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

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FEATURED CASES

$1,700,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY COMMERCIAL VAN WHILE STOPPED AT TRAFFIC LIGHT – CERVICAL HERNIATION – SURGERY – NO INCOME CLAIMS – COLLISION OCCURS IN BERGEN COUNTY BUT CASE BROUGHT IN ESSEX COUNTY BASED UPON RESIDENCE OF DEFENDANT.

Essex County, NJ

In this action for motor vehicle negligence, the 26-year-old plaintiff driver contended that he was struck in the rear by the defendant driver of a commercial van owned by a restaurant. The plaintiff maintained that as a result, he suffered a cervical herniation that ultimately required a surgical fusion and a subsequent revision of the fusion. The defendant denied that the accident caused the claimed injuries.

The plaintiff asserted that he developed very significant cervical symptoms after the accident. The plaintiff initially underwent conservative treatment, including physical therapy and chiropractic manipulations. The plaintiff maintained that his condition continued to deteriorate and that slightly more than one year after the collision, he underwent a 1-level discectomy and fusion in the cervical area. The plaintiff also asserted that because of continuing difficulties, he also required a revision of the fusion. The plaintiff also contended that because of stress above and below the level of the fusion, he is at risk for requiring future surgery.

The defendant contended that the plaintiff's complaints were related to degenerative disc disease only. The plaintiff countered that he had no prior symptoms or treatment, and the plaintiff would have argued that based upon this factor and his age, the defendant's position should be rejected.

The verbal threshold did not apply in this case in which the defendant was the driver of a commercial van. The collision caused moderate property damage. The plaintiff made no income claims.

The defendant had $1,000,000 in primary coverage and a $5,000,000 umbrella. The case settled prior to trial for $1,700,000, including $ 1,000,000 from the primary carrier and $700,000 from the excess carrier.

REFERENCE

Plaintiff 26-year-old driver vs. Defendant driver of commercial van.

Attorney for plaintiff: Mark McBratney of Seigel Law, LLC in Ridgewood, NJ.

$1,325,000 TOTAL RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO STOP AT RED LIGHT – BOTH PLAINTIFFS SUFFER LUMBAR HERNIATIONS – HUSBAND HAS 2 SURGERIES – WIFE UNDERGOES SINGLE SURGERY.

Hudson County, NJ

In this action for motor vehicle negligence, the plaintiffs husband and wife, in their early 60s, contended that the defendant driver negligently failed to stop at a red light, causing the collision in which the plaintiffs sustained serious injuries. The defendant did not dispute that her traffic light was red.

The plaintiff husband suffered a lumbar herniation and contended that initial surgery was inadequate. This plaintiff then underwent a lumbar fusion. This plaintiff asserted that the resulting permanent symptoms are severe.

This plaintiff worked as a self employed mechanic He claimed that his work is much more difficult and that he does not work as much. The plaintiff did not make an income claim. This plaintiff would have submitted out-of-pocket medical bills of approximately $820,000.

The plaintiff wife contended that she suffered a lumbar herniation and will suffer permanent pain and limitations despite surgery. This plaintiff had approximately $150,000 in unpaid medical bills.

The cases settled for $1,075,000 to the husband and $250,000 to the wife, for a total recovery of $1,325,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Sujal Patel, M.D. from Glen Rock, NJ.

Mohammed vs. Poliski. Docket no. HUD-L-4538-17, 04-21.

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

COMMENTARY

It is felt that the plaintiff made an unusually significant recovery in this case in which the plaintiff contended that the rear-end collision caused a cervical herniation that did not occasion income loss. In this regard, the fact the plaintiff was able to bring the case in Essex County, notwithstanding the fact that the accident occurred in Bergen County because of the residence of the defendant. Additionally, the plaintiff emphasized that he will be subject to pain and restriction for the remainder of a lengthy life expectancy and is at risk for requiring additional surgery.

$810,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/TRUCK COLLISION – REAR END COLLISION – PLAINTIFF TRUCKER STRUCK IN REAR BY DEFENDANT TRUCKER ON NJ TPK – PREVIOUS SPINAL INJURIES TREATED CONSERVATIVELY UNTIL AFTER SUBJECT COLLISION – 2-LEVEL CERVICAL FUSION.

Hudson County, NJ

In this action for motor vehicle negligence, the plaintiff truck driver contended that the defendant truck driver struck him in the rear n the NJ Turnpike. The plaintiff maintained that as a result, he suffered the aggravation of lumbar and cervical injuries that occurred less than a year earlier in a job-related incident. The plaintiff maintained that the earlier injuries were amenable to conservative care and allowed him to work. The plaintiff asserted that the aggravation necessitated a cervical fusion at C6-7 which will permanently prevent him from working. The defendant maintained that any injuries sustained in the subject collision resolved.

The plaintiff underwent conservative care only because of the prior injury and was able to work full time. The plaintiff asserted that after the subject collision, his pain and limitations increased substantially. The plaintiff claimed that conservative care was inadequate and that he required a 2-level cervical fusion.

The plaintiff contended that he no longer can work. The plaintiff was earning approximately $80,000 per year.

The case settled prior to trial for $810,000.

REFERENCE

Mattiasich vs. Aguilar. Docket no. HUD-L5044-18, 02-21-21.

Attorneys for plaintiff: Scott M. Sinins and Eric G. Kahn of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. in Springfield, NJ.

COMMENTARY

It is felt that although the history of the prior spinal injury that occurred less than a year earlier compromised the plaintiff's position to some extent, the plaintiff retained sufficient leverage to obtain a substantial recovery. In this regard, the plaintiff emphasized that despite the prior injuries, he was able to work full time, and was, in fact, working when the collision occurred. Additionally, the plaintiff stressed that before the subject accident occurred, there was no suggestion for surgery and that he now required a 2-level cervical fusion.

$290,000 RECOVERY – DOG BITE – 3-YEAR-OLD PLAINTIFF MAULED BY DEFENDANTS' DOG WHILE GUEST IN THEIR HOME – PLAINTIFF CONTENDS DEFENDANTS KNEW OR SHOULD HAVE KNOWN OF DOG'S PROPENSITY TO BITE AND FAILED TO CONTAIN DOG – BITE INJURIES REQUIRING EXTENSIVE MEDICAL TREATMENT – PSYCHOLOGICAL TRAUMA – SCARRING.

Mercer County, NJ

In this negligence case, the minor plaintiff, a 3-year-old girl, asserted that the defendants' dog attacked and bit her causing significant, permanent injury. The defendants filed a notice of appearance through their attorney, but mounted no defense prior to settlement.

On August 24, 2019, the plaintiff was lawfully on the premises of the defendants' home in Pennington. The defendants owned and housed a dog on the premises that bit and injured the infant plaintiff. The plaintiff contended that the defendants knew or should have known of the dangerous propensity of the dog that bit the plaintiff and negligently failed to take adequate precautions and failed to properly secure the dog.

As a result of the attack, the plaintiff sustained significant bite injuries requiring extensive medical treatment and leaving permanent scars. The plaintiff also suffered mental pain and anguish and was left with psychological trauma from the event.

The parties settled the matter prior to trial in the amount of $290,000 broken down as follows: $72,283 in attorney fees; $870 in costs and disbursements; $1,191 in Medicaid liens and $215,657 in net damages to the minor plaintiff.

REFERENCE

Momot vs. Bartnikowski. Docket no. L-001768-19; Judge F. Patrick McManimon, 01-30-20.

Attorney for plaintiff: Gary J. Grabas of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC in Scotch Plains, NJ. Attorney for defendant: Monique D. Moreira of Moreira & Moreira, P.C. in Kearny, NJ.

$197,664 VERDICT – BREACH OF CONSTRUCTION CONTRACT – PLAINTIFF CLAIMS DEFENDANT FAILED TO PAY FOR MASONRY WORK AT 2 JOB SITES – DEFENDANT ARGUES PLAINTIFF DID NOT PERFORM PER CONTRACT AND CAUSED DEFENDANT TO SUFFER DAMAGES.

Middlesex County, NJ

In this breach of contract case, the plaintiff asserted that the defendant owed for work performed at 2 construction sites where the defendant contracted the plaintiff for masonry work. The defendant denied owing the plaintiff because the defendant argued the plaintiff had not performed per the terms of the contract and had caused the defendant damages.

On October 8, 2014, the plaintiff and defendant entered into a purchase order in connection with work to be performed at 740 Main Street in Paterson. The defendant was the general contractor responsible for the construction of a Walgreens drug store on the Paterson site. The plaintiff was retained by the defendant to perform the masonry work on the site. The plaintiff maintained that it performed all the work required by its contract with the defendant. The plaintiff demanded payment in full from the defendant and the defendant failed to make full payment for the work performed. The plaintiff also claimed that the defendant owed the plaintiff for work performed on another Walgreen's construction site, located in Edison.

The plaintiff claimed that, per the terms of its agreement with the defendant, the defendant owed the plaintiff $29,475 for work performed at the Paterson site and $169,946 for work performed at the Edison site, together with interest, attorney's fees, and costs of suit. The defendant argued that it did not owe the plaintiff the remainder of the money it claimed was due because the plaintiff caused the defendant damages in connection with work performed at the Walgreen's store in Edison. The defendant maintained that the plaintiff failed to perform and meet deadlines as required by the purchase order for the Edison site.

The defendant alleged that a change order was initiated to reduce the scope of work required of the plaintiff and that the defendant was required to retain other companies in order to complete the work at the Edison. The defendant argued that, as a result of the delays caused by the plaintiff, the defendant was subject to liquidated damages in the amount of $150,000 and general conditions damages in an amount between $60,000 and $80,000 pursuant to a contract between the defendant and the owner of the Edison site.

Summary judgment was entered in favor of the plaintiff in the amount of $29,475 for damages associated with work performed at the Paterson site. The issues around the Edison site went to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $197,664 inclusive of damages, interest, and fees.

REFERENCE

Mr. Concrete Corporation vs. Boyle Construction Management, Inc. Docket no. L-004258-18; Judge Melvin L. Gelade, 10-19-20.

Attorney for plaintiff: David Hutt of Hutt & Shimanowitz, P.C. in Woodbridge, NJ. Attorney for defendant: Thomas M. Reardon, III of Reardon Anderson, LLC in Tinton Falls, NJ.

The plaintiff's own expert stated in his report that the deterioration of the screws connecting the grill stand to the deck was not visible. Prior inspections had not revealed the defective screws. Therefore, the court stated, the plaintiff had not demonstrated that the defendants had actual or constructive knowledge of any hazardous condition pertaining to the grill stand, and the plaintiff could not show the defendants breached their duty of care to him. Therefore, the court's granting of summary judgment was warranted.

$175,000 RECOVERY – UTILITY COMPANY NEGLIGENCE – PREMISES LIABILITY – DANGEROUS CONDITION – PLAINTIFF PEDESTRIAN SLIPS ON DEFENDANT'S WET UTILITY HATCH IN SIDEWALK IN FRONT OF DEFENDANT PROPERTY OWNERS' PREMISES – COMPLEX DISPLACED FRACTURE OF ANKLE – OPEN REDUCTION WITH INTERNAL FIXATION AND SUBSEQUENT REMOVAL OF SYNDESMOTIC SCREW – NON-BINDING ARBITRATION ASSIGNS 60% LIABILITY TO DEFENDANT WITH GROSS DAMAGES OF $350,000.

Union County, NJ

In this utility company negligence/premises liability case, the plaintiff asserted that the defendants failed to maintain property or a utility hatch on the property such that it posed a hazard to pedestrians and caused the plaintiff to fall sustaining significant, permanent injury. The defendant building owners contended that they did not install or maintain the diamond plate on which the plaintiff contended he fell and that it had been in place since they purchased the building in 1985. The defendant utility company denied that the plate constituted a hazard as there had been no prior incidents and such plates are the industry standard for creating access to underground cables.

On September 30, 2016, the plaintiff was walking in the area of 76 Summit Avenue in Summit. At that time, the plaintiff was caused to violently slip and fall, through no fault of his own, on property owned and negligently maintained by the defendants. The plaintiff contended that he slipped on a wet, steel or metal diamond plate located in the sidewalk of the defendants' premises. The defendants were the owners of the building abutting the sidewalk where the plaintiff fell and the utility company that installed the steel or metal plate in the sidewalk. The plaintiff asserted that the defendant property owners were responsible for the safety of their property and the defendant utility company was responsible for installation of the plate. The plaintiff alleged that the defendants had a duty to construct, maintain, repair, inspect and clean the premises in a reasonable manner and ensure the premises was free from hazards.

The plaintiff maintained that the plate posed a hazard when it was wet. The plaintiff argued that the defendants' breach of the duty to maintain hazard-free premises resulted in permanent injury to the plaintiff. As a result of the fall, the plaintiff sustained a complex displaced fracture of the ankle requiring open reduction with internal fixation and subsequent removal of syndesmotic screw. The plaintiff claimed a $16,500 ERISA lien. The defendant utility company argued that similar plates exist in many locations without incident. The defendants planned to present expert testimony that the plate was standard for covering utility vaults and was not considered a hazard.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 60% liability to the defendant and 40% to the plaintiff with gross damages of $350,000 reduced to $210,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $175,000 with $170,000 contributed by the defendant utility company and $5,000 contributed by the defendant property owners.

REFERENCE

Cartier vs. First Engery Corp., et al. Docket no. L-003094-17; Judge Mark P. Ciarrocca, 01-27-20.

Attorney for plaintiff: Patrick J. Mangan of Bramnick, Rodriguez, Grabas, Arnold & Mangan in Scotch Plains, NJ. Attorneys for defendant utility company: Thomas C. Hart and Richard M. Forzani of Ruprecht Hart Ricciardulli & Sherman, LLP in Westfield, NJ. Attorney for defendant property owners: Jordan D. Freeman of Marks, O'Neill, O'Brien, Doherty & Kelly, P.C. in Cherry Hill, NJ.

COMMENTARY

The defendant property owners moved for summary judgment on the argument that they owned no duty to the plaintiff. The defendants asserted that, to prove negligence, the plaintiff must prove that the defendants owed a duty of care, breached that duty, and that the beach was a proximate cause of the plaintiff's injuries and damages. To determine whether a duty of reasonable care is owed depends on basic fairness under the circumstances as well as public policy considerations per Hopkins v. Fox & Lazo Realtors, 137 N.J. 426, 439 (1993). The defendants argued that the plaintiff's theory of liability was that the diamond plate was slippery and therefore constituted a dangerous condition. Although the diamond plate was located on the sidewalk abutting property owned by the defendants, the defendants did not design, install or maintain the diamond plate. Assuming the dia-

mond plate was unreasonably slippery, the defendants asserted that they could not be expected to repair or replace the plate because it belonged to the co-defendant utility company.
Furthermore, the defendants maintained, there was no evidence that the defendants knew the plate was slippery or presented a hazard. Thus, they argued, the court could not impose a duty on the defendants to warn pedestrians such as the plaintiff. Under the circumstances presented, the defendant property owners argued that the court should find the defendants owed no duty to the plaintiff and to hold otherwise would be fundamentally unfair and would require the defendants to alter or maintain property they did not own. Moreover, the asserted, such a requirement would be at odds with municipal or state codes governing utilities and underground facilities. Thus, they maintained, under the analysis set forth in Hopkins, the court should hold that the defendants did not owe a duty to the plaintiff and grant summary judgment in favor of the defendants.
The plaintiff opposed the motion arguing that the defendant property owners had a legal duty to the plaintiff and that duty was violated. The plaintiff maintained that it is undisputed in New Jersey law that a commercial entity has a duty to insure that the safety of its property extends to public sidewalks that border its premises to inspect the abutting sidewalks and to protect its invitees from any dangers that the inspection would reveal including obstructions, improper construction, the consequences of wear and tear, and the accumulation of snow and ice, citing Monaco v. Hartz Mountain Corp. 178 N.J. 401 (2004). The plaintiff argued that it was evident from the facts presented in this case that the defendant commercial property owners took no actions to ever physically and personally inspect the metal plate that existed in the main traversing area of their commercial sidewalk.
In fact, the plaintiff pointed out, the facts and evidence presented also indicated that the owner of the plate itself, the co-defendant utility company, additionally took no steps to inspect the diamond plate cover on the "pull box." Furthermore, the plaintiff's expert, after reviewing all of the testimony, and personally inspecting the area, attributed the plaintiff's fall to the worn diamond plate surface, its location in the center of the sidewalk used by pedestrians, as well as the wet surface on the day in question. The plaintiff's engineering expert additionally cited to the "standard practice for safe walking surfaces" sections of the ASTM F 1637, sub-secion 6.2 which states: "walking surface hardware within foreseeable pedestrian paths shall be maintained slip resistant." The standard specifies walking surface hardware as including junction box covers, cleanout covers, hatches, sidewalk elevator covers, sewer grates, utility covers, and similar elements that pedestrians can reasonably be expected to walk on. As such, the plaintiff's engineering expert opined that the metal diamond plate in question must be maintained in a slip resistant condition to provide for public safety.
The plaintiff concluded that the duty to maintain the public sidewalk includes the obligation to address the consequences of ordinary wear and tear and that it was evident that neither the defendant property owners nor the co-defendant utility company owners of the "pull box" undertook any measure whatsoever to inspect the diamond plate cover at any time after its installation despite both having full knowledge of its existence and location in the center of the pedestrian walkway. The plaintiff maintained that, under the circumstances, the defendant property owners owed a duty of care to persons such as the plaintiff and that the defendants breach of that duty was the proximate cause of the plaintiff's fall and injuries.
The defendants countered that the plaintiff opposed the motion, asserting that there was no dispute that the accident occurred on a diamond metal plate installed and owned by the co-defendant utility company and that there was no dispute that the defendant property owners did not own, install or maintain the metal plate. The plaintiff's opposition reiterated his expert's opinion that the diamond plate was inadequately maintained and should have been more slip-resistant. That argument did not implicate the defendants because they did not construct or install the diamond metal plate and were not responsible for repairing or maintaining it.
The plaintiff contended that the defendant property owners knew or should have known that the diamond metal plate was slippery and should have warned pedestrians such as the plaintiff. The plaintiff's argument speculated that, if the defendants had inspected the diamond metal plate, they would have determined the plate sustained wear and tear over the years and that it was slippery when wet. The defendants were not engineers and should not be expected to make such a determination.
The court denied the defendants' motion for summary judgment and the case proceeded.

DEFENDANTS' SUMMARY JUDGMENT DISMISSAL – PREMISES LIABILITY – HAZARDOUS PREMISES – FALL DOWN – PLAINTIFF PIANO MOVER CONTENDS GRILL PAD ON DECK IMPROPERLY CONSTRUCTED AND CAUSED HIM TO FALL WHILE MOVING PIANO – ACETABULAR FRACTURE REPAIRED WITH INTERNAL FIXATION – 3 METACARPAL CUBOID FRACTURES – PUBIC CANUS FRACTURE – CERVICAL RADICULOPATHY – DEFENDANTS CLAIM THEY BREACHED NO DUTY TO PLAINTIFF – DEFENDANTS MOVE FOR SUMMARY JUDGMENT DISMISSAL.

Monmouth County, NJ

In this premises liability case, the plaintiff piano mover asserted that the defendant homeowners negligently maintained the deck on their home such that, when he was moving a piano for the defendants, he fell off the deck and sustained significant, permanent injury. The defendants denied liability for the plaintiff's injuries. The defendants argued that the plaintiff, and his co-workers, were professional movers and, as such, should have known whether or not it was safe to move the piano where and in the manner they did.

On September 22, 2016, the plaintiff was a business invitee on the defendants' premises at 28 Willow Brook Road in Freehold. The plaintiff was employed as a piano mover with a piano moving company. On the day in question, the plaintiff was moving the piano into the defendants' house via the back door which was fronted by a deck. As the plaintiff stepped

onto a grill pad on the deck, it collapsed under him causing the piano to land on top of the plaintiff. As a result of the subject incident, the plaintiff sustained acetabular fracture repaired with internal fixation; 3 metacarpal cuboid fractures; pubic canus fracture and cervical radiculopathy. The plaintiff claimed a $160,000 worker's compensation lien.

The plaintiff alleged that the defendants were negligent in maintaining the deck and stairs to the premises leaving it in an unsafe condition which collapsed when the plaintiff traversed the area. The plaintiff alleged that the incident resulted in permanent injuries. The defendants asserted that the plaintiff and his 2 co-workers did not weigh the piano, take any measurements of any kind, or inspect the steps or deck for safety. Initially, the plaintiff and co-workers attempted to move the piano from the second floor, down the interior stairway to the lower level but were unsuccessful. They then decided to move the piano via the back deck stairs, over the back deck railing and into the first floor but could not accomplish it with the grill in the way. The plaintiff made the decision to move the grill and use the grill pad as part of the area the piano would be moved through. All the decisions as to how and what method used to move the piano were undertaken by the plaintiff and his co-workers.

The defendants further asserted that they were not informed by the plaintiff that the grill was being moved and were unaware, until after the accident, that the grill had been moved. The defendants maintained that they believed the plaintiff would move the piano in the safest and most efficient way. The defendants also conceded that the plaintiff's hip and foot injuries were permanent but disputed his claims for permanent neck and shoulder injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendants and 25% to the plaintiff with gross damages of $400,000 reduced to $300,000 for plaintiff's comparative negligence, inclusive of the workers compensation lien. The arbitration was not confirmed and the matter proceeded.

The defendants moved for summary judgment dismissal. The motion was granted and the plaintiff's complaint was dismissed. The plaintiff appealed and the court's decision was upheld.

REFERENCE

Barbato vs. Gallagher. Docket no. L- 000109-18; Judge Mara Zazzali-Hogan, 03-29-21.

Attorney for plaintiff: William A. Wenzel of The Law Offices of William A. Wenzel in Brielle, NJ. Attorney for defendant: Chad M. Moore of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

COMMENTARY

The plaintiff was hired by defendants to move a piano from the second floor of defendants' home to the first floor. The plaintiff testified that he had moved "a couple hundred" pianos prior to the day in question. The plaintiff and his co-workers decided to move the piano via the deck attached to the house. The deck was located on the second floor of the home. It was approximately twenty feet long by 6 feet wide and was 10 feet above grade. There was a sliding glass door to enter the home from the deck. A wooden staircase led from the ground level to the deck. To the right of the stair landing on the deck was a 2-foot 8-inch wide by 3-foot long extension described as the grill stand. The defendants stated the grill stand was in place when they purchased the house.

The defendants bought the grill from the prior owners at the time of the purchase of the house and the grill remained in place on the stand thereafter. The plaintiff was standing on the grill stand while moving the piano. As the men were starting to make the turn to go down the stairs, the grill stand separated from the main portion of the deck, causing the plaintiff to fall and a portion of the piano to land on top of him.

Prior to trial, the defendants moved for summary judgment on the argument that the plaintiff could not prove that the defendants were negligent in causation of the plaintiff's injuries. The defendants argued that they owed no duty to the plaintiff; that the nature of the plaintiff's conduct and actions which led to the injuries were not foreseeable; and that imposing a duty of care on the defendants would contradict public policy and notions of fairness. The defendants' motion was granted and the plaintiff appealed.

The defendant homeowner testified that he hired a home inspector to assess any problems with the residence prior to its purchase. The home inspector did not tell defendants the grill stand was problematic, nor did the inspector tell defendants there was any defective construction regarding the deck or grill stand. The defendants did not alter the configuration of the back deck, the stairs or the grill stand from the time they purchased the home in 2011 to the time of the plaintiff's accident in 2016. The homeowner testified that he had never seen anyone stand on the grill stand.

The plaintiff instituted suit against defendants, alleging they were negligent in the maintenance of their premises and the outdoor deck and stairs were in an unsafe condition, causing him, a business invitee, to sustain personal injuries. During discovery, plaintiff retained an engineering firm to review the structural aspects of defendants' deck. The engineer noted a construction permit indicated the deck was constructed in 1979. He concluded the grill stand was constructed sometime thereafter in the ensuing 30 years. The plaintiff's expert opined that "deck screws should not have been used as the permanent fasteners of the deck extension to the main deck[]" because they "were not capable of carrying [the] load." He further stated the "deck screws were particularly vulnerable to the effects of corrosion and deterioration compared to more commonly used fastening alternatives for this type of connection."

The defendants moved for summary judgment, asserting they did not owe plaintiff a duty of care because plaintiff was hired as a professional piano mover and defendants did not supervise him or oversee the work being done. In addition, the defendants contended they had no actual or constructive knowledge of the alleged dangerous condition of the grill platform.

In opposition, the plaintiff asserted the defendants had a duty of reasonable care to guard against dangerous conditions on their property that they knew or should have known about. That duty included performing a reasonable inspection to discover latent dangerous conditions. The plaintiff also contended the doctrine of res ipsa loquitur was applicable under these circumstances because the deck was in defendants' exclusive control.

The trial judge noted the duty owed to a business invitee but also observed that the analysis of "whether a duty of care exists at all" required a balancing of several factors as enunciated in Hopkins v. Fox

& Lazo Realtors, 132 N.J. 426 (1993). In concluding defendants did not owe plaintiff a duty, the court stated: "In this case, [d]efendants hired a professional moving company to move their piano. The status of the movers as business invitees on [d]efendants' property weighs in favor of [d]efendants owing [p]laintiff a duty of care. However, the nature of the attendant risk was risk of injury while moving the piano, which all movers assume when engaging in their chosen profession. In addition, the opportunity and ability to exercise care rested with [p]laintiff and his co-workers, who were professional movers and entrusted by [d]efendants to carry out their work in a safe and professional manner. Consequently, both of these factors weigh in favor of finding that [d]efendants did not owe [p]laintiff a duty of care. Finally, the public interest in the proposed solution weighs in favor of finding no duty of care, as the public interest is generally furthered by not subjecting individuals to liability stemming from an unknown defect in their property that could not have been discovered via reasonable inspection, as is the case here."

The court granted defendants summary judgment on January 22, 2020. This appeal followed. The court reviewed the grant of summary judgment de novo, applying the same legal standard as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019) (citation omitted). Therefore, they considered "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citations omitted). We review issues of law de novo and accord no deference.

On appeal, the plaintiff asserted the trial court erred in finding the defendants did not owe him a duty of care. He further contended the public interest weighed in favor of the imposition of a duty. The determination of duty is "generally a matter for a court to decide." Acuna v. Turkish, 192 N.J. 399, 413 (2007). "The... imposition of a duty of care and the formulation of standards defining such a duty derive from considerations of public policy and fairness." Hopkins, 132 N.J. at 439 (citing Kelly v. Gwinnell, 96 N.J. 538, 552 (1984)). To determine whether a person owes a duty of reasonable care, our courts "ordinarily consider four factors: 'the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution.'" Est. of Narleski v. Gomes, 244 N.J. 199, 223 (2020) (quoting Hopkins, 132 N.J. at 439).

The appeals court disagreed with the trial court's determination that defendants did not owe a duty of care. However, they agreed with the grant of summary judgment because the plaintiff did not establish a breach of that duty. In turning to the relationship of the parties, plaintiff asserted, and the trial court agreed, that he was a business invitee. An individual is considered a business invitee when the primary purpose for their presence on the property is to confer a benefit upon the property owner. See Filipowicz v. Diletto, 350 N.J. Super. 552, 558 (App. Div. 2002). The duty owed to a business visitor "'encompasses the duty to conduct a reasonable inspection to discover latent dangerous conditions.'" Prioleau v. Kentucky Fried Chicken, Inc., 223 N.J. 245, 257 (2015) (quoting Hopkins, 132 N.J. at 434). An invitee "must prove, as an element of the cause of action, that the defendants had actual or constructive knowledge of the dangerous condition that caused the accident." Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003). Here, plaintiff's failure to show actual or constructive knowledge of the dangerous condition is fatal to his claim. The defendants purchased the house in 2011. Prior to the transaction, a home inspector inspected the entire home including the deck and grill stand. The inspection did not disclose any issues or defects concerning the grill stand. The defendants did not make any changes or do any construction to the deck or the grill stand between their purchase of the property and plaintiff's accident in 2016.

The plaintiff's own expert stated in his report that the deterioration of the screws connecting the grill stand to the deck was not visible. Prior inspections had not revealed the defective screws. Therefore, the court stated, the plaintiff had not demonstrated that the defendants had actual or constructive knowledge of any hazardous condition pertaining to the grill stand, and the plaintiff could not show the defendants breached their duty of care to him. Therefore, the court's granting of summary judgment was warranted.

Verdicts By Category

CONSUMER FRAUD

DEFENDANT'S JUDGMENT

Consumer fraud – Breach of contract – Plaintiff contends defendant seller misrepresented condition of aircraft plaintiff purchased from him and defendant inspector conducted negligent inspection that misrepresented airworthiness of airplane – Defendants assert plaintiff is certified airplane mechanic and there were no misrepresentations made.

Burlington County, NJ

In this consumer fraud case, the plaintiff asserted that the defendant seller and inspector of an aircraft violated the New Jersey Consumer Fraud Act by failing to comply with Airworthiness Directives on the plane purchased by the plaintiff. The defendant seller argued that the plaintiff is an FAA Certified aircraft airframe and power plant mechanic.

The plaintiff saw a 1971 Piper Cherokee aircraft advertised for sale in an airplane publication. The plaintiff contacted the defendant owner of the aircraft and entered into a purchase and sale agreement with the defendant owner for $20,000. In the agreement, the defendant warranted that the aircraft had a current airworthiness certificate issued by the FAA; that all the aircraft log books were accurate and current; and that all applicable airworthiness directives had been complied with. The plaintiff argued that there were defects in the aircraft including failure to inspect the crankshaft properly and the stabilator balance weight tube for cracks.

The plaintiff had a pre-buy inspection performed by the defendant inspector failed to note the defects. Based on the representations of the seller and the inspector, the aircraft was believed to be in compliance with required maintenance and was airworthy, when in fact, it was not. The plaintiff claimed that, as a direct and proximate result of the negligence of the defendants, the plaintiff was deprived of the benefit of his bargain and incurred costs and damages including loss of use, inability to acquire additional flight time, carrying costs, insurance costs and other damages including attorney's fees and expert costs.

The defendant claimed the plaintiff knew the condition of the aircraft he purchased and that the plaintiff was given an ability to inspect all relevant log books and the airplane itself, which he took full advantage of and had a pre-purchase inspection done. The plaintiff knew the airplane was over 45 years old, that the engine had been used more than 90% of its anticipated life, and would soon need to be overhauled. The defendant argued that both the plaintiff and the mechanic hired to inspect the plane had access to the Airworthy Directives and could have examined them. The defendant seller argued that the plaintiff had buyer's remorse and filed suit knowing full well the condition of the airplane he was purchasing at the time.

The defendant inspector argued that, as a licensed A&P mechanic himself, the plaintiff was aware that: no AD check is required to be performed during a pre-sale inspection; no AD review is required to be conducted in a pre-inspection; and that the only check of ADs that is conducted were those checks that occurred during the 1971 Piper's annual inspections as noted in the aircraft's logbooks. The defendant also asserted that there are no FAA regulations, guidelines, or requirements for an AD check to be conducted during a pre-sale inspection. The defendant also put forth that there was no indication in his logbook entry for the subject inspection that the aircraft was airworthy or in compliance with ADs.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found that the plaintiff failed to establish that either defendant had breached a duty owing to the plaintiff. The arbitrator believed that there was not enough substantive proof that demonstrated the defendants were liable to the plaintiff. The arbitrator found in favor of the defendants. The defendants made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Leon vs. Robb, et al. Docket no. L-001136-18; Judge John E. Harrington, 01-13-20.

Attorney for plaintiff: Mark J. Molz, Esq. in Hainesport, NJ. Attorneys for defendant seller: Sander D. Friedman and Wesley Hanna of Law Office of Sander D. Friedman in West Berlin, NJ. Attorney for defendant inspector/inspection company: Sarah Slachetka of Folkman Law Offices, P.C. in Cherry Hill, NJ.

CONTRACT

DEFENDANT'S VERDICT

Contract – Plaintiff's estate and plaintiff company contend defendant former stockholder violated non-compete agreements, breached fiduciary duty, and misappropriated trade secrets when he set up competing company in same business – Defendant asserts plaintiff knew and consented to defendant establishing company and any agreements between defendant and plaintiff company were voided when plaintiff failed to pay fees per terms of agreement.

Broward County, NJ

In this contract case, the plaintiffs, the estate of the founder and the company he founded, asserted that the defendants breached a confidentiality and non-compete agreement, breached fiduciary duty to the plaintiffs, committed tortious interference with the plaintiffs' business relationships, committed fraud and conversion, and had misappropriated trade secrets. The defendant denied all of the plaintiffs' claims.

At the time of his death, the plaintiff individual was the sole shareholder of a mill working business founded in 1993 in Dania Beach. The company made doors, frames, hardware and other related products for construction projects. At one point, the plaintiff and defendant individuals, who were brothers, were both shareholders in the plaintiff company with the plaintiff individual owning a majority of the company's shares. Later, the plaintiff company bought out the defendant individual and he moved to North Carolina.

In 2007, the plaintiff company purchased the defendant individual's minority interest in the business for $400,000 plus monthly consulting payments of $17,333 which were to continue for a period of 54 months. At that time, on May 4, 2007, the parties signed 3 agreements which memorialized the terms of the stock purchase including a confidentiality and non-compete agreement which contained restrictions on the defendant individual's ability to engage in competition with the plaintiff company through November 4, 2014. After the contracts were executed, the plaintiff individual became ill with cancer in 2009 and asked the defendant to return to work at the plaintiff company which he did in 2010. The plaintiffs asserted that the defendant founded a company in the same line of business, without the knowledge or consent of the plaintiffs.

The plaintiff company claimed that the defendant breached the agreement by operating a competing business; soliciting the plaintiff's customers, suppliers, and employees to work with his competing business and transferring the defendant's assets to his competing business. The plaintiffs asserted that the defendants' breaches resulted in damages to the plaintiffs.

The defendant asserted that he formed his new business entity with the knowledge and approval of the decedent plaintiff, his brother. Further, the defendant maintained he was no longer bound by the agreements because the plaintiff company had stopped paying him certain monies under the contracts thus breaching and voiding the agreements.

The jury found that the plaintiffs failed to prove that the defendants had breached the confidentiality and non-compete agreement, breached fiduciary duty, committed tortious interference with business relationships, committed fraud or conversion, or had misappropriated trade secrets. The jury returned a verdict in favor of the defendant.

REFERENCE

Graef, et al vs. Graef, et al. Docket no. CACE15009186; Judge Jack Tuter, 03-15-22.

Attorney for plaintiff: Roger Slade of Haber Law PA in Miami, FL. Attorney for defendant: Craig J. Trigoboff of Gunster, Yoakley & Stewart, P.A. in Fort Lauderdale, FL.

DEFAMATION

DEFENDANT'S VERDICT

Defamation – Conversion – Fraud – Plaintiff and defendant involved in relationship which ended with altercation during which police were called – Plaintiff claims defendant falsely accused her of assault and defamed her causing economic losses and health issues – Defendant counterclaims plaintiff was abusive and caused her emotional, economic and psychological damages.

Cumberland County, NJ

In this matter, the plaintiff and defendant were cohabiting in the plaintiff's residence on and off for 2 years with the intention of having a civil ceremony to become life partners. Due to various circumstances, primarily a disagreement around a $60,000 debt, which the plaintiff claimed belonged solely to the defendant, the parties dissolved their relationship. On August 5, 2017, during a disagreement over the joint purchase of

a home, a verbal altercation ensued and the defendant summoned police to the residence and lodged a complaint charging the plaintiff with assault. The defendant denied the plaintiff's charges and asserted that the plaintiff filed the suit solely for the purpose of harassment, delay, and malicious injury to the defendant.

The plaintiff claimed that the defendant falsely charged her with assault which resulted in the plaintiff being detained on August 5, 2017 and led to her having to notify her place of employment of the police contact and relinquish a handgun and permit. The plaintiff also claimed she was unable to go on a cruise, for which she had paid, because the defendant held the tickets and refused to relinquish them. The plaintiff claimed theft of $8,100, her passport, clothing, taking of civil rights, and loss of income due to being placed off-duty without pay. The plaintiff also asserted that the defendant damaged her reputation and defamed her character by accusing her of being an alcoholic and drug dealer.

As a result, the plaintiff maintained, her installation as president of a union was jeopardized, she was unable to afford to attend an annual convention, and she suffered health issues including hospitalization for stress and high blood pressure on multiple occasions for which she had to pay out-of-pocket due to a lack of insurance. The plaintiff sought damages for fraud, defamation, conversion, and attorney fees for her defense against the false accusations of assault and related expungement, as well as medical damages for hospitalizations due to stress brought on by the situation.

The defendant counterclaimed that the plaintiff, in violation of R. 1:4-8, filed a complaint for an improper purpose; that the complaint was frivolous; and that there was no evidentiary support of the plaintiff's claims. The defendant claimed that the plaintiff's complaint was in violation of N.J.S.A. 2A:15-59.1 and forced the defendant to retain legal counsel and thereby incur attorneys fees, costs and other expenses. The defendant/counterclaimant asserted that the parties were involved in a personal relationship throughout which the plaintiff was emotionally and psychologically abusive towards the defendant/counterclaimant. The defendant asserted that, on August 5, 2017, the abuse became physical when the plaintiff assaulted the defendant/counterclaimant. As a result of the psychological, emotional and physical abuse/attacks, the defendant/counterclaimant sustained severe injuries of both a physical, emotional, and psychological nature.

The defendant/counterclaimant claimed pain and suffering, damages, losses and expenses for the diagnosis and treatment of the physical and psychological injuries the defendant/counterclaimant sustained. The defendant/counterclaimant asserted that she is unable to continue to pursue her usual avocations, hobbies, interests and activities. The defendant/counterclaimant also claimed economic damages and losses including personal property the plaintiff kept at his home and refused to return to the plaintiff with a value of over $4,500.

The court determined that there were insufficient proofs to submit to a jury, as to the plaintiff's claim for fraud and on the defendant's counterclaims for assault and battery and intentional infliction of emotional distress and the court dismissed those claims. The jury considered only the plaintiff's claims for defamation and conversion and the defendant's counterclaim for conversion. The jury found no liability as to all and the court dismissed the plaintiff's complaint and the defendant's counterclaim.

REFERENCE

Johnson vs. Eastman. Docket no. L- 000024-18; Judge Samuel J. Ragonese, 01-15-20.

Attorney for plaintiff: Pro Se. Attorney for defendant: Randy C. Redden, Attorney at Law in Vineland, NJ.

DOG BITE

$60,000 RECOVERY

Dog bite – Plaintiff carpet installer bitten by defendants' dog while measuring for carpet installation – Puncture wounds, cellulitis and permanent scarring and sensitivity – Defendants dispute extent of injuries – Non-binding arbitration assigns 100% liability to defendants.

Middlesex County, NJ

In this dog bite case, the plaintiff asserted that the defendants failed to contain their dog and it bit and injured the plaintiff. Liability was not in dispute because the court had entered an order on August 12, 2019 ruling that the defendants were liable for the dog bite and any injuries suffered by the plaintiff as a result thereof.

On January 16, 2018, the plaintiff was in the course of his employment, taking measurements for floor covering at the defendants' residence, and was legally on the defendants' premises at 38 West Church Street in Milltown when the defendants' dog bit him on the leg. The plaintiff sought medical treatment for his wounds.

The plaintiff sustained puncture wound, developed cellulitis, and has permanent scarring and sensitivity as a result of the attack. The defendants disputed the nature and extent of the injuries sustained by the plaintiff as a result of the dog bite incident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of $56,900. Following arbitration and prior to trial, the parties settled for $60,000.

REFERENCE

Maltzman vs. Biss. Docket no. L-001730-18; Judge Michael V. Cresitello, Jr., 01-21-20.

Attorney for plaintiff: Erin M. Kolodziejczyk of Levinson Axelrod, P.A. in Edison, NJ. Attorney for defendant: Paul Mancuso of Law Office of Debra Hart in Wall, NJ.

INSURANCE OBLIGATION

$324,261 PIP ARBITRATION AWARD

Insurance obligation – Insurance company contends extension of disc surgery initially performed 18 years earlier was not medically necessary or related to subject collision.

Morris County, NJ

This case involved a plaintiff driver, in her 30s, who after the rear end collision, underwent a cervical fusion at an adjacent cervical level that was fused 18 years earlier. She had made a full recovery in the interim. The plaintiff maintained that the need for surgery and follow-up care stemmed from the collision and sought $324,261 from the PIP carrier. The carrier denied that the treatment was medically necessary or causally related to the collision and the case was submitted for PIP arbitration.

The carrier's orthopedist maintained that the films showed significant signs of degeneration and needed no further treatment. The plaintiff's orthopedist spinal surgeon asserted that the plaintiff had been faring well until the collision occurred and that it was clear that the trauma was causally related and that the treatment was necessary.

The arbitrator found for the plaintiff and awarded the amount claimed of $324,261.

REFERENCE

Plaintiff's orthopedic surgeon expert: Kenneth Rieger, M.D. from Chatham, NJ. Defendant's orthopedist expert: Jason Baynes, M.D. from Englewood, NJ.

NJ Spine Center vs. GEICO. 03-24-20.

Attorney for plaintiff: Camilla T. Morch of Camilla T. Morch, LLC in Stirling, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

DEFENDANT'S VERDICT ON LIABILITY

Motor vehicle negligence – Auto/bicycle collision – Plaintiff bicyclist collides with drivers' side of defendant's vehicle as defendant is backing out of driveway – Soft tissue lumbar injuries – No verbal threshold.

Salem County, NJ

In this action for motor vehicle negligence, the plaintiff bicyclist, in his 60s, contended that the defendant driver negligently failed to make adequate observations as she backed out of her driveway. The plaintiff asserted that as a result, he rode into the driver's side of the defendant's car sustaining injuries. The defendant denied that she was negligent and contended that the cause of the accident was the negligence of the plaintiff.

The defendant maintained that the plaintiff was riding against traffic rather than on the right side as required. The accident occurred during a rainy night and the defendant also pointed out that the plaintiff did not have a light on his bike.

The plaintiff did not have a drivers' license and the verbal threshold did not apply. The plaintiff contended that he suffered severe soft tissue lumbar injuries which will cause permanent pain and restriction. The defendant asserted that the soft tissue injuries fully resolved.

The jury found that the defendant was not negligent. The case was tried via Zoom and the physicians testified on video.

REFERENCE

Plaintiff's orthopedic surgeon expert: Laura Ross, D.O. from Medford, NJ. Defendant's orthopedic surgeon expert: Stephen M. Horowitz, M.D. from Marlton, NJ.

McBride vs. Harshman. Docket no. SLM-L-108-18; Judge Jean Chetney, 06-21.

Attorney for defendant: Mitchell Waldman of Hurvitz & Waldman, LLC in Pleasantville, NJ.

Auto/Motorcycle Collision

$500,000 VERDICT

Motor vehicle negligence – Auto/motorcycle collision – 4 lumbar spinous process fractures – 3 lumbar compression fractures – Coccyx fracture – Sternum fracture – Bilateral foot fractures.

Burlington County, NJ

In this action for motor vehicle negligence, the 17-year-old plaintiff motorcyclist contended that the defendant automobile driver failed to make adequate observations, swerving into on-coming traffic. The defendant struck the plaintiff's motorcycle causing him to sustain serious injuries. The defendant contended that the plaintiff crossed the center line.

The plaintiff countered that the debris from the bike was found on the plaintiff's side. The defendant asserted that the force of the impact resulted in the plaintiff's motorcycle returning to his lane. The defendant's car had been moved before the police arrived.

As a result of the collision, the plaintiff sustained multiple fractures, including 4 lumbar spinous process fractures, 3 lumbar compression fractures, a coccyx fracture, a sternum fracture and bilateral foot fractures. No surgery was necessary and the fractures were treated conservatively. The plaintiff asserted, however, that he will suffer permanent pain and limitations.

The operator of a motorcycle traveling with the plaintiff testified as to seeing the defendant holding a cell phone immediately before the impact. The defendant maintained that she was using a blue tooth. The records did not reflect whether or not a blue tooth was used.

The plaintiff made no income claims.

The defendant had $300,000 in coverage. The plaintiff made an offer for judgment of $125,000 and the defendant declined to make an offer. The jury found the defendant 100% negligent and awarded $500,000. The plaintiff will be pursuing a bad faith/Rova Farms case and is also moving for Offer of Judgment sanctions.

REFERENCE

Plaintiff's accident reconstruction expert: Terrence Fisher from Philadelphia, PA.

Miller vs. Garzone. Docket no. CAM-L-1290-17; Judge Aimee Belgard, 03-20.

Attorneys for plaintiff: Michael C. McKenna and Michael J. McKenna of McKenna Law, PC in Cherry Hill, NJ.

Broadside Collision

DEFENDANT'S VERDICT ON LIABILITY

Motor vehicle negligence – Broadside collision – Plaintiff contends defendant is speeding, causing accident when plaintiff fails to stop at stop sign at strip mall – Defendant driving with father while still on permit – Soft tissue injuries – No verbal threshold.

Monmouth County, NJ

In this case of motor vehicle negligence, the plaintiff driver, who was leaving a strip mall, contended that although she had a stop sign, she could not see the defendant driver, whom the plaintiff contended was speeding. The plaintiff maintained that as a result, she was struck in the side of her car, sustaining injuries. The defendant was on her permit and driving with her father.

The defendant denied speeding and contended that the sole cause of the collision was the negligence of the plaintiff.

The plaintiff asserted that she suffered soft tissue cervical and lumbar strain and sprains which will cause permanent pain and restriction. The plaintiff did not have the verbal threshold in her policy.

The jury found that the defendant was not negligent.

REFERENCE

Kelly vs. Farber. Docket no. MON-L-1284-19; Judge Andrea Farber, 05-21.

Attorney for defendant: Michael J. Lynch of Carton Law Firm, LLC in Manasquan, NJ.

Intersection Collision

$900,000 RECOVERY

Motor vehicle negligence – Intersection collision – Failure of pick-up truck driver, in course of employment for road service company, to stop at stop sign – Multiple lumbar and cervical herniations with impingement on spinal cord – Lumbar and cervical surgery – No income claims.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her 40s, contended that the defendant driver of pickup truck, who was in the course of his employment for a road service company, failed to stop at a stop sign, striking her on the driver's side casing her to sustain injuries. The vehicle suffered very significant property damage. The defendant would have argued that the plaintiff made a better recovery than claimed.

The plaintiff asserted that she developed severe radiating cervical and lumbar pain after the accident. The plaintiff's neurosurgeon would have testified that the plaintiff's claims were supported by both MRIs and EMGs. The plaintiff maintained that she will suffer very significant symptoms despite both a cervical and lumbar discectomy.

The plaintiff made no income claims.

The case settled prior to trial for $900,000.

REFERENCE

Plaintiff's neurosurgeon expert: Wael Elkholy, M.D. from North, NJ.

May vs. Puleios Service. Docket no. MID-L-2197-20, 06-21.

Attorneys for plaintiff: Leeor Jerushalmy and Eugene S. Wishnic of Wishnic & Jerushalmy in New Brunswick, NJ.

$290,000 RECOVERY

Motor vehicle negligence – Intersection collision – Inebriated driver fails to stop at red light, causing accident – Lumbar spondylolisthesis and lumbar herniation – Thoracic, lumbar and cervical herniations and bulges – Lumbar and cervical surgery – UIM case.

Hudson County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in his late 60s, contended that the defendant driver was inebriated and failed to stop at a red light, striking him. The plaintiff asserted that he suffered cervical, thoracic and lumbar herniations and bulges.

The evidence would have reflected that the plaintiff underwent medial branch injections and radiofrequency ablations in both the lumbar and cervical areas. The plaintiff contended that he suffered temporary improvement only and required both lumbar and cervical surgery. The plaintiff maintained that the lumbar surgery entailed 6 screws and 2 rods and left a permanent 5-inch scar. The plaintiff's expert neurosurgeon contended that the plaintiff will suffer permanent pain and limitations.

The plaintiff made no income claims.

The defendant had $15,000 in coverage. The plaintiff had $300,000 in UIM protection and $285,000 was available.

The case settled prior to trial for $290,000, including $15,000 from the defendant driver and $275,000 from the UIM carrier.

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ.

Rossi vs. Velasquez-Vela, et al. Docket no. HUD-L-737-21, 03-24-22.

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

UNDISCLOSED RECOVERY

Motor vehicle negligence – Intersection collision – Disc bulges and herniations – Treated conservatively with chiropractic care – Arbitrator assigns 100% liability to defendant with damages of $15,000.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff, a 48-year-old produce department worker at a grocery store, asserted that the defendant driver struck the vehicle in which he was a passenger, in an intersection, with such force that it caused significant, permanent injury. The defendant driver of the vehicle in which the plaintiff was a passenger was dismissed early in the case proceedings. The remaining defendant, driver of the vehicle that struck the plaintiff's vehicle, denied liability and contested the plaintiff's damages.

On May 10, 2016, the plaintiff was a front seat passenger in the defendant driver's vehicle when it was struck by the co-defendant's vehicle in the rear passenger side. The plaintiff's vehicle was traveling eastbound on Lyons Avenue in Newark with a green light when the co-defendant driver, having passed through the intersection, made a u-turn and approached from Wainwright Street, not stopping for the red light and collided with 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 traumatic injury to the neck and lumbar spine. The plaintiff suffered disc bulges and herniations that were treated conservatively with chiropractic care. The plaintiff had been involved in a prior motor vehicle collision in 2005 but contended that he did not suffer serious injury in that accident and that all his claimed injuries were from the subject incident. The defendant argued that the plaintiff's injuries were from a prior motor vehicle accident in 2005, and not caused by the subject collision.

Prior to arbitration, the plaintiff offered to take judgment in the amount of $17,500 against the defendant. The offer was declined and the matter proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $15,000. After arbitration, the plaintiff made an offer to take judgment in the amount of $15,000. Following arbitration and prior to trial, the plaintiff settled with the defendant for an undisclosed sum.

REFERENCE

Jean-Philippe vs. Benoit and McClish. Docket no. L-004298-17; Judge Keith E. Lynott, 10-15-19.

Attorney for plaintiff: James C. Mescall of Mescall & Acosta in West Orange, NJ. Attorney for defendant McClish: Moira T. Dillaway of Law Offices of Viscomi & Lyons in Morristown, NJ. Attorney for defendant Benoit: Matthew Forys of Kent & McBride, P.C. in Middletown, NJ.

Lane Change Collision

$410,000 RECOVERY

Motor vehicle negligence – Lane change collision – Cervical and lumbar spine injuries with positive EMG for radiculopathy – Double cervical discectomy fusion with cage hardware and lumbar discectomy – Plaintiff claims permanent residual injuries and pain and suffering.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 58-year-old man, asserted that the defendant driver changed lanes without warning and struck his vehicle with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant argued that the lane change was proper and that the plaintiff was contributorily negligent in causation of the collision.

On October 11, 2015, the plaintiff was traveling on Route 9 in Woodbridge. The defendant was also traveling on Route 9. The plaintiff maintained that the defendant performed an illegal lane change and entered the plaintiff's lane, causing a collision with 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 traumatic injury to the cervical and lumbar spine with positive EMG for radiculopathy. The plaintiff underwent a double cervical discectomy fusion with cage hardware and lumbar discectomy. The plaintiff claimed permanent residual limitations; pain and suffering; permanent scarring and disability. The plaintiff claimed $5,200 in unpaid medical expenses. The defendant disputed causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $575,000 reduced to $517,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $410,000 inclusive of all liens and costs.

REFERENCE

Matthews vs. Brooks. Docket no. L-005408-17; Judge Patrick Bradshaw, 01-17-20.

Attorney for plaintiff: Richard A. Deutchman of Deutchman & Drews, LLC in Somerville, NJ. Attorney for defendant: Patrick Coyne of Terkowitz & Hermesmann in Somerset, NJ.

$24,214 VERDICT

Motor vehicle negligence – Lane change collision – Sideswipe collision – Plaintiff contends defendant changed lanes unsafely, striking plaintiff's vehicle – Left shoulder labral tear and rotator cuff tear; left elbow ligament tear; and left knee soft tissue injury – Surgery for shoulder and physical therapy for shoulder and elbow.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 47-year-old man, asserted that the defendant driver struck his vehicle in a sideswipe with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On August 19, 2017, the plaintiff was traveling east on East Milton Avenue in Rahway. The defendant was also proceeding east on East Milton Avenue and attempting to change lanes. The plaintiff contended that the defendant negligently failed to observe traffic and changed lanes in an unsafe manner. Consequently, the defendant sideswiped the plaintiff's vehicle causing the plaintiff to suffer permanent injuries.

As a result of the collision, the plaintiff sustained left shoulder labral tear and rotator cuff tear; left elbow ligament tear; and left knee soft tissue injury. The plaintiff treated with arthroscopic surgery for the shoulder with extensive debridement including subscapularis, synovectomy, chondroplasty of the glenoid and humeral head, subacromial decompression with acromioplasty and Mumford distal clavicle resection; and followed up with physical therapy for the shoulder and elbow. The defendant argued that the plaintiff's injuries were pre-existing. The defendant argued that the plaintiff's shoulder condition was degenerative and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $120,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $24,214.

REFERENCE

McGlade vs. Malone. Docket no. L-000242-18; Judge Patrick J. Bradshaw, 02-13-20.

Attorney for plaintiff: Laura A. Rabb of Rabb Hamill, P.A. in Woodbridge, NJ. Attorney for plaintiff: Kelley Leyon of Law Offices of Styliades and Jackson in Mount Laurel, NJ.

Left Turn Collision

$185,000 RECOVERY

Motor vehicle negligence – Left turn collision – Comminuted fracture of dominant distal radius – Initial closed reduction followed by ORIF – No income claims.

Sussex County, NJ

In this action for motor vehicle negligence, the 60-year-old plaintiff contended that the defendant negligently failed to make observations before turning left, causing the collision in which the plaintiff sustained injury. Another vehicle had turned left immediately before the defendant. The defendant asserted that the plaintiff was comparatively negligent.

The plaintiff suffered a comminuted fracture of dominant distal radius. The plaintiff's orthopedic surgeon would have related that a closed reduction was insufficient and that the plaintiff required ORIF surgery. The plaintiff's physician would have concluded that the plaintiff will suffer permanent pain and restriction. The defendant, whose orthopedist did not dispute that the plaintiff suffered a permanent injury, maintained that the plaintiff made a better recovery than claimed.

The plaintiff was subject to the verbal threshold.

The defendant had $250,000 in coverage. The case settled prior to trial for $185,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Frank Capecci, M.D. from Denville, NJ. Defendant's orthopedic surgeon expert: Alan J. Sarokhan, M.D. from Warren, NJ.

Malloy vs. Baghadam, et al. Docket no. SSX-L-359-20, 02-17-22.

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

Multiple Vehicle Collision

$1,000,000 VERDICT

Motor vehicle negligence – Multi-vehicle rear end collision – Cervical herniations at C4-5, C3-4 and L5-S1 – Plaintiff presents MRI and EMG substantiating injuries – Pain management, chiropractic treatment and physical therapy – Plaintiff recovers $50,000 per high/low agreement.

Mercer County, NJ

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

On August 17, 2016, the plaintiff, a 35-year-old woman, was the driver of a vehicle stopped at a red light on Route 31 by its intersection with the exit ramp from I-95 South in Hopewell. The plaintiff claimed that the defendant driver negligently struck the rear of the plaintiff's vehicle and caused it to be pushed forward into the stopped car in front of her. The plaintiff al-

leged that the force of the impact resulted in permanent injuries. The plaintiff's husband claimed loss of consortium.

As a result of the collision, the plaintiff sustained cervical herniations at C4-5, C3-4 and L5-S1. The plaintiff treated with pain management, chiropractic care, and physical therapy. The plaintiff had no prior conditions or injuries and presented MRI and EMG reports substantiating her diagnoses. The plaintiff claimed $89,845 in medical expenses. The defendant argued that the plaintiff's injuries consisted of lumbar and cervical sprains and strains which resolved with no permanency.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $50,000 in the event of the jury awarding damages above that amount, and a minimum of $1,500 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the plaintiff and awarded $875,000 in damages to the plaintiff and $125,000 in loss of consortium damages to the plaintiff husband for a total award of $1,000,000. The verdict was molded to the amount of $50,000 as per the parties' pretrial agreement.

REFERENCE

Kaczynska vs. Rehder, Jr. Docket no. L-001246-17; Judge Janetta D. Marbrey, 08-19-19.

Attorney for plaintiff: R. David Blake, Esq. in Hamilton, NJ. Attorney for defendant: David Sideman of Law Office of Michael G. David in Marlton, NJ.

Rear End Collision

$97,000 RECOVERY

Motor vehicle negligence – Rear end collision – Bilateral shoulder tears – Partial tearing of left, non-dominant triceps tendon – Left-sided surgery – Lumbar herniation and cervical bulges treated conservatively – UIM case.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in his mid 40s, contended that the defendant driver struck him in the rear on the exit ramp of I-287 causing him to suffer serious injruies. The defendant driver had $15,000 in coverage and the plaintiff had $100,000 in UIM protection, with $85,000 available. The defendant did not have an IME.

The plaintiff maintained that he suffered bilateral shoulder tears and a partial tear pf the left, non-dominant triceps tendon. The plaintiff underwent left sided surgery and contended that he will nonetheless suffer permanent pain and limitation.

The plaintiff further asserted that he suffered a lumbar herniation and two cervical bulges which were confirmed by MRI and which will cause permanent symptoms despite conservative care.

The plaintiff made no income claims.

The case against the defendant driver initially settled for the $15,000 policy. The case against the UIM carrier then settled for $82,000, yielding a total recovery of $97,000.

REFERENCE

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

Dragan vs. Santhosh Ravindran, et al. Docket no. MID-L-7734-19.

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

UNDISCLOSED RECOVERY

Motor vehicle negligence – Rear end collision – Multiple cervical and lumbar disc herniations and bulges; cervical and lumbar radiculopathy; lumbar spondylolisthesis – Arbitrator sets damages at $224,500.

Burlington County, NJ

This case of motor vehicle negligence arose on March 14, 2016 when the plaintiff was traveling southbound on I-295 near milepost 56.9 in Bordentown. The defendant was traveling on the same roadway directly behind the plaintiff. The plaintiff maintained that the defendant failed to stop behind the plaintiff and struck the rear of her vehicle with significant force. The plaintiff's vehicle showed severe impact damage. The plaintiff alleged that the force of the impact resulted in permanent injuries. Prior to settlement, the defendant contended that the plaintiff was contributorily negligent in causing the subject collision.

As a result of the collision, the plaintiff sustained disc herniation at C3-4; bulging discs at C4-5, C5-6, C6-7; cervical radiculopathy at bilateral C7 and right C8; bulging discs at L1-2 and L4-5; disc herniation at L5-S1; lumbar radiculopathy at bilateral L4 and right L5; and lumbar spondylolisthesis at L5-S1. The plaintiff's injuries were confirmed by MRI and EMG and deemed to be permanent. The plaintiff claimed $9,500 in current medical expenses, as well as pain and suffering and future medical expenses. The defendant intended to challenge the extent, nature and permanency of the plaintiff's damages.

The parties settled the matter prior to trial and shortly after arbitration wherein the arbitrator found the defendant 100% at fault and set total damages at $224,500 with $140,000 for pain and suffering; $9,500 for present medical damages and $75,000 for future damages. The parties settled for an undisclosed sum.

REFERENCE

Lamon-Mullen vs. Mendenhall. Docket no. L-001862-17; Judge Susan L. Claypoole, 07-30-19.

Attorney for plaintiff: Michael Sussem of Law Offices of Vincent J. Ciecka, PC in Pennsauken, NJ. Attorney for defendant: Brian Stanziano of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Neck and back injuries with disc bulges and radiculopathy.

Hudson County, NJ

The action for motor vehicle negligence arose On October 6, 2015 when the plaintiff was a passenger in a vehicle that was stopped waiting for a traffic light on Bergenline Avenue at the intersection with 85th Street in North Bergen. The defendant was operating a vehicle traveling directly behind the plaintiff's vehicle. The plaintiff maintained that, as a result of the defendant's negligence, he failed to stop and struck the rear of the vehicle in which the plaintiff was a passenger. The plaintiff claimed serious, permanent injury resulting from the collision. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained neck and back injuries with disc bulges and radiculopathy. The defendant presented an IME that disputed the plaintiff's claim of permanent injury.

The plaintiff made an offer of judgment prior to trial in the amount of $75,000. The offer was declined. The plaintiff made a second offer of judgment just prior to trial in the amount of $35,000. That offer was declined and the matter went to trial.

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

REFERENCE

Galo vs. Hijazi. Docket no. L-002915-17; Judge Anthony V. Delia, 07-10-19.

Attorney for plaintiff: Kevin E. Kruse of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: Joseph DiCicco of Law Offices of Nancy L. Callegher in Edison, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff with prior history of cervical condition – New injuries include disc herniations at C5-6 and C6-7; disc bulges at L3-4 and L5-S1 with radiculitis confirmed by EMG and NCV.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 45-year-old woman, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On September 30, 2015, the plaintiff was traveling West on Main Street in Spotswood. The defendant was also traveling on Main Street behind the plaintiff's vehicle. The plaintiff claimed that she was slowing down in traffic when the defendant rear-ended the plaintiff's vehicle causing a significant collision. As a result of the defendant's negligence, the plaintiff maintained that she suffer severe personal injuries, pain and suffering and will continue to incur medical expenses for permanent injuries she sustained.

The plaintiff had a prior history of 2 lumbar injections but was not under active treatment at the time of the subject incident. As a result of the collision, the plaintiff claimed disc herniations at C5-6 and C6-7; disc bulges at L3-4 and L5-S1 with radiculitis confirmed by EMG and NCV. The defendant argued that the pathology of the plaintiff's cervical injuries indicated that they were pre-existing and not caused by the subject collision.

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

REFERENCE

Dzergoski vs. Gochenour. Docket no. L-003051-17; Judge Gary Wolinetz, 08-26-19.

Attorney for plaintiff: Chandni Patel of Mayo & Russ, P.A. in East Brunswick, NJ. Attorney for defendant: Arthur Arnold of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Right Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Right turn collision – Cervical and lumbar disc herniations treated with 2 epidural injections – Plaintiff claims $621 in unpaid medical expenses – Arbitrator assigns 70% liability to the defendant and 30% to plaintiff with gross damages of $40,000 reduced to $28,000 for plaintiff's comparative negligence.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the side of the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant also contested the nature and extent of the plaintiff's injuries.

On March 16, 2015, the plaintiff was traveling southbound on Norfolk Street near 255 Norfolk Street in Newark. The defendant was also traveling southbound at the same location. As the defendant was making a wide right turn into a parking lot, the right side of his vehicle came into contact with the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff contended that the defendant was negligent in operation of his vehicle in failing to make a turn safely and without causing collision with the plaintiff's vehicle.

As a result of the incident, the plaintiff sustained cervical and lumbar disc herniations. The plaintiff treated with 2 epidural injections. The plaintiff claimed $621 in unpaid medical expenses. The defendant presented the testimony of an IME which found that the plaintiff sustained only temporary soft-tissue injuries with no permanency.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant and 30% to the plaintiff. The arbitrator set gross damages at $40,000 reduced to $28,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Howard vs. Sluis. Docket no. L-001966-17; Judge Jeffrey B. Beacham, 11-22-19.

Attorney for plaintiff: Andrew John Calcagno of Calcagno & Associates in Cranford, NJ. Attorney for defendant: Michael J. Kelly of Law Offices of Patricia A. Palma in Woodbridge, NJ.

MUNICIPAL LIABILITY

$90,000 RECOVERY

Municipal liability – Premises liability – Fall down – Plaintiff, jogging on boardwalk, trips on raised board and falls forward onto left hand – Displaced fracture of fourth and fifth metacarpal bones in left hand – Open surgery with hardware and surgery to remove hardware – Ongoing limitations and restrictions in use of hand.

Monmouth County, NJ

In this premises liability case, the plaintiff, a 51-year-old high school teacher, asserted that the defendant city failed to properly maintain a boardwalk for public use and that the plaintiff fell on a defect on the boardwalk, suffering significant, permanent injury. The defendant city asserted tort immunity on liability. The defendant also maintained that the plaintiff was responsible for her own fall; that she assumed the risk of running on the boardwalk which is, by nature, composed of various boards and is not a flat surface like a street or sidewalk and that she failed to keep a proper lookout while running.

On August 10, 2016, the plaintiff was jogging in a northerly direction near the area of 4th Avenue when tripped and fell on a raised, warped portion of the defendant city's public boardwalk. The plaintiff fell forward, putting her hands out to break her fall and sustained significant injury.

The plaintiff contended that the defendant was negligent in the inspection, repair, maintenance and replacement of the wooden planks on the boardwalk and that the defendant's negligence was the cause of the plaintiff's fall and resulting injuries. The plaintiff alleged permanent injuries. The plaintiff sustained displaced fracture of the shaft of the fourth and fifth metacarpal bones in the left hand requiring open surgery including hardware to stabilize the fractures, including 2 plates and 14 screws. The plaintiff underwent a second surgery to remove the plates and screws. The plaintiff has ongoing limitations and restrictions in use of her left hand.

The defendant denied liability, arguing that it had no notice, actual or constructive, of the defect in the boardwalk. The defendant also pointed to the plaintiff's testimony that she frequently jogs on the subject boardwalk, and had just the day before, without issue. The defendant argued that its practice is to inspect and repair specific conditions once they are reported by the public and, additionally, lifeguards

and DPW employees identify potential tripping hazards on the boardwalk during their daily work hours and mark any hazards with orange spray paint.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of $300,000 reduced to $150,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $90,000.

REFERENCE

Moran vs. City of Asbury Park, et al. Docket no. L-001592-18; Judge Kathleen A. Sheedy, 01-24-20.

Attorney for plaintiff: Richard C. Reiders of Schibell & Mennie, LLC in Ocean, NJ. Attorney for defendant: James M. Parisi of Murphy McKeon, P.C. in Riverdale, NJ.

PREMISES LIABILITY

Fall Down

$172,500 RECOVERY

Premises liability – Fall down – Defendant homeowner negligently places commercial vans on sidewalk – Plaintiff walking dog attempts to go around van and falls on ice – Tear of ankle ligament – Surgery.

Bergen County, NJ

In this action for premises liability, the plaintiff, in his early 70s, contended that the defendant, who owned a number of commercial vans, attempted to comply with an ordinance requiring vehicles to be removed from the roadway during snowy conditions, negligently moved one of the vans onto the sidewalk, creating a slipping hazard. As a result, the plaintiff slipped and fell, sustaining injuries.

The plaintiff, who was walking his dog, came upon the defendant's van blocking the sidewalk. When he attempted to walk around the back of the van, he slipped and fell on icy ruts located directly behind the van's tires. Consequently, the plaintiff suffered a tear of the ankle ligament which required surgery.

The plaintiff testified that he was unable to see behind the van because it was dark and the height of the van cast a large shadow behind it. He was also unable to see the icy ruts until he was on the ground. The defense argued that a reasonable person would have simply turned around when the sidewalk became blocked and impassable, not attempt to go around the van.

The liability only case was tried virtually.

The jury found the defendant 100% negligent. The case then settled for $172,500.

REFERENCE

Moloughney vs. Ruprecht. Docket no. BER-L-6077-18; Judge Bishop Thompson.

Attorney for plaintiff: Meghan L. Steingall of Laddey Clark & Ryan, LLP in Sparta, NJ.

$85,000 ARBITRATION CONFIRMATION

Premises liability – Fall down – Plaintiff falls on snow/ice on defendant's property – Complex tear of anterior horn, body and posterior horn of lateral meniscus and partial tear of ACL – Surgery followed up with 11 epidural injections.

Passaic County, NJ

In this premises liability case, the plaintiff, a 60-year-old woman, asserted that the defendant property owner negligently allowed accumulated snow and ice to remain on its property, causing the plaintiff to fall and suffer significant, permanent injury. The defendant moved for dismissal of the plaintiff's complaint, arguing that the plaintiff failed to state a claim for which relief could be granted. The defendant denied that the sidewalk was inadequately cleared and that the plaintiff had even, in fact, been injured by falling on the premises.

On February 10, 2017, the plaintiff was walking on the sidewalk of her apartment complex at 62 Trenton Avenue in Clifton. The defendant was the property owner/manager. The plaintiff contended that the defendant negligently failed to adequately remove and treat snow and ice for the safety of residents of the building. The plaintiff fell, was able to help herself up, and immediately fell again due to the slippery conditions of the sidewalk.

The plaintiff's fall on the poorly shoveled sidewalk resulted in serious, permanent injuries. The plaintiff sustained a complex tear of the anterior horn, body and posterior horn of the lateral meniscus and a partial tear of the ACL, necessitating surgery. The plaintiff also received 11 injections to the knee after surgery.

The defendant maintained that the plaintiff's complaint stated conclusions of law regarding the alleged slip and fall, but failed to provide sufficient facts to establish a claim for relief. The defendant asserted that the complaint did not offer facts on key elements necessary to establish a claim for negligence. As such, the defendant argued, the plaintiff failed to apprise the defendant of claims and issues that it must defend against and the complaint should be dismissed as a matter of law. When the motion failed, the defendant answered the plaintiff's com-

plaint and argued that it had no notice, actual or constructive, of that the clearing and treatment of the sidewalk was in any way defective.

The parties submitted to non-binding arbitration prior to trial wherein the defendant did not appear. The arbitrator assigned 100% liability to the defendant with damages of $85,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted, awarding the plaintiff $85,000 in damages.

REFERENCE

Giordano vs. Paterson Coalition for Housing. Docket no. L- 003584-17; Judge Thomas F. Brogan, 01-09-20.

Attorney for plaintiff: John J. Sheptock of John J. Sheptock, LLC in Union, NJ. Attorney for defendant: David R. Cubby, Esq. in Waldwick, NJ.

UNDISCLOSED RECOVERY

Premise liability – Fall down – Plaintiff falls on uneven paving stones in defendant hotel walkway – Left shoulder labral tear; left elbow extensor tendon tear and left knee tear – $2,000 Medicare lien – Arbitration assigns 100% liability to defendant with damages set at $52,000.

Bergen County, NJ

In this premises liability case, the plaintiff, a 69-year-old man, asserted that the defendant hotel's premises contained a hazard and that the defendant failed to remedy the hazard or warn patrons using the hotel premises. Consequently the plaintiff fell, sustaining injuries. The defendant stipulated liability but contested the plaintiff's damages.

On October 30, 2015, the plaintiff was a guest at the defendant hotel in Mahwah. The plaintiff was walking on paving stones in a walkway on the premises of the defendant hotel when he tripped and fell. The plaintiff maintained that the defendants carelessly allowed a dangerous and hazardous condition to exist on the property or failed to warn of the hazard which caused the plaintiff to fall and sustain serious injuries. The plaintiff asserted that the paving stones were set in an uneven way such that some individual pavers were randomly raised above the others causing a tripping hazard.

As a result of the fall, the plaintiff, who had no prior relevant injuries, sustained left shoulder labral tear; left elbow extensor tendon tear; and left knee tear. The plaintiff claimed a $2,000 Medicare lien. The defendant presented testimony from an IME that disputed causality of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and specified no comparative negligence by the plaintiff with damages set at $52,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Mian vs. Sheraton Mahwah Hotel, et al. Docket no. L-006753-17; Judge Estela M. De La Cruz, 10-16-19.

Attorney for plaintiff: Raymond Carroll of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant: John Sapata of Tango, Dickinson, Lorenzo, McDermott & McGee, LLP in Millburn, NJ.

Hazardous Premises

DEFENDANT'S VERDICT

Premises liability – Hazardous premises – Failure of non-settling filling station to warn tour bus driver that shut-off valve on diesel nozzle, allegedly known to be defective, posed hazard to those standing next to gas tank – Diesel fuel sprays bus driver in face – Alleged chemically-induced COPD – Alleged PTSD.

Onondaga County, NJ

This premises liability case was brought by the driver of a tour bus, in her mid 40s, who was standing next to the diesel tank as the bus was being filled. The plaintiff set the automatic shut-off valve on the nozzle. When the tank was full, the diesel continued to be pumped into the tank and the diesel suddenly sprayed out, splashing the plaintiff in the face casing her to sustain injuries.

The plaintiff contended that this model of the bus was defective because of the failure to respond to the shut off valve and that the defendant filling station, at which these busses are frequently filled, should have provided warnings. Consequently, the plaintiff sustained chemically-induced COPD and PTSD. The filling station denied actual knowledge of the difficulties and as such had no duty to warn.

The filling station's motion for summary judgment was denied by the trial court and subsequently reversed by the App Div. The product liability case against the bus manufacturer settled for an undisclosed sum.

REFERENCE

Menear vs. United Refining Co., et al. Docket no. 2014-EF-4914.

Attorney for defendant: Langston McFadden of Law offices of Pullano & Farrow, PLLC in Rochester, 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

$4,500,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE – FAMILY PRACTITIONER NEGLIGENCE – FAILURE TO DELIVER INFANT IN TIMELY MANNER WHILE THERE WERE CLEAR SIGNS OF DISTRESS – DEVELOPMENTAL DELAYS DUE TO ANOXIC BRAIN INJURY.

Withheld County, MA

In this medical malpractice matter, the plaintiffs mother and child alleged that the defendant family practitioner was negligent in failing to immediately deliver the infant when there were clear signs of fetal distress. Due to the defendant's delay, the child suffered a brain injury which has resulted in significant developmental delays. The defendant denied any wrongdoing.

The plaintiffs brought suit against the defendant physician alleging negligence. The plaintiffs contend that the fetal monitoring warranted immediate delivery of the child and instead the defendant failed to act immediately and allowed labor to progress for additional hours without emergent intervention. The child suffers from significant developmental delays as a result of the defendant's negligence.

The parties agreed to resolve the plaintiff's claim ultimately for the sum of $4,500,000 in a confidential settlement between the parties.

REFERENCE

Plaintiff Mother and Infant vs. Roe PCP. 06-15-20.

Attorneys for plaintiff: Andrew C. Meyer and Robert M. Higgens of Lubin & Meyer in Boston, MA.

$593,005 GROSS VERDICT – MEDICAL MALPRACTICE – HOSPITAL AND DOCTOR NEGLIGENCE – PLAINTIFF'S DECEDENT SUFFERS ABDOMINAL HEMORRHAGE WHICH DEFENDANTS FAIL TO ADDRESS – CARDIOPULMONARY ARREST AND DEATH – WRONGFUL DEATH OF 42-YEAR-OLD MALE.

Philadelphia County, PA

In this action for medical malpractice, the estate of the decedent maintained that the defendant doctors and hospital staff failed to treat the decedent's abdominal hemorrhage causing the decedent to suffer cardio-pulmonary arrest and death. The estate maintained that the defendants let the decedent internally bleed to death. The defendants denied all allegations of negligence and argue that the decedent was treated properly in accordance with all medical standards.

On June 4, 2016, the 42-year-old male decedent was taken via ambulance to the defendant hospitals emergency department. He complained of severe abdominal pain and had sustained a fall the previous day. Upon arriving at the E.R., the decedent's blood pressure was very low and his pain was a 10 out of 10. He was evaluated by trauma surgeon. Over the course of the next 3 hours, the decedent received 4 liters of IV fluid, yet he remained hypotensive and tachycardic. A CT-scan revealed a large collection of blood in his excluded stomach and a complex collection of high-density free fluid in the pelvis concerning for blood. Despite these concerning findings, the defendant moved the decedent to the step down unit.

The jury did not find any negligence against the treating doctors but did find that the hospital staff was negligent in their treatment of the decedent. The jury awarded the estate wrongful death damages and the amount of $200,000 and survival damages in the amount of $647,150. The jury also found that the decedent was 30% contributorily negligent and the award was reduced accordingly to $593,005.

REFERENCE

The Estate of Brian Reinhart by Jean Reinhart vs. Eugene Mayer, M.D., George H. Tsiotsias, Aria Health Physician Services, and Northeast Gastroenterology Associates. Case no. 170504505; Judge Angelo Foglietta, 03-28-22.

Attorney for plaintiff: Nadeem Bezar of Nadeem Bezar in Philadelphia, PA. Attorney for defendant: Marie Plyter of O'Brien & Ryan in Plymouth Meeting, PA. Attorney for defendant: C. Andrew Woodward of Post & Post in Berwyn, PA.

$205,000 RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – PLAINTIFF'S DECEDENT DEVELOPS PRESSURE SORES AND INFECTION AT DEFENDANT NURSING HOME, RESULTING IN DEATH – FAILURE TO TREAT INFECTION – PRESSURE SORES TO LEGS, HEELS, BUTTOCKS, AND SACRUM – SEPSIS – CELLULITIS – BLOOD INFECTION – MALNOURISHMENT – WRONGFUL DEATH OF 91-YEAR-OLD FEMALE.

Bucks County, PA

In this medical malpractice action, the plaintiff's decedent was a resident of a nursing home, where she developed pressure sores and infection, ultimately leading to her death. The defendants generally denied all allegations of negligence.

The plaintiffs maintained that the defendants were negligent in failing to hire adequate staff to provide medical care and supervision to the plaintiff's decedent, failing to provide adequate care to the plaintiff's decedent, failing to perform the necessary routine checks on the plaintiff's decedent to monitor her condition and assist her in her activities, in negligently allowing the nursing home to become understaffed, in failing to ensure the plaintiff had adequate access to walking and mobility, failing to prevent the development of pressure ulcers, failing to treat pressure ulcers, and failing to treat infection and sepsis.

The parties entered into a settlement for $205,000.

REFERENCE

Wendy Parker, as Administratrix for the Estate of Georgiana Gallena, deceased vs. HCR Manorcare, Inc., Manor Care of Yardley PA, LLC, d/b/a Manor Care Health Services - Oxford Valley. Case no. 2019-08155; Judge Rea B. Boylan, 07-21-21.

Attorney for plaintiff: Matthew Thomas Stone of Matthew Stone in Philadelphia, PA. Attorney for defendant: Michael W. Bootier of Buchanan Ingersoll & Rooney, PC in Philadelphia, PA.

DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – PLASTIC SURGERY NEGLIGENCE – DEFENDANT PLASTIC SURGEON PERFORMS BREAST AUGMENTATION SURGERY ON PLAINTIFF AND FAILS TO TIMELY DIAGNOSE HEMATOMA – MULTIPLE SURGERIES – BREAST DEFORMITY – POOR AESTHETIC OUTCOME.

Harris County, TX

The plaintiff in this medical malpractice action maintained that the defendant plastic surgeon failed to appreciate that the plaintiff was suffering from a post-operative left breast hematoma following breast augmentation surgery. Standards of care require that hematomas be diagnosed and evacuated in a timely manner. The plaintiff's hematoma was not addressed until several weeks after the initial procedure. The defendant denied all allegations of negligence and maintained that the plaintiff was treated properly in accordance with all medical standards.

The plaintiff maintained that the defendant plastic surgeon provided negligent post-operative care in failing to timely diagnose and evacuate the hematoma a day or 2 after surgery. The plaintiff has suffered multiple surgical revision procedures including removal of the implants and will require additional procedures if she desires another augmentation surgery.

The jury found that the defendant plastic surgeon was not negligent.

REFERENCE

Yolanda Wiggins vs. Kristi Sumpter, M.D. Case no. 201900564; Judge Christine Weems, 01-06-22.

Attorney for plaintiff: Brian L. Jensen in Houston, TX. Attorney for defendant: Tamara M. Madden of Johnson, Trent & Taylor, LLP in Houston, TX.

PRODUCT LIABILITY

$33,889,968 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN AND MANUFACTURE – PLAINTIFF'S HAND SEVERED BY LID-CUTTING MACHINE – PLAINTIFF CLAIMS COMPLETE DISABILITY.

Miami-Dade County, FL

In this product liability case, the plaintiff worked on an automatic lid cutting machine press, used to make plastic lids, at a factory in Medley. The machine was manufactured, assembled and installed by the defendant South Korean company. The plaintiff asserted that the defendant negligently designed and manufactured an automatic press machine that caused the plaintiff significant, permanent injury and lifelong disability. The plaintiff brought suit for her injuries and the plaintiff children brought suit for loss of consortium. The defendant corporation did not appear in this case to contest the plaintiff's claims.

The plaintiffs claimed that the defendant corporation was negligent in designing, manufacturing, assembling and installing a defective automatic press machine, which caused the plaintiff's right hand to be severed. The plaintiff was cleaning the machine, while in the scope of her employment, when her right hand was caught in the machine, which then, unexpectedly, powered on and cut off the plaintiff's hand.

The jury awarded the plaintiff $29,889,968 for her individual damages and $2,000,000 each to the plaintiff's 2 children for loss of parental consortium, for a total of $33,889,968.

REFERENCE

Ross vs. VFK Head Corp., et al. Case no. 2015-15218-CA-15; Judge Peter R. Lopez, 05-11-21.

Attorney for plaintiff: Robert D. Peltz of The Peltz Law Firm, P.A. in Miami, FL. Attorney for plaintiff: Manuel A. Reboso of Rossman, Baumberger, Reboso & Spier, P.A. in Miami, FL.

MOTOR VEHICLE NEGLIGENCE

$12,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – MINOR PLAINTIFF STRUCK BY DEFENDANT'S VEHICLE WHILE CROSSING STREET – TRAUMATIC BRAIN INJURY – ACUTE SUBARACHNOID HEMORRHAGE – ACUTE SUBDURAL HEMORRHAGE – SKULL FRACTURES – DIFFUSE CEREBRAL EDEMA – HYPOXIC-ISCHEMIC BRAIN INJURY – FRACTURES OF RIGHT TIBIA AND FIBULA – BILATERAL PNEUMOTHORAX – HEMORRHAGIC RIGHT PLURAL EFFUSION – LUNG LACERATION – GRADE 3 LIVER LACERATION – COGNITIVE IMPAIRMENT – SURGERY.

Rockland County, NY

In this motor vehicle negligence action, the minor plaintiff sustained severe injuries after being struck by the defendant's vehicle while crossing the street. The minor plaintiff's injuries, included traumatic brain injury, acute subarachnoid hemorrhage, acute subdural hemorrhage, skull fractures, diffuse cerebral edema, hypoxic-ischemic brain injury, fractures of the right tibia and fibula, bilateral pneumothorax and cognitive impairment. The defendant generally denied all allegations of negligence.

The plaintiffs maintained that the defendant was negligent in failing to keep a proper lookout, failing to yield to the minor plaintiff pedestrian, failing to observe the minor plaintiff, failing to exercise due care, failing to operate the vehicle at a reasonable rate of speed, failing to remain adequately attentive, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the minor plaintiff.

The minor plaintiff's injuries required surgery, including fixation procedures of tibia and fibula fractures involving the placement of hardware, as well as a right thoracotomy, evacuation of hematoma, and repair of pulmonary lacerations.

The jury found in favor of the plaintiffs and awarded $12,000,000.

REFERENCE

Y K Infant, Shmeil M Klyman vs. La Familia Taxi Inc., La Familia Car Service, Inc., Geneus Charles. Index no. 033177/2018; Judge Sherri L. Eisenpress, 12-13-21.

Attorney for plaintiff: Joshua D. Kelner of Kelner & Kelner in New York, NY. Attorney for defendant: Adrianne Leven of Baker, McEvoy & Moskovits, P.C. in Brooklyn, NY.

$2,700,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – WRONGFUL DEATH – DEFENDANT, WITH HISTORY OF DRUG ABUSE, GIVEN PERMISSION BY DEFENDANT PARENTS TO DRIVE VEHICLE UNDER THEIR CONTROL – DEFENDANT DRIVER REAR ENDS VEHICLE WITH 5 PEOPLE IN IT CAUSING DEATHS OF 2 PASSENGERS AND SERIOUS INJURY TO REMAINING 3 OCCUPANTS OF VEHICLE.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiffs asserted that the defendant driver struck their vehicle from behind with such force that it caused significant, permanent injury and/or death to all occupants of the vehicle. The defendant driver died, unrelated to the subject accident, prior to filing of the suit. The plaintiffs proceeded to bring suit against the estate of the deceased defendant driver, negligent entrustment as to the defendant parents, and vicarious liability as to the owner of the vehicle. The defendants denied liability for the collision, arguing the plaintiff driver was negligent or comparatively negligent in causation of the collision. As to negligent entrustment, the defendant parents of the defendant driver denied having any reason to believe it was unsafe to allow their son to drive on the day in question. The defendants argued

that their son showed no signs of impairment or use of any substance and had not shown such in the days prior to the subject accident.

2 of the occupants of the plaintiffs' vehicle were killed and the others were severely injured. As a result of the collision, the defendant driver was issued summons for driving under the influence of liquor or drugs, reckless driving, speeding and failure to observe a traffic control device.

The parties settled all claims in their entirety for the total amount of $2.7 million dollars. The net proceeds available for distribution were $1,880,824.54. All claimants and beneficiaries agreed among themselves as to the allocation of certain monies to the estates the 2 individuals who died in the accident and to the allocation of the net settlement proceeds among themselves, broken down as follows: plaintiff M.Gu $76,500; plaintiff AG $76,500; plaintiff JS $245,000; plaintiff M.Ga $245,000; plaintiff PG $245,000; plaintiff HG-D $992,825; survivor benefits to the estate of plaintiff DG $30,000; survivor benefits to the estate of plaintiff M.Gu $30,000.

REFERENCE

Gallina-Deluca, et al. vs. Estate of Austin Janowski, et al. Docket no. L-004503-18; Judge Christopher D. Rafano, 02-19-20.

Attorneys for plaintiff: Carol L. Forte and Connor C. Turpan of Blume, Forte, Fried, Zerres & Molinari, PC in Chatham, NJ. Attorney for defendant: Mark Bongiovanni of Leary, Bride, Mergner & Bongiovanni, P.A. in Cedar Knolls, NJ.

$964,561 RECOVERY REACHED BEFORE INSTITUTION OF SUIT – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER NEGLIGENCE – DEFENDANT TRACTOR-TRAILER DRIVER TRAVELS TOO QUICKLY ON STEEP HILL EXITING HIGHWAY – DEFENDANT'S RIG LANDS ON TOP OF PLAINTIFF'S DECEDENT'S VEHICLE STOPPED AT RED LIGHT – WRONGFUL DEATH OF 78-YEAR-OLD MALE.

Jackson County, NC

In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver negligently failed to control her rig and was driving to quickly as she traveled down a steep incline while exiting a highway. The plaintiff asserted that as a result, she unable to stop before striking and landing on top of the 78-year-old's work truck that was stopped at an intersecting traffic light. The plaintiff's decedent suffered fatal injuries. The decedent left a wife and 3 adult children. The defendant driver maintained that she had experienced sudden brake failure.

The plaintiff's forensic engineer would have related that he examined the defendant's vehicle after the accident and found no evidence of sudden brake failure. The defendant's accident reconstruction expert examined the vehicle and the case settled shortly thereafter.

The defendant had a self eroding policy of $1,000,000. The carrier had paid approximately $35,400 for property damage and the case settled prior to the bringing of suit for the available coverage.

REFERENCE

Plaintiff's forensic engineer expert: Aaron Duncan, II from Greenwood, SC.

Caldwell vs. Lancer Insurance Co., 12-21.

Attorneys for plaintiff: Mark R. Melrose and Adam Melrose; in Asheville, NC.

PREMISES LIABILITY

$1,150,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF TRIPS AND FALLS ON SIDEWALK DEFECT ABUTTING CO-OP CITY – QUADRICEPS TENDON TEAR – SURGERY – PLAINTIFF DEVELOPS EXCESSIVE BUILD-UP OF FLUID – PLAINTIFF BELIEVES RISKS OF RECOMMENDED ADDITIONAL SURGERY OUTWEIGH POTENTIAL BENEFITS.

Bronx County, NY

In this action for premises liability, the 72-year-old plaintiff contended the defendant property manager of Co-op City negligently failed to notice and repair an approximate 1-inch height differential between sidewalk flags, resulting in the plaintiff tripping and fall, suffering a quadriceps tendon tear. The plaintiff maintained that despite surgery and physical therapy, he will suffer extensive permanent pain and limitations. The defendant maintained that the alleged defect was de minimis and denied that it was negligent.

The plaintiff was hospitalized and underwent an open surgical repair. The plaintiff contended that because of continuing build-up in fluid in the knee, he continued to experience severe pain. The plaintiff asserted that the pain and limitation continued despite several months of physical therapy. The plaintiff maintained

that additional surgery is indicated but that he felt that because of his age, the risks outweighed the benefits and that he declined the surgery.

The case settled during trial for $1,150,000.

REFERENCE

Plaintiff's economist expert: Debra Dwyer, Ph.D. from Stony Brook, NY. Plaintiff's orthopedic surgeon expert: Jerry Lubliner, M.D. from New York, NY. Plaintiff's physiatrist expert: Ali E. Guy, M.D. from New York, NY.

Jenkins vs. Riverbay Corp. Index no. 21753/18, 12-21-21.

Attorney for plaintiff: William Peterman of Burns & Harris in New York, NY.

$1,275,000 RECOVERY – PREMISES LIABILITY – HAZARDOUS PREMISES – 6 FT. 6 IN. SHOPPER STRIKES HEAD ON DOORWAY 6 INCHES LOWER THAN THAT PROVIDED BY NJ CODE – PATRON FALLS BACKWARDS AND STRIKES BACK – BILATERAL QUADRICEPS TENDON RUPTURES – COMPRESSION THORACIC FRACTURE – SURGERY – DECEDENT SUFFERS FATAL P.E. 23 DAYS LATER WHILE STILL IN HOSPITAL DURING PERIOD VISITORS NOT PERMITTED DUE TO COVID.

Atlantic County, NJ

This premises liability action involved a 48-year old farm market patron in which the plaintiff contended that the defendant market's doorway leading to the cash register was lower than that provided by the NJ Building Code. The plaintiff contended that as a result, the 6 ft. 6 in. patron struck his head and fell backwards as he was returning after initially ducking down when he went to the cash register. The patron suffered bilateral quadriceps tendon ruptures and a compression fracture at T9. The patron underwent surgery and 23 days later and while still in the hospital, he suffered a complication of a fatal pulmonary embolism. The defendant would have argued that in view of the fact that the plaintiff had just passed through the doorway without incident when he was going to the register, his failure to do so on his way out constituted overwhelming comparative negligence.

The plaintiff would have countered that it was highly foreseeable that the decedent would momentarily forget and strike his head, especially since the white awning did not advise of potential hazards. The plaintiff would have contended that the code required that a doorway be at least 80-inches tall.

The case settled prior to the institution of suit, and before the exchange of experts, for $1,275,000.

REFERENCE

Palmer vs. American National Insurance Co., 08-04-21.

Attorney for plaintiff: Michael C. McKenna of McKenna Law in Cherry Hill, NJ.

$6,000,000 CONFIDENTIAL RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – FEMALE PLAINTIFF SEXUALLY ASSAULTED BY PERSON DEEMED SUSPICIOUS MINUTES BEFORE BY DEFENDANT'S SECURITY – POST-TRAUMATIC STRESS DISORDER – EMOTIONAL DISTRESS.

Withheld County, MA

In this premises liability matter, the plaintiff alleged that the defendant building owner was negligent in failing to properly secure and protect the building and ensure that a suspicious individual who was not to be in the building was properly removed. Instead, the plaintiff was sexually assaulted by this person when the security officer failed to take affirmative action. The plaintiff suffered various injuries including emotional distress and post-traumatic stress disorder as a result of the incident. The defendant disputed the nature and extent of the plaintiff's alleged injuries and damages.

The plaintiff brought suit against the building owner alleging negligence and seeking damages. The defendant denied the allegations and maintained that its security officer acted appropriately and was unaware that the individual had not left the building as directed.

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

REFERENCE

Assaulted Plaintiff vs. Building Owner. 08-26-21.

Attorneys for plaintiff: Francis J. Lynch, III, Joseph C. Ferriera, Peter Heppner and Matthew Ilacqua of Lynch & Lynch in South Easton, MA.

ADDITIONAL VERDICTS OF INTEREST

Construction Site Negligence

$23,888,520 VERDICT – CONSTRUCTION SITE NEGLIGENCE – DEFENDANTS ASK PLAINTIFF, WHO HAS NO TRAINING, TO OPERATE SKID LOADER AT CONSTRUCTION SITE – PLAINTIFF EJECTED FROM EQUIPMENT AND PINNED BY BUCKET OF LOADER – CRUSH INJURIES TO BOTH LEGS REQUIRING EXTENSIVE EMERGENCY SURGERY AND MULTIPLE FOLLOW-UP SURGERIES.

Broward County, FL

In this construction negligence case, the plaintiff, a 22-year-old construction laborer, asserted that the defendants failed to inform the plaintiff of a dangerous condition on the work site and that the hazard on the premises caused him significant, permanent injury. The defendants failed to appear or present a defense and were found in default. The court ruled that both the defendant contractor and the defendant construction company were negligent and that their negligence was the cause of the plaintiff's injuries. The matter proceeded to trial on damages only.

In the course of the work the defendants asked the plaintiff to operate a New Holland Skid Loader for the purpose of removing debris in connection with the subject project. The plaintiff lacked the proper training, instruction, skill, qualification or experience in operating the equipment. While working the machinery, the plaintiff was ejected from the seat of the equipment.

As a result of being ejected from the front loader, the plaintiff's legs were violently pinned between the bucket and the machine. The plaintiff was trapped for more than an hour, in and out of consciousness, with both of his legs broken and bones protruding through his skin. The plaintiff suffered severe blood loss. The plaintiff was airlifted to the hospital where he underwent an 8-hour emergency surgery followed by several major surgeries over the next several months that he was hospitalized. The plaintiff suffered permanent disability from his injury.

The jury found apportioned fault at 70% to the defendant construction company and 30% to the defendant contractor. The jury awarded damages in the total amount of $23,888,250 broken down as follows: $2,628,000 for past damages and $21,260,520 for future damages. The damages were apportioned per percentage of fault with the defendant construction company ordered to pay $16,721,964 and the defendant contractor $7,166,566.

REFERENCE

Verduzco vs. Whitfield Small, et al. Case no. CACE20002983; Judge Carol-Lisa Phillips, 02-09-22.

Attorneys for plaintiff: Robert C. Johnson and Daniel Lustig of Pike & Lustig, LLP in West Palm Beach, FL.

Insurance Obligation

$100,000 RECOVERY – INSURANCE OBLIGATION – MOTOR VEHICLE NEGLIGENCE – POLICE LIABILITY – PLAINTIFFS' VEHICLE STRUCK BY UNINSURED MOTORIST WHO ENTERED INTERSECTION AGAINST RED LIGHT WHILE FLEEING DEFENDANT POLICE OFFICER – EMERGENCY C-SECTION PERFORMED TO PLAINTIFF – PREMATURE DELIVERY – EXTENDED HOSPITALIZATION.

Travis County, TX

The plaintiffs in this insurance obligation/motor vehicle negligence/police liability action maintained that the plaintiff mother had to have emergency C-section after she was seriously injured in a collision when an uninsured driver disregarded a red light and entered an intersection occupied by the plaintiff's host vehicle. At the time of the collision, the uninsured driver was being negligently pursued by the defendant police department. The defendants generally denied all allegations of negligence and injury.

The plaintiff sustained serious injuries including a ruptured spleen and had to undergo an emergency C-section. The infant was born prematurely and required hospitalization for several weeks. The plaintiffs brought suit against the defendant police department for negligence and causing an unnecessary high-speed chase resulting in the accident. The plaintiffs also sued their insurance company for uninsured motorist benefits.

The plaintiffs settled with the defendant Police Department for $50,000 and with the defendant insurance company for $50,000, for a total of $100,000 recovery on behalf of the minor plaintiff.

REFERENCE

Ian Kim a minor by and through his pngs Sun Ju Hong & Terry Kim vs. The City of Austin dba Austin Police Department and Mercury County Mutual. Case no. D-1-GN-20-002506; Judge Lora J. Livingston, 02-02-22.