



NEW JERSEY

JURY VERDICT

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FEATURED CASES

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

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

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FEATURED CASES

\$2,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT DRIVER LOSES CONTROL WHILE TURNING AT INTERSECTION STRIKING MINOR PLAINTIFF SITTING ON SIDEWALK – THIGH LACERATION – CERVICAL DISC INJURIES REQUIRING FUSION PROCEDURE – PTSD.

Middlesex County, NJ

The plaintiffs in this vehicular negligence action maintain that the defendant driver lost control while operating her vehicle at an intersection and overcorrected causing her to enter the sidewalk and strike the minor. The defendant admitted entering the sidewalk when losing control but denied striking the minor causing her to sustain serious injuries. The defendant denied making contact with the minor but admitted losing control of her vehicle and entering the sidewalk where the minor was sitting.

On May 25, 2018, the female minor was sitting on the sidewalk near her home in East Brunswick, New Jersey. The defendant driver was traveling westbound on Arthur St. attempting to turn left on Prigmore St. When the defendant's rear wheel hit the corner of the curb causing the defendant to overcorrect and strike the plaintiff sitting on the sidewalk.

The plaintiff maintained that the defendant driver operated the vehicle in a careless and reckless fashion, traveling at an excessive rate of speed, failing to keep a proper lookout and failing to make a proper turn. The plaintiff also maintained that the defendant's vehicle owner negligently entrusted the vehicle to the defendant driver. The minor sustained a left thigh laceration and cervical disc injuries requiring a fusion procedure. She also suffered an acute stress reaction.

The parties settled for \$2,000,000.

REFERENCE

Melanie Morales, a minor by her parent and guardian, Susana Paz vs. Ashleigh S. Drummond and Richard A. Drummond. Docket no. MIDL002513-20; Judge Joseph Rea, 07-29-22.

Attorney for plaintiff: Michael Heck of Epstein Ostrove, LLC in Edison, NJ. Attorney for defendant: Joanna Inglessis of Law Office of Anthony P. Castellani in Marlton, NJ.

\$953,763 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF STOPPED IN FAST-FOOD DRIVE-THRU STRUCK BY VEHICLE OPERATED BY UNDERAGE, UNLICENSED DRIVER MULTIPLE TIMES, PUSHING IT THROUGH DRIVE-THRU – DISC HERNIATIONS AND BULGES AT C5-6 AND C6-7; DISC BULGES AT L3-4, L4-5 AND L5-S1; RIGHT C-6 RADICULOPATHY; BILATERAL CARPAL TUNNEL SYNDROME, BILATERAL SHOULDER STRAIN; CERVICAL AND LUMBAR STRAIN/SPRAIN.

Burlington County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the rear of his vehicle with such force that it caused significant, permanent injury. The plaintiff also brought suit for negligent entrustment against the defendant owner of the vehicle who gave permission to the underage, unlicensed driver to drive the vehicle. The defendant admitted liability but asserted that the plaintiff failed to show that he sustained a permanent injury.

On December 1, 2018, the plaintiff was stopped in the drive-thru lane of a McDonald's restaurant on Route 38 in Mt. Laurel. The defendant was driving a

vehicle that entered the drive-thru lane directly behind the plaintiff. The plaintiff contended that the defendant negligently failed to observe the plaintiff's vehicle stopped in the lane and collided violently with the rear of his car multiple times. The plaintiff presented video footage of the accident taken by the restaurant's security cameras. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations and bulges at C5-6 and C6-7; disc bulges at L3-4, L4-5 and L5-S1; right C-6 radiculopathy; bilateral carpal tunnel syndrome, bilateral shoulder strain; cervical and lumbar strain/sprain. The plaintiff testified

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that he was unable to work for a period of time because of his injuries. The defendant disputed the nature and extent of the plaintiff's alleged injuries. The defendant alleged that the plaintiff sustained a related cervical strain and sprain injury which had since resolved.

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

The jury found in favor of the plaintiff and awarded damages in the amount of \$953,763 broken down as follows: \$23,263 in interest; \$3,500 in lost earnings and \$930,500 in pain, suffering and loss of enjoyment of life.

REFERENCE

Lamothe vs. Huggins, et al. Docket no. L-001918-20; Judge Aimee R. Belgard, 07-14-23.

Attorney for plaintiff: Joel Wayne Garber of Garber Law in Voorhees, NJ. **Attorney for defendant:** Anthony Young of Parker Young & Antinoff, LLC in Marlton, NJ.

COMMENTARY

Following the verdict, the defendants filed a motion for new trial or judgment notwithstanding the verdict. The defendants maintained that the plaintiff filed a motion for summary judgment as to the defendants to which the defense objected. The court denied the motion as moot due to the fact that the defense stipulated liability. The defendants argued that it was intended that liability be stipulated as to the defendant driver only. The defendant driver was the operator of the vehicle at the time of the accident and was solely liable for the happening of the accident. The defendant owner gave her permission to use the vehicle, but, the defendants contended, there was no liability and no concession as to liability by the defendant owner.

The defendants maintained that a new trial was warranted because the agreed upon jury charge did not include a time unit rule instruction, depriving the defendants of addressing it in closing. Accordingly, the verdict, which the defendants contended was excessive, could be concluded to be predicated on the time-unit rule which was not included in the court's charge to the jury. The defendants also asserted that the plaintiff engaged in distracting courtroom behavior with the capacity to taint the jury and unfairly prejudice the defense. The plaintiff's distracting behavior included walking among members of the jury array outside the presence of counsel and the court, intentionally drawing attention to his injuries. The defendants conceded that it was not known if the plaintiff spoke to any of the jurors; however, his actions alone should be enough for a presumption of prejudice.

The defendant also argued that it was error for the court to allow the plaintiff to present proof of lost wages. The defendant asserted that the plaintiff did not present medical testimony that his lost wages were proximately caused by injuries allegedly suffered as the result of the subject accident. Lastly, the defendants claimed that the verdict was excessive and warranted a new trial, or remittitur. The plaintiff opposed the motion arguing that the defendants failed to satisfy the standard governing motions for new trial or judgment notwithstanding the verdict. The plaintiff maintained that the defendants' alternative motion for JNOV could not even be entertained by the court because the defendants never made the prerequisite motion for judgment at trial, so they were procedurally barred from asserting that motion post-trial. More critically, the plaintiff argued, the defendants could not prove that this was an extraordinary case where the jury's verdict must be set aside. The plaintiff held that the jury's verdict was correct given the weight of the evidence presented in the plaintiff's favor. Nothing that transpired during the course of the trial could be considered a miscarriage of justice, according to plaintiff's counsel. As to the defendants' claim that stipulation of liability was only with regard to the defendant driver, the plaintiff pointed to his motion for summary judgment during the hearing for which defense counsel was adamant that they were stipulating liability for both defendants. Accordingly, the plaintiff's motion was denied as moot because liability had been stipulated for both defendants. The plaintiff also argued that the inclusion of the time-unit rule in no way prejudiced the defendants. Critically, the plaintiff was restricted in the presentation of his time-unit argument upon defense counsel's objection.

As a compromise between the parties, the court ruled that plaintiff's counsel could present time-unit calculations only generally, without further argument. The court restricted plaintiff's counsel from diving into the most effective part of the time-unit argument, which was the de-

scription of the claimant's lifelong pain and suffering. Plaintiff's counsel was limited to a slightly more detailed life expectancy presentation, devoid of any emotional evocation to the jury. The plaintiff maintained that whether the jury heard a restricted time-unit argument or even none at all, the remaining evidence still substantiated the award. Likewise, the plaintiff's behavior in no way prejudiced the defendants and the defendants waived any recourse by failing to object.

The plaintiff argued that defense counsel was painting the case as tantamount to the jury seeing impermissible evidence left open on the deliberation room table when, in reality, part of what the jury can, and should, evaluate is a witness' demeanor and physical presentation. These physical components, the plaintiff held, are all within the purview of the jury's consideration. The plaintiff argued he was properly permitted to present proof of lost earnings. The plaintiff put forth

that he presented credible, medical evidence that he sustained permanent injuries as a result of this collision. The plaintiff then credibly testified that he was unable to work for a period of time because of those injuries, and quantified the amount of lost earnings that he probably lost. This all conformed with the requirements of Model Civil Jury Charge 8.11C(1).

Lastly, the plaintiff argued that the verdict was fair and just in light of the evidence presented and should not be remitted. The evidence underlying the jury's decision included the extent to which the plaintiff's life had been upended by his injuries as well as the fact that his life expectancy is longer than his current age. The plaintiff held that the jury simply extrapolated the plaintiff's future damages in calculating his present award. Therefore, the court should not, the plaintiff maintained, deem the verdict wrong or shocking to the conscience.

\$1,000,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – ABSENCE OF FALL PROTECTION AT NEW HOME CONSTRUCTION SITE – PLAINTIFF FRAMER FALLS 16 FEET – ANKLE AND DISTAL LEG FRACTURE ON RIGHT SIDE AND FRACTURED LEFT FOOT – PLAINTIFF RETURNS TO WORK WITH RESTRICTIONS.

Essex County, NJ

This action involved a plaintiff framer in his mid 30s who was working on a housing project. The plaintiff contended that the defendant G.C. negligently failed to provide fall protection. The plaintiff maintained that as a result, he fell 16 feet, suffering a fracture to the right ankle and both feet. The plaintiff required surgery several months later. The plaintiff, who returned to work, contended that because of difficulties, including climbing, he is significantly limited in the work he can perform. The plaintiff further contended that he will permanently be very limited in the continuation of sports and other activities. The plaintiff is single and has no children.

The evidence disclosed that the incident occurred in the morning and shortly after the workers started for the day. The plaintiff maintained that he was left in the work van until the end of work that day and the pain was especially severe during this period. The defendant G.C. took the position that it could rely upon the employer to provide fall protection.

The plaintiff maintained that he suffered an ankle fracture and fracture of the distal fibula on the right side as well as a foot fracture on the left side. The plaintiff asserted that despite surgeries, he will permanently suffer extensive pain and limitations. The plaintiff contended that although he was able to return to work, he is greatly limited, especially with climbing. The plaintiff further asserted that he has been forced to greatly restrict his previously active lifestyle.

The plaintiff's orthopedist maintained that the injuries are permanent in nature. The defendant's orthopedist contended that the injuries healed well.

The case settled during trial for \$1,000,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Steven Nehmer, M.D. from Union, NJ. Plaintiff's safety professional expert: William Mizel from Ft. Myers, FL.

Amarado vs. Monmouth Custom Builders, et al. Docket no. ESX-L-0806-18; Judge Jeffrey B. Beacham, 08-23.

Attorney for plaintiff: Joseph A. Reardon, III of Ginarte Gonzalez Winograd, L.L.P. in Newark, NJ.

COMMENTARY

The plaintiff was able to obtain this recovery despite the fact that he returned to work and made no future wage claim. The evidence that after the plaintiff was injured in the morning accident, he was placed in the work van and until the end of the work day undoubtedly contributed to the likely strong jury reaction. Additionally, the plaintiff stressed that he was very physically oriented, that his ability to continue has been effective and that in view of his age in his mid 30s, this restriction is very substantial. In this regard, the plaintiff testified in a very straightforward manner, and it is felt that this factor also significantly contributed to the result.

\$975,000 RECOVERY – COUNTRY CLUB NEGLIGENCE – PLAINTIFF PARTICIPANT IN GOLF TOURNAMENT HELD AS DEFENDANT COUNTRY CLUB STRUCK BY CART USED BY CO-PARTICIPANT – COMMINUTED FRACTURE OF TIBIAL PLATEAU – KNEE REPLACEMENT SURGERY – NO INCOME CLAIMS.

Hudson County, NJ

In this action, the plaintiff participant in a charity golf event held at the defendant country club contended that co-defendant operator of a gold car, a fellow participant, negligently operated a golf cart, striking the plaintiff as he was bending down. The plaintiff sustained a comminuted fracture the tibial plateau and required a subsequent knee replacement. The plaintiff made no income claims.

The evidence disclosed that the plaintiff and the defendant co-participant shared a 2-seat motorized golf cart. As they were playing the third hole and were approaching the green, the plaintiff was walking in the fairway while the other participant was driving the golf cart and attempting to retrieve a ball that was no longer in play. As the plaintiff reached down to pick up the ball, the co-participant continued driving the golf cart and hit plaintiff from behind.

The defendant operator has a \$300,000 homeowners' policy and the plaintiff also discovered that the country club's policy named the participant. During discovery, the plaintiff determined that the co-participant was named as an additional insured under the country club's insurance policy.

The plaintiff maintained that he will suffer pain and difficulties with activities otherwise taken for granted. The plaintiff has been able to resume golf, but contended that the injuries have extensively impacted his game.

The case settled prior to trial for \$975,000 (including the \$300,000 policy limits of the other participant's homeowner's policy).

REFERENCE

Bruno vs. Maplewood Country Club, et al. Docket no. HUD-L-3698 – 19.

Attorneys for plaintiff: Robert Baumgarten and Evan Baker of Davis Saperstein & Salomon ,PC in Teaneck, NJ.

COMMENTARY

The co-participant had a policy limit of \$300,000 and a review of the country club's policy enabled the plaintiff to establish that the participant was an additional insured under the country club's policy. Additionally, the plaintiff obtained this recovery despite the absence of any income claims. In this regard, the plaintiff emphasized that denature despite the knee replacement, his day to day life has become much more painful and difficult. Finally, the traumatic nature of the incident in which the plaintiff was struck by the golf cart from behind probably inured to the plaintiff's benefit.

\$600,000 RECOVERY – MEDICAL MALPRACTICE – RADIOLOGY – PLAINTIFFS CONTEND DEFENDANT ULTRASOUND TECHNICIAN NEGLIGENTLY PERFORMED ULTRASOUND TESTING ON PLAINTIFF MOTHER THAT FAILED TO CAPTURE SIGNIFICANT BIRTH DEFECTS IN PLAINTIFF INFANT – TRISOMY 13 POLYDACTYLY; CLEFT PALATE AND OTHER SIGNIFICANT ANOMALIES – PLAINTIFFS CLAIM DAMAGES FOR EMOTIONAL DISTRESS.

Essex County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant ultrasound technician performed ultrasounds in a manner that did not meet standard practices in radiology which caused the delay or failure to diagnose birth defects in the infant plaintiff. The defendant denied negligence and argued that the plaintiff's defects were not present on radiological films prior to birth.

On January 17, 2014, the plaintiff mother presented to the hospital for the birth of the minor plaintiff. In the course of her pregnancy, the mother had undergone numerous ultrasounds performed by the defendant radiologist. The plaintiffs asserted that the defendant failed to report abnormal findings of cerebral fetal ventricles being dilated in one ultrasound; failed to report ventriculomegaly on another; and provided an

inadequate fetal chamber heart view and no recorded attempt to obtain left and right ventricular outflow tract views.

The plaintiffs maintained that the defendant sonographer deviated from acceptable standards with regard to the assessment and documentation for a second and third trimester ultrasound examination. The plaintiffs claimed that, to a reasonable degree of medical probability, proper identification and reporting of cerebral ventriculomegaly at those ultrasounds would have resulted in a targeted fetal ultrasound to search for additional anomalies as well as patient counseling and consideration of fetal karyotyping to identify potential chromosomal abnormalities. The plaintiffs alleged that the defendant's negligence caused a delay or failure to diagnose an intestinal volvulus.

The plaintiff was ultimately diagnosed, after birth, with Trisomy 13 polydactyly; cleft palate; and other significant anomalies. As a result of the defendant's negli-

gence, the plaintiff was born with severe and permanent impairment that has and will continue to deprive him of any ability to engage in a normal life. The defendant argued that, even if the plaintiff's claimed deviations on 3 ultrasounds did happen, they did not prove to be an issue at birth. Further, the ultrasound technician does not interpret the films, but rather, a radiologist reviews and interprets the films and makes the decision as to abnormality and the need for further testing. Thus, the defendant was not at fault for any failure to perform further testing.

The parties settled the matter prior to trial in the amount of \$600,000 broken down as follows: \$149,586 in attorney fees; \$415 in costs and disbursements; \$225,000 to the plaintiff parents and \$225,000 to the minor plaintiff.

REFERENCE

Jaroszewicz vs. Lo, et al. Docket no. L-005482-15; Judge Jeffrey B. Beachan, 08-30-23.

Attorney for plaintiff: E. Drew Britcher of Britcher, Leone & Sergio, LLC in Glen Rock, NJ. Attorney for defendant: Michael J. McBride of Mattia & McBride, P.C. in Fairfield, NJ.

Verdicts By Category

CONTRACT

\$70,000 COUNTERCLAIM VERDICT

Breach of contract – Plaintiff wedding planner agrees to purchase extensive inventory from defendant for \$100,000 to be paid via down payment and installments – Plaintiff ceases paying claiming inventory incomplete, damaged and unusable – Defendant counterclaims plaintiff owes remaining \$62,500 per agreement.

Middlesex County, NJ

In this breach of contract case, the plaintiff, a wedding and event planner, asserted that the defendant sold her wedding decor inventory, via an agreement for the plaintiff to pay in installments. The plaintiff argued that the defendant failed to deliver all of the goods and delivered some of the pieces in damaged or unusable condition. The defendant denied the plaintiff's claims and countersued for breach of loan agreement. The plaintiff denied that the parties had entered into a loan agreement but rather a contract for purchase and sale in installments.

The plaintiff runs a high end wedding, and event décor business, supplying grand entrances, furniture, centerpieces, assorted stage décor, table settings, and arrangements. The defendant also ran a wedding and event décor business and was looking to sell off some of her wedding and event décor pieces. Accordingly, after discussions between the parties, the plaintiff signed a Promissory Note to pay for approximately \$100,000 worth of inventory purchased from the defendant. Per the terms of the agreement, the plaintiff was to pay a down payment of \$25,000 and then \$2,500 monthly until the full amount was paid.

The plaintiff maintained that she was performing, by making the initial \$25,000 payment and making timely monthly payments as per the agreement. Nevertheless, the defendant failed to deliver the approximately \$100,000 worth of inventory because the defendant provided the plaintiff with damaged, unusable, and missing items. For example, items listed as having a high quantity on the invoice were present in only small amounts; other items listed in the invoice or were not present in the inventory at all. Per the plaintiff's accounting of inventory received to date, she was still missing: dining room chairs, a decorative partition, a bicycle rickshaw, decorations, multiple pelmets, mirror frames, designed flower pot stands, mixed fabric table covers of assorted colors, trestle table covers, dry red roses, over 2,500 dry arrangements including flowers beads and leaves, brass candle stands, a table lamp, a chandelier, chair covers, tiles, table runners, color panels, sofa cushions, floor cushions, chair ribbon and accessories. Further, the

plaintiff claimed she received damaged property from the defendant including broken dining room chairs, mirror frames, a broken bicycle rickshaw, lamps, and lamp shades.

The plaintiff held that the defendant was in material breach of the agreement by failing to perform in delivery of the entire inventory and by delivering damaged goods. Moreover, the plaintiff made several follow up phone calls and sent other written correspondence to the defendant in an attempt to cure the breach but the defendant did not respond and did not cure the breach. The plaintiff argued that she was lawfully excused and no longer obligated to make any further payment to the defendant; and, that the defendant was obligated to pay the plaintiff compensatory damages.

The defendant denied breaching the contract and argued that the plaintiff paid the down payment and made several monthly payments but failed to make payment of the full amount even though she got the benefit of all the wedding and decor pieces at the time of execution of the Note. The defendant argued that the sale was as-is and final and the plaintiff had the opportunity to inspect the pieces at the time of execution of the agreement and delivery of the items but did not reject any of the inventory and, moreover, paid the down payment and continued to make monthly payments. The defendant argued that, had she failed to provide the merchandise, the plaintiff would not have paid these monies and would have rejected the goods at the time she took possession of them.

Further, the defendant brought a counterclaim arguing that the plaintiff, and her husband as guarantor, were in arrears on a loan from the defendant to the plaintiff in the amount of \$62,500, representing the original loan amount of \$100,000 less the down payment of \$25,000 and 5 payments of \$2,500 each.

The jury found that the plaintiff breached the contract and returned a verdict in favor of the defendant on her counterclaim. The jury determined that the plaintiff and her husband, as guarantor, were in breach of the contract between the parties and owed damages to the defendant/counter-plaintiff in the amount of \$70,000 broken down as follows: \$62,500 in damages and \$7,500 in attorney fees.

REFERENCE

Shahid vs. Farid. Docket no. L-003179-19; Judge Patrick J. Bradshaw, 05-03-23.

Attorney for plaintiff: Natraj S. Bhushan of Turturro Law, P.C. in Brooklyn, NY. Attorney for defendant: Saif M. Agha of Agha & Agha, LLP in Edison, NJ.

■ \$20,000 VERDICT

Breach of contract – Fraud – Plaintiff claims it paid defendant to store paper goods in defendant's warehouse but defendant took possession of stored goods and refused to return them to plaintiff – Defendant denies contract for storage and argues contract for plaintiff to sell defendant's goods on commission and plaintiff failed to pay defendant portion of sales.

Morris County, NJ

In this breach of contract and fraud case, the plaintiff asserted that the defendant kept and converted goods belonging to the plaintiff in breach of a contract for storage of the goods in the defendant's warehouse. The plaintiff also claimed breach of the duty of good faith and fair dealing, conversion and fraud by the defendant. The defendant admitted that the plaintiff paid \$1,000 for the storage use of the defendant's warehouse and that certain items of merchandise that the plaintiff stored in the warehouse remained in the warehouse, but denied the remainder of the plaintiff's claims.

On April 17, 2020, the plaintiff and defendant agreed for the plaintiff to rent the defendant's warehouse and that merchandise being delivered to the plaintiff, specifically napkins and paper goods owned by the plaintiff, be delivered to the defendant's warehouse located at 26 Commerce Road in Fairfield. The agreed upon rent was \$1,000 per month for the storage of the plaintiff's merchandise, which the defendant accepted. The plaintiff paid the requested rental of \$1,000 for the storage of its merchandise at the defendant's warehouse. The rental was paid on April 17, 2020 and the term of the rental was from April 17, 2020 until May 16, 2020.

The plaintiff maintained that it thereafter had its paper merchandise delivered to the defendant's warehouse, for purposes of selling the goods to the public, and the defendant accepted the goods into his warehouse. The plaintiff claimed that, sometime between the dates of April 17, 2020 and May 17, 2020, the plaintiff went to the defendant's warehouse and learned that the defendant had changed the locks on the warehouse and that plaintiffs had no access. When the plaintiff demanded to know why the defendant changed the locks, the defendant refused to give a reason. Furthermore, the plaintiff maintained that the defendant refused to permit the plaintiff to retrieve the merchandise. The plaintiff claimed the merchandise belonging to the plaintiff was still at the defendant's warehouse. The plaintiff asserted that the defendant wrongfully and willfully held the plaintiff's merchandise.

The plaintiff claimed breach of contract and the duty of good faith and fair dealing. The plaintiff maintained that the defendant committed conversion against plaintiff; defrauded the plaintiff and induced the plaintiff into transferring their merchandise into the property of the defendant in violation of the

fraud acts including the consumer fraud acts. The plaintiff claimed they were damaged in the sum of no less than \$20,000, plus the loss of selling the merchandise on the open market.

The defendant maintained that the paper goods in the defendant's warehouse had a value much less than \$20,000, and the plaintiff failed to include the fact that the plaintiff owed the defendant approximately \$60,000. The defendant claimed that the plaintiff paid \$1,000 as rent for the use of the warehouse, but never paid a security deposit and made no other rental payment. Further, the defendant claimed the plaintiff owed under a consignment agreement. The defendant maintained that the agreement was not a rental agreement, as the plaintiff stated, but, rather, was a consignment agreement whereby the plaintiff agreed to sell products owned by the defendant in exchange for retention of \$15 per \$100 of the plaintiff's Amazon sales, and that the plaintiff would pay the remaining \$85 per \$100 to the defendant. Based on the plaintiff's agreement to pay the defendant for the balance due and owing under the Consignment Agreement, the defendant facilitated the plaintiff's removal of product from the warehouse in good faith.

Additionally, the defendant held that the Consignment Agreement provided that any and all refunds, deductions, costs and fees were the sole responsibility of the plaintiff. Between April 1, 2020 and April 26, 2020, the plaintiffs sold products owned by the defendant under the Consignment Agreement in the sum of \$82,000, and thereafter additional funds were received by the plaintiff for the sale of the defendant's products under the Consignment Agreement through May 3, 2020. The defendant counterclaimed that the plaintiff breached the Consignment Agreement because it did not pay the defendant 85% of the money that the plaintiff received from the sale of the defendant's product as required by the agreement. The defendant also counterclaimed that the plaintiff made numerous careless mistakes that the plaintiff acknowledged such as shipping the wrong product and double shipping products which caused losses to the defendant such that the plaintiff agreed he would not take 155 on products that he sold erroneously or which were returned.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found in favor of the plaintiff and against the defendant in the amount of \$20,000. The arbitrator found that after the plaintiff delivered the paper goods at issue to the defendant's warehouse the defendant breached the agreement by denying him access to his goods and thereby converting the goods. On the counterclaim filed by the defendant against the plaintiff, the arbitrator found in favor of plaintiff/counter-defendant and against the defendant/counter-plaintiff. The arbitrator concluded that the purported agreements were not signed by the plaintiff and that there was an

oral agreement, with which the plaintiff had fully complied. The arbitration was not confirmed and the matter proceeded to bench trial.

After a bench trial, the court found in favor of the plaintiff as to the counts of breach of contract and the duty of good faith and fair dealing but that the plaintiff failed to prove violations of Consumer Fraud Act. The court awarded \$20,000 to the plaintiff. As to the defendant's counterclaim; the court found in favor of the plaintiff.

REFERENCE

Sahin, et al. vs. Maydel, et al. Docket no. L 001749-20; Judge Stephan C. Hansbury, 05-23-23.

Attorney for plaintiff: Ilana R. Schwitzer, Esq. in Fair Lawn, NJ. Attorneys for defendant: Deborah A. Bryant and Andrew B. Sobel of Sobel Han & Cannon, LLP in Rochelle Park, NJ.

DOG ATTACK

\$50,000 RECOVERY

Dog attack – 2-year-old plaintiff bitten and dragged by arm by defendants' pit bull – Lacerations; puncture wounds and fractured left arm – Wound care and external fixation of fracture.

Cumberland County, NJ

In this dog attack case, the plaintiff, a 2-year-old boy, asserted that the defendant dog owners allowed their male pit bull to attack the plaintiff causing him significant, permanent injury. The defendants did not file an answer to the plaintiff's complaint and agreed to settle the matter.

On July 24, 2011, the minor plaintiff was visiting at the home of the defendants when their dog viciously attacked, bit and dragged the plaintiff without warning. The plaintiff asserted that he in no way provoked or contributed to the attack by the defendants' dog. The defendants were in control of the dog when the incident happened and, the plaintiff contended, failed to meet their duty of care to the plaintiff when they failed to control or supervise their dog. The plaintiff held that the defendants knew or should have known of the dog's vicious propensities and

negligently acted in a careless, reckless, and negligent way when they did not control the dog. The plaintiff alleged that the attack resulted in permanent injuries.

As a result of the attack, the plaintiff sustained lacerations; puncture wounds; and a fractured left arm. The plaintiff was treated at the emergency room for the lacerations and puncture wounds and with external fixation for the arm fracture. The plaintiff has permanent scarring from the attack.

The parties settled the matter prior to trial in the amount of \$50,000 broken down as follows: \$13,079 in attorney fees; \$771 in costs and disbursements and \$36,921 in net damages to the minor plaintiff.

REFERENCE

O'Brien vs. Milby, et al. Docket no. L-000130-23; Judge James R. Swift, 06-27-23.

Attorney for plaintiff: Michael K.W. Nolan of Carluccio, Leone, Dimon, Doyle & Sacks, LLC in Toms River, NJ.

INSURANCE OBLIGATION

\$30,000 RECOVERY

Insurance obligation – Uninsured motorist – Minor plaintiff brings suit for uninsured motorist coverage when vehicle car-jacked by unknown driver and driven into tree – Skull fracture.

Essex County, NJ

In this case, the plaintiff, a 5-year-old girl, asserted that she was involved in a car-jacking incident that ended in a collision wherein she was seriously injured. The plaintiff brought suit against her insurer for the uninsured motorist who car-jacked the vehicle and caused the accident. The defendant filed a notice of appearance but ultimately settled the matter.

On December 30, 2019, the plaintiff was a passenger in a vehicle stopped in the roadway in the vicinity of Bergen Street and Hansbury Avenue in Newark. At that time, an unknown person entered and began operating the motor vehicle, ultimately causing it to collide with a tree, resulting in significant, serious injury to the minor plaintiff.

As a result of the collision, the minor plaintiff sustained a skull fracture for which she underwent procedures to repair and remediate any damage. The plaintiff's pediatrician opined that she had fully recovered without any abnormal cognitive findings.

The parties settled the matter prior to trial in the amount of \$30,000 broken down as follows: \$7,419 in attorney fees; \$324 in costs and disbursements; and \$22,257 in net damages to the minor plaintiff.

REFERENCE

Narcisse vs. Geico Employees Insurance Company. Docket no. L-001274-23; Judge Richard T. Sules, 07-19-23.

Attorney for plaintiff: John Salemi of Law Offices of Pugliese & Salemi, LLP in Newark, NJ. Attorney for defendant: Gabriella Esposito of Law Offices of Leslie A. DeTorres in West Orange, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

■ \$13,200 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – 11-year-old plaintiff struck on bicycle by left-turning defendant – Right shoulder strain, right elbow strain, right wrist strain, bilateral knee strain, and left thumb strain – Plaintiff claims future susceptibility to degenerative joint disease due to injuries – Sling, brace and physical therapy.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, an 11-year-old girl, asserted that the defendant driver struck the plaintiff, on her bicycle, in the roadway with such force that it caused significant, permanent injury. The defendant filed a notice of appearance but then settled the matter before it proceeded further.

On September 21, 2021, the minor plaintiff was riding her bicycle southbound on Harrison Avenue where it intersects with Franklin Avenue in Montclair. The defendant was driving southbound on Franklin Avenue and then made a left turn onto Harrison Avenue. The plaintiff contended that the defendant negligently failed to make sure the way was clear to make a turn, failed to observe the plaintiff on her bicycle and struck her in the roadway. The plaintiff was taken to

her home nearby and an ambulance was called to take her to the emergency room. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained right shoulder strain, right elbow strain, right wrist strain, bilateral knee strain, and left thumb strain. The plaintiff treated conservatively with physical therapy, sling and brace. Her physician reported that she had recovered well but that her injuries left her susceptible to degenerative joint disease in the future.

The parties settled the matter prior to trial in the amount of \$13,200 broken down as follows: \$3,107 in attorney fees; \$772 in costs and disbursements; \$739 in medical expenses and \$8,582 in net damages to the minor plaintiff.

REFERENCE

Miller vs. Martin. Docket no. L-002517-23; Judge Richard T. Sules, 09-27-23.

Attorney for plaintiff: Hanna C. Eichen of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorney for defendant: Georgette M. Wilton of Voss Nitsberg DeCoursey & Hawley in Iselin, NJ.

Auto/Pedestrian Collision

■ \$75,000 VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff pedestrian struck by defendant’s vehicle while crossing street in crosswalk – Cervical disc bulges – Lumbar disc herniation.

Passaic County, NJ

In this motor vehicle negligence action, the plaintiff pedestrian was struck by the defendant’s vehicle while crossing the street, causing her to become injured. The defendant denied all allegations of negligence.

On September 17, 2018, the plaintiff pedestrian was walking on McBride Avenue, at or near its intersection with Glover Street in Paterson, New Jersey. At this time,

the plaintiff was attempting to cross McBride Avenue in the crosswalk at the subject intersection. At the same time, the defendant’s vehicle was traveling on Glover Street and was preparing to make a left turn onto McBride Avenue. As the plaintiff was crossing the street, she was struck by the defendant’s vehicle turning left.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff pedestrian, failing to wait for clearance before making a left turn, failing to properly and safely execute a left turn, failing to obey a crosswalk, failing to remain adequately attentive, failing to obey traffic conditions, failing to warn of the vehicle’s approach, failing

to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulges and lumbar disc herniation.

The jury found in favor of the plaintiff and awarded \$75,000.

■ \$25,000 VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff pedestrian struck by defendant's vehicle in store parking lot – Neck pain – Left shoulder pain – Lumbar disc herniation.

Ocean County, NJ

In this motor vehicle negligence action, the plaintiff pedestrian sustained injuries, after being struck by the defendant's vehicle in a store parking lot, as the defendant's vehicle backed over a curb. The defendant generally denied all allegations of negligence.

On September 23, 2018, the plaintiff pedestrian was lawfully walking on a sidewalk in a Boscov's parking lot, located on the premises of 1201 Hooper Avenue in Toms River, New Jersey. At the same time, the defendant's vehicle was attempting to back into a parking spot, adjacent to the subject sidewalk. As the defendant was backing in, the vehicle backed over the curb of the sidewalk and struck the plaintiff pedestrian.

REFERENCE

Mendez Yohanny vs. Rodriguez Emely. Docket no. L000707-20; Judge Vicki A. Citrino, 07-08-23.

Attorney for plaintiff: Daniel P. McNerney of McNerney & McAuliffe in Hackensack, NJ. Attorney for defendant: Carl A. Mazzie of Foster & Mazzie, LLC in Totowa, NJ.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff pedestrian, failing to remain adequately attentive, failing to safely and properly back into a parking spot, failing to keep the vehicle inside the subject parking spot, failing to keep the vehicle under proper and adequate control, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff pedestrian. Consequently, the plaintiff sustained injuries, including neck pain, left shoulder pain, and lumbar disc herniation.

The jury found in favor of the plaintiff and awarded \$25,000.

REFERENCE

Robertazzi Jacquelin vs. Tidwell Stephanie. Docket no. L002062-20; Judge Craig L. Wellerson, 08-29-23.

Attorney for plaintiff: Sebastien Ferrantell of Montenegro, Thompson, Montenegro & Genz in Brick, NJ. Attorney for defendant: Donald M. Barrone of CSAA Insurance Group.

Head-on Collision

■ \$35,000 VERDICT

Motor vehicle negligence – Head-on collision – Plaintiff's vehicle struck head-on by defendant's vehicle after defendant crosses over center line – Lumbar disc herniation.

Hudson County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck head-on by the defendant's vehicle after the defendant crossed over the center line into the plaintiff's lane of travel, causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On May 6, 2018, the plaintiff's vehicle was traveling northbound on Garfield Avenue, near its intersection with Lembeck Avenue, in Jersey City, New Jersey. At the same time, the defendant's vehicle was traveling southbound on Garfield Avenue, in the same location. At the time of the incident, the defendant's vehicle suddenly swerved over the center line and

abruptly entered the northbound lane of travel. As a result, the defendant's vehicle struck the plaintiff's vehicle head-on.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to keep the vehicle under proper and adequate control, failing to remain in the correct lane of travel, failing to obey traffic conditions, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including a lumbar disc herniation which required and ablation procedure to repair.

The jury found in favor of the plaintiff and awarded \$35,000.

REFERENCE

Wilson Leonard vs. Dunn Mona. Docket no. L003725-19; Judge Anthony V. Delia, 05-10-23.

Attorney for plaintiff: Alexander O. Bentsen of Miller, Meyerson & Corbo in Jersey City, NJ. Attorney for defendant: Nancy Beth Appel of Travelers Insurance.

Intersection Collision

\$76,000 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff's vehicle struck in front passenger side by defendant's vehicle which disregarded red light – Cervical and lumbar disc bulges – Left shoulder contusion – Complex tear of right meniscus.

Passaic County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in its front passenger side by the defendant's vehicle, which disregarded a red light, causing the plaintiff to suffer multiple injuries. The defendant generally denied all allegations of negligence.

On May 11, 2021, the plaintiff's vehicle was traveling on Goffle Hills Road, at or near its intersection with Goffle Road, in Hawthorne, New Jersey. At this time, the plaintiff's vehicle was preparing to proceed straight through the subject intersection with a green traffic light in her favor. At the same time, the defendant's vehicle was traveling on Goffle Road, toward the same intersection with a red traffic light. As the plaintiff's vehicle was proceeding through the inter-

section, the defendant's vehicle ran the intersecting red light and collided with the front passenger side of the plaintiff's vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey a red light, failing to obey traffic signals, failing to observe traffic conditions, failing to yield the right of way, failing to remain adequately attentive, failing to wait, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulges, lumbar disc bulges, left shoulder contusion, and a complex tear of the right meniscus.

The jury found in favor of the plaintiff and awarded \$76,000.

REFERENCE

Calvo Lourdes vs. Base Plumbing & Heating. Docket no. L004016-21; Judge Vicki A. Citrino, 07-25-23.

Attorney for plaintiff: Luis L. Haquia of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Disc herniations at L4-5, L5-S1, C5-6, C4-5, C3-4; and a left knee torn meniscus – Left knee surgery; lumbar and cervical epidural spinal injections – Non-binding arbitration assigns 100% liability to defendant with damages of \$200,000.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 51-year-old woman, asserted that the defendant driver struck her vehicle in an intersection with such force that it caused significant, permanent injury. The defendant admitted fault for causing the accident, but denied the claim that the plaintiff suffered permanent injuries as a result of the accident.

On September 20, 2018, the plaintiff was traveling at the intersection of Island Road and Ramapo Valley Road in Mahwah. She was stopped and preparing to make a left turn onto Island Road. The plaintiff contended that the defendant failed to properly observe the plaintiff and collided with her vehicle while attempting to make a right turn onto Ramapo Valley Road. The plaintiff claimed that the impact caused her permanent injury.

As a result of the collision, the plaintiff was seen in the emergency room for evaluation. She sustained disc herniation at L4-5, L5-S1, C5-6, C4-5, C3-4; and a left knee torn meniscus. The plaintiff initially received conservative treatment but ultimately underwent left knee

surgery; 2 lumbar epidural spinal injections and 2 cervical epidural spinal injections. She has been recommended for cervical fusion surgery. The plaintiff's treating physician opined that her injuries are permanent and caused by the subject collision. The plaintiff claimed \$91,401 in unpaid medical expenses.

The defendant pointed to the plaintiff's prior motor vehicle accident in 2012 wherein she suffered similar injuries and a previous left knee surgery 5 years prior to the subject accident. The defendant presented testimony from a medical expert who reviewed the plaintiff's medical records, MRI images and examined the plaintiff. He opined that the plaintiff did not have evidence of any mechanical or neurologic damage to her cervical or lumbar spine or knee from the accident. He found only normal degenerative age-related changes which did not result in the loss of any bodily function.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of \$200,000 inclusive of medical liens. The arbitration was not confirmed and the matter went to trial.

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

REFERENCE

Boone vs. Lighty. Docket no. L-004098-20; Judge Peter Geiger, 06-29-23.

Attorney for plaintiff: Paul A. Krauss of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: James D. Blumenthal of Bennett, Bricklin & Saltzburg, LLC in Marlton, NJ.

Left Turn Collision

\$90,000 RECOVERY

Motor vehicle negligence – Left turn collision – Minor plaintiff passenger injured when defendant’s vehicle violates path of plaintiff’s vehicle making left turn – Head injury with bilateral jaw fractures – Closed reduction; pain management and tooth removal.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 9-year-old girl, asserted that the defendant driver caused a collision with the plaintiff’s vehicle with such force that it caused serious, permanent injury. The defendant denied negligence and asserted that she in fact had the green light and that the plaintiff’s vehicle accelerated into the path of the defendant’s vehicle, causing the collision.

On April 6, 2020, the minor plaintiff was a restrained rear-seat passenger in a vehicle traveling east on Talmadge Road. The driver of the plaintiff’s vehicle claimed she had a green light and attempted to turn left onto Coolidge Street when her vehicle was struck by the defendant, traveling west on Talmadge Road. The plaintiff contended that her vehicle had the right-

of-way on the green light and the defendant negligently violated traffic laws and caused the collision that resulted in significant injuries to the plaintiff.

As a result of the collision, the plaintiff was taken to the emergency room where she underwent X-rays and CT-scans. The plaintiff sustained a head injury; comminuted fracture of the right mandibular ramus and a nondisplaced fracture of the left angle of the mandible. The plaintiff treated with closed reduction for the jaw fractures; removal of one tooth and pain management.

The parties settled the matter prior to trial in the amount of \$90,000 to the minor plaintiff.

REFERENCE

A.S., a minor vs. Marinescu. Docket no. L -003900-22; Judge Christine M. Vanek, 05-15-23.

Attorneys for plaintiff: Ross V. Carpenter and Mark S. Kundla of Hardin, Kundla, Mckee & Poletto Counselors at Law in Springfield, NJ. Attorney for defendant: John C. Prindiville of John C. Prindiville, P.A. in Sea Girt, NJ.

75,000 VERDICT

Motor vehicle negligence – Left turn collision – Plaintiff’s vehicle attempting to turn left struck by defendant’s vehicle without headlights on – Bone bruising of left knee – Soft tissue injuries to bilateral knees – Soft tissue injury to left ankle.

Ocean County, NJ

In this motor vehicle negligence action, the plaintiff’s vehicle was attempting to turn left when it was struck by the defendant’s vehicle, which did not have its headlights on, causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On January 5, 2019, the plaintiff’s vehicle was traveling northbound on Old Freehold Road in Toms River, New Jersey. At the same time, the defendant’s vehicle was traveling southbound on Old Freehold Road, toward the plaintiff’s location. At this time, it was dark outside and raining, and the defendant’s vehicle did not have its headlights on. Unable to see the defendant’s vehicle approaching, the plaintiff’s vehicle attempted to make a left turn onto a road that intersection Old Freehold Road. As the plaintiff at-

tempted to turn, the defendant’s vehicle continued traveling forward. The plaintiff’s vehicle and defendant’s vehicle then collided.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to utilize headlights in dark and dangerous weather conditions, failing to make the presence of his vehicle known, failing to yield, failing to keep the vehicle under proper and adequate control, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including bone bruising of the left knee, soft tissue injuries to the bilateral knees, and soft tissue injury to the left ankle.

The jury found in favor of the plaintiff and awarded \$75,000.

REFERENCE

Carbone Deborah vs. Saccoman John. Docket no. L002189-20; Judge James Den Uyl, 04-01-23.

Attorney for plaintiff: Michael Phillip Cahill of Rosenberg, Kirby, Cahill, Stankowitz & Richardson in Toms River, NJ.

Multiple Vehicle Collision

\$30,000 VERDICT

Motor vehicle negligence – Multi-vehicle rear end collision – Cervical disc herniations – Cervical disc bulges – Cervical radiculopathy.

Passaic County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while the plaintiff was stopped at an intersection. The plaintiff became injured as a result. The defendant generally denied all allegations of negligence.

On September 20, 2019, the plaintiff's vehicle was traveling northbound on Main Street, at or near its intersection with Gunther Street in Lodi, New Jersey. At this time, the defendant's vehicle was also traveling northbound on Main Street, directly behind the plaintiff's vehicle. At the time of the incident, the plaintiff's vehicle was stopped for a red light at the subject intersection, in a line of other vehicles. While the plaintiff's vehicle was stopped for the red light, it was suddenly struck in the rear by the defendant's vehicle, causing it to be pushed forward into the rear of a third vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to maintain a safe distance from other vehicles, failing to remain adequately attentive, failing to obey traffic signals, failing to obey traffic conditions, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical disc bulges, and cervical radiculopathy.

The jury found in favor of the plaintiff and awarded \$30,000.

REFERENCE

Carrion Pamela vs. Labrana Kayla. Docket no. L002697-21; Judge Adam E. Jacobs, 07-17-23.

Attorney for plaintiff: Dennis G. Polizzi, Esq. of Pitts & Polizzi, LLP in Clifton, NJ.

\$22,500 VERDICT

Motor vehicle negligence – Multi-vehicle rear end collision – Cervical disc herniations – Lumbar disc herniation – Lumbar disc bulge – Radiculopathy.

Passaic County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while slowing for traffic causing the plaintiff to suffer injury. The defendant generally denied all allegations of negligence.

On October 7, 2018, the plaintiff's vehicle was traveling on Route 23, near its intersection with Packanack Lake Road in Wayne, New Jersey. At the same time, the defendant's vehicle was also traveling on Route 23, directly behind the plaintiff's vehicle. At the time of the incident, the plaintiff noticed heavy traffic ahead and began to slow his vehicle. As the plaintiff's vehicle slowed down, it was suddenly struck in the rear by the defendant's vehicle, which caused the plaintiff's vehicle to be pushed forward into the rear of a third vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to maintain a safe distance from other vehicles, failing to remain adequately attentive, failing to observe traffic conditions, failing to obey traffic conditions, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical disc bulges, lumbar disc herniation, lumbar disc bulge, and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$22,500.

REFERENCE

Jakob Robert vs. Szollosi Denise. Docket no. L000234-19; Judge Darren J. Delsardo, 08-01-23.

Attorney for plaintiff: Andrew Park of Law Offices of Andrew Park, PC in New York, NY.

DEFENDANTS' VERDICT

Motor vehicle negligence – Stopped vehicle collision – Plaintiff rideshare passenger in vehicle stopped on shoulder of road struck by defendant taxi, then subsequently struck by third-party driver causing second collision with plaintiff's vehicle – Cervical and lumbar spine; left shoulder; and left knee injuries – Trigger point injections to cervical and lumbar spine; lumbar epidural steroid

injections; arthroscopic shoulder surgery and arthroscopic knee surgery – Defendants deny liability and causation of plaintiff's knee injury.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, a 39-year-old man, asserted that the defendant driver, driving the defendant taxi company's

vehicle, struck a vehicle in which the plaintiff was a passenger, with such force that it caused significant, permanent injury. The defendant drivers each blamed the other for the collision.

On March 4, 2016, the motor vehicle owned by the defendant taxi company and operated by the defendant driver came into contact with the motor vehicle owned and operated by the co-defendant driver which was stopped on the shoulder of the Route 1 & 9 South in Newark, and in which the plaintiff was a ride-share passenger. A third-party vehicle subsequently came into contact with the defendant taxi thereby causing a second impact with that vehicle and the vehicle in which the plaintiff was a passenger. The plaintiff maintained that the collision and resulting injuries were caused by the negligent, wanton, reckless and careless acts of the defendants. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained injury to his cervical and lumbar spine; left shoulder; and left knee. The plaintiff treated with trigger point injections to the cervical and lumbar spine; lumbar epidural steroid injections; arthroscopic shoulder surgery; and arthroscopic knee surgery. The plaintiff claimed \$170,000 in ERICA lien. The defendants

questioned causation of the plaintiff's knee injury, noting that he had had knee issues prior to the subject accident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 65% liability to the defendant taxi company and its driver; 25% liability to the driver of the plaintiff's vehicle; and 10% to the third-party driver with damages of \$175,000 and \$170,000 in ERISA lien for a total of \$345,000. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Estevez vs. Doon Taxi Corp., et al. Docket no. L-005651-17; Judge Annette C. Scoca, 07-17-23.

Attorney for plaintiff: Raye D. Futerfas of Jacoby & Meyers, LLP in Newark, NJ. Attorney for defendant driver of plaintiff's vehicle: Kenneth R. Foreman of Lewis Brisbois Bisgaard & Smith, LLP in Newark, NJ. Attorneys for defendant taxi company and driver: Roger J. Desiderio and Kay A. Gonzalez of Bendit Weinstock in West Orange, NJ. Attorney for defendant third-party driver: Glenn T. Dyer of Dyer & Peterson, P.C. in Parsippany, NJ.

Parking Spot Collision

■ \$35,000 VERDICT

Motor vehicle negligence – Parking spot collision – Plaintiff's vehicle struck by defendant's vehicle maneuvering out of parking spot – Cervical disc herniations – Cervical radiculitis – Cervical sprain/strain.

Hudson County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the side by the defendant's vehicle, which was pulling out of a parking spot, causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On December 15, 2016, the plaintiff's vehicle was traveling in a westbound direction on Bay Street, at or near its intersection with Washington Street in Jersey City, New Jersey. At the same time, the defendant's vehicle was parked along the side of Bay Street, and the defendant was preparing to pull out of his parking spot and merge into traffic. As the plaintiff's vehicle was passing, the defendant's vehicle suddenly maneuvered out of its parking spot and into the roadway. The defendant's vehicle then struck the plaintiff's vehicle in the side.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to yield to oncoming traffic, failing to wait for clearance before pulling out of a parking spot, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical radiculitis, and cervical sprain/strain.

The jury found in favor of the plaintiff and awarded \$35,000.

REFERENCE

Barranco Jose vs. Dormand Edward. Docket no. L003101-18; Judge Christine M. Vanek, 05-25-23.

Attorney for plaintiff: Carlos H. Acosta, Jr. of Mescall & Acosta, P.C. in Union City, NJ. Attorney for defendant: Caesar Brazza of Brazza Law, LLC in Morristown, NJ.

Rear End Collision

■ \$90,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff’s vehicle struck in rear by defendant’s vehicle as plaintiff slowed for traffic – Cervical disc bulge – Lumbar disc herniation – Left knee partial ACL tear – Right knee meniscal tear.

Ocean County, NJ

In this motor vehicle negligence action, the plaintiff’s vehicle was struck in the rear by the defendant’s vehicle as the plaintiff’s vehicle was slowing for traffic ahead, causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On December 5, 2018, the plaintiff’s vehicle was traveling southbound on New Hampshire Avenue in Lakewood, New Jersey. At the same time, the defendant’s vehicle was also traveling southbound on New Hampshire Avenue, directly behind the plaintiff’s vehicle. As she was traveling, the plaintiff noticed heavy traffic accumulating ahead. As such, the plaintiff began to slow her vehicle. As the plaintiff’s vehicle was slowing for traffic, it was suddenly struck in the rear by the defendant’s vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to observe the plaintiff’s vehicle slowing down, failing to obey traffic conditions, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulge, lumbar disc herniation, left knee partial ACL tear, and right knee meniscal tear. The plaintiff’s knee injuries may require surgery in the future.

The jury found in favor of the plaintiff and awarded \$90,000.

REFERENCE

Bass Melissa vs. Roman Eliza. Docket no. L002864-20; Judge Valter H. Must, 10-03-23.

Attorney for plaintiff: Ronald A. Dario of Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz & Krouse in Hackensack, NJ. Attorney for defendant: Robert Ritacco of Leyden, Capotorto, Ritacco, Corrigan & Sheehy, P.C. in Toms River, NJ.

■ \$42,500 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff’s vehicle struck in rear by defendant’s vehicle on entrance ramp – Cervical sprain/strain – Lumbar sprain/strain.

Hudson County, NJ

In this motor vehicle negligence action, the plaintiff’s vehicle was struck in the rear by the defendant’s vehicle while the plaintiff was on an entrance ramp waiting to merge causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On December 14, 2017, the plaintiff’s vehicle was traveling eastbound on an entrance ramp from Bloomfield Avenue to Route 3 East in Clifton, New Jersey. At this time, the plaintiff was waiting to merge onto Route 3 East in a line of traffic on the entrance ramp. At the same time, the defendant’s vehicle was also taking Bloomfield Avenue to the subject entrance ramp, directly behind the plaintiff’s vehicle. At the time of the incident, the plaintiff’s vehicle was struck in the rear by the defendant’s vehicle while waiting in traffic to merge.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe traffic conditions, failing to obey traffic conditions, failing to observe the plaintiff’s vehicle, failing to maintain a safe distance from other vehicles, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including cervical sprain/strain and lumbar sprain/strain.

The jury found in favor of the plaintiff and awarded \$42,500.

REFERENCE

Bravo-Ramos Nieve vs. Kemp Ada. Docket no. L004774-19; Judge Veronica Allende, 05-02-23.

Attorney for plaintiff: Leonard V. Cupo of Cupo Law Firm, LLC in Jersey City, NJ. Attorney for defendant: Jeffrey A Savage.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Cervical disc herniation at C2-3; lumbar disc herniation and annular tear at L4-5; post-concussive syndrome and bilateral carpal tunnel syndrome – Plaintiff presented certification of permanency – Defendant admits liability but denies plaintiff sustained permanent injury or injuries causally related to subject collision.

Camden County, NJ

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

On July 25, 2019, the plaintiff was the operator of a motor vehicle which was traveling southbound on the Black Horse Pike at the intersection with Valley Road/5th Avenue in Mount Ephraim. The defendant was driving behind the plaintiff on the same road. The plaintiff contended that the defendant negligently failed to observe traffic. The defendant struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a cervical disc herniation at C2-3; a lumbar disc herniation and an annular tear at L4-5; post-concussive syndrome and bilateral carpal tunnel syndrome. The plaintiff presented certification from his treating physi-

cian stating that his injuries were based on objective clinical evidence and that the injuries had not healed to function normally. The plaintiff claimed a medical lien of \$4,562.

The defendant argued that the plaintiff's injuries were pre-existing, not permanent and not caused by the subject collision. The defendant's orthopedist indicated pre-existing cervical and lumbar conditions; and cervical and lumbar sprains/strains without permanency. The defendant also presented testimony from an expert neurologist who opined that the plaintiff had a resolved, closed head injury; cervical and lumbar sprains/strains; and found no objective evidence of carpal tunnel syndrome.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$42,062 inclusive of the medical lien. The arbitration was not confirmed and the matter proceeded to trial.

The jury found that the plaintiff failed to prove a permanent injury and returned a verdict in favor of the defendant.

REFERENCE

Page vs. Maniscalco. Docket no. L -000868-21; Judge Michael J. Kessel, 07-14-23.

Attorney for plaintiff: Brian L. Katz of Dansky Katz Ringold in Marlton, NJ. Attorney for defendant: Steven Antinoff of Parker Young & Antinoff, LLC in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff driver and passenger claim injury – Plaintiff driver: lumbar and cervical disc herniations – Plaintiff passenger: cervical disc bulges; L4-5 herniation – Epidural injections – Defendant denies causation.

Essex County, NJ

In this motor vehicle negligence case, the plaintiffs, the driver and passenger of a vehicle stopped in traffic, asserted that the defendant driver struck their vehicle with such force that it caused significant, permanent injury to both plaintiffs. The defendant argued that the plaintiffs had both been involved in prior motor vehicle accidents and thus their injuries could not be causally connected to the subject collision.

On April 1, 2016 the plaintiffs were stopped in traffic at a red light on Morris Avenue in Union. The defendant was traveling directly behind the plaintiffs' vehicle. The plaintiff contended that the defendant negligently failed to observe and obey traffic laws and failed to slow to a stop behind the plaintiffs' stopped vehicle. The defendant struck the plaintiffs' vehicle from behind. The plaintiffs alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff driver sustained lumbar and cervical disc herniations which he treated with three epidural injections. The plaintiff pas-

senger suffered cervical disc bulges; L4-5 herniation with positive EMG which she treated with 6 epidural injections.

The defendant stated that he was slowing when he was distracted by a spoon on the passenger seat of his vehicle. When he looked up, he was unable to stop in time to avoid collision with the plaintiffs' vehicle.

Prior to trial, the plaintiff offered to take judgment in the amount of \$85,000 to settle the matter. The offer was not accepted and the case proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$25,000 to the plaintiff driver only, finding no cause as to the plaintiff passenger. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Crater, et al. vs. Paul. Docket no. L-001291-18; Judge Russell J. Passamano, 07-28-23.

Attorney for plaintiff: Barry Fredson of Fredson & Statmore, LLC in Clifton, NJ. Attorney for defendant: Glenn T. Dyer of Dyer & Peterson, P.C. in Parsippany, NJ.

Sideswipe Collision

\$75,000 VERDICT

Motor vehicle negligence – Sideswipe collision – Plaintiff's vehicle struck in side by defendant's vehicle as defendant attempts to pass plaintiff's vehicle on right while plaintiff's vehicle makes right turn – Cervical disc herniations – Cervical disc bulges – Lumbar disc herniations – Cervical and lumbar radiculopathy.

Passaic County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the side by the defendant's vehicle as the plaintiff was attempting to make a right turn and the defendant attempted to pass the plaintiff's vehicle on the right, causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On September 26, 2017, the plaintiff's vehicle was traveling on East 20th Avenue, at or near its intersection with Madison Avenue in Paterson, New Jersey. At this time, the plaintiff was attempting to turn right from East 20th Avenue, onto Madison Avenue. At the same time, the defendant's vehicle was also traveling on East 20th Avenue, directly behind the plaintiff's vehicle. As the plaintiff was attempting to execute a right turn, the defendant's vehicle suddenly attempted to

pass the plaintiff's vehicle on the right. The defendant's vehicle then struck the plaintiff's vehicle in the side.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, in negligently and illegally passing on the right, in negligently and illegally attempting to pass on the right in an intersection, in failing to observe traffic conditions, failing to wait, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical disc bulges, lumbar disc herniations, and cervical and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$75,000.

REFERENCE

Ulloa Beridania vs. Drakeford Dominick. Docket no. L002736-19; Judge Darren J. Delsardo, 07-29-23.

Attorney for plaintiff: Christopher Mitchell of Stephen P. Haddad, PC in Edison, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Plaintiff contends defendant moved into plaintiff's lane of travel and struck her vehicle – Cervical disc bulges and herniations; lumbar disc bulge at L5-S1 with radiculopathy; bilateral carpal tunnel syndrome; post-concussive syndrome and stress/adjustment disorder – Chiropractic treatment; ESI; 2 medial branch blocks at C3-6 and radio frequency ablation – Defendant denies plaintiff suffered injury and points to multiple prior MRIs which showed no change in plaintiff's condition pre- and post-accident.

Camden County, NJ

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

On January 24, 2019, the plaintiff was traveling westbound on Cedar Brook Road in Winslow. The defendant was also driving west on Cedar Brook Road in an adjacent lane. The plaintiff contended that the defendant negligently migrated into the plaintiff's lane and violated the plaintiff's right-of-way and striking the plaintiff's vehicle. The plaintiff alleged that the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained multiple cervical disc bulges and herniations; lumbar disc bulge at L5-S1 with radiculopathy; bilateral carpal tunnel syndrome; post-concussive syndrome; and stress/adjustment disorder. The plaintiff treated with chiropractic treatment; ESI; 2 medial branch blocks at C3-6; and radio frequency ablation.

The defendant's expert reviewed the plaintiff's records and opined that the plaintiff's older MRIs, when compared to current MRI, showed the same or near the same conditions. The defendant held that the plaintiff's injuries were pre-existing, degenerative and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$30,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found that the plaintiff had failed to prove a permanent injury as required for recovery of damages and found in favor of the defendant.

REFERENCE

Smith-Stroud vs. Sharpe. Docket no. L000159-21; Judge Anthony Pugliese, 07-01-23.

Attorney for plaintiff: Justin H. Sperling of Aronberg, Kouser, Snyder & Lindemann, P.A. in Cherry Hill, NJ. Attorney for defendant: Christopher Marcucci of Margolis Edelstein in Mount Laurel, NJ.

MUNICIPAL LIABILITY

PLAINTIFF'S VERDICT

Municipal liability – Zoning – Defendant applicant applied to defendant zoning board for variance to build 3 townhouses on property zoned for 3-family residential dwellings – Plaintiff contends defendant board failed to publish proper notice of hearing on application and defendant applicant failed to provide sufficient reasons and failed to satisfy required negative criteria to justify granting of variance.

Bergen County, NJ

In this case, the plaintiff was the residential owner of a property located at 45B Myrtle Avenue, Block in Edgewater, New Jersey. The defendant owner of 1456 River Road in Edgewater submitted an application to the defendant Board of Adjustment for the use, height and bulk or "c" variance approvals to construct a 3 unit attached townhouse development. The defendant board held hearings on the defendant's application and approved the application. The plaintiff maintained that the property is in the R-2, 2-family residential district which prohibits 3 family dwellings. The defendant board initially argued that proper notice had been given for the remand and no member of the public appeared to comment.

The plaintiff argued that the resolution failed to provide a sufficient zoning analysis of the board's reasoning to grant the approval, that the defendant board members violated the Open Public Meetings Act by informally discussing the application and also failed to properly publish the Notice of Hearing. The plaintiff maintained that the defendant applicant failed to provide sufficient special reasons and failed to satisfy the required negative criteria to justify the grant of the requested variances and did not adequately prove that the variances could be granted without substantial detriment to the public good and would not substantially impair the intent and the purpose of the zone plan and zoning ordinance. The defendant board engaged in improper decision making and

failed to provide sufficient facts and reasoning related to why a deviation from the zoning ordinance was warranted.

The plaintiff claimed that, as a result of the arbitrary, capricious conduct of the board and the damages flowing there from, the plaintiff was entitled to an Order for Judgment reversing the approval of defendant applicant's application and directing the defendant board to deny the relief requested by the applicant on the property. The defendants asserted that the board properly granted the approval after the defendant applicant met the burden of proof outlined in the resolution passed by the defendant board. The defendants argued that the resolution incorporated all documents submitted by the defendant applicant as well as reports from the professional planner and engineer.

A bench trial was held and the court found that it was uncontested that the defendant board failed to comply with the statute requiring publication of notice in 2 newspapers for the application hearing. As a result, the court deemed the actions taken in the absence of proper notice to be void. The court also found that the plaintiff was deprived of the opportunity to cross-examine the experts testifying in support of the defendant's application which was demonstrative of the fact that the remedial steps taken by the defendant board were inadequate. In response, the court ordered the actions of the defendant zoning board were found to have been arbitrary, capricious and unreasonable and determined that the Resolution of Approval on remand passed by the board was void and of no effect.

REFERENCE

DiMarco vs. Zoning Board of Adjustment of the Borough of Edgewater, et al. Docket no. L -008208-21; Judge Christine Farrington, 07-24-23.

Attorney for plaintiff: Richard Malagiere of The Law Offices of Richard Malagiere in Moonachie, NJ. Attorney for defendant Board of Adjustment: Denise M. Travers of Denise M. Travers Law, LLC in Norwood, NJ. Attorney for defendant applicant: Elaine S. Berkenwald of Lavin & Associates, P.C. in Chester, NJ.

POLICE LIABILITY

\$90,000 RECOVERY

Police liability – Dangerous condition – 13-year-old plaintiff riding electric bike in park clothes-lined by chain set up by defendant borough to rope off area for fireworks – Closed head injury with left pterion skull fracture and left hemispheric subdural hematoma.

Bergen County, NJ

In this case, the plaintiff, a 13-year-old boy, asserted that the defendants police department, borough, and department of public works negligently strung a rope around a public area and that the plaintiff, riding an electric bike, was clothes-lined by the rope suffering significant, permanent injury. The defendant denied negligence and argued that the plaintiff was himself negligent in not operating his bicycle in a

safe manner, keeping a proper lookout for obstacles and also that the plaintiff was not wearing a helmet which would have prevented his head injury.

On July 3, 2022 the minor plaintiff was riding his electric bicycle with another minor near Prospect Avenue and Oradell Avenue in Oradell Township. The defendant police had chained off an area that would be used for fireworks and in doing so, put the chain across a path in the park. The plaintiff could not see the chain was clothes-lined when he attempted to ride his bike on the path.

The plaintiff contended that the defendant police department, borough, and department of public works were negligent in chaining off an area where people were traversing and failing to warn or mark the chain to allow pedestrians to see and avoid it. The plaintiff alleged that the force of the impact resulted in per-

manent injuries. As a result of the incident, the plaintiff sustained head injury with left pterion skull fracture and left hemispheric subdural hematoma. The plaintiff was kept in the hospital overnight for observation.

The parties settled the matter prior to trial in the amount of \$90,000 broken down as follows: \$17,867 in attorney fees; \$609 in costs and disbursements; \$29,726 to satisfy an ERISA lien and \$41,798 in net damages to the minor plaintiff.

REFERENCE

Newman vs. Oradell Police Department, et al. Docket no. L -000898-23; Judge Gregg A. Padovano, 08-24-23.

Attorney for plaintiff: Francis M. Parisi of Corradino & Papa, LLC in Clifton, NJ. Attorney for defendant: Dermot J. Doyle of Huntington Bailey, LLP in Westwood, NJ.

PREMISES LIABILITY

Fall Down

\$255,000 VERDICT

Premises liability – Fall down – Plaintiff trips over cracked and uneven sidewalk and falls, causing him to become injured – Complete tear of right Achilles tendon – Surgery required.

Essex County, NJ

In this premises liability action, the plaintiff tripped and fell over a cracked and uneven sidewalk panel, causing him to become injured. The defendants generally denied all allegations of negligence.

On February 17, 2020, the plaintiff was walking toward his car on a sidewalk along the edge of Goldsmith Avenue in Newark, New Jersey, just outside the premises of Weequahic public High School. At this time, the plaintiff was preparing to travel to work, and was traversing the sidewalk in the dark, due to it being very early in the morning and due to a lack of lighting in the area of the sidewalk. At the time of the incident, the plaintiff tripped over a broken and uneven sidewalk panel, causing him to fall and become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on a public sidewalk, failing to repair a

cracked, broken, or uneven section of the sidewalk, failing to remove a hazardous sidewalk panel, failing to provide adequate lighting in the area, failing to cordon off a hazardous area of the sidewalk, failing to warn of a broken, cracked, or uneven sidewalk panel, failing to provide safe passage, and failing to regard for the health and safety of pedestrians and sidewalk users including the plaintiff. Consequently, the plaintiff sustained injuries, including a complete tear of the right Achilles tendon, which required surgery to repair.

The jury found in favor of the plaintiff and awarded \$255,000.

REFERENCE

Olivacce Ronald vs. City Of Newark. Docket no. L006098-20; Judge Cynthia D. Santomauro, 08-24-23.

Attorney for plaintiff: Andrew B Smith of Smith + Schwartzstein, LLC in Morristown, NJ. Attorney for defendant: Tiara Janelle Samuel of Newark Corporation Counsel.

\$37,500 VERDICT

Premises liability – Fall down – Plaintiff slips and falls on wet floor at defendant restaurant – Acute right quadriceps tear – Surgery required.

Essex County, NJ

In this premises liability action, the plaintiff slipped and fell on a wet area of the floor at the defendant restaurant, causing him to become injured. The defendants generally denied all allegations of negligence.

On December 28, 2018, the plaintiff was a lawful visitor and business invitee at the defendant restaurant, located on the premises of 300 Roselle Street in Lin-

den, New Jersey. At this time, the plaintiff was eating food and was playing a billiards game at a pool table on the premises. While traversing around the pool table, the plaintiff encountered a wet area of the floor, where water or some other fluid had been spilled. The plaintiff slipped on the wet floor and fell.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to adequately clean the premises, failing to remove water or other fluids from the floor, failing to inspect the premises, failing to hire adequate janitorial staff, failing to place signs or otherwise warn of a wet floor, failing to cordon off a slipping hazard, failing to provide safe passage, and failing to regard for the health and safety

■ \$25,000 VERDICT

Premises liability – Fall down – Plaintiff slips on wet floor and falls at defendant restaurant – Left knee complete tear with lateral meniscus tear – Shoulder pain – Cervical disc herniations – Lumbar disc bulges.

Essex County, NJ

In this premises liability action, the plaintiff slipped on a wet area of the floor at the defendant restaurant and fell, causing her to become injured. The defendants generally denied all allegations of negligence.

On January 3, 2019, the plaintiff was a lawful visitor and business invitee at the defendant restaurant, located on the premises of 9 West South Orange Avenue in South Orange, New Jersey. At this time, the plaintiff had gotten up from her table and was walking inside the restaurant when she encountered a wet area of the floor near the restrooms. The plaintiff then slipped on the wet floor and fell, causing her to sustain injuries.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to adequately

of visitor and business invitees at the restaurant including the plaintiff. Consequently, the plaintiff sustained injuries, including an acute right quadriceps tear, which required surgery to repair.

The jury found in favor of the plaintiff and awarded \$37,500.

REFERENCE

Royster Fred vs. Nunos Pavilion Restaurant. Docket no. L006056-19; Judge Cynthia D. Santomauro, 04-22-23.

Attorney for plaintiff: Jonathan P. Arnold of Bramnick Rodriguez Grabas Arnold & Mangan, LLC in Scotch Plains, NJ. Attorney for defendant: Carl Figueroa of Smith Mazure, PC in Somerville, NJ.

clean the premises, failing to remove water or other fluids from the floor of the restaurant, failing to inspect the premises, failing to hire adequate janitorial staff, failing to warn of a wet floor, failing to cordon off a slipping hazard, failing to provide safe passage, and failing to regard for the health and safety of restaurant patrons including the plaintiff. Consequently, the plaintiff sustained injuries, including a left knee complete tear with a lateral meniscus tear, shoulder pain, cervical disc herniations, and lumbar disc bulges.

The jury found in favor of the plaintiff and awarded \$25,000.

REFERENCE

Tavares-Reyes, Tanya vs. BGR. Docket no. L007907-20; Judge Stephen Petrillo, 04-22-23.

Attorney for plaintiff: William L. Gold of Bendit Weinstock in West Orange, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

\$5,000,000 VERDICT – MEDICAL MALPRACTICE – PRIMARY CARE – PLAINTIFF CLAIMS SHE REPORTED BREAST LUMP BUT DEFENDANT PRIMARY CARE PHYSICIAN FAILED TO REFER HER TO SURGEON FOR CONSULTATION RESULTING IN 2-YEAR DELAY IN DIAGNOSIS AND TREATMENT – NEED FOR MORE SEVERE AND SIGNIFICANT TREATMENT; INCREASED POSSIBILITY OF RECURRENCE AND EMOTIONAL AND PSYCHOLOGICAL DAMAGES.

Miami-Dade County, FL

In this medical malpractice case, the plaintiff, a 67-year-old woman, alleged negligence of the defendant primary care physician in his medical care of the plaintiff's breast cancer, which she claimed resulted in more aggressive treatment and an increased rate of recurrence. The defendant denied negligence and argued that the plaintiff failed to prove that any of the defendant's alleged conduct caused her damages.

The plaintiff alleged that the defendant was negligent in failing to refer her for a surgical consult when she presented with complaints of a palpable mass in her breast on October 2, 2013 and at every medical visit she had with him thereafter, and in telling her that the mammogram had ruled out cancer which caused her to have a false sense of security regarding the mass and delayed discovery and treatment of her breast cancer. The plaintiff maintained that, by the time of diagnosis, 3 years after reporting a lump to the defendant, the cancer had increased substantially in size, had become infiltrating, and had advanced in stage. As a result the plaintiff required more severe and significant treatment than she would have required if the cancer had been diag-

nosed earlier when she first reported and the defendant observed, palpated and documented the lump.

The plaintiff underwent a lumpectomy in which the surgeon was unable to achieve clean margins and the plaintiff was required to have a bilateral mastectomy and chemotherapy which greatly compromised her immune system. The plaintiff maintained that she developed serious infections and complications from the mastectomy and reconstructions

The jury found the defendant negligent and awarded damages in the amount of \$5 million broken down as follows: \$4 million in past non-economic damages and \$1 million in future non-economic damages.

REFERENCE

Badia vs. Maceira, M.D., et al. Case no. 2018-008268 CA-15; Judge Jose Rodriguez, 02-06-23.

Attorney for plaintiff: Deborah J. Gander of Colson Hicks Eidson in Coral Gables, FL. Attorneys for defendant: Tullio E. Iacono and Michael E. Brand of Cole, Scott & Kissane, P.A. in Miami, FL. Attorney for defendant: Dinah S. Stein of Hicks, Porter, Ebenfeld & Stein, P.A. in Miami, FL.

\$3,000,000 RECOVERY – MEDICAL MALPRACTICE – OB/GYN – DEFENDANTS MISMANAGE PLAINTIFFS' LABOR AND DELIVERY RESULTING IN OXYGEN DEPRIVATION TO FETUS CAUSING HYPOXIC INJURY – HYPOXIC ISCHEMIC ENCEPHALOPATHY – CEREBRAL PALSY.

Montgomery County, PA

The plaintiffs in this medical malpractice action alleged that the defendant doctors and staff failed to properly manage the plaintiff's labor and delivery allowing the fetus to go without proper oxygen levels resulting in hypoxic ischemic

encephalopathy causing cerebral palsy. The defendants argued that the plaintiffs were treated properly in accordance with all medical standards.

The complaint stated that the defendants were negligent in failing to timely recognize and act upon the infant's fetal distress, failing to perform and or recommend an emergent Cesarean section, failing to rec-

ognize the presence of excessive uterine contractions and the dangers it posed to the infant, failing to properly monitor the infusion of oxytocin, failing to order the discontinuation of oxytocin, failing to appreciate and treat the plaintiff mother's low oxygen and failing to properly manage the plaintiff mother's labor and delivery of the plaintiff infant. Consequently, the plaintiff child suffered hypoxic ischemic encephalopathy, epilepsy, gerd, spastic quadriplegic cerebral palsy, feeding intolerance and pain and suffering.

This action proceeded to trial in April of 2023. During jury deliberations, the parties agreed to a high/low settlement arrangement capping the defendants' liability at \$8 million and in exchange if a hung jury was declared the matter would settle for \$3,000,000. On April 28, 2023, the jury returned a hung verdict on the matter resolved for \$3,000,000.

\$1,700,000 VERDICT – MEDICAL MALPRACTICE – OPHTHALMOLOGY – PLAINTIFF CONTENDS DEFENDANT PHYSICIAN FAILED TO DIAGNOSE OPTIC NERVE SHEATH MENINGIOMA SEEN ON MRI CAUSING 8-MONTH DELAY IN DIAGNOSIS AND TREATMENT – PERMANENT LOSS OF VISION IN LEFT EYE – PLAINTIFF WIFE MAKES CLAIM FOR LOSS OF CONSORTIUM AND NEED FOR CARE OF PLAINTIFF.

Dutchess County, NY

In this medical malpractice case, the plaintiff asserted that the defendant imaging practice and physician failed to diagnose the plaintiff's condition of a meningioma, leading to a delay in treatment which led to significant, serious injury to his eye, causing permanent vision loss in his left eye. The defendants denied negligence and contended that the plaintiff's vision would have been no better than 20/40 even with radiation treatment beginning in March 2018, and that his vision following the loss of the use of his left eye was not significantly worse than it was prior, or than it would have been with prompt radiation treatment.

The plaintiff contended that if the condition had been properly diagnosed in March of 2018, the plaintiff might have maintained 20/40 or better vision. The plaintiff's left eye had been his better eye. Once he lost sight in his left eye entirely, he had only 20/40 vision in his right eye remaining. The plaintiff argued that his pre-existing poor right eye vision was a critical point since, due to the defendants' negligence, he was not just rendered blind in one eye, he was rendered near-blind because the defendant's malpractice cost him his good eye.

REFERENCE

Plaintiff's ob/gyn expert: Frank J. Bottiglieri, M.D. from Towson, MD. Plaintiff's pediatric neurology expert: Stephen T. Glass, M.D.

C.R.M. a minor by and through his png Shanae Iseley vs. Nancy Gallella, M.D. and Alice K. Roberts, M.D., Abington Obstetrical and Gynecology Associates, Abington Health Physicians. Case no. 2016-02545; Judge Lois E. Murphy, 09-26-23.

Attorney for plaintiff: Slade McLaughlin of McLaughlin & Lauricella, P.C. in Philadelphia, PA. Attorney for defendant: Karl J. Protil, Jr. and Donald Carswell of Post & Schell, LLC in Philadelphia, PA. Attorney for defendant: Benjamin Post of Post & Post in Philadelphia, PA.

The plaintiff's wife of 48 years, sought to recover for loss of consortium, which includes not only loss of support or services, but also such elements as love, companionship, affection, society, sexual relations and solace. The plaintiff wife lost some of her independence as well because she must be on hand to drive the plaintiff to doctor's appointments, and accompany him

The jury returned a verdict in favor of the plaintiffs in the total sum of \$1,700,000, of which \$1,100,000 was awarded to the plaintiff for past pain and suffering (a period of approximately 5 years), \$350,000 for seven years of future pain and suffering, and to the plaintiff wife \$250,000 on her derivative cause of action for loss of services and society.

REFERENCE

Dispensa vs. Medical Diagnostic Imaging, PLLC, et al. Index no. 2019-53685; Judge Thomas R. Davis, 05-09-23.

Attorney for plaintiff: Meredith Abrams of Weitz & Luxenberg, PC in New York, NY. Attorney for defendant: Wayne M. Rubin of Feldman, Kleidman, Collins & Sappe, P.C. in Fishkill, NY.

\$750,000 GROSS VERDICT – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PLAINTIFF PARAPLEGIC PATIENT SUFFERS PRESSURE SORES DUE TO NEGLIGENT FAILURE OF DEFENDANT HOSPITAL TO TAKE PROPER MEASURES TO PROPERLY CARE FOR PLAINTIFF’S SKIN – STAGE IV SACRAL PRESSURE SORE WITH NECROTIC DETRITUS – NECROTIC SLOUGH AND DEBRIDEMENT.

Miami-Dade County, FL

In this medical malpractice case, the plaintiff, a paraplegic patient, asserted that the defendant hospital was negligent in its medical care and treatment which caused him significant, permanent injury. At the defendant hospital, the plaintiff developed progressive decubitus ulcers. The plaintiff suffered a Stage IV sacral pressure sore with necrotic detritus. The plaintiff underwent necrotic slough and debridement. The plaintiff contended that his condition continued after his stay at the defendant hospital, after his treatment, and that he continues to receive treatment to the present. The defendant denied the claim that it was negligent in its care and treatment of the plaintiff.

The plaintiff presented a medical expert who opined that the defendant breached the standard of care by failing to properly document the plaintiff’s wound and by failing to reposition him every 2 hours. The defendant claimed there was no record evidence es-

tablishing a causal link between the alleged errors in documentation and the plaintiff’s condition. Specifically, no provider testified that it affected his treatment or outcome.

The jury found the defendant 92% negligent and the plaintiff 8% negligent. The jury awarded damages in the amount of \$750,000 in past and future non-economic damages. The plaintiff recovered net damages of \$690,000 after reduction for comparative negligence.

REFERENCE

Brinson vs. Public Health Trust of Miami-Dade County, Case no. 2019-29346 CA 01; Judge Barbara Areces, 02-17-23.

Attorney for plaintiff: Brett C. Powell of The Powell Law Firm, P.A. in Palmetto Bay, FL. Attorney for plaintiff: Darryn L. Silverstein of Silverstein, Silverstein & Silverstein, P.A. in Aventura, FL. Attorneys for defendant: Geraldine Bonzon-Keenan and Korissa Lepore of Miami-Dade County Attorneys in Miami, FL.

PRODUCT LIABILITY

\$976,488,384 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN – DEFENDANT’S MOTOR VEHICLE RESTRAINT SYSTEM FAILS TO PROTECT PLAINTIFF IN ROLLOVER COLLISION ALLOWING PLAINTIFF’S HEAD TO CONTACT ROOF CAUSING NECK FRACTURE – QUADRIPLEGIA.

Philadelphia County, PA

The plaintiff in this product liability action was involved in a rollover accident during which the plaintiff’s head impacted the interior roof of the vehicle causing the plaintiffs to sustain injuries. The male plaintiff suffered quadriplegia and is required to live in a rehabilitation facility. The plaintiff’s wife claimed loss of consortium. The plaintiff maintained that the seat belt system was defective and inadequate in preventing excessive movement during a collision. The defendant manufacturer argued that there was nothing defective about the seat belt or the car, which complied with all industry and government safety standards. The defendant car dealership also denied all allegations of negligence.

The plaintiff maintained that during the rollover sequence, design and manufacturing defects in the vehicle’s restraint system caused the plaintiff to be partially ejecting or interacted with the roof causing catastrophic injuries to the plaintiff. The plaintiff sued the defendant car manufacturer for strict product liability and the defendant car dealership for breaching their duties in maintaining, inspecting, servicing, re-

pairing, providing adequate warnings for and releasing the subject vehicle when it was not in a reasonably safe condition for foreseeable use.

The jury determined that the defendant, Mitsubishi Motors North America Inc., was strictly liable for a defective product and failure to warn. The jury awarded compensatory damages in the amount of \$156,488,384; loss of consortium damages in the amount of \$20,000,000 and punitive damages in the amount of \$800,000,000 against MMNA for a total verdict of \$976,488,384.

REFERENCE

Soomi Amagasu, Individually and as Spouse and Power of Attorney for Francis Amagasu vs. Fred Beans Motors of Limerick, Inc. d/b/a Fred Beans Kia of Limerick, Fred Beans Family of Dealerships, Mitsubishi Motors North America, Inc., Mitsubishi Motors Corporation. Case no. 181102406; Judge Sierra Thomas Street, 10-30-23.

Attorney for plaintiff: William J. Conroy of Campbell Conroy & O’Neil, P.C. in Berwyn, PA. Attorney for defendant: John J. Hare of Marshall Dennehey Warner Coleman & Goggin in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

\$745,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT DRIVER UNDER INFLUENCE OF DEFENDANT COMPANIES NITROUS OXIDE STRIKES DECEDENT ON SIDEWALK OUTSIDE HER PLACE OF EMPLOYMENT – WRONGFUL DEATH OF 25-YEAR-OLD FEMALE.

St. Louis County, MO

In this action for motor vehicle negligence, the parents of the decedent brought a wrongful death suit against the defendant driver that struck and killed their daughter, the driver's parents who owned the vehicle, the head shop that sold the decedent the nitrous oxide he used to get high prior to the crash, the company that manufactured the nitrous oxide, the decedent's place of employment and the real estate company that owned the property where the decedent worked alleging that all were negligent and all contributed to the death of the decedent. The defendant vehicle owners settled with the plaintiffs out of court and the defendants related to the decedent's place of employment were dismissed from the action. The case proceeded to trial against the remaining defendants. All defendants denied all allegations of negligence.

The estate of the decedent maintained that the defendant driver was negligent in driving under the influence of nitrous oxide, the defendant parents negligently entrusted the vehicle to their son, the defendant head shop negligently sold the nitrous oxide, and the defendant manufacturer sold a product they knew was used to get high and targeted to youth consumers.

The jury found that United Brands Products Design Development, the company that manufactures and distributes Whip-It!, 70% liable; the smoke shop, Coughing Cardinal, LLC, 20% liable and Gieger 10% liable in the case. The jury awarded the decedent's parents \$20 million in compensatory damages, \$700 million in punitive damages against United Brands and \$25 million in punitive damages against Coughing Cardinal.

REFERENCE

Karen Chaplin and Jason Politte as Administrators of the Estate of Melissa Politte vs. Trenton Geiger, Douglas Geiger, Cathy Geiger, Tauc Properties, LLC, Total Access Urgent Care 8, Llc, United Brands Product Design Development and Marketing, Inc., and Coughing Cardinal, LLC. Case no. 20SL-CC06071; Judge John N. Borbonus, 09-08-23.

Attorney for plaintiff: Johnny M. Simon of The Simon Law Group in St. Louis, MO. Attorney for defendant: Michael Joseph Schaller in Saint Louis, MO. Attorney for defendant: Katherine Christine Battisti in Saint Louis, MO.

\$600,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – DEFENDANT STRIKES REAR OF PLAINTIFF'S MOVING VEHICLE AT HIGH RATE OF SPEED – NASAL FRACTURE WITH DEFORMITY – TRAUMATIC BRAIN INJURY.

Allegheny County, PA

The plaintiff in this vehicular negligence action maintained that she suffered serious and permanent injuries including a broken nose, which is now deformed, and a concussion with post-concussion syndrome when her vehicle was struck in the rear by the defendant at a high and excessive rate of speed. The defendant was in default as he failed to answer the plaintiff's complaint.

The plaintiff maintained that the defendant was negligent in following the plaintiff's vehicle too closely, failing to notice that traffic was stopping or slowing, traveling too fast for conditions and failing to pay proper attention to traffic conditions. The Pennsylvania State Police, already on the scene, witnessed the rear end the plaintiff that defendant was issued a traffic citation for violating 75 Pa.C.S. §3310.

The plaintiff was transported to the hospital for emergency medical care. She sustained significant physical injuries to her head, face, and body, including

but not limited to potentially permanent facial disfigurement, a nasal fracture requiring surgery, concussion, traumatic brain injury, neck pain, back pain, and other painful bodily injuries. She continues to have frequent headaches, irritability, and difficulty concentrating, as well as anxiety and depression. Her nose deformity is prominent and her plastic surgeon it is unlikely that she will get back to her pre-accident appearance.

The court found that the plaintiff was entitled to recover \$600,000.

REFERENCE

Elizabeth Tetlow vs. Eric Elliot. Case no. GD-22-009296; Judge Alan Hertberg, 09-08-23.

Attorney for defendant: Noah Fardo of Flaherty Fardo Rogel Amick, LLC in Pittsburgh, PA.

PREMISES LIABILITY

\$9,977,823 VERDICT – PREMISES LIABILITY – HAZARDOUS PREMISES – NEGLIGENT DESIGN – AUTO/PEDESTRIAN COLLISION – PLAINTIFF, EXITING CAFE, STRUCK BY DRIVE-THRU CUSTOMER – MULTIPLE FRACTURES – EXTERNAL FIXATION.

Nassau County, FL

This action arose from personal injuries sustained by the plaintiff, a 72-year-old woman, while patronizing a coffee shop which, the plaintiff contended, had a negligently designed parking lot and drive-thru area that led to the plaintiff being struck by a drive-thru patron. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant coffee shop denied negligence and argued that the subject matter was a motor vehicle action, not a premises liability action.

As a result of the collision, the plaintiff sustained right intra articular lateral tibial plateau fracture; proximal tibia fracture; displaced right medial malleolus fracture; and comminuted left fifth metatarsal fracture. The plaintiff treated with orthopedic treatment and external fixation with a stabilization boot. The plaintiff now ambulates with the use of a cane and a walker

and claimed a need for lifetime follow-up treatment for her injuries, with the possibility of multiple surgeries including total knee replacement in the future.

Following a 6-day trial, the jury found the defendant coffee shop 100% negligent and both the plaintiff and co-defendant driver 0% negligent. The jury awarded damages in the amount of \$8,970,000 broken down as follows: \$970,000 in future medical expenses; \$1,500,000 in past pain and suffering and \$6,500,000 in future pain and suffering. Together with taxable costs of \$143,629 and attorneys fees of \$864,194, the plaintiff's total recovery was \$9,977,823.

REFERENCE

Gold vs. Ward, et al. Case no. 2020CA000109; Judge Eric C. Roberson, 04-11-22.

Attorney for plaintiff: Curry Gary Pajcic of Pajcic & Pajcic, P.A. in Jacksonville, FL.

\$358,000 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF TRIPS ON STAIRS AT ENTRANCE OF DEFENDANT DEPARTMENT STORE – RIGHT MEDIAL MENISCUS TEAR – LUMBAR DISC HERNIATIONS – LUMBAR RADICULOPATHY – SURGERY.

Essex County, NJ

In this premises liability action, the plaintiff tripped on a set of stairs leading to the entrance of the defendant department store sustaining serious injuries. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, and failing to prevent a tripping hazard. Consequently, the plaintiff sustained injuries, including a right knee medial meniscus tear

which required arthroscopic surgery to repair. Additionally, the plaintiff also sustained lumbar disc herniations and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$358,000.

REFERENCE

Seltzer Thomas vs. Simon Property Group, Inc. Docket no. L008629-18; Judge Stephen L. Petrillo, 04-15-23.

Attorney for plaintiff: Amos Gern of Starr, Gern, Davidson & Rubin, P.C. in Roseland, NJ.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

\$250,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF INJURED AFTER ACCIDENTALLY STEPPING INTO UNFILLED FENCE POST HOLE AT CONSTRUCTION SITE – RIGHT QUADRICEPS TENDON RUPTURE – SURGERY REQUIRED.

Essex County, NJ

In this construction site negligence action, the plaintiff was injured when he accidentally stepped into an unfilled hole in the ground at the defendants' construction site. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions at the construction site, failing to fill in a

large hole in the ground, failing to inspect the construction site, failing to remove or repair a tripping hazard, failing to place traffic cones or otherwise warn of the presence of a large hole in the ground, failing to warn of a potential tripping hazard, failing to prevent hazardous or unsafe conditions at the construction site, and failing to regard for the health and safety of construction workers on the premises includ-

ing the plaintiff. Consequently, the plaintiff sustained injuries, including a right quadriceps tendon rupture, which required an open repair surgical procedure.

The jury found in favor of the plaintiff and awarded \$250,000.

REFERENCE

Bradley John vs. Hbc Company, Inc. Docket no. L005176-18; Judge Bridget A. Stecher, 05-11-23.

Attorney for plaintiff: Jonathan P. Arnold of Bramnick Rodriguez Grabas Arnold & Mangan, LLC in Scotch Plains, NJ.

Contract

\$674,704 THIRD-PARTY VERDICT – BREACH OF CONTRACT – PLAINTIFF CONTENDS DEFENDANT PURCHASED SPECIALIZED MACHINERY FROM PLAINTIFF DISTRIBUTOR AND THEN FAILED TO PAY FULL PRICE FOR MACHINE – DEFENDANT ASSERTS MACHINERY DEFECTIVE AND BRINGS THIRD-PARTY CLAIM.

Morris County, NJ

In this action, the plaintiff was a distributor of machines and capital equipment. The defendant was a designer of custom lighting solutions and worked primarily with architects and designers to manufacture and sell custom lighting for commercial, retail, hospitality, industrial and high-end residential applications. The plaintiff contended that the defendant breached a sales agreement wherein the defendant agreed to purchase a machine from the plaintiff for \$418,950. The defendant paid a deposit of \$83,790 but did not pay the remaining balance. The plaintiff sought \$335,160 in damages for breach of contract and damages for the defendant's retention of the loaner machine after the lease's term expired. The defendant denied all liability and asserted a counterclaim against the plaintiff for breach of contract, breach of the implied covenant of good faith and fair dealing, violations of the Uniform Commercial Code and the Consumer Fraud Act, fraud, and negligent misrepresentation.

The plaintiff maintained that the defendant's counterclaims were barred by the limitations provision and warranty provision of the agreement and were not cognizable under the Consumer Fraud Act. The plaintiff argued that the defendant's representative signed all parts of the agreement. Regardless of the claim by the defendant's representative that he did not remember being alerted to additional terms of the agreement, he signed all parts, including front and back pages and, despite his lack of memory of the provisions of the agreement, he agreed to the terms and conditions. The plaintiff asserted that that fact was not challengeable at trial.

The defendant's counterclaim against the plaintiff was dismissed on summary judgment and the plaintiff settled with the defendant prior to trial. The matter continued as to the defendant's third-party claim against the manufacturer of the machine. The defendant brought a third-party claim against the third-party defendant manufacturer of machine tools, turning centers, and lathes for breach of warranty and

negligent design and construction. The defendant claimed that it purchased the machine based on misrepresentations by the plaintiff and third-party defendants that the machine would satisfy the defendant's specific needs. The defendant claimed it was provided a quote for a machine with various features and peripheral equipment, including two warranties, which the defendant accepted. The machine then experienced issues that made it unusable by the defendant. The defendant maintained that the third-party defendant offered a replacement but did not allow an opportunity to inspect the replacement.

The third-party defendant maintained that the defendant's breach of warranty claim was barred because the defendant refused to accept a replacement machine, that any damages were limited to the difference between the value of the machine as warranted and its value after repairs were provided; that the defendant's claims for consumer fraud and negligent design and construction were subsumed under the Products Liability Act; that the negligent design and construction claims were barred under the economic loss doctrine; and that the defendant could not recover damages from the date the replacement would have been installed because such damages were speculative.

The court found in favor of the defendant and against the third-party defendant on the defendant's cross claim. The court awarded the defendant a total of \$674,704 broken down as follows: \$249,871 for lost profits; \$366,329 for expenses and \$58,404 for extra employer compensation.

REFERENCE

Maruka Usa, Inc. vs. Specialty Lighting Industries. Docket no. L -002920-13; Judge Stephan C. Hansbury, 05-23-23.

Attorney for plaintiff: Denis F. Driscoll of Inglesino, Webster, Wyciskala & Taylor, LLC in Parsippany, NJ. Attorney for defendant: Donald E. Taylor of Wilentz, Goldman & Spitzer, P.A. in Woodbridge, NJ.

Country Club Negligence

\$15,000,000 GROSS VERDICT – COUNTRY CLUB NEGLIGENCE – DEFENDANT COUNTRY CLUB STAFF FAILS TO PROPERLY RESPOND TO DECEDENT’S HEAT EXHAUSTION, FAILING TO SUMMON MEDICAL HELP FOR 3 HOURS RESULTING IN FATAL HEART ARRHYTHMIA – WRONGFUL DEATH OF 48-YEAR-OLD MALE.

Los Angeles County, CA

The plaintiff in this wrongful death action was the mother of the decedent as the administrator of the decedent’s estate. The plaintiff maintained that the decedent was suffering from severe heat exhaustion after participating in several hours of paddle tennis at the defendant country club. The staff at the club failed to properly respond to the decedent’s heat exhaustion resulting in the decedent suffering a fatal heart arrhythmia. The defendant denied being negligent.

The decedent began cramping and an attendant at the club massaged the decedent’s calf. According to the plaintiff, the decedent’s cramps spread and he was laid down on a bench and then the floor in the un-airconditioned locker room. The plaintiff maintained that the decedent was attended to for several hours while he was red and sweating profusely. Inexplicably 911 was not called.

At about 5 p.m., the decedent was having difficulty breathing and 911 was called. Paramedics arrived at 5:04. The decedent was awake but turning blue and

then he passed out. He was rushed to the hospital where he suffered a fatal arrhythmia and was pronounced dead a few minutes after arriving at the hospital. Autopsy results show the arrhythmia was caused by elevated potassium due to heat exhaustion.

The jury found that the defendant club was 80% liable and the decedent 20% liable. The jury awarded the decedent’s mother \$15,000,000 for the wrongful death of her son which was reduced accordingly to \$12,000,000.

REFERENCE

Katherine Keck as Administrator of the Estate of William Keck III vs. Bel-Air Bay Club Ltd. Case no. BC704134; Judge Michael Lavanias.

Attorneys for plaintiff: Bruce Broillet, Alan Van Gelder of Greene Broillet & Wheeler, LLP in Santa Monica, CA. .

Sexual Assault

\$13,380,000 VERDICT – SEXUAL ASSAULT – PLAINTIFF ALLEGEDLY RAPED BY UNCLE DURING EUROPEAN TRIP IN 1970S – UNCLE DENIES TRIP IN DEPOSITION SEVERAL MONTHS BEFORE HIS DEATH – CASE CONTINUES AGAINST ESTATE.

Westchester County, NY

This case was brought under the Statute of Limitation window associated with the Child Victims Act and involved a-then 14-year old boy who was allegedly abused by his uncle while in Europe in 1970. The plaintiff contended that as a result, he suffered severe PTSD, anxiety, and other psychological injuries, which continue to result in flashbacks. The alleged assailant/uncle died several months before trial and the defense was continued against the estate with the alleged assailant’s brother as the executor. The plaintiff related that towards the beginning of the trip, the abuse was largely confined to fondling and then graduated to anal rape. In his deposition, the late alleged abuser denied that the sexual conduct occurred or that he went to Europe with the plaintiff

The plaintiff countered the defense of recent fabrication by presenting both his sister who received a 1985 letter from the plaintiff reflecting that the uncle raped him while in Europe. The plaintiff also presented a hitchhiker the pair picked up in Europe who confirmed that they were in Europe at the approximate time in question. There was no evidence of plane tickets.

The plaintiff presented no expert testimony. The plaintiff related that he continues to see a social worker and is in a support group. The plaintiff testified about recent episodes of flashbacks and anxiety/depression. The plaintiff claimed over defense objections relating to the absence of a plaintiff expert, that the condition is permanent in nature.

The plaintiff made no income claims.

The jury found for the plaintiff and awarded \$13,380,000, consisting of \$10,600,000 for 53 years of past pain and suffering and \$2,780,000 for 13.9 years of future pain and suffering.

REFERENCE

Plaintiff adult survivor of sexual abuse by uncle vs. Estate of uncle who died several months before trial.

Attorneys for plaintiff: Jordan Rutsky and Kimberly Kramer of Merson Law, PLLC in New York, NY.