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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

$3,864,000 VERDICT – PERSONAL NEGLIGENCE – GOLF CART COLLISION – DEFENDANT STRUCK PLAINTIFF GOLFER ON RIGHT KNEE WITH GOLF CART, KNOCKING HIM TO GROUND ON HIS BACK – TRAUMATIC LOW BACK INJURY AND RIGHT KNEE INJURY – L5-S1 FUSION – PLAINTIFF CLAIMS $2.5 MILLION IN LOST WAGES.

Bergen County, NJ

On July 24, 2015, the plaintiff, a 42-year-old financial analyst, was a business invitee at a golf course in Demarest. The plaintiff was standing at the 9th hole of the course and the defendant was the operator of a golf cart in the same area. The plaintiff claimed that, as a result of carelessness, recklessness, and negligence, the defendant struck the plaintiff on his right knee with the golf cart, knocking him to the ground on his back. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the incident, the plaintiff sustained low back injury and right knee injury. The plaintiff underwent an L5-S1 fusion. The plaintiff was out of work on medical leave for a year and was laid off shortly before he was scheduled to return to work. The plaintiff claimed $2.5 million in lost wages.

The defendant admitted that the plaintiff sustained knee injury, but denied causation with regard to the plaintiff's claimed back injury and resulting surgery. The defendant maintained that the plaintiff had a prior condition of the low back and that the need for surgery was due to degeneration of the plaintiff's pre-existing condition, not due to the subject accident.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $1 million in non-economic damages; $150,000 in future medical expenses; $2.5 million for loss of earnings and $214,000 in prejudgment interest, for a total damage award of $3,864,000. Following the judgment, the defendant filed for a new trial or remittitur.

REFERENCE

Zaburski vs. Klein. Docket no. L-002879-17; Judge John D. O'Dwyer, 09-06-19.

Attorney for plaintiff: Evan J. Lide of Stark & Stark in Princeton, NJ. Attorney for defendant: Brian R. Lehrer of Schenk, Price, Smith & King, LLP in Paramus, NJ.

COMMENTARY

Post-trial, the defendant moved for a new trial or to remit the jury's damages because, the defendant argued, the award clearly was disproportionate to the injury. The defendant asserted that the plaintiff underwent a successful surgery and ultimately returned to work. The defendant noted that the jury awarded $2.5 million in past and future wage loss where the plaintiff obtained new employment following the accident. Furthermore, the defendant claimed, the plaintiff's claim for future damages was based upon a metric which the plaintiff's own expert conceded applied to manual laborers, as well as white-collar workers. The plaintiff's expert, during the course of cross-examination, conceded that the plaintiff can perform the tasks of his employment and, therefore, the purported lost income award shocks the conscience in and of itself. The defendant cited Fertile v. ST. Michael's Med Center, 169 N.J. 41 (2001). Therefore, the defendant asserted, at a minimum, a remittitur should be granted. The defendant also argued that the certified employment file of the plaintiff was wrongfully not admitted into evidence wherein the plaintiff had had declining reviews and had made numerous mistakes at work prior to the subject accident, which made the $2.5 million wage loss award extraordinary.

The defendant claimed that the court mistakenly failed to cut off the plaintiff's future wage loss claim once he gained new employment. Clearly, defense counsel argued, an award of $2.5 million for lost wages justified defendant's position that the plaintiff's lost wage claim should have been cut off when he obtained new employment and that the defendant should not be responsible for lost wages in perpetuity where a plaintiff demonstrates that he can obtain gainful employment after the accident. Lastly, the defendant claimed that the court should have followed Ponso v Pelle, 166 N.J. 481 (2001) and separated the issue of knee injury, which the defendant conceded, from back injury, which the defendant did not.

The plaintiff opposed the defendant's motion and argued that the motion focused primarily on the fact that the jury awarded damages that the defendant felt were excessive, and that the defense was prevented from introducing employment records from the plaintiff's employer. Plaintiff's counsel asserted that this argument was largely repetitive of a defense objection at trial, which the court overruled. The plaintiff went on to claim that, at the time of the subject collision, the plaintiff was 42 years old with a life expectancy of 34.1 years. Therefore, the jury's award amounted to approximately $80/day, which, the plaintiff argued was not an amount to shock the court, or anyone. As to the defendants being restricted from reading into evidence the plaintiff's employment file, plaintiff's counsel argued that the employment file could have been introduced in other ways, but not in the way it was done by defense counsel, attempting to cross-examine the plaintiff as to the file while he was on the stand and without his ever having seen the file prior. In any case, according to plaintiff's counsel, the defendant misrepresented the contents of the file and put forth that the plaintiff had no real issues at work until he was injured in the subject accident, as supported by deposition testimony of an HR specialist from the plaintiff's place of work who stated that there had

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Ira J. Zarin, Esq.

President
Jed M. Zarin

Contributing Editors
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been no plan or reason to terminate the plaintiff prior to his injury and inability to work and that he had had no disciplinary write-ups at any time.

The plaintiff maintained that the court had properly admitted the plaintiff's future wage loss claim because the plaintiff's neurosurgeon had diagnosed him with a permanent injury, and although the condition was addressed via surgical fusion, the plaintiff would still have permanent restrictions. The plaintiff's expert vocational economist testified as to the plaintiff's future ability to work at trial, determining his economic loss to be $2.5 million, the amount the jury awarded, indicating that the jury clearly found that the plaintiff had suffered a permanent injury that would impact his ability to work in the future. The court denied the defendant's motion for new trial/remittitur.

$2,500,000 VERDICT – MEDICAL MALPRACTICE – PODIATRY – SURGERY – DEFENDANT PODIATRIC SURGEON PERFORMED BUNIONECTOMY ON PLAINTIFF CAUSING VASCULAR INJURY AND THEN FAILED TO TIMELY DIAGNOSE AND TREAT RESULTING INFECTION – OSTEOMYELITIS NECESSITATING REMOVAL OF BONE FROM HALLUX AND METATARSAL – PERMANENT DISFIGUREMENT – PROGRESSIVE ORTHOPEDIC ISSUES – PARTIES SETTLE FOR UNDISCLOSED SUM.

Monmouth County, NJ

In this medical malpractice case, the plaintiff, a 20-year-old woman, claimed that the defendant podiatric surgeon, who performed a bunionectomy on the plaintiff, caused vascular injury to the plaintiff and then failed to timely diagnose and treat a resulting infection which led to osteomyelitis, necessitating the removal of bone from the hallux and metatarsal. The parties disagreed as to how the vascular insult occurred with the plaintiff maintaining that the defendant surgeon caused the vascular injury during surgery and the defendant asserting that the occlusion occurred well away from the surgical site and was not caused by any action of the defendant surgeon. The plaintiff brought suit against the defendant surgeon and his practice.

In the course of bunion surgery, the plaintiff suffered vascular insult that caused vasospasm occluding the anterior tibial artery. The occlusion cut off the blood frown to the dorsalis pedis and the microcirculation to the angiosome providing blood to the area of the surgical incision. The surgical area then became infected including infection of the bone. In the days following surgery, the plaintiff experienced pain and discoloration of her foot. She contacted and was seen by the defendant and his partner several times over the week following surgery and ultimately admitted to the hospital with post-operative infection.

The plaintiff was placed on IV antibiotic for 5 days with no other definitive treatment. The plaintiff was discharged home with notes indicating that her infection had responded to the medication. The plaintiff claimed no culture was performed. The plaintiff was discharged with a prescription for an oral antibiotic, but the antibiotic given at the hospital, which proved effective, was not continued. The plaintiff's experts argued that, had it been continued post-discharge, the plaintiff's infection would have been addressed. Instead, the wound did not respond to the oral medication and eventually the plaintiff developed osteomyelitis. The plaintiff's wound failed to close due to underlying infection and was not resolved until nearly 2 years later with surgery to remove the infected bone. The plaintiff was left with significant, permanent disfigurement and progressive orthopedic issues that will impact her for the rest of her life.

The defendants denied violation of the standard of care and argued that all actions taken by the defendants were appropriate to treatment of the plaintiff's condition. The defendants asserted that the plaintiff suffered a vasospasm which is a rare, but recognized complication of the surgery and not due to any malpractice by the defendants.

The jury found in favor of the plaintiff and against the defendant surgeon and awarded damages in the amount of $2,500,000 together with $266,114 in prejudgment interest, for a total award of $2,766,114. Following the verdict, the defendants filed a motion for new trial. The motion was subsequently withdrawn upon settlement with the plaintiff for an undisclosed sum.

REFERENCE

Ronneberg vs. Sullivan, DPM, et al. Docket no. L-000702-15; Judge Lourdes Lucas, 09-20-19.

Attorney for plaintiff: James D. Martin of Martin Kane & Kuper in East Brunswick, NJ. Attorney for defendant: Dominick DeLaurentis of Stahl & DeLaurentis, P.C. in Runnemede, NJ.

COMMENTARY

The defendants moved for a new trial claiming that the jury, after deliberating only approximately 24 minutes, returned a verdict that was against the weight of the evidence resulting in a miscarriage of justice requiring a new trial. The defendants argued that the plaintiff's standard of care expert's testimony was contradictory and nonsensical and that there was no support for his opinion of "Rough handling" resulting in severing of the DP artery in the records or even in his own testimony. The defendants argued that there was no support for the plaintiff's other claims, for example, that the multiple debridements and chronic infection caused an injury to the DP artery which deprived the wound of the necessary blood to heal. The defendants countered this with expert testimony to the contrary that debridement is exactly how one treats a chronic wound and that it was appropriate to perform in these circumstances.

The plaintiff then pursued a claim that the defendant surgeon failed to culture and take bone biopsies at appropriate times. The defendant asserted that there was no factual basis for this claim as cultures and biopsies were performed throughout the course of the plaintiff's post-operative care. The plaintiff further argued that if the defendant surgeon had called infectious disease during the initial hospitalization, they would have continued with medication that would have cleared the infection. The defendant's infectious disease expert testified that continuing the medication was not indicated and possibly dangerous. The defendants concluded that the jury finding of breach of the standard of care was firmly against the weight of the evidence.

The defendants also claimed that the jury was improperly charged as to the standard for "But for" proximate causation rather than "Increased risk". The defendant maintained that it was plain error to charge "But for" rather than "Increased risk" as to proximate causation. The defendants argued that a pre-existing condition case warranting the increased risk of harm charge is one where negligence combines with the pre-existing condition to cause the harm as opposed to a case where the deviation alone causes the harm citing Holdsworth v. Galler, 345 NJ Super 294 (App Div 2001); Tincall v. Smith, 299 NJ Super 123 (App Div 1997). In the subject cause of action, the defendants claimed that the pre-existing condition of ischemia in turn allowed infection to occur while the claim against the defendants is one of failure to timely diagnose and treat the infection. The defendants had no burden of proof to put on testimony as to specific percentages, but rather needed to establish that the damages for which they were responsible are capable of some type of apportionment - which burden the defendant claims was met. The jury thus, according to defense counsel, should have been charged as to increased risk for proximate causation and this error warrants a new trial.

The defendants also claimed that plaintiff's counsel made inappropriate comments during closing statements leading to jury bias and undue sympathy and that, while attorneys are allowed latitude in closing arguments, plaintiff's counsel's closing was not a comment on the evidence, but rather a plea to feel sorry for the plaintiff and unjustly influenced the jury to an extremely large verdict in only 24 minutes. Defense counsel also claimed that the jury's verdict shocked the conscious, thus warranting a new trial or at the very least a substantial remittitur. The defendants asserted that the cumulative errors presented warranted a new trial.

$1,475,000 VERDICT – PREMISES LIABILITY – NEGLIGENT FAILURE TO WATERPROOF UTILITY ROOM IN OFFICE BUILDING AFTER SIGNIFICANT LEAKING INCIDENT – SPRINKLER SYSTEM LEAKS AND RUSH OF WATER FLOWS INTO DENTAL OFFICE – PLAINTIFF FALLS WHILE STANDING ON CHAIR ATTEMPTING TO RELOCATE COMPUTER EQUIPMENT – AGGRAVATION OF LUMBAR FUSION – SPINAL FLUID LEAK, INFECTION AND NEED TO REPLACE HARDWARE – FALL WHEN BACK GIVES WAY MONTHS LATER –THUMB FRACTURE – FAILED FUSION DESPITE 3 HAND SURGERIES.

Somerset County, NJ

This premises liability action involved a plaintiff dental assistant in the employ of a dentist tenant of an office building in which the plaintiff contended that the defendants negligently failed to a waterproof a utility room that housed items such as hot water heaters after a significant leaking in the room occurred approximately one year earlier. The utility room was next to the dental office in which the plaintiff worked and there was an interior main pipe that was hooked up to a water source in the utility room and led outside to the components of the lawn sprinkler system. The plaintiff contended that the main pipe leaked, and the utility room collected a good deal of water. The plaintiff maintained that because the utility room was not waterproofed, water rushed in as she was standing on a plastic chair attempting to place computer equipment out of harm's way. The plaintiff asserted that she fell and suffered a severe aggravation of a lumbar fusion that was performed approximately 9 months earlier and which necessitated surgery that resulted in a spinal fluid leak, an infection and necessitated the replacement of the hardware used in the earlier fusion. The plaintiff also

contended that she required 2 additional lumbar surgeries, and that her back gave out after the second, resulting in her falling and that she suffered a fracture to the dominant thumb. The plaintiff asserted that she underwent fusion surgery, which failed and that despite 2 additional attempts, she could not achieve union and suffers extensive pain and loss of use of the dominant hand.

The incident occurred on a Monday morning. The plaintiff contended that the water source of the sprinkler system began leaking over the weekend or sometime earlier and that although a cleaning employee (independent contractor), who kept his mop in the utility room, noticed a leak on Saturday and left a message for the property manager, no steps were taken. The plaintiff maintained that when she arrived at work on Monday morning, she noticed that the carpet was wet and that the back offices seemed to be wetter than the front. The plaintiff indicated that she went into the dentist's office, stood on a plastic chair and was in the process of relocating computer equipment when a several inches of water rushed in, resulting in the fall.

The plaintiff's engineer asserted that when the leak occurred the previous year, the defendants landlord and/or property manager should have waterproofed the room. The plaintiff contended that the only work that was done was when the defendant placed a sheet of plywood. The plaintiff's engineer also concluded that other work, such as the placement of a French drain, should have done.

In addition to the defendants landlord and property manager, the plaintiff also named a plumber who had done work in the room approximately 1 week earlier. The plaintiff had initially contended that the plumber, whose work included the replacement of a valve in the sprinkler system, did so in a negligent manner. The plaintiff argued at trial that the cause of the recent leak would not have been important if the room had been properly waterproofed a year earlier.

The cleaner was an independent contractor and was also named as a defendant. This defendant contended, prior to settling for $150,000, that by contacting the property manager, he acted adequately. The plaintiff further named a company that was responsible for maintaining the sprinkler system. This defendant maintained, before settling for $35,000, that it had properly inspected the system, that there was no indication of a leak, and that if the utility room had been waterproofed after the incident a year earlier, the subject incident would not have occurred.

The plaintiff had undergone a lumbar fusion approximately 9 months earlier. The plaintiff asserted that she had fared well and returned to work after missing approximately 3 months. The plaintiff contended that she underwent an initial surgery sometime after this incident and suffered complications of a spinal fluid leak and an infection. The plaintiff required surgery in which included the replacement of the hardware used in the fusion 9 months earlier. The plaintiff also required a third lumbar surgery. The plaintiff contended that she will suffer extensive back pain permanently that will prevent her from working.

The plaintiff also asserted that her back gave way after the second lumbar surgery and she fell, suffering a fracture to the right, dominant thumb. The plaintiff required surgery, including an attempt at a fusion which failed. The plaintiff also underwent 2 more surgeries because of this injury, but has not been able to achieve union. The plaintiff maintained that she will permanently suffer an extensive loss of use of the hand, that she has attempted to learn to write left-handed and that everyday activities are exceedingly difficult. The plaintiff can drive.

The jury found the landlord 51% negligent, the property manager 34% negligent, the settling plumber 9% negligent, the settling sprinkler maintenance company 5% negligent and the settling cleaner 1% negligent. The jury assessed $1,475,000 in damages, including $1,000,000 for pain and suffering, $173,000 for medical bills $124,000 for past lost wages and $173,000 for future lost wages.

REFERENCE

Plaintiff's engineer expert: Wayne Nolte, PE from Hazlet, NJ. Plaintiff's forensic economist expert: Michael Soudry, MBA from East Hanover, NJ. Plaintiff's neurosurgeon expert: Sanford Fineman, M.D. from North Brunswick, NJ. Plaintiff's orthopedic surgeon expert: Albert Johnson, M.D. from North Brunswick, NJ. Plaintiff's vocational expert: Daniel Wulstein, Ph.D. from Hackensack, NJ.

Reiss vs. Warren Medical Center Condo Assn, et al. Docket no. SOM-L-830-16; Judge Michael Rogers, 08-15-19.

Attorneys for plaintiff: Dina M. Denfalone and Dennis M. Fackelman of Confalone & Fackelman, LLC in Somerville, NJ.

COMMENTARY

The evidence reflected that a settling plumber had changed a valve attached to the sprinkler system water source in the utility room approximately one week earlier. The jury, however, found the plumber only 9% negligent and assessed a total of 85% negligence against the non-settling defendant owner and property manager. It is felt that irrespective of the belief as to the cause of the recent leaking, the failure of the owner or property manager to waterproof the room following the significant leaking incident approximately one year earlier was the primary factor in the jury's liability determination. Regarding damages, it is thought that relatively conservative nature of Somerset County had some limiting impact on the size of the jury award in this case in which the plaintiff suffered complications, including a spinal fluid leak, infection and the need to replace hardware from a prior fusion and also suffered extensive pain and a severe loss of use because of the thumb fracture and failed attempts at a fusion attempt of the thumb.

$1,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – NO CONTACT AUTO COLLISION – PLAINTIFF DRIVER RUN OFF ROADWAY BY DEFENDANT DRIVER ATTEMPTING TO PASS ON NARROW ROADWAY – CERVICAL HERNIATION PROMPTING 3-LEVEL FUSION SUPERIMPOSED ON PRIOR DISABLING LOWER BACK INJURIES WHICH REQUIRED PREVIOUS SURGERY.

Morris County, NJ

In this motor vehicle negligence action, the plaintiff driver, in his early 60s, contended that after he went around the defendant driver, who was stopped in the travel lane, and the plaintiff turned right from a stop sign a short distance ahead, the defendant, who also turned right at the intersection, traveled at a high rate of speed and forced the plaintiff off the roadway, which contained one lane in each direction. The plaintiff, who was on disability because of the need for several lumbar surgeries approximately 5 years earlier, contended that the subject accident caused he suffered multiple cervical herniations that required a 3-level fusion The plaintiff did not suffer an aggravation of the prior lumbar condition in the accident. The defendant pointed out that the plaintiff's vehicle did not suffer significant damage and denied that the plaintiff suffered permanent injury.

The plaintiff related that he saw the defendant stopped in the travel lane of the prior roadway and that after another vehicle went into the on-coming lane to pass him he did the same thing. The plaintiff turned right at a stop sign a short distance down the road and onto a roadway containing one lane in each direction. The plaintiff contended that the defendant also turned right at the stop sign and attempted to pass him at a high rate of speed. The plaintiff related that as the defendant did so, he only partially went into the on-coming lane, indicating that because of the proximity to his vehicle, the plaintiff lost control and traveled off the road, stopping in a shallow ditch.

The plaintiff contended that the need for the earlier lumbar surgery resulted in additional stress being placed on the cervical discs. The plaintiff asserted that because of this compromise, the impact had a much greater effect on him than would otherwise be the case. The plaintiff asserted that despite more conservative treatment and physical therapy, he required a 3-level fusion and that he will permanently suffer pain and extensive restriction throughout the back. The plaintiff would have introduced demonstrative evidence that showed the extensive hardware in his neck, and the plaintiff would have argued that the jury could well understand that the plaintiff's testimony regarding the difficulties encountered when engaging in everyday activities was accurate.

The defendant had $250,000 in primary coverage and a $2,000,000 umbrella. The case settled prior to trial for $1,000,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Arash Emanmi, M.D. from Wayne, NJ.

Cocomello vs. Rettagliata. Docket no. MRS-L-179-18, 12-13-19.

Attorney for plaintiff: Anthony R. Fiore of Gage Fiore, LLC in Lawrenceville,, NJ.

COMMENTARY

The defendant would have emphasized that the plaintiff's vehicle suffered very little property damage as it came to rest on a shallow ditch on the side of the road. The plaintiff none-the-less obtained a very significant recovery, which was thought to be especially substantial in view of the absence of any wage claims by the plaintiff, who was already disabled because of prior low back conditions that required previous surgeries. The plaintiff would have argued that even if this impact would not have an untoward effect on most individuals, the compromise associated with the prior low back condition and the lumbar surgeries rendered the new cervical herniations and need for a 3-level fusion especially devastating to this individual. Additionally, the evidence that the ability of the plaintiff, who had been widowed for many years, to be as active with his sons as otherwise would have been the case, would probably also have a strong effect on the jury. Finally, the jury reaction would have been heightened by the evidence that the plaintiff was run off the road after passing the defendant who was stopped in the travel lane.

$100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/MOTORCYCLE COLLISION – MINOR PLAINTIFFS' FATHER KILLED AS RESULT OF COLLISION – DAMAGES SOUGHT FOR FUNERAL EXPENSES; TRAVEL EXPENSES; LOSS OF COMPANIONSHIP AND CONSORTIUM AND OTHER FINANCIAL DAMAGES.

Passaic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the decedent, causing his death. The plaintiffs, the mother and 2 minor children of the decedent, filed suit seeking damages for the value of the loss of the decedent's companionship and consortium, as well as funeral expenses, travel related expenses and other financial losses they suffered as a result of the decedent's death. The defendant denied liability and asserted that she was not guilty of negligence as charged in the plaintiffs' complaint or otherwise. The defendant asserted that the decedent was at least contributorily negligent in causing the collision wherein he died.

On April 16, 2016, the decedent was driving northbound on a motorcycle on Clinton Street in Paterson. The defendant driver was traveling eastbound on North 5th Street in Paterson. The defendant negligently struck the decedent's motorcycle with her vehicle. As a result of the collision, the decedent sustained traumatic bodily injury and was removed from the scene by ambulance. The decedent ultimately succumbed to his injuries and died as a result.

The parties settled the matter prior to trial in the amount of the defendant's insurance policy limit of $100,000 broken down as follows: $25,326 in attorney fees; $37,337 each in net damages to the 2 minor plaintiff children of the decedent.

REFERENCE

Simmons, et al. vs. Butts. Docket no. L-001207-18; Judge Frank Covello, 05-10-19.

Attorney for plaintiff: Ronald C. Hunt of Hunt, Hamlin & Ridley in Newark, NJ. Attorney for defendant: G. Samuel Hoffman of Law Offices of Styliades and Jackson in Mount Laurel, NJ.

COMMENTARY

Following the settlement of this case, a motion to modify the order was filed by the mother of the decedent. The mother of the decedent asserted that she had paid out-of-pocket $21,266 in funeral expenses for the decedent. Both guardians of the respective minor plaintiffs agreed that it was fair to reimburse the decedent's mother for those expenses even if it reduced the plaintiffs' award. The parties further discussed that one of the plaintiffs (the decedent's son) had been having difficulty dealing with his father's death, which he witnessed, and that he would need additional counseling.

It was agreed amongst the parties that the plaintiff decedent's son would receive $30,000 in damages and the plaintiff decedent's daughter would receive $23,507. The plaintiff's attorney indicated that he had explained the situation to the defendant insurance company and they had no objection since the disbursement did not change the amount of the settlement. The adjustment was approved by the court on May 23, 2019.

SUMMARY JUDGMENT FOR DEFENDANT – WRONGFUL TERMINATION – AGE DISCRIMINATION – PLAINTIFF WORKED FOR DEFENDANT PHARMACY FOR 29 YEARS, CLAIMS SHE WAS FIRED BECAUSE SHE WAS AT TOP OF PAY SCALE – DEFENDANT DENIES PLAINTIFF'S CLAIMS FIT UNDER NJLAD.

Burlington County, NJ

In this wrongful termination suit, the plaintiff asserted that the defendant employer fired her because she had seniority and was at the top of the pay scale and that the defendant dismissed her in order to hire a younger worker at a lower pay grade. The defendant denied that the plaintiff was dismissed due to her age.

The plaintiff was hired by the defendant hospital pharmacy in 1986, at the age of 19, after graduating from high school. The plaintiff was hired as a pharmacy technician and was trained in that department. The plaintiff worked for the defendant for 29 years. At some point, the co-defendant was promoted to Director of the defendant pharmacy. The plaintiff maintained that she enjoyed good reviews until she began to be evaluated by the defendant director who, she claimed, created a hostile work environment for the plaintiff.

The plaintiff was the highest paid Pharmacy Technician because she had worked the longest at the defendant pharmacy. The plaintiff claimed that, because of her age and because of her pay rate, which had increased yearly for 29 years, the plaintiff was singled out, harassed and fired. The defendants then replaced the plaintiff with part-time Pharmacy Technicians at great cost savings. The plaintiff asserted that, as a direct and proximate result of the acts and omissions of the defendants, the plaintiff was subjected to a hostile work environment, and suffered financial hardship, loss of benefits, stress, emotional distress and other damages.

The defendant asserted that the plaintiff was fired solely based on her work product and nothing else. The defendant pointed to several instances where the plaintiff was given written reprimand over the course of approximately 3 years prior to her dismissal and that the plaintiff did not file any employee grievances during this time or any other prior to her dismissal. Further, the defendant claimed that the plaintiff failed to establish a legally sufficient case of age discrimination or harassment.

The defendant filed a motion for summary judgment claiming that the plaintiff failed to provide evidence of harassment or discrimination based on age and that financial decisions made by the defendant are not a cause of action under NJLAD. The court agreed with the defendants and granted summary judgment, dismissing the plaintiff's claim.

REFERENCE

Baker vs. Deborah Sadowski, et al. Docket no. L-001154-17; Judge 06-14-19.

Attorney for plaintiff: Mark J. Molz, Esq. in Hainesport, NJ. Attorney for defendant: William M. Honan and Brian J. McGinnis of Fox Rothschild, LLP in Atlantic City, NJ.

COMMENTARY

The defendants' motion for summary judgment sought dismissal of the plaintiff's case on the basis of the argument that the plaintiff's claim of age discrimination had no basis in fact and that she provided no evidence of such. The defendants pointed to the plaintiff's performance reviews from 2011-2014, evidencing numerous performance issues as evidence of the defendants' termination of the plaintiff solely due to failure to improve performance. Following her termination, the plaintiff submitted a letter to the defendants wherein she alleged that she had performed her work well and only had a few isolated incidents of poor performance. She also sent a more comprehensive grievance 7 days after her termination.

The defendants noted that in neither the post-termination letter, nor the grievance, did the plaintiff refer to age discrimination or harassment on account of her age. The defendants produced a significant record of performance-based issues with the plaintiff's work and that she was clearly, ultimately fired for failure to improve on performance issues. The defendants point to the complete lack of any claims of harassment or age discrimination through the defendants' grievance process and, in fact, the lack of any refutation of defendants' complaints or mention of discrimination on any of her poor performance evaluations. The defendants argued that the plaintiff could not bring an age discrimination suit simply because she was terminated after a long tenure with the defendant employer.

The defendants argued that even if the plaintiff was fired because the defendant could hire less-experienced technicians at a lower pay scale, that did not comprise age discrimination. The defendants asserted in their motion for summary judgment that the court should disregard the plaintiff's allegations that her long tenure, her comparatively high salary, and her seniority in the workplace provided the motivation for the defendants' alleged harassment and discrimination, because the applicable law (NJLAD) extends protection to none of these characteristics. The defendants cited Bergen Commercial Bank v. Sisler, 157 N.J. 188, 220 (1999) in arguing that a cost saving measure taken by an employer, without anything more, is insufficient to establish discrimination. As such, the defendants argued that the plaintiff's claim of age discrimination/harassment failed as a matter of law in the light of there being no direct evidence of age discrimination or harassment and no circumstantial evidence of age discrimination or harassment. The defendant maintained that, apart from unspecified, conclusory, and self-serving pronouncements, the plaintiff did not create a genuine issue of fact on the elements of age-based harassment under the NJLAD.

The plaintiff opposed the defendants' motion. The plaintiff listed among her complaints about the defendant director, that the director said such things as, "It's my way or the highway" and "If you're not on board you can get off at the next stop." The plaintiff asserted that the defendant director was purposefully condescending, hostile, unpredictable, conceited, pretentious, arrogant, haughty and insisted on micro-managing the plaintiff's work. The plaintiff maintained that she only began to receive poor performance evaluations once the defendant director became her superior. The plaintiff claimed that, while she did not respond in writing to her negative performance evaluations, she did respond verbally and believes the poor evaluations were designed to create a record to justify her eventual termination. The plaintiff claimed that she made out a prima facie case, established pretext and requested that the court deny the defendants' motion.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Dental

DEFENDANT'S VERDICT

Medical malpractice – Dental – Improper application of anesthetic during dental work results in permanent neurological damage – Decrease sense of taste and smell – Jaw pain – Twitching of eye.

Passaic County, NJ

In this dental malpractice action, the plaintiff asserted that the defendant dentist utilized procedures that were outside the standard of care in treating the plaintiff. The plaintiff claimed he suffered permanent neurological damage resulting from the negligent procedures employed by the defendant including decrease in sense of taste and smell on one side of his face, jaw pain, eye twitching. The plaintiff claimed his injuries resulted from a dental procedure that included three injections; two injections of Mepivacaine and one of Septocaine. The defendant denied violation of the standard of care in his treatment of the plaintiff.

The plaintiff, and his experts, specifically contended that the use of Septocaine for a mandibular block or posterior superior alveolar constituted a deviation from the standard of care. The plaintiff maintained that two injections of Mepivacaine and an additional injection of Septocaine exceeded the amount of vasoconstrictor in one area and that that amount caused the injury to the plaintiff. The plaintiff claimed that the damage was caused by the defendant either through mechanical, chemical or ischemic means.

The defendant asserted that he was engaged by the plaintiff to repair dental work done by a prior dentist. The defendant performed the necessary restorative dental procedures on the plaintiff properly and within the standard of care. The defendant denied that a posterior superior alveolar was performed and that, if it was, its use, given the plaintiff's presentation, did not constitute malpractice.

After a 2-week trial, the jury found in favor of the defendant and against the plaintiff.

REFERENCE

Stilianessis vs. Dionne. Docket no. L-004510-14; Judge Frank Covello, 07-09-19.

Attorney for plaintiff: Alan S. Pralgever of Greenbaum Rowe Smith & Davis, LLP in Roseland, NJ. Attorney for defendant: Jeffrey A. Krompier of Krompier & Tamn, LLC in Parsippany, NJ.

DAYCARE CENTER NEGLIGENCE

$20,000 RECOVERY

Daycare center negligence – Failure to supervise – Broken left arm – Permanent injury – Past and future pain and suffering; past and future medical treatment.

Morris County, NJ

In this daycare center negligence case, the minor plaintiff, a 3-year-old boy, was injured when defendant daycare center failed to adequately supervise children. As a result of the defendant's negligence, the plaintiff sustained a broken left arm requiring significant medical treatment. The defendant initially denied liability, but ultimately settled with the minor plaintiff.

On July 6, 2018, the minor male plaintiff was a business invitee of the defendant daycare center when he sustained injury on the premises. The plaintiff asserted that the defendant was inattentive, careless, negligent and reckless in the operation of the business and that said inattentiveness was the proximate cause of the plaintiff sustaining bodily injury causing great pain and suffering, necessitating medical treatment and leaving the plaintiff was permanent disability that will cause future pain and suffering and physical limitations.

The parties settled the matter prior to trial in the amount of $20,000 broken down as follows: $5,290 in attorney fees; $14,710 in net damages to the minor plaintiff.

REFERENCE

Guzman vs. Loving & Learning Christian Childcare Center, Inc. Docket no. L-000215-19; Judge Philip J. Maenza, 06-12-19.

Attorney for plaintiff: Ronald S. Heymann of Heymann & Fletcher in Mt. Freedom, NJ. Attorney for defendant: Dennis O'Brien of Zirulnik, Sherlock & DeMille in East Hanover, NJ.

DEFENDANT'S VERDICT

Daycare center negligence – Inadequate supervision – Nasal fracture – Rhinoplasty 15 years later.

Bergen County, NJ

The daycare negligence action arose from an incident which occurred on August 6, 2003 when the plaintiff, a then 6-year-old girl, now 20 years old, was a child camper attending the defendant day camp, a daycare business being operated in Park Ridge in 2003. The plaintiff alleged that the defendant did not exercise the proper amount of care and that said lack of care directly and indirectly caused the plaintiff's injuries and damages. On the day in question, the plaintiff was playing on the playground at the defendant camp. The plaintiff asserted that the play area was too small and improper for use by 20 children, as were present on that day. Due to the overcrowding, the plaintiff was playing "Tag" and suffered injury when another child collided with her and she fell into a tree and suffered facial injury. The plaintiff maintained that she was injured in a foreseeable way and that the defendant should have foreseen the risk and protected the plaintiff from potential injury. The defendant denied liability

As a result of the playground accident, the plaintiff sustained a nasal fracture. She was immediately taken to the pediatrician and examined. The plaintiff underwent rhinoplasty that she claimed was related to the 2003 subject injury in 2018. The plaintiff claimed $16,400 in unpaid medical expenses.

The defendant asserted that the plaintiff made no claim for injury or damages until 15 years later when she underwent rhinoplasty. The defendant claimed that the plaintiff could not produce any proofs related to the beyond a single note indicating that the plaintiff would schedule surgery over the summer while at home. The plaintiff produced no evidence as to the playground area, which changed significantly in the intervening years. The defendant contended that the plaintiff could show neither negligence nor causation in this matter.

The plaintiff made an offer of judgment prior to trial in the amount of $58,200. The offer was declined and the matter went to trial. The jury found the defendants not negligent and returned a verdict in their favor.

REFERENCE

Ash vs. Lollypop Day Nursery School, et al. Docket no. L-000431-17; Judge Walter F. Skrod, 06-19-19.

Attorney for plaintiff: Elizabeth A. Tatkow of Brandon J. Broderick Esq., LLC in River Edge, NJ. Attorneys for defendant: Robert Ball and Mark Heftler of Weber Gallagher Simpson Stapleton Fires & Newby, LLP in Bedminster, NJ.

DISABILITY DISCRIMINATION

$63,620 VERDICT

Disability discrimination – Plaintiff claims she was disabled when she returned to work at defendant health care provider following motor vehicle accident and defendants refused to make accommodations for her to be able to work.

Cumberland County, NJ

In this discrimination case, the plaintiff, a venipuncturist, asserted that the defendants failed to allow her ADA required accommodations due to a disability following an auto accident. As a result of her involvement in an auto collision, the plaintiff sustained post-traumatic cephalgia; post-traumatic cervical sprain and strain with multi-level cervical radiculopathy; disc bulges C5-6 and L4-5; thoracic sprain/strain; multi-level lumbar radiculopathy; PTSD; exacerbation of TMJ; ulnar neuropathy at the right elbow; bilateral carpal tunnel syndrome; and left trochanteric bursitis. The plaintiff claimed that these injuries made it difficult for her to stand for periods of time and that she required a chair while working. The plaintiff was unable to work for a period of time because she was unable to perform the essential functions of her job which required constant bending, overhead reaching, pulling and repetitive lifting. When she returned to work, the plaintiff asserted that the defendants denied her accommodations while working. The defendants denied discriminating against the plaintiff and asserted that there were policies in place for employees to request accommodations.

The plaintiff argued that she made the defendant supervisors aware that she continued to be in pain as a result of her prior auto accident and that she required a chair to perform her work. The plaintiff asserted that the defendants did not provide her with a chair. The plaintiff brought suit claiming that the defendants' fail-

ure to provide accommodations was in violation of her rights under the ADA and the defendants' own policies. The defendants maintained that the plaintiff did not request any accommodations and did not comply with company policy on accommodations requiring a certification from a physician outlining the disability and accommodations required by the employee.

The jury found in favor of the plaintiff and awarded damages in the amount of $17,000, as well as attorney fees and costs in the amount of $46,620, for a total award of $63,620.

REFERENCE

Gordillo vs. CompleteCare Health Network, et al. Docket no. L-000376-17; Judge James R. Swift, 09-19-19.

Attorney for plaintiff: Allan E. Richardson of The Vigilante Law Firm, P.C. in Mullica Hill, NJ. Attorney for defendant: James K. Grace of Grace, Marmero & Associates, LLP in Vineland, NJ.

DOG ATTACK

$60,000 RECOVERY

Dog attack – Minor attacked by defendant's dog while playing outside – Multiple acute, traumatic, deep extensive complex facial dog bite lacerations requiring 54 stitches – Severing of facial muscles – Extensive, emergency plastic surgery.

Sussex County, NJ

In this dog attack case, the minor plaintiff asserted that the defendants failed to control or confine their dog, allowing it to attack and severely injure the minor plaintiff. On November 28, 2016, the plaintiff, an 8-year-old girl, was playing outside with friends on Conestoga Trail in Sparta when she was attacked by a dog owned by the defendants. The plaintiff was severely injured and taken by ambulance to the hospital where she underwent emergency surgery. The defendant stipulated liability and the defendant's homeowner's insurer settled with the minor plaintiff.

As a result of the attack, the plaintiff sustained 5 acute, traumatic, deep extensive complex facial dog bite lacerations with an aggregate total length of 11.2 cm requiring 54 stitches. The bites were to the nasal columella and the right nostril dome; the left cheek; postauricular right ear; right temporal scalp with severed muscles in the left cheek and right ear postauricular areas. The plaintiff underwent extensive, emergency plastic surgical repair of the wounds.

The parties settled the matter prior to trial in the amount of $60,000 broken down as follows: $14,071 in attorney fees; $5,000 in unpaid medical expense; $40,929 in net damages to the minor plaintiff.

REFERENCE

Burke vs. Tomko. Docket no. L-000392-18; Judge David J. Weaver, 05-31-19.

Attorney for plaintiff: Jennifer L. Hamilton of Hamilton Law in Sparta, NJ. Attorney for defendant: Judith E. Collins of Terkowitz & Hermesmann in Somerset, NJ.

INSURANCE OBLIGATION

$15,000 ARBITRATION AWARD

Insurance obligation – Rear end collision – Hit-and-run collision with unknown driver – Right shoulder sprain; lumbar, cervical and thoracic sprain – Plaintiff claimed $10,323 in unpaid medical expenses.

Essex County, NJ

In this insurance obligation case, the plaintiff asserted that she was struck from behind in a hit-and-run collision, sustaining injuries. The plaintiff brought suit for uninsured motorist against the NJPLIGA fund.

On January 7, 2016, the plaintiff was operating her vehicle and stopped at the traffic signal eastbound on Springfield Avenue in Newark. At the same time and place, an unknown driver was the operator of a vehicle also eastbound on Springfield Avenue. The plaintiff maintained that the unknown driver negligently failed to stop behind the plaintiff's vehicle at the traffic light and struck the vehicle from the rear. The unknown driver then fled the scene of the collision and was not identified.

As a result of the collision, the plaintiff sustained right shoulder sprain, lumbar, cervical and thoracic sprain. The plaintiff incurred $10,323 in unpaid medical ex-

penses. At the time, the plaintiff was insured under a "Special" personal automobile policy of insurance. Such insured vehicles are statutorily defined as uninsured vehicles and therefore, the plaintiff did not have uninsured motorist coverage of her own so she sought recovery from the New Jersey PLIGA.

The parties entered into an arbitration hearing wherein the arbitrator awarded the plaintiff the policy limit of $15,000. The plaintiff made a motion to confirm the arbitration and the motion was granted.

REFERENCE

Bailey vs. NJPLIGA, et al. Docket no. L-008795-17; Judge Keith E. Lynott, 08-14-19.

Attorney for plaintiff: William S. Greenberg of Greenberg Minasian, LLC in West Orange, NJ. Attorney for defendant: Mark Mattia of Purcell, Mulcahy & Flanagan, LLC in Bedminster, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Rear end collision – Disc herniations at C4-5 and L5-S1 – Multiple diagnostic tests and several forms of treatment.

Union County, NJ

This action arose from a collision which occurred on May 30, 2015 when the defendant tortfeasor struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff brought this cause of action against her insurer for underinsured motorist benefits.

As a result of the collision, the plaintiff sustained two disc herniations at C4-5 and L5-S1. The plaintiff underwent MRI and other diagnostic testing and received extensive treatment. The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were preexisting and degenerative in nature, not caused by the subject collision.

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

REFERENCE

Boltarets vs. Allstate New Jersey Insurance Company. Docket no. L-003747-16; Judge Robert J. Mega, 06-19-19.

Attorney for plaintiff: Andrew J. Clark of Beninato & Matrafajlo, LLC in Elizabeth, NJ. Attorney for defendant: Minal Acharya of Law Office of Kenneth N. Lipstein in Westfield, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$742,700 VERDICT

Motor vehicle negligence – Auto/bicycle collision – Fracture of anterior acetabulum – Disc herniations at L4-5 and L5-S1 – Plaintiff undergoes round of epidural steroid injections – Bilateral L5-S1 hemilaminectomy and discectomy.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff, a 46-year-old male bicyclist, asserted that the defendant driver violated the plaintiff's right-of-way and struck the plaintiff on his bicycle. The plaintiff sustained numerous, serious, permanent injuries. The defendant denied liability and argued that the plaintiff was, himself, negligent and caused the collision.

On June 23, 2016, the plaintiff was a lawfully riding his bicycle westbound on Franklin Avenue through its uncontrolled intersection with Lakeside Boulevard in Franklin Lakes. The defendant was the operator of a motor vehicle traveling in an easterly direction along Franklin Avenue approaching the same intersection with the intent to make a left turn onto Lakeside Boulevard. The plaintiff asserted that the defendant owed a duty of care to bicyclists on the roadway and to obey applicable laws including to make observation of surrounding circumstances and traffic, obey traffic signals and speed limits and to yield to oncoming traffic, including bicycles. The plaintiff maintained that the defendant, in violation of the law, failed to control the motor vehicle and failed to observe and yield to the plaintiff's bicycle. The defendant struck the plaintiff with great force and, as a result, the plaintiff sustained injuries and other damages.

Due to the collision, the plaintiff sustained a fracture of the anterior acetabulum and disc herniations at L4-5 and L5-S1. The plaintiff underwent a round of epidural steroid injections and bilateral L5-S1 hemilaminectomy and discectomy. Due to left foot degenerative changes, the plaintiff required arthrodesis.

The plaintiff made an offer of judgment of $250,000 to settle the matter prior to trial. The offer was declined and the matter went to trial. The jury returned a verdict in favor of the plaintiff and awarded damages totaling $742,741 broken down as follows:

$700,000 for pain and suffering, disability, impairment and loss of enjoyment of life; prejudgment interest in the amount of $42,741.

REFERENCE

Grenner vs. Mohtashemi. Docket no. L-002231-17; Judge Estela De La Cruz, 07-05-19.

Attorney for plaintiff: Michael Lizzi of Maggiano, Digirolamo & Lizzi, P.C. in Fort Lee, NJ. Attorney for defendant: Carl Mazzie of Foster & Mazzie, LLC in Totowa, NJ.

Auto/Pedestrian Collision

$50,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Multiple fractures including right superior and inferior rami, right greater trochanteric, left tibia, right sacral and right superior and inferior ramus; comminuted open right tibial and right fibula fractures and displaced 2-part fracture of right proximal humerus – Right shoulder injuries – Pelvic ring injuries.

Ocean County, NJ

The motor vehicle negligence action arose from a collision which occurred on March 25, 2017. The plaintiff, a 65-year-old man with diminished mental capacity, was a pedestrian crossing Route 37 within a designated crosswalk at the intersection of Hooper Avenue in Toms River. The plaintiff maintained that the defendant negligently breached his duty to operate his vehicle in a safe and prudent manner and violated laws governing safe operation of a motor vehicle such that he struck the plaintiff in the crosswalk. The plaintiff sustained numerous, severe and permanent injuries requiring extensive treatment, causing great pain and suffering and diminishing the plaintiff's ability to enjoy his usual pursuits and activities. The defendant initially denied liability and claimed that the plaintiff was contributorily negligent for the accident that caused his injuries.

As a result of the incident, the plaintiff sustained fractures of the right superior and inferior rami and the right greater trochanteric; comminuted open right tibial and right fibula fractures; left tibia fracture; a displaced 2-part fracture of the right proximal humerus and right shoulder injuries and pelvic ring injuries including right sacral and right superior and inferior ramus fractures.

The parties settled the matter prior to trial in the amount of $50,000.

REFERENCE

Leonhard vs. Ramirez. Docket no. L-001623-18; Judge Arnold B. Goldman, 05-24-19.

Attorney for plaintiff: David P. Corrigan of Hobbie, Corrigan & DeCarlo, P.C. in Eatontown, NJ. Attorney for defendant: Mary McLaughlin of Law Office of Debra Hart in Wall, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Defendant driver strikes plaintiff pedestrian in crosswalk and runs over plaintiff's foot – Laceration of foot requiring stitches – Permanent scarring – Soft tissue edema with anterior talar ligament sprain with partial tear.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian asserted that the defendant driver struck him while he was in a crosswalk causing permanent injury. The defendant denied permanency of injury.

On August 11, 2014, the plaintiff was a pedestrian when he was struck in the crosswalk by the defendant driver. The defendant ran over the plaintiff's foot and the plaintiff fell to the ground. As a result of the collision, the plaintiff sustained a laceration on his foot requiring 7 stitches and which left a permanent scar. The plaintiff also alleged that his cervical spine, lumbar spine and left ankle were injured in the accident.

An arbitrator found that the plaintiff reached the threshold for liability solely by virtue of the permanent scar on his foot from the laceration suffered in the subject incident. The plaintiff presented the report of an expert physician who reported that the plaintiff suffered injuries to his left ankle caused by the subject accident and that MRI images found that the plaintiff had suffered a soft tissue edema with anterior talar ligament sprain with a partial tear. The plaintiff was a named insured under an automobile insurance policy which paid out the PIP policy limit of $15,000 prior to this action.

The defendant denied any injury to the plaintiff's spine and presented testimony of an independent medical examiner who stated that the plaintiff's injuries causally related to the subject incident were limited to the laceration on his foot and that all other injuries were preexisting or not related to the subject accident. The defendant's expert further opined that the plaintiff's foot had healed properly and did not constitute a permanent injury. The defendant also pointed to 2 prior accidents in which the plaintiff sustained injury

occurring prior to the subject accident, in April and October of 2012. The plaintiff presented no evidence showing delineation of the injuries from 2012 and the subject accident in 2014. The defendant also claimed that, having received a payout from his insurer, the plaintiff was subject to the limitation on lawsuit threshold.

Prior to trial, the defendant successfully moved for summary judgment to bar the plaintiff from making any claim for injury to his neck or back. The plaintiff was not barred from proceeding with the claim for injury to his left foot and ankle. The parties settled the remaining claim prior to trial for an undisclosed sum capped at the policy limit of $1,000,000.

REFERENCE

Lee vs. Bacharach. Docket no. L-007260-15; Judge Robert L. Polifroni.

Attorney for plaintiff: Andrew Park of Andrew Park, P.C. in Englewood Cliffs, NJ. Attorney for defendant: Andrew G. Toulas of Harwood Lloyd, LLC in Hackensack, NJ.

Intersection Collision

$8,000 RECOVERY

Motor vehicle negligence – Intersection collision – Facial laceration resulting in small, permanent scar on minor plaintiff's chin.

Atlantic County, NJ

In this motor vehicle negligence case, the minor male plaintiff, a 13-year-old boy, asserted that the defendant driver struck his vehicle in an intersection, causing him to sustain injury. The defendant filed a Notice of Appearance and settled the matter before formally answering the plaintiff's Complaint.

On March 6, 2018, the minor plaintiff was a passenger in a vehicle operated by his father, traveling east on South First Road in Hammonton. The defendant was traveling north on 8th Street. The plaintiff maintained that, while the vehicle in which he was a passenger was traveling through the intersection, the defendant negligently entered the intersection without the right-of-way and struck the plaintiff's vehicle. As a result of the collision, the minor plaintiff sustained a laceration on his chin. The plaintiff has a small, permanent scar remaining.

The parties settled the matter prior to trial in the amount of $8,000 in damages to the minor plaintiff.

REFERENCE

A.A., a minor vs. Fedak. Docket no. L-000704-19; Judge James P. Savio, 07-19-19.

Attorney for plaintiff: Robert J. Gillispie, Jr. of Turner, O'Mara, Donnelly & Petrycki, P.C. in Cherry Hill, NJ. Attorney for defendant: Terence J. Lynch of Law Office of William E. Staehle in Hartford, CT.

Left Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Left turn collision – Cervical disc herniations at C5-6 and C4-5 with radiculopathy at C5-6 – Lumbar disc herniation at L4-5 – Left rotator cuff tear – Aggravation of a prior fusion at L5-S1.

Burlington County, NJ

This motor vehicle negligence action arose from a collision which occurred on March 20, 2017. At the tie of the collision, the plaintiff, a 57-year-old woman, was a passenger in a vehicle driven by her husband traveling on Route 70 at the intersection with Jones Road in Medford. The defendant driver struck the vehicle in which the plaintiff was a passenger as he attempted to make a left turn. In the police report, the defendant said he did not see the plaintiff's vehicle until he struck it. The defendant was issued a summons for failing to yield to an oncoming driver in an intersection. The plaintiff contended that the defendant was negligent in operating his vehicle resulting in his colliding with the vehicle in which the plaintiff was a passenger and causing her serious injury.

As a result of the collision, the plaintiff sustained cervical disc herniations at C5-6 and C4-5 with radiculopathy at C5-6; lumbar disc herniation at L4-5; a left rotator cuff tear and aggravation of a prior fusion at L5-S1. The defendant pointed to the plaintiff's prior fusion surgery and claimed that the plaintiff had suffered no new injuries in the subject accident. The defendant also filed a counterclaim against the driver of the plaintiff's vehicle claiming he was at fault for the collision and thus, responsible for the plaintiff's injuries.

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

REFERENCE

C. Gritton vs. Chin. Docket no. L-001951-17; Judge Susan L. Claypoole, 06-27-19.

Attorney for plaintiff: Robert F. Rupinski of Law Offices of Robert F. Rupinski, LLC in Mount Holly, NJ. Attorney for defendant: Joseph A. Lowe of Benedetti & Lowe in Mount Laurel, NJ.

Parking Lot Collision

$600,000 VERDICT

Motor vehicle negligence – Parking lot collision – Defendant driver cuts through areas for parking vehicles in school parking lot, striking plaintiff driver who is picking up her daughter at school – Tear of dominant rotator cuff – Injections – Lumbar and cervical herniations – No disc surgery – No income claims.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff driver, in her early 40s, contended that as she was traveling at about 10 mph in the through lane of the high school parking lot as she was about to pick up her daughter, the defendant driver, a 21-year-old college student who was at the school for a musical performance, negligently cut through parking stalls rather than use the traffic lane to access the exit. The plaintiff contended that as a result, a significant impact occurred, causing the plaintiff to sustain injury; the plaintiff introduced photos of the property damage.

The plaintiff was not transported to the emergency room from the scene, although she did go to the E.R. within an hour or so of the collision. She complained of mid and low back pain. X-rays were negative. 2 days later she consulted with a chiropractor, complaining of neck, mid back, low back and right shoulder pain. She treated with the chiropractor for 5 months before he referred her to an orthopedist for her right shoulder. Before she saw the orthopedist, she underwent MRIs of her neck, back, and right shoulder. The orthopedist diagnosed a torn right rotator cuff, and between October 2017 and January 2019, he administered 3 cortisone injections in the right shoulder. The plaintiff treated with the chiropractor into February 2018. She received no further treatment for her spinal injuries.

The plaintiff had complained of lower back pain in 2004 and underwent a 2004 lumbar MRI that plaintiff's experts testified were "Normal." The defendant's orthopedist agreed that the 2004 MRI was essentially normal, but showed some signs of disc degeneration. The plaintiff's experts opined that the July 2017 right shoulder MRI showed a partially torn supraspinatus and infraspinatus tendons. The plaintiff maintained that she will suffer permanent symptoms despite 3 cortisone injections. The defendant's orthopedist opined that that there was only a partially torn supraspinatus tendon, and that there were signs of degeneration, denying that the tear was related to the accident.

The plaintiff also contended that she suffered herniated discs at C3-4 and L4-5 herniated disc. The plaintiff's orthopedic expert opined that the herniated disc at C3-4 and L4-5, as well as the rotator cuff tear, resulted from the accident. The defendant's orthopedist found no herniated disc in either MRI, just degenerative conditions. The plaintiff's life expectancy at trial was 35 years.

The defense contested liability. At the close of the evidence, the court granted plaintiff's motion for a directed verdict on liability. The jury had to answer only 2 questions: (1) Did the accident cause at least one permanent injury and, if the answer was "Yes," (2) What amount of money would fully and reasonably compensate her for her injuries. The jury deliberated for 3 hours and 15 minutes, found that the plaintiff had proven that the accident caused a permanent injury, and rendered a $600,000 verdict.

REFERENCE

Diaz vs. Kugan. Docket no. MID-L-6953-17; Judge Christopher Rafano, 02-27-20.

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

PREMISES LIABILITY

Fall Down

$70,000 RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on spilled liquid at defendant stadium in area operated by defendant catering company – Fractured left shoulder.

Bergen County, NJ

This premises liability action arose from an incident which occurred on September 24, 2015 when the plaintiff was working for the company that managed the private suites at the defendant football stadium in Rutherford. As the plaintiff stepped off an elevator on the upper suites level of the stadium, she slipped and fell on liquid on the floor. The plaintiff brought suit against the defendant stadium and its affiliates. As a result of the fall, the plaintiff sustained a left shoulder fracture. The defendant stadium denied

responsibility for causing the hazardous condition or for maintenance and cleaning of the specific area where the plaintiff fell.

The defendants brought a third-party action against the catering service, asserting that the caterers were responsible for clean up of spills that occurred during the course of providing catering services and that the plaintiff fell on liquid spilled, and not removed, by the caterer or its employee.

The plaintiff settled the matter with the defendant caterer prior to trial in the amount of $70,000 plus worker's compensation lien.

REFERENCE

Dunshee vs. NJ Sports & Exposition Authority, et al. Docket no. L-006406-17; Judge Robert L. Polifroni, 12-02-19.

Attorney for plaintiff: Marco A. Laracca of Bio & Laracca, PC in Orange, NJ. Attorney for defendant: Robert N. Paessler of McMahon, Martine & Gallagher, LLP in Trenton, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls stepping down from curb in defendant's parking lot – Longitudinal split tear of the peroneus brevis and thickening of the ATFL suggestive of chronic sprain.

Camden County, NJ

This premises liability action resulted from an incident which occurred on April 19, 2016 as the plaintiff was returning to her car after visiting a local restaurant in Cherry Hill. The plaintiff maintained that she tripped and fell when she stepped down from the curb of a traffic island. The fall caused the plaintiff injury. The plaintiff contended that the defendant property developer was liable for a defect in the traffic island where the plaintiff fell. The plaintiff testified at deposition that she had looked down as she stepped and her testimony at arbitration was consistent. The defendant denied any prior notice of a dangerous condition on the property and thus, maintained that it had no duty of care or liability in the subject matter.

As a result of the fall, the plaintiff sustained traumatic injury to her right ankle. An MRI report found a longitudinal split tear of the peroneus brevis and thickening of the ATFL suggestive of a chronic sprain. The plaintiff's physician referred her for surgery.

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

REFERENCE

Favro vs. Cherry Hill Inn Redevelopment Partners, LLC, et al. Docket no. L-001427-18; Judge Steven J. Polansky, 08-08-19.

Attorneys for plaintiff: Loren Finesmith, Esq. and Elias B. Landau, Esq. in Bala Cynwyd, PA. Attorney for defendant: Erik B. Derr of Kennedys CMK, LLP in Philadelphia, PA.

DEFENDANT'S VERDICT

Premises liability – Fall down – Plaintiff falls in defendant's office parking lot – Traumatic injury to the neck and back – Torn meniscus in left knee.

Union County, NJ

In this premises liability case, the plaintiff asserted that she fell in the parking lot of the defendant's office. The plaintiff maintained that the parking lot was improperly maintained and contained a defect that caused her to fall. Due to the negligent maintenance of the property by the defendant, the plaintiff claimed she was caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

As a result of the fall, the plaintiff sustained traumatic injury to the neck and back and a torn meniscus in the left knee. The plaintiff had a preexisting chip fracture in the right ankle unrelated to the subject incident. The plaintiff claimed a medical lien of $3,500 plus unpaid medical expenses of approximately $16,000.

The defendant contested the plaintiff's claim that there was negligent maintenance of the property and denied that it knew or should have known of any defect. The defendant further argued that the plaintiff's injuries were unrelated to the subject incident and pre-dated the alleged fall.

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

REFERENCE

Boada vs. Wakefern Food Corporation. Docket no. L-001618-17; Judge Alan G. Lesnewich, 06-26-19.

Attorney for plaintiff: Frank A. Tobias of Frank A. Tobias, Esq., LLC in Perth Amboy, NJ. Attorney for defendant: John J. Grossi, III of Carey & Grossi Attorneys at Law in Livingston, NJ.

Falling Object

$25,000 RECOVERY

Premises liability – Falling object – Broom handle falls from display onto minor's head – Concussion – Traumatic neck pain with cervical radiculitis – Severe headache – Cervical sprain/strain, low back pain and muscle spasms.

Camden County, NJ

This premises liability action arose from an incident which occurred on July 4, 2014 when the minor plaintiff and her father were customers at the defendant home improvement store in West Berlin. The minor plaintiff was walking in the aisle of the store in close proximity to where replacement handles for push brooms were stored and displayed when one of the handles suddenly fell from the display area and struck the minor plaintiff in the head causing serious injury. The plaintiff argued that the defendant failed in its duty to maintain the premises in a safe and reasonable manner, free from defect, conditions or dangers which would impede safe passage to customers, such as the plaintiff. The plaintiff asserted that the defendant store was negligent and caused the plaintiff's injuries. The defendant initially asserted that it did not violate any duty to the plaintiff, nor was guilty of negligence and that the incident was the fault of the plaintiff's own negligence or that of a third party.

As a result of the incident, the plaintiff sustained concussion, traumatic neck pain with cervical radiculitis, severe headaches, cervical sprain/strain, low back pain and muscle spasms. The plaintiff treated with spinal manipulation and mechanical traction for joint neurophysiology of the cervical and lumbar spine. The plaintiff's chiropractor's final diagnosis was chronic post-traumatic neck pain with cervical radiculopathy, mid-back pain with radiating pain to the low back; the plaintiff's chiropractor stated that the plaintiff had had some improvement with treatment but would most likely have recurring symptoms. The plaintiff's chiropractor set the plaintiff's permanent disability at 10% depending on the long-term effects of the concussion.

The parties settled the matter prior to trial in the amount of $25,000 broken down as follows: $6,558 in attorney fees; $1,673 in medical bills and Medicaid lien and $16,767 in net damages to the minor plaintiff.

REFERENCE

DeStefano vs. Home Depot, U.S.A., Inc. Docket no. L-001047-18; Judge Daniel A. Bernardin, 07-22-19.

Attorney for plaintiff: Charles H. Nugent, Jr. of Nugent Law in Marlton, NJ. Attorney for defendant: Cheryl Melcher of Hill Wallack, LLP in Princeton, NJ.

Hazardous Premises

$47,500 RECOVERY

Premises liability – Hazardous premises – Minor plaintiff falls through sidewalk grate – Laceration requiring 5 stitches; permanent keloid scarring – Defendants deny permanency.

Union County, NJ

This incident giving rise to this premises liability action occurred on April 4, 2018 when the minor plaintiff, an 8-year-old girl, fell through the metal grate in the sidewalk in front of the defendant's commercial property. The plaintiff claimed that the defendants negligently maintained the property such that the grate was defective and conducive to a small child falling through an opening. The plaintiff claimed permanent scarring from her injuries. The plaintiff brought suit against the defendant building owner and the defendant business being operated from the storefront of the building. As a result of the fall, the plaintiff sustained a laceration to the rear/side of the left thigh. The laceration required 5 stitches to close and left a slightly keloid, 2-inch long, permanent scar. The defendants denied liability, claimed there was no defect in the grate, and each claimed the other was responsible for the maintenance of the grate.

The defendants also denied permanency of the plaintiff's injury. The defendants argued that the plaintiff's scar was minor, on the back of the leg, not visible from the front of the plaintiff's body, and not visible when wearing regular attire. The defendants also asserted that the injury did not cause any loss or limitation of use of the limb.

The parties settled the matter prior to trial in the amount of $47,500 broken down as follows: $15,426 in attorney fees and disbursements; $32,074 in net damages to the minor plaintiff.

REFERENCE

Fernandez vs. Rodriguez. Docket no. L-003574-16; Judge Alan G. Lesnewich, 06-21-19.

Attorneys for plaintiff: Michael Noriega and Patrick J. Mangan of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC in Scotch Plains, NJ. Attorney for defendant Rodriguez and Cota: Antonio R. Espinosa of Andril & Espinosa, LLC in Elizabeth, NJ. Attorney for defendant Domino's Pizza, et al: Michael C. Urciuoli of Zirulnik, Sherlock & DeMille in East Hanover, NJ.

SCHOOL LIABILITY

$100,000 RECOVERY

School liability – Negligent supervision – Assault – Minor punched by fellow student at defendant school – Traumatic injury to upper jaw – Avulsed maxillary central incisors requiring root canal.

Cumberland County, NJ

In this school liability/assault case, the minor plaintiff was a high school student and the defendants were a fellow student and the school itself. On September 27, 2017, the plaintiff maintained that he and the defendant were "Horsing around" in the hallway between classes. As the plaintiff was attempting to get his book bag back from the defendant student, the defendant, without warning, struck the plaintiff in the face, knocking out the plaintiff's 2 front teeth. The defendant student then walked away from the scene. The plaintiff brought suit for assault against the defendant student and negligent supervision against the defendant school.

As a result of the assault, the plaintiff sustained traumatic injury to the upper jaw including avulsed maxillary central incisors. The plaintiff underwent root canal and his teeth were replanted but had +1 mobility. The plaintiff must wear a retainer to stabilize the teeth and may require further treatment in the future.

The minor defendant student claimed that the plaintiff was responsible and had instigated the incident that led to his injury. The defendant student also made a cross claim against the co-defendant school for contribution and indemnification.

The parties settled the matter prior to trial in the amount of $100,000 with the defendant student paying $85,000 through his parents' homeowners' insurance and the defendant school paying $15,000. The award was broken down as follows: $25,225 in attorney fees; $74,775in net damages to the minor plaintiff.

REFERENCE

Rose vs. Cumberland Regional High School, et al. Docket no. L-000263-19; Judge James R. Swift, 06-28-19.

Attorney for plaintiff: Michael A. Testa of Testa Heck Testa & White, P.A. in Vineland, NJ. Attorney for defendant Daniel Cheeseman, minor: Matthew F. Bluck of Burke & Potenza in Parsippany, NJ.

SPORTS & RECREATION

$27,500 RECOVERY

Sports & Recreation – Negligent supervision – Plaintiff struck in mouth by skate at ice skating lesson – Hard palate laceration with excessive bleeding – Psychological trauma.

Camden County, NJ

The incident which gave rise to this action occurred on February 17, 2017 when the minor plaintiff, a 5-year-old girl, was attending an ice skating lesson at the defendant ice rink under the defendant's supervision. The plaintiff maintained that the co-defendants, an ice rink and skating lesson program respectively, failed to adequately supervise and provide safety instruction to the participants, including the plaintiff resulting in serious injury. The plaintiff presented a liability report wherein the plaintiff's liability expert opined that the plaintiff's injury occurred due to a lack of adherence to generally accepted industry practices by the defendant, specifically as they relate to the co-defendant's Learn to Skate USA program including such practices as proper supervision and thorough instruction; cognizance of each skater's skill level; keeping accurate written records; maintaining current competencies. The plaintiff asserted that the defendant skating program placed the minor plaintiff in a class with older, bigger children where she was caused to fall and get hit in the mouth by another skater's skate. The defendant denied liability and argued that there was proper supervision of the plaintiff and others.

As a result of the incident, the plaintiff sustained traumatic injury to the mouth including hard palate laceration with excessive bleeding. The plaintiff maintained that she may require future treatment of her injury and possible psychiatric care for the trauma she experienced. The defendant argued that it has trained professional instructors, that proper safety instruction is given and that the defendant follows all applicable industry practices. The defendant asserted that ice skating holds inherent dangers that the plaintiff's guardians were aware of and that the plaintiff's injury was the result of an accident, not negligence.

The parties settled the matter prior to trial in the amount of $27,500 broken down as follows: $10,743 in attorney fees and costs; $16,757 in net damages to the minor plaintiff.

REFERENCE

Boldurian vs. Virtua Center Flyer's Skate Zone, et al. Docket no. L-003583-17; Judge Donald J. Stein, 07-15-19.

Attorney for plaintiff: George G. Horiates, Esq. in Pennsauken, NJ. Attorney for defendant: Brian J. McNulty of Hueston McNulty, P.C. in Florham Park, 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

$33,280,000 VERDICT - MEDICAL MALPRACTICE - CARDIOLOGY - ANESTHESIOLOGY - ALLEGED UNNECESSARY SURGERY - ALLEGED FAILURE TO OBTAIN INFORMED CONSENT - ANOXIC BRAIN INJURY - MYOCLONUS.

Suffolk County, MA

In this medical malpractice action, the male plaintiff patient contended that the defendant cardiologist and the co-defendant anesthesiologist were negligent in performing a trans-esophageal echocardiogram procedure that was not medically necessary at that time and for which the defendant cardiologist allegedly failed to obtain the plaintiff's informed consent. The plaintiff maintained that following the start of the procedure, the defendant cardiologist and co-defendant anesthesiologist had to immediately terminate the procedure shortly after the plaintiff was anesthetized since he had stopped breathing. The defendants made several attempts to ventilate the plaintiff which were not successful and the plaintiff was ultimately diagnosed as having suffered a permanent, anoxic brain injury as a result of this incident. The plaintiff asserted that the brain injury suffered is severe and life-altering. The defendants denied that there was any deviation from acceptable standards of care in their care treatment of the plaintiff, arguing that the patient's reaction to the anesthesia is a known complication and that their inability to successfully ventilate the plaintiff occurred in the absence of negligence. The defendants further disputed the nature and extent of the plaintiff's injury.

The jury returned with a verdict finding that the defendants had not deviated in electing to perform the procedure or in failing to properly ventilate the patient. They did, however, find that the defendant cardiologist had failed to obtain the plaintiff's informed consent and awarded a substantial $33,280,000 verdict against this defendant only for the lack of informed consent.

REFERENCE

Graham vs. Goldman. Case no. 1684CV02426; Judge Robert Gordon, 11-19.

Attorneys for plaintiff: Andrew D. Nebenzahl, Aimee Goulding and Carly LaCrosse in Sharon, MA.

$6,424,000 VERDICT - MEDICAL MALPRACTICE - RADIOLOGY NEGLIGENCE - NEGLIGENT INTERPRETATION OF CHEST X-RAY - FAILURE TO DIAGNOSE AORTIC DISSECTION - WRONGFUL DEATH FROM CARDIAC TAMPONADE - 98% NEGLIGENCE ASSESSED AGAINST FABRE DEFENDANTS.

Broward County, FL

This was a medical malpractice action in which the plaintiff contended that the defendant radiologist and his practice group were negligent in the care and treatment of the 66-year-old male decedent. The plaintiff alleged that the defendant radiologist negligently failed to identify a widened mediastinum consistent with a thoracic aortic dissection. The plaintiff claimed that the radiologist also failed to communicate the findings consistent with aortic dissection to the co-defendant emergency room and attending physicians and failed to recommend an urgent CT-scan of the chest to rule out a thoracic aortic dissection. As a result of this negligence, the plaintiff contended that the decedent subsequently died from a preventable aortic dissection. The plaintiff settled with all of the other defendants listed in the complaint including an emergency room physician and two attending physicians who remained on the verdict form as Fabre defendants. The defendants radiologist and his practice group maintained that he accurately reported what was visualized on the x-ray in question and argued that he met the standard of care by accurately reporting a "Tortuous aorta" as seen on the radiological films in question. The remaining defendant contended that the Fabre defendants emergency room physician and attending physicians negligently failed to include a aortic dissection in their differential diagnoses and also failed to order a stat CT-scan. Had this study been performed, the defense contended that it would have led to a correct diagnosis, aggressive medical management, and timely surgical intervention to save the decedent's life. The defense maintained that the radiologist had not ruled out aortic dissection and that it was up to the admitting and treating physicians to follow up with appropriate care and orders.

The jury assessed the defendant radiologist's liability at 2%. They further assessed the Fabre defendant emergency room physician's liability at 80%, the Fabre first attending physician at 10%, and the Fabre second attending physician at 8%. The plaintiff was awarded a total gross amount of $6,424,000 in damages including $1,424,000 for loss of support and services and $5,000,000 in pain and suffering.

REFERENCE

Estate of Kyriacos Sozomentou vs. Arfaras, et al. Case no. 12-CA-015150; Judge Carol-Lisa Phillips, 12-06-19.

Attorneys for defendant radiologist/group: Julia M. Ingle and Gordon Lea of Lubell & Rosen, LLC in Fort Lauderdale, FL.

$5,000,000 PRESENT VALUE RECOVERY - MEDICAL MALPRACTICE - OB/GYN - HOSPITAL NEGLIGENCE - FAILURE OF DEFENDANT LABOR AND DELIVERY NURSES TO INVOKE HOSPITAL'S CHAIN OF COMMAND WHEN OB/GYN FAILS TO RECOGNIZE AND APPRECIATE SIGNS OF FETAL DISTRESS - FAILURE TO PERFORM C-SECTION - SEVERE BRAIN DAMAGE TO NEWBORN.

Essex County, NJ

In this medical malpractice action, the plaintiffs contended that the defendant ob/gyn negligently failed to recognize or address an emergent situation when obvious signs and symptoms of fetal distress were occurring at approximately five hours into labor. The plaintiffs asserted that as a result, the fetus suffered from prolonged tachysystole from uterine hyperstimulation, or overly rapid contractions, which is known to have a cumulative, negative effect on fetal oxygenation status and can lead to depletion of fetal reserves necessary to protect the fetus from harm during the course of labor. The plaintiffs contended that the defendant ob/gyn should have ordered an immediate C-section if the mother's contractions could not be slowed, which was not done. The plaintiffs maintained that when it became apparent that the defendant ob/gyn did not recognize or appreciate the signs of fetal distress and the developing emergency, the co-defendant labor and delivery nurses were obligated to invoke the defendant hospital's "Chain of command directive," thereby circumventing the defendant attending ob/gyn's authority, which the plaintiff contended would have resulted in another ob/gyn taking over which would most likely have led to the performance of a timely C-section and avoided severe injury to the infant. The plaintiffs asserted that the failure to call for an emergency C-section resulted in the infant plaintiff sustaining an acute asphyxic event in the minutes prior to her birth which has left her with permanent and profound brain damage.

The case settled at mediation before the Honorable Eugene Codey, P.J.Cv. (retired) for a present value of $5,000,000, including $1,000,000 from the ob/gyn and $4,000,000 from the hospital. A portion of the settlement is being used to purchase an annuity which will make the projected total value of the settlement closer to $10,215,715.

REFERENCE

Vinci vs. Montemurro, et al. Docket no. ESX-L-3680-16; Judge Robert Gardner, 09-19.

Attorney for plaintiff: Daryl L. Zaslow of Eichen Crutchlow Zaslow, LLP in Edison, NJ.

$700,421 RECOVERY - MEDICAL MALPRACTICE - HOSPITAL - DEFENDANT STAFF NEGLIGENTLY ADMINISTERS INSULIN OR SULFONYLUREA TO NON-DIABETIC PATIENT - SEVERE HYPOGLYCEMIA RESULTING IN SEIZURES - PROFOUND BRAIN INJURY REQUIRING FEEDING TUBE AND TRACHEOSTOMY - IMPAIRMENT OF MOBILITY - COGNITIVE DISABILITIES - NEED FOR LIFE-LONG ASSISTANCE.

Harris County, TX

The plaintiffs in this medical malpractice action were the wife and child of the incapacitated male patient. The patient had been undergoing treatment for alcohol withdrawal and was transferred to the defendant hospital for further rehabilitation. While at the defendant hospital, the patient was given insulin instead of his prescribed heparin, causing a severe episode of hypoglycemia which resulted in seizures and which caused brain damage according to the plaintiff's claims. The defendant hospital denied that the patient was given the wrong medication and argued that the hypoglycemia reaction was due to his underlying medical condition.

The parties agreed to establish a special needs trust for the incapacitated male in the amount of $700,420.74.

REFERENCE

Michael R. Adams, Incapacitated, and as next friend of Unnamed minor and Michael Ross Adams, Jr. vs. Select Specialty Hospital Houston, L.P., Select Specialty Hospital, Houston, L.P. d/b/a Select Specialty Hospital. Case no. 201623028; Judge Latosha Lewis Payne, 05-09-19.

Attorney for plaintiff: Richard W. Mithoff, Jr. of Mithoff Law Firm in Houston, TX. Attorney for defendant: Richard M. Law of Feehan Adams Law, LLP in Houston, TX.

MOTOR VEHICLE NEGLIGENCE

$15,000,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - TRACTOR-TRAILER STRIKES CAR IN REAR - L5-S1 DISC HERNIATION/EXTRUSION - DISC FRAGMENTS IMPINGING ON LEFT S1 AND S2 NERVE ROOTS - RADICULOPATHY AND INABILITY TO BEAR WEIGHT ON LEFT LEG - SPINAL SURGERY.

Fairfield County, CT

In this motor vehicle negligence case, the 45-year-old male plaintiff driver and his passenger wife contended that the defendant owner and co-defendant driver of a fully loaded 80,000 lb. tractor-trailer were negligent in striking their car in the rear as the plaintiff's vehicle was stopped in rush hour traffic on I-95. The plaintiff husband maintained that the force of the impact was great enough to cause his seat to break and bend backwards, forcing him to be extricated from the back of his totaled vehicle where he had come to a rest following the impact. The plaintiff claimed that he was diagnosed with neck and back injuries including a large L5-S1 disc herniation/extrusion, disc fragments impinging on the left S1 and S2 nerve roots, radiculopathy and an inability to bear weight on his left leg. The plaintiff, who underwent spinal surgery, contended that he nonetheless requires a walker and assistance for the activities of his daily life as a result of the injuries sustained. The plaintiff, who was working at the time of the incident, maintained that he has been rendered permanently unemployable as a result of the injuries suffered in the collision. The defendants conceded liability, but disputed the nature and extent of the plaintiff husband's claimed injuries.

The jury found for the plaintiff and awarded him the sum of $301,963 for past medical expenses; $311,163 for past lost wages; $1,920,821 for future economic damages; and $11,738,490 for past and future pain and suffering and loss of enjoyment of life. In addition, the jury awarded the plaintiff's wife the sum of $727,562 in past and future loss of consortium damages for a total jury award of $15,000,000.

REFERENCE

Jorge Amparo, et al. vs. Jose Ayala. Case no. CV16-6029461-S; Judge Robert Genuario, 05-22-19.

Attorneys for plaintiff: Brendon P. Laydon and Nicholas E. Wocl of Tooher, Wocl & Leydon, LLC in Stamford, CT. Attorney for plaintiff: Todd S. Miller in Allentown, PA. Attorneys for defendant: Gary Kaisin and John Dolan of Milano & Wanat, LLC in Branford, CT. Attorney for defendant: Daniel S. Kirsch of Halloran & Sage in Hartford, CT.

$4,865,000 VERDICT INCLUDING $1,500,000 PUNITIVE AWARD - MOTOR VEHICLE NEGLIGENCE - HEAD-ON COLLISION - DEFENDANT INEBRIATED DRIVER CROSSES ROADWAY, CAUSING HEAD-ON COLLISION - WRONGFUL DEATH OF WIFE AND MOTHER OF TWO ADULT DAUGHTERS - VEHICLE OWNED BY DEFENDANT DRIVER'S FATHER - FATHER ALSO LIABLE FOR COMPENSATORY AWARD.

Washington County, NY

In this motor vehicle negligence action, the plaintiff contended that the defendant driver, who had a BAC of .29, negligently crossed over the center of the roadway causing a head-on collision, killing the 47-year-old decedent wife and mother of two. The defendant driver had two prior convictions for DWI and is currently serving a prison sentence due to the subject fatal incident. The plaintiff argued that the awarding of a large punitive award would be appropriate in this case, which would also serve as an example to others to refrain from driving while intoxicated. The car was owned by the co-defendant, the father of the incarcerated driver. This defendant denied that the defendant driver had permission to use the car and further denied that he was liable to the plaintiff. The plaintiff countered through the presentation of several witnesses, including the person who sold the car to the family, who testified that in addition to test driving the car, the defendant driver went into the bank to obtain the money to purchase the car. The plaintiff's proofs reflected that the defendant driver customarily operated the car. The plaintiff contended that in view of this evidence and the fact the defendant driver actually kept some of her clothes in the car, the father's claim of a lack of permissive use should clearly be rejected.

The court directed a verdict on liability against the defendant driver and the jury awarded $3,365,000 compensatory damages against the defendants owner and driver which included $1,000,000 for the one-hour of conscious pain and suffering suffered by the decedent prior to her death. The jury further awarded $1,500,000 in punitive damages against the defendant driver only.

REFERENCE

Gibson, et al. vs. Loomis, et al. Index no. 26874001; Judge Glen T. Bruening., 01-09-20.

Attorneys for plaintiff: Victor L. Mazzotti and Philip S. Mazzotti of Martin Harding & Mazzotti, LLP in Albany, NY.

PREMISES LIABILITY

$3,146,500 VERDICT - PREMISES LIABILITY - FALL DOWN - HAZARDOUS PREMISES CREATED BY DANGEROUS STEP IN MOVIE THEATER - INTERTROCHANTERIC HIP FRACTURE - MULTIPLE SURGERIES PERFORMED.

Philadelphia County, PA

This premises liability action was brought by the 75-year-old female plaintiff after she fell in the defendant's Plymouth Meeting movie theater. The plaintiff contended that the fall resulted from a hazardous condition on the premises, specifically an unlit, unmarked step in the movie theater. The plaintiff alleged that the defendant was negligent in permitting an "Unlit" and "Unexpected" step and change in elevation to exist and in failing to warn of the condition. The plaintiff maintained that another movie-goer had reported falling in this exact same area just two days prior to the plaintiff's fall. The plaintiff maintained that the fall caused her to sustain a hip fracture which necessitated three surgeries. The defendant denied liability and also asserted that if the step were found to be dangerous, such a defect was caused by the additional defendant architectural company which had designed the layout and specifications for the theater. The defendant contended that the step in question was open and obvious and was not inherently dangerous. According to the defendant, the fall was the result of the plaintiff's failure to watch where she was walking. On damages, the defense contended that the plaintiff had made a good recovery from her hip fracture and that many of her ongoing complaints were caused by pre-existing, unrelated conditions.

The additional defendant architectural company argued that the theater design was without flaw and complied in every way with the International Building Code, as well as the Americans With Disabilities Act. In fact, the additional defendant showed that the step in question was designed with embedded LED lighting in both the tread and the riser, not only satisfying the codes, but exceeding the code requirements. The additional defendant contended that there was ample evidence that the lighting had burned out, either because the bulb strips had worn out or because there was an electrical problem in the theater.

After a five-day trial, the jury found the defendant theater 100% negligent, finding that the additional defendant architectural firm was not negligent and assessing no comparative negligence against the plaintiff. The jury then awarded that plaintiff a total of $3,146,500 in damages. The award included $2,500,000 in past and future pain and suffering; $79,926 in stipulated past medical expenses; and $566,574 for future medical expenses. The plaintiff's motion for delay damages is pending.

REFERENCE

Hozey vs. American Multi-Cinema, Inc. d/b/a AMC Theaters, et al. Case no. 170801401; Judge Sean F. Kennedy, 01-29-20.

Attorney for plaintiff: Franklin R. Strokoff of The Rothenberg Law Firm in Philadelphia, PA. Attorney for defendant (additional): Thomas J. Gregory of O'Connor Kimball, LLP in Philadelphia, PA.

$1,700,000 RECOVERY - PREMISES LIABILITY - FALL DOWN - TRIP IN DEPARTMENT STORE - ACHILLES TENDON TEAR - MULTIPLE SURGERIES - CHRONIC REGIONAL PAIN SYNDROME.

Miami-Dade County, FL

This premises liability action was brought against a department store and a retail seller which had constructed a temporary sales display in the defendant department store. The 41-year-old female plaintiff contended that the defendants negligently created and allowed a dangerous tripping hazard to exist which caused her to trip and fall, sustaining significant injuries. Specifically, the plaintiff alleged that as she approached the display, she tripped and fell over a corner of the raised portion of the display. The plaintiff was diagnosed with a torn Achilles tendon which required surgical repair. After surgery, she suffered a number of complications which necessitated an additional surgery. The pain in the plaintiff's ankle and foot area continued and she was subsequently diagnosed with Chronic Regional Pain Syndrome, which her doctors opined is permanent in nature. The defendants argued that the display in question was open and obvious and was not dangerous. The defense contended that the plaintiff failed to watch where she was walking. The defense also disputed the injuries and damages sustained by the plaintiff as a result of the incident.

The parties reached a confidential settlement in the amount of $1,700,000 prior to trial.

REFERENCE

Jane Doe vs. ABC Department Store & XYZ Retail. 10-25-19.

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

$1,495,000 RECOVERY - PREMISES LIABILITY - FALL DOWN - TRIP AND FALL OVER MICROPHONE CORD AT DEFENDANT HOTEL/CASINO - HIP FRACTURE PLACES 84-YEAR-OLD AT HEIGHTENED RISK OF STROKE, WHICH OCCURRED THREE WEEKS LATER - SEVERE COGNITIVE DEFICITS - NO INCOME CLAIMS.

Middlesex County, NJ

This premises liability action involved a then 84-year-old female plaintiff who was an internist who had continued practicing on a part-time basis and who would occasionally travel to her native Philippines to provide free medical services to the poor. The plaintiff contended that on the day of the incident, she was slated to be the emcee at an awards ceremony which was being hosted by the defendant hotel/casino. The plaintiff indicated that prior to the ceremony, she had requested one of the defendant's "Banquet house men" to move the podium, through which a corded microphone had been threaded, from the stage to the floor. The plaintiff maintained that when this employee complied with her request, he negligently left the black microphone cord loose on the dark stage carpet. The plaintiff contended that as a result, she tripped over the cord and fell from the stage, causing her to suffer a hip fracture. The plaintiff asserted that among the risks faced by elderly persons who sustain a hip fracture is the possibility for a stroke and the plaintiff contended that approximately three weeks after the fall, she suffered a cerebral artery infarction. The plaintiff maintained that the stroke has left her with severe cognitive deficits including an inability to read, the loss of the right half of her visual field in her right eye and significant issues with her memory.

The defendant contended that the plaintiff was comparatively negligent in failing to observe and avoid the mic cord, especially in light of the fact that it was the plaintiff who had requested that the podium be moved and was present when it was moved. The plaintiff countered that in view of the lack of contrast between the dark carpet and the dark mic cord, the defendant's position in this regard should be rejected. The defendant had further maintained that in view of extensive prior risk factors, including hypertension, diabetes mellitus, cerebrovascular and cardiovascular disease, sleep apnea and prior brain imaging that evidenced micro-ischemic cerebrovasculopathy, the plaintiff's claims that the stroke was related to the hip fracture should be rejected. The plaintiff countered that the defendant was nonetheless liable for the superimposition of the stroke on these pre-existing risk factors and maintained that in light of the fact that the stroke occurred only three weeks after she suffered the hip fracture, her claim of a causal connection was clearly accurate. The plaintiff, who made no income claims, would have argued that the jury should consider her inability to continue on the issues of pain and suffering and loss of enjoyment of life.

The case settled during mediation before the Honorable Mark Epstein (ret.) for a total of $1,495,000.

REFERENCE

DeCastro vs. DGMB Casino, LLC d/b/a Resorts Casino Hotel. Docket no. MID-L-249-18. 11-19-19.

Attorneys for defendant: Matthew G. Bonanno and J. Silvio Mascolo of Rebenack Aronow Mascolo, LLP in New Brunswick, NJ.

ADDITIONAL VERDICTS OF INTEREST

Bus Negligence

$20,000,000 GROSS VERDICT - BUS NEGLIGENCE - DRIVER OF LONG DISTANCE BUS NEGLIGENTLY LEAVES PARKING LOT EARLY AND FAILS TO RESPOND WHEN 25-YEAR-OLD DECEDENT CHASES AFTER BUS - BUS TURNS RIGHT OUT OF PARKING LOT AND DRAGS DECEDENT UNDER BUS, DEGLOVING HIS FOOT BEFORE RUNNING OVER HIS TORSO AND THEN CRUSHING HIS SKULL CAUSING HIS DEATH.

Dallas County, TX

This bus negligence case involved a 25-year-old male decedent in which the plaintiffs contended that the defendant's bus driver, who was driving the bus from Seattle to San Francisco, had stopped at a rest area at approximately 1:15 a.m. and had advised the passengers to return to the bus by 1:30 a.m. The plaintiffs asserted that the driver negligently left a few minutes early without taking a head count, which is required by company policy, and then failed to stop as the decedent was chasing after the bus in the parking lot and banging on the side of the bus. The plaintiff contended that the decedent had reached the door of the bus just as the defendant made a right turn out of the parking lot, causing the front right wheel of the bus to knock the decedent down, drag him under the bus and suffer fatal injuries. This action was brought in Dallas County where the defendant bus company is headquartered. The plaintiff parents brought this

action on behalf of their decedent son, who was unmarried and whom sporadically resided with them, making claims for mental anguish as well as the loss of love, guidance and society of their son. The plaintiffs further contended that the defendant driver, who was not terminated after this incident, was, in fact, terminated following an incident one year later in which the driver smashed the cell phone of an individual who was recording a verbal altercation between the driver and another passenger at a bus station. The plaintiff argued that the bus driver's apparent belief that schedules were more important than human life constituted gross negligence, entitling the plaintiffs to punitive damages. The defendant had denied that the bus driver could see the decedent as he was pulling from the parking lot and the plaintiff countered through the video taped testimony of a number of witnesses who indicated that the decedent was banging on the side of the bus and that they were shouting for the driver to stop the bus, but he nonetheless continued driving. The plaintiffs argued that in view of this testimony, the defendant's position in this regard should clearly be rejected.

The jury found that the defendant 90% negligent, the decedent 10% comparatively negligent, and rendered compensatory award of $3,000,000 for the decedent's pre-death pain and suffering, and $8,500,000 to each parent for past and future loss of society, companionship and mental anguish.

On the punitive damages claim, in order for the jury to find gross negligence, the jury vote would have to be unanimous. In this case, the jury voted 11-1 to find the defendant grossly negligent and, therefore, the award made was for compensatory damages only.

REFERENCE

Becker vs. Greyhound Bus Lines, et al. Case no. DC-17-16588; Judge Emily G. Tobolowsky, 12-11-19.

Attorneys for plaintiff: Charla G. Aldous, Brent Walker and Caleb Miller of Aldous Walker, LLP in Dallas, TX. Attorney for plaintiff: Jane Paulson of Paulson Colleti, PC in Portland, OR.

Insurance Obligation

$2,186,247 VERDICT - INSURANCE OBLIGATION - UNINSURED MOTORIST CLAIM - INTERSECTION COLLISION - HERNIATED CERVICAL AND LUMBAR DISCS - RADICULOPATHY - POST-TRAUMATIC HEADACHES - DAMAGES/CAUSATION ONLY.

Pinellas County, FL

This action was brought against the defendant insurance carrier pursuant to an uninsured motorist policy after the plaintiff was involved in an intersection collision with an uninsured motorist. The defendant carrier had stipulated as to the tortfeasor's negligence in entering a Pinellas County intersection and causing a collision. The case was defended on the issue of damages, causation and permanency. The female plaintiff in her 30s was a restrained front seat passenger when the collision occurred. The plaintiff testified that she was rotated looking to the back seat of the vehicle at the time of impact. The plaintiff sought treatment from a chiropractor the day after the collision occurred and maintained that since the date of the accident, pain has persisted in her neck, upper extremities and lower back. The plaintiff was diagnosed with acute cervical, dorsal, trapezius and lumbosacral sprain. She also claimed right anterior chest wall pain, disc bulges at L4-L5, L5-S1, C3-C4, C4-C5 and C6-C7, a disc herniation with annular tear at C5-C6 with radiculitis, bilateral shoulder pain, headaches and trouble sleeping.

The defense argued that the collision was minor, that it occurred at a low rate of speed, and that it did not cause the injuries being alleged by the plaintiff. The defense showed that between October, 2016, and October, 2017, the plaintiff only treated one time with the chiropractor and that she did not receive any further medical treatment until September of 2018. The defendant maintained that it was speculative that the plaintiff would undergo the additional medical procedures that were recommended. The defense also argued that the plaintiff was able to perform all of the activities she had prior to the subject accident and asserted that she was not permanently injured as a result of the collision.

The jury found that the plaintiff had sustained a permanent injury as a result of the accident and awarded her a total of $2,186,247 in damages including $1,511,000 for future pain and suffering. Post-trial motions are pending including the defendant's motions for collateral source set-offs, remittitur and/or a new trial.

REFERENCE

Marinec vs. Progressive Selective Insurance Company. Case no. 17-001497; Judge Linda R. Allan, 01-09-20.

Attorney for plaintiff: James D. Arnold, Jr. of Morgan & Morgan in Tampa, FL.

Racial Discrimination

$10,000,000 RECOVERY - FAIR HOUSING ACT VIOLATION - ALLEGED DISCRIMINATORY LENDING PRACTICES BY WELLS FARGO BANK - TARGETING OF MINORITIES FOR HIGH INTEREST/HIGH RISK MORTGAGE LOANS - CLAIMED DISPROPORTIONAL NUMBER OF FORECLOSURES - LOSS OF TAX REVENUE TO CITY.

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

This Federal Court action was brought by the plaintiff City of Philadelphia against the defendant Wells Fargo Bank under the U.S. Fair Housing Act ("FHA"). The plaintiff City contended that the defendant inappropriately targeted minorities for high-interest residential mortgage loans in Philadelphia, causing economic and non-economic damages to the City. Specifically, the plaintiff contended that the defendant engaged in predatory lending practices aimed at minority borrowers which involved high risk/high cost loans that included the defendant paying all of the borrower's closing costs in exchange for acceptance of a loan with a significantly higher interest rate, according to the plaintiff's claims. The plaintiff asserted that 23.3% of the mortgage loans the defendant made to minority customers in Philadelphia were high-cost/high-risk loans, while only 7.6% of such loans made to white customers were high-cost/high-risk. According to the plaintiff's claims, this practice resulted in a disproportionately large number of foreclosures. The defendant did not admit liability and vigorously denied the plaintiff's allegations.

The case was settled for a total of $10,000,000 with $8.5 million of the settlement proceeds to provide grants for home purchase assistance to low and moderate income home-buyers in the city which will be administrated through the Philadelphia Housing Development Corporation, according to a joint press release issued by the mayor's office. Additional grant monies will be provided from the settlement to fund mortgage foreclosure prevention programs and revitalizing vacant land.

REFERENCE

City of Philadelphia vs. Wells Fargo & Co., et al. Case no. 2:17-2203-AM; Judge Anita Brody, 12-16-19.

Attorney for plaintiff: Sherrie R. Savett of Berger Montague, P.C. in Philadelphia, PA. Attorneys for plaintiff: Benjamin H. Field and Eleanor N. Ewing of The Philadelphia Law Department in Philadelphia, PA.

State Liability

$9,000,000 RECOVERY - STATE LIABILITY - NEGLIGENT MAINTENANCE - COURT OF CLAIMS CASE - FAILURE OF STATE PARK TO COMPLETE SCALING AND INSPECTION OF ESCARPMENT DUE TO PRIOR ROCK SLIDES - HIKING TRAIL NEGLIGENTLY LEFT OPEN - HIKER STRUCK BY FALLING ROCKS AND PARALYZED FROM THORACIC AREA DOWN.

Albany County, NY

This case involved a then 59-year-old female plaintiff who was hiking with her daughter and their dog on a trail located in the John Thatcher State Park near Albany and underneath the Helderberg Escarpment. The plaintiff contended that a rock slide occurred, causing her to be struck by falling rocks, which resulted in a severe spinal cord injury that has left her with permanent paralysis from the thoracic area down. The plaintiff brought suit against the defendant State of New York for negligent failure to close the trail following a previous rock slide. In addition, the plaintiff maintained that because of the prior rock slide, the defendant state had requested that a crew from another region scale and inspect the area and perform prophylactic work after the hiking season had already begun. The defendant asserted that it had acted reasonably in requesting that this work be done. The plaintiff countered that the team was able to spend only three days on the escarpment and could scale and work on only approximately 1/3 on the escarpment before it was required to return to its own region. The plaintiff established that the defendant nonetheless kept the subject trail open, contemplating that it would complete the scaling work after the trail closed for the season. The plaintiff also established that although the state workers from the other region conducted scaling on an annual basis, such scaling had not been conducted at the subject park where the incident occurred for some 12 years.

The case settled prior to trial for $9,000,000.

REFERENCE

Ladd-Butz vs. State of NY. Index no. 130256; Judge W. Brooks DeBow, 04-26-19.

Attorney for plaintiff: George J. Szary of DeGraff Foy & Kunz, LLP in Albany, NY.