thrower of the football denied injuring the plaintiff and asserted that the plaintiff's claims were frivolous.

On July 17, 2017 the plaintiff, a member of the defendant country club, was at the country club pool in Monroe. The plaintiff maintained that members of the club were throwing a football in and around the pool area. The defendant's lifeguards did nothing to stop the throwing of the football and it hit the plaintiff in the face.

The plaintiff contended that the defendant negligently failed to stop the people throwing the football and failed to maintain the pool area in a manner free of hazards to members. The plaintiff alleged that the incident resulted in permanent injuries. As a result of the football striking the plaintiff's face, she sustained a concussion, whiplash and dental issues. The plaintiff asserted the concussion issues were ongoing for 27 months. The defendants denied that the plaintiff suffered a permanent injury and presented an expert orthopedist who opined that the plaintiff's injuries were not significant and had resolved without any lasting effects.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant pool management company and 20% to the defendant football-thrower with damages of $42,500. Following arbitration and prior to trial, the parties settled for $28,500 divided evenly between the defendant pool management company and the defendant football-thrower.

REFERENCE

Darr vs. Forsgate Country Club, et al. Docket no. L-007337-18; Judge Michael V. Cresitello, Jr., 02-10-20.

Attorney for plaintiff: Anthony J. Giosa of Earp Cohn, PC in Cherry Hill, NJ. Attorneys for defendant country club: Michael O'Brien and Joseph V. Leone of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ. Attorneys for defendant pool management company: Patrick J. Cosgrove and Harminda M. Morales of Pillinger Miller Tarallo, LLP in Philadelphia, PA. Attorney for defendant country club member: David E. Madden of Martin Kane & Kuper in East Brunswick, NJ.

DOG ATTACK

$150,000 RECOVERY

Dog attack – 3-year-old plaintiff bitten on face by defendants' dog – Significant physical damage requiring extensive medical treatment; permanent scarring to face – Mental trauma and anguish.

Somerset County, NJ

In this dog attack case, the 3-year-old plaintiff asserted that the defendant dog owners negligently owned and controlled a dog that attacked the plaintiff and caused significant, permanent injury. The defendants stipulated liability and settled the matter with the plaintiff.

On August 26, 2018, the infant plaintiff and his parents were invited guests at the defendants' home at 16 Colony Drive in North Caldwell. At that time, the plaintiff was attacked and bitten on the face by the defendants' dog. The plaintiff was rushed to the Emergency Room for serious injuries sustained to his face from the dog bites. The plaintiff required emergency plastic surgery due to the severity of his multiple facial injuries.

The plastic surgeon treating the plaintiff made the following diagnosis: Dog bite attack to the face, separate and distinct injury; destruction of the left lateral canthus and canthal hollow of the left eyelid, separate and distinct injury; skin and soft tissue deficit of the left eyelid measuring approximately 2 x 2 cm; multiple left check lacerations with the sum of the length measuring approximately 3 cm; left forehead eyebrow laceration measuring approximately 2 cm and left jaw line laceration measuring approximately 2 cm. Plastic surgery was performed on the plaintiff consisting of: left lateral canthoplasty with reconstruction of the cancel hollow of the left eye (6-0 monocryl buried interrupted suture); V-Y advancement of flap of the left eyelid measuring approximately 2 x 2 cm (6-0 Monocryl buried interrupted sutures throughout in a 6-0 Monocryl subcuticular closure); debridement of multiple cheek lacerations, forehead laceration, and jaw-line laceration with an iris scissor was performed; the wounds were re-prepped with Betadine. The multiple cheek lacerations, after being debrided, were repaired with 6-0 Monocryl buried interrupted sutures throughout in 6-0 Monocryl subcuticular closures; the jaw-line laceration was debrided with use of an iris scissor, the subcutaneous space was repaired with 6-0 Monocryl buried interrupted suture and 6-0 Monocryl subcuticular closure and attention was then drawn to the left forehead laceration after being debrided. The frontalis muscle was repaired with 6-0 Monocryl buried interrupted suture. Wide and extensive skin flaps were then performed, which were inset with 6-0 Monocryl buried interrupted suture in 6-0 Monocryl subcu closure. The infant plaintiff underwent a severely traumatic event, causing significant damage, including permanent scarring to his face and mental trauma and anguish.

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The infant plaintiff settled the matter prior to trial with the defendant dog owners, via their homeowner's insurance carrier, in the amount of $150,000 set up in a structured settlement for the benefit of the infant plaintiff.

REFERENCE

H.C.L., a minor vs. Allstate New Jersey Insurance Co., et al. Docket no. L-001453-1; Judge Robert G. Wilson, 01-17-20.

Attorneys for plaintiff: David C. Roberts and Andrew D. Linden of Norris McLaughlin, P.A. in Bridgewater, NJ. Attorney for defendant: Regina D. Geise of Law Offices of Pamela D. Hargrove in Cranford, NJ.

DRAM SHOP

$840,000 RECOVERY

Dram shop/motor vehicle negligence – Wrongful death – Plaintiff's decedent struck head-on and killed by defendant drunk driver served by 2 separate dram shops prior to subject collision – Defendant dram shops deny defendant driver visibly intoxicated while at establishments.

Morris County, NJ

In this dram shop/motor vehicle negligence case, the plaintiff asserted that the defendant driver was over served alcohol at 2 different defendant bars and then drove while intoxicated, causing a fatal collision with the plaintiff's decedent, a 22-year-old security guard.

The plaintiff contended that, on December 8, 2015, the defendant driver arrived at a hibachi restaurant following a work-related training seminar. She was accompanied by several dozen co-workers for dinner. They arrived at approximately 6:00 p.m. and were there for several hours wherein the defendant driver consumed alcohol. She then left and went to the first defendant restaurant/bar and remained there for approximately 1 hour wherein she consumed alcohol. Thereafter, the defendant drove to the second defendant restaurant/bar where she consumed alcohol for approximately 1 hour and then left and drove to a convenience store.

When she left the convenience store, she drove out of the parking lot and entered Route 15 traveling the wrong way for approximately 5 miles. The plaintiff's decedent was traveling on Route 15 South in Sparta. The defendant was traveling northbound in the southbound lane of Route 15 in excess of 75 mph. The plaintiff contended that the defendant was intoxicated and negligently driving on the wrong side of the road when she struck the plaintiff's decedent head-on and caused him fatal injury.

The plaintiff also contended that the defendant driver had been visibly intoxicated at the defendant bar and that she then went to another defendant bar where she was again served alcohol while visibly intoxicated. The defendant's blood alcohol was .225% at the time of the collision. The decedent was pronounced dead at the scene. The defendant driver was charged with numerous crimes including driving while intoxicated and first degree aggravated manslaughter. The defendant driver remained incarcerated at the time of filing of the subject action.

The decedent's estate, by his parents, brought suit for wrongful death claiming pain and suffering and loss of services by his parents and disabled sister. The defendant driver stipulated liability but asserted that the plaintiff's economic claims were speculative.

During discovery, the defendant driver made an offer of judgment to the plaintiff in the amount of $500,000. The offer was declined and the matter proceeded. The defendant dram shops denied that the defendant appeared visibly intoxicated while at their establishments.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant driver; and 20% to the defendant bar where the defendant driver was last served before the subject collision. The arbitrator allocated damages of $900,000.

Following arbitration and prior to trial, the plaintiff settled with the defendant driver and both dram shops in the amount of $840,000 broken down as follows: $295,989 in attorney fees; and $544,012 in net damages to the plaintiff's decedent's estate. The net settlement proceeds of $544,012 recovered in this action were equally apportioned between the decedent's parents with each recovering $272,056.

REFERENCE

Hunter, Jr. vs. Verbout, et al. Docket no. L-002284-17; Judge William J. McGovern III, 01-14-20.

Attorney for plaintiff: Nicholas F. Pompelio of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C. in Warren, NJ. Attorney for defendant first dram shop: Robert F. Ball of Weber Gallagher Simpson Stapleton Fires & Newby, LLP in Bedminster, NJ. Attorney for defendant second dram shop: Ewan M. Clark of Law Offices of Juengling & Urciuoli in Woodbridge, NJ. Attorney for defendant hibachi restaurant: Anthony S. McCaskey of Lewis, Brisbois, Bisgaard & Smith, LLP in Newark, NJ. Attorney for defendant driver: Stephen A. Rudolph of Rudolph & Kayal Counselors at Law, P.A. in Manasquan, NJ.

INSURANCE OBLIGATION

$180,000 RECOVERY

Insurance obligation – Motor vehicle negligence – Rear end collision – Aggravation of cervical bulge – New lumbar herniation – Conservative therapy – UIM case.

Mercer County, NJ

This case involved a 61-year-old male driver who was struck in the rear sustaining injuries. The tortfeasor had $15,000 in coverage which was paid. The plaintiff had $250,000 in UIM protection, and $235,000 was available. The defendant denied that the plaintiff suffered the claimed injuries.

The plaintiff contended that he suffered an aggravation of a cervical bulge and a new lumbar herniation. The plaintiff asserted that the injuries were confirmed by MRI and treated with physical therapy. The plaintiff maintained he will suffer permanent symptoms. The plaintiff, who lives alone, contended that day-to-day duties are painful and difficult. The plaintiff made no income claims.

The defendant stressed that the plaintiff was involved in an accident a week earlier. The defendant contended that the property damage from the subject accident was very minor. The evidence also reflected that the subject accident involved slight property damage. The plaintiff contended that he developed severe symptoms after the subject accident.

The case against the UIM carrier settled for $165,000, yielding a total recovery of $180,000.

REFERENCE

Fay vs. Plymouth Rock Assurance Co. Docket no. MER-L-001902-18, 05-21.

Attorney for plaintiff: Evan J. Lide of Stark & Stark in Lawrenceville, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Plaintiff performs water damage remediation work at insured's home and assigned benefits from defendant insurance proceeds in return – Defendant insurer denies claim asserting damage due to wear and tear, not peril event.

Broward County, NJ

In this insurance obligation case, the plaintiff contractor asserted that the defendant insurer wrongfully denied a claim for water damage at a property where the plaintiff did mitigation work and was the assignee of the homeowner's expected reimbursement for his claim against the defendant. The defendant denied breaching the insurance contract, arguing that the claim was correctly rejected after an inspection revealed no direct physical damage to the roof beyond normal wear and tear, which is not covered.

On August 31, 2016, the insured suffered a water loss to the residence located at 1820 North 27 Avenue in Hollywood. The residence was insured by the defendant and the policy was in full effect. The homeowner/insured filed a claim under the policy and assigned benefits to the plaintiff in exchange for water mitigation services. The plaintiff maintained that the defendant wrongfully denied the claim.

The plaintiff maintained that weather conditions caused the damage to the property and that weather was a covered cause of loss under the defendant-issued policy. The plaintiff argued that the defendant relied solely on its adjuster's superficial inspection of the property and called an expert who did not even inspect the property, but relied on documents and photos to support his opinion. The defendant asserted that there was no peril that first damaged the building causing an opening that allowed rain or other substance to penetrate the exterior of the property.

The jury found that the defendant did not breach the policy of insurance returned a verdict in favor of the defendant.

REFERENCE

Express Damage Restoration, LLC vs. Citizens Property Insurance Corporation. Docket no. CACE18028711; Judge Martin J. Bidwill, 09-23-21.

Attorney for plaintiff: Erik D. Diener of The Diener Firm, P.A. in Plantation, FL. Attorney for defendant: Miriam R. Merlo of Gaebe Mullen Antonelli & DiMatteo in Coral Gables, FL.

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MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$90,000 RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Non-displaced right knee fracture – Right shoulder sprain with post-traumatic impingement syndrome – Right hip sprain – Scarring on knee and elbow – Extensive medical treatment – 2 weeks in physical rehabilitation facility.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff, a 74-year-old man, asserted that the defendant driver struck his motorcycle with such force that it caused significant, permanent injury. The defendant contended that the plaintiff was negligent or comparatively negligent in causation of the accident.

On July 9, 2018, the plaintiff was entering an intersection, at East Landis Avenue and Lidl Street in Vineland, with the right-of-way when the defendant, driving a van and coming from the opposite direction, negligently turned left across the plaintiff's land of travel. The plaintiff was forced to lay down his motorcycle to avoid colliding with the van. The plaintiff alleged that the impact with the ground resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a non-displaced right knee fracture of the lateral tibial plateau and proximal shaft; right shoulder sprain with post traumatic impingement syndrome; right hip sprain; scarring on the knee and elbow. The plaintiff spent 2 weeks in an in-patient rehabilitation facility. The plaintiff claimed $35,000 in unpaid medical expenses.

The defendant denied liability and contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were treated and he recovered without significant permanency.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $90,000. Following arbitration and prior to trial, the parties settled for $90,000.

REFERENCE

Hickman vs. Nassiri. Docket no. L-001899-18; Judge Joseph L. Marczyk, 01-13-20.

Attorney for plaintiff: Dean R. Maglione of The Maglione Firm, PC in Newark, NJ. Attorney for defendant: Joshua K. Givner of Hurvitz & Waldman, LLC in Pleasantville, NJ.

Auto/Pedestrian Collision

$45,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Disc herniations at L4-5, C3-4; disc bulges at L5-S1, C4-5, C5-6 and C6-7 – Parties settle for amount determined at arbitration.

Hudson County, NJ

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

On August 30, 2016, the plaintiff was a pedestrian lawfully crossing at the intersection of Park Avenue and Liberty Street in Weehawken. The defendant was driving a vehicle in the same area, in the course of his employment. The vehicle was owned by the defendant's employer. The plaintiff asserted that the defendant driver negligently failed to observe and stop for pedestrians crossing the street and struck the plaintiff with his vehicle. As a result of the collision, the plaintiff sustained disc herniations at L4-5, C3-4; and disc bulges at L5-S1, C4-5, C5-6 and C6-7.

The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant asserted that the plaintiff was guilty of contributory negligence in causation of the accident. The defendant also challenged the nature, extent and causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $45,000. Following arbitration and prior to trial, the parties settled for $45,000.

REFERENCE

DeCastro vs. Cannalley, Jr., et al. Docket no. L-002666-18; Judge Kimberly Espinales-Maloney, 01-27-20.

Attorney for plaintiff: Nicholas M. Torres of Nicholas M. Torres, LLC in West New York, NJ. Attorney for defendant: Lisa M. Pascarella of Pascarella Divita, PLLC in Holmdel, NJ.

Back-up Collision

$18,750 RECOVERY

Motor vehicle negligence – Back-up collision – Defendant backed up into plaintiff's vehicle at traffic light – Defendant disputes plaintiff's claims and contends plaintiff moved forward and struck defendant – Disc herniations at C4-5 and C5-6; disc bulges at C6-7 and L5-S1.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver backed into the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendant denied liability, arguing that the plaintiff was inattentive and moved forward when the light turned green without waiting for the defendant to proceed. The defendant argued that the plaintiff was completely at fault and caused the collision.

On July 16, 2016, the plaintiff was at a completely stopped at a red light on 509 76th Street in North Bergen. The defendant was stopped in front of the plaintiff's vehicle. The plaintiff maintained that, when the light turned green, the defendant reversed and collided with the plaintiff's vehicle. The plaintiff contended that the defendant negligently and unexpectedly backed up into the plaintiff's vehicle causing a significant collision wherein the plaintiff suffered permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C4-5 and C5-6; disc bulges at C6-7 and L5-S1. The defendant contested the plaintiff's damages. The defendant presented an IME which opined that the plaintiff suffered no permanent injury to the cervical or lumbar spine.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of $30,000 reduced to $15,000 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial.

The jury unanimously found the defendant 62.5% liable for the occurrence of the subject accident and the plaintiff 37.5% liable. The plaintiff recovered damages of $18,750 from the defendant per the parties' pretrial stipulation on damages.

REFERENCE

Franco vs. Quinteros, et al. Docket no. L-002461-18; Judge Dennis Vincent Nieves, 02-18-20.

Attorney for plaintiff: Lara R. Lovett of Gaylord Popp in Trenton, NJ. Attorney for defendant: Stephen Czeslowski of Campbell, Foley, Delano & Adams, LLC in Asbury Park, NJ.

Driveway Exit Collision

$150,000 VERDICT

Motor vehicle negligence – Driveway exit collision – Defendant backs out of driveway, impacting with plaintiff driver – Lumbar herniation – Cervical soft tissue injuries – Chiropractic care for 8 months followed by 2 injections.

Middlesex County, NJ

The plaintiff driver in this action for motor vehicle negligence contended that the defendant driver failed to make adequate observations before backing out of a driveway. The plaintiff maintained that as a result, the defendant struck his vehicle causing him to sustain injuries.

The defendant argued that the plaintiff failed to pay adequate attention and was responsible for the crash.

The plaintiff contended that he developed severe lumbar and cervical pain after the accident. The plaintiff contended that a lumbar herniation was confirmed by MRI. The plaintiff underwent some 8 months of chiropractic treatment which was followed by 2 lumbar injections.

The plaintiff contended that he will permanently suffer neck and back complaints. There was no evidence that disc surgery is indicated. The defendant maintained any injuries suffered were temporary, and that any current complaints were caused by degeneration. The plaintiff countered that he had no prior symptoms.

The plaintiff made no income claims.

Prior to trial, the insurance company offered $8,000 to resolve the claim. After the offer was rejected, they offered a "high/low" of $5,000 and $100,000, which was also rejected. Earlier in the litigation, the plaintiff filed an Offer of Judgment for $80,000, which expired in December of 2019.

After 4 days of trial, the 6 person jury returned a verdict finding the defendant 100% responsible for the collision and awarded $150,000 in damages to the plaintiff. In accordance with the Offer of Judgment rule, the plaintiff is also pursuing approximately $25,000 in pre-judgment interest and $39,000 in attorneys' fees.

REFERENCE

Plaintiff's pain management expert: Eugene Gorman, M.D. from Cresskill, NJ.

Donyina vs. Rawal. Docket no. MID-L-5584-18, 06-21.

Attorney for plaintiff: Paul M. Brandenburg of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

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Intersection Collision

$39,800 VERDICT

Motor vehicle negligence – Intersection collision – Disc herniations at C3-4, C4-5, C5-6, C6-7, L4-5 and L5-S1 confirmed on MRI – Chiropractic care; pain management; epidural injections – Recommendation for 2 future surgeries.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to stop at a stop sign and struck the plaintiff's vehicle with such force that it caused the plaintiff to suffer significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

On August 16, 2015, the plaintiff was traveling east on East Scott Street approaching the intersection with Rutherford Street in Rahway. The defendant was traveling northbound on Rutherford approaching the intersection. The plaintiff contended that the defendant negligently failed to stop at a stop sign controlling entry into the intersection from Rutherford Street. As a result of the defendant failing to stop, he struck the plaintiff's vehicle on the rear, driver's side quadrant. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C3-4, C4-5, C5-6, C6-7, L4-5 and L5-S1 confirmed on MRI. The plaintiff treated with chiropractic care; pain management; epidural injections; and will require 2 future surgeries, according to her treating physician. The plaintiff claimed $50,967 in medical expenses paid by the PIP carrier.

The defendant argued that the plaintiff's injuries were pre-existing, degenerative in nature, and not caused by the subject collision. The defendant also pointed to a prior slip and fall the plaintiff sustained at work in 2015.

The jury found in favor of the plaintiff and awarded damages in the amount of $39,800 broken down as follows: $37,500 in damages; $2,300 in pre-judgment interest.

REFERENCE

Douglas vs. Digirolamo. Docket no. L-002643-17; Judge James Hely, 01-14-20.

Attorneys for plaintiff: Eric D. Dakhari and Tracey C. Hinson of Hinson Snipes, LLP in Princeton, NJ. Attorney for defendant: Edwin J. McCreedy of Law Offices of Edwin J. McCreedy in Cranston, NJ.

$16,500 RECOVERY

Motor vehicle negligence – Intersection collision – Plaintiff contends defendant ran stop sign and collided with plaintiff's vehicle in intersection – Nondisplaced fracture of right patella; chest contusions – Fracture of 2 ribs.

Middlesex County, NJ

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

On December 16, 2015, the plaintiff was operating a vehicle which was traveling east on Rues Lane. The defendant was traveling north on Hillsdale Road in East Brunswick. The plaintiff asserted that the defendant negligently failed to yield to a stop sign controlling the intersection and caused a collision between the vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was taken by ambulance from the scene of the collision. She sustained a non-displaced fracture of the right patella; contusions of the chest; and fracture of the ninth and tenth ribs. The plaintiff claimed a $9,249 disability lien, $310 fee for ambulance, and $960 for housecleaning during the time the plaintiff could not perform household tasks. The defendant argued that the plaintiff's injuries were not permanent as evidenced by the fact that she failed to provide any narrative report from a physician causally relating any injuries to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $50,000. Following arbitration and prior to trial, the parties settled for $16,500.

REFERENCE

Dayaram vs. Kiyabu. Docket no. L-007306-17; Judge Thomas Buck, 01-17-20.

Attorney for plaintiff: Lawrence B. Sachs, Esq. in East Brunswick, NJ. Attorney for defendant: Colin Gibson of Viscomi & Lyons in Morristown, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Cervical disc herniation at C6-7; lumbar disc herniation at L5-S1; right shoulder sprain with partial thickness tearing of rotator cuff tendon and labrum – Pinched-nerve syndrome at C6-7 and radiculopathy at L5-S1 – Chiropractic care – Referred for orthopedic evaluation and pain management.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff, a 51-year-old woman, asserted that she sustained injury when the defendant driver negligently failed to stop at a controlled intersection and struck the plaintiff's vehicle. The defendant denied that the plaintiff sustained permanent injury in the collision.

On January 6, 2015, the plaintiff was traveling with the right of way on Wabash Avenue in Linwood. The defendant was traveling on the intersecting street of Barr Avenue, which was controlled by a stop sign. The plaintiff asserted that the defendant failed to observe and stop for the stop sign and thus entered the intersection and struck the plaintiff's vehicle with enough force to cause the plaintiff serious, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

The plaintiff was evaluated by emergency medical personnel at the scene of the accident and transported to the hospital. As a result of the collision, the plaintiff sustained cervical disc herniation at C6-7; lumbar disc herniation at L5-S1; right shoulder sprain with partial thickness tearing of rotator cuff tendon and labrum; aggravation of underlying calcific deposit within her rotator cuff tendon. The plaintiff initially had chiropractic care and was ultimately referred for orthopedic evaluation and pain management. The plaintiff was later diagnosed with pinched-nerve syndrome at C6-7 and radiculopathy at L5-S1.

The defendant asserted that the plaintiff's injuries were minor and consisted of sprain/strains which should have resolved since the incident. The defendant denied that there was any significant injury or causal relationship to the subject collision.

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

REFERENCE

Gandy vs. Handler. Docket no. L-002492-16; Judge James P. Savio, 07-23-19.

Attorneys for plaintiff: Alan M. Handler and Danielle Walcoff of Lipari & Walcoff, LLC in Pleasantville, NJ. Attorney for defendant: Malcolm McPherson of Hoagland, Longo, Moran, Dunst & Doukas, LLP in Hammonton, NJ.

Left Turn Collision

$245,000 RECOVERY

Motor vehicle negligence – Left turn collision – Bilateral rib fractures – Displaced tibial plateau fracture – Left pneumothorax; pulmonary contusion and aortic dissection – Hospitalization and surgical intervention – Non-binding arbitration assigns 100% liability to defendant.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff passenger asserted that the defendant driver struck the vehicle in which she was a passenger because of a failure to yield the right-of-way when making a left turn across the plaintiff's lane of travel. The plaintiff asserted that the collision was so forceful that it caused significant, permanent injury. The defendant denied negligence arguing that the driver of the plaintiff's vehicle was negligent, or comparatively negligent, in failing to observe the defendant's vehicle and avoid collision.

On March 24, 2017, the plaintiff was a passenger in a motor vehicle traveling on State Route 34 at or near its intersection with Professional Circle in Colts Neck. The plaintiff argued that the defendant was carelessly and negligently operating his motor vehicle, so as to fail to yield the right of way, making a left turn directly in front of the vehicle in which plaintiff was a passenger, striking that vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries including bilateral rib fractures; a displaced tibial plateau fracture; left pneumothorax; pulmonary contusion and aortic dissection. The plaintiff was hospitalized and underwent surgery for her injuries.

Prior to arbitration the plaintiff made an offer to take judgment in the amount of $250,000. The parties submitted to non-binding arbitration prior to trial wherein the arbitrator assigned 100% liability to the defendant with damages of $300,000. Following arbitration and prior to trial, the parties settled for $245,000.

REFERENCE

Chin vs. Hungerford. Docket no. L-000812-18; Judge Lisa Vignuolo, 02-13-20.

Attorney for plaintiff: Gregg A. Williams of Law Offices of Gregg A. Williams in East Brunswick, NJ. Attorney for defendant: Karen B. Miller of Law Offices of Pamela D. Hargrove in Cranford, NJ.

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Multiple Vehicle Collision

$207,093 GROSS VERDICT

Motor vehicle negligence – Multiple vehicle collision – Phantom vehicle cuts off defendant driver who collides with third-party vehicle who collides with plaintiff causing plaintiff to lose control and crash into concrete barrier – 2 cervical herniations – Epidural injections.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 60-year-old male, asserted that the defendant driver struck a third-party vehicle causing it, in turn, to strike the plaintiff's vehicle with such force that it caused the plaintiff significant, permanent injury. The defendant driver denied liability claiming that she swerved to avoid the phantom vehicle which had cut her off that caused her collision with the third-party vehicle which subsequently collided with the plaintiff's vehicle. The third-party vehicle was determined not to have been negligent and was released on summary judgment prior to trial. On February 7, 2017, the plaintiff was the operator of a motor vehicle traveling in a northerly direction on the Garden State Parkway. The defendant was the driver of a vehicle also proceeding north on the Garden State Parkway and there was a third-party vehicle traveling in the lane next to the defendant's vehicle. The plaintiff asserted that the defendant driver, while changing lanes, negligently struck and collided with the phantom third-party vehicle causing it to suddenly and without warning collide with the plaintiff's vehicle. The plaintiff's vehicle then lost control, ran off the road, and struck the concrete traffic barrier head on. A police report determined the cause of the accident was the defendant driver failing to maintain directional control of her vehicle.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and back. The plaintiff suffered 2 cervical herniations confirmed on MRI. The plaintiff treated with epidural injections. The defendant driver contested the plaintiff's damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant driver and 10% to the plaintiff's UIM carrier with damages of $40,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $207,093 broken down as follows: $254 in costs; $6,838 in interest; $200,000 in damages apportioned at 60% as to the defendant driver and 40% as to the phantom vehicle to be paid by the plaintiff's UIM carrier. Because the plaintiff elected for $15,000 in UIM coverage, the $80,000 of damages by the jury was conformed to $15,000 resulting in total damages, costs and interest to the plaintiff of $142,093.

REFERENCE

Carbajal vs. Patel. Docket no. L-004317-17; Judge Thomas J. Buck, 12-20-19.

Attorney for plaintiff: Laura A. Rabb of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for defendant driver: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ. Attorney for defendant UIM carrier: Darren C. Kayal of Rudolph & Kayal Counselors at Law, P.A. in Manasquan, NJ.

Rear End Collision

$210,000 RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff driver struck at stop sign on exit ramp while turning head to left – Lumbar herniation superimposed on degenerative disc disease – Cervical herniations – Conservative care and injections – Lumbar surgery – No income claims.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her mid 50s, contended the defendant driver negligently struck her in the rear while she was stopped at a stop sign at the end of an exit ramp and turning her head to the left.

The plaintiff asserted that as a result, she suffered a cervical herniation that was superimposed on degenerative disc disease that had caused some prior lower back pain. The plaintiff's expert neurosurgeon would have concluded that 80% of the cervical injury stemmed from the accident.

The plaintiff underwent chiropractic care and injections to both areas. The plaintiff's neurosurgeon also contended that the plaintiff required lumbar surgery. The plaintiff asserted that she will suffer permanent symptoms in both areas.

The plaintiff made no income claims.

The defendant had a combined, single limit policy of $250,000. The case settled prior to trial for $210,000.

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Defendant's orthopedic surgeon expert: Edward Decter, M.D. from Cedar Knolls, NJ.

Roman vs. Ribaudo, et al. Docket no. MRS-L-927-20, 09-20-21.

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

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Motor vehicle negligence – Rear end collision – Accident allegedly causes lumbar and cervical herniations treated with injections – Defendant points to prior accident with more property damage approximately a year earlier – Damages only.

Burlington County, NJ

The defendant conceded negligence in this motor vehicle negligence case. The plaintiff driver, approximately 60, contended that she suffered lumbar and cervical herniations in the accident which were confirmed by MRI. The plaintiff also contended that she suffered lumbar radiculopathy and that an EMG was positive. The plaintiff asserted that despite lumbar and cervical injections, she will suffer permanent symptoms. The defendant denied that the plaintiff sustained the claimed injuries.

The defendant's radiologist concluded that the cervical area showed no evidence of traumatically induced disc pathology and that any lumbar findings appeared to be related to degenerative disc disease, not caused in the accident. The defendant further pointed out that the plaintiff had been in an MVA approximately 1 year earlier that involved a heavier impact. The plaintiff made complaints of neck and back pain at the E.R. after the prior accident, which did not result in litigation.

The jury found for the defendant on the verbal threshold.

REFERENCE

Plaintiff's chiropractor expert: Mark A. Bolinger, DC from Burlington, NJ. Defendant's radiology expert: Andrew Shaer, M.D. from Jenkintown, PA.

Ervin vs. Parikh. Docket no. BUR-L-2152-19; Judge Aimee Belgard, 04-00-21.

Attorney for defendant: James D. Blumenthal of Bennett Bricklin & Saltzburg, LLC in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Complaints of low back pain, bilateral hand pain and right knee instability – MRI indicated left paracentral disc herniation with broad-based bulge at L5-S1 with radiculopathy – Defendants deny permanent injury.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff, a 23-year-old woman, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff brought suit against the defendant driver and against her own insurer for underinsured motorist benefits. The defendants stipulated liability but contested the plaintiff's damages.

On February 10, 2016, the plaintiff was traveling westbound on Harding Highway in Mays Landing when the vehicle operated by the defendant driver rear-ended the vehicle operated by the plaintiff. The plaintiff claimed that, as a result of the collision and the defendant driver's negligence, she suffered permanent injuries to her neck and low back. The plaintiff sought monetary compensation for the permanent injuries she claims she suffered proximately caused by the collision.

As a result of the collision, the plaintiff complained of low back pain, bilateral hand pain and right knee instability. MRI indicated left paracentral disc herniation with a broad based bulge at L5-S1 with radiculopathy. The defendants argued that the plaintiff's injuries were not permanent in nature and not causally related to the subject collision. The defendants' IME report noted mild arthritic changes of the S1 joints and lower thoracic region, but no fractures or disc deformities, nor any injuries to the knee or hands.

The plaintiff settled with the defendant driver and the matter went to trial only as to the defendant insurer. The jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Camardo vs. Martinez, et al. Docket no. L-002374-17; Judge Mary C. Siracusa, 11-06-19.

Attorney for plaintiff: Dominic R. DePamphilis of D'Arcy Johnson Day in Egg Harbor Township, NJ. Attorney for defendant insurer, High Point Property and Casualty Insurance Company: Eric S. Robinson of Law Office of Debra Hart in Mount Laurel, NJ. Attorney for defendant driver: Robyn Barkow of Law Offices of Michael G. David in Marlton, NJ.

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Sideswipe Collision

$15,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Insurance obligation – Phantom vehicle cuts off defendant driver and forces defendant's vehicle into side of plaintiff's vehicle – Disc herniations at C2-7, L5-S1 and L2-3 – Chiropractic treatment and physical therapy.

Burlington County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the side of her vehicle after being cut off by a phantom vehicle. The plaintiff brought suit against the defendant driver and for uninsured motorist benefits from her insurer. The defendant driver asserted that a phantom vehicle cut her off on the roadway and forced her vehicle into the side of the plaintiff's vehicle, thus causing the collision. The defendant insurer argued that the defendant driver was at fault for the collision.

On November 19, 2017 the plaintiff was traveling east on Pointville Road in Pemberton. The defendant was the operator of a vehicle traveling behind the plaintiff. The plaintiff maintained that the defendant struck her vehicle on the rear driver's side. The plaintiff alleged that the force of the impact resulted in permanent injuries.

The plaintiff had had a prior fusion surgery at L3-S1 and prior bulges at C2-6, L2, and L5-S1 but claimed new injuries as a result of the subject collision. The plaintiff sustained new disc herniations at C2-7, L5-S1 and L2-3. The plaintiff treated with physical therapy and chiropractic care and claimed medical expenses of $11,000.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 30% liability to the defendant insurer and 70% to the defendant driver with damages of $50,000 inclusive of medical expense. Following arbitration and prior to trial, the plaintiff settled with the defendant insurer for $15,000.

REFERENCE

Fletcher vs. Lecorchick, et al. Docket no. L-000875-18; Judge John E. Harrington, 01-20-20.

Attorney for plaintiff: Robert I. Segal of Law Offices of Robert I. Segal, PA in Medford, NJ. Attorney for defendant uninsured motorist carrier: Eleanore Rogalski of Law Office of Debra Hart in Mount Laurel, NJ. Attorney for defendant driver: David Sideman of Law Office of Michael G. David in Marlton, NJ.

PREMISES LIABILITY

Fall Down

$796,024 GROSS RECOVERY

Premises liability – Fall down – Medical malpractice – Nursing negligence – Plaintiff falls on defective curb at defendant gas station – After undergoing surgical repair of fracture patella from fall at gas station; while recovering at hospital, she suffers re-injury of surgical site due to defendant nurse's negligence – Plaintiff settles with defendant nurse for $200,000 and matter goes to trial as to defendant gas station – Jury awards $596,024.

Hudson County, NJ

In this two-part case, the plaintiff asserted that the defendant gas station allowed a hazardous condition to exist on its property such that she fell and suffered injury. After surgical repair of her injury, the plaintiff maintained that the defendant's hospital staff breached the standard of care while she was recovering in the hospital, causing her to require a second repair of the damage to her original surgical repair. The plaintiff brought suit against the defendant gas station and the defendant hospital. The defendant gas station argued that the curbing where the plaintiff fell was outside the metes and bounds of the defendant gas station's property and thus the defendant was not liable for the condition of the curb, or the plaintiff's injuries from her fall.

On June 16, 2016, the plaintiff fell on a defective curb at the defendant gas station at the corner of 14th Street and Luis Marin Boulevard in Jersey City. The plaintiff maintained that the defendant negligently maintained the property such that it presented a hazard to customers and caused her to trip and fall. The plaintiff sustained a fractured right patella requiring surgical repair. The defendant hospital and nurse argued that the plaintiff failed to establish causation of the failure of the initial knee surgery and denied that the second surgery was necessitated by the plaintiff's contact with the footrest of a chair in her hospital room, or that the contact was caused by the defendant or its staff member.

On June 25, 2016, the plaintiff underwent open reduction and internal fixation of the right patella. While she was recovering from surgery, the plaintiff was

transferred out of bed to a recliner chair. When the footrest was elevated by the nurse, it struck the plaintiff on the back of her right leg/calf causing her extreme pain due to new injury to the right knee. Further intervention was then required from the pain management team related to the extreme level of the plaintiff's pain. The plaintiff alleged that the impact of the footrest on her leg resulted in displacement of the wires in her right knee surgical structure.

While an orthopedist initially elected to treat the plaintiff conservatively, she ultimately had to undergo a second surgery to repair the damage caused by the subject incident. The plaintiff presented expert nursing testimony that there was a reasonable probability that the care, skill or knowledge exercised by the defendant nurse, medical center and its employees was a deviation from and fell outside of acceptable nursing practices as related to the nursing care provided to the plaintiff. The plaintiff's expert also opined that those deviations from acceptable standards of care resulted in the necessity of her subsequent care and treatment, including revision surgery of her right patella fracture.

The defendant hospital was dismissed on summary judgment and the plaintiff settled with the defendant nurse for $200,000 prior to trial. The matter went to trial only as to the defendant gas station on the underlying issue of the plaintiff's initial fall and injury.

The jury found the plaintiff and the defendant gas station each 50% negligent and that each party's negligence was a proximate cause of the plaintiff's injuries. The jury rendered a gross damages verdict in favor of the plaintiff in the sum of $596,024 broken down as follows: $250,000 for pain and suffering, disability, impairment and loss of enjoyment of life; $7,500 for past lost wages; $239,524 for past medical expenses and $100,000 for future medical expenses. The plaintiff recovered net damages of $98,512, after adjustment for comparative negligence and offset of $200,000 pro tanto settlement with the medical malpractice portion of the case, plus $4,110 in pre-judgment interest for a total recovery of $102,622.

REFERENCE

Direso vs. Speedway, LLC, et al. Docket no. L-001036-17; Judge Joseph V. Isabella, 02-06-20.

Attorney for plaintiff: C. Robert Luthman of Weir & Associates in Pennington, NJ. Attorney for defendant hospital: Judith A. Wahrenberger of Ruprecht Hart Weeks & Ricciardulli, LLP in Westfield, NJ. Attorney for defendant nurse: Anthony W. Liberatore of Orlovsky, Moody, Schaaff & Conlon, LLC in West Long Branch, NJ. Attorney for defendant gas station: Francis K. Liu of Ahmuty, Demers & McManus, Esqs. in Morristown, NJ.

$350,000 RECOVERY

Premises liability – Fall down – Slip and fall on ice – Compression fracture – Lumbar/thoracic radiculopathy and aggravation of underlying lumbar stenosis – Non-binding arbitration finds defendant tenant 85% liable.

Middlesex County, NJ

In this premises liability case, the plaintiff, a 67-year-old woman, asserted that the defendants failed to remove or remediate accumulated ice on the sidewalk outside their premises, causing the plaintiff to fall and suffer significant, permanent injury. The plaintiff brought suit against the defendant owner of the property and the defendant commercial tenant of the building. The defendant commercial tenant claimed that, although they had no contract for snow removal, the defendant property owner routinely removed snow for the defendant tenant of the building. The defendant property owner argued that the terms of the defendant tenant's lease provided that the defendant tenant was responsible for snow removal and, thus, the defendant tenant was liable.

On March 17, 2017, the plaintiff was lawfully walking on the sidewalk at the corner of Lousans Road and Morris Avenue in Union, which abuts the commercial premises at 2343 Morris Avenue maintained by the defendant commercial tenant. The plaintiff contended that she fell on ice accumulated on the sidewalk. The plaintiff alleged that the force of the fall resulted in permanent injuries.

The plaintiff argued that the defendant was contractually responsible to remediate snow and ice from the premises pursuant to a lease agreement with the defendant property owner and that it failed in that duty. Or, in the alternative, that the defendant owner of the property was responsible for the condition of the premises. As a result of the fall, the plaintiff sustained a compression fracture through the L1 vertebral body with associated loss of height and retropulsion of the superior aspect of the posterior cortex; compression fracture deformity at the L2 vertebral body; Kyphotic deformity at the L1 level with 20 degree forward angulation; spinal malalignment; lumbar/thoracic radiculopathy; and aggravation of underlying lumbar stenosis at L4-5 and L5-S1. The plaintiff claimed a $90,397 ERISA lien.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 85% liability to the defendant commercial tenant/nightclub and 15% to the plaintiff with gross damages of $300,000 reduced to $255,000 for plaintiff's comparative negligence. The arbitrator's award was inclusive of the plaintiff's ERISA lien. Following arbitration and prior to trial, the parties settled for $350,000.

REFERENCE

Hutchings vs. RUKH Union, LLC, et al. Docket no. L-001905-18; Judge Jamie D. Happas, 01-15-20.

Attorney for plaintiff: Erroll J. Haythorn of Gill & Chamas, LLC in Woodbridge, NJ. Attorney for defendant property owner: Raymond Kramkowski of Law Offices of Viscomi & Lyons in Morristown, NJ. Attorney for defendant commercial tenant: Robert Ball of Weber Gallagher in Bedminster, NJ.

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$25,000 RECOVERY

Premises liability – Fall down – Infant plaintiff slips and falls on unsecured linoleum on staircase in defendant's building – Right tibia "toddler's" fracture.

Hudson County, NJ

In this premises liability case, the plaintiff asserted that the defendant property owners breached a duty of care owed to the infant plaintiff by allowing a dangerous condition to exist on their property and that said condition caused the plaintiff injury. The defendants denied liability and asserted that third parties were responsible for any fall and injury to the minor plaintiff or that the plaintiff/plaintiff mother were responsible for not taking care while descending the stairs, and, thus caused the fall and resulting injury.

On May 1, 2016, the infant plaintiff and her mother were tenants of an apartment in the building at 235 Liberty Avenue in Jersey City. The defendants owned and maintained the building. On the day in question, the infant plaintiff and her mother were descending the interior staircase on the property when the infant plaintiff slipped on sliding linoleum on the stairs and fell. The plaintiff argued that the staircase was negligently maintained in that the linoleum was not secured to the steps and created a hazard on the premises. The plaintiff alleged that the fall resulted in significant injuries and expense to the minor plaintiff.

As a result of the incident, the plaintiff sustained a right tibia "toddler's fracture." The plaintiff treated with a cast. The plaintiff claimed significant pain and suffering. The defendants maintained that the plaintiff suffered no permanent injury as a result and that the plaintiff's own physician deemed her prognosis as "excellent."

The parties settled the matter prior to trial in the amount of $25,000 broken down as follows: $7,043 in attorney costs and fees; $17,957 in net damages to the minor plaintiff.

REFERENCE

Francois vs. Independence Capital, LLC, et al. Docket no. L-003434-17; Judge Joseph V. Isabella, 01-21-20.

Attorney for plaintiff: Anthony Carbone of Law Offices of Anthony Carbone in Jersey City, NJ. Attorney for defendant: Robert Zimmerer of Zimmerer, Murray, Conyngham & Kunzier in Saddle Brook, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls on defective sidewalk outside office building owned, operated or maintained by respective defendants – Aggravation of prior wrist fusion requiring new open reduction with internal fixation and ongoing treatment – Arbitrator assigns 60% liability to defendant building owner; 10% to facilities service company; 10% to property manager and 20% to plaintiff with gross damages of $125,000.

Camden County, NJ

In this premises liability case, the plaintiff asserted that the defendants negligently maintained a sidewalk that was part of an office building whereon the plaintiff fell on a defect in the sidewalk and sustained significant, permanent injury. The plaintiff brought suit against the defendant owner of the building, the facility services provider, and the property manager. The defendants denied liability and each contended that the other was responsible for maintenance of the subject sidewalk.

On August 7, 2015, the plaintiff was lawfully on the premises of an office building owned, operated, maintained, inspected and repaired by the defendants located at 556 Egg Harbor Road in Sewell. The plaintiff tripped and fell on a broken or uneven sidewalk outside the premises. As a result, the plaintiff sustained aggravation of a prior wrist fusion. The plaintiff's injury required open reduction with internal fixation with plate and screws. The plaintiff was receiving ongoing treatment at the time of the filing of the subject lawsuit.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 60% liability to the defendant owner of the property, 10% to the facilities service company, 10% to the property manager, and 20% to the plaintiff. The arbitrator set gross damages at $125,000 apportioned per the percentages of liability. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Hoffman vs. WTMOB I, LLC, et al. Docket no. L-001584-17; Judge Donald J. Stein, 01-10-20.

Attorney for plaintiff: Edward F. Kuhn, III, Esq. in Cherry Hill, NJ. Attorney for defendant WTMOB I, LLC and Hammes Realty Services, LLC: Rose Marie DiMeo of Law Offices of Linda S. Baumann in East Windsor, NJ. Attorney for defendant C&W Facility Services, Inc.: Kerri A. McDowell of Purcell, Mulcahy & Flanagan, LLC in Bedminster, NJ.

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DEFENDANT'S VERDICT

Premises liability – Fall down – Plaintiff falls on stairs behind door with no landing – Fracture of left distal fibula – Closed reduction and physical therapy – Future treatment required.

Middlesex County, NJ

This action for premises liability arose from an incident which occurred on May 13, 2015 when the plaintiff was lawfully on the property owned and controlled by the defendant in Edison. The plaintiff fell while descending a staircase at the property sustaining injuries. The defendant contested the plaintiff's damages.

The plaintiff maintained that there was a closed door at the foot of a staircase with steps immediately beyond the door. The plaintiff asserted that there was no landing, no warning that there were steps behind the door, and insufficient lighting in the area for the plaintiff to see the steps. The plaintiff opened the door and stepped onto what she expected to be a landing, which was instead a step downward. The plaintiff then fell down the steps.

The plaintiff maintained that the defendant negligently controlled, repaired, modified, inspected or maintained the premises such that a dangerous condition existed and failed to warn the plaintiff of the condition. The plaintiff claimed that, due to the defective condition of the property, and failure to warn, the plaintiff fell and sustained serious injury. The plaintiff sustained fracture of the left distal fibula treated with closed reduction and physical therapy. The plaintiff claimed a worker's compensation lien of $9,000 and $18,000 for future medical treatment.

The defendant argued that the plaintiff's injuries were minor, that his fracture healed, and that he underwent minimal treatment. Prior to trial, the defendants made an offer of judgment to the plaintiff in the amount of $60,000.

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

REFERENCE

Minor vs. W & F Gressing. Docket no. L-00230-17; Judge Patrick J. Bradshaw, 08-07-19.

Attorneys for plaintiff: James Pagliuca and Andrew L. Chamberry of Gill & Chamas, LLC in Woodbridge, NJ. Attorney for defendant: Joseph M. Marabondo of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

TRANSIT AUTHORITY NEGLIGENCE

$280,000 RECOVERY

Transit Authority negligence – Bus negligence – Plaintiff passenger in automobile struck in rear by defendant bus driver – Multiple cervical herniations – Disc replacement surgery.

Hudson County, NJ

In this Transit Authority negligence action, the plaintiff passenger, approximately age 30, contended that the defendant bus driver struck the host vehicle in the rear while stopped causing him to sustain injuries. The defendant denied that the plaintiff suffered the claimed injures in the accident.

The plaintiff maintained that as a result, she suffered multiple herniations and required disc replacement surgery. The plaintiff asserted that she will suffer permanent symptoms. The defendant maintained that the difficulties were degenerative in nature. The plaintiff would have countered that she had no prior symptoms or treatment and that in view of her age; the defense position should clearly be rejected.

The plaintiff made no income claims.

The case settled prior to trial for $280,000.

REFERENCE

Haughey vs. NJ Transit, et al. Docket no. HUD-L-3719-19, 12-21.

Attorney for plaintiff: Patrick M. Metz of Dario Albert Metz Eyerman Canda Concannon Ortiz & Krouse in Hackensack, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$11,500,000 RECOVERY – MEDICAL MALPRACTICE – FAILURE TO PROPERLY INTUBATE AND RESUSCITATE NEW BORN AFTER HE IS BORN IN SEVERELY DEPRESSED STATE – CEREBRAL PALSY AND SEVERE BRAIN DAMAGE – PARENTS ARE ACTIVE DUTY SAILORS AND BIRTH TOOK PLACE IN GUAM – PARENTS SUBSEQUENTLY TRANSFERRED TO VIRGINIA AND PERMITTED TO BRING FEDERAL TORT CLAIMS ACTION IN VIRGINIA (GUAM LAW APPLIED).

U.S.D.C. - Eastern District of Virginia

In this medical malpractice case, the plaintiff parents, active duty sailors, contended that the defendant physicians and nurses, who were members of the new born team, negligently failed to properly intubate the new born after he showed signs of hypoxia, including the aspiration of meconium. The plaintiff contended that that as a result, the infant plaintiff suffered brain damage and cerebral palsy that will cause a permanent inability to walk or talk, severe cognitive deficits and will require 24/7 care for the remainder of his life. At the time of the birth, the parents were stationed in Guam, where the birth took place. The parents were subsequently transferred to Virginia. The parents had the option of bringing the action in Virginia or Guam, but Guam law would apply. The case was brought in the Eastern District of Virginia. If the case had not settled, it would have been tried before the court under the Federal Tort Claims Act.

The plaintiff contended that the child will never be able to walk or talk and will require 24-hour per day home care. The plaintiff further asserted that under Guam law, the parents were entitled to compensation for the extraordinary care they must give to the child.

The case settled prior to trial for $11,500,000.

REFERENCE

Plaintiff's life care planning expert: Susan Riddick-Grisham, CLCP from Richmond, VA. Plaintiff's neonatology expert: Edward Karotkin, M.D. from Norfolk, VA. Plaintiff's perinatology expert: Aaron Caughey, M.D. from Portland, OR. Plaintiff's placental pathology expert: Cynthia G. Kaplan, M.D. from Stony Brook, NY.

Bebeau vs. USA. Case no. 2:18-cv-00291-RAJ.

Attorneys for plaintiff: Dov Apfel and Seth L. Cardeli of Janet, Janet & Suggs, LLC in Baltimore, MD. Attorneys for plaintiff: Michael F. Imprevento and Kevin Biniazan of Breit Cantor Grana Buckner, PLLC in Richmond, VA.

$3,050,000 RECOVERY – MEDICAL MALPRACTICE – SURGERY – HOSPITAL NEGLIGENCE – FAILURE OF SURGEON TO READ RESULTS OF PTT TEST ORDERED BY HIM BEFORE PLACEMENT OF PERMANENT SPINAL CORD STIMULATOR – FAILURE OF FLOOR NURSE TO PROPERLY MONITOR PATIENT'S POST-OPERATIVE NEUROLOGICAL CONDITION – PARAPLEGIA.

Camden County, NJ

This was a medical malpractice case involving a plaintiff in his mid 40s. The plaintiff had undergone prior surgery in which a laminectomy was conducted and a trial placement of a spinal cord stimulator had been installed by a prior, non-party physician. The plaintiff contended that the defendant surgeon negligently failed to read the partial thromboplastin time (PTT) test ordered by him, which showed abnormalities that increased the risk of abnormal bleeding from the surgery. The plaintiff maintained that a hematoma formed because the surgery was performed without the consideration of the abnormal PPT results. The plaintiff also contended that the co-defendant floor nurse negligently failed to appreciate signs of heightening

neurological deficits. The plaintiff asserted that because of the pressure of the hematoma, he was paralyzed below the waist. In addition to naming the hospital for vicarious liability of the defendant floor nurse, the plaintiff contended that the floor nurse's personnel file reflected a history of a significant number of instances in which the nurse failed to conduct adequate neurovascular assessments and failed to properly document assessments which were allegedly done. The defendant surgeon contended that he acted within the standard of care and could rely upon the hospital to make sure the results of the test were properly disseminated.

The plaintiff was already fully disabled because of his back injury before he underwent the subject surgery. The plaintiff's life care plan reflected $2,136,068 to $2,178,485, which included a new home that was appropriate for his needs.

The case settled prior to trial for $3,050,000, including $2,750,000 from the hospital and $300,000 from the physician.

REFERENCE

Plaintiff in his early 50s vs. Defendants surgeon, floor nurse and hospital.

Attorney for plaintiff: Eric G. Zajac of Zajac & Arias, LLC in Philadelphia, PA.

$2,150,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PLAINTIFF SUFFERS FROM KIDNEY FAILURE AND COMPLICATIONS AFTER BEING PRESCRIBED ANTIBIOTICS – FAILURE TO STOP COURSE OF ANTIBIOTICS WHEN PLAINTIFF SHOWED SIGNS OF KIDNEY FAILURE – VANCOMYCIN-INDUCED NEPHROTOXICITY – VANCOMYCIN-INDUCED RENAL FAILURE – DECREASED RENAL FUNCTION – PERMANENT RENAL DAMAGE.

Bronx County, NY

In this medical malpractice action, the plaintiff was a patient at the defendant hospital where she was prescribed a course of antibiotics, which led to kidney failure and complications. The defendants denied all allegations of negligence.

The plaintiff was admitted as a patient to the Emergency Room unit at the defendant hospital for an infection of the knee. The plaintiff was given X-rays and was evaluated by Emergency Room staff, which diagnosed the plaintiff with a MRSA Staph infection of the left knee, and was prescribed an antibiotic called Vancomycin. While on the course of Vancomycin, the plaintiff developed symptoms, including elevated blood urea nitrogen level (BUN level); as well as elevated levels of creatinine in the bloodstream, both of which are symptoms of impending kidney failure. The plaintiff's antibiotic treatment was not altered or stopped at this point.

Consequently, the plaintiff developed injuries and complications, including Vancomycin-induced nephrotoxicity, Vancomycin-induced renal failure, acute renal failure, decreased renal function, and permanent renal damage. The plaintiff's injuries required the plaintiff to undergo treatment via dialysis and blood transfusions.

The parties entered into a settlement for $2,500,000.

REFERENCE

Audrey A. Appleyard vs. Russell G. Tigges, Orthopedic Associates Of Dutchess County, P.C., Vassar Brothers Hospital, Health Quest Systems, Inc. Index no. 24491/2014E; Judge Elizabeth Taylor, 09-18-20.

Attorney for plaintiff: Ernest Buonocore of Shapiro Law Offices, PLLC in New York, NY. Attorney for defendant: Katherine Herr Solomon of Mauro Lilling Naparty, LLP in Woodbury, NY.

$1,500,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – PHYSICIAN NEGLIGENCE – DEFENDANT DISCHARGES PLAINTIFF'S DECEDENT WITH DIAGNOSIS OF GASTROENTERITIS WHEN PLAINTIFF'S DECEDENT SUFFERING FROM BOWEL OBSTRUCTION – FAILURE TO ORDER DIAGNOSTIC TESTS – WRONGFUL DEATH OF 17-YEAR-OLD MALE.

Bucks County, PA

The minor decedent's mother brought this medical malpractice suit against the defendant physician alleging that his failure to order diagnostic tests resulted in the minor being discharged from the hospital with a diagnosis of a generic stomach ailment when the decedent was suffering from sigmoid volvulus. The volvulus caused a fatal bowel obstruction. The defendant physician maintained that the decedent was treated properly in accordance with all medical standards.

The plaintiff maintained that the defendant doctor failed to meet the standard of care by failing to order proper diagnostic tests to determine the cause of the decedent's symptoms, failing to appreciate the decedent's symptoms in relation to causing 2 trips to the E.R. in 5 weeks, and diagnosing the decedent with gastroenteritis when the decedent was suffering from a bowel obstruction. The hospital was dismissed from the action. The defendant doctor denied failing to

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meet standards of care and argued that the decedent was provided care in accordance with all standards.

The case was arbitrated by one judge and the judge awarded the plaintiff $1,500,000, with 75% to wrongful death and 25% to survival. A $250,000/$2,500,000 low/high agreement was in place in this case.

REFERENCE

The Estate of D.X.S. by Tara Broadie Administratrix vs. Michael Chiarelli, D.O., Doylestown Emergency Physicians and Doylestown Hospital. Case no. 2018-01601; Judge C. Theodore Fritsch, Jr., 09-20-21.

Attorney for plaintiff: Daniel Jeck of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C. in Philadelphia, PA. Attorney for defendant: Donald Camhi of Post & Schell in Philadelphia, PA.

PRODUCT LIABILITY

$1,100,000 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN OF RADIANT SPACE HEATER – GRILLE TOO CLOSE TO HEATING ELEMENT – PLAINTIFF RESTAURANT SERVER FAINTS AND STRIKES HEATER BEING STORED ON LEDGE – 3RD DEGREE BURNS TO APPROXIMATELY 1/3 OF BACK – SKIN GRAFT – PERMANENT SCARRING.

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

In this action for product liability, the plaintiff part-time server, in her late 50s, contended that the defendant manufacturer's radiant space heater was defectively designed, resulting in her suffering third degree burns to her back when she fainted and landed on the space heater which was kept on a ledge approximately 2 feet off the floor in her home. The plaintiff subsequently underwent skin graft surgery and has been left with significant scarring across approximately 1/3 of her back. The defendant denied that the space heater was defectively designed.

The plaintiff spent several days in the hospital after the initial injury and she then received outpatient burn care for approximately 4 months. The plaintiff testified that the pain was especially severe during this period. The plaintiff then underwent a skin graft procedure in which the donor tissue was obtained from the other side of her back. The plaintiff asserted that the healing process was very painful and that she will suffer pain and impairment permanently.

The jury found that the heater was defectively designed and awarded $1,100,000, including $100,000 for past physical impairment, $75,000 for future physical impairment $100,000 for past disfigurement, $75,000 for future disfigurement, $150,000 for past mental anguish, $150,000 for future mental anguish, $300,000 for past physical pain and suffering and $150,000 for future pain and suffering.

REFERENCE

Plaintiff's life care planning expert: Jason M Marchetti, M.D. from Dallas, TX. Plaintiff's product design expert: Stan McClellan, Ph.D. from San Marcos, TX.

Nelson vs. Sumbeam, et al. Case no. 4:19-CV-263, 09-02-21.

Attorneys for plaintiff: Michael Callahan and Casey Brown of The Callahan Law Firm in Pasadena, TX.

MOTOR VEHICLE NEGLIGENCE

$352,782,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT AIRPORT WORKER STRIKES PLAINTIFF LAWFULLY DIRECTING TRAFFIC ON TARMAC – COMPLETE SPINAL CORD INJURY WITH PARAPLEGIA – STROKE WITH TRAUMATIC BRAIN INJURY – CATASTROPHIC INJURIES TO 50-YEAR-OLD MALE – ROUND-THE-CLOCK CARE REQUIRED.

Harris County, TX

In this action for motor vehicle negligence, the wife and children of the catastrophically injured plaintiff brought suit against the defendants for negligence alleging that their loved one sustained permanent and life-altering injuries when he was in the course of his employment as a wing walker at Bush Intercontinental Airport in Houston and he was struck by the defendant airport employee. The employee maintained that sun glare prevented him from seeing the plaintiff and argued that the plaintiff was comparatively negligent.

The accident paralyzed the plaintiff from the chest down. He was rushed to the hospital where doctors performed spine-stabilization surgery, which saved him from becoming paralyzed all the way up to his neck, but 2 days later, he suffered a stroke that left him unable to use his right arm.

The jury found Allied Aviation 70% responsible for the accident and Willis 30% responsible, rejecting the defense's claims that United Airlines and Cruz himself were partly to blame. The jury awarded the plaintiff past and future damages of $287,390,000. The plaintiff's wife was awarded $25,282,000 in past and future damages and his adult child and his minor child each awarded $20,050,000.

REFERENCE

Cecilia Cruz, Individually and as Representative of Ulysses D. Cruz and Next Friend of S.C. a minor and Angelo Cruz vs. Reginald Willis and Allied Aviation Fueling Company of Houston Inc. Case no. 201981830; Judge Ravi K. Sandill, 10-25-21.

Attorney for plaintiff: Randall O. Sorrels of Abraham, Watkins, Nichols, Sorrels, Agosto & Aziz in Houston, TX. Attorney for defendant: Rusty Hardin of Rusty Hardin & Associates, P.C. in Houston, TX.

$3,625,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – PLAINTIFF TURNS LEFT, COLLIDING WITH LIMO DRIVER AS DEFENDANT ENTERS INTERSECTION WHILE TRYING TO REACH HEAD OF FUNERAL PROCESSION – TEARS TO WRIST AND ROTATOR CUFF – SURGERIES – INABILITY OF PLAINTIFF TO WORK.

Queens County, NY

This motor vehicle negligence action involved a plaintiff driver, in her mid 30s, in which the plaintiff asserted that the defendant limousine driver, who was to head a funeral procession, attempted to catch up with the procession, proceeding in the left lane, by passing it in the right lane, entering the intersection without making adequate observations and at an excessive rate of speed. The plaintiff, who was turning left from the opposite direction, collided with the limo. The plaintiff contended that she sustained tears to the right, dominant wrist which will cause severe pain permanently despite some 3 surgeries. The plaintiff further maintained that she suffered a rotator cuff tear on the left, non-dominant side which will cause permanent symptoms despite surgery. The case was bifurcated and settled after a jury finding of 100% negligence against the defendant limo driver.

The defendant's accident reconstruction expert concluded that the cause of the accident was the negligence of the left turning plaintiff. It was undisputed that the funeral was proceeding in the left lane of the roadway containing two lanes in each direction, and that the limo driver was passing the procession on the right in order to catch up to and lead the procession.

The plaintiff's accident reconstruction expert contended that the sudden presence of the limo caused the collision.

The plaintiff further contended that she suffered a tear of the left, non-dominant rotator cuff tear which will cause permanent pain and limitations despite arthroscopic surgery. The plaintiff maintained that she suffers daily pain and that activities of daily living are painful and difficult. The plaintiff, who is a nurse, has not worked since the accident and contended that she will be permanently unemployable.

The liability jury found the defendant 100% negligent. The case then settled for $3,625,000.

REFERENCE

Plaintiff's accident reconstruction expert: Robert Genna from Northport, NY. Plaintiff's economist expert: Kristin Kuscma, MA from Livingston, NJ. Plaintiff's orthopedic surgeon expert: Bennett H. Brown, M.D. from Woodbury, NY. Plaintiff's orthopedic surgeon expert: Craig Levitz, M.D. from Rockville Centre, NY. Plaintiff's vocational expert: Charles Kincaid, Ph.D. from Hackensack, NJ.

McGhee-Mack vs. Harley, et al. Index no. QTS-300100-19; Judge Tracy Catapano-Fox.

Attorney for plaintiff: Paul J. Edelstein; The Edelsteins, Faegenburg & Brown, LLP in New York of trial counsel to Ketover & Associates, LLC in Garden City, NY.

$1,750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT TRACTOR-TRAILER DRIVER WHILE SLOWING FOR TRAFFIC – PLAINTIFF PROPELLED INTO VEHICLE IN FRONT – CERVICAL AND LUMBAR HERNIATIONS – CERVICAL AND LUMBAR SURGERY – NO FUTURE INCOME CLAIMS.

Bergen County, NJ

This was a motor vehicle negligence action involving a plaintiff driver in her late 30s who contended that as she was slowing for traffic on I-80, the defendant tractor-trailer driver struck her with great force, propelling her car into the vehicle in front. The plaintiff contended that as a result, she suffered cervical and lumbar herniations. The plaintiff underwent a cervical fusion and discectomy which was followed by a lumbar microdiscectomy. The plaintiff asserted that she will experience extensive pain and suffering for the remainder of her life. The

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defendant did not comply with discovery and the defendant, who resided in Canada, did not appear for a court ordered deposition.

The plaintiff indicated during discovery that the impact was very substantial and that she began suffering symptoms shortly after the accident. The plaintiff had approximately one year of physical therapy. The plaintiff's proofs reflected that such care was inadequate, and that the plaintiff underwent fusion surgery at C5-6 and C6-7. The plaintiff maintained that approximately one year later, and following additional physical therapy, she required a microdiscectomy and L4-5. The defendant's expert orthopedist would have maintained that the plaintiff made a good recovery from the injuries.

The case settled prior to trial for $1,750,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Joshua Landa, M.D. from Englewood Cliffs, NJ. Defendant's orthopedic surgeon expert: Charles R. Carozza, M.D. from Ridgewood, NJ.

Unkasekvinai vs. Sohi, et al. Docket no. BER-L-001877-18, 12-19.

Attorneys for plaintiff: Matthew Mendolsohn and Adam Epstein of Mazie Slater Katz & Freeman, LLC in Roseland, NJ.

Schaer and Noah Shapiro of Zarwin Baum DeVito Kaplan Schaer Toddy in Philadelphia, PA.

PREMISES LIABILITY

$3,850,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY AT APARTMENT COMPLEX – DECEDENT KILLED IN DRIVE-BY SHOOTING – FAILURE TO IMPLEMENT SECURITY MEASURES TO PREVENT FORESEEABLE CRIME.

Miami-Dade County, FL

This was a negligent security case where the victim was shot and killed in a drive-by shooting while entering the defendants' apartment complex. The plaintiff was the personal representative of the decedent's estate, who brought the case on behalf of the decedent's 2 surviving parents. The defendants were the owner and manager of the apartment complex, which were not identified pursuant to agreement of the parties.

The plaintiff claimed that the defendant apartment complex was located in a known high-crime area and had been the location of prior drive-by shootings. The plaintiff alleged that the defendant failed to take adequate security precautions to prevent the foreseeable shooting. The plaintiff argued that the defendants' security measures were entirely inadequate at the time of the incident.

The case was settled shortly after litigation was filed and prior to retention of experts for a total of $3,850,000.

REFERENCE

Doe vs. ABC Apartment Building. Case no. (withheld); Judge n/a, 08-20-21.

Attorneys for plaintiff: Michael A. Haggard and Pedro P. Echarte, III of The Haggard Law Firm in Coral Gables, FL.

ADDITIONAL VERDICTS OF INTEREST

Construction Site Negligence

$26,600,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – GENERAL CONTRACTOR NEGLIGENCE – FAILURE TO INSPECT – FAILURE TO SUPERVISE – PLAINTIFF FELL FROM SCAFFOLDING WHEN HARNESS FAILED – MULTIPLE-LEVEL DISC HERNIATIONS – 7 SURGERIES – NEUROGENIC BLADDER AND BOWEL.

Middlesex County, MA

In this construction site negligence matter, the plaintiff mason alleged that the defendant general contractor and the scaffolding contractor were negligent in failing to properly supervise and inspect the construction site and provide proper and safe scaffolding and safety equipment to the plaintiff for the work to be done in compliance with OSHA rules and regulations. A failure of the safety harness provided to the plaintiff resulted in him falling 5 feet onto concrete causing significant injuries to the plaintiff's neck and back. The defendants denied the allegations. The defendants argued that the plaintiff failed to complain of any pain for 18 days after the incident and, in fact, continued to work following the fall.

He was transported from the site to the emergency room. He was diagnosed with herniated discs at C4-C6 and L2 to L5. The plaintiff suffered multiple-level

disc herniations to his cervical and lumbar spine. He was required to undergo 7 different surgeries to attempt to repair the injuries to his spine and minimize his pain and discomfort. The plaintiff was also left with a neurogenic bladder and bowel as a result of the incident which requires daily catheterization by the plaintiff. The plaintiff has not been able to return to work.

At the conclusion of the evidence, the jury deliberated and returned its verdict in favor of the plaintiff. The jury awarded a total of $26,600,000 in damages consisting of $1,000,000 for past medical expenses; $2,100,000 for past lost earning capacity; $5,500,000 for past pain and suffering and $18,000,000 for future pain and suffering. The jury assessed the defendants as 100% liable and assessed no liability to the plaintiff for the incident.

REFERENCE

Plaintiff's economics expert: Rosemarie Eldridge Meissner from Ashburnham, MA.

John Rooney vs. J.F. White Contracting Company, et al. Case no. 1581CV05652; Judge Kristen Buxton, 08-05-21.

Attorneys for plaintiff: Andrew Abraham and Martin Sabounjian of Keches Law Group, P.C. in Milton, MA. Attorney for plaintiff: Melissa Ann Brennan of Feinberg Dumont & Brennan in Boston, MA.

Dram Shop

$730,000 RECOVERY – DRAM SHOP – PLAINTIFF'S DECEDENT SUSTAINS FATAL INJURIES WHEN VEHICLE STRUCK HEAD ON BY DEFENDANT DRIVER WHO HAD BEEN SERVED EXCESSIVE ALCOHOL BY DEFENDANT BARS AND – VIOLATING PA DRAM SHOP LAWS – WRONGFUL DEATH OF 64-YEAR-OLD MALE.

Bucks County, PA

The estate of the decedent brought this wrongful death action against the defendant driver, who was operating a vehicle under the influence of alcohol, and the bars where the driver was served the alcohol, alleging that their combined negligence caused a motor vehicle accident that claimed the life of their decedent. The defendants generally denied liability.

The decedent is survived by his wife and 3 adult children. The estate brought 2 separate actions against each bar for the same incident and the actions were consolidated by the court. The estate alleged that the defendant bars violated Pennsylvania Dram Shop Laws by serving intoxicating beverages to the defendant driver to a degree that caused her to be unable to safely operate a vehicle, continuing to serve alcoholic beverages to an intoxicated patron, serving alcohol to the defendant driver when she was visibly intoxicated.

The case was settled for $730,000 with the defendant Irish Rover paying $400,000, the defendant Isaac Newton's paying $300,000, the defendant driver paying policy limits of $100,000 and the decedent's underinsured motorist benefit paying $30,000. 70% of the award was allocated to wrongful death and 30% to survival action.

REFERENCE

The Estate of Francis Fisher by Sheila Sotomayer vs. Karen Baxter, Bru House, Inc., The Irish Rover Station House, Smitty's Good Times and Taylor Mae, Inc. and Isaac Newton's Bar and Restaurant. Case no. 2019-05771; Judge Theodore Fritsch, Jr., 10-05-21.

Attorney for plaintiff: Robert Braker of The Law Firm of Saltz Mongeluzzi & Bendesky in Philadelphia, PA. Attorney for defendant: Theodore Winicov of Forry Ullman, P.C. in Philadelphia, PA. Attorney for defendant: John Evans of Donnelly & Associates, P.C. in West Conshohocken, PA.

Insurance Obligation

$3,040,286 VERDICT – INSURANCE OBLIGATION – REAR END COLLISION BY DUMP TRUCK – UNDERINSURED MOTORIST CLAIM – HERNIATED CERVICAL AND LUMBAR DISCS – CERVICAL SURGERY PERFORMED – DAMAGES/CAUSATION ONLY.

Indian River County, FL

This was a personal injury action was brought by the plaintiff after his vehicle was struck from behind by a dump truck. The tortfeasors settled the plaintiff's claim prior to trial and the case proceeded as an underinsured motorist claim. The defendant did not dispute the negligence of the dump truck driver in causing the collision. However, the defense maintained that the rear end impact was not severe enough to have caused the injuries alleged by the plaintiff.

The plaintiff testified he felt immediate neck pain after the impact. He was subsequently diagnosed with herniated discs in his cervical and lumbar spine which his doctors causally related to the accident. The plaintiff underwent a C3-C4 anterior cervical discectomy and fusion surgery on October 27, 2017. He contended that he is now in constant pain and can no longer enjoy his favored activities of golf, tennis, bicycling and playing the piano.

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The jury found that the plaintiff sustained a permanent injury as a result of the accident. The plaintiff was awarded $3,040,286 in damages. Post-trial motions are pending.

REFERENCE

Plaintiff's epidemiology expert: Michael Freeman from Portland, OR. Plaintiff's life care expert: Steven BiFulco from Tampa, FL. Plaintiff's orthopedic surgery expert: Pasquale Montesano, M.D. from Tampa, FL. Plaintiff's radiology expert: Sean Mahan, M.D. from Winter Springs, FL.

Sallies vs. The First Liberty Insurance Corporation. Case no. 2019-CA-000421; Judge Robert L. Pegg, 04-23-21.

Attorneys for plaintiff: Brian K. McClain, Ryan P. Rudd and Ady A. Goss of Morgan & Morgan in Orlando, FL.

Landlord Negligence

$4,250,000 CONFIDENTIAL RECOVERY – LANDLORD NEGLIGENCE – 8-MONTH-OLD INFANT SUSTAINED THIRD DEGREE BURNS TO BODY WHEN SHE FELL ONTO OPEN BASEBOARD HEATER – SEVERAL SURGERIES – SIGNIFICANT SCARRING – FAILURE TO PROPERLY INSTALL BASEBOARD HEATER COVER.

Withheld County, MA

In this landlord negligence matter, the plaintiff parents alleged that the defendant landlord was negligent in failing to properly install and repair the baseboard heater cover. The heating pipe was exposed and the infant fell onto the scalding pipe, sustaining third degree burns to her left arm, leg and left side of her face. She has significant scarring from the incident. The defendant denied the allegations and disputed the allegations of negligence, blaming the fall on the parent's failure to properly supervise the infant.

The plaintiffs brought suit against the landlord alleging negligence. The plaintiffs maintained that they had provided notice to the landlord on several occasions including the during the initial lease in 2017 and despite their continued requests, the heating was never repaired, leaving an exposed hot water pipe that created the dangerous condition.

The parties agreed to resolve the plaintiffs' claim for the sum of $4,250,000 at mediation.

REFERENCE

Infant Plaintiff vs. Landlord Roe. 01-31-21.

Attorneys for plaintiff: Jeffrey N. Catalano, Lisa M. Conserve and Christine R. Thompson of Todd & Weld in Boston, MA.

Sports & Recreation

$7,443,369 VERDICT – SPORTS & RECREATION – DEFENDANT PARAGLIDER ACTS GROSSLY NEGLIGENT, RECKLESS AND OUTSIDE OF SCOPE OF ORDINARY ACTIVITIES INVOLVED IN PARAGLIDING BY FLYING TOO CLOSE AND BEHIND PLAINTIFF, ENABLING PLAINTIFF TO OVERCOME WAIVER – DEFENDANT STRIKES PLAINTIFF'S CANOPY, RESULTING IN PLAINTIFF FALLING APPROXIMATELY 100 FEET – BURST FRACTURE LUMBAR SPINE – 5-LEVEL FUSION.

San Bernardino County, CA

This action involved a then-47-year-old plaintiff who was participating in paragliding, a sport in which a pilot sits in a harness suspended below a fabric wing to fly a foot-launched glider aircraft. The plaintiff contended that the defendant, another paraglider, acted in a reckless and grossly negligent manner as he flew behind the plaintiff, crashing into him. The plaintiff fell approximately 100 feet and suffered a bust lumbar fracture that required a 5-level fusion. The defendant asserted this was a mere accident for which the waiver and assumption of risk doctrine barred recovery.

The plaintiff, who signed a waiver in which he indicated he was assuming the risk and which exonerated other participants, maintained that a reckless defendant could not defeat liability on the waiver or the issue of assumption of the risk. The plaintiff also asserted that the defendant's actions were outside of the range of ordinary activities involved in paragliding. The defendant was covered by a self-exhausting $1,000,000 policy issue by Recreation Risk Retention Group and there was no reservation of rights by the carrier.

The plaintiff, who underwent 5-level fusion, can walk and has returned to his IT job. The plaintiff contended, however, that because of extensive pain upon sitting,

he spends most of the work day standing. The plaintiff's previous active, outdoors lifestyle was also forever impacted.

The jury found that the defendant was grossly negligent and reckless. The jury also determined that the defendant acted outside of the scope of activity ordinarily occurring in paragliding. They also found that the plaintiff was not comparatively negligent. The jury then awarded $7,443,369, including $ 613,000 for future medical bills, $11,128 for past lost earnings, $600,000 for future lost earnings, $1,000,000 for past pain and suffering and $5,000,000 for future pain and suffering. Stipulated past medical bills of $219,241 were added to the verdict.

REFERENCE

Plaintiff's economic expert: Kristin Spoon from San Diego, CA. Plaintiff's life care planning expert: Brook Feerick, R.N. from San Diego, CA. Plaintiff's neurosurgeon expert: Vrijesh S Tantuwaya, M.D. from Poway, CA. Plaintiff's pilot error expert: Greg Feith from Broomfield, CO. Plaintiff's sports safety expert: Chuck Smith from Ketechum, ID. Plaintiff's vocational expert: Enrique N. Vega from Woodland Hills, CA.

Firtat vs. Pivka. Case no. CIVDS1902691; Judge John M. Tomberlin, 11-02-21.

Attorneys for plaintiff: David A. Fox, Christopher L. Hendricks, Russell A. Gold and Joanna L. Fox of Fox Law, APC in Solana Beach, CA.

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