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FEATURED CASES

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

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

VERDICTS BY CATEGORY

FEATURED CASES

$5,700,000 RECOVERY – EMPLOYER LIABILITY – NEGLIGENT SECURITY – PLAINTIFF EMPLOYEE ASSAULTED BY MALE NURSE CONTRACTED TO WORK AT DEFENDANT HOSPITAL – ATTACKER STRUCK PLAINTIFF IN HEAD WITH WRENCH AND SEVERELY BURNED PLAINTIFF WITH CHEMICALS – THIRD DEGREE BURNS TO FACE AND HANDS – LACERATION AND CONTUSION TO HEAD.

Bergen County, NJ

The plaintiff in this personal injury negligence action sued the defendant hospital where she worked alleging that they negligently allowed her assailant access to hospital carrying a bag with a weapon and chemicals whereupon the assailant attacked the plaintiff in the break room of the hospital causing serious injuries to the plaintiff. The defendant hospital denied being negligent and maintained that it was the actions of the assailant only that caused the incident and the plaintiff's injuries.

On February 7, 2022, the female plaintiff, age 52, was a patient care technician and employee of the defendant hospital and was lawfully on the property managed, maintained, operated, serviced and/or otherwise controlled by defendant. While the plaintiff was in the break room she was attacked by a male who had contracted with the defendant as a nurse but was not on duty at the time. The attacker was allowed to enter the hospital carrying a large bag containing weapons and harmful chemicals. The attacker wantonly and intentionally struck the plaintiff in the head with a wrench and severely burned the plaintiff with chemicals.

The plaintiff maintained that the defendant hospital was negligent, careless and reckless in failing to properly manage, maintain, operate, service and/or otherwise control the property, allowing a person not authorized to be on the premises to enter and remain on so as to constitute a danger to the patients, employees, occupants and others lawfully coming in and out of the property; in providing security systems that were ineffective and/or defective making the aforementioned premises unsafe and dangerous, failing to properly hire, train, control and supervise any and all employees and failing to take proper and adequate measures and to have adequate security to safeguard and protect the patients, employees, occupants and others lawfully coming in and out of the property. The plaintiff suffered serious and disfiguring injuries including third degree burns to her face, upper body and hands and a contusion and laceration to the head requiring stitches.

The plaintiff and the hospital settled the dispute for $5,700,000.

REFERENCE

Magalie Cius and Dennis Charlemon vs. Hackensack University Medical Center. Docket no. L002049-22; Judge Robert C. Wilson, 01-25-23.

Attorney for plaintiff: Michael Fitzpatrick of Day Pitney, LLP in Parsippany, NJ. Attorney for defendant: Kathleen Einhorn of Genova Burns in Newark, NJ.

COMMENTARY

Following the incident, the assailant fled the scene. Police responded to the scene and sent out an APB for the attacker that the police described as armed and dangerous. The attacker was later found dead by a self-inflicted gunshot wound to the head. Court records indicated that the assailant was not a hospital employee but had worked at the defendant Hackensack University Medical Center as a contracted nurse for several months. The attacker cleared a background check at Hackensack University Medical Center prior to being hired.

$2,400,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – BUS/PEDESTRIAN COLLISION – PLAINTIFF STRUCK BY BUS WHILE CROSSING IN CROSSWALK NEAR STATION – RIB FRACTURES – INJURIES TO NECK, NON-DOMINANT SHOULDER, BOTH KNEES, LEFT HIP AND LEFT ANKLE – 5 SURGICAL INTERVENTIONS.

Bergen County, NJ

This motor vehicle negligence case involved a plaintiff in her mid 50s who contended that as she crossed in a crosswalk not controlled by a traffic light and directly near a station, she was struck by a municipal shuttle bus. The accident occurred in a location in which numerous buses picked up and dropped off passengers. The plaintiff maintained that she suffered rib fractures and severe injuries to her neck, non-dominant shoulder, both knees, her left hip and left ankle. The plaintiff had previously worked as a Senior Art Director for a major design firm, earning $180,000 per year.

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The plaintiff related that as she left her bus, she noticed that the shuttle bus that struck her was down the street and stopped to discharge passengers. The plaintiff related that as she crossed, she was struck by the bus that failed to make observations. The bus driver indicated in discovery that he did not see the plaintiff because of sun glare and that although he swerved to the left, he could not avoid striking the plaintiff.

The plaintiff contended that because of the extensive disruption she required some 5 surgical interventions and asserted that she can no longer work. The plaintiff related that prior to the accident, she was able to live independently and also help her daughter who lived in her own apartment. The plaintiff asserted that in addition to being unable to work, she is unable to engage in the activities of daily living without assistance and has moved into a one bedroom apartment with her daughter, with the plaintiff staying in the bedroom and the daughter on the living room couch. The plaintiff contended that the injuries are permanent in nature.

The case settled prior to trial for $2,400,000.

REFERENCE

Plaintiff's orthopedic spinal surgeon expert: Joshua Rovner, M.D. from Englewood, NJ. Plaintiff's orthopedic surgeon expert: Richard Selde, M.D. from Hackensack, NJ.

Song vs. Henderson and Boro of Edgewater. Docket no. BER-L-7632-19, 06-22.

Attorneys for plaintiff: Jae Lee and Shane Sullivan of Jae Lee Law, PC in Ft. Lee, NJ.

COMMENTARY

It is thought that the evidence of a role reversal in which the plaintiff, who previously held a high powered marketing job that paid $180,000 a year, has been unable to work and has moved into a one bedroom apartment with her daughter because she is now dependent upon her daughter to help with numerous activities of daily living, provided a very substantial evidence of severe continuing injury in and of itself. Additionally, the emphasis of the stark change experienced by the plaintiff after the accident was buttressed by the detailed evidence of the manner in which the plaintiff has great difficulties engaging in everyday tasks otherwise taken for granted was felt to be very significant.

$2,064,075 VERDICT – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – DEFENDANT ATTEMPTS LEFT TURN AT INTERSECTION AND STRIKES PLAINTIFF'S VEHICLE – DISREGARDING STOP SIGN – SPINAL INJURIES – RADICULOPATHY – TRAUMATIC BRAIN INJURY WITH DISRUPTION IN MOOD AND MEMORY.

Burlington County, NJ

The plaintiff in this vehicular negligence action maintained that she sustained permanent injuries when she was lawfully at an intersection and her vehicle was struck by the defendant who entered the same intersection attempting to turn left, without stopping for a stop sign. The defendant stipulated liability but denied that the impact caused injury to the plaintiff. The defendant argued that a prior accident, which occurred shortly before this accident, caused the plaintiff's condition.

September 10, 2018, the female plaintiff was the operator of a vehicle that was traveling eastbound on Levitt Parkway in Willingboro, New Jersey. The defendant was traveling through the intersection of Evergreen Dr. and Levitt Parkway. The defendant was attempting to make a left turn onto Evergreen Drive when the defendant struck the plaintiff's vehicle.

Following the accident, the plaintiff was taken to the emergency room and treated for pain in her neck and back and head. She was eventually diagnosed with spinal disc problems with right upper extremity

radiculopathy and a traumatic brain injury with cognitive deficits manifesting as memory and mood problems.

The plaintiff maintained that the defendant was negligent in failing to obey a traffic control device, disregarding a stop sign, failing to keep a proper lookout, and failing to have the vehicle under proper and adequate control. The defendant originally argued that a third-party vehicle prevented the defendant from seeing the plaintiff in the intersection; however, the defendant stipulated liability prior to trial.

Trial in this matter resulted in a 7-0 jury award of $2,064,075, broken down as $1,548,056.25 on plaintiff Glenda Smiley's claim and $516,018.75 on Charles Smiley's loss of consortium claim. The defendant has moved for a new trial or in the alternative, for remittitur. The motion was granted by the court in April of 2023.

REFERENCE

Glenda W. Smiley and Charles J. Smiley vs. Estate of Charles F. Carter, Jr. Docket no. L002007-19; Judge James J. Ferrelli, 12-05-22.

Attorney for plaintiff: Robert Segal in Medford, NJ. Attorney for defendant: Steven Antinoff of Parker, Young and Antinoff, LLC in Marlton, NJ.

COMMENTARY

The plaintiff's neurologist testified that the plaintiff suffered a traumatic brain injury as a result of the accident. According to the neurologist, the plaintiff's complaints of headaches, dizziness and recall issues were impacting her everyday life. The plaintiff attempted to treat her condition without medication but reported that she was not progressing with conservative treatment. She was then prescribed a medication called Aricept which is typically used for patients with dementia. The plaintiff reported that the neither the medication nor cognitive therapy alleviated her symptoms.

$500,000 RECOVERY – AMBULANCE NEGLIGENCE – INTERSECTION COLLISION – DEFENDANT AMBULANCE DRIVER ENTERS INTERSECTION AND STRIKES PASSENGER SIDE OF PLAINTIFF'S VEHICLE LAWFULLY PROCEEDING THROUGH INTERSECTION – FAILURE TO STOP FOR RED LIGHT – CERVICAL AND LUMBAR DISC INJURIES INCLUDING HERNIATIONS AT CERVICAL INTERVERTEBRAL DISCS C4-5-6-7 AND BULGES AT L4-5 AND L5-S1 – CONCUSSION – RIGHT KNEE LATERAL MENISCUS TEAR – INJECTIONS, DECOMPRESSION SURGERY, AND RIGHT KNEE ARTHROSCOPY.

Berlin County, NJ

The plaintiff in this vehicular negligence action maintained that she was injured she was lawfully proceeding through an intersection and her vehicle was struck on the passenger side by the defendant ambulance driver who negligently entered the intersection at a high rate of speed against a red light. The defendant driver and ambulance company denied all allegations of negligence and maintained that the plaintiff was comparatively negligent and traveling at an excessive rate of speed.

On May 20, 2019, the female plaintiff, age 44, was stopped for a red light behind 2 other vehicles on Route 46 East, at its intersection with Liberty Street in Little Ferry, New Jersey. When the light turned green, the 2 cars proceeded through the intersection followed by the plaintiff. Suddenly and without warning, the passenger side of her vehicle was struck by the front of an ambulance driven by the defendant traveling north on Liberty Street. The ambulance had its lights and sirens activated and was on its way to a hospital.

The plaintiff maintained that the defendant ambulance driver was reckless in the operation of the ambulance and failed to use caution when proceeding through an intersection in an emergency. In addition the plaintiff maintained that the ambulance company was negligent in the hiring, training, retention, and supervision of the ambulance driver. Following the accident, the plaintiff was diagnosed with a concussion, right knee lateral meniscus tear, herniations at cervical intervertebral discs C4-5-6-7 and bulges at L4-5 and L5-S1. She underwent injections, decompression surgery, and a right knee arthroscopy with synovectomy, chondroplasty of the joint, extensive intra-articular debridement, medial and lateral meniscectomy, and removal of intra-articular loose body. She claimed permanent injuries to her cervical spine, lumbar spine and right knee. The defendant argued that the plaintiff was comparatively if not solely responsible for the accident as the plaintiff was speeding when she entered the intersection.

The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay $500,000 from a policy that provided $1 million of coverage.

REFERENCE

Zoryana Derhachova vs. Protective Care Ambulance. Docket no. L000896-21; Judge Lisa Perez-Friscia, 08-24-22.

Attorney for plaintiff: Dennis Shlionsky of Snyder Sarno D'Aniello Maceri & da Costa, LLC in Bridgewater, NJ. Attorney for defendant: Kevin M. O'Brien of Nicolson Law Group, LLC in Radnor, PA.

$1,500,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF'S DECEDENT FALLS FROM FOURTH FLOOR OF 80-UNIT PREFABRICATED BUILDING HE WAS WORKING ON COURSE AND SCOPE OF EMPLOYMENT WITH DEFENDANT CONSTRUCTION COMPANY – WRONGFUL DEATH AND SURVIVAL ACTION.

Union County, NJ

In this action for construction site negligence, the estate of the decedent maintained that their decedent fell to his death while in the scope of his employment with the defendant construction company that failed to maintain a construction site properly and safely. The defendant denied being negligent and argued that it was the action of the decedent that caused the tragic fall.

On March 12, 2019, the male decedent was lawfully on the premises and was employed by the defendant working to erect a prefabricated 80 unit steel building on Bonnel Court in Union, New Jersey. While working on the building, the decedent fell from the fourth floor to the concrete sidewalk below suffering fatal injuries.

The estate of the decedent alleged that the defendant failed to properly maintain and manage the premises, allowed a hazardous and dangerous condition to exist on the premises, failed to provide proper safety equipment to the decedent and failed to exercise reasonable care in the performance of their professional services. The Estate maintained that on the day of the accident, it was too windy to safely use a crane and move trusses and the defendant should have halted construction. The defendant denied all allegations of negligence and injury and maintained that it was the actions of the decedent that caused the incident and subsequent death.

The parties settled their dispute for $1,500,000.

REFERENCE

The Estate of Angel Fernandez-Zhicay vs. American Landmark Developers. Docket no. L003052-19; Judge John G. Hudak, 12-14-22.

Attorney for plaintiff: Walter Dana Venneman of Gill & Chamas, LLC in Woodbridge, NJ. Attorney for defendant: Brian C. Harris of Braff, Harris, Sukoneck & Maloof in Livingston, NJ.

$750,000 RECOVERY – PREMISES LIABILITY – HAZARDOUS PREMISES – CHAIR ATTACHED TO SLOT MACHINE DISLODGES AS PLAINTIFF LEANS BACK – PLAINTIFF FALLS TO FLOOR – CLOSED HEAD INJURY – FREQUENT HEADACHES – COGNITIVE DEFICITS.

Atlantic County, NJ

In this action for premises liability, the plaintiff Atlantic City casino patron, age 37 at the time, contended that as he leaned back in the chair that was bolted to the slot machine, the chair suddenly detached and he fell to the floor, striking his head and sustaining serious injuries.

The plaintiff asserted that he suffered a closed head injury and a TBI. The plaintiff's neurologist contended that the plaintiff will suffer frequent headaches despite Botox injections. The plaintiff's neurologist and neuropsychologist concluded that the plaintiff will permanently suffer significant deficits in short term memory and concentration. The plaintiff's engineer maintained that 2 of the 4 bolts were missing and that the other 2 were improperly secured, heightening the hazard.

The plaintiff maintained that he is permanently unable to work. The plaintiff' had previously been employed the State of New York in a union position. The defendant pointed out that the plaintiff had a very spotty work history.

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

REFERENCE

Plaintiff's neuropsychologist expert: Kenneth Kutner, Ph.D. from East Rutherford, NJ. Plaintiff's TBI expert: Brian Greenwald, M.D. from Edison, NJ.

37-year-old plaintiff patron vs. defendant Atlantic City Casino, et al.

Attorney for plaintiff: Joseph D. Sullivan of Law Offices of Joseph D. Sullivan in Cedar Knolls, NJ. Attorney for plaintiff: Thomas J. Vesper of Westmoreland Vesper Quattrone & Beers, PA in Atlantic City, NJ.

Verdicts By Category

MEDICAL MALPRACTICE

Surgery

UNDISCLOSED RECOVERY

Medical malpractice – Surgery and nursing care – Plaintiff suffers postoperative bleed that goes undiagnosed by nursing staff and not remediated until hours later – Delay in diagnosis and remediation results in permanent paraplegia – Contentious settlement negotiations stall due to confidentiality clause – Case ultimately settled for confidential sum.

Camden County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant surgeon, his practice, the defendant nurse and his employer were negligent in performance of a surgery on the plaintiff in such a fashion as to cause him permanent injury and disability for which he will require lifelong care. The plaintiff wife brought action for loss of consortium. The defendants denied any breach of the standard of care and asserted that the plaintiff's hematoma and postoperative bleed were known complications of the type of surgery he underwent.

On November 11, 2013, the plaintiff came under the professional care and treatment of the defendants, after being admitted to the defendant hospital for a T8-T9 laminectomy and spinal stimulator placement. Following the surgery, the plaintiff was taken to the nursing floor for overnight observation. The plaintiff expressed to the defendant nurse that he was experiencing numbness in his legs and abdominal pressure, both signs of possible paralysis. The defendant nurse told the plaintiff his experience was normal and did not contact the on-call doctor or anyone else. The nurse on the following shift immediately recognized the symptoms of paralysis and contacted the on-call physician who contacted the defendant surgeon.

The plaintiff contended the defendants negligently delayed diagnosis of a postoperative bleed; failed to use proper surgical technique; failed to rule out all intraoperative bleeds prior to closing the plaintiff's operative site; failed to recognize the clear signs and symptoms of paralysis; failed to take prompt action upon learning of the plaintiff's critical condition; failed to properly examine the plaintiff prior to and subsequent to his surgery; failed to properly supervise the post-surgical care, monitoring and treatment of the plaintiff; and failed to obtain informed consent.

The defendants argued that the plaintiff was fully informed of the risks of surgery and proceeded voluntarily. As a result of the subject malpractice, the plaintiff experienced a T6 through T9 hematoma with spinal cord compression, the delay in diagnosis and treatment of which rendered him paraplegic.

The parties globally settled the matter prior for a sum that was not stated in the release documents. The plaintiff then objected to, and removed confidentiality language and signed the release. The defendants refused to sign the altered release and the plaintiff moved to enforce the settlement. The parties ultimately came to an agreement and settled the matter.

REFERENCE

Cancel vs. Greenleaf, M.D., et al. Docket no. L-004184-15; Judge Donald J. Stein.

Attorney for plaintiff: Eric G. Zajac of Zajac & Arias, LLC in Philadelphia, PA. Attorneys for defendant orthopedist and practice: William L. Brennan and Mary Grace Callahan of Law Office of William L. Brennan in Shrewsbury, NJ. Attorney for defendant hospital: John S. Rigden of Parker McCay in Mount Laurel, NJ. Attorney for defendant nurse: Sean P. Buckley of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ.

CONTRACT

$85,000 RECOVERY

Breach of contract – Plaintiff asserted defendant construction company and its owner breached agreement to perform renovation work and also committed consumer fraud, breach of implied good faith and fair dealing in refusing to complete work or return plaintiff's money.

Bergen County, NJ

In this breach of contract case, the plaintiff was a 2-member LLC located in Westfield and the defendants were a construction company located in Elizabeth and its principal owner. The plaintiff asserted that the defendant breached a contract for renovation services. The plaintiff claimed Consumer Fraud; Breach of the Implied Covenant of Good Faith and Fair Dealing; and Unjust Enrichment. The defendant broadly denied the plaintiff's claims

In May 2018, the plaintiff engaged the defendants to perform a full home renovation, including demolition and clean up, framing, roof (including garage), siding (including garage), gutters and litters, full electrical work, full plumbing work, and HVAC. The plaintiff argued that the defendants routinely failed to complete these tasks by the dates promised, despite continual reassurance to the plaintiff.

As a result of the defendants' breach, the plaintiff's entire home renovation was substantially delayed and obstructed resulting in the plaintiff's inability to move forward with the remaining work waiting to be performed by other contractors. The plaintiff claimed to have suffered an ascertainable loss of money as a result of the defendants' unconscionable commercial practices as set forth and that it was entitled to relief under the Consumer Fraud Act. The plaintiff sought all statutory damages including compensatory and treble damages as well as attorneys' fees and interest.

The plaintiff maintained that, due to the defendants' breaches, the plaintiff was compelled to hire other contractors to complete the project at substantial cost and expense. The plaintiff demanded that the defendants return and refund the balance of the monies the plaintiff paid to the defendants for the remaining work the defendants failed to perform in the amount of approximately $37,500.

The parties settled the matter prior to trial in the amount of $85,000 to be paid via installments. The defendants failed to make any payments and the plaintiff filed for an Order of Judgment against the defendants. The court granted the judgment and a Writ of Execution was issued to the Sheriff of Union County.

REFERENCE

152 Irving CG LLC vs. SanMartin Construction, LLC, et al. Docket no. L-008123-18; Judge Mary F. Thurber.

Attorney for plaintiff: Jessica M. Wilde of Nicoll Davis & Spinella, LLP in Paramus, NJ. Attorney for defendant: Richard Obuch, Esq. in Union, NJ.

INSURANCE OBLIGATION

$100,000 (POLICY LIMIT) RECOVERY

Insurance obligation – Uninsured inebriated driver loses control and suddenly swerves from far left to right lane of 3-lane highway – Non-dominant rotator cuff tear – Arthroscopic surgery – Cervical herniation treated conservatively.

Union County, NJ

In this case, the 41-year-old plaintiff driver contended that the defendant inebriated driver lost control and swerved across the highway lanes, causing the accident in which the plaintiff sustained injuries. The defendant was uninsured and the plaintiff proceeded under a $100,000 UM policy.

The plaintiff maintained that he suffered a partial tear of the non-dominant shoulder which will cause permanent symptoms despite arthroscopic surgery. The plaintiff also asserted that she will suffer permanent pain from the cervical herniation despite conservative care.

The plaintiff made no income claims.

The case settled prior to trial for the $100,000 UM policy.

REFERENCE

Taccetta vs. State Farm. Docket no. UNN-L-1103-22; 10-19-22.

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

MOTOR VEHICLE NEGLIGENCE

Intersection Collision

$125,000 RECOVERY

Motor vehicle negligence – Intersection collision – Plaintiff driver making left turn on green arrow – Lumbar herniation – Surgery – Plaintiff on disability because of prior unrelated complaints – UIM case.

Morris County, NJ

In this motor vehicle negligence case, the 62-year-old plaintiff driver contended that as she was making a left turn on a left green arrow, the defendant driver, who was traveling straight, negligently failed to stop, causing the accident. As a result, the plaintiff sustained serious injury. The defendant did not contend that his light was green.

The plaintiff developed radiating pain to both legs and that after more conservative care, including chiropractic manipulations, proved inadequate, she underwent lumbar surgery. The plaintiff asserted that although improved, she will suffer some permanent pain and difficulties.

The plaintiff was disabled from work because of unrelated conditions.

The defendant had a combined, single limit $50,000 policy that was paid. The plaintiff had $300,000 in UIM protection and $250.000 was available. The plaintiff obtained an additional $75,000 from the UIM carrier, yielding a total recovery of $125,000.

REFERENCE

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

McGrath vs. Evans, et al. Docket no. MRS-L-952-22; 01-23.

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

Multiple Vehicle Collision

$185,000 RECOVERY

Motor vehicle negligence – Multi-vehicle rear end collision – Plaintiff driver struck after defendant driver of commercial van strikes car behind plaintiff at traffic light – Closed head injury – Plaintiff allegedly suffers concussion and mood disorder with difficulties concentrating – Cervical and lumbar disc injuries.

Camden County, NJ

In this motor vehicle negligence action, the plaintiff driver in her late 30s contended that as she was stopped at a traffic light, the defendant driver of a commercial van struck the car behind her, propelling it into the plaintiff's vehicle. The plaintiff contended that as a result, she suffered a concussion and post-concussion syndrome which will permanently manifest in a psychological depression, frequent headaches and difficulties with concentration and short-term memory. The defendant denied that the plaintiff suffered the claimed injuries in the collision.

The plaintiff further asserted that she suffered cervical and lumbar disc injuries which will cause permanent symptoms. The plaintiff, a single parent of 3 children in their early-mid teens related that she suffers significant difficulties caring for her children.

The defendant contended that the impact was low speed in nature. The defendant further pointed out that the plaintiff did not undergo recommended disc surgery and the plaintiff countered that a lapse in health coverage accounted for this decision.

The case settled prior to trial for $185,000.

REFERENCE

Plaintiff's neuropsychologist expert: Derek P. Aita, Psy.D. from Haddonfield, NJ. Plaintiff's orthopedic surgeon expert: Jeffrey R. Gleimer, D.O. from Cherry Hill, NJ. Plaintiff's orthopedic surgeon expert: Richard Schmidt, M.D. from Roseland, NJ. Plaintiff's orthopedist expert: I. David Weisband, D.O. from Cherry Hill, NJ.

Ruiz vs. Quinones. Docket no. CAM-L-3854-18.

Attorney for plaintiff: Melissa Baxter of Rossetti & DeVoto, PC in Cherry Hill, NJ.

Rear End Collision

$300,000 (POLICY LIMIT) RECOVERY

Motor vehicle negligence – Rear end collision – Elderly plaintiff struck in rear by inebriated defendant driver – 3 cervical spinus process fractures – Deep venous thrombosis.

Union County, NJ

In this motor vehicle negligence action, the plaintiff driver in his early 80s contended that he was struck in the rear by the defendant inebriated driver causing serious injuries. The defendant had $100,000 in coverage. The plaintiff had $300,000 in UIM protection and $200,000 was available.

The plaintiff maintained that he suffered 3 cervical spinous fractures that were treated conservatively and which will cause permanent pain and limitations.

The plaintiff further maintained that he underwent testing that showed an acute left intramuscular deep venous thrombosis of the calf veins. This condition was treated conservatively.

The case settled prior to trial for the available coverage.

REFERENCE

Gierer, et al vs. Piscioneri, et al. Docket no. UNN-L-126-20; 06-15-21.

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

$98,000 RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff passenger's vehicle struck in rear – Multiple cervical herniations and bulges – Radiculopathy – Injections.

Middlesex County, NJ

In this action for motor vehicle negligence, the plaintiff was 56-year -old passenger in her husband's car that was struck in the rear. The plaintiff contended that she sustained multiple cervical bulges and herniations including herniations at C4-5, C7-T1. EMG was positive for C7 radiculopathy.

The plaintiff went to the E.R. from the scene, then did chiropractic care and eventually moved on to pain management. She underwent 2 cervical facet injections, an occipital nerve block, a right shoulder injection, and a cervical epidural injection at C7-T1.

The defendant denied that the plaintiff suffered the claimed injuries in the accident and contended that they were preexisting. The plaintiff countered that she had no prior cervical symptoms.

The defendant had $50,000 in coverage which was paid. The plaintiff had $50,000 in UIM protection and the plaintiff received $48,000 from the UIM carrier for a total of $98,000.

REFERENCE

Plaintiff's pain management expert: Edward Maginzer, M.D. from Edison, NJ.

Pleasant vs. Haganey. Docket no. MID-L-5224-19; 07-21.

Attorney for plaintiff: Paul M. Brandenburg of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniation at L5-S1; disc bulge at L5-6 – Left shoulder tear of subscapularis tendon with arthroscopic surgery recommended – No cause of action; plaintiff recovers $10,000 per pretrial high/low agreement.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such violence that it caused the plaintiff to suffer significant, permanent injury. The defendant denied liability and argued that the plaintiff caused the subject collision.

The plaintiff, a 52-year-old man, was stopped in traffic when, he contended, the defendant failed to take notice, failed to keep a proper lookout and negligently failed to stop his vehicle behind the plaintiff's vehicle. The plaintiff maintained that the defendant struck the plaintiff's vehicle with significant force.

As a result of the collision, the plaintiff was taken to the emergency room. The plaintiff was diagnosed with soft tissue injuries to the neck, back, and left shoulder. The plaintiff was also diagnosed with a disc herniation at L5-S1; disc bulge at L5-6; and left shoulder tear of the subscapularis tendon for which arthroscopic surgery was recommended.

The parties entered into a high/low agreement prior to trial whereby the plaintiff would receive a minimum of $10,000 in the event of a defendant's verdict and a cap on damages of $25,000 in the event of a plaintiff's verdict. The jury found no cause of action and, as such, the plaintiff recovered $10,000 per the pretrial agreement.

REFERENCE

Sepulveda Jr. vs. Vega. Docket no. L-002796-17.

Attorney for plaintiff: Athan Mergus of Athan M. Mergus, PA in Ridgefield, NJ. Attorney for defendant: Mindy Fox of Law Office of Pamela D. Hargrove in Cranford, NJ.

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Motor vehicle negligence – Rear end collision – Cervical and lumbar bulges – Cervical injections – Plaintiff also contends tear of medial meniscus requiring arthroscopic surgery – Knee complaints first reported 2 ½ years after accident.

Monmouth County, NJ

Liability was stipulated in this motor vehicle negligence case in which the plaintiff in her 50s stopped suddenly when deer ran into the road. The plaintiff was then struck in the rear by the defendant. The plaintiff contended that she sustained cervical and lumbar bulges that were confirmed by MRI. The defendant driver conceded liability, but denied that the plaintiff met the verbal threshold.

The plaintiff underwent 3 cervical injections. The plaintiff further asserted that she suffered a tear of the medial meniscus that required arthroscopic surgery. The plaintiff maintained that she will suffer permanent pain and limitations. The defendant pointed out that the plaintiff did not make knee complaints for 2 ½ years. The plaintiff countered that the symptoms were masked by lumbar radiculopathy. The defendant argued that the plaintiff only had cervical injections and argued that her claims should be rejected.

The jury found for the defendant on the verbal threshold.

REFERENCE

Ressani vs. Uzon. Docket no. MON- L-3484-18; Judge Owen McCarthy, 06-21.

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

PREMISES LIABILITY

Fall Down

$100,000 VERDICT

Premises liability – Fall down – Plaintiff reserved mobility device for use during stay at defendant casino which defendants failed to provide resulting in plaintiff falling – Tibial plateau fracture – Total knee replacement.

Ocean County, NJ

The plaintiff in this premises liability action maintained that she suffered serious injury requiring a total knee replacement when she fell while a guest at the defendant casino. The plaintiff reserved a scooter for mobility when she booker her reservation which the defendant failed to provide causing the plaintiff to fall and sustain injury. The defendants denied all allegations of negligence and injury.

On September 19, 2019, the female plaintiff was a lawful business invitee of the defendant casino located in Ocean County, New Jersey. The plaintiff had booked a reservation with the defendant and requested a mobility scooter for use during her stay. The defendants confirmed the reservation and the use of the scooter. When the plaintiff arrived at the defendant establishment a scooter was unavailable. The plaintiff proceeded to a bathroom on the premises after the long car ride when she tripped and fell.

The plaintiff maintained that the defendants failed to maintain the property in a safe condition, failed to make proper inspections of the premises and failed to provide the plaintiff with the required mobility device that was reserved for the plaintiff. Consequently, the plaintiff sustained a tibial plateau fracture requiring total knee replacement and five months of physical therapy. Each defendant denied all allegations of negligence and argued that the action of the plaintiff caused the incident. In addition, the defendants argued that the knee replacement was the result of normal degenerative causes and not a traumatic injury.

The board of arbitrators found each defendant to be 40% liable and the plaintiff to be 20% liable. The board awarded the plaintiff $100,000 in damages.

REFERENCE

Chere and Frank Rinald vs. Harrah's Atlantic City and Mobility on Wheels LLC. Docket no. OCNL003059-20; Judge Robert E. Brenner, 10-27-22.

Attorney for plaintiff: David Pepe of Wilentz, Goldman and Spintzer in Philadelphia, PA. Attorney for defendant: Christine Viggiano of Reilly McDevitt & Henrich, PC in Philadelphia, PA. Attorney for defendant: Timothy Patrick Mullin of Zarwin Baum Devito Kaplan in Philadelphia, PA.

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

$28,500,000 VERDICT – MEDICAL MALPRACTICE – ORTHOPEDIST'S NEGLIGENCE – FAILURE TO ADDRESS CARTILAGE INJURY WHILE DEFENDANT ORTHOPEDIC SURGEON PERFORMING OPEN REDUCTION TO TREAT NFL PLAYER'S FRACTURED ANKLE – LOSS OF CAREER – COURT INSTRUCTS JURY THAT THEY COULD FIND FOR PLAINTIFF IF THEY DETERMINED NEGLIGENCE CAUSED LOSS OF CHANCE OF RECOVERY THAT WAS GREATER THAN SLIGHT.

New York County, NY

This was a medical malpractice/informed consent case involving a then 25-year-old NFL player on the NY Giants. The plaintiff contended that the defendant orthopedic surgeon, who performed an open reduction to treat an ankle fracture sustained in a game the previous day, negligently failed to tell him that the he also suffered a osteochondral shear injury involving cartilage, negligently failed to address the cartilage injury and negligently cleared the plaintiff for a full return to practice, despite the continuing vulnerability caused by the cartilage. The plaintiff contended that as a result, he suffered severely increased pain in the ankle, could not run or jump, and could not resume his career. The jury was aware that the defendant passed away after testifying in discovery.

The evidence revealed that the plaintiff suffered a trimalleolar fracture in a game. The defendant performed an open reduction the following day. The defendant indicated in discovery that he was aware of the cartilage injury from diagnostic films. The defendant also admitted that he did not inform the plaintiff or his family of the cartilage injury, nor did he surgically address the cartilage injury during surgery.

The plaintiff had played 2 years into a 4-year $2.3 million contract. The plaintiff's agent testified as an expert that based upon factors that included plaintiff's ability to play multiple positions, prior team evaluations and the fact that the plaintiff had not played football before relatively late in college, he could have anticipated a total of an 8-year career and that the alleged malpractice caused $14,000,000 in economic damages.

The jury found that the defendant was negligent and also found that a reasonable patient in plaintiff's position would not have agreed to undergo the limited surgery performed by the defendant if provided with the necessary information to make an informed decision. They also found that the negligence and lack of informed consent were substantial factors in the plaintiff's loss. They then awarded $28,500,000, including $12,000,000 for past lost income, $1,000,000 for past pain and suffering, and $15,500,000 for future pain and suffering over 47.5 years. There was no claim for future lost earnings, as the trial occurred after the 8-year period during which plaintiff alleged he would have continued to play football professionally.

REFERENCE

Plaintiff's orthopedic surgeon expert: Francis McGuigan, M.D. from Washington, DC. Plaintiff's sports agent expert: Robert Walker from Monroe, NC.

Cox vs. Lorich, et al. Index no. 805548/16; Judge Judy H. Kim, 09-22.

Attorneys for plaintiff: Jordan Merson, Jordan Rutsky and Sarah Cantos of Merson Law, PLLC in New York, NY.

$10,000,000 VERDICT – MEDICAL MALPRACTICE – DENTAL NEGLIGENCE – GENERAL DENTIST PERFORMING ROOT CANAL FAILS TO TIMELY REALIZE SHE WENT THROUGH APEX OF TOOTH – TRIGEMINAL NEURALGIA – SEVERE CONSTANT PAIN.

DeKalb County, GA

This was a dental malpractice action in which the plaintiff contended that the defendant general dentist, who performed a root canal, negligently failed to realize that the instrument had gone though the apex, resulting in caustic material leaking and the onset of trigeminal neuralgia that will permanently result in excruciating pain upon engaging in otherwise simple activities such as smiling and brushing her teeth. The defendant asserted that she acted within the standard of care.

The plaintiff pointed out that in the x-ray taken after the procedure, it was evident that the defendant had and broke through the apex of the tooth, allowing gutta percha to accumulate. The plaintiff contended that in order to minimize the chances of a permanent injury, the substance had to be treated within approximately 72 hours and as a result of the failure to do so, permanent trigeminal neuralgia developed.

The plaintiff contended that she suffers great pain in everyday activities such smiling, brushing her teeth, eating and feeling the wind on her face.

The jury found for the plaintiff and awarded $10,000,000. The defendant had $1,000,000 in coverage.

REFERENCE

Crawford vs. Dental Care Center of DeKalb, LLC, et al. Case no. 19A76777; Judge Kimberly A. Alexander, 08-10-22.

Attorney for plaintiff: Daniel J. Moriarity of Moriarity Injury Law in Atlanta, GA. Attorney for plaintiff: C. Andrew Childers of Childers, Schlueter & Smith, LLC in Atlanta, GA. Attorney for plaintiff: Daphne S. Withrow of Olivetti, McCray & Withrow, LLC in Hilton Head, SC.

$5,380,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – PEDIATRICS – FAILURE TO TIMELY DIAGNOSE AND TREAT ENLARGED MEDIASTINAL MASS – SUFFOCATION DEATH OF 10-YEAR-OLD CHILD.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant pediatricians were negligent in failing to timely diagnose and treat the child's cancer which resulted in the mass in his trachea suffocating him resulting in his tragic death. The defendants denied the allegations and disputed any wrongdoing.

The plaintiff brought suit against the defendants, pediatrician, urgent care physician, emergency room physician and radiologist were all named in the litigation as defendants. The defendants denied the allegations and disputed that they had committed any negligence.

The defendants all eventually settled with the plaintiff for a total recovery of $5,380,000. The last defendant, the E.R. pediatrician, was the last to settle as the trial had just commenced.

REFERENCE

Estate of 10-year-old vs. Defendant Pediatricians. 08-26-22.

Attorneys for plaintiff: Clyde Bergstresser, Scott Heidorn and Russell Pollock of Bergstresser & Pollock, P.C. in Boston, MA.

$1,950,000 RECOVERY – MEDICAL MALPRACTICE – PHYSICIAN'S ASSISTANT NEGLIGENCE/PRIMARY CARE PHYSICIAN'S OFFICE NEGLIGENCE – DEFENDANT P.A. DIAGNOSES PLAINTIFF'S DECEDENT WITH GERD AND ESOPHAGITIS WHEN DECEDENT PRESENTS WITH COMPLAINTS OF HEARTBURN AND SUFFERING CARDIAC DISTRESS DEMONSTRATED BY RECENT ABNORMAL DIAGNOSTIC CARDIAC TESTS – WRONGFUL DEATH OF 61-YEAR-OLD MALE.

Bucks County, PA

In this medical malpractice action, the estate of the decedent maintained that the defendant physician's assistant and defendant cardiologist failed to appreciate the decedent's physical symptoms of cardiac distress and failed to communicate with the decedent regarding his abnormal stress test. Instead, the decedent was informed by the physician's assistant that he had GERD and died 2 days after presenting to the PA with cardiac symptoms. All defendants denied all allegations of negligence and injury.

The estate maintained that the defendant cardiologist was negligent in failing to appreciate the decedent's presenting symptoms in conjunction with his history and recent abnormal stress test, failing to perform an EKG, diagnosing a high risk patient with GERD without performing tests to rule out cardiac causes of chest pain, failing to send the decedent to the hospital and providing care that fell below standards. The estate also maintained that the defendant cardiologist failed to report the results of the stress test to the decedent. He died on July 20, 2016. He is survived by his wife and 3 adult children.

The parties settled for $1,950,000.

REFERENCE

The Estate of Steven Schmidt by Kathleen Schmidt vs. Alexander Shvartsman CRNP, Penn Care Medical Associates of Bucks County, Penn Medicine University of Pennsylvania Health System and Trustees Of The University Of Pennsylvania, Ronald Fields, M.D. and Comprehensive Cardiology. Case no. 2016-07506; Judge Jeffrey Trauger, 11-06-22.

Attorney for plaintiff: Daniel McGrath of Ross Feller Casey in Philadelphia, PA. Attorney for defendant: Daniel J. Sherry of Marshall, Dennehey, Warner, Coleman & Goggin in King of Prussia, PA. Attorney for defendant: Donald J. Brooks, Jr. of Eckert Seamans in Philadelphia, PA.

$1,167,482 VERDICT – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – WRONGFUL DEATH – PLAINTIFF'S DECEDENT SUFFERS PRESSURE WOUNDS, DETERIORATION OF WOUNDS, SUBSEQUENT INFECTION AND ULTIMATELY DEATH.

Miami-Dade County, FL

This medical malpractice cause of action was brought pursuant to Section 400.023, Fla. Stat. Section 400.023, Fla. Stat. providing for the exclusive cause of action for negligence or a violation of resident's rights as specified in Section 400.022, Fla. Stat., alleging direct and vicarious liability for the personal injury or death of a nursing home resident arising out of negligence or violation of rights. The plaintiff brought suit for nursing home malpractice and wrongful death. The defendants denied negligence.

The plaintiff's decedent was a patient suffering from dementia who was a resident at the defendant nursing home. The plaintiff asserted that, during his residency at the defendants' facility, the defendants negligently and carelessly allowed the plaintiff's decedent to develop a sacral decubitus ulcer/bedsore/pressure injury. The plaintiff contended that the defendant staff and employees failed to develop an adequate care plan and failed to properly monitor and supervise the care and treatment provided to the decedent in order to prevent him from suffering the development and deterioration of injuries. As a direct result of the defendants' acts and omissions, the plaintiff's decedent suffered wounds, deterioration of wounds, subsequent infection and ultimately death.

The jury found that the defendants were negligent or violated the plaintiff's decedent's rights in the care, treatment and services provided to him during his residency. The jury apportioned fault at 80% to the defendant facility and 20% to the defendant health management company. The jury awarded damages in the amount of $1,167,482 broken down as follows: $55,000 for loss of companionship, loss of protection, medical and funeral expenses incurred by the decedent's survivors; $750,000 for the decedent's pain and suffering, disfigurement, physical impairment, mental anguish, inconvenience, loss of capacity for the enjoyment of life or any aggravation of existing disease or physical defect and $362,482 for economic damages.

REFERENCE

Ruiz vs. Palm Garden of Aventura, LLC et al. Case no. 2020-CA-7434; Judge William Thomas, 09-30-22.

Attorneys for plaintiff: Carlos Jimenez and Mark B. Hart of Jiminez Hart Mazzitelli Mordes in Miami, FL. Attorney for plaintiff: Manuel L. Dobrinsky of Dolan Dobrinsky Rosenblum Bluestein, LLP in Miami, FL. Attorney for defendant: Jerome R. Silverberg of Ullman Bursa Law in Ft. Lauderdale, FL.

PRODUCT LIABILITY

$18,111,250 VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN – PLAINTIFF TRIPS AND FALLS ON DEFECTIVE CABLE PROTECTOR COVERING AUDIOVISUAL CABLES AT DEFENDANT HOTEL – DESIGNING CABLE PROTECTOR WHICH CREATED TRIPPING HAZARD – TIBIA/FIBULA FRACTURES – C.R.P.S.

Philadelphia County, PA

The plaintiff in this liability action maintained that she tripped on a dangerous and effective cable protector that was on the floor covering audiovisual wires at a conference the plaintiff was attending at the defendant hotel.

Consequently, the plaintiff suffered a comminuted spiral fracture of the distal tibia, spiral fracture of the distal fibula, displaced fracture of the distal fibula with intra articular extension, right lateral malleolus fracture, right posterior malleolus fracture, post-traumatic arthritis and complex

regional pain syndrome. The plaintiff resolved her dispute with all defendants prior to trial except for the successor corporation that manufactured the cable protector. This defendant denied all allegations of negligence.

Prior to trial, the plaintiff resolved her dispute with all of the defendants at a mediation except for the defendant Checkers Industrial Products, the successor corporation that manufactured the cable protector. Checkers argued it could not be held liable because it was in no way involved with the conference where the plaintiff fell and it was in no way involved in the design manufacturer sale or distribution of the cable protector involved in the plaintiff's accident. In addition, the defendant argued that the plaintiff was comparatively negligent for not watching where she was walking.

The jury found for the plaintiff in the amount of 15,111,250 and for her husband in the amount of $3 million for a total verdict of $18,111,250.

REFERENCE

Dana and Ralph Burnley vs. Checkers Industrial Products, LLC. Case no. 160901257; Judge Michele Hangley, 09-08-22.

Attorney for plaintiff: Michael Pansisni of Pansini & Mezrow, P.C. in Philadelphia, PA. Attorney for defendant: Marc Perry of Post & Schell in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

$6,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/PEDESTRIAN COLLISION – 9-YEAR-OLD INFANT PLAINTIFF STRUCK BY PICK-UP TRUCK WHILE CHASING BALL INTO ROADWAY – SKULL FRACTURE – SURGERY FOR SUBDURAL HEMATOMA – PLATE AND 12 SCREWS PLACED INTO SKULL – SIGNIFICANT COGNITIVE DEFICITS – INFANT PLAINTIFF UNCONSCIOUS FOR BRIEF PERIOD.

Nassau County, NY

In this motor vehicle negligence action, the plaintiff contended that that the defendant driver of a pick-up truck negligently failed to pay adequate attention and timely stop when the 9-year-old infant plaintiff ran into the street after a ball. The plaintiff contended that as a result, he suffered a fractured skull and that despite surgery; he will permanently suffer moderate cognitive deficits which will place him at great risk for extensive economic losses in the future. The commercial pick-up truck had $30 million in total coverage, including several umbrella policies. The defendant asserted that the infant plaintiff suddenly darted into the street and that the accident was unavoidable,

The incident was captured on video from a surveillance camera owned by an across-the-street neighbor. The video showed that the infant plaintiff was already holding the ball when struck and then propelled approximately 20 feet. The plaintiff maintained that the injuries will significantly limit him in career endeavors. The plaintiff's economist would have concluded that such projected losses ranged from approximately $4,400,000 to $4,800,000.

The case settled during the appeal of the Court's decision to strike that answer because of the finding of spoliation for $6,000,000.

REFERENCE

Plaintiff's economics expert: Leonard Freifeld from New York, NY. Plaintiff's neuropsychologist expert: Sarah Schaeffer, Ph.D. from Smallwood, NY. Plaintiff's neurosurgeon expert: Mark Mittler, M.D. from Manhasset, NY.

Case of 9-year-old plt. vs. Defendant driver.

Attorneys for plaintiff: Mark Yagerman and Evan Yagerman of Yagerman Law in New York, NY.

$1,400,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/MOTORCYCLE COLLISION – INTERSECTION COLLISION – PLAINTIFF MOTORCYCLIST PROPELLED ALMOST 40 FEET – SEVERE FRACTURES TO NON-DOMINANT FOREARM, WRIST AND HAND – TOTAL OF SOME 20 SURGERIES.

Hudson County, NJ

In this action for motor vehicle negligence, the plaintiff motorcyclist in his late 30s contended that the defendant automobile driver negligently failed to stop at a red light, causing the collision. The plaintiff was thrown almost 40 feet and suffered severe fractures to the left, non-dominant forearm, wrist and hand. The defendant asserted that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff contended that although improved to some extent, he will have problems with everyday activities. The plaintiff was ultimately able to return to his job in the software field and the plaintiff made no future income claims.

The defendant had $1,500,000 in coverage. The case settled prior to trial for $1,400,000.

REFERENCE

Klepper vs. Carney. 12-20-21.

Attorney for plaintiff: Joseph C. Angelo of Law Offices of Joseph C. Angelo in Nutley, NJ.

PREMISES LIABILITY

$3,000,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY AT SUBWAY RESTAURANT LOCATION – CARJACKING – SHOOTING – LOSS OF SPEECH – LOSS OF VISION IN ONE EYE – INABILITY TO WALK WITHOUT ASSISTANCE – PSYCHOLOGICAL TRAUMA.

Broward County, FL

The plaintiff in this action for premises liability was a 29-year-old man who claimed catastrophic injuries as a result of a shooting at the defendant, Subway Restaurant's, freestanding fast food location. The plaintiff alleged that the shooting and carjacking resulted from the defendants' negligence in failing to provide adequate security at the location.

The plaintiff sustained bullet wounds which caused him to lose the ability to speak. He also lost vision in one eye and is unable to walk without an assistive device. In addition, the plaintiff claimed intense psychological trauma resulting from the shooting.

The plaintiff sought medical expenses of $500,000 and lost wages of $150,000. The plaintiff's wife also asserted a derivative claim.

The case was resolved prior to trial for a total of $3,000,000.

REFERENCE

St. Clermont vs. Subway Restaurants, Inc., et al. Case no. CACE-20-007930; Judge Michele Towbin-Singer, 08-12-20.

Attorney for plaintiff: Douglas McCarron of The Haggard Law Firm in Coral Gables, FL.

$2,114,287 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS AND FALLS ON WET FLOOR THAT HAD BEEN RECENTLY MOPPED BY DEFENDANT CLEANING COMPANY – RIGHT HIP PARTIAL THICKNESS TEAR, RIGHT HIP BURSITIS, GLUTEUS MINIMUS/MEDIUS TENDONOSIS AND RIGHT HIP LARGE CYSTIC LESION – RIGHT KNEE ACL SPRAIN WITH TEAR AND SWELLING.

Philadelphia County, PA

The plaintiff in this premises liability action was a Philadelphia police officer who was lawfully at the officer training campus when she slipped and fell in a wet hallway that had recently been mopped by the defendant. Consequently, the plaintiff sustained a right hip partial thickness tear, right hip bursitis, gluteus minimus/medius tendinosis, right hip large cystic lesion, right knee ACL sprain with tear and right knee swelling. The defendant generally denied all allegations of negligence and injury and maintained that the incident was caused by the actions of the plaintiff.

The plaintiff maintained that the defendants created a dangerous and hazardous condition on the premises, created an unreasonable risk of harm, failed to correct a dangerous and hazardous condition on the premises, failed to properly and safely mop prep or burnish the hallway floor and failed to warn of the dangerous condition.

The jury found that the defendant was negligent and that their negligence was a factual cause of harm to the plaintiff. The jury did not find any negligence on the part of the plaintiff. The jury awarded the plaintiff's damages totaling $2,114,286.85.

REFERENCE

Joan Palmer vs. Team Clean, Inc. Case no. 190701204; Judge Gwendolyn Bright, 11-18-22.

Attorney for plaintiff: William Bishop in Philadelphia, PA. Attorney for defendant: Stephen Scheuerle of Hohn & Scheuerle in Philadelphia, PA.

ADDITIONAL VERDICTS OF INTEREST

Landlord Negligence

$3,700,000 RECOVERY – LANDLORD NEGLIGENCE – PLAINTIFF TENANT WITH DOWN SYNDROME FALLS DOWN SEVERAL INTERIOR STEPS AND STRIKES WALL, SUFFERING HAIRLINE SKULL FRACTURE AND SUBDURAL HEMATOMA – COGNITIVE DEFICITS.

Middlesex County, NJ

This action involved a plaintiff tenant, approximately age 60, who contended that the defendant landlord negligently failed to repair interior steps leading to the laundry room. The plaintiff contended that as a result, he tripped and fell several steps as he was descending, striking his head on the adjacent wall. The plaintiff asserted that he suffered a hairline skull fracture that caused subdural hematoma that resulted in significant cognitive deficits. The defendant denied that the condition of the steps was related to the fall. The defendant maintained that the fall was caused by a stroke.

The plaintiff suffered from Down syndrome and maintained that prior to the accident, he was relatively independent, could go shopping and perform his laundry and that he is no longer able to do so, depending on his brother and sister-in-law with whom he lived before the fall occurred.

The case settled prior to trial for $3,700,000.

REFERENCE

Higgins vs. Sky-Top Gardens. 03-22.

Attorney for plaintiff: Barry R. Eichen of Eichen Crutchlow Zaslow, LLP in Edison, NJ.

Municipal Liability

$1,200,000 RECOVERY – MUNICIPAL LIABILITY – AUTO/PEDESTRIAN COLLISION – MOTHER STRUCK BY CITY EMPLOYEE WHILE CARRYING 5-WEEK-OLD INFANT PLAINTIFF – BABY SUFFERS SKULL FRACTURE – RISK OF SEIZURE DISORDER.

Essex County, NJ

In this action, the 5 week-old infant plaintiff's mother contended that as she was carrying the infant plaintiff while crossing in the crosswalk with the "walk" , the defendant driver of a City of Newark vehicle negligently failed to make observations as he turned left from behind. The plaintiff contended that as a result, the infant was struck suffering a skull fracture and a TBI. The infant plaintiff, currently age 6, required surgery, is subject to seizures as she grows and must be evaluated for developmental delays. The evidence disclosed that the mother had almost completed crossing when struck. The defendant did not dispute liability. The defendant would have pointed out that the infant plaintiff continues to meet developmental milestones.

The plaintiff maintained that the infant plaintiff sustained a skull fracture and approximately 1 ½ years after the accident, the infant plaintiff underwent a craniotomy where the fractured skull was removed and rib bone was plated together with the skull. The infant plaintiff has substantially met all developmental milestones as of the time of settlement. The plaintiff contended, however, she must be monitored for delays until her head is fully grown. The plaintiff further pointed out that she will permanently be at increased risk for a seizure disorder.

The case settled prior to trial for $1,200,000.

REFERENCE

Plaintiff's pediatric neurosurgeon expert: Luke Tomycz, M.D. from Morristown, NJ.

Yanez vs. City of Newark, et al. Docket no. ESX- L-003972-18.

Attorney for plaintiff: William P. Mikita, Jr. of Mikita & Roccanova in Hazlet, NJ.

Negligent Supervision

$110,000,000 RECOVERY – NEGLIGENT SUPERVISION – PERSONAL NEGLIGENCE – DEFENDANTS ALLOW UNDERAGE MINOR PLAINTIFF TO OPERATE ATV DESPITE MOTHER'S EXPLICIT DIRECTIONS THAT MINOR NOT OPERATE OR RIDE ON ATV – MINOR AND PASSENGER SUFFER ROLLOVER ACCIDENT – TRAUMATIC BRAIN INJURY – FACIAL LACERATIONS WITH SCARRING.

Starr County, TX

The plaintiff in this personal injury negligence action maintained under the defendants' supervision her minor daughter was allowed to operate an ATV despite the plaintiff mother's direction that the minor not be allowed to and the minor suffered a rollover collision resulting in life-altering injuries. As a result of such negligence and gross negligence, including negligence entrustment, the minor sustained a traumatic brain injury, facial lacerations with scarring and multiple contusions, abrasions, and sprains to the body. The defendants argued that the ATV was taken by the minor without their permission, and they argued the defense of "unclean hands".

The plaintiffs maintained that the defendants entrusted and allowed the minor to operate the ATV even though the defendants knew, or should have known, the minor, was incompetent, unlicensed, and/or reckless. The defendants argued that the minor plaintiff assumed the risks of her actions, took the ATV without permission using the defense of "unclean hands" and was comparatively negligent.

The jury found in favor of the plaintiffs and awarded the plaintiff $90,000,000 in compensatory damages and $20,000,000 in punitive damages for a total of $110,000,000.

REFERENCE

Linora Rodriguez, individually and as next friend of L.A.G. vs. Myra Garza and Roel Rodriguez. Case no. DC-19-129; Judge Jose Luis Garza, 11-04-22.

Attorney for plaintiff: Jesus Garcia, Jr. of Garcia De La Garza, LLP in Houston, TX. Attorney for defendant: J.M. Chema Garza of Law Offices of J.M. Chema Garza in Rio Grande, TX.

Ski Resort Negligence

$3,250,000 CONFIDENTIAL RECOVERY – SKI RESORT NEGLIGENCE – OPERATOR INATTENTION – 60-YEAR-OLD PATRON FALLS FROM LIFT DUE TO MISLOADING – HIP AND SHOULDER FRACTURES – HIP REPLACEMENT REQUIRED.

Withheld County, MA

In this liability matter, the plaintiff alleged that the defendant ski resort and its employee were negligent in failing to properly operate the ski lift and pay attention to the plaintiff's cries for help when she misloaded. As a result, the plaintiff fell 20 feet to the ground. The plaintiff suffered multiple fractures which required surgery. The defendant resort denied any wrongdoing and disputed the plaintiff's allegations of negligence and damages.

The plaintiff brought a claim against the defendant ski resort alleging negligence. The plaintiff contended that the lift operator was improperly trained and inattentive and failed to respond to the plaintiff's cries for help when she misloaded.

The matter was submitted to mediation and was resolved at mediation for the total sum of $3,250,000 in a confidential agreement between the parties.

REFERENCE

Skier Doe vs. Ski Resort Roe. 08-02-21.

Attorney for plaintiff: Jeffrey S. Raphaelson of Ralphaelson Law in Hingham, MA.