



NEW JERSEY

# JURY VERDICT

## REVIEW & ANALYSIS®

www.JVRA.com

FEATURED CASES

**Volume 43, Issue 8**  
**January 2023**

*A monthly review of New Jersey State and Federal Civil Jury Verdicts. The New Jersey cases herein are obtained from an ongoing monthly survey of the State and Federal courts in the State of New Jersey.*

- \$5,350,000 RECOVERY** – County liability – Motor vehicle negligence – Auto/motorcycle collision – Defendant employee of prosecutor’s office makes left turn into path of plaintiff motorcyclist – 8 surgeries . . . . . 2
- \$1,200,000 RECOVERY** – Municipal liability – Auto/pedestrian collision – Mother struck by city employee while carrying 5-week-old infant plaintiff – Baby suffers skull fracture – Risk of seizure disorder . . . . . 3
- \$3,700,000 RECOVERY** – Landlord negligence – Plaintiff tenant with Down syndrome falls down several interior steps and strikes wall, suffering hairline skull fracture and subdural hematoma – Cognitive deficits . . . . . 4
- \$850,000 RECOVERY** – Federal Tort Claims Act case – Motor vehicle negligence – Plaintiff pedestrian struck by left turning postal truck – Closed head injury – Cognitive deficits and right-sided tinnitus – Several rib fractures – medial and lateral tears to right knee – Arthroscopic surgery – Cervical herniations – 3-level cervical fusion . . . . . 4
- \$800,000 RECOVERY** – Motor vehicle negligence – Rear end collision – Plaintiff driver struck in rear by box truck driver – Cervical herniations – Knee fracture – Meniscal tear – Federal motor carrier regulations apply . . . . . 5
- \$575,000 RECOVERY** – Motor vehicle collision – Left turn collision – Lumbar herniation superimposed on prior back pain – Surgery – Limited PIP policy – No future income claims . . . . . 6
- \$295,000 RECOVERY** – Motor vehicle negligence – Sideswipe collision – Defendant fails to yield entering I-280 – Aggravation of cervical and lumbar herniations previously necessitating surgeries – Lumbar surgery . . . . . 6
- \$175,000 SUMMARY JUDGMENT AWARD** – Breach of contract – Plaintiffs contend defendant LLC and its managing member individually took money from plaintiffs for bogus investment in property acquisition and development project and, after agreeing to return funds, did not do so – Defendant failed to pay on settlement . . . . . 7

VERDICTS BY CATEGORY

<b>Contract</b> . . . . . 8	Left Turn Collision . . . . . 14
<b>Disability Discrimination</b> . . . . . 8	Multiple Vehicle Collision . . . . . 14
<b>Dog Bite</b> . . . . . 9	Parked Auto Collision . . . . . 15
<b>Insurance Obligation</b> . . . . . 9	Parking Lot Collision . . . . . 16
<b>Motor Vehicle Negligence</b>	Rear End Collision . . . . . 16
Auto/Pedestrian Collision . . . . . 10	Truck/Pedestrian Collision . . . . . 17
Head-on Collision . . . . . 11	<b>Premises Liability</b>
Intersection Collision . . . . . 12	Fall Down . . . . . 18
Intersection Collision . . . . . 13	<b>Supplemental Verdict Digest</b> . . . . . 21

## FEATURED CASES

### **\$5,350,000 RECOVERY – COUNTY LIABILITY – MOTOR VEHICLE NEGLIGENCE – AUTO/MOTORCYCLE COLLISION – DEFENDANT EMPLOYEE OF PROSECUTOR’S OFFICE MAKES LEFT TURN INTO PATH OF PLAINTIFF MOTORCYCLIST WHO IS FORMER ICE AGENT – 8 SURGERIES INCLUDING TRACHEOTOMY.**

#### **Morris County, NJ**

**This case involved a then-38-year-old plaintiff motorcyclist. The plaintiff contended that the defendant driver, an employee of the defendant Essex County Prosecutor’s Office, who was in the course of work, made a left hand turn into the path of the plaintiff, causing the accident. The plaintiff contended that as a result, he suffered a severe trauma and has already required some 8 surgical interventions. The plaintiff is a former officer for the U.S. Immigration and Customs (ICE) Agency, part of the Department of Homeland Security. The plaintiff investigated serious cross-border crime and immigration cases. He captured murderers and other dangerous criminals involved in drug trafficking and human smuggling. He is out of work on a permanent medical disability. The evidence disclosed that the plaintiff was traveling 2 blocks from his home with the green light in his favor. The defendant was making a left turn and said he did not see the plaintiff. Neither driver was impaired by alcohol or using their cell phones at the time of the accident.**

The plaintiff maintained that the injuries included a severe trauma to a vocal chord that prompted a tracheostomy that attempted to open his air passage which was blocked by scar tissue related to injuries sustained in the accident. The plaintiff lived with a tracheostomy tube for a year and three months, his airways have been reduced to a size not much larger than an M&M. He now requires reconstructive surgery on his throat. The restriction causes him to experience breathing difficulties during strenuous tasks and even sometimes when speaking. Many activities of everyday living also have been significantly curtailed because of his respiratory limitations.

The plaintiff also suffered an injury to a blood vessel attached to one eye and has been left legally blind in that eye. The plaintiff further contended that because of multiple leg fractures he has a moderate limp that will remain permanently.

The plaintiff maintained that he is permanently unemployable and the plaintiff would have introduced evidence of slightly less than \$3,000,000 in income loss. At the time of the accident, the plaintiff had twin 7-year-old daughters and a 9-year-old daughter. The

plaintiff maintained that he will permanently have great difficulties staying active with his family. The plaintiff maintained that he has great difficulties, including simple things like teaching his 9-year-old daughter and 7-year-old twin girls how to ride a bike, throw and catch a ball, play tag or run.

The evidence would have also reflected that since 2019, the plaintiff has helped lead Atlantic Health’s monthly Post Intensive Care Syndrome (PICS) support group, which includes about a dozen ICU survivors and their relatives. The group is a part of the Atlantic Health System Post-ICU Care Center, which launched in late 2020. It is the only one of its kind in New Jersey and one of just 40 or so in the U.S. Recently, The proofs would have also reflected that the plaintiff was named one of 2022’s NJBIZ Healthcare Hero recipients. He will be honored in an official awards celebration in August. The HealthCare Heroes program recognizes excellence and honors the efforts of individuals and organizations making a significant impact on the quality of healthcare in New Jersey. The case settled prior to trial for \$5,350,000.

#### **REFERENCE**

Martins vs. County of Essex, et al. Docket no. MRS-L-1791-19, 09-20-22.

**Attorneys for plaintiff: James M. Foerst and Michael Cuellar of Spector Foerst & Assoc. in Millburn, NJ.**

#### **COMMENTARY**

**The defendant driver, who was using a car owned by the Essex County Prosecutor’s Office, was employed by the State of NJ and it should be noted that the county, state and excess carrier contributed to the settlement.**

**At the time of the accident, the plaintiff was an ICE officer and his favorability before the jury was undoubtedly enhanced by the evidence that the plaintiff has become very involved with a Post-ICU program. Additionally, the evidence that the accident occurred at the time the plaintiff had twin 7-year-old daughters and a 9-year-old daughter and his inability to remain active with his family also was very significant. Finally, the description of the massive breathing difficulties caused by the throat injury and the evidence that even after surgery, his airway has been reduced to the approximate size of an M&M, would have substantially contributed to an unpredictable verdict if the case had proceeded to trial.**

Reproduction in any form without the express permission of the publisher is strictly prohibited by law.

**Founder**

Ira J. Zarin, Esq.

**President**

Jed M. Zarin

**Contributing Editors**

Brian M. Kessler, Esq.

Michael Bagen

Laine Harmon, Esq.

Cristina N. Hyde, J.D.

Deborah McNally, Paralegal

Ruth B. Neely, Paralegal

Cathy Schlechter-Harvey, Esq.

Julie L. Singer, Esq.

Tammy A. Smith, Esq.

Kate Turnbow, Paralegal

Susan Winkler

**Business Development**

Gary Zarin

**Production Coordinator**

Cathryn A. Peyton

**Professional Search**

Timothy P. Mathieson

**Court Data Coordinator**

Jeffrey S. Zarin

**Customer Services**

Meredith Whelan

**Circulation Manager**

Ellen Loren

Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081  
www.jvra.com

**Main Office:**

973/376-9002 Fax 973/376-1775

Circulation &amp; Billing Department:

973/535-6263

**New Jersey Jury Verdict Review & Analysis** is a trademark of Jury Verdict Review Publications, Inc.

Reproduction in any form without the express written permission of the publisher is strictly prohibited by law.

**New Jersey Jury Verdict Review & Analysis** (ISSN 8750-8060) is published monthly at the subscription rate of \$395/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081.

Periodical postage paid at Springfield, NJ and at additional mailing offices.

**Postmaster:** Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

## **\$1,200,000 RECOVERY – MUNICIPAL LIABILITY – AUTO/PEDESTRIAN COLLISION – MOTHER STRUCK BY CITY EMPLOYEE WHILE CARRYING 5-WEEK-OLD INFANT PLAINTIFF – BABY SUFFERS SKULL FRACTURE – RISK OF SEIZURE DISORDER.**

**Essex County, NJ**

In this action, the 5 week-old infant plaintiff's mother contended that as she was carrying the infant plaintiff while crossing in the crosswalk with the "walk" , the defendant driver of a City of Newark vehicle negligently failed to make observations as he turned left from behind. The plaintiff contended that as a result, the infant was struck suffering a skull fracture and a TBI. The infant plaintiff, currently age 6, required surgery, is subject to seizures as she grows and must be evaluated for developmental delays. The evidence disclosed that the mother had almost completed crossing when struck. The defendant did not dispute liability. The defendant would have pointed out that the infant plaintiff continues to meet developmental milestones.

The plaintiff maintained that the infant plaintiff sustained a skull fracture and approximately 1 ½ years after the accident, the infant plaintiff underwent a craniotomy where the fractured skull was removed and rib bone was plated together with the skull. The infant plaintiff has substantially met all developmental milestones as of the time of settlement. The plaintiff contended, however, she must be monitored for delays until her head is fully grown. The plaintiff further pointed out that she will permanently be at increased risk for a seizure disorder.

The case settled prior to trial for \$1,200,000.

**REFERENCE**

**Plaintiff's pediatric neurosurgeon expert: Luke Tomycz, M.D. from Morristown, NJ.**

Yanez vs. City of Newark, et al. Docket no. ESX- L-003972-18.

**Attorney for plaintiff: William P. Mikita, Jr. of Mikita & Rocanova in Hazlet, NJ.**

**COMMENTARY**

Although the child has currently substantially met developmental milestones, the plaintiff would have argued that the child remains at risk for a seizure disorder. In this regard, it is felt that the plaintiff's physician made effective use of demonstrative evidence in the form of imaging studies of the brain. The plaintiff's physician showed continuing brain injury which the plaintiff stressed leaves her at risk for a future seizure disorder.

Finally, it should be noted that by the time plaintiff's counsel was referred, the Statute of Limitations regarding a Portee claim had passed and this aspect was not part of the case.

**\$3,700,000 RECOVERY – LANDLORD NEGLIGENCE – PLAINTIFF TENANT WITH DOWN SYNDROME FALLS DOWN SEVERAL INTERIOR STEPS AND STRIKES WALL, SUFFERING HAIRLINE SKULL FRACTURE AND SUBDURAL HEMATOMA – COGNITIVE DEFICITS DEPRIVE PLAINTIFF OF ABILITY TO SHOP AND DO LAUNDRY INDEPENDENTLY – PLAINTIFF OVERCOMES CONCLUSIONS OF PHYSICIANS IN HOSPITAL THAT FALL CAUSED BY STROKE.**

**Middlesex County, NJ**

This action involved a plaintiff tenant, approximately age 60, who contended that the defendant landlord negligently failed to repair interior steps leading to the laundry room. The plaintiff contended that as a result, he tripped and fell several steps as he was descending, striking his head on the adjacent wall. The plaintiff asserted that he suffered a hairline skull fracture that caused subdural hematoma that resulted in significant cognitive deficits. The defendant denied that the condition of the steps was related to the fall.

The plaintiff suffered from Down syndrome and maintained that prior to the accident, he was relatively independent, could go shopping and perform his laundry and that he is no longer able to do so, depending on his brother and sister-in-law with whom he lived before the fall occurred. The defendant maintained that the fall was caused by a stroke and pointed out that some five treating physicians at the hospital detected signs of a stroke. The plaintiff's expert neuroradiologist concluded that the films showed contusions caused by the fall and did not reflect that he suffered a stroke before the incident.

The plaintiff maintained that the steps contained broken up concrete. The plaintiff would have presented an expert biomechanical engineer who would have concluded that based on factors, including where the plaintiff landed and the positioning of his body, it was highly likely that he fell from one of the steps in disrepair. The plaintiff also used an animation that the plaintiff's expert would have explained illustrated his conclusions and the plaintiff would have argued that his conclusions should be accepted.

During the deposition of the plaintiff's treating physicians, who had read the films as showing a stroke, 2 of the 5 ultimately conceded that the plaintiff's neuroradiologist, who is considered renowned, was correct in his interpretation that the plaintiff had, in actuality, suffered contusions as a result of the trauma and not a stroke that preceded the fall. The plaintiff would have further argued that the jury should consider that in view of the preexisting mental compromise, the plaintiff's remaining abilities was especially important and that the loss of enjoyment of life was extensive.

Plaintiff's counsel relates that the referral to him was made shortly before the Statute of Limitations would have run.

The case settled prior to trial for \$3,700,000.

**REFERENCE**

Higgins vs. Sky-Top Gardens. 03-22.

**Attorney for plaintiff: Barry R. Eichen of Eichen Crutchlow Zaslow, LLP in Edison, NJ.**

**COMMENTARY**

The defendant had denied that the condition of the steps was related to the fall and pointed out that the 5 physicians in the hospital had diagnosed a stroke. The plaintiff, who overcame this position, and who claimed that the alleged signs of stroke were, in reality, contusions caused by the fall itself, argued that the credentials of the plaintiff's neuroradiologist, were excellent and the plaintiff ultimately elicited testimony from treating physicians that the contusions were caused by the fall and not a stroke. Finally, the plaintiff would have also pointed to the testimony of a biomechanical engineer who would have testified that based upon the positioning of the body, and the area of defect, it was clear that the defect on the steps caused the fall.

**\$850,000 RECOVERY – FEDERAL TORT CLAIMS ACT CASE – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF PEDESTRIAN STRUCK BY LEFT TURNING POSTAL TRUCK – CLOSED HEAD INJURY – COGNITIVE DEFICITS AND RIGHT-SIDED TINNITUS – SEVERAL RIB FRACTURES – MEDIAL AND LATERAL TEARS TO RIGHT KNEE – ARTHROSCOPIC SURGERY – CERVICAL HERNIATIONS – 3-LEVEL ANTERIOR CERVICAL FUSION.**

**Newark County, NJ**

In this Federal Tort Claims Act case, the plaintiff pedestrian in her early 50s contended that the defendant driver of a 2-ton postal truck driver negligently failed to see her as the defendant turned left from in front of her as the plaintiff maintained that she was in the crosswalk. The plaintiff asserted that as a result, she suffered a closed head injury, a concussion with post - concussion syndrome and a moderate cognitive deficits involving short term memory and

concentration as well right sided tinnitus. The plaintiff further suffered several fractured ribs. The plaintiff also contended that she suffered a cervical herniation that required surgery. The plaintiff made no income claims. The defendant took the position during discovery that based on an independent eyewitness; the plaintiff was crossing outside of the crosswalk.

This witness did not testify during discovery. The plaintiff, who steadfastly maintained that she was in the crosswalk, would have also argued that irrespective

of this factor, the evidence that the defendant failed to see the plaintiff as the defendant was turning clearly reflected negligence.

The defendant also conceded during discovery that as she was turning, there was a blind spot. The plaintiff would have argued that the defendant should have been especially careful as she was turning and that if she had, she would have seen the plaintiff crossing before striking her.

The plaintiff suffered a closed head injury and maintained that the resulting deficits and tinnitus are permanent in nature. The plaintiff further claimed that she suffered 3 cervical herniations that will cause permanent symptoms despite a 3-level fusion. The plaintiff also asserted that she sustained three lumbar herniations that did not require fusion. The plaintiff contended that she will permanently suffer symptoms from the herniations.

The defendant denied that the plaintiff suffered the claimed cervical herniation in the accident and asserted that she suffered from degenerative disc disease only. The plaintiff countered that she had no prior symptoms or treatment and denied that the defendant's position should be accepted.

The plaintiff made no income claims.

The case settled prior to trial for \$850,000.

**\$800,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY BOX TRUCK DRIVER – CERVICAL HERNIATIONS – KNEE FRACTURE – MENISCAL TEAR – EXCESSIVE WEIGHT OF BOX TRUCK TRIGGERS FEDERAL MOTOR CARRIER REGULATIONS.**

**Union County, NJ**

**In this motor vehicle negligence action, the plaintiff minivan driver in her mid 50s contended that the defendant driver of a box truck struck her in the rear. The plaintiff maintained that although she initially believed that she wasn't injured and drove from the scene, she developed severe radiating pain and a cervical bulge and a cervical herniation that were confirmed by MRI. The plaintiff declined recommended disc surgery. The plaintiff also suffered a patella fracture that was treated conservatively. The defendant maintained that the herniation was caused by the natural progression of degenerative disc disease.**

The plaintiff contended that over the next 6 months, the pain and difficulties with her knee increased and that a tear of the medial meniscus, which was treated arthroscopically, was diagnosed. The plaintiff asserted that she will suffer permanent pain and limitations. The defendant denied that the plaintiff suffered a tear of the medial meniscus. The plaintiff countered that she had no prior relevant treatment.

**REFERENCE**

**Plaintiff's neurosurgeon expert: Mathew Tormenti, M.D. from Princeton, NJ. Plaintiff's orthopedic surgeon expert: Michael Cunningham, M.D. from Aberdeen, NJ. Plaintiff's pain management expert: Stephen Waldman, M.D. from Clifton, NJ. Plaintiff's physical medicine & rehabilitation expert: Brian Greenwald, M.D. from Edison, NJ.**

Jimenez vs. U.S.A. 10-13-22.

**Attorney for plaintiff: Andrew L. Statmore of Fredson Statmore Bitterman, LLC in Bloomfield, NJ.**

**COMMENTARY**

An independent eyewitness placed the plaintiff outside of the crosswalk, which was adamantly disputed by the plaintiff. This witness, however, did not testify in discovery and would not have testified if the case proceeded to trial. Additionally, the plaintiff would have stressed that she remained visible to the defendant and that the defendant reported that she had a blind spot in her truck as she turned left. Regarding damages, the primary position of the defendant was a denial of causal relationship between the accident and the cervical herniations that required a 3-level fusion. In this regard, the defendant would have argued that the finding of significant desiccation supported its position that the plaintiff suffered from degenerative disc disease. The plaintiff would have countered this position by emphasizing that she had no prior symptoms of treatment.

The plaintiff, who does not work outside of the home, contended that she has been forced to hire outside help around the home.

The defendant had \$1,000,000 in coverage. The plaintiff's initial pre-suit demand was \$250,000 which was denied by the carrier. In response suit was filed, and during the lawsuit the demand was increased to \$1,000,000. The plaintiff contended that the box truck, and the contents within the box truck increased its weight to trigger the protections and requirements set forth in the Federal Motor Carrier Safety Regulations.

The plaintiff filed a Motion to Amend the Complaint seeking a Count for Punitive Damages, and prior to the ruling on the Motion, the case settled \$800,000.

**REFERENCE**

Guerra vs. Gajewski. Docket no. UNN-L-3084 -19, 01-28-21.

**Attorney for plaintiff: Dan T. Matrafajlo of Beninato & Matrafajlo in Elizabeth, NJ.**

**\$575,000 RECOVERY – MOTOR VEHICLE COLLISION – LEFT TURN COLLISION – DEFENDANT CONTENDS HE STARTED TURNING ON GREEN ARROW – LUMBAR HERNIATION SUPERIMPOSED ON PRIOR BACK PAIN – SURGERY – LIMITED PIP POLICY – NO FUTURE INCOME CLAIMS.**

**Middlesex County, NJ**

In this action for motor vehicle negligence, the plaintiff in his 50s, who was a bus driver operating his personal car, contended that the defendant driver disregarded a left turn arrow and caused the accident in which the plaintiff sustained permanent injuries. The defendant maintained that the arrow was green when he began to turn and the cause of the collision was the negligence of the plaintiff. The plaintiff would have countered that the defendant did not make this claim to the investigating office. There was no independent eyewitness testimony.

The plaintiff asserted that he suffered a lumbar herniation and that after more conservative treatment. Including physical therapy chiropractic manipulations and an injection were insufficient he, underwent a lumbar discectomy. The plaintiff asserted that he continued to experience severe symptoms and underwent a lumbar arthroplasty surgery. The plaintiff maintained that although improved, he continues to suffer some pain and limitations, which he contended will continue to plague him permanently. The plaintiff who had a limited PIP policy of \$15,000, made a claim for out-of-pocket medical expenses of approximately \$200,000.

The defendant denied that the plaintiff sustained the alleged injuries in the accident, contending that he suffered from age related degenerative disc disease. The defendant pointed out that the plaintiff had made prior complaints and underwent an MRI several years earlier. The defendant asserted that there was no change between the earlier MRI and the one taken after the collision. The plaintiff countered that he did not require significant treatment before the accident occurred and maintained that the defendant's position should be rejected.

The plaintiff was able to return to work and the plaintiff made no future wage claims.

The case settled prior to trial for \$575,000.

**REFERENCE**

**Plaintiff's orthopedic surgeon expert: Joseph Lombardi, M.D. from Edison, NJ.**

Santa vs. Moy. Docket no. MID-L-6503-18, 10-21.

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

**\$295,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SIDESWIPE COLLISION – DEFENDANT FAILS TO YIELD ENTERING I-280 – PLAINTIFF DRIVER PROPELLED INTO MEDIAN DIVIDER – AGGRAVATION OF CERVICAL AND LUMBAR HERNIATIONS PREVIOUSLY NECESSITATING SURGERIES – COMPLAINTS OF PAIN APPROXIMATELY ONE MONTH BEFORE SUBJECT ACCIDENT – LUMBAR SURGERY FOR AGGRAVATION AFTER CONSERVATIVE CARE AND INJECTIONS INADEQUATE – UIM CASE.**

**Sussex County, NJ**

In this action for motor vehicle negligence, the plaintiff driver in his early 30s contended that the defendant failed to yield when entering I-280. The plaintiff maintained that the defendant struck him and propelled him into the median divider causing him to sustain permanent injuries. The defendant did not dispute negligence.

The plaintiff had suffered lumbar and cervical herniations that required surgery approximately 4 years earlier. The plaintiff asserted that the trauma caused an aggravation and that despite conservative care and an injection, he ultimately required an L5-S1 decompression and discectomy. The plaintiff maintained that he will nonetheless suffer permanent pain and limitations as a result of the aggravation.

The defendant denied that the surgery was the result of the accident and the defendant would have argued that the jury should consider that he made re-

lated complaints approximately one month before the collision. The plaintiff countered that testing at that time revealed no recurrent herniations and that subsequent testing showed the aggravation.

The plaintiff made no income claims.

The defendant had a \$100,000 policy. The plaintiff had \$300,000 in UIM protection and \$200,000 was available.

The case settled prior to trial for \$295,000, including the defendant's policy and \$195,000 from the UIM carrier.

**REFERENCE**

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

Wester vs. Gugel, et al. Docket no. SSX-L-416-21.

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

**\$175,000 SUMMARY JUDGMENT AWARD – BREACH OF CONTRACT – PLAINTIFFS CONTEND DEFENDANT LLC AND ITS MANAGING MEMBER INDIVIDUALLY TOOK MONEY FROM PLAINTIFFS FOR BOGUS INVESTMENT IN PROPERTY ACQUISITION AND DEVELOPMENT PROJECT AND, AFTER AGREEING TO RETURN FUNDS, DID NOT DO SO – PARTIES ARRIVED AT SETTLEMENT AGREEMENT TO RECOUP PORTION OF WHAT WAS OWED TO PLAINTIFFS AND DEFENDANT FAILED TO PAY ON SETTLEMENT, EVEN AFTER MOTION TO ENFORCE WAS GRANTED.**

**Hudson County, NJ**

**In this breach of contract case, the plaintiffs asserted that the defendants signed an assignment agreement for the plaintiffs to invest in a development project for a sum of money and that, when the project fell through, the defendants fraudulently mishandled and misused funds that should have been returned to the plaintiffs as a refund of their investment in the failed project. The plaintiffs brought suit for breach of fiduciary duty, breach of contract, conversion, legal malpractice, vicarious liability, fraud, and piercing the corporate veil and imposing personal liability on the managing member of the defendant LLC.**

On October 6, 2017, the defendant managing member of the defendant LLC executed an assignment agreement with the plaintiff LLC through its principal members. In exchange for the plaintiffs transferring their 33.33% interest in a property development project, the defendant agreed to pay each of the plaintiff members \$175,000 or \$350,000 total within one business day of the signing of the Assignment Agreement. The plaintiffs' investment funds were supposedly being held in escrow by the defendant attorney and law firm. However, when the deal fell through and the plaintiffs requested return of their funds, they were told that the funds were in the possession of the defendant LLC. The plaintiffs sought return of the funds from the defendant LLC which, they maintained, was a shell company created in cooperation with the defendant escrow attorney. The plaintiffs demanded return of their investment funds.

The defendant managing member made a wire transfer payment to the plaintiffs in the amount of \$75,000 on November 2, 2017 and a payment by check for \$75,000 5 days later. The check was dishonored and another dishonored check for \$100,000 was received by the plaintiffs on November 22, 2017. On October 10, 2019, a settlement demand was made to the defendant managing member in the amount of \$175,000, representing the amount of the dishonored checks. The defendant's attorney confirmed the matter was settled and that payments would be made by the defendant on October 31, November 30, and December 31, 2019. The defendant failed to make any payments.

The plaintiffs were granted an Order to Enforce Settlement on January 24, 2020, but the defendant made no attempt to comply with the Order. The plaintiffs then filed a Motion for Summary Judgment against the defendant. The defendant asserted that he entered into settlement agreements in good faith and agreed to refund that plaintiffs' investment in the development project as a courtesy even though, he claimed, neither he nor the defendant LLC was legally required to do so.

The court granted summary judgment in favor of the plaintiffs and against the defendant managing member of the defunct LLC, personally, in the amount of \$175,000.

**REFERENCE**

Singhvi, et al. vs. Martone, Esq. et al. Docket no. L-000504-18; Judge Joseph A. Turula.

**Attorney for plaintiff: Bradley M. Wilson of Nowell, P.A. in Hackensack, NJ. Attorney for defendant: Edward Bassetti of Bassetti Law, LLC in Saddle Brook, NJ.**

**COMMENTARY**

The court's opinion on the summary judgment stated that the motion was: "Granted, pursuant to R.4:46. New Jersey Courts have made it clear that settlement agreements are binding and enforceable even in the absence of a writing. See *Pascarella v. Bruck*, 190 N.J. Super. 118 (App. Div. 1983) (enforcing an oral settlement agreement). See *Hagrish v. Olson*, 254 N.J. Super. 133 (App. Div. 1992) (settlement correspondence between attorneys which required defendants to pay a stated sum of money is enforceable even though the plaintiff failed to execute general releases). See *Williams v. Vito* 365 N.J. Super. 225 (Law Div. 2003) (settlement communications between attorneys held to be enforceable). See *Jennings v. Reed*, 381 N.J. Super. 217 (App. Div. 2005) (holding that it is well settled that settlements made by attorneys are enforceable against their clients). Here, the record shows that Wolk's attorney stated that his client agreed to settlement. (See Certification in Support, Exh. #8, Email correspondence between Wilson, Esq., and Bassetti, Esq., October 23 & 24, 2019). Additionally, the movant has certified that Wolk has not made any payments in satisfaction thereof. Therefore, summary judgment in [sic] entered against Wolk and in favor of the plaintiffs, in the amount of \$175,000."

# Verdicts By Category

## CONTRACT

### \$10,000 RECOVERY

**Breach of construction contract – Plaintiff claims he performed renovation work on defendant's home per terms of contract and she prevented him from completing job and failed to pay for work done.**

#### Gloucester County, NJ

**In this breach of contract case, the plaintiff asserted that the defendant failed to pay the plaintiff for construction work done in her home by the plaintiff per a written agreement. The plaintiff filed suit seeking payment for contracted work performed and legal fees totaling \$11,582. The defendant asserted that the plaintiff was seeking payment for work that was either not performed or incompetently performed.**

On November 4, 2018, the plaintiff and defendant contracted for the defendant to complete various home-improvement work for the plaintiff including installation of a furnace and hot water heater and building a new bathroom. The plaintiff claimed that the contract specified a down payment of \$10,000, then a payment of \$10,000 when the rough plumbing and electric work was done, an \$8,000 payment when the sheetrock, doors and trim were complete and a final payment of \$4,500 when the entire job was finished. The plaintiff maintained that he performed all the work in phase one except for the trim, baseboard, bifolds and bathroom. The defendant prevented the plaintiff from completing the job.

The defendant pointed to the plaintiff's deposition wherein he admitted to performing work without a proper contract, proper permits, and not up to code, among other failures under the Home Improvement Practice Regulations NJAC 13:45A-16 & 17 et seq. The defendant claimed that she paid the defendant \$22,415 per the terms of the contract but refused to allow him to continue work when he caused a fire and caused pipes to freeze in her home due to inadequate work. The defendant claimed that the plaintiff abruptly quit the job with much of the work left undone and that she was forced to hire other contractors to re-do work the plaintiff had done and to finish the incomplete work. The plaintiff filed a counterclaim for damages from the work she paid to have work re-done and completed due to the plaintiff/counterclaim defendant's incompetent work.

The parties settled for \$10,000 to the defendant/counterclaim plaintiff to compensate for work improperly performed.

#### REFERENCE

Weber vs. Frampton. Docket no. L-000979-19; Judge Timothy W. Chell, 02-03-20.

**Attorney for plaintiff plaintiff/counterclaim defendant Weber: Marla Gaglione of Holston, MacDonald, Uzdavinis & Myles in Woodbury, NJ. Attorney for defendant defendant/counterclaim plaintiff Frampton: Joseph Marano of Friewald Law, P.C. in Philadelphia, PA.**

## DISABILITY DISCRIMINATION

### \$100,000 RECOVERY

**Disability discrimination – Employee allegedly fired from fast-foot franchise based on autism.**

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

**This was a disability discrimination suit brought by the Federal Equal Employment Opportunity Commission under the Americans with Disabilities Act ("ADA"). The defendant in the case was a Sewell, New Jersey, limited partnership that owns and operates numerous McDonald's franchises in New Jersey. The plaintiff alleged that the defendant fired an employee, who worked at several McDonald's restaurants for 37 years, because of his autism spectrum disorder.**

The plaintiff contended that the employee's performance remained excellent throughout his decade-long employment at the Deptford, New Jersey McDonald's, receiving numerous awards and accolades acknowledging his excellent job performance. However, 2 months after the defendant assumed ownership of this McDonald's, it abruptly terminated the employee from his position as grill cook.

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

The defendant agreed to pay \$100,000 to settle the case. In addition to the monetary relief, the 2-year consent decree settling the suit provides for the defendant's periodic reporting to the EEOC, and training for all management personnel in responding to reasonable accommodation requests.

#### REFERENCE

EEOC vs. JDKD Enterprises, L.P. Docket no. 1:21-cv-16441; Judge Joseph H. Rodriguez, 12-14-22.

**Attorney for plaintiff: Joshua Zuger of Equal Employment Opportunity Commission in Philadelphia, PA.**

## DOG BITE

### \$175,000 RECOVERY

**Dog bite – Plaintiff life coach bit in ankle by defendant's German Shepherd while visiting defendant's home on business – Ligament tear – Arthroscopic surgery – Plaintiff able to return to work; no income claims.**

#### Bergen County, NJ

In this case, the plaintiff, a life care coach contended that as she was visiting the home of the defendant, her client, the defendant's German Shepard escaped from his crate and ran to her, biting her twice in the ankle.

The plaintiff brought the action under the strict liability Dog Bite Statute. The plaintiff asserted that she suffered a tear of the anterior talofibular ligament which will cause permanent pain and limitations, despite arthroscopic surgery.

The plaintiff returned to her work and made no income claims.

The case settled prior to trial for \$175,000.

#### REFERENCE

Stewart vs. Bisaccia. 02-21.

**Attorney for plaintiff: Joseph M. Marabondo of Eichen Crutchlow Zaslow, LLP in Edison, NJ.**

## INSURANCE OBLIGATION

### \$250,000 (POLICY LIMIT) RECOVERY

**Insurance obligation – Uninsured motorist backs out of driveway at high rate of speed – Labral tear of right hip – Lumbar and thoracic herniations treated conservatively.**

#### Essex County, NJ

In this case, the plaintiff driver in her mid 50s contended that the uninsured driver backed out of a driveway at a high rate of speed, striking her vehicle. The plaintiff proceeded under a \$250,000 UM policy.

The plaintiff maintained that she suffered a labral tear of the right hip which as well as lumbar and thoracic herniations which will cause permanent pain despite chiropractic care. The plaintiff was not working at the time of the accident,

The case settled slightly more than 6 months after the accident for the policy.

#### REFERENCE

**Plaintiff's chiropractor expert: Nicola Amato, DC from Linden, NJ. Plaintiff's chiropractor expert: Eileen Nickel, DC from Linden, NJ.**

Pertrone vs. Nationwide Ins. Co. Docket no. ESX-L-190-22, 11-25-22.

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

### \$100,000 POLICY LIMIT RECOVERY

**Insurance obligation – Left turn collision – Elderly plaintiff makes left turn and collides with speeding defendant – Right scapula fracture and left tibial plateau fracture – Conservative treatment – UIM case.**

#### Morris County, NJ

In this matter, the 83-year-old plaintiff driver contended that the defendant driver entered the intersection at 60 mph in the 35 mph zone, resulting in the collision when the plaintiff had

almost completed her left turn. The defendant had \$15,000 in coverage, which was paid. The plaintiff proceeded under a \$100,000 UIM policy and \$85,000 was available.

The plaintiff maintained that she suffered fractures of the right scapula on the dominant side and a fracture of the left tibial plateau. The plaintiff asserted that she will permanently suffer some pain and difficulties ambulating.

The case resolved for the policy limits approximately 6 months after the accident and before the retention of experts.

#### REFERENCE

Sperber vs. Hart, et al. Docket no. MRS-L-2095-21, 01-17-22.

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

## MOTOR VEHICLE NEGLIGENCE

### Auto/Pedestrian Collision

#### \$330,000 RECOVERY

**Motor vehicle negligence – Auto/pedestrian collision – Plaintiff struck when defendant resumes traveling after light turns green – Cervical herniations – Surgery.**

#### Monmouth County, NJ

In this motor vehicle negligence matter, the plaintiff pedestrian, approximately age 50, contended that as she was crossing in the crosswalk, the defendant driver began traveling when the red light at which she was stopped, turned to green, knocking her down causing her to sustain permanent injury. The defendant argued that the light turned green and he began accelerating before the plaintiff stepped in front of his car, arguing that the plaintiff was overwhelmingly comparatively negligent. The plaintiff countered through the investigating officer who observed the accident and who maintained that the accident occurred several seconds after the plaintiff left the curb.

The plaintiff contended that she sustained several cervical herniations which initially were treated with PT and an injection. The plaintiff asserted that such treatment was inadequate and that EMGs were positive at one cervical level and she will suffer permanent symptoms.

The plaintiff made no income claims.

The case settled prior to trial for \$330,000.

#### REFERENCE

**Plaintiff's neurosurgeon expert: John Shiau, M.D. from Union, NJ. Plaintiff's orthopedic surgeon expert: Joshua Landa, M.D. from Old Bridge, NJ. Defendant's orthopedic surgeon expert: Jason Baynes, M.D. from Englewood, NJ.**

Stevens vs. Connell. Docket no. MON-L-4411-18, 01-18-22.

**Attorney for plaintiff: Matthew G. Bonanno of Rebenack Aronow & Mascolo, LLP in New Brunswick, NJ.**

#### \$99,000 RECOVERY

**Motor vehicle negligence – Auto/pedestrian collision – 3-year-old plaintiff's hand run over by defendant driver in parking lot – Dorsal right hand laceration with sutures; minor ligament damage to thumb; extensive, visible permanent scar – Non-binding arbitration assigns 100% liability to defendants with damages of \$55,000.**

#### Essex County, NJ

In this motor vehicle negligence case, the 3-year-old infant plaintiff asserted that the defendant driver struck him in a parking lot and caused significant, permanent injury to his hand. The defendant stipulated liability but contested the plaintiff's damages.

On March 7, 2010, the infant plaintiff was in a parking lot of a shopping center when his left, dominant hand was backed over by the defendant driver. The plaintiff contended that the defendant negligently failed to observe pedestrians in the parking lot and ran over the plaintiff's hand due to negligent observation/operation of his vehicle. The plaintiff alleged that the incident resulted in permanent injuries.

As a result of the incident, the plaintiff sustained injury to his right hand including dorsal hand laceration with sutures. His injury had mostly resolved with a concern of minor ligament damage to the thumb. The plaintiff also claimed an extensive, clearly visible 2"x3" scar to his right hand that was deemed permanent by a plastic surgeon. The defendant argued that the plaintiff's injuries were not permanent and did not prohibit him from any use of his hand.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of \$55,000. The defendants made a motion to confirm the arbitration order; however, the award was deemed insufficient and was not granted.

Following arbitration and prior to trial, the parties settled for \$99,000 as to the defendant driver. The award was broken down as follows: \$24,344 in attorney fees; \$1,625 in costs and disbursements and \$73,031 in net damages to the minor plaintiff.

#### REFERENCE

Ramos vs. White. Docket no. L-008721-13; Judge Jeffrey B. Beacham.

Attorney for plaintiff: Nathaniel M. Davis, Esq. in Maplewood, NJ. Attorney for defendant: Joseph V. Pinto of Law Offices of Leslie A. DeTorres in West Orange, NJ.

### ■ \$35,000 RECOVERY

**Motor vehicle negligence – Auto/pedestrian collision – 21-year-old plaintiff struck by left turning defendant – Lumbar herniation and 2 lumbar bulges confirmed by MRI – 7 months of chiropractic treatment.**

#### **Bergen County, NJ**

In this motor vehicle negligence action, the 21-year-old plaintiff contended that she was injured when as she was crossing in the crosswalk, the defendant, who was turning left from in front of her, negligently failed to make adequate observations, striking her and knocking her to the pavement after she had crossed approximately 1/2 of the roadway. The defendant maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff asserted that she sustained a herniation at L1-2 and bulges at L4-5 and L5-S1. The injuries were confirmed by MRI but an EMG was normal. The

plaintiff underwent 7 months of chiropractic care and maintained that she continues to suffer pain and has reduced her exercise regimen. The defendant asserted that the plaintiff made a good recovery/

The plaintiff, who was a part-time college student, lost one semester from school and has since returned.

The plaintiff was subject to the zero tort threshold because she did not own a car and did not reside with any relative on the date of the accident.

The defendant had \$100,000 in coverage. The case settled prior to trial for \$35,000.

#### **REFERENCE**

**Plaintiff's chiropractor expert: Wayne Poller, DC from Bergenfield, NJ.**

Tojot vs. Stein. Docket no. BER-L-7862-19.

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

## Head-on Collision

### ■ \$113,500 RECOVERY

**Motor vehicle negligence – Head-on collision – Plaintiff driver and 2 plaintiff passengers killed and 2 third-party individuals injured when intoxicated defendant driver crosses center line and hits them head-on – Defendant driver also killed in collision – Plaintiffs bring suit against defendant's insurer and plaintiff passengers' underinsured motorist policy.**

#### **Camden County, NJ**

In this motor vehicle negligence case, the plaintiffs, the driver and his 4 passengers, asserted that the intoxicated defendant driver struck their vehicle head-on in an intersection causing the deaths of the plaintiff driver and 2 of the passengers, serious injury to 2 third parties, and the defendant driver. The defendant driver carried an auto insurance policy with liability coverage limits of \$15,000/\$30,000. The plaintiffs were covered by underinsured motorist benefits of \$50,000/\$100,000.

On October 8, 2017, the plaintiff driver and 2 passengers were traveling on Sicklerville Road near its intersection with Dunlin Way in Gloucester. The defendant was the operator of a motor vehicle which was traveling on Sicklerville Road at the same intersection. The plaintiffs assert that the defendant driver was negligent in operation of his vehicle such that it caused a head-on collision between the vehicles in the intersection.

The plaintiffs maintained that the defendant driver was legally intoxicated at the time of the collision. The plaintiff driver and both passengers were killed in the accident, 2 third-party individuals were seriously injured and the defendant driver was also killed. The defendant estate argued that the plaintiff driver was contributorily negligent in causation of the subject collision.

The parties settled the matter with the defendant driver's insurance policy of \$30,000 broken down as follows: \$9,000 plus 30% of accumulated interest to the first surviving plaintiff; \$4,500 plus 15% of accumulated interest to second surviving plaintiff and \$8,250 each plus 27.5% each of accumulated interest to the estate of each of the 2 deceased plaintiff passengers. The plaintiffs also settled the matter with their underinsured motorist carrier as follows: \$41,750 each to the estates of the deceased plaintiffs.

#### **REFERENCE**

Ramoundous, et al. vs. Mason. Docket no. L-000440-18; Judge Sherri L. Schweitzer, 05-11-20.

**Attorney for plaintiff: Kenneth G. Andres, Jr. of Andres & Berger, P.C. in Haddonfield, NJ. Attorney for defendant driver: Cindy B. Shera of Law Offices of Debra Hart in Mount Laurel, NJ. Attorney for defendant underinsured motorist carrier: Raymond Danielewicz of Law Offices of Raymond Danielewicz in Haddonfield, NJ.**

## ■ \$100,000 POLICY LIMIT RECOVERY

**Motor vehicle negligence – Head on collision – Nasal fracture – Soft tissue injuries.**

### **Warren County, NJ**

In this motor vehicle negligence action, the plaintiff, age 56 at the time of this accident, was traveling northbound on Route 94 when the defendant, traveling southbound, failed to maintain her lane of travel and crossed the center line, striking the plaintiff's vehicle head-on causing her to sustain serious injuries. The accident was witnessed by several individuals who confirmed that the defendant was operating her vehicle in the wrong lane of travel before striking the plaintiff's vehicle.

The impact was so severe that the plaintiff was rendered unconscious and the jaws of life were deployed to remove her from the vehicle. The plaintiff

sustained a fracture of the anterior nasal spine and profuse epistaxis and diffuse swelling of the mid-face in the upper lip and bad ecchymosis; periorbital headaches; a nasal spinal fluid leak; bilateral tinnitus; a closed nasal bone fracture which involved the anterior nasal spine; and extensive orthopedic injuries to the neck, back and chest.

The case settled prior to trial for the \$100,000 policy limits. Neither side retained expert testimony.

### **REFERENCE**

Vernoski vs. Erickson-Suhy, et al. Docket no. WRN-L-146-20, 02-02-21.

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

## Intersection Collision

### ■ \$250,000 (POLICY LIMIT) RECOVERY

**Motor vehicle negligence – Intersection collision – Failure to stop at stop sign as plaintiff driver is making left turn – Defendant driver concedes at scene that she did not see plaintiff – Lumbar herniation – Surgery – Knee injuries.**

### **Morris County, NJ**

In this motor vehicle negligence action, the plaintiff driver in his late 20s contended that the defendant driver negligently failed to stop at a stop sign as the plaintiff was in the course of turning left, striking the plaintiff's vehicle, causing the plaintiff to sustain injuries. The defendant admitted to the investigating officer that she did not see the plaintiff before impact.

The plaintiff maintained that he sustained a lumbar herniation which will cause permanent symptoms despite surgery. The plaintiff further contended that he suffered a trauma to both knees which have continued to cause symptoms.

The plaintiff made no income claims.

The case settled prior to trial for the \$250,000 policy limits.

### **REFERENCE**

**Plaintiff's chiropractor expert: Jay Brecker, D.C. from Dover, NJ. Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ. Plaintiff's physical therapist expert: Monreo C. Castro from Dover, NJ.**

Parrales vs. Shin, et al. Docket no. MRS-L-709-22., 12-03-22.

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

### ■ \$130,000 VERDICT

**Motor vehicle negligence – Intersection collision – Failure to obey stop sign – 2 displaced fractures of left, non-dominant hand – Surgery – Cervical and lumbar herniations treated conservatively.**

### **Morris County, NJ**

The plaintiff's motion for summary judgment on liability was granted in this motor vehicle negligence case in which the plaintiff driver in his late 20s contended that the defendant driver negligently failed to stop at a stop sign, causing the accident in which the plaintiff sustained multiple injuries. The defendants maintained that the injuries substantially resolved.

The plaintiff maintained that he was propelled across 2 lanes of traffic upon impact and struck a fire hydrant. The plaintiff contended that he suffered a displaced fracture to the 4th metacarpal on the left, non-dominant hand and a fractured finger on this side. The plaintiff maintained that despite surgery, which was performed the day of the accident, he will suffer pain and weakness permanently.

The plaintiff further claimed that he suffered lumbar and cervical herniations that will cause permanent symptoms despite chiropractic care. There was no evidence that disc surgery will be necessary.

The plaintiff missed approximately 3 months from his work and made an approximate \$3500 wage loss claim.

The jury found the defendant 100% negligent and awarded \$130,000. \$7194 in prejudgment interest was added and the case settled for \$137,194.

#### REFERENCE

**Plaintiff's neuroradiology expert: Lisa Marie Sheppard, M.D. from Flemington, NJ. Plaintiff's orthopedic surgeon expert: Kevin C. Aurori, M.D.**

**from Morristown, NJ. Defendant's orthopedic surgeon expert: Louis Bouillon, M.D. from Denville, NJ. Defendant's radiology expert: Andrew H. Shaer, M.D. from Cherry Hill, NJ.**

Rivera vs. Clark. Docket no. MRS-L-966-18; Judge W. Hunt Dumont, 02-11-20.

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

## Intersection Collision

### \$33,000 RECOVERY

**Motor vehicle negligence – Intersection collision – Disc herniation at L3-4 with multiple disc bulges confirmed on MRI; bilateral L5 radiculopathy – Injections suggested but not recommended due to underlying condition; discography attempted but not completed – Non-binding arbitration assigns 90% liability to defendant and 10% to plaintiff with gross damages of \$40,000.**

#### Middlesex County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver entered into an intersection without the right-of-way and struck the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendant asserted that the plaintiff caused the collision.**

On November 20 2017, the plaintiff was traveling eastbound on Raritan Avenue (Route 27) in Highland Park. The defendant was attempting to proceed through the intersection of Raritan Avenue onto South Tenth Avenue from a stop sign. The plaintiff contended that the defendant negligently failed to yield the right-of-way to the plaintiff who arrived at the intersection first. Both vehicles proceeded into the intersection whereupon they collided. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniation at L3-4 with multiple disc bulges confirmed on MRI; bilateral L5 radiculopathy confirmed on EMG.

The plaintiff was suggested for injections but they were not recommended due to underlying condition; discography was attempted but not completed. The defendant's IME found no traumatic injury to spine and no permanency.

The defendant denied liability and contested the plaintiff's damages. The defendant argued that the plaintiff entered the intersection without the right-of-way and caused or contributed to the collision. The defendant also challenged the nature, extent and permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of \$40,000 reduced to \$36,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$33,000.

#### REFERENCE

Prignoli vs. Tsibulevskiy. Docket no. L-003630-18; Judge Thomas Buck.

**Attorney for plaintiff: Steven P. Sona of Steven P. Sona, LLC in Edison, NJ. Attorney for defendant: Arthur Arnold of Law Offices of Pamela D. Hargrove in Cranford.**

## Left Turn Collision

### \$47,500 RECOVERY

**Motor vehicle negligence – Left turn collision – Hip, left knee, cervical and lumbar injuries – Conservative treatment for knee and back injuries and injections for hip injury – Non-binding arbitration assigns 90% liability to defendant and 10% to plaintiff with gross damages of \$70,000 reduced to \$63,000 for plaintiff's comparative negligence.**

#### Bergen County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver made a negligent left turn in front of the plaintiff and struck her vehicle with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant asserted that the plaintiff was at least contributorily negligent for the collision.**

On May 21, 2016, the plaintiff was traveling north on Piermont Road at the intersection of East Madison Avenue in Cresskill. The defendant was traveling south on Piermont Road. The plaintiff contended that the defendant negligently made a left turn across the plaintiff's lane of travel and forcibly struck the plaintiff's vehicle. The plaintiff alleged that the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained hip, left knee, cervical and lumbar injuries. The plaintiff treated conservatively for the knee and back injuries and with injections for the hip injury. The defendant argued that the plaintiff's injuries were not permanent. The defendant's IME found that the plaintiff's injuries were all soft tissue injuries with no associated permanency.

### DEFENDANT'S VERDICT ON VERBAL THRESHOLD

**Motor vehicle negligence – Left turn collision – Collision allegedly causes cervical herniations and bulges – Significant property damage to both vehicles – Limited treatment – Damages only.**

#### Middlesex County, NJ

**Liability was stipulated in this motor vehicle negligence case in which the defendant driver made a left hand turn in the path of the plaintiff driver, causing the accident and the plaintiff's injuries. The defendant denied that the plaintiff met the verbal threshold.**

The plaintiff in his mid 40s contended that he suffered 2 cervical herniations and 2 cervical bulges which were confirmed by MRI and which the plaintiff's orthopedist maintained will cause permanent symptoms. Both vehicles suffered major property damage.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of \$70,000 reduced to \$63,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$47,500.

#### REFERENCE

Park vs. Kim. Docket no. L-002061-18; Judge Lisa Perez-Friscia, 02-18-20.

**Attorney for plaintiff: Albert H. Wunsch, III, Esq. in Englewood Cliffs, NJ. Attorney for defendant: Douglas M. Barnett of Gregory P. Helfrich & Associates in Summit, NJ.**

The defendant's orthopedist denied that the plaintiff suffered permanent injury in the accident. The defendant pointed out that the plaintiff's treatment was limited to PT.

The jury found for the defendant on the verbal threshold.

#### REFERENCE

**Plaintiff's orthopedic surgeon expert: Steven Dane, M.D. from Paterson, NJ. Defendant's orthopedic surgeon expert: Robert Bercik, M.D. from Clark, NJ.**

Henry vs. Borowski. Docket no. MID-L-5752-18; Judge Brian English, 07-22.

**Attorney for defendant: John A. Camassa of Law Offices of John Camassa in Wall Twp, NJ.**

## Multiple Vehicle Collision

### \$40,000 ARBITRATION CONFIRMATION

**Motor vehicle negligence – Multiple vehicle collision – Defendant driver strikes third-party vehicle at high speed, causing it to collide with plaintiff's vehicle – Disc herniations at C5-6, C4-5, L5-S1 and L3-4; lumbar radiculopathy at L5-S1 confirmed on EMG – Chiropractic treatment and recommendation for injections.**

#### Camden County, NJ

**This motor vehicle negligence case arose from a collision which occurred on August 14, 2016 when the plaintiff was traveling northbound on Route 676 in Camden. The defendant was also traveling on Route 676. The plaintiff contended that the defendant negligently struck a third-party vehicle at such a high rate of speed that it propelled the third-party vehicle into the plaintiff's vehicle with enough force to cause serious permanent injuries to the plaintiff. The defendant contested the plaintiff's damages. The**

**defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.**

As a result of the collision, the plaintiff sustained disc herniations at C5-6, C4-5, L5-S1 and L3-4 and lumbar radiculopathy at L5-S1 confirmed on EMG. The plaintiff treated with 8 months of chiropractic treatment and was recommended for epidural injections. The plaintiff's limited PIP coverage was exhausted through treatment and the plaintiff had \$1,750 in out-of-pocket expenses. The defendant pointed to the plaintiff's prior history of neck and back spasms and a subsequent motor vehicle accident wherein the plaintiff's vehicle tipped over.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$40,000. The defendant made a motion to confirm the arbitration order and the motion was granted.

**REFERENCE**

Williams vs. Rizzo, et al. Docket no. L-002311-18;  
Judge Anthony M. Pugliese.

**Attorney for plaintiff: Michael J. Dennin of Law  
Offices of Vincent J. Ciecka, P.C. in Pennsauken, NJ.  
Attorney for defendant: Zachary P. Hicks of Law  
Office of Michael G. David in Marlton, NJ.**

## Parked Auto Collision

### ■ \$15,000 RECOVERY

**Motor vehicle negligence – Parked auto collision – Plaintiff contends defendant driver and vehicle owner sideswiped her parked vehicle while she was in it – 3 cervical disc bulges; 4 lumbar disc bulges with positive EMG at L4-5 – 1 lumbar and 2 cervical epidural injections – Non-binding arbitration assigns 100% liability to defendant.**

#### **Bergen County, NJ**

**In this motor vehicle negligence case, the plaintiff, a 59-year-old woman, asserted that the defendant driver struck her parked vehicle as he drove past, causing significant, permanent injury to the plaintiff. The defendants challenged the nature, causation, and extent of the plaintiff's damages.**

On August 19, 2016, the plaintiff was parked on Paterson Avenue near the intersection with Rose Street in Wallington. The defendant driver, operating a vehicle owned by the defendant employer, was traveling on Paterson Avenue. The plaintiff contended that the

defendant negligently sideswiped the plaintiff's parked vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result, the plaintiff sustained 3 cervical disc bulges and 4 lumbar disc bulges with positive EMG at L4-5. The plaintiff treated with 1 lumbar and 2 cervical epidural injections.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$34,290.

Following arbitration and prior to trial, the parties settled for the defendants' \$15,000 policy limit.

#### **REFERENCE**

Piedra vs. Passaic Prof, LLC, et al. Docket no. L-002269-18; Judge Rachelle Harz, 02-03-20.

**Attorney for plaintiff: Thomas A. McCarter of Law  
Office of Thomas A. McCarter in Hackensack, NJ.  
Attorney for defendant: John M. Bashwiner of  
Bashwiner and Deer, LLC in Verona, NJ.**

### ■ \$6,000 RECOVERY

**Motor vehicle negligence – Parked auto collision – Cervical and lumbar disc herniations – Chiropractic treatment – Non-binding arbitration assigns 100% liability to defendant with damages of \$25,000.**

#### **Hudson County, NJ**

**In this motor vehicle negligence case, the plaintiff, a minor, asserted that the defendant driver struck the parked vehicle in which he was sitting with such force that it caused significant, permanent injury. The defendant denied liability and contested the nature, causation and permanency of the plaintiff's injuries.**

On May 29, 2018, the minor plaintiff was a passenger in a motor vehicle parked in a parking spot on Martin Luther King Drive in Jersey City. The plaintiff contended that the defendant driver, proceeding along Martin Luther King Drive, struck the parked vehicle in which the plaintiff was sitting. The plaintiff alleged that the force of the impact resulted in permanent inju-

ries. As a result of the collision, the plaintiff sustained cervical and lumbar disc herniations. The plaintiff treated with chiropractic care.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$25,000 inclusive of medical expenses.

Following arbitration and prior to trial, the parties settled for \$6,000 broken down as follows: \$1,429 for attorney fees; \$283 for disbursements and costs; \$1,791 in outstanding medical bills and \$2,497 in net damages to the minor plaintiff.

#### **REFERENCE**

Washington vs. Rivera, et al. Docket no. L-003032-19; Judge Joseph V. Isabella, 02-25-20.

**Attorneys for plaintiff: Joseph G. Boccia and Joseph Szesko of Zavodnick, Perlmutter & Boccia, LLC in Jersey City, NJ. Attorney for defendant: Brooke Gerner of Law Office of Eric H. Bennett in Hackensack, NJ.**

## Parking Lot Collision

### DEFENDANT'S VERDICT ON VERBAL THRESHOLD

**Motor vehicle negligence – Parking lot collision – Plaintiff driver turning around in gas station to line up gas tank with pump struck by defendant who enters gas station from highway – Alleged lumbar and cervical herniations.**

#### Morris County, NJ

The plaintiff driver in his early 60s contended that as he was maneuvering in a gas station to line up his tank with the pump, the defendant driver entered the filling station without making observations, striking his vehicle.

The plaintiff maintained that he suffered lumbar and cervical herniations which will cause permanent symptoms despite conservative care.

The defendant asserted that any injuries were related to degenerative disc disease only. The defendant also contended that any aggravation quickly resolved and the defendant denied that the plaintiff met the verbal threshold.

The jury found that the defendant was 100% negligent and found for the defendant on the verbal threshold.

#### REFERENCE

**Defendant's orthopedic surgeon expert: Edward M. Decter, M.D. from Cedar Knolls, NJ.**

Mendoza vs. Giscomis. Docket no. MRS-L-836-18, 07-21.

**Attorney for defendant: Maryann O'Donnell McCoy of O'Donnell McCoy Buerle in Morristown, NJ.**

## Rear End Collision

### \$500,000 RECOVERY

**Motor vehicle negligence – Rear end collision – Plaintiff passenger in her car driven by 3rd party defendant boyfriend struck in rear while stopped in traffic under RR tracks at Penn Station – Extruded lumbar disc – Surgery – No future wage claims.**

#### Essex County, NJ

In this action for motor vehicle negligence, the plaintiff in her late 30s who was being driven to her job as a senior recruiter by her boyfriend, who was operating her car, contended that as the host car was stopped in traffic under the Penn Station, the defendant driver struck it in the rear causing the plaintiff to sustain injury. The defendant denied that the plaintiff's version was accurate and maintained that he was cut off by the host driver who was named as a 3rd party defendant.

The defendant also maintained that the plaintiff was in the course of exiting the car because of the traffic and her proximity to work, and had already removed

her seat belt. The plaintiff denied that she had removed her seat belt when the host vehicle was struck or that the boyfriend had cut off the defendant.

The plaintiff asserted that she suffered a lumbar extrusion which will cause permanent symptoms despite surgery. The plaintiff worked from home during her convalescence and made no income claims.

The defendant had \$5,000,000 in coverage. The case settled prior to trial for \$500,000.

#### REFERENCE

**Plaintiff's chiropractor expert: Gary Bozian, D.C. from Succasunna, NJ. Plaintiff's orthopedic surgeon expert: Brian Massoud, M.D. from Glen Rock, NJ. Plaintiff's orthopedic surgeon expert: Sujal Patel, M.D. from Glen Rock, NJ.**

Lopez vs. Bare. Docket no. ESX-L-3934-18.

**Attorney for plaintiff: Trevor J. Warden of Bongiovanni Collins & Warden, PC in Denville, NJ.**

### \$300 RECOVERY

**Motor vehicle negligence – Rear end collision – Post-traumatic cervical and lumbar injury with radiculopathy – Epidural injections and physical therapy – Arbitrator assigns 100% liability to defendant with damages of \$2,500.**

#### Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the vehicle in which he was a passenger with such

**force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On December 9, 2015, the plaintiff was a passenger in a vehicle traveling east on Orton Parkway approaching the intersection with Myrtle Avenue in Irvington. The defendant was traveling in the same direction and location directly behind the plaintiff's vehicle. The plaintiff contended that the defendant negligently struck the plaintiff's vehicle from the rear

when the plaintiff's vehicle stopped at a stop sign and that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and lumbar spine with radiculopathy. The plaintiff treated with epidural injections and physical therapy.

The defendant argued that the plaintiff's complaints were pre-existing from prior similar injuries and not caused by the subject collision. The defendant also argued that the plaintiff's injuries were not permanent in nature.

### ■ **UNDISCLOSED RECOVERY**

**Motor vehicle negligence – Rear end collision – Disc bulges at C2-3, C3-4, L4-5, L5-S1 with stenosis at L4-5 – Epidural injections – Arbitration finds defendant 100% liable with damages of \$45,000.**

#### **Essex County, NJ**

**In this motor vehicle negligence case, the plaintiff, a 29-year-old man, asserted that the defendant driver struck his vehicle from behind with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.**

On November 25, 2015, the plaintiff was traveling eastbound on State Highway 24 near milepost 8 in Millburn. The defendant was operating a vehicle directly behind the plaintiff. The plaintiff asserted that the defendant negligently failed to slow or stop and violently struck the rear end of the plaintiff's vehicle. The force of the impact pushed the plaintiff's vehicle into the rear of the vehicle traveling directly in front of his vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$2,500. Following arbitration and prior to trial, the parties settled the matter for \$300.

#### **REFERENCE**

Gordon vs. Richardson. Docket no. L-008452-17; Judge Bahir Kamil.

**Attorney for plaintiff: Tracey C. Hinson of Hinson Snipes, LLP in Princeton, NJ. Attorneys for defendant: Joseph A. Selitti and Jill Roth of Sponder & Sellitti in Princeton, NJ.**

As a result of the collision, the plaintiff, who had no prior or subsequent similar injuries, sustained disc bulges at C2-3, C3-4, L4-5, L5-S1 with stenosis at L4-5. The plaintiff treated with epidural injections. The defendant argued that the plaintiff's injuries were not substantial or permanent in nature.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$45,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

#### **REFERENCE**

Kushner vs. Costello. Docket no. L-008121-17; Judge Jeffrey B. Beacham.

**Attorney for plaintiff: Glenn A. Farrell of Calcagno & Associates in Cranford, NJ. Attorney for defendant: Kate M. Celestino of Law Offices of Cindy L. Thompson in West Orange, NJ.**

## **Truck/Pedestrian Collision**

### ■ **\$5,000 RECOVERY**

**Motor vehicle negligence – Truck/pedestrian collision – Plaintiff maintained defendant flatbed truck driver ran over plaintiff's foot – Defendant argued plaintiff presented no evidence of actual injury – Injury to right foot – Thoracic and lumbar injuries – Physical therapy – Non-binding arbitration assigns 100% liability to defendant with damages of \$17,500.**

#### **Middlesex County, NJ**

**In this motor vehicle negligence case, the plaintiff, a 71-year-old woman, asserted that the defendant tow truck driver ran over her foot and caused significant, permanent injury. The defendant argued that the plaintiff did not meet the limitation on lawsuit tort threshold.**

On May 30, 2016, the defendant arrived at the plaintiff's home to remove a vehicle via flatbed truck. When the vehicle had been loaded on the flatbed and the truck began to leave, the driver ran over the plaintiff's right foot with the truck's left rear tire. The plaintiff twisted her back and fell to the ground. She was taken by ambulance to the E.R. The plaintiff alleged that the incident resulted in permanent injuries.

As a result of the collision, the plaintiff sustained thoracic and lumbar injuries and injury to her right foot. The plaintiff's expert found that the plaintiff's injuries were permanent in nature with decreased strength and limitation in motion of the ankle between 10 and 20 degrees; visible thickening at the medial and lateral ligaments of the ankle as well as failure of the lumbar spine to heal to normal function.

The defendant presented IME testimony that disputed the plaintiff's injuries. The defendant's expert found no evidence of fracture in the foot but did find plantar calcaneal spurring, a degenerative condition not associated with traumatic injury. The plaintiff's spine studies also indicated no evidence of fracture and only mild degenerative changes.

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

Following arbitration and prior to trial, the parties settled for \$5,000.

#### REFERENCE

Woodard vs. Geico, et al. Docket no. L-004656-18; Judge Bruce J. Kaplan.

**Attorney for plaintiff: George F. Hendricks of Hendricks & Hendricks in New Brunswick, NJ.**

**Attorney for defendant: Amanda M. Dadiago of Law Office of Cindy L. Thompson in Piscataway, NJ.**

## PREMISES LIABILITY

### Fall Down

#### \$55,000 RECOVERY

**Premises liability – Fall down – Plaintiff trips on pothole in defendant's parking lot – Left ankle sprain/strain and left hip residual injury – Plaintiff claims medical lien of \$5,000 – Non-binding arbitration assigns 5% liability to defendant and 15% to plaintiff with gross damages of \$60,000 reduced to \$51,000 for plaintiff's comparative negligence.**

#### Middlesex County, NJ

**In this premises liability case, the plaintiff asserted that the defendant home improvement store failed to keep its parking lot in a condition safe for pedestrians, resulting in the plaintiff's trip and fall with significant, permanent injury. The defendant disputed permanency and causation of the plaintiff's injuries.**

On May 20, 2016, the plaintiff was a business invitee on the premises of the defendant home improvement store. The plaintiff was walking in the parking lot when she was caused to trip and fall due to a pothole in the defendant's parking lot. The plaintiff contended that the defendant negligently failed to keep

the parking lot in a condition free from hazards for the safety of the public. The plaintiff alleged that the fall resulted in permanent injuries.

As a result of the trip and fall, the plaintiff sustained left ankle sprain/strain and left hip residual injury. The plaintiff claimed a medical lien of \$5,000. The defendant argued that the plaintiff's injuries were pre-existing or not permanent in nature.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 85% liability to the defendant and 15% to the plaintiff with gross damages of \$60,000 reduced to \$51,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$55,000.

#### REFERENCE

Ramos-Rodriguez vs. Lowe's Companies, Inc. Docket no. L-002575-18; Judge Jamie D. Happas, 02-24-20.

**Attorney for plaintiff: George J. Shamy, Jr. of Shamy & Shamy, LLC in New Brunswick, NJ. Attorney for defendant: John W. Harding of Martin Kane Kuper, LLC in East Brunswick, NJ.**

#### \$32,000 RECOVERY

**Premises liability – Fall down – Disc bulges at L2-3, L3-4, L4-5, L5-S1; right hip pain and chronic pain syndrome – Epidural injections and EMG – Defendant points to 2-year gap in treatment.**

#### Camden County, NJ

**This premises liability matter arises from a slip and fall accident at the defendant dollar store. The plaintiff claimed that she was injured as a result of the accident and her husband asserted a per quod claim. The defendant denied liability and contested the plaintiff's damages.**

On August 16, 2016, the plaintiff was a patron at a retail store located at 323 Marlton Avenue in Camden. The plaintiff claimed that there was a spill of liquid in

the cleaning products aisle of the store. The plaintiff argued that the defendant store negligently allowed the liquid to remain on the floor of the store without any type of warning to customers of the hazard. The plaintiff alleged that the force of her fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained disc bulges at L2-3, L3-4, L4-5, L5-S1; right hip pain; and chronic pain syndrome. The plaintiff treated with epidural injections and EMG. The plaintiff claimed \$26,765 in unpaid medical expenses. The defendant argued that it had no notice of the spilled liquid and thus could not be held liable. The defendant also questioned causation of the plaintiff's injuries, pointing to a 2-year gap in treatment.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$30,000 to the plaintiff and \$2,000 for the husband's per quod claim.

Following arbitration and prior to trial, the parties settled for \$32,000.

#### REFERENCE

Streater vs. Family Dollar Stores, Inc., et al. Docket no. L-002840-18; Judge Sherri L. Schweitzer, 06-08-20.

### ■ \$30,000 RECOVERY

**Premises liability – Fall down – Plaintiff falls on cracked, uneven pavement at defendant's commercial property – Cervical and lumbar disc injuries treated primarily with chiropractic treatment – Plaintiff claims \$17,486 in medical expenses including \$3,125 Medicaid lien.**

#### Essex County, NJ

**In this premises liability case, the plaintiff, a 61-year-old woman, asserted that the defendant property owner failed to maintain a commercial property in safe condition for the public, causing the plaintiff to fall and suffer significant, permanent injury. The defendant denied liability, arguing that the sidewalk was not in such a condition that it could cause someone to fall if they were taking reasonable care and looking out where they were walking.**

On April 13, 2017, the plaintiff was lawfully on the premises of the defendant's property at 885 18th Avenue in Irvington. The plaintiff asserted that she fell due to a cracked and uneven sidewalk abutting the defendant's property. The plaintiff argued that the defendant had a duty to use reasonable care in the ownership, control, operation, use and maintenance of the premises and that the defendant failed in that duty.

The plaintiff contended that the defendant negligently maintained the sidewalk in front of the property in such a fashion as to allow it to exist in an unsafe

### ■ UNDISCLOSED RECOVERY

**Premises liability – Fall down – Plaintiff falls on black ice at defendant supermarket in co-defendant shopping center – Defendants dispute responsibility for location where plaintiff fell – 4 days hospitalization; comminuted fracture of distal radius; displaced fracture of ulnar styloid of right arm and linear nondisplaced fracture of right hip – Treated with casting for arm and open reduction of right hip – Plaintiff claims ongoing pain and restriction of motion in all affected areas; \$7,200 in lost wages and medical lien of \$73,487.**

**Attorney for plaintiff: Adam M. Kotlar of Kotlar, Hernandez & Cohen, LLC in Mount Laurel, NJ. Attorney for defendant: Michael D. Rosenfeld of Weber, Gallagher, Simpson, Stapleton, Fires & Newby, LLP in Mt. Laurel, NJ.**

condition for pedestrians walking at that location. The plaintiff claimed that the condition of the sidewalk was the proximate cause of her fall. The plaintiff alleged that the force of the fall resulted in permanent injuries. As a result of the trip and fall, the plaintiff sustained cervical and lumbar disc injuries treated primarily with chiropractic treatment. The plaintiff claimed \$17,486 in medical expenses including a \$3,125 Medicaid lien. The defendant maintained that the plaintiff was either completely or contributorily negligent in failing to look out while walking on the sidewalk and, thus, caused or contributed to her own injury and resulting damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of \$45,000 reduced to \$36,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$30,000.

#### REFERENCE

Ramey vs. AA of America, LLC. Docket no. L-000942-18; Judge Thomas M. Moore.

**Attorney for plaintiff: Ethan Jesse Sheffet of Sheffet & Dvorin, P.C. in Verona, NJ. Attorney for defendant: Edward H. Lee of Lee Law Firm, LLC in Springfield, NJ.**

#### Essex County, NJ

**In this premises liability case, the plaintiff, a 67-year-old female EMA Tech, asserted that the defendant supermarket and the shopping center landlord negligently allowed a dangerous condition to exist on the property, in the form of black ice, and failed to remediate, remove or warn the public of the hazard. Due to the defendants' negligence, the plaintiff fell and sustained permanent injury. Both defendants noted that there had not been any recent precipitation and claimed to have had no notice of the ice prior to the plaintiff's fall.**

On February 18, 2016, the plaintiff was a lawful patron on the premises of the defendant supermarket in the defendant shopping center located in Clifton.

The plaintiff contended that the defendants failed to maintain their parking lot in a safe condition for patrons. As a result of the failure of the defendants to remove or remediate snow and ice, the plaintiff fell on a patch of black ice and sustained permanent injury. As a result of the fall, the plaintiff was hospitalized for 4 days with a comminuted fracture of the distal radius extending to the articular surface as well as a displaced fracture of ulnar styloid of the right arm requiring casting; and a linear nondisplaced fracture through the right femoral neck of her right hip requiring an open reduction of the right hip. The plaintiff claimed ongoing pain and restriction of motion in all affected areas.

The plaintiff is no longer able to carry out daily activities such as cooking, cleaning, shopping and household chores as well as activities such as walking, standing for long periods, and exercising. The plaintiff claimed \$7,200 in lost wages and a medical lien of \$73,487.

### DEFENDANT'S VERDICT

**Premises liability – Fall down – Plaintiff diner allegedly slips on brown water next to bucket in restaurant – Mode of operation charge – Soft tissue lumbar injuries – Conservative care and lumbar nerve root ablations.**

#### Cape May County, NJ

**In this action for premises liability, the plaintiff restaurant patron in her early 40s contended that she sustained injuries when she slipped and fell on brown water that was next to a bucket. The defendant denied that the bucket was present.**

The defendant maintained that it would only place such a bucket at closing time and since the restaurant was still open, the plaintiff's claims should be rejected. The accident was unwitnessed.

The plaintiff contended that she suffered lumbar injuries which will cause permanent pain and limitation despite conservative care and lumbar nerve root ab-

lations. Due to the location of the plaintiff's fall, just outside the cart corral of the supermarket, the defendants disagreed as to whose responsibility it was to remediate snow and ice in that area. The defendant shopping center corporation was responsible for the parking area but the defendant store was responsible for its premises. Thus, each defendant pointed to the other as responsible.

Prior to trial, the parties settled for an undisclosed sum.

#### REFERENCE

Pollard vs. SDC Clifton Commons, Inc. et al. Docket no. L-000440-17; Judge Bridget A. Stecher.

**Attorney for plaintiff: Jeffrey Grabelle of Mandelbaum Salsburg, PC in Edison, NJ. Attorney for defendant SDC Clifton Commons: Thomas M. Madden of Hack Piro Counselors at Law in Florham Park, NJ. Attorneys for defendant Stop & Shop Supermarket LLC: Jeffrey Hall-Gale and Colleen M. Ready of Margolis Edelstein in Mt. Laurel, NJ.**

The defendant advanced that any difficulties stemmed from an MVA approximately 10 years earlier.

The jury found for the defendant.

#### REFERENCE

**Plaintiff's neurosurgeon expert: Andrew Glass, M.D. from Somers Point, NC. Defendant's engineering expert: Joseph B. Mills, P.E. from Mullica Hill, NJ. Defendant's orthopedic surgeon expert: David Anapolle, M.D. from Somers Point, NJ.**

Doer vs. 19 Buffet, Inc. Docket no. CPM-L-132-20; Judge James H. Pickering, Jr., 12-22.

**Attorney for defendant: Mitchell Waldman of Hurvitz & Waldman in Pleasantville, NJ.**

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

## Supplemental Verdict Digest

### MEDICAL MALPRACTICE

***\$19,665,312 GROSS VERDICT – MEDICAL MALPRACTICE – PRIMARY CARE PHYSICIAN NEGLIGENCE – DEFENDANT DOCTORS FAIL TO APPRECIATE PLAINTIFF PATIENT’S SIGNS AND SYMPTOMS OF SPINAL LESION OVER 5-YEAR PERIOD OF REPEATED COMPLAINTS OF BACK PAIN AND NEUROLOGICAL SYMPTOMS – SPINAL DAMAGE RESULTING IN INCOMPLETE PARAPLEGIA – BOWEL AND BLADDER DYSFUNCTION.***

#### **Philadelphia County, PA**

The plaintiff in this medical malpractice negligence action maintained that she suffered permanent neurological injury when the defendant primary care, internist, failed to appreciate the plaintiff’s repeated complaints indicative of a spinal lesion and therefore failed to timely diagnose and treat the spinal lesion. The plaintiff sued the defendant primary care doctor and the podiatrist he referred the plaintiff to alleging they breached the standard of care. The defendants denied all allegations of negligence and raised the defense of comparative and contributory negligence.

The plaintiff suffers incomplete paraplegia with neurologic sequelae including muscle spasticity, bowel dysfunction and urinary incontinence. The plaintiff maintained that the defendant doctors, both the internist and the podiatrist, provided care that fell below medical standards and failed to perform proper diagnostic tests, failed to obtain radio-graphic imaging and failing to refer the plaintiff to a specialist.

The jury found that the defendant primary care physician was negligent, but the defendant podiatrist was not. The jury found that the negligence of the primary care physician was a factual cause of injury for the plaintiff. The jury did find that the plaintiff was comparatively negligent and that her own negligence was also a factual cause of her injuries. The jury apportioned liability at 94% against the defendant doctor and 6% against the plaintiff. The total compensatory verdict of the jury was \$19,665,312 which was reduced accordingly to \$18,485,393.30.

#### **REFERENCE**

Diana Melendez vs. Gyi P. Mo, M.D. and Albert D’Angelantonio, D.P.M. Case no. 180801939; Judge Craig Levin, 09-21-22.

**Attorney for plaintiff: Shanin Specter of Kline & Specter, PC in Philadelphia, PA. Attorney for defendant: James Young of Burns White in Philadelphia, PA.**

***\$4,850,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT NEGLIGENCE – PLAINTIFF’S DECEDENT PRESENTS TO EMERGENCY DEPARTMENT SUFFERING FROM ACUTE AORTIC DISSECTION WHICH GOES UNDIAGNOSED AND UNTREATED BY DEFENDANTS – WRONGFUL DEATH OF 55-YEAR-OLD MALE.***

#### **Bucks County, PA**

In this action for medical malpractice, the plaintiff’s decedent presented to the defendant hospital with sudden back pain that radiated to his chest shoulder and jaw. After being treated with aspirin, nitroglycerin, Zofran and fluids, his condition improved, and he was discharged by the defendants with a diagnosis of nonspecific chest pain and heat exhaustion. He was found dead in his kitchen several hours after discharge. The estate alleged that the defendants failed to diagnose and treat acute aortic dissection. The

defendants maintain the decedent was provided care in accordance with all standards based on his clinical presentation.

The decedent’s wife died in 2004 and he is survived by 11 children, 3 of which are minors.

The parties settled for \$4,850,000.

## REFERENCE

The Estate of Edward Peers by Gwendolyn Deger vs. Mark Choi, M.D., Doylestown Emergency Associates Doylestown Hospital, Linda Barnhurst, D.O. and Doylestown Radiology Associates. Case no. 2016-05468; Judge C. Theodore Fritsch, 09-13-22.

Attorney for plaintiff: Seth D. Wilson of Morris Wilson in Conshohocken, PA. Attorney for defendant: Paul C. Troy of Kane Pugh Knoell Troy & Kramer, LLP in Norristown, PA. Attorney for defendant: James P. Kilcoyne of Kilcoyne & Nesbitt, LLC in Blue Bell, PA.

**\$2,500,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – SURGEON NEGLIGENCE – NURSE PRACTITIONER NEGLIGENCE – PHYSICIAN ASSISTANT NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE AND TREAT COMPARTMENT SYNDROME – BELOW-THE-KNEE AMPUTATION FOR 22-YEAR-OLD ATHLETE.**

## Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendants, a surgeon, nurse practitioner and a physician's assistant were negligent in their care and treatment of the plaintiff following a motor vehicle collision which negligence resulted in failure to timely diagnose and treat compartment syndrome. As a result, the plaintiff was required to undergo a below-the-knee amputation. The defendants denied any deviation from acceptable standards of care.

She alleged lost wages and future medical costs to total approximately \$1.68 million. The plaintiff brought a claim against the 3 health care providers alleging negligence and seeking damages.

The matter was mediated. After 2 mediation sessions, the matter was resolved for the sum of \$2,500,000.

## REFERENCE

22-Year-Old vs. Defendant Surgeon, et al., 08-09-22.

Attorneys for plaintiff: Elizabeth Mulvey and Florence A. Carey of Crowe & Mulvey in Boston, MA.

## MOTOR VEHICLE NEGLIGENCE

**\$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – FRONT-SEAT PASSENGER SUFFERS COLON TEAR AND REQUIRES ILEOSTOMY – CASE OF PLAINTIFF DRIVER WIFE REMAINS PENDING – PASSENGERS' CASES RESOLVE FOR FULL COVERAGE.**

## Middlesex County, NJ

This motor vehicle negligence action involved a front-seat passenger, in his early 50s, who was in a vehicle being driven by his wife in which the plaintiff contended that the defendant on-coming driver crossed over and struck the host car head-on. The plaintiff passenger's 18-year-old daughter was a rear-seat passenger and also a plaintiff, who suffered a fractured clavicle. Her mother was driving, made claims that included PTSD and the host driver's case remains pending. The defendant did not dispute crossing over and causing the head-on crash.

The plaintiff front-seat passenger's injuries included multiple mesenteric injuries that required exploratory surgery, one of the results of which was sepsis, requiring a second surgery, following which this plaintiff's sepsis worsened, prompting a third exploratory which

disclosed a serosal tear at the ascending colon, colonic ischemia and secondary surgical complication of hemorrhage, necessitating massive transfusions. The plaintiff was hospitalized for 6 weeks that was followed by 6 weeks in a rehabilitation hospital. The passenger daughter suffered a fractured clavicle, which required an open reduction/internal fixation.

The defendant had a \$100,000/\$300,000 policy. The plaintiff had a \$250,000/\$500,000 UIM policy. The plaintiff also had a \$1,000,000 umbrella which was added to the UIM policy. The father's case settled prior to trial for \$1,250,000 and the daughter's case settled for \$250,000.

## REFERENCE

Taylor vs. Mikhail. 09-22.

Attorney for plaintiff: Michael J. Paragano of Nagel Rice, LLP in Roseland, NJ.

**\$537,755 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – DEFENDANT STRIKES REAR OF PLAINTIFF’S SLOWING VEHICLE – CERVICAL DISC HERNIATIONS – EPIDURAL INJECTIONS – FUTURE SURGERY REQUIRED.**

**Harris County, TX**

The plaintiff in this motor vehicle negligence action maintained that she suffered serious injuries to her neck which will require future surgery when she was slowing her vehicle due to traffic conditions and her vehicle was struck in the rear by the defendant. The defendant stipulated striking the rear of the plaintiff’s vehicle but denied all allegations of injury.

Following the collision, the plaintiff presented for pain in her neck and back and was eventually diagnosed with cervical disc herniations requiring epidural injections with the need for future fusion surgery.

The jury found that the plaintiff was entitled to recover past damages in the amount of \$117,755.35 and the plaintiff was entitled to recover future damages in the amount of \$420,000 for a total of \$537,755.35.

**REFERENCE**

Alma Escamilla vs. Nicklos Lagrone. Case no. 2018-76184; Judge R.K. Sandill, 10-12-22.

**Attorney for plaintiff: Eric D. Nielsen of The Nielsen Law Firm, P.C. in Houston, TX. Attorney for defendant: William Rustam of Walters Balido & Crain L.L.P. in Houston, TX.**

**PREMISES LIABILITY**

**\$4,550,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – UNAUTHORIZED “NIGHT BAR” OPERATED IN LIQUOR STORE PARKING LOT – 31-YEAR-OLD MALE SHOT AND KILLED – WRONGFUL DEATH OF FATHER OF 3.**

**Broward County, FL**

This negligent security action was brought by the mother of the 31-year-old Trabis Ward, a former Tennessee State University football star who died as a result of a shooting in the parking lot of the defendant liquor store. The defendants also included the owners and managers of the shopping plaza where the shooting occurred. The plaintiff claimed that the defendants were aware of unauthorized late-night activities in the parking lot of the premises, yet failed to prevent the infractions or implement adequate security there. The defendants argued that the decedent was targeted for the murder and the crime could not have been foreseen or prevented by the defendants.

Police reported, at the time, that the decedent arrived at the shopping plaza in a party bus on October 10, 2020. At approximately midnight, an unknown

person shot the decedent while he was in the parking lot. He was transported to the hospital where he was pronounced dead as a result of gunshot wound to the head. The shooter has not been arrested.

The decedent was a former Dillard High School and Tennessee State University football standout. He played running back for the Tennessee State Tigers from 2009 to 2012 and signed onto the NFL in 2013 and had a brief stint with the St. Louis Rams. He was survived by 2 minor sons and a minor daughter.

The case settled prior to trial for a total of \$4,550,000.

**REFERENCE**

Doris Deberry, as personal representative of the Estate of Trabis Ward vs. American Federated Title Corp., et al. Case no. CACE-21-013871; Judge n/a, 06-30-22.

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

**\$1,400,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPPED ON PUDDLE IN CAR DEALERSHIP – LUMBAR AND CERVICAL HERNIATIONS – SURGERY – AGGRAVATION OF KNEE AND SHOULDER ARTHRITIS TREATED CONSERVATIVELY – ALLEGED AGGRAVATION OF EMOTIONAL ISSUES.**

**Bergen County, NJ**

In this premises liability action, the plaintiff, approximately age 60, contended that as she was walking across the service area of a dealership, she slipped on a puddle. The plaintiff contended that as a result, she suffered lumbar and cervical herniations that required surgery, and an aggravation of knee and shoulder arthritis that was treated conservatively. The plaintiff also

maintained that the fall occasioned an aggravation of emotional difficulties which had previously required psychotherapy. The defendant denied that the area was unsafe and asserted that the cause of the incident was the failure of the plaintiff to walk more carefully.

The plaintiff asserted that she developed severe lumbar and cervical symptoms after the fall and that after more conservative therapy was inadequate, she

underwent surgery to both areas. The plaintiff contended that she will nonetheless suffer permanent pain and limitations. The plaintiff further contended that the incident caused an aggravation of emotional issues which were discussed in psychotherapy. The defendant had \$1,500,000 in coverage. The case settled prior to trial for \$1,400,000.

#### REFERENCE

Plaintiff in her late 50s vs. Prestige Mercedes Benz. 02-04-22.

**Attorneys for plaintiff: Cory A. Casidy and Anthony J. Riposta of Riposta Cassidy, LLC in North Arlington, NJ.**

## ADDITIONAL VERDICTS OF INTEREST

### Dram Shop

**\$1,000,000 RECOVERY – DRAM SHOP ACTION – HABITUAL ALCOHOLIC PERMITTED TO BECOME INTOXICATED AT WORK – SINGLE-VEHICLE COLLISION – WRONGFUL DEATH AT AGE 23.**

#### Miami-Dade County, FL

The decedent's estate brought this dram shop/wrongful death action against the decedent's former employer, alleging that the defendant allowed the decedent to become intoxicated at work and allowed her to attempt to drive home in an inebriated state. The decedent was involved in a single-vehicle collision on her way home, resulting in her death. The defendant and its insurance carrier agreed to pay the bar's liability policy limits.

The plaintiff showed that there was a history of social media posts and text messages with a manager of the defendant's establishment that made it obvious that the decedent suffered from a drinking problem and that the defendant bar knew or should have known about her addiction.

The decedent attempted to drive home in an intoxicated state on the night in question and was involved in a single-vehicle collision which resulted in her death. The decedent was 23 years old at the time of her death and was survived by her parents.

The case was settled, shortly after the lawsuit was filed, for the defendant's available policy limits of \$1,000,000.

#### REFERENCE

Justin Stivers, as Personal Representative of the Estate of Charilyn Martica Rodriguez vs. Sandbar Bay LLC, d/b/a/ Sandbar Sports Grill. Case no. 2022-006664-CA-01; Judge David C. Miller, 06-16-22.

**Attorney for plaintiff: Pedro Echarte of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Michael Carmona of Friedland Carmona in Coral Gables, FL.**

### Landlord Negligence

**\$650,000 RECOVERY – LANDLORD NEGLIGENCE – NEGLIGENT MAINTENANCE – PLAINTIFF DIABETIC TENANT SUFFERS SCALDING WHEN SHOWERING, CAUSING SEVERE BURNS TO FEET AND ANKLE – BILATERAL BELOW-THE-KNEE AMPUTATIONS DESPITE DEBRIDEMENTS AND SKIN GRAFTS.**

#### Bronx County, NY

In this case, the 45-year-old plaintiff tenant contended that the defendant landlord negligently failed to maintain the hot water, resulting in her suffering severe burns to both feet and ankles. The plaintiff maintained that despite treatment, including painful debridements and skin graft procedures, she required a bilateral below-the-knee amputation. The defendant denied that it had any actual or constructive notice of the condition.

The defendant contended that irrespective of the incident, the plaintiff would have required the amputations because of long-standing diabetes.

The case settled prior to trial for \$650,000.

#### REFERENCE

Williams vs. 2160 Walton, LLC, et al. Index no. 20158/18 E, 11-21.

**Attorneys for plaintiff: Jordan Jacob Nazarzadeh and Mark Walsh of Rosenbaum & Rosenbaum, PC in New York, NY.**

## Toxic Tort

**\$363,000,000 VERDICT – TOXIC TORT – ETHYLENE OXIDE EMISSION FROM CHEMICAL PLANT – DEFENDANT MEDICAL DEVICE CLEANING PLANT EMITS TOXIC CHEMICAL FROM FACILITY INTO NEIGHBORING AIR CAUSING CANCER – WILLFUL AND WANTON CONDUCT – ULTRA-HAZARDOUS ACTIVITY – CIVIL BATTERY – PUBLIC NUISANCE – BREAST CANCER.**

### Cook County, IL

In this matter, the plaintiff claimed she lived within a quarter mile of the defendant's medical device sterilization company for over 40 years. Unbeknownst to her, she was breathing in poisonous chemicals emitted from the defendant's building. She developed breast cancer due to the emissions and her son developed non-Hodgkin's lymphoma. Her case is the first of its kind to go to trial. Her son's case is pending in court. The defendant denied all allegations of negligence and maintained they complied with applicable rules and regulations regarding the chemical ethylene oxide.

The plaintiff sued the defendant sterilization company, and the parent company alleging the defendants failed to analyze how long the chemical would stay in the air in the Willowbrook community or the distance it would travel, failed to install emission controls decades earlier to reduce releases of the chemical and failed to warn the community of the hazardous

emissions. The plaintiff maintained that there was no history of cancer in her family and she had been unaware that the company was releasing the cancer causing chemical into the air.

After a 5-week trial, the jury returned their verdict awarding the plaintiff \$38 million in compensatory damages and \$325 million in punitive damages for a total of \$363,000,000.

### REFERENCE

Susan and Edward Kamuda vs. Sterigenics U.S., LLC; Sotera Health, LLC. Case no. 2018-L-010475; Judge Marguerite Quinn, 09-19-22.

**Attorney for plaintiff: Patrick Salvi of Salvi, Schostok & Pritchard, PC in Chicago, IL. Attorney for plaintiff: The Collins Law Firm in Naperville, IL. Attorney for defendant: Miner, Barnhill & Galland, PC in Chicago, IL. Attorney for defendant: Maja C. Eaton of Sidley Austin, LLP in Chicago, IL. Attorney for defendant: Chuhak & Tecson, PC in Chicago, IL. Attorney for defendant: Hollingsworth, LLP in Washington, DC.**

## Transit Authority Liability

**\$3,500,000 RECOVERY – TRANSIT AUTHORITY LIABILITY – FAILURE OF TRANSIT AUTHORITY TO PROPERLY MAINTAIN STATION – DISABLED COMMUTER TRIPS ON DEPRESSION ON LANDING AND FALLS TO LANDING BELOW – SKULL FRACTURE, SUBDURAL HEMATOMA AND SUBARACHNOID HEMORRHAGE – DEATH APPROXIMATELY 3 YEARS LATER.**

### Kings County, NY

This case involved a 55-year-old decedent in which the plaintiff contended that the defendant NYCTA negligently failed to adequately inspect an interior stairway at the station. The plaintiff maintained that a depression on an interior stairway was associated with a clean out plug on the underside of the landing. The plaintiff asserted that the decedent, who was standing on the landing, lost her footing and fell down a flight of stairs to the landing below, suffering a skull fracture, subarachnoid hemorrhage, a subdural hematoma and as a result, died 3 years later.

The plaintiff asserted that the decedent was intermittently conscious and suffered extensive pain over the course of the ensuing 3-year-period until she died. The defendant denied that the decedent was conscious during this period. The plaintiff would have countered that the hospital records reflected that

during the first 1 ½ years, the decedent would react to stimulation, would open her eyes when asked and that at times, she seemed alert.

The decedent left 5 children, 4 of whom were adults and the 13-year-old who was with her when she fell.

The case settled prior to trial for \$3,500,000. The children agreed to the division among the siblings.

### REFERENCE

Tacardon, et al vs. NYCTA. Index no. 9646/14, 08–22.

**Attorneys for plaintiff: Liza A. Milgrim and David Dean of Sullivan Papain Block McGrath Coffinas & Cannavo, PC in Garden City, NY.**