



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

***\$4,200,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF’S VEHICLE STRUCK IN REAR BY DUMP TRUCK OPERATED BY DEFENDANT – PLAINTIFF DRIVER SUSTAINS THORACIC VERTEBRAL FRACTURES, INTERNAL BLEEDING IN BRAIN AND MASSIVE HEAD TRAUMA – SURGERY – WRONGFUL DEATH OF PLAINTIFF’S ONE-YEAR-OLD DAUGHTER.***

### **Essex County, NJ**

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck in the rear by a dump truck, which was being operated by the defendant, while the plaintiff’s vehicle was stopped for traffic. The accident resulted in serious injuries to the plaintiff driver and the death of the plaintiff’s one year-old daughter. The defendant generally denied all allegations of negligence.**

On August 5, 2020, the plaintiff and her daughter, the decedent, were traveling in the plaintiff’s vehicle in a westbound direction on Route 3 in Clifton, New Jersey. The plaintiff was a restrained driver in the front seat, while her daughter was restrained in a child safety seat in the rear of the vehicle. At the same time, the defendant was operating a dump truck owned by his employer, which was also traveling westbound on Route 3, directly behind the plaintiff’s vehicle. At the time of the incident, the plaintiff’s vehicle stopped for heavy traffic ahead. While the plaintiff’s vehicle was stopped, it was struck in the rear by the defendant’s dump truck, which was traveling at an extremely fast rate of speed. The collision caused the plaintiff to become injured, and caused the death of the plaintiff’s infant daughter.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to operate the vehicle at a reasonable rate of speed, failing to observe traffic conditions, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate a vehicle responsibly within the scope of employment, 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 thoracic vertebral

fractures, which required surgery with the placement of hardware to repair. The plaintiff also sustained internal bleeding into the brain. The plaintiff’s daughter, the decedent, sustained massive head trauma, which resulted in the wrongful death of a one year-old female.

The parties entered into a settlement for \$4,200,000.

### **REFERENCE**

Yarrish vs. Hines, Sanzari Asphalt Co. Docket no. ESXL008653-20; Judge John Keefe, 08-03-22.

**Attorney for plaintiff: Evan Goldman of Goldman, Davis, Krumholz & Dillon in Hackensack, NJ.**

**Attorney for plaintiff: Anthony Guidice of Barry, McTiernan & Wedinger in Edison, NJ.**

### **COMMENTARY**

Following the accident in this case, the plaintiff was required to undergo several surgeries and remained in the hospital for several weeks. She was out of work for 10 months, and is still currently receiving physical therapy for both her spinal injuries and complications of a brain bleed. The plaintiff is also still receiving psychotherapy due to massive emotional and psychological injury related to the loss of her infant daughter in the accident.

During proceedings, it was revealed that the plaintiff had been speaking to a friend on a hands-free phone at the time of the accident. Following the crash, the friend reported hearing both the plaintiff and her daughter “moan” for several minutes. An expert physician for the plaintiff testified that this phone call implied that the plaintiff’s infant daughter had sustained conscious pain and suffering leading up to her death, resulting in massive emotional distress for both mother and child. The settlement amount in this case was likely determined by the severity of both the plaintiff’s and the decedent’s physical and psychological injuries, as well as the plaintiff’s prolonged need for medical care and her continuous, lifelong emotional suffering due to the loss of her infant child in the crash.

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**\$1,050,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/MOTORCYCLE COLLISION – TRUCKER CHANGING LANES IN PA COLLIDES WITH NJ MOTORCYCLIST – SEVERAL FRACTURES IN ARMS, INCLUDING SEVERELY COMMINUTED FRACTURE IN RIGHT HUMERUS AND SEVERAL ACUTELY DISPLACED FRACTURES IN LEFT RADIUS AND ULNA REQUIRING ORIF SURGERY – PERMANENT HEARING LOSS IN RIGHT EAR.**

**Passaic County, NJ**

In this action for motor vehicle negligence, the 65-year-old plaintiff motorcyclist, who was riding along with 7 other people on motorcycles, contended that the defendant tractor-trailer driver negligently failed to make adequate observations. The plaintiff contended that as a result, he suffered fractures in his right elbow and both of his wrists, as well as non-fracture injuries to his right shoulder, 100% hearing loss in his right ear and 15% hearing loss in his left ear. During his deposition, the defendant, an experienced truck driver, contended that the motorcyclist had attempted to speed past him as the trucker was changing lanes, and in doing so, the motorcyclist struck his truck. The defendant also contended that the motorcyclist had been in his blind spot, which is why could not see and avoid him.

The evidence revealed that the plaintiff and the other 7 motorcyclists were part of the same riding club. The plaintiff had served as the group's "sweep," meaning he rode at the back of the group and maintained close communication with the rider at the front. Because he was at the back, the other 7 motorcyclists had already cleared the area when the accident occurred and were unaware of the near fatal accident. The motorcyclist testified that as he was riding at less than 5 miles per hour, fully equipped with both his helmet and goggles on, the front passenger side of the truck's front bumper hit the left side of his motorcycle.

Upon impact, the motorcyclist was thrown from his motorcycle and onto the side of the roadway. He suffered several fractures in his arms, including a severely comminuted fracture in his right humerus and several acutely displaced fractures in his left radius and ulna, requiring open reduction internal fixation (ORIF) surgery. The motorcyclist also suffered permanent hearing loss in his right ear.

The investigating police officers determined that the truck driver had struck the motorcyclist after attempting to merge onto Route 33 North. In their follow-up interview with the truck driver, the driver stated that he had struck the motorcyclist – not that the motorcyclist had struck him. This was affirmed by the police officers' follow-up interview with the motorcyclist and at the deposition of the investigating police officer. There was a summons issued to the truck driver but was ultimately dismissed by the Court.

The plaintiff is the owner of a production marketing business and contended that he would have continued working until age 70. The plaintiff contended that the pain and restriction in his arms is permanent as is the partial hearing loss. The plaintiff made an income claim of approximately \$200,000. The defendant maintained that in view of the history of CAD, hypertension and psychological depression, the plaintiff's claims should be rejected. The plaintiff countered that he had remained active despite the underlying conditions as evidenced both participation with the motorcycle group and his continuing to work.

The case settled prior to trial for \$1,050,000.

## REFERENCE

Plaintiff's accident reconstruction expert: Robert Klingen from Mahwah, NJ. Plaintiff's economist expert: Kenneth T. Betz, M.A. from Livingston, NJ. Plaintiff's economist expert: Kristin K. Kucsma, M.A. from Livingston, NJ. Plaintiff's vocational rehabilitation expert: Edmond Provder from Lodi, NJ.

65-year-old motorcyclist vs. defendant trucker.

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

## **\$3,000,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – DEFENDANTS FAIL TO WORK UP DECEDENT FOR PULMONARY EMBOLISM AND PLAINTIFF'S DECEDENT DIES WHILE BEING DISCHARGED FROM E.R. – WRONGFUL DEATH OF 44-YEAR-OLD FEMALE.**

### **Morris County, NJ**

In this action for medical malpractice, the estate of the decedent maintained that the defendants negligently treated the decedent when she was taken to the E.R. with shortness of breath and heart palpitations. After a short stay in the E.R. the decedent was discharged and while she was leaving the hospital, she fainted and her condition deteriorated rapidly. She coded and died several days later. The defendants generally denied all allegations of negligence and injury.

On October 20, 2020, the 44-year-old female decedent was taken to the defendant hospital, from her place of work, with shortness of breath, elevated blood pressure, elevated heart rate and palpitations. In the E.R. the decedent was under the care of the defendant doctors. The defendants ordered several tests and ultimately diagnosed the decedent with benign heart palpitations. The defendants determined that the decedent was clinically stable for discharge and provided instructions for follow-up with her primary and a cardiologist.

When the decedent began to leave the hospital, she fainted and was taken to a room where additional episodes of fainting occurred. She then stopped breathing and lost all pulses. A code blue was called and CPR initiated, a pulse was restored but the de-

## COMMENTARY

The police report was initially standard with the investigating officer's report reflecting the versions of the parties. During discovery, the officer indicated he personally recalled the incident because of its unusual nature and largely supported the plaintiff's version. In this regard, since the case did not involve probable deaths, the report was more standard, enabling the officer to effectively augment his report.

dent required full life support. She died on October 23, 2020. Her cause of death was pulmonary embolism.

The estate of the decedent maintained that the defendants failed to exercise the necessary degree of care, failed to properly assess the decedent for myocardial injury prior to discharge, failed to place the decedent on a cardiac monitor, failing to request cardiac biomarkers on an emergent basis, failed to obtain exertional vital signs, failed to recognize significant findings on the ECG and failed to rule out a pulmonary embolism.

The decedent is survived by her husband and 2 adult children.

The parties settled for \$3,000,000.

## REFERENCE

Ronald Cantoni as executor of the Estate of Cheryl Miskimon, and Timothy Miskimon vs. Anar Dinesh Shah, M.D.; Cosimo Laterza, M.D.; Envision Physician Services; Atlantic Health System D/B/A Morristown Medical Center. Docket no. MRSLO02611-21; Judge Stuart A. Minkowitz, 03-07-23.

Attorney for plaintiff: David A. Mazie of Mazie Slater Katz & Freeman, LLC in Roseland, NJ. Attorney for defendant: Lauren Koffler O'Neill of MacNeill O'Neill & Riveles, LLC in Cedar Knolls, NJ.

## **\$1,325,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – SLIP ON WET FLOOR OF THEATER SITUATED APPROXIMATELY 6 FEET FROM SELF-SERVICE SODA AND ICE DISPENSER – MODE OF OPERATION – CERVICAL AND LUMBAR HERNIATIONS – SURGICAL INTERVENTIONS – PERMANENT SYMPTOMS – NO FUTURE INCOME CLAIMS.**

### **Passaic County, NJ**

In this action for premises liability, the 33-year-old plaintiff contended that as she was walking near the self-dispensing soda/ice machine at the defendant theater, she slipped and fell on a wet floor, suffering a lumbar and a cervical

herniation. The plaintiff maintained that despite several surgical interventions, she will suffer permanent symptoms. The defendant maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff suffered herniations in an automobile accident that was treated conservatively when she was in high school. The plaintiff asserted that she was essentially asymptomatic until the subject fall occurred. The plaintiff proceeded on a mode of operation theory, denying that notice was necessary. The plaintiff also contended that the coefficient of friction when wet was inadequate and violated the applicable code. The fall was captured on surveillance cameras.

The site of the fall was some 6 feet from the ice and soda machine. The plaintiff's expert engineer maintained that the liquid substance came from the self-service freestyle drink machine and that the color and sheen of the floor camouflaged potential dangers from patrons who used the machines. The plaintiff's engineer also concluded that the attention of patrons would be drawn to nearby registers.

The plaintiff went to the emergency room later that day. The plaintiff underwent a bilateral lumbar and cervical transforaminal epidural steroid injection as well as a percutaneous disc decompression at L5-S. The plaintiff maintained that she did not fair well. The plaintiff ultimately required a lumbar discectomy, as well as lumbar and cervical fusions. The plaintiff asserted that despite the surgery, she will permanently suffer extensive pain and limitations.

The defendant contended that any continuing symptoms were preexisting and stemmed from the prior herniations. The plaintiff countered that she had been essentially asymptomatic for many years fully recovered and that she was not under active treatment with a physician with regard to neck or back complaints prior to this accident.

The plaintiff had a desk job and made no future income claims.

The case settled prior to trial for \$1,325,000.

#### REFERENCE

**Plaintiff's engineer expert: Wayne Nolte, PE from Hazlet, NJ. Plaintiff's orthopedic spinal surgeon expert: Michael Gerling, M.D. from New York, NY.**

Restrepo vs. Kerosetes Showplace Theaters. Docket no. PAS L-1628-21.

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

#### COMMENTARY

The evidence disclosed that the fall on the wet floor occurred approximately 6 feet from the self-dispensing soda and ice machine and the plaintiff proceeded on a mode of operation theory, obviating the need to show notice. Additionally, the plaintiff's engineer stressed that the coefficient of friction when wet did not comply with applicable codes. Finally, with respect to liability, the plaintiff argued that a patron's gaze would probably be shifted to nearby registers, and that the failure to see the floor was wet did not reflect comparative negligence. Regarding damages, the defendant argued that any continuing symptoms stemmed from herniations that were sustained in a car accident when the plaintiff was in high school. The plaintiff, who was in her early 30s, stressed that she had been essentially asymptomatic and had not required medical attention for many years. Finally, it should be noted that the case was tried under a Letter of Protection and that approximately \$800,000 in medical bills would have been boardable, but were compromised down to approximately \$300,000 in the settlement phase with the doctors.

### **DEFENDANT'S VERDICT – LEGAL MALPRACTICE – PLAINTIFF CLAIMS DEFENDANT'S MALPRACTICE CAUSED HER TO LOSE POTENTIAL DAMAGE RECOVERY IN UNDERLYING EMPLOYMENT LAWSUIT – DEFENDANT DOES NOT DENY MISHANDLING PLAINTIFF'S CASE BUT ARGUES NO DAMAGES TO PLAINTIFF BECAUSE SUIT SETTLED WITH ANOTHER LAW FIRM.**

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

**In this legal malpractice case, the plaintiff asserted that the defendant law firm breached the standards of legal practice in handling an employment discrimination case on behalf of the plaintiff. The plaintiff asserted that the defendant breached its duty of fiduciary care to the plaintiff to adequately represent her and breached the contract for professional services between the parties. The defendant did not contest liability but disputed the plaintiff's claim for damages.**

On July 20, 2008, the plaintiff entered into a retainer agreement with the defendant law firm. The plaintiff sought the defendant's representation in an employment action against her former employer. The plaintiff argued that the defendant law firm did not advise the plaintiff about a motion to compel discovery and failed to respond to the motion. On February 20, 2009, the court issued an order that discovery was overdue and giving the plaintiff 10 days to produce

the missing discovery. The plaintiff contended that the defendant negligently failed to respond to the order resulting in the court dismissing the plaintiff's case. The plaintiff argued that the defendant concealed the dismissal from the plaintiff and misrepresented the status of the plaintiff's lawsuit from her. On April 25, 2014 the plaintiff filed a grievance against the defendant and the ethics committee filed a disciplinary action complaint against the defendant. Unbeknownst to the plaintiff, the plaintiff's file was destroyed as a result of the underlying employment case having been dismissed in March of 2009. The plaintiff filed a motion to have her case restored due to the defendant's failure to honor their commitments to the plaintiff. The case was restored and the plaintiff hired a different law firm to represent her in the case. The plaintiff ultimately settled the employment action because she feared her claims would be difficult to prove due to the excessive passage of time, the

death of witnesses over the year, loss of documents, and the potential failure of memories of remaining witnesses. More than 9 years passed since the plaintiff retained the defendants to file the employment discrimination suit.

The plaintiff claimed that negligence, carelessness, negligent misrepresentations, improper actions and omissions, and departures from the accepted standards of legal practice were committed by the defendant in the handling of the plaintiff's case. The plaintiff argued that, due to the defendant's professional negligence, she had to settle the case for less than she might have received if the matter had been handled properly when it was originally filed and that she incurred additional legal expenses due to having to restart her case after it was dismissed because of the defendant's failure to litigate the case in a timely fashion. The plaintiff claimed damages in excess of

\$3 million. The defendant argued that the plaintiff was not harmed by the delay in litigation of her case and that she received a good outcome in the form of her \$635,000 settlement. The defendant maintained that the plaintiff could not prove that she would have recovered more had the matter been litigated earlier.

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

#### **REFERENCE**

Codella vs. The Dwyer Law Firm, LLC. Docket no. L - 002309-17; Judge Annette Scoca, 05-10-23.

**Attorney for plaintiff: Steven L. Hess of Hess & Leibowitz, PLLC in New York, NY. Attorney for defendant: Andrew Dwyer of The Dwyer Law Firm, L.L.C. in Newark, NJ.**

# Verdicts By Category

## AUTO REPAIR NEGLIGENCE

### \$55,000 VERDICT

**Auto repair negligence – Plaintiff injured after defendant automotive repair shop fails to properly reattach plaintiff's front driver's side wheel – Front driver's side wheel falls off, causing plaintiff to abruptly brake and bring vehicle to very sudden stop – Cervical disc herniations – Lumbar disc herniations – Right median neuropathy.**

#### **Burlington County, NJ**

**In this action, the plaintiff was injured after the defendant automotive repair shop failed to properly reattach her vehicle's front driver's side wheel. The defendants generally denied all allegations of negligence.**

On March 28, 2019, the plaintiff was a lawful customer at the defendant automotive repair shop, located on the premises of 1386 NJ-38 in Hainesport, New Jersey. On this day, the plaintiff had taken her vehicle into the defendant shop for maintenance. After the repair process was complete, the vehicle was returned to the plaintiff, at which point she attempted to drive it home. Just after merging onto Route 38, the plaintiff's front driver's side wheel fell off, causing

the plaintiff to abruptly brake and bring the vehicle to a very sudden stop. The plaintiff became injured as a result.

The plaintiff maintained that the defendants were negligent in failing to properly repair the motor vehicle, failing to properly inspect the vehicle after repairs, failing to test the vehicle, failing to properly reattach the subject wheel, failing to properly complete the repair process, failing to warn that the wheel was loose, failing to adequately follow maintenance and repair protocols, and failing to regard for the health and safety of customers including the plaintiff. Consequently, the plaintiff sustained injuries, including cervical disc herniations, lumbar disc herniations, and right median neuropathy.

The jury found in favor of the plaintiff and awarded \$55,000.

#### **REFERENCE**

Box vs. Icahn Automotive Group. Docket no. L001434-20; Judge Richard L Hertzberg, 05-31-23.

**Attorney for plaintiff: Robert I. Segal of Robert I. Segal, Esq. in Medford, NJ. Attorney for defendant: Christopher J. O'Connell of Sweeney & Sheehan in Westmont, NJ.**

## CIVIL ASSAULT

### \$100,000 VERDICT

**Civil assault – Road rage incident – Defendant assaults plaintiff with maintenance tool following road rage incident – Assault/battery – Nasal fractures and lacerations to arm and leg.**

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

**In this action, the plaintiff and defendant were traveling on the same road when the defendant drove his vehicle aggressively and dangerously prompting the plaintiff to take evasive action and come to a complete stop. While the plaintiff was stopped, the defendant exited his vehicle and assaulted the plaintiff with a maintenance tool from the defendant's trunk. The defendant maintained it was the actions of the plaintiff that caused the incident.**

On August 23, 2019 at approximately 5:30 p.m., the male plaintiff was operating a motor vehicle, traveling westbound on Interstate 80 at or around milepost

36.8, in Rockaway Township, New Jersey. At the same time and place, the defendant was operating his vehicle westbound on I-80 when he negligently interfered with traffic and the plaintiff's ability to safely operate his vehicle causing the plaintiff to take evasive action and come to a complete stop. The defendant then exited his motor vehicle and used a maintenance tool to smash the plaintiff's driver side window breaking the glass and resulting in shards of glass contacting and physically penetrating the plaintiff's body including his arms and legs which resulted in severe lacerations and significant scarring to the plaintiff's body.

The defendant also struck the plaintiff in the face with the same tool resulting in displaced nasal fractures. The plaintiff sued the defendant for assault and gross negligence. The defendant denied all allegations of negligence and maintained that any damages al-

leged to have been suffered by the plaintiff were caused solely by the comparative or contributory negligence of the plaintiff.

The arbitrator found that the defendant was 65% negligent and the plaintiff was 35% negligent. The arbitrator awarded the plaintiff \$100,000 which was reduced to \$65,000 for comparative negligence.

## REFERENCE

Hassan vs. Thoenig, Jr. Docket no. MRS-L-2251-20; Judge Fred Greenberg, Arbitrator, 08-11-22.

**Attorney for plaintiff: Cynthia Walters of Snyder Sarno D'Aniello Maceri & da Costa, LLC in Hackensack, NJ. Attorney for defendant: William Mergner of Leary, Bride, Mergner & Bongiovanni, P.A. in Cedar Knolls, NJ.**

## CONTRACT

### \$14,500 RECOVERY

**Breach of contract – Real estate – Plaintiff sellers claim defendant buyer failed to pay contracted deposit for purchase of plaintiffs' home and did not inform plaintiffs of cancellation of intent to buy property – Plaintiffs claim damages from selling home at lower price and carrying costs in interim.**

#### Middlesex County, NJ

**In this breach of contract case, the plaintiff asserted that the defendant failed to pay the contracted deposit for purchase of plaintiffs' home and did not inform plaintiffs of the cancellation of intent to buy the property. The defendant denied breaching the contract and argued that the contract of sale for the property between the parties contained a mortgage contingency which conditioned the purchase of property upon the ability of the defendant to have secured a conventional mortgage in the sum of \$368,000.**

On April 17, 2014, the parties entered into a contract of sale for the real property known as 626 Archibald Lane in Florence Township. Per the agreement, the defendant was to buy the property from the plaintiffs for the sum of \$460,000. A sale contract between the parties was signed on April 26, 2014. Per the terms of the contract, a deposit of \$19,000 was due 5 days later. The deposit was not paid despite reminders and the defendant gave no explanation for not making the payment. On May 15, 2014, the defendant sent the plaintiffs an email advising that, in his opinion, the property was only worth about \$440,000. The plaintiffs claimed this was an attempt to lower the sales price of the property.

The plaintiffs asserted that the mortgage company neither denied nor approved the defendant's mortgage application and that the defendant canceled the application before a decision was made. The plaintiffs maintained that the defendant caused the mortgage application to be canceled or withdrawn, in contrast with his claims in the subject lawsuit. The plaintiffs claimed that the defendant refused to pay the deposit required by the contract and refused to proceed but never gave notice of cancellation of the contract, nor requested return of his initial \$1,000 deposit.

After it became clear that the defendant was not proceeding with the transaction, the plaintiffs re-listed the property and sold it for \$440,000, which was \$20,000 less than the contract price to the defendant. The plaintiffs asserted that, as a result of the defendant's breach, they suffered damages in the amount of \$29,017 as follows: \$20,000 reduction in sale price; \$8,882 in mortgage carrying cost and \$135 homeowners' association fee.

The defendant's attorney contended that the plaintiffs' attorney was advised that the contract was canceled because of the defendant's inability to satisfy the mortgage contingency, although, because of the passage of almost 6 years prior to the commencement of the subject lawsuit by the plaintiffs, documents cannot be located by both the plaintiffs and the defendant. Inasmuch as the complaint was filed approximately 14 days prior to the 6 year statute of limitation for this action, without there being any communication between the plaintiffs and the defendant from the time of the cancellation until the filing of a lawsuit 6 years later, emails have been discarded and lost as a result of the change of email addresses, although there is no dispute that the contract was in fact canceled.

The defendant, because of being advised that the mortgage was being denied by his mortgage company, was required to cancel the contract in accordance with the mortgage contingency clause. The mortgage processor stated that his correspondence to the defendant on May 21, 2014, stated why the loan was being rejected and stated in his deposition that this particular mortgage application was canceled due to high debt ratio. Accordingly, the defendant argued, as a result of the defendant being advised by a mortgage representative that his mortgage application was being canceled because of high debt ratio, the defendant canceled the real estate contract due to his inability to satisfy the mortgage contingency and cancellation was provided for and permitted in the contract itself.

The parties settled the matter prior to trial in the amount of \$14,500 and that should the defendant fail to pay that amount by June 23, 2023, judgment in favor of the plaintiffs and against the defendant in the amount of \$25,000 would be entered.

#### REFERENCE

Bobal vs. Dussa. Docket no. L-002001-20; Judge Joseph L. Rea, 05-15-23.

**Attorney for plaintiff: Arthur L. Lessler of Lessler & Lessler in South River, NJ. Attorney for defendant: Howard L. Felsenfeld, Esq. in Trenton.**

## DOG ATTACK

### \$45,800 RECOVERY

**Dog attack – Minor plaintiff attacked by defendant’s pit bull while walking along edge of defendant’s property – Bite wounds to neck – Rabies shots – Permanent scarring – Emotional distress – Defendant argues plaintiff trespassing on property.**

#### Gloucester County, NJ

**In this dog attack case, the teenaged plaintiff asserted that he sustained injury when the defendant’s dog jumped a fence and attacked him as he walked alongside the defendant’s property. The defendant denied negligence and claimed the plaintiff was trespassing; therefore, he was barred from recovery for the attack.**

On May 16, 2021, the plaintiff was walking with friends along a trail adjacent to a chain link fence line on or near the property located at 345 Davis Avenue in Williamstown, owned by the defendant. The plaintiff contended that, as he walked along the property, he was attacked by the defendant’s Pit Bull which jumped up on the defendant’s yard’s fence and bit the plaintiff on the neck. The plaintiff presented video from the defendant’s home security camera which showed the dog leap on the fence. Records suggested youths regularly traveled this path to a nearby creek, even though it was on the defendant’s prop-

erty. The plaintiff argued there was no evidence of the type of criminal trespass needed for a defense in a dog bite case.

The plaintiff claimed permanent scars on his neck; pain and stiffness with cold or damp conditions; and limitations in range of motion of the neck to the present. The plaintiff was required to undergo a series of rabies shots and claimed emotional distress from the attack.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$48,220. Following arbitration and prior to trial, the parties settled for \$45,800 broken down as follows: \$11,034 in attorney fees; \$1,661 in costs and disbursements; \$800 in medical expenses and \$32,305 in net damages to the minor plaintiff.

#### REFERENCE

Adams vs. Cullen, Jr. Docket no. L-001407-21; Judge Anne McDonnell, 05-24-23.

**Attorney for plaintiff: Herbert J. Stayton, Jr. of Stayton Law, LLC in Cherry Hill, NJ. Attorney for defendant: Janet Pisansky of Burke & Potenza, P.C. in Parsippany, NJ.**

## INSURANCE OBLIGATION

### \$50,000 RECOVERY

**Insurance obligation – Car jacking – 3 minor plaintiffs, ages 9 to 11, in vehicle when thief took control of vehicle and crashed it into tree, then fled, leaving plaintiffs injured in collision – First minor plaintiff: displaced fracture of left femur underwent surgery with open reduction and internal fixation with hardware; Second minor plaintiff: concussion, hospitalized overnight for observation; Third minor plaintiff: contusion to left shin and foot, treated and released.**

#### Essex County, NJ

**In this case, the 3 plaintiff passengers, 3 minor siblings, twins age 9 and an 11-year-old, asserted that a thief/tortfeasor stole the car in which they were passengers and struck a tree with such force that it caused significant, permanent injury. The plaintiff parents brought suit against their auto insurance carrier for uninsured motorist coverage. The defendant insurer agreed to tender the full policy limit of \$25,000 per person; \$50,000 total to resolve the uninsured motorist claims by all 3 plaintiffs.**

On December 30, 2019, the plaintiffs were seated in a vehicle left running in the roadway, at the intersection of Bergen Street and Hansbury Avenue in Newark, while their parents were loading the car for a trip. The tortfeasor, an unknown individual, entered and began operating the vehicle with the intent to steal it. The tortfeasor sped away before noticing the children in the back, crashing into a tree, and fleeing the scene. The plaintiffs alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, all 3 children were taken to the hospital. The first plaintiff sustained a displaced fracture of her left femur and underwent surgery with open reduction and internal fixation with hardware. She underwent a second surgery to remove hardware 10 months later. She was hospitalized for 2 nights total. The second plaintiff suffered a concussion and was kept in the hospital overnight for observation. The

third plaintiff suffered a contusion to his left shin and his left foot. He was treated and released the same day of the accident.

The parties settled the matter prior to trial in the amount of \$50,000 with the first plaintiff receiving \$25,000 and each of the other 2 plaintiffs receiving \$12,500 each. The damages were broken down as follows: \$12,324 in attorney fees; \$703 in costs and disbursements; \$18,498 in net damages to the first minor plaintiff; \$9,211 in net damages to the second minor plaintiff and \$9,264 in net damages to the third minor plaintiff.

#### REFERENCE

Subuloye, et al. vs. GEICO. Docket no. L-006362-22; Judge Richard T. Sules, 05-15-23.

**Attorney for plaintiff: Stewart M. Levis of Berkowitz, Lichtstein, Kuritsky, Giasullo & Gross, LLC in Roseland, NJ. Attorney for defendant: Gabriella Esposito of Staff Counsel, GEICO in Princeton, NJ.**

## LANDLORD NEGLIGENCE

### \$50,000 GROSS ARBITRATION AWARD

**Landlord negligence – Plaintiff claims defendant property owner and his agents failed to remove snow and ice from property and allowed dangerous condition to exist that caused plaintiff to fall and suffer injury – Disc herniations at L5-S1 and C3-4; bilateral tendonitis of shoulders and bilateral strain and sprain of knees – Pain management and chiropractic treatment, limited by COVID – Non-binding arbitration assigns 80% liability to defendant property owner and 20% to plaintiff.**

#### Essex County, NJ

**In this premises liability case, the plaintiff tenant asserted that the defendant property owner and its agents failed to remove snow and ice from the property causing the plaintiff to fall and suffer significant, permanent injury. The defendants denied negligence and contested the plaintiff's damages.**

On March 14, 2019, the plaintiff, a tenant in the defendants' building located at 872 South 16th Street in Newark, told the defendants' super that there was snow and ice that needed to be cleared from the steps of the property. The super came with a shovel but did not use it. The plaintiff's fiancé shoveled the snow but did not have salt for the ice. The plaintiff informed the super that the ice had to be removed. The following morning, the plaintiff left the property to go to work and slipped on ice on the steps. The plaintiff contended that the defendants had constructive knowledge of the presence of the hazard and, despite that knowledge, negligently failed to remove or remediate the ice. The plaintiff alleged that the force of the impact from the fall resulted in permanent injuries.

As a result of the slip and fall on ice, the plaintiff sustained disc herniations at L5-S1 and C3-4; bilateral tendonitis of shoulders; and bilateral strain and sprain of knees all confirmed on MRI. The plaintiff treated with pain management and chiropractic treatment but contended treatment was limited by COVID. The plaintiff was unable to work for one month after the incident but made no lost wages claim. The plaintiff claimed ongoing headaches and pain in the neck, shoulders and lower back.

The defendant property owner argued that it performed as required with regard to snow and ice removal and that the purported fall by the plaintiff was due to melting and refreezing of ice overnight. The defendant denied knowledge of the condition on the following day and asserted that there had not been notice or enough time to deal with the ice the following day before the plaintiff fell. The defendant also challenged the extent and causation of the plaintiff's claimed injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of \$50,000 reduced to \$40,000 for plaintiff's comparative negligence. Neither party moved for trial, and the arbitration was confirmed by the court.

#### REFERENCE

Burton vs. Jones, et al. Docket no. L-002391-20; Judge Annette Scoca, 05-11-23.

**Attorney for plaintiff: Martin F. Kronberg of Law Offices of Martin F. Kronberg in Union, NJ. Attorneys for defendant: Patrick J. Cosgrove and Meaghan C. Mahon of Pillinger Miller Tarallo, LLP in Philadelphia, PA.**

## MOTOR VEHICLE NEGLIGENCE

### Auto/Bicycle Collision

#### \$39,000 VERDICT

**Motor vehicle negligence – Auto/bicycle collision – Plaintiff bicyclist injured when defendant’s vehicle sideswipes plaintiff’s bicycle – Fracture of left elbow – Left shoulder contusion – Cervical disc bulges – Lumbar disc bulges – Bilateral shoulder subacromial bursitis.**

#### Bergen County, NJ

**In this motor vehicle negligence action, the plaintiff bicyclist was injured when the defendant’s vehicle sideswiped the plaintiff’s bicycle. The defendant generally denied all allegations of negligence.**

On November 6, 2019, the plaintiff was lawfully riding his bicycle along the right edge of State Street Bridge in Teaneck, New Jersey. At this time, the plaintiff bicyclist was preparing to merge onto Windsor Road from State Street Bridge. At the same time, the defendant’s vehicle was also traveling on State Street Bridge toward Windsor Road, in the same traffic lane as the plaintiff’s bicycle. At the time of the incident, the defendant’s vehicle sideswiped the plaintiff’s bicycle on its left side. The plaintiff bicyclist then fell to the ground, causing the plaintiff to become injured.

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 bicyclist, failing to obey traffic conditions, failing to maintain a safe distance from the plaintiff bicyclist, 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 bicyclist. Consequently, the plaintiff sustained injuries, including a fracture of the left elbow, left shoulder contusion, cervical disc bulges, lumbar disc bulges, and bilateral shoulder subacromial bursitis.

The jury found in favor of the plaintiff and awarded \$39,000.

#### REFERENCE

Mirabal vs. Dorian. Docket no. L005106-21; Judge Gregg A. Padovano, 04-12-23.

**Attorney for plaintiff: Sagar Shah of Eisenberg & Baum, LLP in New York, NY.**

### Auto/Pedestrian Collision

#### \$7,500 RECOVERY

**Motor vehicle negligence – Auto/pedestrian collision – Plaintiff claims defendant was speeding and struck plaintiff in crosswalk – Left foot contusion – X-rays and conservative treatment with no permanency.**

#### Hudson County, NJ

**In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver struck the plaintiff pedestrian with such force that it caused significant, permanent injury. The defendant stipulated liability but asserted that the plaintiff was guilty of contributory negligence.**

On September 10, 2021, the minor plaintiff was a pedestrian in a crosswalk at Old Bergen Road and Winfield Avenue in Jersey City. The plaintiff contended that the defendant was traveling at a high and unlawful rate of speed under the circumstances and without warning of its approach, negligently struck the minor plaintiff.

The plaintiff contended that the defendant failed to observe a pedestrian in a crosswalk and that the force of the impact resulted in serious injuries. The plaintiff sustained a left foot contusion that was treated conservatively and ultimately resolved without limitation. The defendant contested the plaintiff’s damages, noting that the plaintiff’s physician stated that the plaintiff made a full recovery with no permanency.

The parties settled the matter prior to trial in the amount of \$7,500 broken down as follows: \$1,747 in attorney fees; \$514 in costs and disbursements and \$5,240 in net damages to the minor plaintiff.

#### REFERENCE

Armfield vs. Indardat. Docket no. L-002461-22; Judge Veronica Allende, 05-01-23.

**Attorneys for plaintiff: David Shachat and Josepha G. Boccia of Zavodnick, Perlmutter & Boccia, LLC in Jersey City, NJ. Attorney for defendant: Jason Bonica of Law Offices of William J. Fitzula in Woodbridge, NJ.**

## Auto/Truck Collision

### DEFENDANT'S VERDICT

**Motor vehicle negligence – Auto/truck collision – Plaintiff claims defendant, driving box truck in course of employment, cut in front of plaintiff without warning causing collision between vehicles – Defendant denies plaintiff's claim and argues plaintiff crossed into defendant's lane without slowing to allow for crossover and failed to keep safe distance, thus colliding with rear of defendant's truck – Case bifurcated and goes to trial as to liability only.**

#### Essex County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver cut in front of the plaintiff's vehicle, causing a collision between the vehicles. The parties agreed to bifurcate the issues of negligence and damages and the matter went to trial as to liability only. The defendant denied negligence and asserted that the plaintiff was at fault.**

On August 1, 2017, the plaintiff was traveling north on the New Jersey Turnpike in the city of Newark. The defendant was the operator of a truck being operated while in the employ of the defendant beverage company traveling north on the turnpike in the right lane. As the plaintiff approached a split in the roadway and intending to take the western spur to the right, leading to the George Washington Bridge, the plaintiff made a lane change to the right. The plaintiff claimed that he observed the defendant's box truck in front of him and to his right. He asserted that the defendant's vehicle was going slightly faster than the plaintiff's vehicle and that he applied his brakes to slow down when the defendant crossed in front of the plaintiff causing his vehicle to come in contact with the rear of the defendant's vehicle.

The plaintiff contended that the defendant made a negligent lane change and cut off the plaintiff causing a collision between the vehicles.

The defendant testified that, as he approached the split in the road with the intention to take the eastern spur leading to the Lincoln Tunnel, he put on his directional signal and looked in his mirror. Upon seeing no vehicles, he commenced a lane change from the right lane to the center lane. The defendant then felt an impact to the rear of his truck, near the passenger side of the vehicle. The defendant driver maintained that the plaintiff crossed into the defendant's lane and failed to maintain an appropriate speed and keep a safe distance, thus causing his vehicle to collide with the rear of the defendant's vehicle.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 30% liability to the defendant and 70% to the plaintiff with no damages to the plaintiff. The arbitration was not confirmed and the matter proceeded to trial.

The jury unanimously found in favor of the defendant, finding that the plaintiff did not prove that the defendant was negligent, resulting in no cause for action.

#### REFERENCE

Ravelo vs. Pastora. Docket no. L -001286-19; Judge Robert H. Gardner, 05-26-23.

**Attorney for plaintiff: Arthur V. Lynch of Lynch Lynch Held Rosenberg, P.C. in Hasbrouck Heights, NJ.**

**Attorney for defendant: Joseph M. Gaul, Jr. of Gaul, Baratta & Rosello, LLC in Cedar Knolls, NJ.**

## Intersection Collision

### \$47,500 VERDICT

**Motor vehicle negligence – Intersection collision – Plaintiff's vehicle struck broadside by defendant's vehicle after defendant fails to stop at stop sign – Cervical disc bulge – Lumbar disc bulge – Cervical radiculopathy.**

#### Burlington County, NJ

**In this motor vehicle negligence action, the plaintiff's vehicle was struck broadside by the defendant's vehicle when the defendant failed to stop at a stop sign causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.**

On November 11, 2019, the plaintiff's vehicle was traveling southbound on Briggs Road, at or near its intersection with Route 38 in Mt. Laurel, New Jersey. At this time, the defendant's vehicle was traveling west-

bound on Route 38, toward the same intersection. At the time of the incident, the plaintiff's vehicle was attempting to proceed straight through the intersection. As the plaintiff's vehicle proceeded forward, the defendant's vehicle failed to stop at a stop sign and struck the plaintiff's vehicle broadside, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey a stop sign, failing to obey traffic signals, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, 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 vehi-

cle. Consequently, the plaintiff sustained injuries, including cervical disc bulge, lumbar disc bulge, and cervical radiculopathy.

The jury found in favor of the plaintiff and awarded \$47,500.

### ■ \$35,000 VERDICT

**Motor vehicle negligence – Intersection collision – Plaintiff’s vehicle struck broadside by defendant’s vehicle in intersection – Failure to obey stop sign – Lumbar disc herniations – Cervical disc bulge – Lumbar disc bulge.**

#### **Burlington County, NJ**

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck broadside by the defendant’s vehicle in an intersection causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.**

On August 12, 2019, the plaintiff’s vehicle was traveling eastbound on Cooper Street, at or near its intersection with Hickory Street in Delanco, New Jersey. At the same time, the defendant’s vehicle was traveling northbound on Hickory Street, toward the same intersection. At the time of the incident, the plaintiff attempted to proceed forward through the intersection. As the plaintiff’s vehicle proceeded, the defendant’s vehicle failed to stop at a stop sign and struck the plaintiff’s vehicle broadside.

#### **REFERENCE**

Carbonaro vs. Ganskopp. Docket no. L002240-21; Judge Eric G. Fikry, 05-09-23.

**Attorney for plaintiff: David R. York of Pressman, Doyle, Bloom & York in Cherry Hill, NJ.**

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey a stop sign, failing to obey traffic signals, failing to observe the plaintiff’s vehicle, failing to yield the right-of-way, 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 lumbar disc herniations, cervical disc bulge, and lumbar disc bulge.

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

#### **REFERENCE**

Hayden, Jr. vs. Kirk. Docket no. L001288-21; Judge Aimee R. Belgard, 06-09-23.

**Attorney for plaintiff: Mark S. Gertel of Law Offices of Mark S. Gertel, P.C. in Cherry Hill, NJ. Attorney for defendant: James Patrick Meissler of James Patrick Meissler, Esq. in Moorestown, NJ.**

## Left Turn Collision

### ■ \$61,878 VERDICT

**Motor vehicle negligence – Left turn collision – Plaintiff claims defendant failed to stop and failed to make observations of oncoming traffic before making left turn colliding with plaintiff’s vehicle – Disc herniations at L3-4, L4-5, L5-S1 and T8-9; cervical disc bulges; radiculopathy and secondary right ankle sprain – 2 epidural injections to cervical and lumbar spine.**

#### **Burlington County, NJ**

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle in a t-bone collision with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff’s damages.**

On November 1, 2018, the plaintiff was traveling north in the far lane of Route 130 in Mansfield Township and had the right-of-way. The defendant was operating a motor vehicle and attempting to make a left turn from County Road 678 (Kinkora Road) onto US Highway Route 130. Route 130 is a 4-lane highway with 2 lanes traveling in each direction with a median between them. The plaintiff contended that the defendant negligently failed to properly stop or

yield to traffic in both lanes of Route 130, and attempted her left turn without observing oncoming traffic, causing a severe T-bone collision with the plaintiff’s vehicle. The plaintiff alleged that the force of the impact was so severe that it totally destroyed the plaintiff’s vehicle and resulted in serious, permanent injuries to the plaintiff. The defendant was ticketed for careless driving in violation of NJSA 39:4-97, which was reduced to Unsafe Operation of a Motor Vehicle in violation of NJSA 39:4-97.2 as a result of the subject incident.

As a result of the collision, the plaintiff sustained disc herniations at L3-4, L4-5, L5-S1 and T8-9; cervical disc bulges; radiculopathy and, due to difficulty walking because of numbness in the lower extremities, the plaintiff suffered a secondary right ankle sprain. The plaintiff treated with two epidural injections to the cervical and lumbar spine. The plaintiff claimed a medical lien of \$11,878 in unpaid medical expenses. The plaintiff presented testimony from his treating physician that his injuries were permanent in nature. The defendant argued that some of the plaintiff’s injuries were pre-existing and degenerative in nature. The defendant’s medical expert asserted that the plaintiff’s injuries were not permanent.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$75,000 plus a healthcare lien of \$21,977. The arbitration was not confirmed and the matter proceeded to trial. The jury awarded damages in the amount of \$50,000 the court added \$11,878 in medical lien expenses for a total recovery of \$61,878.

## REFERENCE

Hogan vs. Jones. Docket no. L-002045-20; Judge James J. Ferrelli, 05-12-23.

**Attorney for plaintiff: Thomas M. Thistle, III of Rosner Law Offices, P.C. in Vineland, NJ. Attorney for defendant: Brad A. Parker of Parker Young & Antinoff, LLC in Marlton, NJ.**

## Parking Lot Exit Collision

### \$85,000 VERDICT

**Motor vehicle negligence – Parking lot exit collision – Plaintiff’s vehicle struck broadside by defendant’s vehicle when defendant pulls out from parking lot – Cervical disc herniations – Cervical disc bulges – Lumbar disc bulges – Cervical and lumbar radiculopathy.**

#### Burlington County, NJ

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck broadside by the defendant’s vehicle when the defendant attempted to pull out of a parking lot and merge into the plaintiff’s lane of travel. As a result, the plaintiff sustained injuries to the discs of the back. The defendant generally denied all allegations of negligence.**

On February 25, 2019, the plaintiff’s vehicle was traveling northbound on Campus Drive, at or near its intersection with Autumn Lane in Burlington Township, New Jersey. At this time, the plaintiff was passing a parking lot, located on the premises of 15 Campus Drive. At the same time, the defendant’s vehicle was attempting to pull out of the same parking lot and

merge into the plaintiff’s lane of travel. As the defendant pulled out of the lot, the defendant’s vehicle suddenly struck the plaintiff’s vehicle on its passenger side.

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’s vehicle, failing to wait for clearance before pulling out of a parking lot, failing to yield, 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 disc herniations, cervical disc bulges, lumbar disc bulges, and cervical and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$85,000.

## REFERENCE

Ekelburg vs. Morales. Docket no. L000323; Judge Richard L. Herzberg, 06-08-23.

**Attorney for plaintiff: Martin Pappaterra of Martin Pappaterra, Esq. in Mt Holly, NJ.**

## Rear End Collision

### \$60,000 VERDICT

**Motor vehicle negligence – Rear end collision – Tears of supraspinatus tendon – Shoulder impingement – Cervical sprain and strain – Damages only.**

#### Morris County, NJ

**The plaintiff in this motor vehicle negligence action maintained that he suffered serious injury to his shoulder and neck when his lawfully slowing or stopped vehicle was struck in the rear by the defendant. The defendant admitted liability but denied the nature and extent of the plaintiff’s injuries.**

On October 15, 2018, the male plaintiff was operating his vehicle on Littleton Road in Parsippany, New Jersey. The plaintiff was slowing his vehicle to a stop or was stopped in traffic when his vehicle was struck in the rear by the defendant. Consequently, the plaintiff suffered a partial tear of the supraspinatus tendon, full thickness tear anteriorly, acromioclavicular joint arthropathy, synovitis, im-

pingement, bicipital tendonitis, loss of shoulder range of motion and cervical sprain. The plaintiff’s wife also made a claim for loss of consortium.

The plaintiff maintained that the defendant was negligent in failing to maintain an assured clear distance, failing to make a proper application of the brakes and failing to maintain a proper lookout. The defendant stipulated liability but denied the nature and extent of the plaintiff’s injuries. An independent medical examination was performed during which the plaintiff was non compliant. The exam revealed that plaintiff was suffering mild tendinopathy.

The board of arbitrators found in favor of the plaintiff and awarded the plaintiff \$60,000.

## REFERENCE

Abhilas T. Abraham and Erica Varga vs. Lisa Catalano. Docket no. MRS-1927-20; 03-09-23.

**Attorney for plaintiff: Nicholas Barone of Peter N. Davis & Associates in Paterson, NJ. Attorney for defendant: Zachary M. Green of Javerbaum Wurgafft Hicks Kahn Wikstrom & Sinins, P.C. in Voorhees, NJ.**

## ■ \$30,000 RECOVERY

**Motor vehicle negligence – Rear end collision – Plaintiff’s vehicle struck in rear by defendant’s vehicle after plaintiff changed lanes – Cervical disc herniations.**

### **Bergen County, NJ**

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck in the rear by the defendant’s vehicle after the plaintiff changed lanes causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.**

On November 6, 2019, the plaintiff’s vehicle was traveling eastbound on Route 46, at or near its intersection with Frederick Street in Little Ferry, New Jersey. The plaintiff’s vehicle was traveling in the left travel lane. At the same time, the defendant’s vehicle was also traveling eastbound on Route 46, just behind the plaintiff’s vehicle in the right travel lane. At the time of the incident, the plaintiff’s vehicle merged into the right lane, directly in front of the defendant’s vehicle. After changing lanes, the plaintiff’s vehicle was struck in the rear by the defendant’s vehicle, causing the plaintiff to become injured.

## ■ DEFENDANT’S VERDICT

**Motor vehicle negligence – Rear end collision – Plaintiff contends he is stopped in traffic when defendant strikes vehicle from behind – Disc herniations at L5-S1; disc bulges at C3-T1, all confirmed on EMG – C6-C8 radiculopathy and lumbar radiculitis at left L5-S1 – Epidural steroid injections and conservative treatment – Defendant argues traffic stopped suddenly without time to react and plaintiff not permanently injured in accident.**

### **Mercer County, NJ**

**In this motor vehicle negligence case, the plaintiff, a 31-year-old man, asserted that the defendant driver struck his vehicle from the rear with such force that it caused significant, permanent injury. The defendant denied negligence claiming that traffic in front of her stopped suddenly creating an emergency situation where she could not stop in time to avoid collision.**

On September 15, 2017, the plaintiff was stopped in traffic on Route 1 in West Windsor. The defendant was traveling directly behind the plaintiff. The plaintiff contended that the defendant negligently failed to observe stopped traffic and allow enough time and space between vehicles to slow or stop. The plaintiff alleged that the force of the rear impact resulted in permanent injuries.

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 allow the plaintiff to safely merge, failing to observe 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.

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

### **REFERENCE**

Carrillo vs. Leon. Docket no. L003782-21; Judge Michael N. Beukas, 05-24-23.

**Attorney for plaintiff: Thomas A. McCarter of Thomas McCarter Law in Hackensack, NJ. Attorney for defendant: Andrew G. Toulas of Harwood Lloyd, LLC in Ridgewood, NJ.**

As a result of the collision, the plaintiff sustained disc herniation at L5-S1; disc bulges at C3-T1, all confirmed on EMG; C6-C8 radiculopathy; and lumbar radiculitis at left L5-S1. The plaintiff treated with epidural steroid injections and conservative treatment. The defendant contested the plaintiff’s damages, arguing that the plaintiff had a prior back injury and that he did not suffer any injury, or any permanent injury in the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$57,500. The arbitration was not confirmed and the matter proceeded to trial.

The jury unanimously found that the plaintiff did not sustain a permanent injury and returned a verdict in favor of the defendant.

### **REFERENCE**

Hobson vs. Edore. Docket no. L-001316-19; Judge Douglas H. Hurd, 05-18-23.

**Attorney for plaintiff: George G. Horiates, Esq. in Pennsauken, NJ. Attorney for defendant: John J. Gentile of Law Office of John J. Gentile in Wall Township, NJ.**

## Sideswipe Collision

### \$95,000 VERDICT

**Motor vehicle negligence – Sideswipe collision – Plaintiff passenger injured when host vehicle sideswiped by defendant’s vehicle – Right knee PCL tear – Right ankle sprain – Neck pain – Shoulder pain.**

#### Camden County, NJ

**In this motor vehicle negligence action, the plaintiff passenger was injured when the host vehicle was sideswiped by the defendant’s vehicle. The defendant generally denied all allegations of negligence.**

On November 24, 2019, the plaintiff was a restrained passenger in the host vehicle, which was traveling southbound in the left travel lane on Route 130 in Collingswood, New Jersey. At the same time, the defendant’s vehicle was traveling northbound on Route 130. At the time of the incident, the defendant’s vehicle suddenly drifted over the center line and into the southbound lane. The defendant’s vehicle then sideswiped the host vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to remain adequately attentive, failing to observe traffic conditions, failing to observe the host vehicle, 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 host vehicle. Consequently, the plaintiff sustained injuries, including a right knee PCL tear, right ankle sprain, neck pain, and shoulder pain.

The jury found in favor of the plaintiff and awarded \$95,000.

#### REFERENCE

King vs. Barci. Docket no. L003128-21; Judge Steven J. Polansky, 04-15-23.

**Attorney for plaintiff: Michael L. Testa of Testa Heck Testa & White, P.A. in Vineland, NJ.**

## PREMISES LIABILITY

### Fall Down

### \$151,200 VERDICT

**Premises liability – Fall down – Plaintiff injured after slipping and falling in shower at defendant motel – Cervical and lumbar protrusions – L5 pars/acute closed chip fracture of left vertebrae.**

#### Burlington County, NJ

**In this premises liability action, the plaintiff was injured after slipping and falling in a shower at the defendant motel. The defendants generally denied all allegations of negligence.**

On July 11, 2020, the plaintiff was a lawful guest staying at the defendant motel, located on the premises of 350 Century Parkway in Mount Laurel, New Jersey. On this day, the plaintiff was inside his rented hotel room and was attempting to take a shower in the bathroom. While the plaintiff was using the shower, the bathtub failed to drain properly, causing a pool of water to accumulate in the tub. Due to the slippery condition that the poor drainage created, the plaintiff suddenly slipped and fell while showering, causing him to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the premises, failing to ensure proper drainage on the premises, failing to unclog the bathtub drain, failing to prevent hazardous or unsafe conditions, failing to supply a bath mat or other safety measures to prevent slippery conditions, failing to repair a hazardous bathtub and drain, and failing to regard for the health and safety of motel guests including the plaintiff. Consequently, the plaintiff sustained injuries, including cervical and lumbar protrusions, as well as a pars/acute closed chip fracture of the left vertebrae at L5.

The jury found in favor of the plaintiff and awarded \$151,200.

#### REFERENCE

Brown vs. Fairfield Inn. Docket no. L001798-21; Judge Aimee R. Belgard, 04-29-23.

**Attorney for plaintiff: David A. Rosenbaum of Rosenbaum & Associates, P.C. in Cherry Hill, NJ.**

## Hazardous Premises

### ■ \$100,000 RECOVERY

**Premises liability – Hazardous premises – 11-year-old plaintiff playing behind building owned by defendant landlord at invitation of defendant tenant where fence posts had been removed by defendant construction company – Plaintiff falls on cut down, exposed fence post – Significant laceration to left knee – Suturing and immobility – Large, permanent scar – Non-binding arbitration assigns 70% liability to construction company and 30% to defendant landlord.**

#### Essex County, NJ

**In this premises liability case, the plaintiff, an 11-year-old boy, asserted that the defendants owed a duty of care to the plaintiff to provide safe premises for invitees. The plaintiff maintained that the defendants breached that duty and allowed a dangerous condition to exist on the premises where the plaintiff was an invitee and that that dangerous condition caused the plaintiff significant, permanent injury. The defendant landlord argued that the terms of the lease provided that the defendant tenant maintain general public liability insurance and that he failed to do so. The defendant landlord argued that the plaintiff's sole purpose for being on the premises was to attend a jujitsu class taught by the defendant tenant. The defendant tenant argued that the defendant landlord was responsible for the plaintiff's damages because he hired an unqualified person to remove the fence and did not ascertain that the removal was performed appropriately.**

On July 18, 2018, the plaintiff was on the premises of a martial arts studio (the defendant tenant) where his father was attending a class. While playing outside the building, the plaintiff fell on the remnants of a metal fence post in a grassy area behind the mixed martial arts studio being operated in a space leased by the defendant tenant, from the defendant owner of the property (the defendant landlord) located in Maple Tree Plaza at 2737 Route 23 in Hardyston. The plaintiff contended that the defendant tenant kept the backdoor to his studio open and invited the plaintiff and others who attended his class to go unsupervised behind the building while an adult class attended by the plaintiff's father was taking place. The plaintiff was invited to go behind the leased studio unit to toss around a football that the defendant tenant kept in the studio.

The plaintiff contended that the defendant landlord was negligent in cutting down and leaving the fence posts on the premises creating a hazard to visitors and failing to warn them of the danger. The plaintiff asserted that the defendant tenant was negligent in that he was aware that the fence had been removed and that the posts were cut, yet failed to inspect the area knowing that children were going to be playing

in the area. As a result of the incident, the plaintiff sustained a severe laceration to the left knee requiring suturing and immobility. The plaintiff was on crutches for a period of time until the sutures were removed. The plaintiff was left with a 3 inch long, permanent scar which, he claimed, occasionally caused him stiffness or pain and was very visible.

The defendant landlord maintained that the plaintiff remained at the property afterwards while his father attended an adult class, also taught by the defendant tenant, and was invited by the defendant tenant to play outside in an area the defendant landlord asserted was not appropriate for invitees and was not intended to be used by the general public but was used for utilities and industrial equipment behind a building, away from the public areas. Further, the defendant landlord stated that the defendant tenant had been notified that the fence was removed and the posts cut down. The defendant landlord asserted that the defendant tenant had a duty to his business invitees and a contractual duty to procure general liability insurance for the benefit of the landlord against any and all liability or claims arising out of, occasioned by or resulting from any accident or otherwise in or about the leased premises. Thus, the defendant landlord argued, the defendant tenant was solely responsible for the injury to the plaintiff and was indemnified to the landlord for the damages claimed by the plaintiff.

The defendant tenant maintained that the defendant landlord was responsible for removing the fence; for leaving the cut down fence posts behind; and for failing to properly remove or barricade the area where the danger existed. The defendant tenant pointed to an email from the defendant landlord wherein he stated that he had instructed the contractor to make certain no pips were visible above ground level and expressed, "I can't believe he left them in that condition." Thus, the defendant tenant held, the defendant and third parties hired by the defendant were liable for creation of the dangerous condition which proximately caused the plaintiff's injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant construction company; 30% to the defendant landlord; 0% to the defendant tenant with damages of \$100,000.

Following arbitration and prior to trial, the parties settled for \$100,000 with the defendant construction company contributing \$70,000; the defendant tenant contributing \$15,000; and the defendant landlord contributing \$15,000. The damages were broken down as follows: \$23,123 in attorney fees; \$7,508 in costs and disbursements and \$69,369 in net damages to the plaintiff.

## REFERENCE

Freeland vs. Kaiser Pendergrast Properties, LLC et al. Docket no. L-002639-20; Judge Jeffrey B. Beacham, 05-08-23.

**Attorney for plaintiff:** Joseph J. Serafini of Law Offices of Serafini & Serafini in Wayne, NJ. **Attorneys for defendant tenant:** John D. Shea and Matthew A.

**Wachstein of Freeman Mathis & Gary, LLP in Cherry Hill, NJ. Attorney for defendant landlord:** Murray A. Klayman of Murray A. Klayman, PC in Roseland, NJ. **Attorney for defendant construction company:** Maria O. Rodriguez of Barry McTiernan & Moore, LLC in Edison, NJ.

# WRONGFUL TERMINATION

## DEFENDANT'S VERDICT

**Wrongful termination – Whistleblower/Law Against Discrimination – Plaintiff claims wrongful termination after engaging in whistleblower activities and taking leave under Family Medical Leave Act due to medical disability – Defendant maintains plaintiff terminated for cause after posting statement to social media in violation of defendant's organizational values.**

### Atlantic County, NJ

**In this whistleblower case, the plaintiff asserted that he engaged in protected activity under N.J.S.A 34:19-1 et seq., The Conscientious Employee Protection Act; and N.J.S.A 10:5-1 et seq., the New Jersey Law Against Discrimination. The plaintiff maintained that the defendant employer retaliated against him when he participated in protected activity and while he was suffering from a documented disability. The defendant argued that the plaintiff was terminated for cause when he made a recording and posted a statement on social media that was contrary to the defendant's organizational and professional values, by describing an intent to purposely miss an emergent call and provide others a method to do the same.**

On March 4, 2007, the plaintiff was hired by the defendant medical center as a paramedic with the defendant's EMS Department. On July 11, 2017, the plaintiff was terminated from employment with the defendant. The plaintiff contended that the defendant created a pretext for dismissing the plaintiff and, in fact, fired him in retaliation for whistle-blower activities in which the defendant engaged. The plaintiff asserted that he was a loyal and dedicated employee with a solid satisfactory work performance record.

In 2008/2009, the plaintiff was diagnosed with IBS (and later Crohn's Disease) and was required to request and use intermittent leave through the Family Medical Leave Act policies provided by the defendant. From January 1, 2015 through the plaintiff's date of termination, he used 21 intermittent leave days due to his disability. The plaintiff contended that his leave time was commented on by the defendant's Assistant Chief of EMS in a negative manner and that he made comments to the plaintiff and others that the plaintiff's leaves were "awfully convenient" because they were at or near holidays and ex-

pressed negative opinions about employees who were required to take leaves to accommodate health problems.

In December 2016, the plaintiff sent an email to the defendant's assistant chief and other supervisory employees of the defendant disclosing that co-employees were not properly securing emergency vehicles containing narcotics, in violation of N.J.A.C. 8:41-6.3(c) and the defendant's policy. When the plaintiff began to start his shifts by checking the truck, he noticed and reported to the defendants, on a frequent basis, that the lock and double-lock systems were not followed and that the keys to boxes storing narcotics were not properly secured. After several months, the issue had not been resolved and the plaintiff renewed his concerns but was told not to worry about it.

Up until the date of the plaintiff's termination, keys to the narcotics were left in various, unsecured locations. In the same time frame, the plaintiff was disclosing and reporting the violation regarding unsecured narcotics; he continued to suffer from IBS and Crohn's disease and took periodic leaves to accommodate his disability. The plaintiff contended that the defendant's Assistant Chief of EMS told the plaintiff's supervisor that he was dissatisfied with the plaintiff taking leaves and was out to get the plaintiff. Shortly thereafter the plaintiff's supervisor was terminated and the plaintiff began to report directly to the assistant chief who had complained about his leaves for disability.

The defendant's assistant chief met with the plaintiff and questioned him about his disability, also telling him that the use of leave was causing a strain on the department and warned him about taking further leaves of absence. On June 11, 2017, the plaintiff learned that paramedics on staff had been subjected to gunshots while tending a gunshot victim. The plaintiff, in support of fellow paramedics impacted by the incident, made a social media post about the need for bulletproof vests and encouraged colleagues to share and repost the call for provision of protection for EMS workers. He also approached the defendant's supervisors via email about the need for ballistic vests in light of the shooting. The plaintiff

also reported unsafe driving practices and violations of speed limits by some EMS units and that concern was also ignored by the defendant.

On June 12, 2017, the plaintiff was required to use intermittent leave due to his disability, to the expressed displeasure of the defendant's supervisor. On the following day the defendant supervisor called the plaintiff into his office and harassed him about the prior day and asking invasive questions about the need for the leave. The plaintiff left the office feeling discriminated against for a medical condition over which he had no control. In the following weeks, the plaintiff again needed to take a few sporadic days of leave to accommodate his disability. On July 10, 2017, the plaintiff was listening to the radio between dispatch calls and video recorded a song, while on a break, that depicted a dispatch tablet in the EMS truck. The recording, posted to social media did not identify the truck belonging to the defendant, nor did it identify the plaintiff as being affiliated with the defendant. 2 days later, the defendant's Human Resources Manager and the defendant supervisor informed the plaintiff that he was being terminated from employment immediately because of posting the radio recording.

The plaintiff, however, claimed that he did not violate the defendant's social media policy and further was aware of other employees whose social media postings showed them in full uniform, often with the defendant's truck in the background and even some posting negative comments about working. But no other EMS employees who previously posted to social media were subject to adverse employment action by the defendants. The plaintiff filed this action contending that his termination was in violation of whistleblower and discrimination laws and the defendant's own policies.

The defendant maintained that the plaintiff's post showing himself ignoring an emergency dispatch call and encouraging others to do the same. The defendant asserted that the plaintiff's actions had the potential to erode the confidence of patients in the defendant's services by conveying a message that a call for help would be ignored. The disciplinary action notice to the plaintiff stated that, "(g)iven the serious implication of the message conveyed, and contrary references to [defendant's] values, [plaintiff] is terminated from his employment." The defendant denied violating the plaintiff's disability rights and pointed to the fact that all of his leaves were approved and he was not terminated over the course of years of use of his disability leave, nor was he terminated upon reports of issues he raised to the defendant about policies and practices in the workplace. He was only terminated immediately after the social media post that the defendant contended violated the terms of his employment.

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

#### REFERENCE

Imperatrice vs. Atlanticare Regional Medical Center, Inc., et al. Docket no. L-002452-17; Judge Stanley L. Bergman, 05-30-23.

**Attorneys for plaintiff: Michelle J. Douglass and Philip S. Burnham of Burnham Douglass in Somers Point, NJ. Attorney for defendant: Russell L. Lichtenstein of Cooper Levenson, P.A. in Atlantic City, 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

#### **\$182,737,791 VERDICT – MEDICAL MALPRACTICE – OB/GYN – HOSPITAL NEGLIGENCE – DEFENDANTS FAIL TO TIMELY PERFORM C-SECTION ON MOTHER WITH UTERINE INFECTION RESULTING IN HYPOXIC INJURY TO FETUS – FAILURE TO TIMELY DIAGNOSE CHORIOAMNIONITIS – HYPOXIC BRAIN INJURY – CEREBRAL PALSY.**

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

The plaintiffs in this medical malpractice action maintained that the defendant doctors and staff responded inappropriately to the plaintiff mother's uterine infection causing a delay in the birth of her son which resulted in a hypoxic injury and cerebral palsy. The defendants denied all allegations of negligence and maintained that the plaintiffs were treated properly in accordance with all medical standards and that injury occurred in the absence of negligence.

In the moments leading up to the birth, the fetus began to suffer injurious effects of being left in an infected uterine environment too long including but not limited to oxygen deprivation and metabolic acidosis. At birth the baby's Apgar scores were 2, 6, and 8 at one minute, 5 minutes and 10 minutes respectively. The placental pathology report confirmed chorioamnionitis. Following his birth, the baby was diagnosed with worsening metabolic acidosis reflecting an injury that occurred just prior to his birth. The child has since been diagnosed with severe and profound hypoxic ischemic encephalopathy and cerebral palsy with substantial global and neurodevelopment delays.

The jury found that the defendants were negligent, and their care fell below standards. The jury awarded past pain and suffering in the amount of \$10,000,000, future pain and suffering in the amount of \$70,000,000, future lost earnings in the amount of \$1,700,000 and \$101,037,791 in future medical and related expenses.

##### **REFERENCE**

J.M. a minor by and through his png Dajah Hagans and Dajah Hagans Individually vs. Hospital of the University of Pennsylvania, Trustees of the University of Pennsylvania, University of Pennsylvania Health System, Kirsten Leitner, M.D., Julie A. Sayama, M.D., Whitney R. Bender, M.D., Sarah Gutman, M.D., Denise Johnson, M.D., Jessica Peterson, M.D. and Victoria Kroesche, R.N. Case no. 190607280; Judge Gwendolyn Bright, 04-25-23.

**Attorney for plaintiff: E. Merritt Lentz of Gilman & Bedigian in Philadelphia, PA. Attorney for plaintiff: H. Briggs Bedigian of Gilman & Bedigian in Philadelphia, PA. Attorney for plaintiff: Jon S. Stefanuca of Gilman & Bedigian in Philadelphia, PA. Attorney for defendant: James A. Young of Burns White, LLC in Conshohocken, PA. Attorney for defendant: Richard S. Margulies of Burns White in West Conshohocken, PA.**

#### **\$3,000,000 RECOVERY – MEDICAL MALPRACTICE – NURSING – HOSPITAL NEGLIGENCE – DEFENDANT HOSPITAL'S CRNA ERRONEOUSLY PLACED INTUBATION TUBE IN ESOPHAGUS INSTEAD OF TRACHEA – HYPOXIC INJURY – WRONGFUL DEATH OF 48-YEAR-OLD MALE.**

##### **Lycoming County, PA**

The decedent's wife brought this medical malpractice action against the defendant hospital maintaining that the defendants certified registered nurse anesthetist negligently placed an intubation tube into the decedent's esophagus instead of his trachea causing a hypoxic injury

that resulted in death. The defendants admitted liability, conceding both negligence and causation.

The plaintiff's complaint alleged that the defendants failed to properly and correctly intubate the decedent's trachea, negligently intubating the decedent's esophagus instead of his trachea, failing to properly determine whether or not the endotracheal tube that

was inserted was in the trachea and not in the esophagus, failing to detect esophageal intubation, and failing to timely respond to a change in the decedent's condition following intubation.

The 48-year-old decedent is survived by his wife and parents.

The parties settled for \$3 million.

#### REFERENCE

The Estate of Thomas J. Cusick by Michelle Cusick vs. The Williamsport Hospital UPMC dba University of Pittsburgh Medical Center, UPMC Williamsport dba The

Williamsport Hospital aka The Williamsport Hospital and Medical Center dba UPMC Susquehanna Williamsport. Case no. CV-2019-00058; Judge Eric R. Linhardt, 04-19-23.

**Attorney for plaintiff: Thomas R. Kline of Kline & Specter, PC in Philadelphia, PA. Attorney for defendant: Brian J. Bluth of McCormick Law Firm in Williamsport, PA.**

### **\$350,000 RECOVERY – MEDICAL MALPRACTICE – ORTHOPEDIST NEGLIGENCE – DEFENDANTS FAIL TO APPRECIATE SYMPTOMS OF POST-OPERATIVE INFECTION – INFECTION BECOMES SEPTIC – WRONGFUL DEATH OF 68-YEAR-OLD FEMALE.**

#### **Montgomery County, PA**

**The plaintiff in this medical malpractice action was the estate of the 68-year-old decedent who died after developing an infection following hip replacement surgery performed and followed up with by the defendants. The plaintiff claimed that the defendants failed to repeatedly appreciate signs and symptoms of infection. The defendants denied all allegations of negligence.**

Despite the plaintiff's decedent displaying symptoms that were consistent with the postoperative infection at each of her follow-up visits with the defendants, they failed to undertake any action to diagnose or treat the worsening infection.

On October 24th, the decedent flew to Denver Colorado to visit her son. Upon arrival she was noted to be acting strangely with progressive right hip pain. She was taken to the hospital and diagnosed with sepsis. Despite prompt, appropriate medical interventions in

Colorado, the decedent's untreated infection had spread and she was pronounced dead on the evening of October 29th.

The 68-year-old decedent is survived by her husband and 2 adult children.

The parties settled for \$350,000. The award was allocated with 75% to wrongful death and 25% to survival action.

#### REFERENCE

The Estate of Anne C. Prokopsychyn by Eugene Prokopsychyn vs. Andrew Star M.D., Theresa M. Galantim PA – C and Abington Orthopaedic Specialists, PC. Case no. 2015-05462; Judge Melissa Sterling, 01-09-23.

**Attorney for plaintiff: Mark Tanner of Feldman, Shepherd, Wohlgelernter, Tanner, Weinstock & Dodig, LLP in Philadelphia, PA. Attorney for defendant: Jacqueline R. Drygas of Kilcoyne & Nesbitt in Blue Bell, PA.**

## **MOTOR VEHICLE NEGLIGENCE**

### **MOTOR VEHICLE NEGLIGENCE – AUTO/MOTOR SCOOTER COLLISION – DEFENDANT STRIKES REAR OF PLAINTIFF'S MOPED CAUSING PLAINTIFF TO BE VIOLENTLY THROWN TO GROUND AND DRAGGED BY DEFENDANT'S VEHICLE – TRAUMATIC BRAIN INJURY – BROKEN NECK AND BACK – PARAPLEGIA – DAMAGES ONLY.**

#### **Anderson County, SC**

**The plaintiff in this motor vehicle negligence action maintained that he will require skilled nursing for the remainder of his life due to the accident caused by the defendant's negligence. The defendant struck the rear of the plaintiff's moped knocking the plaintiff to the ground and causing injuries that resulted in paraplegia. The defendant fled the scene of the accident.**

The defendant slammed into the back of the plaintiff's moped, causing the plaintiff to go over the top of the defendant's vehicle. The plaintiff was then dragged behind the vehicle while the defendant was fleeing the scene of the collision.

The accident caused the plaintiff to suffer a traumatic brain injury, broken jaw, laceration to throat, broken neck and broken back resulting in paraplegia.

The jury found for the plaintiff and awarded the plaintiff damages in the amount of \$22,500,000.

#### REFERENCE

Max A. Jefferson vs. Tyler Alexander. Case no. 2020CP0400989; Judge Scott Sprouse, 08-24-22.

**Attorney for plaintiff: James Camden Hodge of Anastopoulo Law Firm, LLC in Charleston, SC. Attorney for defendant: John Kirkman Moorhead in Anderson, SC.**

**\$750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR-END COLLISION ON HIGHWAY – DEFENDANT CONTENDS HE IS CUT OFF BY PHANTOM DRIVER, CAUSING ACCIDENT – TORN LABRUM IN HIP – EXTENSIVE NUMBER OF INJECTIONS AND PHYSICAL THERAPY – NEED FOR FUTURE SURGERY.**

**Passaic County, NJ**

In this action for motor vehicle negligence, the plaintiff driver, approximately age 50, contended that as she was stopped in traffic in the middle lane of I-80, she was struck in the rear by the defendant driver. As a result of the collision, the plaintiff suffered a torn labrum in the hip. The evidence disclosed that the plaintiff underwent extensive physical therapy and numerous injections. The plaintiff's orthopedic surgeon contended that future surgery will be necessary. The defendant asserted that he was cut off by a phantom driver, causing the accident.

The plaintiff would have countered that the physical evidence reflected a straight type rear end collision and did not entail an angle. The plaintiff, who would

not have produced a liability expert, would have contended that this physical evidence was very probative.

The defendant had \$1,000,000 in coverage. The case settled prior to trial for \$750,000.

**REFERENCE**

**Plaintiff's orthopedic surgeon expert: Alexander Hughes, M.D. from Hospital for Special Surgery, New York, NY.**

Marino vs. MacGlaughlin. 11-04-21.

**Attorney for plaintiff: Jeffrey J. Zenna of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.**

**\$650,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SIDESWIPE COLLISION – AGGRAVATION OF NECK AND SHOULDER INJURIES SUFFERED IN FALL 2 YEARS EARLIER – 2-LEVEL CERVICAL FUSION – PERMANENT PAIN AND SIGNIFICANT RESTRICTION – NO INCOME CLAIMS.**

**Westchester County, NY**

In this action for motor vehicle negligence, the plaintiff passenger, approximately age 60, contended that the defendant non-host driver negligently sideswiped the host vehicle causing the plaintiff to sustain permanent injuries which required surgery. The defendant denied that the plaintiff met the no-fault threshold and contended that the need for surgery and continuing difficulties stemmed from the fall itself.

The plaintiff was wearing her seat belt. The plaintiff had suffered neck and right shoulder injuries in a fall approximately 2 years earlier. The plaintiff maintained

that after the fall, she required conservative treatment only. The plaintiff asserted that she suffered an aggravation that required a 2-level cervical fusion and that she will nonetheless suffer permanent pain and significant restriction.

The defendant had \$1,300,000 in coverage. The case settled prior to trial for \$650,000.

**REFERENCE**

Markell vs. Spensor, et al. Index no. 54261/20; Judge Joan Lefkowitz, 11-22.

**Attorney for plaintiff: Ava L. Zelenetsky of Zelenetsky & Associates, P.C. in White Plains, NY.**

**\$325,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – MINOR PLAINTIFF STRUCK BY DEFENDANT'S VEHICLE WHILE CROSSING STREET – RIGHT SUBDURAL HEMATOMA – RIGHT-SIDED HEMOPNEUMOTHORAX – LIVER LACERATION – SEVERAL SURGICAL PROCEDURES REQUIRED.**

**Suffolk County, NY**

In this motor vehicle negligence action, the minor plaintiff sustained serious injuries resulting in multiple surgeries after being struck by the defendant's vehicle while crossing the street. The defendant driver generally denied all allegations of negligence.

The minor plaintiff injuries included a right subdural hematoma, a right-sided hemopneumothorax, and a liver laceration. The minor plaintiff was then required to undergo several surgical procedures, including subcutaneous cranial bone graft and cranioplasty.

The parties entered into a settlement for \$325,000.

**REFERENCE**

In The Matter Of The Application To Settle The Claim Of Lm, An Infant Under The Age Of Eighteen (18) Years By Her Mother And Natural Guardian, Meredith Mendelsohn vs. Aig Property Casualty Company. Index no. 607211/2020; Judge James Hudson.

**Attorney for plaintiff: Steven B. Ewall of Ewall & Ewall, Esqs. in Huntington, NY. Attorney for defendant: Michael A. Bono of Wade Clark Mulcahy in New York, NY.**

## PREMISES LIABILITY

### **\$3,000,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY AT ORLANDO APARTMENT COMPLEX – SHOOTING OF TEEN-AGED RESIDENT – WRONGFUL DEATH AT AGE 15.**

#### **Orange County, FL**

This negligent security action involved the murder of a 15-year-old boy at the defendants' apartment complex in West Orlando, Florida. The plaintiff alleged that the complex had an extensive history of crime, yet the defendants failed to implement adequate security to address the crime risk that existed at the property and prevent the fatal shooting. The defendants claimed that the security at the apartments was sufficient and that the crime was not preventable.

The teen-aged victim lived at the defendants' Boca Club Apartments in Orlando with his father. On July 1, 2018, a tenant at the complex called police after noticing the teen's body lying in the grass with a gunshot wound to the head. He was later pronounced dead. The victim was survived by his parents.

The plaintiff alleged that the defendants' apartment complex failed to have needed security measures to protect residents and guests. As a result of the defendants' failure to act, the plaintiff maintained that neither the 15-year-old victim nor his family knew the extent of the crime in the community or the full extent of the

The case was settled prior to trial for a total of \$3,000,000.

#### **REFERENCE**

Dieules Idoris, as Personal Representative of the Estate of W.I., vs. Orlando Neighborhood Improvement Corporation, Inc., et al. al. Case no. 2020-CA-003709; Judge Emerson R. Thompson, 03-08-23.

**Attorney for plaintiff: Pedro Echarte of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Skinner Louis of The Louis Law Firm, PLLC in Orlando, FL.**

### **\$1,966,290 GROSS VERDICT – PREMISES LIABILITY – SLIP AND FALL IN WAL-MART STORE – FAILURE TO CLEAR WATER FROM FLOOR – LUMBAR DISC HERNIATION WITH SURGERY – CHRONIC BACK PAIN – 15% COMPARATIVE NEGLIGENCE FOUND.**

#### **Miami-Dade County, FL**

The plaintiff in this action for premises liability was 5 months pregnant when she slipped and fell in the defendant Wal-Mart's store in Hialeah, Florida, sustaining serious injuries. The plaintiff contended that she landed on her knees and wrist and initially felt pain in those areas. However, several days later, she began to suffer worsening back pain which radiated down both legs. The defendant claimed that the condition was open and obvious, the plaintiff was herself negligent and that she failed to mitigate her damage by incurring unreasonable medical expenses.

The plaintiff first visited a chiropractor 5 days post-accident. She then saw an orthopedic surgeon who diagnosed a lumbar disc herniation. The plaintiff underwent steroid injections to her neck and back followed by a rhizotomy of the lumbar spine. Because the plaintiff's pain continued, she then underwent a lumbar decompression at the L4-L5 level.

The jury found the defendant 85% negligent and the plaintiff 15% comparatively negligent. The plaintiff was awarded \$1,966,290 in gross damages, reduced to a net judgment of \$1,671,347. The defendant's post-trial motions were recently denied. The plaintiff has moved for attorney fees and costs.

#### **REFERENCE**

**Plaintiff's neurosurgery expert: Santiago Figueroa, M.D. from Miami, FL. Defendant's medical coding expert: Marilyn Pacheco from Tempe, AZ. Defendant's orthopedic surgery expert: Elliot Lang, M.D. from South Miami, FL. Defendant's radiology expert: Mehul Desai, M.D. from Parkland, FL.**

Pineda vs. Wal-Mart Stores East LP. Case no. 2020-026469-CA-01; Judge David C. Miller, 03-10-23.

**Attorneys for plaintiff: Gregory Deutch and Evan Abel of Rubenstein Law in Miami, FL.**

## ADDITIONAL VERDICTS OF PARTICULAR INTEREST

### Asbestos

**\$29,138,692 VERDICT – ASBESTOS – PRODUCT LIABILITY – FAILURE TO WARN – PLAINTIFF DEVELOPS MESOTHELIOMA AFTER YEARS OF USING DEFENDANTS’ TALC PRODUCTS – MESOTHELIOMA – REDUCED LIFE EXPECTANCY.**

#### Richland County, SC

The plaintiff in this product liability action maintained she was exposed to asbestos in products manufactured, distributed and sold by the defendants resulting in the plaintiff suffering mesothelioma which was diagnosed when she was age 35. The plaintiffs sued many defendants involved in the products she was exposed to but ultimately the trial was against the talc supplier and manufacturer. Both defendants denied all allegations of negligence.

The plaintiff brought suit against companies in the supply chain of various products alleging that the defendants were negligent in researching, manufacturing, fabricating, designing, modifying, testing or failing to test, warning or failing to warn and failing to recall asbestos-containing talc products or products manufactured for foreseeable personal use by individuals like the plaintiff.

The only remaining defendants at trial were the talc supplier and the talc manufacturer. The jury found that the defendant talc supplier was liable to the plaintiff and awarded the plaintiff \$871,356 and past medical expenses, three million \$268,336 in future medical expenses, 20 million in past and future pain and suffering and five million to the plaintiff’s husband for loss of consortium for a total of 29,138,692. The plaintiff settled with cosmetics company Mary Kay and makeup pigment maker Color Techniques.

#### REFERENCE

Sarah and Parker Plant vs. Whittaker Clark & Daniels, Inc. and Imi Fabi, LLC. Case no. 2022CP4001265; Judge Jean Hoefler Toal, 03-07-23.

**Attorney for plaintiff: Jessica Dean of Dean Omar Branham Shirley in Dallas, TX. Attorney for defendant: Stephanie Flynn of Fox Rothschild.**

**Attorney for defendant: Elizabeth O’Neill of Womble Bond Dickinson in Charleston, SC.**

### Civil Assault

**\$40,000,000 JUDGMENT – CIVIL ASSAULT – 3-YEAR-OLD CHILD BEATEN DURING SUPERVISION BY MOTHER’S BOYFRIEND – SKULL FRACTURES – SUBDURAL HEMORRHAGE– RIB FRACTURE – FRACTURED LEFT TIBIA – MULTIPLE INFECTIONS – DEATH SEVERAL DAYS LATER – ACS ALSO NAMED BUT DISMISSED BECAUSE OF ABSENCE OF SPECIAL RELATIONSHIP.**

#### Kings County, NY

In this civil assault case, the Administration of Children’s Services (ACS) negligently failed to properly locate the 3-year-old child, who was under the supervision of the mother’s boyfriend for 3 days. The child was at the mother’s home. The mother’s boyfriend was also a defendant and did not testify. The plaintiff, the child’s biological father, contended that the child was found having been beaten with skull fractures and covered in feces, that he suffered a subdural hemorrhage, a left eighth rib fracture, a fractured left tibia and multiple infections. He died several days later. The evidence revealed that ACS received notice that the child was being abused, but their data base was wrong and the child was not found for 3 days. ACS moved for dismissal pointing out that there was insufficient evidence of a promise of protection to give rise to a special relationship

that would impose liability against ACS. This motion was granted and the case continued against the mother’s boyfriend.

The plaintiff contended that during the 3 days in which the child lived, the pain and suffering was horrific. The defendant contended that the Glasgow Coma Scale did not rise above 4 during the 3-day period the child lived and the ability experience conscious pain and suffering was in dispute. The plaintiff countered that the child reacted to painful stimulate and asserted that this was clear evidence of conscious pain and suffering.

#### REFERENCE

Aliyev vs. Luchesse. Index no. 523770/18; Judge Joy F. Campanelli, 10-19-22.

**Attorneys for plaintiff: Paul J. Edelstein and Arthur Blyakher of The Edelsteins Faegenburg & Browne, LLP in New York, NY.**

**\$13,000,000 VERDICT– CONSTRUCTION SITE NEGLIGENCE – UNSAFE WORKPLACE – PLAINTIFF IS STRUCK ON HEAD BY FALLING CONSTRUCTION MATERIALS AT DEFENDANT’S JOB SITE – SEVERE HEAD INJURY WITH PERMANENT DEFICITS – INABILITY TO WORK – LOSS OF CONSORTIUM CLAIM – DEFENDANT FOUND IN DEFAULT AND MATTER GOES TO TRIAL AS TO DAMAGES.**

**Miami-Dade County, FL**

In this construction site negligence case, the plaintiff carpentry worker asserted that the defendant project manager failed to maintain the job site in a safe manner and that the plaintiff was struck on the head by heavy, wooden panels causing him significant, permanent injury. The plaintiff sustained a severe head injury requiring hospitalization and continued care. The plaintiff suffered a traumatic brain injury resulting in continuing, debilitating pain that prevents him from employment or basic tasks and causes altered mental states and depression requiring psychiatric care. The defendant failed to answer or appear before the court and was found in default. The case went to trial as to damages only.

The plaintiff asserted that the defendant undertook the responsibility of supervising the construction of the project by overseeing the plaintiff and other workers, providing build plans and instructing the workers on assembly, disassembly and shipping of the display. The plaintiff argued that the defendant breached its

duty by failing to maintain and keep in safe condition its warehouse property and had superior knowledge as to how to assemble the display, therefore the plaintiff reasonably relied on the defendant’s instructions.

The jury awarded damages in the amount of \$13,000,000 broken down as follows: \$5,000,000 in past lost earning capacity, past medical expenses, future lost earning capacity, and future medical expenses; \$5,000,000 in pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect and loss of capacity for the enjoyment of life in the past and future; \$3,000,000 for loss of consortium.

**REFERENCE**

Perez vs. Studio 21 LLC, et al. Case no. 2019029259CA01; Judge Gina Beovides, 11-14-22.

**Attorneys for plaintiff: Pablo Rojas and Steven C. Marks of Podhurst Orseck, P.A. in Miami, FL.**

## Construction Site Negligence

**\$13,000,000 VERDICT– CONSTRUCTION SITE NEGLIGENCE – UNSAFE WORKPLACE – PLAINTIFF IS STRUCK ON HEAD BY FALLING CONSTRUCTION MATERIALS AT DEFENDANT’S JOB SITE – SEVERE HEAD INJURY WITH PERMANENT DEFICITS – INABILITY TO WORK – LOSS OF CONSORTIUM CLAIM – DEFENDANT FOUND IN DEFAULT AND MATTER GOES TO TRIAL AS TO DAMAGES.**

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**REFERENCE**

Perez vs. Studio 21 LLC, et al. Case no. 2019029259CA01; Judge Gina Beovides, 11-14-22.

**Attorneys for plaintiff: Pablo Rojas and Steven C. Marks of Podhurst Orseck, P.A. in Miami, FL.**

## Country Club Negligence

**\$1,000,000 RECOVERY – COUNTRY CLUB NEGLIGENCE – PLAINTIFF STANDING IN FRONT OF PRO GOLF SHOP STRUCK BY GOLF CART UNDER CONTROL OF COUNTRY CLUB EMPLOYEE – LUMBAR HERNIATION – FUSION SURGERY WITH HARDWARE – MENISCAL TEAR – AGGRAVATION OF PLANTAR FASCIITIS – INABILITY TO CONTINUE ACTIVE LIFESTYLE.**

### Essex County, NJ

In this case, the 59-year-old plaintiff was standing in front of the pro shop at the defendant country club when she was struck by a golf cart under the control of the defendant's employee. The plaintiff contended that her legs were run over and crushed, and the impact forced the left side of her body to strike a nearby wall before she fell to the ground. The plaintiff maintained that she suffered a lumbar herniation that required fusion from L4-S1 with hardware, a meniscal tear that necessitated arthroscopic surgery, plantar fasciitis and tarsal tunnel syndrome which required a release. The defendant asserted that any injuries sustained in the incident substantially resolved.

The evidence reflected that the defendant's employee parked the golf cart facing the pro shop with the engine on while he loaded a cooler with ice and

water. As he was in the process of loading the cooler, a case of water fell onto the cart's accelerator, causing it to hit the plaintiff who was standing 10 feet away. The defendant did not vigorously dispute liability during the course of the litigation.

The plaintiff made no income claims.

The case settled prior to trial for the primary policy of \$1,000,000.

### REFERENCE

Sutton vs. Glen Ridge Country Club, et al. Docket no. ESX-L-2348-19; Judge Raymond A. Reddin.

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

## Employer Liability

**\$5,700,000 RECOVERY – EMPLOYER LIABILITY – NEGLIGENT SECURITY – PLAINTIFF ASSAULTED BY MALE NURSE CONTRACTED TO WORK AT DEFENDANT HOSPITAL – ATTACKER STRUCK PLAINTIFF IN HEAD WITH WRENCH AND SEVERELY BURNED PLAINTIFF WITH CHEMICALS – THIRD DEGREE BURNS TO FACE AND HANDS – LACERATION AND CONTUSION TO HEAD.**

### Bergen County, NJ

The plaintiff in this personal injury negligence action sued the defendant hospital where she worked alleging that they negligently allowed her assailant access to hospital carrying a bag with a weapon and chemicals whereupon the assailant attacked the plaintiff in the break room of the hospital. The plaintiff suffered serious and disfiguring injuries including third degree burns to her face, upper body and hands and a contusion and laceration to the head requiring stitches. The defendant hospital denied being negligent and maintained that it was the actions of the assailant only that caused the incident and the plaintiff's injuries.

On February 7, 2022, the female plaintiff, age 52, was an employee of the defendant hospital and was lawfully on the property managed, maintained, operated, serviced and/or otherwise controlled by defen-

dant. While the plaintiff was in the break room she was attacked by a male who had contracted with the defendant as a nurse but was not on duty at the time. The attacker was allowed to enter the hospital carrying a large bag containing weapons and harmful chemicals. The attacker wantonly and intentionally struck the plaintiff in the head with a wrench and severely burned the plaintiff with chemicals.

The plaintiff and the hospital settled the dispute for \$5,700,000.

### REFERENCE

Magalie Cius and Dennis Charlemon vs. Hackensack University Medical Center. Docket no. L002049-22; Judge Robert C. Wilson, 01-25-23.

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

## Insurance Obligation

**\$723,508 VERDICT – INSURANCE OBLIGATION – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF’S VEHICLE REAR-ENDED BY UNDERINSURED DRIVER – CLAIM FOR UNDERINSURED MOTORIST COVERAGE UNDER POLICY WITH DEFENDANT INSURER – HERNIATED DISCS IN CERVICAL AND LUMBAR SPINE – 12% WHOLE BODY PERMANENT INJURY RATING – CONTINUED CHIROPRACTIC CARE.**

### Volusia County, FL

In this action arising out of an automobile accident, the plaintiff, a homemaker and farmer, brought suit against the defendant driver and against her own insurance carrier for uninsured/underinsured motorist coverage. The plaintiff dismissed her claim against the defendant driver, and the case proceeded to trial solely against the plaintiff’s insurer. The plaintiff’s treating physician assigned a 12% permanent injury rating to the plaintiff’s body as a whole. The defendant argued that the plaintiff was herself negligent in the operation of her vehicle and disputed the nature and extent of the plaintiff’s alleged damages.

As a result of the collision, the plaintiff sustained one cervical and one lumbar disc herniation. The plaintiff treated, and continues to treat, with chiropractic care. The plaintiff’s life care planner testified concerning the future medical care she was reasonably certain to incur as a result of this accident totaling \$354,940.

The court instructed the jury, as a matter of law, that the tortfeasor driver was negligent in the operation of the motor vehicle that caused the collision. The jury was tasked solely with determining causation and damages.

Following a 4-day trial, the jury returned a verdict for the plaintiff, awarding \$723,508 in compensatory damages, comprised of \$33,508 for past medical expenses, \$180,000 for future medical expenses, \$75,000 for past pain and suffering, and \$435,000 for future pain and suffering.

### REFERENCE

Fuguet vs. GEICO. Case no. 2018 1 1863 C1DL; Judge Michael S. Orfinger, 10-21-22.

**Attorney for plaintiff: Will D. Bates of Morgan & Morgan, P.A. in Orlando, FL. Attorneys for defendant: Kurt E. Alexander, Kendall B. Rigdon and Thomas P. Edens of Rigdon, Alexander & Rigdon, LLP in Merritt Island, FL.**