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FEATURED CASES

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

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

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$1,250,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – DEFENDANT STRIKES PLAINTIFF'S DECEDENT'S VEHICLE WHILE PLAINTIFF PUTTING MINOR PLAINTIFF IN CAR – PLAINTIFF'S DECEDENT SUCCUMBS TO INJURIES – MINOR PLAINTIFF SERIOUSLY INJURED – PLAINTIFF WIDOW AND PLAINTIFF DAUGHTER OF DECEDENT SEEK DAMAGES.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, widow of the decedent and mother of the minor plaintiff, asserted that the defendant driver struck the decedent's vehicle with such force that it caused the death of the plaintiff's decedent and injury to the minor plaintiff.

On January 29, 2018, the decedent was standing outside of his vehicle on South Broadway in South Amboy, placing the minor plaintiff, his step-daughter, into his vehicle. At that date and time, the defendant was proceeding South on South Broadway. The vehicle driven by the defendant collided with the decedent's vehicle. The plaintiff contended that the defendant negligently failed to operate his vehicle in a safe and proper manner, failed to maintain control of his vehicle, failed to make proper observations, failed to remain alert and observe vehicle, pedestrian, and foot traffic while operating his vehicle, as well as failed to obey all traffic laws, statutes and ordinances. The plaintiff alleged that the force of the impact resulted in the death of plaintiff's decedent and serious injury to the minor plaintiff.

The parties settled the matter prior to trial in the amount of $1,250,000 broken down as follows: $12,511 in attorney fees; $123,749 to the minor plaintiff for her personal injuries; $123,749 to the plaintiff widow for her claims of loss of consortium; $898,991 to persons entitled to recover in an action pursuant to the Wrongful Death Act at 77.68% to the plaintiff widow and 22.32% to the plaintiff daughter.

REFERENCE

Navarrete vs. Walsh. Docket no. L-006241-18; Judge James E. Hyland, 02-12-20.

Attorney for plaintiff widow and minor plaintiff: William F. Mueller of Clemente Mueller, P.A. in Morristown, NJ. Attorney for plaintiff intervenor, daughter of decedent: Blagoja Petreski of Petreski Law Offices in Butler, NJ. Attorney for defendant: Steven I. Litvak of Litvak & Trifiolis, P.C. in Cedar Knolls, NJ.

$850,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – BILATERAL THORACIC OUTLET SYNDROME REQUIRING SEVERAL SURGERIES – PLAINTIFF SUFFERED CERVICAL AND LUMBAR HERNIATIONS 5-6 YEARS EARLIER AND UNDERWENT CERVICAL FUSION – COMPARATIVE ANALYSIS.

Union County, NJ

In this action for motor vehicle negligence, the plaintiff driver, age 50 at the time of the settlement, asserted that she was struck in the rear at a high speed by the defendant driver while in stop and go traffic. The plaintiff, who had a history of cervical and lumbar herniations, had undergone a cervical fusion and lumbar injections 5-6 years earlier contended that she suffered an aggravation that will permanently cause increased symptoms. The plaintiff also developed bilateral thoracic outlet syndrome in this accident which she maintained will cause permanent pain and restriction despite several surgical interventions. The defendant had a $1,000,000 policy.

The plaintiff maintained that both vehicles suffered significant property damage. The evidence disclosed that the plaintiff had a significant orthopedic history that largely revolved around lumbar and cervical herniations that were sustained 5-6 years earlier and resulted in a cervical fusion and lumbar injections. The plaintiff maintained that the trauma from the subject accident caused bilateral thoracic outlet syndrome and that the condition resulted in extensive pain in both wrists, elbows and chest. The plaintiff asserted that she required several surgeries for this condition and will nonetheless be left with continuing pain and noticeable scarring.

The plaintiff's surgeon, who treated the plaintiff for thoracic outlet syndrome, performed a Polk, comparative analysis and attributed 100% of the plaintiff's current complaints to the subject accident. The plain-

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tiff pointed out that the plaintiff had very little interim treatment. The plaintiff asserted that if the subject accident had not occurred, her current complaints would clearly be significantly less extensive.

The plaintiff made no income claims.

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

REFERENCE

Plaintiff's orthopedist expert: Steven Nehmer, M.D. from Union, NJ.
Plaintiff's surgeon expert: Kenneth Elkwood, M.D. from Shrewsbury, NJ.

McGovern vs. Zamora-Alfaro. Docket no. UNN-L3934-19, 02-21-22.

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

COMMENTARY

Although the plaintiff had a significant orthopedic history in which she suffered lumbar and cervical herniations and underwent a cervical fusion 5-6 years earlier, the plaintiff recovered most of the defendant's policy. In this regard, the plaintiff's surgeon, who treated the thoracic outlet syndrome offered discovery testimony on a Polk, comparative analysis that attributed 100% to the thoracic outlet syndrome. Although the plaintiff did not completely overcome the evidence of a pre-existing condition, she recovered only $150,000 less than the defendant's policy. The plaintiff stressed that the conditions were separate and distinct, and that although a jury could find some degree of prior causation, it was evident that the plaintiff, who required several surgeries and suffered permanent surgical scars as a result of this collision, continues to suffer significantly as a result of the subject accident.

$995,000 RECOVERY – INSURANCE OBLIGATION – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – PLAINTIFFS' DECEDENT STRUCK AND KILLED WHILE WORKING AS TOW TRUCK DRIVER – PLAINTIFFS SEEK DAMAGES ON BEHALF OF DECEDENT'S ESTATE TO BENEFIT DECEDENT'S MINOR CHILDREN.

Somerset County, NJ

In this case, the plaintiff, the fiancé and the mother of the decedent, brought suit against the defendant driver and insurer to recover damages on behalf of the decedent's minor children.

On June 6, 2018, the plaintiff's decedent was working as a tow truck driver and was clearing an accident in the gore area of Route 287 South in Bridgewater. The defendant driver was traveling on Route 287 south when her vehicle left its lane of travel, crossed into the shoulder where the decedent was working and struck him. Reports indicated that the decedent saw the defendant's vehicle approaching and attempted, but was not able to, get out of the path of the defendant's vehicle. At the time of the incident, the defendant was insured by 2 policies of automobile insurance. The plaintiffs settled with the defendant driver's insurers and sought additional damages from the decedent's employer which included underinsured motorist coverage in the amount of $1 million.

As a result of the collision, the plaintiffs claimed that the decedent suffered severe injuries resulting in conscious pain and suffering and ultimately his death. The plaintiffs settled the matter with the defendant driver in the amount of $265,000, the defendant's policy limits, and prior to filing of the subject action. The plaintiffs maintained that the value of the plaintiffs' injuries exceeded $265,000, thus, the defendant insurer's UIM coverage applied. The plaintiffs argued that the decedent's estate was liable for, and in fact paid for, the decedent's funeral and burial expenses and charges. Further, the decedent left multiple surviving family members including his children, who, by reasons of the decedent's

wrongful death, have suffered damages. Subsequent to the death of the plaintiffs' decedent, the decedent's children were deprived of the society and companionship of their father.

The defendant filed a Notice of Appearance and settled the matter with the plaintiffs. The plaintiffs settled the subject matter with the decedent's insurer in the amount of $745,000 allocated to settlement of the claims pursuant to Wrongful death Act, N.J.S.A. 2:31-1, et seq., broken down as follows: $186,250 in attorney fees; and $279,375 for each of the decedent's surviving children. Additionally $250,000 to the plaintiff fiancé allocated to settlement of the claims pursuant to the Survivorship Act, N.J.S.A. 2A:15-3 broken down as follows: $86,372 for attorney fees; $124,033 for worker's compensation lien; and $19,797 for each of the decedent's surviving children. The plaintiffs recovered a total settlement of $995,000.

REFERENCE

Ramos, et al. vs. Raiti, et al. Docket no. L-000833-19; Judge Thomas C. Miller, 07-24-19.

Attorney for plaintiff: Tyler Hall of Rebenack, Aronow and Mascolo, LLP in Somerville, NJ. Attorney for defendant AXIS Insurance Company: Pasquale A. Pontoriero of Kennedys CMK, LLP in Basking Ridge, NJ. Attorney for defendant Carmela Raiti, driver: Karen Quinn Sopko of Law Office of Cindy Thompson in Piscataway, NJ.

$900,000 RECOVERY – PREMISES LIABILITY – FALL DOWN ON ICE – FAILURE OF CONDO ASSOC AND SNOW REMOVAL CONTRACTOR TO PROVIDE ADEQUATE MONITORING AFTER SEVERAL DAY "BOMB CYCLONE" STORM – SEVERE CERVICAL CORD COMPRESSION – 2-LEVEL FUSION AND DISCECTOMY.

Middlesex County, NJ

This premises liability case involved a 66-year-old plaintiff condo tenant. The plaintiff contended that the condo association and the co-defendant snow removal contractor, who agreed to continuously monitor ice and snow at the premises, negligently failed to realize that thawing and re-freezing after a several day "bomb cyclone" snow event created black ice at the condo entrance. The plaintiff asserted that as a result, he slipped and fell, and suffered immediate weakness in upper and lower extremities. The imaging studies, taken immediately after the fall, showed central cord syndrome with severe compression. The plaintiff's injuries required an emergent 2-level cervical discectomy and fusion. The defendants maintained that proper monitoring was provided.

The incident occurred as the plaintiff was leaving the condo. The plaintiff maintained that he will permanently suffer extensive pain and restriction and everyday activities are more difficult. The plaintiff's snow and ice removal expert and the plaintiff's property management expert would have concluded that the weather conditions required better monitoring and safeguards against the formation of black ice. The defendants contended that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff, who was retired at the time of the incident, made no claim for lost income.

The case settled prior to trial for $900,000, with each defendant paying half.

REFERENCE

Plaintiff's engineer expert: Wayne Nolte, Ph.D., P.E. from Hazlet, NJ. Plaintiff's life care planning expert: Linda Lajterman, RN, CCM from Stockholm, NJ. Plaintiff's orthopedic surgeon expert: Cary Glastein, M.D. from Tinton Falls, NJ. Plaintiff's pain management expert: Douglas Spiel, M.D. from Edison, NJ. Plaintiff's property management expert: Richard Dinar from Parsippany, NJ. Plaintiff's snow and ice removal expert: John Allin from Erie, PA.

Gerstein vs. Marina View Tower Condo Assoc., et al. Docket no. MID-L-5855-18, 03-15-22.

Attorney for plaintiff: Raymond A. Gill, III of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

The plaintiff stressed that because of thawing and re-freezing after the several day "bomb cyclone," especially careful monitoring and safeguards against the formation of black ice was required. In this regard, the plaintiff buttressed the testimony of his liability experts by pointing to NOAA records which pointed to evidence of thawing and re-freezing during this period.

Regarding damages, it should be noted that the plaintiff made no income claims and that the recovery reflected the surgery and pain and difficulties which continue to impact the plaintiff.

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$125,000 RECOVERY – RACIAL DISCRIMINATION – VIOLATION OF NJLAD – HOSTILE WORK ENVIRONMENT, DISCRIMINATION, RETALIATION – PLAINTIFF DENIED PROMOTIONS AND POSITIONS GIVEN TO NON-MEMBERS OF PROTECTED CLASS – DEFENDANT DENIES ANY VIOLATION AND ASSERTS PLAINTIFF GIVEN MANY OPPORTUNITIES FOR ADVANCEMENT.

Essex County, NJ

In this case, the plaintiff, an African-American employee of the defendant college and subordinate of the defendant director, claimed that the defendants failed promote him, retaliated against him, created a hostile work environment, and ultimately wrongfully terminated his employment on the basis of racial discrimination. On September 18, 2006, the plaintiff was hired and commenced employment with the defendant as a Computer Technician. He was qualified for the position to which he was hired, and at all relevant times he remained qualified for the positions that he held with the defendant college. The plaintiff claimed that his employment was unlawfully terminated on May 9, 2017. The defendant denied any discrimination against the plaintiff and asserted that the plaintiff was offered encouragement and means by which he could enhance his opportunities for advancement in the workplace.

During all relevant times, the plaintiff performed his duties satisfactorily. In 2007, the plaintiff complained to Human Resources about being ordered to cover the NYC campus for an employee who was being punished for violating company rules. The plaintiff averred that he should not be part of the punishment for the employee who violated the rules. The plaintiff advised HR that he believed it was unethical for the defendant to have him working in NYC, but not have him classified as a NYC employee. Thereafter, the defendant took steps to force the plaintiff to quit. The plaintiff's performance reviews regularly were conducted late and were contrived to make it look as if he were underperforming. Also, the plaintiff's expenses were not timely paid as they were for others outside of the plaintiff's protected class.

In 2009, the plaintiff was qualified for and applied for the position of Lead Technician. Despite his qualification, the plaintiff was denied the promotion. The promotion was given to someone outside the plaintiff's protected class. In or about August 2011, the plaintiff sought to advance his career and applied for the position of Lead Computer Support Technician. Although qualified for the position, the plaintiff did not receive the position he sought and was not granted an interview. The position went to someone outside of the plaintiff's protected class. During this time period there were several promotions throughout the department for which the plaintiff could have been considered but was not.

Upon information and belief, the plaintiff claimed that, through his supervisors, the defendant was retaliating against the plaintiff for his prior complaints. On August 29, 2011, the plaintiff complained to Human Resources that he was discriminated against on the basis of his race, which was the reason he did not receive the position of Lead Computer Support Technician. Thereafter, the Head of the IS Department (the Chief Information Officer of the College) suggested to the plaintiff that he take a new job. The new job would have more responsibility, but the plaintiff would not receive a raise or a promotion unless he proved that he was worthy of the job.

Others outside the protected class were not similarly treated with respect to new jobs requiring additional responsibility with no commensurate pay increase or promotion. The plaintiff declined this "opportunity" whereupon the defendant purportedly investigated the plaintiff's complaint of discrimination, and found that although the plaintiff was qualified for the position to which he applied, the defendant determined that another employee (outside the plaintiff's protected class) was more qualified, and promoted that employee. Despite the discriminatory treatment experienced by the plaintiff in 2011, he continued to perform his duties satisfactorily.

The plaintiff experienced varying degrees of retaliation and hostile work environment after he complained to HR about the race-based decision to deny him a promotion in 2011. In 2011, the plaintiff inquired about being promoted to Co-Lead in New Jersey. The defendant Director of IT told him there was no money in the budget, and nothing to substantiate having co-leads in NJ. The plaintiff offered to take the position without receiving a pay increase so that he could gain more experience, help the defendant, and improve his future prospects. The defendants refused.

In or about October 2012, the position of Lead Desktop/Support Tech of New Jersey opened, and again the plaintiff applied. Despite his superior qualification, the promotion was offered to the only other applicant – who was outside of the plaintiff's protected class. That applicant turned down the position. Given that the plaintiff was the only remaining qualified applicant, the plaintiff was promoted to the position of Lead Desktop / Support Tech of New Jersey. The plaintiff was not given a raise commensurate with the position and responsibility. In addition to the inappropriate compensation, the plaintiff was not allowed to transfer to the position site in Woodland Park, NJ; he was instead kept in Newark, and relegated to a basement office with no cell phone reception. The location made it difficult to communicate with colleagues and eliminated the opportunity for the plaintiff to interface daily with his superiors.

The plaintiff continued to receive hostile treatment from his superiors in the form of limited communication; limited opportunity for advancement; and inappropriate treatment upon his return from short-term disability. The plaintiff later learned that the defendant director instructed the plaintiff's previous manager to target the plaintiff and instructed her to reprimand the plaintiff and to write him up without justification. The defendant director stated that the plaintiff was always using the "race card," but that would not sway her. The defendant director went on to say that "if that n****r comes after me, I will handle him. I've handled the EEOC/NAACP before." Despite this obvious hostility, the plaintiff continued to perform his duties in an exemplary fashion. In or about July 2014, the plaintiff's immediate supervisor was fired. The plaintiff inquired about being promoted to the position. Although the plaintiff was given the responsibility of the position, the defendant director refused to promote the plaintiff. Ultimately, the position went to another African-American from outside of the job.

In 2015, the plaintiff sought a promotion to DBA/Application Administrator. The defendant director declined to consider the plaintiff for the position. The plaintiff later learned from a co-worker that the defendant director stated to all of her Management team, that she would "not be promoting [the plaintiff]." Up to and including the date the plaintiff's employment was terminated, there were several employees outside his protected class who were similarly or less qualified than he who received raises and promotions from which the plaintiff was excluded, despite his qualifications. The plaintiff's employment was terminated on May 9, 2017 in retaliation for his complaints of racial harassment, failure to promote, and failure to provide him with the same terms and conditions of employment as others outside of his protected class.

The parties settled the matter prior to trial via mediation in the amount of $100,000 which was then increased to $125,000 as the final settlement amount. The defendants filed a motion to enforce the settlement and the plaintiff responded with a motion to reinstate the case.

REFERENCE

Long vs. Berkeley College, et al. Docket no. L-008493-17; Judge Thomas Moore, 11-18-19.

Attorney for plaintiff: James Alexander Lewis, V of Chasan Lamparello Mallon & Cappuzzo in Secaucus, NJ. Attorney for defendant: Joseph V. MacMahon, Esq. in Oakland, NJ.

COMMENTARY

The parties participated in court-ordered mediation on November 1, 2019. During the mediation, the parties agreed upon a settlement to the plaintiff in the amount of $100,000. The plaintiff then requested time to discuss the settlement with his wife. On November 4, the plaintiff rejected the settlement amount of $100,000 and demanded $150,000. The demand was rejected and, on the same day, the plaintiff made a last and final offer of $125,000 to settle all claims.

The defendants accepted the plaintiff's offer on November 6, 2019. However, notwithstanding the settlement of the litigation, the plaintiff avoided implementation of the settlement by execution of its terms. The defendants filed a motion to enforce the settlement. A draft Settlement Agreement and Mutual Releases was exchanged between counsel for the parties and all revisions to the agreement by the plaintiff were accepted by the defendants and incorporated into the agreement as of November 12, 2019. On November 15, 2019, the plaintiff notified the court by letter of his intention to file a stipulation of dismissal. Following the settlement of the litigation, the defendants made numerous efforts to execute the settlement to no avail. 9 months later, the defendant filed a motion to enforce the settlement.

The defendant argued that the settlement agreement reached by the parties was a binding contract entitled to enforcement. The defendant asserted that there is strong public policy in New Jersey favoring the settlement of litigation and that principles of contract law govern settlement agreements citing Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008). The defendant pointed to Nolan v. Lee Ho, 120 N.J. 465 (1990) which indicates that a settlement of a legal claim between parties is a contract like any other contract, and which "may be freely entered into and with a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts." Pascarella v. Bruck, 190 N.J. Super. 118 124-5 (App. Div. 1983) [quoting Honeywell v. Bubb, 130 N.J. Super. 130, 136 (App. Div. 1974)], cert. den. 94 N.J. 600 (1983). In the subject case, the defendant pointed to an email dated November 4, 2019 wherein the plaintiff through his counsel made "our last and final demand of $125,000 to resolve all claims in this matter." The defendants then notified the plaintiff that they accepted the offer on November 6, 2019. Therefore, the defendants argued, the matter was settled by the parties and nothing further was required to be exchanged between the parties to have an enforceable settlement agreement. All that remained was for the settlement to be executed.

The defendants then engaged in an unsuccessful months-long email and phone call exchange with plaintiff's counsel to conclude the settlement culminating in filing the motion to enforce the settlement. The defendant concluded that the plaintiff put his offer of settlement in writing by the November 4th email and the defendants accepted the offer of settlement in writing by the November 6th email thereby arriving at an amicable and enforceable resolution of the litigation. It was that resolution the defendants requested that the court enforce as a matter of both basic contract law and strong public policy.

The plaintiff opposed the motion arguing that the defendants' motion was unenforceable because, under basic principles of contract law, there was no meeting of the minds as to several material terms and, therefore, there was no contract. The plaintiff maintained that, as no contract had been formed, there was no agreement to be enforced by the court and the defendants failed to demonstrate any basis for court intervention. Rather, the strong public policy in favor of claims being resolved on the merits militates toward this matter being reopened as a matter of law and justice, according to plaintiff's counsel. The plaintiff argued that the complaint in the instant matter arose under the auspices of the New Jersey Law Against Discrimination, which has the explicit purpose of vindicating the rights of individuals, such as the plaintiff, who have been victimized based upon their belonging to a protected class.

The plaintiff's version of events differed from the defendants'. The plaintiff maintained that, after a failed mediation, the parties continued to discuss settlement whereupon the parties, at one point, agreed

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to a single material term as it relates to settlement. Specifically, there was a time when both parties were amenable to resolution for $125,000. The plaintiff claimed that the defendants served a proposed Settlement Agreement, which had several more terms, and conditions to which the parties never agreed. The case law relied upon by the defendants was instructive in stating, "qualified or conditional acceptance containing terms and conditions not in the original proposal may operate as a counter-offer' and acceptance does not result in the formation of a valid contract binding upon the parties." Carlin v. City of Newark 36 N.J. Super 74, 89 (Law Div. 1955). This is true because the court determined the "seeming acceptance" from the defendant college was "in fact a counter-offer, containing unmentioned terms requiring acceptance before the matter could be resolved."

The plaintiff maintained that the same was true in this matter. The plaintiff concluded that there was no agreement as the plaintiff had not agreed to the material terms in the defendants' counteroffer, and as with any contract, the agreement was unenforceable because there was no explicit, affirmative agreement that unmistakably reflects assent and a willingness to be bound. Rather, the plaintiff explicitly refused the terms of the counteroffer, refused to execute the agreement, and sought to exercise his constitutional right to prosecute his claims before a jury. Notably, "when one party... presents a contract for signature to another party, the omission of that other party's signature is a significant factor in determining whether the two parties mutually have reached an agreement." Leodori v. CIGNA Corp., 175 N.J. 293, 305 (2003). The plaintiff requested that the matter be returned to the trial court, and the defendants' request to enforce a settlement be denied.

The court granted the defendants' motion to enforce the settlement and denied the plaintiff's motion to reinstate the case.

DEFENDANT'S VERDICT – BREACH OF CONTRACT – PLAINTIFF CONTENDS DEFENDANT BREACHED CONTRACT TO PAY PLAINTIFF FOR "BOOK OF BUSINESS" BY MAKING LATE PAYMENTS AND MISMANAGING CLIENTS – DEFENDANT DENIES LATE PAYMENT AND CLAIMS FEWER CLIENTS LEFT AFTER HE TOOK OVER BUSINESS THAN WHEN PLAINTIFF WAS MANAGING ACCOUNTS.

Monmouth County, NJ

This matter involved claims by the plaintiff against the defendant investment advisers. The defendants worked with an investment advisory company located in Colts Neck. The plaintiff and one of the defendants entered into a contract in August 2016 pursuant to which the defendant bought the plaintiff's then-existing investment advisory "book of business," which consisted of the plaintiff's client accounts. At the time of the contract, the plaintiff had an action pending against him in FINRA, the agency that oversees and licenses securities broker/dealers. The pending action would potentially result in revocation of the plaintiff's license to work in the securities industry.

The parties entered into an Asset Purchase Agreement dated August 25, 2016 which provided for the sale of assets, including brokerage insurance and investment advisory accounts on which the plaintiff was the representative of record. The agreement provided for the sale of 25% of the plaintiff's book of business to the defendant and the transfer of the remaining 75% upon a "trigger event" defined as the death or suspension of the plaintiff's license by FINRA. The plaintiff's clients were transferred to the defendant, who at that point, was listed as the representative of record on those accounts. The agreement provided that the plaintiff could repurchase the book of business from the defendant at any time prior to the final transfer in order that, if he was not suspended, he could buy back the 25% of his book of business that had been sold to the defendant. The parties entered into an Adjustable Promissory Note pursuant to which the defendant would pay the plaintiff the total amount of $47,500 for the book of business. The defendant paid the plaintiff a $10,000 down payment on August 10, 2016 in the form of a loan which was treated as repaid in full by the plaintiff at the time of closing. Under the agreements, the defendant was to make monthly payments to the plaintiff in the amount of $1,319 beginning on September 1, 2016. The first three monthly payments were the basis for part of the plaintiff's claim in this matter. The plaintiff argued that the payments were made late, contrary to the terms of the agreement and note.

The plaintiff's license was revoked by FINRA on November 18, 2016. Per the agreement, the defendant purchased the remaining 75% of the plaintiff's book of business following the "trigger event" of the revocation of the plaintiff's license. In July 2017, the defendant advised the plaintiff that a particular client with a large account had left the firm and that the parties would need to make a downward adjustment on the amounts being paid by the defendant to the plaintiff. The plaintiff disagreed and set forth that he believed the downward adjustment to be inappropriate in a letter dated August 11, 2017. The plaintiff maintained that the downward adjustment constituted a breach of the contract and demanded that the defendant immediately pay all principal owed under the acceleration clause contained in the note signed by the parties. The plaintiff also included the defendant owner of the investment firm, of which the defendant was an employee, as a defendant in the action.

The defendant maintained that all payments made to the plaintiff were made properly and in conformance with the agreements between the parties. As to the downward adjustment, the defendant advised the plaintiff that he was entitled to reduce the monthly payments to the plaintiff due to the fact that the GDC had reduced during the adjustment period by more than 10% and indicated that he was going to voluntarily provide a higher payment than he was

required. The defendant denied that he was in breach of any of the terms of the agreements between the parties.

After a bench trial, the court entered judgment against the plaintiff and in favor of the defendants.

REFERENCE

Sequeira vs. Russo & Robbins. Docket no. L-003747-17; Judge Linda Grasso Jones, 03-18-20.

Attorney for plaintiff: Pro se. Attorney for defendant Russo: Richard W. Wedinger of Barry, McTiernan & Wedinger, P.C. in Edison, NJ. Attorneys for defendant Robbins: Steven E. Mellen and David H. Feldstein of Winget, Spadafora & Schwartzberg, LLP in Jersey City, NJ.

COMMENTARY

The court, in its trial decision, indicated that overall it found the defendant to be a credible witness who spoke directly and clearly indicated in his testimony when he did not know the answer to a question, without prevarication or dissembling. The court felt he did not appear at any time to be fabricating answers to questions to help his case and His testimony was supported by the documentary evidence presented at trial.

Conversely, the court noted that, while it was clear that the plaintiff believed that the testimony he presented at trial was accurate, his claims in the matter and the conclusions that he drew from what he contended was the relevant evidence were not supported by the evidence presented. For example, the plaintiff took great exception to the involvement of the owner of the company in his disagreement with the defendant. The court found it difficult to understand how the plaintiff could argue that the owner of the investment firm had no business being involved as she employed the defendant and had formerly employed the plaintiff. Further, the plaintiff had sent the owner of the firm a copy of the August 2017 demand letter to the defendant.

The court opined that the plaintiff was unable to squarely address the evidence presented at trial, but rather stuck to his version of events, which was not supported by messages, emails or other documents presented. The court found his testimony, viewed in light of the entire record presented in the matter, and also standing alone, was not generally supportive of his claims against the defendants.

The court noted that, given the evidence presented, it could not find that the defendant was delinquent in the first three payments made to the plaintiff and, in fact, that one of the payments was not made in a timely fashion due to the plaintiff having given the defendant incorrect wire transfer information. The court found that the plaintiff had not proven that the defendant did not make the payments on time and that the plaintiff was not entitled to an acceleration of the payments and interest on those payments, as he claimed.

The plaintiff also maintained that the defendant had mismanaged the accounts transferred to him from the plaintiff. The court deemed that nothing presented would permit the court to conclude that the manner in which the accounts were managed by the defendant constituted mismanagement of an account, or that clients had left due to something that the defendant did or did not do. Rather the evidence presented would lead to the opposite conclusion. Specific information was presented as to the reasons that certain clients had left, and those reasons had nothing to do with management of the account by Russo. Additionally, the evidence presented showed that ten of the plaintiff's clients had left in the year prior to the agreement, while the plaintiff was managing the accounts, as compared to 6 leaving during the following "adjustment period" year. Thus, the court determined that no factual or legal basis was provided for the plaintiff's claims that the defendant was not diligent in servicing the accounts of the plaintiff's former clients.

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Verdicts By Category

CONTRACT

$3,000 RECOVERY

Breach of contract – Fraud – Plaintiff homeowner claims defendants took down payment from her but failed to install "smart" bath system in her home and damaged other electrical systems in home while attempting installation of necessary circuitry for bath system.

Essex County, NJ

In this breach of contract case, the plaintiff homeowner asserted that the defendants breached a contract and committed fraud in taking payment from her and then failing to install, or properly install, a bathroom fixture in her home and, in the process, damaging other parts of her home. The defendants denied breaching the contract and each claimed that the other was responsible for any faulty installation or damage to other parts of the home. Each defendant filed a cross claim against the other.

In July of 2017, the plaintiff signed a contract with the defendant bathroom remodeler and construction company to have a "smart" bath system installed at her home located at 110 Prospect Street in South Orange. The plaintiff paid a down payment in the amount of $4,632. The plaintiff contended that the defendants did not install the necessary GFCI circuit to run the "smart" appliances and that the tub does not work properly or drain properly.

The plaintiff asserted that as a result of the defendants' failure to properly install the bath system, her furnace now needs a new water feed, damage was done to the telephone system, burglar alarm and the electrical panel in her home. The plaintiff claimed monetary damages and anxiety as a result of the defendants' breach of the contract to install the bath system.

The parties settled the matter prior to trial in the amount of $3,000 with half contributed by the defendant bathroom remodeling company and half from the defendant construction company.

REFERENCE

Miller vs. Home Smart Industries, LLC, et al. Docket no. L-002048-18; Judge Thomas R. Vena, 02-24-20.

Attorney for plaintiff: Laurence H. Olive, Esq. in Montclair, NJ. Attorney for defendant construction company: Stephen R. Dumser of Swartz Campbell, LLC in Mt. Laurel, NJ. Attorneys for defendant bathroom remodeling company: Robert Douglas Billet, Christopher D. Hillsley and Stacy L. Greenberg of Billet Hillsley, LLC in Mt. Laurel, NJ.

DOG ATTACK

$100,000 RECOVERY

Dog attack – Dog jumps fence into yard where 4-year-old plaintiff playing and attacks him – Multiple bite wounds to hand and forearm – Plaintiff taken to hospital where wounds are treated and he is released – Defendant denies any history of aggressive behavior by dog.

Bergen County, NJ

In this dog attack case, the plaintiff, a 4-year-old boy, asserted that the defendant's dog attacked and bit him multiple times, causing significant injury. The plaintiff brought suit against the owner property where the dog was residing at the time of the incident, and the dog owner. The defendant dog owner denied having notice that the dog was dangerous and asserted that the dog had never exhibited any vicious propensities.

On July 16, 2018, the minor plaintiff was playing in the yard at 98 Lafayette Place in Englewood when the defendant's dog, which resided in the house next door, jumped a fence between the properties and attacked the plaintiff. As a result of the incident, the plaintiff sustained multiple bite injuries to his hand and forearm. The plaintiff was transported to the hospital where his wounds were treated and he was released.

The plaintiff argued that the defendant had a duty to plaintiff to exercise reasonable care in keeping defendant's dog confined such as to prevent foreseeable injury to the plaintiff resulting from behavior common to the class of animals to which defendant's dog belongs; or propensities known to defendant that were idiosyncratic to the particular animal. The plaintiff also asserted that the defendant property

owner was responsible because they were in custody and control of the premises, including the fence that the dog breached, on the day in question.

The parties settled the matter with the defendant dog owner prior to trial in the amount of $100,000 broken down as follows: $24,530 in attorney fees; $288 in medical expenses and $73,304 in net damages to the minor plaintiff.

REFERENCE

McLennon vs. Kendrick, et al. Docket no. L-002339-19; Judge John D. O'Dwyer, 01-28-20.

Attorney for plaintiff: J. Sean Connelly of Seigel Law, LLC in Ridgewood, NJ. Attorney for defendant: Robert Zimmerer of Zimmerer, Murray, Conyngham & Kunzier in Saddle Brook, NJ.

INSURANCE OBLIGATION

$22,727 RECOVERY

Insurance obligation – Left turn collision – Plaintiff contends uninsured driver made left turn in front of plaintiff and collided with plaintiff's vehicle – Plaintiff seeks recovery from defendant uninsured motorist policy carrier – Right knee and shin injuries including horizontal, peripheral tearing involving body of lateral meniscus and continued, visible bruising of right shin – Physical therapy.

Burlington County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the tortfeasor driver struck her vehicle while making a left turn causing her to sustain injuries. The tortfeasor driver and vehicle owner were uninsured and the plaintiff brought the subject action to collect from the defendant insurer under her uninsured motorist policy.

On September 1, 2016, the plaintiff was traveling on Rancocas Road at the intersection with Mt. Holly By-pass in Mount Holly. The tortfeasor driver was coming from the opposite direction on Rancocas Road. The plaintiff contended that the tortfeasor negligently turned left across the plaintiff's lane of travel. The tortfeasors' vehicle struck the plaintiff's vehicle in the intersection with significant impact. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant made a cross claim for indemnification as to the tortfeasor driver and the owner of the vehicle. The tortfeasors did not appear and default judgment was entered against them.

As a result of the collision, the plaintiff suffered right knee and shin injuries. The plaintiff was diagnosed with a horizontal, peripheral tearing involving the body of the lateral meniscus. The plaintiff also continued to have visible bruising of the right shin as compared to the left shin with associated pain sensitivity. The plaintiff treated conservatively with physical therapy.

Pre-trial arbitration assigned 100% liability to the defendant, via the tortfeasors, with damages of $25,000. Following arbitration, the defendant insurer settled with the plaintiff in the amount of $22,727. A default judgment was entered in the defendant insurer's cross claim against the tortfeasors. Subsequently, the tortfeasors were located and made arrangements to repay the settlement amount to the defendant insurer.

REFERENCE

Luppke vs. Pressly, Jr., et al. Docket no. L-001577-18; Judge John E. Harrington, 07-28-20.

Attorney for plaintiff: Michael H. Foster of Stark & Stark in Marlton, NJ. Attorneys for defendant uninsured motorist policy carrier: Deborah C. Halpern and Brad A. Parker of Parker Young & Antinoff, LLC in Marlton, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Rear end collision – Cervical disc herniations at 3 levels; positive EMG for cervical radiculopathy – Epidural injections and facet joint injections – Arbitration finds defendant liable with $75,000 in damages.

Middlesex County, NJ

In this insurance obligation case, the plaintiff asserted that the uninsured tortfeasor driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff brought this action against the defendant insurer for uninsured motorist benefits. The defendant conceded liability but disputed the nature, causation, and permanency of the plaintiff's injuries.

On October 24, 2014, the plaintiff was a passenger in a motor vehicle traveling on the NJ Turnpike in East Brunswick. The tortfeasor was traveling behind the plaintiff's vehicle and negligently failed to observe traffic, operating his vehicle in a careless and reckless manner such that he struck the plaintiff's vehicle in the rear.

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The plaintiff alleged that the force of the impact resulted in permanent injuries including disc herniations at 3 levels with positive EMG for cervical radiculopathy. The plaintiff treated with 2 cervical epidural injections and facet joint injections.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $75,000. Following arbitration and prior to trial, the plaintiff offered to take judgment in the amount of $100,000. The arbitration was not confirmed, the offer of judgment was not accepted, and the matter proceeded to trial.

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

REFERENCE

Martinez vs. Allstate. Docket no. L-005906-16; Judge Bruce J. Kaplan, 01-31-20.

Attorney for plaintiff: John R. Gorman of Lutz, Shafranski, Gorman & Mahoney in New Brunswick, NJ. Attorney for defendant: Mary Lou Dennis-Suckow of Law Offices of Pamela D. Hargrove in Cranford, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Rear end collision – Cervical disc herniations at C2-3 and C4-5; lumbar disc herniations at L3-S1; aggravation of pre-existing disc disease; left hand carpal tunnel syndrome – Chiropractic treatment and pain management – Plaintiff recovers $15,000 from tortfeasor and brings underinsured motorist action against defendant insurer – Defendant disputes permanency and causation of plaintiff's injuries.

Middlesex County, NJ

On January 13, 2017, the plaintiff was traveling southbound on Route 202 in Warrington, Pennsylvania. A third-party driver was also traveling southbound on Route 202 and struck the tortfeasor who subsequently struck the rear of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained cervical disc herniations at C2-3 and C4-5; lumbar disc herniations at L3-S1; aggravation of pre-existing disc disease; and left hand carpal tunnel syndrome. The plaintiff treated with chiropractic care and pain management.

The defendant's IME reported that the plaintiff's chiropractic and pain management care were temporary and that there was no evidence of the subject collision as having caused the plaintiff's contended injuries. Further, the defendant argued that the plaintiff did not sustain a carpal tunnel injury or any permanent injury. The defendant asserted that the plaintiff's disc condition was pre-existing and not causally related to the subject accident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $85,000 reduced to $70,000 for recovery from tortfeasor contribution. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Gamble vs. Allstate New Jersey Property and Casualty Insurance Company. Docket no. L-001906-17; Judge Dennis V. Nieves, 02-04-20.

Attorney for plaintiff: Maria K. McGinty-Ferris of Swartz Culleton, PC in Newtown, PA. Attorney for defendant: Frederic J. Regenye of Regenye Lipstein, LLC in Westfield, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$185,000 RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Defendant driver makes left turn in front of plaintiff who lays down motorcycle to avoid contact – Fractured tibia – Ankle dislocation – Plaintiff at risk for future ankle replacement – No income claims.

Middlesex County, NJ

In this action for motor vehicle negligence, the 50-year-old plaintiff motorcyclist contended that the defendant driver negligently made a left turn into his path, resulting in his laying down his bike to avoid contact with the defendant and sustaining serious injuries. The defendant asserted that the plaintiff was speeding and was comparatively negligent.

The plaintiff maintained that he suffered a fractured tibia as well as a severe ankle dislocation. The plaintiff asserted that despite conservative therapy, he will suffer permanent pain and limitations and is at risk for a future ankle replacement. The plaintiff has not undergone surgery.

The plaintiff made no income claims.

The case settled prior to trial for $185,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Gregory Charko, M.D. from Union, NJ.

Reevey vs. Planko. Docket no. MID-L-7427-19, 03-05-21.

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

Driveway Exit Collision

$12,400 RECOVERY

Motor vehicle negligence – Driveway exit collision – Defendant backing out of driveway strikes plaintiffs' vehicle – Plaintiff driver sustains disc herniations at C3-4, C4-5, C5-6, L1-2, L2-3, L4-5; disc bulges at C6-7, L3-4, and L5-S1 – Minor plaintiff suffers bulging discs at C2-3, C3-4 and C4-5 – All injuries to both plaintiffs permanent per physician.

Burlington County, NJ

On September 7, 2016, the plaintiffs were the driver and her son, the minor passenger, in a vehicle traveling southbound, straight on Coles Avenue at the intersection with Gainor Avenue in Maple Shade. The defendant was attempting to back out of his driveway located at 200 South Coles Avenue. The plaintiffs alleged that the defendant failed to observe traffic and, suddenly and without warning, backed out of the driveway at a high rate of speed and struck the plaintiffs' vehicle. The plaintiffs alleged that the force of the impact resulted in permanent injuries to both plaintiffs. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff driver suffered disc herniations at C3-4, C4-5, C5-6, L1-2, L2-3, L4-5; disc bulges at C6-7, L3-4, and L5-S1. The plaintiff driver's injuries were certified as permanent. The minor plaintiff passenger sustained disc bulging at C2-3, C3-4 and C4-5.The plaintiff's physician certified the plaintiff's disc bulges at C2-3, C3-4 and C4-5 were permanent injuries. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The defendant settled the matter with the minor plaintiff prior to trial in the amount of $12,400 broken down as follows: $3,213 in attorney fees; $1,766 in medical expenses and $7,422 in net damages to the minor plaintiff. The defendant settled with the plaintiff driver for an undisclosed sum.

REFERENCE

Lozada vs. Ford. Docket no. L-001831-18; Judge Susan L. Claypoole, 07-19-19.

Attorney for plaintiff: Justin H. Sperling of Aronberg, Kouser, Snyder & Lindemann, P.A. in Cherry Hill, NJ. Attorney for defendant: Brian Stanziano of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ.

Head-on Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Head-on collision – Police liability – Defendant driver being pursued by defendant police wrong way on one-way road results in head-on collision that kills plaintiff's decedent – Arbitration assigns liability at 90% to defendant driver and 10% to defendant City and its police officers – Damages set at $100,000 – Parties settle after arbitration.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendants caused a motor vehicle collision wherein the plaintiff's decedent was killed. The plaintiff asserted that the defendant driver was negligent in operation of his vehicle and that the defendant police were negligent in pursuing a high-speed chase the wrong way on the roadway and increasing the chances of an accident such as befell the plaintiff's decedent. The plaintiff asserted that the defendant police violated their own policy as to high-speed chases in crowded vehicular areas when they pursued the defendant driver. The defendant police officers contended that they acted in a reasonably prudent manner at all times, given the situation and maintained that the defendant driver of the fleeing vehicle was responsible for turning onto a one-way road and was a sole, proximate cause of the collision which killed the plaintiff's decedent.

On July 18, 2015, the plaintiff's decedent was operating a motor vehicle traveling eastbound on Route 81 in Elizabeth. At the same time, the defendant driver of an uninsured vehicle was being chased by the defendant police unit and traveled westbound against traffic near the North Avenue East exit ramp. The defendant driver was traveling the wrong way on a one-way road. The defendant driver caused a head-on collision with the decedent's vehicle resulting in the

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plaintiff's decedent's death from injuries suffered in the collision. The insurance companies for the plaintiff driver and for the vehicle he was driving paid their policy limits for uninsured motorists for a total of $100,000.

At trial, the plaintiff planned to present testimony from a police pursuit expert, and economics expert and a vocational expert. The defendants asserted that they were protected by qualified immunity as they were acting in their roles as government officials at the time of the incident. The defendant officers made a cross claim against the defendant driver of the fleeing vehicle. The defendant driver of the vehicle that collided with the decedent's vehicle was served due process at the facility where he was incarcerated. The defendant driver initially did not answer and a default judgment was granted.

The defendant driver eventually filed a motion to vacate the default judgment against him and the motion was granted. The defendant driver again failed to answer the Complaint within the time given and a second Motion for Default was filed by the plaintiff. The defendant owner of the fleeing vehicle failed to answer the plaintiff's Complaint as well and both motions were pending at the time of settlement of the case.

The parties submitted to arbitration prior to trial. The arbitrator assigned 90% liability to the defendant driver of the fleeing vehicle and 10% to the defendant city (employer of the pursuing police officers). The arbitration set damages at $100,000 apportioned in accordance with the findings of liability. Following the arbitration, the plaintiff settled the matter with the defendant city and its individual police officers for a confidential sum.

REFERENCE

Estate of Edward G. Coleman, Jr. vs. Ophilien, et al. Docket no. L-002610-17; Judge Robert J. Mega, 05-18-20.

Attorneys for plaintiff: Clarence Barry-Austin and Catherine B. Liu of Law Office of Clarence Barry-Austin, P.C. in South Orange, NJ. Attorneys for defendant police officer: Robert F. Renaud of Palumbo Renaud & Deappolonio, LLC in Cranford, NJ and Michael S. Simitz of Kologi & Simitz Counselors at Law in Linden, NJ. Attorney for defendant City of Elizabeth: Christina M. DiPalo of LaCorte, Bundy, Varady & Kinsella in Union, NJ.

Intersection Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff contends defendant failed to stop at stop sign and struck plaintiff's vehicle – 4 cervical disc herniations and 2 bulges; 3 lumbar herniations and 1 bulge – Chiropractic treatment – Plaintiff recovers $2,500 per high/low agreement.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to stop at a traffic control and struck the plaintiff's vehicle with such force that it caused the plaintiff significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On October 12, 2015, the plaintiff was operating her vehicle westbound on Cator Avenue in Jersey City. The plaintiff contended that the defendant negligently operated his vehicle in a careless, reckless and inattentive manner so as to fail to properly stop at a stop sign, causing a collision between the plaintiff's and defendant's vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained 4 cervical disc herniations and 2 bulges, and 3 lumbar herniations and 1 bulge. The plaintiff underwent 5-6 months of chiropractic treatment. The plaintiff presented a physician's certification indicating that the plaintiff's injuries were causally related to the subject collision and that they were permanent in nature.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant pointed to the plaintiff's 2006 motor vehicle collision resulting in a lumbar discectomy. The defendant's IME found that the plaintiff had multiple degenerative discs with protrusions in the cervical and lumbar spine.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of $15,000 reduced to $12,000 for plaintiff's comparative negligence. 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 $40,000 in the event of the jury awarding damages above that amount, and a minimum of $2,500 in the event of a defendant's verdict or an award below that amount. The jury found no cause of action in favor of the defendant; thus, the plaintiff recovered $2,500 in damages.

REFERENCE

Martinez vs. Mangal. Docket no. L-003893-17; Judge Mary K. Costello, 01-22-20.

Attorney for plaintiff: John F. Kennedy of Law Offices of Raffi T. Khorozian, PC in Fort Lee, NJ. Attorney for defendant: Mindy Fox of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Left Turn Collision

$78,679 VERDICT

Motor vehicle negligence – Left turn collision – Alleged aggravation of 2 low back herniations – Cauda equina syndrome – Emergency surgery 4 months after accident successfully resolves cauda equina syndrome – Plaintiff contends extensive lower back pain from aggravation.

Monmouth County, NJ

Liability was stipulated in this motor vehicle negligence case. The plaintiff driver in his early 30s contended that the collision aggravated herniations at L-4-5 and L-5 and L-5, S-1. The initial herniations occurred before the subject accident. The defendant maintained that the cause of the symptoms was the natural progression of the prior condition.

The plaintiff maintained that because of the aggravation, he developed cauda equina syndrome, a condition that occurs when the bundle of nerves below the end of the spinal cord known as the cauda equina is damaged, that resolved following emergency surgery approximately 4 months after the subject collision. The plaintiff asserted that although the surgery resolved the cauda equina syndrome, he will suffer severe pain for the remainder of his life.

The defendant maintained that the cause of the surgery and continuing symptoms were caused by the natural progression of the prior condition. The plaintiff began treatment for the low back one year prior to the subject accident. He had 2 prior MRI studies. The first one was 11 months before the accident and the second one was 2 months before the accident. The one performed 2 months before the incident reflected the 2 prior disc herniations. The defendant presented the radiologist who found that there were no differences between the prior films and the films taken after this accident.

The jury awarded medical bills of $78, 679. They voted no for the plaintiff on the verbal threshold and awarded no money for the injuries. The plaintiff only received economic damages or partial medical bills which have to be repaid to the ERISA lien hold.

REFERENCE

Plaintiff's orthopedic surgeon expert: Lance Markbeiter, M.D. from Eatontown, NJ. Plaintiff's spinal surgeon expert: Naser Ani, M.D. from Hazlet, NJ. Defendant's orthopedic surgeon expert: Steven Fried, M.D. from New Brunswick, NJ. Defendant's radiology expert: Paresh Rijsinghani, M.D. from Middletown, NJ.

Kitchen vs. Somma. Docket no. MON-L-1949-18; Judge Owen McCarthy, 05-28-21.

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

Multiple Vehicle Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Multiple-vehicle rear end collision – Cervical sprain at C4-5, C5-6; thoracic bulge T10-11; lumbar disc herniation L2-3, L3-4 – Injuries confirmed by MRI as well as positive EMG – Epidural injections in cervical and lumbar spine.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury.

On May 18, 2015, the plaintiff, a 55-year-old man, was stopped at a red light with 2 cars in front of him. The defendant failed to stop behind the plaintiff. The defendant struck the plaintiff's vehicle from the rear, pushing it under the rear of the car in front of the plaintiff. The plaintiff's vehicle was sandwiched between both vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained cervical sprain at C4-5 and C5-6; thoracic bulge at T10-11; lumbar disc herniation at L2-3 and L3-4 all confirmed by MRI as well as positive EMG. The plaintiff was out of work for 2 weeks due to his injuries. The plaintiff underwent epidural injections in the cervical and lumbar spine. The plaintiff claimed an ERISA lien of $11,419.

The defendant argued that the plaintiff's injuries were pre-existing and caused by a prior 2013 accident in which the plaintiff was involved. The defendant asserted that the plaintiff had only suffered sprains and strains that had resolved with no permanency.

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

REFERENCE

Jover vs. Valdes. Docket no. L-004728-17; Judge Kimberly Espinales-Maloney, 07-31-19.

Attorney for plaintiff: J. Andrew Velez of Alonso & Navarrete, LLC in North Bergen, NJ. Attorney for defendant: Thomas A. Morrone of Chasan Lamparello Mallon & Cappuzzo, PC in Seacaucus, NJ.

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Parking Lot Exit Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Parking lot exit collision – Failure to yield as defendant driver is exiting parking lot – Meniscal tear – Knee replacement – UIM case.

Warren County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her early 60s, contended that the defendant driver failed to yield before exiting a parking lot. The plaintiff contended that the collision resulted in her sustaining permanent injury

The plaintiff maintained the defendant crashed into plaintiff's vehicle, causing the plaintiff's vehicle to be propelled onto the shoulder, where it struck the curb, exited the roadway, crossed the sidewalk and finally came to rest on the front lawn/embankment of Starbucks, approximately 25 feet from the point of impact. The plaintiff asserted that she suffered a medial meniscal tear and that after conservative treatment proved to be inadequate, she underwent knee replacement surgery.

The plaintiff claimed that she will suffer permanent pain and difficulties. The plaintiff was not working at the time of the accident

The defendant had $15,000 in coverage, which was paid. The plaintiff had a $100,000 in UIM protection and $85,000 was available. The case settled before the retention of experts for the available amount

REFERENCE

Medina vs. Hall. Docket no. WRN-L-327-20, 10-25-21.

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

Rear End Collision

$100,000 VERDICT

Motor vehicle negligence – Rear end collision – Torn rotator cuff – C5-6 disc protrusion requiring fusion surgery – Plaintiff receives treatment in Chile and then returns to U.S.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 67-year-old female passenger, asserted that the defendant driver was responsible for striking the vehicle in which she was a passenger from behind with such force that it caused significant, permanent injury. The defendant contested the nature, extent and causation of the plaintiff's damages.

On June 19, 2014 the plaintiff was the passenger in a vehicle traveling on the Main Avenue ramp from Route 3 West in Clifton. The defendant was operating a vehicle traveling behind the vehicle in which the plaintiff was a passenger. The plaintiff's vehicle stopped for oncoming traffic whereupon, the plaintiff claimed, the defendant struck the rear of the plaintiff's vehicle.

The plaintiff asserted that the defendant was negligent in failing to maintain a safe traveling speed and distance between vehicles such that he was unable to stop without striking the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries and the need for surgery. As a result of the collision, the plaintiff sustained a torn rotator cuff; C5-6 disc protrusion requiring fusion surgery.

The plaintiff treated in Chile for her injuries and other unrelated medical issues and then returned to the U.S. The defendant argued that the plaintiff's injuries were not significant or permanent in nature, just sprains/strains, and that the plaintiff failed to produce any records from treatments received in Chile.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $35,000. Following arbitration the parties agreed to an expedited trial including a high/low agreement wherein the plaintiff would receive a minimum of $0 and a maximum of $100,000 in damages. The matter went to trial wherein the jury found in favor of the plaintiff and awarded $100,000 in damages against the defendant.

REFERENCE

Iniguez-Guerrero vs. Tulli. Docket no. L-000751-17; Judge Estela M. De La Cruz, 10-11-19.

Attorney for plaintiff: Nicholas A. Mattera of Nicholas A. Mattera, LLC in Paterson, NJ. Attorneys for defendant: Emily S. Barnett and Jacqueline Jung Choi of Law Offices of Viscomi & Lyons in Morristown, NJ.

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Rear end collision – Cervical and lumbar herniations – Surgery.

Morris County, NJ

In this action for motor vehicle negligence, the 50-year-old plaintiff contended that the defendant driver negligently struck him in the rear. The plaintiff maintained that he suffered cervical and lumbar herniations with radiculopathy.

The plaintiff related that he was afraid of going to the hospital by ambulance because of COVID-19 and went to the hospital by private vehicle. The plaintiff asserted that despite conservative care and injections, the cervical difficulties continued to progress. The plaintiff required an anterior C4-C5 and C5-C6 discectomy, partial C5 and C6 corpectomy and fusion procedure with instrumentation. The plaintiff claimed he will nonetheless suffer permanent symptoms.

The plaintiff was not working at the time of the accident.

The defendant had $25,000 in coverage, which was paid. The plaintiff had $100,000 in UIM protection and $75,000 was available. The case settled with the UIM carrier for the available coverage approximately 10 months after the accident occurred.

REFERENCE

Gonzalez vs. Rodriguez, et al. Docket no. MRS-L-1635-21, 11-21-21.

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

$20,000 RECOVERY

Motor vehicle negligence – Rear end collision – Disc bulge at C4-5, C6-7 and L3-4 – Disc herniation at L4-5 – Epidural injections.

Bergen County, NJ

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

On November 28, 2015, the plaintiff was traveling on Route 17 in Hasbrouck Heights. The defendant negligently failed to stop behind the plaintiff and struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained disc bulges at C4-5, C6-7 and L3-4 and a disc herniation at L4-5. The plaintiff treated with cervical epidural injections.

During discovery the plaintiff made an offer to take judgment in the amount of $25,000. The offer was not accepted and the matter proceeded. The defendant challenged the nature, extent and causation of the plaintiff's injuries. The plaintiff was in her 60s and the defendant argued that she had degenerative disc issues rather than traumatic injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $60,000. Following arbitration and prior to trial, the parties settled for $20,000.

REFERENCE

Gravina vs. Siri, et al. Docket no. 006829-17; Judge Mary F. Thurber, 01-08-20.

Attorney for plaintiff: Eric J. Plantier of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: Franzois D. Prophete of Law Offices of Eric H. Bennett in Hackensack, NJ.

Truck/Auto Collision

$400,000 RECOVERY

Motor vehicle negligence – Truck/auto collision – Plaintiff driver struck in rear by commercial pickup truck – Lumbar herniation – Injections – Fusion surgery – 2 cervical bulges – Injections.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her late 30s, contended that she sustained injuries when her vehicle was struck in the rear by the defendant driver of a commercial pick-up truck.

The plaintiff contended that she suffered a lumbar herniation and 2 cervical bulges. The plaintiff underwent injections in both areas and maintained that a lumbar fusion was none-the-less necessary. The plaintiff did not undergo cervical surgery.

The plaintiff maintained that she will suffer permanent radiating pain in a leg and some continued pain in the cervical area. The defendant asserted that the plaintiff made a much better recovery than alleged.

The plaintiff made no income claims.

The case settled prior to trial for $400,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Jeffrey Pan, M.D. from Edison, NJ.

Jimenez de Mendez vs. Ever Ready Electric, Inc., et al. Docket no. MID-L-8395-18.

Attorney for plaintiff: Paul M. Brandenburg of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

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PREMISES LIABILITY

Fall Down

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls on cracked, broken sidewalk outside defendant's premises – 2 mm, intra-articular fracture of olecranon treated with open reduction and internal fixation including hardware – Permanent scar – 4 months of lost work – Arbitration finds defendant 80% liable with $175,000 in gross damages.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant negligently failed to maintain a public walkway on its premises and allowed a hazardous condition to exist that caused the plaintiff to fall and sustain injury. The defendant denied liability claiming that there was no defect in the sidewalk and that the plaintiff was responsible for her own injury by failing to keep a proper lookout where she was walking.

On December 19, 2015, the plaintiff was walking on a sidewalk located at 26 West Palisade Avenue in Englewood. The plaintiff maintained that the defendant owner, or their agents, allowed a cracked, broken, defective sidewalk to exist on the property upon which the plaintiff fell and sustained serious, permanent bodily injury.

As a result of the fall, the plaintiff sustained a 2 mm, intra-articular fracture of the olecranon. The plaintiff's injury was treated with open reduction and internal fixation including a plate and screws. The plaintiff has a permanent scar on her elbow and was out of work for 4 months due to her injury. The plaintiff claimed $3,883 in lost wages. A subsequent fall in May, 2018 inflamed the subject injury and the plaintiff missed an additional 16 weeks of work.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of $175,000 including injury damages of $150,000 and economic damages of $25,000, reduced to $140,000 net after accounting for the plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Monroe vs. Tree Co/Secrets, LLC, et al. Docket no. L-008604-17; Judge Robert L. Polifroni, 11-13-19.

Attorney for plaintiff: E. Michael Garrett, Jr. of Barrett Lazar, LLC in Maywood, NJ. Attorney for defendant: Danielle M. DeMarzo of Law Office of Gerald F. Strachan in Woodbridge, NJ.

Hazardous Premises

$36,185 ARBITRATION AWARD

Premises liability – Hazardous premises – Plaintiff falls due to large pothole in defendant's parking lot – Non-displaced fracture of right fifth metatarsal – 8 weeks of casting, one month in boot and cortisone injections.

Middlesex County, NJ

In this premises liability case, the plaintiff business invitee asserted that she sustained serious injuries when she fell due to the defendant shopping center's failure to maintain the premises or warn patrons of a hazard in the parking lot. The defendant denied liability, claiming the plaintiff was inattentive to where she was walking and was responsible for her own injury.

On June 18, 2018, the plaintiff tripped and fell in a large pothole in the parking lot surface at the defendant shopping center on Oak Tree Avenue in South Plainfield. The plaintiff contended that the defendant negligently allowed a dangerous condition to exist on the premises and failed to maintain the parking lot in a safe fashion for its patrons. The plaintiff alleged that the fall resulted in permanent injuries. The plaintiff sustained a non-displaced fracture of the right fifth metatarsal. She was treated with 8 weeks of casting; wore a boot for one month and had cortisone injections.

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 $50,000 reduced to $35,000 for plaintiff's comparative negligence. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $35,000 plus $1,185 in interest, for a total recovery of $36,185.

REFERENCE

Norat vs. Skyline Management Corp. et al. Docket no. L-005457-18; Judge Michael V. Cresitello, Jr., 01-10-20.

Attorney for plaintiff: Dennis A. Drazin of Drazin and Warshaw in Red Bank, NJ. Attorney for defendant: Paul J. Soderman of Paul J. Soderman, LLC in Roseland, NJ.

Negligent Maintenance

$72,500 RECOVERY

Premises liability – Negligent maintenance – Plaintiff falls on wet floor caused by water leak in bathroom of defendant's premises – Aggravation of cervical and lumbar disc condition – Meniscus tear – Fracture of distal fibula – Casting for fracture with poor result; ongoing issues.

Essex County, NJ

In this premises liability case, the plaintiff asserted that the defendant property owner/operator failed to maintain the property in a safe condition for the public and that the plaintiff fell in the defendant's restroom due to a water leak that caused the floor to be slippery and dangerous. Consequently, the plaintiff sustained serious injuries. The defendant denied liability and asserted that the plaintiff was responsible for his own injuries because he failed to observe and open and obvious condition and avoid stepping in the accumulated water on the floor and that a reasonable person could anticipate a bathroom floor near urinals to be wet or slippery.

On May 18, 2016, the plaintiff was lawfully on the defendants' premises located at 20 Toler Place in Newark. The plaintiff contended that the defendant negligently failed to maintain and repair the premises such that there was water leaking from a urinal in the restroom. The plaintiff slipped and fell on the wet floor, sustaining permanent injuries.

The plaintiff sustained aggravation of cervical and lumbar disc condition; meniscus tear; and fracture of the distal fibula. The plaintiff's fibula fracture was treated with casting with a poor result of non-union of the fracture. The plaintiff claimed $35,000 in unpaid medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of $125,000 reduced to $100,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $72,500.

REFERENCE

Woods vs. Community Education Centers, Inc. et al. Docket no. L-006442-17; Judge Keith E. Lynott, 02-18-20.

Attorney for plaintiff: Jonathan S. Druckman of Druckman & Hernandez, P.C. in Elizabeth, NJ. Attorney for defendant: Howard B. Mankoff of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

DEFENDANT'S VERDICT

Premises liability – Negligent maintenance – Plaintiff slips and falls on accumulated water she contends came from faulty irrigation system leaking into basement of building – Plaintiff claims unresolved, traumatic brain injury with complete disability from work – Defendant contends it was not responsible for irrigation system that leaked and injuries not permanent.

Burlington County, NJ

In this premises liability case, the plaintiff, a Financial Center Manager, asserted that the defendants negligently maintained the premises where the plaintiff worked, such that she fell on water from a faulty irrigation system, sustaining injury. The plaintiff brought suit against the property owner, the bank located on the property, and several contractors and subcontractors involved in the maintenance of the property. The plaintiff settled the matter with all defendants except the defendant landscaping subcontractor. The matter went to trial only as to the defendant subcontractor landscaping company responsible for maintenance of the property's irrigation system.

On June 20, 2015, the plaintiff was on the premises of the bank where she worked and was in the employee break room, located in the basement of the building, when she fell on an accumulation of water adjacent to the sink in the restroom. The plaintiff claimed that, after she had fallen, she noticed that there was water coming through the basement wall, which was later discovered to be from an exterior pipe of the property's irrigation system. The plaintiff did not expect there to be an accumulation of water in an area where there shouldn't be any, and could not have anticipated falling due to water on the floor. The plaintiff alleged that she fell and struck her head, and that the force of the impact resulted in permanent injuries. The defendant landscaping subcontractor denied liability and maintained that other individuals were responsible for the defective design and installation of the irrigation system that allegedly leaked, causing the plaintiff injury.

As a result of the fall, the plaintiff claimed she sustained a traumatic brain injury. The plaintiff was diagnosed with; suspected diffuse axonal injury; post-concussion syndrome; and adjustment disorder with depression. The plaintiff claimed that she continues to

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suffer fainting spells and seizures due to her injury. The plaintiff initially returned to work shortly after the subject fall but had a fainting spell attributed to her underlying brain injury and was unable to work since then, accruing lost wages from that time until the time of filing of the subject action.

During the course of the case, the plaintiff made an offer to take judgment from the landscaping contractor in the amount of $1 million. The offer was not accepted and the matter proceeded. The defendant landscaping subcontractor contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent in nature and presented evidence of the plaintiff participating in activities that would be impossible given her contended injuries. The defendant contended that the plaintiff had suffered a mild concussion which resolved with rehabilitation leaving the plaintiff with no limitations on her ability to work or participate in activities of daily living.

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

REFERENCE

Morciglio vs. CBRE, Inc., et al. Docket no. L-001298-17; Judge Aimee R. Belgard, 02-18-20.

Attorney for plaintiff: Richard J. Albuquerque of D'Arcy Johnson Day in Egg Harbor, NJ. Attorney for defendant: Michael J. Dunn of Law Offices of Michael J. Dunn, LLC in Cherry Hill, 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

$6,000,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – ORGAN DONATION COORDINATION NEGLIGENCE – DEATH AS RESULT OF DEFENDANTS' NEGLIGENCE IN DISCLOSING DONOR ORGAN INFECTED WITH PARASITE – WRONGFUL DEATH OF 73-YEAR-OLD DONOR RECIPIENT.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant organ donor coordinator and company were negligent in failing to notify the decedent and his medical team that the lung that had been supplied for transplant was from an individual who was later determined to be positive for a parasitic infection. The failure to warn resulted in the decedent's untimely death. The defendant denied the allegations and maintained that it was not negligent.

The decedent died as a result of septic shock resulting from the parasitic infection. The plaintiff brought suit against the donor coordinator and quality control specialist alleging negligence and seeking damages for the decedent's wrongful death. The defendants maintained that they were not negligent as the information concerning the medical condition of the donor had been uploaded to the internet database. The defendants maintained that if the recipient and/or his medical team failed to review that information they should not be held accountable.

The parties agreed to resolve the plaintiff's claims for the sum of $6,000,000 in a confidential settlement between the parties prior to a trial.

REFERENCE

Estate of Donor vs. Organ Coordinator, et al., 09-11-21.

Attorneys for plaintiff: Andrew C. Meyer, Jr. and Nicholas D. Cappiello of Lubin & Meyer in Boston, MA.

$2,555,000 VERDICT – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – EMERGENCY ROOM PHYSICIAN NEGLIGENTLY FAILED TO REQUEST NEUROLOGICAL CONSULT WHEN CT-SCAN DID NOT SHOW SIGNS OF STROKE WHEN PLAINTIFF PRESENTED WITH SEVERE HEADACHE – NEED FOR CRANIECTOMY – LOSS OF COORDINATION – GREATLY REDUCED MUSCLE FUNCTION IN LEFT ARM.

Nassau County, NY

This was medical malpractice action involving a then-50-year-old plaintiff. The plaintiff, who woke up with a severe headache that was followed by difficulties walking, contended that the defendant emergency room physician negligently failed to request a neurological consult when a CT-scan did not show signs of a stroke. The plaintiff had a stroke in the cerebellum, the early signs of which might not be evident on a CT-scan and was discharged with a diagnosis of gastritis. The defendant denied negligence. The defendant asserted that in addition to properly interpreting the CT-scan, she properly conducted a full stroke assessment, which was negative.

The plaintiff maintained that over the next 35 hours, the symptoms deteriorated, that he developed hydrocephalus and required a craniectomy to drain the fluid. The plaintiff asserted that although the patient was outside the window of TPA because he awoke with symptoms, had the defendant timely realized he was having stroke, they could have monitored his intracranial pressure and promptly responded to any increase in pressure with treatments including mannitol. The plaintiff maintained that such treatment would have prevented the development of hydrocephalus.

The plaintiff maintained that he lost mobility and suffered greatly reduced muscle function in his left non-dominant arm and hand and his left leg. The plaintiff

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claimed that although he has regained a significant amount of strength, he continues to suffer a loss of coordination and often drops objects.

The jury found for the plaintiff and awarded $2,555,000, including $730,000 for past lost income, $320,000 for future lost income, $800,000 for past pain and suffering and $700,000 for future pain and suffering.

REFERENCE

Plaintiff's economist expert: Kristin Kucsma from Livingston, NJ. Plaintiff's emergency medicine expert: Alan L. Schechter, M.D. from Bronx, NY. Plaintiff's neurologist expert: Alan Hausekenect, M.D. from Hewlett, NY. Plaintiff's radiology expert: Thomas Ptak, M.D. from Baltimore, MD.

Carroll vs. South Nassau Community Hosp., et al. Index no. 601207/15, 04-22.

Attorney for plaintiff: Ben Bartolotta of Bamundo Zwal Schermerhorn & Caffrey, LLP in New York, NY.

$1,750,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – MINOR PLAINTIFF SUFFERS JAUNDICE AND MEDICAL COMPLICATIONS AFTER LIVER DISEASE MISDIAGNOSED – FAILURE TO DIAGNOSE BILIARY ATRESIA – JAUNDICE – LIVER FAILURE – SURGERY REQUIRED.

Kings County, NY

In this medical malpractice action, the minor plaintiff sustained jaundice and medical complications after neonatal liver disease was not diagnosed by the defendant hospital. The defendants generally denied negligence.

The plaintiff mother brought the minor plaintiff to be evaluated at the defendant hospital, at which time his condition was determined not to be jaundice by the defendant physician. The minor plaintiff's symptoms persisted, at which point he began to display further medical issues related to liver disease and failure. It was discovered at a later time that the minor plaintiff was suffering a liver disease of unknown origin, called biliary atresia, which had progressed significantly and had become life-threatening.

Consequently, the minor plaintiff sustained injuries, including jaundice and early stages of liver failure. The minor plaintiff's injuries required emergency liver transplant surgery.

The parties entered into a settlement for $1,750,000.

REFERENCE

N.T., An Infant By His Mother And Natural Guardian, Khadija Temple, And Khadija Temple, Individually vs. James Gough, Richard Clare, Allied Physicians Group, Pllc. Index no. 501702/2020; Judge Genine Edwards, 09-13-21.

Attorney for plaintiff: Paul A. Simonson of Simonson Goodman Platzer, PC in New York, NY. Attorney for defendant: Alexandra Formica of Amabile & Erman, P.C. in Staten Island, NY.

PRODUCT LIABILITY

DEFENDANT'S VERDICT – PRODUCT LIABILITY – MANUFACTURING DEFECT – PLAINTIFF'S DECEDENT KILLED WHEN VEHICLE IN WHICH HE WAS PASSENGER STRUCK TREE AFTER FRONT TIRE SUSTAINS TREAD SEPARATION DUE TO FAULTY MANUFACTURING – WRONGFUL DEATH OF 76-YEAR-OLD MALE.

Oklahoma City County, OK

In this action for product liability, the plaintiff driver and the estate of the decedent filed separate actions against several defendants related to the manufacturer, distribution and maintenance of the tire and vehicle that was involved in the single vehicle accident that caused serious injury to the driver and death to the passenger. The actions were consolidated by the court. The plaintiffs maintained that the defendant negligently manufactured a defective tire that suffered a tread separation causing a single vehicle accident resulting in injury and death to driver and passenger respectively. The defendants denied all allegations and only the claim against the tire manufacturer remained at trial.

The plaintiffs maintained that the tire at issue was defective and unreasonably dangerous. The tire contained hidden defects including trapped air between the internal components of the tire indicating improper bonding with the rubber causing premature degradation of the tire. Further the plaintiffs alleged that the tire was defective and unreasonably dangerous due to the improper top belt to tread ratio and lack of a complete nylon cap ply. These defects all combined to cause the separation within the tire. The plaintiffs alleged that the defendant knew of these defects and sold the tire anyway.

The plaintiff driver settled his claim out of court. The only claim that remained at trial was the wrongful death claim of the plaintiff against the defendant tire manufacturer. The jury found no negligence against the defendant Michelin.

REFERENCE

Defendant's accident reconstruction expert: Scott Bailo. Defendant's tire expert: Joseph Grant.

The Estate of Clifford Schick by Gary Schick vs. Michelin North America. Case no. CJ-2018-2621; Judge Brent Dishman, 04-12-22.

Attorney for plaintiff: Brent Dishman of Denney & Barrett in Norman, OK. Attorney for defendant: Haylie Treas of Reed Smith, LLP in Oklahoma City, OK.

MOTOR VEHICLE NEGLIGENCE

$68,586,370 VERDICT – MOTOR VEHICLE NEGLIGENCE – SINGLE VEHICLE COLLISION – CATASTROPHIC INJURIES – PERMANENT QUADRIPLEGIA.

Miami-Dade County, FL

In this motor vehicle negligence case, the plaintiff asserted that the defendants were negligent or vicariously liable for the collision which rendered the plaintiff a quadriplegic. As a result of the collision, the plaintiff suffered a spinal cord injury and was rendered permanently quadriplegic. The plaintiff will require lifelong care.

The plaintiff brought suit against the owners of the vehicle and the corporate entity that owned the vehicle; the driver of the vehicle; and a passenger who distracted the driver, contributing to the accident. The defendant owners of the vehicle, employers of the defendant driver, failed to appear or answer.

The plaintiff filed a motion for liability on the pleadings and the motion was granted, finding all the defendants liable for the negligence that caused the accident. The case was set down for trial as to damages only.

The jury awarded damages in the amount of $68,586,370 broken down as follows: $4,424,370 in past medical expenses; $2,112,000 in future medical expenses; $21,900,000 in past non-economic damages and $40,150,000 in future non-economic damages.

REFERENCE

Marin vs. Guzman, et al. Case no. 2010046308CA02; Judge William Thomas, 02-28-22.

Attorneys for plaintiff: Ronald D. Rodman and Raquel Y. Reyes-Lao of Friedman, Rodman & Frank, P.A. in Miami, FL.

$3,800,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SIDESWIPE COLLISION – DEFENDANT DRIVER OF BOX TRUCK PULLING FROM CURB COLLIDES WITH HOST VEHICLE – SEVERE AGGRAVATION OF LUMBAR AND CERVICAL HERNIATIONS – FUSION SURGERIES TO BOTH AREAS – NO INCOME CLAIMS.

Essex County, NJ

In this action for motor vehicle negligence, the plaintiff front seat passenger in her late 30s contended that the defendant driver of a box truck pulled from a parallel parking spot without making proper observations, striking the right front portion of the host car. The plaintiff had suffered cervical and lumbar herniations in a fall approximately 8 year earlier, which she indicated were exacerbated by another MVA before the subject collision. The plaintiff contended that the subject accident caused an aggravation that was sufficiently severe to prompt a cervical and a lumbar fusion. The defendant denied that the subject collision was related to the need for surgery, pointing to minimal impact damage. The defendant had $1,000,000 in primary coverage and a $5,000,000 umbrella policy.

The plaintiff testified in her deposition that she was relatively active until the subject collision occurred, and that the after accident, the radiating pain and weakness became severe. The plaintiff, who was on disability prior to the collision, made no income claims

The case settled prior to trial for 3,800,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Steven Schiebert, D.O. from Bridgewater, NJ.

Taylor vs. Lomma. Docket no. ESX-L-4091-18, 02-10-22.

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

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$2,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – 12-YEAR-OLD CROSSWALK PLAINTIFF RUN OVER BY BUS AFTER BUS DRIVER RESUMES WHEN TRAFFIC LIGHT TURNS GREEN – PELVIC FRACTURES – SURGERIES – SIGNIFICANT SCARRING TO HIP AND THIGH.

Somerset County, NJ

This motor vehicle negligence case involved a then-12-year-old plaintiff crosswalk pedestrian who contended that the defendant bus driver negligently failed to make to make proper observations as he proceeded from the left turn lane when his traffic light turned green. The plaintiff maintained that as a result, she was struck, suffering a pelvic fracture that required an open reduction and internal fixation. The infant plaintiff also suffered significant scarring to the hip and thigh. The defendant indicated in discovery that when his light turned green and he resumed, he did not see any pedestrians, but realized the accident occurred when he heard a thump and screaming. The infant plaintiff was under a rear wheel. The defendant was attempting to show that the infant plaintiff was negligent for being on her cell phone when the accident occurred.

The plaintiff also suffered significant scarring to the thigh and hip which the plaintiff maintained is permanent despite some improvement from revision surgery.

The case settled for $2,500,000.

REFERENCE

Skwirut vs. Reed. Docket no. SOM-L-443-19, 03-22-21.

Attorney for plaintiff: Brett Greiner of Levinson Axelrod in Edison, NJ.

$2,313,000 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/DISABLED TRACTOR TRAILER COLLISION – PLAINTIFF'S DECEDENT STRIKES REAR OF DEFENDANT'S DISABLED VEHICLE ON SHOULDER OF TEXAS HIGHWAY – FAILURE TO USE PROPER WARNING SAFETY DEVICES TO INDICATE DISABLED VEHICLE ON SIDE OF ROAD – WRONGFUL DEATH OF 37-YEAR-OLD MALE.

Harris County, TX

In this action for motor vehicle negligence, the plaintiff's decedent was traveling home from his employment when his vehicle struck the rear of the defendant's disabled truck on the shoulder of the road. The estate of the decedent maintained that the defendants failed to properly warn that the disabled vehicle was on the shoulder of the road. The defendants argued it was the actions of the decedent that caused the tragic accident.

The estate of the decedent, comprised of his common law wife and 3 minor children, maintained that the defendant driver was negligent in failing to park his vehicle in a safe location, failing to place warning devices such as flares or hazard triangles around the disabled vehicle within a reasonable amount of time and failing to properly operate and control the vehicle. In addition, the estate maintained that the defendant transportation company was negligent in hiring, training and supervising the defendant driver.

The defense maintained that the plaintiff fell asleep while driving due to his working an almost 12 hour overnight shift at his job.

The jury found that the defendant was 80% negligent and the plaintiff's decedent was 20% negligent. The jury awarded the plaintiff $2,313,000 which was reduced accordingly to $1,976,460.

REFERENCE

The Estate of Noe Carrizales by Michelle Raines vs. Jerson Martinez and Rush Transport. Case no. 201868100; Judge Cory Sepolio, 04-04-22.

Attorney for defendant: Matthew Paul Skrabanek of Pierce Skrabanek, PLLC in Houston, TX. Attorney for defendant: Robert D. Brown of Donato Brown Pool & Moehlmann in Houston, TX.

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PREMISES LIABILITY

$1,360,000 VERDICT – PREMISES LIABILITY – SLIP AND FALL – CERVICAL DISC HERNIATIONS – ROTATOR CUFF TEAR – CERVICAL RHIZOTOMY AND ABLATION.

Broward County, FL

In this premises liability case, the plaintiff, a 63-year-old woman, asserted that the defendant restaurant failed to maintain its premises in a safe condition for customers such that the plaintiff fell on the premises and suffered significant, permanent injury. The defendant denied any notice, actual or constructive, of a transitory substance on the floor.

As a result of the fall, the plaintiff was taken to the hospital by ambulance. She sustained cervical disc herniations at C4-5, C5-6 and right shoulder rotator cuff tear. The plaintiff was recommended for 2-level cervical anterior cervical discectomy and fusion. The plaintiff ultimately underwent cervical rhizotomy and ablation and shoulder surgery to repair the rotator cuff tear. She was scheduled to undergo the discectomy and fusion at the time of trial.

The jury assigned 60% liability to the defendant and 40% to the plaintiff with gross damages of $1,360,000 broken down as follows: $260,000 in past medical expenses; $500,000 in future medical expenses; $500,000 in past pain and suffering; and $100,000 in future pain and suffering. The jury's award was reduced to $816,000 for plaintiff's comparative negligence.

REFERENCE

Rodriguez vs. Doherty Apple South Florida, LLC. Case no. CACE17021410|; Judge Carlos A. Rodriguez, 03-03-22.

Attorney for plaintiff: Joseph R. Dawson of Law Offices of Joseph R. Dawson in Fort Lauderdale, FL. Attorney for defendant: David L. Luck of Lewis Brisbois Bisgaard & Smith, LLP in Coral Gables, FL.

$1,000,000 RECOVERY – PREMISES LIABILITY – HAZARDOUS PREMISES – MINOR DECEDENT DROWNS AFTER FALLING INTO ABOVE GROUND POOL ON DEFENDANT'S PREMISES – WRONGFUL DEATH OF 4-YEAR-OLD MALE.

Kings County, NY

In this premises liability action, the plaintiff's minor decedent drowned in an above ground pool while visiting the defendant's premises. The defendants generally denied negligence.

While the plaintiffs were visiting the property, the minor plaintiff was outside in the pool area, which existed in a location that could not be seen from the house. While in the area of the pool, the minor plaintiff slipped on an accumulation of water on the wood deck, causing him to fall into the pool. The minor plaintiff then drowned.

The parties entered into a settlement for $1,000,000.

REFERENCE

M. B., Infant, Deceased, The Estate Of M.B., Infant, Anna Tumanova, Administratrix Awaiting Appointment And Mother/Natural Guardian vs. Mikhail Bucharov, Veronika Bocharov Fedorova. Index no. 517613/2020; Judge Francois A. Rivera, 04-04-22.

Attorney for plaintiff: William Pager of Law Offices of William Pager in Brooklyn, NY. Attorney for defendant: Mikhail Pinkusovich of McMahon Martine & Gallagher, LLP in Brooklyn, NY.

ADDITIONAL VERDICTS OF INTEREST

FELA

$21,000,000 GROSS VERDICT – FELA – RAILROAD EMPLOYEE SLIPS FROM TRAIN'S STIRRUP – TRAUMATIC RIGHT LEG AMPUTATION.

Philadelphia County, PA

The plaintiff in this FELA action maintained that his traumatic leg amputation resulted from the negligence of the defendant railroad company in failing to have proper safety protocols in place during train yard maneuvers. As a result, when the plaintiff slipped from the train's stirrup, the train failed to stop and the plaintiff's leg went under the train car where it was amputated by a train wheel. The defendant argued that it was the actions of the plaintiff that caused the incident.

The plaintiff maintained that the defendant was negligent in unsafely operating the train car on which the plaintiff was riding, failing to have proper safety protocols in place during pull procedures, ordering the plaintiff, a remote control operator, to work with a yard crew thereby changing the nature of his job as-

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signment, creating a work crew with two conductors leaving it unclear who was in charge, failing to the supervise the train engineer to ensure that he was safely operating the train in a way that was safe for the plaintiff to ride on the side, and failing to provide the plaintiff and the crew with a job briefing.

The jury returned a verdict in favor of the plaintiff for $21,000,000. The plaintiff was found 2.25% contributorily negligent, so the net award was $20,527,500.

REFERENCE

Ali Brown, Sr. vs. Conrail and Consolidated Rail Corporation. Case no. 190202687; Judge Charles Cunningham, 03-17-22.

Attorney for plaintiff: William Myers of The Myers Law Firm in Philadelphia, PA. Attorney for defendant: Richard Hohn of Hohn & Scheuerle in Philadelphia, PA.

Toxic Tort

$15,000,000 RECOVERY – TOXIC TORT – ENVIRONMENTAL LAW – MTBE LEAKED FROM UNDERGROUND STORAGE CONTAINERS AT GAS STATIONS, RESULTING IN DECADES OF SOIL AND GROUNDWATER CONTAMINATION.

District County, RI

In this action, the Rhode Island Attorney General sued several of the nation's largest gasoline refinery companies over alleged pollution of soil and groundwater with a gasoline additive. The defendants denied the accusation. The state has resolved claims against 3 such parties with a settlement.

Methyl tertiary-butyl ether (MTBE) is a gasoline additive used by companies including the defendants Shell, Sunoco, and CITGO in their gasoline. The plaintiff State of Rhode Island asserted that MTBE leaked from underground storage containers at gas stations, resulting in decades of soil and groundwater contamination. Its presence in drinking water has been shown to pose serious health risks, and it is considered a probable carcinogen for humans. MTBE was banned in Rhode Island in 2007, but allegedly continued in use throughout the state.

The State of Rhode Island's claims against Shell, Sunoco, and CITGO were resolved with a settlement for $15 million. The consent judgment stipulates the distribution and use of the settlement by the Rhode Island Department of Environmental Management (DEM) to be used for emergency response and ongoing MTBE contamination remediation efforts. Litigation against the remaining companies is ongoing.

REFERENCE

State of Rhode Island vs. Atlantic Richfield Company, et al. Case no. 1:17-cv-00204-WES-PAS, 04-11-22.

Attorney for plaintiff: Alison B. Hoffman of Rhode Island Office of the Attorney General in Providence, RI.