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SUMMARIES WITH TRIAL ANALYSIS

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

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

VERDICTS BY CATEGORY

Summaries with Trial Analysis

$5,000,000 RECOVERY – MEDICAL MALPRACTICE – OBSTETRICS – DEFENDANTS FAILED TO TIMELY DELIVER INFANT PLAINTIFF CAUSING PROLONGED UTERINE HYPERSTIMULATION – PROFOUND NEUROLOGICAL INJURIES INCLUDING SEIZURE DISORDER – INFANT PLAINTIFF WILL REQUIRE LIFELONG CARE.

Essex County, NJ

In this medical malpractice case, the plaintiffs asserted that the defendant ob/gyn, hospital and nursing staff were negligent during delivery of the infant plaintiff causing her to suffer significant, permanent injury. The defendants denied liability and claimed that, at no point, did they deviate from the standard of care. The defendants asserted that the plaintiff's delivery was within acceptable standards.

On August 27, 2013, the plaintiff mother was a patient under the care of the defendants for the purpose of giving birth. During the course of the birth, as a result of the defendants' deviations from accepted standards of care, the infant plaintiff experienced prolonged uterine hyperstimulation and ominous fetal heart rate tracings. The plaintiff contended that the defendants failed to deliver the infant in a timely manner in violation of the standard of care and that their deviation caused the infant's profound, permanent and disabling injuries. At trial, the plaintiff planned to present the reports of experts in eight different specialties including obstetrics/gynecology, nursing standard of care, neonatology, genetics, neuroradiology, pediatric radiology, life-care planning, and economics. These experts would address, not only the alleged liability of the defendants, but also causation and damages.

As a result of the defendants' negligence, the infant plaintiff suffered profound neurological injuries including a seizure disorder. As such, the infant plaintiff, 5 years old at the time of this suit, will never be able to care for herself. The plaintiff parents will require assistance to care and provide services to the infant plaintiff for the remainder of her life. The plaintiff has already had numerous hospitalizations due to her condition and will have similar hospitalizations and procedures throughout her life.

The parties settled the matter prior to trial in the amount of $5,000,000 broken down as follows: $1 million from the defendant ob/gyn and $4 million from the defendant hospital and its nurses.

REFERENCE

Vinci, et al. vs. Montemurro, M.D., et al. Docket no. L-003680-16; Judge Robert H. Gardner, 07-22-19.

Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorney for defendant Hackensack UMC Mountainside and nursing staff: William J. Buckley of Schneck Price Smith & King in Florham Park, NJ. Attorney for defendant Robert Montemurro, M.D.: Kenneth M. Brown of Weber Gallagher Simpson Stapleton Fires & Newby, LLP in Bedminster, NJ.

COMMENTARY

During discovery, an issue arose as to an extension for the defendant ob/gyn to obtain medical expert testimony to counter the 8 experts retained by the plaintiffs. In their objection to an extension of discovery for these purposes, the plaintiffs pointed to the fact that the defendant ob/gyn was not board certified and had failed the board certification examination more than 5 times. The plaintiffs alleged that he deliberately failed to obtain important medical evidence in an effort to prevent the plaintiffs from bringing the subject case against him. The plaintiffs maintained that the defendant ob/gyn was having difficulty in finding experts willing to defend him in this case. The plaintiffs asserted that the plaintiffs' special damages alone were over $7 million and the defendant ob/gyn had certified in his answers to interrogatories that his insurance coverage was only $1 million. Therefore, the plaintiffs argued, the defendant was asking for an unreasonable extension of discovery in an effort to find experts, which would only add even more unnecessary litigation costs in a case where he was already grossly underinsured. The plaintiffs consented to a short extension but asked the court not to award the extension of 62 days sought by the defendant.

The defendants countered that seeking a 2-month extension to serve reports responsive to the reports served by plaintiffs was not unreasonable given the number of specialties involved and the complexity of the case. Defense counsel put forth that counsel for the plaintiffs advised in his opposition papers that he consented to a short extension of the discovery end date and, as such, the defendant's motion should be granted. The court denied the defendant's Motion to Extend Discovery noting that it was the defendant's ninth such request for extension of discovery.

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DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – PHLEBOTOMY – PLAINTIFF CLAIMS DEFENDANT PHLEBOTOMIST AND MEDICAL PRACTICE FOLLOWED IMPROPER PROCEDURE IN PERFORMING ROUTINE BLOOD DRAW ON PLAINTIFF PATIENT – TYPE I COMPLEX REGIONAL PAIN SYNDROME OF UPPER RIGHT EXTREMITY – PERMANENT DISABILITY.

Atlantic County, NJ

In this medical malpractice case, the plaintiff, a 29-year-old cable technician, asserted that the defendant and its employees failed to utilize proper care and skill while attempting to draw blood from the plaintiff. The plaintiff asserted that the defendant medical group and its practice failed to appropriately train employees and phlebotomists in the proper methods of drawing blood and failed to remove or properly train those phlebotomists who were known to have previously injured people while drawing blood. The plaintiff claimed that the defendants' deviation from generally accepted standards of care while attempting to draw blood resulted in serious, permanent nerve injury to the plaintiff. The defendants denied any violation of the standard of care and asserted that the plaintiff's diagnosis was unfounded and, if valid, was not causally related to any actions of the defendants or their technicians.

On May 14, 2014, the plaintiff had blood drawn at the defendant physician's group practice in Atlantic City. While at the physician's lab/service center, the defendant's phlebotomist attempted to and did draw blood. At the onset of the procedure, the plaintiff questioned the size of the needle being used. During this procedure, the plaintiff felt instant, significant pain, discomfort, numbness and tingling in his right arm and the tips of his fingers. The plaintiff informed the defendant's phlebotomist of the pain and tingling. The plaintiff maintained that the defendant's phlebotomist made a joke and continued to draw blood. At the conclusion of the procedure, the plaintiff asked the phlebotomist how long the pain, numbness and tingling would last. The defendant's phlebotomist informed the plaintiff that it would last approximately one day. The plaintiff also informed an employee at the front desk that he was experiencing pain following the blood draw. The plaintiff argued that the defendant's phlebotomist improperly performed the blood draw causing injury to the plaintiff.

The plaintiff went immediately to another doctor and described the experience at the defendants' practice. He presented with right upper extremity pain radiating up to the cervical and upper thoracic spine and the head. Testing was performed and the plaintiff underwent a stellate ganglion block which, according to the plaintiff, caused the neck pain to worsen. The plaintiff was referred for physical therapy, which he performed. The plaintiff continued to have symptoms and was ultimately diagnosed with Type I Complex Regional Pain Syndrome of the upper right extremity as a result of the venipuncture procedure of May 14, 2014. The plaintiff presented the report of a chronic pain expert who opined that the plaintiff's condition is permanent and could worsen. The plaintiff also provided expert testimony that his condition prevented him from working at his usual job.

The defendants noted that the plaintiff claimed the phlebotomist struck a nerve while drawing blood but, the defendants argued, blood cannot be drawn from a nerve and, on the day in question, the defendants drew four vials of blood from the plaintiff. The defendants further refuted the plaintiff's claim of permanency with regard to his claimed injury and his inability to work.

The jury found no deviation from the standard of care and returned a verdict in favor of the defendant. The plaintiff filed a motion for new trial which was denied and is currently on appeal.

REFERENCE

Lucas vs. Atlanticare Health System, et al. Docket no. L-000798-16; Judge Joseph L. Marczyk, 05-14-19.

Attorney for plaintiff: Gary F. Piserchia of Parker McCay, P.A. in Mt. Laurel, NJ. Attorney for defendant: Eric M. Wood of Fox Rothschild, LLP in Atlantic City, NJ.

COMMENTARY

Following the jury's verdict, the plaintiff moved for a new trial on the arguments that the jury's verdict was against the weight of the evidence. The plaintiff asserted that defense counsel improperly utilized and argued alleged "Facts" that were not in evidence, were specious, and without basis. Further, plaintiff's counsel argued, defense counsel cast aspersions against plaintiff's counsel as if plaintiff's counsel were actually on trial. Additionally, the plaintiff put forth that defendant counsel repeatedly told the jury that the plaintiff had been sent to one of his trial experts by plaintiff's counsel when there was no testimony to that effect and after plaintiff's counsel had objected to that question during the expert's deposition testimony.

In regard to the weight of the evidence, plaintiff's counsel argued that there was no doubt whatsoever that if plaintiff cried out in pain, yelled, or indicated significant discomfort during the blood draw involved that the blood draw should have been immediately discontinued. The only "Evidence" presented by the defendant in this regard was that the defendant, a phlebotomist, did not document anything about the blood draw. It is submitted that lack of documentation should not have been allowed to overweigh the plaintiffs clear testimony of pain, which was not only voiced on the date of the blood draw, but again one week later during a return visit to the doctor's office. Furthermore, the location of the needle stick was clearly improper and violated Atlanticare's own policies and procedures. In regard to improper arguments, the plaintiff maintained that defense counsel repeatedly argued to the jury that the plaintiff's case should not be believed because the plaintiff did not bring in any physical therapists or personnel from the plaintiff's cable company employer. With regard to the therapists, the court had already ruled that the therapists could not testify; therefore, for defense counsel to mislead the jury by stating "Why didn't they bring any therapists in?" was totally improper. The plaintiff claimed that defense counsel also repeatedly and improperly argued to the jury that the plaintiff's failure to bring in witnesses from the plaintiff's cable company employer somehow meant that plaintiff was "Hiding something" and that plaintiff was probably terminated for reasons other than his injuries. There was absolutely no evidence to support that implicit and explicit argument by defense counsel. Not only was there no evidence at trial in that regard, there was no evidence whatsoever in discovery that plaintiff lost his job for any reason other than his injuries from the blood draw.

Defense counsel also argued, in both his opening statement and closing argument, that the physicians called to testify by the plaintiff should not be believed because they were both hired by plaintiffs counsel. While that, in and of itself, would not justify a new trial, it was the manner in which that argument was made that was improper. Both during opening statement and closing argument, defense counsel pointed at plaintiff's counsel in an obvious attempt to disparage plaintiff's counsel. The plaintiff put forth that attacking opposing counsel is improper and such behavior had been found by the appellate division to warrant a new trial as would improperly and inaccurately arguing that the plaintiff was sent to his expert by plaintiff's counsel.

Defense counsel countered that the plaintiff pointed to various arguments in support of his motion, but failed to address that the jury evaluated the credibility of the witnesses, and concluded that the plaintiff did not prove by a preponderance of the evidence that the event occurred as he described. Defense counsel opined that the case came down to a classic "He said/she said" scenario. In fact, both sides agreed that if the jury believed the plaintiff's version of events, they should answer affirmatively as to jury interrogatory number one. While the defendant had no memory of the events in question, she and her supervisor both testified that they would have written down the information in their notes had the events occurred as described by the plaintiff. Defense counsel argued that the absence of any notes referencing the events as claimed by the plaintiff was evidence from which the jury could conclude that the events did not occur as stated, or that the plaintiff simply did not meet his burden of proving those facts by a preponderance of the evidence.

Moreover, defense counsel asserted that there was uncontroverted medical evidence relating to the fact that the nerve injury could not have occurred as stated by the plaintiff due to the fact that you cannot get blood from a nerve, and four vials of blood were produced from the draw. Accordingly, there is ample evidence from which the jury could have concluded that the plaintiff had not met his burden of proof as to what had occurred during the blood draw. Defense counsel pointed to the fact that the plaintiff must prove by clear and convincing evidence that there was a miscarriage of justice in order to prevail on the instant motion. "Clear and convincing evidence is evidence that produces in your minds a firm belief or conviction that the allegations sought to be proved by the evidence are true. It is evidence so clear, direct, weighty in terms of quality, and convincing as to cause you to come to a clear conviction of the truth of the precise facts in issue. The clear and convincing standard of proof requires that the result shall not be reached by a mere balancing of doubts or probabilities, but rather by clear evidence which causes you to be convinced that the allegations sought to be proved are true." The defendants concluded that plaintiff's counsel had not established clearly and convincingly that there was a miscarriage of justice under the law, such that a new trial should be granted, pointing to the fact that, since the jury did not answer question one in the affirmative, any issues related to questioning of plaintiff's medical experts as to causation was moot.

The court denied the plaintiff's motion for new trial and the verdict in favor of the defendant stood. The plaintiff appealed the court's decision and that appeal has not yet been heard.

$2,000,000 POLICY LIMIT RECOVERY – CONSTRUCTION SITE NEGLIGENCE – FAILURE TO PROVIDE FALL PROTECTION – 21-YEAR-OLD LABORER FALLS 20-30 FEET WHILE STANDING ON FORKLIFT DURING CONSTRUCTION OF LARGE BANQUET HALL – WRONGFUL DEATH – UNMARRIED DECEDENT WITH NO CHILDREN.

Essex County, NJ

This action involved a 21-year-old decedent laborer who was unmarried and had no children. The decedent worked for a subcontractor placing ornamental objects on the roof top of a large banquet/wedding hall. He was killed when he fell approximately 20-30 feet from a forklift on which he was standing. The plaintiff asserted that defendants had a duty to provide fall protection harnesses/lanyards and scaffolding so workers could safely perform their work under OSHA safety regulations.

The workers were placing the ornamental structures earlier in the day at heights which reached approximately 50 feet. The evidence revealed that at the end of the day, the decedent was raised to the roof by a forklift to retrieve a ladder, which had been left behind. Soon after obtaining the ladder, decedent was caused to fall about 20-30 feet to his death. The decedent suffered severe blunt force trauma which was determined to cause his death.

The plaintiff would have presented evidence that decedent was conscious and in great pain for approximately 15 minutes before he died. The plaintiff's medical expert would have testified that the nature of the injuries was consistent with plaintiff's cause of death and that the medical records and testimony supports plaintiff's claims of conscious pain and suffering. The decedent was survived by his parents with whom he resided. The plaintiff would have asserted that the loss of guidance and advice was very substantial.

The defendants owner and general contractor each had $1,000,000 in coverage. The case settled relatively early in discovery for the policies.

REFERENCE

Plaintiff's pulmonology expert: Monroe Karetzky, M.D. from Bronx, NY.

Estate of Montero vs. ABN Realty, et al. Docket no. ESX-L-6101-18., 11-15-19.

Attorneys for plaintiff: Gerald Clark and Lazaro Berenguer of Clark Law Firm, PC in Belmar, NJ.

COMMENTARY

The plaintiff argued that this highly traumatic event could have been avoided had defendants decided to abide by well-known OSHA federal safety regulations. In this regard, the plaintiff argued that the defendants instead chose to violate the law, cut corners, and force workers to put their lives at risk. Additionally, the claim that the decedent experienced approximately 15 minutes of agony was supported by both eyewitness testimony and the conclusions of the plaintiff's physician who reviewed the medical records. Finally, although the parents could not obtain compensation for the grief attendant to the loss of their son, the loss of guidance and advice under Green vs. Bitner could be used by a jury in attempting to provide compensation to the parents for such a loss.

$1,000,000 POLICY LIMIT RECOVERY – TRACTOR-TRAILER NEGLIGENCE – DEFENDANT DRIVER MAKES RIGHT TURN FROM MIDDLE LANE OF HIGHWAY AS PLAINTIFF DRIVER PROCEEDS IN FAR RIGHT LANE, STRIKING PLAINTIFF'S VEHICLE – LUMBAR HERNIATION – FUSION SURGERY – MENISCAL TEAR – INJECTION – SOFT TISSUE LUMBAR INJURIES RESOLVE WITHOUT SIGNIFICANT TREATMENT.

Ocean County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her early 40s, contended that the defendant tractor-trailer driver negligently made a right turn from a lane to the plaintiff's left. The plaintiff contended that as a result, she was struck and suffered a lumbar herniation that required fusion surgery and a meniscal tear which was treated with an injection. The plaintiff further contended that she suffered soft tissue lumbar sprains and strains which essentially resolved without treatment. The defendant's accident reconstruction expert denied that the defendant's large vehicle could make such a sudden turn and the defendant denied that the plaintiff's claims should be accepted. The defendant denied that the claimed herniation was caused by the accident, denied that she suffered significant knee injuries and contended that the soft tissue lumbar injuries resolved.

The evidence disclosed that the highway had three lanes in each direction and there was no median divider. Shortly before the upcoming intersection, the right lane expanded into two with the far right lane leading to a jug handle. The plaintiff maintained that as she was in the far right lane and intending to take the jug handle, the defendant suddenly made a right turn from the second to most left lane, causing the accident. The plaintiff would have contended that the defendant could have made a wide turn by initially traveling into on-coming traffic in this area in which no median divider was present and then swinging to the right. The plaintiff indicated that she was

concentrating on taking the up-coming jug handle and did not see the defendant's vehicle before impact.

The plaintiff contended that as a result of the collision, she suffered a herniation at L5-S1 and that after more conservative therapy was inadequate, she underwent fusion surgery. The plaintiff asserted that she will suffer permanent symptoms. The plaintiff further maintained that she required an injection to the knee and that the symptoms will remain permanently. There was no evidence that arthroscopic knee surgery will be necessary. The plaintiff indicated that she suffers daily pain and that some days are better than others. The plaintiff would have also related that the myriad of everyday tasks and activities, otherwise taken for granted, have become painful and difficult. The plaintiff worked as a bus driver. Although she was able to continue, she missed some time immediately after the accident and for the surgery.

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

REFERENCE

Sclavunos vs. Gillikin. Docket no. OCN-L-2014-17, 01-27-20.

Attorneys for plaintiff: Michael Heck and Daniel N. Epstein of Epstein Ostrove in Edison, NJ.

COMMENTARY

The defendant had denied that the plaintiff's claims should be accepted, arguing that the defendant's large vehicle could not make the sudden turn from the middle lane as claimed by the plaintiff. It is felt that the conclusions of the plaintiff's accident reconstruction expert that the defendant's vehicle could have done so by taking various maneuvers, including commencing a wide turn by initially traveling into the on-coming lane. Additionally, the plaintiff would have argued that the only manner in which the defendant, traveling in one of the middle lanes, would impact with the plaintiff, who was proceeding in the far right lane intending to take the jug handle, was negligent driving on the part of the defendant.

Regarding damages, the plaintiff was able to settle for the policy limits despite the absence of any income claims. The plaintiff effectively stressed that because of the residuals from the lumbar fusion, the myriad of everyday tasks and activities have become painful and difficult. Additionally, the plaintiff presented with a very matter of fact and believable demeanor and this factor was undoubtedly very significant.

$900,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF CROSSWALK PEDESTRIAN STRUCK BY DRIVER TURNING LEFT FROM BEHIND HER – CLOSED HEAD INJURY – TBI – COGNITIVE DEFICITS INVOKING MEMORY AND CONCENTRATION – PSYCHOLOGICAL DEPRESSION AND FREQUENT IRRITABILITY – FRACTURES TO LEFT PATELLA, LEFT LOWER LEG AND LEFT ANKLE – ROTATOR CUFF TEAR ON DOMINANT SIDE – ARTHROSCOPIC SURGERY.

Bergen County, NJ

This motor vehicle negligence case involved a 70-year-old plaintiff in which the plaintiff contended that as she was crossing in the crosswalk, the defendant driver, who turned left from behind her, negligently failed to make adequate observations, resulting in her being struck and knocked down. The plaintiff asserted that she suffered a close head injury that caused extensive cognitive deficits involving short term memory and concentration. The plaintiff further suffered fractures to the left tibia and fibula, the left patella and a bimalleolar fracture of the left ankle. The plaintiff maintained that despite surgical interventions, she will suffer permanent pain and significant difficulties ambulating. Finally, the plaintiff claimed that she suffered a partial rotator cuff tear on the dominant side that required arthroscopic surgery and which will cause permanent pain and limitations in the arm and shoulder. The defendant indicated that he did not see the plaintiff crossing because the sun was in his eyes.

The plaintiff's neuropsychologist and the plaintiff's neurologist would have testified that the plaintiff suffered a neuropsychological deficit largely involving short term memory and concentration and that the deficits were confirmed by a battery of neuropsychological tests. The plaintiff would have related that at times, she will watch a TV show and forget that she had recently seen it. The plaintiff also maintained that everyday activities are difficult because she becomes confused and forgetful easily. The plaintiff asserted that she has become very depressed and irritable because of the deficits. The plaintiff had been married for approximately 50 years and the plaintiff also contended that the loss of consortium claim was very significant.

The plaintiff would have also pointed out that the defendant had the plaintiff examined by a neuropsychologist but the expert's testimony would have been favorable to the plaintiffs' case. The plaintiff further maintained that despite several surgeries, the left-sided leg and knee fractures will cause permanent pain. The plaintiff further contended that the shoulder problems will permanently affect her despite arthroscopic surgery.

The case settled before trial for $900,000.

REFERENCE

Plaintiff's neurologist expert: David H. Rosenbaum, M.D. from Englewood Cliffs, NJ. Plaintiff's neuropsychologist expert: George Carnavalle, Ph.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: Thomas Scalaris, M.D. from Englewood, NJ.

Yim vs. Hamburger. Docket no. BER-L-3488-18, 04-19.

Attorney for plaintiff: Roosevelt Jean of Law Offices of Roosevelt Jean, LLC in Tenafly, NJ. Attorney for plaintiff: Conrad Park of Law Offices of Conrad Park in Ft. Lee, NJ.

COMMENTARY

During negotiations, the plaintiff stressed that the defendant should consider that although a probable verdict that was based only upon the orthopedic injuries could be readily ascertained, a jury reaction to the cognitive deficits was more unpredictable. In this regard, the detailed testimony regarding the daily difficulties, including forgetting a recent TV show that was watched, and the manner in which the plaintiff frequently becomes irritable and depressed, could well have produced a strong jury response. Additionally, the plaintiff would have emphasized that the plaintiff and her husband had been married for approximately 50 years, and argued that the per quod claim was clearly very substantial.

UNDISCLOSED SETTLEMENT – MUNICIPAL LIABILITY – FAILURE TO REMEDIATE SNOW AND ICE IN PUBLIC ALLEYWAY – DISTAL RADIAL FRACTURE OF LEFT, DOMINANT WRIST WITH ULNAR INVOLVEMENT – SURGERY WITH INTERNAL AND EXTERNAL FIXATION HARDWARE – PLAINTIFF CLAIMS ONGOING REDUCTION IN RANGE OF MOTION OF LEFT HAND/WRIST – CASE CONTINUED AFTER SUCCESSFUL APPEAL OF DEFENDANT'S SUMMARY JUDGMENT DISMISSAL.

Camden County, NJ

In this premises/municipal liability case, the plaintiff, a legal secretary, asserted that the defendant town owned and maintained an alleyway and was responsible for snow removal from that alleyway. The plaintiff maintained that the defendant failed in its duty to remove snow and ice and application of salt in the alleyway resulting in the plaintiff's fall on black ice and her resulting injury. The defendant moved for summary judgment on the premise of statutory weather immunity.

On January 29, 2014, the plaintiff was walking in an alleyway located behind homes in the 400 block of Conger Avenue in Collingswood. The plaintiff reported that she returned from work, parked her vehicle in the back of her house, and then took her three dogs out for a walk in the alley which had one to two inches of new snow which fell that day and was on the surface of the alleyway. There were previous snows with plowing and accumulated snow on the left and right sides of the alleyway with more snow on the sides than in the center. The plaintiff maintained that the alley was not level and, as such, if there was any melting, it would puddle in the center of the alley and was subject to re-freezing into ice. The plaintiff asserted that she was walking in the alley when she suddenly hit an "Incredibly slippery spot" and fell backwards onto her left hand. The plaintiff presented an engineering report stating that sections of the alleyway tended to puddle rain water as the surface was not fully level.

As a result of the fall, the plaintiff sustained a distal radial fracture in her left, dominant wrist with ulnar involvement. The plaintiff underwent surgery, with internal and external fixation hardware, which remained in place for approximately 2 months. The plaintiff underwent six months of physical therapy and her surgeon opined that plaintiff's fracture was clinically and radiographically healed. At that time, the range of motion in her left wrist was five degrees less than that of her right. The plaintiff missed three days of work due to her injury. The plaintiff's treating surgeon reevaluated her wrist in January 2016, and found that although her surgical incisions had healed, the plaintiff still had range of motion issues in her left wrist.

The defendant maintained that the plaintiff was aware, before she left her house, that there was snow in the alleyway and that there was more accumulated snow on the left and right from prior plowing activity from prior storms. The plaintiff did not make any complaints to the defendant borough either the day of the incident or the week before about the snow conditions in the alleyway at Conger Avenue and did not know of anyone else making any such complaint. The defendant asserted that the plaintiff's engineering report did not factor in the plaintiff's actions or comparative negligence, nor did it analyze the fresh snowfall of one to two inches. The defendant argued that the plaintiff's engineering report provided no analysis of the weather conditions as the cause of the slip and fall accident. The defendant's motion for summary judgment was denied and the matter proceeded toward trial.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the plaintiff and found no cause of action. Following arbitration and prior to trial, the parties settled the matter for undisclosed terms.

REFERENCE

Bruce vs. Borough of Collingswood, et al. Docket no. L-001361-15; Judge Michael J. Kassel, 10-11-19.

Attorney for plaintiff: Jordan Irwin of Begelman & Orlow, P.C. in Cherry Hill, NJ. Attorney for defendant: John M. Palm of Law Office of John M. Palm, LLC in Gibbsboro, NJ.

COMMENTARY

Prior to the current action, this case had been decided by summary judgment in favor of the defendant who argued that the plaintiff's injuries failed to meet the requirements of the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3 which provided that no damages could be awarded against a public entity for pain and suffering resulting for any injury if that injury did not result in permanent loss of a bodily function or permanent disfigurement. The plaintiff moved for reconsideration, which was denied. The plaintiff then appealed and, in October of

2018, the court reversed and remanded the case under the following analysis. The plaintiff slipped and fell on a patch of ice in an alley allegedly owned and maintained by defendant, Borough of Collingswood. The plaintiff argued her injuries were "Permanent and substantial," thereby meeting the standard first announced by the Court in Brooks v. Odom. Additionally, the plaintiff argued she suffered "Permanent disfigurement," an issue fully briefed before the motion judge, but which he never addressed. The court agreed that for purposes of summary judgment, the plaintiff raised a genuine issue of material fact as to whether her injuries were permanent and substantial. Therefore, summary judgment was inappropriate and the appellate court reversed the decision. Moreover, because the appellate record was unclear regarding the plaintiff's claim of permanent disfigurement, and because the judge never addressed the issue, the appellate court remanded to the trial court to determine whether that specific allegation should survive summary judgment. Lastly, although the defendant argued it was immune from any claim pursuant to N.J.S.A. 59:4-7, the TCA's so-called "Weather immunity," the judge admittedly "Punted" on the issue and never decided it. Inexplicably, the defendant did not reassert this argument before the appellate court. Nevertheless, the court did not deem the argument to be waived, and therefore, on remand, the defendant was free to raise this defense anew before the trial judge.

The appellate court reviewed the grant of summary judgment de novo, applying the same standard used by the trial court, which mandated that summary judgment be granted "If the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." [Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).] The court also determined "Whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). The court stated that it owed no deference to the trial court's legal analysis or interpretation of a statute. Viewed in a light most favorable to plaintiff, the motion record revealed that in the early evening of January 29, 2014, while walking her dogs, she slipped and fell on ice and fractured her left wrist; plaintiff is left-hand dominant. She underwent surgery, requiring the internal placement of pins and the attachment of an external fixator device, which remained in place for approximately two months. By May, plaintiff completed physical therapy and her surgeon opined that plaintiff's fracture was clinically and radiographically healed. At that time, the range of motion in her left wrist was five degrees less than that of her right. The plaintiff missed only three days of work as a legal secretary and by May was able to type using both hands. Plaintiff's treating surgeon reevaluated her wrist in January 2016, and found that although her surgical incisions had healed properly, plaintiff still lacked five-to-seven degrees range of motion in her left wrist. Additionally, the plaintiff made complaints of pain and stiffness with increased physical activity and changes in weather. The surgeon opined with a reasonable degree of medical certainty that plaintiff's injury was permanent, that her wrist will never function normally, and the plaintiff will be unable to perform some life activities such as repetitive pushing, pulling or lifting heavy objects. However, the plaintiff admitted that she was able to paint some of the rooms in her home after the accident. The motion judge observed, and the appellate court agreed, that each case is fact-sensitive, and it is virtually impossible to find what demarcates what is or is not a substantial loss of function. However, the plaintiff's ability to return quickly to work and perform her functions as a legal secretary is not dispositive. See, e.g., Kahrar v. Borough of Wallington, 171 N.J. 3, 15 (2002) (noting that "dicta in Brooks should not be understood to suggest that plaintiffs with permanent and substantial impairments who, nevertheless, can manage to perform adequately routine tasks at work and at home are barred from recovery"). The Court held that "[i]f the loss of bodily function is permanent and substantial,... a plaintiff's eligibility to recover pain and suffering damages will not be defeated merely because she can perform some routine functions almost as well as she could prior to her injury." Id. at 15. The Court considered several objective factors such as the seriousness of the injury, the invasiveness of the surgery, and the extent of reduction in normal range of motion. Id. at 16.

The appellate court opined that, in reversing its affirmance of the trial court's grant of summary judgment, the Court held that the plaintiff sustained a permanent loss of a bodily function that was substantial. The court wrote that it was satisfied that the Legislature intended to include within the notion of aggravated cases those involving permanent injury resulting in a permanent loss of normal bodily function even if modern medicine can supply replacement parts to mimic the natural function. The court concluded that those are all aggravated cases within the contemplation of the Legislature when it enacted the "Permanent loss of bodily function" language and that they fall squarely within the "Substantial" requirement of Brooks. [Id. at 542-43.] See also Leopardi v. Twp. of Maple Shade, 363 N.J. Super. 313, 333-34 (App. Div. 2003) (holding the plaintiff's spinal fusion surgery, which did not include installation of hardware, that left some decreased mobility and increased potential for more damage to his spine, satisfied the TCA's requirement of a permanent injury that was substantial), certif. granted, 179 N.J. 370 (2004), appeal dismissed, 187 N.J. 486 (2005). Surgical intervention alone is not dispositive because, as the defendant noted, the Court has held in other circumstances that the plaintiffs failed to demonstrate a "substantial" loss of a bodily function under the TCA despite having undergone surgical procedures. For example, in Ponte v. Overeem, 171 N.J. 46 (2002), decided the same day as Kahrar, the Court concluded that although the plaintiff underwent arthroscopic knee surgery, there was no evidence his "range of motion [was] limited, his gait impaired or his ability to ambulate restricted." Id. at 54. Similarly, in Hammer v. Township of Livingston, the plaintiff underwent surgery on her knee and elbow because of injuries suffered in a motor vehicle accident. 318 N.J. Super. 298, 301 (App. Div. 1999). The court held that the plaintiff's subjective complaints of residual pain were insufficient, particularly in light of objective medical evidence indicating she suffered no restrictions on range of motion or limits on the functioning of her joints. Id. at 301-02. In Knowles v. Mantua Township Soccer Association, the Court explained the types of injuries that satisfy the threshold. 176 N.J. 324 (2003). These include "An injury that permanently would render a bodily organ or limb substantially useless but for the ability of 'modern medicine [to] supply replacement parts to mimic the natural function,'" id. at 332 (quoting Gilhooley, 164 N.J. at 542-43), if there is "a 'physical manifestation of [a] claim that [an] injury … is permanent and substantial.'" Ibid. (quoting Ponte, 171 N.J. at 54). "[N]either an absence of pain nor a plaintiff's ability to resume some of his or her normal activities is dispositive of whether he or she is entitled to pain and suffering damages under the TCA." Ibid. (citing Kahrar, 171 N.J. at 15-16).

The court noted that this case, admittedly, was a close case. The plaintiff can perform most of her routine tasks without significant limitation. However, like the plaintiff in Gilhooley, only the insertion of pins in plaintiff's wrist permits the joint to "mimic [its] natural function." 164 N.J. at 542. Moreover, the court held that the objective medical evidence demonstrated permanent limitations on the range of motion in her dominant wrist. The appellate court concluded that for purposes of summary judgment, the plaintiff had demonstrated a material factual dispute as to whether her wrist injury met the requirements of the TCA. The court therefore reversed summary judgment and remanded the matter to the trial court for further proceedings consistent with this opinion.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Dental

CONFIDENTIAL RECOVERY

Medical malpractice – Dental – Plaintiff asserts defendant dentist negligently applied inappropriate mouth prop – Injury to plaintiff's maxillary right.

Morris County, NJ

On April 27, 2017, the plaintiff was a patient of the defendant dentist and received dental care from him on that date. The plaintiff experienced discomfort after a crown completion on the left side of her mouth. The plaintiff maintained that the discomfort was due to the mouth prop that was inserted and which her mouth could not accommodate. The plaintiff asserted that, because she had been a patient of the defendant for 35 years, he had special knowledge of the plaintiff's medical history and the width of her mouth and should have been aware that the mouth prop would not be accommodating to her as a patient. The defendant denied any violation of the standard of care in treatment of the plaintiff.

As a result of the defendant's alleged malpractice, the plaintiff suffered injury to the maxillary right. The plaintiff maintained that the use of the inappropriate mouth prop caused the plaintiff severe discomfort and injury. The plaintiff claimed that the defendant's actions were below the standard of care and amounted to malpractice. The plaintiff sought actual, compensatory and punitive damages.

The defendant asserted that the plaintiff failed to mitigate her damages and had already received a full and fair compensation for all injuries and a complete satisfaction of her claim. The defendant moved for summary judgment as the plaintiff failed to provide an Affidavit of Merit as required for a medical malpractice case.

The defendant's motion was withdrawn and the parties agreed to a confidential settlement prior to trial.

REFERENCE

Gregory vs. Gruber, DMD. Docket no. L-000915-19; Judge Louis S. Sceusi, 10-25-19.

Attorney for plaintiff: F.R. "Chip" Dunne, III of Dunne, Dunne & Cohen, LLC in Kearny, NJ. Attorney for defendant: Herbert Kruttschnitt, III of Dughi, Hewit & Domalewski in Cranford.

Hospital

UNDISCLOSED RECOVERY

Medical malpractice – Hospital negligence – Plaintiff infant brought to wrong mother for breastfeeding while in maternity ward of defendant hospital – Plaintiff mother suffers severe emotional distress as result – Plaintiff father claims loss of consortium.

Bergen County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants mistakenly brought the plaintiff's newborn to a different mother in the maternity ward to breastfeed and that the other mother breastfed the plaintiff's baby. The plaintiff mother argued that, as a result of the incident, she was emotionally distraught at the time of the incident as she had several concerns for her newborn's health and alleged that since the incident, she suffers from anxiety and panic attacks as to the health and safety of her daughter. The defendants denied that any harm came to the plaintiff infant or plaintiff mother due to the subject incident.

On September 30, 2016, the plaintiff mother was confined to the defendant hospital after delivering her newborn daughter 2 days prior. The plaintiff maintained that the defendants had mistakenly brought her infant to another mother in the maternity ward for feeding. The plaintiff developed severe anxiety and mental distress from the incident beginning in the hospital when she began to question if the hospital had, in fact, mixed up the infants and if she would go home with someone else's child and continuing with her wondering about the health of her child being that she didn't know anything about the medical history of the mother who fed her child. Additionally, the plaintiff is a vegan and did not know if the mother who breastfed her baby followed the same dietary restrictions and the plaintiff was aware that the

mother who breastfed her baby had just had a C-section and was likely receiving painkillers when she breastfed the plaintiff's infant. The infant later had blood work done that indicated no negative health issues from the incident. The plaintiff mother has sought extensive counseling due to the subject incident and her emotions around that.

The plaintiffs alleged medical/nursing/hospital malpractice; negligent supervision and failure to establish adequate procedures; negligent hiring, training and retention; res ipsa loquitur; outrageous conduct; aiding the commission of tort; conspiracy; emotional distress negligently inflicted; loss of consortium; medical expenses and fraudulent concealment. As a result, the plaintiff mother claimed she suffered severe depressive disorder, panic disorder, generalized anxiety disorder, acute stress disorder, and posttraumatic stress disorder. The plaintiff husband claimed that the plaintiff mother's emotional difficulties have put a severe strain on their relationship. The plaintiffs were granted summary judgment as to liability.

The defendants pointed to the fact that the infant and mother are both healthy and that the plaintiff mother's emotional issues cannot objectively be connected to the subject incident. The defendants were granted summary judgment as to the counts of negligence, outrage and loss of consortium. The defendants argued that the plaintiffs were unable to meet their burden to support a medical malpractice claim since the plaintiffs did not provide an expert opinion detailing the applicable standard of care and a deviation from the standard and causation between such deviation and the plaintiffs' injuries. The defendants also asserted that the plaintiff infant did not allege any damages other than pain from blood work and that the plaintiff mother conceded that the plaintiff infant did not suffer any damage as a result of the alleged malpractice.

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

REFERENCE

CG vs. The Valley Hospital, et al. Docket no. L-005700-17; Judge Lisa Perez-Friscia, 12-17-19.

Attorney for plaintiff: Rosemarie Arnold of Law Office of Rosemarie Arnold in Fort Lee, NJ. Attorney for defendant: Evelyn C. Farkas of Farkas & Donohue, LLC in Florham Park, NJ.

Nursing Home

UNDISCLOSED RECOVERY

Medical malpractice – Nursing home negligence – Inadequate care leading to acute kidney injury, severe hyperkalemia, chronic COPD, septic shock, leukocytosis and hyponatremia ultimately leading to death of plaintiff's decedent.

Camden County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants provided inadequate care to the plaintiff's decedent leading to her hospitalization and death. The defendants denied any violation of the standard of care and the corporate defendants denied vicarious liability.

In July, 2013, the plaintiff's decedent, a 71-year-old woman, was admitted to the defendant rehabilitation and sub-acute care facility. The plaintiff asserted that, beginning in mid-late November 2015, the staff at the defendant facility and multiple healthcare professionals provided inadequate care and treatment for the decedent, causing her condition to deteriorate. The plaintiff's decedent was transferred to a hospital on November 29, 2015 with an admitting diagnosis of acute kidney injury, severe hyperkalemia, chronic COPD, septic shock, leukocytosis and hyponatremia. On December 1, 2015, the plaintiff's decedent died.

In addition to being directly liable for the wrongful acts that lead to the decedent's decline and death, the plaintiff argued that the corporate defendants, owners and management companies for the defendant rehabilitation and sub-acute care facility were indirectly liable and responsible for each and every act and omission in care and the resulting damages. The plaintiff presented the affidavits of a board certified internal and geriatric physician and a board certified nursing specialist in life support, emergency nursing, and legal nurse consulting. Both of the plaintiff's experts opined that the defendants provided care that fell outside acceptable professional or treatment standards to the plaintiff's decedent.

The defendants asserted that any conditions of which the plaintiff complained were unrelated to the actions or treatments performed by the defendants either by causation, exacerbation or both. The defendants argued that any treatment proposed or rendered to the decedent was exercised with every degree of care requisite.

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

REFERENCE

Robinson vs. Majestic Center for Rehabilitation & Sub-Acute Care, et al. Docket no. L-004297-17; Judge Morris G. Smith, 01-06-20.

Attorney for plaintiff: Thomas M. Comer of Lomurro, Munson, Comer, Brown & Schottland, LLC in Freehold, NJ. Attorney for defendant Cooper Operating, LLC d/b/a Majestic Rehabilitation & Sub-Acute Care: Alex W. Raybould of Lewis Brisbois Bisgaard & Smith, LLP in Newark, NJ.

PRODUCT LIABILITY

Failure to Warn

UNDISCLOSED RECOVERY

Product liability – Failure to warn – Plaintiff inhales or ingests colored powder intended for a "Color Run" event at his high school – Powder contained hazardous substances – Gastrointestinal issues, asthma, obstructive pulmonary disease, and reactive airway disease, severe breathing problems, bouts of hyperventilation and panic attacks – Severe mental and emotional pain and suffering.

Burlington County, NJ

In this product liability case, the minor plaintiff asserted that the defendants produced and distributed a product that caused significant, permanent injury to the plaintiff. The defendants denied liability and asserted that the products used in the production of the color powder did not require a warning by any statute.

On or about March 11, 2015, the plaintiff, a 16-year-old student, was on the committee planning a Color Run at his high school. The high school was in the Lenape Regional High School District under the control of the defendant district. The defendants, by and through their agents, servants and/or employees, manufactured, distributed, supplied, marketed, leased, owned, sold and/or placed the color powder for the color run. The plaintiff was participating in bagging the color powder under the direction and/or supervision of the defendant school district's employees when he was caused to inhale or ingest the color powder. The plaintiff maintained that, because of his exposure to the color powder, he sustained severe and permanent injuries. The plaintiff argued that the defendants were negligent in supplying a defective product, in failure to warn of the dangers and hazards of exposure to the product, and in supervision of the use of that product by the minor plaintiff.

As a result of exposure to the color powder, the plaintiff asserted that he developed gastrointestinal issues, asthma, obstructive pulmonary disease, and reactive airway disease, which has led to severe breathing problems, bouts of hyperventilation and panic attacks. The plaintiff claimed severe mental and emotional pain and suffering as a result of his asthma and reactive airway disease, including significant panic attacks and anxiety. The plaintiff claimed his injuries and diagnoses were permanent in nature.

The defendants asserted that the powder was composed of food products, such as cornstarch and food coloring, which are not toxic and did not require warning labels. The defendants maintained that, if the plaintiff used the product in a way other than its intended usage, which comprised negligence on the part of the plaintiff, not the defendants.

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

REFERENCE

Flaherty vs. Chameleon Colors, et al. Docket no. L-001944-17; Judge John E. Harrington, 10-15-19.

Attorney for plaintiff: Anthony J. Leonard of Leonard, Sciolla, Hutchison, Leonard & Tinari, LLP in Moorestown, NJ. Attorney for defendant Chameleon Colors: Tobin A. Butler of Litchfield Cavo, LLP in Cherry Hill, NJ. Attorney for defendant Sensient Colors, LLC: Keith D. McDonald of Norris McLaughlin, P.A. in Bridgewater, NJ.

CIVIL ASSAULT

$3,357 GROSS VERDICT

Civil assault – Plaintiff assaulted by defendant at residence of co-defendant host – Left tibia fracture – Concussion with ongoing migraines – Elbow laceration – Jury finds plaintiff 10% liable; defendant 80% liable and co-defendant 10% liable – Plaintiff recovers $342.

Monmouth County, NJ

In this assault case, the plaintiff, a 47-year-old woman, asserted that the defendant punched her in the face at the co-defendant's residence causing her serious injuries. The plaintiff brought suit against the defendant for assault and battery and the co-defendant homeowner/host for failing to prevent the assault or bar the defendant from being on the premises.

On July 13 and 14, 2014 the plaintiff and defendant assaulter were at the co-defendant mutual friend's house for a birthday celebration. The group from the party then went to a local bar where the defendant began a fight with a member of the party. The defendant was escorted out of the bar and the mutual friend brought the defendant to his home. When they arrived, the other participant from the bar fight was on the premises. The defendant then resumed the fight with him. At one point, the plaintiff asserted that she asked the defendant what had happened (refer-

ring to the fight) whereupon the defendant punched the plaintiff in the face, knocking her to the floor and causing significant injury to the plaintiff. The defendant denied liability.

As a result of the assault, the plaintiff sustained a left tibia fracture, laceration of the elbow and concussion with ongoing migraines. The defendant admitted that he struck the plaintiff, but claimed that it was an accident. The defendant argued that he had been aiming for the other party to the fistfight, but instead unintentionally hit the plaintiff. The defendant was bankrupt at the time of trial.

The co-defendant homeowner asserted that the plaintiff, defendant, and patron from the bar spontaneously engaged in a mutual fight at his home and that he neither engaged in the fight nor could have been expected to have known the fight would happen. As an active participant in the fight, the co-defendant asserted that the plaintiff herself was liable for her injuries. The co-defendant denied any responsibility for the fight, its prevention, or the resulting injuries to the plaintiff.

The plaintiff settled with the defendant assaulter prior to trial for an undisclosed sum. The trial proceeded against the co-defendant homeowner/host wherein the jury found the plaintiff 10% liable; the co-defendant homeowner/host 10% liable and the defendant assaulter, previously dismissed from the case, 80% liable. The jury awarded damages in the amount of $3,357 with prejudgment interest in the amount of $62.54, for a total judgment of $3,420. After apportionment of liability, the plaintiff recovered $342.

REFERENCE

Pham vs. O'Keefe and Pizzano. Docket no. L-000992-16; Judge Mara Zazzali-Hogan, 06-24-19.

Attorney for plaintiff: Edward J. Ahearn of Ansell, Grimm & Aaron, P.C. in Ocean, NJ. Attorney for defendant Michael P. O'Keefe: Alfonse A. DeMeo of Celli, Schlossberg, DeMeo & Giusti, P.C. in Morristown, NJ. Attorneys for defendant Marc Pizzano: G. Samuel Hoffman and Ada Gallicchio of Law Offices of Styliades and Jackson in Mount Laurel, NJ.

DOG ATTACK

$240,000 RECOVERY

Dog attack – Minor sustains multiple, severe bite wounds to face with permanent scarring – Conscious pain, suffering and mental anguish – Past and future medical treatment – Emotional distress.

Essex County, NJ

In this strict liability, dog attack case, the plaintiff, an 8-year-old girl, asserted that the defendants were responsible for failing to prevent their dog from attacking guests at their home, including the minor plaintiff. The defendant stipulated liability and filed a Notice of Appearance before settling the matter with the plaintiff.

On September 4, 2010, the minor plaintiff was a social invitee attending a children's sleepover party when suddenly and with no warning, she was viciously attacked, bitten about her face and caused to be severely injured as a result of being attacked by the defendants' unlicensed, unprovoked and unrestrained dog. As a result of the attack, the plaintiff sustained multiple, severe bite wounds to the face and has been left with permanent scarring. The plaintiff also claimed conscious pain, suffering and mental anguish, as well as past and future medical treatment, and emotional distress.

The parties settled the matter prior to trial in the amount of $240,000 broken down as follows: $60,471 in attorney fees and $179,529 in net damages to the minor plaintiff.

REFERENCE

Zurlo vs. Reininga. Docket no. L-003386-19; Judge Robert H. Gardner, 07-02-19.

Attorney for plaintiff: Douglas S. Schwartz of Sisselman & Schwartz, LLP in Roseland, NJ. Attorney for defendant: Murray A. Klayman of Murray A. Klayman, P.C. in Florham Park, NJ.

$30,000 RECOVERY

Dog attack – Multiple bites and mauling injuries with permanent scarring.

Middlesex County, NJ

This dog attack action arose from an incident which occurred on August 5, 2017 when the plaintiff, a 16-year-old minor child, was lawfully and legally playing basketball at Cornell Park in Carteret. The plaintiff maintained that the defendants failed to control their dog, believed to be a pit bull, and that said dog, without provocation or warning, viciously attacked and mauled the minor plaintiff. The plaintiff asserted that the defendants failed to warn, prevent, confine or otherwise take steps to avoid the aforementioned attack.

As a result of the incident, the plaintiff suffered multiple bite wounds and mauling injuries with permanent scarring. At the time the defendants answered, a proposed settlement was in process; therefore, the de-

fendants denied the plaintiff's claims, but reserved any affirmative defenses in the event that the settlement was not approved.

The parties settled the matter prior to trial in the amount of $30,000 broken down as follows: $8,749 in attorney fees; $3,651 for medical liens and $17,600 in net damages to the minor plaintiff.

REFERENCE

Wall vs. Makkar, et al. Docket no. L-001194-19; Judge Christopher Rafano, 07-26-19.

Attorney for plaintiff: James R. Pastor of Law Offices of Pastor & Pastor, LLC in Woodbridge, NJ. Attorney for defendant: Matthew P. Venema of Venema Proko & Keahey in Philadelphia, PA.

INSURANCE OBLIGATION

$201,860 VERDICT

Insurance obligation – Motor vehicle negligence – Auto/motorcycle collision – Underinsured motorist claim – 3-day hospitalization – Displaced fracture with compression of vertebrae – Facet point injections.

Middlesex County, NJ

In this motor vehicle negligence/underinsured motorist case, the plaintiff, a 42-year-old bricklayer, asserted that the defendant driver negligently, and without the right-of-way, made a left turn in front of the plaintiff's motorcycle causing a collision between the vehicles, causing the plaintiff to suffer permanent injures. The plaintiff settled with the defendant driver for her policy limit and brought this action for underinsured motorist benefits in the amount of $250,000 against the defendant insurer.

On August 19, 2017, the plaintiff was operating a motorcycle which was proceeding west on Raritan Street in South Amboy. The defendant was proceeding on the exit ramp from Route 9 and Route 35 and was in the process of making a left turn from a stop sign when she collided with the plaintiff's motorcycle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was removed from the scene by ambulance, hospitalized for 3 days, and sustained a displaced fracture with compression of vertebrae. The plaintiff treated with a set of facet point injections. The plaintiff claimed $16,000 in lost wages and $6,400 in unpaid medical expenses.

The defendant denied that the plaintiff was significantly or permanently injured in the subject collision. The defendant asserted that the plaintiff's damages were covered by the settlement he received from the tortfeasor and he was not entitled to further damages from the defendant.

The plaintiff made a pre-trial Offer of Judgment in the amount of $250,000 less the $25,000 already received from the tortfeasor's policy. The offer expired and the matter went to trial. The jury found in favor of the plaintiff and awarded damages for pain and suffering, disability, impairment and loss of enjoyment of life in the amount of $200,000 molded to $175,000 as a result of the underlying settlement plus interest in the amount of $7,234; $12,400 for lost wages plus interest in the amount of $513; $6,447 for medical damages plus interest in the amount of $266, for a total award of $201,860 in damages and interest.

REFERENCE

Wozny vs. Allstate. Docket no. L-007457-17; Judge Christopher D. Rafano, 08-20-19.

Attorney for plaintiff: Robert G. Goodman of Palmisano & Goodman, P.A. in Woodbridge, NJ. Attorney for defendant: Minal J. Acharya of Law Office of Kenneth Lipstein in Westfield, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$15,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Minor plaintiff struck by defendant driver while crossing street – Soft tissue injuries – Pain and suffering.

Camden County, NJ

In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver was negligent in operation of her vehicle such that she struck and injured the plaintiff in the roadway. The defendant contended that the plaintiff was negligent and caused the incident in which she was injured.

On June 8, 2016, the minor plaintiff was a pedestrian attempting to cross the street in front of 326 Bergen Street in Gloucester. The plaintiff maintained that the defendant was operating her vehicle on Bergen Street near the intersection with Sussex Street. The plaintiff argued that the defendant was careless and reckless in the operation of her vehicle such that she struck the plaintiff causing severe bodily injuries. The defendant denied any carelessness or negligence and maintained that the plaintiff was solely responsible for her own injuries.

The plaintiff maintained that some of her injuries are permanent in nature. Following the incident at issue, the minor plaintiff was taken to Cooper University Hospital and underwent X-rays at South Jersey Radiology. The plaintiff's injuries were soft tissue in nature.

The parties settled the matter prior to trial in the amount of $15,000 to the minor plaintiff broken down as follows: $4,273 in attorney fees; $1,405 in medical expenses and $9,358 in damages.

REFERENCE

Gina Haubrich vs. Rachel Gorman-Simons. Docket no. L-002017-18; Judge Steven J. Polansky, 02-10-19.

Attorney for plaintiff: Deborah S. Dunn of Stark & Stark in Marlton, NJ. Attorney for defendant: Laticia M. Wright of Law Offices of Cindy L. Thompson in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Auto/pedestrian collision – SLAP tear of left rotator cuff requiring arthroscopic surgery – Aggravation of 2 prior spine injuries treated with epidural injections.

Middlesex County, NJ

This motor vehicle negligence matter arose from an incident which occurred on January 29, 2017 when the plaintiff was a pedestrian standing on the street in front of 570 Ridgeway Avenue in South Amboy and she was struck by the defendant, sustaining injury which required surgery. The defendant denied liability and maintained that his vehicle never hit the plaintiff at all.

The defendant was the owner and operator of a vehicle parked on Ridgeway Avenue. The plaintiff was talking to the defendant while the defendant was sitting in his parked car. The plaintiff maintained that the defendant driver then abruptly pulled away from the parking space in a reckless, negligent manner and, in doing so, struck the plaintiff pedestrian causing serious personal injury. As a result of the collision, the plaintiff sustained a SLAP tear of the left rotator cuff requiring arthroscopic surgery and aggravation of two prior spine injuries which were treated with epidural injections.

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

REFERENCE

Flaherty vs. Martin. Docket no. L-006654-17; Judge Carlia M. Brady, 05-14-19.

Attorney for plaintiff: John D. Gagnon of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for defendant: Peter DeSalvo, Jr. of Soriano, Henkel, Biehl & Matthews in Roseland.

Driveway Exit Collision

$255,000 RECOVERY

Motor vehicle negligence – Driveway exit collision – Plaintiff pulling forward from his driveway collides with defendant who is allegedly traveling at approximately twice speed limit – Cervical herniation superimposed on prior neck condition – Cervical fusion – Aggravation of prior rotator cuff tear – No income claims.

Middlesex County, NJ

In this motor vehicle negligence cause of action, the male plaintiff driver, approximately age 60, contended that the defendant driver was speeding, causing the accident as the plaintiff pulled forward from his driveway. The plaintiff related that he observed the defendant when he was approximately 180 feet away and reasonably believed that he had sufficient time to enter the roadway, asserting that although the defendant had the right-of-way, the defendant's negligence was the primary cause of the collision.

The plaintiff's accident reconstruction expert would have maintained that based upon the observations of the plaintiff, the lengthy skid marks and the extent of property damage, it was likely that the defendant was traveling at 48 mph in the 25 mph zone. The defendant denied that he was speeding and would have argued that the sole cause of the collision was the negligence of the plaintiff, who failed to yield to the defendant's right-of-way.

The plaintiff asserted that although he had prior symptoms in the neck area, there was no prior diagnosis of a herniation and although he had previously received a recommendation to be evaluated for surgery, he did not follow through. The plaintiff contended that he suffered a herniation in the collision

and that he will suffer permanent symptoms despite a cervical fusion. The plaintiff also claimed that a prior partial ACL tear was aggravated and is now a full tear. The plaintiff would have asserted that he will ultimately require surgery that would not otherwise be necessary.

The plaintiff had previously been diagnosed with a rotator cuff tear on the dominant side that had been treated without surgery. The plaintiff claimed that he suffered an aggravation that will permanently cause increased pain and limitations. There was no evidence that surgery will be necessary. The defendant contended that all of the complaints were preexisting and denied that the plaintiff met the verbal threshold.

The plaintiff made no income claims.

The defendant had $500,000 in coverage. The case settled on the eve of trial for $255,000.

REFERENCE

Plaintiff's accident reconstruction expert: Michael O'Connor from Manahawkin, NJ. Plaintiff's orthopedic surgeon expert: Scott Meyers, M.D. from Morristown, NJ. Defendant's neurologist expert: Erin Elmore, M.D. from West Orange, NJ. Defendant's orthopedic surgeon expert: Michael Bercik, M.D. from Elizabeth, NJ.

Valvano vs. Lora. Docket no. MID-L-5017-17, 10-19.

Attorney for defendant: Paul Brandenburg of Rebenack Aronow Mascolo, LLP in Somerville, NJ.

Intersection Collision

$13,410 VERDICT

Motor vehicle negligence – Intersection collision – Rollover of vehicle – Neck and back injuries.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver entered an intersection before the plaintiff had cleared the intersection and struck the plaintiff's vehicle causing serious injury to the plaintiff. The defendant contended the plaintiff driver, who failed to stop at the stop sign controlling the intersection, was the negligent party and cause of the collision.

The plaintiff driver was operating his vehicle through a controlled intersection in Bayonne and was 75-80% of the way through the intersection when the defendant driver entered the intersection, failed to control his vehicle and collided with the plaintiffs' vehicle. The plaintiff's vehicle rolled over as a result of the collision.

As a result of the subject accident, the plaintiff driver sustained serious neck and back injuries which were confirmed by MRI. The plaintiff claimed ongoing injury and has outstanding medical expenses and lost wages of approximately $5,000.

After a 3-day trial the jury found the plaintiff 49% liable and the defendant 51% liable. After apportionment, the jury awarded the plaintiff net damages of $13,410 broken down as follows: $5,100 for non-economic damages; $1,530 for lost wages and $6,780 for reimbursement of a healthcare lien.

REFERENCE

Frank vs. Macatangay. Docket no. L-004274-16; Judge Martha D. Lynes.

Attorney for plaintiff: Sarabraj S. Thapar of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins in Jersey City, NJ. Attorney for defendant: Pilu Patel of Law Office of Eric H. Bennett in Hackensack.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Disc herniation at C4-5 – Concussion – Multiple neck and back disc bulges – Defendant denies liability and contends plaintiff's injuries are preexisting – High/low agreement of $85,000/ $4,000.

Monmouth County, NJ

In this motor vehicle negligence cause of action, the male plaintiff contended that, on August 5, 2015, he was traveling with the right-of-way through the intersection of Matawan Avenue and Grove Street in Aberdeen with a flashing yellow light governing his direction of travel when the defendant disregarded a flashing red signal governing his flow of travel, entered the intersection and caused the collision wherein the plaintiff was seriously injured. The defendant contended that he brought his vehicle to a complete stop at the stop sign controlling Grove Street and proceeded through the stop sign when an impact with the plaintiff's vehicle occurred. The defendant maintained that the plaintiff failed to operate his vehicle within the applicable speed limit, to keep a proper lookout, or to employ any evasive measures to avoid the subject collision.

The plaintiff maintained that as a result of the collision, he sustained a disc herniation at C4-5, a concussion, and bulging discs in his neck and back. The majority of the plaintiff's medical expenses were incurred for testing in the emergency room. The defendant disputed that the plaintiff sustained any permanent injuries as a result of the subject incident. The defendant's independent medical examiner opined that the plaintiff's injuries were pre-existing and not causally related to the subject collision.

The jury found no cause of action against the defendant. Per a high/low agreement of $85,000/$4,000 entered into by the parties prior to trial, the plaintiff recovered $4,000.

REFERENCE

Mikhel vs. Majd. Docket no. L-000125-17; Judge Marc C. LeMieux, 03-01-19.

Attorney for plaintiff: Gregory S. Heizler of Schibell & Mennie, LLC in Ocean, NJ. Attorney for defendant: Ragged M. Allan of Law Offices of Nancy L. Callegher in Mt. Laurel, NJ.

Parking Lot Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Parking lot collision – Soft tissue neck and back injuries – Conservative treatment with chiropractic manipulation and physical therapy.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck vehicle as she was pulling into a parking space next to the plaintiff's vehicle in a parking lot, causing her to sustain injury. The defendant denied negligence and asserted that the plaintiff was negligent in backing out of her parking space without ascertaining that the aisle was clear and that, in fact, the plaintiff struck the defendant's vehicle.

On July 6, 2015, the defendant was operating a motor vehicle in the parking lot of a Home Depot store in Berlin. At the same time, the plaintiff was parked in a parking spot of the same parking lot. As the defendant pulled into a parking space to the right of the plaintiff, the plaintiff backed out of her spot and the vehicles collided. As a result of the collision, the plaintiff sustained soft tissue neck and back injuries. The plaintiff treated conservatively with chiropractic treatment and physical therapy.

The plaintiff asserted that the defendant was negligent in the operation of her motor vehicle and caused the collision that injured the plaintiff. The plaintiff asserted that she began to back out of the parking space, saw the defendant, the defendant "Yielded" to the plaintiff and the plaintiff continued to back up whereupon the defendant proceeded and struck the plaintiff's vehicle. The defendant countered that it was the plaintiff who was negligent in operating her vehicle and that the plaintiff caused the collision. The defendant argued that she stopped with her directional on indicating that she was pulling into the parking space next to the plaintiff and that the plaintiff backed out of her space at an inappropriate rate of speed and struck the plaintiff's vehicle.

The defendant also disputed that the plaintiff sustained bodily injuries as a result of the collision. The defendant pointed to the plaintiff's deposition wherein she testified that she was involved in at least 6 prior motor vehicle accidents, making it virtually impossible to ascertain new, separate injuries sustained in the subject collision. The plaintiff successfully moved to exclude all references to prior or subsequent accidents except the subject incident.

Prior to trial, the parties entered into a settlement agreement whereby the damages portion of the lawsuit was settled with an amount capped at $7,500 inclusive for fees and interest contingent upon the plaintiff proving defendant's negligence at 50% or more. The jury found the plaintiff 60% at negligent and the defendant 40% negligent for the subject collision. As such, judgment was entered in favor of the defendant and the plaintiff recovered no damages.

REFERENCE

Johnson vs. Henry. Docket no. L-001328-17; Judge Steven J. Polansky, 05-24-19.

Attorney for plaintiff: Jeannette Johnson of Law Offices of Robert I. Segal, P.A. in Medford, NJ. Attorney for defendant: Brad A. Parker of Parker Young & Antinoff, LLC in Marlton, NJ.

Rear End Collision

$20,000 VERDICT

Motor vehicle negligence – Rear end collision – Cervical facet joint syndrome – Traumatic cervical spondylopathy – Contusion of right sacroiliac joint – Chronic pain – Chiropractic care and pain management.

Monmouth County, NJ

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

On November 3, 2015, the plaintiff, a lab site coordinator, was on her way to work traveling on Route 33 in Neptune near the intersection with West Bangs Avenue. The plaintiff stopped, preparing to make a left turn into the parking lot of her employer and she was rear-ended by the defendant and pushed forward approximately 2 to 3 car lengths.

As a result of the collision, the plaintiff claimed permanent injuries to her neck and back. She was diagnosed with cervical facet joint syndrome and traumatic cervical spondylopathy and a contusion of her right sacroiliac joint resulting in chronic pain. The plaintiff received chiropractic treatment and pain management. The defendant argued that some of the plaintiff's injuries were pre-existing and not caused by the subject collision and that others were minor in nature and resolved without permanency.

The jury found in favor of the plaintiff and awarded damages in the amount of $20,000.

REFERENCE

Finley vs. Hunter, et al. Docket no. L-003896-17; Judge Mara Zazzali-Hogan, 07-31-19.

Attorney for plaintiff: Roy D. Curnow of Law Offices of Roy D. Curnow in Spring Lake Heights, NJ. Attorney for defendant: Richard S. Greenhaus of Piasecki & Whitelaw, LLC in Green Brook, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Rear end collision – L4-5 disc herniation with positive EMG and radiculopathy – 3 epidural injections – $75,000 arbitration award confirmed by court repealed after defendant shows cause for failure to attend arbitration due to incarceration.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. On April 18, 2016, the plaintiff was traveling on North Washington Avenue near the intersection with North Avenue in Dunellen. The defendant was operating a vehicle at the same location, traveling behind the plaintiff, stopped at a red light with 2 cars in front of her. The defendant failed to stop behind the plaintiff. The defendant struck the plaintiff's vehicle from the rear, pushing it under the rear of the car in front of the plaintiff. The plaintiff's vehicle was sandwiched between both vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained L4-5 disc herniation with positive EMG and radiculopathy. The plaintiff treated with three epidural injections. The defendant filed an Answer pro se. The defendant denied negligence and causation of the plaintiff's alleged injuries.

The parties submitted to arbitration prior to trial. The defendant did not appear at the arbitration. The arbitrator assigned 100% liability to the defendant and set damages at $75,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $75,000 plus $745 in interest for a total recovery of $75,745. The defendant filed a motion to reinstate his Answer, as he was incarcerated at the time of the arbitration and unable to attend. The defendant's Answer was reinstated. The parties subsequently settled the matter for an undisclosed sum.

REFERENCE

Ferreira vs. Givens. Docket no. L-001840-18 07-12-19; Judge Thomas J. Buck, 07-12-19.

Attorney for plaintiff: William R. Marth of Aiello, Harris, Marth, Tunnero & Schiffman, P.C. in Watchung, NJ. Attorney for defendant: pro se.

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Motor vehicle negligence – Rear end collision – Accident allegedly causes herniation – Plaintiff doesn't treat for 9 months – Offer of Judgment – Damages only.

Camden County, NJ

Liability was stipulated in this rear end collision case. The plaintiff driver, age 22 at the time of the accident and age 25 a t trial, contended that she suffered a lumbar herniation which was confirmed by MRI and which required PT and a pain management course. The plaintiff asserted that she will suffer permanent pain and limitations. The defendant denied that the plaintiff sustained a permanent injury in the accident or met the verbal threshold.

The defendant pointed to minimal impact damage. The defendant also pointed out that the plaintiff did not treat for some 9 months, and that when she visited a physician, she attributed her back pain to positioning while sleeping. The defendant further maintained that at the first visit, the plaintiff recalled that the accident caused short-term symptoms only. The defendant asserted that the herniation was preexisting and pointed out that the plaintiff had made complaints of back pain when studying karate as a teenager.

The case was arbitrated at $47,500. The defendant rejected an Offer of Judgment in this amount. The jury found for the defendant on the verbal threshold.

REFERENCE

Plaintiff's orthopedic surgeon expert: Mark G. Schwartz , M.D. from Mt. Laurel, NJ. Defendant's orthopedic surgeon expert: Larry S. Rosenberg, M.D. from West Berlin, NJ.

Frank vs. Persichetti. Docket no. CAM – L -693-18, 11-01-19.

Attorney for defendant: Anthony Young of Parker Young & Antinoff, LLC in Marlton, NJ.

U-Turn Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – U-turn collision – 3 lumbar disc herniations – Injury to left hand and both shoulders – Chiropractic treatment; pain management; 3 epidural injections – Defendant contested causation.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff, a then 52-year-old male, asserted that, on April 12, 2015, the defendant driver attempted an illegal U-turn, cutting across the plaintiff's' lane of travel and collided with the plaintiff's vehicle, causing injury to the plaintiff driver.

As a result of the collision, the plaintiff was taken from the scene by ambulance to the Emergency room. The plaintiff sustained three lumbar disc herniations, a low back injury, a left hand injury, neck pain, and pain in both shoulders and one knee. The plaintiff treated with chiropractic care, pain management and 3 lumbar epidural injections.

The plaintiff's out-of-pocket medical expenses totaled $26,664 above PIP coverage. The plaintiff made no claim for lost wages. The defendant contended that the plaintiff's injuries were preexisting and degenerative in nature. The defendant contested causation of the plaintiff's injuries.

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

REFERENCE

Rich vs. Taylor. Docket no. L-004381-16; Judge Linda Grasso Jones, 03-04-19.

Attorney for plaintiff: David E. Rehe of Garces, Grabler & LeBrocq in Trenton, NJ. Attorneys for defendant: Andrew I. Rich and David J. Leone of Carton Law Firm, LLC in Manasquan, NJ.

PREMISES LIABILITY

Fall Down

$500,000 RECOVERY

Premises liability – Fall down – Failure to treat ice from melting snow in commuter overflow lot – Lumbar herniations – Surgery – Plaintiff advises physician one week earlier of back pain suffered in exercise class weeks before fall – Plaintiff claims new symptoms of tingling and numbness in several toes.

Middlesex County, NJ

In this premise liability action, the female plaintiff, age 56 at the time, contended that she slipped and fell on ice patches in the defendant's parking lot, sustaining injuries. The plaintiff maintained that the defendant commuter parking lot owner was aware of ice patches forming because of the refreezing of melting snow, and had called its snow removal contractor to come to the premises at rush hour on the morning of the fall. The defendant contractor called the co-defendant subcontractor and the fall occurred before the subcontractor arrived. The defendants owner and contractor had contractual indemnification from the subcontractor. The defense maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff maintained that she suffered herniations at L4-5 and L5-S1 that will cause permanent symptoms despite fusion surgery. The plaintiff underwent surgery sometime after the fall and contended that she will nonetheless suffer significant symptoms. The evidence disclosed that approximately one week earlier, the plaintiff made complaints of significant lower back pain that was apparently sustained in a recent exercise class.

The defense pointed out that approximately 1 ½ years earlier, the plaintiff underwent an MRI for lower back complaints following a fall down and that the MRI taken after the subject fall was unchanged. The plaintiff countered that while she had bilateral radiculopathy from the prior fall, she suffered the onset of new symptoms of numbness and tingling to several toes which would not be seen on the MRI.

The plaintiff was able to return to her IT job.

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

REFERENCE

Plaintiff's orthopedic surgeon expert: Joshua Landa, M.D. from Old Bridge, NJ. Plaintiff's snow removal expert: George Sosnowski from Oceanport, NJ.

Jairaj vs. Nexus Parking, et al. Docket no. MID-L-5883-16, 01-20.

Attorney for plaintiff: Craig Aronow of Rebenack Aronow & Mascolo, LLP in New Brunswick, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls on ice at defendant apartment complex – Ruptured quadriceps requiring 2 surgical repairs – Arbitration assigns 45% liability to defendant apartment complex and 35% to defendant maintenance company with damages of $400,000 gross before reduction of $20,000 for ERISA lien.

Essex County, NJ

In this premises liability case, the plaintiff asserted that the defendants failed to properly remove snow or ice from a walkway at the defendant property owner's building and that the plaintiff fell on the hazardous ice, sustaining permanent injury. The defendant stipulated liability, but contested the plaintiff's damages.

The plaintiff, a resident of the defendant apartment complex, claimed to have fallen on a patch of ice on a walkway where the defendant maintenance company was contracted to remove snow and ice and keep the premises safe for residents. The last snow had fallen 4-5 days prior to the subject incident and the temperature on the date of the incident was 44 degrees. The plaintiff maintained that the prior snowfall had resulted in melting and refreezing into ice on the walkway and that the defendants knew or should have known of the condition and should have salted, sanded, or removed the ice in a timely fashion. As a result of the fall, the plaintiff sustained rupture of the right quadriceps. The plaintiff underwent immediate surgical repair. The quadriceps ruptured again on July 5, 2015 requiring a second repair surgery.

The defendant argued that the plaintiff's injuries were preexisting and not caused by the subject collision. The plaintiff claimed $15,000 in lost wages and a $20,000 ERISA lien. The parties submitted to arbitration prior to trial. The arbitrator assigned 45% liability to the defendant property and 35% to the defendant maintenance company. Arbitration set damages at $400,000 gross and $320,000 net after reduction for ERISA lien.

Following arbitration, the parties settled for an undisclosed sum.

REFERENCE

Fasone vs. Troy Towers, Inc., et al. Docket no. L-001480-17; Judge Robert H. Gardner, 12-16-19.

Attorney for plaintiff: Stephen F. Lombardi of Lombardi & Lombardi, P.A. in Edison, NJ. Attorney for defendant Bravo Building Services: Raymond Kramkowski of Law Offices of Viscomi & Lyons in Morristown, NJ. Attorney for defendant Troy Towers, Inc. and Ayson Realty Corp.: Harry D. Norton, Jr. of Norton, Murphy, Sheehy, & Corrubia, P.C. in Woodland Park, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$30,000,000 GROSS VERDICT - MEDICAL MALPRACTICE - ORTHOPEDICS - NEGLIGENT TREATMENT OF ANKLE FRACTURE - FAILURE TO TIMELY DIAGNOSE DEEP VEINED THROMBOSIS - FAILURE TO ENSURE THAT ANTICOAGULANT MEDICATION WAS GIVEN - WRONGFUL DEATH FROM PULMONARY EMBOLISM.

Miami-Dade County, FL

This medical malpractice action involved the death of a 71-year-old female following an ankle fracture. The defendants at trial included an orthopedic surgeon, who treated the decedent in the hospital, his practice group, and an internist, who subsequently treated the decedent at a nursing home. The internist settled the plaintiff's claims prior to trial and remained on the verdict form as a Fabre defendant. The plaintiff contended that the defendant orthopedic surgeon negligently failed to timely diagnose and treat signs of deep venous thrombosis ("DVT") and negligently failed to make sure that the decedent had received needed anticoagulant therapy. As a result, the plaintiff claimed that the decedent suffered a fatal pulmonary embolism. The defendant argued that the patient had, in fact, received an anticoagulant in the hospital and that he had recommended that the medication be continued, but he had no control over the patient's care after she was transferred to the nursing home. The plaintiff's claim against the nursing home was severed pursuant to an arbitration agreement and is in the process of being arbitrated.

The jury found the defendant orthopedist 5% negligent and the Fabre defendant internist 95% negligent. The plaintiff was awarded $30,000,000 in damages, reduced accordingly. All post-trial defense motions have been denied and the plaintiff's motion to amend the final judgment and renewed motion for directed verdict for the full $30,000,000 jury award are pending.

REFERENCE

Estate of Maria Elena Fernandez vs. Baptist Health Medical Group Orthopedics, et al. Case no. 2018-013104-CA-01; Judge David C. Miller, 03-06-20.

Attorney for plaintiff: Gary Alan Friedman of Friedman & Friedman in Coral Gables, FL.

$6,500,000 RECOVERY - MEDICAL MALPRACTICE - ANESTHESIOLOGY - NEGLIGENT INTUBATION OF INFANT BORN FOUR MONTHS PREMATURE - ENCEPHALOPATHY - SIGNIFICANT COGNITIVE DEFICITS - SEIZURE DISORDER - VISION PROBLEMS.

Monmouth County, NJ

This medical malpractice action involved an infant female plaintiff who was born four months premature. Prior to her discharge, a small hernia was noted, which was surgically repaired. One week after that repair, the hernia returned and the infant was brought to the defendant hospital's emergency room by her parents, where the hernia was reduced, but the infant plaintiff was brought to surgery out of fear the bowel might incarcerate. The plaintiff contended that prior to the surgery, the defendant anesthesiologist negligently intubated the child, causing her to suffer deprivation of oxygen. As a result of this improper intubation, a decision was made to put off the surgery until 8:00 a.m. the following day. The plaintiff contended that following the botched intubation, the infant was transferred to the PICU from the O.R., during which time her vital signs and oxygen levels were not adequately monitored. The plaintiff asserted that the infant suffered hypoxic-induced encephalopathy which was left her with very significant cognitive deficits as well as a seizure disorder. The infant plaintiff also sustained reduced vision as well as difficulties with motor control. The defendants denied a deviation or that the infant's care was substandard. The defendants maintained that the infant plaintiff was doomed to suffer such deficits, irrespective of the care provided at the time, pointing out that a substantial percentage of babies born so prematurely generally suffer such deficits. Moreover, the defense contested causation, as the infant suffered from e-coli infection that the defense alleged was the cause of her condition. The plaintiff countered that in view of the stark difference in results of the brain scan before and after this date, the defendant's position should be rejected.

The case settled prior to trial for $6,500,000 as a result of the effort of a Judicial Settlement conference which took place after a failed mediation attempt.

REFERENCE

Roman vs. Rahal. Docket no. MON-L-4550-13; Judge Joseph Quinn, 02-19-20.

Attorneys for plaintiff: Peter Chamas and Robert Adinolfi of Gill & Chamas in Woodbridge, NJ.

$3,207,759 VERDICT - MEDICAL MALPRACTICE - HOSPITAL NEGLIGENCE - NURSING - NEGLIGENT PERFORATION OF BOWEL DURING INSERTION OF ENEMAS - FAILURE TO TIMELY DIAGNOSE AND TREAT BOWEL PERFORATION - ILEOSTOMY - MULTIPLE SURGERIES - INFECTION.

Hartford County, CT

In this medical malpractice action, the plaintiff patient contended that the defendant hospital and its staff were negligent in perforating the plaintiff's bowel during the insertion of an enema and further, in failing to timely diagnose and treat the perforation, resulting in the plaintiff suffering a life-threatening infection. The plaintiff maintained that he underwent multiple surgeries as a result of the defendants' negligence. The 70-year-old male plaintiff maintained that he was admitted to the hospital for treatment of pancolitis most likely due to Crohn's disease or possibly ulcerative colitis, which treatment included a colonoscopy based upon the plaintiff's complaints and symptoms. The plaintiff was discharged home with directions for Rowasa enemas, an anti-inflammatory drug used to treat ulcerative colitis. He was re-admitted to the hospital two days later for syncope and dehydration. Two days after that, a nurse responsible for the plaintiff's care noticed rectal bleeding. It was determined that the bleeding was likely from rectal trauma related to an enema injury. On February 16th, the plaintiff underwent a laparoscopic diverting loop ileostomy in which the bleeding was embolized. It was determined at that time that the plaintiff likely suffered a rectal perforation during the enema insertion process. The enemas had been performed in the hospital by two nurses, one of whom admitted not having any experience in administering enemas. The defendants denied the plaintiff's allegations of negligence and maintained that the enemas that were administered by the plaintiff's wife at home were the cause of the rectal perforation. The defendant also disputed the nature and extent of the plaintiff's alleged injuries and damages.

At the conclusion of the trial, the jury returned with a verdict in favor of the plaintiff. The jury then awarded a total sum of $2,487,759 in damages consisting of $382,732 in economic damages and $2,105,027 in non-economic damages. The jury also awarded the plaintiff's wife $720,000 in damages for her loss of consortium claim.

REFERENCE

Bruce Cockayne, et al. vs. The Bristol Hospital, Inc. et al. Case no. CV16-6034402S; Judge Lisa Morgan, 01-24-20.

Attorney for plaintiff: Thomas P. Cella of Howard Kohn Sprague & Fitzgerald in Hartford, CT. Attorney for defendant: Michael G. Rigg of O'Brien Tansky & Young in Rocky Hill, CT.

$1,000,000 RECOVERY - MEDICAL MALPRACTICE - CARDIOLOGY NEGLIGENCE - DEFENDANT CARDIAC SURGEON OPTS TO TREAT CARDIAC CONDITION BEFORE ADDRESSING DECEDENT'S LIFE-THREATENING DIABETIC KETOACIDOSIS - FAILURE TO DEFER CARDIAC INTERVENTION UNTIL METABOLIC STABILITY WAS ACHIEVED - WRONGFUL DEATH.

Allegheny County, PA

In this medical malpractice action, the plaintiff estate of the 46-year-old female decedent contended that the defendant cardiac surgeon negligently proceeded with surgery to treat the decedent's cardiac condition before addressing the decedent's concurrent life-threatening diabetic condition, which the plaintiff maintained resulted in the decedent dying while on the operating table during a cardiac catheterization procedure. Specifically, the plaintiff maintained that following an examination of the patient was performed in the emergency department, a decision was made to transfer the patient to the cardiac cath lab for cardiac intervention before critical blood work returned. When the blood work did arrive, it revealed that the patient was suffering new onset diabetes with diabetic ketoacidosis, which is a life threatening condition. The plaintiff asserted that despite the E.R. physician walking back to the cath lab to inform the defendant cardiac surgeon of the abnormal and critical blood work results, the defendant opted to continue with the cardiac catheterization, which should have been postponed until after treatment to reverse the ketoacidosis according to the plaintiff. The patient coded twice during the catheterization and died on the operating table. The decedent was survived by her parents. The defendant denied negligence and argued that the decedent was treated properly and in accordance with all medical standards.

The parties reached a settlement of $1,000,000 prior to trial.

REFERENCE

Plaintiff's cardiovascular expert: John F. Setaro, M.D. litem of the Estate of Erin Hufnagel vs. UPMC Passavant, University of Pittsburgh Physicians, Upmc Heart and Vascular Institute and Sun Kim Scolieri, M.D. Case no. GD-16-004578; Judge Alan Hertzberg, 09-04-19.

Attorney for plaintiff: Victor H. Pribanic of Pribanic & Pribanic in Pittsburgh, PA. Attorney for defendant: Lisa Renee Whisler of Dinsmore & Shohl, LLP in Pittsburgh, PA.

PRODUCT LIABILITY

$10,133,000 VERDICT - PRODUCT LIABILITY - DESIGN/MANUFACTURING DEFECT OF TRUCK TIRE - TRUCKER KILLED AFTER TIRE BLOWS OUT CAUSING TRUCK TO VAULT OVER RETAINING WALL AND OFF BRIDGE - WRONGFUL DEATH OF 45-YEAR-OLD.

Harris County, TX

The plaintiff estate in this product liability action contended that the defendants tire manufacturer, vehicle manufacturers, trucking company and truck owner were all liable for a fatal tire blow out which sent a cement truck the plaintiff's decedent was operating out of control and off a bridge, resulting in the death of the decedent. The plaintiff contended that the cement truck was designed, marketed and/or manufactured by the defendants including, but not limited to, Navistar, International Trucks, Continental and EZ Pack. The truck was owned, operated and maintained by the defendant Alamo/Dorsett. The truck's tires were designed, manufactured and distributed by the defendants Sailun and TBC. The plaintiff asserted that while the decedent was driving the cement truck within reasonable and permitted highway speeds, the right front tire unexpectedly "Popped," ruptured, delaminated, tread separated, became compromised in what is known as a "Blow out." The plaintiff maintained that the decedent attempted to control his vehicle after the blow out, but could not do so. According to the plaintiff, in less than two seconds, the vehicle was completely out of control and immediately veered to the right, striking a jersey barrier and/or guard rail and careened onto the barrier, riding the barrier for some distance before plunging 60+ feet to the ground below and bursting into flames. The decedent, who was found dead inside his truck, was survived by his wife and six minor children.

The estate alleged that the defendants were liable for using and/or placing inappropriate tires/wheels on the truck, using untrained individuals to maintain the truck and/or tires, selecting substandard, cheap, unfit and/or inferior tires for use on the cement truck given the known and intended uses the vehicle would be put to. The plaintiff contended that the defendants failed to properly maintain the tires or the vehicle in a safe and reasonable operating condition; designed, manufactured and distributed products which were not reasonably safe for their foreseeable and intended uses; designed, manufactured and distributed products which were defective, without adequate or reasonable warnings; all of which rendered the cement truck and its tires unreliable and unfit for their foreseeable and intended uses while affirmatively representing that the truck and the tires were "Reliable and fit." The defendants denied all allegations of negligence and argued that the tires and truck were safe for their intended use and that superseding or intervening parties had caused the incident.

The case settled with the Alamo defendants for $133,000. The estate then settled with the Sailun defendant for $10,000,000, for a total recovery of $10,133,000. The other defendants were voluntarily dismissed

REFERENCE

The Estate of Daniel Miregi by Maureen Miregi vs. Alamo Concrete Products Company, Alamo Concrete Products, Ltd., Dorsett Brothers Concrete Supply, Inc., Navistar, Inc., International Trucks, Sailun Group Co., Ltd, TBC Brands, TBC Corporation, Continental Mixer Solutions, LLC, Commerciality Specialty Truck Holdings, LLC, EZ Pack Refuse Hauling Solutions, LLC and Continental Manufacturing Co., Inc. Case no. 201758759; Judge Jaclanel M. McFarland, 09-09-19.

Attorney for plaintiff: Benjamin Lewis Hall, III of The Hall Law Firm in Houston, TX. Attorney for defendant: Erik Raney Wollam of Lucero Wollam, PLLC in Wimberley, TX. Attorney for defendant: William Joseph Collins, III of Sheehy Ware & Pappas, PC in Houston, TX. Attorney for defendant: Jamie Aycock of Kirkland & Ellis in Houston, TX.

MOTOR VEHICLE NEGLIGENCE

$140,000,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - TRACTOR TRAILER/AUTO COLLISION - PLAINTIFF RENDERED QUADRIPLEGIC WHEN HIS VEHICLE COLLIDES WITH TRACTOR-TRAILER WHICH ALLEGEDLY CUT HIM OFF.

Upshur County, TX

In this motor vehicle negligence action, the 39-year-old male plaintiff auto driver contended that the defendant tractor-trailer driver and the co-defendant corporate truck owner were negligent in causing a collision with the plaintiff's vehicle. The plaintiff maintained that the defendant driver negligently pulled out directly in front of his vehicle, causing a severe collision which resulted in the plaintiff suffering severe traumatic injuries and ultimately sustaining quadriplegia. The plaintiff alleged that the defendant driver was unfit to be operating the truck on the day of the incident under Federal Trucking rules. In this regard, the plaintiff asserted that the defendant driver had been involved in multiple, previous

collisions, had routinely violated both state and federal trucking safety regulations regarding maximum time behind the wheel and minimum rest times. The plaintiff also maintained that the co-defendant trucking company had knowledge of these facts and yet failed to take any remediative actions regarding the defendant driver in violation of its own policies and procedures. The defendants denied the plaintiff's allegations, disputed liability, and disputed causation and damages.

The case settled for a $140,000,000 after extensive discovery on the part of the plaintiff's counsel was completed.

REFERENCE

39-Year-Old vs. Dijuana Smith, et al., 07-31-19.

Attorney for plaintiff: Brent Goudarzi of Goudarzi & Young, LLP in Gilmer, TX.

$101,100,000 VERDICT INCLUDING $75,000,000 PUNITIVE AWARD - MOTOR VEHICLE NEGLIGENCE - TRACTOR TRAILER STRIKES REAR OF PICK-UP TRUCK WITH GREAT FORCE - DEFENDANT DRIVER ALLEGEDLY IMPAIRED BY DRUGS AT TIME OF COLLISION - SPINAL INJURIES - DISC REPLACEMENT SURGERY.

Upshur County, TX

In this tractor-trailer motor vehicle negligence action, the plaintiff driver contended that the defendant tractor-trailer driver and the co-defendant trucking company were negligent in causing a significant rear end collision between the truck and the plaintiff's pick-up. Specifically, the plaintiff contended that the defendant tractor-trailer driver was operating his rig at a high rate of speed when it collided into the rear of the plaintiff's vehicle. The plaintiff maintained that the defendant driver was operating the tractor-trailer while under the influence of both marijuana and methamphetamines. The plaintiff made a claim for punitive damages based on this evidence. The plaintiff further contended that the defendant driver's log book indicated that the defendant driver should not have been operating the truck at all on the date of the incident. The plaintiff asserted that the defendant trucking company was negligent in its hiring and supervision of the defendant driver. The plaintiff claimed that he suffered extensive injuries as a result of the significant force of impact between the vehicles. He was initially diagnosed with neck and spinal injuries which ultimately required disc replacement surgery. The plaintiff maintained that despite the surgical intervention, the injuries he sustained in the collision are permanent and will prevent him from returning to his employment as a crane operator. The defendant trucking company denied the plaintiff's allegations, arguing that it took its obligations for proper training and safety very seriously and maintained that the driver had received extensive new driver training including defensive driver training as well as drug and alcohol training. The defendants also disputed the nature and extent of the plaintiff's claimed injuries and damages.

At the conclusion of the trial, the jury deliberated and returned with a verdict in favor of the plaintiff. The jury returned its verdict in the amount of $101,100,000. The jury's award consisted of $75,000,000 in punitive damages.

REFERENCE

Joshua Patterson vs. FTS International Services, LLC. Case no. 356-15; Judge Lauren Parish.

Attorneys for plaintiff: Brent Goudarzi and Marty Young of Goudarzi & Young, LLP in Gilmer, TX. Attorney for defendant FTS International Services, LLC: D. Patrick Long of Squire Patton Boggs in Dallas, TX. Attorney for defendant FTS International Services, LLC: Keith Starr of Starr Schoenbrun & Comte, PLLC in Tyler, TX. Attorney for defendant Acker: Snow E. Bush in Longview, TX.

$4,100,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - AUTO/BUS COLLISION - DEFENDANT BUS OPERATOR NEGLIGENTLY ENTERS DECEDENT'S LANE OF TRAVEL AND STRIKES DECEDENT'S VEHICLE, CAUSING IT TO ENTER ONCOMING TRAFFIC WHERE IT IMPACTS ANOTHER VEHICLE HEAD-ON - FATAL BLUNT FORCE TRAUMA INJURIES - WRONGFUL DEATH OF 41-YEAR-OLD MALE.

Allegheny County, PA

In this motor vehicle/wrongful death case, the 41-year-old male decedent's father was named as executor of the decedent's estate after the decedent was killed in a multi-vehicle collision which the plaintiff contended was caused by the negligence of the defendant school bus driver. Specifically, the plaintiff asserted that the defendant bus driver negligently swerved to the right into the decedent's lane of travel to avoid striking a left-turning vehicle in front of it, thereby striking the decedent's vehicle and causing it to careen into a guardrail and then whip back across the two travel lanes and into the opposing lane of traffic where he was struck by an oncoming

vehicle head-on. The plaintiff estate further alleged that the co-defendant private transportation company was vicariously liable for the negligence of its employee. The defendants denied the plaintiff's allegations of negligence and asserted that the defendant driver had encountered a sudden emergency to which he properly and reasonably reacted by swerving to the right to avoid a collision and, therefore, was not liable to the plaintiff. The plaintiff countered that the defendant bus driver was traveling at an excessive rate of speed, was not paying proper attention to the road, and asserted that the bus driver could have slowed or stopped and avoided striking the left-turning vehicle without changing lanes, preventing the death of the decedent. The decedent was survived by his common law wife, one adult child, three minor children and his father.

The parties reached a settlement of $4,100,000 prior to trial.

REFERENCE

The Estate of Gregory Huston, Jr. by Gregory Huston, Sr. vs. Pennsylvania Coach Lines, Inc. and Harry Upperman. Case no. GD-15-008537; Judge Christine Ward, 06-17-19.

Attorney for plaintiff: Victor Pribanic of Pribanic & Pribanic in Pittsburgh, PA. Attorney for defendant: Warren L. Siegfried of Wayman, Irvin & Mcauley, LLC in Pittsburgh, PA.

$3,500,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - REAR END COLLISION - AGGRAVATION OF PREVIOUS LUMBAR AND CERVICAL HERNIATIONS - PRIOR INJURIES ALLEGEDLY RENDERS PLAINTIFF MUCH MORE VULNERABLE TO NEW INJURY - DAMAGES ONLY.

Middlesex County, NJ

Liability was stipulated in this motor vehicle negligence action in which the female plaintiff driver, in her mid-40s, contended that as a result of being struck in the rear by the defendant, she suffered a significant aggravation of several lumbar and cervical herniations sustained in a collision several years earlier. The plaintiff, who underwent a pain management regimen consisting of multiple nerve block injections after the previous accident, asserted that she had essentially completed the treatments and had not undergone an injection for approximately one year when the subject accident occurred. The plaintiff claimed that despite resuming nerve block injections, the aggravation of her preexisting injuries caused her to suffer extensive, permanent pain and limitations. The plaintiff did not undergo any surgery for the aggravations. The defendant denied that the subject accident caused the claimed injuries, pointing out that the impact caused only minor property damage. The plaintiff countered that the forces absorbed by the car's bumper did not necessarily correlate to the forces absorbed by the plaintiff's body. The defendant did not present a biomechanical expert.

The jury awarded $3,500,000, including $2,500,000 for non-economic losses and $1,000,000 for economic losses. Prior to trial, the parties entered into a high/low agreement.

REFERENCE

Bennett vs. Hill. Docket no. MID-L-6522-17; Judge Thomas McCloskey, 01-17-20.

Attorney for plaintiff: Max J. Stagliano of Gill & Chamas in Woodbridge, NJ.

$1,550,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - INTERSECTION COLLISION - FAILURE TO STOP AT STOP SIGN - KNEE INJURIES SUPERIMPOSED ON LONG-STANDING KNEE COMPLAINTS.

Queens County, NY

In this motor vehicle negligence action, the male plaintiff driver, approximately age 60 at the time, contended that the defendant driver negligently failed to stop at a stop sign, causing the accident. Liability was stipulated and the case was tried as an SJT with a high/low agreement of $750,000/ $200,000. The plaintiff contended that as a result of the collision, he suffered a severe tear to his right knee, that arthroscopic surgery was insufficient, and that he ultimately required knee replacement surgery. The plaintiff maintained that he also suffered cervical and lumbar herniations which were confirmed by MRI and which will cause permanent symptoms despite conservative care. The plaintiff, who had worked as a bus driver for approximately 30 years, maintained that he intended to work until age 65, but because of the knee injuries, he stopped working at age 60. The plaintiff was earning approximately $60,000 per year. The plaintiff was operating his personal car at the time of the accident.

The jury awarded $1,500,000. The case subsequently settled for $750,000 in conformance with the high/low agreement.

REFERENCE

Buchner vs. McGill. Index no. 20544/10; Judge Leslie Purification.

Attorney for plaintiff: Peter W. Kolp of Law Offices of Peter W. Kolp in Brooklyn, NY.

PREMISES LIABILITY

$1,600,000 CONFIDENTIAL RECOVERY - PREMISES LIABILITY - HAZARDOUS PREMISES - PLAINTIFF INJURED WHILE A PATRON AT DEFENDANT'S VENUE - HEAD INJURY - CONCUSSION - POST-CONCUSSIVE SYNDROME - INABILITY TO RETURN TO COLLEGE STUDIES.

Withheld County, MA

In this premises liability action, the 21-year-old female plaintiff college student contended that while she was a patron at the defendant's entertainment venue to attend a concert, she was struck in the head by an unknown object, suffering a concussion and a significant laceration which required multiple staples. The plaintiff maintained that as a result of the incident, she continues to suffer post-concussion syndrome, which has limited her ability to return to college and continue with her plans to obtain a college degree in interior design. The plaintiff maintained that after the incident, she was forced to withdraw from the remainder of the semester as a college student due to the concussion syndrome she was experiencing. The plaintiff further asserted that her major requires significant computer usage, which greatly aggravates this condition. She thereafter attended a less rigorous semester abroad, but although she completed that semester, she did so with significant accommodations for her condition. She claimed that since then, she has been unable to continue with the rigors of attending college, even with a reduced course load, and was subsequently diagnosed with post-concussion syndrome. The plaintiff ultimately withdrew from college and began working very limited hours as a yoga instructor. The defendant denied the plaintiff's allegations and contended that the plaintiff did not suffer a permanent injury and had fully recovered from the concussion after a few months. The defendant disputed any causal connection between the plaintiff's claim that she was unable to continue with college and the injuries sustained.

The parties agreed to resolve the plaintiff's claim prior to trial for a total sum of $1,600,000 in a confidential settlement with the defendant.

REFERENCE

21-Year-Old College Student vs. Entertainment Venue. 05-15-19.

Attorney for plaintiff: Ronald E. Gluck of Breakstone White & Gluck, PC in Boston, MA.

$1,000,000 GROSS VERDICT - PREMISES LIABILITY - SLIP AND FALL ON WET FLOOR AT DISCOUNT SHOPPING CLUB - LEAKING PIPE ATTACHED TO STANDALONE FREEZER - KNEE, ANKLE AND HIP TEARS - ARTHROSCOPIC KNEE SURGERY - LUMBAR HERNIATION.

Middlesex County, NJ

In this premises liability action, the female plaintiff in her early 60s, contended that the defendant discount shopping club negligently failed to properly correct a leaking CVC pipe that was attached to a standalone freezer. The plaintiff maintained that as a result, she slipped and fell on the floor due to the presence of liquid as a result of the leaking pipe. The plaintiff claimed that she suffered tears to her knee, ankle and hip, as well as a lumbar herniation. The case did not involve any mode of operation issues. The receiving manager on duty at the time of the accident denied notice of the alleged defective condition. The plaintiff countered that she had taken photographs of the area after she fell using her cell phone and contended that the photographs showed that a paper towel roll had been inserted between the pipe and the freezer, arguing that this evidence clearly proved that store personnel had been aware that there was a leak. The plaintiff also named the store's receiving manager on duty at the time of the accident as an individual defendant, contending that he should have placed cones and warning signs and that he also failed to report the subject incident. The defendant maintained that the plaintiff failed to make adequate observations and, therefore, was comparatively negligent for her own injuries. The defendant maintained that the plaintiff had been involved in a car accident three years earlier and had treated with a chiropractor until approximately one month before the subject fall, arguing that in light of this evidence and the fact that the plaintiff did not commence treatment for the injuries allegedly sustained in this incident until she returned to the chiropractor approximately one month later, her damages claims should be rejected. The plaintiff countered that most of the prior treatments involved her back and that she had previously made only transient complaints about her knee, hip and ankle. The plaintiff contended that the overall pain has continued and that her knee pain heightened to the point that she ultimately required arthroscopic knee surgery. The plaintiff asserted that as a result of her injuries, she will

permanently be unable to work as a bus driver. The plaintiff did not contend that she is permanently unemployable.

The jury found the discount shopping club 65% negligent, the individual defendant receiving manager 20% negligent (employer found vicariously liable), and the plaintiff 15% comparatively negligent. They then rendered a gross award of $1,000,000 including $175,000 for past pain and suffering, $230,000 for past medical expenses, $200,000 for future medical expenses, $65,000 for past lost wages, $105,000 for future lost wages and $225,000 to the husband for loss of services. The net award, including prejudgment interest, was $904,090. The defendant's offer prior to trial was $150,000.

REFERENCE

Gaguancela vs. BJ's Wholesale Club, Inc., et al. Docket no. MID-L-3824-16; Judge Christopher Rafano, 10-29-19. Attorney for plaintiff: Paul K. Caliendo of Gill & Chamas in Woodbridge, NJ.

$1,000,000 RECOVERY - PREMISES LIABILITY - NEGLIGENT SECURITY AT CONVENIENCE STORE/FOOD MARKET - ARMED ROBBERY - PLAINTIFF SHOT 3 TIMES - ABOVE-THE-KNEE LEG AMPUTATION.

Broward County, FL

This premises liability/negligent security action was brought against the owner of a Fort Lauderdale commercial property as well as the operator of a convenience store located on the property. The 28-year-old male plaintiff contended that the defendants negligently failed to implement adequate security at the site despite prior knowledge that the property was located in a high-crime area. Specifically, the plaintiff asserted that after he had exiting the convenience store and while he was still on the defendants' property, he confronted by an assailant who robbed him at gunpoint. During the confrontation, the assailant shot the plaintiff 3 times, causing major injuries primarily to his left leg. The plaintiff claimed that initially underwent life-saving surgery, and then a number of subsequent surgeries to his left leg, but ultimately suffered an above-the-knee amputation. The defendants denied negligence and denied that the criminal attack perpetrated against the plaintiff was foreseeable or preventable by the defendants. The plaintiff countered that the defendant convenience store had a 4-year history of criminal calls including six for narcotic incidents, four robberies and two aggravated assaults. The plaintiff maintained that the property had no reasonable security features and had been in violation of the Convenience Business Security Act, a Florida Statute, which sets minimum security standards for convenience businesses.

The case settled for the defendants' policy limit of $1,000,000 prior to trial.

REFERENCE

Barker vs. Fiesta Food Market, et al. Case no. CACE19025099; Judge David Haimes, 03-23-20.

Attorney for plaintiff: Todd Michaels of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Michael Lewenz of Zebersky, Payne, Shaw, Lewenz, LLP in Fort Lauderdale, FL.

ADDITIONAL VERDICTS OF INTEREST

Police Liability

$3,449,990 RECOVERY - POLICE LIABILITY - INTERSECTION COLLISION - FAILURE OF DEFENDANT POLICE OFFICER ON NON-EMERGENCY RUN TO STOP AT STOP SIGN - LUMBAR AND CERVICAL DISC INJURIES AND SHOULDER TENDONITIS ON RIGHT, DOMINANT SIDE - CONTINUING SYMPTOMS OF SEVERE PAIN - PLAINTIFF MAINTENANCE WORKER ALLEGES PERMANENT DISABILITY.

Bronx County, NY

In this police negligence case, the male plaintiff driver in his 40s contended that the defendant police officer, who was not responding to an emergency, negligently failed to stop at a stop sign, striking the plaintiff's vehicle, which was proceeding from the defendant's left, on the passenger side. The plaintiff asserted that he suffered tendonitis in his right, dominant shoulder, which has essentially resolved with arthroscopic surgery, as well as lumbar and cervical herniations and bulges which will cause permanent, extensive symptoms despite surgeries to both areas. The plaintiff asserted that these injuries will permanently prevent the plaintiff, a maintenance worker, from continuing meaningful work. The defendant contended that he came to a full stop, made observations, and then proceeded. The defendant maintained that the plaintiff suddenly appeared to his left, traveling at an

excessive rate of speed, and the defendant would have argued that the plaintiff was overwhelmingly comparatively negligent. The plaintiff countered that both roadways leading to the intersection were relatively straight for a substantial distance and that the defendant had an ample opportunity to observe the plaintiff's vehicle before proceeding through the intersection, arguing that the defendant's position in this regard should be strongly rejected.

The case settled prior to trial for $3,449,990.

REFERENCE

Poletayev vs. City of NY, et al. Index no. 309911/12; Judge Mitchell J. Danziger, 11-19.

Attorney for plaintiff: Patrick J. Mullaney of Mullaney & Gjelaj, PLLC in Forest Hills, trial counsel to Law Offices of Alexander Bespechny in Brooklyn, NY.