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SUMMARIES WITH TRIAL ANALYSIS

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

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

VERDICTS BY CATEGORY

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Summaries with Trial Analysis

$12,500,000 RECOVERY – MEDICAL MALPRACTICE – PEDIATRICS – FAILURE TO TIMELY DIAGNOSE AND RESPOND TO ACUTE COMPARTMENT SYNDROME FOR 12 HOURS – CHILD SUFFERS IRREVERSIBLE ISCHEMIC INJURY LEADING TO BELOW-THE-KNEE AMPUTATION – RECOVERY FOR PARENTS EMOTIONAL DISTRESS.

Essex County, NJ

This was a medical malpractice action involving a then-5-year-old child who had been admitted for the removal of his tonsils and adenoids. The child, who had asthma, suffered an anesthesia-related complication in the O.R. which necessitated emergent resuscitative measures including administering epinephrine through a vascular catheter or arterial line. In order to gain vascular access, multiple sticks with a needle to made to both femoral arteries. The child was successfully stabilized and transferred to the PICU. The defendants conceded that the multiple sticks to the femoral arteries presented a risk for development of blood clots and they were under a duty to monitor the boy's perfusion for signs of circulatory impairment. The plaintiff maintained that the defendants failed to properly assess the child's circulation and recognize that he presented with signs of acute compartment syndrome, a medical emergency requiring immediate intervention. As a result of the defendant's negligence, the child suffered extensive ischemic injury from the loss of circulation necessitating an above-the-knee amputation.

Specifically, at 9:00 a.m., the child, sedated and intubated, was admitted to the PICU where he had normal circulation until 2:00 p.m., when a nurse detected a decrease in pulse, and change in temperature and color. The attending physician was notified of this change in condition. However, at 4:00 p.m., when the nurse detected another decrease in pulse she did not report it to the physician. Throughout the afternoon and evening, the boy's mother was alarmed by his cool right foot and leg, and a blue discoloration mark that worsened over time, but her reports that something was wrong were dismissed by the nurses and doctor. The plaintiff contended that the failure to properly monitor and report the child's changes in circulation and worsening conditions led to the development of acute compartment syndrome.

It was not until the following morning at about 3:00 a.m. when the mother and father raised the alarm, refusing to have their concerns dismissed and insisting on another doctor and second opinion that the loss of pulse was detected. At that point, vascular consult was called which led to an emergent vascular surgery – a 4-compartment fasciotomy. However, the vascular surgeon found there was extensive ischemic injury from the loss of circulation and told the parents that their child would most likely lose his leg. Following the emergent surgery, the child was airlifted to Children's Hospital of Pennsylvania where he remained for 2 and half months. He underwent an intensive course of treatment to save as much of the leg as possible, and after the below-the-knee amputation and skin graft surgery, he went through rehabilitation

The plaintiff's proofs included a detailed timeline of the child's condition, the circulatory assessments, change in condition and when he was seen by medical staff. The plaintiff's proofs included that despite the pediatric hospitalist having been told to closely monitor the child's leg, she did not see the child for a period of 7 hours and did not check the nurses' circulatory assessments. The plaintiff asserted that the nurses failed to report to the doctors' their on-going abnormal circulatory assessments. Plaintiff's discovery included production of the audit trail of the electronic medical record and deposition of hospital representative with regard to the entries in the audit trail which demonstrated critical facts for the timeline.

The plaintiff's damages claims for the child included pain and suffering, loss of enjoyment of life, permanent disability and future employment limitations for which a life care plan and vocational rehabilitation report was presented. The plaintiff parents, having witnessed the medical malpractice and its aftermath, asserted Portee claims for their emotional distress as supported by psychological evaluation reports.

The case settled prior to trial for a total of $12,500,000. The Court appointed attorney, Scott Parsons, Esq., as appointed guardian ad litem to evaluate the claims make recommendations as to apportionment of the settlement. The Court accepted the Guardian's recommendation that $10 million be awarded to the child, and $2,500,000 be allocated to the parents' Portee claims..

REFERENCE

Plaintiff's bioethicist and pediatrician expert: Robert Truog, M.D. from Boston, MA. Plaintiff's child psychiatrist/PTSD expert: Glenn Saxe, M.D. from New York, NY. Plaintiff's economist expert: Kristin Kucsma from Livingston, NJ. Plaintiff's examining psychologist expert: Sharon Ryan Montgomery, Psy.D. from Morristown, NJ. Plaintiff's interventional

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radiologist expert: Jeffrey Hellinger, M.D. from New York, NY. Plaintiff's life care planning expert: Edmond Provder from Lodi, NJ. Plaintiff's media expert: Uri Goldsmith from Courtcom, West Orange, NJ. Plaintiff's pediatric hospitalist expert: Daniel Rouch, M.D. from Boston, MA. Plaintiff's PICU nurse expert: Maureen Hillier, RN from Boston, MA. Plaintiff's vascular surgeon expert: Allen D. Hamdan, M.D. from Boston, MA.

Child requiring below-the-knee amputation vs. Defendant pediatric critical care physician, et al.

Attorneys for plaintiff: David Mazie and Beth Baldinger of Mazie Slater Katz & Freeman in Roseland, NJ.

COMMENTARY

The plaintiff obtained a very substantial recovery in settlement after mediation with retired Judge Carey Thompkins McGuire, Livingston, NJ and in conference with Judge Moore, P.J.S.C., Essex County. An effective mediation tool was utilized, in that plaintiff prepared an electronic mediation presentation on an I-pad which included an electronic time line, video clips of key portions from the defendants' depositions, highlights of the expert reports, as well as a pictorial and video montage of life before and after the malpractice. This provided the opportunity to provide defense counsel and their insurance carriers a preview of the trial and it is believed it served to enhance settlement negotiations.

$1,200,863 VERDICT – CIVIL RIGHTS – EMPLOYMENT DISCRIMINATION – EMPLOYEE CLAIMS DISMISSAL BY DEFENDANT PHARMACY DUE TO SEXUAL ORIENTATION – DEFENDANT CLAIMS DISMISSAL WAS DUE TO VIOLATION OF COMPANY THEFT POLICY – PLAINTIFF SEEKS FRONT AND BACK PAY AND DAMAGES FOR EMOTIONAL DISTRESS.

Monmouth County, NJ

In this employment discrimination case, the plaintiff, a homosexual man, contended that his employment with the defendant pharmacy store in Spring Lake Heights was terminated based on his sexual orientation. The plaintiff contended that employees of a non-protected class, in this case heterosexual employees, were consistently given preferential treatment over the plaintiff by the defendant. Additionally, the plaintiff asserted that he had made multiple claims of discrimination against the defendant manager prior to his dismissal and that the defendants failed to act on his claims. The plaintiff argued that the defendant's claim that he was dismissed because of a violation of company policy regarding shoplifting was nullified by a situation wherein a heterosexual employee engaged in comparable misconduct and was not dismissed.

In fact, according to the plaintiff, the other employee admitted to knowledge of the theft of over 900 pills of a controlled substance from the pharmacy, but did not report it and yet he was not terminated. However, the plaintiff failed to report theft of a single item of makeup valued at less than $10 and that was the purported reason for his dismissal. The plaintiff asserted that the defendants dismissed his employment based on his sexual orientation in violation of LAD.

The plaintiff brought suit against the defendant pharmacy store and its defendant manager. The plaintiff sought damages for back pay; front pay and damages for emotional distress caused by his dismissal and loss of income. The defendants asserted that the plaintiff's employment was terminated for legitimate business reasons including failing to report a shoplifter to the Loss Prevention Manager or District Manager in violation of company policy against theft. The defendants did not contend that they dismissed the plaintiff because of general poor performance,

but specifically because of his knowledge of and his failure to prevent shoplifting by a known person. The defendants argued that evidence that the plaintiff generally did a good job, and yet was dismissed, was inadequate as proof of discrimination. Additionally, the defendants maintained that their decision to terminate the plaintiff due to violation of company policy could be viewed as wrong, but that a wrong decision could not be used to prove that the decision was discriminatory.

The jury found in favor of the plaintiff and against the defendants and awarded damages in the amount of $220,000 for back pay only, plus punitive damages against the defendant pharmacy of and additional $200,000 and punitive damages against the defendant manager of $500, with $38,975 in prejudgment interest. The court ruled, post-trial, on the plaintiff's motion for counsel fees. The court awarded $741,388 in counsel fees and costs, bringing the plaintiff's total award of $1,200,863.

REFERENCE

Hansen vs. Rite Aid, et al. Docket no. L-004790-08; Judge Linda Grasso Jones, 06-25-19.

Attorney for plaintiff: Denise Campbell of Campbell Legal Associates, PLLC in Manasquan, NJ. Attorneys for defendant: James Bucci and Peter Berk of Genova Burns, LLC in Tinton Falls, NJ.

COMMENTARY

Following the trial, which ended on June 25, 2019, the plaintiff filed an application for an award of counsel fees. The application was opposed by the defendants. The plaintiff requested counsel fees of $4,773,845 ($2,386,992.50 with a 100% enhancement which doubles the lodestar fee request) and costs in the amount of $261,928.58. The counsel fee request was based on the assertion by plaintiff's counsel that fees should be awarded at the rate of $725/hour, which counsel indicated was her regular rate. The total request by the plaintiff for counsel fees and costs was $5,035,773.50.

Defense counsel opposed the plaintiff's motion, arguing that plaintiff's counsel's supplemental submissions did not support the claim that an hourly rate of $725 was "The fee customarily charged in the locality for similar legal service." The defendants asserted that the plaintiff ignored case law setting forth the hourly rate for a plaintiff's attorney in discrimination or whistleblowing cases under LAD and the Conscientious Employee Protection Act. Defense counsel also denied that the plaintiff had a right to insist on 100% enhancement, noting that no such enhancement has been awarded since the Supreme Court overturned a fee enhancement of 100% and held that such enhancements are only appropriate in cases involving equitable relief with no opportunity for monetary recovery citing Rendine v. Pantzer, 141 N.J. 292 (1995). The defendants asserted that the plaintiff remained unable to justify the majority of his counsel's disbursements. The defendants argued that the plaintiff did not provide invoices for problematic entries in his initial submission and the invoices that were submitted raised substantial issues such as attempting to shift clerical costs to the defendant.

The court ruled, in light of analysis of what constitutes reasonable fees and costs, the total award in counsel fees of $643,892.5 and costs of $97,495.47. Prejudgment interest was granted in the amount of $38,975.28. As such, the plaintiff's motion for reasonable fees and costs was granted in part and denied in part.

$1,055,230 RECOVERY – BUS NEGLIGENCE – DRIVER OF PRIVATE BUS PREMATURELY STARTS AS PLAINTIFF IS LOOKING FOR SEAT AND THEN STOPS SUDDENLY RESULTING IN PLAINTIFF BEING PROPELLED BACKWARDS AND INTO DASHBOARD – CERVICAL AND LUMBAR HERNIATIONS – LUMBAR LAMINECTOMY INADEQUATE – INSTALLATION OF SPINAL CORD STIMULATOR – NO INCOME CLAIMS.

Hudson County, NJ

In this bus negligence case, the plaintiff bus passenger, in her early 40s, contended that the defendant driver of a private bus negligently failed to stop before proceeding as the plaintiff and her daughter were looking for a seat. The plaintiff maintained that as she was in the aisle, the defendant suddenly stopped suddenly, and that she flew back, striking the interior of the bus near the dashboard. The plaintiff asserted that she suffered a lumbar herniation that initially required a laminectomy. The surgery provided only partial relief and the plaintiff underwent additional surgery in which a spinal stimulator was installed. The defendant contended that the plaintiff should have been holding one of the poles as she was looking for a seat as passengers customarily do.

The evidence disclosed that as the plaintiff was walking down the aisle with her daughter in front of her, the defendant started moving and then slammed on his brakes, resulting in the plaintiff being propelled backwards where she struck the area of the dashboard. The defendant driver continued for 12 blocks after the accident occurred, notwithstanding that patrons were shouting at him to stop the bus. The defendant driver was arrested for not having a required license. The evidence would have reflected, however, that the defendant was trained, had the correct New York license, but did not obtain the proper New Jersey license despite working in this state for an extended period.

The plaintiff contended that she sustained a cervical and a lumbar herniation which were confirmed by MRI. The plaintiff contended that the lumbar symptoms became pronounced and that she underwent a lumbar laminectomy. The plaintiff asserted that because of a relatively poor result, she underwent subsequent surgery in which a spinal stimulator was

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installed. The plaintiff uses a remote control device. The plaintiff, who is married with one child, did not work outside the home and made no wage claims.

The case settled before trial for $1,055,230.

REFERENCE

Plaintiff's vehicle and industrial engineer expert: Douglas Rowland from Clifton, NJ.

Donoso vs. Universe Transportation Corp., et al. Docket no. HUD-L-5079-17, 05-15-19.

Attorney for plaintiff: Luis A. Martinez of LaBarbiera & Martinez in North Bergen, NJ.

COMMENTARY

Although the defendant bus driver was arrested at the scene because he didn't have a license, if this issue was admitted, the jury would also have been advised that the defendant was a trained bus driver, had the appropriate New York license, and that his difficulties revolved around making the appropriate New Jersey applications. It is felt that although the plaintiff was able to command a settlement which was substantial, especially in view of the absence of income claims, the evidence that the plaintiff fell backwards when she failed to steady herself on a pole, as is so common on buses, were thought by counsel to be problematic to a degree and that this factor mitigated the recovery to some degree in this case that would have been tried before a Hudson County jury.

$950,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT DRIVER OF BOX TRUCK WHILE STOPPED IN TRAFFIC ON NJ TPK – CERVICAL AND LUMBAR HERNIATIONS REQUIRING SURGERY TO BOTH AREAS – ROTATOR CUFF TEAR ON LEFT, NON-DOMINANT SIDE.

Hudson County, NJ

In this motor vehicle negligence action the plaintiff driver, age 53 at the time, contended that the defendant driver of a box truck struck her in the rear while she was stopped in traffic on the New Jersey Turnpike. The plaintiff asserted that she suffered cervical and lumbar herniations, required surgery to both areas, and a rotator cuff tear on the left, non-dominant side. The defendant denied that the collision caused the claimed injuries and the defendant would have argued that the property damage was very minor.

The plaintiff ultimately underwent a 2-level lumbar laminectomy and a fusion, and a 2-level cervical fusion at C4-5 and C5-6, as well as a left shoulder arthroscopy. The plaintiff maintained that she nonetheless continues to suffer pain which will continue for the remainder of her life.

The defendant's biomechanical expert would have denied that the forces involved in the accident were sufficient to cause the claimed injuries. The plaintiff would have countered that the impact when her vehicle was struck in the rear by the box truck was very significant, and the plaintiff would have stressed that as per jury instructions, they could consider that the absence of extensive damage does not necessarily equate to the absence of injury and visa versa.

The defendant would have further maintained that the plaintiff made frequent prior complaints of neck and back pain to co-employees at her job as a daycare teacher. The plaintiff would have denied that this testimony was accurate. The plaintiff would have argued that there was bad blood between these workers and the plaintiff, accounting for this testimony. The defendant further established that approximately 2 months before the collision, the plaintiff fractured her left wrist in a fall and that a note in the medical records reflected a complaint of neck pain. The plaintiff would have countered that there was only 1 mention of neck pain and that she did not require any treatment to the neck in the approximate 6-week period between this mention and the subject collision.

The case settled prior to trial for $950,000.

REFERENCE

Ortiz. vs. Sirob Imports, et al. Docket no. HUD L 2680-18; Settled via mediation with the Honorable Dennis Carey, 12-16-19.

Attorneys for plaintiff: Joseph LaBarbiera and Richard LaBarbiera of LaBarbiera & Martinez in North Bergen, NJ.

COMMENTARY

The plaintiff was confronted with testimony of 2 former co-workers who claimed that she made frequent prior complaints of neck and back pain over a period of approximately 15 years. The plaintiff denied making such complaints and the plaintiff would have endeavored to undermine the defense position by stressing that her prior medical records did not reflect such complaints and by arguing that it was likely that an explanation for this position by co-workers, which was diametrically opposed to her own testimony, was that there was bad blood between the co-workers and the plaintiff.
Additionally, the defendant pointed to minimal property damage and presented a biomechanical expert who concluded that the forces were not sufficient to cause the claimed injuries. The nature of the incident in which the plaintiff was struck while stopped on the TPK by a box truck, and the relative absence of medical records otherwise explaining the need for cervical, lumbar and left shoulder surgery, as well as the anticipated instruction by the court that the extent of property damage does not necessarily correlate to the severity of the injuries, enabled the plaintiff to obtain a significant recovery irrespective of the challenges in the case.

DEFENDANT'S VERDICT – MOTOR VEHICLE NEGLIGENCE – BROADSIDE COLLISION – DISC HERNIATION AT C5-6 – CONCUSSION; SENSITIVITY TO LOUD NOISES AND SOME HEARING LOSS – NO EXPERT TESTIMONY TO SUPPORT INJURIES – PARTIES DISAGREE AS TO WHETHER OR NOT PLAINTIFF CAN COLLECT UNUSED PIP DAMAGES FROM DEFENDANT.

Monmouth County, NJ

This motor vehicle negligence case arose from a collision which occurred on August 14, 2016. The plaintiff, a 34-year-old florist, was operating her motor vehicle exiting Friendship Plaza on the east side in Howell, attempting to pull onto New Friendship Road. At the same time, the defendant was operating her motor vehicle traveling south on Route 9 when she attempted to merge onto the exit ramp. As the defendant attempted to turn into the exit ramp, she failed to make reasonable and timely observations of the plaintiff's vehicle while approaching the intersection and otherwise failed to use reasonable care in the operation of her vehicle causing it to come into direct contact with the plaintiff's front driver's side quarter panel, spinning the plaintiff's vehicle 180 degrees and causing the plaintiff to sustain injury. The defendant stipulated liability, but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained disc herniation at C5-6, a concussion and has sensitivity to loud noises and some hearing loss. However, the plaintiff received no treatment for hearing issues and did not present expert testimony as to hearing loss, and therefore, was barred from presenting this condition at trial.

The defendant argued that the plaintiff's injuries were preexisting and not caused by the subject collision. The defendant pointed to left foraminal spurring at the C5-6 level as indicative of the plaintiff's preexisting, degenerative condition. Prior to trial, the defendant made an offer of judgment to the plaintiff in the amount of $65,000.

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

REFERENCE

Barnes vs. Fiore. Docket no. L-001876-17; Judge Linda Grasso Jones, 07-25-19.

Attorney for plaintiff: Brian W. McAlindin of Bathgate, Wegener & Wolf in Lakewood, NJ. Attorney for defendant: Sean M. Doherty of Law Offices of Pamela D. Hargrove in Wall Township, NJ.

COMMENTARY

This case involved the assertion of new case law which bears discussion here. The defendant's position was that any amount unpaid by the plaintiff's PIP carrier to the $15,000 cap requested by the plaintiff for her automobile insurance policy in effect at the time of the subject accident was not payable by the defendant in litigation of the plaintiff's personal injury claim. The defendant argued that the plaintiff must make a claim for such benefits within 2 years of the last payment of PIP benefits. If she failed to do so, then the claim was time barred, according to the defendant. In this case, the defendant pointed to the fact that the plaintiff's expert opined that the plaintiff may need injections in his report in April of 2018. This was well before the statute ran, and yet, the defendant noted, the plaintiff failed to see a doctor, have the injections, or any other treatment. The defendant asserted that, therefore, the plaintiff could not claim in the subject action that the statute had run and she was entitled to payment for future medicals from the defendant in litigation.

Conversely, the plaintiff argued that, following the automobile accident at issue, the plaintiff received PIP benefits to treat her injuries totaling $12,515.72; however, her last benefit received was more than 2 years prior. The plaintiff asserted that, due to the recent ruling in Haines v. Taft, 237 N.J. 271 (2019), and its effect on New Jersey Law, the plaintiff was ineligible to be compensated for these benefits as a result of her $15,000 PIP policy and the 2-year gap. Therefore, the plaintiff maintained, should she receive a verdict from the jury, the court must mold the verdict to include the additional $2,424.28.

The parties' arguments were ultimately moot in light of the defendant's verdict.

$950,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – FAILURE OF LANDLORD TO MAINTAIN APARTMENT COMPLEX DRIVEWAY – SECTIONS OF BROKEN UP ASPHALT ON SIDE OF DRIVEWAY – PLAINTIFF TRIPS AND FALLS WHILE WALKING TO CAR – MINOR LACERATION, BUT FRAGMENTS OF BLACKTOP ENTER BLOODSTREAM CAUSING NECROTIZING FASCIITIS – 8 SURGICAL INTERVENTIONS – SEVERE DISFIGUREMENT OF HAND.

Essex County, NJ

In this premises liability action, the plaintiff apartment tenant contended that the defendant landlord negligently failed to repair a condition of a broken surface on the right side of a small driveway connected to the complex. The plaintiff maintained that as a result, she tripped and fell, sustaining a laceration which caused severe swelling within 24 hours and the embedment fragments of blacktop into her right dominant hand. The plaintiff, who initially believed that she had not sustained significant injury and treated the wound with a sterile solution at home, developed extensive swelling and redness of the hand within 24 hours, was admitted to the

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hospital within 3 days and diagnosed a short time later with necrotizing fasciitis or a flesh eating bacteria. The plaintiff required many surgical interventions and although the infection itself resolved, the plaintiff has been left with a severely disfigured right hand and has difficulties with tasks otherwise taken for granted. The defendant would have denied that the plaintiff established that the infection was related to the fall. The plaintiff would have countered that the history of her hand becoming red and swollen within a day of the incident was consistent with her story.

The incident occurred during the day when the plaintiff was going to her car, parked on the right side of the driveway, to retrieve her dog leash. The defendant pointed out that the driveway had been in the same condition since the plaintiff moved in approximately 6 months earlier. The defendant would have maintained that plaintiff was clearly comparatively negligent in failing to avoid the fall. The plaintiff would have countered that she would not naturally look at the ground when she was walking and that it the defendant had properly repaired the driveway, the incident would not have occurred. The plaintiff further pointed out that fallen leaves had obscured much of the broken surface, contributing to her failure to observe and avoid the fall.

The plaintiff initially believed that she had sustained a minor injury only and treated the hand with a sterile solution. The plaintiff contended that within 24 hours the hand became very red and swollen. The plaintiff visited the emergency room and was then admitted to the hospital. The plaintiff was diagnosed with necrotizing fasciitis and was in danger of requiring an amputation. The plaintiff underwent some 8 surgical interventions and the infection itself resolved. The plaintiff contended, however, that she was left with a disfigurement and difficulties using the hand.

The plaintiff had a doctorate in physical therapy, but did not work in that field, indicating that she did not enjoy that type of work. The evidence reflected that at the time, the plaintiff had a clerical type job with an insurance company, earning approximately $60,000 per year. The plaintiff has not worked since the accident, but the plaintiff's proofs reflected that she could obtain alternative work, such as a purchasing agent. The plaintiff further claimed that she will incur future costs of care for items such as physician's visits therapy, and alterations of her home.

The defendant $1,000,000 in coverage. The case settled prior to trial for $950,000.

REFERENCE

Plaintiff's economist expert: Kristin Kucsma from Livingston, NJ. Plaintiff's engineer expert: Scott Moore, PE from Vorhees, NJ. Plaintiff's infectious disease expert: Theresa A. Soroko, M.D. from Newark, NJ. Plaintiff's life care planning expert: Elizabeth Davis; Ph.D., RN from Cedar Bluffs, VA. Plaintiff's orthopedic surgeon hand surgeon expert: Renata V. Weber, M.D. from Rutherford, NJ.

Sullivan vs. RL Palmi, LLC. Docket no. ESX-L-8310-17, 10-09-19.

Attorney for plaintiff: John E. Molinari of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

COMMENTARY

Although it did not initially appear that the plaintiff suffered more than minor lacerations in the fall, the plaintiff emphasized that the onset of severe swelling and redness within a day of the fall was consistent with necrotizing fasciitis and the plaintiff argued that there was no other likely cause for the condition. The defendant, in arguing that the plaintiff was comparatively negligent, stressed that the condition had been present during the entire approximate 6-month period in which the plaintiff resided in the complex and argued that she clearly should have been able to avoid the fall. Additionally, plaintiff's counsel advises that as a practical matter, the delay in obtaining a trial date in Essex County prompted the plaintiff to avoid any further delay and resolve the case for slightly less than the $1,000,000 policy.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Anesthesiology

UNDISCLOSED RECOVERY

Medical malpractice – Anesthesiology – Plaintiff presents for spinal injections; defendants fail to perform procedure appropriately – Failure to diagnose crash – Profound brain injuries causing inability to walk, talk, or perform any activities of daily living – Lifetime care required.

Middlesex County, NJ

In this medical malpractice case, the plaintiff, a 32-year-old woman and mother of 2 young children, asserted that the defendant medical personnel deviated from the standard of care in their treatment of the plaintiff resulting in serious, permanent injury. On July 20, 2015, the plaintiff presented to the defendant ambulatory surgical center for spinal injections for pain management. The plaintiff came under the care of the defendants. The plaintiff asserted that the defendants failed to exercise reasonable care in the management of their treatment of the plaintiff and each deviated from the accepted standard of medical care in this regard. The plaintiff asserted that the defendants failed to properly perform the procedure, failed to monitor anesthesia, failed to timely recognize and diagnose the signs of the plaintiff's impending crash and failed to timely treat the plaintiff. As a direct and proximate consequence of the defendants' deviations from the accepted standards of medical care, the plaintiff was caused to suffer severe and permanent injuries.

The plaintiff was caused to suffer profound brain injuries leaving her unable to walk, talk, or perform any activities of daily living. She will require care for the rest of her life. The plaintiff claimed that she has been caused to endure pain and suffering and will have future pain and suffering; she has been caused to incur medical and related expenses and will continue to incur them in the future. The plaintiff also claimed additional economic and other damages.

The defendants denied any deviation from the standard of care. The defendants also asserted that the plaintiff was barred from suit due to assumption of risk of the procedure. The defendants claimed that the injuries complained of by the plaintiff were due to idiosyncratic reactions of the plaintiff for which the defendants were not responsible and was an unforeseeable consequence of the procedure.

The plaintiff made an offer of judgment in the amount of $1,000,000 as to the defendant pain management physician and the defendant pain management practice only. The parties settled the matter prior to trial for a confidential amount of damages inclusive of the following: $291,685 in attorney fees; $299 in satisfaction of Medicare lien; $5,000 for legal services to create trust; and undisclosed total damages to the plaintiff.

REFERENCE

Negron vs. Summit Anesthesia, et al. Docket no. L-003537-16; Judge Jamie D. Happas, 07-25-19.

Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorneys for defendant Manoj D. Patharkar, M.D. and Pain Management Associates of Central Jersey, PC: Sean P. Buckley and Teresa Finnegan of Buckley Theroux Kline & Petraske, LLC in Princeton, NJ.

Psychiatry

CONFIDENTIAL RECOVERY

Medical malpractice – Psychiatry – Plaintiff's minor decedent presents to defendant with evidence of intention to self-harm – Defendant fails to pursue voluntary or involuntary psychiatric commitment – Minor commits suicide by hanging – Plaintiff seeks damages under Survivor Statute N.J.S.A. 15-2 for pain and suffering, funeral expenses, counsel fees, interest and costs of suit.

Middlesex County, NJ

In this medical malpractice case the plaintiff, guardian of the minor decedent, asserted that the defendant psychiatrist failed to properly evaluate, diagnose and treat the plaintiff's decedent and otherwise failed in the proper evaluation, care and management of the plaintiff's decedent, hence deviating from the standard of care and resulting in the decedent's death.

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On February 19, 2015, the plaintiff's decedent, a long-time patient of the defendant, had his last appointment with the defendant. The plaintiff accompanied the minor decedent to that appointment. The plaintiff and the decedent communicated to the defendant a threat of imminent, serious physical violence against himself in the form of suicide. The plaintiff argued that the circumstances were such that a reasonable professional in psychiatry would believe the patient intended to carry out the threat. The plaintiff asserted that the defendant had a duty to protect the patient against violence against himself. The plaintiff maintained that the defendant failed to discharge his duty to the plaintiff's decedent because he failed to arrange for the patient to be admitted voluntarily to a psychiatric unit of a hospital or other care facility; or initiate procedures for involuntary commitment to treatment of the patient to an outpatient treatment provider, or other care program.

The plaintiff claimed that, as a direct and proximate result of the medical negligence of the defendant, the minor decedent committed suicide by hanging on February 27, 2015. The plaintiff asserted that the decedent sustained critical injuries and was forced to endure excruciating and severe physical, emotional and psychological pain and suffering. The plaintiff sought judgment against the defendant pursuant to the Survivor Statute N.J.S.A. 15-2 et seq. for damages including pain and suffering, funeral expenses, counsel fees, interest and costs of the suit.

The defendant denied violation of the standard of care and asserted that the decedent's injury was the result of existing and pre-existing physical conditions and was not caused by actions or inactions of the defendant.

The parties settled the matter prior to trial for a confidential amount.

REFERENCE

Carracedo vs. Mayer, M.D. Docket no. L-000657-17; Judge Michael V. Cresitello, Jr., 07-25-19.

Attorney for plaintiff: Alex Lyubarsky of Wilentz, Goldman & Spitzer, P.A. in Woodbridge, NJ. Attorney for defendant: Jeffrey A. Krompier of Krompier & Tamn, LLC in Parsippany, NJ.

DAYCARE NEGLIGENCE

$10,000 RECOVERY

Daycare negligence – Dangerous condition – Infant suffers traumatic injury to finger while in crib at defendant childcare facility – E.R. evaluation and conservative treatment.

Cape May County, NJ

On March 23, 2018, the infant plaintiff was being cared for at the defendant childcare center. The plaintiff was in a crib at the facility when he was injured by a dangerous condition created or allowed to remain by employees/agents of the defendant childcare center. The defendant did not file a formal response and settled the matter with the plaintiff.

As a result of the incident, the minor plaintiff was taken to the emergency room. He sustained a traumatic injury to his third finger on his right hand with possible fracture. The plaintiff's physician did not deem the injury permanent.

The parties settled the matter prior to trial in the amount of $10,000 broken down as follows: $2,687 in attorney fees; $475 to satisfy Medicaid lien; $6,838 in net damages to the minor plaintiff.

REFERENCE

Slaney vs. Seashore Learning Center. Docket no. L-000084-19; Judge Christopher Gibson, 07-17-19.

Attorney for plaintiff: Teddy C. Strickland, Jr. of Targan, Pender & Strickland, P.C. in Atlantic City, NJ.

DOG ATTACK

$300,000 RECOVERY

Dog attack – Bites wounds to face on left cheek, nose and right cheek – Minor plaintiff treated with scar management and requires further treatment – Permanent scarring.

Sussex County, NJ

On February 10, 2018, the defendants were the owners of an Australian Shepherd dog which was being housed and maintained at their home in Sparta. The plaintiff was a lawful invitee at the defendants' residence. The plaintiff argued that the defendants failed to control the dog so that it was allowed to, without warning, viciously attack

the minor plaintiff. The defendants initially denied liability but ultimately settled with the minor plaintiff.

As a result of the attack, the plaintiff sustained bites to the face on her left cheek, nose and right cheek. The plaintiff received scar management treatment from a cosmetic dermatologist and will require further treatment to achieve her maximum recovery; however, the plaintiff is likely to be left with permanent scarring.

The parties settled the matter prior to trial in the amount of $300,000 broken down as follows: $75,369 in attorney fees; $244,631 in net damages to the minor plaintiff.

REFERENCE

Homann vs. Facer. Docket no. L-000362-18; Judge David J. Weaver, 06-05-19.

Attorney for plaintiff: Brian D. Drazin of Drazin and Warshaw, P.C. in Red Bank, NJ. Attorney for defendant: John J. Kapp of Gregory P. Helfrich & Associates in Summit, NJ.

DRAM SHOP

$300,000 RECOVERY

Dram shop – Death of minor plaintiff's father in motor vehicle collision after driver is over-served by defendant.

Salem County, NJ

On November 29, 2015, after consuming alcohol at the defendant dram shop, the third-party driver of a motor vehicle, in which the plaintiff's decedent was a passenger, drove off the road crashing the vehicle head-on into a tree causing the death of the plaintiff's decedent. The decedent left behind a 4-year-old daughter. The plaintiffs asserted that the driver of the vehicle was over served at the defendant dram shop and that his intoxication at the hands of the defendant was the cause of the collision that killed the plaintiff's decedent. The plaintiff asserted that the defendant negligently served alcoholic beverages to the patron of the business at a time when he was visibly intoxicated. The defendant initially denied liability and asserted that the plaintiff's decedent was negligent in voluntarily being a passenger in a vehicle driven by an intoxicated driver.

As a direct result of the defendant's actions, the plaintiff's decedent suffered pain and suffering, personal injuries resulting in his death, loss of earnings, medical expenses and he was deprived of his ability to enjoy the full pleasures and quality of life. The plaintiff was and will continue to be deprived of the guidance, tutelage and moral upbringing which she would have received from the decedent due to the defendant's negligence.

The defendant denied knowing and serving the patron/driver after he was intoxicated. The defendant made a third-party complaint against the driver of the vehicle contending that he was solely responsible for the death of the plaintiff's decedent. The defendant ultimately settled the case with the plaintiff's decedent.

The parties settled the matter prior to trial in the amount of $300,000 broken down as follows: $76,822 in attorney fees; $233,178 in net damages set up as an annuity for the benefit of the minor plaintiff.

REFERENCE

Ryan vs. Alloway Village Inn. Docket no. L-000185-17; Judge Jean S. Chetney, 06-14-19.

Attorney for plaintiff: Susan K. Collins of Archer & Breiner in Haddonfield, NJ. Attorney for defendant: George A. Prutting, Jr. of Prutting & Lombardi in Audubon, NJ.

INSURANCE OBLIGATION

$30,000 COMBINED RECOVERY

Insurance obligation – Motor vehicle negligence – Rear end collision – First minor plaintiff suffers disc bulge at C5-6 confirmed by defendant's IME – Second minor plaintiff suffers disc herniation at C5-6; disc bulge at L4-5 – Plaintiffs received conservative care.

Union County, NJ

On September 2, 2015, the plaintiffs were the minor 13-year-old and 17-year-old female passengers in a motor vehicle traveling southbound on Somerset Street at the intersection with Dupont Street in North Plainfield. The tortfeasor was traveling behind the plaintiffs' vehicle and negligently failed to stop, thus striking the plaintiffs' vehicle from the rear. Each plaintiff

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collected the tortfeasor's policy limit of $7,500 and filed the subject claim for underinsured motorist against the defendant insurer.

As a result of the collision, the first plaintiff sustained a disc bulge at C5-6 that was confirmed by defendant's IME. The second plaintiff sustained disc herniation at C5-6 and disc bulge at L4-5. The plaintiffs received conservative care in treatment of their injuries. The second plaintiff was recommended for facet injections, but did not have the procedure. The plaintiffs' physician opined that both plaintiffs' injuries were permanent. The defendant initially challenged the plaintiffs' injuries, but ultimately settled after the plaintiffs' IMEs.

The parties settled the matter prior to trial in the amount of $30,000 to the both plaintiffs, broken down as follows: $14,500 in damages to the first plaintiff and $16,500 in damages to the second plaintiff.

REFERENCE

Celis vs. State Farm, et al. Docket no. L-003457-17; Judge Robert J. Mega, 06-14-19.

Attorney for plaintiff: Jonathan P. Arnold of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC in Scotch Plains, NJ. Attorney for defendant: Scott Krupa of Gregory P. Helfrich & Associates in Summit, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Rear end collision – Traumatic injury to neck and back – Epidural injections – Plaintiff recovers $100,000 policy limit from tortfeasor and brings UIM claim against defendant insurer.

Bergen County, NJ

In this 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 was a passenger in a vehicle which was rear-ended by the tortfeasor while traveling on Route 67 near Hogsback Road in Oxford, Connecticut. The plaintiff brought suit against the tortfeasor driver and collected the tortfeasor's policy limit of $100,000. The plaintiff then brought this suit against the defendant insurer seeking the UIM limit of $250,000.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and back. The plaintiff treated with epidural injections to the lumbar spine. The defendant stipulated liability, but contested the plaintiff's damages. The defendant's IME indicated that the plaintiff suffered cervical bulges, but no lumbar injuries and made no complaints of pain in any area.

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

REFERENCE

Vega vs. Allstate. Docket no. L-004364-17; Judge Walter F. Skrod, 08-02-19.

Attorney for plaintiff: James E. Humphreys of Goldstein, Ballen, O'Rourke & Wildstein in Passaic, NJ. Attorney for defendant: Joseph B. O'Toole, Jr. of O'Toole, Couch & Della Rovere, LLC in Cedar Knolls, NJ.

LANDLORD'S NEGLIGENCE

$5,000 RECOVERY

Landlord's negligence – Failure to remediate mold – Minor plaintiff suffers seizures from mold exposure – Plaintiffs vacate property and file suit for personal injury – Defendants file suit for nonpayment of rent.

Morris County, NJ

In this landlord's negligence case, the plaintiff asserted that the defendant failed to remediate mold in the plaintiff's apartment causing the minor plaintiff to sustain serious, possibly permanent, injury. The defendant denied violation of any duty to the minor plaintiff and contended that the plaintiff's parents were engaged in a dispute over rent when the subject claim was made.

On October 15, 2015, the minor plaintiff was residing at a property owned by the defendants located on Park Avenue in Randolph. The plaintiff claimed that on the date in question, she was exposed to dangerous and hazardous mold, chemicals and other unlawful toxins causing serious injury to the minor plaintiff. As a result of the mold exposure, the plaintiff began suffering seizures. She was treated by her physician from March 23, 2016 through January 18, 2017. The plaintiff's treating physician testified that a neurological exam would be required to determine if the plaintiff's condition was permanent. The plaintiffs claimed, in a separate suit regarding nonpayment of rent, that the minor plaintiff's injury due to mold constituted constructive eviction. The plaintiff claimed the mold was not remediated until May 10, 2018, nearly a year after the plaintiff's reported the mold condition and left the premises.

In August of 2017, the defendants were notified of a mold issue on the property and of the plaintiff parents intent to withhold rent until the mold problem was re-

solved. The plaintiffs physically vacated the property in August and removed their belongings from the property at the end of November and filed the subject claim for personal injury due to mold exposure. The plaintiff asserted that the defendants had a duty to maintain the premises in a safe condition so that the plaintiff would not be injured and that the defendants breached that duty by failing to properly maintain, inspect, clear, clean and warn of hazards. The plaintiff maintained that the defendants negligently failed to meet their duty and were thus liable for the minor plaintiff's damages due to injury.

The parties settled the matter prior to trial in the amount of $5,000 broken down as follows: $1,525 in attorney fees and $3,475 in net damages to the minor plaintiff.

REFERENCE

Dalzell, et al. vs. Gottweiss, et al. Docket no. L-002168-17; Judge Philip Maenza, 06-07-19.

Attorney for plaintiff: Evan A. Marx of Kreizer Law in Shrewsbury, NJ. Attorney for defendant: Murray A. Klayman of Murray A. Klayman, P.C. in Florham Park, NJ.

LEMON LAW

UNDISCLOSED RECOVERY

Lemon Law – Defective remote start feature is non-conforming to warranty – 3 attempted repairs without success – Plaintiff claims value of vehicle is compromised.

Camden County, NJ

In this Lemon Law case, the plaintiff asserted that the defendant manufacturer produced and sold a defective product to the plaintiff. On September 7, 2017, the plaintiff purchased a new 2016 Kia Sportage manufactured and warranteed by the defendant. The vehicle purchase price including all fees and taxes was more than $36,332. The plaintiff maintained that, as a result of the ineffective repair attempts made by the defendant and its authorized dealer, the vehicle cannot be utilized for the purposes intended and the vehicle is worthless.

The plaintiff claimed that the remote start feature of the vehicle was defective. The plaintiff asserted that the vehicle was subject to repair more than 3 times for the same non-conformity and that the non-conformity remains uncorrected. The defendant denied that the vehicle was defective and asserted that the damages alleged by the plaintiff might have been caused by the negligent acts or omissions of other individuals, not due to any breach of warranty by the defendant.

The parties settled the matter for an undisclosed sum following arbitration wherein it was determined that the plaintiff proved that the remote starter was defective through repeated repairs without resolution of the problem. The arbitrator determined that the defect satisfied the standard of non-conforming product within the requisite time frame. The arbitrator recommended a total award of $4,000 including $1,500 in Lemon Law damages and $2,500 for attorney fees and costs.

REFERENCE

Fast vs. Kia Motors America, Inc., et al. Docket no. L-003593-18; Judge Thomas T. Booth, Jr., 09-03-19.

Attorney for plaintiff: Michael Power of Power & Associates, P.C. in Glen Mills, PA. Attorney for defendant: Lauren K. Brown of Campbell Campbell Edwards & Conroy in Berwyn, PA.

DEFENDANT'S VERDICT

Lemon Law – Plaintiff maintains that vehicle purchased from the defendant contained defects that reduced its use, value and safety – Defendant argued it made all necessary repairs and that plaintiff's case did not comply with law.

Gloucester County, NJ

In this Lemon Law case, the plaintiff asserted that the defendant car dealership sold him a defective vehicle and did not make repairs in a timely fashion under the law.

On February 27, 2018, the plaintiff purchased a new 2018 Jeep Wrangler manufactured and warranteed by the defendant. In consideration for the purchase of the vehicle, the defendant issued to the plaintiff several warranties, guarantees, affirmations or undertakings with respect to the material or workmanship of the vehicle and remedial action in the event that the vehicle failed to meet the promised specifications. The parties' agreement included an express 3-year/36,000 mile warranty. There came a time when the vehicle's engine would not start. The plaintiff first sought to repair the vehicle on April 27, 2018 when the vehicle odometer read 1,683 miles. On that date, repair attempts were made to repair the no-start condition. The second documented warranty repair attempt occurred on April 28, 2018, when the odometer showed 1,711 miles. On that date, repair attempts were made to the stalling condition and starter. The third documented warranty repair attempt occurred on May 8, 2018 when the vehicle odometer showed 1,912 miles. On that date, repair attempts were made to the no-start condition. The plaintiff

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claimed that the vehicle continues to exhibit defects and nonconformities which substantially impair its use, value and safety.

The plaintiff alleged that the condition of the vehicle not starting was not fixed in a reasonable amount of time. The plaintiff sought repurchase or replacement of the involved motor vehicle pursuant to the New Jersey Lemon Law.

The defendant denied any violation of its duty to the plaintiff under the Lemon Law. The defendant maintained that the repairs made to the vehicle were effective and that the plaintiff's complaint did not comply with the conditions required for replacement or repurchase under the law. The defendant asserted that the vehicle is fit for its intended uses and does not contain any non-conformities or defects and that the defendant complied with all express, limited, and written warranties. The defendant argued that the vehicle was repaired within 10 days and that that was a reasonable amount of time.

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

REFERENCE

Scordo vs. FCA US, LLC. Docket no. L-000637-18; Judge Samuel J. Ragonese, Jr., 07-01-19.

Attorney for plaintiff: Zachary A. Zawrotny of Kimmel & Silverman, PC in Cherry Hill, NJ. Attorney for defendant: Kevin M. McKeon of Marshall, Dennehey, Warner, Coleman & Goggin in Mt. Laurel, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$15,000 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Minor plaintiff struck on bicycle by defendant driver – Right distal fibula fracture – Treated with immobilization.

Cumberland County, NJ

This motor vehicle negligence action arose form an incident which occurred on July 3, 2016 when the minor plaintiff, a 12-year-old boy, was lawfully riding his bicycle and was traveling in a westerly direction on Chestnut Avenue at the intersection with South West Boulevard in Vineland. The defendant was operating a motor vehicle and was traveling in a southerly direction on South West Boulevard at the intersection with Chestnut Avenue.

The plaintiff maintained that the defendant negligently operated her motor vehicle as to cause a violent collision with the plaintiff who was lawfully crossing South West Boulevard, causing serious injury to the plaintiff. The defendant initially denied negligence and contended that the plaintiff was negligent in causing the collision.

As a result of the incident, the minor plaintiff sustained a right distal fibula fracture. The plaintiff was temporarily disabled with no weight bearing for 4 weeks followed by immobilization and weakness for 4 weeks. The plaintiff has fully recovered.

The parties settled the matter prior to trial in the amount of $15,000 broken down as follows: $4,685 in attorney costs and fees; $10,315 in net damages to the minor plaintiff.

REFERENCE

Amparo vs. Lopez. Docket no. L-000184-18; Judge James R. Swift, 07-19-19.

Attorney for plaintiff: Michael J. Gaffney and Paul V. Orecchia of Radano & Lide in Vineland, NJ. Attorney for defendant: Rachel Vicari of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

Auto/Pedestrian Collision

$32,500 VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Disc herniations at C3-4 and L4-5 – Right knee bruise – Plaintiff treated conservatively.

Essex County, NJ

This motor vehicle negligence case arose from an incident which occurred on February 19, 2015 when the plaintiff was a pedestrian delivery person making a delivery to the defendant's home on Christopher Street in Montclair. The plaintiff was parked in the defendant's driveway and had gotten out of the delivery van and was on foot to make the delivery. The plaintiff began backing down the driveway without looking and did not see the plaintiff parked behind her. The plaintiff whistled, in an attempt to get the defendant's attention to warn her. The defendant continued backing and struck the plaintiff, pushing him into the open door of the van, causing him to sustain injury.

As a result of the incident, the plaintiff sustained disc herniations at C3-4 and L4-5; and a right knee bruise. The plaintiff treated conservatively. The defendant

denied negligence and contested the plaintiff's damages. The defendant argued that the plaintiff was comparatively negligent to a greater degree than the defendant. The defendant also challenged the nature, extent and causation of the plaintiff's injuries.

The jury found in favor of the plaintiff and awarded damages in the amount of $32,500 inclusive of outstanding medical bills.

$25,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Mildly displaced Salter-Harris type II fracture of distal radius with dorsal displacement of distal fracture fragment – Closed reduction and pinning.

Middlesex County, NJ

In this motor vehicle negligence case, the minor plaintiff pedestrian asserted that the defendant driver struck him with his vehicle while he was in a crosswalk causing him to sustain injuries. The defendant denied liability and claimed that the plaintiff was at least contributorily negligent in causing the collision wherein he was injured.

On October 21, 2016, the minor plaintiff was a pedestrian attempting to cross in the crosswalk at the intersection of Eagle Avenue and Amboy Avenue in Perth Amboy. The defendant was the owner/operator of a motor vehicle traveling on Eagle Avenue in the vicinity of the plaintiff pedestrian. The plaintiff maintained that the defendant negligently and recklessly operated his vehicle such that the vehicle collided with the plaintiff causing serious, permanent injury.

As a result of the collision, the plaintiff sustained a mildly displaced Salter-Harris type II fracture of the distal radius with approximately one half cortical shafts width dorsal displacement of the distal fracture fragment. The plaintiff was treated with closed reduction with pinning. The plaintiff contended that he has suffered permanent injuries to his right arm and left wrist as a result of the subject accident.

The parties settled the matter prior to trial in the amount of $25,000 broken down as follows: $11,283 in attorney fees and a net recovery to the minor plaintiff of $13,717.

REFERENCE

Burgos vs. Gonzalez-Rodriguez. Docket no. L-004567-17; Judge Carlia M. Brady, 05-16-19.

Attorney for plaintiff: Elizabeth Tatkow-Flack of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: Roma M. Patel of Law Offices of Styliades and Jackson in Mount Laurel, NJ.

Auto/Truck Collision

$75,000 VERDICT

Motor vehicle negligence – Auto/truck collision – Disc herniations at L4-5 and L5-S1 per MRI; radiculopathy per exam by neurologist – 3 months of chiropractic treatment and 1 round of epidural injection – Parties settled for $45,000 post trial.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to control the vehicle in which the plaintiff was a passenger. The plaintiff claimed the defendant driver's negligence caused a collision with a dump truck wherein the plaintiff sustained significant, permanent injury. The plaintiff brought suit against the defendant driver of the vehicle in which she was a passenger, as well as the driver of the dump truck that the defendant struck. The dump truck driver was dismissed on summary judgment and the case continued against the defendant driver of the plaintiff's vehicle.

On May 21, 2015, the plaintiff was a passenger in a vehicle being driven by the defendant. The plaintiff maintained that the defendant, trying to avoid collision with a bus, swerved and lost control of the vehicle, striking a dump truck traveling alongside the defendant's vehicle. The plaintiff pointed to significant damage to the vehicle indicating the severity of the collision. The plaintiff was taken to the emergency room from the scene of the collision.

As a result of the collision, the plaintiff sustained disc herniations at L4-5 and L5-S1 per MRI and radiculopathy per exam by a neurologist. The plaintiff treated with 3 months of chiropractic treatment and 1 round of epidural injection.

The defendant contended that the plaintiff did not meet the verbal threshold to recover damages. The defendant refuted the plaintiff's claim of permanent injury.

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The jury found in favor of the plaintiff and awarded $75,000 in damages which was reduced by a credit of $30,000 which was the policy limit of the settling primary insurance carrier for a net award to the plaintiff of $48,084, inclusive of pre-judgment interest, payable by the defendant's insurer. Post trial, the parties settled for $45,000.

REFERENCE

Newell vs. Volkman. Docket no. L-007263-16; Judge Jeffrey Beacham, 09-30-19.

Attorney for plaintiff: Jonathan P. Holtz of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC in Scotch Plains, NJ. Attorney for defendant: Scott A. Malyso of Law Offices of Cindy L. Thompson in West Orange, NJ.

Head-on Collision

$25,500 RECOVERY

Motor vehicle negligence – Head-on collision – Sprain and strain of cervical, thoracic and lumbosacral spine, sacral region somatic dysfunction, pelvic region somatic dysfunction, segmental and somatic dysfunction of lower extremity – Post-traumatic headaches and muscle spasms – Physical therapy.

Cumberland County, NJ

This action for motor vehicle negligence arose from a collision which occurred on July 9, 2015 when the plaintiff, a 13-year old boy, was a passenger in a vehicle being operated by the plaintiff's father traveling in a westerly direction on West Landis Avenue at the intersection with Route 55 in Vineland. The defendant was traveling in an easterly direction on West Landis Avenue when she suddenly crossed into the westbound lane and struck the vehicle in which the plaintiff was a passenger head-on, causing injury to the minor plaintiff passenger. The defendant filed a Notice of Appearance and then settled the matter with the plaintiff prior to trial.

Immediately after the collision, the minor plaintiff was treated at the scene by emergency medical personnel and then transported by his father to the emergency room for complaints of mid-back pain. The plaintiff sought additional medical treatment for the injuries he sustained at a physical therapist. The plaintiff was diagnosed with sprain and strain of the cervical, thoracic and lumbosacral spine, sacral region somatic dysfunction, pelvic region somatic dysfunction, segmental and somatic dysfunction of the lower extremity, post-traumatic headaches, and muscle spasm.

The parties settled the matter prior to trial in the amount of $25,500 with the defendants paying $10,500 and their insurer paying $15,000. The proceeds of the settlement are broken down as follows: $6,615 in attorney fees; $2,287 in medical expenses and $16,598 in net damages to the minor plaintiff.

REFERENCE

McNamee vs. Romanik, et al. Docket no. L-000875-18; Judge James R. Swift, 05-31-19.

Attorney for plaintiff: Jordan S. Namerow of Nenner & Namerow in Philadelphia, PA. Attorney for defendant: Christine Mercado-Spies of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

Rear End Collision

$23,762 VERDICT

Motor vehicle negligence – Rear end collision – 2 lumbar herniations; cervical bulges – Positive EMG for both cervical and lumbar spine radiculopathy – Epidural injections.

Morris County, NJ

In this motor vehicle negligence case, the plaintiff, a 50-year-old man, asserted that the defendant driver struck his vehicle from behind with such force that it caused him significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On May 18, 2015, the plaintiff was stopped at a red light with 2 cars in front of her. The defendant failed to stop behind the plaintiff. The defendant struck the plaintiff's vehicle from the rear, pushing it under the rear of the car in front of the plaintiff. The plaintiff's vehicle was sandwiched between both vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained 2 lumbar herniations and cervical bulges. She had a positive EMG for both cervical and lumbar spine radiculopathy. The plaintiff received 1 lumbar spine

injection. The defendant argued that the plaintiff's injuries were preexisting and not caused by the subject collision.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $1,500 in the event of the jury awarding damages above that amount, and a minimum of $75,000 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the plaintiff and awarded $22,800 in damages; thus the plaintiff recovered the amount of damages awarded plus pre-judgment interest, for a total of $23,762.

REFERENCE

Amador-Navarro vs. Fleming. Docket no. L-000745-18; Judge Rosemary E. Ramsay, 07-19-19.

Attorney for plaintiff: Leonardo R. Hernandez of Druckman & Hernandez, P.C. in Elizabeth, NJ. Attorney for defendant: Mark Dwyer of Law Offices of Eric H. Bennett in Hackensack, NJ.

Single Vehicle Collision

$66,680 VERDICT

Motor vehicle negligence – Single vehicle collision – DUI – Disc bulges at C4-5 with effacement of ventral thecal sac, C5-6, C6-7, L5-S1, L4-5 abutting ventral thecal sac, and L3-4; ongoing pain – Trigger point injections; acupuncture – Plaintiff claims permanent injury and disability – Plaintiff recovers $50,000 per pretrial high/low agreement.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver was driving while under the influence and lost control of his vehicle causing a crash in which the plaintiff passenger was seriously injured. The defendant stipulated liability as to the collision, but maintained that the plaintiff was guilty of comparative negligence and that the plaintiff's sole remedy was Worker's Compensation.

On July 4, 2015, the plaintiff was a passenger in a vehicle owned by the defendant owner and operated by the co-defendant. The vehicle was traveling in a southerly direction on New Street near the intersection with Hillside Avenue in Tenafly. The plaintiff contended that the defendant driver was driving while impaired and drove on the wrong side of the roadway, causing a collision in which the plaintiff suffered permanent injuries, and was disabled and disfigured.

As a result of the collision, the plaintiff sustained disc bulges at C4-5 with effacement of ventral thecal sac, C5-6, C6-7, L5-S1, L4-5 abutting ventral thecal sac, and L3-4. The plaintiff received trigger point injections to his cervical spine and testified that he continues to suffer pain in his neck and back radiating into his left leg on a regular basis. The plaintiff continues to treat with acupuncture. The plaintiff's physician certified that the plaintiff's injuries had not healed to function normally and likely would not. The plaintiff's physician opined that the plaintiff's injuries were permanent.

The jury found in favor of the plaintiff and determined that the defendant's negligence was the proximate cause of the plaintiff's permanent injuries. The jury awarded the plaintiff $66,680 in compensatory damages. The parties had entered into a high/low agreement prior to trial wherein the plaintiff would receive a minimum of $5,000 in the event of a defendant's verdict and a maximum of $50,000 in the event that the jury awarded in excess of that amount. Thus, the plaintiff recovered $50,000.

REFERENCE

Leung vs. Lau. Docket no. L-003597-17; Judge John D. O'Dwyer, 07-18-19.

Attorney for plaintiff: Reiah N. Etwaroo of Law Offices Rosemarie Arnold in Fort Lee, NJ. Attorney for defendant: John Ciabattari of Law office of Pamela Hargrove in Cranford, NJ.

U-Turn Collision

$110,000 GROSS VERDICT

Motor vehicle negligence – U-turn collision – Left wrist and hand injury – Disc herniations at C2-3, C3-4, C4-5, C6-7 confirmed by positive EMG – Wrist and hand resolved; cervical injuries treated with medical branch block – Plaintiff's damages reduced to $102,227 for comparative negligence.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 69-year-old part-time nurse, asserted that the defendant driver struck her vehicle while making an illegal maneuver and caused significant, permanent injury to the plaintiff. On May 19, 2016 in Roselle, New Jersey, the defendant driver made an illegal U-turn directly in the path of the

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plaintiff's vehicle causing the vehicles to collide. The plaintiff suffered injuries requiring extensive treatment and lost time from work.

As a result of the collision, the plaintiff sustained left wrist and hand injury; and disc herniations at C2-3, C3-4, C4-5, C6-7 confirmed by positive EMG. The plaintiff's wrist and hand injury resolved and she treated with one medical branch block. The plaintiff claimed lost wages of $44,000.

The defendant denied liability and contested the plaintiff's damages and lost wage claim. The defendant argued that the plaintiff was at fault for the collision by not taking evasive action to avoid the defendant's oncoming vehicle. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The jury found the plaintiff 7% negligent and the defendant driver 93% negligent. The jury awarded damages in the amount of $75,000 for pain and suffering; $35,000 for gross lost wages and $4,799 in interest. Reduced by the plaintiff's comparative negligence, the net award was $69,550 for non-economic damages; economic damages of $26,079, plus interest in the amount of $1,799, for a total judgment of $102,227.

REFERENCE

Anglin vs. Ruiz, et al. Docket no. L-003005-16; Judge Alan G. Lesnewich, 06-02-19.

Attorney for plaintiff: Douglas Schwartz of Foster & Mazzie, LLC in Totowa, NJ. Attorney for defendant: John Aufiero of Gregory P. Helfrich & Associates in Summit, NJ.

MUNICIPAL LIABILITY

DEFENDANT'S VERDICT

Municipal liability – Employment discrimination – Retaliation; hostile work environment; harassment – Plaintiff claims defendant City and employees of police department repeatedly harassed and retaliated against her after she filed lawsuit against defendants.

Union County, NJ

In this employment discrimination case, the plaintiff asserted that the defendants, a city police department and its employees, created a hostile work environment and pervasively harassed the plaintiff. In her complaint and testimony the plaintiff delineated 17 separate instances of harassment she endured including verbal harassment, property damage, threats, reassignment, failure to provide assistance, retaliation, and others. The plaintiff maintained that these actions created a working environment that was hostile and abusive. The plaintiff claimed that her treatment at the hands of the defendants stemmed from her having sued the defendant city in 2003. The plaintiff admitted that she did not report instances of harassment and abuse to her supervisors because she did not expect the defendant department to provide a sufficient response.

The defendants denied all of the plaintiff's claims and provided testimony refuting each of her individual examples of harassing behavior. The defendants also pointed to the plaintiff's admission that she did not report the harassment to her supervisors. The defendants asserted that the plaintiff provided no evidence of causation. The defendant argued that the plaintiff's lawsuit ending in 2008, and her complaints of harassment in 2012 and 2014 created no temporal proximity to demonstrate retaliation. Further, the defendants claimed that the plaintiff failed to introduce evidence supporting a claim of punitive damages against the defendant city. Per the appropriate statute and prevailing case law, the defendant argued that there were no upper management employees of the defendant city personally involved in the alleged acts of retaliation, thus the plaintiff did not meet the standard for punitive damages.

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

REFERENCE

Salvero vs. City of Elizabeth, et al. Docket no. L-001023-13; Judge Robert J. Mega, 06-14-19.

Attorneys for plaintiff: Robert B. Woodruff and Kieran M. Dowling of Schiller, Pittenger & Galvin, P.C. in Scotch Plains, NJ. Attorney for defendant: Robert F. Varady of LaCorte, Buncy, Varady & Kinsella in Union, NJ.

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PREMISES LIABILITY

Fall Down

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on unknown substance on defendant restaurant floor – Tears in both shoulders – Neck and back injuries – Shoulder injuries initially treated conservatively and then through surgical intervention.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant restaurant failed to maintain a safe environment for customers and failed to notify invitees of a hazardous and dangerous condition on the premises. The plaintiff claimed that the defendant's negligence caused the plaintiff to fall and sustain significant, permanent injury. The defendant denied negligence and asserted that it did not violate any duty owning to the plaintiff.

On July 8, 2015, the plaintiff was a lawful business invitee at the premises of the defendant restaurant in Hasbrouck Heights. The plaintiff claimed he slipped and fell on a liquid substance on the floor. The plaintiff did not observe the substance prior to falling. The plaintiff claimed the defendant was responsible to keep the floors of the restaurant clean and free of hazards in a duty to patrons of the establishment and that the defendant failed in that duty and failed to warn patrons of the substance on the floor.

As a result of the fall, the plaintiff sustained tears in both shoulders initially treated conservatively and then through surgical intervention. The plaintiff also alleged neck and back injuries. The plaintiff had an outstanding Medicare lien of $15,000.

The defendant asserted that the negligence that caused the plaintiff's injuries was committed by a third party, or by the plaintiff's own contributory negligence. The defendant argued that there was no indication as to how long the substance was on the floor or how it got there. The defendant also denied the nature and extent of the plaintiff's injuries, asserting that the plaintiff should not have had surgery and that the plaintiff suffered from pre-existing osteoarthritis.

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

REFERENCE

Montemurro vs. IHOP, et al. Docket no. L-001953-17; Judge Mary F. Thurber, 06-17-19.

Attorney for plaintiff: Francesca Aiello-Nicholas of Law Offices of Rosemarie Arnold in Fort Lee, NJ. Attorney for defendant: Robert Zimmerer of Zimmerer, Murray, Conyngham & Kunzier in Saddle Brook, NJ.

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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

$3,000,000 CONFIDENTIAL RECOVERY - MEDICAL MALPRACTICE - SURGERY - FAILURE TO PROPERLY FOLLOW-UP FOLLOWING APPENDIX SURGERY - WRONGFUL DEATH OF 33-YEAR-OLD FROM UNDIAGNOSED PERITONITIS AND SEPTIC SHOCK.

Withheld County, MA

In this medical malpractice action, the plaintiff contended that the defendants, a surgeon and an ICU physician, were negligent in failing to properly follow-up and recognize the signs and symptoms of peritonitis following the completion of an emergency appendectomy on the 33-year-old male patient. The plaintiff asserted that as a result of the defendants' negligence in this regard, the decedent subsequently died of septic shock secondary to peritonitis, abdominal compartment syndrome and cardiopulmonary arrest. The decedent was the young father of three minor children at the time of his death. The defendant physicians denied the plaintiff's allegations and disputed that there was any deviation from acceptable standards of care in the treatment of the decedent. The defendant surgeon also argued that he had been reduced to a per diem surgeon, as opposed to a full-time member of the surgical team and, therefore, was not responsible for monitoring the patient post-surgically. The plaintiff countered that the defendant surgeon's indifference to his obligations for follow-up care was a substantial cause of the decedent's untimely death.

The parties mediated the plaintiff's claim and it settled shortly afterward for the sum of $3,000,000 in total.

REFERENCE

Estate of 33-Year-Old vs. Surgeon, et al., 03-31-19.

Attorneys for plaintiff: Clyde D. Bergstresser and Richard J. Zabbo of Bergstresser & Pollock, P.C. in Boston, MA.

$2,925,000 RECOVERY - MEDICAL MALPRACTICE - ORTHOPEDIC SURGERY - FAILURE TO PRESCRIBE ANTICOAGULANT MEDICATION UPON DISCHARGE FOLLOWING SURGERY TO TREAT ANKLE FRACTURE - PATIENT AT HEIGHTENED RISK FOR EMBOLISM DUE TO HISTORY OF IMMOBILITY ASSOCIATED WITH MUSCULAR DYSTROPHY DIAGNOSIS - FATAL PULMONARY EMBOLISM - WRONGFUL DEATH OF 50-YEAR-OLD-FEMALE.

Suffolk County, NY

This medical malpractice/death action involved a 50-year-old decedent patient, who had a medical history of suffering from muscular dystrophy that was diagnosed in 2000 and which prompted that she use a walker. The plaintiff contended that after the decedent fell and fractured her ankle, the defendants orthopedic surgeon and hospitalist negligently failed to prescribe anticoagulant therapy post-operatively. The plaintiff maintained that as a result, the decedent suffered a fatal pulmonary embolism some two weeks after the surgery which occurred in front of her family. The decedent was survived by her husband and two children, including a then 19-year-old son with moderate autism and a nine-year-old daughter. The plaintiff asserted that due to the patient's history of muscular dystrophy and associated immobility, the decedent was at significant risk of an embolism following the surgery and should have been prescribed anticoagulant medication post-surgically to prevent the formation of emboli. The defendant hospitalist had assessed prior to surgery that the decedent was at moderate risk for deep vein thrombosis. The defendants denied that anticoagulation therapy following this ankle surgery was necessary. The plaintiff countered that in view of the decedent's pre-existing issues with immobility, this defense should be rejected. The defendant hospitalist and orthopedic surgeon each contended that they reasonably relied on the other.

The case settled after jury selection and prior to trial for $2,925,000, including $1,800,000 from the orthopedist, $1,100,000 from the hospitalist and $25,000 from the hospital.

REFERENCE

Walsh vs. Mathew, et al. Index no. 062446-13, 03-03-20.

Attorney for plaintiff: Clifford S. Argintar of Duffy & Duffy, PLLC in Uniondale, NJ.

$684,000 VERDICT - MEDICAL MALPRACTICE - FAMILY PHYSICIAN NEGLIGENCE - DEFENDANT FAILS TO PROPERLY MONITOR DECEDENT'S ANTICOAGULATION LEVELS RESULTING IN DECEDENT SUFFERING STROKE - WRONGFUL DEATH OF PATIENT.

Harris County, TX

In this medical malpractice action, the plaintiff surviving family members of the 74-year-old decedent patient contended that the defendants family physician and his practice negligently failed to properly treat the decedent in failing to order testing of the decedent's levels of anticoagulation medication that she was taking due to atrial fibrillation. The plaintiff asserted that the defendant's negligence in this regard resulted in the decedent suffering a stroke which eventually resulted in her untimely death. The plaintiff survivors maintained that they suffered the loss of care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that plaintiffs would have received from the decedent both in the past and in the future. In addition, the plaintiffs also suffered the loss of companionship and society and positive benefits flowing from the love, comfort, companionship, and society that the plaintiffs would have received from the decedent both in the past and in the future. The plaintiffs also suffered mental anguish, emotional pain, torment, and suffering in the past and future. The defendants denied all allegations of negligence and maintained that the decedent's death was caused in whole, or in part, from pre-existing conditions unrelated to the defendant's provision of healthcare.

The jury found that the negligence of the defendant caused the death of the plaintiff's decedent. The jury then awarded the decedent's family a total of $320,000 in past loss of companionship, $79,000 in future loss of companionship, and $285,000 for mental anguish, for a total verdict of $684,000.

REFERENCE

Daniel Mota and Enrique Mota as Wrongful Death Beneficiaries of Maria Alvarado vs. Prabhugouda B. Patil, M.D. and Prabhu B. Patel, M.D. Case no. 201500348; Judge Jaclanel M. McFarland, 02-10-20.

Attorney for plaintiff: Tommy Ray Hastings of Hastings Law Firm in The Woodlands, TX. Attorney for defendant: Richard M. Law of Law Feehan Adams, LLP in Houston, TX.

PRODUCT LIABILITY

$5,000,000 RECOVERY - PRODUCT LIABILITY - DESIGN DEFECT - FAILURE TO GUARD PINCH POINT IN INDUSTRIAL LINE OR DESIGN LINE TO ELIMINATE PINCH POINT - PLAINTIFF WORKER'S DOMINANT ARM CRUSHED - GUILLOTINE BELOW-THE-ELBOW AMPUTATION COMPLETED IN HOSPITAL - DEFENDANT PARENT COMPANY OF PLAINTIFF'S EMPLOYER NAMED AS DEFENDANT FOR NEGLIGENT FAILURE TO DETERMINE THAT LINE WAS HAZARDOUS TO WORKERS.

Philadelphia County, PA

This product liability case involved a 37-year-old male industrial line worker who contended that he instinctively reacted by reaching in when sparklers used in the production process inadvertently dropped into an unguarded gap in the line's conveyor system. As the plaintiff reached in to retrieve the sparklers, the conveyor system unexpectedly moved, resulting in his arm being pulled into the conveyor causing such severe crushing fractures to the lower portion of his dominant arm that it essentially entailed a partial "Guillotine" amputation of his arm. The plaintiff was immediately brought to the hospital where the partial amputation of his arm was surgically completed below his elbow. In his lawsuit, the plaintiff named Han-Tek, the designer and manufacturer of the industrial line known as a "Melt Line" as a defendant, contending that the area should have been guarded or that the line's conveyor system should have been designed to avoid the creation of a pinch point at this location. The plaintiff also named his employer, Reading Alloy's parent corporation Ametek, as a defendant, contending that although it audited other machines used by the workers at this plant, it failed to do so with the subject Melt Line and thereby failed to determine that it posed a hazard to workers.

The plaintiff further contended that two designers of component parts which included the area of the line involved in the injury were also responsible under a products liability theory. Finally, the plaintiff named, on a negligence theory, an engineering company that performed design work of other components of the line after it became operational, but before the incident occurred, contending that it should have advised the plaintiff's employer to take steps to obviate the hazard. The defendant parent corporation of plaintiff's employer contended that it was entitled to the benefit of a release signed by the plaintiff after he obtained a workers' compensation settlement and, therefore, it was entitled to immunity under the

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workers' compensation act as plaintiff's employer. This defendant also argued that since it paid workers' compensation benefits to the plaintiff, it should be entitled to employer immunity. The plaintiff countered that this defendant was a separate corporate entity from the plaintiff's employer and was responsible for its own independent conduct. The plaintiff established that he, his co-workers, and his supervisors, were all W-2 employees of the subsidiary corporation and were not employees of the parent corporation. The plaintiff argued, in response to the defendant's summary judgment motions, that the defendant held itself out as a separate entity from the employer and that its contentions of workers' comp immunity should be rejected. The trial court denied this defendant's motion for summary judgment. An attempt to seek an interlocutory appeal of the trial court's denial was unsuccessful.

The case settled prior to trial for $5,000,000, with the defendant Han-Tek, Inc. contributing $2.5 million, the defendant Ametek, Inc. contributing $2.2 million, and the defendants Aquajet Services, LLC, Wily Machine, LLC and SSM Group, Inc. each contributing $100,000.

REFERENCE

Boylan vs. Amatek Corp., et al. Case no. December Term, 2016, No. 2600, 01-20.

Attorneys for plaintiff: Alan M. Feldman, Daniel J. Mann and Edward S. Goldis of Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig, LLP in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

$5,445,637 VERDICT - MOTOR VEHICLE NEGLIGENCE - DEFENDANT DRIVER, HEADING IN OPPOSITE DIRECTION FROM PLAINTIFF, STRIKES A CAR IN REAR, VAULTS OVER MEDIAN DIVIDER AND STRIKES PLAINTIFF'S VEHICLE HEAD-ON - CLOSED HEAD INJURY - TBI - EXTENSIVE SHORT TERM MEMORY AND CONCENTRATION DEFICITS - C2 FRACTURE - LEFT HIP FRACTURE - LOWER LEG FRACTURES - BLOOD TRANSFUSIONS - PNEUMOTHORAX.

Polk County, FL

Liability was stipulated in this motor vehicle negligence action in which the male plaintiff driver, in his late 60s, contended that the defendant driver, who was in the course of her employment for a rental car company traveling in the opposite direction of the plaintiff, negligently struck a car in front of her with such great force that her car vaulted over the median divider into the oncoming lane, striking the plaintiff's vehicle head-on. The plaintiff maintained that as a result, he suffered a closed head injury which has left him with a TBI that has severely impacted his short-term memory and ability to concentrate. The plaintiff further claimed that he suffered a fracture at C2, which did not cause significant neurological deficits, a fracture to the left hip that was superimposed on a prior hip replacement, severe bilateral fractures to the tibia and fibula, multiple rib fractures, a fracture to the left, non-dominant arm and a kidney laceration. The defendant had more than $300,000,000 in available insurance coverage.

The jury awarded $5,445,637, including $1,195,637 for past medical expenses, $2,500,000 for future medical expenses, $500,000 for past pain and suffering, $1,000,000 for future pain and suffering, $125,000 for past loss of consortium and $125,000 for future loss of consortium.

REFERENCE

Young vs. McCoy, et al. Case no. 2016CA004053; Judge Gerald P. Hill II, 02-04-20.

Attorney for plaintiff: Matthew D. Powell of MattLaw in Tampa, FL.

$2,225,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - HEAD-ON COLLISION - DEFENDANT DRIVER KILLED IN ACCIDENT - PLAINTIFF SUFFERS BILATERAL DISPLACED FEMORAL FRACTURES AND LEFT ACETABULUM FRACTURES - THREE SURGERIES WITH HARDWARE - $100,000 POLICY LIMIT - REMAINDER OF RECOVERY OBTAINED FROM ESTATES OF DEFENDANTS DRIVER AND OWNER/HUSBAND.

Orange County, NY

The plaintiff's motion for summary judgment on liability was granted in this motor vehicle negligence case in which the defendant driver, who was killed in the collision, traveled over the double-yellow line causing a head-on collision with the plaintiff's vehicle. The female plaintiff driver, in her early 30s, contended that as a result, she sustained bilateral, displaced femoral fractures and a fracture to the left acetabulum requiring multiple surgeries and the placement of hardware. The plaintiff, who is a teacher, contended that she was able to return to the classroom six months after the collision, but she is now limited to spending most of her teaching time sitting due to her inability to continuously stand at

the front of the class due to pain. The deceased defendant driver had a $100,000 motor vehicle insurance policy and her husband, the co-defendant vehicle owner passed away shortly after the death of his wife. Plaintiff's counsel suspected that the defendants' estate had considerable assets, which were confirmed by an inventory following a Surrogate Court investigation.

The case settled prior to trial for $2,225,000, including the $100,000 insurance policy limit and the remainder coming from the estate of the defendants driver and vehicle owner. It should be noted that most of the estate was liquidated to fund the settlement, with the estate keeping a vacation home.

REFERENCE

Bonesteel-Miranda vs. McAdam. Index no. EF003800-2017; Judge Sandra Sciortino, 02-02-20.

Attorney for plaintiff: Alexander E. Mainetti of Mainetti & Mainetti, PC in Kingston, NY.

$1,825,150 VERDICT - MOTOR VEHICLE NEGLIGENCE - LEFT TURN COLLISION - PLAINTIFF PASSENGER INJURED AFTER VEHICLE IS STRUCK IN PASSENGER SIDE BY DEFENDANT NON-HOST DRIVER - LUMBAR HERNIATION PROMPTING SURGERY.

Philadelphia County, PA

Liability was conceded by the defendant driver in this motor vehicle negligence case involving a 39-year-old male plaintiff construction plumber, who was traveling as a passenger in a car located in the left lane. The plaintiff contended that the host vehicle was struck by the defendant non-host driver who negligently made a left hand turn from the right lane, striking the passenger door of the host vehicle with force. The plaintiff contended that as a result of the collision, he suffered a lumbar herniation which ultimately required fusion surgery approximately three years after the accident after more conservative treatment and nerve block injections proved inadequate. The plaintiff, the co-owner of a construction plumbing business, asserted that due to the injury suffered in the subject collision, he was forced to hire another individual to perform the heavy plumbing work he had previously performed himself. The plaintiff maintained that the company obtained a significant amount of new business since the time of the accident and that although he currently earns more then he did at the time of the accident, the necessity of hiring a new plumber due to the plaintiff's inability to perform heavy plumbing work resulted in his suffering a substantial diminution in earnings. The defendant pointed out that the plaintiff has significantly increased his earnings as of the time of trial and argued that the plaintiff's claims should be judged accordingly. The jury rendered a verdict of $1,825,150, including $58,150 for past medical bills, $23,000 for future medical bills, $1,152,000 for future diminution of earning capacity and $600,000 got past and future pain and suffering.

REFERENCE

Wicker vs. Pileggi, et al. Judge D. Webster Keogh, 11-21-19.

Attorney for plaintiff: Brian S. Chacker of Gay & Chacker in Philadelphia, PA.

PREMISES LIABILITY

$2,000,000 RECOVERY PLUS UNDISCLOSED CONFIDENTIAL SUM FROM CO-DEFENDANT MANAGEMENT COMPANY - NEGLIGENT SECURITY - ABDUCTION OF 12-YEAR-OLD GIRL FROM APARTMENT COMPLEX - FAILURE TO MONITOR PREMISES - OFF-LEASE SEX OFFENDER RESIDING IN PREMISES - WRONGFUL DEATH.

Escambia County, FL

This was a negligent security action stemming from the well publicized kidnapping and murder of 12-year-old Naomi Jones in 2017. The defendants included the Pensacola apartment complex where the girl resided and the management company for the property. The plaintiff contended that the defendants were negligent in allowing the murderer, a registered sex offender, to reside in their complex without being on the lease. The defendants denied negligence and maintained that they had no notice that the murderer was residing on the premises.

The case was settled prior to trial with the defendant apartment complex agreeing to pay $2,000,000 plus an undisclosed confidential sum from the co-defendant management company.

REFERENCE

Shantara Hurry as P.R. of the Estate of Naomi Jones vs. Aspen Village Acquisition, LLC and Progressive Management of America, Inc. Case no. 2018-CA-001991; Judge C. Lee Robinson, 03-19-20.

Attorneys for plaintiff: Michael A. Haggard and Christopher L. Marlowe of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Samuel Bearman (deceased) in Pensacola, FL.

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$1,563,315 GROSS VERDICT - PREMISES LIABILITY - HOMEOWNER'S NEGLIGENCE - NEGLIGENT PLACEMENT OF PLASTIC SHEETING UNDER EXTENSION LADDER - FALL FROM LADDER - TIBIAL PILON FRACTURE - CALCANEAL FRACTURE - MULTIPLE SURGERIES.

Broward County, FL

This premises liability action arose out of an incident in which the plaintiff handyman, age 59 at trial, fell from a ladder, sustaining significant injuries while attempting to paint the exterior of the defendant's home. The plaintiff contended that the fall occurred as a result of the defendant's negligence in placing a plastic sheet under the feet of the ladder. The defendant argued that the fall was the result of the plaintiff's own negligence in failing to properly secure the ladder prior to climbing up on it and by placing a piece of cardboard underneath the ladder and on top of the plastic sheet which was laying on a wet driveway. The plaintiff maintained that he was painting the second story of the house and as he was climbing down the ladder, it suddenly slipped away from the side of the house, causing him to fall approximately 12 feet. The plaintiff was using an extension ladder supplied by the defendant and set up at her direction. The plaintiff was diagnosed with a closed tibial pilon fracture on the right and a closed displaced calcaneal fracture on the left. He underwent closed reduction of the right tibial pilon fracture with application of external fixator and then an open reduction with internal fixation of the left calcaneus fracture a week later followed by three additional surgeries. The defendant disputed the nature and extent of the plaintiff's claimed injuries, as well as his claim of lost earnings. The defendant argued that there was no evidence that the plaintiff would have continued working, given his age and unrelated health conditions including diabetes and neuropathy.

The jury found the defendant 70% negligent and the plaintiff 30% comparatively negligent. The plaintiff was awarded $1,563,315 in gross damages, reduced accordingly. The plaintiff's motion for attorney fees and costs and the defendant's motion for directed verdict, new trial and/or remittitur are pending.

REFERENCE

Brown vs. Shirley-Burden. Case no. CACE 16-20999; Judge Carlos Rodriguez, 01-24-20.

Attorneys for plaintiff: Lawrence J. Bohannon and Paul Cannella of Lawrence J. Bohannon, PA in Fort Lauderdale, FL.

$950,000 RECOVERY - PREMISES LIABILITY - NEGLIGENT MAINTENANCE - FALL DOWN - FAILURE TO PLACE SEALANT IN PARKING LOT OVER 25 YEARS - PLAINTIFF HOSPICE NURSE LOSES BALANCE AFTER WALKING INTO A DEPRESSION IN THE LOT SURFACE - MEDIAL MENISCUS TEAR - DEVELOPMENT OF CRPS IN KNEE WHICH SPREAD DOWN LEG - INABILITY TO CONTINUE WORKING.

Monmouth County, NJ

In this premises liability action, the female plaintiff hospice nurse, in her early 50s at the time, contended that the defendant nursing home, where she was present to visit one of her patients, negligently failed to properly maintain its parking lot, resulting in the formation of a several- inch deep depression. The plaintiff asserted that she lost her balance and fell after stepping out of her car into the depression. The plaintiff claimed that she suffered a tear to the medial meniscus that was treated via arthroscopic surgery and contended that despite the arthroscopic surgery, she subsequently developed CPRS in her knee which has traveled down her leg and which, she maintained, will cause permanent, extensive pain and limitation, preventing her from continuing working. The defendant argued that the plaintiff had been using the same parking spot over an extended period of time as she visited various patients and their families and the defendant's facility. The defendant maintained, therefore, that the plaintiff should have been aware of any depression in the lot surface and was clearly comparatively negligent in failing to avoid it. The plaintiff countered that the depression was subtle, accounting for her not being aware of its presence. The plaintiff additionally argued that over 25 years, the defendant failed to apply any sealant to the lot to prevent water ingression from causing such hazards. The plaintiff's expert was prepared to testify that sealant should be applied on a yearly basis in commercial premises that are open to the public.

The case settled prior to trial for $950,000 with $760,000 allocated to the plaintiff and $150,000 to her husband on his per quod claim.

REFERENCE

Cathey vs. Jersey Shore Convalescence Center, et al. Docket no. MON -L-3085-17; Mediated before Judge Dennis O'Brien (retired), 12-19-19.

Attorney for plaintiff: John G. Mennie of Schibell & Mennie, LLC in Ocean, NJ.

$332,500 RECOVERY - PREMISES LIABILITY - FALL DOWN - PLAINTIFF SUSTAINS INJURIES AFTER HE FELL OVER LOOSE BRICKS ON ALLEGEDLY POORLY CONSTRUCTED WALKWAY - ELBOW FRACTURE - HIP FRACTURE.

Harris County, TX

The male plaintiff, a UPS delivery carrier, contended that he sustained serious injuries to his elbow and hip while making a delivery to the defendant in the course and scope of his employment and was lawfully on the defendants' property when he tripped over loose bricks present on the front walkway. Specifically, the plaintiff asserted that when he arrived at the defendant's door, he rang the doorbell and could hear a dog barking in the house. Per UPS protocol, the plaintiff backed away from the door to avoid possible contact with the dog. As the door opened and the dog escaped, the plaintiff quickly continued backing away whereupon he tripped over a brick in the "Extended walkway" that had been installed using concrete bricks in a haphazard fashion, according to the plaintiff. The plaintiff claimed that he suffered a left elbow fracture dislocation with coronoid fracture and displaced radial hip fracture. The defendants argued that the plaintiff failed to use that degree of care and caution as would have been used by a reasonably prudent person under the same or similar circumstances and that such acts or omissions of the plaintiff were the sole and/or producing and/or proximate cause of the plaintiff's alleged damages.

The parties settled for $332,500.

REFERENCE

Rick Pitre vs. SFRA III, LLC, Main Street Renewal, LLC and Sarah A. Nelson. Case no. 201722272; Judge Tanya Garrison.

Attorney for plaintiff: Jack Wayne Little of Elliott & Little in Conroe, TX. Attorney for defendant: Staci Mims Vetterling of Hartline Barger, LLP in Houston, TX. Attorney for defendant: Anthony Leonard Vitullo of Fee,Smith,Sharp & Vitullo, LLP. Attorney for defendant: Benjamin Shafer Carpenter of The Carpenter Law Firm in Houston, TX.

ADDITIONAL VERDICTS OF INTEREST

Dog Attack

$192,360 VERDICT - DOG ATTACK - PLAINTIFF ALLEGES DEFENDANT'S DOG ATTACKED HIM UNPROVOKED - FACIAL LACERATIONS - HEAD INJURY - CONCUSSION - ROTATOR CUFF TEAR - INGUINAL HERNIA - SURGERY.

Litchfield County, CT

In this dog attack case, the plaintiff, a medical doctor, contended that the defendants, the dog's owner and a neighbor was walking the dog at the time, were both responsible for the dog's actions after it attacked the plaintiff and his dog as they were walking past the defendants' property. The plaintiff contended that both defendants were aware that the dog had vicious tendencies, that it had previously attacked other persons and animals in the neighborhood, including the plaintiff and, therefore, that the defendants were strictly liable for the plaintiff's injuries and damages. The plaintiff claimed that as a result of the attack, he suffered extensive injuries as a result of the incident including a head injury, spinal injuries, concussion, rotator cuff tear and a hernia which required surgery. The defendants denied the plaintiff's allegations and maintained that the plaintiff caused his own injuries by teasing and tormenting their dog immediately prior to the attack. The defendants also disputed causation and the plaintiff's claimed damages, arguing that the plaintiff's injuries were either not permanent or not causally related to the incident.

At the conclusion of the trial, the jury deliberated and returned a verdict in favor of the plaintiff, awarding the plaintiff $192,360. The defendant neighbor filed a motion to set aside the verdict as to him, arguing that the relevant state statute did not permit recovery as to both the owner and the keeper of the animal. The Court considered the defendant's motion and agreed. The Court determined that under the law, the co-defendant could not be deemed the dog's keeper and, therefore, could not legally be found liable for the injuries sustained by the plaintiff. Accordingly, a JNOV was entered as to the co-defendant neighbor.

REFERENCE

Michael Valdes et al. vs. Martin Lindenmayer. Case no. CV18-6017083-S; Judge John Pickard, 10-23-19.

Attorney for plaintiff: Kathleen L. Nastri of Koskoff & Koskoff & Bieder, PC in Bridgeport, CT. Attorney for defendant dog owner: Michael R. Young of Ryan Ryan & Deluca in Bridgeport, CT. Attorney for defendant Rafferty: Edward W. Gasser of Gasser Law Firm, LLC in Avon, CT.

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Elevator Company Negligence

$2,115,000 RECOVERY - ELEVATOR COMPANY NEGLIGENCE - DEFENDANT SUPPLIES CONTROL SWITCH ON TOP OF ELEVATOR CAR WHICH DOES NOT COMPLY WITH CODE DUE TO FAILURE TO INCLUDE APPARATUS PREVENTING INADVERTENT ACTIVATION - DECEDENT ELEVATOR MECHANIC INADVERTENTLY TOGGLES SWITCH CAUSING ELEVATOR CAR TO DESCEND AS HE IS BETWEEN SHAFT AND CAR - 42-YEAR-OLD DECEDENT CRUSHED TO DEATH.

Hudson County, NJ

In this elevator negligence action, the plaintiff contended that the defendant elevator company violated applicable regulations by incorporated a switch on the top of their elevator car which did not include a safeguard against inadvertent activation of the car. The plaintiff maintained that on the day of the incident, the 42-year-old male decedent elevator technician was performing routine inspection work of the defendant's elevator car while positioned next to it in the elevator shaft. The plaintiff contended that as he was working, the decedent inadvertently contacted the subject switch, causing the car to begin moving, fatally crushing the decedent between the car and the shaft. The plaintiff asserted that applicable code requires that such switches come equipped with devices to prevent accidental activation. The defendant contended that it offered such an interlock switch, but had acquiesced to the property owner/employer's request that it supply the switch used on this elevator car, which did not include such a safety device. The plaintiff made a motion in limine to prevent the defendant from pointing the finger at the non-party employer. This motion was pending at the time of the settlement.

The defendant further contended that the decedent, who was an experienced elevator maintenance technician, should have gone to the control room before beginning his inspection. The defendant established that the decedent could have set the controls to prevent the car from moving while it was being inspected. However, the plaintiff countered that setting the controls in this manner would impede his job since he was riding on top of the car while it descended to each floor before climbing into the elevator shaft to perform his inspection work of the car on each floor. The plaintiff contended that if the elevator car had incorporated the proper switch to prevent unintentional activation, which was mandated by the relevant local code, the decedent could have safely performed his duties and would still be alive.

The decedent, who was not married, left two sons, one of who resided with him. The plaintiff's economist would have testified to losses of $977,333, including lost earnings, as well as loss of guidance, advice and household services.

The case settled prior to trial for $2,115,000.

REFERENCE

Camper vs. Quality Elevator Products, Inc. Docket no. HUD-L-1870-17, 12-05-19.

AttorneyS for plaintiff: Edward Capozzi and Corey Dietz of Brach Eichler, LLC in Roseland, NJ.

Transit Authority Negligence

$12,500,000 RECOVERY - TRANSIT AUTHORITY NEGLIGENCE - BUS/PEDESTRIAN COLLISION - PLAINTIFF ALLEGES HE WAS STRUCK FROM BEHIND BY LEFT TURNING BUS WHILE IN A CROSSWALK - NYCTA INVESTIGATION DETERMINED THAT PLAINTIFF WALKED INTO THE SIDE OF THE BUS SOME 70 FEET FROM CROSSWALK - SEVERE CRUSH INJURIES TO GROIN - EVISCERATION OF TESTICLE - AMPUTATION OF LEG AT HIP.

Queens County, NY

In this Transit Authority negligence action, the male plaintiff pedestrian, age 40 at the time, contended that as he was crossing the street in a crosswalk, the driver of the defendant NYCTA bus negligently made a left turn without making adequate observations, striking the plaintiff from behind with the left front of the bus and rolling over him. The plaintiff maintained that as a result, he suffered severe crush injuries to the lower half of his body and that his injuries included a wound to his groin that was so severe that it resulted in an evisceration of one testicle and ultimately, the need for a hemipelvectomy in which his leg was surgically amputated at the hip. The defendant maintained that its investigation reflected that the incident had occurred approximately 70 feet from the intersection and after the defendant bus operator had completed her left turn, asserting that the plaintiff had walked into the side of the bus. The NYPD police report was largely

consistent with the defendant Transit Authority's position in this regard. The plaintiff denied that the defendant's investigation conclusions accurately reflected the events of the incident. The plaintiff called an independent eyewitness who indicated that he was stopped in the turning lane immediately behind the bus. This witness testified that when the light turned green, the bus proceeded to make a left turn. The witness stated that he saw the plaintiff walking in the crosswalk and thought to himself, "Oh my God, the bus is going to hit him!" The eyewitness's testimony reflected that he saw the plaintiff being struck and run over by the front of the defendant's bus.

The case settled prior to trial for $12,500,000.

REFERENCE

Zhou vs. NYCTA, et al.

Attorney for plaintiff: James C. Napoli of Caesar and Napoli, PC in New York, NY.

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