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SUMMARIES WITH TRIAL ANALYSIS

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

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

VERDICTS BY CATEGORY

Summaries with Trial Analysis

$7,000,000 RECOVERY – MEDICAL MALPRACTICE – OB/GYN – FAILURE TO ORDER C-SECTION DESPITE SIGNS OF FETAL DISTRESS – CEREBRAL PALSY – DEATH AT AGE 4.

Passaic County, NJ

In this action for medical malpractice, the plaintiff contended that the defendant attending ob/gyn and the staff at the defendant hospital negligently failed to perform a timely C-section and continued Pitocin despite signs of fetal distress including an abnormal heart rate. The plaintiff also contended that the defendant failed to follow hospital protocol by continuing attempts to deliver the child with a suction device when the suction device could not properly adhere to the baby's scalp, further traumatizing the infant, The plaintiff contended that as a result, the child was born after 12 hours of labor with cerebral palsy, difficulties with breathing, microcephaly, blindness, an inability to sit up, the need for a feeding tube and required constant respiratory suction. The child died at age 4 and the cause of death was listed as hypoxic ischemic encephalopathy.

The plaintiff maintained that when signs of fetal distress continued for several hours, the defendant should have advised for a C-Section. The plaintiff asserted that if the defendant had done so, the child would probably have been born healthy. The defendant physician and several nurse's testified in depositions that the mother was offered a C-Section but declined. The plaintiff denied that this testimony should be accepted. The plaintiff contended that if the defense position was accurate, the mother would have clearly consented to the C-section. The plaintiff pointed out that the mother had signed a consent for a C-section when she was admitted. The plaintiff also pointed out that the defendant conceded that although he offered the mother a C-section, he did not tell her it was medically necessary.

The evidence would have reflected that the child required constant care that until dying at age 4.

The case settled prior to trial for $7,000,000, including $1,300,000 to the parents and $5,700,000 to the estate.

REFERENCE

Parents of baby born with cerebral palsy vs. Defendant attending ob/gyn and hosptial.

Attorney for plaintiff estate: Charles A. Cerussi of Cerussi & Gunn, PC in Shrewsbury, NJ. Attorney for plaintiff parents: Stewart M. Leviss of Berkowitz Lichtstein Kuritsky Giasullo & Gross, LLC in Roseland, NJ.

COMMENTARY

It was undisputed that a C-section was required and the defendant contended that the mother was offered a C-section but refused. The plaintiff, who denied that this testimony was accurate, pointed out that she had signed a consent form relating to a C-section when she was admitted. Additionally, the plaintiff emphasized that the defendant ob/gyn conceded that he had not told the mother that the surgery was medically necessary. It is felt that the plaintiff commanded a very large settlement and the risk to the defendant in this case in which the jury could well reject the defendant's position was very great,.

$3,682,312 RECOVERY – MEDICAL MALPRACTICE – ANESTHESIOLOGY – PLAINTIFF'S DECEDENT IMPROPERLY INTUBATED LEADING TO CARDIAC ARREST AND DEATH – DEFENDANTS ARGUE NO DEVIATION FROM STANDARD OF CARE IN INTUBATION PROCESS, PLAINTIFF FAILED TO IMPROVE WITH TREATMENT AND CARDIAC ARREST WAS INEVITABLE.

Middlesex County, NJ

In this medical malpractice case, the plaintiff asserted that, as a result of the defendants' negligence, recklessness and carelessness, lack of skill, and deviation from accepted medical standards, the plaintiff's decedent suffered severe, permanent, life-threatening and painful injuries, ultimately resulting in her premature death. The plaintiff brought suit against the defendant physician and family practice group, the defendant thoracic medical group and its physicians, the defendant anesthesiology nurse and the defendant hospital. Ultimately, all defendants were dismissed except the defendant hospital and its direct employees. The defendants denied liability and argued that all procedures and treatment were within the standard of care.

The decedent, a 52-year-old mother of 2, presented to the defendant hospital on March 28, 2015 with pneumonia-like symptoms. During her care and treatment, her medical care providers decided to electively intubate her so that they could better treat and manage her symptoms. On March 31, the defendant

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critical care physician recommended to the decedent that she be intubated to better manage her respiratory distress. The plaintiff argued that the intubation was improperly performed and caused the patient's death.

The intubation, performed by the defendant CRNA in anesthesiology assisted by residents and overseen by an anesthesiologist, failed to maintain an adequate airway. As a consequence, the plaintiff's decedent suffered a cardiac arrest. The plaintiff argued that, had the intubation been properly performed, the plaintiff's decedent would have maintained adequate oxygen levels and would have been able to be treated and survive her underlying diagnosis.

The defendants asserted that the plaintiff was diagnosed with pneumonia and sepsis and that those underlying conditions were the cause of her death, regardless of the unsuccessful intubation procedures. The defendants provided expert testimony that, given the decedent's arterial blood gas levels and failure to improve with any of the antibiotics given, she had failed to stabilize with escalating treatment of her hypoxemia, and was clearly heading to physiologic exhaustion and cardiopulmonary arrest. The defendant anesthesiology nurse also argued that there was a delay in ordering the intubation by the defendant critical care physician.

The plaintiff settled the matter prior to trial as to the defendant hospital and its employees in the amount of $3,682,312.

REFERENCE

Estate of Marie Horvath, et al. vs. St. Peter's Healthcare System, et al. Docket no. L-004076-16; Judge James F. Hyland, 11-27-19.

Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorney for defendant: Ed Thornton of Methfessel & Werbel, P.C. in Edison, NJ.

COMMENTARY

During the course of discovery, the plaintiff filed a motion to amend the complaint to add the defendant hospital's respiratory therapists to the list of defendants. The plaintiff also sought to add a count of fraudulent concealment and misrepresentation of evidence, spoliation, alteration and destruction of medical records and to add punitive damages against the defendants due to these allegations.

The plaintiff contended that the defendant CRNA began the intubation at 4:20 and at 5:10, the decedent was pronounced dead following a Code Blue. The defendant CRNA prepared one note in the medical records wherein she recorded the events surrounding the intubation, code and death of the plaintiff. Notably, the plaintiff argued, the note was offensively misleading, inaccurate and did not set forth the involvement of respiratory therapists, disagreements between the CRNA and the respiratory therapists regarding whether the defendant had positioned the endotracheal tube, any involvement of the critical care physician or anesthesiologist, or of the fact that vital pieces of needed medical equipment which were to be used to secure the patient's airway were missing.

The plaintiff brought the motion because the certified copy of the decedent's medical records did not indicate a single problem occurred during the intubation. Despite the records' silence, discovery revealed that there were arguments with the defendant CRNA and other staff that the tube had not been properly placed; respiratory therapists advised the defendant that the position of the tube was wrong and that they secured the tube despite indications that the tube was not properly placed; after the initial intubation, the critical care physician ordered a device to facilitate intubations; however, when it arrived, a critical piece of the equipment was missing so that it could not be used; that testimony indicated that the decedent's husband should have been, but was not advised of the truth as to what happened to his wife.

After insisting that the tube was improperly positioned and that it had to be removed, the critical care physician insisted that the defendant call her attending anesthesiologist to perform a second intubation and that the anesthesiologist arrived, yet his name does not appear anywhere in the medical records nor are there any notes as to who performed the second intubation; and the anesthesiologist testified that her note concerning the issues surrounding the intubation should have been in the chart; however, this note was conspicuously missing from the chart. The plaintiff maintained that testimony elicited during depositions revealed

that the important portions of the decedent's chart were missing and certain entries failed to memorialize or record true events surrounding the intubation, code and death of the plaintiff's decedent.

Only after these issues were revealed in depositions did the defendant CRNA accuse the proposed defendant respiratory therapists of negligently securing the ET tube despite their belief that it was wrongfully placed. The plaintiff argued that it was apparent, and that the critical care physician conceded, that portions of the chart were missing and entries contained overt misrepresentations and missing information. Thus the plaintiff moved to file a Second Amended Complaint to include a count of fraudulent concealment, misrepresentation and alteration of evidence, spoliation, alteration and destruction of medical records and evidence and for a count for punitive damages against the defendants and to add the respiratory therapists, whose role had previously not been substantively involved, as direct defendants.

The defendant countered that the Court must first decide whether it was proper to allow the 2 therapists to be named as defendants even though plaintiff counsel candidly admitted that he did not propose any specific theory against them, but expected that counsel for the defendant CRNA would do so. The defendant maintained that it was too late for such a pleading. Although the proposed 2 new defendants were not individually named in the handwritten hospital chart, the technician's name appeared in the chart on March 30 and 31. The defendant argued that the plaintiff's original complaint did not name the defendant CRNA.

Defense counsel for the defendant hospital spoke with plaintiff's counsel shortly before serving discovery responses and advised that there were emails from 3 respiratory therapists which gave a more full account of the tragic events, the emails being sent to the respiratory department head, the emails being the basis of plaintiff to file a First Amended Complaint naming the CRNA. Although plaintiff did name a series of "John Does" in the original Complaint, the plaintiff in no way gave any indication that one of the claims was going to be against the therapists; there was no specific mention in either the original Complaint or the First Amended Complaint as to any therapist involvement or non-involvement. Thus, according to the defendant, the plaintiff simply waited too long to specify allegations or to substitute the correct name of defendants in place of a John Doe. For 18 months after the Complaint was filed and over three years after the event, correct identities and a history of the event were known. The defendant also countered the plaintiff's request to amend the Complaint to add a cause of action, of fraudulent concealment, misrepresentation and alteration of evidence, spoliation, alteration and/or destruction of medical records.

The defendant argued that it must be noted that no discovery showed any meeting, gathering, meeting of the minds, or any type of plan or conspiracy whatsoever among any actors to conceal or alter records. Therefore there can be no fraudulent concealment. While the plaintiff alleged that many records were not complete, that was no way a misrepresentation or alteration of evidence. It is certainly not spoliation, because one can only spoliate existing evidence. There is no suggestion that any medical record was ever altered by anyone and certainly no suggestion that any medical record was ever destroyed. The defendant argued that there was simply no cause of action under the plaintiff's allegations regarding the medical records. Under NJAC 13: 35-6.5(b), licensed healthcare professionals are required to "prepare contemporaneous professional treatment records" which reflect certain criteria, such as dates of treatment, patient history, diagnosis, etcetera. While the plaintiff correctly or incorrectly claimed that the records were incomplete, nonetheless not only do incomplete records not substantiate a cause of fraudulent concealment, they do not establish a cause of action at all. If such a cause of action exists it is the property of the Board of Medical Examiners or the State of New Jersey.

With respect to an allegation of fraudulent concealment or spoliation, the defendant pointed to the fact that the Court weighed in on this matter in Viviano v. CBS, Inc., 251 N.J. Super 113 (App. Div. 1991). The Viviano court made it clear that there must be specific elements proven, which were not even alleged in the subject case. First, that the proposed defendant must have knowledge of pending or probable litigation; in this matter, that is debatable, but nonetheless the plaintiff fails on the next requirement, willful or possibly negligent destruction of evidence by the defendant, designed to disrupt the plaintiff's case. Clearly, the plaintiff did not even allege destruction of evidence. Next, the Viviano Court instructs us that there must be actual disruption of the plaintiff's case, again, not alleged here, and as the last requirement, damages proximately caused by the acts. It should be noted that in the matter of Gilleski v. Community Medical Center, 336 N.J. Super 646, 651 (App. Div. 2001) the Trial Court recognized the tort of negligent spoliation of evidence. The Appellate Court disagreed, offering certain remedies for negligently lost evidence, but not creating a cause of action for evidence that never existed. A cause may be found for claims of negligent destruction of evidence or willful concealment, but no case has extended any cause of action to the plaintiff's subject request. Indeed, a person can be held criminally liable if a person purposely destroys, alters, or falsifies any record in order to deceive or mislead any person, but such is neither the allegation nor, frankly, the facts. The defendant concluded that, it therefore followed, if there was no recognized cause of action for incomplete medical records, the plaintiff could not plead punitive damages.

The plaintiff's motion to file the amended complaint was granted by the court allowing the addition of the 2 respiratory therapists as additional defendants and further giving leave to include counts of fraudulent concealment, misrepresentation and alteration of evidence, spoliation, alteration and/or destruction of medical records and/or evidence and a count for punitive damages against the defendants as reflected in the plaintiff's proposed Second Amended Complaint.

$2,552,882 VERDICT – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF TILE FINISHER FALLS WHEN EXITING PORTABLE TOILET ON JOB SITE – RIGHT KNEE MENISCUS TEAR AND NEUROMA – ARTHROSCOPIC SURGERIES; MENISCECTOMY; NEURECTOMY – INJECTIONS; NERVE BLOCKS AND PHYSICAL THERAPY – PLAINTIFF NOW WALKS WITH LIMP AND IS COMPLETELY DISABLED – PLAINTIFF SETTLES WITH DEFENDANT TOILET VENDOR PRIOR TO TRIAL AND TRIAL PROCEEDS AGAINST CONTRACTOR.

Camden County, NJ

In this construction site negligence case, the plaintiff asserted that the defendant contractor and portable toilet vendor allowed a defective condition to exist on a construction site where the plaintiff was working as a tile finisher. The plaintiff asserted that the hazard on the site caused the plaintiff to fall and sustain significant, permanent injury rendering him disabled. The defendant provider of the portable toilet argued that it placed the unit where it was told to by the defendant contractor, as is the practice on all job sites.

On April 1, 2015, the plaintiff suffered serious injuries while working on a jobsite for a flooring subcontractor at the defendant contractor's construction project in Galloway. As the plaintiff was leaving a portable toilet on the defendant's construction site, he tripped and fell on the curb outside the toilet. The plaintiff maintained that the door of the portable toilet opened only 18 inches from the curb of an adjacent parking lot; thus, creating a tripping hazard. The plaintiff argued that the portable toilet was also directly next to the construction dumpster hat was overflowing with trash, debris, wood and in an area where construction equipment would dump debris in the dumpster creating a hazard for workers walking to and from the toilet. As a result of the defendants' failure to safely position the temporary toilet away from any tripping hazards, curbs, etc., the plaintiff sustained career-ending, permanent injuries to his right knee.

As a result of the fall, the plaintiff sustained a right knee meniscus tear and neuroma. The plaintiff has undergone arthroscopic surgeries; meniscectomy; neurectomy; injections; nerve blocks and physical therapy. The plaintiff now walks with a limp and will require additional treatments and surgeries in the future, including a potential total knee replacement. The plaintiff claimed he is no longer employable in his field as a tile finisher.

The defendant vendor argued that the defendant contractor is ultimately responsible for all safety conditions on the job site. The defendant contractor denied liability claiming that the portable toilet had been in place for more than 4 weeks and that neither the plaintiff nor anyone else on the site had complained of any defect or had any type of accident involving the ingress and egress of the toilet.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 10% liability to the defendant portable toilet company, 40% to the defendant contractor, and 50% to the plaintiff with gross damages of $934,867 reduced to $467,434 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded. The plaintiff settled with the portable toilet company for an undisclosed sum prior to trial. The trial proceeded as to the defendant contractor only. Following arbitration and prior to trial, the plaintiff offered to take judgment against the defendant contractor in the amount of $3,000,000 inclusive of all costs, interest and fees. The offer was not accepted and the matter proceeded to trial.

The jury found in favor of the plaintiff and against the defendant contractor only and awarded damages in the amount of $2,552,882 broken down as follows: $2,343,701 in damages; and $179,181 in interest.

REFERENCE

O'Connell vs. Mr. John, et al. Docket no. L-001222-17; Judge Michael J. Kassel, 11-25-19.

Attorneys for plaintiff: John T. Dooley and Sean M. McMonagle of The Law Offices of John T. Dooley, P.C. in Pennsauken, NJ. Attorney for defendant general contractor: Arthur Donnelly of Romando Zirulnik Sherlock & DeMille in Mt. Laurel, NJ. Attorney for defendant portable toilet vendor: James P. Lisovicz of Kinney Lisovicz Reilly & Wolff, PC in New York, NY.

COMMENTARY

In the course of the trial, the defendant portable toilet vendor filed a motion for summary judgment dismissal from the case arguing that it was not responsible for job-site safety, only the defendant general contractor was solely responsible for job-site safety and was the employer of the plaintiff who was injured during the course of his employment. The defendant vendor maintained that the plaintiff claimed a vendor who simply delivered and serviced port-a-johns at a construction site was in fact an "employer" under OSHA, and had the responsibility to override the decisions of the general contractor on the site with respect to the placement of the port-a-johns it delivered to the site. The defendant asserted that, as a vendor, it did not owe the plaintiff a duty to supervise or control the safety of a construction site controlled by the defendant general contractor. The defendant claimed that it simply delivered and serviced port-a-johns to a construction site. The site was controlled by the defendant general contractor, as well as the plaintiff's direct employer and subcontractor to the defendant contractor.

Although the plaintiff's liability expert applied OSHA standards to the defendant vendor as if were an employer on the site, his own report conceded that the defendant was a "vendor." Indeed, the very OSHA regulation that the plaintiff's liability expert relied on specifically refers to contractors and subcontractors. Here, the defendant vendor did not contract with either the general contractor or the plaintiff's direct employer to perform construction work at the site in question. It simply delivered port-a-johns and serviced them once a week. Moreover,

the defendant general contractor specifically admitted that it determined the location of the port-a-johns. Finally, the defendant vendor was not on the site the day of the accident or the five days preceding it. Thus, even if the defendant vendor was treated as an employer on the construction site, the plaintiff could not establish a prima facie case against it.

More importantly, the defendant argued, despite issuing a 72 page report, the plaintiffs' liability expert failed to inspect, measure, or otherwise document a condition that violated any recognized code or standard. Indeed, the plaintiff's own photograph of the site of the fall taken the day after the fall showed no tripping hazard. Despite the plaintiff's expert's contention, OSHA regulations do not impose liability on vendors. New Jersey courts have recognized that an alleged violation of an OSHA regulation by itself will not support the imposition of liability, even on a general contractor. See Slack v. Whalen, 327 N.J. Super. 186, 195 (App. Div.), certif. denied, 163 N.J. 398 (2000). This principle applies whether the defendant is a property owner or a general contractor. Muhammad v. N.J. Transit, 176 N.J. 185, 199 (2003). Here, nothing in the record suggested that OSHA issued any violation to the defendant vendor in connection with the plaintiff's accident. Nor is there any evidence in the record to suggest that the defendant vendor was a contractor or subcontractor on the jobsite and could be treated as an employer. In fact, the plaintiff's own expert report makes it clear that, as the general contractor, and plaintiff's employer, the co-defendant was in control of and responsible for the safety of the jobsite that the plaintiff was working at.

In the absence of any facts or evidence establishing a cause of action against the defendant vendor, plaintiffs' expert relied entirely on conclusory statements that fly in the face of the record evidence. A review of the record will reveal that there is in fact no evidence of a dangerous condition. Moreover, there is no evidence that the defendant vendor or its employees had actual or constructive notice of the alleged condition that caused the plaintiff's fall. In the absence of such evidence, the defendant vendor argued it was entitled to summary judgment as a matter of law.

The defendant contractor opposed the defendant vendor's motion arguing that, in the present case, the defendant vendor was in the business of supplying portable toilets to various customers and, through the testimony of its manager and employee, acknowledged that it owed a duty of safety to both its own employees and to its customers. Yet, notwithstanding the fact that the defendant vendor acknowledged that it owed a dirty of providing a safe and secure environment for its customers, the vendor argued that, under traditional notions of premises liability, it could not be held responsible for any injuries that may have been sustained by the plaintiff. The defendant contractor argued, at its core, the defendant vendor's position is that the case must be predicated on the traditional common law approach to landowner or occupier liability.

Although New Jersey, for the most part, does take a traditional approach to premises liability law, more recent cases have stated that if a person does not fit squarely within on of the classifications or invitee, licensee or trespasser, a court should provide a full duty analysis applying a balancing test based upon basic fairness principles owed. Hopkins v. Fox and Lazo Realtors, 132 N.J. 426, 433 (1993). The defendant contractor maintained that, even if all were to assume that the defendant vendor did not owe a duty under the common law to the plaintiff, the fact remained that the testimony of its employees demonstrated that the vendor voluntarily assumed a duty to act for the safety of its customers. Therefore, even if the common law would not typically mandate a duty on the part of the vendor, the fact that it voluntarily undertook such a duty mandates that the motion for summary judgment be denied.

The court denied the defendant vendor's motion for summary judgment dismissal and the defendant went on to settle with the plaintiff prior to trial.

$1,300,000 PRE-SUIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/ PEDESTRIAN COLLISION – PLAINTIFF IN HIS EARLY 80S SUFFERS COGNITIVE DEFICITS, PRESSURE SORES TO HEELS, MULTIPLE RIB FRACTURES – 2 PUNCTURED LUNGS – INTUBATION – PROBABLE FUTURE SURGERY – UIM CASE.

Bergen County, NJ

This case involved a plaintiff pedestrian in his early 80s in which the plaintiff contended that the defendant driver struck him as he completed crossing the roadway in the crosswalk and was about to step onto the curb. The plaintiff contended that he suffered a head contusion and a TBI which resulted in a several-week coma and which caused permanent moderate difficulties with memory and concentration, multiple rib fractures, and 2 punctured lungs. The plaintiff also required intubation and suffered complications involving tracheal stenosis, required a ventilator, and suffered pressure sores on both heels. There was no significant dispute regarding liability.

The plaintiff was an inpatient for an initial 6-week period. The evidence would have disclosed that after his discharge, he developed cellulitis in the left foot, contributing to the need for further hospitalization. The plaintiff asserted that he suffered pressure ulcers on both heels and those difficulties will remain. The plaintiff maintained that it is likely that he ultimately will require surgery to treat both the pressure sores and continued breathing difficulties stemming from the consequences of the tracheal stenosis.

The plaintiff is a retired dentist who worked into his 70s. The plaintiff's proofs reflected that he was previously extremely active, played racquetball worked out very frequently. The plaintiff's wife and 2 adult children would have supported this position. The plaintiff would have argued that the inability of this individual to continue a very active lifestyle warranted very significant compensation.

The defendant had $100,000 in coverage. The plaintiff had $300,000 in UIM protection and an additional $1,000,000 umbrella. The case settled prior to the institution of suit for a total of $1,300,000, including the $100,000 policy limits of the defendant, $200,000 from the UIM carrier and $1,000,000 policy from the plaintiff's umbrella.

REFERENCE

Van Slooten vs. Waldron. 10-20.

Attorney for plaintiff: Michael J. Epstein of The Epstein Law Firm, PA in Rochelle Park, NJ.

COMMENTARY

The plaintiff was able to negotiate a very substantial recovery, which almost equaled the coverage, before the bringing of suit and despite the plaintiff's advanced age. In this regard, the plaintiff's position that prior to the accident, he was unusually active, having worked out and played racquetball very frequently contrasted extensively with the plaintiff's appearance after the collision and probably would have had a strong impact on the jury if the case had proceeded. Additionally, the before and after testimony of the plaintiff's wife and adult children would have been extremely effective.

$1,185,842 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – DISC HERNIATIONS AT C5-6 AND L5-S1 – DISC BULGE AT C6-7 – LIMITED RANGE OF MOTION – BACK MUSCLE SPASMS; DECREASED TRICEPS REFLEX AND DECREASED SENSATION ON RIGHT SIDE – CHIROPRACTIC TREATMENT, PAIN MANAGEMENT, LUMBAR FACET INJECTION – 8 MONTHS PHYSICAL THERAPY.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver, in the course of his employment for the defendant company, struck the plaintiff's vehicle from behind with such force that it caused the plaintiff to sustain significant, permanent injury. The defendants stipulated liability, but contested the plaintiff's damages.

This matter arose out of a motor vehicle accident which occurred on November 12, 2015. On that date, the plaintiff was the owner and operator of a vehicle that was stopped in traffic on the northbound lane of U.S. Highway Route One in the Township of Edison. At the same time, the defendant driver was the operator of the motor vehicle owned by the defendant company and was traveling in the same direction as the plaintiff. The defendant driver struck the plaintiff's vehicle from behind, causing it to be pushed into another vehicle.

As a result of the collision, the plaintiff sustained disc herniations at C5-6 and L5-S1 and a disc bulge at C6-7. The plaintiff experienced limited range of motion, superficial and deep back muscle spasms, decreased triceps reflex, and decreased sensation on the right side, with complaints of "Radiating pain that goes down the arm." The plaintiff treated with chiropractic treatment, pain management, 1 lumbar facet injection, and 8 months of physical therapy at which point his physician deemed him to have reached maximum improvement and that his condition was permanent and a result of the subject collision.

The defendants challenged the nature, extent and causation of the plaintiff's injuries. The defendants argued that some or all of the plaintiff's conditions were degenerative in nature and not caused by the subject collision. The defendant's expert opined that the plaintiff presented with disc bulges only and degenerative disc disease.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of $65,000 exclusive of medical expenses. The arbitration was not confirmed and the matter proceeded.

The parties entered into a pre-trial high/low agreement wherein the defendant stipulated liability and the plaintiff agreed to cap any potential recovery at $1,991,618 within the $2 million policy limit held by the defendants.

The jury found in favor of the plaintiff and awarded damages in the amount of $1,185,842 broken down as follows: $1,118,000 in damages; $500 in costs; $750 in attorney fees; and $66,592 in interest.

REFERENCE

Bejarano vs. Lobianco, et al. Docket no. L-006087-17; Judge Bruce J. Kaplan, 11-25-19.

Attorney for plaintiff: Stephen A. Mennella of Lord, Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ. Attorney for defendant: Rob Morello of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

COMMENTARY

Following the jury verdict, the defendant moved for a new trial or remittitur. The defendants argued that the injuries sustained by the plaintiff were not severe enough to justify an award of damages in excess of $1,000,000. Moreover, the defendants contended that our "[C]ourt's misguide[ed] ruling regarding the "insurance" testimony may have served to incense the jury," thus causing the jury to be prejudiced in favor of a reward greater than that which the plaintiff was entitled. The plaintiff simply argued that an extraordinary remedy, such as a remittitur, should only be used in extraordinary circumstances. The plaintiff maintained that the jury award could not be perceived as enough to shock the conscience in light of his injuries and the effect of those injuries on his life. The plaintiff argued that, when using the time unit rule, $25,237 per year is not excessive for his life expectancy of 44.3 years.

In evaluating the case, the court stated that, on a motion for a new trial, the trial court's obligations revolve around evaluating and weighing the evidence. Kita v. Borough of Lindenwold, 305 N.J. Super 43, 49 (App. Div. 1997) (citing Dolson v. Anastasia, 55 N.J. 2, 5-6

(1969)). "The object is to correct clear error or mistake by the jury." Id. (quoting Dolson, 55 N.J. at 6). The trial court must "take into account, not only tangible factors relative to the proofs as shown by the record, but also appropriate matters of credibility, generally peculiarly within the jury's domain, and the intangible 'feel of the case' which it gained by presiding over the trial." Id. (citing Dolson, 55 N.J. at 6). Based on the evidence presented to the jury at trial, including the expert testimony that the plaintiff suffered a permanent injury at 2 levels of his spine, and the plaintiff's own testimony that, taking into account his age, his injuries continue to affect all aspects of his daily living, including that: he feels completely useless, cannot carry his own child, assist his wife around the house, sleep regularly through the night, and perform his job without resulting pain, the court opined that it could not conclude that the jury's award of $1,118,000 in this matter was so grossly excessive to be pervaded by a sense of wrongness or manifestly unjust to sustain.

While the court acknowledged that the defendants believed that the jury award reflected a jury that was prejudiced, invigorated with passion, and incensed by the court's allegedly misguided rulings, there was simply no basis in law or fact to conclude same. The court concluded to the contrary that the jury simply accepted the plaintiff's case, rejected the defendants' witnesses and arguments, and compensated the plaintiff in accordance with the Model Jury Charge, for a life of continuous pain, suffering, and loss of enjoyment which they attributed to the negligence of the defendants. The fact the selected jury did not arrive at a verdict that aligned with the defendants' expectations did not mean that the jury's verdict constituted a manifest denial of justice if sustained. Thus, based upon the testimony cited, the court could not conclude that the jury's award of $1,118,000.00 in this matter was grossly excessive to shock the judicial conscience.

While this was objectively a significant sum of money, the court would not substitute its own judgment for that of the jurors in determining how to properly compensate the plaintiff for his pain, or how to properly calculate the worth of not having any pain. The jurors were instructed by the court on how to calculate damages for the plaintiff's pain and suffering and were instructed to consider his age and his life expectancy in making such an assessment. The defendants' motions for new trial and remittitur were denied.

$353,000 RECOVERY – BREACH OF CONTRACT – CONVERSION – DEFENDANT FAILS TO REPAY LOANS MADE BY PLAINTIFF PER TERMS OF PROMISSORY NOTES – PLAINTIFF SEEKS MONEY OWED PLUS ATTORNEY FEES, INTEREST AND COSTS.

Somerset County, NJ

In this breach of contract action, the defendant and a friend went into business together and formed the plaintiff equipment distribution company in December of 2016 after the assets of the defendant's father's company were sold and the company liquidated. The parties agreed that the friend would be named the Chief Executive Officer of the plaintiff company and the defendant would be President of the company. The plaintiff asserted that it made numerous loans to the defendant that he did not repay and that he breached the terms of the repayment agreement. The defendant denied borrowing money from the company and asserted that he only borrowed money from a specific individual, not the named plaintiff.

The plaintiff asserted that the defendant individual borrowed various sums of money from the plaintiff company as evidenced by a series of 7 promissory notes confirming loans made from December 12, 2016 through December 30, 2017. The plaintiff maintained that the sum secured by the promissory notes accumulated to a total of $353,897.46. With accumulating interest and credits for payroll deductions, the defendant owed the plaintiff $350,550.27 as of the filing of the complaint. The defendant repaid a portion of the amount owed under the promissory notes to the plaintiff through payroll deductions. The plaintiff terminated defendant's employment on November 30, 2018 after a long period of decline in the defendant's productivity resulting in the defendant earning a reduced salary and being unable to keep up with the loan payments.

The plaintiff claimed that the promissory notes provided that: if within 5 days of cessation of work, the borrower did not pay the obligation in full, then the defendant borrower authorized entry of judgment against him for the full value of the obligation, less payments made, plus costs and reasonable attorney fees for the entry of judgment. The plaintiff sought the full amount owed plus attorneys' fees, interest and costs of suit. The defendant disputed the amount alleged to have been borrowed as asserted in the complaint and disputed the amount that is alleged by the plaintiff to have been paid via payroll deductions. The defendant stated that he and a friend went into business together and formed the plaintiff company in December of 2016 after the assets of the defendant's father's company were sold and the company liquidated. The parties agreed that the defendant's friend would be named the Chief Executive Officer of the plaintiff company and the defendant would be President of the company.

The defendant had been without income prior to forming the company and needed temporary funding to meet the needs of his family while the company began its operations. Thus, the defendant borrowed money directly from his life-long friend, not from the business entity, to cover his family's living expenses, as well as marketing efforts in the early days of the company's operations. The defendant argued that he and the friend signed promissory notes documenting the monies that he borrowed and he began repaying the money through payroll deductions, as agreed between the parties.

On November 30, 2018, the plaintiff's Chief Executive Officer (and friend of the defendant) terminated his employment with the company. Contrary to the

CEO's statements regarding the circumstances of the termination, the CEO terminated the defendant's employment via email, copying 2 other employees. The defendant argued that no reason related to performance was stated. Upon terminating the defendant's employment, the CEO demanded immediate repayment of the balance of the funds borrowed. Also upon terminating the defendant's employment, the defendant asserted that the CEO took immediate steps to sue because he received a letter from plaintiff's counsel on December 13, 2018 stating that he was in default under the terms of the promissory notes. The defendant claimed that he had a file on his desk containing the promissory notes and that the file went missing on the day he was terminated.

The defendant did not recall the exact amount of the loans or number of promissory notes, but disputed that it was the amount claimed by the plaintiff. The defendant also disputed the terms of the notes with regard to immediate repayment. The defendant contended that the notes contained terms requiring immediate payment if he left the company, which, he argued, did not apply since he was terminated. The defendant also claimed that he reached out to the CEO and proposed terms for repayment in an attempt to reach an amicable resolution of the issue. The defendant believed that the parties were working in good faith until the plaintiff filed the complaint 1 week later.

The parties settled the matter prior to trial, via conference with a judge, in the amount of $353,000, with the defendant to make monthly $1,000 payments in repayment of the debt.

REFERENCE

Brenco Equipment Supply & Technology, LLC vs. Binder. Docket no. L-001601-18; Judge Thomas C. Miller, 10-16-19.

Attorney for plaintiff: Michael D. Mezzacca of Bourne, Noll & Kenyon in Summit, NJ. Attorney for defendant: Anne M. Aaronson of Dilworth Paxson, LLP in Philadelphia, PA.

COMMENTARY

After the agreement was reached, the defendant made payments on the settlement until December of 2020 when he failed to make payment. The plaintiff then filed a motion to enter judgment asserting that the 5-day grace period for the December 2020 installment of $1,000 lapsed on December 7, 2020, and that the defendant was notified via email to his attorney that default had occurred. The plaintiff claimed that the 10-day cure period lapsed and requested entry of judgment in the amount of $341,700, plus reasonable attorney's fees and filing fees in the amount of $700.

The defendant filed opposition to the motion. The defendant averred that COVID-19 caused reduced business and revenue, delaying the December payment. The defendant conceded that as of the filing of the motion, the December payment had not been made. However, the defendant expected that he would make the December payment by January 22, 2021, along with the payment for January. The defendant made every other payment required by the Settlement Agreement during the month in which it was due. Additionally, the defendant argued that the Settlement Agreement required that the promissory notes be offered, in support of a motion for entry of judgment, which were not provided. Furthermore, the plaintiff's request for attorney's fees and filing fees was without evidentiary support. The defendant filed a supplemental certification on January 18, 2021, indicating that the December and January payments had been made. The defendant requested that the motion to enter judgment be denied.

The plaintiff filed a reply contending that the 5-day grace period and 10-day cure period both passed well before the filing of the plaintiff's motion. Additionally, there was no provision in the Settlement Agreement that required promissory notes be submitted. The plaintiff asserted that it was unfair to have settled this matter on clear and concise terms, then to have to incur attorney's fees to compel compliance and be asked to withdraw the motion for judgment when the defendant finally tendered payment after the motion was filed and well after the 10-day cure period.

Upon review of the Settlement Agreement, the court found that Section 1(a) did provide the following: "If the default is not cured within that ten days, [the plaintiff] shall have the right to file a motion for entry of judgment for the full amount of the $353,000 supported by the promissory notes.." Thus, the promissory notes are to be submitted with the motion for entry of judgment. Further, the Court stated that it was aware that the COVID-19 pandemic posed hardship on many individuals and businesses. Although payments have been late, the defendant was making the payments. The court found that the defendant had substantially complied with the Settlement Agreement as the plaintiff had received the fundamental benefit of the Settlement Agreement, being the $1,000 installment payments, which were paid to date.

Defense counsel attempted to contact plaintiff's counsel to request consent to adjourn this motion to permit time for the defendant to make the payment; however, plaintiff's counsel did not respond. The defendant demonstrated a continued good faith commitment to fulfilling the obligations under the Settlement Agreement, as he made the January 2021 payment and all other past payments. For the reasons set forth in its opinion and the reasons stated on the record, the court denied the plaintiff's motion to enter judgment without prejudice. However, the court noted that, going forward, the defendant must make his payments on time in accordance with the Settlement Agreement.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Emergency Department

$1,000,000 RECOVERY

Medical malpractice/Wrongful death – Emergency Department – 9-year-old plaintiff presents to defendant emergency room with symptoms of bowel obstruction or appendicitis – Patient treated and released without CT-scan or surgical consult – Patient dies less than 24 hours later of intestinal rupture due to blockage.

Essex County, NJ

In this medical malpractice/wrongful death case, the plaintiff asserted that the defendant emergency medicine pediatrician and hospital deviated from acceptable standards of medical care resulting in the death of the plaintiff's decedent, a 9-year-old boy, from a bowel obstruction. The defendants denied any deviation from the standard of care in initially assessing, treating and releasing the plaintiff's decedent.

On July 1, 2016, the plaintiff arrived at the defendant hospital and was treated by the defendant pediatric emergency medicine physician. The plaintiff decedent presented with signs and symptoms consistent with a bowel obstruction or appendicitis. He was discharged 4 hours later and died within 24 hours as a result of an intestinal rupture due to intestinal blockage.

The plaintiff asserted that the defendants failed to properly assess, diagnose and treat the plaintiff's decedent's medical condition. The plaintiff also contended that the defendants failed to provide the decedent's parent with information that a prudent patient would deem material in deciding to undergo the recommended medical treatment; failed to inform of the risks of the recommended treatment and acceptable alternatives. The plaintiff argued that the parent would have declined the course of treatment undertaken by the defendant and accepted alternative medical treatment if she had been informed of the options available. The plaintiff maintained that, prior to his discharge, the defendant pediatrician should have order either a CT-scan or surgical consult to rule out either appendicitis or bowel obstruction. The plaintiff alleged that if a CT-scan had been performed, the obstruction would have been found and, after surgical intervention, the plaintiff's decedent would have survived.

The plaintiff maintained that the defendant's negligence and deviation from acceptable standards of care were a proximate cause of the plaintiff's decedent's death or caused the decedent to lose a substantial chance at avoiding death.

The defendants argued that the patient's symptomatology at the time did not indicate further testing or treatment, they did obtain informed consent from the plaintiff's parent and that a reasonable person would have accepted the treatment involved and that, even if adequately informed, a reasonable person would have accepted the treatment given by the defendants. The defendants asserted that the plaintiff's decedent should have been returned to the hospital when his symptoms did not improve or worsened following his release from the emergency room. The defendants argued that any recovery by the plaintiff was limited by the doctrine of avoidable consequences.

Following the exchange of discovery, the plaintiff made an offer to take judgment against the defendant pediatrician only in the amount of $2 million. The offer was not accepted and the matter proceeded. The parties ultimately settled the matter prior to trial as to the defendant pediatrician and the emergency medical practice in the amount of $1 million.

REFERENCE

Estate of Kadyr Hyder vs. RWJ Barnabas Health, et al. Docket no. L-001166-17; Judge Lisa M. Adubato, 03-17-20.

Attorney for plaintiff: Pamela Brown-Jones of Weiss & Paarz in Northfield, NJ. Attorney for plaintiff emergency medical practice and pediatrician: Lauren M. Strollo of Vasios, Kelly & Strollo, PA in Union, NJ. Attorney for defendant hospital: Eileen Bass Rudd of Hardin, Kundla, McKeon & Poletto, P.A. in Springfield, NJ.

Ob/Gyn

$1,075,000 RECOVERY

Medical malpractice – Ob/Gyn negligence – Wrongful birth – Plaintiff contends abnormal ultrasound not followed up with amniocentesis that would have revealed genetic defect in fetus – Infant plaintiff born with multiple, severe medical conditions that will require lifetime care.

Bergen County, NJ

In this medical malpractice case, the plaintiffs asserted that the defendant obstetrician and hospital were negligent in failing to provide proper and adequate prenatal care to the plaintiff mother resulting in significant damages to the plaintiff mother and infant. The defendant hospital was dismissed on summary judgment because the defendant obstetrician was deemed not to have been an employee of the hospital. The defendant obstetrician denied any breach of the standard of care in the treatment of the plaintiff mother.

The plaintiff mother was the patient of the defendant obstetrician throughout her pregnancy and underwent several ultrasounds at the defendant hospital. The plaintiff maintained that the defendants were negligent in failing to adequately counsel the plaintiff to have further testing after abnormal ultrasounds, with markedly increased amniotic fluid, showed the likelihood of a genetic defect. On December 18, 2014, the infant plaintiff was delivered prematurely and was born with ventricular septal defect, hydronephrosis left kidney, congenital macroglossia, inguinal hernia-right, congenital obstruction of ureterovesical junction, intestinal malrotation, hyperbilirubinemia, respiratory distress, terminal deletion of chromosome 3 and terminal duplication of chromosome 11 (Beckwith-Weidman Syndrome). He receives 24/7, 365 day nursing care requiring breathing assistance through a tracheostomy, feeding tube, various therapies, and has required skilled nursing care with numerous hospitalizations for multiple complications. The condition is permanent.

As a result of the defendants' negligence in failing to recommend appropriate prenatal testing for the presence of genetic defect, the plaintiff mother was deprived of the option of terminating the pregnancy and, as a further result, the plaintiffs have sustained significant damages and will continue to incur significant expense for the life of the infant plaintiff. The defendant asserted that, following the abnormal ultrasound, he called the plaintiff mother into his office to discuss the results and, at that time, he discussed the possibility of gestational diabetes or chromosomal abnormality and recommended blood work to rule out diabetes and amniocentesis to test for genetic defect. The defendant maintained that he referred the plaintiff to a genetic counselor and for amniocentesis because he did not specialize in genetics. The defendant asserted that the plaintiff stated, based on the negative Panorama test for some genetic conditions, she did not wish to pursue amniocentesis.

The defendant argued that, following a second ultrasound which continued to show increased amniotic fluid, he again discussed amniocentesis with the plaintiff, and she again declined to proceed. The defendant asserted that the plaintiff was mainly concerned with Down syndrome, and that having been ruled out by the Panorama test, she did not feel it necessary to have amniocentesis. The defendant maintained that it is the physician's responsibility to recommend and refer, but any testing or procedure is ultimately the patient's decision.

The plaintiffs settled the matter as to the defendant obstetrician prior to trial in the amount of $1,075,000 broken down as follows: $344,203 in attorney fees; $186,988 in medical liens; $3,000 to establish a trust for the minor plaintiff; and $442,956 in net damages to the minor plaintiff.

REFERENCE

Graham, et al. vs. Shoman, M.D., et al.

Attorneys for plaintiff: Bruce H. Nagel and Susan F. Connors of Nagel Rice, LLP in Roseland, NJ. Attorney for defendant hospital: Danie Ko of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP in Florham Park, NJ. Attorneys for defendant obstetrician and obstetrical practice: Robert W. Donnelly, Jr. and Elizabeth A. Farrell of Dughi, Hewit & Domalewski in Cranford, NJ.

UNDISCLOSED RECOVERY

Medical malpractice – Ob/Gyn negligence – Plaintiff contends defendant surgeon violated standard of care in performance of pregnancy termination – 10 cm laceration of uterus – Laceration of right fallopian tube – Significant blood loss necessitated emergency supracervical hysterectomy and bilateral salpingectomy – Psychological and emotional grief, anger, and torment including depression, anxiety and post-traumatic stress disorder.

Essex County, NJ

In this complex medical malpractice matter the plaintiff, a 25-year-old woman, alleged that the defendant physician, his practice and the nurses were negligent in performing a termination of pregnancy resulting in permanent injuries. Summary judgment dismissal was granted as to the defendant obstetrical practice and the defendant nurses. The case proceeded only as to the defendant treating surgeon and his practice.

On April 25, 2015, the plaintiff presented to the defendants for a second trimester pregnancy termination and follow-up care. The plaintiff asserted that the defendants violated the duty of care and treatment to their patients and deviated from the appropriate medical standard in treatment of the plaintiff during and after the procedure. The plaintiff claimed that, in the course of the termination, the defendants caused an approximately 10 cm laceration of her uterus, a laceration of the right fallopian tube, right round ligament and uterine artery. The plaintiff sustained significant blood loss which necessitated emergency surgery to perform a supracervical hysterectomy and bilateral salpingectomy.

The plaintiff claimed psychological and emotional grief, anger, and torment including depression, anxiety and post-traumatic stress disorder which significantly diminished her quality of life. The plaintiff argued that the defendants neglected to heed the signs and symptoms that the plaintiff was exhibiting in the course of treatment; and failed to administer and perform proper treatment necessary to safely and effectively treat the plaintiff's condition. The plaintiff presented an expert medical report wherein the plaintiff's expert opined that the defendant physician violated the standard of care in injuring the plaintiff and in delaying emergency treatment afterward. The defendant denied the plaintiff's allegations, asserting that the plaintiff was comparatively negligent and that the proximate cause of her injuries and resulting damage were the existing and pre-existing physical condition of the plaintiff.

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

REFERENCE

Tyner vs. Kelinson, M.D. et al. Docket no. L-000977-17; Judge Thomas M. Moore, 10-15-19.

Attorney for plaintiff: John R. Connelly, Jr. of Drazin and Warshaw in Red Bank, NJ. Attorney for defendant: Ryan T. Gannon of Marshall, Dennehey, Warner, Coleman & Goggin in Roseland, NJ.

Urgent Care

$200,000 RECOVERY

Medical malpractice – Urgent care – Plaintiff contends defendant physician at urgent care facility misdiagnosed eye condition leading to severe eye injury – Defendant denies violation of standard of care and asserts that plaintiff's diagnosis was accurate based on presentation.

Middlesex County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant physician misdiagnosed her eye condition as a bacterial infection causing her to suffer injury to her eye. The defendant denied any violation of the standard of care and asserted that any and all injuries sustained by the plaintiff were the result of the acts or omissions of a third-party or of the plaintiff.

On July 7, 2016, the plaintiff came under the care of the defendant physician at an urgent care facility. The plaintiff asserted that the defendant negligently and carelessly examined and treated the plaintiff so as to deprive the plaintiff of appropriate medical treatment and caused her to suffer a severe eye injury. As a result of the misdiagnosis of the plaintiff's condition, she was prescribed an ophthalmic antibiotic for bacterial infection and was not treated for the actual eye condition. The plaintiff's condition progressed and resulted in eye injury due to delay in proper diagnosis and delay in treatment of underlying condition.

In the course of discovery, the plaintiff made an offer to accept judgment from the defendant in the amount of $400,000. The parties ultimately settled the matter prior to trial in the amount of $200,000.

REFERENCE

Clark vs. Desai, M.D. Docket no. L-004582-17; Judge Carlia M. Brady, 11-12-19.

Attorney for plaintiff: Robert G. Hicks of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, P.C. in Freehold, NJ. Attorney for defendant: Justin Johnson of Marshall Dennehey Warner Coleman & Goggin, P.C. in Roseland, NJ.

INSURANCE OBLIGATION

$285,000 RECOVERY

Insurance obligation – Motor vehicle negligence – Underinsured motorist – Minor plaintiff passenger injured when tortfeasor negligently strikes another vehicle – Unspecified traumatic injuries – Plaintiff brings suit against tortfeasors and for underinsured motorist against defendant insurer.

Hunterdon County, NJ

In this insurance obligation/motor vehicle negligence case, the minor plaintiff, a 14-year-old boy, asserted that the tortfeasor driver struck another vehicle while the plaintiff was a passenger in the vehicle, causing significant, permanent injury to the plaintiff. The defendant filed an appearance, but settled prior to making any defense.

On August 29, 2018 the minor plaintiff was a passenger in a vehicle being driven west on Reaville Avenue in Raritan Township by the defendant driver. The plaintiff asserted that the defendant driver was negligent in operation of the vehicle and caused a collision with another vehicle. As a result of the collision, the plaintiff sustained unspecified traumatic injuries.

The parties settled the matter prior to trial in the amount of $285,000 broken down as follows: $71,625 in attorney fees and costs; and a net recovery to the minor plaintiff of $213,375 set up in an annuity fund. The settlement allowed for $15,000, the policy limit, to be paid by the tortfeasors and $270,000 to be paid by the plaintiff's underinsured motorist policy carrier.

REFERENCE

Alpaugh vs. Rocco, et al. Docket no. L-000162-19; Judge Thomas C. Miller, 10-18-19.

Attorney for plaintiff: Frank Tunnero of Aiello, Harris, Marth, Tunnero & Schiffman, P.C. in Watchung, NJ. Attorney for defendant New Jersey Manufacturers Insurance: John P. Gilfillan of Kennedys CMK, LLP in Basking Ridge, NJ. Attorney for defendant tortfeasors: Georgette M. Wilton of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

$10,000 VERDICT

Insurance obligation – Underinsured motorist claim – Rear end collision – Aggravation of prior cervical and lumbar condition – Rotator cuff injury – Multiple epidural injections.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff, a seamstress, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury from a prior condition. The plaintiff collected $100,000 from the tortfeasor's underlying insurance policy and brought suit against the defendant insurer for underinsured motorist claim. The defendant stipulated liability, but contested the plaintiff's damages.

On June 3, 2014, the plaintiff was the operator of a motor vehicle traveling on Route 35 northbound in Old Bridge. The tortfeasor was operating a vehicle in the same direction, behind the plaintiff. The plaintiff asserted that the tortfeasor negligently failed to observe traffic and failed to slow or stop behind the plaintiff's vehicle. The tortfeasor driver struck the rear of the plaintiff's vehicle with force. The plaintiff alleged that the force of the impact resulted in aggravation of serious prior neck and back conditions resulting in permanent injuries. The defendant argued that all of the plaintiff's injuries were pre-existing and not caused by the subject collision.

The plaintiff had an extensive history of neck and low back problems before the subject accident and had had a prior two-level cervical fusion surgery and a lumbar surgery. The plaintiff claimed the subject collision aggravated her prior cervical condition along with new injuries to the lumbar spine and a new rotator cuff injury. The plaintiff received numerous injections to the cervical and lumbar spine. The plaintiff claimed lost wages and was on SSD at the time of trial.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $205,000 reduced to $125,000 after offset for prior insurance policy payment. The arbitration was not confirmed and the matter went to trial.

The jury returned a 6-1 verdict of zero dollars for pain and suffering and $10,000 for lost wages.

REFERENCE

Novakova vs. Allstate New Jersey Property & Casualty Insurance Company. Docket no. L-003430-17; Judge Kathleen A. Sheedy, 10-15-19.

Attorneys for plaintiff: Ronald S. Drazin and Christopher R. Brown of Drazin and Warshaw, P.C. in Hazlet, NJ. Attorney for defendant: William E. Wells, Jr. of King, Kitrick, Jackson & McWeeney in Brick, NJ.

LANDLORD/TENANT

$120,000 DEFENDANTS' RECOVERY

Landlord/tenant – Breach of quiet enjoyment – Constructive eviction – Plaintiff contends abusive behavior and violation of covenant of quiet enjoyment resulted in constructive eviction of plaintiff by defendant realty company and its principal – Defendants argue plaintiff breached lease and failed to pay rent.

Middlesex County, NJ

In this breach of quiet enjoyment and constructive eviction case, the plaintiff was a corporation located at 1630 Route 27 in Edison. The defendants were a realty company and its principal agent from whom the plaintiff rented the property. On August 16, 2017, the plaintiff leased the property at 1630 Route 27 in Edison from the defendant realty company for a term of 5 years for a rental fee of $20,000 per month. The

plaintiff leased the property to be used as a Chinese restaurant. The plaintiff invested extensive sums in the premises and rehabilitated the property. During the course of the lease, the plaintiff maintained that the defendant principal continually and on a regular basis visited the premises. The plaintiff argued that the defendant did not visit as a customer, but for issues relating to the building, the grounds, the restaurant, the employees, the rent and the activities therein all of which he addressed as a representative and majority stockholder of the defendant realty company. The plaintiff asserted that the defendant agent's visits almost always consisted of loud belligerent behavior frequently accompanied by hitting, attacking or assaulting individuals, employees or shareholders at the premises. The defendants denied the plaintiff's claims and asserted that the defendants' actions did not result in any damage to the plaintiff or the plaintiff's business.

After one attack on the manager of the restaurant, the police were called and the defendant left the premises only to return after the police left. On July 5, 2018, a final restraining order was entered against the defendant principal and in favor of the manager of the restaurant wherein the defendant is not allowed to be on the premises nor at the home of the manager. The plaintiff maintained that, due to the hostile visits by the defendant, the head chef quit. The plaintiff put forth that it was very difficult to replace a head chef in a Chinese restaurant and even more difficult to re-create the food specialties to which the customers were accustomed. The plaintiff complained that, due to the behavior of the defendant, the restaurant manager was no longer comfortable managing the restaurant and several other employees also quit.

The plaintiff argued that the defendants, through the actions of their principal, breached the express covenant of quiet enjoyment of the property it rented. The plaintiff also maintained that the defendants' actions resulted in damages including the costs of opening the subject business and losses from future expected profits from the business. The plaintiff also charged that the defendants' actions occurred since the beginning of the lease and that the plaintiff believed it would continue through the term of the lease. The plaintiff argued that this constituted constructive eviction and tortious interference with the business of the plaintiff due to the inability to operate its business on the premises. The plaintiff sought damages for the breach of quiet enjoyment, as well as termination of the lease with no payments owing by the plaintiff.

The defendants pointed to specific clauses in the lease including non-payment of rent, late fees, and the landlord's right to enter the property. Further, the defendants argued, the plaintiff willfully breached its agreement with the defendants to the detriment of the defendants and that the plaintiff's breach preceded any claimed breach by the defendants. The plaintiff made rental payments for September 2017 through May of 2018 and thereafter ceased payments. The defendants instituted eviction proceedings and, in an order dated September 26, 2018, the plaintiff was evicted.

The defendants claimed that the plaintiff was barred from recovery due to its willful, wanton, and reckless claim for damages, which claim was made with full knowledge that the terms of the agreement between the parties had not been satisfied by the plaintiff. The defendants brought a counterclaim against the plaintiff for breach of contract, common law fraud, equitable fraud, and breach of the covenant of good faith and fair dealing. The defendants argued that the plaintiff owed back rent in the amount of $180,000, the balance of the lease in the amount of $1,020,000, as well as late fees, attorney's fees and the costs of the subject suit.

The parties submitted to arbitration wherein the plaintiff stakeholders agreed to pay the defendants $120,000 in satisfaction of money owed for rent and the defendants agreed to vacate an arrest warrant issued against the plaintiff's principal and return fixtures and equipment belonging to the plaintiff restaurant.

REFERENCE

Chuan Yue Palace, Inc. vs. Li, et al. Docket no. L-004693-18; Judge Thomas Daniel McCloskey, 11-27-19.

Attorney for plaintiff: Jon Marshall, Esq. in Philadelphia, PA. Attorney for defendant: Robert M. Adochio, Esq. in New Brunswick, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$350,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff struck while crossing in crosswalk at night – Fractures of ankle and lower leg – Surgery – Knee tear – Arthroscopic surgery.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff pedestrian, in her late 40s, contended that the defendant SUV driver failed to make adequate observations, striking her while she was walking in a crosswalk, causing her to sustain severe permanent injuries. The defendant maintained that the plaintiff failed to make observations and was comparatively negligent. The defendant further pointed out that the plaintiff was wearing dark clothing, rendering her difficult to see.

The plaintiff suffered a bimalleolar fracture and a fracture to the distal fibula which required surgery and will cause permanent pain and limitations. The plaintiff further asserted that she suffered a knee tear and required a meniscectomy, synovectomy and a chondroplasty of the medial femoral condyle. The plaintiff maintained that she will permanently suffer pain swelling from such injuries. The defendant maintained that the plaintiff made a good recovery, but conceded that she may have some limitations.

The plaintiff made no income claims.

The defendant had $250,000 in primary coverage and a $1,000,000 umbrella. The case settled prior to trial for $350,000.

REFERENCE

Plaintiff's emergency medicine expert: Lynn McCoy, M.D. from Elizabeth, NJ. Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ.

Caldwell vs. Hokenberg. Docket no. L-0088-19, 10-20.

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

Auto/Truck Collision

$14,000 RECOVERY

Motor vehicle negligence – Auto/truck collision – Minor plaintiff passenger in vehicle struck by commercial truck – Disc herniation at L5-S4 – 3 ½ months chiropractic treatment.

Ocean County, NJ

In this motor vehicle negligence case, the minor plaintiff, a 12-year-old boy, asserted that the defendant driver struck the vehicle in which he was a passenger with such force that it caused significant injury. The defendant stipulated liability and being a commercial entity, the zero threshold applied in this case.

On April 16, 2018, the plaintiff was a passenger in a vehicle being driven by his father traveling north on River Avenue in Lakewood. The defendants were the owner and the driver of a commercial vehicle also traveling on River Avenue. The plaintiff contended that the defendant driver negligently operated the vehicle such that it struck the vehicle in which the plaintiff was a passenger resulting in serious injuries. The minor plaintiff was taken from the scene of the collision in an ambulance. As a result of the collision, the plaintiff sustained L5-S4 disc herniation. He was treated and released from the emergency room and followed up with 3 1/2 months of chiropractic treatment.

The parties settled the matter prior to trial in the amount of $14,000 broken down as follows: $3,428 in attorney fees; $289 in costs and disbursements and $10,283 in net damages to the minor plaintiff.

REFERENCE

Fontus vs. EMCA Glass, LLC, et al. Docket no. L-000896-19; Judge James Den Uyl, 10-07-19.

Attorney for plaintiff: Richard J. Weber of Milstein, Weber & Collazo, P.A. in Neptune, NJ. Attorney for defendant: Dawn M. Ritter of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

Head-on Collision

$750,000 RECOVERY

Motor vehicle negligence – Head-on collision – Plaintiff contends defendant box truck's tires excessively worn causing loss of control resulting in collsion – Pilon fracture – ORIF surgery.

Middlesex County, NJ

In this action for motor vehicle negligence, the 67-year-old plaintiff contended that the defendant driver of a box truck was proceeding despite excessively worn tread on a tire. The plaintiff maintained that as a result, the defendant failed to control his vehicle, resulting in the head-on collision which resulted in the plaintiff's injury. The defendant asserted that a phantom driver in front of him suddenly stopped, resulting in his swerving into the on-coming lane.

The plaintiff would have countered through the presentation of an independent eyewitness who would have testified that the defendant was swerving both in and out of his lane and the opposite lane as he approached the scene of the accident. The witness would have also denied that the defendant was confronted with a suddenly stopping vehicle. The plaintiff maintained that excessive wear on a tire caused the loss of control.

The plaintiff suffered a pilon fracture that required and ORIF surgery. The defendant contended that plaintiff had made a very good recovery despite the fracture. The plaintiff had retired some months earlier and contended that he has been forced to greatly restrict his plans to travel during his sunset years.

The case settled prior to trial for $750,000.

REFERENCE

Bobenchik vs. Wagner. 04-07-20.

Attorney for plaintiff: William A. Bock of Gill & Chamas in Woodbridge, NJ.

Intersection Collision

$100,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Intersection collision – Failure to stop at stop sign – Cervical herniation with surgery – Lumbar bulges treated conservatively – UIM case.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in his early 70s, contended that the defendant driver failed to obey a stop sign, causing the accident which resulted in the plaintiff sustaining injuries. The defendant indicated at the scene that he stopped and proceeded. The report of the investigating officer reflected that the officer spoke with an independent eyewitness who observed the defendant enter the intersection without stopping.

The plaintiff contended that he suffered a cervical herniation and 3 lumbar bulges that were confirmed by MRI. The plaintiff asserted that after conservative care, including physical therapy and chiropractic manipulations, was inadequate, he underwent an anterior fusion with instrumentation. The bulges were treated conservatively.

The defendant had $50,000 in coverage. The plaintiff had a $100,000 UIM policy and $50,000 was available. The case settled for the carrier's policies. The accident occurred in January, 2020 and settled in February, 2021.

REFERENCE

Plaintiff's chiropractor expert: Jay E. Brecker, D.C. from Dover, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ. Plaintiff's pain management expert: Richard Stillman, M.D. from Millburn, NJ.

Caamano vs. Longabardi. Docket no. MRS-L-2470-20, 02-18-21.

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

Parked Car Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Parked car collision – Rear end collision – Plaintiff passenger in parked van rear-ended by defendant driver – Cervical disc injuries – Cervical block injection and multiple disc ablation – Arbitration finds defendant 100% liable with $37,500 in damages.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver negligently struck the parked vehicle in which she was a passenger from behind with such force that it caused significant, permanent injury. The defendant stipulated liability, but contested the plaintiff's damages.

On June 16, 2016, the plaintiff was a passenger in a medical transport van parked outside Cooper University Hospital in the driveway off of Haddon Avenue in Camden. The plaintiff alleged that the defendant driver pulled into the driveway and struck the parked van in which the plaintiff was a passenger. The plaintiff alleged that as a result of the collision, she sustained traumatic cervical disc injury. The plaintiff treated with cervical block and ablation for multiple discs.

The defendant argued that the plaintiff had a significant prior history of spine issues. The defendant asserted that the subject collision involved minimal impact not sufficient to cause or exacerbate injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $37,500. There was no motion to confirm the arbitration order and the case proceeded.

The jury unanimously found that the plaintiff did not sustain a permanent injury proximately caused by the subject accident. Therefore, the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Alston vs. Thomas. Docket no. L- 000491-18; Judge Morris Smith, 12-06-19.

Attorney for plaintiff: Jonathan Fendler of The Law Office of Jared S. Zafran in Philadelphia, PA.
Attorney for defendant: Robert M. Kaplan of Margolis Edelstein in Mount Laurel, NJ.

Parking Lot Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Parking lot collision – C5-6 disc bulge with radiculopathy – Chiropractic treatment and physical therapy – Defendant claims plaintiff contributorily negligent and asserts plaintiff did not suffer injury in collision.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle in a parking lot and caused significant, permanent injury to the plaintiff. The defendant denied liability and claimed that the plaintiff was distracted while driving and did not see or avoid the defendant's vehicle.

On July 12, 2017, the plaintiff was traveling through the West Grove Square parking lot at 31 South Main Street in Neptune. The defendant was backing out of a parking space in the parking lot. The plaintiff maintained that the defendant negligently backed out without ascertaining that it was safe to do so and backed into the plaintiff's vehicle. The plaintiff alleged that as result of the impact, the plaintiff sustained a C5-6 disc bulge with radiculopathy. The plaintiff treated with chiropractic care and physical therapy.

The defendant contested the plaintiff's damages given the low speed, low impact of the collision. The defendant's IME opined that the plaintiff's condition was degenerative and not traumatic in nature.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $20,000 reduced to $18,000 for plaintiff's comparative negligence. After arbitration and prior to trial, the plaintiff offered to take judgment in the amount of $35,000. The offer was not accepted and the matter proceeded to trial.

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

REFERENCE

Courtney vs. Adams. Docket no. L- 001727-18; Judge Kathleen Sheedy, 12-19-19.

Attorney for plaintiff: Daniel J. Eastmond of Manning, Caliendo & Thomson, P.A. in Freehold, NJ. Attorney for defendant: Brittany Edgerley-Dallal, Esq. in Piscataway, NJ.

Rear End Collision

$680,000 RECOVERY

Motor vehicle negligence – Rear end collision – Trauma sustained by plaintiff previously undergoing cataract surgery – Dislocation of intraocular lens – Need for replacement of lens causes continuing edema – Moderate vision loss in one eye – Lumbar and cervical bulges – Cervical radiculopathy – No disc surgery – Non-dominant shoulder tear – Labral tear of right hip – No income claims.

Hudson County, NJ

The plaintiff driver's motion for summary judgment on liability was granted in this motor vehicle negligence case. The plaintiff, age 37 at the time, had undergone prior cataract surgery. The plaintiff contended that the trauma resulted in the dislocation of the intraocular lens, and the need for a replacement of the artificial lens, and that such a need resulted in continuing edema. The plaintiff's ophthalmologist maintained that the plaintiff will probably suffer vision loss in the eye in the future. The defendant's ophthalmologist maintained that any continuing eye difficulties were related to a subsequent MVA caused by the plaintiff. The defendant also pointed out that both vehicles sustained minor property damage only.

The plaintiff would have argued that in view of the difficulties with the eye after the subject accident and before the subsequent collision, the defendant's position should be rejected. The plaintiff further asserted that he suffered cervical and lumbar bulges that were confirmed by MRI and cervical radiculopathy that was confirmed by EMG. There was no evidence that disc surgery will be indicated. The plaintiff also maintained that he sustained a labral tear of the hip that did not require surgery. The plaintiff also contended that he suffered a tear of the non-dominant shoulder which will caused permanent pain and restriction despite arthroscopic surgery.

The plaintiff made no income claims.

The case settled prior to trial for $680,000.

REFERENCE

Plaintiff's neuro-optometrist expert: Vincent R. Vicci, Jr., O.D. from Westfield, NJ. Plaintiff's neurologist expert: David H. Rosenbaum, M.D. from Elmwood Park, NJ. Plaintiff's ophthalmologist expert: Warren Klein, M.D. from Elizabeth, NJ. Plaintiff's orthopedic surgeon expert: Michael Meese, M.D. from Hackensack, NJ. Defendant's neurologist expert: David Prince, M.D. from Englewood Cliffs, NJ. Defendant's ophthalmologist expert: Alyson G. Yashar, M.D. from Woodcliff Lake, NJ. Defendant's orthopedic surgeon expert: Lawrence Kraut, M.D. from Clifton, NJ.

Tsai vs. AVF Transports, LLC. Docket no. HUD-L-936-19, 08-20.

Attorney for plaintiff: Lisa A. Lehrer of Davis Saperstein & Salomon, PC in Teaneck, NJ.

PREMISES LIABILITY

Fall Down

$72,500 RECOVERY

Premises liability – Fall down – Plaintiff trips and falls on broken up sidewalk at apartment complex in which she resides – Fractures of dominant wrist and elbow – Tear of dominant rotator cuff – Plaintiff declines recommendation for rotator cuff surgery – No income claims.

Passaic County, NJ

In this action for premises liability, the 71-year-old plaintiff tenant in a garden apartment complex contended that the defendant, her landlord, negligently failed to maintain the sidewalk resulting in a broken up section that caused the plaintiff to trip and fall, sustaining multiple injuries. The defendant asserted that the plaintiff should have seen the area and avoided the incident. The defendant would have argued that the plaintiff was comparatively negligent.

The plaintiff suffered fractures to the dominant elbow and wrist. These injuries were treated conservatively and the plaintiff maintained that she will suffer some permanent pain and limitation. The plaintiff also contended that the plaintiff suffered a partial rotator cuff tear on the dominant arm, which the plaintiff claimed will cause some permanent symptoms. The plaintiff declined recommended arthroscopic surgery for the rotator cuff tear. The defendant maintained that the injuries substantially resolved.

The case settled prior to trial for $72,500.

REFERENCE

Plaintiff's orthopedic surgeon expert: Keith Johnson, M.D. from Glen Rock, NJ.

Eberson vs. Park East Terrace Cooperative Apartments, Inc. Docket no. PAS-L-003350-20, 11-18-20.

Attorney for plaintiff: Todd I. Siegel of Siegel & Siegel in Teaneck, NJ.

Hazardous Premises

$7,500 RECOVERY

Premises liability – Hazardous premises – Minor plaintiff bitten by bed bugs at defendant hotel – Defendant denies bed bug infestation – Nightmares, itching and scarring – Costs of medical treatment, rehabilitation and medication – Pain and suffering.

Union County, NJ

This action for premises liability arose from an incident which occurred on October 17, 2017 when the plaintiff mother and minor granddaughter, aged 5, stayed overnight at the defendant hotel on Spring Street in Elizabeth. The plaintiffs maintained that the defendant had a duty to maintain the premises and to inspect the premises and rooms that they rented to invitees prior to renting the rooms, including inspecting for and exterminating bed bugs. The plaintiffs argued that the defendants breached that duty resulting in the plaintiffs being attacked and bitten by bed bugs. The defendant denied liability arguing that they employed a pest control company that inspected at least once/month for bed bugs and that cleaning staff inspected for and reported any signs of bed bugs when they cleaned the rooms.

The plaintiffs claimed they suffered from lack of sleep, nightmares, itching, and scarring from the bites. The plaintiffs argued that, as a result of the defendant's negligence, they incurred the costs of medical treatment, rehabilitation and medication, as well as pain and suffering. The plaintiffs sought compensatory damages; consequential damages; punitive damages and attorney fees, and costs of the suit.

The defendant maintained that prior to the plaintiffs' complaint, there had been no indication of the presence of beg bugs by cleaning staff, pest control, or other guests. Further, the defendant had had no bed bug issues for the entire preceding year. The defendant noted that the plaintiffs had been staying at 2 other hotels in the days preceding their stay at the defendant hotel and that it was likely that they encountered bed bugs at one of the other hotels in which they stayed.

The parties settled the matter prior to trial in the amount of $7,500 to the minor plaintiff broken down as follows: $2,804 in attorney fees and $4,696 in net damages to the minor plaintiff.

REFERENCE

Carter vs. Knights Inn. Docket no. L-000955-18; Judge James Hely, 10-25-19.

Attorney for plaintiff: James M. Almasy of Almasy Law in Woodbridge, NJ. Attorney for defendant: Timothy P. Malacrida of Kirmser, Lamastra, Cunningham & Skinner in Elizabeth, NJ.

RETALIATORY TERMINATION

DEFENDANT'S VERDICT

Retaliatory termination – Whistleblower claim – Plaintiff claims defendant state and its employees violated New Jersey Conscientious Employee Protection Act by retaliating against her for objecting to and disclosing inappropriate violations of rights of individuals confined to defendants' psychiatric facilities – Defendants deny plaintiff engaged in protected activity and deny any retaliation or damages incurred by plaintiff.

Mercer County, NJ

In this whistleblower case, the plaintiff provided daily legal support to the subject state-run psychiatric hospital and other state-run hospitals on an as needed basis. In August 2012, the plaintiff began work to assist the subject facility to come into compliance with regulations instituted to provide eligible persons with mental disabilities the least restrictive care possible and reduce the number of involuntarily institutionalized persons. After receiving high praise for her work, the plaintiff was then subjected to retaliation for reporting individuals who were attempting to circumvent the regulations in order to receive more Medicaid reimbursements by keeping people institutionalized even when they met the requirements for independent living. The defendants denied any retaliation against the plaintiff and denied the allegations made by the plaintiff.

The plaintiff asserted that the defendants violated the New Jersey Conscientious Employee Protection Act by retaliating against the plaintiff for objecting to and disclosing purposeful denial of Division of Developmental Disabilities services to consumers deemed to meet the eligibility criteria; subjecting DDD-eligible individuals to unnecessarily lengthy and needlessly restrictive institutionalizations after they were no longer clinically deemed dangerous to themselves or others in violation of Title II of the ADA, the state's Olmstead obligations, and the state and federal Constitutions; unlawful treatment of the consumers identified by the plaintiff in emails to the defendants; maintenance of DDD-eligible consumers on CEPP for an average of 505 days in violation of their rights; and the unlawful retaliation to which she was subjected after raising these concerns. The plaintiff also asserted that she was presented with a confidentiality and non-disclosure agreement and that, when she would not sign it without clarification of the terms, she was issued a Notice of Suspension From Duty Without Pay even though she had no prior discipline whatsoever during her lengthy employment with the defendant state. The plaintiff maintained that other employees had not signed the agreement but were not similarly disciplined.

As a result of the defendants' retaliation, the plaintiff suffered economic losses, economic losses, emotional distress, harm to career, harm to reputation, and other damages compensable under the Conscientious Employee Protection Act. The plaintiff sought: compensatory damages, consequential damages, punitive damages, attorneys' fees, costs of suit, and pre- and post-judgment interest. The defendants denied that the plaintiff suffered any damages caused by the defendants, and that any damages were caused by the plaintiff herself.

The defendants argued that the plaintiff acted unreasonably and failed to avail herself of policies and procedures by which to make any complaints of retaliation, and thus, failed to give the defendants notice of the discriminatory or retaliatory conduct. The defendants argued that they did not take any adverse employment action against the plaintiff and that any adverse action was taken for legitimate, non-discriminatory, non-retaliatory reasons. The defendants denied that the plaintiff engaged in a protected activity and that, upon learning of the plaintiff's allegations, a prompt and thorough investigation was completed consistent with the defendants' policies and procedures and effective remedial action was taken. The defendants claimed that, at all relevant times, they acted in compliance with all applicable laws, rules regulations and standards.

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

REFERENCE

Bennett vs. State of New Jersey, et al. Docket no. L-001774-15; Judge Anthony M. Massi, 11-18-19.

Attorney for plaintiff: Claudia A. Reis of Lenzo & Reis, LLC in Morristown, NJ. Attorneys for defendant: Christine P. O'Hearn and Therese M. Taraschi of Brown & Connery, LLP in Westmont, NJ.

SCHOOL LIABILITY

$48,405 RECOVERY

School liability – Negligent supervision – Minor plaintiff injured while under defendant's supervision on school playground – Fractured arm requiring surgical repair.

Somerset County, NJ

In this negligent supervision case, the minor plaintiff asserted that the defendant school failed to maintain a safe environment for the children on the premises and, as a result, the plaintiff was seriously injured. The defendant did not present a defense and settled the matter with the plaintiff.

On October 30, 2017, the plaintiff fell on the playground of the defendant school on Bethel Road in Warren. The plaintiff maintained that the defendant's staff was negligent in failing to properly supervise children in their care. The plaintiff maintained that his injury was a result of negligent supervision by the defendant. As a result of the accident, the plaintiff sustained a broken arm requiring surgical repair. The plaintiff claimed a medical lien of $5,329.91.

The parties settled the matter prior to trial in the amount of $48,405 broken down as follows: $5,330 in medical expenses and $43,075 in net damages to the minor plaintiff.

REFERENCE

Schobert vs. Lighthouse Scholars, LLC. Docket no. L-001125-19; Judge Thomas C. Miller, 12-23-20.

Attorney for plaintiff: Plaintiff mother pro se.
Attorney for defendant: Danielle Demarzo of Law Office of Gerald F. Strachan in Woodbridge, 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

$2,500,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – NURSING NEGLIGENCE – PHYSICIAN NEGLIGENCE – BIRTH INJURY – HYPOXIC ISCHEMIC BRAIN INJURY DUE TO DELAYED DELIVERY.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant family physician and the defendant nurse were both negligent in failing to appreciate that the infant was in severe fetal distress and in need of immediate emergency delivery. Instead, the child was delivered more than 2 hours later, having suffered a hypoxic brain injury. The defendants denied that there was any deviation from acceptable standards of care. The defendants disputed causation and damages.

The plaintiff mother presented at 40 weeks with contractions. She was under the care of the defendant family physician and the defendant nurse. A fetal heart monitor was placed in utero; however, the evidence indicated that both the physician and the nurse failed to properly consider and immediately act on the worrisome fetal heart readings. Decelerations in the fetal heart rate were initially noticed at 2:30 a.m., 2:52 a.m. and then again at 4:55 a.m. By 6:15 a.m., these decelerations were increasing with increased fetal heart rate. At 7:20 a.m., the fetal heart rate was 190 with consistent, repeated and prolonged decelerations, yet the defendant physician and the defendant nurse failed to take any immediate action to deliver the infant.

The case was resolved for $2,500,000 prior to the depositions of the defendants.

REFERENCE

Minor Doe vs. Nurse Roe, et al., 05-01-18.

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

$1,500,000 RECOVERY – MEDICAL MALPRACTICE – RADIOLOGY – DELAY IN DIAGNOSIS OF BREAST CANCER – PLAINTIFFS' DECEDENT SUCCUMBS TO BREAST CANCER AFTER DEFENDANT RADIOLOGIST FAILS TO IDENTIFY CANCER THAT HAD ALREADY SPREAD TO LYMPH NODES – DIAGNOSIS DELAYED BY 10 MONTHS – WRONGFUL DEATH CLAIM – CASE COMPLICATED BY PLAINTIFF'S CLAIM FOR LOSS OF CONSORTIUM BY ADULT DISABLED CHILDREN.

Ocean County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants failed to timely diagnose breast cancer in the plaintiffs' decedent resulting in a lowered survivability rate and ultimately her death. The plaintiffs brought suit against the defendant radiologist and primary care physician and their respective practices. The defendants denied liability and denied violating any duty owed to the plaintiffs. Each defendant asserted that the co-defendants were responsible for any delay in diagnosis and treatment.

For some time prior to being diagnosed with cancer on September 14, 2015, the plaintiffs' decedent was a patient of the defendants. The plaintiff argued that the defendant radiologist negligently interpreted and reported as normal a mammogram performed December 11, 2014, instead of reporting breast cancer which had already spread to the patient's axillary lymph nodes. The misreading of the mammogram resulted in a 10-month delay in diagnosis of the patient's breast cancer.

The jury unanimously found no cause of action and returned a verdict in favor of the defendant primary care physician and practice on November 11, 2019. The defendant radiologist and radiology practice settled the matter prior to trial, via mediation, in the amount of $1.5 million with 25% of the award allocated to the survival claim and 75% to the wrongful death claim.

REFERENCE

Estate of Paula Kirby vs. Shore Medical Specialists, et al. Docket no. L- 000786-17; Judge James Den Uyl, 03-26-20.

Attorney for plaintiff: Dennis M. Donnelly of The Donnelly Law Firm in Summit, NJ. Attorney for defendant radiologist and radiology practice: Lauren H. Zalepka of Ronan, Tuzzio & Giannone in Tinton Falls, NJ. Attorney for defendant primary care facility and physician: Thomas J. Heavey of Grossman, Heavey & Halpin, P.C. in Brick, NJ.

$1,000,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PHYSICIAN NEGLIGENCE – DEFENDANT DOCTORS FAIL TO APPRECIATE AND ADDRESS DECEDENT'S SIGNS AND SYMPTOMS OF INTERNAL BLEEDING CAUSING DECEDENT TO GO INTO SHOCK AND DIE – FAILURE TO PROPERLY AND PROMPTLY DIAGNOSE AND TREAT ABDOMINAL HEMORRHAGE – WRONGFUL DEATH OF 57-YEAR-OLD FEMALE.

Montgomery County, PA

The estate of the decedent in this medical malpractice action alleged that the defendant hospital physicians failed to properly diagnose and treat their decedent's internal abdominal bleeding causing the decedent to go into shock and pass away. The defendant doctors and hospital denied all allegations of negligence and maintained that the decedent was treated properly and in accordance with all standards.

On December 23, 2017, the 57-year-old female decedent was admitted to the defendant hospital where she came under the care of the defendant doctors for suspected pulmonary embolism. She was placed on anticoagulants and her condition deteriorated. Despite the decedent's declining condition and signs and symptoms of internal bleeding, the defendants failed to investigate or stop the bleed and the decedent went into shock and died on December 27, 2017.

A joint tortfeasor pro rata agreement was reached with the settling defendants, Holy Redeemer and Malik, with the estate recovering $1,000,000. An action against the Estate of the remaining treating physician, Dr. Brian Carnavil, is still pending.

REFERENCE

The Estate of Anna Marie Allen by Ernest Allen vs. Holy Redeemer Hospital and Aslam Malik, M.D. and The Estate of Brian Carnavil, M.D. Case no. 2019-29121; Judge Gail Weilheimer, 11-20-20.

Attorney for plaintiff: Brian Hall in Philadelphia, PA. Attorney for defendant: Amalia Romanowicz of Post & Schell in Philadelphia, PA.

$625,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – ADULT CARE FACILITY NEGLIGENCE – FACILITY'S DRIVER NEGLIGENT IN DISEMBARKING PLAINTIFF CAUSING HER TO FALL – TRAUMATIC BRAIN INJURY IN PLAINTIFF WITH DEMENTIA.

Withheld County, MA

In this matter, the plaintiff alleged that the defendant adult care facility's driver was negligent in assisting her out of the vehicle at her home, resulting in a fall where the plaintiff sustained head trauma and was diagnosed with a traumatic brain injury. The defendant facility denied the allegations and disputed damages, arguing that the plaintiff's cognitive function was already diminished and damages could not be ascertained as specific to any potential negligence by their driver.

The female plaintiff, age 67, attended the defendant's adult care facility. She was transported from her home back and forth to the facility on the days she was under their care, by its designated driver using their van vehicle. On the date of this incident, the driver was a new employee and while he was assisting the plaintiff from the van, he failed to exercise proper care and the plaintiff fell backward and struck her head on the ground.

The parties agreed to resolve the plaintiff's claims for the sum of $625,000 in a confidential settlement that occurred prior to the trial in this matter.

REFERENCE

Plaintiff Jane Doe vs. Defendant Adult Care Facility. 01-20-20.

Attorney for plaintiff: Christopher DiBella of DiBella Law Offices, P.C. in Methuen, MA.

$175,000 RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – PLAINTIFF'S DECEDENT SUFFERS HIP AND LEG FRACTURES IN FALL AT DEFENDANT SKILLED NURSING FACILITY LEADING TO WORSENING PRESSURE WOUND AND DECLINE IN HEALTH RESULTING IN DEATH – WRONGFUL DEATH OF 82-YEAR-OLD.

Montgomery County, PA

This was a medical malpractice action in which the estate of the decedent alleged that the defendant facility failed to properly treat and care for the decedent resulting in fall. The fall, which occurred in July of 2017, caused the patient to suffer a hip and leg fracture which resulted in surgeries, infection and a decline in health. She died on October 6, 2017. The facility denied all allegations negligence and injury and maintained that the decedent's comorbidities were the cause of death and not any action or inaction on the part of the defendant.

On May 16, 2017, the plaintiff's 82-year-old decedent was admitted to the defendant facility in Hatboro, Pennsylvania for a right lower leg decubitus ulcer with cellulitis. She remained a patient of the defendant facility until August of 2017.

The parties settled for $175,000.

REFERENCE

The Estate of Ruth Belardino by Anthony Belardino vs. Luther Woods SNF, LLC dba Luther Woods Nursing and Rehabilitation Center and Vita Healthcare Group. Case no. 2019-16034; Judge Steven C. Tolliver, 10-14-20.

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

MOTOR VEHICLE NEGLIGENCE

$9,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER DRIVER RUNS RED LIGHT – DECEDENT DRIVER MAKING LEFT TURN COLLIDES WITH TRUCK – NEGLIGENT HIRING AND RETENTION OF DRIVER – DEATH OF 18-YEAR-OLD WHO RESIDED WITH HER MOTHER – DISCOVERY INCLUDES NUMEROUS WITNESSES REGARDING SPECIAL BOND BETWEEN DECEDENT AND HER MOTHER ON ISSUE OF MENTAL ANGUISH AND LOSS OF COMPANIONSHIP.

Bexar County, TX

In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver negligently failed to stop at a red light that provided the right-of-way for drivers in the opposite direction to make a left hand turn resulting in the plaintiff striking the truck while attempting a left turn. The plaintiff claimed that as a result, the 18-year-old driver suffered severe trauma and died. The defendant trucking company denied that it improperly hired or retained the driver.

The evidence would have disclosed that although the tractor-trailer's two-way dash cam showed the defendant driver running the red light and although the trucking company had possession of the video within 2 hours of the accident, the initial defense reflected that the decedent had run the red light. The plaintiff obtained the video during discovery and the defendants no longer disputed the question of lights.

The decedent had expressed an interest in becoming both a physician and a teacher. The plaintiff's economist projected the amount the decedent would have earned, less self maintenance which ranged between slightly more than $300,000 to slightly more than $5,000,000. The plaintiff maintained that the loss of society and mental anguish caused by the death was particularly severe.

The defendant had $5,000,000 in primary coverage and a $25,000,000 umbrella. The case settled prior to trial for $9,000,000.

REFERENCE

Plaintiff's accident reconstruction expert: Michael H. Rangel, P.E. from San Antonio, TX. Plaintiff's economist expert: Keith W. Fairchild, Ph.D. from San Antonio, TX. Plaintiff's psychologist expert: H. David Feltoon, Ph.D. from Austin, TX. Plaintiff's trucking expert: Peter J. Sullivan from Houston, TX.

$1,250,000 POLICY LIMIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF PASSENGER IN CAR STRUCK IN REAR BY PICK-UP TRUCK – LUMBAR PROTRUSION NECESSITATING 2 SURGERIES – PLAINTIFF CARPENTER CLAIMS HE CAN NO LONGER ENGAGE IN HEAVY PHYSICAL WORK AND FACES SIGNIFICANT DIMINUTION IN EARNINGS.

Riverside County, CA

This action for motor vehicle negligence involved a then 28-year-old plaintiff front-seat passenger in which the host vehicle was struck by the defendant pick-up truck driver. Liability was not in dispute. The plaintiff, who was a union carpenter and who engaged in heavy physical work, contended that he sustained a lumbar protrusion that prompted 2 surgeries and which will prevent him from engaging in physically rigorous work and create a very significant diminution in earnings over the course of the plaintiff's life. The defendant denied that the accident, involving minor property damage, caused the plaintiff to suffer permanent injuries.

The plaintiff asserted that prior to the accident, he was very physically active and had a good job record, engaging in heavy labor. The plaintiff claimed that he developed severe lower back symptoms and that an MRI confirmed a protrusion at L5-S1. The plaintiff maintained that after a more conservative course of treatment was inadequate, he underwent a discectomy. The plaintiff asserted that he continued to suffer numbness in the legs and difficulties walking despite the operation and that he required a second surgery.

The defendant had $250,000 in primary coverage and a $1,000,000 umbrella. The case settled prior to trial for $1,250,000.

REFERENCE

Plaintiff's economist expert: Catherine M. Graves, M.B.A. from Fullerton, CA. Plaintiff's life care planning expert: Michelle Clarence, O.T.R.L., C.L.C.P. from San Diego, CA. Plaintiff's neurosurgeon expert: Sylvain Palmer, M.D. from Mission Viejo, CA. Plaintiff's vocational rehabilitation expert: Richard H. Andersen, M.S., C.V.E. from Westminster, CA.

Nursall vs. C-ME Trim Company, Inc., et al. Case no. RIC1820464, 03-09-20.

Attorneys for plaintiff: Cynthia D. Hafif-Stonehouse and Michael J. Huber of Hafif-Stonehouse Law Group in Ontario, CA.

PREMISES LIABILITY

$2,076,759 VERDICT – PREMISES LIABILITY – FALLING OBJECT – DANGEROUS CONDITION AT APARTMENT COMPLEX – CEILING COLLAPSE – PLAINTIFF KNOCKED TO FLOOR – LUMBAR DISC HERNIATIONS.

Miami-Dade County, FL

The plaintiff in this premises liability action claimed that she was seriously injured in the apartment unit she rented from the defendants when a portion of the drywall ceiling fell and struck her on the head and body. As a result of the incident, the plaintiff sustained herniations as several levels of the lumbar spine with radiculopathy, cervical sprain and contusions and abrasions, which her doctors causally related to the fall. She complained of ongoing pain and limitation of physical activity. The plaintiff contended that the premises were negligently maintained by the defendants (the property owner and management company). The defendants denied the plaintiff's claims and contended that the premises were reasonably safe and they had no actual or constructive knowledge of the allegedly dangerous condition.

The plaintiff was a tenant of an apartment complex called "187th Street Apartments" in Miami Gardens, Florida. The apartment was intended as one of Florida's low-income housing incentives known as the "Family Loan Management Set-Aside housing program". The plaintiff argued that the presence of mold on the ceiling pieces which had fallen indicated a long-standing moisture problem of which the defendants knew or should have known.

The jury found the defendant causally negligent and award the plaintiff $2,076,759 in damages.

REFERENCE

Plaintiff's engineering expert: John C. Pistorino from Miami, FL. Plaintiff's neurosurgery expert: Santiago Figueroa, M.D. from San Juan, PR. Defendant's biomechanical expert: Andrew Rentschler from Pittsburgh, PA.

Neloms vs. Miami Property Group, Ltd., et al. Case no. 2014-014367CAO1; Judge Carlos Guzman, 03-21-19.

Attorneys for plaintiff: Stephen S. Nuell and Robert L.F. Polsky of Nuell & Polsky in Miami, FL. Attorney for plaintiff: Brett L. Schlacter of Law Offices of Brett L. Schlacter in Bay Harbor Islands, FL.

ADDITIONAL VERDICTS OF INTEREST

Cleaning Service Negligence

$2,000,000 RECOVERY – CLEANING SERVICE NEGLIGENCE – PROPANE GRILL LEFT TURNED ON – GAS LEAK – EXPLOSION – EXTENSIVE BURN INJURIES – SKIN GRAFTS REQUIRED.

Lee County, FL

In this negligence case, the plaintiff was badly burned when his propane grill exploded on his Cape Coral, Florida, patio. The plaintiff alleged that a worker employed by the defendant's cleaning service was responsible for the explosion in that the employee negligently failed to fully turn off the gas grill after cleaning it. When the plaintiff pressed the igniter button on the grill, he contended that the accumulation of flammable gas caused a massive explosion of fire. The plaintiff was transported to the hospital and diagnosed with third degree burns over more than 20 percent of his body, including his legs, arms, face, chest and genitals. He underwent 4 skin graft surgeries and 7 debridement procedures to treat his burns. The defense denied that it was responsible for causing the fire and alleged that the plaintiff, or someone else at his house, caused the fire.

Evidence showed that, on December 21, 2017, the defendant sent its cleaning crew to the plaintiff's home to perform cleaning services. On that visit, the defendant's employee proceeded to clean the gas grill located on the plaintiff's outdoor patio. In doing so, the plaintiff alleged that the defendant's employee negligently turned on a burner to the gas grill and then left the home without ever turning off the burner.

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

REFERENCE

Dastra vs. Sparkle & Shine Cleaning Service of SWFL, LLC. Case no. 19-CA-002025; Judge James R. Shenko, 01-29-21.

Attorneys for plaintiff: Thomas B. Scolaro and Justin B. Shapiro of Leesfield Scolaro, P.A. in Miami, FL.

Maggio vs. Garcia-Moreno, et al. Case no. 2018CI24231, 11-16-20.

Attorneys for plaintiff: Thomas A. Crosley and Shawn M. Mechler of Crosley Law Firm, P.C. in San Antonio, TX.

Construction Site Negligence

$915,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – CONSTRUCTION DEBRIS FALLS FROM SCAFFOLDING AND STRIKES PLAINTIFF ON HEAD – FAILURE TO PROVIDE SAFE WORKSITE – TRAUMATIC BRAIN INJURY – SURGERY – COGNITIVE DEFICITS.

Travis County, TX

This negligence action was brought by the plaintiff construction worker to recover for a serious traumatic injury that he sustained when he was struck in the head by construction material that fell from a scaffolding. The plaintiff sustained a traumatic brain injury that required multiple surgeries and recuperative therapy. The defendants denied being negligent and maintained that it was the actions of the plaintiff that caused the incident and any resulting damages.

The plaintiff maintained that the defendants were negligent in maintaining an unsafe worksite, violating OSHA regulations, and failing to warn of the hazardous and dangerous condition. The defendants denied all allegations of negligence and argued that at the time of the incident the plaintiff was outside the exclusion area. The defendants also argued that the plaintiff's brain injury has greatly improved since litigation began.

The plaintiff settled with the defendant Sanchez for $625,000 and the defendant Novak for $290,000, for a total of $915,000.

REFERENCE

Adelso Garcia vs. Sanchez Stone & Bricks, LLC and Novak Commercial Construction, LLC. Case no. D-1-GN-19-001761; Judge Rhonda Hurley, 01-26-21.

Attorney for plaintiff: S. Burgess Williams of Zinda Law Group, PLLC in Austin, TX. Attorney for defendant: R. Chad Geisler of Germer Beaman & Brown, PLLC in Austin, TX. Attorney for defendant: Trek Doyle of Doyle & Seelbach, PLLC in Austin, TX.

Contractor's Negligence

$2,063,681 VERDICT – CONTRACTOR'S NEGLIGENCE – NEGLIGENT PLACEMENT OF PORTA-JOHN AT RENOVATION SITE FACING CURB – PLAINTIFF TILE FINISHER FALLS LEAVING FACILITY – SEVERE KNEE INJURIES – 4 ARTHROSCOPIC INTERVENTIONS – INABILITY TO WORK.

Camden County, NJ

This case involved a plaintiff, who was age 50 at the time, and who was working as a tile finisher at a warehouse undergoing major renovations, who contended that the defendant general contractor negligently had the one available Porta-John placed in such a manner that it exited onto a curb, creating a tripping hazard. The plaintiff asserted that as a result, he fell as he was exiting the facilities, suffering severe tears of the knee, including the ACL and PCL, as well as tears to the lateral and medial menisci of the same knee. The plaintiff claimed that despite some 4 arthroscopic surgeries, he will be unable to work. The defendant's engineer denied that there was a tripping hazard. The defendant also asserted that the plaintiff, who had just entered the

The plaintiff claimed that his talents, inclinations and educational level gear him towards physical labor, that he will permanently be unable to engage in such physical work and that the plaintiff is permanently unemployable. The plaintiff further maintained that everyday activities and tasks are painful and difficult.

The jury found the defendant 100% negligent and awarded $2,063,681, including $101,981 for past medical bills, $111,720 for future medical bills, $220,000 for past lost earning, $680,000 for future lost earnings, $625,000 for pain and suffering and $625,000 to the wife on her per quod claim.

REFERENCE

Plaintiff's construction safety expert: Stephen A. Estrin from Cooper City, FL. Plaintiff's economist expert: Andrew C. Verzilli, MBA from Lansdale, PA. Plaintiff's functional capacity expert: Margaret Flynn from Richmond, PA. Plaintiff's life care planning expert: Chava Goskschmidt from Bala Cynwyd, PA. Plaintiff's orthopedic surgeon expert: Matthew D. Pepe, M.D. from Egg Harbor Twp., NJ. Plaintiff's pain management expert: Alan F. Kwon, M.D. from Marlton, NJ. Plaintiff's vocational rehabilitation expert: Sonya M. Mocarski, from Atco, NJ. Defendant's engineer expert: Micahel Cronin, P.E. from Edison, NJ. Defendant's orthopedic surgeon expert: Jeffrey Lakin, M.D. from Clifton, NJ.

O'Connell vs. Network Construction, Inc., et al. Docket no. CAN-L-001222-17; Judge Michael J. Kassel, 11-01-19.

Attorneys for plaintiff: Sean M. McMonagle and John T. Dooley of Law Office of John T Dooley in Pennsauken, NJ.

Fraud

$4,300,000 RECOVERY – FRAUD – BEVERAGE COMPANY ACCUSED OF DEFRAUDING GOVERNMENT OF BOTTLE DEPOSITS – $1.85 MILLION IN BOTTLE DEPOSITS.

Winchester County, NY

In this action, the State of New York accused a beverage company of inflating its empty bottle returns, resulting in a substantial amount in unpaid bottle deposits to the state. The matter was resolved with a settlement.

The defendant Oak Beverages is a distributor of beer, wine, hard cider, spirits and soda throughout the New York City Metro and Westchester areas. The defendant's container (bottle) collection practices were subject to parallel investigations by the state Attorney General's Office, as well as the Rockland County District Attorney. Investigators found that defendant Oak Beverages systematically and falsely inflated the number of empty containers reported receiving in its quarterly reports to the State of New York. Specifically, investigators found that defendant's GM modified customer invoices sent from drivers' daily records in order to exaggerate the number of empty containers collected. The defendants allegedly instructed lower-level employees to modify the defendant's electronic sales to reflect these alterations and not inform anyone else of the adjustment. The relator Robert S. is a former employee of defendant.

In December 2016, the relator filed suit pursuant to the qui tam provision of the state False Claims Act, naming as defendants Oak Beverage, Generation Enterprises (d/b/a Top Pop Soda), Boening Bros, and Debra B. The defendant was accused of failure to turn over approximately $1,859,000 in unpaid deposits to New York State between 2013 and 2016. The state sought damages and penalties pursuant to the New York State False Claims Act, New York State Finance Law, and Returnable Container Act (The Bottle Bill).

The matter was resolved with a settlement, in which defendant admitted to the conduct alleged and agreed to pay $4.3 million. The relator will receive over $948,000 of that amount.

REFERENCE

State of New York ex rel. Robert M. Stoever vs. Oak Beverages, Inc., et al. Index no. 68674/2016, 05-24-18.

Attorney for plaintiff: Justin Wagner of Office of the Attorney General - State of New York in Albany, NY. Attorney for plaintiff: Kathy S. Marks of Yankwitt, LLP in White Plains, NY. Attorney for defendant: Alex Spiro of Quinn, Emanuel, Urquhart & Sullivan, LLP in New York, NY. Attorney for defendant: Richard F.X. Guay of Meyer, Suozzi, English & Klein, P.C. in New York, NY.

Negligent Entrustment

$250,000 RECOVERY – NEGLIGENT ENTRUSTMENT – FAILURE TO TRAIN OR SUPERVISE TEENAGER'S USE OF WALK-BEHIND LAWN MOWER – TOE AMPUTATION.

Columbia County, PA

This action was brought on a negligent entrustment theory after the minor plaintiff suffered a toe amputation while mowing the defendant homeowner's lawn. The plaintiff alleged that the defendant was negligent in failing to supervise or instruct the plaintiff regarding safe use and operation of the walk-behind push mower. The defendant maintained that the minor plaintiff was not given permission to use the mower and did so without the defendant's knowledge.

The plaintiff argued that the defendant homeowner was aware that the minor plaintiff was visiting his son and spending the weekend at the defendant's house. Before leaving for work, the defendant left a "list of chores" for his son to complete. One of the chores included mowing the lawn. The plaintiff claimed that the defendant was aware that the minor plaintiff often helped the defendant's son complete the chores.

The case was settled before trial for $250,000.

REFERENCE

Plaintiff's (treating) orthopedic surgeon expert: John M. Parenti, M.D. from Danville, PA.

B.J.G. a Minor vs. Munson. Case no. 2019-CV-698; Judge n/a, 12-05-20.

Attorney for plaintiff: Richard M. Jurewicz of Galfand Berger, LLP in Philadelphia, PA.

Transit Authority Negligence

$150,000 VERDICT – TRANSIT AUTHORITY NEGLIGENCE – PREMISES LIABILITY – PLAINTIFF FALLS ON SUBWAY STATION STAIRCASE – COMMINUTED FRACTURE OF DISTAL TIBIAL – COMMINUTED DISPLACED SPIRAL FRACTURE OF DISTAL FIBULAR METAPHYSIS – TRANSVERSE FRACTURE OF MEDIAL MALLEOLUS – FRACTURE AT BASE OF CUBOID – OPEN REDUCTION/INTERNAL FIXATION – COMPLICATIONS INCLUDING INFECTION AND DVT – SUBSEQUENT SURGERY TO REMOVE HARDWARE AND REPAIR ACHILLES TENDON – ONGOING PAIN AND LIMITED MOBILITY.

Queens County, NY

In this case, the plaintiff, a 63-year-old woman, asserted that the defendant subway station operators negligently maintained a staircase in a subway station such that it caused her to slip and fall. As a result, the plaintiff sustained a comminuted spiral fracture of the distal fibular, a comminuted fracture of the distal tibial metaphysic and a transverse fracture of the medial malleolus. The plaintiff's injury was treated with open reduction and internal fixation with hardware. The plaintiff brought suit against the Metropolitan Transportation Authority, the New York City Transit Authority, and the defendant real estate company. The defendants each denied liability.

On October 4, 2014, the plaintiff was descending the staircase from the subway to the street level from the Queensboro Plaza subway station at 27th Street and Crescent Street in Queens when she slipped on the last step of the staircase, twisted her ankle and fell. Emergency personnel were called to the scene. They found the plaintiff sitting on the bottom stair and assessed her injuries. The plaintiff was transported by ambulance to the hospital emergency room.

The jury found the defendant transit authorities 100% liable; thus, the defendant real estate company was released from the damages portion of the trial. The jury awarded $150,000 to the plaintiff for past pain and suffering only.

REFERENCE

Enriquez vs. Metropolitan Transportation Authority, et al. Index no. 701217/15; Judge Pam Jackman-Brown, 03-01-19.

Attorney for plaintiff: John P. Dearie of The Dearie Law Firm in New York, NY.