NEW JERSEY
JURY VERDICT REVIEW & ANALYSIS®
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SUMMARIES WITH TRIAL ANALYSIS

Volume 42, Issue 1
June 2021

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

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

VERDICTS BY CATEGORY

SUMMARIES WITH TRIAL ANALYSIS

$1,491,000 RECOVERY PLUS SIGNIFICANT REDUCTION OF ERISA LIEN – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – MULTIPLE LEG AND ARM FRACTURES – INABILITY TO CONTINUE AS NURSING ASSISTANT.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her mid 40s contended that the on-coming defendant driver suddenly traveled across the center line, causing the head-on collision. The plaintiff suffered fractures of her left femur, left ilium, left patella, right humerus and right patella. The plaintiff required the performance of some 14 surgeries and remains vulnerable to a below-the-knee amputation of the right leg because of blood supply difficulties.

The plaintiff ambulates with the use of a walker. The evidence reflected that she continues to suffer extensive pain with discomfort and the plaintiff contended that even if she can avoid the amputation, she will suffer extensive pain and difficulties ambulating for the remainder of her life.

The plaintiff previously worked as a nursing assistant for a hospital and has not worked since the accident. The plaintiff will likely change jobs to perform more sedentary work. The plaintiff maintained that it will be very difficult to find such work and that even if she can ultimately do so; her earnings will be significantly less. The plaintiff is losing approximately $10,000 per year after an offset of her disability payments. She had an estimated 18 additional years to work before she contemplated retirement. The plaintiff significantly exhausted her $250,000 PIP benefits and plaintiff's counsel relates that there was a substantial amount of medical bills which were submitted to her health care carrier and not acted upon by them in a timely manner, enabling the plaintiff to reduce the healthcare ERISA lien to under $50,000.

The defendant had $500,000 policy that was reduced for $9,000 property damage payments. He also had a $1,000,000 umbrella. The case settled prior to trial for $1,491,000, plus a significant reduction of the ERISA lien and release language that her lost wage claim was not compensated by the settlement to try to avoid her disability carrier from reducing her future payments.

REFERENCE

Van Orden vs. Stampoe. Docket no. MRS–L224-20, 11-24-20.

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

COMMENTARY

The plaintiff had exceeded her $250,000 PIP medical benefits early on and In addition to the recovery of the full amount of the available insurance, the plaintiff was able to significantly reduce the lien ERISA lien. In this regard, plaintiff's counsel relates that although the medical bills were timely provided to the health care provider, they were not promptly paid enabling plaintiff to reduce the lien to under $50,000. In addition, the release contained language that the settlement money was not compensating her for lost wages helping to avoid a future diminution of her disability payments as the settlement money did not fully compensate the plaintiff for her catastrophic injuries.

$1,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT SCHOOL MINIVAN DRIVER CONTAINING NO STUDENTS – CERVICAL AND LUMBAR DISC INJURIES – TWO-LEVEL LAMINECTOMY AND ARTIFICIAL DISC REPLACEMENT SURGERY – NO SIGNIFICANT FUTURE INCOME CLAIMS.

Essex County, NJ

In this action for motor vehicle negligence, the plaintiff driver in her late 40s contended that she was struck in the rear by a minivan driven by the defendant employee of a school transport company. The plaintiff contended that as a result, she suffered two herniations each in the lumbar and cervical disc areas which required a two-level laminectomy and an artificial disc replacement. The plaintiff also contended that several months after the accident, she suffered additional injury in a fall caused by the instability associated with the initial injuries that will permanently increase the severity of the injuries and permanently necessitate increase future care, including physical therapy. The defendant did not dispute that the accident occurred when the plaintiff stopped to avoid a pedestrian at the intersection. The defendant asserted, however, that the impact was insufficient to cause the claimed injuries.

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

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

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

The plaintiff would have countered that she had no history of significant back or neck difficulties, and that in view of this factor and the evidence that the diagnoses were made shortly after the accident, the defendant's position should be rejected. The plaintiff, who has not worked since the accident, made no significant future income claims. The plaintiff maintained, however, that the pain performing everyday activities otherwise taken for granted are very difficult. The plaintiff would have testified that she experiences regular difficulties sleeping in addition to pain stemming from the neck and back injuries.

The plaintiff contended that such difficulties will continue permanently despite future care. The plaintiff's life care plan approximated $1,300,000 - to over $4,000,000 including the anticipated use of a home health aide. The plaintiff would have also argued that the jury should consider that the impact of the injuries will continue for remainder of a lengthy life expectancy.

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

REFERENCE

Defendant's biomechanical expert: Calum McRae from AARCA, Penns Woods, PA.

Rafael vs. Williams. Docket no. ESX-L-1513-19, 10-20.

Attorney for plaintiff: James Vasquez of Law Office of James Vasquez in Clifton, NJ.

COMMENTARY

The plaintiff was able to resolve the case for a significant sum despite the evidence that the impact was not severe and notwithstanding the absence of significant future income claims. The plaintiff emphasized that she had no significant prior neck or back symptoms until after the collision occurred and underwent disc surgery a relatively short time after the accident occurred. Additionally, the plaintiff's future life care plan, including the costs of physical therapy and the anticipated use of a home health aide, were very substantial. In this regard, the plaintiff would have argued that the need for future care was heightened by injuries sustained in a fall a number of months following the accident. Finally, as has been noticed in the past, the presence of the case of a school bus driver often evokes a heightened jury response even in spite of the fact that no children were on the bus at the time of the accident.

$279,423 VERDICT – POLICE LIABILITY – EXCESSIVE FORCE – ASSAULT AND BATTERY – PLAINTIFF CLAIMS FALSE ARREST AND ASSAULT RESULTING IN INJURY AND EMOTIONAL DISTRESS – SCRATCHED LEFT CORNEA; RIGHT OPERCULATED RETINAL HOLE AND TRAUMATIC IRITIS – LASER SURGERY – PLAINTIFF ALSO CONTENDS LOSS OF JOB DUE TO SUBJECT INCIDENT – COURT AWARDED ADDITIONAL $169,565 IN ATTORNEY FEES AND $12,779 IN COSTS POST-TRIAL FOR TOTAL RECOVERY OF $461,759.

Hudson County, NJ

In this police liability case, the plaintiff asserted that the defendants unlawfully arrested him. The plaintiff brought suit against the defendant city, police department, individual police officers, and the defendant police lieutenant. The plaintiff accused the defendants of assault and battery; deprivation of civil rights; abuse of process; false imprisonment; false arrest; intentional infliction of emotional distress; defamation; malicious prosecution; negligent hiring, training supervision and retention; vicarious liability as to the city and police department; and conspiracy to commit a tort. The charges of false imprisonment, false arrest, malicious prosecution, abuse of process and conspiracy were dismissed via summary

judgment prior to trial. The other charges remained and the case proceeded on those charges. The defendants denied the plaintiff's claims and asserted that any damages suffered by the plaintiff were caused or contributed to by the negligence of the plaintiff.

On March 22, 2015, the plaintiff was at a bar in Jersey City when a fight broke out amongst a large group of females that the plaintiff did not know. The front entrance was clogged with people stampeding out so the plaintiff, his stepsister and cousin exited out a side door and, in the chaos, the plaintiff's cousin's phone was dropped underneath a vehicle. The plaintiff reported that he squatted down to look for the phone when an officer appeared and asked him what he was doing. He responded that he was attempting to retrieve the phone under the car. The officer told him to leave and, when the plaintiff attempted to reach for the phone, he was grabbed from the front and brought to the sidewalk.

The plaintiff was subsequently arrested by the defendants and charged with various criminal offenses including: assault on a law enforcement officer; resisting arrest; failure to disperse and disorderly conduct. In the course of his arrest, the plaintiff was subject to excessive force, assault and battery and otherwise violently attacked by the defendants' officers. The plaintiff was charged with several criminal offenses all of which were later dismissed in municipal court. The plaintiff asserted that the defendants' actions were willful and in wanton disregard of the plaintiff's civil and constitutional rights. The plaintiff asserted that the defendants communicated to third parties a false and defamatory statement of fact concerning the plaintiff with actual knowledge that the statement was false or with reckless disregard of its truth or falsity in order to defame the plaintiff.

As a result of the defendants' assault on the plaintiff, he was taken to the hospital for injuries sustained while in the custody of the defendants. The plaintiff sustained a scratched left cornea; right operculated retinal hole and traumatic iritis and right hand contusion. The plaintiff underwent laser surgery to repair the operculated retinal hole. The plaintiff also was caused to suffer severe emotional distress and mental anguish. Further, the plaintiff contended that he lost his job due to the subject arrest because he was placed on house arrest and was unable to maintain his previous work schedule.

The defendants refuted the plaintiff's description of events, claiming that the defendants were dispersing people through the street after arriving on the scene of the bar fight and observed the plaintiff acting belligerent and failing to heed police commands. The defendant lieutenant stated that the plaintiff kept walking towards him and towards the bar when the defendant warned him to leave or be placed under arrest. The lieutenant testified that the plaintiff did not leave the area and acted like he was going to "walk through" the lieutenant. At that point, other officers grabbed the plaintiff and tried to place him under arrest but, due to his active resistance, the officers wound up on the ground until eventually being able to place him in handcuffs. The defendants asserted that any injuries the plaintiff sustained were due to his active resistance. Further, the defendants argued that the plaintiff's claims were barred by the New Jersey Tort Claims Act.

The jury found in favor of the plaintiff and against the defendant lieutenant only and awarded compensatory damages in the amount of $279,423 broken down as follows: $271,948 in damages; and $7,477 in interest. The jury declined to award punitive damages. The remaining individual officers were dismissed on motions or by "no cause" assessment by the jury.

REFERENCE

Williams vs. City of Jersey City, et al. Docket no. L-000959-17; Judge Mary K. Costello, 11-07-19.

Attorneys for plaintiff: Brian Schiller and Adam M. Brown of Schiller McMahon, LLC in Westfield, NJ. Attorney for defendant: Peter J. Baker of Corporation Counsel, City of Jersey City - Law Department in Jersey City, NJ.

COMMENTARY

Following the verdict, the plaintiff moved for award of counsel fees and costs pursuant to N.J.S.A. 10:6-2(f) violation of the plaintiff's civil rights. The plaintiff justified the amount of attorney's fees claiming that the case was more difficult than expected since the evidence necessary to prove the case was only available through the defense witnesses due to the lack of direct evidence in the form of video, body cameras, and cooperative eyewitnesses. The defendants contested the fee application by arguing that the number of hours billed were excessive, some of the billing entries were duplicative or vague, some of the services billed for were purely administrative and that the hourly rate was out of proportion.

The court found that, in spite of the position taken by the defendants, the plaintiff was a prevailing party as defined by N.J.S.A. 10:6-2(f), which triggered the right to reasonable fees and costs. The court stated that the inquiry as to the fees and costs began with the number of hours claimed and the corresponding hourly rate for services rendered. The court must employ a "reasonableness standard" when reviewing the claimed number of hours as well as the rate charged per hour. Prevailing market rates should be used in guiding the court's analysis.

In this case, the court found that counsel for the plaintiff billed the client for different rates, depending on which attorney was performing the service with two attorneys billing at the partner rate of $450/hour and two attorneys billing at the associate rate of $375/hour. In support of those billable rates, the plaintiff presented the affidavit of an attorney, who attested to the standard of practice in the geographic area, as well as the experience, skill and specialization of the plaintiff' attorney. The court was satisfied that the hourly rates charged were reasonable and in conformance with local practice. The total fee sought by the plaintiff was $181,118. After scrutinizing the billing statement, the court disallowed certain fees as duplicative or impermissibly administrative. Other fees were reduced as being excessive for the time allotted. As such, the court awarded reasonable fees in the amount of $169,565 and costs in the amount of $12,779.

$200,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF FALLS ON ICE ACCUMULATED ON SIDEWALK OUTSIDE OF DRUGSTORE IN MULTI-TENANT SHOPPING CENTER – BILATERAL KNEE TRAUMATIC CHONDROMALACIA – PARTIAL THICKNESS ROTATOR CUFF TEAR – C4-5 DISC HERNIATION WITH RADICULOPATHY – LEFT SHOULDER ARTHROSCOPIC DECOMPRESSION – SYNOVECTOMY – EXTENSIVE DEBRIDEMENT OF LABRAL TEAR AND DEBRIDEMENT OF ROTATOR CUFF TEAR – ONGOING, PERMANENT DISABILITY FROM ACTIVITIES OF DAILY LIVING.

Ocean County, NJ

In this premises liability case, the plaintiff, a 44-year-old woman, asserted that the defendant store failed to remove snow and ice from the sidewalk outside the store and that the plaintiff fell on accumulated ice causing significant, permanent injury. The plaintiff brought suit against the defendant drugstore, the shopping center owner, and the snow removal contractor. The defendant store denied responsibility for the area where the plaintiff fell. The defendant store argued that it was one tenant in a multi-tenant shopping center.

On January 15, 2017, the plaintiff was entering the defendant store via a walkway from the parking lot directly in front of the defendant drugstore. The plaintiff slipped on ice that she claimed was caused by water dripping from the melting of snow on the roof of the defendant store. The plaintiff's fall was so close to the door of the defendant store that it was captured on security video cameras positioned to view the door of the store. The plaintiff further presented evidence that, regardless of snow removal agreements between the defendant store, property owner, and snow removal contractor, the manager of the defendant store had consistently instructed employees to keep the area immediately outside the doors to the store free from ice and to apply ice-melt products when necessary. A snow shovel was also kept by the doors for employees to use to remove snow or ice as it appeared. The defendant store never contacted the co-defendants about the melting and dripping of snow from the roof to the spot in front of the store's doors.

As a result of the fall, the plaintiff sustained knee injury: bilateral patellofemoral traumatic chondromalacia; Left shoulder injury: partial thickness rotator cuff tear; thickening of the coracoacromial ligament; impingement syndrome; bursitis; radiculopathy; Cervical spine injury: C4-5 disc herniation with radiculopathy. The plaintiff underwent left shoulder arthroscopic decompression and acromioplasty, synovectomy, extensive debridement of labral tear and debridement of partial rotator cuff tear. The plaintiff had a $45,000 ERISA lien.

The defendant asserted that the sidewalk where the plaintiff fell was part of the common space at the shopping center, open to any user, including the customers and employees of all the shopping center tenants. Further, the defendant asserted that it agreed, commencing in April 2015, to pay the defendant property owner/landlord its pro rata share of the common area charges and transferred the maintenance and repairs of all common areas, including the removal of snow and ice, to the landlord. The defendant property owner denied liability contending that it had contracted with the defendant snow removal contractor to remove snow and ice on the property including the sidewalk adjacent to the store.

The plaintiff allegedly fell approximately 2 ½ hours after the contractor inspected the sidewalk. The defendant contractor claimed that it fulfilled its duty to remove and remediate ice and snow and that the accumulation of ice that the plaintiff allegedly slipped on occurred due to a defect in the building that allowed melt runoff to accumulate on the sidewalk and, for which, the defendant contractor had no responsibility. The defendant contractor argued that the defect allowed runoff to accumulate on the sidewalk continuously throughout days when there was or wasn't active precipitation. The defendant contractor maintained that the runoff was the result of a defect in the building design, not due to precipitation which the defendant contractor was responsible to remove.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 45% liability to the defendant property owner; 45% to the defendant snow removal company; 0% to the defendant drugstore and 10% to the plaintiff. The arbitrator set gross damages at $85,000 reduced to $76,500 for plaintiff's comparative negligence combined with the $45,000 for reimbursement of ERISA lien for total damages to the plaintiff of $121,500. Following arbitration and prior to trial, the parties settled for $200,000.

REFERENCE

DeCaprio vs. The Walgreen Company, et al. Docket no. L-002782-17; Judge James Den Uyl, 10-29-19.

Attorney for plaintiff: Stephan T. Mashel of Mashel Law, LLC in Morganville, NJ. Attorneys for defendant drugstore, Walgreen Company: James P. Lisovicz and George A. Kelman of Kinney Lisovicz Reilly & Wolff, PC in Parsippany, NJ. Attorney for defendant snow removal contractor A&M Harrison Construction Co.: Elizabeth A. Darmody of Zimmerer, Murray, Conyngham & Kunzier in Manasquan, NJ. Attorney for defendant property owner, Adelphia Plaza LLC and Stavola Realty Company: David L. Burnett of Kirmser, Lamastra, Cunningham & Skinner in Whitehouse Station, NJ.

COMMENTARY

The defendant store brought a motion for summary judgment arguing it was entitled to be dismissed from the case because it did not owe a duty to maintain the area where the plaintiff fell. The defendant put forth that the plaintiff was a patron at a multi-tenant shopping center where the defendant was just one of eight tenants, the attendant risk was in a common area, the assignment of maintenance responsibility impacted the defendant's opportunity and ability to address the condition, and the public interest weighed in favor of not imposing a duty on the defendant under the facts of the case.

The defendant's motion was opposed by the plaintiff who argued that the defendant owed business invitees such as the plaintiff a duty to keep the walkway to its store reasonably free from ice which could cause injury. The plaintiff cited Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993) wherein the court ruled that the operator of a commercial business must provide reasonably safe premises and that no distinction should be made between an owner-operator and a tenant-operator. Hopkins went on to establish that a business that enjoys the benefits of a sidewalk used by its customers to access the business must take reasonable measures to keep the area free from hazards and that the tenant's liability is concurrent with the owner's liability.

The court applied the four-factor test outlined in Hopkins to determine whether there was a duty word by the defendant to the plaintiff. With regard to the relationship between the defendant and plaintiff, the court found there was enough evidence to suggest the plaintiff was a direct business invitee of the defendant. In terms of the nature of the attendant risk, patrons utilizing the sidewalk to enter and leave the defendant's business were put at a risk of harm from the ice on the sidewalk. With regard to the opportunity and ability to exercise care, the defendant had an opportunity and ability to exercise care as evidenced by the location of the sidewalk and that it abutted the defendant's store. Finally, with regard to the public interest factor, the court found that the circumstances of this case compelled the imposition of a duty. In light of the four-factor test, and in light of the location of the sidewalk abutting the defendant's store, the court found that there was a duty owed by the defendant to the plaintiff. The court also found that there were genuine disputes of material fact as to whether the defendant breached that duty. On those grounds, the court denied the defendant's motion for summary judgment.

$55,000 RECOVERY – MEDICAL MALPRACTICE – NURSING – HOME HEALTHCARE NEGLIGENCE – ELDERLY PATIENT WITH PARKINSON'S DISEASE CLAIMS DEFENDANT HEALTHCARE PROVIDER AND EMPLOYEES ABUSED PATIENT CAUSING HER TO SUFFER INJURIES INCLUDING BROKEN ARMS ON TWO OCCASIONS, MULTIPLE FRACTURES, AND OTHER INJURIES, SOME REQUIRING SURGICAL REPAIR – DEFENDANT EMPLOYEES ALSO STOLE MONEY FROM PLAINTIFF, AS WELL AS DOUBLE-BILLING OR BILLING FOR CARE NOT PROVIDED – DEFENDANT ASSERTS PLAINTIFF'S DAMAGES CAUSED BY OWN NEGLIGENCE OR NEGLIGENCE OF FAMILY.

Hudson County, NJ

In this medical malpractice case, the plaintiff, who suffered from multiple health issues including dementia, asserted that the defendant home healthcare company and its employees and agents abused the plaintiff patient in their care, failed to protect an elderly and cognitively impaired woman, failed to investigate and document injuries sustained during the defendant's care of the plaintiff, failed to adequately supervise employees, and billed for care during times when the plaintiff was not at home and was an inpatient in hospital facilities. The defendant denied liability and contended that the plaintiff's damages were caused or contributed to by the plaintiff's own negligence, the negligence of the attorney in fact, her familial caretakers, financial brokers, and any other individuals with access to the plaintiff's financial information other than the defendant.

On December 10, 2010, the defendant was employed to provide home health care services to the plaintiff. Those services were provided between December 2010 and 2017. During this time period, the plaintiff suffered Parkinson's disease and declining cognitive skills. The plaintiff claimed that she suffered abuse from the defendant and its employees during the time of their care of her, including broken arms on two occasions, multiple fractures, and other injuries, some requiring surgical repair. The plaintiff also claimed that, during that time, the defendant overbilled and doubled-billed the plaintiff for its services. The plaintiff maintained that the defendant, through its agents and employees, presented invoices to the plaintiff directly and helped her write checks in payment of those bills.

Also during that period of time, the defendant, agents and employees, while rendering services to plaintiff, converted plaintiff's money to their own use. Among the ways that this conversion occurred was the defendant's agents and employees took the plaintiff to the bank and had her sign withdrawals of cash which they used for their own or took cash from the home, in which the plaintiff resided. The plaintiff argued that the defendant was aware that its agents and employees were making cash withdrawals from the plaintiff's bank account because some of the cash withdrawals were used to pay the defendant. The plaintiff held that the defendant, through its agents and employees, sought to avoid any oversight by the plaintiff's family members and others, in order to prevent them from learning about this improper billing for services and that the defendant's

employees and agents hid the plaintiff's financial books in order to avoid these practices being detected.

The plaintiff asserted that she suffered physical injuries at the hands of the defendant's employees; as well as pain and suffering, emotional distress, and financial losses. The plaintiff claimed that the defendant's agents/employees wrote more than $82,000 in checks from the plaintiff's checkbook between February and May 2017 alone, as well as frequent cash withdrawals from the plaintiff's bank account.

The defendant maintained that the plaintiff was culpable by conduct consisting of not keeping track of her records, failing to notify anyone that her attorney in fact was not responding, failing to pay her bills on time, failing to keep track of her finances, permitting several individuals access to her bank accounts; failing to notify proper authorities and/or financial institutions when irregularities were detected; failing to take steps to protect her finances; failing to permit people to assist her with daily chores of living; failing to use the proper walking devices; failing to get up out of bed on a regular basis; and failing to seek assistance in ambulation, bathing, movement, etc.

The parties settled the matter prior to trial in the amount of $55,000.

REFERENCE

Sima vs. Always Caring Health Services, LLC. Docket no. L- 005168-17; Judge Vincent J. Militello, 05-05-20.

Attorney for plaintiff: Alexander O. Bentsen of Miller, Meyerson & Corbo in Jersey City, NJ. Attorney for defendant: Amy S. Weissman of Marshall Conway & Bradley, P.C. in Jersey City, NJ.

COMMENTARY

This case settled, after lengthy negotiations, on January 16, 2020. Plaintiff's counsel received a Release from the defendants via email on that date. Upon sending the release to the plaintiff, counsel learned for the first time that, prior to the filing of the lawsuit, the defendant had sent the plaintiff a bill for an alleged outstanding balance of approximately $20,000. The plaintiff asked that the matter be addressed in the Release with the settlement to include a mutual release of all claims for both parties. The defendant indicated that there was an outstanding balance on the plaintiff's account and that they would not waive the bill, but would reduce the bill. Plaintiff's counsel petitioned the court to enforce the settlement agreement entered into by the parties and bar the defendant from raising any claim or set-off from the agreed-upon settlement.

Plaintiff's counsel argued that no bill was ever mentioned or produced in discovery, nor was any counterclaim asserted by the defendant. The plaintiff maintained that it was well settled in the Rules Governing the Courts of the State of New Jersey, that when a plaintiff brings a lawsuit against a defendant, the defendant must raise all claims it may have against the plaintiff in the same action per Rule 4:30A. Additionally, per Rule 4:7-1: "failing to comply with R. 4:30A (entire controversy doctrine) or failing to set off a liquidated debt or demand or a debt or demand capable of being ascertained by calculation, shall thereafter be precluded from bringing any action for such claim or for such debt or demand which might have been so set off."

Plaintiff's counsel also cited Schweitzer v. MacPhee, 130 N.J. Super. 123 (App. Div. 1974) wherein the defendant MacPhee had hired plaintiff Schweitzer to perform earth removal. While performing the work, Schweitzer damaged MacPhee's property by causing a wall collapse. MacPhee sued Schweitzer for the damage and the parties settled. After the conclusion of the first lawsuit, Schweitzer filed a new breach of contract suit against MacPhee related to the underlying contract. The trial court held that Schweitzer's claim was "liquidated or capable of being ascertained by calculation" and therefore barred because it was never raised in the first lawsuit. The plaintiff argued that this was the same scenario. The plaintiff maintained that the defendant intended not to include the purportedly unpaid bill in this lawsuit so that could later be asserted against the plaintiff after the insurance carrier settled the matter with the plaintiff. Plaintiff's counsel claimed this was clearly prohibited by Rules 4:7-1; 4:30A and the court's holding in Schweitzer.

The defendant opposed the motion arguing that the plaintiff, at no time during negotiations or settlement, raised the issue of outstanding money due to the defendant. Likewise, given that the defendant's representation in this matter was pursuant to the defendant's insurance coverage, and counsel was retained by the defendant's insurer, no counterclaim was asserted in the defendant's answer for any monies owed to the defendant, which, defense counsel argued would be outside the scope of its representation in this matter. The defendant maintained that the plaintiff brought up the issue of mutual release of any monies for the first time after settlement. At that time, defense counsel claimed, it did not represent the defendant in its capacity for any monies owed, and instead represented the defendant pursuant to an assignment by the defendant's insurer. Defense counsel held that a mutual release could not be achieved without some consideration to the defendant, which the plaintiff was not offering. The defendant argued that the plaintiff's citing of Schweizer v. MacPhee was inappropriate since it dealt with property damage, not varying claims for professional negligence and conduct, as in the subject case.

The court ordered that the plaintiff's motion to enforce the settlement was granted and the matter was fully and finally settled. However, the court denied the plaintiff's request to bar the defendant from taking any future action against the plaintiff arising out of the home health services/patient relationship relevant to the subject action.

DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – SURGERY – PLAINTIFF CONTENDS DEFENDANT MISDIAGNOSED C5 PALSY RATHER THAN EPIDURAL HEMATOMA CAUSING DELAY OF EVACUATION OF HEMATOMA AND RESULTING IN PERMANENT PARTIAL PARALYSIS – DEFENDANT CONTENDS NO DELAY IN TREATMENT OF HEMATOMA AND DETERIORATION CAUSED BY INTRODUCTION OF SIGNIFICANT ANALGESICS, EFFECTS OF WHICH REQUIRED MEDICAL REVERSAL, AND WHICH DEFENDANT DID NOT ORDER OR ADMINISTER.

Bergen County, NJ

This action for medical malpractice arose from an incident which occurred on June 30, 2014, when the plaintiff, while riding his bicycle, was forced to suddenly brake, causing the front wheel to lock, flipping him over the handlebars. He landed on his back, neck and shoulders. He had severe scapular pain traveling up to his neck. The plaintiff was taken by ambulance to the hospital where MRIs were performed and read as demonstrating severe central spinal stenosis due to ossification of the posterior longitudinal ligament. A spinal surgery consult was obtained and the plaintiff underwent emergent cervical decompression of his spinal stenosis and anterior corpectomy and strut graft fusion C5-T1, as well as a posterior laminectomy and instrumented fusion C3-T1 performed by the defendant. The following day, the defendant diagnosed the plaintiff with postoperative C5 palsy. The plaintiff continued to have spasms and the next day was again diagnosed with C5 palsy. An MRI reviewed by a physician's assistant instead demonstrated a fluid collection consistent with an epidural hematoma causing cord compression and the plaintiff immediately underwent surgery for evacuation of the hematoma. The eventual decompression of the epidural hematoma ultimately resulted in permanent paralysis of the upper extremity muscle groups. The defendant denied liability arguing that his diagnosis of the plaintiff was proper based on the plaintiff's symptomatology at the time and that any alleged delay in treatment was not the result of his action or inaction.

The plaintiff maintained that the defendant's treatment of him following his accident fell below the standard of care. The plaintiff maintained that the defendant breached the duty of care in three ways: 1) the initial surgery was not indicated; 2) the defendant misdiagnosed the plaintiff's acute neurological change as C5 palsy; and 3) the misdiagnosis of the plaintiff's condition caused a delay in the eventual decompression of the epidural hematoma which ultimately resulted in permanent paralysis of the upper extremity muscle groups. The defendant argued that the plaintiff's post-drain removal deterioration and subsequent outcome was due to the administration of significant amounts of narcotic analgesics and the resulting need to reverse the effects with Narcan and that the defendant had no role in those events. Further, the defendant denied any delay in diagnosis because the MRI confirming the presence of a hematoma was performed the same day as the plaintiff's deterioration and the decompression was performed the following day.

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

REFERENCE

Hiseman vs. Rovner, M.D. Docket no. L-002334-16; Judge Mary F. Thurber, 12-03-19.

Attorney for plaintiff: Jennie Shatynski of Morelli Law Firm PLLC in New York, NY. Attorney for defendant: Jeffrey A. Krompier of Krompier & Tamn, LLC in Parsippany, NJ.

COMMENTARY

With regard to the jury verdict, there was extensive expert testimony from experts for both the plaintiff and defendant in a month-long trial. The facts of the plaintiff's case are as follows, along with a synopsis of the conflicting expert testimony that the jury heard.

The plaintiff's initial work up upon arrival at the emergency room indicated that he was complaining of left wrist pain, mid-back pain and cervical pain. He was diagnosed with nondisplaced distal left radius fracture, several compression fractures of the thoracic spine and questionable endplate fracture of C6. A normal neurologic exam was documented. He was admitted for observation and further workup. An MRI scan of the thoracic spine was read as demonstrating T3 and T5 superior endplate nondisplaced fractures. An MRI scan of the cervical spine on the same date demonstrated a questionable endplate fracture of C6 but did show severe central spinal stenosis at C5-T1 due to ossification of the posterior longitudinal ligament. There was no signal change within the cord to suggest myelopathy. On the same date, the trauma surgeon and a resident documented normal neurologic examinations.

A spinal surgeon consultation was obtained and it was decided that the plaintiff required emergent cervical decompression of his spinal stenosis. A preoperative consult documented normal neurologic exam with no numbness or weakness. On the same date, the plaintiff was taken into surgery where the defendant performed an anterior corpectomy and strut graft fusion at C5-T1, as well as a posterior laminectomy and instrumented fusion at C3-T1. An incidental durotomy occurred and was repaired anteriorly. The plaintiff awoke neurologically intact and was subsequently transferred to a nursing unit where he later was observed to have a marked increase in serosanguinous drainage from both wounds. The following afternoon, the anterior and posterior drains were removed precipitating a marked increase in the plaintiff's pain level that was so intense that he was administered 6 mg of morphine followed by another 6 mg intravenously. He then became obtunded and a full code was called.

The plaintiff was resuscitated with Narcan, and upon resuscitation, was unable to move his arms or legs. The plaintiff was transferred to ICU where he gained motor and sensory return to his lower extremities, but still remained weak in his upper extremities. The following

morning, the plaintiff's wounds were dry and he had full strength in the lower extremities, His diagnosis at that time was postoperative C5 palsy which would resolve in time. The next morning, the plaintiff's blood pressure was elevated and he was extremely restless, complaining of spasms in his arms and back. The defendant was asked to give an opinion and his diagnosis remained C5 palsy. Later that day, the attending trauma physician ordered an MRI scan of the cervical spine because of concern with his neurologic condition. Later that evening, a physician's assistant reviewed the MRI scan which demonstrated a fluid collection consistent with an epidural hematoma causing cord compression and arrangements were made to return the plaintiff to the operating room for evacuation of the hematoma.

The defendant performed a posterior incision and drainage, as well as foraminotomies at C4, C5, C6 and a laminectomy at T1. Three days later, the plaintiff was noted to have biceps and deltoid strength and grip, wrist flexors and wrist extensors, and triceps strength. The following day, he was okayed for discharge to a rehabilitation facility. He was subsequently seen by another surgeon who performed a number of brachial plexus nerve transfers in an effort to gain more function for the plaintiff's upper extremities.

Based on the facts and timeline of the case as outlined, the plaintiff's primary expert opined that the defendant breached the standard of care resulting in significant permanent injury to the plaintiff. First, the plaintiff's expert stated that the surgery that occurred on the day the plaintiff was admitted was not indicated because the plaintiff had no history of pre existing cervical spine symptoms suggesting symptomatic stenosis. His neurologic examinations on multiple occasions by differing doctors were completely within normal limits. The plaintiff's expert stated that there was reason to believe the plaintiff's cervical and thoracic pain was due to his minor fractures and those should have been treated conservatively. The plaintiff's expert noted that severe pathology on a radiographic study does not necessarily become an indication for emergent surgery. Having documented the fact that he plaintiff had severe cervical spinal stenosis, he should have been closely monitored over a period of time and operated on in an elective manner if and when he became symptomatic. In addition, anterior decompression, as performed by the defendant, carried a high risk of dural tears which, in fact, happened in the case of the plaintiff. Second, the plaintiff's expert argued that the defendant's diagnosis that the plaintiff's acute neurologic change after his drains were removed was secondary to a C5 palsy was a diagnosis of exclusion and that C5 palsy under the circumstances would be rare and bilateral.

The plaintiff's expert opined that all other possibilities of the neurologic deterioration should have been ruled out prior to declaring a diagnosis of C5 palsy. The plaintiff should have undergone an MRI scan immediately upon the plaintiff's deterioration whereas, in this case, it was not done until 48 hours later because of the defendant's misdiagnosis. Additionally, the plaintiff's expert opined that the misdiagnosis caused a delay in the eventual decompression of the epidural hematoma which ultimately resulted in permanent paralysis of the upper extremity muscle groups subsequently requiring nerve transfers and further surgery. The plaintiff's expert stated that the defendant's care of the plaintiff fell below the standard due to misdiagnosis of the plaintiff's C5 palsy when, ,in fact he had an evolving central spinal cord injury. The defendant did not see the plaintiff until two days after his deterioration but, had he seen the plaintiff in a timely fashion and made the correct diagnosis, it would have expedited the plaintiff's decompression. The misdiagnosis at the most critical time contributed to the delay in the appropriate treatment which again led to permanent neurologic deficits and the plaintiff's upper extremities requiring extensive further surgical procedures.

The defendant presented opposing expert testimony indicating that there was no deviation from the standard of care by the defendant during his care of the plaintiff. The defendant's expert noted that the defendant did not participate in the pre-operative care or decision making or the post-operative care of the plaintiff. The defendant's expert opined that it was within the standard of care for a patient with a neck injury and severe cervical stenosis to be offered the option of a surgical decompression and stabilization procedure as was done. During the performance of the anterior procedure, during which the defendant was the surgical assistant, an incidental durotomy occurred which is a known complication of a patient with ossification of the posterior longitudinal ligament. The defendant's expert opined that this was adequately repaired at the time with no further problems. The plaintiff had drains appropriately placed both anteriorly and posteriorly and whenever the drainage was diminished to an acceptable level, his posterior drain was removed. There was no deviation from the standard of care by anyone involved in removing the plaintiff's wound drain at the appropriate time.

The defendant's expert stated that the neurologic changes the plaintiff sustained were not due to the drain removal or any sudden increased accumulation of hematoma or seroma, but due to the hypotension and under perfusion of the cervical spinal cord that occurred when he was administered a significant amount of narcotic analgesics to treat his severe complaints of neck pain. The defendant was not involved in ordering these narcotics or the subsequent naloxone. The amount of narcotic analgesics he received was significant enough that he required naloxone to reverse the effects. There typically can be some residual hematoma and seroma after removal of a drain which, however, is usually stable, organized and not increasing in size. The removal of the drain could not be expected to cause any increased bleeding or seroma formation. The defendant was requested to do a post-operative consult on the plaintiff on 07/07/2014 and the post-operative MRI of the cervical spine was performed the same day which, the defendant's expert argued, did not constitute a delay.

The defendant, as the surgical assistant, was not required to be involved in the post-operative care of the plaintiff and his minimal involvement in the post-operative care was within the standard of care for an orthopedic surgeon acting as an invited surgical assistant. The defendant's expert concluded that the defendant did not deviate from the standard of care with respect to any of the treatment given and the plaintiff's ultimate outcome was not the result of any negligence by the defendant.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Primary Care

$700,000 RECOVERY

Medical malpractice – Primary care – Plaintiff's decedent's diagnosis and treatment of sepsis delayed despite continued presentation of symptoms of infection, known risk factors and two emergency room visits – Ultimate death from infection – Wrongful death of 70-year-old male.

Middlesex County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant medical care providers deviated from the standard of care in treatment of the plaintiff's decedent, a 70-year-old man, leading to his wrongful death. The plaintiff's decedent was survived by his wife and 8-year-old daughter, as well as 3 adult children from a prior marriage.

On November 19, 2016, the plaintiff's decedent came under the medical care and treatment of the defendant medical care providers. The decedent had been being followed by the defendant general physician from March through November of 2016, prior to his hospitalization. The decedent had been diagnosed with myasthenia gravis by the defendant physician and put on immunosuppressive medications. The plaintiff asserted that the defendants were aware that the decedent was taking immunosuppressive medications that could increase his risk of infection.

On November 12, 2016, the decedent presented to the defendant general physician with complaints of sore throat, cough, congestion, and upper throat infection. The decedent was prescribed antibiotics. The decedent's wife testified that he also complained that his shoulder and arm were causing him a great deal of pain. On November 19th, the decedent noted his arm hurting and getting worse with increasing swelling. The decedent was referred, by the defendant general physician, to the defendant emergency room where he was treated by the co-defendant emergency physician. The decedent was diagnosed with hypertension and bicipital tendonitis and discharged home.

The decedent continued to experience pain and swelling with no improvement and began to have chills, fatigue, joint swelling and skin changes. The decedent was readmitted to the emergency room on the morning of November 21st. Treatment notes indicated that his presentation was consistent with an infection, but tests and diagnosis of his condition did not occur until more than 8 hours later. The decedent's condition deteriorated and he was transferred to the ICU where tests for infection were ordered. The decedent was finally diagnosed as septic with left upper extremity cellulitis. Shortly thereafter, and before any treatment could be administered, the decedent went into septic shock with acute kidney failure and pancytopenia and died.

The plaintiff argued that the defendants misdiagnosed and delayed diagnosis and treatment of the decedent who had a known risk for infection. The plaintiff argued that, as a result of the defendants' malpractice, the decedent suffered severe, permanent, painful and disabling injuries all of which eventually led to his death on November 21, 2016. The plaintiff maintained that, had the decedent been properly diagnosed in the week prior, at his first presentation to the emergency room, or upon his second presentation to the emergency room, instead of 8 hours later, he could have been treated and survived.

The defendants denied any violation from the standard of care and asserted that the plaintiff's decedent was treated according to established, acceptable protocols. The defendants noted the decedent's multiple comorbidities and argued that his diagnosis and treatment were complicated by his other conditions. The defendant medical center argued that, as a non-profit institution, it was immune from liability under N.J.S.A. 2A:53A-7 et seq. and was entitled to the $250,000 cap on jury verdicts.

The parties settled the matter prior to trial in the amount of $700,000 broken down as follows: $63,644 in litigation expenses; $212,119 in attorney fees; $3,153 for guardian ad litem costs; $126,325 to the plaintiff wife and $294,759 to the minor beneficiary of the decedent's estate.

REFERENCE

Ye vs. Rappi, M.D., et al. Docket no. L-005414-17; Judge Thomas Daniel McCloskey, 04-30-20.

Attorney for plaintiff: William R. Lane of O'Connor, Parsons, Lane & Noble, LLC in Springfield, NJ. Attorney for defendant medical center: Eileen W. McGann of Orlovsky Moody Schaaff Conlon & Gabrysiak in West Long Branch, NJ. Attorneys for defendant emergency room physician: William G. Theroux and Sheila Murugan of Buckley Theroux Kline & Petraske, LLC in Princeton, NJ. Attorney for defendant general physician: Michael J. Di Leo of Ruprecht Hart Ricciardulli & Sherman, LLP in Westfield, NJ.

Pulmonology

DEFENDANT'S VERDICT

Medical malpractice – Pulmonology – Plaintiff's decedent presents to defendants with pulmonary embolism – Plaintiff claims negligent treatment causes death – Defendants deny breaching standard of care – Plaintiff offers to settle for $1.6 million.

Hunterdon County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants deviated from the standard of care in treatment of the plaintiff's decedent for pulmonary embolism, ultimately resulting in his death. The defendants denied any deviation from the standard of care and asserted that the decedent died from his underlying condition and that no action taken or omitted by the defendants caused his condition or resulting death.

On June 13, 2015, the plaintiff's decedent came under the care and treatment of the defendant critical care unit at the defendant hospital and was treated by the defendant pulmonologist. The plaintiff maintained that, due to the negligence of the defendants, the plaintiff's decedent was deprived of appropriate medical treatment and was caused to suffer a pulmonary embolism requiring the care and treatment of other physicians and was caused to incur medical expenses and ultimately died.

The plaintiff presented testimony from a board-certified internal medicine and pulmonary disease specialist who opined that the defendant's treatment of the decedent fell outside acceptable standards of care. The defendants maintained that, because the decedent was treated by other physicians after presenting to the defendants, those care providers could have caused injury to the plaintiff's decedent.

During discovery, the plaintiff made an offer to accept judgment in the amount of $1,600,000. The offer was not accepted and the matter proceeded.

The jury unanimously found no deviation from the standard of care and returned a verdict in favor of the defendant.

REFERENCE

Higgins vs. Yuan-Duclair, M.D., et al. Docket no. L-000059-16; Judge Michael F. O'Neill, 01-31-20.

Attorney for plaintiff: Robert Hicks of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins in Freehold, NJ. Attorney for defendant: Raymond J. Fleming of Rosenberg Jacobs Heller & Fleming, P.C. in Morris Plains, NJ.

BUS NEGLIGENCE

UNDISCLOSED RECOVERY

Bus negligence – Fall on bus – Plaintiff falls when bus starts and then stops suddenly – Fractured shoulder – Cortisone injections – Recommendation for total shoulder replacement surgery – Plaintiff claimed lost wages and Medicare lien – Arbitration finds defendant 100% liable with $225,000 damages.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 70-year-old female bus passenger, asserted that the defendant driver operated the bus in a negligent manner causing the plaintiff to fall to the floor of the bus with such force that it caused significant, permanent injury. The plaintiff brought suit against the transit authority, the defendant driver, and the defendant bus company. The defendant driver and transit authority were dismissed from the action on summary judgment and the case proceeded only as to the defendant bus company. This defendant denied liability and contested the plaintiff's damages.

On May 7, 2015, the plaintiff boarded the defendants' bus which was traveling on Central Avenue and Park Street in Hackensack. The plaintiff contended that she boarded the bus and was moving toward a seat when the bus started to move and then suddenly, without warning stopped abruptly causing her to fall to the floor of the bus.

As a result of the fall, the plaintiff sustained a fractured shoulder. The plaintiff did not undergo surgery, but a full shoulder replacement was recommended due to malunion of the shoulder. The plaintiff received cortisone injections. The plaintiff claimed lost wages of $2,300 and a Medicare lien of $3,293. The defendant argued that the plaintiff's did not require shoulder replacement as claimed by the plaintiff's physician.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant bus company and set damages at $225,000 inclusive of lost wages and the lien. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Brown vs. NJ Transit Corp., et al. Docket no. L-002837-17; Judge John D. O'Dwyer, 01-13-20.

Attorney for plaintiff: Brian A. Klein of Law Offices Rosemarie Arnold in Fort Lee, NJ. Attorney for defendant Community Coach, Inc.: Daniel T. DiCicco of Ronan, Tuzzio & Giannone.

CONTRACT

$64,973 ARBITRATION CONFIRMATION

Breach of contract – Plaintiff claims defendant breached contract for sale of business to the plaintiff by failing to execute lease of premises where business was located – Defendant asserts he intended to execute lease, but plaintiff changed his mind about purchase – Plaintiff moves to confirm arbitration finding of breach of contract by defendant and court grants motion.

Hudson County, NJ

In this breach of contract case, the plaintiff asserted that the defendant breached the terms of a contract for sale of a business and lease of the premises to operate the business. The defendant denied breaching the contract

The parties entered into a contract for the plaintiff to buy a business from the defendant. As part of the sale, the defendant seller was to lease the premises for the business to the plaintiff buyer for 10 years. The buyer paid the full purchase price of $60,000 plus $2,000 for one month rent and $2,000 for security deposit. The plaintiff asserted that the defendant breached the contract for sale by not executing the lease. The plaintiff sought return of monies paid to the defendant plus interest.

The defendant agreed that the parties entered into a contract for the plaintiff to purchase the defendant's business for $60,000 and that the plaintiff paid monthly on the agreement. However, the defendant maintained that he used the monies paid by the plaintiff to repair a walk-in refrigerator at the business site, as well as installing new features to improve the appearance of the store including repair of all soda machines/refrigerators, cleaning out of stored items; fixing floors, painting and electrical work to make the premises ready for the plaintiff. In addition, the defendant argued, the second floor tenant moved out on 1/1/17 and the defendant intended to move into the apartment the value of which, he claimed, was $1,700/month. Because the defendant lost that income, he used the money from the plaintiff's payments on the contract to cover the mortgage of the building.

The defendant and plaintiff had the final lease drawn up and were to sign it a week later, on a Monday. The defendant handed over the business keys to the plaintiff. The defendant argued that, after one week of operating the business, the plaintiff returned the keys to him and stated that he no longer wanted the business and that the defendant had not signed the lease. The defendant maintained that the plaintiff used the lease as an excuse to void the contract when, in fact, he simply changed his mind. The defendant asserted that, due to the plaintiff's actions, the defendant has suffered tremendous financial losses and was forced to file for bankruptcy and his home went into foreclosure.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found that the defendant had breached the contract and owed the plaintiff $64,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $64,000 plus $973 in interest, for a total recovery of $64,973.

REFERENCE

Dadoune vs. 161 Broadway Corner, LLC, et al. Docket no. L-001897-18; Judge Vincent J. Militello, 01-24-20.

Attorney for plaintiff: Joseph R. Press, Esq. in Bayonne, NJ. Attorney for defendant: Defendant pro se.

DOG ATTACK

$40,000 RECOVERY

Dog attack – On two separate occasions, approximately six weeks apart, minor plaintiff attacked by defendants' dog – Bite injuries requiring medical treatment and resulting in significant, permanent scarring.

Camden County, NJ

In this dog bite case, the minor plaintiff, a 16-year-old girl, was attacked by the defendants' dog on two separate occasions resulting in significant, permanent injury. The defendants asserted that the plaintiff unreasonably and voluntarily encountered a known risk and that the plaintiff assumed that risk. The defendants also put forth that the dangerous condition was open and obvious, the plaintiff was aware of, or in the exercise of due care, should have been aware of the dangerous condition.

On April 7, 2018, the minor plaintiff was visiting a friend at a home owned by the defendant in Merchantville. At that same time and place, the defendant owned and harbored a dog. The dog owned by the defendant suddenly and without warning attacked the minor plaintiff. The plaintiff maintained that she did not provoke the animal in any way.

On May 18, 2018 the minor plaintiff was again visiting her friend at the home owned by the defendant. At that time, the dog owned by the defendant again at-

tacked the plaintiff suddenly and without warning or provocation. In both cases, the minor plaintiff received medical treatment for her injuries. The plaintiff received significant treatment for both attacks and was left with extensive, permanent scarring which was presented in photos and in person at the friendly settlement hearing.

The parties settled the matter prior to trial and judgment was issued in the amount of $40,000 broken down as follows: $9,586 in attorney fees; $1,657 in costs; $5.00 in medical expenses and $28,752 in net damages to the minor plaintiff.

REFERENCE

Bennett vs. Williams, et al. Docket no. L-003670-18; Judge Michael J. Kassel, 01-09-20.

Attorney for plaintiff: David J. Cowhey, Esq. in Linwood, NJ. Attorney for defendant: G. Samuel Hoffman of Law Offices of Styliades and Jackson in Marlton, NJ.

INSURANCE OBLIGATION

$15,000 VERDICT

Insurance obligation – Motor vehicle negligence – Rear end collision – Three cervical and two lumbar herniations – Epidural injections, nerve block injection and median branch facet block – Plaintiff recovers nothing after deduction for damages already collected from tortfeasor.

Passaic County, NJ

In this insurance obligation case, the plaintiff, a 51-year-old man, asserted that the defendant driver struck his vehicle from behind and caused him serious, permanent injury. The plaintiff collected the tortfeasor's policy limit of $15,000 and the tortfeasor was dismissed from the case. The plaintiff continued the cause of action on an underinsured motorist claim against the defendant insurer. The defendant stipulated liability, but denied that the plaintiff had sustained a permanent injury.

On October 7, 2015, the plaintiff was traveling on Lakeview Avenue in Clifton and attempted to make a right turn on East 1st Street. When the plaintiff realized East 1st Street was closed, he continued forward on Lakeview Avenue. The defendant was operating her vehicle on East 1st Street. She observed that the plaintiff had his turn signal activated and proceeded forward, striking the plaintiff's vehicle as he decided to continue straight on Lakeview Avenue.

As a result of the collision, the plaintiff sustained traumatic injury to the cervical and lumbar spine. The plaintiff suffered three cervical and two lumbar herniations. The plaintiff underwent one cervical epidural and nerve block injection, as well as one lumbar epidural with nerve block and median branch facet block.

By a vote of 7-1, the jury found that the plaintiff had sustained a permanent injury as a result of the subject collision and awarded damages in the amount of $15,000. The plaintiff having already recovered $15,000 from the tortfeasor, the jury verdict was molded to reduce the damages award by the sum of $15,000 for a net award of $0 and a judgment of no cause of action was entered.

REFERENCE

Galindo vs. Masri, et al. Docket no. L-003004-17; Judge 05-03-19.

Attorney for plaintiff: Jeffrey S. Hasson of Law Offices of Jeffrey S. Hasson, P.C. in Teaneck, NJ. Attorney for defendant: Harry D. Norton, Jr. of Norton, Murphy, Sheehy & Corrubia, P.C. in Woodland Park, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Rear end collision – Plaintiff settles for $15,000 with tortfeasor and brings underinsured motorist claim against defendant insurer – Cervical and thoracic herniations with radiculopathy – Epidural injections and chiropractic treatment – Defendant denies plaintiff's injuries causally related to subject collision.

Cape May County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff settled with the tortfeasor in the amount of $15,000 policy limit and brought the subject suit for underinsured motorist coverage against the defendant insurer. The defendant stipulated liability, but contested the plaintiff's damages.

On February 4, 2016, the plaintiff was lawfully operating a motor vehicle on Interstate 76 in Gloucester City. The tortfeasor driver was traveling behind the plaintiff and failed to observe traffic, negligently striking the rear of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical and thoracic herniations with radiculopathy for which she received injections. The plaintiff admitted to prior neck issues with treatment, but claimed that she had no ongoing issues at the time of the subject collision. The plaintiff also received chiropractic treatment and her treating physician deemed her injuries to be permanent.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant pointed to the plaintiff's prior neck injury with fusion surgery.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $80,000 reduced to $65,000 after credit for the underlying settlement with the tortfeasor. The arbitration was not confirmed. After arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of $45,000. The offer was not accepted and the matter went to trial.

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

REFERENCE

Duncan vs. Allstate. Docket no. L-000455-17; Judge James H. Pickering, Jr., 02-07-20.

Attorney for plaintiff: Paul R. D'Amato of D'Amato Law Firm in Egg Harbor Township, NJ. Attorney for defendant: Andrew Reiners of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$225,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff struck by defendant driver backing out of space in parking lot – Fracture of tibia plateau – Surgery – Knee tear – Arthroscopic repair – Fracture of non-dominant wrist treated conservatively.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff parking lot pedestrian in her late 60s contended that the defendant driver failed to make adequate observations as she was backing out of a parking space. The plaintiff asserted that as a result, she was struck, suffering a split depressed bicondylar tibial plateau fracture of the right knee requiring an open reduction and internal fixation with placement of titanium rods and screws, a right lateral meniscus tear and a fracture of the non-dominant wrist. The plaintiff was governed by the verbal threshold. The defendant contended that the plaintiff made a better recovery than claimed.

The plaintiff maintained that she requires an ORIF to treat the leg, arthroscopic surgery to treat the knee and the wrist fracture was managed conservatively. The plaintiff claimed that the injuries will permanently cause pain and some difficulties with everyday activities.

The plaintiff made no income claims.

The case settled prior to trial for $225,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Frank Capecci, M.D. from Denville, NJ.

Alcazar vs. Centinaro, et al. Docket no. MRS-L-211-20, 11-12-20.

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

Auto/Truck Collision

$350,000 RECOVERY

Motor vehicle negligence – Auto/truck collision – Defendant tractor-trailer driver strikes plaintiff traveling to left of defendant when defendant claims he is cut off by phantom vehicle – Dash came from defendant shows absence of phantom vehicle – Lumbar herniation – Decompression surgery – No significant income claims

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her 40s, who was traveling in the left lane of the roadway that has two lanes in each direction, contended that as the defendant tractor-trailer driver was traveling in the right lane, he lost control and struck the plaintiff's car causing the plaintiff to sustain injuries. The

defendant asserted that he was cut off by an unidentified driver exiting a parking lot to his right and that this emergency situation resulted in his swerving into the plaintiff's vehicle. The plaintiff would have countered that the defendant's dash-cam reflected that no vehicle exited the parking lot at the time.

The plaintiff asserted that she suffered a lumbar herniation and that after more conservative means were inadequate, she underwent decompression surgery. The plaintiff maintained that despite the surgery, she will suffer permanent symptoms.

The plaintiff did not make significant income clams.

The case settled prior to trial for $350,000.

REFERENCE

Homeijer vs. Lilly Transportation, et al. Docket no. MRS-L-127-18, 11-20.

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

Disabled Auto Collision

$35,000 RECOVERY

Motor vehicle negligence – Disabled auto collision – Defendant driver loses control of defendant company van and vehicle disabled in travel lane of parkway where plaintiff collides with van – Complex ankle fracture requiring surgical repair with plates and screws – Defendant claims plaintiff at fault for failing to avoid disabled vehicle.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver caused a collision with her vehicle that caused her significant, permanent injury. The defendants denied liability and argued that there was a malfunction of the van which caused the defendant driver to strike a guardrail, ricochet off it and come to rest primarily in the right, southbound lane of the parkway.

On November 21, 2015, the plaintiff was driving her vehicle in the right lane of the southbound Garden State Parkway near milepost 71.9 in Lacey Township. The defendant driver was operating a van owned by his employer, the defendant company. The defendant was traveling southbound on the Garden State Parkway in the same area as the plaintiff. The plaintiff contended that the defendant negligently lost control of his vehicle and struck a guardrail with the vehicle coming to rest in the middle and right lanes of travel, directly in the path of the plaintiff's vehicle causing a violent collision. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a complex fracture of the ankle requiring surgical repair with plates and screws. The plaintiff will require future removal of the hardware in her ankle, which has been recommended by her treating orthopedist.

The defendant driver activated his hazard lights, got out of the van and began waving vehicles away from the disabled vehicle. Minutes later, the plaintiff crashed into the disabled van, despite the fact that other vehicles were able to observe and avoid collision with the van. The defendants argued that the plaintiff was at fault for failing to observe what was open and obvious and failing to avoid the van in the roadway with hazards flashing and the defendant driver waving drivers around the vehicle.

The parties settled the matter prior to trial in the amount of $35,000.

REFERENCE

Bonsky vs. Joseph T. Payne & Sons, Inc., et al. Docket no. L-006640-17; Judge Bruce J. Kaplan, 01-14-20.

Attorney for plaintiff: Michael E. Ellery of Console & Hollawell, P.C. in Marlton, NJ. Attorney for defendant: Vincent R. Glorisi, Esq. in Old Bridge, NJ.

Head-on Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Head-on collision – Plaintiff claims permanent injury from diagnosed lumbar and cervical herniations – 35 visits to chiropractor and one visit to pain management physician – Damages only.

Passaic County, NJ

Liability was stipulated in this motor vehicle negligence case in which the plaintiff contended that the defendant driver negligently crossed over the center line, striking the passenger side with the front and side of the defendant's vehicle causing the plaintiff to sustain injury. The accident occurred on 12-10-16 and the defendant pointed out that in his certificate of permanency, the plaintiff's chiropractor had listed 12-20-16 as the date.

The 26-year-old plaintiff driver contended that she sustained a lumbar and a cervical herniation which was confirmed by MRI and which the plaintiff maintained will cause permanent symptoms. There was no evidence that surgery indicated.

The defendant denied that the plaintiff sustained a permanent injury or met the verbal threshold. The defendant argued that the jury should consider that the plaintiff's treatment was limited to 35 visits to a chiropractor and one visit to a pain management specialist.

This case was tried to a jury via Zoom. The jury found for the defendant on the verbal threshold.

REFERENCE

Amar vs. Aguirre. Docket no. PAS-L-3761-18; Judge Vicki Citrino, 05-12-21.

Attorney for defendant: Thomas B. Hight of Chasan Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ.

Intersection Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff claims neck and back injuries and carpal tunnel syndrome – Three lumbar trigger point injections and three lumbar epidural injections – Non-binding arbitration finds no cause for action against defendant.

Cumberland County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the plaintiff's vehicle while crossing an intersection against a red light, causing the plaintiff to sustain injuries. The defendant stipulated liability, but contested the plaintiff's damages.

On November 23, 2016, the plaintiff was operating her vehicle on W. Landis Avenue at the intersection with S. Orchard Street in Vineland. The defendant was exiting a shopping center at 1294 W. Landis Avenue. The plaintiff contended that the defendant had a red light controlling his entry into the roadway from the parking lot, while the plaintiff was proceeding on a green light. The defendant attempted to cross the intersection without the right-of-way and collided with the plaintiff's vehicle resulting in permanent injuries to the plaintiff. As a result of the collision, the plaintiff claimed injuries to the neck and back and carpal tunnel syndrome. The plaintiff treated with three lumbar trigger point injections and three lumbar epidural injections.

The defendant argued that the plaintiff did not sustain an injury that warranted an award of damages. The defendant asserted that the plaintiff had not satisfied the verbal threshold for permanent injury causally related to the subject collision. The defendant pointed to the fact that the plaintiff had extensive pre-existing neck, back, and carpal tunnel issues, but did not claim aggravation of those injuries and did not present a Polk Analysis to differentiate her present claims from pre-existing conditions or to confirm aggravation of a prior condition.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant, but found that the plaintiff had not sustained an injury that met the verbal threshold for damages. The arbitrator found no cause for action. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Bard vs. Schaser. Docket no. L-000549-18; Judge James R. Swift, 01-10-20.

Attorney for plaintiff: Craig A. Altman of Law Offices of Craig A. Altman, P.C. in Vineland, NJ. Attorney for defendant: Anthony Young of Parker Young & Antinoff, LLC in Marlton, NJ.

Left Turn Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Left turn collision – Exacerbation of cervical spondylosis – Trigger point injections, pain management, dorsal rami injections and physical therapy – Defendant challenges causation and permanency of plaintiff's injuries in light of pre-existing condition and subsequent motor vehicle accident – Non-binding arbitration finds defendant liable with $15,000 in damages.

Cumberland County, NJ

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

On December 30, 2015, the plaintiff was traveling westbound on West Landis Avenue through a green light with the right-of-way. The defendant was travel-

ing eastbound, also on West Landis Avenue, and negligently failed to see the plaintiff's vehicle. The plaintiff asserted that the defendant failed to make appropriate observations and failed to yield the right-of-way, carelessly making a left turn into the plaintiff's vehicle, 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 exacerbation of cervical spondylosis with muscle spasm, decreased range of motion, decreased sensation, mild atrophy of the hand, diminished reflexes in the left biceps, neurological findings of the left arm, and bilateral weakness with extension of the wrists. The plaintiff treated with pain management, physical therapy, trigger point injections, and dorsal rami injections. The plaintiff continues to suffer pain in her neck, headaches and radiating pain, tingling and numbness down both arms. The plaintiff claimed a $2,574 medical lien.

The defendant argued that the plaintiff's injuries were degenerative, not caused by the subject collision, and not permanent in nature. Further, the defendant pointed to complaints that the plaintiff made to her physician only after a subsequent accident in June of 2017, indicating that at least some of the plaintiff's injuries were related to the second accident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $15,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury unanimously found that the plaintiff had failed to prove a permanent injury and returned a no cause for action verdict in favor of the defendant.

REFERENCE

Edmeads-Wright vs. Ballinger, Jr. Docket no. L-000887-17; Judge James R. Swift, 01-28-20.

Attorney for plaintiff: Megan P. Gable of Kotlar, Hernandez & Cohen, LLC in Mount Laurel, NJ. Attorney for defendant: Steven Antinoff of Parker Young & Antinoff, LLC in Marlton, NJ.

Multiple Vehicle Collision

$300,000 RECOVERY

Motor vehicle negligence – Multiple vehicle collision – Disc herniations at C6-7, L3-4, L4-5, L5-6, and C7-T1; and L5-S1 tear – Two arthroscopic surgeries for L5-S1 tear and a two-level fusion surgery – Two epidural injections and thoracic branch blocks – Plaintiff takes early retirement due to his injuries and claims losses from out-of-pocket medical expenses and partial loss of pension.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 57-year-old bus driver asserted that the defendant drivers collided with each other and pushed one of the vehicles into the plaintiff's vehicle with such force that it caused significant, permanent injury. The plaintiff brought suit against all parties involved. All defendants, except the defendant truck driver and the defendant business owner of the truck, were dismissed during discovery. The defendants stipulated liability, but contested the plaintiff's damages.

On December 17, 2015, the plaintiff was driving a New Jersey Transit bus in the course of his employment. The plaintiff was traveling easterly in the right lane of the George Washington Bridge, Upper Level. The defendant driver of a truck owned by the defendant distribution company was also traveling on the Upper Level of the GWB in the course of his employment. The defendant driver/truck collided with another vehicle and pushed it into the plaintiff's bus. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C6-7, L3-4, L4-5, L5-6, and C7-T1; and L5-S1 tear. The plaintiff treated the L5-S1 tear with two arthroscopic surgeries and ultimately a two-level fusion surgery. The plaintiff treated his other injuries with two epidural injections and thoracic branch blocks. The plaintiff has a permanent limp from his injuries and retired early on disability. The plaintiff claimed $300,000 in lost pension benefits and significant out-of-pocket medical expenses.

The defendants argued that some of the plaintiff's injuries were pre-existing and could not have been caused by the low impact of the subject collision. The defendant's expert radiologist pointed to an L5-S1 herniation that appeared on a 2014 CT-scan, prior to the subject collision. In the course of the case, the defendants offered judgment to the plaintiff in the amount of $150,000. The offer was not accepted and the matter proceeded.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant driver of the truck. The arbitrator set damages at $1,750,000. Following arbitration and prior to trial, the parties settled for $300,000.

REFERENCE

Aliaga vs. Boddy, et al. Docket no. L-005487-17; Judge Thomas Daniel McCloskey, 01-27-20.

Attorney for plaintiff: Robert C. Krieger of Wysoker, Glassner, Weingartner, Gonzalez & Lockspeiser, P.C. in New Brunswick, NJ. Attorney for defendant: Nghia H. Nguyen of Law Office of John P. Hendrzak in Parsippany, NJ.

Parking Lot Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Parking lot collision – Radiculopathy; cervical sprain and strain; thoracic sprain and strain; lumbar sprain and strain; right hip sprain and strain and right elbow sprain and strain – Arbitration found plaintiff did not meet verbal threshold and therefore there was no cause of action.

Camden County, NJ

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

On June 12, 2016, the plaintiff contended that the defendants collectively operated their respective vehicles negligently and carelessly so as to cause them to collide with each other, causing injury to the plaintiff passenger in one of the vehicles. The vehicles were navigating the parking lot at a bank in Camden when the vehicle in which the plaintiff was a passenger was struck by a vehicle driven by one of the co-defendants.

As a result of the collision, the plaintiff sustained radiculopathy; cervical sprain and strain; thoracic sprain and strain; lumbar sprain and strain; right hip sprain and strain; and right elbow sprain and strain. The plaintiff claimed past and future pain and suffering and medical expenses due to these injuries. The defendants asserted that the plaintiff had been involved in a number of prior and subsequent accidents where she injured and treated the same body parts she was alleging to have injured in the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause of action due to the decision that the plaintiff did not satisfy the verbal threshold. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Fassihi vs. Smart, et al. Docket no. L-001461-18; Judge Michael J. Kassel, 10-25-19.

Attorney for plaintiff: Casey O. Srogoncik of Law Offices of Ronald A. Clearfield & Associates, P.C. in Philadelphia, PA. Attorney for defendant: Francis T. McDevitt of Naulty, Scaricamazza & McDevitt in Marlton, NJ.

Rear End Collision

$120,000 RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff involved in two rear end collisions with second occurring as he was on his way home from treatment procedure related to first collision – Left acute C5-6 radiculitis; left acute S1 radiculopathy and bilateral median neuropathy with mild carpal tunnel syndrome.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 41-year-old man, asserted that the defendant driver struck his vehicle from behind with such force that it caused significant, permanent injury. The plaintiff was then involved in a second rear end collision and brought suit against the defendant driver from the first collision, the limousine company from the second collision, and the limousine company's insurer. The defendants each claimed that the other caused the plaintiff's injuries or was liable for the significance of the injuries. Further, the defendants pointed to prior back injury the plaintiff sustained at work in 2007.

On March 21, 2015, the plaintiff was operating a vehicle that was traveling northbound on the Garden State Parkway, Exit 131 ramp, and completely stopped in traffic at the controlling traffic light in Woodbridge. The plaintiff contended that the defendant was operating a vehicle directly behind the plaintiff and negligently failed to observe traffic, failing to stop behind the plaintiff and striking his vehicle from the rear.

The plaintiff was subsequently involved in a second accident on May 14, 2018 wherein he was a passenger in the defendant limousine that had exited from the Garden State Parkway and was attempting to come to a stop in traffic in the area near the intersection of John F. Kennedy Drive and Montgomery Street in Bloomfield when suddenly and without warning the limousine was struck from behind by an unknown vehicle. The plaintiff alleged that the force of the impacts resulted in permanent injuries.

As a result of the first collision, the plaintiff sustained left acute C5-6 radiculitis; left acute S1 radiculopathy and bilateral median neuropathy with mild carpal tunnel syndrome. At the time of the second accident, the plaintiff had just come from a medical procedure necessitated by the injuries from the first accident and was resting and recuperating in the back of the vehicle when the second collision occurred. The plaintiff asserted that the second accident had a direct and immediate effect on the plaintiff's injuries

from the 2015 collision, significantly exacerbating them, as well as causing new injuries. The plaintiff underwent chiropractic treatment; physical therapy and pain management.

The parties settled the matter prior to trial in the amount of $120,000 broken down as follows: $90,000 from the defendant driver in the first collision; $15,000 from the defendant limousine company and $15,000 from the defendant carrier of the limousine service's uninsured motorist policy for the phantom vehicle involved in the second collision. The plaintiff settled with all parties except the defendant carrier of the plaintiff's uninsured motorist policy for the "phantom" vehicle involved in the second collision; that case is pending.

REFERENCE

Amarando vs. Andiorio, et al. Docket no. L-001786-17; Judge Michael V. Cresitello, Jr., 01-21-20.

Attorney for plaintiff: Andrew S. Blumer of Law Office of Andrew S. Blumer in New Brunswick, NJ. Attorney for defendant limousine company: Miriam R. Rubin of Law Offices of Miriam R. Rubin in East Brunswick, NJ. Attorney for defendant driver from first accident: Peter K. Barber of Daly Lamastra Cunningham Kirmser & Skinner in Whitehouse Station, NJ. Attorney for defendant limousine company's uninsured motorist carrier: Michael C. Trifolis of Litvak & Trifiolis in Cedar Knolls, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Injuries resulting in permanent disability – Past and future medical expenses; past and future pain and suffering; permanent injury; loss of consortium – Defendant argued plaintiff driver was negligent herself in failure to employ seatbelt and plaintiff's injuries not causally related to subject incident.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiffs asserted that the defendant driver, an agent of the defendant employer, caused a collision with the plaintiffs' vehicle that caused the plaintiff serious and permanent injury and loss of consortium by the plaintiff husband. The defendant contended the plaintiff driver was negligent in failing to use a seat belt and that any resulting injuries were due to the plaintiff's negligence.

On August 13, 2015, the plaintiff was traveling East on Woodbridge Avenue in Edison when the defendant driver, employed by the defendant owner of the vehicle, collided with the plaintiff's vehicle causing the plaintiff serious and permanent injury. As a result of the collision, the plaintiff driver and her plaintiff husband maintained that she suffered injuries that caused her to be permanently disabled and no longer able to perform her usual functions, as well as great pain and suffering. The plaintiff husband claimed loss of consortium of his wife, the plaintiff driver.

The defendant asserted that the plaintiff failed to maintain automobile insurance including PIP and liability coverage and, as such, was barred from recovery damages against the defendant. Lastly, the plaintiff challenged causation and extent of the plaintiff's injuries.

The jury found that the plaintiff did not suffer a permanent injury proximately caused by the subject collision and returned a verdict in favor of the defendant.

REFERENCE

Anyelina Sillas and Omar Sillas vs. Samuel Flissar, et al. Docket no. L-004533-17; Judge Thomas Buck, 03-22-19.

Attorney for plaintiff: Steven P. Haddad of Steven P. Haddad, P.C. in Edison, NJ. Attorney for defendant: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ.

PERSONAL NEGLIGENCE

DEFENDANT'S VERDICT

Personal negligence – Minor defendant kicks minor plaintiff's hand during recess at school – Right middle phalanx volar lip fracture with dorsal dislocation – Closed reduction with internal fixation and dislocation reduction – Plaintiff claims permanent injury.

Burlington County, NJ

In this personal negligence case, the plaintiff asserted that the minor defendant negligently kicked the minor plaintiff's hand and caused injury to her finger. On April 20, 2016, the plaintiff and defendant were 14-year-old students at Indian Mills Memorial School in Shamong Township. On the day in question, the parties were outside for afternoon recess on the school grounds. The minor plaintiff asserted that the minor defendant negligently and recklessly kicked the plaintiff in the right hand while attempting to kick a kickball. The plaintiff testified that the ball rolled away from the group and she went to retrieve it. At the same time she bent to pick up

the ball, the defendant kicked it and her finger. The plaintiff alleged that the force of the kick resulted in permanent injuries. The defendant denied any reckless or negligent action.

As a result of the incident, the plaintiff sustained right middle phalanx volar lip fracture with dorsal dislocation. The plaintiff underwent surgery to repair the injury with closed reduction, internal fixation and dislocation reduction. The plaintiff was splinted for five weeks after the surgery and underwent physical therapy. The plaintiff claimed residual permanency in the form of contracture of the joint, visible to the naked eye and preventing the wearing of a ring on that finger permanently.

There is no evidence, in fact, that it was the minor defendant who kicked the plaintiff. The defendant testified that 7 or 8 children were kicking a ball around and, while playing, the defendant became aware of the plaintiff on the ground and crying. The defendant claimed that he did not witness her fall as other kids were blocking his view. He testified that teachers were on the playground and came to help the plaintiff and took her inside the school. Further, the school incident report indicates that "another student" kicked the plaintiff, but does not identify the student as being the minor defendant. Additionally, the school's principal, in an email to the defendant's father, indicated that the incident was never considered anything other than a playground accident. In her testimony, the plaintiff described the defendant as an acquaintance and that there had been no acrimony between the parties prior to the subject incident and, in fact, in her own words said that the defendant "accidentally" hit her finger when attempting to kick the ball.

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

REFERENCE

Jodlbauer vs. Schmidling. Docket no. L-000126-18; Judge Susan L. Claypoole, 07-25-19.

Attorney for plaintiff: David A. Avedissian of Law Office of David A. Avedissian, Esquire, LLC in Haddonfield, NJ. Attorney for defendant: Harold H. Thomasson of Amy F. Loperfido & Associates in Mt. Laurel, NJ.

PREMISES LIABILITY

Fall Down

$220,000 RECOVERY

Premises liability – Fall down – Plaintiff falls on icy walkway at defendant's property – L4-5 disc bulging and bilateral foraminal stenosis with central annular tear – Central subligamentous disc herniation – Bilateral foraminal stenosis at L5-S1 – Left lateral subligamentous disc herniation at L3-4 – L4-5 and L5-S1 posterolateral extradural discectomy.

Middlesex County, NJ

In this premises liability case, the plaintiff, a 33-year-old woman, asserted that the defendant property failed to remove or remediate icy conditions on the property, causing her to fall and suffer significant, permanent injury. The defendant denied liability, contending that the injuries allegedly sustained by the plaintiff were caused by the plaintiff's own negligence in failing to exercise due and proper care under the existing circumstances and conditions.

On December 10, 2017, the plaintiff was lawfully on the premises located at 23 Skytop Gardens in Sayreville. The premises was owned and maintained by the defendant. The plaintiff asserted that the defendant negligently failed to remove snow and ice from the property to maintain the premises in a safe manner for the public. The plaintiff fell on the icy condition of a walkway at the property. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result, the plaintiff sustained L4-5 disc bulging and bilateral foraminal stenosis with central annular tear; central subligamentous disc herniation with caudal migration superimposed on annular bulging with thecal sac compression and bilateral foraminal stenosis at L5-S1; and left lateral subligamentous disc herniation with left foraminal stenosis at L3-4. The plaintiff underwent L4-5 and L5-S1 posterolateral extradural discectomy. The plaintiff claimed to have ongoing difficulties with lifting, bending and any activity that involves the spine. She was unable to perform normal activities with functional disability and loss of enjoyment of life.

The parties settled the matter prior to trial in the amount of $220,000.

REFERENCE

Atkins vs. Skytop Gardens, Inc. Docket no. L-007574-18; Judge Michael V. Cresitello, Jr., 01-17-20.

Attorney for plaintiff: Karim Arzadi of Law Offices of Karim Arzadi in Perth Amboy, NJ. Attorneys for defendant: Colin Chudzik and Ronald Citrenbaum of Donnelly Minter & Kelly, LLC in Morristown, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff using power washer to help in-laws trips on uneven concrete – Massive rotator cuff tear to left shoulder – Two arthroscopic surgeries for rotator cuff repair, biceps tenodesis – Extensive debridement – Arbitration sets gross damages at $167,500 with 75% liability to defendants.

Cape May County, NJ

In this premises liability case, the plaintiff, a 53-year-old meat cutter for a supermarket chain, asserted that the defendants failed to maintain their property in a safe condition free from latent or hidden hazards and defects for the benefit of invited guests and visitors. Due to the defendants' negligence, the plaintiff slipped and fell sustaining serious injury.

On January 24, 2016, the plaintiff was an invitee helping his in-laws clean up debris in the defendants' back yard at 6 C114 Park Boulevard in Wildwood Crest after a storm. The defendants asked the plaintiff to use a power washer device. As the plaintiff unsuspectingly cleaned the rear of the premises with the power washer, he slipped and fell on an uneven, concrete flooring surface. The plaintiff argued that the defendants' actions or inactions created an unreasonable and foreseeable risk to the plaintiff. The defendants asserted that the fall and resulting injury were due to the sole negligence of the plaintiff.

As a result of the fall, the plaintiff sustained a massive rotator cuff tear to the left shoulder. The plaintiff underwent two arthroscopic surgeries for rotator cuff repair, biceps tenodesis and an extensive debridement of the labrum and a revision surgery approximately 18 months later. The plaintiff followed up with six months of postoperative physical therapy. The plaintiff claimed lost wages and out-of-pocket medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant and 25% to the plaintiff. The arbitrator set gross damages at $167,500 reduced to $125,625 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Chinnis vs. Monti. Docket no. L-000476-17; Judge James H. Pickering, Jr., 10-09-19.

Attorney for plaintiff: Theodore M. Costa of Costa Vetra LaRosa & Costa in Hainesport, NJ. Attorney for defendant: Gregory Drews of Deutchman & Drews, LLC in Somerville, NJ.

Hazardous Premises

$7,500 RECOVERY

Premises liability – Hazardous premises – Plaintiff claims he broke front crown and dental post on dessert provided by defendant hotel's buffet – Emergency dental care including post-lengthening treatment and replacement of crown.

Union County, NJ

This action for premises liability arose from an incident which occurred on April 1, 2016 when the plaintiff was on the premises of the defendant hotel, casino and spa and was eating at a buffet provided by the defendant. While eating a chocolate haystack confection, the plaintiff claimed that he bit into the dessert and broke a crown and dental post. The defendant denied liability and contended that the desserts served in the buffet were prepackaged and purchased from a third-party vendor and that the defendant had no authority or control over the manufacture, labeling, packaging, etc. of the desserts.

As a result of the incident, the plaintiff sustained traumatic injury to his tooth. The plaintiff maintained that the food product provided by the defendant caused the plaintiff's front crown and dental post to break. The plaintiff required emergency dental care including post-lengthening treatment and replacement of the crown. The plaintiff presented expert testimony indicating that he may need additional dental work due to the subject incident as a crown will only last five to seven years.

The third-party vendor asserted that it did not manufacture, produce or package the desserts, but purchased them from another vendor. The defendant hotel contended that they had no other complaints about the particular confection that the plaintiff claimed injured him and that the chef and staff inspect all desserts before placing them in the buffet. The defendant denied that there was any defect in the confection consumed by the plaintiff. The defendant argued that the plaintiff mistakenly selected a dense, hard chocolate confection for a soft cookie and that, given the plaintiff's extensive history of dental problems, he should have been more careful in his selection of foods, but that the liability for that choice lay with the plaintiff, not the defendant.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 60% liability to the defendant; 0% liability to the third-party defendants and 40% to the plaintiff with gross damages of $25,000 (exclusive of medical expenses) reduced to $15,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $7,500.

REFERENCE

Haustein vs. Borgata Hotel Casino & Spa, et al. Docket no. L-003268-16; Judge Mark P. Ciarrocca, 10-21-19.

Attorney for plaintiff: David H. Kaplan of Law Office of David H. Kaplan, LLC in Stanhope, NJ. Attorney for defendant Borgata Hotel Casino & Spa: Russell L. Lichtenstein of Cooper Levenson, P.A. in Atlantic City, NJ.

Negligent Security

$313,586 VERDICT

Premises liability – Negligent security – Civil assault – Plaintiff assaulted by intoxicated members of party at defendant bar/restaurant – Multiple fractured ribs; broken teeth – Neck injury requiring cervical fusion.

Somerset County, NJ

This premises liability matter arose out of a physical altercation that occurred at a restaurant/bar in Basking Ridge. The plaintiff contended that the individual defendants were at the premises to celebrate the engagement of one defendant's daughter. The defendants shouted insults at the plaintiff's girlfriend and then attacked and assaulted the plaintiff causing him to sustain injuries. The defendant denied the plaintiff's version of events and argued that the plaintiff approached the defendant and instigated a confrontation.

On June 20, 2015, family and friends gathered at the location following the proposal. At the same time, the plaintiff was at the location with his girlfriend listening to a musical performance. As the engagement celebration continued, the plaintiff took issue with the defendant father of the fiancée whistling loudly and making boisterous noise such that it bothered other patrons of the venue. The plaintiff asked the defendant to stop. A verbal exchange took place and the plaintiff was separated and taken to another room to wait for the situation to calm down.

In order to exit the venue, the plaintiff claimed he had to walk back through the bar area and past the defendants. The plaintiff claimed that, as he and his girlfriend walked past the defendants to the exit, the defendants shouted insults at the plaintiff's girlfriend and then attacked and assaulted the plaintiff. As a result of the assault, the plaintiff sustained multiple fractured ribs and broken teeth along with a neck injury requiring cervical fusion. The plaintiff also made a claim for lost wages.

The plaintiff brought suit against the defendant bar for over serving the defendants and failing to prevent the assault, and against the individual defendant assailants. The individual defendants maintained that the manager of the defendant bar allowed the plaintiff and his girlfriend to return to the bar area whereupon the plaintiff began yelling insults at the defendants and swinging his arms. One of the defendant individuals asserted that the plaintiff hit him in the eye with his arms and also elbowed the defendant's 90-year-old mother. Another defendant stated that he attempted to separate the parties whereupon the plaintiff struck one of the defendants and that the defendant father took a swing at the plaintiff, but missed. The plaintiff then struck the defendant and five or six people unknown to the defendants joined in.

The jury delivered a gross verdict of $400,000 in favor of the plaintiff and allocated fault as follows: plaintiff 20%; defendant Finley Enterprises LLC 10%; defendant Fedele 10%; and defendant McDonald 60%. The jury also awarded punitive damages of $10,000 as to defendant McDonald. Thus, the damages were allocated with the plaintiff recovering $43,370, including prejudgment interest from the defendant bar and $270,216 including prejudgment interest from defendant primary assailant, for a total award of $313,586.

REFERENCE

Hodge vs. Washington House, et al. Docket no. L-001316-16; Judge Edward M. Coleman, 11-01-19.

Attorney for plaintiff: Thomas M. Comer of Lomurro, Munson, Comer, Brown & Schottland, LLC in Freehold, NJ. Attorney for defendant McDonald: Steven I. Litvak of Litvak & Trifiolis, P.C. in Cedar Knolls, NJ. Attorney for defendant Fedele: Charles B. Costello of Hardin, Kundla, McKeon & Poletto in Springfield, NJ. Attorney for defendant Lajterman: Chad M. Moore of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ. Attorney for defendant bar and restaurant: Kevin M. Killmurray of Zirulnik, Sherlock & DeMille in Hamilton, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$1,500,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PLAINTIFF'S DECEDENT SUFFERS BOWEL OBSTRUCTION FOLLOWING BYPASS SURGERY THAT DEFENDANTS FAIL TO DIAGNOSE AND TREAT IN TIMELY FASHION – WRONGFUL DEATH OF 69-YEAR-OLD MALE.

Allegheny County, PA

In this action for medical malpractice, the estate of the decedent maintained that the defendant hospital failed to address their decedent's bowel obstruction following cardiac surgery in timely manner resulting in cardiopulmonary arrest and death. The defendant doctor and hospital denied all allegations of negligence and maintained that preexisting conditions caused the decedent's death. The defendant physician was dismissed from the action and the hospital settled with the estate.

The estate alleged that the defendant doctor and hospital were negligent in failing to order the X-ray STAT, failing to make sure the X-ray was performed and interpreted before the end of the work day on the 26th, failing to promptly order a full obstruction series, and failing to promptly address the decedent's deteriorating condition. The decedent is survived by his wife and two adult children.

The parties settled for $1,500,000. The defendant doctor was dismissed from the action and the defendant hospital was liable for $1,000,000 while the MCARE fund paid $500,000. The recovery was allocated at 90% wrongful death and 10% survival action.

REFERENCE

The Estate of Terry Matty by Christine Matty vs. UPMC Presbyterian Hospital and Christopher Sciortino, M.D. Case no. GD-19-003270; Judge Alan Hertzberg, 08-01-19.

Attorney for plaintiff: Scott Glassmith in Pittsburgh, PA. Attorney for defendant: Frederick Bode, III of Dickie, McCamey & Chilcote, P.C. in Pittsburgh, PA.

MOTOR VEHICLE NEGLIGENCE

$5,445,637 VERDICT - MOTOR VEHICLE NEGLIGENCE - DEFENDANT DRIVER, HEADING IN OPPOSITE DIRECTION FROM PLAINTIFF, STRIKES A CAR IN THE REAR, VAULTS OVER THE 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.

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 WHO MADE LEFT TURN FROM RIGHT LANE INTO PLAINTIFF'S VEHICLE - LUMBAR HERNIATION PROMPTING FUSION 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 THE CO-DEFENDANT MANAGEMENT COMPANY - PREMISES LIABILITY - NEGLIGENT SECURITY - ABDUCTION OF 12-YEAR-OLD GIRL FROM APARTMENT COMPLEX - FAILURE TO MONITOR PREMISES TO DETERMINE THAT OFF-LEASE SEX OFFENDER WAS RESIDING IN THE 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.

$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 - BACK INJURY - 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.

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 con-

trols 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.