NEW JERSEY
JURY VERDICT REVIEW & ANALYSIS®

www.JVRA.com

SUMMARIES WITH TRIAL ANALYSIS

Volume 40, Issue 10
March 2020

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

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

$6,500,000 RECOVERY – Medical malpractice – Anesthesiology – Negligent intubation in case of infant born 4-months premature – Encephalopathy – Significant cognitive deficits – Seizure disorder – Vision problems. 2

$1,747,505 VERDICT – Medical malpractice – Ob/gyn – Labor and delivery – Midwife applied excessive traction when encountering shoulder dystocia resulting in brachial plexus injury – Multiple surgeries and therapies – Permanent, disabling injury. 3

$3,500,000 VERDICT – Motor vehicle negligence – Rear end collision – Aggravation of previously sustained lumbar and cervical herniations – Plaintiff stressed she ceased spine treatment for prior injuries approximately one year before subject collision – plaintiff emphasized prior injuries rendered her much more vulnerable to new injury. 4

$1,875,000 RECOVERY – Motor vehicle negligence – Intersection collision – Failure to stop at stop sign – Cervical herniations – Plaintiff requires cervical fusion and suffers known complication of left vocal fold paresis – Extensive pain upon swallowing 5

$1,000,000 GROSS VERDICT – Premises liability – Slip and fall on wet floor at discount shopping club – Plaintiff takes photo on cell phone showing paper towel between pipe and standalone freezer – Knee, ankle and hip tears – Arthroscopic knee surgery – Lumbar herniation treated conservatively 6

DEFENDANT'S VERDICT ON SUMMARY JUDGMENT – Premises liability – Hazardous premises – While walking in store's aisle, plaintiff's foot jammed into pallet display causing her to fall on knees – Post-traumatic cervical sprain and strain – Left knee rupture of patellar tendon – Bilateral knee injections 7

VERDICTS BY CATEGORY

Medical Malpractice
- Chiropractic 9
- Surgery. 10

Amusement Park Negligence 10

Insurance Obligation. 11

Landlord/Tenant 12

Motor Vehicle Negligence
- Auto/Bicycle Collision. 13
- Auto/Motorcycle Collision. . . . 13
- Auto/Pedestrian Collision. . . . 14
- Intersection Collision 14
- Parking Lot Collision 15
- Rear End Collision 15
- Negligent Maintenance. 17

State Liability 18

Wage Theft 18

Supplemental Verdict Digest 20

Copyright 2020 Jury Verdict Review Publications, Inc.

Subscribe Now

Summaries with Trial Analysis

$6,500,000 RECOVERY – MEDICAL MALPRACTICE – ANESTHESIOLOGY – NEGLIGENT INTUBATION IN CASE OF INFANT BORN 4-MONTHS PREMATURE – ENCEPHALOPATHY – SIGNIFICANT COGNITIVE DEFICITS – SEIZURE DISORDER – VISION PROBLEMS.

Monmouth County, NJ

This was a medical malpractice action involving an infant plaintiff who was born 4 months premature. When discharged, a small hernia was noted, and was surgically repaired. One week after that repair, the hernia returned, and the child was brought to the emergency room by her parents, where the hernia was reduced, and the child was brought to surgery out of fear the bowel might incarcerate. It was alleged that the defendant anesthesiologist intubated the child inappropriately for the surgery, causing a deprivation of oxygen. As a result, the decision was made to put off the surgery until approximately 8:00 a.m. the next day. The plaintiff contended that after being intubated, the child was transferred to the PICU from the OR, during which time her vital signs and oxygen levels were not adequately monitored. The plaintiff asserted that the child suffered hypoxic-induced encephalopathy and was left with very significant cognitive deficits as well as a seizure disorder. The infant plaintiff also sustained reduced vision and difficulties with motor control. The defendant denied that the care was negligent.

The evidence reflected that the child spent approximately 3 months in the NICU after she was born and that during this period, an inguinal hernia was detected, prompting surgery. The operation failed, and there was no allegation that it was negligently performed. The baby was brought back to the hospital and the hernia was manually reduced by a pediatric ER physician. The physicians at the hospital were concerned that the hernia could strangulate and a decision to perform another surgery was made. The infant plaintiff was brought to the OR at approximately midnight. During the attempt to intubate the child, there was a short period where she was not breathing. The plaintiff did not contend that such cessation was the result of negligence.

The defendant anesthesiologist then intubated the baby and the plaintiff contended that the apparatus was negligently placed too low and that the child was not getting sufficient oxygen. A decision was then made to delay the surgery until approximately 8:00 a.m. The child was transferred to the PICU and the plaintiff maintained that her respiratory function was not adequately monitored. The plaintiff contended that the records failed to establish that the anesthesiologist was watching the patient. Hernia surgery was performed and as the anesthetic wore off, the infant plaintiff began to exhibit signs of a seizure disorder.

The plaintiff claimed that the child suffered a hypoxic insult and that the deficits were the result of oxygen deprivation. The plaintiff maintained that the child will permanently suffer very significant cognitive deficits, and difficulties with vision, although she is able to walk and speak. The plaintiff contended that with proper treatment she would have led a normal life, and the plaintiff would have introduced a life care plan of approximately 15 million dollars.

The defendant maintained that the infant plaintiff was doomed to suffer such deficits, irrespective of the care provided at the time, pointing out that a substantial percentage of premature babies born so premature suffer such deficits. Moreover, the defense contested causation as the infant suffered from an e-coli infection that the defense alleged caused the condition. The plaintiff countered that in view of the stark difference in results of the brain scan before and after this date, the defendant's position should be rejected.

The case settled prior to trial for $6,500,000 as a result of the effort of a Judicial Settlement conference that took place after a failed mediation attempt.

REFERENCE

Roman vs. Rahal. Docket no. MON-L-4550-13; Judge Joseph Quinn, 02-19-20.

Attorneys for plaintiff: Peter Chamas and Robert Adinolfi of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

It is felt that among the more difficult aspects facing the plaintiff in this case was the defendant's evidence that a substantial percentage of babies, such as the infant plaintiff who was born 4 months premature, have very significant deficits, irrespective of the care provided. The plaintiff, in surmounting this factor, would have pointed to the stark difference in the brain scans taken before the oxygen deprivation and the tests taken subsequently, Additionally, the plaintiff would have argued that the jury should consider that this child will probably benefit greatly from planned therapy and that a significant award for costs of care would result in a real difference to the child.

Reproduction in any form without the express permission of the publisher is strictly prohibited by law.

Founder
Ira J. Zarin, Esq.

President
Jed M. Zarin

Contributing Editors
Brian M. Kessler, Esq.
Michael Bagen
Laine Harmon, Esq.
Cristina N. Hyde, J.D.
Deborah McNally, Paralegal
Ruth B. Neely, Paralegal
Cathy Schlecter-Harvey, Esq.
Julie L. Singer, Esq.
Tammy A. Smith, Esq.
Kate Turnbow, Paralegal
Susan Winkler

Business Development
Gary Zarin

Production Coordinator
Cathryn A. Peyton

Professional Search
Timothy P. Mathieson

Court Data Coordinator
Jeffrey S. Zarin

Customer Services
Meredith Whelan

Circulation Manager
Ellen Loren

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

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

New Jersey Jury Verdict Review & Analysis is a trademark of Jury Verdict Review Publications, Inc.

Reproduction in any form with out the express written permission of the publisher is strictly prohibited by law.

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

Postmaster: Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

$1,747,505 VERDICT – MEDICAL MALPRACTICE – OB/GYN – LABOR AND DELIVERY – MIDWIFE APPLIED EXCESSIVE TRACTION WHEN ENCOUNTERING SHOULDER DYSTOCIA RESULTING IN BRACHIAL PLEXUS INJURY – MULTIPLE SURGERIES AND THERAPIES – PERMANENT, DISABLING INJURY.

Atlantic County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant midwife breached the standard of care in delivery of the minor plaintiff causing permanent injury and impairment to the plaintiff. The defendant denied any violation of the standard of care that could have proximately caused the plaintiff's injury.

On October 30, 2013, the plaintiff was delivered by the defendant midwife. In the course of the plaintiff's delivery, a shoulder dystocia occurred. The plaintiff asserted that the defendant's treatment and resolution of the shoulder dystocia fell below the standard of care when she applied excessive traction resulting in permanent brachial plexus injury. The plaintiff asserted that the defendant failed to call for help, failed to instruct the plaintiff to stop pushing, and failed to appropriately direct the nursing staff how to perform the McRobert's maneuver or apply suprapubic pressure. The plaintiff asserted that, against the standard of care, the defendant midwife then applied downward lateral traction to the fetal head in response to the shoulder dystocia complication resulting in global brachial plexus injury.

As a result of the injury, the plaintiff sustained permanent nerve damage requiring multiple microsurgeries and spica casting in attempt to repair nerve damage. He has been treated at a brachial plexus clinic and has gone from 0 function to 50% function of his left arm since birth. However, the plaintiff has a limited best result outcome and will never have complete, normal function of his left arm and hand.

At trial, the plaintiff presented experts in midwifery and obstetrics and gynecology who testified that the plaintiff's injury was of a "Global" nature in that 4 of the 5 nerves were injured, indicating severe nerve injury and at least one of his nerves was completely avulsed. The plaintiff's experts testified that the only thing that could have caused this type of injury, including injury to all 5 nerves of the brachial plexus, 4 of which were torn and one which was torn from the spinal column, is movement of the head by the person delivering the infant. The plaintiff denied the defendant's contention that the injury was caused by a combination of maternal pushing and contractions as the mother was not experiencing contractions at the time of the injury – leaving only the force of the defendant moving the plaintiff's head as the cause of injury.

The defendant presented expert testimony that the plaintiff's injury was most likely caused in the 55 seconds between the delivery of the plaintiff's head and the delivery of his body and that the cause was net vector forces including a combination of contractions, maternal pushing, and force being applied by the defendant to the baby's head/neck. Therefore, the defendant asserted, the injury was not solely caused by the actions of the defendant.

The jury found in favor of the plaintiff and awarded damages of $1,747,505 broken down as follows: $565,000 for future lost earning capacity; $182,505 for past medical expenses and $1,000,000 for pain, suffering, disability, impairment and loss of enjoyment of life.

REFERENCE

Miller vs. Grencavich, C.N.M. Docket no. L-001582-15; Judge Christine Smith, 07-03-19.

Attorney for plaintiff: Julie E. Nugent of Weiss & Paarz in Northfield, NJ. Attorney for defendant: James E. Drake of Drake Law Firm, P.C. in Absecon, NJ.

COMMENTARY

The defendant moved for a new trial following the verdict, arguing that the jury was improperly charged on proximate cause and erroneously charged on the applicability of a learned treatise. During deliberations, the jury asked a question about the use of Varney's Fourth or Fifth Edition of its text on midwifery. The question specifically inquired into the weight of publications mentioned or read during expert testimony. Initially, the defendant argued, the court correctly advised the jury that neither version of the textbook was in evidence. However, counsel for the plaintiff requested a second instruction on the second day of deliberation. The defendant asserted that the jury instruction misled the jury about the applicability and availability of the texts based on expert deposition testimony. Contrary to counsel for the plaintiff's representations to the court in support of his request for a jury instruction, the expert testified that the Fifth Edition was published in 2015 at her deposition. As of the date of the minor plaintiff's birth, Varney's Fourth Edition was widely available in the obstetrical community as opposed to questionably available during the subject trial. Defense counsel argued that, assuming the Fifth Edition existed at the time of the plaintiff's birth, not one expert witness or healthcare provider testified to owning or reading it prior to the plaintiff's delivery.

The court, however, instructed the jury that "The competent and credible evidence exchanged during pretrial discovery suggests that Verney's Midwifery Fifth Edition was the one in effect at the time of this delivery." Defense counsel asserted that the instruction to the jury regarding the applicable literature had the effect of carrying the plaintiff's burden of proof despite the contradicting expert testimony in support of the plaintiff's position. Additionally, according to the defendant, the jury instruction failed to include any language advising the jury that the publications referenced at trial were not binding on their decision. Further, the jury charge, according to the defendant, improperly included and emphasized substantial factor for purposes of explaining proximate cause. The defendant argued that the jury was given instruction including the "Substantial factor" standard for causation as opposed to the appropriate "But for" standard.

Lastly, the defendant asserted that a new trial was warranted because the verdict was against the weight of the evidence presented at trial. The defendant asserted that she could only be held responsible for deviations from the standard of care that proximately caused the injuries to the plaintiff. Although the plaintiff's expert alleged multiple deviations from the standard of care, only one possible theory on proximate cause for the minor plaintiff's injuries was presented; specifically, the theory that the defendant allegedly pulled the plaintiff's head downward and away from the impacted shoulder. In the two-week trial, none of the witnesses, according to the defendant, actually offered any testimony suggesting that the defendant applied downward lateral traction to the minor plaintiff's head. The defendant asserted that the record is devoid of any testimony supporting that theory. As such, the defense counsel argued, a jury could not possibly conclude this purported deviation proximately caused the minor plaintiff's brachial plexus injury.

The defendant concluded that the incorrect jury instruction alone warranted a new trial, but the cumulative effect of all the errors listed tilted the balance in favor of the plaintiff and resulted in serious prejudice to the defendant. Defense counsel claimed that the court misled the jury about the applicable standard of care and deprived the defendant of her right to a fair trial. The court denied the motion for a new trial.

$3,500,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – AGGRAVATION OF PREVIOUSLY SUSTAINED LUMBAR AND CERVICAL HERNIATIONS – PLAINTIFF STRESSED SHE CEASED SPINE TREATMENT FOR PRIOR INJURIES APPROXIMATELY ONE YEAR BEFORE SUBJECT COLLISION – PLAINTIFF EMPHASIZED PRIOR INJURIES RENDERED HER MUCH MORE VULNERABLE TO NEW INJURY – DAMAGES ONLY.

Middlesex County, NJ

Liability was stipulated in this motor vehicle negligence action, in which the plaintiff driver, in her mid 40s, contended that as a result of being struck in the rear, she suffered an aggravation of several lumbar and cervical herniations initially sustained in a collision several years earlier in which her vehicle was struck in the side after the driver in the previous accident failed to stop at a stop sign. The plaintiff, who underwent a pain management regimen consisting of multiple injections after the previous accident, asserted that she had essentially completed the prior treatment and had not undergone an injection for her spine for approximately one year when the subject accident occurred. The plaintiff claimed that despite resuming the injections, the aggravation caused extensive permanent pain and limitations. The plaintiff did not undergo any surgery for the aggravations.

The plaintiff testified that after the prior accident she suffered extensive pain and required approximately 12 injections. The plaintiff indicated that she had essentially completed her treatment for the prior spinal column injuries, and underwent her last injection approximately one year before the subject accident. The plaintiff argued that the prior injuries rendered her much more vulnerable to significant injury and that as a result of the subject collision, she suffered a severe exacerbation of the prior injuries. The plaintiff claimed that despite numerous injections, she will permanently experience extensive pain and suffering. The plaintiff, who had worked as an administrative assistant for a physician who treated autistic children, contended that she could no longer work in a sedentary job, and she voluntarily resigned, concentrating on her recovery.

The defendant denied that the subject accident caused the claimed complaints. The defendant pointed out that the impact caused only minor prop-

Subscribe Now

erty damage. The plaintiff countered that the forces absorbed by the car's bumper did not necessarily correlate to the forces absorbed by the victim's body. The defendant did not present a biomechanical expert.

The plaintiff successfully moved in limine for an order that the defendant would be precluded from bringing up the fact of the prior litigation and settlement. However, the defendant was permitted to impeach the plaintiff's credibility based on alleged inconsistencies between her prior sworn testimony and her testimony at the subject trial. The plaintiff detailed the extent of her prior injuries extensively during her direct examination and argued that the defendant's endeavors to undermine her believability by attacking her on allegedly minor inconsistencies should be rejected.

The jury awarded $3,500,000, including $2,500,000 for non-economic losses and $1,000,000 for economic losses. Prior to trial, the parties entered into a high/low agreement.

REFERENCE

Plaintiff's neurosurgeon expert: Arien Smith, M.D. from East Brunswick, NJ.

Bennett vs. Hill. Docket no. MID-L-6522-17; Judge Thomas McCloskey, 01-17-20.

Attorney for plaintiff: Max J. Stagliano of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

The plaintiff, who had a history of numerous injections because of prior injuries, discussed such history extensively both during her case in chief at trial and during discovery. In this regard, the plaintiff clearly maintained her believability and argued that the jury should consider that her history rendered her much more vulnerable to injury from a less substantial force than would otherwise be the case. In this regard, the jury was instructed to the effect that the force of an impact does not necessarily correlate to the extent of injuries sustained in a collision. Additionally, given the victim's prior injuries suffered through no fault of her own, and that the subject accident involved her vehicle being struck in the rear, this likely rendered her especially compelling to the jury who apparently wanted their verdict to ensure that the plaintiff remains as comfortable as possible. Finally, it should also be noted that the plaintiff successfully moved in limine for an order that although the defendant could use prior transcripts to impeach the plaintiff's credibility, the defendant could not delve into the fact that there was prior litigation or a settlement.

$1,875,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO STOP AT STOP SIGN – CERVICAL HERNIATIONS – PLAINTIFF REQUIRES CERVICAL FUSION AND SUFFERS KNOWN COMPLICATION OF LEFT VOCAL FOLD PARESIS – EXTENSIVE PAIN UPON SWALLOWING.

Bergen County, NJ

This motor vehicle negligence case involved a 52-year-old female plaintiff driver who contended that as a result of the negligence of the defendant driver, who failed to obey a stop sign, she collided with the defendant and suffered several cervical herniations. The plaintiff required fusion surgery and during the operation, she suffered a known complication of a left vocal fold paresis. The plaintiff's proofs also reflected that eating and swallowing are very painful. The plaintiff asserted that she was well known as an aspiring chef and culinary teacher and that although the plaintiff, a single mother, had not actually worked as she was raising her child, she remained well known in the field, often supervising large dinners involving 200-300 people and was planning on commencing work as a chef in the near future. The plaintiff maintained that the injuries will prevent her from doing so. The defendant maintained that after she entered the plaintiff's lane, she stopped and was struck by the plaintiff, who was traveling at an excessive rate of speed. The plaintiff was driving on a roadway that contained one lane in each direction. The defendant claimed that if the plaintiff had been traveling at an appropriate rate of speed and paying adequate attention, she could have traveled into the on-coming lane and avoided the collision.

The plaintiff was trained as a chef and during the period that she was raising her children, she remained very involved, although she did not have a claim for past lost wages. The plaintiff asserted that because she was very well known, she solidified her reputation by often putting on large affairs of 200-300 people, including a dinner at the Haitian embassy. The plaintiff maintained that because of the complication in the cervical fusion, she will permanently find swallowing very painful, and she cannot engage in the extensive tasting required of a chef. The plaintiff also pointed out that she lost approximately 40 pounds after the collision.

The plaintiff would have presented a number of lay witnesses who would have attested to her reputation and skill. One of the witnesses testified that the plaintiff trained her and that she now owns and operates a successful restaurant in Haiti, which is where the plaintiff and the restaurant owner are from. The plaintiff would have contended that if she did not open a restaurant, her future loss of income would approximate $40,000 - $50,000. The plaintiff would have also asserted that she hoped to open a restaurant, which would be much more lucrative. The defendant would

Subscribe Now

have asserted that the plaintiff's economic claims were highly speculative. The defendant pointed out that a large percentage of restaurants fail for a wide variety of reasons. The plaintiff would have argued that the jury should consider that she has been deprived of the opportunity to work as a chef. The plaintiff asserted that her child graduated high school several months after the accident and that she would have commenced working as a chef if not for the collision.

The case settled prior to trial for $1,875,000.

REFERENCE

Plaintiff's accident reconstruction expert: Robert Klingen from Mahwah, NJ. Plaintiff's economist expert: Kenneth Betz, from Livingston, NJ. Plaintiff's economist expert: Kristin Kucsma from Livingston, NJ. Plaintiff's life care planning; vocational rehabilitation expert: Ellen Radar-Smith from Towaco, NJ. Plaintiff's spinal surgeon expert: Marc Arginteanu, M.D. from Englewood, NJ. Plaintiff's spinal surgeon expert: Daniel Riew, M.D. from New York, NY. Defendant's engineer expert: Kevin Doreo from Kinematic Consultants, Rochelle Park, NJ. Defendant's orthopedic surgeon expert: Charles Gatto, M.D. from Morristown, NJ. Defendant's otolaryngologist expert: Stephen Freifeld, M.D. from Springfield, NJ. Defendant's physical therapy expert: Thomas Xenskis from Kinematic Consultants, Rochelle Park, NJ. Defendant's rehabilitation counselor expert: David Stein from Springfield, NJ.

Phillipe vs. Merians. Docket no. BER-L-9000-17; Judge Lisa Perez-Friscia, 11-19.

Attorneys for plaintiff: Michael J. Maggiano and Christopher DiGirolamo of Maggiano DiGirolamo & Lizzi, PC in Ft. Lee, NJ.

COMMENTARY

This case was thought to be interesting in that the plaintiff, who suffered injuries to the vocal cord which will prevent her from working as a chef, had not earned money for many years as the plaintiff was raising her child. The plaintiff stressed that she had remained very involved and well known in this field in which one's reputation is especially important, often put on events that hosted as many as 200-300 guests and burnished her reputation. In this regard, the plaintiff would have stressed that she was deprived of the opportunity to advance her career in the field which she greatly loved, Additionally, it is felt that the timing of the injury, in which the plaintiff single parent had looked forward to returning to being a chef when her daughter graduated high school several months after the accident, would have clearly added to the impetus for a large verdict if the case had proceeded to trial.

$1,000,000 GROSS VERDICT – PREMISES LIABILITY – SLIP AND FALL ON WET FLOOR AT DISCOUNT SHOPPING CLUB – PLAINTIFF TAKES PHOTO ON CELL PHONE SHOWING PAPER TOWEL BETWEEN PIPE AND STANDALONE FREEZER – KNEE, ANKLE AND HIP TEARS – ARTHROSCOPIC KNEE SURGERY – LUMBAR HERNIATION TREATED CONSERVATIVELY.

Middlesex County, NJ

In this premises liability action, the plaintiff, in her early 60s, contended that the defendant discount shopping club negligently failed to properly correct a leaking CVC pipe that was attached to a standalone freezer. The plaintiff maintained that as a result, she slipped and fell on the floor which was wet as a result of the leaking pipe. The plaintiff asserted that she suffered knee, ankle and hip tears, as well as a lumbar herniation. The case did not involve any mode of operation issues. The receiving manager on duty at the time of the accident denied notice of the condition. The plaintiff took a photograph of the area after she fell and contended that it depicted that a paper towel was in between the pipe and the freezer. The plaintiff named the store' s receiving manager on duty at the time of the accident, contending that he should have reported the incident and place cones and warning signs. The defendant further contended that the plaintiff failed to make adequate observations and was comparatively negligent.

The evidence revealed that the plaintiff had been involved in a car accident approximately three years before the subject accident occurred and had treated with a chiropractor until approximately one month before the fall. The defendant maintained that in light of this evidence and the fact that the plaintiff did not commence treatment for the injuries allegedly sustained in the subject incident until she returned to the chiropractor approximately one month after the fall, her claims should be rejected. The plaintiff countered that most of the prior treatment involved the back and that only transient complaints about the knee, hip and ankle. The plaintiff, who testified through a Spanish interpreter, indicated that most of the prior treatment was for a back injury, which she contended was aggravated in the subject incident.

The plaintiff went to the hospital on the evening of the accident and the records reflected that she had made hip and knee complaints. Although the records did not reflect back complaints, a back X-ray was taken. The plaintiff indicated that she was tired of the chiropractic visits, constituting part of the reason for the delay in treatment. The plaintiff also established that shortly before the incident, she had been offered a job as a bus driver. This job started a few weeks after the fall. The plaintiff contended that she was concerned of repercussions at her new job if she commenced treatment for a recent fall, and that this

Subscribe Now

factor and her hope that the injuries would resolve with time accounted for her decision to not go for treatment sooner.

The plaintiff contended that the pain continued and that her knee pain heightened over the next approximate two-year period and that she ultimately required arthroscopic knee surgery and ceased work. The plaintiff asserted that she will permanently be unable to work as a bus driver. The plaintiff did not contend that she is permanently unemployable.

The jury found the store 65% negligent, the receiving manager 20% negligent (store is vicariously liable) and the plaintiff 15% comparatively negligent. They then rendered a gross award of $1,000,000 including $175,000 for past pain and suffering, $230,000 for past medical expenses, $200,000 for future medical expenses, $65,000 for past lost wages, $105,000 for future lost wages and $225,000 to the husband for loss of services. The net award, including prejudgment interest, was $904,090. The defendant's offer was $150,000.

REFERENCE

Plaintiff's economist expert: Stan Smith, Ph.D. from Chicago, IL. Plaintiff's orthopedic surgeon expert: Gregory Lane, M.D. from Edison. Plaintiff's pain management expert: Douglas J Spiel, M.D. from Edison, NJ. Plaintiff's podiatrist expert: Anthony Sergi, D.P.M. from Edison, NJ.

Gaguancela vs. BJ's Wholesale Club, Inc., et al. Docket no. MID-L-3824-16; Judge Christopher Rafano, 10-29-19.

Attorney for plaintiff: Paul K. Caliendo of Gill & Chamas in Woodbridge, NJ.

COMMENTARY

The defendant denied any notice of the leaking pipe. The plaintiff effectively countered this position by pointing to a cell phone photo she took at the time which showed that a paper towel was placed between the pipe and the standalone freezer, and this evidence was clearly critical. Regarding damages, the plaintiff had ceased treatment for injuries sustained in an accident 3 years earlier approximately 1 month before the subject fall. The plaintiff, who went to the hospital the night of the fall, did not commence treatment until she returned to her chiropractor approximately two months after the fall. The plaintiff stressed that her prior treatment was largely related to the back and only slightly dealt with the more severe injuries allegedly sustained in the fall, including the knee, hip and ankle.

Additionally, the plaintiff indicated that she was concerned that since she had been hired for a job as a bus driver shortly before the fall, and slated to start shortly thereafter, obtaining treatment could jeopardize her position. Finally, it is felt the plaintiff's testimony that after a long prior course of chiropractic treatment, she had grown weary of the therapy, and that her hopes that the pain and limitations suffered after the fall would improve with time, was especially understandable.

DEFENDANT'S VERDICT ON SUMMARY JUDGMENT – PREMISES LIABILITY – HAZARDOUS PREMISES – WHILE WALKING IN STORE'S AISLE, PLAINTIFF'S FOOT JAMMED INTO PALLET DISPLAY, HAZARDOUSLY PLACED BY DEFENDANT, CAUSING HER TO FALL ON KNEES – POST-TRAUMATIC CERVICAL SPRAIN AND STRAIN – LEFT KNEE RUPTURE OF PATELLAR TENDON – BILATERAL KNEE INJECTIONS.

Burlington County, NJ

In this premises liability case, the plaintiff asserted that the defendant store negligently placed a display such that it caused the plaintiff to trip and fall. On June 12, 2017, the plaintiff was a customer at the defendant store in Edgewater Park. The plaintiff claimed that, while walking in the store's aisle, her left foot jammed into a pallet display unit that was hazardously placed by the defendant. The plaintiff claimed that she fell to her knees on the floor and sustained serious injuries. The plaintiff asserted that the pallet structure was protruding into the area where customers walk, causing a hazard to exist in the store. The defendant successfully moved for summary judgment in this case.

As a result of her fall, the plaintiff suffered post-traumatic cervical sprain and strain; post-traumatic cervical facet syndrome; traumatically induced left C6-7 radiculopathy; post-traumatic lumbosacral sprain and strain; post-traumatic lumbar facet syndrome; traumatic aggravation of both knees with aggravation of previous total knee replacements; left knee rupture of the patellar tendon with disruption of the extensor mechanism of the left knee with no active extension; right knee contusion with synovitis status and post right total knee replacement. The plaintiff treated with three rounds of bilateral knee injections

The defendant claimed that there was no issue of material fact in the case as the plaintiff clearly, according to the defendant's evidence, fell over her own foot and not due to any defect in the store display. The defendant presented video footage and still frames refuting the plaintiff's claim that she fell on a display in the defendant store's aisle. The defendant's video and photos show the plaintiff walking near the subject display, but never actually contacting the display with her foot or any part of her body. The plaintiff is seen walking near the display utilizing a cane and then tripping on her opposite leg as she turned a corner and falling to the floor.

The court granted the defendant's motion for summary judgment and the plaintiff's case was dismissed.

REFERENCE

Edwards vs. Aldi, Inc. et al. Docket no. L-001391-18; Judge Susan L. Claypoole, 05-29-19.

Attorney for plaintiff: Stephen M. Tatonetti of DuBois Sheehan Hamilton Levin & Weissman, LLC in Camden, NJ. Attorney for defendant: James J. Green of Bardsley, Benedict & Cholden, LLP in Mt. Laurel, NJ.

COMMENTARY

The plaintiff replied to the defendant's motion for summary judgment claiming that plaintiff's counsel sent a spoliation of evidence letter requesting a copy of any surveillance video of the incident, but was not advised of the existence of the video until discovery was completed. The plaintiff argued that a genuine issue of material fact existed which precluded the entry of summary judgment as the plaintiff maintained that the video and still frames were not definitive due to the angle of the video, that her recollection was clear that her foot contacted the pallet causing her to fall, and that a jury could find that the pallet was the cause of the plaintiff's fall and that that determination should be left to a jury propounded by the evidence including the video and still frames. The plaintiff asserted that a reasonable jury could conclude from the video evidence that the pallet inhibited her walking pattern, causing her to fall rather than her simply tripping over her own feet. The plaintiff also pointed to her letter of August 24, 2017 requesting a copy or the ability to review the surveillance footage of the incident in requesting that the court deny the defendant's sanction application. The plaintiff argued that, had the video been presented before the plaintiff's deposition testimony, the matter could have been resolved sooner without the defendant incurring fees and costs.

The defendant asserted that the plaintiff was mistaken and that copies of the video along with the frivolous litigation letter were served before the close of discovery and before the plaintiff's deposition. The defendant claimed that it served a frivolous litigation letter on the plaintiff on December 5, 2018 advising of the surveillance video of the fall and that it contradicted the plaintiff's version of events that led to her alleged injuries. The defendant requested plaintiff's counsel withdraw the complaint within 28 days but received no response and the plaintiff did not withdraw the complaint. The defendant's asserted that the evidence provided to the plaintiff and to the court, revealed that the plaintiff did not contact the pallet, and that the photos showed there was space between her foot and the display at all times, including the moment of her fall. The defendant maintained that the plaintiff's failure to withdraw the complaint left the defendant no alternative, but to file a motion for summary judgment and seek fees and costs.

Based on a review of the evidence as well as the parties' submissions, the court found that, in light of the video surveillance footage and still frame photos, the defendant's motion for summary judgment was granted. The court put forth that there was no dispute that the defendant, as a property owner, owed the plaintiff, as an invitee, a duty of care and that, despite the plaintiff's claims, the evidence clearly demonstrated that the plaintiff entered the defendant supermarket, walked towards the display near the stores' entrance; her left foot crossed in front of her right foot; her feet became tangled, causing her right foot to become jammed with her left foot; and the plaintiff fell as a result. As to the defendant's request for sanctions under R. 1:4-8 and N.J.S.A. 24: 15-59.1, the court declined to impose sanctions. The court explained that it is a high bar which must be met in order for sanctions under the rules to be imposed. The court found that the plaintiff's arguments were reasonable and not baseless. While the court found, in this case, that there was no negligence on the part of the defendant, the court did not find the plaintiff's claim to be "Frivolous," therefore, the court did not impose sanctions. The court granted the defendant's motion for summary judgment and denied the defendant's motions for reimbursement of fees and costs.

Subscribe Now

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Chiropractic

DEFENDANT'S VERDICT

Medical malpractice – Chiropractic – Improper chiropractic manipulations cause spinal cord compression requiring surgery.

Passaic County, NJ

In this medical malpractice action, the plaintiff, a 59-year-old woman, was involved in a motor vehicle accident on May 19, 2014. The plaintiff began treatment with the defendant chiropractor shortly thereafter. Her primary complaints following the accident had been neck pain, headache and shoulder pain. She indicated severe neck pain graded 9/10. The plaintiff treated with the defendant for approximately 3 months for a total of 23 visits. The defendant's testimony was that he used low force technique with an activator to treat the plaintiff. The plaintiff disputed this claim and contended that the defendant used his hands for all manipulations. At the plaintiff's last visit with the defendant she reported her neck pain as 8/10 having improved only marginally. Records indicate that the defendant recommended an MRI, but that one was not done while the plaintiff was under the defendant's care. On August 8, 2014, 2 days after the plaintiff's most recent visit with the defendant, she was in such severe pain that she presented to a hospital emergency where she reported severe pain and a tingling sensation in her left arm and left side of her face for the past hour. An MRI was performed which revealed cord compression at C4-5 with increased signal within the spine at that level. The defendant denied violating the standard of care and denied that treatment provided caused exacerbation of the plaintiff's injury.

Severe central canal narrowing was also demonstrated posterior to C5-6. The diagnosis was cord compression and anterior cervical discectomy at C4-5, partial corpectomy at C4, partial corpectomy at C6, anterior cervical fusion at C4-6, and application of carbon fiber cage with allograft was performed 3 days later. The plaintiff was hospitalized for a week and then discharged to a rehabilitation center. The plaintiff was on disability at the time of trial and seeing a pain management specialist for the ongoing pain in her neck.

The plaintiff contended, and presented expert testimony, that spinal cord compression was a contraindication to cervical spine manipulation. The plaintiff argued that the defendant's records held no reference to informed consent and that failing to obtain informed consent for manipulation and the associated risks involved was the first deviation from the standard of care. The plaintiff also asserted that the defendant breached the standard of care in failing to note a lack of improvement in pain and failing to perform an MRI, or refer the plaintiff to a neurologist, which would have revealed cord compression, a contraindication to manual manipulation of the spine. The plaintiff asserted that the defendant's continued to manipulate her cervical spine without knowing the nature and extent of the disc or bone pathology. The plaintiff put forth that the defendant's treatment worsened her condition, causing inflammation about the cord and causing compression which resulted in the necessity of a cervical fusion at several levels and causing her present disabilities, inability to work and restrictions in all activities of daily living. The plaintiff maintained that her condition was permanent.

The defendant presented expert testimony from a radiologist who opined that there were no findings to suggest that the defendant caused or exacerbated any of the plaintiff's symptoms. An expert neurosurgeon testified that the plaintiff current condition was a result of her motor vehicle accident, and not the defendant's care. The defendant put forth that the plaintiff had a preexisting condition exacerbated by her accident and that the defendant's care played no role in that injury. The defendant argued that the plaintiff's condition was present from the time of the accident forward and worsened over time, irrespective of the defendant's treatment, until ultimately the plaintiff required surgery. The defendant asserted that his treatment of the plaintiff did not cause her injury and that the cause of her spinal cord compression was the underlying motor vehicle accident.

The jury returned a verdict in favor of the defendant and the court dismissed the plaintiff's complaint with prejudice.

REFERENCE

Payton vs. Berger, et al. Docket no. L-002668-16; Judge Thomas J. LaConte, 05-14-19.

Attorney for plaintiff: Joseph E. Collini of Emolo & Collini, Esqs. in Paterson, NJ. Attorneys for defendant: Haley K. Grieco and Philip F. Mattia of Mattia, McBride & Grieco, P.C. in Fairfield, NJ.

Surgery

DEFENDANT'S VERDICT

Medical malpractice – Surgery – Nerve injury due to nerve root strike during improperly performed lumbar puncture – Debilitating headaches and lower back pain requiring blood patch.

Union County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant surgeon caused nerve root damage during a lumbar puncture procedure and that the plaintiff has ongoing medical issues as a result. The defendant denied any violation of the standard of care and testified that the plaintiff did not report any pain during the procedure that would indicate nerve injury.

On September 10, 2012, the plaintiff underwent a lumbar puncture procedure at the defendant hospital and performed by the defendant surgeon. The plaintiff claimed that, during a lumbar puncture procedure, a nerve was struck causing the plaintiff to cry out in excruciating pain. The plaintiff asserted that the defendant continued with the procedure in contradiction of the standard of care for this procedure.

The plaintiff argued that the standard of care indicates that, if a patient experiences sudden pain during a lumbar puncture, the procedure should stop and the patient should be reassessed to avoid the possibility of nerve damage. The plaintiff asserted that the defendant failed to follow that procedure, and thus, violated the standard of care, causing the plaintiff persistent and permanent pain and disability.

The plaintiff asserted that the defendant knew he had caused nerve root damage and pain as evidenced by the fact that the plaintiff was in such pain that the defendant prescribed a narcotic to the plaintiff following the subject incident. The plaintiff presented the testimony of his treating neurologist who testified that the plaintiff sought treatment from him relating to complications he suffered from a lumbar puncture procedure performed by the defendant. The plaintiff's treating neurologist testified that, over the course of his treatment of the plaintiff, the patient has consistently suffered from debilitating lower back pain primarily in the region of the lumbar puncture and intense headaches.

The plaintiff has been treated with a number of medication and pain management. The plaintiff's neurologist opined that the plaintiff suffered a leak of cerebrospinal fluid and that he will require a second blood patch to repair the damage. The defendant and his experts admitted that it is possible the plaintiff sustained a striking of the nerve root during the lumbar puncture, but denied awareness of this event during the procedure and denied that it is the likely cause of the plaintiff's ongoing complaints.

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

REFERENCE

Wolfe vs. Volosky, M.D., et al. Docket no. L-003204-14; Judge Alan G. Lesnewich, 05-21-19.

Attorney for plaintiff: Bruce H. Nagel of Nagel Rice, LLP in Roseland, NJ. Attorney for defendant: Cyndee L. Allert of Dughi, Hewitt & Domalewski, P.C. in Cranford, NJ.

AMUSEMENT PARK NEGLIGENCE

$45,000 RECOVERY

Amusement park negligence – Premises liability – Plaintiff falls on defective steps of amusement ride at fair – Severe gashes and lacerations – Sutures to close wounds – Permanent scarring.

Warren County, NJ

On August 1, 2016, the minor plaintiff was a business invitee at the Warren County Fair when she was caused to fall due to the defective and dangerous condition of the steps attached to the defendant owned and operated "Fun House" amusement ride, sustaining injuries. The defendant initially denied liability, but ultimately settled the matter prior to trial.

As a result of her fall, the plaintiff, a 14-year-old girl, sustained severe gashes and lacerations to her foot and ankle which have resulted in permanent disfigurement and scarring. The plaintiff underwent emergency treatment including closure of the wounds. Since that time, the plaintiff's lacerations have closed, but the trauma resulted in disfigurement and scarring which the plaintiff's physician deemed permanent.

The parties settled the matter prior to trial in the amount of $45,000 broken down as follows: $12,310 in attorney fees and $32,690 in net damages to the minor plaintiff.

REFERENCE

Oliveira vs. New Jersey Valley Amusements. Docket no. L-000108-19; Judge John H. Pursel, 05-22-19.

Attorney for plaintiff: Brad M. Russo of Russo Law Offices, LLC in Phillipsburg, NJ. Attorney for defendant: Dennis M. Marconi of Law Offices of Barnaba & Marconi in Trenton, NJ.

Subscribe Now

INSURANCE OBLIGATION

$309,500 RECOVERY

Insurance obligation – Motor vehicle negligence – T-bone collision with uninsured motorist – Lacerated forehead – Lacerated liver and splenic laceration requiring emergency splenectomy – Lifetime risk for invasive bacterial infections – Significant, permanent surgical scar.

Gloucester County, NJ

The auto collision which gave rise to this this insurance obligating case, occurred on July 27, 2017 when the minor plaintiff was a 15-year-old girl traveling as a passenger in a vehicle operated by the defendant driver. At that time the vehicle was traveling north on Delsea Drive when the co-defendant driver, who was traveling south on Delsea Drive, lost control of her vehicle, struck a mailbox, crossed into the northbound lane and violently collided with the plaintiff's vehicle in a T-bone scenario. As a result of the bench seat in the defendant's vehicle not being properly fastened to the floor of the vehicle, the impact caused the seat to separate from the floor and eject the plaintiff causing serious, permanent injury and scarring.

On the day of the accident, the co-defendant driver was uninsured. The plaintiff made an uninsured motorist claim with her automobile carrier which had $300,000 in coverage; and the defendant driver's insurer with a $15,000 policy. The plaintiff received $12,500 of the $15,000 policy limit with $2,500 going to another claimant. The uninsured motorist carriers on behalf of the plaintiff and defendant driver offered their pro rata share of their uninsured motorist policy totaling $300,000. Therefore, the defendants have offered the plaintiff a total of $309,500. The plaintiff sought court approval of the defendants' global settlement offer.

As a result of the collision, the plaintiff sustained a lacerated forehead, a lacerated liver, and splenic laceration which required an emergency splenectomy. Due to the splenectomy, the plaintiff will be at high risk for invasive bacterial infections, including life-threatening infection, for the remainder of her life. The plaintiff also has a permanent surgical scar that runs from the lower part of their sternum to the top of her pubis bone.

The defendant driver of the plaintiff's vehicle, and the plaintiff's insurer offered a global settlement of the plaintiff's uninsured motorist claim due to the lack of insurance of the co-defendant driver of the vehicle that struck the plaintiff's vehicle. The parties settled the matter prior to trial with the defendant's insurer offering $24,500 comprised of $12,000 under a bodily injury policy and $12,500 under an uninsured motorist bodily injury policy coupled with the plaintiff's insurer offering $285,000, for a total settlement of $309,500 to the minor plaintiff.

REFERENCE

Masciocchi vs. McGroarty, et al. Docket no. L-000139-18; Judge Timothy W. Chell, 05-03-19.

Attorney for plaintiff: James S. Taylor of Hoffman DiMuzio in Franklinville, NJ. Attorney for defendant driver: Eric S. Robinson of Law Office of Debra Hart in Mount Laurel, NJ. Attorney for defendant plaintiff's insurer: Robert M. Kaplan of Margolis Edelstein in Mount Laurel, NJ.

$15,986 VERDICT

Insurance obligation – UM case – Rear end collision – Alleged lumbar and cervical herniations – Injections and radiofrequency ablation – Damages only.

Union County, NJ

Liability was stipulated in this case in insurance obligation, which the 44-year-old plaintiff driver was struck in the rear by the underlying defendant who had a basic policy which did not provide liability coverage. The plaintiff proceeded under a $100,000 UM policy. The defendant denied that the plaintiff suffered a permanent injury in the accident.

The plaintiff maintained that she developed severe cervical and lumbar symptoms and the plaintiff asserted that MRIs revealed disc herniations at L4-5 and L5-S1 and a disc bulge at C4-5. The plaintiff underwent chiropractic treatments for 4 months and then came under the care of a pain management physician who performed bilateral medical branch blocks at L3-L5. The plaintiff later underwent bilateral radiofrequency ablations at L3-L5. The plaintiff maintained that she will nonetheless suffer permanent symptoms.

The plaintiff was subject to the verbal threshold. The plaintiff introduced $15,986 in excess medical bills which were incurred after her $15,000 PIP benefits were exhausted. The defendant's orthopedic surgeon testified that the MRIs showed two disc bulges with no nerve root or spinal compression. The defendant argued that there was no evidence that the cervical bulges caused symptoms. The defendant's expert further asserted that any studies showed only degenerative disc disease in the lumbar area. The defendant's expert also testified that the physical exam was normal. The plaintiff contended that she had no prior symptoms or treatment.

The jury returned a no cause defense verdict, finding no permanent injury. The jury awarded the full amount of $15,986 for medical bills, which was rendered before the jury considered whether or not there was a permanent injury.

Subscribe Now

REFERENCE

Plaintiff's chiropractor expert: Richard A. Inacio, D.C. from Union, NJ. Plaintiff's pain management expert: Ningning He, M.D. from Springfield, NJ. Defendant's orthopedic surgeon expert: Steven Robbins, M.D. from West Orange, NJ.

Ruiz vs. GEICO Indemnity, Co. Docket no. UNN- L-3896-17; Judge James Hely, 10-17-19.

Attorney for defendant: Darren C. Kayal of Rudolph & Kayal, PA in Manasquan, NJ.

LANDLORD/TENANT

$184,280 VERDICT

Landlord/tenant – Contract – Failure to maintain property – Plaintiff claims that lease misrepresented size of warehouse space leased and there were defects in property that caused damage to plaintiff's products stored there.

Union County, NJ

This matter arose out of a commercial lease of warehouse space located in Linden. The plaintiff was a wholesale and direct distributor of auto styling parts that imported its products from China which it warehoused on the subject property. On January 22, 2015, the plaintiff contacted a representative of the defendant realty company regarding leasing commercial warehouse space in New Jersey. The plaintiff and defendant made arrangements to view the subject property on January 23, 2015. The plaintiff viewed the property a second time on January 30, 2015 and then entered into a lease agreement with the co-defendant landlord to commence May 1, 2015. The lease contained details as to the size of the space, a clause wherein the landlord was liable for the repair and maintenance of the roof and structure of the property, and other provisions. The plaintiff asserted that the defendant realty company made misrepresentations regarding the size of the office space in the warehouse and that the defendant landlord would make all repairs necessary for the plaintiff's May 1, 2015 occupancy date.

The plaintiff alleged that it was promised 2,000 square feet of office space, but was only provided with approximately 1,000 square feet with the option to build an additional 1,000 square feet of space. Further, the plaintiff alleged significant water infiltration problems through the roof and other parts of the building and that water entered the premises from the roof, walls and windows whenever it rained causing damage to his products stored there. The plaintiff also claimed that these conditions rendered portions of the warehouse space unusable. The plaintiff argued that the lease clearly stated that the co-defendant landlord was responsible for maintenance of the roof and structure of the building and thus was responsible for damage caused to the plaintiff's products and the diminishment of usable space.

The defendant realty company denied representing that the office space was 2,000 square feet and pointed to multiple communications wherein it clearly stated to the plaintiff that the office space was 1,000 square feet. Further, the defendant realty company asserted that all disputes in this action are of a landlord/tenant nature regarding repairs and withholding of rent and do not involve the defendant realty company in any way. The defendant realty company put forth that, at no time, did it have a written or oral contract with the plaintiff and that the only pertinent contract at issue was the lease agreement between the co-defendant landlord and the plaintiff. The defendant realty company filed a Motion for Summary Judgment to dismiss the plaintiff's claims. The court granted the motion in part, dismissing the plaintiff's claim against the defendant realty company for breach of contract, promissory estoppel, breach of implied covenant of good faith and fair dealing, and claims of fraud based on the size of the property.

The co-defendant landlord claimed that he advised the defendant realty company that the office space was 1,000 square feet and that that is what the realty company represented to the plaintiff. The defendants denied, in any event, that the plaintiff was ever promised more than 1,000 square feet and point to the plaintiff's own email as evidence of his acknowledgement that the office was 1,000 square feet. The defendant landlord claimed that it has completed multiple repairs and attempted to fix problems identified by the plaintiff, but that the plaintiff continued to withhold rent even after repairs were made.

The jury found in favor of the plaintiff against the co-defendant landlord only and awarded damages in the amount of $184,280 with pre-judgment interest, for a total of $196,942.

REFERENCE

Bay Speed Aerokit, LLC vs. BBD Associates, LLC and Bussell Realty Corp. Docket no. L-002584-16; Judge James Hely, 05-28-19.

Attorney for plaintiff: Jay J. Freireich of Freireich, L.L.C. in Florham Park, NJ. Attorney for defendant Bussel Realty Corp.: Andrew S. Turkish of Clausen Miller Attorneys at Law in Florham Park, NJ. Attorney for defendant BBD Associates: William Handler of Handler & Handler in West Orange, NJ.

Subscribe Now

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Auto/bicycle collision – Displaced mid-shaft right clavicle fracture – Injury to right shoulder – Contusions; bruises and temporary soft tissue neck and back injuries.

Somerset County, NJ

In this motor vehicle negligence case, the plaintiff, a 53-year-old man, asserted that the defendant driver struck him from behind as he was riding his bicycle, causing him to sustain injuries. The plaintiff asserted that the defendant driver negligently struck him as he legally operated his bicycle. The defendant maintained that the plaintiff was negligent and completely at fault for the collision wherein he was injured.

On August 14, 2016, the plaintiff was riding his bicycle at the point of the Route 287 overpass on Route 206 South. The plaintiff maintained that he looked behind him and there was only one car quite far back. The plaintiff testified that after looking behind him and ascertaining that he had time and space to do so, he signaled that he was moving to the left lane in order to make a left turn off of Route 206. He moved over to the left lane and according to the plaintiff, a few seconds later, the defendant's vehicle struck the rear wheel of the plaintiff's bicycle. The plaintiff argued that he did not move into her lane and immediately was struck; rather, he had moved into the lane and was riding there for several seconds when the defendant struck him. The plaintiff declined an ambulance to the hospital at the scene of the accident and, instead, went directly to an urgent care facility where his injuries were diagnosed.

As a result of the collision, the plaintiff sustained a fractured clavicle, injury to his right shoulder, contusions, bruises and temporary soft tissue neck and back injuries that have since resolved. The plaintiff's clavicle and shoulder injuries were treated with 6 months of physical therapy. The plaintiff claimed that he continues to see a psychologist to deal with the trauma of his injury and that he no longer rides a bike, but instead walks everywhere he goes because of the accident.

On the day in question, the defendant was operating her motor vehicle on Route 202/206 near the intersection with Schooley Mountain Road. The defendant asserted that the plaintiff switched suddenly from the right lane into the defendant's lane causing an impact to occur. Further, the defendant pointed to the report of an independent medical examination where the plaintiff's injuries were described as fully healed and not permanent in nature.

The jury found each party 50% negligent, barring the plaintiff from recovery.

REFERENCE

Howland vs. Jibilian. Docket no. L-000208-17; Judge Edward M. Coleman, 04-30-19.

Attorney for plaintiff: Glenn A. Montgomery of Montgomery Fetten in Bridgewater, NJ. Attorney for defendant: Steven I. Litvak of Litvak & Trifiolis, P.C. in Cedar Knolls, NJ.

Auto/Motorcycle Collision

$495,000 AVAILABLE COVERAGE RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Left turn collision caused by non-emergency medical transport vehicle – Displaced fracture of tibia and fibula – 2 surgeries – No income claims.

Middlesex County, NJ

In this motor vehicle negligence action, the male plaintiff driver, an off duty police officer in his late 20s, contended that the defendant driver of a non-emergency medical transport van negligently made a left turn into his path, causing the accident and the plaintiff's resulting injuries. The defendant had a $1,000,000 policy. The defendant maintained that the driver was not listed on its policy, that it had no opportunity to underwrite the driver, and that the coverage should be stepped down to $15,000. The plaintiff countered that under statute, such non-emergent medical transport vehicles must carry at least $500,000 in coverage.

The plaintiff asserted that he suffered displaced tibia and fibula fractures. The plaintiff underwent an initial ORIF. The plaintiff suffered a non-union and required a second surgery. He claimed that he will suffer permanent pain. The plaintiff was ultimately able to return to full duty as a police officer and the plaintiff made no income claims.

The defendant initially paid $5,000 for property damage. The case then settled for $495,000.

Subscribe Now

REFERENCE

Plaintiff's orthopedic surgeon expert: James Kanellakos, M.D. from Summit, NJ.

Marulanda vs. Patriot Care, Inc., et al. Docket no. MID-L-6460-18, 07-19.

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

Auto/Pedestrian Collision

$98,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Left tibia fracture with closed reduction – Left leg laceration with permanent scarring; forehead laceration – PTSD.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 7-year-old boy, asserted that the defendant driver, in the course of her employment, negligently struck the minor plaintiff pedestrian with a vehicle owned by the co-defendant, causing the minor to sustain multiple injuries. The plaintiff brought suit against the defendant driver and the co-defendant owner of the vehicle, her employer. The defendants denied negligence and contended that the plaintiff was at fault for running into the street without warning from between parked vehicles.

On April 23, 2017, the minor plaintiff was a pedestrian lawfully crossing Catherine Street in Perth Amboy when he was struck by a vehicle proceeding north-bound. The vehicle that struck the plaintiff was owned by the co-defendant transportation company and driven by the co-defendant driver. As a result of the accident, the minor plaintiff suffered serious injury and continues to suffer from emotional trauma in the form of post-traumatic stress disorder.

The minor plaintiff sustained a left tibia fracture with closed reduction; left leg laceration with permanent scarring; forehead laceration and post-traumatic stress disorder. At the time of disposition, the plaintiff was still receiving psychological treatment.

The defendants argued that the plaintiff was negligently at fault for the incident and responsible for his own injuries. The defendant driver admitted that she did not see the plaintiff in the road, but argued that the plaintiff ran into the street unexpectedly and the defendant driver's view of the plaintiff was obstructed by parked cars. The defendants also asserted that the plaintiff's fracture had fully healed without residual injury or permanency and that the plaintiff suffered no other serious or permanent injuries.

The parties settled the matter prior to trial in the amount of $98,000 broken down as follows: $26,258 in attorney fees and $71,742 in net damages to the minor plaintiff.

REFERENCE

Martinez vs. Wallace, et al. Docket no. L-003919-17; Judge Phillip Lewis Paley, 05-02-19.

Attorney for plaintiff: Margaret Kiehe Paterson of Law Offices of Karim Arzadi in Perth Amboy, NJ. Attorney for defendant: Eric Befeler of Law Office of Juengling & Urciuoli in Woodbridge, NJ.

Intersection Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Intersection collision – Failure of commercial vehicle to obey stop sign – Lumbar herniation – Surgery – Cervical herniation – Left shoulder tear.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff driver, in his mid 30s, contended that the defendant driver of a commercial pick-up truck negligently failed to stop at a stop sign, striking the passenger side of his vehicle.

The plaintiff contended that he suffered a lumbar and a cervical herniation which were confirmed by MRI.

The plaintiff further asserted that he suffered lumbar and cervical radiculopathy and the plaintiff would have pointed to positive results of his EMG/NCS. The plaintiff claimed that conservative care was inadequate and that he required lumbar surgery. There was no evidence that cervical surgery is indicated. The plaintiff also contended that he suffered a tear of the left, non-dominant shoulder which will cause permanent symptoms.

The case settled before the defendant's carrier retained counsel for the $100,000 policy limits.

REFERENCE

Plaintiff's chiropractor expert: Philip Delli Santi, D.C. from Newark, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's pain management expert: Amit Goswani, M.D. from Wayne, NJ.

Lalla vs. Nieves-Castro, et al. Docket no. ESX-L-7587-19, 01-13-20.

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

Subscribe Now

Parking Lot Collision

$100,000 VERDICT

Motor vehicle negligence – Parking lot collision – Herniated disc at C5-6 with the cord compression – Radiofrequency ablation.

Middlesex County, NJ

On February 12, 2016 the plaintiff was operating a motor vehicle traveling southbound on Vineyard Road near the intersection of Old Post Road in Edison. At that time the defendant was operating a motor vehicle that exited a parking lot and entered traffic on Vineyard Road near the intersection of Old Post Road. The plaintiff asserted that the defendant negligently operated her vehicle such that she exited the parking lot without it being safe to do so and collided with the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained a herniated disc at C5-6 with cord compression. She underwent single-level medial branch radiofrequency ablation to treat her pain.

The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant maintained that the plaintiff only sustained $17,000 in boardable medical bills.

The jury found in favor of the plaintiff and awarded $100,000 in damages with pre-judgment interest, for a total award of $101,248.

REFERENCE

Khairulla vs. Cerqua. Docket no. L-004416-17; Judge Patrick Bradshaw, 06-19-19.

Attorney for plaintiff: J. Sean Connelly of Seigel Law, LLC in Ridgewood, NJ. Attorney for defendant: Karen Quinn Sopko of Law Offices of Cindy L. Thompson in Piscataway, NJ.

$6,500 RECOVERY

Motor vehicle negligence – Parking lot collision – Minor plaintiff suffers neck and back strain – Chiropractic treatment.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 9-year-old girl, asserted that the defendant driver struck the vehicle in which she was a passenger and caused significant injury. The plaintiff's 15-year-old sister was also a passenger in the vehicle and her case was settled for an undisclosed sum prior to trial. The defendant denied liability and argued that the collision was caused by an unidentified third party. The defendant also asserted that the plaintiff's injuries were not significant and did not warrant damages.

On May 29, 2014, the plaintiff was the minor backseat passenger in a vehicle traveling on West Front Street in Plainfield. The defendant was the operator of a motor vehicle that, the plaintiff contended, she failed to operate in a safe manner and thereby exited a parking lot located on Plainfield Avenue and collided with the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained neck and back strain which were treated with chiropractic treatment.

The parties settled the matter prior to trial in the amount of $6,500 broken down as follows: $1,681 in attorney fees and $4,819 in damages to the minor plaintiff.

REFERENCE

Polanco-Vanegas, et al. vs. Perez. Docket no. L-001743-16; Judge James Hely, 09-04-19.

Attorney for plaintiff: Anthony R. Fattell of Lord, Kobrin, Alvarez & Fattell in Mountainside, NJ. Attorney for defendant: Amanda M. Dadiego of Law Office of Cindy L. Thompson in Piscataway, NJ.

Rear End Collision

$315,000 RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff driver struck in rear by defendant driver using own car while delivering pizza – Cervical herniation and 3 lumbar bulges – Cervical and lumbar surgery following conservative therapy.

Morris County, NJ

In this action for motor vehicle negligence, the 60-year-old female plaintiff contended that she was severely injured when the defendant driver, who was using his own car while delivering pizza, struck her in the rear while she was stopped, yielding to traffic. The verbal threshold did not apply in this action.

The plaintiff contended that after the collision, she felt a popping sensation in her upper back and neck. The plaintiff related that she developed a severe cervical herniation. The plaintiff also reported lower back symptoms. The MRI confirmed the cervical herniation and 3 lumbar bulges. The plaintiff further related that she struck her knee on the steering wheel. The plaintiff maintained that she suffered a knee sprain that will

cause permanent symptoms despite conservative care. The plaintiff also contended that she suffered a shoulder sprain that was treated conservatively. The plaintiff embarked on a course of conservative therapy, which she asserted was inadequate as were cervical and lumbar injections. The plaintiff underwent surgery to both areas and claimed that the procedures provided partial relief only.

The defendant denied that the accident caused the herniations and contended that the plaintiff suffered soft tissue injuries only. The defendant maintained that the plaintiff suffered from degenerative disc disease, and the plaintiff countered that she had no prior symptoms or treatment. The defendant did not dispute that the knee and shoulder complaints were caused by the accident.

The case settled prior to trial for $315,000, including the defendant driver's $15,000 policy and $300,000 from the pizza chain.

REFERENCE

Plaintiff's chiropractor expert: Jay Brecker, D.C. from Dover, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: David Feldman, M.D. from Denville, NJ.

Schmidt vs. Rasool and Upper Crust, Inc. t/a Dominos Pizza. Docket no. MRS-L-1713-17, 09-05-19.

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

$19,305 RECOVERY

Motor vehicle negligence – Rear end collision – Compression fracture at L-3 – Herniation at L5-S1 – Epidural injections – $100,000/$19,305 high/low agreement.

Morris County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver rear-ended the plaintiff's vehicle causing serious injury to the plaintiff. The defendant denied causation.

On February 19, 2016, the male plaintiff was operating a motor vehicle traveling on Route 23 South in Pequannock and the defendant was also traveling in the same direction behind the plaintiff. The plaintiff alleged that the defendant failed to keep a proper distance and was traveling at an unsafe rate of speed causing a violent rear end collision between the vehicles. As a result of the collision, the plaintiff driver sustained a compression fracture at L-3, a herniation at L5-S1 and disc bulges in the cervical and lower spine. The plaintiff was treated with epidural injections.

The plaintiff claimed unpaid medical bills of $17,800, as well as other compensatory damages. The defendant stipulated to liability for the collision, but claimed that the plaintiff's damages were degenerative in nature and not caused by the subject incident.

At arbitration, the arbitrator found the defendant 100% liable for the subject collision. The parties entered into a high/low agreement of $100,000/$19,305. The matter went to trial and the jury found in favor of the defendant. Following the verdict, the parties settled the matter for $19,305 per the pretrial agreement.

REFERENCE

Phillip Perrotta vs. Robert Myszka. Docket no. L-001481-17; Judge W. Hunt Dumont, 03-28-19.

Attorney for plaintiff: Jacqueline Rosa of Seigel Law, LLC in Ridgewood, NJ. Attorney for defendant: Jennifer Obodo of Law Offices of Eric H. Bennett in Hackensack, NJ.

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Motor vehicle negligence – Rear end collision – Alleged lumbar herniations and bulges – Recommended lumbar fusion – Damages only.

Mercer County, NJ

Liability was stipulated in motor vehicle negligence collision case. The plaintiff contended that because of the moderate impact, she suffered a herniation at L-5-S-1, as well as bulges at L4-5 and L3-4. The plaintiff maintained that she will suffer permanent pain and that she is considering undergoing a recommended lumbar fusion. The plaintiff's vehicle sustained moderate property damage.

The defendant denied that the plaintiff suffered a permanent injury in the accident or that she met the verbal threshold. The defendant established that the plaintiff had undergone conservative treatment for some time because of lower back complaints until approximately one week before the accident and contended that any difficulties stemmed from degenerative disc disease.

The jury found for the defendant on the verbal threshold.

REFERENCE

Defendant's orthopedic surgeon expert: John Nolan, M.D. from Hamilton, NJ.

O'Hagan vs. Hannify. Docket no. MER- L-2289-16; Judge Douglas Hurd.

Attorney for defendant: C. Robert Luthman of Weir Attorneys in Ewing, NJ.

Subscribe Now

$365,000 RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on sidewalk abutting residence – Defendant property owner creates dangerous condition of sump pump discharging onto driveway – Runoff freezes – Ankle fracture – ORIF.

Middlesex County, NJ

In this action for premises liability, the plaintiff, in her 30s, contended that the defendant landlord of the single-family home, and the tenant, created, maintained and/or failed to rectify a hazardous condition because a sump pump discharged on the driveway was higher that the abutting sidewalk. The plaintiff asserted that runoff froze, creating a dangerous condition which caused her to fall and sustain injury. The defendants each had a $300,000 policy.

The defendants maintained that the cause of the incident was the negligence of the plaintiff who failed to make adequate observations. The defendant tenant also maintained that any difficulties were structural and that under the lease the landlord had responsibility.

The plaintiff suffered a trimalleolar fracture that necessitated an ORIF. The plaintiff asserted that she will suffer permanent pain and limitations and that future surgery might be necessary. The plaintiff missed several months from her clerical job.

The case settled prior to trial for $365,000, including $270,000 from the landlord and 90,000 from the tenant.

REFERENCE

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

Horbal vs. Marus, et al. Docket no. MID-L-1706-18, 10-19.

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

Negligent Maintenance

$7,500 RECOVERY

Premises liability – Negligent maintenance – Fall down – Severe head laceration – Permanent scarring.

Monmouth County, NJ

In this premises liability case, the minor male plaintiff contended that the defendant department store negligently maintained its premises such that there was a hazard in the form of a raised fold in the carpeting on the floor of the store which caused the minor plaintiff to fall and be permanently injured. The defendant had not answered the complaint prior to settling the case.

On June 4, 2014, the minor plaintiff was a business invitee along with his mother at the defendant department store. While his mother was shopping, the plaintiff proceeded around one of the clothing racks, tripped and fell on a fold in the carpet, and struck his head on the sharp edge of one of the clothing racks. As a result of the incident, the plaintiff sustained a severe laceration on his head. The plaintiff's laceration left him with a permanent scar.

The parties settled the matter prior to trial in the amount of $7,500 broken down as follows: $2,300 in attorney fees and $5,200 in net damages to the minor plaintiff.

REFERENCE

Bowman vs. Boscov's, Inc. Docket no. L-000679-19; Judge Lourdes Lucas, 10-10-19.

Attorney for plaintiff: Stephanie Tolnai of Clark Law Firm in Belmar, NJ.

DEFENDANT'S VERDICT

Premises liability – Negligent maintenance – Fall down stairs – Torn left meniscus – Tailbone injury – Arthroscopic surgery on knee with residual disability.

Passaic County, NJ

In this premises liability action, the female plaintiff was a resident of the defendant condominium complex operated and managed by the co-defendant management company. The plaintiff asserted that the defendants failed to maintain the premises with reasonable care and allowed a dangerous and hazardous condition to exist and to cause the plaintiff to fall and sustain serious, permanent injury. The defendants denied liability and contested the plaintiff's damages.

On March 21, 2015, as the plaintiff was using an exterior set of concrete steps at the defendants' property, the stairs crumbled beneath her, causing her to fall and sustain injury to her knee and tailbone. The plaintiff argued that the steps were defective and were negligently maintained such that they created a hazard to users of the stairway. As a result of the fall, the plaintiff sustained traumatic injuries including a torn

Subscribe Now

left meniscus and tailbone injury that requires her to sleep on her side at all times. The plaintiff underwent arthroscopic surgery and claims residual disability.

The defendants argued that the plaintiff had a preexisting torn labrum and bursitis that were the underlying cause for her injuries. The defendants also pointed to the fact that the plaintiff is totally disabled due to chronic Lyme disease already so there was no change in her status due to any claimed injury.

The jury returned a verdict in favor of the defendants finding that they were not negligent.

REFERENCE

Monarque vs. Parkside at Wanaque, et al. Docket no. L-004287-16; Judge Thomas F. Brogan, 06-10-19.

Attorney for plaintiff: Jean-Claude Labady of Garces, Grabler & Lebrocq, P.C. in Newark, NJ. Attorney for defendant Parkside at Wanaque: John M. Sapata of Tango, Dickinson, Lorenzo, McDermott & McGee in Millburn. Attorney for defendant Greentree Development Group: Ronald S. Heymann of Heymann & Fletcher in Mt. Freedom, NJ.

STATE LIABILITY

$500,000 RECOVERY

State liability – Motor vehicle negligence – Defendant pick up truck driver, in course of employment with state, makes left hand turn into path of plaintiff driver – Cervical herniation – Surgery – No income claims.

Sussex County, NJ

In this case, the male plaintiff driver, in his mid 40s, contended that the defendant driver of a commercial pick-up truck, who was in the course of his employment for the state, negligently made a left-hand turn into the plaintiff's path, causing the collision. The defendant then collided with two drivers who were not involved in the subject litigation. The plaintiff's motion for summary judgment against the driver and state were granted.

The plaintiff maintained that he suffered herniations at C4-5 and C5-6 with encroachment, and that after more conservative efforts were inadequate, he underwent a cervical discectomy and fusion. The plaintiff's neurosurgeon would have testified that despite the surgery, the plaintiff will permanently suffer pain and limitation which is heightened during periods of stress.

The defendants' expert orthopedist, radiologist and neurologist each denied that the plaintiff sustained permanent injuries to the neck or shoulder. The defendant denied that any difficulties were related toe the accident or that the plaintiff met the Tort Claims threshold. The plaintiff countered that he had no prior symptoms and the plaintiff would have argued that the defendant's position should be rejected.

The plaintiff made no income claims.

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

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Defendant's neurologist expert: Steven M. Lomazow, M.D. from Belleville, NJ. Defendant's radiology expert: Michael L. Brooks, M.D. from Darby, PA.

Trapasso vs. Brown and State of New Jersey. Docket no. SSX-L-287-18, 01-02-20.

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

WAGE THEFT

DEFENDANT'S VERDICT

Wage theft – Violation of labor law – Plaintiffs claim defendant employer did not keep track of hours and did not pay overtime as required by law – Defendant claims plaintiffs worked only 40 hours per week and were paid as such.

Union County, NJ

In this employment action, the plaintiff employees asserted that the defendant employer violated the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a to 56a38, which imposes the legal obligation to keep a true and accurate record of the hours worked by employees and the wages paid to each employee. The 3 plaintiffs were employed by the defendant as general laborers to perform manual labor during various periods in 2016 and 2017.

Subscribe Now

The plaintiffs were not overtime-exempt employees and did not perform overtime-exempt work or services for the defendant.

The plaintiffs claimed that the defendant failed to keep accurate records and then failed to pay overtime to the plaintiffs per the NJWHL. The plaintiffs contended that they were paid a "Salary" of $600 per week regardless of the amount of hours they actually worked in any given week. The plaintiffs asserted that the defendant kept no records that demonstrated or recorded the amount of hours the plaintiffs worked each week.The defendant argued the plaintiffs were hired for $600 per week for approximately 40 hours per week with no overtime and there was a stipulation that they would not be paid for time spent traveling to and from the job sites.

The first plaintiff testified that he would bet to the shop around 7:00 a.m. and work until 7:00 or 8:00 p.m. He testified that he worked on many Saturdays and Sundays for 6 or 7 hours. He stated that when they would go to some job sites, he would be the driver and he would take the other 2 employees. During his testimony, he also stated that when they did go to job sites, work would normally start around 6:00 a.m. The plaintiff testified that the defendant's son would accompany the plaintiffs to job sites. He also testified that the owner of the company never went to the job sites when they were performing work. The second plaintiff testified that he also worked approximately 7 days per week and that he would get to work at 3:00 a.m. every morning. He stated that he got to work early to load the pickup truck. The third plaintiff testified that he worked at 4:00 a.m. every morning and that it would take approximately 3 hours to fill the truck with materials and machines to get to the job site.

The defendant testified that, if there was inclement weather at a job site, the plaintiffs would be taken back to the shop; if there was available work at the shop, they could perform work there. If there was no work that had to be performed, they could leave. The defendant testified that on some days, they would work 8 hours a day and on other days they would work less hours. The defendant denied that the plaintiffs every worked on a Saturday or any Sundays. He further testified that he would pay the plaintiffs with checks derived from Quick Books. The defendant noted that there were times when the plaintiffs would return to the shop after the quitting time of 3:30, but that was due to traffic. He also stated that he provided transportation to and from job sites so that it would not cost the plaintiffs to get there. The defendant denied that any of the plaintiffs were required to drive or drive others to the job site and that no one worked earlier than 6:00 a.m. The defendant denied that anyone could even get into the shop earlier than that since only the defendant, his son, and one other employee had keys to the shop. The defendant asserted that the plaintiffs never complained or made allegations that they were working more hours than for what they were paid.

The court agreed with the plaintiffs as to the requirement of the defendant to pay overtime hours if overtime hours were worked. The court also agreed that the defendant did not track the hours each plaintiff worked each week in contravention of the NJWHL. However, the court found that none of the plaintiffs credibly or accurately recalled their work circumstances. The court ruled that the plaintiffs, having the burden of proving their claim by a preponderance of the evidence, failed to meet that burden and that the court would be required to speculate in order to award damages, which it declined to do. The court returned a verdict in favor of the defendant.

REFERENCE

Chavez-Hernandez, Pensa and Ferreira vs. Eagle Steel and Iron, LLC. Docket no. L-002714-17; Judge Alan G. Lesnewich, 05-21-19.

Attorney for plaintiff: Ravi Sattiraju of The Sattiraju Law Firm, P.C. in Princeton, N.J. Attorney for defendant: Terry B. Stomel of Adler & Stomel, PA in Bridgeton, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$6,900,000 RECOVERY - MEDICAL MALPRACTICE - NEGLIGENT FAILURE TO PERFORM NECESSARY SURGERY - EXTENDED IMMOBILITY FOR MORE THEN ONE YEAR DUE TO REPEATED ATTEMPTS TO TREAT INFECTION STEMMING FROM RUPTURED APPENDIX MEDICALLY, RATHER THAN SURGICALLY - HETEROTOPIC OSSIFICATION AFFECTING LOWER LIMBS AND HIPS - PERMANENT CONFINEMENT TO WHEELCHAIR.

Bronx County, NY

In this medical malpractice action, the then 38-year-old male plaintiff contended that the defendant general surgeon at the co-defendant hospital negligently failed to perform necessary surgery over more than a one-year period after the plaintiff, who was admitted with severe abdominal pain and vomiting, had an infection due to a ruptured appendix. The plaintiff maintained that because of the repeated attempts to treat the resulting infections medically, rather than surgically, an extended period of immobility that lasted more than a year resulted in the plaintiff developing heterotopic ossification, or an abnormal growth of bone in soft tissue, which has primarily affected the lower limbs and hips, resulting in the plaintiff being permanently restricted to a wheelchair. The defendants contended that it is well known that heterotopic ossification is a congenital condition and that it is very likely that the plaintiff would have developed it irrespective of the care provided by the defendants. The plaintiff countered that he could have avoided this untoward result had proper and timely care been given. The plaintiff would have also argued that a predisposed individual would be at especially great risk for this condition if extended immobility occurred and that the defendant's should have been aware that such extended immobility needed to be avoided in the plaintiff's case.

The case settled prior to trial for $6,900,000.

REFERENCE

38-year-old plaintiff vs. Defendant general surgeon and hospital.

Attorney for plaintiff: John Dalli of Dalli & Marino, LLP in Mineola, NY.

$6,290,000 VERDICT - MEDICAL MALPRACTICE - FAILURE TO TIMELY DIAGNOSE AND TREAT SEVERE CORONARY ARTERY DISEASE - CARDIAC ARREST - WRONGFUL DEATH AT AGE 48 - SURVIVAL ACTION.

Lehigh County, PA

This action arose from the death of the 48-year-old male decedent from cardiac arrest while he was out jogging in 2016. The decedent had begun treatment with the defendant cardiologist six weeks earlier under the advice of his non-party primary care physician. The plaintiff contended that following his examination of the decedent and his medical history, the defendant cardiologist negligently failed to appreciate signs and symptoms of severe coronary artery disease and render appropriate and timely treatment to the decedent which the plaintiff asserted would have prevented his death. The defendants, including the cardiologist and the health network which employed him, argued that the decedent's treatment met the standard of care in all respects and that his sudden death was unpredictable.

After a six-day trial, the jury found the defendant cardiologist causally negligent and awarded the plaintiff estate $6,290,000 in damages. Post-trial motions are currently pending.

REFERENCE

Cowher vs. Kodali and St. Luke's University Health Network. Case no. 2018-C-0264; Judge J. Brian Johnson, 12-09-19.

Attorney for plaintiff: Andrew Youman of Youman & Caputo in Philadelphia, PA.

Subscribe Now

$1,333,000 VERDICT - DENTAL MALPRACTICE - INJURY TO INFERIOR ALVEOLAR NERVE WHILE REMOVING MOLAR IN ANTICIPATION OF PLACEMENT OF IMPLANT - PERMANENT PAIN AND PARESTHESIA - PLAINTIFF SUCCESSFULLY MOVES IN LIMINE FOR ORDER PRECLUDING DEFENDANT FROM ARGUING THAT PLAINTIFF SUFFERED A NORMAL RISK OF THE PROCEDURE.

Morris County, NJ

In this dental malpractice case, the female plaintiff in her early 60s contended that the defendant periodontist, who was removing a molar in anticipation of placing an implant, performed the removal in a negligent manner, resulting in an injury to the plaintiff's inferior alveolar nerve. The plaintiff contended that as a result, she will suffer severe and permanent pain in her chin area which is significantly heightened by even a light touch. The plaintiff asserted through expert opinion that there was ample room to complete the extraction without injuring the inferior alveolar nerve and the fact that it was injured evidenced negligence. The plaintiff also pointed out the procedure took more than four hours and contended through expert testimony that it is normally completed in approximately one hour. The defendant denied that the procedure was negligently performed and claimed that the plaintiff suffered an unexpected risk of the procedure.

The jury found for the plaintiff and awarded $1,100,000 to the plaintiff and $233,000 to her husband on his per quod claim. The defendant's post-trial motions are pending. The award, including interest, approximates $1,450,000.

REFERENCE

Seergy vs. Ricker. Docket no. MRS-L-1244-16; Judge W. Hunt Dumont, 09-26-19.

Attorneys for plaintiff: Bruce H. Nagel and Susan F. Connors of Nagel Rice, LLP in Roseland, NJ.

PRODUCT LIABILITY

$17,589,233 GROSS VERDICT INCLUDING $11,275,000 PUNITIVE AWARD - TOBACCO LAWSUIT - PRODUCT LIABILITY - FAILURE TO WARN - BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY - WRONGFUL DEATH OF 58-YEAR-OLD FEMALE - CHAPTER 93A VIOLATION ALLEGED.

Middlesex County, MA

In this tobacco liability/wrongful death action, the plaintiff estate of the female decedent contended that the defendant tobacco company was negligent in its promotion and sale of cigarettes, resulting in the decedent developing lung cancer which ultimately killed her at the age of 58. The plaintiff asserted that the decedent smoked Winston and Winston Light brand cigarettes manufactured by the defendant RJR Tobacco starting in her early teen-age years. She was diagnosed with lung cancer in 2015 and died shortly thereafter in 2016. The plaintiff estate maintained that the defendant breached its implied warranty of merchantability by selling a product that was inherently dangerous and defectively designed. The plaintiff further maintained that the defendant's marketing strategy violated the state's consumer protection laws by targeting below age consumers. Finally, the plaintiff maintained that and the defendant conspired with other tobacco companies in failing to warn consumers including the decedent as to the dangerous nature of its products. The defendant RJR Tobacco denied any wrongdoing. The defendant disputed that its product was defectively designed, maintaining that the decedent had the ability to discontinue using its products, which she declined to do until just before her death, despite knowing that she was dying from lung cancer.

At the conclusion of a three-week trial, the jury returned with a verdict in favor of the plaintiff, assessing liability at 50.42% against the defendant and 49.58% against the decedent. The jury then awarded a total gross award of $17,589,233 including $11,275,000 in punitive damages.

REFERENCE

Pamela Coyne vs. R.J. Reynolds Tobacco Co. Case no. 1681CV0266; Judge Joshua I. Wall, 05-31-19.

Attorney for plaintiff: Randy Rosenblum of Dolan Dobrinsky Rosenblum in Miami, FL. Attorneys for plaintiff: Gary Paige and Cassandra Costellano-Lombard of Gordon & Partners in Davies, FL. Attorney for plaintiff: Meredith Lever of Public Health Advocacy Institute in Boston, MA.

Subscribe Now

MOTOR VEHICLE NEGLIGENCE

$23,050,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - BUS NEGLIGENCE - SCHOOL BUS COLLIDES WITH TREE AFTER SWERVING TO AVOID STRIKING ANOTHER VEHICLE HEAD-ON - AUTISTIC MINOR PLAINTIFF BUS PASSENGER SUFFERS CATASTROPHIC INJURIES WHEN HE IS EJECTED FROM HIS SEAT - TRAUMATIC BRAIN INJURY.

Waterbury County, CT

In this motor vehicle negligence action, the 12-year-old minor male plaintiff school bus passenger contended that the defendant school bus driver and the co-defendant employer were liable for the plaintiff's injuries after the driver swerved to avoid a collision and then struck a tree. The minor plaintiff was thrown from the bus and struck his head multiple times, resulting in skull fractures and multiple brain bleeds. The plaintiff, who is mildly autistic, claimed that he sustained a permanent traumatic brain injury in the collision. The defendants denied that they were at fault for the collision and maintained that the other vehicle suddenly swerved into the bus' lane of travel and the driver swerved to avoid a head-on collision. The defendant also disputed the nature and extent of the plaintiff's alleged injuries and damages.

At the conclusion of the trial, the jury returned with a verdict in favor of the plaintiff, assessing liability at 26% to the driver of the car and 74% to the bus company defendants. The jury awarded $3,050,000 in economic damages and $20,000,000 in non-economic damages.

REFERENCE

Gabriel Goncalves, et al. vs. Utica Mutual Insurance Company, et al. Case no. CV-15-6018864-S; Judge Andrew Roraback, 11-25-19.

Attorneys for plaintiff: Michael D'Amico and Jeremy D'Amico of D'Amico & Pettinicchi, LLC in Watertown, CT. Attorney for defendant: Daniel J. Krisch of Halloran & Sage in Hartford, CT. Attorney for defendant: Michele C. Wojcik of Nuzzo & Roberts, LLC in Cheshire, CT. Attorney for defendant: G. Randall Avery of Law Offices of G. Randall Avery in Darien, CT.

$12,450,000 COMBINED VERDICT - MOTOR VEHICLE NEGLIGENCE - PLAINTIFFS' CAR STRUCK IN REAR BY DEFENDANT'S TRACTOR-TRAILER AND PUSHED INTO VEHICLE IN FRONT - DISC INJURIES TO PLAINTIFFS DRIVER AND PASSENGER - TRIGEMINAL NEURALGIA SUFFERED BY PLAINTIFF DRIVER - DAMAGES ONLY.

Harris County, TX

The plaintiffs in this rear end collision action contended that they sustained serious, permanent and life-altering injuries after their car was struck in the rear by the defendant's tractor-trailer in the course and scope of his employment with the co-defendant trucking company. The plaintiff maintained that the force of the impact pushed the plaintiffs' vehicle into the vehicle to their front, causing a chain-reaction collision. The female plaintiff driver and male plaintiff front-seat passenger maintained that they sitting in heavy traffic when their car was violently struck by the defendants' tractor-trailer from behind at a relatively high rate of speed. The male plaintiff passenger claimed that as a result of the accident, he sustained disc bulges at L4-L5 and L5-S1 along with foraminal stenosis at L5-S1, cervical stenosis, and cervical and lumbar radiculopathy. Epidural steroid injections and future lumbar fusion surgery will be required according to the plaintiff's medical experts. The female plaintiff driver claimed that she sustained disc bulges at C4-C5 and C5-C6, headaches, a lumbar disc herniation at L5-S1, and trigeminal neuralgia requiring surgery, which has not provided her enough relief likely resulting in the need for future microvascular compression surgery. The defendants stipulated liability, but questioned the nature and extent of the plaintiffs' injuries.

The jury found that the male plaintiff passenger was entitled to $450,000 in past pain and suffering. The jury further found that the female plaintiff driver was entitled to past pain and suffering damages of $4,200,000 as well as $7,800,000 in future pain and suffering for a total verdict of $12,450,000.

REFERENCE

Christine John and Christopher Lewis vs. Robert Alonzo and New Prime, Inc. Case no. 201444841; Judge Michael Gomez, 09-30-19.

Attorney for plaintiff: Jim S. Hart of Williams Hart Boundas & Easterby, LLP in Houston, TX. Attorney for defendant: Michael Walter Magee of Mehaffy Weber in Houston, TX.

Subscribe Now

$8,500,000 VERDICT - BUS/PEDESTRIAN COLLISION - TRANSIT AUTHORITY NEGLIGENCE - BUS NEGLIGENCE - 42-YEAR-OLD DECEDENT STRUCK AFTER REACHING HALFWAY POINT OF ROADWAY - COLLISION CAPTURED ON SURVEILLANCE VIDEO FROM NEARBY BUSINESS - WRONGFUL DEATH OF WIFE AND MOTHER OF SIX - NO CLAIM FOR PRE-IMPACT TERROR OR CONSCIOUS PAIN AND SUFFERING MADE.

Kings County, NY

This action was brought by the plaintiff estate which contended that the defendant MTA's bus driver was negligently speeding and failed to make observations as the 42-year-old female decedent, who was crossing mid-block, reached the center area of the roadway. The plaintiff maintained that as a result, the decedent was struck and killed from blunt force trauma. The decedent left behind a husband and six children, five of whom were minors at the time of the accident. The entire event was captured on surveillance video from a nearby business. The defendant maintained that the plaintiff was clearly comparatively negligent in crossing in the mid-lock area of the roadway.

The case settled prior to trial for $8,500,000. As of the time of the settlement, only the plaintiff's accident reconstruction expert had been disclosed.

REFERENCE

Khan vs. MTA, et al. Index no. 520724/16, 04-03-19.

Attorneys for plaintiff: Peter Gordon and Supriya Kichloo of Gordon & Gordon, P.C. in Forest Hills, NY. Attorney for plaintiff: Peter W. Thomas of Peter W. Thomas, PC in Forest Hills, NY.

$1,392,232 VERDICT INCLUDING $500,000 PUNITIVE AWARD - MOTOR VEHICLE NEGLIGENCE - AUTO/PEDESTRIAN COLLISION - POLICE OFFICER STRUCK WHILE ACTING IN LINE OF DUTY - DEFENDANT DRIVING WHILE UNDER THE INFLUENCE AND WITHOUT A VALID DRIVER'S LICENSE - FRACTURED PELVIS - DAMAGES ONLY.

Palm Beach County, FL

In this motor vehicle negligence case, the plaintiff, a state police officer employed by the Florida Highway Patrol, contended that he was conducting a routine traffic stop when he was suddenly struck by a vehicle being driven by the defendant. The plaintiff contended that the defendant was negligently operating his vehicle while under the influence of alcohol and without a valid driver's license. The plaintiff further contended that the defendant driver was negligent in failing to yield to the left for an emergency vehicle and in negligently striking his high patrol car as well as the other vehicle the plaintiff had stopped. A default judgment was entered against the defendant in March, 2018, for failure to respond to the complaint. Accordingly, the case was heard on the issue of damages only with the plaintiff seeking both compensatory and punitive damages. The defendant driver had pled guilty to driving under the influence causing or contributing to serious bodily injury and for operating a vehicle without a valid driver's license. He was sentenced to five years in the Florida Department of Corrections.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded him $1,392,232 in compensatory damages and $500,000 in punitive damages. The plaintiff's taxable costs of $7,362 were added to the award for a final judgment of $1,899,594.

REFERENCE

Mickens vs. Castillo. Case no. 502017CA005615XXXXMB; Judge Lisa S. Small, 10-08-19.

Attorneys for plaintiff: Victoria L. Olds and Lonniell Olds of Olds & Stephens, P.A. in West Palm Beach, FL. Attorney for defendant: Pro se.

ADDITIONAL VERDICTS OF INTEREST

Civil Rights

$27,000,000 VERDICT - CIVIL RIGHTS - 42 U.S.C. SECTION 1983 VIOLATION - PLAINTIFF ALLEGED HE WAS WRONGFULLY CONVICTED AND IMPRISONED FOR 27 YEARS FOR CRIME HE DID NOT COMMIT.

U.S.D.C., District of Massachusetts

In this civil rights violation action, the plaintiff contended that he was wrongfully convicted and incarcerated for 27 years for a murder he did not commit. The plaintiff, who is African American, contended that he was falsely arrested and convicted in connection with the murder of an innocent bystander outside a nightclub where a dispute over a drug deal erupted into gunfire. The plaintiff was convicted based upon identification of the plaintiff as the shooter in a case where an errant bullet struck and ultimately killed the bystander, a young female in her 20s. Specifically, the plaintiff asserted that the investigating officers and the defendant city acted inappropriately by using suggestive tactics to get the plaintiff identified as the shooter. The plaintiff maintained that the defendant's officers had received photographs of several potential suspects from the Hartford Police department, including the plaintiff's photograph, although the plaintiff vehemently denied that he was anywhere near where the shooting occurred at the time. The plaintiff argued that the defendant's officers used suggestive tactics to obtain a positive identification from several of the eyewitnesses. The plaintiff sought damages for his 27 years of incarceration from the defendant town and its police officers. The defendants denied any wrongdoing and disputed that there was any violation of the plaintiff's civil rights. The defendants further contended that the plaintiff was not entitled to any restitution since he was not exonerated by the court, which the defendants maintained was essential for restitution.

At the conclusion of the two-week trial, the jury deliberated for approximately two hours before returning with a verdict in favor of the plaintiff. The jury then awarded the plaintiff a total sum of $27,000,000 representing $1,000,000 for each year of his incarceration.

REFERENCE

Mark Schand vs. City of Springfield, et al. Case no. 3:15-cv-30148; Judge William Young.

Attorneys for plaintiff: Joshua Weedman and Heather McDevitt of White & Case in New York, NY.

$4,150,000 RECOVERY - CIVIL RIGHTS - MALICIOUS PROSECUTION - ALLEGED FABRICATION OF EVIDENCE - CITY WHICH CHARGED AND CONVICTED PLAINTIFF WHO HAD A SOLID ALIBI AND FAILED TO INVESTIGATE OTHER SUSPECTS - PLAINTIFF SENT TO PRISON FOR 24 YEARS FOR A MURDER HE DID NOT COMMIT.

U.S.D.C., Eastern District of Pennsylvania

The plaintiff in this false arrest and malicious prosecution case sued two homicide detectives and the City of Philadelphia alleging that he was wrongfully arrested, convicted and imprisoned for 24 years for a murder he could not have committed because he was in custody on the day of the murder for an unrelated attempted motorcycle theft. Specifically, the plaintiff contended that the defendant city's detectives improperly failed to investigate the validity of the plaintiff's alibi, improperly coerced witnesses to identify the plaintiff as being involved in the murder, and improperly withheld critical case information about other likely suspects during the plaintiff's trial. In 1994, the plaintiff was tried and found guilty of second degree murder, which earned him an automatic life sentence. The plaintiff's conviction was subsequently vacated in 2017.

The defendants all denied all allegations of wrongdoing and maintained that the case was properly handled. The defendants maintained that with the discovery of new evidence, prosecutors chose not to retry the plaintiff for the murder due to time served, the plaintiff's age at the time of the crime, and the fact that he was not the shooter. The prosecutors argued that those facts did not prove the plaintiff's innocence, rather, they made it difficult to prove the plaintiff's guilt beyond a reasonable doubt and, therefore, they declined to prosecute the plaintiff a second time.

The defendant city agreed to settle the plaintiff's claim for a total of $4,150,000.

REFERENCE

Shaurn Thomas vs. The City of Philadelphia, Martin Devlin, Paul Worrell. Case no. 17-CV-04196; Judge David R. Strawbridge, 12-10-19.

Attorney for plaintiff: James Figorski of Dechert, LLP in Philadelphia, PA. Attorney for defendant: Michael R. Miller of City of Philadelphia Law Dept in Philadelphia, PA.

Subscribe Now

Construction Site Negligence

$4,000,000 RECOVERY - CONSTRUCTION SITE NEGLIGENCE - FAILURE OF DEFENDANT SUBCONTRACTOR TO USE SPOTTER AS DUMP TRUCK IS TRAVELING IN REVERSE - TRUCK COMES TO REST ON PLAINTIFF'S LEGS - PERMANENT NERVE DAMAGE - PERMANENT DISABILITY ALLEGED - PTSD.

Camden County, NJ

The male plaintiff road construction laborer, in his mid-40s at the time of the accident, contended that the defendant driver of a dump truck being used to deliver asphalt to a road construction site, who was employed by the co-defendant asphalt subcontractor, negligently failed to use a spotter as he was traveling through the area in reverse. The plaintiff additionally contended that the truck's reverse alarm, which had been installed approximately two months earlier, was not functioning properly, causing it to not be heard over the din of the surrounding construction noise. The plaintiff, who worked for a different subcontractor, maintained that as a result of the defendants' negligence, he was knocked over by the dump truck which then drove over both of his legs. The plaintiff contended that he suffered severe crushing wounds to both of his thighs, as well as permanent nerve damage which will cause him to suffer severe and permanent pain. The plaintiff further claimed that he suffers from significant PTSD as a result of the incident. Finally, the plaintiff asserted that he suffered an aggravation of bilateral meniscal tears which had previously required arthroscopic surgery and that this aggravation is permanent despite arthroscopic surgery that was performed after this incident. The plaintiff maintained that as a result, he will be permanently disabled from working. The defense contended that the plaintiff made a better recovery than claimed and further maintained that the plaintiff was wearing ear buds at the time, which prevented him from hearing the reverse alarm. The plaintiff, who denied that he was wearing ear buds at the time, argued that had a spotter been properly used by the defendants, the incident simply would not have occurred even if the plaintiff had been wearing ear buds.

The case settled prior to trial for a cash amount of $4,000,000

REFERENCE

Leon vs. Shuhart, et al. Docket no. CAM-L-3575-15, 07-01-19.

Attorneys for plaintiff: Jason Daria and John Dodig of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig in Philadelphia, PA.

Elder Care Negligence

$6,000,000 VERDICT INCLUDING $4,000,000 IN PUNITIVE DAMAGES - ASSISTED LIVING FACILITY NEGLIGENCE - UNATTENDED FALL - SEVERE SUN BURN - HEAT STROKE - WRONGFUL DEATH AT AGE 97 - SURVIVAL ACTION.

St. Lucie County, FL

The plaintiff's decedent was a resident of the defendant's assisted living facility for some 10 years before she suffered an unattended fall which the plaintiff contended caused her death. The plaintiff maintained that the defendant negligently failed to adequately supervise, monitor and protect the decedent, allowing her to remain outside in the hot sun after falling and thereby causing her subsequent death from sun exposure and heat stroke. The defendant maintained that it exceeded the standard of care in monitoring the decedent and that she had been assessed with a level of independence that allowed her to sit in the outside courtyard by herself. The defense also disputed that the subject incident caused the decedent's death, which occurred almost three months after the fall. The defendant maintained that the decedent had, in fact, died as a result of old age. Plaintiff's counsel was granted leave to amend the complaint to include a claim for punitive damages, alleging that the defendant attempted to conceal its conduct after the decedent's fall. The parties agreed to bifurcate the trial as to issues of liability and punitive damages. The first phase of the trial addressed liability, including the question as to whether punitive damages were warranted. The second phase of the trial addressed the amount of punitive damages to be awarded.

The jury found that there was negligence on the part of the defendant which was a legal cause of the decedent's death. It awarded each of the decedent's two surviving adult children $1,000,000 in compensatory damages. The jury also determined that punitive damages were warranted. On the same day, in a bifurcated procedure, the jury awarded an additional $4,000,000 in punitive damages. The jury specifically found that the defendant's wrongful conduct was motivated primarily by unreasonable financial gain. It also found that the unreasonably dangerous nature of the wrongful conduct and the high likelihood of in-

jury were actually known to the defendant. The plaintiff was subsequently awarded costs by the court. The defendant has filed a notice of appeal.

REFERENCE

Estate of Kathleen Menard vs. Port St. Lucie Retirement Investors, LLC, d/b/a The Harbor Place At Port St. Lucie. Case no. 2018CA001152; Judge J. David Langford, 05-10-19.

Attorneys for plaintiff: Scott Mitchell Fischer and Robert E. Gordon of Gordon & Partners in Palm Beach Gardens, FL.

Utility Negligence

$4,937,874 VERDICT - UTILITY COMPANY NEGLIGENCE - DEFENDANT ELECTRICAL UTILITY'S TRANSFORMER MALFUNCTIONS CAUSING A FIRE THAT RESULTED IN EXTENSIVE DAMAGE TO PLAINTIFF'S PLACE OF BUSINESS - LOSS OF BUSINESS INVENTORY, MATERIALS, PROPERTY AND PROFITS.

Harris County, TX

The individual plaintiff in this utility negligence action was the owner and operator of an upholstery company located in Houston, Texas. The plaintiff contended that an electrical transformer owned, controlled and maintained by the defendant utility company malfunctioned, causing a fire to spread to the plaintiff's property, destroying the premises along with the plaintiffs' entire business inventory. The plaintiff argued that the defendant's acts and omissions constituted legal negligence under existing Texas law which was a direct and proximate cause of the plaintiff's damages. Specifically, the plaintiff asserted that the defendant's failure to properly and timely maintain or replace the transformer in question allowed it to malfunction in such a way as to cause a fire and destroy the plaintiff's premises and business. The defendant denied all of the plaintiff's allegations of negligence, arguing that the plaintiff did not have any direct evidence that it was the defendant's transformer which caused the fire and destruction of the plaintiff's property.

The jury found the defendant 100% liable and awarded the plaintiff a total of $4,937,874 in damages. Prejudgment interest was added to the verdict by the court for a total recovery of $7,156,699.80.

REFERENCE

Howard E. Coleman Individually and dba Coleman Conversions vs. Centerpoint Energy Houston Electric, LLC. Case no. 201219169; Judge Donna Roth, 11-13-19.

Attorney for plaintiff: Jeffrey W. Hitt in Spring, TX. Attorney for defendant: Jason Newman of Baker Botts in Houston, TX.

Subscribe Now