



NEW JERSEY

JURY VERDICT REVIEW & ANALYSIS®

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FEATURED CASES

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

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

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## FEATURED CASES

### **\$3,750,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT MAINTENANCE – LONG-TERM FAILURE TO COMPLY WITH NATIONAL ELECTRICAL CODE FOR INSULATING RODS – WORKER FOR NON-DEFENDANT COMPANY SUFFERS FATAL ELECTRICAL INJURY AFTER CONTACT WITH DEFENDANT’S CABLES.**

#### **U.S.D.C. - District of New Jersey**

This premises liability case involved the death of a 51-year-old worker, who did not work for the defendant company, and who was electrocuted when working near defendant’s cables because of the absence of proper insulation on a cable. The defendant maintained that the Rural District Exception applied and denied liability.

The plaintiff countered that the Rural District Exception exemption from the 1961 Electrical Code did not apply to insulators. The plaintiff’s electrical safety expert concluded that the Code had been amended a number of times since 1918, none of which supported the defendant’s position. The plaintiff asserted that the conduct of the defendant warranted punitive damages.

The plaintiff’s expert anesthesiologist would have testified that the electrical charge entered the hands, went to the ground and not to the brain. According to the plaintiff’s expert, it was likely that the decedent knew he was being electrocuted.

The decedent left a wife and 2 teenage children. He was earning approximately \$150,000 per year.

The case settled at mediation before Hon. Dennis F. Carey, III, P.J.Cv.D. (retired) for \$3,750,000.

#### **REFERENCE**

Plaintiff’s anesthesiologist expert: Peter Salgo, M.D. from Nutley, NJ. Plaintiff’s economic expert: Kristin Kucsma from Livingston, NJ. Plaintiff’s electrical safety expert: William Patrick from Moravia, NY.

Fatal electrocution of 31-year-decedent vs. x.; Settled after mediation before Judge Dennis F. Carey, II.

**Attorney for plaintiff: William S. Greenberg of Greenberg Minasian, LLC.**

#### **COMMENTARY**

It is felt that if the case had proceeded to verdict, the long time failure of the defendant to comply with the Electrical Code would have resulted in a large and unpredictable verdict. In this regard, the plaintiff stressed that although the Code had been amended a number of times, the defendant had never complied. Finally, it should be noted that all of the settlement was attributed to pain and suffering.

### **\$489,514 GROSS VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS AND FALLS ON WET AND ICY FLOOR INSIDE MALL OWNED CONTROLLED AND MAINTAINED BY DEFENDANTS – INJURIES TO KNEE AND SHOULDER BOTH REQUIRING SURGERY – CERVICAL DISC HERNIATION.**

#### **Morris County, NJ**

The plaintiff in this premises liability action maintained she suffered serious injuries to her knee, shoulder and neck when she slipped and fell on a wet and icy floor at a mall owned, controlled and maintained by the defendants. The defendants denied all allegations of negligence and maintained it was the actions of the plaintiff that caused or contributed to the incident.

On January 30, 2019, the female plaintiff was lawfully upon the premises known as rockaway town square, a mall on Mount Hope Ave. in Rockaway, New Jersey. The premises was owned and maintained by the defendants. The plaintiff was walking near the mall entrance at the food court when she slipped and fell on a wet or icy floor.

The plaintiff maintained that the defendants were negligent and failing to properly maintain the premises, failing to inspect for dangerous conditions, and failing to properly remediate the dangerous condition. As a result of the incident, the plaintiff sustained a right torn medial meniscus and cruciate ligament requiring arthroscopic repair. In addition, she also sustained 3 herniated cervical discs at C4-7, and a left shoulder slap tear requiring decompression and debridement.

The board of arbitrators found that the facility management company, CRS, was 50% liable and the plaintiff was 50% liable. The board awarded the plaintiff damages in the amount of \$489,514 which was reduced accordingly to \$244,757.

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**REFERENCE**

Kimblin Cowins vs. Rockaway Center Associates dba Rockaway Townsquare, Simon Property Group, CRS, Facility Services, Laurano Landscaping. Docket no. MRSL001893-20; Arbitration Panel, 03-23-23.

**Attorney for plaintiff: Cristina Mirda of Accardia & Mirda in East Hanover, NJ. Attorney for defendant: Lawrence M. Berkeley of Fishman McIntyre Berkeley Levine Samansky, P.C. in East Hanover, NJ.**

**\$281,250 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS ON WATER LEAKING FROM REFRIGERATED FOOD DISPLAY CASE AND FALLS – DISPLACED EVULSED FRACTURE OF LEFT PATELLA – SURGERY REQUIRED.**

**Bergen County, NJ**

**In this premises liability action, the plaintiff slipped and fell on water leaking from a refrigerated food display case at the defendant supermarket. The defendants generally denied all allegations of negligence.**

On August 10, 2021, the plaintiff was a lawful visitor and business invitee at the defendant supermarket, located on the premises of 372 Broadway in Hillsdale, New Jersey. While there, the plaintiff was walking through the frozen food aisle, where merchandise was kept and displayed in refrigeration cases. On this day, one of the display case drains was clogged, which had caused water to leak from the refrigeration display case onto the aisle floor. While the plaintiff was walking through the aisle, she slipped on the leaking water and fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to adequately clean the premises, failing to remove water from the floor, failing to erect signs or otherwise warn of a wet floor, failing to hire adequate janitorial staff, failing to inspect the premises, failing to warn of a drain leak on the premises, failing to provide safe passage, and failing to regard for the health and safety of visitors on the premises including the plaintiff. Consequently, the plaintiff sustained injuries, including a displaced, evulsed fracture of the left patella, which required open reduction and internal fixation surgery with the placement of hardware to repair.

The jury found in favor of the plaintiff and awarded \$281,250.

**REFERENCE**

Zisser Jaime vs. Inserra Supermarkets, Inc. Docket no. L007056-21; Judge Peter G. Geiger, 04-08-23.

**Attorney for plaintiff: Steven R. Hymowitz of Steven R. Hymowitz, Esq. in New City, NY.**

**COMMENTARY**

Following the accident in this case, the plaintiff underwent open reduction and internal fixation surgery, which included the placement of a metal plate and four screws into the left knee. Several months later, the plaintiff was required to undergo a follow-up procedure, during which the metal hardware in her knee was removed. After this follow-up surgery, the plaintiff continued to experience immense pain, rendering her incapable of ambulating without the use of a cane for several months.

The plaintiff also suffered other health issues as a result of her inability to walk, including significant weight gain. The plaintiff will likely need to undergo further surgical procedures in the future in order to restore the function of her left knee/leg. The awarded amount in this case was likely determined by the severity of the plaintiff's injuries, as well as her prolonged need for medical care.

**\$2,800,000 VERDICT – MEDICAL MALPRACTICE – REHABILITATION CENTER NEGLIGENCE – WRONGFUL DEATH – FOLLOWING SURGERY, PLAINTIFF’S MOTHER SUFFERED FATAL BRAIN HERNIATION WHILE IN CARE OF DEFENDANT PHYSICIANS AT DEFENDANT REHABILITATION HOSPITAL.**

**Camden County, NJ**

**In this medical malpractice case, the plaintiff asserted that the defendants breached the standard of care in treatment of the plaintiff’s decedent, a 71-year-old mother of 8 and grandmother of 20, resulting in her untimely death from a subdural hematoma. The plaintiff resolved the matter with the defendant rehabilitation hospital and its physicians group before trial. The case proceeded as to the defendant treating rehabilitation physician and rehabilitation physiatrist. The defendants contended that they found the decedent an appropriate patient for the rehabilitation hospital and denied the plaintiff’s allegations, specifically denying that decedent displayed any symptoms while she was under the defendants’ care that signaled a potential subdural hematoma.**

The plaintiff claimed that the defendants deviated from accepted standards of medical practice in treatment of the plaintiff’s decedent. The decedent was diagnosed with a meningioma in 2010. In October 2015, the decedent was chasing her dog and subsequently had a fainting spell. In response to her fainting spell, the decedent’s children took her to the local hospital. While at the local hospital, the decedent was placed on subcutaneous heparin. The decedent had a meningioma removed on October 28, 2015, and was subsequently admitted to a rehabilitation hospital on November 4, 2015, by the defendant treating rehabilitation physician.

The defendant treating physician then left for vacation and the decedent was under the care and observation of the co-defendant until the defendant returned on November 9, 2015. The decedent developed a hemorrhage which became clinically apparent around 9 p.m. on November 9, 2015, and the decedent ultimately died of a subdural hematoma on November 10, 2015. The plaintiff asserted that the defendants failed to properly identify signs of a brain hemorrhage and failed to send the decedent for a CT-scan prior to 9:00 p.m. on November 9, 2015.

At trial, the plaintiff presented the testimony of an expert oncologist/hematologist who opined that the delay in diagnosis of the decedent’s subdural hematoma caused direct and proximate harm to her by allowing the subdural hematoma to worsen, allowing her aPTT test to become significantly abnormal and thereby worsening the subdural hematoma and put her brain under significant pressure. The plaintiff’s expert asserted that the pressure caused her brain to herniate, which resulted in her death and that the delay in the diagnosis of the subdural herniation created a loss of the chance of long-term survival.

The defendant physician argued that after admitting the decedent on November 4, 2015, she went on vacation from November 5, through November 8, 2015; while on vacation, the defendant was not on call or available to her patients or her staff. On November 9th, a nurse at the rehabilitation hospital performed 15-minute checks on the decedent and did not report any changes in her condition. Consequently, the defendant treating physicians were not contacted about any deterioration in the decedent’s condition before 9:00 p.m. on November 9, 2015. Around 9 p.m., the decedent’s condition dramatically changed, and she became unresponsive.

The decedent was transported to the Emergency Department. The decedent’s mental status change occurred just prior to her arrival at the E.R. In the E.R., the decedent was diagnosed with a brain hemorrhage due to a subdural hematoma. She was then transferred to another hospital where she underwent emergency surgery. The surgery was unsuccessful, and the decedent died on the afternoon of November 10, 2015.

The defendants maintained that the decedent suffered an adverse reaction to subacute Heparin that was unable to be predicted and occurred suddenly, unavoidably causing her death. The defendants asserted that the defendant rehabilitation hospital and its staff were responsible for monitoring and identifying any changes in the decedent’s condition during the crucial period when she was experiencing the subdural hematoma and that, absent their reporting any issues to the defendants, there was no reason for the defendants to presume a change in condition or need for change in treatment. The defendants maintained that multiple other people were aware of the decedent’s medical prognosis and progress and none of those providers, including two additional physicians who had the capability to do so, ordered a CT-scan or noted that they believed the decedent was suffering from a subdural hematoma.

The defendant rehabilitation hospital settled for an undisclosed amount prior to trial and the matter proceeded only as to the 2 defendant physicians.

The jury found that the rehabilitation hospital was liable for 60% of the decedent’s pain, suffering, and loss of enjoyment of life. The defendant treating physician was liable for 35% and the defendant physiatrist was liable for 5%. The jury awarded damages of \$1,000,000 for the Survival Action and \$1,800,000 for the Wrongful Death Action. The plaintiff settled with the co-defendant physiatrist following the verdict and the remaining defendant filed a motion for new trial.

## REFERENCE

Estate of Carol J. Jones vs. Marlton Rehabilitation Hospital, et al. Docket no. L -003858-16; Judge Donald J. Stein, 05-10-23.

**Attorney for plaintiff:** Jared N. Kasher of Kasher Law Group, LLC in Cherry Hill, NJ. **Attorneys for defendant treating rehabilitation physician Barbara Douglas, M.D.:** Tess J. Kline and Kaitlyn E.

**Greenberg of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ. Attorney for defendant treating rehabilitation psychiatrist Deborah Oranchak, D.O.:**

Jay J. Blumberg of Blumberg & Wolk, LLC in Woodbury, NJ. **Attorneys for defendant Marlton Rehabilitation Hospital and Vibra Physicians, LLC:** William J. Mundy and Brian D. Pagano of Burns White, LLC in Cherry Hill, NJ.

## COMMENTARY

Following the verdict, the defendant treating rehabilitation physician moved for new trial arguing that a new trial was warranted due to the cumulative effect of plaintiff's counsel's improper summation. The defendant submitted that various comments made by plaintiff's counsel throughout his summation amounted to cumulative error that demanded a new trial. The defendant held that plaintiff's counsel made improper personal attacks on defense counsel's conduct.

The defendant acknowledged that no individual comment by plaintiff's counsel directly places aspersions on defendant's counsel's character. However, throughout the course of his summation, plaintiff's counsel implied that defendant's counsel had, throughout the trial, performed improperly and unethically to divert attention from the issues, and purposefully cause immense distress to the decedent's family.

The defendant argued that plaintiff's counsel improperly commented on defendant's counsel's Affidavit of Merit questions. Defendant's counsel sought to demonstrate that it was possible that the plaintiff's standard of care expert had instigated this lawsuit without reviewing the medical records at issue in this matter thus attacking the plaintiff's standard of care expert's credibility. Plaintiff's counsel implied that defense counsel acted improperly by questioning the plaintiff's standard of care expert about the Affidavit of Merit. He indicated that her questions were unbelievable, improper, and implied that the defendant's counsel had acted outside accepted legal standards. The defendant maintained that the implication of plaintiff's counsel's statement was that defendant's counsel had to resort to these unheard-of tactics as the only way to present a defense on behalf of her client and was improper and untrue.

The defendant also pointed to plaintiff's counsel's accusations that defendant's counsel purposefully caused the decedent's family immense distress. Plaintiff's counsel strongly implied that defendant's counsel acted improperly by projecting relevant medical records of the decedent where the decedent's daughters admitted to hospital staff that the decedent had been having periods of paranoia and frustration. The phrase "immense distress" implied defense counsel purposefully caused the decedent's family to suffer, which the defendant argued was improper and a direct attempt to place defendant's counsel in a bad light in front of the jury. The defendant asserted that plaintiff's counsel implied that it was improper for defense counsel to impeach the decedent's family. Defense counsel impeached various members of the decedent's family with their deposition testimony and answers to interrogatories.

The defendant argued that the decedent's family were the plaintiffs in this action, chose to instigate the lawsuit and were aware or should have been aware that giving testimony and hearing expert opinions about the last days of their mother's life would be difficult and distressing. Defense counsel's responsibility was to their clients, but nevertheless, the defendant submitted that they acted appropriately and empathetically towards the decedent's family. Altogether, the multiple improper comments about defense counsel, along with terms such as "I couldn't believe it" and "caused the family immense distress" implied that defense counsel acted improperly and actively attempted to hurt the family in an attempt to win their case by any means necessary and improperly inflamed the jury. The defendant argued that plaintiff's counsel improperly stated multiple times that the defendant refused to "take responsibility."

The defendant did not argue that plaintiff's counsel ever requested that the jury "send a message." Instead, he used the negligibly more benign phrase "take responsibility". Plaintiff's counsel said the phrase "take responsibility" in his opening statement and twice in his closing statement. Accusing the defendant of not wanting to take responsibility invalidated her decision to take this matter to court and receive a trial by jury as is her right. Once sued, the defendant asserted, she had no responsibility to either admit fault or provide the decedent's family with any financial compensation for their loss. To assert otherwise adversely impacted the defendant's ability to receive a fair trial.

The defendant also argued that plaintiff's counsel repeatedly misstated the evidence. Plaintiff's Counsel also made several statements regarding the decedent that were never testified to by any witness. For example no member of the decedent's family ever gave testimony that the decedent attended church or volunteered. In addition, none of the decedent's grandchildren were ever called to testify. Such references by plaintiff's counsel were influential, describing the decedent as a church-attending volunteer made her impact become greater than a loving parent. Demanding that the jury think of the non-testified pain of the grandchildren when deciding their verdict made the entire family appear more sympathetic and more in need of a favorable verdict. Plaintiff's counsel used information, both verbally and demonstratively, that had never been mentioned at trial before, which the defendant claimed went far beyond the latitude allowed at summation and unfairly and irrevocably prejudiced the defendant. The defendant also claimed plaintiff's counsel stated inaccurate medical information during his closing. Since plaintiff's counsel was the last party to present a summation statement, it was impossible for defense counsel to refute his information.

The defense maintained that plaintiff's counsel told the jury incorrect medical information. This is not a harmless error according to the defendant's motion. Plaintiff's counsel submitted in his closing that as opposed to waxing and waning, the decedent's last four days were part of an easily avoidable terrible decline. Distorting the evidence to make it appear that the decedent missed more therapy sessions than she actually did made plaintiff's counsel's argument appear to be weightier than it actually was. The defendant maintained that she was additionally prejudiced in that she could not establish that plaintiff's counsel was incorrect because she had no chance to refute his inaccurate information. Further, plaintiff's counsel projected an undisclosed PowerPoint at closing. The defendant submitted a Motion in Limine requesting to limit visual evidence and to require all counsel the opportunity to review and object to any proposed visual aids and presentations, outside the presence of the jury, before they were shown to the jury.

No Orders for the Motions in Limine were ever signed for this case, nor were they placed on the record. However, the plaintiff did not file any opposition to the defendant's Motions in Limine which signified a tacit acceptance and agreement to share visual aids. In fact, plaintiff's counsel sent defense counsel his opening PowerPoint presentation the night before the parties opened. Portions of that presentation were objected to, and plaintiff's counsel made the applicable changes. Plaintiff's counsel notably did not do the same for his closing visual aid. Defense counsel argued that they had the right to examine it and make objections before it was shown to the jury. The cumulative improper aspects of plaintiff's counsel's summation led to irreversible prejudice to the defendant.

The defendant argued that plaintiff's counsel breached the Golden Rule when he placed himself in the decedent's shoes and spoke as if he was the decedent talking to the jury about her family. By speaking as the decedent, plaintiff's counsel reminded the jury that he represented a large family who were tight knit, had unexpectedly lost their mother, and how much influence the decedent had on her family. Plaintiff's counsel also appealed to the jury by saying "And any of us who has relationships with our parents or have kids, and you know, as our kids get older, those problems get bigger." The defendant held that this was a clear invitation for the jury to either consider their own parents or their own children and then think about how they would feel if they were in the decedent's family.

This was a clearly impermissible appeal to emotion and sympathy and to encourage the jury to do to the decedent's family as they might hope someone would do to them. The defendant maintained that the curative statements offered by the court were insufficient in this matter. The court did the best it could, but telling the jury to rely on their recollection if they found that their memories conflicted with the summations was not strong enough to counter assertive unrefuted pronouncements from the last attorney to speak, plaintiff's counsel.

The defendant charged that the plaintiff's causation expert provided a net opinion and therefore, the plaintiff was unable to prove her case. The plaintiff had only one causation expert, who, the defendant contended, was obliged to explain how the decedent could have been cured if a CT-scan had been ordered. The plaintiff's expert did not provide any testimony specific enough to provide a direct link between the deviation and the cure. His testimony did not provide any insight as to how the decedent could have survived and been cured. The plaintiff's expert's answer did not include any certainty that the decedent specifically would have been able to survive if she received a CT-scan. He did not name any medication or medical technique, such as surgery, that could have cured her subdural hematoma. His testimony did not explain how the defendants' alleged deviation proximately caused the decedent's death.

The defendant also challenged the jury's award, arguing that the damage award was excessive, unsupported by the evidence and a reflection of undue sympathy of the jury which required a remittitur. The defendant claimed that the percentage of liability assigned by the jury to the defendant was unsupported by the evidence. The defendant was only present and responsible for one-fifth of the decedent's stay at the rehabilitation hospital. The defendant asserted that it was clear that with regard to physician responsibility, the co-defendant should have the majority of responsibility for the care and treatment of the decedent. The co-defendant examined and spoke with the decedent 2 times more than the defendant did.

The jury clearly believed the plaintiff's argument that decedent was suffering from a brain bleed from November 7th through November 9th. For 2 of those 3 days, the co-defendant was the attending physician for the decedent. If the plaintiff's argument was accurate, the co-defendant failed to notice the alleged signs and symptoms and should

have noticed differences in the decedent's behavior. Therefore, it the defendant maintained, it was against the weight of the evidence that the jury could find the plaintiff's argument credible but only award the co-defendant treating physiatrist 5% liability and find the defendant 35% liable.

Further, the defendant argued that the award itself was excessive. The survival action damages of \$1 million for decedent's pain, suffering, and loss of enjoyment of life were unsupported by the evidence because the decedent was in pain for an extremely brief period of time. Any recovery for this pain must correspond with the amount and severity of pain and therefore must be negligible. In his closing, plaintiff's counsel described the decedent's condition when she hemorrhaged stating, "On the ninth, Carol lost control of her bowels. She became unresponsive. They were taking care of her." There was no testimony as to how long this condition had occurred. At most, the time between when she lost control of her bowels and became unresponsive was mere minutes. The defendant asserted that this extremely short period of time did not justify a million dollar verdict. The defendant argued that the wrongful death damages of \$1,800,000 for the survivors of the decedent for the loss of services, assistance, care, training, guidance, advice, counsel and companionship were also unsupported by the evidence. When the testimony of the decedent's children was analyzed, they did not testify to \$1,800,000 of non-economic damages. With regard to testimony regarding assistance and services, the testimony was clear that while decedent provided childcare services for her grandchildren; that had occurred many years prior to her death. Even though the decedent certainly assisted some of her children in the initial child rearing of her grandchildren, there was no testimony that the decedent was still assisting them or providing services when she died in 2015. The only testimony that could even somewhat qualify as "guidance" came from Howard Jones who said, "if I had a bad day at work and I needed to get away, I'd drive down, I would sit in her bedroom at the edge of her bed, and you know, we would talk about it." The defendant maintained that there were no examples of companionship that the decedent provided to her children; instead, it was companionship that her children provided to the decedent. The defendant asserted that there was no evidence of any compensable companionship that the decedent provided to her children.

The plaintiff opposed the motion, arguing that it was abundantly clear that there was no miscarriage of justice related to the trial and jury verdict in this instant matter. The plaintiff asserted that counsel is permitted wide latitude in presenting his summation and that he did not exceed allowable arguments in closing. Plaintiff's counsel denied that made any type of improper personal attack on defense counsel. During plaintiff's closing, when discussing the showing of the decedent's medical records, it was to demonstrate their lack of relevance and that the records should not be considered in their verdict. At no time during closing did plaintiff's counsel imply that it was improper for defense counsel to impeach a witness. Plaintiff's counsel is permitted in closing argument to direct the jury to the evidence, including the records of the hospital and the CT-scan. The plaintiff merely stated the importance of the medical records in the determination of the jurors' verdict. Neither did plaintiff's counsel misstate evidence or improperly state multiple times that the defendant refused to "take responsibility."

As the hospital was going to be on the verdict sheet, plaintiff's counsel did discuss that they resolved their differences with plaintiff prior to the trial in opening. The plaintiff argued that the use of the benign phrase "take responsibility" and "settled" were interchangeable in this regard. As to the evidence, the plaintiff noted that defense counsel showed medical records which were not in evidence at the time of her

closing. Specifically, she displayed a hospital record of 10/20/15 (a document she did not advise counsel she would be showing during closing) when the decedent's children told a nurse their mother was having periods of paranoia and frustration. The jury saw that information and it is unknown how that document and defendant's counsel's discussion affected their decision making. The plaintiff submitted that this record had far greater potential to influence the jury than a picture of the decedent holding her dog or standing with her family. As to the PowerPoint presentation, plaintiff's counsel utilized a PowerPoint presentation at closing which was a summary to save judicial and jury time. The plaintiff argued that using demonstrative evidence in opening and closing violated no court rule or case law.

Plaintiff's counsel argued that they did not breach the golden rule. Defense counsel admitted that plaintiff's counsel did not invite jurors to place themselves in the decedent's shoes. Instead, it appeared she objected to the plaintiff's discussion of the uniquely close family he represented. The plaintiff's comments about a large family who were close knit were true. The plaintiff maintained that 8 children represented a large family, and stating that they were close was also true and supported by the testimony. Further, the plaintiff held that the curative statements were sufficient to cure any error. A prompt curative instruction was provided by the judge following the plaintiff's closing statement. Under *Geler v. Akawie*, 358 N.J. 437 (App. Div. 2003) cert. denied, 177 N.J. 223 (2003), it was recognized that prompt curative instructions can remedy attorney error.

The plaintiff denied the defendant's claim that the plaintiff's causation expert provided a net opinion. The plaintiff asserted that her expert then succinctly provided the jury with the connection that, had the bleed been recognized, the decedent's death would not have occurred, thus providing the defendant with the ultimate outcome that the decedent's brain would not have herniated if the bleed had been treated prior to the evening hours of November 9th. Finally, both de-

fendants testified, on direct examination and when called as witnesses in the plaintiff's case, that a CT-scan could have been performed on a STAT basis and the results returned within 30 minutes.

The plaintiff refuted the defendant's claim that the damage award was excessive, was not supported by the evidence and was a reflection of undue sympathy of the jury. The plaintiff argued that the medical records clearly established that the decedent was suffering as she was unable to participate fully in therapy sessions, suffering due to dizziness, fatigue, inability to stay awake, inability to sit up, and inability to safely participate. This suffering was in the medical records, recorded contemporaneously by medical providers. The plaintiff maintained that it was disingenuous to suggest that the decedent was not suffering. At trial the jury saw a video of the decedent eating a meal of meat, peas and mashed potatoes and drinking from a cup with a straw on November 4, 2015, clearly demonstrating her ability prior to her arrival at the rehabilitation hospital.

The decedent's son and daughter both testified that their mother was able to eat and drink by herself and communicate following the surgery, but, days later, after the failure to diagnose her brain bleed, she required assistance with eating and all other activities. As to the loss of services, assistance, care, training, guidance, advice, counsel and companionship, the plaintiff held that logic dictates that a parent who provides for her children will have a close relationship with those children. The decedent did not provide financially for her children but certainly had a close relationship with each one. Every one of her children visited her almost daily while at the rehabilitation hospital. That is, in the plaintiff's opinion, the best evidence that the decedent continued to provide for her children. Thus, the jury verdict was certainly not against the weight of the evidence so as to constitute a miscarriage of justice.

The defendant's motion is pending.

**\$400,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION INVOLVING PLAINTIFFS HUSBAND AND WIFE – BOTH PLAINTIFFS LOSE CONSCIOUSNESS – HUSBAND SUFFERS THORACIC COMPRESSION FRACTURE AND MULTIPLE RIB FRACTURES – HUSBAND REQUIRES SEVERAL DAYS IN ICU – WIFE SUFFERS COMPRESSION THORACIC FRACTURE, CONCUSSION, AS WELL AS NASAL AND RIB FRACTURES – UIM CASE.**

**Morris County, NJ**

**In this action for motor vehicle negligence, the plaintiff driver in her mid 60s and her husband/passenger in his mid 70s contended that the defendant driver negligently struck the host vehicle in the rear. The plaintiff maintained that the impact was severe and that both plaintiffs lost consciousness and suffered significant injuries.**

The plaintiff husband contended that he suffered a thoracic fracture and multiple rib fractures and that he required several days in the ICU during an initial 10-day hospitalization. The plaintiff husband also required several weeks in a rehabilitation hospital and a significant amount of physical therapy. This plaintiff asserted that the pain nonetheless continued to worsen and the plaintiff maintained that it is clearly permanent in nature. There was no evidence that surgery is indicated.

The plaintiff wife contended that she will permanently suffer thoracic pain and frequent headaches.

The defendant had a combined, single limit of \$300,000. \$284,000 remained after property damage payments. The plaintiffs had UIM protection of \$250,000 each.

The case settled prior to trial for \$250,000 to the plaintiff husband and \$150,000 to the plaintiff wife for a total recovery of \$400,000.

**REFERENCE**

**Plaintiff's chiropractor expert: Jay Brecker, D.C. from Dover, NJ. Plaintiff's orthopedic surgeon expert: Patricio Grob, M.D. from Morristown, NJ.**

DelPreore vs. Noferi. Docket no. MRS-L-868-19.

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

# Verdicts By Category

## CONTRACT

### \$110,941 RECOVERY

**Breach of contract – Plaintiff pharmaceutical company claims defendant pharmacy failed to pay for pharmaceuticals delivered and invoiced to defendant and breached settlement agreement between parties to resolve outstanding balance – Defendant argues plaintiff failed to present supporting documentation of outstanding balance.**

#### **Bergen County, NJ**

**In this breach of contract case, the plaintiff, a distributor of pharmaceuticals and other products and goods to pharmacies, hospitals and other healthcare providers, asserted that the defendant specialty pharmacy breached the terms of a contract between the parties and owed the plaintiff \$77,834 in addition to other fees and costs.**

On April 13, 2018, to induce the plaintiff to extend credit to the defendant, the defendant's principal executed and delivered a business application for credit terms and a security agreement. Pursuant to the credit agreement, the defendant granted the plaintiff a purchase money security interest in the defendant's inventory and proceeds and a security interest in substantially all of the defendant's assets. The plaintiff perfected its security interest by filing a UCC-1 Financing Statement with the Secretary of State for the State of New Jersey on April 23, 2018. In reliance on the credit agreement and orders placed by the defendant, the plaintiff sold pharmaceuticals to the defendant on an open account and issued invoices to the defendant for the pharmaceuticals.

The agreement provided that, upon default, the plaintiff could assess a daily late fee of 0.05% (18% annually) beginning on the first business day after the payment due date. The agreement further provided that the defendant would pay all costs and expenses incurred by the plaintiff, including reasonable counsel fees, in seeking to collect the obligations owed to the plaintiff by the defendant. The defendant defaulted on its obligations by, among other things, failing to pay for the pharmaceuticals as and when agreed under the terms of the credit agreement and invoices issued by the plaintiff.

On September 17, 2021, the defendant and plaintiff entered into a settlement agreement intended to settle the claims and controversies between them. The settlement agreement provided, among other things, for 2 payments, each in the amount of \$63,600. The defendant defaulted on its obligations under the settlement agreement by failing to make the payment due November 1, 2021. The plaintiff claimed that, as a direct and proximate result of the defendant's failure to pay the invoices on the terms agreed to by the parties, as of October 31, 2022, the plaintiff was owed \$77,834, together with interest at the contractual rate of 18% per annum on each outstanding invoice, along with attorneys' fees and costs.

The defendant argued that the plaintiff failed to submit even a single invoice — let alone the 19 that it alleged remain outstanding and due and owing to plaintiff — to establish that the defendant was liable to the plaintiff for the sum that it was seeking. Further, the defendant held that the plaintiff misrepresented parts of the settlement agreement including the fact that the parties acknowledged that the settlement amount was agreed upon as a compromise and final settlement of disputed claims and that payment of the settlement amount did not, and could not be construed as, an admission of liability by the defendant, and was not to be construed as an admission that the defendant engaged in any wrongful, tortious, or unlawful activity. The defendant specifically disclaimed and denied any liability to the plaintiff; and engaging in any wrongful, tortious, or otherwise unlawful activity.

The parties settled the matter prior to trial in the amount of \$110,941 inclusive of attorney's fees and costs.

#### **REFERENCE**

ASD Specialty Healthcare, LLC vs. Golden Care Pharmacy, LLC. Docket no. L-003915-21; Judge Gregg A. Padovano, 05-18-23.

**Attorney for plaintiff: Robert P. Johns, III of Klehr Harrison Harvey Branzburg, LLP in Marlton, NJ.**

**Attorney for defendant: Christopher G. Salloum of The Salloum Law Firm, LLC in Wayne, NJ.**

## DOG ATTACK

### \$10,000 PARTIAL RECOVERY

**Dog attack – Strict liability dog bite – 11-year-old plaintiff playing in fenced yard when defendant dog owners’ pit bull enters plaintiff’s property and attacks him – Plaintiff also brings action against defendant property owners, landlords of defendant dog owners’ residence – Bite wounds to right ear lobe, temple above right ear, right shoulder, right torso and scratch wounds to torso and right finger – Permanent scarring, embarrassment about disfigurement and fear of playing outdoors – Defendant property owners settle prior to trial – Defendant dog owners fail to appear or answer plaintiff’s complaint and are found in default.**

#### Atlantic County, NJ

**In this dog bite case, the minor plaintiff, an 11-year-old boy, asserted that the defendant dog owners were strictly liable for an attack by their dog on the plaintiff that caused significant, permanent injury. The plaintiff maintained that the attack satisfied all the statutory requirements of N.J.S.A. 4:19-16, imposing strict liability upon the defendants. The plaintiffs also brought suit against the defendant property owners, landlords of the defendant dog owners. The defendant property owners asserted that they did not own or control the dog, that they had no knowledge that the dog was dangerous as the owners had provided references from prior landlords, and that the attack did not happen on their property, therefore they were not liable. The defendant dog owners denied that it was their dog that bit the plaintiff.**

The minor plaintiff and defendant dog owners were neighbors. On April 8, 2019, the plaintiff was in his own backyard playing basketball when he heard growling and saw the dog coming towards him from his front yard. The defendants’ pit bull breed dog came onto the property where the minor plaintiff resided and without any provocation, the dog attacked the minor plaintiff. The defendant dog owners rented and resided at the premises located at 6202 Sears Avenue, Mays Landing, next door to the plaintiff’s home. The defendant property owners rented the property to the defendant dog owners.

The plaintiff’s mother testified that she always heard growling, barking and shaking of the fence by the dog before the incident but said nothing to the owners of the dog before the day in question and had no

contact with the defendants regarding the dog. She also testified that she had never seen the dog loose before the date of the incident. The plaintiff contended that the defendants knew or should have known that the dog possessed dangerous and vicious characteristics, propensities, traits, tendencies or proclivities, creating a foreseeable danger of harm to other human beings and negligently failed to control or contain the dog such that it could not attack the plaintiff. The plaintiff also alleged that the attack resulted in permanent injuries to the minor plaintiff.

As a result of the attack, the plaintiff sustained dog bite wounds to his right ear lobe, temple above the right ear, right shoulder, right torso, and scratch wounds to his torso and right finger. The plaintiff claimed scarring and disfigurement to his right ear, right shoulder and right side of his torso as well as sensitivity to the right ear lobe and embarrassment regarding his scarring. Due to the traumatic nature of the attack, the plaintiff was now fearful of playing outside.

The defendant husband reported to responding police that he was working on his vehicle when he heard the commotion from next door and the plaintiff’s mother was shouting at him and waving a dog collar at him. The defendant asserted that he looked around and found his dog lying inside his fenced backyard. He asserted that his dog was not in the plaintiff’s yard immediately after the attack and had no means to get out of his own yard.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant dog owners with damages of \$45,000. The arbitration was not confirmed and the matter proceeded.

The parties settled the matter prior to trial in the amount of \$10,000 from the defendant property owners. The defendant dog owners were found in default for failure to answer or appear and a damages hearing is being scheduled as to those defendants.

#### REFERENCE

Robinson vs. Franks. Docket no. L-001234-19; Judge Ralph A. Paolone, 05-12-23.

**Attorney for plaintiff: Richard A. Stoloff of Law Offices of Richard A. Stoloff in Linwood, NJ. Attorney for defendant property owners: Harold Thomasson of Earl R. Uehling & Associates in Mt. Laurel, NJ.**

## DRAM SHOP

### \$100,000 ARBITRATION AWARD

**Dram shop – Assault – Plaintiff and defendant friend drinking at defendant restaurant/bar when defendant friend punches plaintiff in face – Plaintiff contends defendant bar negligently over served defendant individual – Concussion – Permanent facial scarring.**

#### Burlington County, NJ

**In this dram shop and assault case, the plaintiff asserted that the defendant bar negligently over served the defendant individual, his friend, resulting in his friend punching him in the face causing him serious injury. The defendant restaurant denied negligence and asserted that alcohol was not the cause of the defendant individual assaulting the plaintiff.**

On August 25, 2018, the plaintiff and defendant individual were guests at the defendant restaurant located at 1598 Nixon Drive in Moorestown. The plaintiff had picked up his friend and they went to the defendant restaurant for a fantasy football draft event. The plaintiff asserted that the defendant was over served alcohol by the defendant restaurant and punched the plaintiff in the face. The plaintiff contended that the defendant restaurant negligently served alcohol to the defendant individual while he was visibly intoxicated and that the defendant individual deliberately and recklessly with the intention to harm the plaintiff, committed an assault and battery. The plaintiff claimed that the assault resulted in permanent injuries.

As a result of the assault, the plaintiff sustained permanent facial scarring and a concussion. The defendant pointed to the fact that the plaintiff and defendant individual had been friends since they were teens and that they had gotten into fights before. The plaintiff characterized the defendant friend as “just wasn’t somebody to mess with.” The defendant restaurant argued that the relationship between the friends was the cause of the fight and that the

plaintiff knew that the defendant was volatile and still engaged in drinking and socializing with him, in fact, bringing him to the defendant restaurant on the date of the assault. The defendant’s staff testified that they were familiar with the defendant individual as a customer but that they had never seen him intoxicated, nor knew him to be aggressive.

The defendant restaurant argued that it could not have foreseen or prevented the altercation but that the plaintiff had knowledge of the defendant individual’s propensity for aggressive behavior that the defendant restaurant did not. The defendant argued that the plaintiff could have avoided the assault. The defendant also disputed the severity of the plaintiff’s injuries and pointed to a recent prior motor vehicle accident as a result of which the plaintiff was in the process of applying for disability status. The defendant individual, the assaulter, pled guilty to assault in criminal court but did not appear or answer the plaintiff’s civil complaint.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 60% liability to the defendant individual who assaulted the plaintiff and 40% to the defendant restaurant with damages of \$100,000. The plaintiff settled the matter with the defendant restaurant after arbitration and prior to trial in the amount of \$30,000. The plaintiff defendant then made a motion to confirm the arbitration order as to the defendant individual and the motion was granted in the amount of \$63,863 comprising \$60,000 in damages plus \$3,864 in interest.

#### REFERENCE

Seppanen vs. Dion, et al. Docket no. L- 000867-20; Judge James J. Ferrelli, 05-12-23.

**Attorney for plaintiff: Margaret E. Quinlan of Lowenthal & Abrams, P.C. in Bala Cynwyd, NJ.**  
**Attorney for defendant Jersey Wings, Inc.: Andrew S. Turkish of Clausen Miller, P.C. in Florham Park, NJ.**

## INSURANCE OBLIGATION

### \$15,000 VERDICT

**Insurance obligation – Auto/pedestrian collision – Plaintiff struck by unknown defendant’s vehicle while crossing street – Concussion with loss of consciousness – Right inferior pubic rami fracture – Right sacral fracture – Complex laceration of forehead.**

#### Bergen County, NJ

**In this motor vehicle negligence action, the plaintiff was struck by an unknown defendant’s vehicle while crossing the street causing her to sustain serious injuries. The defendant fled the scene and was not identified.**

On November 16, 2019, the plaintiff was lawfully walking on Belleville Turnpike, at or near its intersection with Beech Street in North Arlington, New Jersey. At this time, the plaintiff was attempting to cross

Belleville Turnpike at the aforementioned intersection. At the same time, an unknown defendant's vehicle was traveling eastbound on Belleville Turnpike, toward the same intersection. At the time of the incident, while she was crossing the street, the plaintiff was suddenly struck by the defendant's vehicle, causing her to become injured. The defendant's vehicle then fled the scene of the accident and the defendant driver was not identified.

The plaintiffs maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff, failing to yield to pedestrians, failing to obey traffic signals, failing to operate the vehicle at a reasonable rate of

speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff. Consequently, the plaintiff sustained injuries, including concussion with loss of consciousness, right inferior pubic rami fracture, right sacral fracture, and complex laceration of the forehead.

The jury found in favor of the plaintiff and awarded \$15,000, an amount reflective of the plaintiff's eligibility for NJPLIGA.

#### REFERENCE

Olearick Raquel vs. Njpliga. Docket no. L007356-21; Judge Peter G. Geiger, 04-12-23.

**Attorney for plaintiff: Stephen S. Berowitz of Stephen S. Berowitz in Bloomfield, NJ.**

## MOTOR VEHICLE NEGLIGENCE

### Intersection Collision

#### \$27,500 RECOVERY

**Motor vehicle negligence – Intersection collision – Disc herniations at C4-5, L4-5 and L5-S1; disc bulges at C5-6 and C6-7– Soft tissue injuries to right knee and bilateral shoulders – Injections, orthopedic treatment, chiropractic treatment and pain management – Non-binding arbitration assigns 100% liability to defendant.**

#### Bergen County, NJ

**In this motor vehicle negligence case, the plaintiff passenger, a college student, asserted that the defendant driver negligently violated traffic controls and struck the vehicle in which the plaintiff was a passenger with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.**

On August 28, 2019, the plaintiff was a front seat passenger in a vehicle traveling south on Overlook Avenue at the intersection with Fairview Avenue in Teaneck, New Jersey. The plaintiff's vehicle's entry into the intersection was not controlled by a stop sign or traffic light and thus the plaintiff's vehicle had the right-of-way. The defendant was traveling on Fairview Avenue and did have a stop sign controlling entry into the intersection. The plaintiff contended that the defendant negligently failed to stop at the stop sign and entered the intersection without the right-of-way. The defendant struck the plaintiff's vehicle in a t-bone collision with the impact occurring nearest to where the plaintiff was sitting in the vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff's right knee hit the dashboard. The plaintiff sustained disc herniations at C4-5, L4-5 and L5-S1; disc bulges at C5-6 and C6-7; and soft tissue injuries to the right knee and bilateral shoulders. The plaintiff treated with orthopedic treatment and injections, pain management, and chiropractic treatment. The plaintiff claimed unpaid medical expenses.

The defendant argued that the driver of the plaintiff's vehicle failed to take evasive action to avoid collision when the defendant slowly rolled through the stop sign into the intersection. The defendant also asserted the plaintiff's injuries were not permanent in nature. The defendant planned to call an independent medical examiner who would testify that there were no objective clinical findings of permanent orthopedic functional impairments or neurological deficits related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$45,000. Following arbitration and prior to trial, the parties settled for \$27,500.

#### REFERENCE

Ezeike vs. Adabunu, et al. Docket no. L-005123-21; Judge David V. Nasta, 06-08-23.

**Attorney for plaintiff: James C. DeZao of Law Offices of James C. DeZao in Parsippany, NJ. Attorney for defendant: Peter L. Aragona of Law Offices of Pamela D. Hargrove in Clark, NJ.**

## ■ \$10,000 GROSS RECOVERY

**Motor vehicle negligence – Intersection collision – Minor plaintiff passenger injured in intersection collision caused by defendant driver – Cervical pain with right-side radiculitis and persistent right shoulder pain – Treated conservatively.**

### **Bergen County, NJ**

**In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver, a permissive driver of the co-defendant's vehicle, struck the vehicle in which the plaintiff was a passenger with such force that it caused serious injury. The defendants denied negligence and argued the driver of the plaintiff's vehicle was comparatively negligent to a greater degree than the defendants.**

On July 24, 2020, the minor plaintiff was a passenger in a motor vehicle traveling at the intersection of Sweet Briar Road and Atlantic Avenue in Wildwood Crest. The defendant was driving a vehicle owned by, and with the permission of, the co-defendant vehicle owner. The plaintiff contended that the defendant driver negligently failed to observe traffic and entered the intersection without the right-of-way.

The defendant struck the plaintiff's vehicle with enough force to result in significant injuries to the minor plaintiff. As a result of the collision, the minor plaintiff claimed cervical pain with right-side radiculitis; and persistent right shoulder pain. The plaintiff's physician assigned a prognosis for good recovery.

The parties settled the matter prior to trial in the amount of \$5,000 from each defendant for a total gross recovery of \$10,000. The plaintiff's award was broken down as follows: \$2,433 in attorney fees; \$268 in costs and disbursements; \$195 in outstanding medical expenses and \$7,105 in net damages to the minor plaintiff.

### **REFERENCE**

Courtney, et al. vs. Gartland, et al. Docket no. L-002361-22; Judge Peter G. Geiger, 02-10-23.

**Attorney for plaintiff: Brian R. Lehrer of Brandon J. Broderick, Attorney at Law, LLC in River Edge, NJ. Attorney for defendant driver: Kate N. Celestino of Law Offices of Leslie A. Detorres in West Orange, NJ.**

## ■ DEFENDANT'S VERDICT

**Motor vehicle negligence – Intersection collision – Plaintiff claims defendant ran stop sign and caused collision wherein plaintiff permanently injured – Disc bulges and herniations at C3-4, C4-5, C5-6, C6-7 and L5-S1 – 5 months chiropractic treatment; acupuncture and lumbar epidural at L5-S1 – Defendant denies liability and argues plaintiff failed observe defendant's vehicle and avoid collision and plaintiff did not sustain any permanent injuries – Non-binding arbitration assigns 100% liability to defendant.**

### **Essex County, NJ**

**In this motor vehicle negligence case, the plaintiff, a 46-year-old machinist, asserted that the defendant driver struck his vehicle with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.**

On March 10, 2017, the plaintiff was traveling south on College Farm Road West approaching the intersection with College Farm Road in New Brunswick. The plaintiff's entry into the intersection was not controlled by a stop sign. The defendant was driving on College Farm Road approaching the intersection with a stop sign controlling his entry into the intersection. The plaintiff contended that the defendant negligently failed to stop at the stop sign and entered the intersection without the right-of-way. The front of the plaintiff's vehicle collided with the defendant's vehicle in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc bulges and herniations at C3-4, C4-5, C5-6, C6-7 and L5-S1. The plaintiff was unable to work for approximately one week after the accident but re-

ceived paid time off and made no lost wage claim. The plaintiff treated with 5 months of chiropractic treatment; acupuncture; and one lumbar epidural at L5-S1. The plaintiff's chiropractor opined that continued treatment could alleviate some symptomatology, but that the injury would not heal to function normally even with further medical treatment and, as such, was a permanent injury.

The defendant argued that the plaintiff was comparatively negligent in failing to observe the defendant's vehicle entering the intersection and failing to avoid collision. The defendant argued that the plaintiff's injuries were not caused by the subject collision and were not permanent. The defendant noted that the plaintiff had been involved in a similar, prior collision in 2008 for which he received treatment for neck pain, including MRIs and injections. The defendant pointed to an IME report which indicated that the plaintiff reported little to no pain and had full range of motion.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$37,500. The arbitration was not confirmed and the matter proceeded to trial.

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

### **REFERENCE**

Jean-Baptiste vs. Shue. Docket no. L-000900-19; Judge Mayra V. Tarantino, 05-12-23.

**Attorney for plaintiff: Antonio Arthurs of Goldstein & Goldstein, LLP in East Orange, NJ. Attorney for defendant: Glenn Dyer of Dyer & Peterson, PC in Parsippany, NJ.**

## Lane Change Collision

### \$22,500 VERDICT

**Motor vehicle negligence – Lane change collision – Plaintiff’s vehicle struck in passenger side by defendant’s vehicle while merging onto bridge – Cervical disc herniations at C5-6 and C6-7 – Cervical disc bulges – Lumbar disc herniations – Cervical and lumbar radiculopathy.**

#### Bergen County, NJ

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck in the passenger side by the defendant’s vehicle while merging onto a bridge causing the plaintiff to sustain serious injuries. The defendant generally denied all allegations of negligence.**

On February 27, 2020, the plaintiff’s vehicle was traveling on Midtown Bridge Street, at or near its intersection with Midtown Place in Hackensack, New Jersey. At this time, the defendant’s vehicle was also traveling on Midtown Bridge Street, and both vehicles were attempting to merge onto Midtown Bridge. While the plaintiff’s vehicle was attempting to merge into traffic, the defendant’s vehicle crossed over into the plaintiff’s travel lane. The defendant’s vehicle then struck the plaintiff’s vehicle on its passenger side, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain adequately attentive, failing to remain in the correct lane of travel, failing to properly merge, failing to yield, failing to observe the plaintiff’s vehicle, failing to keep the vehicle under proper and adequate control, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations at C5-6 and C6-7, cervical disc bulges, lumbar disc herniations, and cervical and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded \$22,500.

#### REFERENCE

Velez Zoila vs. Marcelin Marie. Docket no. L006875-21; Judge Rachelle L. Harz, 05-18-23.

**Attorney for plaintiff: Thomas McCarter of Thomas McCarter Law in Hackensack, NJ.**

## Left Turn Collision

### \$125,000 VERDICT

**Motor vehicle negligence – Left turn collision – Plaintiff’s vehicle struck broadside by defendant’s vehicle making left turn – Cervical disc herniations – Left knee pain – Left shoulder rotator cuff tear.**

#### Bergen County, NJ

**In this motor vehicle negligence action, the plaintiff’s vehicle was struck broadside by the defendant’s vehicle making a left turn causing the plaintiff to sustain multiple injuries. The defendant generally denied all allegations of negligence.**

On December 26, 2019, the plaintiff’s vehicle was traveling southbound on Palisade Avenue, at or near its intersection with Washington Place in Cliffside Park, New Jersey. At the same time, the defendant’s vehicle was traveling northbound on Palisade Avenue, toward the same intersection. At the time of the incident, the plaintiff attempted to proceed straight through the intersection, when the defendant’s vehicle made a sudden left turn toward Washington

Place. The defendant’s vehicle then struck the plaintiff’s vehicle broadside, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to properly and safely execute a left turn, failing to wait for clearance before executing a left turn, failing to obey traffic conditions, failing to observe the plaintiff’s vehicle, failing to yield, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff’s vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, left knee pain, and left shoulder rotator cuff tear.

The parties entered into a settlement for \$125,000.

#### REFERENCE

Ahrzaouy Malika vs. Sarajian Charles. Docket no. L001298-21; Judge Rachelle L. Harz, 06-01-23.

**Attorney for plaintiff: James W. Taylor, Jr. of James W. Taylor Jr., Esq. in Jersey City, NJ. Attorney for defendant: Douglas M. Barnett in Summit, NJ.**

## Parking Lot Collision

### DEFENDANT'S VERDICT

**Motor vehicle negligence – Parking lot collision – Multiple, traumatic disc herniations; muscle spasms; radiculopathy of upper and lower extremities – Chiropractic treatment – Defendant stipulates liability but asserts plaintiff did not meet threshold for permanent injury and damages.**

#### Atlantic County, NJ

**In this motor vehicle negligence case, the plaintiff, a 45-year-old casino card dealer, asserted that the defendant driver struck the plaintiff's vehicle in a parking lot with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On March 22, 2018, the plaintiff was traveling in a southerly direction in a parking lot of Produce Junction at Tilton Road in the Township of Egg Harbor. The defendant was traveling westerly through the parking lot, emerging from between parked vehicles. The plaintiff contended that the defendant negligently failed to make proper observations and failed to stop to allow the plaintiff the right-of-way. The defendant's vehicle violently struck the rear driver's side of the plaintiff's vehicle in the area of the back wheel; the plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc bulges at C2-3, C4-5, C5-6, C6-7 impinging on thecal sac; disc bulges at L2-3, L3-4, L4-5; disc herniation at C3-4 and L5-S1; muscle spasms; radiculopathy of the upper and lower extremities. The plaintiff treated with chiropractic treatment. The plain-

tiff was out of work for 12 weeks due to her injuries and claimed that she is unable to do her household chores and work duties due to pain when lifting, prolonged sitting and standing.

The defendant argued that the plaintiff had a long-standing history of complaints in the same areas she claimed injury from the subject accident, starting in 2011, and including a chiropractic appointment she had just hours prior to the subject incident. The defendant presented expert testimony that all of the plaintiff's disc issues were degenerative and that she also had indications of arthritis in the spine. The defendant's expert stated that the conditions he observed on the plaintiff's MRIs take years to develop and were not the result of trauma. The defendant asserted that the plaintiff's condition was pre-existing, degenerative rather than traumatic, and not caused by the subject collision.

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

#### REFERENCE

Rivera vs. Romero-Sanchez. Docket no. L -000878-20; Judge Ralph Paolone, 04-17-23.

**Attorney for plaintiff: Thomas F. Reynolds of Law Offices of Reynolds & Scheffler, LLC in Northfield, NJ. Attorney for defendant: Malcolm McPherson of Hoagland, Longo, Moran, Dunst & Doukas, LLP in Hammonton, NJ.**

## Rear End Collision

### \$90,000 VERDICT

**Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while slowing for traffic – Rotator cuff tear in right shoulder – Surgery – Cervical disc bulges.**

#### Bergen County, NJ

**In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while slowing for traffic causing her to sustain injuries. The defendant generally denied all allegations of negligence.**

On July 13, 2019, the plaintiff's vehicle was traveling southbound on Route 17 in Rochelle Park, New Jersey. At this time, the defendant's vehicle was also traveling southbound on Route 17, directly behind the plaintiff's vehicle. At the time of the incident, an uninvolved vehicle ahead of the plaintiff's vehicle stopped short in traffic. The plaintiff's vehicle then also stopped short, so as to avoid a collision with the vehicle ahead. As the plaintiff's vehicle slowed/stopped, it was suddenly struck in the rear by the defendant's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff's vehicle slowing/stopping, failing to observe traffic conditions, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including a rotator cuff tear in the right shoulder, which required surgery to repair. Additionally, the plaintiff also sustained cervical disc bulges and lumbar sprain/strain.

The jury found in favor of the plaintiff and awarded \$90,000.

#### REFERENCE

Babajko Donna vs. Ciano Joann. Docket no. L003109-21; Judge Greg A Padovano, 05-05-23.

**Attorney for plaintiff: David Elijah Gross of Finkelstein & Partners, LLP in Edison, NJ.**

### ■ \$60,000 VERDICT

**Motor vehicle negligence – Rear end collision – Defendant strikes rear of plaintiff's slowing vehicle – Shoulder tears – Bicep tendonitis – Cervical sprain.**

#### **Morris County, NJ**

**The plaintiff in this vehicular negligence action suffered various injuries including shoulder tears when the plaintiff's vehicle was slowing to a stop and was struck in the rear by the defendant. The defendant admitted striking the plaintiff's vehicle in the rear but denied the nature and extent of the plaintiff's injuries.**

On or about October 3, 2018, the male plaintiff was operating his motor vehicle in a northerly direction on Littleton Road, in the Township of Parsippany-Troy Hills, New Jersey. The plaintiff was lawfully slowing his vehicle when it was struck in the rear by the defendant.

The plaintiff maintained that the defendant was negligent in traveling too close to the plaintiff, failing to properly apply the brakes, and failing to appreciate traffic conditions. Consequently, the plaintiff suffered injuries to his right shoulder including a partial tear of the supraspinatus tendon, full thickness tear anteriorly, synovitis and impingement, bicep tendonitis and cervical sprain and strain.

The board of arbitrators found in favor of the plaintiff and awarded him \$60,000.

#### **REFERENCE**

Abhilas T. Abraham vs. Lisa M. Catalano. Docket no. MRSLO01927-20; Panel Arbitration, 03-09-23.

**Attorney for plaintiff: Nicholas Barone in Paterson, NJ. Attorney for defendant: Gregory F. McGroarty, Esq. of Voss Nitsberg DeCoursey & Hawley in Iselin, NJ.**

### ■ \$27,500 VERDICT

**Motor vehicle negligence – Rear end collision – Back pain – Spinal injury.**

#### **Atlantic County, NJ**

**In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while stopped in traffic causing her to sustain injuries. The defendant generally denied all allegations of negligence.**

On August 29, 2019, the plaintiff's vehicle was traveling westbound on Jimmie Leeds Road in Galloway Township, New Jersey. At this time, the plaintiff's vehicle was stopped in traffic at the intersection of Jimmie Leeds Road and Chris Gaupp Drive. At the same time, the defendant's vehicle was also traveling westbound on Jimmie Leeds Road, directly behind the plaintiff's vehicle. At the time of the incident, the defendant's vehicle struck the plaintiff's vehicle in the rear while the plaintiff was stopped in traffic.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe traffic conditions, failing to obey traffic signals, failing to observe the plaintiff's stopped vehicle, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including neck pain, back pain, and spinal injury.

The jury found in favor of the plaintiff and awarded \$27,500.

#### **REFERENCE**

Wilson Whitney vs. Walker Harry. Docket no. L002492-21; Judge Sarah B Johnson, 06-05-23.

**Attorney for plaintiff: Steven K. Johnson of D'Arcy Johnson Day in Egg Harbor Township, NJ.**

### ■ DEFENDANT'S VERDICT ON LIABILITY

**Motor vehicle negligence – Rear end collision – Plaintiffs driver and passenger allegedly struck in rear while stopped at light – Plaintiffs both contend shoulder tears as well as lumbar and cervical herniations and bulges – No surgery.**

#### **Morris County, NJ**

**This motor vehicle negligence case involved a 45-year-old driver and his 42-year-old passenger in which the plaintiffs contended that the defendant driver struck the host vehicle in the rear while stopped at a traffic light causing the plaintiffs to sustain injuries. The defendant denied negligence, asserting that the accident occurred when the plaintiff suddenly stopped at a yellow light. There was no independent eyewitness testimony.**

The plaintiffs each contended that they sustained tears of the dominant shoulder which will cause permanent pain and limitations. The plaintiffs each asserted that they suffered cervical and lumbar herniations and bulges that will cause permanent symptoms. The defendant denied that either plaintiff suffered permanent injury or satisfied the verbal threshold.

The jury found that the defendant was not negligent.

#### **REFERENCE**

Eom and Jung vs. Denure. Docket no. MRS-L-404-18; Judge Peter Bogard, 07-21.

**Attorney for defendant: Maryann O'Donnell McCoy of O'Donnell McCoy Buerle in Morristown, NJ.**

## PREMISES LIABILITY

### Fall Down

#### \$165,000 VERDICT

**Premises liability – Fall down – Plaintiff slips and fall on water in bathroom at defendant restaurant – Rotator cuff tear – Bicep tear.**

##### **Morris County, NJ**

**This premises liability action stemmed from a slip and fall that that the plaintiff maintained occurred due to water on a bathroom floor at the defendant's restaurant. The plaintiff maintained that the defendant negligently allowed the dangerous condition to occur and remain on the premises causing her to sustain injury. The defense argued comparative negligence.**

On September 11, 2018, the female plaintiff was a lawful business invitee at the defendant's diner located in Chester, New Jersey. The plaintiff entered the defendant's restroom and slipped on wet tile in the common area directly inside the bathroom door. The plaintiff slipped feet first and landed hard on her right side suffering a biceps tear and torn rotator cuff.

The plaintiff maintained that the defendant's restaurant was negligent in allowing the premises to become and remain in an unsafe condition, failing to make proper inspections of the premises and failing to correct the defective and dangerous condition. The defendant denied all allegations of negligence and stated that the actions of the plaintiff caused the incident. The defendant denied that there was any unsafe or dangerous condition on the floor.

The board of arbitrators found that the defendant diner was liable and that the plaintiff was entitled to recover \$165,000 in damages.

##### **REFERENCE**

Darlene and James Enman vs. PK Diner, Inc. dba Chester Diner. Docket no. MRS-L1 702-20; Judge Stuart A. Minkowitz, 02-09-23.

**Attorney for plaintiff: Lauren Fraser of Javerbaum Wurgaft Hick Kahn Wikstrom & Sinins, PC in Morristown, NJ. Attorney for defendant: Deirdre M. Dennis, Esq. of Law Offices of Linda S. Baumann in East Windsor, NJ.**

#### \$56,000 VERDICT

**Premises liability – Fall down – Plaintiff trips over collection of wires protruding from under table on defendants' premises – Right shoulder nerve impingement.**

##### **Atlantic County, NJ**

**In this premises liability action, the plaintiff was a business invitee on the defendants; premises when he tripped on a collection of wires on the floor and fell, resulting in injury. The defendants generally denied all allegations of negligence.**

On November 12, 2018, the plaintiff was a lawful and welcome business invitee at the defendant hotel and casino, located on the premises of 600 Huron Avenue in Atlantic City, New Jersey. At this time, the plaintiff was attending an event located in a ballroom on the premises. At the time of the incident, the plaintiff was traversing the ballroom when he tripped over a collection of wires on the floor, which was protruding from under a table. The plaintiff then fell, causing him to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to remove wires from the floor, failing to prevent a tripping hazard, failing to provide safe passage, failing to warn of the presence of wires on the floor, in negligently allowing a collection of wires to protrude from under a table, making them difficult to see, in failing to prevent hazardous or unsafe conditions on the premises, failing to erect safeguards or otherwise cordon off a tripping hazard, and failing to regard for the health and safety of business invitees on the premises including the plaintiff. Consequently, the plaintiff sustained injuries, including nerve impingement in the right shoulder.

The jury found in favor of the plaintiff and awarded \$56,000.

##### **REFERENCE**

Craig Charles vs. Golden Nugget A.C. Hotel. Docket no. L003665-20; Judge Stanley L. Bergman, 04-15-23.

**Attorney for plaintiff: Ross Gigliotti of Gigliotti Law Group, LLC in Cherry Hill, NJ.**

## DEFENDANT'S VERDICT

**Premises liability – Fall down – Plaintiff trips and falls on staircase on defendants' premises – Left knee pain – Right shoulder pain – Back pain – Right leg pain – Rotator cuff tear of right shoulder – Spinal stenosis of lumbar region.**

### Atlantic County, NJ

**In this premises liability action, the plaintiff was injured when she tripped and fell on a staircase on the defendants' premises. The defendants generally denied negligence.**

On September 28, 2018, the plaintiff was a lawful visitor and guest at the defendant hotel and casino, located on the premises of 1000 Boardwalk in Atlantic City, New Jersey. On this day, the premises was owned, operated, and maintained by the defendants. At this time, the plaintiff was being ushered up a staircase to a dining table by hotel staff. Also at this time, some of the ceiling lights above the subject staircase were burnt out or otherwise off. As she was ascending the staircase, the plaintiff tripped and fell. Consequently, the plaintiff sustained injuries, including left knee pain, right shoulder pain, back pain, right leg pain, rotator cuff tear of the right shoulder, and spinal stenosis of the lumbar region with and without neurogenic claudication.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to provide proper and adequate lighting in the area of the subject staircase, failing to ensure the safety of the staircase, failing to prevent a tripping hazard, failing to prevent hazardous or generally unsafe conditions on the premises, failing to warn of a tripping hazard on the stairs, failing to replace broken or burnt out lights, and failing to regard for the health and safety of business invitees on the premises including the plaintiff. The defendants denied all allegations of negligence and maintained that the subject staircase was in good, safe condition and thus the hotel could not be liable for the plaintiff's fall.

The jury found in favor of the defendants.

### REFERENCE

Baumann Christine vs. Boardwalk 1000, LLC d/b/a Hard Rock Hotel & Casino Atlantic City. Docket no. L003016-20; Judge Danielle J. Walcoff, 04-15-23.

**Attorney for plaintiff: Christopher J. Culleton of Swartz Culleton, PC in Newtown, PA.**

## Falling Object

### \$35,000 GROSS VERDICT

**Premises liability – Falling object – Plaintiff struck on foot by falling cutting board from nearby display while standing at defendant's check out counter – Right big toe comminuted fracture.**

### Monmouth County, NJ

**The plaintiff in this premises liability action was a lawful business invitee at the defendant's retail establishment when a stone cutting board or serving dish fell on the plaintiff's foot while the plaintiff waited in line at a checkout counter causing her to sustain injury. The defendant maintained it was the actions of the plaintiff that caused the incident and any resulting damages.**

On June 23, 2019, the 65-year-old female plaintiff was a business invitee at the Saks Fifth Avenue OFF 5TH located at the Mills at Jersey Gardens in Elizabeth, New Jersey. The plaintiff was waiting in a check-out line to purchase items from the store when a heavy cutting board/serving dish fell off of a display rack onto the plaintiff's right foot. Consequently, the plaintiff suffered a comminuted fracture of the right big toe. The big toe nail eventually fell off. The treatment consisted of splinting and a podiatry shoe.

The plaintiff maintained that the defendant negligently, improperly and carelessly designed, constructed, maintained, supervised and inspected the aforementioned premises and more particularly the display shelves located in the check-out area of the store and failed to give warning to customers and business invitees of the dangerous and hazardous condition that existed in the check-out area of the store. The defendant argued that the plaintiff's allegations are barred by the doctrine of avoidable consequences, the doctrine of election of remedies and the doctrine of comparative negligence.

The board of arbitrators found that the defendant was 60% negligent and the plaintiff was 40% negligent. The board awarded the plaintiff \$35,000 which was reduced accordingly to \$20,000.

### REFERENCE

Rashmi Bhatnagar vs. Saks & Company, LLC. Docket no. L-3550-20; Board of Arbitrators, 02-09-23.

**Attorney for plaintiff: Joseph A. Lombardi of Lombardi & Lombardi, P.A. in Edison, NJ. Attorney for defendant: Eric Evans of Gordon & Rees, LLP in Florham Park, NJ.**

## Negligent Maintenance

### \$30,000 VERDICT

**Premises liability – Negligent maintenance – Plaintiff slips and falls on residual cleaning product left on locker room floor by defendant cleaning company – Head injury – Right shoulder pain.**

#### **Bergen County, NJ**

**In this premises liability action, the plaintiff was injured when he slipped and fell on residual cleaning product left on a locker room floor by the defendant cleaning company. The defendants generally denied all allegations of negligence.**

On May 21, 2019, the plaintiff was lawfully on the premises of the Port Authority of New York and New Jersey, located at 220 Bruce Reynolds Boulevard in Fort Lee, New Jersey. At this time, the plaintiff was traversing the men's locker room and was getting ready for his work day, as he was an employee at the Port Authority. While he was traversing the locker room, the plaintiff suddenly slipped on residual cleaning product on the floor, which had been left behind by the defendant cleaning company, who had been hired to clean the Port Authority premises. The plaintiff then fell, causing him to become injured.

The plaintiff maintained that the defendants were negligent in failing to properly clean the premises, failing to remove cleaning products from the premises, failing to ensure the safety of the cleaning products they used, failing to place signs or otherwise warn of a wet floor, failing to prevent hazardous or unsafe conditions on the premises, failing to hire adequate and competent janitorial employees, and failing to regard for the health and safety of individuals using the locker room they had cleaned. Consequently, the plaintiff sustained injuries, including a head injury, as well as right shoulder pain.

The jury found in favor of the plaintiff and awarded \$30,000.

#### **REFERENCE**

Hunter David vs. Susan's Cleaning Angels, Inc. Docket no. L002954-21; Judge Peter G. Geiger, 06-07-23.

**Attorney for plaintiff: Brian P. Campbell of Brian P. Campbell Law Office in Mantoloking, NJ. Attorney for defendant: David T. Pfund of Pfund McDonnell, P.C. in Ridgewood, NJ.**

## SCHOOL LIABILITY

### \$25,000 RECOVERY

**School liability – Negligent supervision – Assault – Plaintiff middle school student stabbed in face with pencil by defendant fellow student – Plaintiff has piece of lead permanently imbedded in cheek which he can feel on inside of mouth – Permanent scarring on right cheek.**

#### **Burlington County, NJ**

**In this negligent supervision and assault case, the plaintiff, an 11-year-old boy, asserted that his defendant classmate, also an 11-year-old, assaulted him in class causing significant, permanent injury. The plaintiff contended that the defendant school failed to protect the plaintiff from the attack. The defendant school district denied negligence and argued that no employees witnessed the incident and had no opportunity to prevent it from happening. The defendant student's parents asserted that the minor defendant suffers from autism and responded to the plaintiff's sitting in the defendant's seat in the class and responded without understanding the consequences of his actions.**

On January 30, 2019, the minor plaintiff was a student on the premises of Cinnaminson Middle School located at 312 N. Forklanding Road in Cinnaminson when the defendant, a fellow student, negligently as-

saulted the plaintiff. The plaintiff and defendant student were in science class when the defendant approached the plaintiff and stabbed him in the face with a pencil, leaving part of the object embedded in his face.

The plaintiff argued that the school and its employees negligently allowed the plaintiff to be assaulted and did not exercise proper care and supervision in safeguarding the plaintiff. The plaintiff contended that the injury was caused by the negligence and carelessness of the defendant student as well as the negligence of the school and its teachers or other employees charged with supervising the students at the school. The plaintiff alleged that the incident resulted in permanent injuries.

As a result of the incident, the plaintiff sustained a stab wound to the right cheek. The plaintiff's physician spent more than one hour attempting to remove the pencil lead from the plaintiff's cheek but was unable to remove it without causing further damage and scarring to the area. The plaintiff is left with a 2 millimeter hypo-pigmented scar on his face. The lead of the pencil remains in the plaintiff's cheek and can be felt on the inside of his mouth when he is chewing or talking. The plaintiff's physician testified that the plaintiff has permanent scar tissue from the incident. The

plaintiff claimed that the injury restricted or prevented him from pursuing his usual activities and caused him both physical and emotional trauma, pain and suffering.

The parties settled the matter prior to trial in the amount of \$25,000 broken down as follows: \$7,500 against the defendant board of education; \$2,500 against the defendant township; \$15,000 against the parents of the minor defendant. The settlement included attorney's fees and costs with net damages to the plaintiff of \$14,587.

**REFERENCE**

Shea vs. Myers, et al. Docket no. L-000152-22; Judge M.P. Richmond, 05-17-23.

**Attorney for plaintiff: David S. Rochman, Esq. in Mount Laurel, NJ. Attorney for defendant township and school district: Betsy G. Ramos of Capehart & Scatchard, P.A. in Mount Laurel, NJ. Attorney for defendant student and parents: Diana R. Brocco of Kent & McBride, P.C. in Cherry Hill, NJ.**

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

## Supplemental Verdict Digest

### MEDICAL MALPRACTICE

***\$12,000,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – HOSPITAL NEGLIGENCE – EMERGENCY ROOM STAFF FAIL TO ADMINISTER EPINEPHRINE TO PLAINTIFF’S DECEDENT SUFFERING SEVERE ALLERGIC REACTION TO PERFUME – FAILURE TO TIMELY DIAGNOSE AND TREAT ANAPHYLAXIS – WRONGFUL DEATH OF 35-YEAR-OLD-MALE.***

#### **Monmouth County, NJ**

**In this action for medical malpractice, the estate of the decedent maintained that the defendant emergency room doctor and staff failed to properly treat the decedent’s allergic reaction resulting in an impaired airway and leading to cardiac arrest from which the decedent could not be revived. The defense maintained that certain medications were contraindicated given the decedent’s obesity.**

According to hospital records, the decedent weighed over 300 pounds and had never had an allergic reaction before. He was admitted to the E.R. under the care of the defendant doctor, a physician board certified in emergency medicine, and 2 nurses. Benadryl, Pepcid and Decadron were administered. The decedent’s condition worsened and 2 unsuccessful attempts to establish an airway occurred. Doctors attempted a cricothyrotomy which was not successful. After several more minutes passed the decedent was taken for emergency surgery. By then, the decedent had been deprived of oxygen for too long and he suffered a cardiac arrest and died that evening.

The decedent is survived by his wife and 2 minor children. The defense denied all allegations of negligence and argued that despite proper care in accordance with all standards, the decedent suffered a fatal allergic reaction. The anesthesiologist parties were dismissed from the action.

The estate and the defendants settled for \$12,000,000.

#### **REFERENCE**

The Estate of David Gago by Michelle Gago vs. Kevin Sirchio, D.O. Alfonso Ciervo, M.D., Kambiz Kamrani, M.D., Monmouth Medical Center, North American Partners Anesthesiology, North American Partners in Anesthesia, Llp, and Dan-Thuy Tran, M.D. Docket no. L001381-18; Judge Kathleen A Sheedy, 03-08-23.

**Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow in Edison, NJ. Attorney for defendant: William G. Theroux of Buckley Theroux Kline & Cooley in Princeton, NJ.**

***\$2,000,000 RECOVERY – MEDICAL MALPRACTICE – PULMONOLOGIST NEGLIGENCE – DEFENDANT DOCTOR FAILS TO REPORT RESULT OF PLAINTIFF’S DECEDENT’S SLEEP STUDY TO PLAINTIFF’S DECEDENT RESULTING IN HIM FAILING TO USE CPAP AND RESULTING IN DEATH IN SLEEP – WRONGFUL DEATH OF 45-YEAR-OLD-MALE.***

#### **Montgomery County, PA**

**The plaintiff in this medical malpractice/wrongful death action was the wife of the decedent. She alleged that the decedent, who suffered from sleep apnea and alcoholism, was not informed of the results of his latest sleep study indicating his apnea had worsened and was very dangerous. Without this information, the decedent was inconsistent in the use of his cpap machine and he died in his sleep several months after the sleep**

**study. The defendant denied all allegations of negligence and maintained that it was the decedent who was noncompliant in using the cpap machine resulting in his death.**

The estate maintained that the defendant doctor was negligent in failing to timely and properly inform, counsel, communicate or report the sleep study and data, failing to timely disclose sleep study data and results, failing to timely and properly recognize the need for immediate intervention and management

of severe sleep apnea, and failing to timely recommend or prescribe cpap, oxygen, cardiac intervention and sleep therapy devices. In addition, the estate maintained that the different hospital was vicariously liable for the actions of the defendant doctor. The defendants denied all allegations and maintained that the decedent was non compliant regarding the use of the cpap machine. In addition, the defense argued that the decedent's alcoholism was a contributing factor to his ill health and untimely death.

The parties settled for \$2,000,000.

**\$1,750,000 RECOVERY – MEDICAL MALPRACTICE – OPTOMETRIST NEGLIGENCE – DEFENDANT OPTOMETRIST FAILS TO ORDER PROPER TESTING AND TREATMENT FOR PLAINTIFF'S EYE COMPLAINTS RESULTING IN DELAY IN DIAGNOSIS OF GLAUCOMA – FAILURE TO MAKE PROPER AND TIMELY DIAGNOSIS OF PLAINTIFF'S CONDITION – ADVANCED GLAUCOMA – VISION LOSS.**

**Union County, NJ**

The plaintiff in this medical negligence claim maintained that she routinely saw the defendant optometrist for both routine care and eye complaints which the defendant did not properly address. The plaintiff developed severe glaucoma that the defendant failed to timely diagnose and treat resulting in vision loss. The defendant denied all allegations of negligence and injury.

The plaintiff maintained that the defendant optometrist was negligent in failing to make a proper and timely diagnosis of the plaintiff's condition, failing to institute proper and timely treatments, failing to perform or order necessary and appropriate medical interventions and failing to order necessary and

**REFERENCE**

The Estate of Charles Plyter by Marie Plyter vs. Abington Memorial Hospital and Richard Friedenheim, M.D. Case no. 201717026; Judge Lois E. Murphy, 03-17-23.

**Attorney for plaintiff: Iddo Harel of Ross Feller Casey in Philadelphia, PA. Attorney for defendant: Paul C. Troy of Kane Pugh Knoell Troy Kramer in Norristown, PA.**

Zalepka of Ronan, Tuzzio & Giannone in Tinton Falls, NJ.

appropriate medical interventions in a timely manner. The plaintiff's husband made a claim for deprivation of the society, services, consortium and companionship of his wife.

The parties settled their dispute for \$1,750,000.

**REFERENCE**

Rupa and Alpesh Dharja vs. David Carotenuto, O.D.; Brunner Eye Care; Family Vision Health Care. Docket no. L-1542-21; Judge John G. Hudak, 02-27-23.

**Attorney for plaintiff: Bruce H. Nagel of Nagel Rice, LLP in Roseland, NJ. Attorney for defendant: Frances Wang Deveney of Post & Schell, P.C. in Mount Laurel, NJ.**

**MOTOR VEHICLE NEGLIGENCE**

**\$35,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – HIGH SPEED REAR END COLLISION – PLAINTIFF CONTENDS DEFENDANT INTOXICATED AND TRAVELING AT HIGH RATE OF SPEED WHEN SHE STRUCK REAR OF PLAINTIFF'S VEHICLE – PLAINTIFF RENDERED PARAPLEGIC BY COLLISION – PERMANENT DISABILITY.**

**Broward County, FL**

In this motor vehicle negligence case, the plaintiff, a 26-year-old U.S. Navy veteran, asserted that the defendant intoxicated driver struck the rear of his vehicle with such force that it caused significant, permanent injury. The defendant pleaded no contest to felony charges of driving under the influence with serious bodily injury and was incarcerated at the time of trial.

As a result of the collision, the plaintiff suffered broken ribs and was rendered paraplegic. The plaintiff maintained that he incurred significant medical expenses for treatment and will require extensive future treatment. The plaintiff also suffered permanent disability; loss of earning capacity; loss for the enjoyment of life; and mental anguish.

The jury found that the plaintiff had suffered injuries caused by the defendant's operation of a motor vehicle while intoxicated. The jury awarded damages in the amount of \$35,000,000 broken down as follows: \$1,362,315 in lost earnings; \$758,916 in past medical expenses; \$9,748,452 in future medical expenses; \$3,130,317 in past non-economic damages and \$20,000,000 in future non-economic damages.

**REFERENCE**

Laspes vs. Castillo. Case no. CACE-17-017741; Judge Mily R. Powell, 07-13-21.

**Attorneys for plaintiff: Robert W. Kelley, Kimberly L. Wald and Michael A. Hersh of Kelley/Uustal, PLC in Fort Lauderdale, FL. Attorney for defendant: Pro Se.**

**\$1,625,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – PAIN IN CERVICAL, THORACIC AND LUMBAR SPINE – LEFT LABRUM TEAR – HEADACHES, CONCUSSION AND POST-TRAUMATIC STRESS DISORDER – ARTERIAL THORACIC OUTLET – SYNDROME – DECOMPRESSION SURGERY.**

**Morris County, NJ**

A settlement was reached between the parties in this vehicular negligence action after the plaintiff suffered serious neurologic injury when her vehicle was struck by the defendant who attempted a negligent left hand turn. The defendant denied all allegations of negligence and injury and argued that it was the actions of the plaintiff that caused the collision.

The plaintiff maintained that the defendant had negligently operated her vehicle while under the influence of alcoholic beverages, operated a vehicle without using corrective eyewear and negligently attempted a left turn. Following the accident, the plaintiff suffered pain in the cervical spine, thoracic spine, and

lumbar spine, left superior labrum tear, tingling in the left hand/fingertips, headaches, concussion, and post-traumatic stress disorder. She was eventually diagnosed with thoracic outlet syndrome and underwent thoracic outlet decompression surgery. The parties settled their dispute for \$1,625,000.

**REFERENCE**

Cynthia Bernstein vs. Linda Friedman. Docket no. L002549-18; Judge Rosemary E. Ramsay, 05-13-22.

**Attorney for plaintiff: Salomao Nascimento of Epstein Ostrove, LLC in Edison, NJ. Attorney for defendant: Brian T. Byrne of Marshall Dennehy Warner Coleman & Goggin in Roseland, NJ.**

## PREMISES LIABILITY

**\$933,500 GROSS VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF'S DECEDENT TRIPS AND FALLS ON DEFECTIVE ENTRYWAY MAT SUSTAINING BROKEN NECK THAT CAUSES DECLINE IN HEALTH AND RESULTS IN DEATH – WRONGFUL DEATH AND SURVIVAL OF 84-YEAR-OLD FEMALE.**

**Philadelphia County, PA**

In this action for premises liability, the estate of the decedent sued the defendant apartment complex alleging that they allowed a dangerous and slippery entranceway mat to exist on the premises which caused their decedent to fall and sustain a cervical fracture which caused complications that resulted in her death. The defendant denied all allegations of negligence and injury and maintained that the actions of the plaintiff's decedent caused the incident.

The plaintiffs maintained that the defendant's apartment complex was negligent in failing to properly inspect, discover and remedy the defective condition, allowing a dangerous and hazardous condition to exist on the property and failing to warn members of the general public of the dangerous condition. The

plaintiff's broken neck led to a cascading of health problems resulting in her death and the plaintiffs made a claim for wrongful death.

The jury found that the defendant was 76% negligent and the decedent 24% negligent. The jury awarded the estate damages in the amount of \$933,500. The award was reduced accordingly to \$709,460.

**REFERENCE**

The Estate of Shirley Coker by Co-Executrixes Shirley Hughes and Cecelia Giles-Moore vs. Scully Company and Village Green Associates. Case no. 190900949; Judge James Crumlish, 01-27-23.

**Attorney for plaintiff : Leonard K. Hill in Philadelphia, PA. Attorney for defendant : Margaret Jenks in Philadelphia, PA.**

**\$2,000,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – PIZZA DELIVERY DRIVER SHOT AT DEERFIELD BEACH APARTMENT COMPLEX – BULLET PARTIALLY SEVERED NERVE IN LEFT LEG – PERMANENT NERVE DAMAGE TO LOWER EXTREMITY – CHRONIC PAIN.**

**Broward County, FL**

The 41-year-old plaintiff in this negligent security action was delivering a pizza to a Deerfield Beach apartment complex managed by the defendant when he was shot by a group of juveniles sustaining serious injury. The plaintiff alleged that

the defendant, the property management company, was negligent in failing to provide adequate security at the property. The defense argued there was no prior history of shootings or violent crimes in or around the defendant complex.

The plaintiff, age 41 at the time, was transported to the hospital where it was discovered that a bullet had partially severed a nerve in his left leg. The plaintiff claimed \$17,000 in medical expenses. His treating physicians ruled out any extensive future medical care. However, the plaintiff asserted that the gunshot wounds have left him in chronic pain which impacted his life on a daily basis and made it more difficult to help support his minor daughter.

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

## REFERENCE

Orcutt vs. Professional Management, Inc. Case no. CACE 21010556; Judge Fabienne E. Fahnestock, 12-13-22.

**Attorneys for plaintiff: Michael Haggard and Kimberly Wald of The Haggard Law Firm in Coral Gables, FL. Attorneys for plaintiff: Joseph J. Slama and Justin Bailey of Krupnick, Campbell & Malone in Fort Lauderdale, FL. Attorney for plaintiff: John D. Mooney, III of John D. Mooney, PA in Fort Lauderdale, FL.**

## ADDITIONAL VERDICTS OF PARTICULAR INTEREST

### Construction Site Negligence

**\$7,297,700 GROSS VERDICT – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF PERFORMING WORK IN DITCH NEXT TO RAILROAD TRACKS STRUCK BY DEFENDANT’S TRAIN – TRAUMATIC BRAIN INJURY – JAW FRACTURE – MANDIBLE FRACTURE – NASAL FRACTURE – 18-DAY HOSPITALIZATION – PTSD.**

#### Philadelphia County, PA

**The plaintiff in this personal injury negligence action maintained that he suffered catastrophic injuries when he was hit by the defendant’s train while performing his duties on a construction site controlled by the defendant construction company. The defendants maintained that it was the actions of the plaintiff that caused the incident and resulting damages.**

The plaintiff was performing work in a ditch immediately adjacent to and or underneath the train track owned, operated, managed and maintained by the defendant railroad SEPTA. A train owned and operated by the defendant, believed to be the Airport Regional Rail Line, was traveling eastbound on the tracks where the plaintiff was performing his work. The defendant Independence Tree Service failed to alert the plaintiff of the oncoming train. The plaintiff attempted to get out of the ditch but did not have enough time and was struck by the train causing disabling and permanent injuries.

The plaintiff was diagnosed with a traumatic brain injury, skull fracture with subdural hematoma, displaced mandible fracture requiring ORIF, sternal fracture, fractures of the nasal bones, maxillary sinus fracture, traumatic epidural hematoma, bilateral lung contu-

sions, severe lacerations on his scalp, face, jaw and torso, mesenteric hematoma, left-sided hearing loss, severe sepsis, pneumonia and post-traumatic stress disorder.

The jury found that Independence Constructors Corporation and SEPTA and the plaintiff were negligent. The jury apportioned liability at 70% against ICC, 29% against SEPTA and 1% against plaintiff. The jury awarded the plaintiff past and future damages in the amount of \$7,297,700 which was reduced accordingly to \$7,224,723.

## REFERENCE

Jesse Hernandez vs. Independence Constructors Corporation, Southeastern Pennsylvania Transportation Authority. Case no. 181202689; Judge Angelo Foglietta, 02-23-23.

**Attorney for plaintiff: Jeffrey Goodman of Saltz Mongeluzzi Barrett in Philadelphia, PA. Attorney for defendant: William P. Barrett of Nationwide Insurance in Philadelphia, PA. Attorney for defendant: Melanie J. Foreman of Marshall Dennehey Warner Coleman & Goggin, P.C. in Philadelphia, PA.**

## Personal Negligence

**\$81,902,500 VERDICT – PERSONAL NEGLIGENCE – DEADLY ASSAULT – DEFENDANT SHOOTS PLAINTIFF’S DECEDENT, HIS NEIGHBOR, IN BROAD DAYLIGHT FOLLOWING ALTERCATION – INFLICTION OF DEADLY BODILY INJURY – WRONGFUL DEATH OF 53-YEAR-OLD FEMALE.**

### Harris County, TX

In this action, the defendant and the plaintiff’s decedent got into a verbal altercation outside their homes when the defendant pulled out a gun and fatally shot the decedent in the chest. The defendant argued that the shooting was in self defense.

On January 24, 2017, in the 3400 block of Mourning Drive, in Houston, Texas, the defendant engaged in a verbal altercation with his next door neighbor, the decedent, regarding the decedent’s involvement with the estrangement of the defendant’s wife and minor child. During the verbal dispute, the defendant intentionally raised and fired his personal firearm and shot and killed the decedent.

The decedent is survived by her husband, a son and her mother. The estate of the decedent sued the defendant for wrongful death and intentional infliction of

bodily injury. The defendant argued that he fired in self defense as the decedent came toward the defendant.

The jury found that the defendant was negligent and that the estate was entitled to recover \$70,000,000 in damages with an additional \$11,902,500 in prejudgment interest for a total of \$81,902,500.

### REFERENCE

The Estate of Ana Weed by Scottie Weed vs. Hector Arturo Campos. Case no. 2017-19225; Judge Cory Sepolio, 05-25-22.

**Attorney for plaintiff: William R. Ogden of Farrar & Ball, LLP in Houston, TX. Attorney for defendant: Warren Taylor of Taylor, Taylor & Russell in Houston, TX.**

**\$6,100,000 VERDICT – UNIVERSITY NEGLIGENCE/FRATERNITY NEGLIGENCE – HAZING – DEFENDANT FRATERNITY PERFORMS HAZING RITUAL RESULTING IN ALCOHOL POISONING AND ASPRIATION – WRONGFUL DEATH OF 18-YEAR-OLD MALE LSU FRESHMAN.**

### Baton Rouge County, LA

## University Negligence

In this action, the parents of the 18-year-old male decedent sued the defendant university, fraternity and at least 10 members of the fraternity alleging that a hazing ritual caused their decedent to consume a large quantity of alcohol which caused his death. All defendants denied being liable and all but one reached out of court settlements with the plaintiffs.

The decedent is survived by his parents and 2 siblings. The parents of the decedent sued the university, the fraternity and at least 10 members of the fraternity for wrongful death and survival.

All defendants except one settled with the plaintiff’s out of court. The jury, which was largely symbolic due to the settlements, found that the plaintiffs were entitled to recover \$6,100,000 for which the lone defendant was responsible for \$122,000.

### REFERENCE

The Estate of Max Gruver by Rae Ann and Stephen Gruver vs. State of Louisiana through the Board of Supervisors of Louisiana State University and Agricultural

and Mechanical College, Phi Delta Theta and Ryan M. Isto, Sean Paul Gott, Zachary A. Castillo, Patrick A. Forde, Zachary T. Hall et al., 03-08-23.

**Attorney for plaintiff: Donald J. Cazayoux, Jr. of Cazayoux Ewing LLC in Baton Rouge, LA. Attorney for defendant: David Mark Bienvenu, Jr. of Bienvenu Bonnezeze Foco, Viator & Holinga in Baton Rouge, LA.**