NEW JERSEY
JURY VERDICT REVIEW & ANALYSIS®
www.JVRA.com

SUMMARIES WITH TRIAL ANALYSIS

Volume 42, Issue 2
July 2021

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

$7,200,000 RECOVERY – MEDICAL MALPRACTICE – OBSTETRICS – DEFENDANT MATERNAL MEDICINE SPECIALIST'S DECISION TO INDUCE PREMATURE LABOR AND DELIVERY OF INFANT PLAINTIFF RESULTS IN LIFELONG INJURY – TWO WEEKS IN NICU WITH CPAP AND INTUBATION FOR RESPIRATORY SUPPORT – COLLAPSED LUNG REQUIRING CHEST TUBES; SEIZURES IN INFANCY – SPASTIC DIPLEGIA AND CEREBRAL PALSY.

Middlesex County, NJ

In this medical malpractice case, the plaintiffs, a 34-year-old mother and her infant daughter, brought suit relative to care and treatment regarding the labor and delivery and neonatal outcome of the minor plaintiff. They maintained that the minor sustained serious life-altering injuries due to the defendants' negligence. All parties were released at various times on various motions during the progression of the case. The remaining defendant at the time of settlement was the attending obstetrics and gynecology faculty member, maternal fetal medicine specialist present at the delivery. The defendant denied liability and argued that the care provided to the plaintiffs was within the standard of care.

In October 2007, the defendant maternal fetal medicine and obstetrician provided care to the plaintiff mother during the pregnancy and labor at issue. The defendant also was present for and assisted in the labor and delivery of the minor plaintiff and made medical decisions regarding the plaintiffs' care and treatment. The plaintiffs asserted that the defendant was negligent in the care and treatment provided to both the plaintiff mother and infant plaintiff. The plaintiff alleged that the defendant should not have recommended or performed an elective induction and that doing so was a breach of the standard of care in labor and delivery and neonatology. The plaintiffs maintained that the defendant failed to exhibit proper precautions and supervisions during the labor and delivery; failed to diagnose the plaintiff mother's obstetrical condition appropriately and timely so as to prevent serious or permanent injury to the infant plaintiff; failed to institute conservative management of the plaintiff mother's labor, knowing the high risk to the child with prematurity; and recommended premature induction of labor. The plaintiffs argued that the defendant failed to evaluate and appreciate the risk factors that existed for induction of labor at 31 weeks without a justifiable medical reason, which caused severe and permanent bodily injury to the infant plaintiff.

As a result of the defendant's malpractice, the plaintiff mother's labor was prematurely induced and the infant plaintiff was born with multiple medical issues related to premature birth. The infant plaintiff was in the NICU for two weeks during which time she had several complications of prematurity. She required CPAP and intubation for respiratory support and ultimately developed a collapsed lung requiring chest tubes. She also developed seizures in her infancy and was ultimately diagnosed with spastic diplegia and cerebral palsy. The infant plaintiff will require lifelong care and the plaintiff's family have been deprived of the company and consortium of the infant plaintiff.

The defendant maintained that the induction of labor was appropriate given the plaintiff's mother's presentation with preterm labor and indications of sub-clinical infection. The defendant argued that, given the options between early delivery and the possibility of severe injury or death due to infection, the proper choice was to induce early delivery. The defendant put forth that there are known risks for premature delivery, but that they were outweighed by the risk of not delivering the infant plaintiff and having her exposure to infection in utero. The defendant argued that the plaintiff's outcome was improved by the defendant's appropriate medical decision to induce the plaintiff mother's labor and deliver the infant plaintiff early.

The plaintiff settled with the defendant obstetrician prior to trial in the amount of $7,200,000 broken down as follows: $2,321,874 in attorney fees; $227,407 in costs; $38,230 to Pennsylvania DHS; and $1,612,490 in net damages set up in a trust for the benefit of the minor plaintiff.

REFERENCE

Plaintiff's maternal-fetal medicine expert: Steven L. Warsof, M.D. from Virginia Beach, VA.

Szumski, et al. vs. Al-Khan, M.D., et al. Docket no. L-000035-16; Judge Michael V. Cresitello, Jr., 04-09-20.

Attorney for plaintiff: Jennifer L. Emmons of Locks Law Firm, LLC in Cherry Hill, NJ. Attorney for defendant: James A. Vasios of Vasios, Kelly & Strollo, P.A. in Union, NJ.

COMMENTARY

The plaintiff's expert's report was compelling and included his opinion that the management of the plaintiff mother by the defendant, with a recommendation to move to Pitocin induction at 31 weeks ges-

NEW JERSEY JURY VERDICT REVIEW & ANALYSIS
www.JVRA.com

Founder
Ira J. Zarin, Esq.

President
Jed M. Zarin

Contributing Editors
Brian M. Kessler, Esq.
Michael Bagen
Laine Harmon, Esq.
Cristina N. Hyde, J.D.
Deborah McNally, Paralegal
Ruth B. Neely, Paralegal
Cathy Schlecter-Harvey, Esq.
Julie L. Singer, Esq.
Tammy A. Smith, Esq.
Kate Turnbow, Paralegal
Susan Winkler

Business Development
Gary Zarin

Production Coordinator
Cathryn A. Peyton

Professional Search
Timothy P. Mathieson

Court Data Coordinator
Jeffrey S. Zarin

Customer Services
Meredith Whelan

Circulation Manager
Ellen Loren

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

Main Office:
973/376-9002 Fax 973/376-1775
Circulation & Billing Department:
973/535-6263

New Jersey Jury Verdict Review & Analysis (ISSN 8750-8060) is published monthly at the subscription rate of $395/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081. Periodical postage paid at Springfield, NJ and at additional mailing offices. **Postmaster:** Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

tation for fear of possible infection, was not reasonable and fell below the standard of care. Preterm rupture of membranes is a common obstetrical problem. Standard of care to optimize outcome for the fetus and mother mandates expectant management to 34 weeks gestation with appropriate cultures and antibiotics unless there is evidence of maternal or fetal infection or spontaneous labor. While there can be multiple antibiotic regimens used, the most common antibiotic therapy is the "Mercer protocol." This management or slight variations have been endorsed by the ACOG and has been the standard of care for several decades.

Although the record stated that the plaintiff mother desired induction, the plaintiff's expert opined that she was not in a position nor did she have proper counseling to make this medical decision. She was not told of the risks to her baby if the baby were born prior to 34 weeks, including significantly increased risk of developing cerebral palsy. The plaintiff's expert put forth that the defendant should have been aware of the standard of care for the management of this common obstetrical problem and should have properly and accurately advised the plaintiff of these risks so that she could make an informed decision. The plaintiff's expert noted that the defendant should have told the plaintiff that delivery was not standard practice if there was no indication of infection, which in her case there was not. The defendant should have told the plaintiff that, unless and until she showed signs of infection, the appropriate and safest course for her baby was to monitor her and not deliver the infant. The plaintiff's expert reported that the defendant should have informed the plaintiff mother that the infant plaintiff was at significant risk of developing cerebral palsy or other injuries if delivered at this point in the pregnancy.

Furthermore, the plaintiff's expert opined, the residents and attending physicians should also have been aware of proper management and should have made independent decisions not to proceed with the elective induction. Failure to get a satisfactory response should have initiated a chain of command for the obstetricians. The order for induction would not have been made by the treating physicians and the obstetricians should not simply have deferred to the defendant for a decision they knew to be below the accepted standards of care and that posed an unnecessary risk to the infant plaintiff. The plaintiff's expert concluded that the elective preterm delivery led directly to the complications of prematurity and subsequent spastic diplegia and cerebral palsy which are lifelong injuries. More likely than not, all the injuries related to prematurity would have been avoided if the standard of care for the management of preterm premature rupture of membranes was followed by the defendant and the obstetrical providers. The plaintiff's expert opined that the deviations from the standard of care placed the plaintiffs at significant increased risk for serious injury and were a substantial factor in the minor plaintiff developing the conditions she has.

$100,686 VERDICT – MEDICAL MALPRACTICE – DENTAL NEGLIGENCE – VICARIOUS LIABILITY – DEFENDANT DENTAL PRACTICE'S DENTIST MISPLACED FIVE DENTAL IMPLANTS INTO MAXILLARY SINUS – SIGNIFICANT RESTORATIVE REPAIR PROCEDURES – VICARIOUS LIABILITY ESTABLISHED ON SUMMARY JUDGMENT; CASE PROCEEDS ON DAMAGES.

Monmouth County, NJ

In this dental malpractice case, the plaintiff asserted that the defendant dentist breached the standard of care in treatment of the plaintiff, resulting in significant, permanent injury. The plaintiff brought suit against the defendant dental practice for vicarious liability. The defendant dental practice asserted that the defendant dentist was an independent contractor and, therefore, the defendant practice was not liable for his actions.

The plaintiff had been a patient at the defendant dental practice for five years. On September 27, 2013, the plaintiff was seen by the defendant's dentist for the first time. On that date, the defendant's dentist placed eight dental implants in one sitting. The plaintiff contended that the dentist was negligent in failing to take any pre-diagnostic X-rays prior to the implant surgery and failing to take any intra-procedural X-rays. The dentist did not perform any testing or grafting to determine whether there was sufficient bone to place the implants. He also provided anesthesia to the plaintiff without a permit.

As a result of the defendant's dentist's misplacement of the implants, five of the implants entered the maxillary sinus and caused the plaintiff to require extensive restorative work. As a result of his treatment of the plaintiff and other patients, the defendant's dentist was suspended from the practice of dentistry. The plaintiff claimed the defendant dental practice was vicariously liable for the defendant dentist's malpractice. The plaintiff successfully moved for summary judgment as to the vicarious liability of the defendant dental practice and the case proceeded as to damages only.

The jury found in favor of the plaintiff and against the defendant dental practice and awarded damages in the amount of $100,686 broken down as follows: $92,173 in damages and $8,513 in interest.

REFERENCE

Pellegrino vs. Maron, D.D.S., et al. Docket no. L-002921-16; Judge Kathleen A. Sheedy, 01-14-20.

Attorney for plaintiff: Frederick E. Gerson of Feitlin, Youngman, Karas & Gerson, LLC in Glen Rock, NJ. Attorney for defendant: Erin A. Bedell of Orlovsky, Moody, Schaaff, Conlon & Gabrysiak in West Long Branch, NJ.

COMMENTARY

The plaintiff moved for summary judgment as to the vicarious liability of the defendant dental practice for the actions of the dentist who performed the procedure in question on the plaintiff. The plaintiff provided very specific evidence to support its claim that the dentist in question was an employee of the defendant dental practice and was not an independent contractor as claimed by the defendant.

On November 2, 2015, the State of New Jersey, the Department of Public Safety, Division of Consumer Affairs, State Board of Dentistry filed an Administrative Complaint against the defendant. In fact, on January 19, 2016, the plaintiff received a letter from the State of New Jersey, Office of the Attorney General stating, in part: "We are sending you this letter because information was received by the State Board of Dentistry raising concerns about inappropriate treatment of you by Dr. Andrew Maron in September, 2013, when you were given anesthesia and eight (8) implants were placed. The Acting Attorney General of New Jersey has filed an administrative complaint against Dr. Andrew Maron. The complaint alleges that he has grossly and repeatedly mistreated patients and has violated many rules of conduct regulated by the Board of Dentistry. The allegations include incompetent examinations, incompetent placement of implants, administration of general anesthesia when he did not have a current permit to do so, failure to maintain adequate treatment records, and for some patients, charging for high quality crowns when lesser quality crowns were used, and other violations. You are among the patients we believe were harmed by his conduct. The Attorney General will seek restitution to you of money you paid for treatment by the defendant or by his office."

The defendant stopped work at the defendant dental practice after his dental license was suspended, in part due to his treatment of the plaintiff at the defendant dental practice. The plaintiff maintained that the defendant dental practice was vicariously liable for the conduct of its dentist. In its defense, the defendant dental practice stated that "co-defendant, Maron, was an independent contractor over which answering defendant had no duty to control or supervise." In the defendant dental practice's answers to interrogatories, they further claimed that the dentist was an independent contractor. At his deposition, the owner of the defendant dental practice testified that the dentist was an independent contractor. Despite stating that the dentist was an independent contractor, the defendant dental practice never entered into any written contract with the dentist and there were no documents at all which would define the relationship between the dentist and the defendant dental practice as an independent contractor.

Simply, plaintiff's counsel argued, the owner of the practice merely stated that the dentist was an independent contractor, despite the lack of any documents or contracts confirming that. In fact, plaintiff's counsel asserted, the following facts confirmed that the dentist was not an independent contractor, and was either an employee of the defendant dental practice or, at the very least, acted with apparent authority: a. the defendant did not utilize any of his own equipment. The defendant dental practice would pay for the implants; the cost of any and all equipment; and anything that the defendant utilized. The defendant did not have to pay for anything according to the testimony of the defendant dental practice's office manager. b. No payments made for the dentist's implant surgery would go directly to the dentist's account. All payments made by the patient or by the loan entity, would go directly to the defendant dental practice and be put into the defendant dental practice's bank accounts. The defendant dental practice would then pay the defendant from its account per the deposition testimony of the defendant dental practice's office manager. The payment was 60% to the defendant dental practice and 40% to the dentist. c. There was nothing in the medical chart which would demonstrate to a patient or any person that the defendant was an independent contractor. d. Loan documents provided to the plaintiff to pay for the implant surgery were provided to the plaintiff by the office manager of the defendant dental practice. e. The loan forms, in reference to the implant surgery, stated the name of the medical provider as being the defendant dental practice. The name on the loan form did not mention the dentist's name or otherwise indicated that the dentist was the medical provider f. The plaintiff was a long time patient of the defendant dental practice. She never met the dentist until the day of the surgery. g. The patients seen by the dentist at the defendant dental practice were not the dentist's clients, but patients of the defendant dental practice. All patients were provided to the dentist from the defendant dental practice h. During the implant surgery, the dentist was assisted by an employee of the defendant dental practice who was paid directly by the defendant dental practice. The dentist did not pay the assistant. i. Nobody ever explained to the plaintiff that the defendant dental practice was not responsible for the conduct of the dentist. j. There was no policy at the defendant dental practice to inform the patients that the defendant dental practice would not be responsible for the work of an independent contractor. k. The owner of the defendant dental practice was unaware of any policy to let patients know that the surgeon working on a patient was an outside surgeon not associated with the defendant dental practice. l. The plaintiff was never told that the defendant was an independent contractor. m. The defendant dental practice determined the cost of the implant. n. The defendant dental practice determined the need for implants prior to the plaintiff seeing the dentist. On the basis of these arguments, the plaintiff sought partial summary judgment declaring that the defendant dental practice was vicariously liable for the work performed by conduct of its dentist.

The plaintiff's motion was granted and the court deemed the defendant dental practice to be vicariously liable for the conduct of the defendant dentist.

$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO OBEY STOP SIGN – PLAINTIFF, WHO UNDERWENT PRIOR TWO-LEVEL FUSION FOLLOWING ACCIDENT THAT OCCURRED FIVE YEARS EARLIER SUFFERED CERVICAL HERNIATIONS IN SUBJECT ACCIDENT AND REQUIRED EXTENSION OF FUSION TO FIVE LEVELS – LUMBAR HERNIATION – RADIOFREQUENCY ABLATION – SLAP TEAR TO LEFT SHOULDER – ARTHROSCOPIC SURGERY – BILATERAL HIP INJURIES REQUIRE INJECTIONS.

Bergen County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her mid 40s, contended that the defendant SUV driver failed to stop at a stop sign, causing the accident in which the defendant struck the passenger side of the plaintiff's car. The plaintiff contended that she suffered an aggravation of cervical herniations that occurred approximately five years earlier. The prior injuries required a two-level fusion and the plaintiff asserted that after this subject accident, she required injections and ultimately the extension of the cervical fusion to five levels. The plaintiff also maintained that she suffered a lumbar herniation in the subject accident which required injections and a radio-frequency ablation, as well as a SLAP tear of the left shoulder that prompted arthroscopic surgery. The defendant would have maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff claimed that after the prior two-level fusion, she had recovered well and was able to engage in everyday activities without undue difficulties. The plaintiff asserted that after this subject collision, in which she was severely jostled from side to side, her pain increased extensively. The plaintiff underwent a revision of the initial fusion and then a cervical epidural injection. The plaintiff contended that this course was inadequate and that she ultimately required the extension of the fusion to five cervical levels. The plaintiff maintained that although the pain has improved to some extent, her restriction is severe. The plaintiff asserted that she cannot turn her head without also turning her torso.

The plaintiff further contended that she suffered a lumbar herniation that required epidural injections and a radiofrequency ablation. The plaintiff asserted that she will permanently suffer lower back pain. The plaintiff further claimed that she will suffer permanent pain and restriction from the shoulder injury despite arthroscopic surgery. The plaintiff also contended that she sustained hip injury requiring injection and which will add to her pain and difficulties for the remainder of her life.

The plaintiff would have presented her sister, who indicted during her deposition that the plaintiff appeared to fare well upon her recovery after the prior accident and now displays extensive difficulties with everyday tasks. The plaintiff contended that everyday activities are painful and difficult, that she has trouble walking up and down steps and cannot walk long distances and she has problems performing housework. The sister related that the cervical X-rays resembled a "door hinge."

The plaintiff is unmarried. The plaintiff, who taught disabled children at their homes, was able to return to work.

The case settled prior to trial for $1,500,000.

REFERENCE

Plaintiff's orthopedic spinal surgeon expert: Michael Gerling, M.D. from Jersey City, NJ. Plaintiff's orthopedic surgeon expert: David Feldman, M.D. from Englewood, NJ. Plaintiff's pain management expert: Thomas Ragukonis, M.D. from Paramus, NJ.

Watts vs. Seneca. Docket no. BER-L-6615-17, 03-23-21.

Attorneys for plaintiff: Jeffrey Hasson and Robert Florke of Law Office of Jeffrey S. Hasson, PC in Teaneck, NJ.

COMMENTARY

The plaintiff was able to command a very substantial settlement despite the fact that her history included a two-level cervical fusion. It is felt that the demonstrative evidence in the form of cervical X-rays which graphically depicted the extensive hardware involved in the extension of the fusion to five cervical levels provided the plaintiff with extensive leverage. In this regard, the deposition testimony of the sister that when she first saw the X-rays, it reminded her of a door hinge, would have buttressed this anticipated reaction.

$988,069 VERDICT – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – DISC HERNIATIONS AT C3-4, C4-5 AND C5-6; DISC BULGE AT L4-5 – PLAINTIFF TREATED CONSERVATIVELY – RECOMMENDATION FOR CERVICAL DISC SURGERY – PARTIES SETTLE FOR UNDISCLOSED SUM POST-TRIAL.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 37-year-old surgeon, asserted that the defendant driver struck her vehicle while making a left turn across the plaintiff's right-of-way causing the plaintiff to sustain serious injuries. The defendant denied liability and contested the plaintiff's damages.

On July 10, 2015, the plaintiff was the driver of a vehicle traveling northbound on Palisades Avenue in Fort Lee. The defendant was the driver of a vehicle traveling southbound on Palisades Avenue. The defendant negligently and carelessly made a left turn onto Bridge Way colliding with the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained disc herniations at C3-4, C4-5 and C5-6 and a disc bulge at L4-5. The plaintiff underwent conservative treatment and claims to still have significant pain. The plaintiff has been recommended for cervical disc surgery and epidural steroid injections, but has refused. The defendant argued that the plaintiff suffered no permanent injury.

The jury returned a verdict in favor of the plaintiff. The jury found that the defendant was negligent and a proximate cause of the motor vehicle accident and injuries sustained by the plaintiff. The jury found that the plaintiff was not negligent and had suffered a permanent injury caused by the accident and awarded the plaintiff damages of $988,069 broken down as follows: $17,257 for costs of litigation; $56,522 in prejudgment interest; $74,290 in attorney's fees; and $840,000 in net damages to the plaintiff for disability, impairment, loss of enjoyment of life, and pain and suffering. Following the verdict, the parties settled for an undisclosed sum.

REFERENCE

Syed vs. Venezia. Docket no. L-002931-17; Judge Robert C. Wilson, 06-26-19.

Attorney for plaintiff: James S. Lynch of Lynch, Lynch, Held, Rosenberg, P.C. in Hasbrouck Heights, NJ.
Attorney for defendant: Gregory Irwin of Law Office of Harwood Lloyd in Hackensack, NJ.

COMMENTARY

Following the trial, the defendant filed a Motion for New Trial or Remittitur. The defendant's argument was two-fold. First, medical causation of the plaintiff's three disc herniations in her neck and the nature and extent of the plaintiff's injuries, pain and suffering and alleged future treatment, including surgery. The defendant acknowledged that the jury clearly found in favor of the plaintiff with regard to causation. However, the defendant argued, based on the quantum of the jury verdict, the jury's findings with regard to the plaintiff's injuries, pain and suffering and alleged future treatment was against the weight of the evidence produced at trial. The defendant asserted that, at trial, the jury repeatedly heard about the plaintiff's lack of medical treatment after 2015. The plaintiff admitted that, following that time frame, she would self-treat both at home and in her office. She also testified that she did resume physical therapy on a few occasions in 2016. The plaintiff did not, however, undergo the recommended epidural steroid injections since, she claimed, she had an allergic reaction.

Defense counsel argued that, based on the plaintiff's treating physician's testimony, it was clear that the plaintiff had no intention of proceeding with that course of treatment. And the plaintiff never told the jury that she intended to have the recommended surgery in the future either. The defendant put forth that the jury's award was against the weight of testimony at trial and was based on the jury's belief that the plaintiff would ultimately have surgery in the future, a fact that the defendant argued was at odds with the testimony given by the plaintiff and her surgeon. Accordingly, the defendant argued that the defendant was entitled to a new trial on damages or, alternatively, that the court grant the defense a remittitur of the jury verdict and award damages consistent with the evidence and reasonable inference to be drawn from the evidence in the case.

Plaintiff's counsel filed an opposition to the defendant's motion, countering that the plaintiff suffered serious injury and will continue to suffer for the remainder of her life as a result of the subject accident. The plaintiff has ongoing pain that limits the way in which she can work, including having to change the manner in which she performs surgeries, her daily schedule, and that she has to work more hours because she works more slowly now. Further, the plaintiff's treating orthopedic surgeon testified that a three-level cervical fusion would be necessary, especially in light of the deteriorating interval MRIs the plaintiff underwent. The plaintiff testified that she understood that this surgery would be required, but her intent was to put it off as long as possible because the surgery would fuse her neck, limit her motion and possibly end her career as a surgeon. The plaintiff argued that, as a young woman with so many years ahead of her, this injury was devastating. Plaintiff's counsel asserted that the verdict was not in the least bit excessive when considering that the plaintiff will undergo more than 40 years of pain, suffering, impairment and loss of enjoyment of life as was clear from her testimony and that of the treating physicians.

Following the filing of defendant's motion and plaintiff's opposition, the defendant withdrew her motion and the parties settled for an undisclosed sum.

$980,000 RECOVERY – SCHOOL LIABILITY – NEGLIGENT SUPERVISION – FAILURE OF SCHOOL OFFICIALS TO PROPERLY SUPERVISE – TEACHER KISSES AND GROPES 8TH GRADE STUDENT ON SEVERAL OCCASIONS – PTSD.

Sussex County, NJ

This case involved a then 14-year-old 8th Grade student in which the plaintiff contended that the defendant Board of Education violated NJ LAD and negligently failed to supervise a teacher. The plaintiff contended that as a result, she engaged in a number of incidents in which she was the victim of kissing and groping by the teacher. The plaintiff further named the uninsured teacher as a defendant. The assailant was arrested and sentenced to three years in prison. The plaintiff continued in the school and was the subject of bullying because of the incident which caused her to suffer PTSD. The plaintiff also asserted that the defendant negligently failed to properly provide a plan to minimize the bullying. The evidence reflected that the plaintiff completed high school at the head of her class, and the defendant maintained that any symptoms of PTSD resolved.

The plaintiff maintained that in the months leading up to the incidents, the plaintiff and teacher had exchanged inappropriate email messages. The plaintiff pointed out that in the emails, the plaintiff and teacher expressed the fact that they were anxious to see each other. The plaintiff would have also pointed out that in the emails, the teacher, and the plaintiff, who had a separate phone number than her parents, had exchanged phone numbers. The plaintiff asserted that the school district should have used software which would flag particular in appropriate words, arguing that if the defendant school district had done so, it would have been aware of the imminent abuse before it occurred.

The plaintiff would have also presented a witness who would have testified as to seeing the teacher stare at the plaintiff's chest, arguing that this evidence should have placed the school on notice as well. The evidence would have reflected that two incidents of kissing occurred during the previous year and that two incidents of kissing occurred in a school room in high school that year. The plaintiff further maintained that the teacher, who supervised dances, had danced in an inappropriate manner with the plaintiff and that this factor should have placed the school on notice as well.

The plaintiff contended that the she suffered PTSD as a result of the abuse and the bullying which stemmed from the widespread knowledge about the incidents. The defendant would have endeavored to counter the plaintiff's claim that the defendant improperly failed to formulate a plan to insulate the plaintiff against bullying by establishing that it offered to provide an out-of-district placement of the student at no cost.

The case settled prior to trial for $980,000, including $950,000 from the school board and $30,000 individually from the defendant teacher.

REFERENCE

Plaintiff's computer expert: Bryan Gorczyk from Livingston, NJ. Plaintiff's education expert: Edward F. Dragon, Ph.D. from Lambertville, NJ. Plaintiff's psychologist expert: Susan Esquilin, Ph.D. from Verona, NJ.

Plaintiff 8th grade student vs. Defendant Board of Education, et al.

Attorneys for plaintiff: Paul R. Rizzo and Nicholas F. Pompelio of DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, PC in Warren, NJ.

COMMENTARY

In this failure of school officials to provide adequate supervision of the teacher/assailant, the plaintiff would have argued that appropriate use of technology would have enabled the school officials to learn about the impending assaults before they occurred. In this regard, the plaintiff would have stressed that software was available which would have flagged inappropriate communications and enable the imminent abuse to be prevented. Finally, although the plaintiff appears to be doing well and has completed high school at the head of her class, the nature of such an incident would be expected to create a strong jury response, resulting in an unpredictable verdict if the case had proceeded to trial.

DEFENDANT'S VERDICT ON SUMMARY JUDGMENT – COUNTY LIABILITY – PREMISES LIABILITY – HAZARDOUS PREMISES – PLAINTIFF STEPS IN HOLE IN DEFENDANT COUNTY'S DOG PARK – COMMINUTED OBLIQUE DISPLACED FRACTURES OF SECOND AND THIRD METATARSALS OF LEFT FOOT – RESIDUAL PERONEAL NERVE INJURY; LOSS OF MOTION; RESIDUAL STIFFNESS – SPLINTING; CASTING; FRACTURE BOOT; PHYSICAL THERAPY – PLAINTIFF MAKES OFFER OF $125,000 – DEFENDANT MOVES FOR SUMMARY JUDGMENT.

Mercer County, NJ

In this county liability/premises case, the plaintiff, a 55-year-old woman, asserted that the defendant County failed to maintain its park in a safe condition for visitors and that the negligence of the defendant resulted in injury to the plaintiff.

The defendant denied liability and claimed that it neither had notice of the hole, nor could be held responsible for the natural act of dogs digging holes in a dog park. The defendant asserted that prior to the subject incident, it was not aware of the hole and that there had been no prior such

injuries in the past; therefore, the defendant did not have actual or constructive notice of the hole in the dog park.

On September 20, 2017, the plaintiff was lawfully in a Mercer County Park located in West Windsor when she tripped and fell on what she claimed was a dangerous and defective condition on the premises. The plaintiff stepped in a hole at the county's dog park and broke her left foot. A Mercer County staff member responded, aided the plaintiff and the plaintiff then left with her husband and daughter to seek medical attention.

As a result of the fall, the plaintiff sustained traumatic injury to her left foot. The plaintiff suffered comminuted oblique displaced fractures of the distal shafts of the second and third metatarsals of her left foot with peroneal nerve injury; loss of motion; residual stiffness. She was treated by a podiatrist with splinting followed by several weeks of casting and then a fracture boot. The plaintiff underwent physical therapy and a home-based exercise program.

Prior to trial, the plaintiff made an offer of judgment in the amount of $125,000. The offer was not accepted and the defendant filed a Motion for Summary Judgment. After oral arguments, the court granted the motion and dismissed the plaintiff's case against the defendant.

REFERENCE

Tompkins vs. Mercer County Park Commission. Docket no. L-000914-18; Judge William Anklowitz, 07-19-19.

Attorney for plaintiff: Craig M. Aronow of Rebenack, Aronow & Mascolo, LLP in New Brunswick, NJ.
Attorney for defendant: John K. Maloney of Assistant County Counsel, Mercer County in Trenton, NJ.

COMMENTARY

In its Motion for Summary Judgment, the defendant County argued that it could not be found liable under the New Jersey Tort Claims Act because it is well established that if there is both immunity and liability under provisions of the Tort Claims Act, the immunity prevails. The defendant asserted that the plaintiff could not establish the elements necessary to prove a prima facie case of dangerous condition liability under N.J.S.A. 59:4-2 including: notice, a defect when the property is used with due care for its intended purpose, or palpably unreasonable conduct. The defendant County claimed it was thus entitled to summary judgment as the plaintiff could not prove that the County had either actual or constructive notice of any dangerous or unsafe condition. Further, even if the plaintiff could prove that the defendant County did have notice, the plaintiff could not prove that a hole dug by an animal in a dog park represented a dangerous condition. Lastly, the defendant argued, even if the plaintiff could prove that the hole represented a dangerous condition, or that the defendant had prior notice of a dangerous or unsafe condition, and that the defendant had either actual or constructive notice, the plaintiff could provide no evidence that the defendant's actions or inactions were palpably unreasonable. The defendant concluded that the plaintiff could not establish all the elements necessary to prove a prima facie case of dangerous condition liability and the defendants were entitled to summary judgment.

The defendant also asserted that, in the event the court found the defendant county could be liable under the Tort Claims Act, the defendant was still immune to liability under N.J.S.A. 2A:42A-2, et seq., the Landowner Liability Act. The Act protects landowners, including public entities, from any duty to keep their premises safe for use by others for recreational activities. The intent of NJLLA was to provide the owners of rural tracts of open land with immunity from suit from those who entered and used the land for sporting or recreational purposes. The Act provides immunity with regard to activities on land, regardless of whether it is in a natural or improved state or whether the land is the site of a commercial enterprise. Therefore, under the NJLLA, the defendant claimed it was immune from liability and summary judgment should be granted.

The court agreed and dismissed the plaintiff's case on summary judgment in favor of the defendant. The court stated in its opinion, "This motion for summary judgment was met with opposition by plaintiff that included the statement: 'This matter arises out of a trip and fall into a hole located in the Mercer County Dog Park on September 20, 2017.' As indicated by defendant, N.J.S.A. 2A:42A3(a), 'An owner…owes no duty to keep the premises safe for entry or use by others for sport and recreational activities….' Assuming the facts proposed by plaintiff are true, the dog park is a recreation facility as defined in N.J.S.A. 2A:42A-2. Therefore, defendant is immune and the case is dismissed."

VERDICTS BY CATEGORY

CONTRACT

$173,685 RECOVERY

Contract – Plaintiff nursing staffing service contends defendant health care facility owes plaintiff for services rendered – Defendant denies being entity that entered into contract and denies owing plaintiff any money.

Camden County, NJ

In this breach of contract case, the plaintiff staffing service asserted that the defendant health care facility breached a contract for services rendered by not paying the plaintiff. The defendant denied owing the plaintiff and asserted that it was a separate entity that entered into a contract with the plaintiff and thus the defendant was not responsible for payment.

On January 4, 2017, the authorized representatives of the plaintiff entered into a contract to provide nursing services to the defendant health care facility. The contract provided for the costs of service whereby the plaintiff would provide nurses to the defendant to staff the skilled nursing facility operated by the defendant. Pursuant to the agreement, the plaintiff provided nursing staff to the defendant at the defendant's request. The total sum due to the plaintiff for such medical personnel was $166,210. The plaintiff maintained that the defendant did not provide any complaint as to the services provided yet failed to pay.

The parties submitted to non-binding arbitration prior to trial. The arbitrator determined that the defendant owed the plaintiff $166,210 plus interest in the amount of $7,479 for a total of $173,689. The plaintiff made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Nurse Staffers, Inc. vs. Skyline Care, LLC, et al. Docket no. L-001859-18; Judge Michael J. Kassel, 01-10-20.

Attorney for plaintiff: Michael C. Donio of Hoffman DiMuzio in Franklinville, NJ. Attorney for defendant: Miro Lati of Shapiro & Associates Attorneys at Law, PLLC in Brooklyn, NY.

DOG ATTACK

$92,140 RECOVERY

Dog attack – 14-year-old plaintiff visiting friend when defendant's dog suddenly attacks and bites plaintiff's face – 2 cm horizontal laceration to right infra-orbital face; chin laceration; puncture wound from braces wire; puncture wound on mucosal surface of lower lip; damage to one tooth and damage to braces – Significant suturing; subsequent scar revision surgery; replacement of tooth with permanent crown; repair of braces – Permanent residual scarring –Psychotherapy for anxiety and emotional distress.

Gloucester County, NJ

On June 10, 2017, the minor plaintiff, a 14-year-old girl, was lawfully at the residence of the defendant located at 458 Dickinson Road in Wenonah, visiting the defendant's daughter. The defendant had a dog on the premises and, the plaintiff claimed, the defendant negligently and carelessly allowed the dog to be at large and not securely or otherwise guarded or confined. While the plaintiff was lying across her friend's bed, next to the dog, the dog suddenly turned and bit the plaintiff's face causing severe injuries. The plaintiff asserted that the defendant knew or should have known of the vicious propensities of her dog and was negligent in failing to control the dog or warn the plaintiff of the dog's dangerous nature. The defendant settled with the plaintiff after service of the complaint.

Immediately following the attack, the plaintiff was taken to the emergency room. She had lacerations to her right eye and chin, as well as a broken wire from her braces going through her lower lip. The physician's report noted a 2 cm horizontal laceration to the right infra-orbital face, chin laceration, puncture wound from the wire and puncture wound on mucosal surface of the lower lip from the dog's teeth. The physician had to cut the wire that had broken off from her braces with a wire cutter. The E.R. physician performed surgery to close the wound near the plaintiff's eye. The other wounds were not closed due to the risk of infection.

The plaintiff followed up with her dentist due to damage caused to her tooth by the braces being ripped off in the attack. The plaintiff's dentist found a large fracture of one tooth with near pulp exposure requiring replacement with a permanent crown. The plaintiff also saw her orthodontist for repair of her braces. The plaintiff saw a plastic surgeon who noted a raised scar on the lower left lip, right lower eyelid scar that was raised and pink. He recommended and the plaintiff underwent revision surgery for the scar on her chin. The plaintiff also received counseling for emotional distress at the scarring and anxiety about people looking at her and asking what happened.

The parties settled the matter prior to trial in the amount of $92,140 broken down as follows: $23,435 in attorney fees; $2,140 in medical expenses and $66,565 in net damages to the minor plaintiff.

REFERENCE

Ward vs. Hinnershitz. Docket no. L-000499-19; Judge Timothy W. Chell, 09-20-19.

Attorney for plaintiff: Ralph A. Paolone of The Law Offices of Ralph A. Paolone in Galloway, NJ.
Attorney for defendant: James Meissler of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

DRAM SHOP

UNDISCLOSED RECOVERY

Dram shop – Plaintiff contends two separate bars over served patron when he was clearly intoxicated and second bar failed to take appropriate security measures, allowing assailant to attack plaintiff outside bar – Loss of consciousness – Loss of six teeth; extensive, severe facial lacerations – Plaintiff required full upper and lower dentures due to injuries – Arbitrator assigned 50% liability to second defendant bar and defendant individual assailant and set damages at $100,000.

Cape May County, NJ

In this dram shop and inadequate security action, the plaintiff asserted that two defendant dram shops over served an individual who went on to assault the plaintiff. The plaintiff also maintained that the second dram shop, where the assault occurred, had inadequate security. The plaintiff had settled with the individual who assaulted him, prior to this action, in the amount of $20,000. However, the dram shop defendants brought the individual patron who assaulted the plaintiff into the matter as a third-party defendant.

On June 27, 2016, the plaintiff was a patron at a bar in Sea Isle, which he frequently patronized. At the same time, the third-party defendant individual was also a patron at the bar in Sea Isle with his fiancée and her mother. The plaintiff and the defendant bar patron were seated on opposite sides of the bar when, the plaintiff maintained, the individual began a verbal dispute with the bartender and other employees because of his disorderly behavior. The plaintiff asserted that the individual was visibly intoxicated when he arrived at the subject bar. He then remained at the bar where he was served drinks by two different bartenders.

The plaintiff claimed that the defendant patron continued to attempt to provoke physical altercations with the bartenders, employees, and other patrons. He then accused the plaintiff of "looking at him." The individual continued to be verbally and physically aggressive with staff and patrons until he left the bar, while broadcasting verbal threats of violence against anyone in his proximity including the plaintiff. The plaintiff argued that the defendant individual was allowed to leave and allowed to stand at the perimeter of the bar's property without any escort from the defendant bar's employees or without any notification of his behavior to police.

The plaintiff remained in the bar for approximately 10 minutes allowing for the individual to leave the area. The plaintiff asserted that the defendant bar's employees knew or should have known that the individual remained at the exterior of the property lying in wait for the plaintiff to exit. Upon his exit, the plaintiff claimed he was brutally attacked and physically beaten by the individual until he was knocked unconscious, sustaining substantial and permanent bodily injuries. The plaintiff was transported to the emergency room where he was treated for his injuries. As a result of the assault, the plaintiff sustained loss of six teeth and numerous facial lacerations. The plaintiff ultimately required placement of full upper and lower dentures.

The plaintiff pointed to the defendant individual's fiancée's testimony that the defendant individual consumed three Bloody Marys and four beers before leaving home, then four pints of beer at the first defendant dram shop before continuing to the second defendant dram shop where he was served more drinks and where the assault occurred. The witness described the defendant in a written statement as "heavily intoxicated" and that she attempted to get him to go home, but he refused and she went home without him.

The defendant dram shops asserted that the plaintiff had already collected for his injuries from the third party defendant assailant and therefore could not seek duplicate damages against the defendant bars. The first defendant bar denied serving the third party defendant after he was intoxicated and pointed to the fact that the plaintiff was at no point a patron at the first bar, did not witness the defendant serve the

third-party defendant, and had no knowledge of how much or where he had consumed alcohol prior to his arrival at the second bar. The second bar maintained that it ejected the assailant and was no longer responsible for him when he was off its property. The third-party defendant assailant asserted that he had settled with the plaintiff on June 22, 2017, prior to the filing of this action and was no longer a party to the suit.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no liability for dram shop action, but did find liability against the second defendant bar for lack of security claim and against the defendant individual party for assault. The arbitrator assigned 50% liability to the second defendant bar and the defendant individual assailant and set damages at $100,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

McFarlane vs. LaCosta's Bar & Lounge, et al. Docket no. L-000067-18; Judge James Pickering, Jr., 10-16-19.

Attorneys for plaintiff: Louis M. Barbone and Timothy C. Alexander of Jacobs & Barbone, P.A. in Atlantic City, NJ. Attorney for defendant first dram shop, Ocean Drive & Sandbar: Christine J. Viggiano of Reilly, McDevitt & Henrich, P.C. in Cherry Hill, NJ. Attorney for defendant second dram shop, LaCosta's Bar & Lounge: John Reed Evans of Donnelly & Associates, P.C. in Conshohocken, PA. Attorney for third-party defendant assailant: Jill L. Teague of Law Office Charles A. Little, Jr. in Moorestown, NJ.

INSURANCE OBLIGATION

$25,000 VERDICT

Insurance obligation – Underinsured motorist – Plaintiff argues underinsured tortfeasor entered his lane of travel and struck vehicle – Herniated discs at L4-5 and L5-S1 – Plaintiff claims medical lien of $696 – Plaintiff settles with tortfeasor for $24,000 and uninsured motorist claim goes to trial.

Monmouth County, NJ

In this insurance obligation case, the plaintiff, a 63-year-old man, asserted that the tortfeasor driver struck his vehicle and caused the plaintiff injury. The tortfeasor offered the plaintiff $24,000 of a $25,000 policy, which the plaintiff accepted and then filed the subject suit against the defendant insurer for an underinsured motorist claim, for which the plaintiff held a $50,000 policy with the defendant insurer. The defendant denied liability and contested the plaintiff's damages.

On February 3, 2014, the plaintiff was traveling on Asbury Avenue at the intersection of Whitesville Road in Neptune. The plaintiff alleged that the tortfeasor driver negligently and illegally entered the plaintiff's lane of travel and struck the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained herniated discs at L4-5 and L5-S1. The plaintiff claimed a medical lien of $696.

The defendant asserted that the plaintiff was at least contributorily negligent in causation of the collision. The defendant also argued that the plaintiff's injuries were degenerative and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages at $40,696 to be reduced by the tortfeasor's insurance payment. The arbitration was not confirmed and the matter went to trial.

The jury found in favor of the plaintiff and awarded non-economic damages in the amount of $25,000.

REFERENCE

Laine vs. Allstate New Jersey Property and Casualty Insurance Company. Docket no. L-002594-17; Judge Owen C. McCarthy, 11-01-19.

Attorney for plaintiff: Thomas DeSeno of Law Offices of Schibell & Mennie, LLC in Ocean, NJ. Attorney for defendant: William E. Wells of King, Kitrick, Jackson & McWeeney, LLC in Brick, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$425,000 RECOVERY

Motor vehicle negligence – Truck/pedestrian collision – Six-year-old minor plaintiff crossing street at school-supervised party struck by defendant commercial truck while driver on cell phone and speeding – Defendants claim plaintiff darted out from between two parked cars and ran into side of truck – Closed head injury – Post-

traumatic grade 3 splenic laceration – Rib fracture associated with significant left pleural effusion – Surgical repair of deep laceration to scalp.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian, a 6-year-old girl, asserted that the defendant driver struck her in the roadway with tremendous force such that it caused significant, permanent injury. The defendants claimed the plaintiff darted out from between 2 parked cars and ran into side of the truck.

On June 20, 2017, the defendant driver was operating a commercial box truck in a westerly direction on West 40th Street in Bayonne. The plaintiff pedestrian was walking in a northerly direction across West 40th Street when she was struck in the roadway by the defendants' truck. The truck was leased by the defendant floral delivery company, from the defendant leasing company, and operated by the defendant driver in the course of his employment.

As a result of the collision, the plaintiff sustained significant, traumatic internal injuries including: closed head injury; post-traumatic grade 3 splenic laceration with devascularization of approximately 25 percent of the kidney; post-traumatic grade 3 splenic laceration involving the posterior inferior pole of the spleen with a through and through lesion of the inferior pole measuring 3 cm in length and a left tenth rib fracture associated with significant left pleural effusion. The plaintiff was transported by ambulance from the scene to the hospital. The plaintiff underwent surgical repair of a deep laceration to the scalp with residual scarring.

The plaintiff asserted that the defendants were negligent, careless and reckless in the ownership and operation of their commercial vehicle so as to fail to slow down or stop after due notice and knowledge that children were crossing the street in the area. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendants denied liability and stated that the minor plaintiff darted out from between 2 parked cars, ran into the side of the truck, and fell to the ground. The defendants pointed to witness testimony from an eyewitness who stated that she saw the truck and witnessed a child run into the street from between 2 cars. The witness stated that it appeared to her that the truck was coming to a stop as the plaintiff was hit and did not move after hitting the plaintiff.

The parties settled the matter prior to trial in the amount of $425,000 broken down as follows: $134,869 in attorney fees and costs; $340,131 in net damages to the minor plaintiff set up as structured payments.

REFERENCE

Mccullough vs. Fisch Floral Supply Co., Inc., et al. Docket no. L-001865-18; Judge Kimberly Espinales-Maloney, 10-08-19.

Attorney for plaintiff: Samuel A. Denburg of Newman & Denburg, LLC in Fair Lawn, NJ. Attorney for defendant: Thomas B. Hight of Chasen Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ.

Intersection Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Lumbar disc extrusion at L5-S1; lumbar disc herniation with annular tear at L4-5; cervical disc herniations at C5-6 and C3-4 – Sprains/strains of cervical, thoracic and lumbar spine – Three months of chiropractic treatment and physical therapy.

Burlington County, NJ

This action for motor vehicle negligence arose from an incident which occurred On November 23, 2015 in Mansfield when the plaintiff, a 40-year-old man, was operating a vehicle northbound on Bordentown Road at the intersection with Georgetown Road whereupon, he contended, the defendant negligently caused a collision between the plaintiff's and defendant's vehicles causing the plaintiff to sustain injuries. The defendant disputed the extent, causation and permanency of the plaintiff's claimed injuries.

As a result of the collision, the plaintiff presented to the emergency room bleeding from his mouth and with complaints of overall body pain, mainly in the chest/torso and extremities. The plaintiff presented to the emergency room a second time, one week later, with unrelenting chest pain and headaches. The plaintiff sustained lumbar disc extrusion at L5-S1; lumbar disc herniation with annular tear at L4-5; cervical disc herniations at C5-6 and C3-4 and sprains/strains of the cervical, thoracic and lumbar spine.

The plaintiff treated with three months of chiropractic care and physical therapy. The plaintiff later underwent a neurosurgical consult. The plaintiff's physiatrist and neurosurgeon opine that the plaintiff sustained permanent injuries and will require further pain management and surgery in the future.

Prior to trial, the plaintiff made an offer of judgment in the amount of $100,000 inclusive of all costs. The defendant did not accept the offer and the matter went to trial. The jury unanimously found that the plaintiff failed to prove a permanent injury and returned a verdict in favor of the defendant.

REFERENCE

Navarrete vs. Alessi. Docket no. L-001410-17; Judge M. Patricia Richmond, 08-14-19.

Attorneys for plaintiff: Jeremy M. Weitz and Marc F. Greenfield of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Marlton, NJ. Attorney for defendant: Steven Antinoff of Parker Young & Antinoff, LLC in Marlton, NJ.

Left Turn Collision

$3,000 VERDICT

Motor vehicle negligence – Left turn intersection collision – L5-S1 herniation; aggravation of prior disc bulges and radiculopathy – Lumbar epidural injections – Prior motor vehicle accidents with similar injuries – Defendant denies injuries caused by subject collision.

Mercer County, NJ

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

On November 4, 2015, the plaintiff was proceeding south near the intersection of Broad Street and Bridge Street in Trenton. The defendant was approaching the same intersection. The plaintiff maintained that the defendant negligently failed to stop at a red light controlling the intersection, made a left turn across the plaintiff's lane of travel, and collided with the plaintiff's vehicle. There was significant impact between the vehicles with airbag deployment in the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained L5-S1 herniation; aggravation of prior disc bulges and radiculopathy. The plaintiff treated with lumbar epidural injections facet blockers. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant presented an IME that indicated the plaintiff's injuries were from three prior motor vehicle accidents and that the plaintiff had not performed a comparative analysis of the prior injuries and the injuries claimed to be from the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $25,000. The arbitration was not confirmed and the matter proceeded to trial. The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $50,000 in the event of the jury awarding damages above that amount, and a minimum of $1,500 in the event of a defendant's verdict or an award below that amount.

The jury found in favor of the plaintiff and awarded $3,000 in damages.

REFERENCE

Worthy vs. Smith. Docket no. L-001699-17; Judge Douglas H. Hurd, 11-20-19.

Attorney for plaintiff: Stuart A. Tucker of Szaferman, Lakind, Blumstein & Blader, P.C. in Lawrenceville, NJ. Attorney for defendant: Marie Ramos-Wright of Law Offices of Michael G. David in Marlton, NJ.

Multiple Vehicle Collision

$1,000,000 COMBINED RECOVERIES

Motor vehicle negligence – Multi-vehicle rear end collision – Host vehicle struck by pizza driver when stopped and propelled into car in front – Plaintiff driver suffers cervical herniations necessitating fusion surgery – Plaintiff passenger suffers meniscal tear and alleged lumbar bulge prompting imaging study one year later – Surgery at level below – Installation of spinal stimulator – Damages only.

Sussex County, NJ

Liability was stipulated by the rear-striking driver in this case involving a plaintiff driver, age 57 at the time of recovery and her plaintiff passenger, 52 at recovery. The plaintiff driver contended that she suffered herniations at C5-6 and C6-7 that were confirmed by MRI and which will cause occasional pain permanently. The plaintiff passenger maintained that she sustained a tear of the medial meniscus that will cause pain and limitations permanently despite arthroscopic surgery.

The plaintiff passenger further maintained that she suffered lower back pain, but did not make complaints for some months. The plaintiff asserted that the knee complaints contributed to the delay. The MRI revealed a bulge at L3-4 and extensive degeneration at L5-S1. The plaintiff passenger underwent surgery at L5-S1 and the defendant denied that the surgery was related to the accident, which caused very little property damage. The plaintiff also underwent the installation of a spinal cord stimulator. This plaintiff countered that in view of the absence of prior symptoms, it was likely that any aggravation of degeneration occurred before of the collision. The plaintiff driver contended that she had no prior low back symptoms either.

The defendant pizza driver (his own car) had a $300,000 CSL and Domino's had an umbrella of $1,200,000. The driver's case settled for $400,000 and the passenger's case settled for $600,000, for a total combined recovery of $1,000,000.

REFERENCE

Plaintiff driver's orthopedic surgeon expert: J. Scott Schobb, M.D. from Chatham, NJ. Plaintiff driver's orthopedic surgeon (knee) expert: Glen Bradish, M.D. from Montague, NJ. Plaintiff passenger s orthopedic surgeon (knee) expert: Safal Mahmood, M.D. from Wayne, NJ. Plaintiff passenger's orthopedic surgeon expert: Joshua Rovner, M.D. from Englewood, NJ.

Cangelosi, et al. vs. Dominoe's, et al. Docket no. SSX-L-4095-18, 01-21.

Attorney for plaintiff: Jacqueline M. Rosa of Brady Brady & Reilly in Kearny, NJ.

$75,000 RECOVERY

Motor vehicle negligence – Multiple vehicle collision – Defendant driver attempts changing lanes, clips third-party driver and then veers across lanes striking plaintiff's vehicle – Radius fracture and ulnar fracture requiring closed reduction – Soft tissue injuries – Plaintiff claims $800 in lost wages.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle after sideswiping another vehicle and losing control. The plaintiff claimed the collision caused significant, permanent injury. The defendant driver denied liability and asserted that the third-party driver struck the defendant driver leading to the collision between the defendant and plaintiff. The third-party driver denied liability and contended that the defendant driver attempted to change lanes and, in doing so, "clipped" the third-party vehicle, causing the defendant's vehicle to fishtail across lanes, ultimately striking the plaintiff's vehicle.

On May 1, 2018, the plaintiff was driving on the Garden State Parkway in Union. The defendant driver was operating a vehicle owned by his employer and acting as an agent of the defendant employer. The defendant driver was merging onto the Garden State Parkway and, in doing so, negligently struck the third-party driver's vehicle and then the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a radius fracture; ulnar fracture requiring closed reduction and soft tissue injuries. The plaintiff was unable to work for six weeks due to her injuries and collected disability for a portion of that time. The plaintiff claimed $800 in lost wages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant driver and his employer only. The arbitrator set damages at $80,000, inclusive of lost wages. Following arbitration and prior to trial, the parties settled for $75,000.

REFERENCE

Montilla vs. Bassetti Photo Inc., et al. Docket no. L-004194-18; Judge Keith E. Lynott, 02-26-20.

Attorney for plaintiff: Patrick G. Patel of The Law Offices of Patrick G. Patel in Jersey City, NJ. Attorney for defendant third-party driver: Rafael A. Soto of Law Offices of Pamela D. Hargrove in Cranford, NJ. Attorney for defendant Bassetti Photo, Inc. and employee/driver: Deborah A. Megarr of Barrett Lazar, LLC in Maywood, NJ.

Sideswipe Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Disc herniations with annular tears at L5-S1 and L4-5 – Injections and chiropractic care – Plaintiff recovers $5,000 per high/low agreement.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle in a sideswipe collision that caused significant, permanent injury. The plaintiff brought suit against the defendant driver and against her own vehicle insurer for uninsured motorist coverage. The plaintiff settled with the insurer prior to trial and the matter continued as to the defendant driver only. The defendant denied liability and contested the plaintiff's damages.

On June 23, 2016, the plaintiff was traveling westbound on the Route 80 in Saddle Brook. The defendant was also traveling westbound on Route 80. The plaintiff alleged that the defendant negligently left her lane and entered the plaintiff's lane, sideswiping and colliding with his vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff sustained disc herniations with annular tears at L5-S1 and L4-5. The plaintiff received 10 injections and chiropractic care to treat his injuries.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant presented IME testimony that all of the plaintiff's injuries were degenerative and none were

trauma induced. The defendant's expert also opined that the plaintiff received excessive treatment for his purported injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $35,000. Following arbitration, the plaintiff made an offer to take judgment in the amount of $30,000. The offer was not accepted and the matter continued to trial.

The jury found no cause of action and returned a verdict in favor of the defendant. The plaintiff recovered $5,000 in damages per a pretrial high/low agreement.

REFERENCE

Zarate vs. Sirinaula, et al. Docket no. L- 004689-17; Judge Walter F. Skrod, 11-13-19.

Attorney for plaintiff: Ana Romero-Bosch of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant uninsured motorist carrier: Ryan J. Gaffney of Chasan Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ. Attorney for defendant driver: Brooke Gerner of Law Offices of Eric Bennett in Hackensack, NJ.

Stopped Vehicle Collision

$52,929 VERDICT

Motor vehicle negligence – Stopped vehicle collision – Rear end collision – Disc protrusions at C3-4 and C6-7; significant protrusion at C5-6; disc bulges at L3-4, L4-5 and L5-S1 – Defendant questions extent of plaintiff's injuries and recommendation for fusion surgery.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver made a negligent left turn and struck a third-party vehicle, pushing it into the plaintiff's stopped vehicle causing the plaintiff to sustain injuries. The defendant denied liability and contested the plaintiff's damages.

On September 23, 2016, the plaintiff was operating his vehicle in a northerly direction on Route 35 in Woodbridge. At the same time and place, the third party was also proceeding northerly on the same road. The defendant was proceeding onto the ramp to Route 1 South. The plaintiff maintained that the defendant and the third-party vehicle collided, through no fault of the plaintiff, and caused a secondary collision with the plaintiff's vehicle wherein the plaintiff was seriously and permanently injured.

As a result of the collision, the plaintiff claimed traumatic injury to the neck and back with disc protrusions at C3-4, C5-6 and C6-7; disc bulges at L3-4, L4-5, and L5-S1. Medical records indicated that the C5-6 disc protrusion was significant. The defendant asserted that the plaintiff sustained only cervical and lumbar sprains and that the plaintiff had a pre-existing degenerative condition. The defendant also argued that the plaintiff's recommendation for future fusion surgery increased the case value beyond the subject injuries.

The jury found in favor of the plaintiff and found the defendant 100% liable for the collision with the third party 0% liable. The jury awarded damages in the amount of $50,000 or pain and suffering, disability, impairment and loss of enjoyment of life, plus interest in the amount of $2,929, for a total of $52,929 to the plaintiff.

REFERENCE

Youstos vs. Capiro-Pozo, et al. Docket no. L-003548-17; Judge Carlia M. Brady, 08-12-19.

Attorney for plaintiff: Gregory G. Goodman of Palmisano & Goodman, P.A. in Woodbridge, NJ. Attorney for defendant: Stephen Czeslowski of Campbell, Foley, Delano & Adams, LLC in Asbury Park, NJ.

PREMISES LIABILITY

Fall Down

$130,000 RECOVERY

Premises liability – Fall down – Plaintiff falls on puddle of water in defendant supermarket – Partial tear of hamstring; labral tear – Aggravation of prior laminectomy at L5-S1 – Laminectomy revision surgery with recommendation for fusion surgery – Arbitration finds defendant 90% liable and plaintiff 10% liable with gross damages of $200,000.

Monmouth County, NJ

In this premises liability case, the plaintiff asserted that the defendant supermarket failed to clean up or warn of liquid on the floor and that the plaintiff fell on the liquid and suffered significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On August 7, 2016, the plaintiff was a patron at the defendant supermarket on State Highway 66 in Neptune. The plaintiff claimed he slipped and fell on a puddle of water near the produce section of the store. The plaintiff asserted that the defendant failed to remediate a hazard or warn the plaintiff of the dangerous condition. The plaintiff alleged that the fall resulted in permanent injuries.

The plaintiff sustained a partial tear of the hamstring; a labral tear; and aggravation of prior laminectomy at L5-S1. The plaintiff underwent laminectomy revision surgery with a recommendation for fusion surgery. The defendant argued that the plaintiff's pre- and post-accident lumbar MRIs showed no change. The defendant also pointed to a two-month gap between the accident and the plaintiff reporting back pain. The defendant's experts opined that the plaintiff suffered lumbar sprain with no permanency.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $200,000 reduced to $180,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $130,000.

REFERENCE

Gustenhoven vs. Saker Shoprite, Inc. Docket no. L-002000-18; Judge James J. Mcgann, 11-01-19.

Attorney for plaintiff: Matthew Jordan of Nelson, Fromer, Crocco & Jordan in Neptune, NJ. Attorney for defendant: Peter R. Errico of Wolff Helies, Spaeth & Lucas in Manasquan, NJ.

$60,685 RECOVERY

Premises liability – Fall down – Plaintiff falls on wet, tile floor at defendant apartment complex – Comminuted, displaced fracture of left elbow; aggravation of prior back pain – Plaintiff not viable candidate for surgery due to advanced age – Plaintiff claims medical lien of $18,000 – Court grants plaintiff's motion for confirmation of arbitration award plus prejudgment interest.

Camden County, NJ

In this premises liability case, the plaintiff, an 87-year-old man, asserted that the defendant apartment complex negligently allowed a dangerous condition to exist on its premises, in the form of a wet tile floor, which caused the plaintiff to fall sustaining significant, permanent injury. The defendant denied liability and disputed that the floor was wet, or that the defendant had notice of the condition.

On May 18, 2016, the plaintiff was an invitee at the defendants' premises on Frontage Road in Cherry Hill. The plaintiff took the elevator to the 11th floor of the building, stepped out and fell on a wet, tile floor outside the elevator. The plaintiff asserted that the defendants' records indicated that the floor was mopped at least once per day and that, on the day in question, the defendants failed to warn patrons, including the plaintiff, that the floor was wet. The plaintiff alleged that the force of the fall resulted in permanent injuries and that the defendants' negligence was the cause of the plaintiff's injuries.

As a result of the fall, the plaintiff sustained a comminuted, displaced fracture of the left elbow and an aggravation of prior back pain. The plaintiff was not a viable candidate for surgical repair of the fracture due to his age. The defendant argued that the plaintiff's fracture healed with minimal residuals. The plaintiff claimed a medical lien of $18,000.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with gross damages of $58,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $58,000 plus $2,685 in interest, for a total recovery of $60,685.

REFERENCE

Moskovitz vs. Grand Gardens Assoc., LLC, et al. Docket no. L-001534-18; Judge Sherri L. Schweitzer, 12-20-19.

Attorney for plaintiff: Marc F. Greenfield of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Marlton, NJ. Attorney for defendant: Andrew J. Heck of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP in Florham Park, NJ.

DEFENDANT'S VERDICT

Premises liability – Fall down – Hazardous condition – Plaintiff trips on sweet gum tree seed on walkway at defendant condominium complex – Fractured fifth metatarsal; partial tear of shoulder tendon – Concussion – Defendant denies seeds posed hazard, or defendant could be responsible for every seed that fell from tree – Non-binding arbitration assigns 70% liability to defendant and 30% to plaintiff with gross damages of $125,000 reduced to $87,500.

Monmouth County, NJ

In this premises liability case, the plaintiff, a 69-year-old man, asserted that the defendant negligently maintained its property such that a hazardous condition existed, causing the plaintiff to fall and sustain significant, permanent injury. The defendant denied liability and contested the plaintiff's claimed damages.

On January 14, 2016, the plaintiff was a resident of the defendant condominium complex located at 170 Amberly Drive in Manalapan. On the date in question, he was leaving his unit, going towards his car when he tripped on sweet gum tree seeds on the common walkway. The plaintiff contended that the defendant negligently allowed a dangerous condition to exist on the property by not removing the sweet gum tree seeds, which, the plaintiff argued, posed a tripping hazard to the public. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a fractured fifth metatarsal; partial tear of shoulder tendon and a concussion. The plaintiff claimed a $5,000 Medicare lien. At the time of discovery, the plaintiff was actively treating with a neurologist and orthopedist.

The defendant asserted that the tree seeds did not pose a hazard to anyone using due care in walking the pathway. Further, the defendant maintained that the plaintiff had walked in the area many times prior to the day in question and knew, or should have known, of the seeds being present and, in fact, testified that he had seen the seeds on prior occasions. The defendant pointed to the plaintiff's deposition testimony wherein the plaintiff stated that he never considered removing the seeds from the walkway because he did not view them as a hazard. The defendant also disputed causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant and 30% to the plaintiff with gross damages of $125,000 reduced to $87,500 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Nelson vs. Covered Bridge Condominium. Docket no. L-000652-17; Judge Kathleen A. Sheedy, 02-11-20.

Attorney for plaintiff: Edward K. Hammill of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for defendant: Seth A. Abrams of Donnelly Minter & Kelly, LLC in Morristown, NJ.

Falling Object

UNDISCLOSED RECOVERY

Premises liability – Falling object – 500 lb granite slab falls on plaintiff's leg at defendant home improvement store – Closed fracture of distal end of right tibia requiring open reduction with internal fixation and physical therapy post-surgery – Plaintiff claims ongoing pain and limitations – Arbitrator assigns 100% liability to the defendant with damages of $325,000.

Essex County, NJ

In this premise liability case, the plaintiff, a 60-year-old woman, asserted that the defendant store failed to secure products in its store such that a granite slab fell on the plaintiff and caused significant, permanent injury. The defendant denied liability and claimed that the plaintiff was responsible for her own injuries due to her own negligence and was thus not entitled to recovery of damages.

On June 17, 2016, the plaintiff was a business invitee lawfully on the premise of the home improvement store owned, operated, leased, controlled, supervised, managed or maintained by the defendant and located on US Highway 46 in Fairfield. The plaintiff argued that the defendant failed to maintain the premises in a safe condition for customers on the premises and that the negligence of the defendant in securing retail products caused a 500 lb. stone slab to fall on the plaintiff's right leg and foot, causing her serious, permanent injury.

As a result of the incident, the plaintiff sustained a closed fracture of the distal end of the right tibia requiring open reduction with internal fixation. The plaintiff also received physical therapy post-surgery. The plaintiff claimed ongoing pain and limitation in the leg. The plaintiff had no medical lien and claimed no lost wages. The defendant claimed that the plaintiff failed to make proper observations of her surroundings, failed to seek assistance when moving the large granite slab and other acts of comparative negligence which caused the slab to fall on her.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $325,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

McKenna vs. Green Demolitions Surplus Inc., et al. Docket no. L-009010-17; Judge Thomas R. Vena, 12-10-19.

Attorney for plaintiff: Steven Benvenisti of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant: Edward G. Fattell of Law Office of Linda S. Baumann in East Windsor, NJ.

Hazardous Premises

$200,000 RECOVERY

Premises liability – Hazardous premises – Plaintiff falls off stage set up for service of dinner – Mandible fracture and loosening of several teeth.

Passaic County, NJ

In this action for premises liability, the plaintiff, in her late 40s, contended that the defendant establishment set up a dangerous condition by placing table and chair on a stage, creating a falling hazard. The plaintiff, who had no alcohol, maintained that she fell from the stage and suffered a fractured mandible and the loosening of several teeth. The defendant argued that the plaintiff was negligent as she failed to notice the height difference between the platform and adjacent floor although she stepped up from the floor to the platform, prior to the fall, when being seated for dinner.

The plaintiff required interior and exterior stitches and contended that she will suffer permanent pain. The plaintiff further maintained that she may well require the replacement of four teeth.

The plaintiff made no income claims.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $200,000.

REFERENCE

Plaintiff's orthodontist expert: Anna Patras, D.M.D. from Sparta, NJ. Plaintiff's plastic surgeon expert: Robert Nemerofsky, M.D. from Denville, NJ.

Straud vs. Jimmy Geez North Bar and Grill, et al. Docket no. PAS-L-377-20, 05-24-21.

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

Negligent Maintenance

$70,000 RECOVERY

Premises liability – Negligent maintenance – Plaintiff claims to have fallen in hole on porch of defendant-owned property where plaintiff resided – Post-traumatic femur fracture with displacement and comminution requiring open reduction with internal fixation – Plaintiff suffered ongoing pain and required use of walker from time of incident until death, from unrelated causes.

Burlington County, NJ

In this premises liability case, the plaintiff asserted that the defendant property owner failed to maintain the subject property in a manner free of hazards. The plaintiff argued that a hazardous condition existed on the property that caused the plaintiff significant, permanent injury. The defendant disputed that she was negligent and alleged the plaintiff himself was negligent and the cause of his own injuries and further disputed the nature and extent of any damages claimed by the plaintiff.

On July 10, 2016, the plaintiff was a resident of the property located at 19 Francis Street in Wrightstown. The plaintiff claimed that he fell into a hole on the porch of the property and sustained serious injury. The plaintiff, later deceased, was a tenant residing at a property owned by the defendant when he was injured due to an alleged dangerous condition of the property.

As a result of the incident, the plaintiff was taken to the hospital where he was found to have sustained a left femur post-traumatic femur fracture with displacement and comminution requiring open reduction with internal fixation. Upon discharge from the hospital, the plaintiff continued with wound care and physical therapy. The plaintiff was non-weight bearing for approximately three months, then transitioned to use of a walker which continued until his passing.

The plaintiff alleged the defendant was negligent as to her legal duty to maintain the property and that the defendant's negligence proximately caused the incident and resultant injuries sustained by the plaintiff. The plaintiff sought damages for his past pain, suffering, disability, impairment, loss of the enjoyment of life's pleasures and medical expenses, stemming from the incident and continuing until the time of his passing. The defendant maintained that the hole had been there and pointed to the plaintiff's testimony that he walked on the porch 2 to 3 times per week over the course of the months that he lived there.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause for action in favor of the defendant. Following arbitration and prior to trial, the parties settled for $70,000.

REFERENCE

Stillwell vs. Young. Docket no. L-000174-18; Judge John E. Harrington, 02-21-20.

Attorneys for plaintiff: Michael G. Spear and Marc F. Greenfield of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Marlton, NJ. Attorney for defendant: Melissa Bishop of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

RACIAL DISCRIMINATION

$70,000 RECOVERY

Racial discrimination – Racial harassment and harassment due to sexual orientation – Minor plaintiff claims she was harassed on basis of race and perceived sexual orientation over three-year period at defendant school and administrators participated in and failed to stop harassment – Plaintiff ultimately withdrew from school and had to be home schooled.

Burlington County, NJ

In this law against discrimination case, the minor plaintiff asserted that the defendant school district allowed or failed to prevent or deter discrimination against her on the basis of race and sexual orientation in a place of public accommodation. The plaintiff claimed that the harassment was purposeful, intentional and willful and members of the defendant's upper management and administrative staff were made aware of the harassment and willfully indifferent to the harassment. The plaintiff asserted that punitive damages were warranted because members of the defendant's upper management and administration were willfully indifferent and participated in the harassment. The defendant denied all of the plaintiff's contentions.

The plaintiff was a minor, white female who attended the defendant school where the incidents of racial harassment and harassment based on perceived sexual orientation took place. The plaintiff began attending the defendant elementary school as a Third-grade student in September of 2013. The plaintiff asserted that she was subjected to unlawful harassment from that time until June of 2017 when she was forced to leave school and begin home schooling. The incidents of harassment alleged by the plaintiff included being hit in the face with a ball, being called "whitey," being physically assaulted and dragged across a playground, being kicked in view of lunch aides who did not respond, being threatened, and being threatened while using the school bathroom.

The plaintiff's mother complained about each incident and others to the principal of the defendant school. The plaintiff's mother had meetings with the principal and sent emails complaining about the racial harassment and physical assaults the plaintiff was subjected to. The plaintiff's mother informed the principal that the parents of other students had approached her and stated that they were concerned about the safety of their children because of the harassment. This continued through 2014 and into 2015. On February 23, 2015, the plaintiff's mother sent an email correspondence to the superintendent of schools complaining about the racial harassment the plaintiff was subjected to and outlined the harassment the plaintiff received due to the perception of her sexual orientation. The plaintiff's mother reported an incident that occurred on February 5th wherein another female student called the plaintiff a lesbian and wherein two students threatened to beat up the plaintiff. The plaintiff's mother included pictures of injuries the plaintiff sustained at the hands of other students. The plaintiff's mother attended a board of education meeting and complained again about the harassment of the plaintiff.

Despite all of her action, the plaintiff's mother reported that no actions were taken by the defendant to stop the acts of harassment and assault. Throughout 2016 and into 2017, the plaintiff's mother documented and reported each incident to administration. During that time, the plaintiff and her mother were threatened by students and threats were posted on social media. The plaintiff's mother eventually reported one incident to the police. Nevertheless, the threats continued and the plaintiff and her mother were called "white bitch" "white trash" and "cop caller." In one instance, the alleged assailants reported that the plaintiff had threatened them. The plaintiff's mother was told by a teacher, "If your daughter would just keep her mouth shut, we could avoid all of these problems." The plaintiff's mother then withdrew the plaintiff and her sister from the school and they were home schooled from that point on.

The parties settled the matter, via mediation, prior to trial in the amount of $70,000 broken down as follows: $24,296 in attorney fees; $45,704 in net damages to the minor plaintiff.

REFERENCE

M.S. vs. New Hanover Township School District. Docket no. L-000548-18; Judge Ronald E. Bookbinder, 01-14-20.

Attorney for plaintiff: Drake P. Bearden, Jr. of Costello & Mains, LLC in Mount Laurel, NJ. Attorney for defendant: Jessica M. Anderson of Anderson & Shah, LLC in Cherry Hill, NJ.

WAGE THEFT

$402,500 RECOVERY

Wage theft – Class Action – Violation of NJ Wage Law – Plaintiffs contend defendant restaurants skimmed 4% of gratuity pool from each shift before dividing gratuities among servers – Plaintiffs contend 4% "tax" was used to the benefit of defendants or to pay legal obligations of defendants, in violation of wage laws – Defendants admit pooling tips, but deny any violation of wage laws.

Camden County, NJ

This was a class action wage theft case brought on behalf of the plaintiffs and a class of current and former tipped servers employed by the defendants, who owned and operated three local restaurants, for a uniform wage policy of unlawfully withholding and diverting gratuities owned by the class in violation of the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, et seq. during the six year prior to filing of the suit in 2018. The plaintiffs asserted that the defendants pursued an unlawful, uniform policy of regularly and systematically taking and converting gratuities paid to the class and using them to pay the expenses and legal obligations of the defendants in violation of New Jersey wage law wherein gratuitous are considered the property of employees to whom they are paid and may not be taken or diverted by the employer for the purposes or benefit of the employer. The defendants denied any violation of wage laws and specifically denied using gratuities in violation of the New Jersey wage law.

According to the plaintiffs, the defendants had a policy referred to as the "Coppola Tax" wherein, at the end of every restaurant shift, at the three subject restaurants; the tips were pooled together and reduced by 4% of his/her net sales during that shift. If a server's total credit card gratuities during a shift were higher than the 4% "Coppola Tax," then the entire 4% would be deducted from said credit card gratuities and the remainder of that server's total cash and credit gratuities would be the server's contribution to the tip pool for that shift. If the credit card gratuities for that shift were not sufficient to cover the entire 4% "Coppola Tax," then the difference would be taken from the server's cash gratuities for that shift.

The plaintiffs asserted that this was a scheme by the defendants to convert the gratuities paid to and owned by the class, and use such amounts to pay money directly to the defendants and to pay the lawful obligations owed by the defendants. The bus staff was not a part of the tip pool and, in fact, each server gave approximately 10% of their share of the net gratuities to each member of the bus staff, after the "Coppola Tax" had been applied to the server's gratuities. Thus, the proceeds of the "Coppola Tax" either went directly into the defendants' pockets or were used to satisfy the defendants' legal obligations to pay the hourly wages owed to the bus staff, or other expenses of the defendants; expenses that were solely the legal obligation of the defendants.

The plaintiffs made a claim for injunctive and declaratory relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A16-51, et seq., to end the defendants' unlawful policies; a claim under N.J.S.A. 34:11-4.1, et seq. and 34:11-4.7 for such misappropriation of wages; and claims under common law for conversion, breach of covenant of good faith and fair dealing and unjust enrichment based on the amounts unlawfully withheld and diverted by the defendants. The defendants admitted that tips are pooled, and that this practice is approved under NJ wage law, but denied all of the plaintiffs' other assertions as to misappropriation of wages. The defendants argued that decisions made by the defendants were the lawful exercise of management rights and did not give rise to any liability.

The parties settled the matter prior to trial in the amount of $402,500 broken down as follows: $100,000 in attorney fees; an award of $7,500 to each of the named plaintiffs; $280,000 to be placed in a Common Fund for the benefit of any unnamed plaintiffs.

REFERENCE

Neidle, et al. vs. ACME Trading Expeditions, LLC, et al. Docket no. L-003026-18; Judge Steven J. Polansky, 06-25-20.

Attorney for plaintiff: Stephen P. DeNittis of DeNittis, Osefchen, Prince, P.C. in Marlton, NJ. Attorneys for defendant: Louis R. Lessig and Hannah Girer-Rosenkrantz of Brown & Connery, LLP in Westmont, NJ.

WRONGFUL TERMINATION

$20,000 RECOVERY

Wrongful termination – Workers' compensation retaliation – Plaintiff claims he was terminated due to work-related injury which caused him disability – Defendants argue plaintiff terminated during 90-day probation period after multiple, negative reviews of performance.

Hudson County, NJ

In this workers' compensation retaliation case, the plaintiff, a 53-year-old construction worker, asserted that the defendant municipal utility authority terminated his employment in retaliation for his having filed a workers' compensation claim. The defendant argued that the plaintiff was a probationary employee and was terminated for poor work performance.

The plaintiff was employed by the defendant from August 16, 2017 until his termination on November 15, 2017. The plaintiff alleged that, while working for the defendant on November 9, 2017, debris at a job site fell on the plaintiff's back, shoulder, and helmet. The plaintiff subsequently sought medical treatment for the work-related injuries to his back and head. The plaintiff provided notice of the accident to the defendant's foreman on the day of the incident. The plaintiff claimed that, instead of immediately sending the plaintiff for treatment, the plaintiff was directed to remain in the truck for approximately 45 minutes before he was sent for any medical treatment, during which time he reported the accident to the safety manager and to the general office.

The plaintiff was examined and given a return-to-work date of November 10, 2017, with work restrictions. During the evening of that day, the plaintiff was in increasing pain and was taken by ambulance to the emergency room where he was examined, treated, tested and recommended for follow-up, which he did the following day, November 10th. The plaintiff provided the defendant with medical notes from his treating physicians indicating that he should use a cane and only perform restricted work duties from November 10th - November 15th. The defendant's safety officer sent the plaintiff home. On November 15, 2017, the plaintiff reported to work and, after waiting several hours for a work assignment, was told to go to the office where he was informed that he was being terminated.

The plaintiff contended that the reasons provided for his termination were a pretext for discrimination and that the real reason for the termination was due to his on-the-job injury and resulting disability. The plaintiff argued that he was entitled to job protection from the work-related injury, which included medical treatment and time out from work. The plaintiff claimed that the conduct of the defendants in terminating the plaintiff's employment after having sustained a work-related injury constituted retaliation in violation of the New Jersey Workers' Compensation Act, N.J.S.A. 34:15-39.1 et seq. As a result of that violation, the plaintiff claimed he was caused to sustain loss of employment and income; sustained emotional and psychological stress and harm; embarrassment; and a continuous and permanent interference with the prospect of future employment.

The defendant pointed to the plaintiff's performance review of November 7, 2017, wherein two of the plaintiff's supervisors designated the plaintiff's performance as needing development and specifying several work performance deficiencies such as sleeping on the job, consistently being tired, illegally parking a utility vehicle resulting in two parking tickets and regularly disregarding safety protocols, such as not securely tying boots correctly, which the supervisor deemed as creating a hazard. Further, another supervisor, during the same review period, deemed the plaintiff's performance as "unsatisfactory" and explicitly stated that the plaintiff was not recommended for full time employment. The plaintiff's reviews predated his alleged accident and thus could not be in retaliation for the incident.

Additionally, the plaintiff's job required that he obtain a CDL within the probationary period and the plaintiff was aware of the requirement, yet he did not secure the CDL by the end of the probationary period and thus failed to meet the conditional requirement for continued employment with the defendant. The plaintiff's termination letter of November 15, 2017 clearly stated that, after reviewing all evaluations of the plaintiff's 90-day probationary period, he was not accepted as a regular employee of the defendant. Lastly, the defendant asserted that the plaintiff did not file a workers' compensation claim until after his termination and, therefore, the plaintiff's termination could not possibly have been in retaliation for filing of the claim. The plaintiff was terminated on November 15th and filed his claim on December 14, 2017.

The parties settled the matter prior to trial in the amount of $20,000.

REFERENCE

Anonymous vs. Anonymous. Judge Mary K. Costello, 05-04-20.

Attorney for plaintiff: Paula Dillon of Krumholz Dillon, PA in Jersey City, NJ. Attorney for defendant: James A. Lewis, Esq. of Pennington Law Group in South Orange, 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

$9,500,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – EITHER DEFENDANT LAB MISCOMMUNICATED LAB RESULTS OR DEFENDANT HOSPITAL INPUT WRONG RESULTS INTO RECORDS INDICATING INFANT PLAINTIFF TESTED NEGATIVE FOR HERPES SIMPLEX VIRUS – AS RESULT OF ERROR, PLAINTIFF'S PHYSICIANS DISCONTINUED TREATMENT WITH ACYCLOVIR – HSV ENCEPHALITIS RESULTING IN PROFOUND PHYSICAL AND COGNITIVE DISABILITIES AND SHORTENED LIFESPAN.

Camden County, NJ

The infant plaintiff brought this medical malpractice action alleging personal injuries based on a negligent failure to diagnose and treat the herpes simplex virus (HSV) with which she was born. The plaintiff was born prematurely on March 3, 2012, at the defendant hospital and, based upon skin lesions observed on March 21, 2012, was started on the drug Acyclovir to treat the suspected HSV. Three samples were taken from the plaintiff on March 21, 2012 to test for HSV and sent them to the defendant children's hospital Department of Pathology and Laboratory Medicine in Philadelphia for testing. The lab results were incorrectly reported by the defendant lab or incorrectly recorded by the defendant hospital. The plaintiff maintained that, during the 16 days without Acyclovir treatment, the disorder progressed to encephalitis that destroyed much of the plaintiff's brain and resulted in severe physical and cognitive disabilities. The defendant testing laboratory stipulated liability as to breaching the standard of reporting results. The defendant physicians maintained that the Acyclovir was discontinued because HSV sample tests were negative, and that any error was on the part of the laboratory, not the defendant physicians who followed the standard of care.

The plaintiff asserted that the defendant hospital's lab breached the standard of care in inaccurately and incompletely communicating the results of the tests to the defendant hospital and that the defendant treating physicians were negligent in failing to wait for all the results to be reported before discontinuing the plaintiff's treatment with Acyclovir. The plaintiff argued that the Acyclovir was wrongfully discontinued before the clinical team knew the results of the HSV cultures and that the physicians and staff were negligent in not waiting for all lab results before discontinuing treatment.

The parties settled the matter prior to trial in the amount of $9,500,000 broken down as follows: $3,114,594 in attorney fees; $156,218 in litigation costs; $881,946 in Medicaid liens; $150,000 in reimbursement to the plaintiff mother for services rendered to the plaintiff; and $5,197,242 in net damages to the minor plaintiff to be paid into a special needs trust.

REFERENCE

Johnson vs. Virtua-West Jersey Health System Inc., et al. Docket no. L- 000177-17; Judge Donald J. Stein, 03-23-20.

Attorney for plaintiff: Michael S. Berger of Andres & Berger, P.C. in Haddonfield, NJ. Attorney for plaintiff: Louis J. DeVoto of Rosetti & DeVoto, P.C. in Cherry Hill, NJ. Attorney for defendant hospital and staff: Elizabeth G. Thompson of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ. Attorneys for defendant hospital and staff: Carolyn R. Sleeper and Kathryn A. Somerset of Parker McCay, P.A. in Mount Laurel, NJ. Attorneys for defendant children's hospital lab: Michael W. Horner and James D. Burger of White and Williams, LLP in Cherry Hill, NJ. Attorney for defendant treating nurse and physician: Parker W. Hall, III of Blumberg & Wolk, LLC in Woodbury, NJ.

$2,000,000 CONFIDENTIAL PRE-SUIT RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – IMPROPER BED RAILS RESULT IN STRANGULATION DEATH OF 84-YEAR-OLD RESIDENT.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant nursing facility was responsible for the death of the plaintiff's decedent due to strangulation from improper bed rails on decedent's bed. The defendant denied the allegations and disputed causation and damages.

The 84-year-old decedent was a resident at the defendant's nursing facility. On the morning of the incident, the defendant's employee found the decedent partially hanging out of the bed with his head trapped between the rail and the bed frame/mattress. He was found unresponsive and could not be resuscitated.

The parties ultimately settled the plaintiff's claim for the sum of $2,000,000 after mediation that was conducted prior to the institution of any litigation.

REFERENCE

Estate of Decedent vs. Nursing Home Roe. 11-16-20.

Attorney for plaintiff: Robert Higgins of Lubin & Meyer, P.C. in Boston, MA.

$400,000 RECOVERY – MEDICAL MALPRACTICE – SURGERY – DEFENDANT SURGEON PERFORMS HERNIA SURGERY ON PLAINTIFF'S DECEDENT AND FAILS TO APPRECIATE POST-SURGICAL SYMPTOMS OF PERFORATED BOWEL – WRONGFUL DEATH OF 61-YEAR-OLD MALE.

Montgomery County, PA

The decedent's brother brought this medical malpractice/wrongful death suit against the defendant surgeon who performed hernia surgery on the decedent, the surgeon's associate who took a phone call regarding the decedent's post-surgical condition and the hospital where the decedent presented for post-operative care, alleging that none of the defendants properly addressed the decedent complaints of post-surgical pain. He died from a perforated bowel. The defendants all denied being negligent and maintained that the decedent was provided proper and adequate care.

On November 17, 2016, the defendant Trang operated on the plaintiff's decedent. The defendant performed a robotic-assisted hernia repair with mesh procedure. The decedent was discharged the following day. On the 22nd, the decedent asked his wife to help him to the bathroom where he collapsed and dark fluid oozed from his mouth and nose. 911 was called and the wife performed chest compression until paramedics arrived, but the decedent could not be saved. He is survived by his companion and common law wife, his brother and his nephew.

The defendant settled with the decedent's estate, administrated by the decedent's brother, for 400,000 with 100% going to the survival action.

REFERENCE

The Estate of John P. Ruddy by Ronald Ruddy and Leslie Jackson in her own right vs. Einstein Medical Center Montgomery and Alfred Trang, M.D., Ramsey Dallal, M.D. and Einstein Practice Plan dba Einstein Surgical Associates. Case no. 2018-23254; Judge Gail Weilheimer, 03-22-21.

Attorney for plaintiff: Stewart Bernstein of Kanter, Bernstein & Kardon, P.C. in Philadelphia, PA.
Attorney for defendant: Donald Brooks, Jr. of Eckert Seamans in Philadelphia, PA.

$225,000 RECOVERY – MEDICAL MALPRACTICE – OB/GYN – INFANT PLAINTIFF SUSTAINS BRACHIAL PLEXUS INJURY – ERB'S PALSY TO RIGHT ARM – ABNORMALITIES OF FIFTH AND SIXTH CERVICAL NERVE – DELAYED WALKING – PERMANENT DECREASED RANGE OF MOTION – PHYSICAL THERAPY REQUIRED.

Queens County, NY

In this medical malpractice action, the infant plaintiff sustained a brachial plexus injury during the delivery process, causing her to sustain permanent injuries and developmental delay. The defendant hospital generally denied all allegations of negligence on the grounds that shoulder dystocia is an assumed risk of a delivery procedure.

The plaintiffs maintained that the defendants were negligent during the birthing procedure by failing to prevent complications and using excessive traction on the infant plaintiff's body during delivery. Consequently, the infant plaintiff sustained injuries, including a brachial plexus injury resulting in Erb's Palsy to the right arm, muscle atrophy, delayed walking, and permanent decreased range of motion of the right arm. The infant plaintiff has undergone physical therapy

and will continue to require physical therapy throughout her life in order to encourage functioning of the right arm.

The parties entered into a settlement for $225,000.

REFERENCE

Madelyne Palacio-Bazante, An Infant, By Her Parents And Natural Guardians Ingry Tatia Bazante Ruano And Luis Palacio And Ingry Tatia Bazante Ruano And Luis Palacio, Individually vs. Long Island Jewish Medical Center, Stephanie Buck Haskin, M.D. Index no. 709986/2017; Judge Leonard Livote, 11-25-20.

Attorney for plaintiff: Thomas Peter Giuffra of Rheingold Giuffra Ruffo & Plotkin, LLP in New York, NY. Attorney for defendant: Rupa Banik of Aaronson Rappaport Feinstein & Deutsch, LLP in New York, NY.

PRODUCT LIABILITY

$3,500,000 VERDICT INCLUDING $2,500,000 PUNITIVE AWARD – PRODUCT LIABILITY – DEFECTIVE DESIGN OF HIP REPLACEMENT INVOLVING METAL-ON-METAL-BALL AND SOCKET – PLAINTIFF SUFFERS BUILD UP OF METAL IONS IN BODY AND PAINFUL PSEUDO TUMOR AS RESULT OF PRESENCE OF DEVICE – PLAINTIFF UNDERGOES SURGERY IN WHICH MORE TRADITIONAL METAL-ON-POLY DEVICE IMPLANTED FIVE YEARS LATER – NEED FOR MULTIPLE FUTURE REPLACEMENTS.

U.S.D.C. - Central District of Iowa

This action for product liability involved a plaintiff, then in her early 40s, who underwent surgery in which the metal-on-metal hip replacement was installed in 2007. The plaintiff contended that as a result of a design defect, the prosthesis failed after approximately five years, necessitating further surgery in which a metal-on-poly, a more traditional device, was implanted. The defendant denied that the device was defective.

The plaintiff maintained that she continues to suffer pain and difficulties and that she will require earlier future replacements than would otherwise be the case. The plaintiff further asserted that he defendant manufacturer of the device acted in a willful and wanton manner in marketing device without adequately testing it.

The jury found that the device was defective. They awarded $1,000,000 in compensatory damages. They also found that punitive damages were appropriate and rendered a $2,500,000 punitive award.

REFERENCE

Plaintiff's biomechanical expert: Mari S. Truman, P.E. from Warsaw, IN. Plaintiff's orthopedic surgeon expert: George S. Kantor, M.D. from Palm Beach Gardens, FL. Plaintiff's orthopedic surgeon expert: Emile C. Li, M.D. from Fort Dodge, IA. Plaintiff's orthopedic surgeon expert: Steven E. Naide, M.D. from Pompano Beach, FL. Defendant's biomechanical expert: Steven M. Kurtz, Ph.D. from Philadelphia, PA. Defendant's orthopedic surgeon expert: Charles R. Clark, M.D. from Iowa City, IA.

40-year-old plaintiff vs. Defendant medical device company.

Attorneys for plaintiff: Bryan Hofeld, Jeffrey L. Haberman and Sarah J. Schultz of Schlesinger Law Offices, P.A. in Fort Lauderdale, FL. Attorney for plaintiff: Devin Kelly of Roxanne Conlin & Associates, P.C. in Des Moines, IA.

MOTOR VEHICLE NEGLIGENCE

$12,750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF PASSENGER IN NON-PARTY HUSBAND'S CAR STRUCK IN REAR BY BOX TRUCK – CERVICAL SPINAL CORD INJURY – INCOMPLETE QUADRIPLEGIA WITH LIMITED USE OF UPPER EXTREMITIES.

Philadelphia County, PA

This motor vehicle negligence case involved a 72-year-old woman who was a passenger in her non-party husband's car. The plaintiff contended that the defendant box truck driver failed to make observations, striking the car in the rear after it had moved to the right shoulder of the highway. The plaintiff contended that, as a result, she suffered a spinal cord injury in the cervical area that left her an incomplete quadriplegic in which she has some limited movement of her arms. The defendants did not have the plaintiff examined.

The plaintiff maintained that the defendant truck driver acted in a reckless manner by looking down at her phone at the time of the collision. She also maintained that the trucking company acted in a reckless and wanton manner by placing the cell phone mount in too low a position, requiring the driver to

take her eyes off the road when she either used the hands-free phone to communicate or used the phone for GPS, as shown in the surveillance camera inside the cab of the truck.

The plaintiff's proofs regarding future costs of care ranged from $3,500,000 to $5,000,000. Medical care costs were the only economic damages because there was no loss of earnings claim.

The case settled for $12,500,000.

REFERENCE

Plaintiff passenger in her early 70s vs. Defendant trucking company and driver.

Attorneys for plaintiff: Nancy Winkler and Todd Schoenhaus of Eisenberg Rothweiler Winkler Eisenberg & Jeck, PC in Philadelphia, PA.

$6,850,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRACTOR-TRAILER COLLISION – DEATH OF 45-YEAR-OLD HUSBAND FATHER OF THREE – DEFENDANT DRIVER PLEADS GUILTY TO VEHICULAR HOMICIDE AND IS CURRENTLY INCARCERATED.

Monmouth County, NJ

In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver operated under the influence of Xanax, Klonopin, and Clonazepam, and had very little sleep the night before. The plaintiff contended that as a result, the 45-year-old decedent was struck in the rear by the defendant driver, sustaining fatal injuries. The decedent left a widow and three children, age 22, 19 and 16 at the time of the death. The defendant driver had pled guilty to various crimes, including vehicular homicide and is currently incarcerated.

The evidence disclosed that the accident occurred as the decedent was on his way home from his job as a field technician for Verizon. Blood testing on the defendant was positive for Xanax, Klonopin, and Clonazepam. The plaintiff would have contended, through the testimony of investigating officers, that the defendant had exhibited adverse side effects such as impaired judgment, drowsiness, fatigue, dizziness, unsteadiness, and disorientation.

The case settled prior to trial for $6,850,000. The net proceeds were allocated as follows: $3,112,870 to the widow and $518,812 to each child.

REFERENCE

Appio vs. Isserovich, et al. Docket no. MON-L-1580-18, 03-20-21.

Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow, LLP in Edison, NJ.

PREMISES LIABILITY

$1,379,869 VERDICT – PREMISES LIABILITY – FALL DOWN – SUPERMARKET PATRON SLIPS AND FALLS ON MILK – LUMBAR BULGE WITH RADICULOPATHY – PLAINTIFF FALLS SEVERAL MONTHS LATER WHILE STILL TREATING FOR BULGE – PLAINTIFF CONTENDS SUBSEQUENT FALL CAUSED FROM INJURIES SUFFERED IN SUPERMARKET FALL – ALLEGED NEED FOR FUTURE LUMBAR DISCECTOMY.

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

In this case of premises liability, the plaintiff supermarket shopper in her mid 60s contended that the defendant's manager and his assistant noticed a spilled area of liquid approximately 7 minutes before the plaintiff slipped and fell. The plaintiff maintained that as a result of the fall, she suffered a lumbar bulge with radiculopathy that required five injections, a neurotomy involving heat treatment and will require a lumbar surgery in the future. The plaintiff fell at home several months after the supermarket incident, suffering four lumbar compression fractures. The subsequent incident occurred prior to the completion of the course of injections. The defendant denied that it had notice of the condition.

The plaintiff countered that approximately 7 minutes earlier, the same camera depicted the manager and his assistant walking past the area and the manager seeming to point to the area of the fall with his leg. The plaintiff maintained that the spill should have been addressed at that time with the area being blocked off until cleaned.

The jury found the defendant 100% negligent and awarded $1,379,869.

REFERENCE

Plaintiff's life care plan expert: Amy McKenzie, R.N. from Tyler, TX. Plaintiff's pain management expert: Aaron Calodney, M.D. from Tyler, TX.

Creighton vs. Aldi (Texas) LLC. Case no. 6:19-CV-00268; Judge Jeremy D. Kernodle, 03-17-21.

Attorneys for plaintiff: Randy Roberts, Frank Weedon and Justin Roberts of Roberts & Roberts in Tyler, TX.

ADDITIONAL VERDICTS OF INTEREST

Civil Assault

$3,240,000 COMBINED VERDICT – CIVIL ASSAULT – PLAINTIFFS, MINOR LEAGUE BASEBALL PLAYERS, EJECTED FROM TAVERN WITHOUT JUSTIFICATION AND WITH EXCESSIVE FORCE – PHYSICAL INJURIES LARGELY RESOLVE – EXTENSIVE MENTAL ANGUISH BECAUSE ALLEGATIONS OF BEING INVOLVED IN BAR FIGHT REDUCE CHANCES OF MAKING IT TO MAJOR LEAGUES.

Harris County, TX

This case involved then-21 and then-24-year-old minor league baseball players who contended that as they were patrons on New Year's Eve in the defendant tavern, owned by the individual defendant, the bouncers assaulted them, improperly escorted them out for no reason and used excessive force while doing to. The 21-year-old plaintiff asserted that he was struck in the head by a flashlight as he was carried out, suffering a sinus fracture and bruising on his left side and rib cage. The 24-year-old plaintiff also maintained that he suffered bruises to the chest and rib cage. This second plaintiff, the son of retired MLB player Roger Clemens, who is first baseman, contended that he suffered a trauma to the dominant elbow and an aggravation of pre-existing cervical spondylosis. Both plaintiffs also maintained that they continue to suffer extensive mental anguish because the allegations of being involved in the incident could well hamper their hopes of being promoted to the Major Leagues. The defendants denied that they acted improperly and contended that the plaintiffs were escorted out because they were acting in a belligerent manner.

The plaintiffs maintained that the defendants acted with negligence, gross negligence, and punitive damages were demanded. The plaintiffs denied that they were acting in an aggressive fashion and claimed that the defendant acted without provocation. The plaintiffs also maintained that although they consumed some alcohol, they were not inebriated.

The jury found that the plaintiffs were assaulted by the tavern and that the owner was negligent. They assessed 40% liability against the establishment and 60% against the owner. The jury found for the defense on the claim of gross negligence, which the court found must be unanimous. They then awarded $2,280,000 to the then-21-year-old plaintiff (Connor Capel). This award was allocated as follows: $700,000 for past pain and suffering; $1,400,000 for mental anguish; $10,000 for past physical impairment; $20,000 for past physical impairment and $150,000 for future physical impairment. The jury also awarded $960,000 to the then-24-year-old plaintiff (Kacy Clemens). This award was allocated as follows: $300,000 for past physical mental anguish; $30,000 for future physical impairment; $600,000 for future mental anguish and $30,000 for past physical impairment.

REFERENCE

Plaintiff's oral and maxillofacial surgeon expert: Christopher Morris, D.D.S. from Houston, TX. Plaintiff's orthopedic surgeon expert: Larry Likover, M.D. from Houston, TX.

Capel and Clemens vs. 34th S&S, LLC d/b/a Concrete Cowboy, et al. Case no. 2019-07278; Judge Rabeea Collier, 02-05-21.

Attorneys for plaintiff: Randall O. Sorrels and Alexandra Farias-Sorrels of Sorrels Law in Houston, TX.

Contractor's Negligence

$48,257,922 VERDICT – CONTRACTOR'S NEGLIGENCE – NEGLIGENT ROOF REPAIRS – FAILURE TO WARN OF CONTINUING WATER INTRUSION IN CONDOMINIUM UNIT – MOLD DEVELOPMENT – CHRONIC INFLAMMATORY RESPONSE SYNDROME.

Broward County, FL

The plaintiff in this action alleged serious and permanent personal injuries as a result of being exposed to toxic mold in the condominium unit she rented in Plantation, Florida. The building owner and the management company settled the plaintiff's claims prior to trial. The contractor, which the plaintiff claimed made negligent roof repairs allowing the water to continue to enter the unit, was in default and did not appear at trial. Accordingly, the case proceeded against the roofing company on the issue of damages only.

On June 27, 2017, after months of complaining about water leaks, the plaintiff independently hired a company to test for mold. The testing company found the premises to be contaminated with very toxic mold having abnormal levels of microbes in the air and on surfaces within the unit. The plaintiff claimed significant adverse health consequences, in-

cluding chronic inflammatory response syndrome, as well as contamination of her personal property due to the mold-infested and contaminated conditions.

After a virtual trial, the jury awarded the plaintiff $48,257,922 in damages, including $35,000,000 in pain and suffering.

REFERENCE

Jividen vs. EDS Advisors, Inc. Case no. CACE 18011479; Judge William Haury, Jr., 04-29-21.

Attorney for plaintiff: Robert J. McKee of The McKee Law Group, LLC in Davie, FL. Attorney for plaintiff: David W. Brill of Brill & Rinaldi, The Law Firm in Weston, FL.

Disability Discrimination

$2,045,512 VERDICT INCLUDING $2,000,000 PUNITIVE AWARD – DISABILITY DISCRIMINATION – VIOLATION OF ADA AND FLORIDA CIVIL RIGHTS ACT – PLAINTIFF RESTAURANT CASHIER TERMINATED BECAUSE OF PRESENCE OF TUBE STEMMING FROM MVA.

U.S.D.C - Middle District of Florida

This was a case brought under the Americans with Disabilities Act and the Florida Civil Rights Act. It involved an 18-year-old cashier who was hired approximately six weeks before her termination. The plaintiff had been involved in a motor vehicle accident approximately one year before she was hired by the store manager, and because of the injuries sustained in the accident, she required a tracheal tube that was visible. The plaintiff maintained that the regional manager advised the restaurant manager that he did not like the appearance of the tube and that she should be fired. The plaintiff also maintained that the defendant acted with malice or reckless disregard for the plaintiff's rights and punitive damages were demanded. The defendant denied that the plaintiff was terminated because of a disability, and contended that the plaintiff was discharged from her job because of attendance issues.

It was undisputed that the plaintiff was qualified for the position, was fired and that she was disabled. The plaintiff claimed that she was terminated because of the disability. The franchisee manager testified that after the regional manager visited the restaurant, he asked if the person with the "nasty" tube had been fired and that if the wasn't fired the district and franchisee manager would be terminated. The plaintiff maintained that in view of this evidence, it was clear that punitive damages were appropriate.

The jury found for the plaintiff and determined that punitive damages were appropriate. They then awarded $2,045,512, including $15,520 for past lost wages, $30,000 for emotional distress and $2,000,000 for punitive damages. The punitive award is subject to reduction to $300,000, which is the cap for businesses with 500 or fewer employees under the ADA.

REFERENCE

Merard vs. Magic Burgers, LLC., et al. Case no. 6:19-cv-01864-PGB-LRH; Judge Paul G. Byron.

Attorneys for plaintiff: Mary E. Lytle and David V. Barszcz of Lytle & Barszcz in Maitland, FL.

Dram Shop

$1,000,000 CONFIDENTIAL RECOVERY – DRAM SHOP – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION AFTER BEING OVER SERVED BY DEFENDANT RESULTED IN PLAINTIFF SUFFERING INJURIES – MULTIPLE FRACTURES REQUIRING MULTIPLE SURGERIES INCLUDING OPEN REDUCTION AND INTERNAL FIXATION.

Withheld County, MA

In this motor vehicle negligence and dram shop matter, the plaintiff driver alleged that the defendant pizzeria and the defendant driver were negligent in causing the head-on collision that resulted in extensive injuries including multiple fractures that required multiple surgical procedures. The defendants denied the allegations and disputed the nature and extent of the plaintiff's injuries and damages.

The defendant driver was a patron at the defendant pizzeria for a private party event. On that evening, the defendant served the driver numerous alcoholic beverages even after it was apparent that the driver was visibly intoxicated. While he drove home, he crossed over the double-yellow center line and collided head-on into the 32-year-old female plaintiff's vehicle. The plaintiff was unable to work or drive for approximately one year from the time of the collision. The plaintiff brought a claim for lost wages of approximately $25,000 and medical bills of approximately $120,000 against the driver and pizzeria that served him alleging a violation of dram shop laws.

The defendant pizzeria offered its policy limits to settle the claim shortly after the claim was brought by the plaintiff's counsel and prior to any institution of suit. The matter resolved for the sum of $1,000,000.

REFERENCE

Driver Doe vs. Pizzeria. 09-01-20.

Attorney for plaintiff: Robert A. DiTusa of Alekman DiTusa in Springfield, MA.

Landlord/Tenant

$52,304,476 VERDICT – LANDLORD/TENANT – BREACH OF WARRANTY OF HABITABILITY – CLASS ACTION RELATING TO UNINHABITABLE PREMISES IN APARTMENT COMPLEX – ABSENCE OF HEAT IN WINTER AND AIR CONDITIONING IN SUMMER – ROACH INFESTATION – MOLD CONTAMINATION – BENCH TRIAL CONDUCTED OVER ZOOM BECAUSE OF PANDEMIC.

Jackson County, MO

This was a class action case involving plaintiffs who were tenants in the defendant complex that contained 179 buildings. The defendants were the complex itself and a manager who was also a part owner. The plaintiffs claimed that the defendants violated the warranty of habitability and that there was an absence of heat in the winter, air conditioning in the summer, roach infestation, mold contamination and the presence of ground hogs that ran about the outside portion of the complex. The claims of one tenant reflected that raw sewage backed into her bathtub, preventing this class member from bathing her children for several months. The plaintiffs further maintained that they suffered severe emotional distress because of the breaches. The defendants did not participate in discovery despite orders, including contempt citations and the Court suppressed the answer.

The plaintiffs maintained under the common law claim that the defendants acted in a malicious fashion and punitive damages were demanded. The plaintiffs also included claims under Missouri Merchandising Practices Act (MMPA), contending that prospective tenants were shown a model apartment which appeared clean and complied with the warranty of habitability.

The case was a bench trial conducted remotely. The court awarded $52,304,476, including compensatory and punitive damages against both the complex and the individual defendant.

REFERENCE

Fuentes, et al vs. KM-T.E.H. Realty 8, LLC, et al. Case no. 1916-CV29273; Judge Joel P. Fainestock, 03-20.

Attorney for plaintiff: Gregory Leyh of Gregory Leyh, P.C. in Gladstone, MO.

State Liability

$3,250,000 RECOVERY – STATE LIABILITY – SINGLE-VEHICLE MOTORCYCLE COLLISION – STATE NEGLIGENTLY FAILED TO NOTICE LARGE BUMP IN LEFT LANE OF GRAND CENTRAL PARKWAY WHEN CONDUCTING INSPECTIONS – DECEDENT ENCOUNTERS BUMP, GETS THROWN FROM MOTORCYCLE AND STRUCK AND KILLED BY SUV DRIVER WHO PREVIOUSLY SETTLED FOR POLICY.

New York County, NY

In this Court of Claims case that was tried on liability only, the claimant contended that the defendant State negligently failed to notice, or timely discover and repair, a large bump in the left, westbound lane of the three-lane Grand Central Parkway during routine inspections. The claimant asserted that as a result, the decedent lost control of his motorcycle and was thrown from it after encountering the approximate 3"+ high bump that extended across the entirety of the left, westbound lane, and was then struck by an SUV sustaining fatal injuries. The defendant claimed that the bump formed within several days immediately before the accident, thereby leaving the State no time to discover the bump and repair the defect.

The decedent was survived by only his wife. The driver of the SUV was initially a defendant and settled for the policy limits. The incident occurred on July 24, 2015, and the claimant maintained that the bump had formed as a result of the harsh winter that had occurred earlier that year.

The case was tried on liability only. In a 52-page Decision, the Court found the State 100% liable and the case settled on the day the Damages Trial was scheduled to begin for $3,250,000.

REFERENCE

Plaintiff's economist expert: Kristin Kucsma, MA from Livingston, NJ. Plaintiff's engineer expert: Joseph J. McHugh, P.E. from Boston, MA. Plaintiff's pathology expert: Stuart L. Dawson, M.D. from Commack, NY.

Cano vs. State of NY. Index no. 127378, 12-07-20.

Attorney for plaintiff: Terrence L. Tarver of Garden City of counsel to Edward Horn in Baldwin, NY.