



NEW JERSEY

# JURY VERDICT

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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.*

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## SUMMARIES WITH TRIAL ANALYSIS

***\$9,500,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – FAILURE TO DIAGNOSE AND TREAT – EITHER DEFENDANT LAB MISCOMMUNICATED LAB RESULTS OR DEFENDANT HOSPITAL INPUT WRONG RESULTS INTO RECORDS INDICATING INFANT PLAINTIFF TESTED NEGATIVE FOR HERPES SIMPLEX VIRUS – AS RESULT OF ERROR, PLAINTIFF’S PHYSICIANS DISCONTINUED TREATMENT WITH ACYCLOVIR – HSV ENCEPHALITIS RESULTING IN PROFOUND PHYSICAL AND COGNITIVE DISABILITIES AND SHORTENED LIFESPAN.***

### **Camden County, NJ**

The infant plaintiff brought this medical malpractice action alleging personal injuries based on a negligent failure to diagnose and treat the herpes simplex virus (HSV) with which she was born. The plaintiff was born prematurely on March 3, 2012, at the defendant hospital and, based upon skin lesions observed on March 21, 2012, was started on the drug Acyclovir to treat the suspected HSV. Three samples were taken from the plaintiff on March 21, 2012 to test for HSV and sent them to the defendant children’s hospital Department of Pathology and Laboratory Medicine in Philadelphia for testing. The defendant lab reported the results of those three tests to defendant hospital on March 22, 2012. The lab results were incorrectly reported by the defendant lab or incorrectly recorded by the defendant hospital. The plaintiff maintained that, during the 16 days without Acyclovir treatment, the disorder progressed to encephalitis that destroyed much of the plaintiff’s brain and resulted in severe physical and cognitive disabilities. The plaintiff presented evidence of her significant disabilities and her life expectancy of only 35 years. The defendant testing laboratory stipulated liability as to breaching the standard of reporting results. The defendant physicians maintained that the Acyclovir was discontinued because HSV sample tests were negative, and that any error was on the part of the laboratory, not the defendant physicians who followed the standard of care in discontinuing Acyclovir upon receipt of negative test results for HSV. The plaintiff filed suit for breach of the standard of care by both the defendant hospital and its staff, and the defendant lab that processed the tests. The malpractice of the defendants resulted in catastrophic injuries sustained by the minor plaintiff shortly after her premature birth at the defendant hospital in Voorhees. While a patient at the defendant hospital, the plaintiff developed skin lesions that led the clinical team to suspect that she contracted the HSV and as a result, the clinical team began treating her with Acyclovir, an antiviral drug. In order to confirm the existence of

HSV, the lab samples were drawn by the medical team at the defendant hospital and sent to the defendant children’s hospital lab for testing to confirm the existence of the virus. When the plaintiff was tested for HSV, three samples were sent for testing, and each was independently tested to see if the sample was positive or negative for HSV. Some of the HSV test results were positive, however, due to a laboratory communication error, the test was erroneously recorded in the defendant hospital’s electronic medical chart as negative.

The plaintiff asserted that the defendant hospital’s lab breached the standard of care in inaccurately and incompletely communicating the results of the tests to the defendant hospital and that the defendant treating physicians were negligent in failing to wait for all the results to be reported before discontinuing the plaintiff’s treatment with Acyclovir. The plaintiff argued that the Acyclovir was wrongfully discontinued before the clinical team knew the results of the skin and eye HSV cultures and that the physicians and staff were negligent in not waiting for all lab results before discontinuing treatment. The plaintiff presented expert testimony asserting that Acyclovir should have been administered due to the infant plaintiff’s clinical status, including the skin lesions on her left arm. The plaintiff’s expert opined that the lesions never resolved and were the type indicative of HSV lesions and that the plaintiff’s treating medical staff should have taken into account both lab results and clinical presentation in treatment of the plaintiff.

The plaintiff argued that, as a result of the defendants’ malpractice, the antiviral medication that was being administered for treatment of HSV was prematurely discontinued resulting in permanent brain damage to the plaintiff. The defendants argued that, on examination several days after the cultures, the plaintiff presented no new lesions. Combined with what the defendants believed were negative test results, the decision to discontinue Acyclovir was not outside the standard of care.

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The parties settled the matter prior to trial in the amount of \$9,500,000 broken down as follows: \$3,114,594 in attorney fees; \$156,218 in litigation costs; \$881,946 in Medicaid liens; \$150,000 in reimbursement to the plaintiff mother for services rendered to the plaintiff; and \$5,197,242 in net damages to the minor plaintiff to be paid into a special needs trust.

**REFERENCE**

Johnson vs. Virtua-West Jersey Health System Inc., et al. Docket no. L-000177-17; Judge Donald J. Stein, 03-23-20.

**Attorney for plaintiff: Michael S. Berger of Andres & Berger, P.C. in Haddonfield, NJ. Attorney for plaintiff: Louis J. DeVoto of Rosetti & DeVoto, P.C. in Cherry Hill, NJ. Attorney for defendant hospital and staff: Elizabeth G. Thompson of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ. Attorneys for defendant hospital and staff: Carolyn R. Sleeper and Kathryn A. Somerset of Parker McCay, P.A. in Mount Laurel, NJ. Attorneys for defendant children's hospital lab: Michael W. Horner and James D. Burger of White and Williams, LLP in Cherry Hill, NJ. Attorney for defendant treating nurse and physician: Parker W. Hall III of Blumberg & Wolk, LLC in Woodbury, NJ.**

**COMMENTARY**

The defendant children's hospital lab filed a motion to dismiss based upon its claim that the plaintiff failed to supply an affidavit of merit applicable to the defendant lab for purposes of the litigation. The deficiency was raised via motion to dismiss. The defendant asserted that the plaintiff pleaded and admitted that the lab reported the results of those three tests to the defendant on March 22, 2012. The defendant put forth that the plaintiff pleaded and admitted that the defendant lab results were accurate and correct with two samples being positive and one negative. The plaintiff alleged that the defendant hospital, however, incorrectly recorded the positive HSV results as negative, which resulted in the treating staff's discontinuation of Acyclovir which was the cause of the plaintiff's injuries. The plaintiff alleged the defendant hospital, however, incorrectly recorded the positive HSV results as negative, which resulted in their discontinuation of Acyclovir. The test reports filed by the plaintiff identified the defendant Department of Pathology and Laboratory Medicine and did not contain the word "critical". Thus, the plaintiff was in possession of the test result reports with all information necessary to make the allegations against the defendant lab in her complaint as of February 9, 2016, which was 11 months before the plaintiff filed her complaint.

The defendant argued that the plaintiff's complaint and Affidavits of Merit alleged that the defendant's failure to designate the positive herpes test result as "critical" when reporting them to the plaintiff's physicians deviated from the accepted standards of medical care and violated the policies and procedures of the defendant lab. In support of the claim of professional medical negligence against the defendant lab (and all other parties), the plaintiff provided Affidavits of Merit from two specialists in the field of Neonatology. The moving defendant challenged the sufficiency of the Affidavits of Merit offered in the specialty of Neonatology against the defendant Department of Pathology and Laboratory Medicine. The defendant argued that an affidavit of merit from a doctor or nurse in the specialty of Neonatology is insufficient with respect to the defendant lab. The defendant relied on the arguments that 1) the plaintiff's Affidavits of Merit were not from an appropriate licensed person with respect to the defendant Department of Pathology and Laboratory Medicine; and 2) whether the defendant lab must write the word "critical" on a HSV test result is not "common knowledge."

The plaintiff countered that the defendant's motion should be denied because an Affidavit of Merit was not required for the plaintiff's case against the defendant lab. The negligence action against the defendant lab rested solely with the adequacy in which it communicated abnormal test results and the issue of whether the lab was negligent in the manner and method chose to do so fell squarely within the common knowledge doctrine — an exception to the requirement for an Affidavit of Merit and expert testimony. All of the contentions raised by the defendant lab were misguided and inconsistent with the opinions decisively held by the Appellate Division, which obviated the need for an Affidavit of Merit in that regard. Notwithstanding the "appropriate licensed person" requirement did not apply and an Affidavit of Merit was not required because communication of abnormal test results did not involve a specialty or subspecialty recognized by the American Board of Medical Specialties or American Osteopathic Association. For those reasons, the plaintiff argued, the defendant's motion should be denied. The court denied the defendant's motion to dismiss.

The defendant filed a second motion for summary judgment arguing that: 1) expert proofs regarding a deviation from the standard of care was required to maintain the action against the defendant and no such proofs existed; 2) the "common knowledge" doctrine was not applicable in this case; 3) the plaintiff's Affidavits of Merit were not from an appropriate licensed person with respect to the defendant's department of pathology and laboratory medicine; and 3) Res Ipsa Loquitur was not applicable to the subject case. The defendant maintained that the average juror had no experience in reporting on behalf of a laboratory, or receiving laboratory results. Further, it was admitted that the lab result was correct. The defendant hospital simply input the correct result incorrectly into its system. In this regard, there was also no causal relationship between the alleged breach and the harm because the defendant lab test results were accurate.

The motion was opposed by the co-defendant hospital who argued that the "common knowledge doctrine" did apply to the claims against the co-defendant lab because expert testimony was not required to establish whether the fax transmission of the abnormal test results from the co-defendant lab to the defendant hospital was sufficient and within the standard of care. The defendant hospital asserted that the issue was not related to technical matters particularly within the knowledge of a medical practitioner. And, furthermore, that there was other evidence from which a jury could determine the applicable standard of care and its violation with respect to this particular issue. The plaintiff did not oppose the defendant's motion. The court denied the defendant lab's motion for summary judgment dismissal.

**\$140,000 RECOVERY – MEDICAL MALPRACTICE – OBSTETRICS – MINOR PLAINTIFF DELIVERED WITH BRACHIAL PLEXUS INJURY DUE TO SHOULDER DYSTOCIA – PLAINTIFF MOTHER CLAIMS DEFENDANT OBSTETRICIAN FAILED TO INFORM HER OF INCREASED RISK OF SHOULDER DYSTOCIA DUE TO OBESITY, PRIOR HISTORY, AND GESTATIONAL DIABETES – DEFENDANT DENIES INCREASED RISK AND ASSERTS VAGINAL DELIVERY APPROPRIATE – PRIOR TO SETTLEMENT, DEFENDANT OFFERS \$75,000; PLAINTIFF COUNTER OFFERS \$350,000.**

**Gloucester County, NJ**

**In this medical malpractice case, the plaintiffs asserted that the defendant obstetrician breached the standard of care in prenatal care and delivery of the infant plaintiff, resulting in significant, permanent nerve root injury to the minor plaintiff. The defendant denied any breach of the standard of care. The defendant also challenged the extent of permanency and limitation of the plaintiff's injury.**

On April 7, 2014 the plaintiff mother came under the professional care and treatment of the defendant obstetrician for prenatal care and the eventual labor and delivery of the minor plaintiff on September 4, 2014. The plaintiff asserted that the defendant negligently breached the duty of care to the plaintiffs by failing to take proper cognizance of risk factors for shoulder dystocia during the pregnancy of the minor plaintiff including the plaintiff mother's previous shoulder dystocia, insulin dependent diabetes, obesity and indeterminate estimated fetal weight. The plaintiffs also claimed that the defendant failed to inform the plaintiff that she was at an increased risk of experiencing a delivery complicated by shoulder dystocia and failed to offer the plaintiff mother the option to deliver the minor plaintiff via cesarean section.

The plaintiff mother presented to the hospital on September 4, 2014, for the scheduled delivery of the infant plaintiff believing that she was scheduled for a cesarean section when, in fact, she was scheduled for induction. The plaintiffs put forth that the defendant failed to order a cesarean section prior to the minor plaintiff's birth, instead, inducing labor without input from the plaintiff mother. As a result of the defendant's malpractice, the minor plaintiff sustained severe injuries including left brachial plexus injury at C5-6, physical pain, suffering and mental distress. The

minor plaintiff claimed that he has and may in the future continue to be hindered from attending to normal and usual activities, functions and occupations. The plaintiffs also claimed future inconvenience, disfigurement, humiliation, shortening of his life expectancy, decreased earning capacity and psychological pain.

The defendant denied any breach of the standard of care and pointed to the plaintiff's interrogatory answers to refute that cesarean section delivery had not been considered or offered by the defendant. The plaintiff stated in her own testimony that she had informed the defendant of prior delivery involving shoulder dystocia and that they discussed a cesarean delivery. However, the defendant asserted that the plaintiff never requested a cesarean delivery. When the plaintiff presented for induction, the defendant argued, she did not request a cesarean section and permitted vaginal delivery. The defendant noted that the minor plaintiff's injuries would not preclude him from pursuing most physical activities and future occupations.

During discovery, the defendant made an offer of judgment to the plaintiff in the amount of \$75,000 inclusive of all costs. The plaintiffs made a counter offer to take \$350,000. Neither offer was accepted and the matter proceeded.

The parties settled the matter prior to trial in the amount of \$140,000 broken down as follows: \$67,885 in costs; and \$62,115 in net damages to be set up in trust for the minor plaintiff. Plaintiffs' counsel waived their fees.

**REFERENCE**

Gaskins vs. Nolan, D.O. Docket no. L-001017-16; Judge Samuel J. Ragonese, 03-06-20.

Attorneys for plaintiff: Susan A. Morgan and Jarad L. Silverstein of Wapner, Newman, Wigrizer, Brecher & Miller, P.C. in Marlton, NJ. Attorneys for defendant: Jennifer N. Cortopassi and William L. Brennan of The Law Office of William L. Brennan in Shrewsbury, NJ.

### COMMENTARY

This was a complex medical malpractice action on behalf of the minor plaintiff for brachial plexus injuries sustained as a result of a delivery complicated by shoulder dystocia. The plaintiff mother contended that the defendant obstetrician failed to properly inform her that she was at an increased risk of experiencing a vaginal delivery complicated by shoulder dystocia because of her obesity, insulin-dependent gestational diabetes, history of prior shoulder dystocia and likelihood of delivering a large baby. The parties reached a settlement in this matter in the amount of \$140,000 which they requested the court approve. The plaintiffs and their counsel believed that the proposed settlement was in the minor plaintiff's best interest, especially considering the substantial risk that trial of the case would result in a defense verdict and no recovery at all. Plaintiffs' counsel decided not to take an attorney fee and that the amount of the settlement provided reasonable compensation for the minor plaintiff's injuries. The plaintiffs sought court approval to pay the net proceeds of the settlement based on the following facts:

Shoulder dystocia occurs when one shoulder becomes impacted or stuck in the maternal pubis symphysis impeding spontaneous vaginal delivery when this complication of a delivery occurs, and obstetricians must perform maneuvers to dislodge the impacted shoulder so that the shoulder can be delivered. An infant's brachial plexus nerves in the neck can be injured during efforts to extract the impacted shoulder. The brachial plexus nerves control arm, shoulder, elbow, wrist and finger function. Recognized risk factors for shoulder dystocia include macrosomia, obesity, gestational diabetes and prior shoulder dystocia. The plaintiff mother's first pregnancy resulted in intrauterine fetal death. The stillborn fetus was delivered on November 11, 2012. That delivery was complicated by an 8 to 9 minute shoulder dystocia.

The plaintiff mother became pregnant for the second time in late 2013. The plaintiff mother's weight was noted to be between 292 and 314 pounds during her pregnancy with the infant plaintiff. Her body mass index was 44.46. Parallel to her first pregnancy, the plaintiff mother was obese. Also parallel to her first pregnancy, the plaintiff mother was diagnosed with gestational diabetes for which she was prescribed insulin. All experts in this case agreed that her diabetes was poorly controlled during the pregnancy.

At an August 19, 2014 prenatal visit, an induction date of September 4, 2014 was noted. The plaintiff mother testified that she didn't know what the term "induction" meant, and believed she was going to be delivered by cesarean section. The defendant obstetrician was assigned to deliver the infant plaintiff on September 4th based on the call schedule. The plaintiff mother met the defendant obstetrician for the first time on August 21, 2014. This was the plaintiff mother's only interaction with the defendant prior to the date of delivery. There was great disparity between the testimonies of the plaintiff mother and the defendant as to what they discussed on both August 21st and September 4th. According to the plaintiff mother, she specifically told the defendant that she wanted a cesarean delivery and was told by the defendant that she would be getting one.

According to the defendant, the plaintiff mother never asked for cesarean delivery. The defendant contended that, at the August 21, 2014 visit, she did not tell the plaintiff mother that she was at risk for shoulder dystocia. Rather, she believed that the plaintiff mother, an

obese, gestational diabetic who had a prior delivery complicated by shoulder dystocia, was at no increased risk for encountering a shoulder dystocia and denied that the plaintiff mother's uncontrolled gestational diabetes and prior shoulder dystocia experience created "extra risks" for encountering shoulder dystocia in the subject delivery. It is this incorrect information (that the defense's own experts conceded was wrong) which formed the basis of the lack of informed consent claim.

The plaintiff mother presented to the hospital at approximately 7:30 a.m. on September 4, 2014 for delivery of her child. When she arrived at the hospital that morning she believed she was getting a cesarean section. Nevertheless it was clear that she was not being prepped for an operation. The plaintiff mother did not insist to hospital staff to undergo a cesarean section. Pitocin was started at 10:12 am to induce labor. The plaintiff mother testified that when the Pitocin was started, it marked the first point in time she realized she was not going to have a C-section, but was rather being induced for a vaginal delivery. She permitted the defendant to deliver her vaginally. She voiced no objection to a vaginal delivery while she was in labor. The plaintiff mother delivered a male infant vaginally at 10:39 p.m., more than 12 hours after the Pitocin was started.

The delivery was complicated by shoulder dystocia. As a result, the infant plaintiff sustained a brachial plexus injury to the left arm at the C5 - C6 levels. The plaintiffs' liability expert was a nationally recognized expert in Obstetrics and Maternal Fetal Medicine. He had practiced obstetrics for approximately 30 years. The plaintiff's expert would have testified at trial that the defendant's management plan to perform a vaginal delivery met the standard of care. However, he would also have confirmed that it is well known that obesity, prior shoulder dystocia, gestational diabetes, and a large baby increase the risk of shoulder dystocia and that the defendant incorrectly advised the plaintiff mother that she was at no increased risk of encountering shoulder dystocia by vaginally delivering her son. He would have further testified that a reasonable person would have wanted to know of the increased risk for encountering shoulder dystocia prior to delivery in order to make an informed decision as to mode of delivery.

The minor plaintiff's injuries to the left, upper extremity are permanent; however the injured arm and hand are his non-dominant one. Moreover the minor plaintiff made a significant recovery of left arm function and will not be physically precluded from pursuing most physical activities and future occupational interests. The minor plaintiff underwent tendon transfer surgery, which is a customary, secondary surgery, performed on children with injury to the C5 - C6 nerve roots. The surgery was performed when the minor plaintiff was two and he has not required any additional surgical intervention. The minor plaintiff underwent occupational and aquatic therapy from 2015 - 2018. He attended slightly over 40 occupational therapy sessions before his last one in July 2018.

The plaintiffs' orthopedic surgery expert was a renowned expert in pediatric brachial plexus injuries. The plaintiffs' orthopedic surgery expert stated that the minor plaintiff sustained a partial tear of the C5 - C6 nerve roots which affected his shoulder girdle, elbow flexion and forearm supination. His left hand showed no atrophy or atrophic changes. Active wrist extension and flexion on the left was comparable to the right. He had a slight elbow contracture and the left arm is slightly shorter than the right. The expert opined that the minor plaintiff's recovery has reached a plateau. The plaintiffs' expert conceded that the minor plaintiff's injury is the most common brachial plexus injury with the greatest chance for recovery. He confirmed that the right, dominant arm is completely unaffected. The plaintiff will live independently with only minor accommodations. The defense pediatric neurologist opined that the minor plaintiff's brachial plexus

injury has improved following surgery and therapy. He testified that the minor plaintiff is and will be, in the future, independent in all activities of daily living and would only benefit from physical therapy to age 10.

Both the plaintiffs and the defendant presented economic experts. The plaintiffs' life-care planner projected a cost of \$363,583 of which \$330,225 was allocated to therapy. However, the minor plaintiff had not attended therapy since July 2018. The defendant's life-care planning expert prepared a report projecting future medical and therapy costs at \$156,851, less than half of that of the plaintiff's experts. The minor plaintiff's treating physician and orthopedic surgeon last treated the minor plaintiff on October 16, 2018 for a yearly follow-up. The plaintiff's treating physician noted that the minor plaintiff had "excellent hand to mouth and hand to neck motion" and was not given any physical restrictions or limitations. Due to the success of the minor plaintiff's progress, the minor plaintiff was instructed to return for follow-up in 2 years. The plaintiff's treating physician opined that the plaintiff has likely reached maximum medical improvement and will continue to develop without physical restriction. The plaintiff's expert did not find any indication that additional surgery will be necessary in the future.

Plaintiffs counsel petitioned for approval of the plaintiffs' settlement noting that they have practiced law for over 50 years combined and that their practice is limited to medical malpractice, with a large focus on obstetric malpractice cases. Plaintiffs' counsel recommended a settlement of this action for \$140,000 for multiple reasons. First, given the lack of a formal consent claim and the insufficient documentation in the record to determine the details of any doctor-patient discussions, credibility would be the single most determinant of factor in the outcome of the trial. To that extent, counsel believed that the plaintiff mother would have had a significant credibility issue that could deter a jury from finding in the plaintiff's favor. In the plaintiffs' counsel's

professional opinion, it was more likely than not that a jury would not find the plaintiff mother's version of events credible, even though truthful. Importantly, when the plaintiff mother arrived at the hospital for the delivery it was obvious that she was being prepared for vaginal delivery. Even after she testified that once she realized she was not going to have a cesarean section, she did not object to a vaginal delivery.

In addition, out of the dozens of shoulder dystocia cases handled by plaintiffs' counsel over the years, the minor plaintiff's injury was one of the least severe. He completely avoided injury to the lower nerve roots at C7, C8 and T1 which would have profoundly affected his left arm movements and function. His physical limitations were comparatively mild as indicated by his treating physician who reported that the minor plaintiff has full use of his left hand and fingers. Moreover, the defense had filed an offer of judgment in this case in the amount of \$75,000. Plaintiffs' counsel believed there was a very real possibility that a trial would have resulted in a small verdict for the plaintiff in an amount 80% or less than that of the offer of judgment. That, in turn, would have required the plaintiffs to reimburse the defendant's attorney fees and costs from the time the offer of judgment was filed. Finally, a trial would have accumulated significant costs for expert appearances and trial technology, beyond what was already an expensive case expert-wise. A settlement prior to the trial of this matter negated those additional costs. As such, plaintiffs' counsel argued, the proposed settlement would provide a sum of money to be placed in a pooled trust fund to benefit the minor plaintiff that was a reasonable, sufficient sum of money that could be utilized to make very positive improvements to not only the minor plaintiff's quality of life, but to his family's quality of life through his gains.

**\$6,850,000,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRACTOR-TRAILER COLLISION – DEFENDANT DRIVER SHOWS SIGNS OF IMPAIRED JUDGMENT FROM MEDICATION AND ALSO ADMITS TO INVESTIGATING OFFICER HE HAD LITTLE SLEEP THE NIGHT BEFORE – DEFENDANT DRIVER PLEADS GUILTY TO VEHICULAR HOMICIDE AND IS CURRENTLY INCARCERATED – DEATH OF 45-YEAR-OLD HUSBAND FATHER OF THREE.**

**Monmouth County, NJ**

**In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver operated under the influence of Xanax, Klonopin, and Clonazepam, and had very little sleep the night before. The plaintiff contended that as a result, the 45-year-old decedent was struck in the rear by the defendant driver, sustaining fatal injuries. The decedent left a widow and three children, age 22, 19 and 16 at the time of the death. The defendant driver had pled guilty to various crimes, including vehicular homicide and is currently incarcerated.**

The evidence disclosed that the accident occurred as the decedent was on his way home from his job as a field technician for Verizon. Blood testing was positive for Xanax, Klonopin, and Clonazepam. The plaintiff would have contended, through the testimony of investigating officers that the defendant had exhibited adverse side effects such as impaired judgment, drowsiness, fatigue, dizziness, unsteadiness,

and disorientation. The plaintiff also contended that the defendant driver conceded to the officers that he had very little sleep the night before. The plaintiff asserted that the defendant driver's condition caused the incident.

The evidence disclosed that the multiple good Samaritans tried to render to assistance to the decedent immediately after the accident, but that he appeared deceased in his vehicle and there was no evidence that he was conscious after the accident. The plaintiff maintained that the economic loss approximated \$3,500,000, including the loss of guidance and advice to the family. The defendant would have denied that the plaintiff's claims of economic loss should be accepted and contended that the claim was grossly exaggerated. The defendant also pointed out that there was no evidence of conscious pain and suffering.

The case settled prior to trial for \$6,850,000. The net proceeds were allocated as follows: \$3,112,870 to the widow and \$518,812 to each child.

#### REFERENCE

Appio vs. Isserovich, et al. Docket no. MON-L-1580-18, 03-20-21.

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

### **\$1,200,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO OBEY STOP SIGN – LUMBAR AND CERVICAL HERNIATIONS – CERVICAL SURGERY – NO INCOME CLAIMS.**

#### **Somerset County, NJ**

**In this action for motor vehicle negligence, the plaintiff driver, in her early 40s, contended that the defendant driver negligently failed to obey a stop sign, resulting in the collision. The plaintiff maintained that as a result, she suffered cervical and lumbar herniations, ultimately required a cervical surgery, and will none-the-less suffer extensive symptoms permanently. The plaintiff did not work outside the home. The defendant did not vigorously dispute liability.**

The plaintiff asserted that she developed severe cervical and lumbar symptoms shortly after the accident and commenced treatment with a chiropractor within days of the collision.

The plaintiff maintained that she suffered herniations at C4-5, C5-6, C6-7, L3-4 and L4-5 that were confirmed by MRI. The plaintiff underwent conservative care, including manipulations and first saw her orthopedic surgeon several months after the accident. The plaintiff continued conservative care and underwent a lumbar and a cervical injection, which were administered by a pain management physician.

The plaintiff claimed that the injections and continued conservative care provided short-term relief only and that approximately 2 ½ years after the accident, the plaintiff underwent cervical surgery. The plaintiff maintained that she will none-the-less suffer extensive pain and restriction permanently. The plaintiff contended that everyday activities, including housework, are painful and difficult. The plaintiff and her son, who no longer lives at home, testified as to the day-to-day limitations.

The defendant denied that the plaintiff suffered herniations as a result of the accident. The defendant asserted that the plaintiff suffered soft tissue injuries in

#### COMMENTARY

The plaintiff commanded a very substantial recovery, especially in view of the absence of any evidence of conscious pain and suffering. The evidence that the defendant driver was impaired from prescription drugs, and his admission that he had little sleep the night before, would have created a very strong jury response which would have impacted on the expected jury award. Additionally, the plaintiff would have stressed that the death occurred when the children were ages 22, 19 and 16, arguing that the loss of guidance and advice at such a critical point in their lives would dictate an especially large award.

the collision which resolved and that the surgery was prompted by the natural progression of degenerative disc disease. The plaintiff countered that she had no prior symptoms or treatment and the plaintiff would have argued that the defendant's position should be rejected.

The defendant had \$250,000 in primary coverage and a \$1,000,000 umbrella. The case settled prior to trial and following a settlement conference with Judge Thomas Miller for \$1,200,000, including \$200,000 from the primary carrier and the \$1,000,000 umbrella policy.

#### REFERENCE

Lezcano vs. Coleman, et al. Docket no. SOM-L-000668-19, 06-02-20.

**Attorneys for plaintiff: Michael Heck and Daniel Epstein of Epstein Ostrove, LLC in Edison, NJ.**

#### COMMENTARY

The plaintiff was able to resolve this case for only slightly less than the insurance limits, notwithstanding the absence of any income claims. The defendant had denied that the surgery was related to the accident and maintained that the alleged three lumbar and two cervical herniations the plaintiff suffered were the natural progression of degenerative disc disease only. The plaintiff countered this position by stressing that she had no prior symptoms or treatment. Additionally, it is felt that both the plaintiff and her son, who testified in discovery, offered detailed testimony regarding the day to day difficulties faced by the plaintiff and the manner in which this individual's life had been changed from a person who, prior to the accident provided extensive services to her family, arguing that the roles have been reversed, rendering her a very dependent individual.

**\$2,750,000 RECOVERY – DRAM SHOP – PLAINTIFF WEDDING GUEST CLAIMS HE WAS OVER SERVED AT DEFENDANT CATERING FACILITY AND DEFENDANT HOTEL BAR – HE SUBSEQUENTLY FELL OR DOVE FROM THIRD-FLOOR BALCONY ONTO CONCRETE DECK OF HOTEL’S POOL AREA – SEVERE CATASTROPHIC INJURIES TO HEAD AND BODY – PERMANENT COGNITIVE IMPAIRMENT AND QUADRIPLÉGIA.**

**Bergen County, NJ**

In this dram shop and premises liability case, the plaintiff, a 30-year-old man, asserted that he was over-served alcohol at the defendant catering facility and then fell in the pool area of the defendant hotel, due to negligent design and maintenance of the defendant hotel premises. The plaintiff’s fall caused severe, catastrophic injury. The defendants denied over serving the plaintiff. The defendant catering facility pointed to the plaintiff’s testimony that he did not have any problems walking, talking or moving due to alcohol while at the reception and at no time during the reception did anyone tell the plaintiff to stop drinking or refuse to serve him. The defendant caterer denied over serving the plaintiff and asserted that his extreme intoxication occurred after he had left the defendant catering facility.

On November 17, 2014, the plaintiff was a guest at the defendant hotel in Saddle Brook while he was in town for a wedding reception at the defendant catering facility in Garfield. The plaintiff alleged he was served alcohol while he was visibly intoxicated at both the defendant catering facility and at the defendant hotel bar. The plaintiff was at the defendant catering facility from approximately 6:00 p.m. until 11:30 p.m. He then drank several beers and shots of hard liquor at the defendant hotel bar until it closed at 1:30 a.m. The plaintiff had no recollection of any events after the dinner portion of the wedding reception. The plaintiff claimed that, at around 5:00 a.m., he was so intoxicated that he fell over a negligently designed guard railing from a stairway to the pool area as he made his way to the pool where other patrons were already swimming. The plaintiff claimed he fell over the railing of the stairs onto the deck of the hotel pool area sustaining significant, permanent injury.

The plaintiff retained a medical expert, who opined that the plaintiff would have shown visible signs of intoxication between 10:30 and 11:00 p.m. The plaintiff further asserted that the guard rails around the pool area were only 39 inches high and violated the IBC and NJCCC codes; that there were no signs regarding the pool’s hours; and that the area was insufficiently lit. The plaintiff maintained that the defendant hotel failed in its duty to secure the pool and stairways, landings and railings in a safe and proper condition and free of conditions that would endanger the safety of patrons such as the plaintiff.

As a result of the incident, the plaintiff sustained traumatic brain injury with respiratory failure and dysphasia; cervical vertebral comminuted fracture of

C5 resulting in paraplegia; right-sided skull fracture with large epidural hematoma and scalp laceration requiring right frontotemporal-parietal craniotomy for evacuation of hematoma and repair of skull fracture and superior earlobe; pneumothorax and pleural effusion of the right and left lungs requiring placement of chest tube; L5 burst fracture with instability; right rib fractures from 5-9; liver hemangioma. The plaintiff required a feeding tube for seven weeks. The plaintiff underwent a tracheotomy in the emergency room and subsequent surgeries including: cervical C5 vertebral corpectomy and decompression; fusion from C4-C6 with placement of anterior cervical plate; open reduction of fracture at C5 and bone graft. The plaintiff has permanent cognitive impairment and is now a quadriplegic.

The defendant catering facility retained an expert who opined that the plaintiff would not have been visibly intoxicated while at the catering facility. The defendant hotel argued that the plaintiff did not show signs of intoxication that would prevent him from being served, and that there was no evidence that the plaintiff was served alcohol at the defendant hotel bar. There was no bar tab or receipts with the plaintiff’s name on them. Both defendants pointed to evidence that the plaintiff continued to drink and consume marijuana and cocaine privately well after leaving both defendants’ facilities. Toxicology reports noted that a urine drug screen of the plaintiff conducted at 6:23 a.m., at the hospital, was positive for cocaine and marijuana. The defendants also pointed to testimony from witnesses, including the plaintiff, indicating that he did not fall from the stairway, but rather attempted to dive head first from the landing into the pool.

The parties settled the matter prior to trial in the amount of \$2,750,000 with the defendant hotel’s portion of the settlement being \$2,250,000; and the defendant catering company’s portion being \$500,000.

**REFERENCE**

Ljuljanaj vs. Saddle Brook Marriott Hotel, et al. Docket no. L-007360-16; Judge John O’Dwyer, 01-20-20.

**Attorney for plaintiff: Natalie A. Zammitti Shaw of Law Offices Rosemarie Arnold in Fort Lee, NJ.**

**Attorney for defendant catering company: John R. Knodel of Methfessel & Werbel in Edison, NJ.**

**Attorney for defendant hotel: Randi A. Wolf of Spector, Gadon, Rosen, Vinci, PC in Philadelphia, PA.**

## COMMENTARY

There was extensive, conflicting testimony as to whether the plaintiff jumped or fell from the third floor balcony. The facts of the case were as follows. The plaintiff drank alcohol at the reception. After the reception the plaintiff took a shuttle bus with other wedding guests back to the defendant hotel and went to the hotel bar for drinks. After leaving the hotel bar, when it closed, the plaintiff and other guests went to multiple hotel rooms where it is disputed as to whether the plaintiff drank more alcohol until around 3:00 am. Around 3:45 or 4:00 a.m., a group of guests, including the plaintiff, decided to go swimming in the indoor hotel pool, which had closed at 10:00 p.m. The group entered the locked and gated pool area by climbing over planters. The group was in the pool area for about half an hour before the plaintiff's accident. Around 5:00 a.m., the Saddle Brook Police Department received an emergency call that a person, later identified as the plaintiff, struck his head after attempting to jump into the hotel's indoor pool from the third-floor balcony.

A witness observed the plaintiff in the air descending from the third-floor balcony near the pool in a head-first diving position. Conflicting testimony indicated that he was in freefall. The plaintiff landed head and neck first on the pool deck about a foot from the pool's deep end and then went into the water. Initially the plaintiff alleged he dove from the third floor balcony, but later claimed he fell over the third-floor railing in the stairway to the pool. A few hours after the plaintiff's accident, hotel staff inspected and photographed his hotel room. The staff members found several consumed beer bottles and cans, a bottle of Jameson whiskey, and cigarettes spread throughout the room. The issue was ultimately moot as, after extensive expert testimony, the defendant hotel moved for, and was granted, summary judgment as to the count of negligent design and construction of the

hotel. The case then focused on the over service of alcohol to the plaintiff with multiple witnesses, including the plaintiff's then-girlfriend, indicating that the plaintiff was exceptionally drunk both at the wedding reception and at the hotel bar.

Following the settlement, the defendant catering facility moved to enforce the settlement. Defense counsel argued that the matter was tried before the court and jury between January 13, 2020 and January 21, 2020 with the case settling on 20th for \$2,750,000. The moving defendant's share of the settlement was \$500,000. The settlement was placed on the record before Judge O'Dwyer with the plaintiff testifying under oath he understood the terms of the settlement and agreed to it. A proposed Settlement Agreement and General Release were sent to the plaintiff's attorney on February 10, 2020. The plaintiff was interested in a structured settlement and an attorney was retained to prepare a structured settlement agreement. Defense counsel asserted that, despite several emails and phone calls to the plaintiff's attorney, who advised she was waiting for a final lien letter from either Medicare or Medicaid, nine months elapsed and the plaintiff failed to execute the Settlement Agreement and General Release.

The structured settlement attorney advised that the plaintiff was balking at the settlement, but progress was being made with the structured settlement; however, three months later, the defendant had still not received closing papers. Defense counsel noted that, "Apparently you cannot give away \$2,750,000" and it appeared the case would not be resolved without judicial intervention. The defendant argued that, at some time, closure was warranted. The requested to be allowed to deposit its portion of the settlement, \$500,000, in court and the complaint and all cross claims be dismissed with prejudice. Shortly after the defendant's motion, the matter was resolved and the motion was withdrawn.

**\$361,410 ARBITRATION AWARD – PREMISES LIABILITY – HAZARDOUS PREMISES – PLAINTIFF COURIER FALLS THROUGH TRAP DOOR IN FLOOR OF DEFENDANTS' STORE – FAILURE TO WARN – COMMINUTED FRACTURE OF LEFT TIBIAL PLATEAU – LONG PERIOD OF TREATMENT WITH ONGOING SYMPTOMS OF PAIN – LOSS OF RANGE OF MOTION.**

## Cumberland County, NJ

In this premises liability case, the plaintiff, a courier, asserted that the defendants allowed their premises to exist in a hazardous condition that caused the plaintiff significant, permanent injury. The defendant proprietors ran a health store from a leased space in a building and, on the day in question, the plaintiff was making a delivery from a nutritional supplement company to the store when she was injured by a hazard on the premises. The plaintiff brought suit against the proprietors of the store to whom she was making the delivery, the nutritional supplement company from whom the delivery came, and the defendant storefront landlord. The landlord moved for summary judgment and was dismissed from the case as was the company from whom the delivery came. The matter proceeded as to the defendant store and its proprietors. The defendant store and proprietors failed to respond to the plaintiff's Summons and Complaint and the matter proceeded.

On March 17, 2017, the plaintiff was making a delivery at the defendants' premises, on Landis Avenue in Vineland, when she stepped into a trap door in the floor of the store that had been left open and obscured by draped tables. The plaintiff testified that the defendant proprietor of the store greeted her as she entered the store and watched her walk toward the hazard without warning her. The plaintiff walked around a draped table and fell through the access hole, which had been left open without warnings or barricades in place. The plaintiff fell through the hole, down a flight of stairs to the basement of the building. The plaintiff had made deliveries to the location before, but the trap door had never been open on those occasions and the plaintiff had no knowledge of the basement access door. The plaintiff asserted that the defendants were negligent in obscuring the hazard and in not blocking off or warning of the hazard of the open trap door.

As a result of the fall, the plaintiff sustained a comminuted fracture of the left tibial plateau, full thickness head laceration, and multiple abrasions and contusions. The plaintiff had a long period of

treatment with ongoing symptoms of pain and loss of range of motion. The plaintiff claimed lost wages and decreased ability to participate in physical activities.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of \$350,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered \$350,000 plus \$11,410 in interest, for a total recovery of \$361,410.

## REFERENCE

Delaney vs. Ponce De Leon, et al. Docket no. L-000045-18; Judge James R. Swift, 11-25-19.

**Attorney for plaintiff: John F.X. Fenerty, Jr. of The Fenerty Law Firm, LLC in Haddonfield, NJ. Attorney for defendant landlord: John J. Mastronardi of Styliades and Jackson in Marlton, NJ.**

## COMMENTARY

The defendant owner of the building and landlord filed for summary judgment dismissal on the argument that the trap door to the basement was typical of older buildings and in itself only presented a hazard when it was open. The defendant building owner maintained had no duty to warn, nor in fact had knowledge of the door being open or closed at any moment in time. The defendant put forth that the full responsibility for the trap door hazard resided with the defendant tenants of the storefront.

For the plaintiff to prevail in this motion and establish a prima facie case against the defendant, she had to prove that the condition which caused her injury was a "dangerous" one. The defendant asserted that there was no evidence, of any kind, to establish that the presence of an access door to the basement, located in the floor, in a building of this age and construction is, itself, a dangerous condition. Moreover, the defendant argued, the plaintiff offered no substantive legal authority that the defendant landlord owed a duty to the tenant to provide cones or the like to use to warn patrons of the access opening when the door is open. The defendant made the analogy of the argument that a landlord has a duty to provide a mop and "wet floor" sign to the tenant to use when the tenant cleans the floor to prevent patrons from slipping. In short, the defendant argued, a landlord does not owe that duty, nor have that responsibility, to either the tenant or the general public.

For whatever reason, the access door to the basement was left open by the tenant and the opening was apparently obscured by tables which prevented the plaintiff from observing the opening. Obviously, if the tenant had closed the door when entering the basement, then the accident would not have happened. Likewise, if the tables were not arranged so as to obscure the opening, this accident would not have happened. Finally, if the tenant felt the door had to be left open, for whatever it was it was doing, then a barrier or other warning should have been used to alert patrons or others of the opening. Had that been done, the accident would not have happened. The defendant concluded that it was not the duty or the responsibility of the defendant landlord to make sure the tenant does all or any of the foregoing.

There is no allegation the door was defective or not able to be closed which required it to be left open. In fact, the testimony of the plaintiff made clear, that on the previous times she had been on premises the door was not open. Finally, the plaintiff makes reference to the lack of insurance by the tenant and the defendant not making sure the tenant secured the proper insurance. Again, there is no duty owed by the defendant landlord to make sure the tenant has insurance, except to protect himself. The lease was clear that the purpose of the tenant procuring insurance is for the benefit of the defendant, not for the benefit of the general public. The defendant concluded that plaintiff offered nothing to prevent the court from granting the defendant landlords Motion for Summary Judgment and dismissing the Complaint and all cross-claims, with prejudice.

The plaintiff opposed the motion arguing that the defendant, through his designated Property Manager, acknowledged that the tenant defendants were allowed to use the basement, and that the defendant landlord expected that the tenant defendants would use the basement, but they never instructed or provided a means for the tenant defendants to protect people from encountering the opening. The defendant acknowledged that they never provided the tenant with any cones or other product to put up when the trap door was open to protect people from falling through the opening. The defendant also acknowledged that the terms of the Lease provide that the tenant carry their own insurance and provide proof of same to the defendant landlord, but the defendant landlord never received, nor asked for, proof of insurance in this case. The court granted the defendant's motion and the defendant landlord was dismissed from the case.

# VERDICTS BY CATEGORY

## MEDICAL MALPRACTICE

### Plastic Surgery

#### UNDISCLOSED RECOVERY

**Medical malpractice – Plastic surgery – Wrongful death – Plaintiff’s decedent dies of septic infection and necrotizing fasciitis after being seen twice in 48 hours by defendant physician with symptoms of complications of surgery – Defendant files motion for summary judgment asserting plaintiff unable to prove deviation from standard of care – Parties settle while defendant’s motion is pending.**

#### Bergen County, NJ

**In this medical malpractice case, the plaintiff asserted that the defendants deviated from the standard of care in treatment of the plaintiff’s decedent, a 33-year-old woman, resulting in her death. The defendant denied deviation from the standard of care.**

The plaintiff had been a patient of the defendant surgeon when she underwent an abdominoplasty with liposuction and autologous fat transfer on October 16, 2015. There were not apparent complications with that procedure. The patient was next seen by the defendant on February 25, 2016, for liposuction of her arms and buffalo hump, as well as resection of a small dog ear. The patient called the defendant over the weekend following the procedure complaining of pain in the left arm. The defendant advised the patient to continue with antibiotics and pain medication and come into the office on Monday, February 29. At that appointment, the defendant indicated that the patient was afebrile and vital signs were stable with tenderness of the left arm especially the lower third and fluid accumulation, which was drained at the appointment. No cultures were taken. The patient was told to return in 48 hours, which she did.

At the March 2 appointment, the patient was complaining that the pain in her left arm continued and that she also now had pain in the right arm. The defendant again drained fluid with some bloody component and, again, no cultures taken. The patient was sent home with instructions to call for any worsening of symptoms. That evening the patient was seen at the emergency room of the hospital complaining of numbness in the hands and feet; weeping wounds; nausea; vomiting and diarrhea. The patient was unable to keep fluids down. Gram stains and blood cultures that were taken indicated group A streptococcal infection with septic shock and toxic shock syndrome. The patient was transferred to an-

other hospital for treatment where the diagnosis of necrotizing fasciitis with hemodynamic instability and severe acidosis.

The patient underwent surgery for drainage and debridement of necrotic soft tissue and remained in the ICU requiring ventilator support. The following day, she had an exploratory laparotomy to alleviate abdominal compartment syndrome and fasciotomy of the upper right extremity. The patient went into cardiac arrest and was put on life support. The patient deteriorated and suffered multiple organ failure and was noted to have fixed and dilated pupils and was shown to have no evidence of brain function. The patient was declared brain dead on March 6, 2016 and withdrawal of care was made on March 8, 2016.

As a result of the failure to diagnose and treat the plaintiff’s necrotizing fasciitis, the plaintiff’s decedent died. The plaintiff alleged negligence by the defendant surgeon due to the defendant having failed to recognize symptoms consistent with necrotizing fasciitis and for failing to refer the patient to the emergency room upon first presentation of symptoms on February 29, 2016. The plaintiff also asserted that the defendant surgeon failed to recognize worsening symptoms at a second appointment on March 2, 2016 and, again, failed to refer the patient for treatment of her worsening condition. The plaintiff presented deposition testimony of an expert surgeon who reported that the defendant surgeon was negligent in his follow-up treatment of the patient, failing to diagnose, treat, or refer the plaintiff’s decedent for specialized treatment in a timely fashion. The plaintiff’s expert opined that, had the defendant treated the patient in a proper and prompt fashion with hospitalization early on March 2, 2016, it was highly probable that the patient would not have suffered the degree of septic shock that occurred and would have been able to be treated at an early stage with a significantly increased likelihood of survivability.

The defendant denied that the failure to diagnose at the first appointment was negligent and denied causation of the patient’s death as a result of failure to send the patient to the emergency room at the second appointment. The defendant moved for summary judgment, claiming that the testimony of the plaintiff’s expert indicated that the defendant did not deviate from the standard of care at the patient’s first appointment, due to lack of clear symptoms and

that any purported deviation at the second appointment could not be causally tied to the patient's outcome, therefore the defendant argued, the plaintiff presented no evidence of negligence or causation. The parties settled the matter for an undisclosed sum while the defendant's summary judgment motion was pending.

## REFERENCE

Rosario vs. Pelosi Medical Center, et al. Docket no. L-002776-17; Judge Lisa Perez Friscia, 10-18-19.

**Attorney for plaintiff: Robert H. Wolff, Attorney-at-Law in Holmdel, NJ. Attorney for defendant: Rachel M. Schwartz of Giblin, Combs, Schwartz & Cunningham in Morristown, NJ.**

# PRODUCT LIABILITY

## Defective Design

### \$4,500 RECOVERY

**Product liability – Defective design – Plaintiff suffers severe burns when defendants' e-cigarette battery explodes in his pants pocket – Severe burn injuries to lower extremities, buttocks, chest and arms – Lost wages; significant scarring, emotional distress.**

#### Camden County, NJ

**In this product liability case, the plaintiff asserted that the defendants negligently manufactured and sold to the plaintiff an e-cigarette with a defective battery design that caused the plaintiff severe and permanent injury. The defendants all denied liability and collectively argued that they did not act maliciously, wantonly, willfully, negligently, carelessly and/or recklessly; did not fail to act in accordance with legal obligations; did not create, maintain, knew about and/or allowed to exist a dangerous condition; did not design, manufacture, repair /or sell a defective battery, especially insofar the battery at issue was unforeseeably negligently maintained and/or used by the plaintiff or other unknown third parties.**

The plaintiff purchased an electronic cigarette and related parts from the defendants. The defendants were the manufacturers, wholesalers, distributors, and retailers of the electronic cigarette and related parts. On September 29, 2016, the plaintiff was at work when suddenly his e-cigarette battery exploded in his pocket, shooting flames down his pants, causing serious personal injuries. The plaintiff contended that the defendant retailer, defendant wholesaler, and defendant manufacturer were negligent in producing and selling a defective product that caused permanent injury to the plaintiff.

The device and flames from the explosion burned the plaintiff's pants and burned through the pocket, hitting his bare skin. The plaintiff immediately attempted to extinguish the flames. As a result of the explosion,

the plaintiff sustained severe burn injuries to his lower extremities, buttocks, chest and arms. The plaintiff was unable to work due to his injuries which required extensive dressing and frequent dressing changes. The plaintiff experienced severe pain from his wounds for months afterward and claims physical and emotional scarring from the experience.

The defendants argued that they acted reasonably and prudently at all times, and thus, to the extent that the plaintiff's accident and resulting injuries or damages were caused by the negligence or intentional acts or omissions of anyone, said negligence or intentional acts or omissions were committed by the plaintiff himself, by other unknown parties. The defendants each claimed that any negligence was committed by other co-defendants. The defendant distributor was released on summary judgment after the plaintiff failed to show that the defendant distributor was the distributor of the specific battery that caused the plaintiff's injuries.

The plaintiff settled with the defendant retailer prior to trial in the amount of \$4,500. The settlement payment was not made by the deadline specified in the terms of the settlement and the plaintiff brought a motion for enforcement of the settlement and for associated interest and legal fees. The motion was granted and legal fees of \$650 plus interest were added to the settlement amount of \$4,500.

## REFERENCE

Burdash vs. Kanger Vape, et al. Docket no. L-004719-16; Judge Anthony M. Pugliese, 08-24-20.

**Attorney for plaintiff: Domenic B. Sanginiti, Jr. of Stark & Stark in Princeton, NJ. Attorneys for defendant distributor: Robert J. Cosgrove and Peter F. Cardwell of Wade Clark Mulcahy, LLP in Philadelphia, PA. Attorney for defendant retailer: M. Michael Maley of Maley & Associates in Collingswood, NJ.**

## CONSUMER FRAUD

### \$53,748 ARBITRATION AWARD

**Consumer fraud – Bait and switch pricing – Plaintiffs contend defendants advertised one price for used Jeep, but charged plaintiffs a different price when they purchased vehicle – Defendants maintained plaintiffs knew of price difference and proceeded with purchase of their own volition.**

#### Union County, NJ

**In this consumer fraud case, the plaintiffs, a father and son, asserted claims under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., and the Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-14 to -18, based on violations of advertising and disclosure regulations they committed in the course of selling a vehicle to the plaintiffs. The defendants denied any violation of statutes governing auto sales.**

During February 2017, one of the plaintiffs saw an online advertisement for a used 2009 Jeep Wrangler Unlimited with 113,950 miles offered for sale by the defendants for \$12,900 and confirmed with the defendants that it was available for that price. On February 27, 2017, the plaintiffs went to the defendants' dealership approximately 100 miles away to look at the Jeep. The plaintiffs saw a window sticker indicating the list price of the vehicle as \$18,900. The plaintiffs informed the defendants of the price in the online advertisement. The defendants' representative checked and confirmed the sale price and agreed to honor the advertised price of \$12,900.

The plaintiffs purchased the vehicle; signed two copies of the window sticker with the price marked as \$12,900, and drove home. When the plaintiffs returned home, they discovered that the defendants had not provided them with the Motor Vehicle Retail Order or the Retail Installment Sales Contract, the two documents that would contain the financial terms of the transaction. The plaintiffs contacted the assignee of the RISC and obtained a copy from them. The defendants charged the plaintiffs \$12,900 for "Price of Unit," \$3,000 for "Dealer Prep. Fee," \$2,250 for the "Carsafe" vehicle service contract, \$1,059 for "State Sales Tax," \$225 for Registration/Title Fee (Estimated), and \$599 for "Documentary Fee." The Retail Order does not set forth any itemization of pre-delivery services performed nor the price of each pre-delivery service. Not including the charges for the Carsafe VSC, sales tax, and registration/title fees, the defendants charged the plaintiffs \$16,499, comprising the \$12,900 unit price, \$3,000 dealer prep fee, and \$599 documentary fee.

The plaintiffs claimed that the defendants charged them more than the advertised price in an unlawful "bait and switch" practice and misrepresented the terms of an extended warranty to induce the plaintiffs to purchase the contract. The plaintiffs sought monetary damages, under the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, et seq., the Motor Vehicle Advertising Practices Regulations ("MVAP Regulations"), N.J.A.C. 13:45A-26A.1, et seq., the Automotive Sales Practices Regulations, N.J.A.C. 13:45A-26B.1 to -26B.4, and a civil penalty under the Truth-in-Consumer Contract, Warranty and Notice Act ("TCCWNA"), N.J.S.A. 56:12-14 to -18. The statutes contain fee-shifting provisions that mandate an award of reasonable attorney's fees and costs to the prevailing plaintiff. N.J.S.A.56:8-19; N.J.S.A. 56:12-17. The defendants argued that, in order to establish a claim under the CFA, the plaintiffs must establish not only a regulatory violation, but also an ascertainable loss caused by that regulatory violation. The defendants maintained that it was by no means clear that the alleged regulatory violations caused any harm to the plaintiffs. Further, the defendants argued, all of the components of the price of the Jeep were disclosed to the plaintiffs in documents that they signed. The defendant contended that the plaintiffs chose to proceed with the transaction despite being informed that the final selling price was greater than the base price in the advertisement.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found that the defendants had violated the Consumer Fraud Act and Truth in Consumer Contract, Warranty and Notice Act. The arbitrator awarded damages of \$18,300 together with attorneys' fees of \$34,000 and costs of \$1,448, for a total award of \$53,748.

The plaintiffs made a motion to confirm the arbitration and enter judgment, which the defendants opposed. The court granted the plaintiffs' motion and entered judgment in favor of the plaintiffs per the arbitration decision.

#### REFERENCE

Traska vs. BM Motoring, LLC, et al. Docket no. L-002130-17; Judge Robert J. Mega, 08-02-19.

**Attorney for plaintiff: David C. Ricci of Law Office of David C. Ricci, LLC in Short Hills, NJ. Attorneys for defendant: Thomas C. Jardim and Michael V. Gilberti of Jardim, Meisner & Susser, P.C. in Florham Park, NJ.**

## CONTRACT

### DEFENDANT'S VERDICT

**Breach of contract – Professional negligence and unjust enrichment – Plaintiff property owner claims refund owed of commission from defendant realtor for lease broken before completion of its term – Defendant denies breaching original agreement and claims it offered partial credit of commission via new agreement plaintiff declined to enter into, thus no refund was owed.**

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

On October 22, 2012, the plaintiff commercial property owner and defendant realtor entered into an exclusive brokerage agreement related to a property owned by the plaintiff and located on North Midland Avenue in Saddle Brook. On May 8, 2013, the parties extended the term of the agreement. The defendant was able to find a tenant for the property and the tenant entered into a commercial lease agreement for 7 years and 3 months, commencing on November 1, 2013. The defendant received commission on the lease in the amount of \$56,000. In late January, 2017, the tenant vacated the premises. Upon learning of the lease termination, the defendant and the broker identified in the agreement, agreed to attempt to lease the premises and give the plaintiff a \$32,000 credit against any commissions owed to the defendant for the new listing. The defendant submitted a proposed, revised exclusive brokerage agreement to the plaintiff. The plaintiff refused to sign the agreement. Shortly after the tenant had vacated the premises, the defendant listed the property, despite the plaintiff not having yet signed the proposed agreement. The listing did not state a price per square foot, as no price had yet been agreed upon. The plaintiff did not agree with the price per square foot proposed for the property by the defendant. The defendant proposed \$14.75 per square foot and the plaintiff wanted it listed at \$20 per square foot. On February 16, 2017, the plaintiff informed the defendant that it would not be signing the proposed agreement. The plaintiff chose to utilize another broker for the property. The new broker secured a lease for a new tenant at \$10.26 per square foot.

The plaintiff contended that the defendant breached its contract and engaged in professional negligence. The plaintiff claimed it was due \$32,000 from the

plaintiff as partial reimbursement on the commission paid to the defendant for an unsuccessful rental of the plaintiff's property. Further, the plaintiff argued that the defendant represented that it had the degree of knowledge and skill ordinarily possessed and used by others engaged in the business of real estate. The plaintiff also asserted that the defendant represented that it would use the knowledge, skill and care which real estate agents/brokers of ordinary ability and skill possess and exercise in providing services to clients such as the plaintiff and had a duty to have and to use that degree of knowledge and skill in providing services to the plaintiff. The plaintiff claimed that the defendant was negligent, careless or reckless and deviated from the applicable standard of care and otherwise breached the duties owed to the plaintiff. The plaintiff also claimed unjust enrichment for failure to return the portion of commission owed to the plaintiff.

The defendant argued that the signed original and extended agreements between the parties did not contain a provision for reimbursement of commissions. Thus, the defendant denied owing the plaintiff a refund of commission. The defendant argued that, per the signed agreements between the parties, in the event of the tenant's default, the defendant was required to use best efforts to obtain another tenant for no fee for as many months as remained on the balance of the lease term, but not to provide any refund of commission paid. The defendant maintained that it offered a credit to the plaintiff if they were to sign a new agreement, which did not happen and the plaintiff engaged a different broker. Therefore, there was no new agreement in place and the defendant did not breach the original agreement.

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

#### **REFERENCE**

S-4, Inc. vs. Sheldon Gross Realty, Inc. Docket no. L-002612-18; Judge Robert C. Wilson, 11-04-19.

**Attorney for plaintiff: Leonard E. Seaman of The Law Offices of Richard Malagiere in Moonachie, NJ.**

**Attorney for defendant: Joseph H. Tringali of Bendit Weinstock, P.A. in West Orange, NJ.**

## DISABILITY DISCRIMINATION

### DEFENDANT'S VERDICT

**Disability discrimination – Wrongful termination – Plaintiff claims he requested time off to seek medical treatment for on-the-job injury and defendant denied him time off and terminated him in violation of the New Jersey Law Against Discrimination.**

#### Burlington County, NJ

**In this discrimination case, the plaintiff employee asserted that the defendant transportation company violated the New Jersey Law Against Discrimination in wrongfully terminating his employment because he was injured on the job. The defendant denied terminating the plaintiff and maintained that the employee left the job after injuring his arm and never returned to work.**

The plaintiff presented to the defendant on November 14, 2016, seeking employment as a heavy duty driver. The plaintiff was hired and worked for the defendant for approximately two weeks. The plaintiff maintained that the defendant wrongfully terminated the plaintiff's employment due to disability discrimination, perception of disability discrimination, retaliation and workers' compensation retaliation. The plaintiff asserted that he suffered an injury to his shoulder at work and requested the rest of the day off to see a doctor and have his shoulder examined. The plaintiff claimed that he made the request directly to the head of upper management for the defendant. The plaintiff maintained that he was told that the defendant "didn't have time for that bullshit" and terminated him. The plaintiff argued that, when he asked for part of a day off, requesting a reasonable ac-

commodation of his disability, the defendant violated an act of protected conduct under the LAD by terminating him. The plaintiff also claimed that, by asking for time off to see a physician, he was asserting his rights pursuant to the New Jersey Workers' Compensation Act. The plaintiff asserted that, as a result of the unlawful conduct of the defendant, he was forced to suffer economic and non-economic harm.

The defendant denied terminating the plaintiff and argued that, on the night in question, the plaintiff had towed a truck from Jamaica, NY to Burlington, NJ and then returned to the tow yard at 3:20 p.m. At 4:50 p.m., the plaintiff was assigned to take a truck to do a tow from Burlington, NJ. The defendant maintained that the plaintiff was angry that he had been assigned a call at 4:50 p.m. The plaintiff refused to do the tow that night and walked out of the office. The following morning, the plaintiff indicated that he had injured his arm and was going home to treat it. The plaintiff never returned to work. Further, the defendant asserted that the plaintiff had never disclosed that he had another business or that he operated other trucks.

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

#### REFERENCE

Prkic vs. Johnson Specialized Transport. Docket no. L-002333-17; Judge Janet Z. Smith, 01-23-20.

**Attorney for plaintiff: Kevin Costello of Costello & Mains, LLC in Mount Laurel, NJ. Attorney for defendant: Mark Molz of Law Office of Mark J. Molz in Hainesport, NJ.**

## DOG BITE

### \$4,200 RECOVERY

**Dog bite – Defendant's dog attacks plaintiff food delivery person – Bite wounds.**

#### Camden County, NJ

**In this dog bite case, the plaintiff asserted that the defendant's dog bit her and caused significant injury. The plaintiff brought suit against the defendant dog owner, the defendant apartment complex owner, and the defendant apartment management company. The defendant apartment complex and management company asserted that they were not responsible for the behavior of the dog and that the defendant owner was strictly and solely liable for the dog. The defendant dog owner denied negligence and argued that the plaintiff was barred from recovery by his own**

**negligence. The defendant dog owner also challenged the extent and permanency of the plaintiff's injuries.**

On February 13, 2016, the plaintiff was lawfully on the premises of the defendant apartment complex to deliver food to the defendant tenant. After delivering the food, the defendant's dog ran from the apartment and attacked the plaintiff, biting him on his left leg and causing injuries. The plaintiff went to the hospital where he was treated for injuries sustained by the dog attack. The plaintiff claimed he was unable to work for approximately two weeks following the attack. The plaintiff was the manager for a food business which suffered economically because of his missed time at work following the attack. The plaintiff argued that he continued to suffer from pain as a result of the injuries sustained.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant dog owner with damages of \$4,200. Following arbitration and prior to trial, the parties settled for \$4,200.

#### REFERENCE

Alam vs. Abrams, et al. Docket no. L-000584-18;  
Judge Donald J. Stein, 01-27-20.

**Attorney for plaintiff: Andrew A. Keith of Keith & Keith in Collingswood, NJ. Attorney for defendant: Francis X. Ryan of Green, Lundgren & Ryan, P.C. in Cherry Hill, NJ.**

## INSURANCE OBLIGATION

### UNDISCLOSED RECOVERY

**Insurance obligation – Motor vehicle negligence – Intersection collision – Tortfeasor driver runs stop sign and collides with plaintiff’s vehicle – Soft tissue neck and back injuries – Conservative treatment only – Arbitrator assigns 100% liability to defendant with damages of \$14,000.**

#### Essex County, NJ

In this insurance obligation case, the plaintiff asserted that the defendant driver failed to obey traffic controls and struck his vehicle with such force that it caused significant injury. The defendant driver’s insurance company was insolvent and the plaintiff brought an uninsured motorist claim against the defendant insurer. The defendant insurer asserted that the plaintiff’s damages were caused by the concurrent negligence of the plaintiff and codefendant drivers. The defendant also argued that the plaintiff’s injuries were not significant or permanent and did not warrant damages.

On July 31, 2016 the plaintiff was traveling on Stuyvesant Avenue in Irvington. The defendant was traveling on Prospect Avenue in Irvington. The plaintiff

maintained that the defendant driver failed to stop at a stop sign controlling the intersection of the two roads and entered the intersection without the right-of-way, causing his vehicle to collide with the plaintiff’s vehicle. As a result of the collision, the plaintiff sustained traumatic soft tissue injuries to the neck and back. The plaintiff treated conservatively.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the tortfeasor and defendant insurer and set damages at \$14,000. Following arbitration and prior to trial, the plaintiff settled with the defendant insurer only for an undisclosed sum.

#### REFERENCE

Alexandre vs. Martinez. Docket no. L-000687-18;  
Judge Robert H. Gardner, 09-25-19.

**Attorney for plaintiff: Joel I. Bergman, Esq. in West Orange, NJ. Attorney for defendant: Robert J. Kovacs of Gregory P. Helfrich & Associates in Summit, NJ.**

### DEFENDANT’S VERDICT

**Insurance obligation – Motor vehicle negligence – Intersection collision – Underinsured motorist claim – Various soft tissue injuries; right wrist tenosynovitis and ulnar wrist pain – Arthroscopic surgery – Defendant denies permanency.**

#### Cumberland County, NJ

In this insurance obligation/motor vehicle negligence case, the plaintiff asserted that the tortfeasor driver negligently failed to stop at a stop sign and collided with her vehicle, causing significant, permanent injury. The plaintiff filed this suit to collect bodily injury damages from the defendant insurer. The defendant stipulated liability, but contested the plaintiff’s damages.

On November 15, 2011 the plaintiff was operating a vehicle on Foster Avenue in Vineland. The plaintiff’s vehicle collided with a motor vehicle being driven by the defendant who had run a stop sign. The plaintiff alleged that the force of the impact resulted in per-

manent injuries. At the time of the accident, the plaintiff was insured with a policy of automobile insurance issued by the defendant providing underinsured motorist coverage in the amount of \$100,000. As a result of the collision, the plaintiff sustained various soft tissue injuries; right wrist tenosynovitis and ulnar wrist pain. The plaintiff underwent arthroscopic surgery on her wrist. The defendant argued that the plaintiff’s injuries were not permanent in nature and, thus, did not warrant damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$80,000, subject to reduction for any damages received from the tortfeasor. The arbitration was not confirmed and the matter proceeded to trial.

The jury unanimously found that the plaintiff did not prove by a preponderance of the medical evidence that she sustained a permanent injury in the subject accident. The jury returned a verdict in favor of the defendant.

#### REFERENCE

Solano-Torres vs. New Jersey Manufacturers Insurance Company. Docket no. L- 000782-17; Judge James R. Swift, 01-21-20.

**Attorney for plaintiff: Robert Pancari of Capizola Pancari Lapham & Fralinger in Vineland, NJ.**  
**Attorney for defendant: Anthony Young of Parker Young & Antinoff, LLC in Marlton, NJ.**

## MOTOR VEHICLE NEGLIGENCE

### Auto/Bicycle Collision

#### DEFENDANT'S VERDICT

**Motor vehicle negligence – Auto/bicycle collision – Bilateral shoulder injuries requiring acromioplasty and distal clavicle resection on right – 90% undersurface tear of anterior supraspinatus of left shoulder requiring surgical repair.**

#### Atlantic County, NJ

This case of motor vehicle negligence arose from an incident which occurred On August 22, 2012 when the plaintiff was riding her bicycle in a southerly direction on the Atlantic Brigantine Boulevard in Brigantine. The defendant was sitting in the driver's seat of a parked vehicle that he had just parked. The plaintiff asserted that, without warning, the defendant opened the driver's door into the path of the plaintiff. The plaintiff was caused to disengage from her bicycle striking her right shoulder on the door and tumbling over the door, landing on her left side and sustaining serious injuries. The plaintiff claimed that the incident was caused by the defendant's failure to observe the bicycle which had the right-of-way. The defendant denied that the plaintiff's injuries were caused by the subject collision.

As a result of the collision, the plaintiff sustained bilateral shoulder injuries requiring acromioplasty and a distal clavicle resection on the right shoulder. The plaintiff also sustained a 90% undersurface tear of the anterior supraspinatus of the left shoulder requiring a two anchor double-row surgical repair. The plaintiff's surgeon opined that both injuries were causally related to the subject incident.

The defendant claimed that the plaintiff had a non-traumatic diabetes and thyroidism that caused rotator cuff disease. The defendant asserted that the plaintiff's surgeries were necessitated by her non-traumatic disease and not by the subject accident.

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

#### REFERENCE

Stone vs. New Jersey Manufacturers Insurance Company. Docket no. L-000560-17; Judge Mary C. Siracusa, 07-31-19.

**Attorney for plaintiff: Paul R. D'Amato of D'Amato Law Firm in Egg Harbor, NJ. Attorney for defendant: Malcolm McPherson of Hoagland, Longo, Moran, Dunst & Doukas, LLP in Hammonton, NJ.**

### Auto/Motorcycle Collision

#### \$350,000 RECOVERY

**Motor vehicle negligence – Auto/motorcycle collision – Failure to stop at stop sign – Scapula fracture – Chest laceration – Rib fractures – Kidney laceration – Conservative care – Plaintiff missed one week from work.**

#### Union County, NJ

In this action for motor vehicle negligence, the plaintiff motorcyclist in his mid 30s contended that the defendant driver of a Ford Wagon commercial vehicle negligently failed to stop at a stop sign, causing the collision in which the plaintiff sustained serious injuries. The defendant maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff asserted that he suffered severe initial injuries, including a scapula fracture, chest laceration that required a tube that was inserted and removed during the approximate one-week hospitalization, multiple rib fractures and a kidney laceration. The plaintiff maintained that the initial pain was particularly severe.

The plaintiff also claimed that although he made a relatively good recovery, he will be subject to permanent pain. The defendant claimed that the plaintiff made a good recovery, required minimal physical therapy and returned to work in one week.

The defendant had \$1,000,000 in coverage. The case settled prior to trial for \$350,000.

## REFERENCE

Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ.

Walters vs. Hamad, et al. Docket no. UNN-L-2705-20, 02-22-21.

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

## Auto/Pedestrian Collision

### \$16,172 RECOVERY

**Motor vehicle negligence – Truck/pedestrian collision – Minor plaintiff struck by defendants' vehicle while crossing street – Traumatic injury to right leg, ribs and spine treated conservatively – Approximately \$4,000 in outstanding medical expenses.**

#### Essex County, NJ

**In this motor vehicle negligence case, the minor plaintiff pedestrian asserted that the defendant driver struck him with a truck owned by the defendant company. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendants initially denied liability, but ultimately settled the matter.**

On March 26, 2015, the minor plaintiff was a pedestrian crossing Piaget Avenue in Clifton. The defendant driver was operating a vehicle owned by the defendant realty company. The defendant driver carelessly, recklessly and negligently struck the plaintiff in the roadway. As a result of the collision, the plaintiff

sustained traumatic injury to the right leg, ribs and spine. The plaintiff treated conservatively. The plaintiff claimed \$4,000 in out-of-pocket medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of \$12,500 plus \$4,000 for out-of-pocket medical expenses for a total of \$16,500. Following arbitration and prior to trial, the parties settled for \$16,172 representing \$12,500 for plaintiff's bodily injury claims and \$3,672 for outstanding medical expenses. \$6,612 for attorney fees was deducted from the proceeds, for a net recovery to the plaintiff in the amount of \$9,559.

## REFERENCE

Aguilar vs. Neme, et al. Docket no. L-001911-17; Judge Thomas R. Vena, 02-26-20.

Attorney for plaintiff: Robert S. Maider of Birkhold & Maider, LLC in Nutley, NJ. Attorney for defendant realty company/owner of vehicle: Angela E. Cameron of Law Offices of Linda S. Baumann in East Windsor, NJ.

### DEFENDANT'S VERDICT

**Motor vehicle negligence – Auto/pedestrian collision – Minor plaintiff trick-or-treating with family struck by defendant driver while attempting to cross road – Defendant contends plaintiff crossed without seeing defendant's vehicle and ran into side of SUV – Concussion; fracture of nasal bone; lacerations; post-concussion syndrome – Non-binding arbitration finds each party 50% responsible.**

#### Cape May County, NJ

**In this motor vehicle negligence case, the minor plaintiff pedestrian, age 7, asserted that the defendant driver struck him with her vehicle when he was crossing the roadway causing her to suffer severe injuries. The defendant denied liability, arguing that the minor plaintiff darted out into the roadway in such a fashion that the defendant could not see him or have time to stop the vehicle.**

On October 31, 2017, the minor plaintiff was trick-or-treating with his family. The plaintiff had just left a house where he received candy and was standing at the curb on Cole Avenue in Ocean View waiting to cross and join his parents on the other side of the street. The plaintiff's mother stated that she told him to wait, then checked in both directions that there were no vehicles approaching from either direction. Upon seeing no vehicles approaching, the plaintiff's mother indicated for the plaintiff to cross. The mother

then said she saw a vehicle approaching at a high speed and yelled to the plaintiff to stop, but the vehicle and the plaintiff collided and the plaintiff fell backwards to the ground in the road.

As a result of the collision, the minor plaintiff was taken by ambulance to the hospital. The plaintiff sustained concussion; a fracture of the nasal bone; lacerations; post-concussion syndrome. At the time of filing, the plaintiff continued to have a deviated septum with nasal obstruction and external nasal deformity.

The defendant maintained that the plaintiff caused the collision wherein he was injured. The police investigation of the accident indicated that the defendant was driving at or below the posted speed limit and that the minor plaintiff ran into the side of the defendant's vehicle. The report stated that the investigator's conclusion was that the plaintiff pedestrian failed to yield the right-of-way to traffic (in violation of N.J.S. 39:4-32d and 39:4-32f) and ran into the roadway when the defendant's vehicle was so close that it was impossible for her to stop.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of \$75,000 reduced to \$37,500 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial with the parties

stipulating to damages in the amount of \$90,000 to be reduced by any percentage of comparative negligence found by the jury.

The jury found that the defendant was not negligent with respect to the subject accident and returned a verdict of no cause for action in favor of the defendant.

## REFERENCE

Biggar vs. Johnson. Docket no. L-000023-18; Judge Stanley Bergman, 01-31-20.

**Attorney for plaintiff: Norman W. Briggs of Briggs Law Office, LLC in Marmora, NJ. Attorney for defendant: James R. Birchmeier of Birchmeier & Powell, LLC in Tuckahoe, NJ.**

## Head on Collision

### ■ \$100,000 POLICY LIMIT RECOVERY

**Motor vehicle negligence – Head-on collision – Nasal fracture – Bilateral tinnitus – Plaintiff substantially recovers from glass entering eye – Soft tissue cervical and lumbar injuries.**

#### Warren County, NJ

**In this action for motor vehicle negligence, the plaintiff driver in her mid 50s maintained that the defendant traveled on the wrong side of the roadway, causing the head-on accident which resulted in the plaintiff sustaining numerous injuries. The plaintiff would have presented a number of independent eyewitnesses to support her liability contentions.**

The plaintiff maintained that she suffered a nasal fracture, concussion and tinnitus which will cause permanent symptoms. The plaintiff further contended

that a piece of glass invaded her eye. This injury substantially resolved. The plaintiff also asserted that she suffered soft tissue lumbar and cervical injuries which will cause permanent pain and restriction despite chiropractic care.

The plaintiff made no income claims. The plaintiff was governed by the verbal threshold.

The defendant had a \$100,000 policy. The case settled for the policy before retention of experts for the policy limit.

## REFERENCE

Vernoski vs. Erickson-Suby, et al. Docket no. WRN-L-146-20, 02-02-21.

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

## Intersection Collision

### ■ \$80,000 RECOVERY

**Motor vehicle negligence – Intersection collision – Failure to obey stop sign – Lumbar and cervical herniations – Injections under anesthesia – TMJ dysfunction treated with orthotics – No income claims.**

#### Bergen County, NJ

**In this action for motor vehicle negligence, the 30-year-old plaintiff driver contended that the defendant driver failed to obey a stop sign, striking the plaintiff's vehicle on the front passenger side causing it to leave the roadway and strike a tree. The plaintiff treated for neck and back complaints with a chiropractor for approximately 11 months. A lumbar and a cervical herniation with radiculopathy were confirmed by MRI and EMG. The defendant maintained that the plaintiff failed to make adequate observations and was comparatively negligent.**

The plaintiff came under the care of a pain management specialist and had a lumbar and a cervical injection under anesthesia. The plaintiff also claimed

he suffered TMJ dysfunction for which the treating dentist prescribed an orthotic. The plaintiff maintained that the injuries are permanent in nature. The defendant contended that any injuries resolved.

All treatment was completed within one year of the accident. The plaintiff was unemployed at the time of the accident and made no income claims.

The defendant had a \$250,000 policy. The case settled for \$80,000 two months after the complaint was answered and before discovery.

## REFERENCE

**Plaintiff's chiropractor expert: Kenneth M. Ermann, D.C. from Teaneck, NJ. Plaintiff's dentist expert: Robert Federman, D.D.S. from Ft. Lee, NJ. Plaintiff's pain management expert: Steven Waldman, M.D. from Clifton, NJ.**

Campbell vs. Skoufas. Docket no. BER-L-4163-20; Judge Lisa Perez-Friscia, 03-26-21.

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

## Rear End Collision

### \$242,000 RECOVERY

**Motor vehicle negligence – Rear end collision – Aggravation of cervical bulge and adjacent cervical herniation – Comparative analysis – Surgery – UIM case.**

#### Morris County, NJ

**In this action for motor vehicle negligence, the 37-year-old driver contended that the defendant negligently struck her in the rear. The plaintiff asserted that she suffered an aggravation of a cervical bulge and an adjacent cervical herniation originally suffered in 2 accidents that occurred in the 2-year period proceeding the subject accident. The defendant's orthopedist maintained that a comparison of imaging studies taken before and after the collision showed no changes.**

The plaintiff claimed that despite chiropractic treatment, an injection and a course of pain management, she required surgery. The plaintiff's neurosurgeon maintained that the plaintiff will nonetheless suffer permanent symptoms. The plaintiff's radiologist concluded that 70% of the plaintiff's

symptoms are attributable to the subject collision and that the subject accident was 100% responsible for the need for surgery.

The defendant had a \$100,000 policy. The plaintiff obtained permission to settle for less than the policy and still make a claim under a \$150,000 UIM policy. The case initially settled with the defendant's carrier for \$92,000 and the plaintiff subsequently settled with UIM carrier for \$150,000.

#### REFERENCE

**Plaintiff's chiropractor expert: Jay Brecker, D.C. from Succasunna, NJ. Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's pain management expert: Roman N. Kosiborod, D.O. from Fair Lawn, NJ. Plaintiff's radiology expert: Lisa Marie Shepherd, M.D. from Flemington, NJ. Defendant's orthopedic surgeon expert: Louis Bouillon, M.D. from Dover, NJ.**

Hayat vs. Blakely, et al. Docket no. MRS-L-888-19, 01-16-21.

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

### DEFENDANT'S VERDICT

**Motor vehicle negligence – Rear end collision – Multiple bulging discs in cervical and lumbar spine and cervical radiculitis – 2 months of physical therapy – Defendant denies plaintiff suffered permanent injury – Arbitration finds defendant liable with \$12,000 damages; plaintiff offers to take \$12,000 in settlement; defendant declines settlement offer.**

#### Camden County, NJ

**In this motor vehicle negligence case, the plaintiff, a 29-year-old teacher, asserted that, on April 4, 2015, the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

As a result of the collision, the plaintiff sustained multiple bulging discs in cervical and lumbar spine and cervical radiculitis. At the E.R., the plaintiff also complained of left shoulder pain from the seatbelt locking at the moment of impact. The plaintiff treated with 2 months of physical therapy.

The defendant denied that the plaintiff had suffered any permanent injury caused by the subject collision. The defendant pointed to the fact that the plaintiff missed no time from work and also had a medical expert testify that the plaintiff's injury was not permanent.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$12,000. Following arbitration, the plaintiff made an offer to take judgment in the amount of \$12,000. The offer was not accepted and the matter proceeded to trial.

The jury unanimously found that the plaintiff had not sustained a permanent injury and returned a verdict in favor of the defendant.

#### REFERENCE

Baylor vs. Harris. Docket no. L- 001356-18; Judge Morris G. Smith, 11-13-19.

**Attorney for plaintiff: Kimberly Hoehing of Kotlar, Hernandez & Cohen, LLC in Mount Laurel, NJ.**

**Attorney for defendant: Robert M. Kaplan of Margolis Edelstein in Mount Laurel, NJ.**

## PREMISES LIABILITY

### Fall Down

#### \$270,000 RECOVERY

**Premises liability – Fall down – Plaintiff slips and falls on ice under snow while caring for defendants' children after school closed early for inclement weather – Knee fracture – Episode of blood clot – No income claims.**

#### Morris County, NJ

In this action for premises liability, the plaintiff in her mid 40s, who agreed to care for the defendants' children when school was closed early because of inclement weather, contended that the defendants negligently failed to properly maintain their driveway, resulting in her slipping and falling on ice situated below freshly falling snow sustaining serious, permanent injury. The defendant denied notice of any condition. The defendant also maintained that the plaintiff was comparatively negligent.

The plaintiff would have pointed out that after the accident, one of the defendants admitted as to a recurring condition where runoff would accumulate. The plaintiff asserted that if this condition had been repaired, the accident wouldn't have occurred.

The plaintiff suffered a fractured patella and underwent initial surgery in which a K-wire was inserted. The plaintiff contended that the injury was extremely pain-

ful and that she required an arthroscopic revision. The plaintiff's orthopedic surgeon concluded that the plaintiff will suffer permanent pain, some difficulties walking, is at risk of developing traumatic arthritis and may well require a knee replacement in the future. The plaintiff also developed a blood clot while in the hospital. This condition was treated medically and further testing reflected that the clot did not recur.

The plaintiff was not working at the time and made no income claims.

The defendants had \$500,000 in coverage. The case settled prior to trial for \$270,000.

#### REFERENCE

**Plaintiff's interventional cardiologist expert: John Baker, M.D. from Irvine, CA. Plaintiff's orthopedic surgeon expert: Stephen Kocaj, M.D. from Florham Park, NJ. Defendant's orthopedic surgeon expert: J. Mervyn Lloyd, M.D. from Westwood, NJ.**

Rosenthal vs. Thatcher, et al. Docket no. MRS-L-1776-19, 02-25-21.

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

#### \$20,000 RECOVERY

**Premises liability – Fall down – Plaintiff claims she tripped on uneven, crooked walkway on defendant hospital's premises – Sprain/strain of cervical spine – Right shoulder full thickness rotator cuff tear – Right wrist tendon tear.**

#### Burlington County, NJ

In this premises liability case, the plaintiff asserted that the defendants allowed a hazardous condition to exist on the premises of their hospital such that it caused the plaintiff to fall and suffer significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

On August 26, 2015, the plaintiff was lawfully on the defendants' premises. The plaintiff asserted that the defendants negligently maintained, inspected and repaired the property such that the plaintiff tripped and fell on an uneven, crooked section of a walkway on the premises of the defendant hospital's emergency room. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the fall, the plaintiff sustained sprain/strain of the cervical spine; right shoulder full thickness rotator cuff tear with supraspinatus; and right wrist tendon tear. All of the plaintiff's injuries were seen on MRIs. The defendant argued that the plaintiff's injuries were due to degeneration and with no permanency.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of \$35,000 reduced to \$28,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of \$20,000 and the parties settled for \$20,000.

#### REFERENCE

Castro vs. Princeton Healthcare System, et al. Docket no. L-001768-17; Judge Aimee R. Belgard, 01-24-20.

**Attorney for plaintiff: Douglas S. Grossbart of Pelliattieri, Rabstein and Altman in Princeton, NJ. Attorney for defendant: Guy M. Magnusson of Farkas & Donohue, LLC in Florham Park, NJ.**

## DEFENDANT'S VERDICT

**Premises liability – Fall down – Plaintiff falls on stairs that did not have handrail – Knee injury requiring knee replacement – Low back and coccyx injury; pelvis fracture; rib contusions – Achilles tendon tear requiring surgical repair.**

### Morris County, NJ

In this premises liability case, the plaintiff, a nurse, asserted that the defendant owner of the property failed to maintain their premises in a safe fashion. The plaintiff contended that, on September 20, 2015, in the course of her employment at a rehabilitation center (the lessee of the property), she fell on a flight of stairs that were faulty and did not have a handrail. The plaintiff asserted that the defendant school (owner/lessor of the property) made modifications to the stairway, widening it to twice its prior span, but failed to install a handrail in the middle of the wide staircase and allowed the stairs to exist in a defective state that caused the plaintiff's fall and resulting injuries. The defendant denied liability and contested the plaintiff's damages.

As a result of the fall, the plaintiff sustained knee injury requiring knee replacement; low back and coccyx injury; pelvis fracture; rib contusions; and Achilles tendon tear with Haglund's Syndrome requiring surgical repair and partial calcaneotomy with right flexor

hallucis longus deep tendon transfer. The plaintiff claimed that several subsequent injuries were related to the original injury because her ankle would "give out" without warning, in one case causing her to fall and sustain a quadriceps tear requiring surgery. The plaintiff had a worker's compensation lien of \$200,000.

The defendant argued that the subject incident was neither foreseeable nor preventable by the exercise of reasonable care. The defendant also put forth that the plaintiff's claimed damages were not proximately caused by the defendant's actions or inactions.

The parties submitted to arbitration prior to trial. The arbitrator assigned 65% liability to the defendant and 35% liability to the plaintiff. The arbitrator set damages at \$925,000 net, reduced to \$601,250 for the plaintiff's liability (including worker's compensation lien). The arbitration was not confirmed and the matter went to trial. The jury found no cause of action and returned a verdict in favor of the defendant.

### REFERENCE

Sakos vs. St. John Baptist School. Docket no. L-0024791-16; Judge Robert J. Brennan, 07-17-20.

**Attorney for defendant: Scott H. Goldstein of Bonner Kiernan Trebach & Crociata, LLP in Parsippany, NJ.**

## RETALIATORY TERMINATION

### \$95,000 RECOVERY

**Retaliatory termination – Discrimination – Plaintiff terminated for complaining about working on mold remediation and for taking leave.**

### Union County, NJ

In employment action, the plaintiff claimed that the defendant housing authority violated the Conscientious Employee Protection Act, as well as violating the N.J.S.A. 34: 15-39.1 (Workers' Compensation Discrimination) when they terminated the plaintiff's employment. The defendant denied the plaintiff's claims and asserted that the plaintiff was terminated for harassing a co-worker with homophobic and sexist language. The plaintiff denied that he was terminated for using homophobic slurs to a co-worker and argued that he only engaged in typical workplace kidding or cajoling.

The plaintiff was employed as a maintenance laborer from January 2001 to September 2016. On September 28, 2016, the plaintiff was terminated. The plaintiff alleged that there was mold in a unit of the defendant's property and that the defendant forced the plaintiff to address the mold issue, in lieu of a mold remediation specialist. The plaintiff claimed that he made complaints regarding the mold issue to officials at the defendant authority and that he was subsequently terminated in retaliation. Further, the

plaintiff asserted that the defendant was punishing him for taking four months Workers' Compensation Leave in 2014 following a slip and fall.

The defendant maintained that the plaintiff made the claim about mold only at the time of filing of the complaint and that it had never been informed of any mold issues prior to receiving the plaintiff's summons and complaint in this action and pointed to the plaintiff's work orders for the time period around the time of his termination, none of which reference mold. As to the plaintiff's claim regarding Workers' Compensation Leave, the defendant noted that the leave was taken in 2014, over two years prior to the plaintiff's termination and that no less than five other workers took time off from work related to injuries and none of them suffered any sort of discrimination, nor did the plaintiff.

The parties settled the matter prior to trial in the amount of \$95,000 broken down as follows: \$30,000 in attorney fees; and \$65,000 in net damages to the plaintiff.

### REFERENCE

Fields vs. Linden Housing Authority. Docket no. L-001261-17; Judge Robert J. Mega, 11-04-19.

**Attorney for plaintiff: Christopher C. Roberts of Christopher C. Roberts, LLC in East Orange, NJ.**  
**Attorney for defendant: Timothy R. O'Connor of Keenan & Doris, LLC in Rutherford, 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

***\$29,500,000 VERDICT – MEDICAL MALPRACTICE – EMT NEGLIGENCE – FAILURE OF MEDICS TO USE IV EPINEPHRINE WHEN PLAINTIFF FALLS INTO ANAPHYLACTIC SHOCK – DEFENDANT PARTICIPATES IN PROMULGATION OF RULES THAT REQUIRE IV EPINEPHRINE BUT DOES NOT INCLUDE IT – PLAINTIFF BECOMES QUADRIPLAGIC WHO CAN'T TALK – NEED FOR FEEDING TUBE.***

### Clark County, NV

This medical malpractice case involved a 27-year-old plaintiff, who was attending a trade show at the non-party hotel in Las Vegas, who had a severe allergy to peanuts. The plaintiff took a bite from a pretzel, tasted peanuts, and after using her epinephrine pen, called her friend and asked her to meet her in the room the defendant's medics were using. The plaintiff maintained that although she advised the defendants that she thought she consumed peanut butter and that she was allergic, the defendants did not seem to believe her or her friend. The plaintiff lost consciousness and stopped breathing and the medics administered epinephrine. The evidence disclosed that since the plaintiff was unconscious, the epinephrine could not be drawn out of the muscles and into the blood stream and that IV epinephrine was needed. The plaintiff suffered a severe anoxic brain injury and has been left a quadriplegic who needs to be fed through a tube. The defendant maintained that IV epinephrine was dangerous, can cause an infarct, and should not be used by medics.

The plaintiff maintained that although the substance would only cost the defendant \$2.42 to keep the proper medicine in the bag, the defendant had

made the decision not to include it because it was seldom used and had to be thrown out when expired. The plaintiff further asserted that Advanced Life Support should have been called immediately and before plaintiff lost consciousness, but the medics waited to call Advanced Life Support only after she stopped breathing.

The jury found for the plaintiff and awarded \$29,500,000, including \$12,500,000 for a life care plan over 15 years, \$5,000,000 for past pain and suffering, \$10,000,000 for future pain and suffering and \$2,000,000 for loss of earning capacity.

### REFERENCE

Plaintiff's economist expert: Robert W. Johnson, Ph.D. from Berkeley, CA. Plaintiff's emergency medicine expert: Marc Eckstein, M.D. from Los Angeles, CA. Plaintiff's life care plan expert: Kathy Pouch, MSN RN from Denver, CO. Plaintiff's neurologist expert: David Preston, M.D. from Cleveland, OH. Plaintiff's physiatrist expert: Owen Z. Perlman, M.D. from Ypsilanti, MI.

Giacalone vs. MedicWest. Case no. A-15-714139-C; Judge Jacqueline Bluth, 04-21.

Attorney for plaintiff: Christian Morris of Nettles Morris Law Firm in Las Vegas, NV.

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

### Passaic County, NJ

In this action for medical malpractice, the plaintiff contended that the defendant attending ob/gyn and the staff at the defendant hospital negligently failed to perform a timely C-section and continued Pitocin despite signs of fetal distress including an abnormal heart rate. The plaintiff also contended that the defendant failed to follow hospital protocol by continuing attempts to deliver the child with a suction device when the suction

device could not properly adhere to the baby's scalp, further traumatizing the infant. The plaintiff contended that as a result, the child was born after 12 hours of labor with cerebral palsy, difficulties with breathing, microcephaly, blindness, an inability to sit up, the need for a feeding tube and required constant respiratory suction. The child died at age 4 and the cause of death was listed as hypoxic ischemic

**encephalopathy. The defendant physician and several nurse's testified in depositions that the mother was offered a C-Section but declined.**

The plaintiff maintained that when signs of fetal distress continued for several hours, the defendant should have advised for a C-Section. The plaintiff asserted that if the defendant had done so, the child would probably have been born healthy. The evidence would have reflected that the child required constant care that until dying at age 4.

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

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

**Middlesex County, NJ**

**In this medical malpractice case, the plaintiff asserted that, as a result of the defendants' negligence, the defendant critical care physician recommended to the decedent that she be intubated to better manage her respiratory distress. The plaintiff argued that the intubation was improperly performed and caused the patient's death. The defendants denied liability and argued that all procedures and treatment were within the standard of care.**

The plaintiff brought suit against the defendant physician and family practice group, the defendant thoracic medical group and its physicians, the defendant anesthesiology nurse and the defendant

**REFERENCE**

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

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

hospital. Ultimately, all defendants were dismissed except the defendant hospital and its direct employees.

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

**REFERENCE**

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

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

**\$1,950,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – RADIOLOGY NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE LUNG CANCER – DIMINISHED PROSPECT OF SURVIVAL FOR 35-YEAR-OLD MOTHER OF THREE.**

**Withheld County, MA**

**In this medical malpractice matter, the plaintiff patient alleged that the defendant radiologists were negligent in failing to timely diagnose the plaintiff's lung cancer. As a result of the delay in diagnosis, the plaintiff's chances of survival were diminished. The defendants denied any negligence and disputed causation and damages. The defendants argued that an earlier diagnosis would not have changed the plaintiff's chances of survival.**

The 35-year-old female mother of three was treated for pneumonia during a hospitalization for same. Several X-rays of her chest were taken during that time and the defendant radiologists failed to report that

each of the three chest X-rays taken disclosed a suspicious lesion in her left lobe. A CT-scan taken almost six months later disclosed a 3.5 cm lesion that had metastasized into the right lung. The plaintiff was diagnosed with Stage IV inoperable, non-curable non-small cell lung cancer and had a 10 percent survival rate.

A mediation resolved the plaintiff's claim for the sum of \$1,950,000 in a confidential settlement.

**REFERENCE**

Jane Doe vs. Radiologists Roe. 05-26-20.

**Attorneys for plaintiff: Kevin Donius and Ralph Sbrogna of Sbrogna Brunelle & Donius, LLP in Worcester, MA.**

**\$1,000,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – ANESTHESIOLOGY NEGLIGENCE – FAILURE TO PROPERLY MONITOR PATIENT DURING COLONOSCOPY – BRAIN INJURY DUE TO OXYGEN DEPRIVATION RESULTS IN WRONGFUL DEATH OF 54-YEAR-OLD MALE.**

**Withheld County, MA**

In this medical malpractice matter, the plaintiff alleged that the defendant anesthesiologist was negligent in failing to continuously and properly monitor the patient during the colonoscopy procedure. The patient suffered cardiac arrest, which resulted in oxygen deprivation and major brain injury that ultimately resulted in his death. The defendant anesthesiologist denied any wrongdoing and disputed that the decedent's death was causally related.

The 54-year-old male patient presented for a routine colonoscopy. He was to receive propofol for sedation and was to be under the monitoring of the defendant anesthesiologist during the procedure which lasted 21 minutes. After the administration of the sedative, the patient had 100% oxygen saturation and normal

heart rate and blood pressure. When the colonoscopy was concluded, the patient was unresponsive and was found without a heart rate, blue in coloration. It was determined that he had suffered cardiac arrest during the procedure which resulted in massive brain injury due to oxygen deprivation. He was placed on life support, but removed shortly thereafter and passed away.

The parties ultimately agreed to resolve the plaintiff's claim, prior to the institution of suit, for the defendant's policy limits of \$1,000,000.

**REFERENCE**

Estate of Doe vs. Roe Anesthesiologist. 07-30-20.

**Attorney for plaintiff: Robert M. Higgins of Lubin & Meyer in Boston, MA.**

## **MOTOR VEHICLE NEGLIGENCE**

**\$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – MULTI-VEHICLE REAR END COLLISION – PLAINTIFF PASSENGER IN ACCESS-A-VAN STRUCK IN REAR AFTER DEFENDANT DRIVER OF TRUCK STRIKES VEHICLE DIRECTLY BEHIND HOST VAN AND PROPELS IT INTO VAN – CERVICAL HERNIATION – FUSION – BILATERAL TEARS OF MEDIAL MENISCUS – SUMMARY JUDGMENT ON LIABILITY GRANTED IN JUNE, 2018 – \$6,000,000 POLICY.**

**Queens County, NY**

This motor vehicle negligence case involved a plaintiff in her early 60s who was a passenger in an access-a-van because of pre-existing bilateral knee arthritis. The plaintiff contended that the defendant driver of a commercial water-proofing truck struck the vehicle behind the van in which the plaintiff was a passenger, propelling it into the rear of the plaintiff's van. The plaintiff contended that she sustained a cervical herniation that required fusion surgery and bilateral medial meniscal tears that necessitated arthroscopic surgery. The plaintiff's motion for summary judgment against the driver of the water-proofing truck was granted in June, 2018. The defendant maintained that the knee conditions were pre-existing, pointing out that she was allowed on the access-a-van because of severe arthritis to both knees.

The plaintiff was on her way home from her clerical job when the accident occurred. The plaintiff asserted that she was able to remain active before the accident despite her arthritis and the plaintiff would have argued that the defendant's position should be rejected. The plaintiff also contended that she had no prior significant cervical issues and that it was clear that the cervical herniation leading to the fusion surgery was caused by the impact.

The defendant had \$6,000,000 in coverage. The case settled prior to trial for \$1,500,000.

**REFERENCE**

Plaintiff passenger in access-a-ride vehicle vs. Defendant driver of water truck.

**Attorney for plaintiff: Matthew Sullivan of Gregory Spektor & Associates, P.C. in Rosedale, NY.**

**\$765,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT STRIKES PLAINTIFF’S DECEDENT CAUSING FATAL INJURIES AS DECEDENT WALKED HOME FROM BUS STOP – NEGLIGENTLY OPERATING VEHICLE WHILE UNLICENSED AND UNDER INFLUENCE OF ALCOHOL – WRONGFUL DEATH OF 38-YEAR-OLD MALE.**

**Bucks County, PA**

The parents of the decedent brought this motor vehicle negligence suit against the defendant, alleging their son was struck and killed by the defendant driver who was intoxicated, speeding, unlicensed and driving a vehicle he should not have been driving. The estate alleged that the defendants’ actions all contributed to the accident and the death of their decedent. The defendants all denied all allegations.

On August 11, 2019, the 38-year-old male decedent was walking home from a bus stop at 11:30 p.m. along Hulmeville Road in Bensalem, Pennsylvania. The defendant, who had just left an area pool hall after consuming several beers, was driving home south-bound on Hulmeville Road when the defendant struck the decedent propelling him into the air and onto a nearby yard resulting in fatal injuries.

The estate and the defendants settled for a lump sum of \$750,000 and the petitioners received an addition \$15,000 from their insurance carrier. The award was apportioned at 70% wrongful death and 30% survival claim.

**REFERENCE**

The Estate of Timothy McGuire by Dennis McGuire vs. Richard McCausland, Wendy Hibbs, JHRG I LLC, Maid Brigade of Bucks County and John Hollyday. Case no. 2019-07902; Judge Jeffrey Finley, 01-15-21.

**Attorney for plaintiff: Kevin Boylan of Morgan & Morgan, P.A. in Philadelphia, PA. Attorney for defendant: Warren Sperling of Bennett Bricklin & Saltzburg in Blue Bell, PA. Attorney for defendant: Mary Ellen Conroy of Cipriani & Werner in Blue Bell, PA. Attorney for defendant: Ralph Michetti of Marshall Dennehey in Doylestown, PA.**

**\$632,500 VERDICT – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – FRACTURES TO NON-DOMINANT ELBOW – KNEE FRACTURE – SURGERY – AGGRAVATION OF CLOSED HEAD CONDITION CAUSING HEADACHES AND ANXIETY/DEPRESSION – PLAINTIFF PRESENTS NEUROPSYCHOLOGIST WHO TREATED HER BOTH BEFORE AND AFTER ACCIDENT.**

**Brazos County, TX**

In this action for motor vehicle negligence, the plaintiff driver, age 70 at trial, contended that the defendant pick-up truck driver made a left hand turn into her path, causing an accident which resulted in her suffering a fracture of the transverse processes, a fracture of the right patella, a fracture of the left, non-dominant distal ulna, a comminuted fracture to the left elbow and a dislocation of the left clavicle. The defendant conceded liability prior to trial.

The plaintiff also asserted that she suffered an aggravation of a closed head injury and mild TBI, primarily causing frequent headaches and anxiety/depression. The plaintiff underwent an ORIF to the elbow the day of the accident and the surgery needed to be repeated the following day because the hardware did not take. The plaintiff also underwent surgery to treat the knee and contended that she will nonetheless suffer permanent pain and difficulties ambulating.

The jury awarded \$632,500, including \$150,000 for past medical bills, \$85,000 for future medical bills, \$150,000 for past physical impairment \$5,000 for future physical impairment, \$2500 for past disfigurement, \$35,000 for past mental anguish, \$5,000 for future mental anguish, \$175,000 for past pain and suffering and \$25,000 for future pain and suffering.

**REFERENCE**

**Plaintiff’s accident reconstruction expert: Danny Phillips from Dallas, TX. Plaintiff’s life care planning expert: Todd Cowen, M.D. from Thibodaux, LA. Plaintiff’s neuropsychologist expert: Larry Pollock, Ph.D. from Houston, TX. Plaintiff’s orthopedic surgeon expert: Rubin Bashir, M.D. from Houston, TX.**

Elrod vs. Siegert, et al. Case no. 19-00008-CV-85; Judge Kyle Hawthorne.

**Attorneys for plaintiff: Adam Lewis and Joseph McGowin of Arnold & Itkin, LLC in Houston, TX. Attorney for plaintiff: Aron Hutchins of Holt & Hutchins, PLLC in Bryan, TX.**

## PREMISES LIABILITY

### **\$1,000,000 POLICY LIMIT RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – FATAL SHOOTING AT POMPANO BEACH GAS STATION – WRONGFUL DEATH AT AGE 20.**

#### **Broward County, FL**

**This negligent security case arose from the fatal shooting of the 20-year-old decedent at the Pompano Beach gas station/convenience store owned and operated by the defendants. The plaintiff claimed that the defendants failed to implement adequate security to prevent the murder. The defendant denied the allegations.**

On July 15, 2020, just before midnight, the decedent was shot and killed at the defendants' Solo gas station in Pompano Beach, Florida. The decedent lived nearby with his girlfriend, and the plaintiff contended that he went to the gas station/convenience store to purchase snacks. Police ultimately received a 911 call reporting a shooting at the gas station. When deputies arrived, they found the decedent outside the business suffering from a gunshot wound. The decedent, a student, was transported to the hospital where he later died.

The plaintiff argued that the defendant owner of the gas station negligently failed to install functioning surveillance cameras. The plaintiff also claimed that the defendant's store clerk failed to respond to an audible commotion which was occurring on the property at the time of the shooting. The plaintiff alleged that there was a staggering history of daily drug dealing, public intoxication, and violence at the defendant's gas station, which made the crime foreseeable.

The case settled prior to filing suit for \$1,000,000, representing the entire policy limits available.

#### **REFERENCE**

Estate of Zion Lamar vs. AMP Petroleum Enterprises, Inc., et al. Case no. N/A; Judge N/A, 01-12-21.

### **\$538,000 GROSS VERDICT – PREMISES LIABILITY – HOMEOWNER'S NEGLIGENCE – PLAINTIFF'S LADDER SLIPS AND PLAINTIFF FALLS TO GROUND WHILE PAINTING DEFENDANTS' FOYER – DEFENDANT ASSURED PLAINTIFF LADDER WOULD BE SECURED BY MINOR SON – MULTIPLE FRACTURES OF RIGHT LEG – EMOTIONAL DISTRESS – ECONOMIC DAMAGES.**

#### **Galveston County, TX**

**The plaintiff in this premises liability action was hired by the defendant to paint the walls of the defendants' foyer. The floor of the foyer was slippery, so the defendants required their minor son to hold and secure the ladder. While the plaintiff was at the top of the ladder, the ladder slipped and the plaintiff fell. Consequently, the plaintiff suffered multiple breaks in his right leg and knee, head contusion and laceration with loss of consciousness and mental anguish and economic damages. The defendants denied they assured the plaintiff the ladder would be held and maintained that the plaintiff failed to properly secure the ladder before painting.**

The plaintiff maintained that the defendants were negligent in failing to warn the plaintiff of the hazardous and dangerous condition posed by the slick floor and failing to make the condition reasonably safe despite assuring the plaintiff that the ladder would be secured and allow the plaintiff to safely climb and paint the walls.

The jury found that the defendant Robert Kelly was 70% negligent and the plaintiff was 30% negligent. The jury awarded the plaintiff past medical expenses of \$168,000, past pain and suffering of \$90,000, past lost earnings of \$45,000, future medicals of \$60,000, future pain and suffering of \$95,000 and future lost earnings of \$80,000 for a total of \$538,000 which was reduced accordingly for comparative negligence, for a total award of \$376,600.

#### **REFERENCE**

Ruben Santillan vs. Robert and Wende Kelly. Case no. 17-CV-1526; Judge Jared Robinson, 10-19-19.

**Attorney for plaintiff: David L. Thornton of Thornton Law Firm in Friendswood, TX. Attorney for defendant: Shane Osbourne of Martin, Disiere, Jefferson & Wisdom, LLP in Houston, TX.**

**Attorneys for plaintiff: Michael A. Haggard and Adam C. Finkel of The Haggard Law Firm in Coral Gables, FL.**

## ADDITIONAL VERDICTS OF INTEREST

### Contractor's Negligence

**\$493,500 RECOVERY – CONTRACTOR'S NEGLIGENCE – MINOR PLAINTIFF INJURED DUE TO NEGLIGENTLY INSTALLED WATER HEATER – FAILURE TO INSTALL THERMOSTATIC MIXING VALVE – FLUID SPLASH BURNS – SECOND DEGREE BURNS OVER 12-15% OF TOTAL BODY SURFACE AREA.**

#### Montgomery County, PA

In this contractor's negligence action, the minor plaintiff was injured by scalding water due to a negligently installed water heater, including fluid splash burns, as well as second degree burns over 12-15% of her total body surface area, including the lower abdomen, thighs, genitals, and buttocks. The burns required several debridement and enzyme procedures. The defendants generally denied negligence.

The plaintiffs maintained that the defendants were negligent in failing to install a thermostatic mixing valve, failing to properly install the water heater, failing to ensure the safety of the water heater, and failing to prevent a hazard in the home involving the water heater.

The parties entered into a settlement for \$493,500.

#### REFERENCE

Christopher McClain vs. Gary Krout and Son Plumbing and Heating, LLC. Case no. 2018-21772; Judge Page, 12-28-20.

### Personal Negligence

**\$3,662,000 RECOVERY – PERSONAL NEGLIGENCE – MINOR PLAINTIFF STRUCK BY LIFT GATE ON TRUCK BELONGING TO DEFENDANTS – CRUSH INJURY TO RIGHT FOOT AND LOWER RIGHT LEG – BELOW-THE-KNEE AMPUTATION OF RIGHT LEG.**

#### Chautauqua County, NY

In this personal injury action, the minor plaintiff sustained injuries, including a crush injury of the right foot and lower right leg when he was struck by a falling lift gate on a box truck. Eventually, the minor plaintiff's crush injury required amputation below-the-knee and the use of prosthetics. The defendants generally denied allegations of negligence due to a lack of supervision over the minor plaintiff. The defendants' truck was parked lawfully in its location at the time of the incident.

The plaintiffs maintained that the defendant truck operators were negligent in failing to provide a proper and adequate warning label regarding the lift gate's potential to come down. Due to the improper warn-

ing label on the truck with few liability charges otherwise, the defendant truck operators proposed a settlement.

The parties entered into a settlement for a \$3,662,000 structured annuity.

#### REFERENCE

Shauna M. Engle/Parent, Garrett G. Engle/Infant vs. Fereras Transportation, Inc., Charles Llewellyn. Index no. EK12019000698; Judge Stephen Cass, 05-05-20.

**Attorney for plaintiff: Craig Edward Jackson of Craig Jackson, Attorney at Law in Jamestown, NY.**

Plaintiff passenger in access-a-ride vehicle vs. Defendant driver of water truck.

**Attorney for plaintiff: Matthew Sullivan of Gregory Specter & Associates, P.C. in Rosedale, NY.**

### Police Liability

**\$432,323 VERDICT – POLICE LIABILITY – MUNICIPAL LIABILITY – NEGLIGENT OPERATION OF POLICE VEHICLE – INTERSECTION COLLISION – CERVICAL AND LUMBAR DISC HERNIATIONS – UMBILICAL HERNIA.**

#### Palm Beach County, FL

The plaintiff in this action for police liability alleged that a police officer, employed by the defendant City of Boynton Beach, negligently operated a police vehicle so as to crash into the vehicle in which the plaintiff was riding as a passenger causing the plaintiff to sustain serious

injuries. The plaintiff was transported to the hospital with severe chest pain and chest contusions and she remained hospitalized for several days for observation. The host vehicle was deemed a total loss as a result of the impact. The defendant contested both liability and damages.

**The defense argued that the host driver entered the intersection on a red light and caused the collision.**

The plaintiff was subsequently diagnosed with an L5-S1 disc herniation for which she underwent right lumbar epidural steroid injections. She was also diagnosed with C5-C6 and C6-C7 disc herniations for which she underwent cervical facet injections on May 15, 2015. The plaintiff claimed that her cervical and lumbar herniations were caused by the collision. She also claimed an umbilical hernia as a result of a seatbelt injury sustained during the collision.

After a 3-day trial, the jury found the defendant's employee 100% negligent. It also found that the plaintiff sustained a permanent injury as a result of the accident and awarded her \$432,323 in damages.

**REFERENCE**

**Plaintiff's orthopedic surgery expert: John E. Baker, M.D. from Delray Beach, FL. Plaintiff's pain management expert: Stuart Krost, M.D. from Lake Worth, FL. Plaintiff's vascular surgery expert: Jesus Jimenez, M.D. from Boynton Beach, FL. Defendant's orthopedic surgery expert: Michael Zeide, M.D. from Boynton Beach, FL.**

Venegas vs. City of Boynton Beach. Case no. 502018CA002926XXXXMB; Judge James Nutt, 09-11-19.

**Attorney for plaintiff: Richard E. Retamar of Retamar & Millian, PA in Deerfield Beach, FL.**