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SUMMARIES WITH TRIAL ANALYSIS

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

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

VERDICTS BY CATEGORY

Summaries with Trial Analysis

$4,425,000 RECOVERY – DRAM SHOP LIABILITY – INEBRIATED DEFENDANT DRIVER STRIKES MINIVAN IN REAR SHORTLY AFTER LEAVING TAVERN – DRAM SHOP ASPECT SETTLES SOME MONTHS AFTER SETTLEMENT WITH DEFENDANT DRIVER – SKULL FRACTURE – SUBDURAL HEMATOMA – PARTIAL LEFT-SIDED PARALYSIS.

Passaic County, NJ

In this action, the plaintiff contended that the defendant driver of a Mercedes struck the host vehicle in the rear while inebriated. The plaintiff maintained that as a result, the 10-year-old infant plaintiff, who was a rear-seat passenger, struck his head on the back of the car seat situated directly in front of him suffering a skull fracture, a subdural hematoma and TBI that will cause permanent partial paralysis of the left non-dominant arm and partial paralysis of the left leg. The plaintiff also asserted that the infant plaintiff, although returning to full time matriculated school, has difficulty with patience and social filters and fatigues more easily. The infant plaintiff has been able to maintain good grades in school and has strong social support from friends. The accident occurred shortly after the defendant driver left the co-defendant tavern, where, the plaintiff contended, the driver was served while visibly intoxicated. The defendant driver had $250,000 in primary coverage with a $2,000,000 umbrella. The defendant tavern had $1,000,000 in dram shop protection.

The evidence disclosed that the defendant driver had been present at the defendant tavern for approximately 2 ½ hours and that she lived in the immediate vicinity. The accident occurred shortly after she left the tavern and the defendant driver was found to have a.141 BAC. The plaintiff's toxicologist would have maintained that with such a BAC, the defendant driver would have shown visible signs of intoxication before being served her last drink. The defendant driver contended that she only had a glass and a half of wine during the 2 ½-hour period she was at the tavern. The defendant was captured on the bar's surveillance camera, entering and exiting the bar and walking around, speaking with other patrons, ordering food from a menu, making change and walking out of the tavern to her car. Although it did not show obvious evidence of intoxication, plaintiff argued it primarily showed the back of her head while she was at the bar. The defendant tavern would have maintained that there was inadequate evidence that the Dram Shop Act was violated and that serving 1 ½ glasses of wine during a 2 ½ hour-period was not unreasonable and that the video did not show any obvious signs of visible intoxicated behavior.

The plaintiff would have countered that the investigating officer noticed signs of visible intoxication at the scene. The plaintiff would have also argued that it was likely that the defendant driver had consumed a significant amount of alcohol before arriving at the defendant tavern and was showing visible signs of intoxication from the time she entered. The plaintiff would have also argued that the jury should consider that the defendant driver lived in the immediate vicinity and that arranging for her to be driven home or picked up would have been very easy.

There were also several additional children in the car, but the infant plaintiff was the only one injured. The plaintiff mother related that after the accident, she noticed that the infant plaintiff was bleeding and lost consciousness. The plaintiff mother, therefore, made a Portee vs. Jaffee claim, contending that she thought her son had been killed. The infant plaintiff was brought to the hospital and a significant portion of the skull required removal to accommodate swelling associated with the subdural hematoma, and the section of bone was replaced some 9 months later. The infant plaintiff was in a coma for several weeks and then transferred to a rehabilitation hospital where he was a patient for several months.

The plaintiff asserted that the infant plaintiff will permanently suffer partial paralysis of the left, non-dominant arm and partial paralysis of the left leg. The infant plaintiff initially required assistance coming and going from his house; however, he can now walk on his own without assistance. The plaintiff also prevailed upon the PIP carrier to contribute $100,000 for home modifications. The plaintiff further contended that due to his injury the infant plaintiff no longer has a "Social filter" and will permanently have periodic episodes in which he utters inappropriate comments. The evidence disclosed that the infant plaintiff continued obtaining good grades, as he had prior to the accident, has many friends and has regained physical, cognitive and emotional independence.

The case settled for a total of $4,425,000, including the $2,475,000 auto insurance liability limits, and $1,000,000 personally from the defendant driver. Some months later on the eve of trial, the dram shop carrier settled for $950,000, including $800,000 to the infant plaintiff, $100,000 for the mother's Portee claim and $50,000 to the father for loss of services.

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REFERENCE

Polifonte vs. D'Amario-Aubin, et al. Docket no. PAS-L-4200-17, 06-12-20.

Attorney for plaintiff: Christopher DiGirolamo of Maggiano, DiGirolamo & Lizzi in Fort Lee, NJ.

COMMENTARY

It should be noted that in addition to recovering the full coverage of $2,225,000 from the automobile carrier, the plaintiff obtained $1,000,000 personally from the defendant driver. In this regard, the fact that the plaintiff had already obtained $3,475,000 months earlier rendered the continuation of the litigation against the tavern much easier. The defendant driver was present at the tavern for approximately 2 ½ hours, during which time; she indicated she had only had a glass and ½ of wine. Although the defendant driver was on the surveillance camera, the shots were from behind, showed her sitting at the bar, and the tavern would have argued that there were no signs of visible intoxication.

The plaintiff, who would have argued that the location of the plaintiff relative to the camera accounted for the absence of such overt signs, would have also pointed to the testimony of the investigating officer that the defendant driver was mumbling and had bloodshot eyes; arguing that in view of this evidence and high BAC of.141, which the plaintiff's toxicologist opined would result in such visible signs, it was clear that the defendant driver showed such signs and may well have consumed alcohol earlier in the day and was showing visible signs from the time she first entered the bar that should have been observed by the bartender. The defendant's toxicologist concluded that the video did not show any signs of visible intoxication, 1 ½ glasses of wine in 2 ½ hours was not unreasonable and any mumbling speech or bloodshot eyes observed by the police were after her face and head were struck hard by the airbag.

$1,454,059 VERDICT – CIVIL RIGHTS – WRONGFUL IMPRISONMENT – PLAINTIFF CONVICTED OF BEING ACCOMPLICE TO MURDER AND SENTENCED TO 2 LIFE SENTENCES – PLAINTIFF SERVES 17 YEARS BEFORE CONVICTION OVERTURNED – PLAINTIFF BRINGS SUIT TO RECOVER DAMAGES FOR LOSS OF LIBERTY DUE TO WRONGFUL CONVICTION.

Mercer County, NJ

In this wrongful imprisonment case, the plaintiff asserted that the defendant state mistakenly accused and convicted him of being an accomplice to murder and that he was owed damages for his loss of liberty for a crime he did not commit. The plaintiff moved for summary judgment as to liability on his claim for civil damages brought under the "Mistaken Imprisonment Act Claim." The defendant opposed the plaintiff's motion for summary judgment.

The plaintiff argued that, per N.J. Court Rules, R. 4:46-2, the "..evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." The plaintiff argued that he met the requirements of the Mistaken Imprisonment Act since he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or part of his sentence; and he did not commit the crime for which he was convicted; and he did not by his own conduct cause or bring about his conviction. The plaintiff asserted that, based on the State's admissions and under the doctrine of the law of the case (Kamienski v. State, 451 N.J. Super. At 512 n.4) elements of the statute regarding his serving time and not being the cause of his own conviction had been satisfied. The plaintiff claimed that he established his entitlement to summary judgment by showing by clear and convincing evidence that either he did not perform the proscribed act or he did not possess the requisite mens rea.

The crimes at issue in this action were 2 counts of first degree murder and 1 count of felony murder stemming from September 1983 homicides and theft of 3 kilograms of cocaine from the victims. The plaintiff was convicted of these crimes under the theory of accomplice liability.

The plaintiff argued that he was entitled to summary judgment on his Mistaken Imprisonment Act Claim because he could demonstrate by requisite standard of proof that he did not commit the Murder Crimes as charged. Specifically, the plaintiff showed, by clear and convincing evidence, that he was not an accomplice to the murders and felony murders. The State could not genuinely dispute this evidence.

The defendant argued that a vast amount of evidence established that the plaintiff had a relationship with the 2 persons whom the plaintiff claims were the perpetrators of the robbery and murders. The defendant asserted that the conviction was correct and not an error and, at best, the subject case involved disputed materials of fact; thus precluding a grant of summary judgment because the evidence could only lead a rational juror to find that the plaintiff's guilt had been proved by clear and convincing evidence. The defendant argued that, given the myriad disputes of material fact in the case, the plaintiff could not establish his innocence, and therefore, summary judgment must be denied.

The plaintiff's motion for summary judgment was denied and the matter went to trial. The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $1,454,059 broken down as follows: $998,673 in attorney fees; $31,314 in litigation expenses and $344,000 in damages to the plaintiff, with interest in the amount of $80,072.

REFERENCE

Kamienski vs. State of New Jersey, Department of the Treasury. Docket no. L-002106-10; Judge Douglas H. Hurd, 07-24-20.

Attorney for plaintiff: Jerome A. Ballarotto of Law Office of Jerome A. Ballarotto in Trenton, NJ. Attorney for plaintiff: Timothy J. McInnis of McInnis Law in New York, NY. Attorney for defendant: Robert J. McGuire of Deputy Attorney General New Jersey in Trenton, NJ.

COMMENTARY

The plaintiff, Kamienski, asserted that his wrongful conviction occurred when, on September 19, 1983, Joseph Marzeno singlehandedly murdered Henry Nicholas "Nick" DeTournay and his wife Barbara. After shooting both of them, Marzeno absconded with the three kilograms of cocaine the DeTournays had recently acquired on consignment for $150,000 from Colombian drug dealers in Florida. The DeTournays had planned to sell the drugs to Marzeno that day hoping to make more than $100,000 in profits. This was to be the first installment of a long-term arrangement to transport kilogram quantities of cocaine from Florida into New Jersey. Within hours of the murders, Marzeno fled the scene with the stolen cocaine. A few days later, law enforcement authorities recovered Nick's and Barbara' bodies from the Barnegat Bay near Toms River, New Jersey. Nick's body was found floating in shallow water. It was wrapped in a blue sleeping bag and orange blanket and was still tethered by a white plastic clothesline to a concrete block. Barbara's body had apparently broken free and was found washed ashore on Sedge Island. It was enshrouded in a similar orange blanket.

As horrific as the murders were, Kamienski had nothing to do with them or the drug deal that led to their commission. Moreover, Kamienski knew nothing in advance of Marzeno's plans to kill and rob the DeTournays and did not share Marzeno's homicidal intentions. The DeTournays were, after all, peers in their 30s and friends of Kamienski through boating activities. Marzeno, on the other hand, was about 20 years older and someone Kamienski barely knew, having just met him a few times in the 2 or 3 weeks before the murders. In the aftermath of the killings, Kamienski was reported to have expressed fears that Marzeno might kill him too in order to cover up the DeTournay murders. A little more than 5 years later, Marzeno, his acquaintances Anthony Alongi and Kamienski were tried before a jury in Ocean County, New Jersey for the DeTournay murders and related drug charges. The trial lasted about 1 month. At its conclusion, Marzeno was convicted of being the principal to the murders and Alongi and Kamienski were convicted of being his accomplices.

All 3 were also convicted on drug conspiracy counts. As to the latter, there was no evidence Kamienski knew of, participated in or had any financial stake in the drug deal. Rather, Kamienski's sole alleged role was to have gratuitously introduced Nick DeTournay to Alongi a few weeks earlier when Nick was looking to sell a few ounces of cocaine. Kamienski was acting under the mistaken impression he was doing both of them a favor. Despite having conducted an investigation for more than four years, law enforcement authorities were able to amass only scant information and evidence concerning the murders themselves. The Ocean County Prosecutor's Office surmised that the DeTournays were killed in the early evening hours of September 19, 1983 and that the shootings took place in the garage of Alongi's Toms River home. At trial, Assistant County Prosecutor E. David Millard conceded that Kamienski did not know in advance of Marzeno's plan to rob and kill the DeTournays. Instead, Prosecutor Millard said at least three times to the jury in closing that Kamienski had no idea that the DeTournays were going to be murdered. Millard argued in closing that Kamienski had introduced Alongi, whom Kamienski had only met a few weeks earlier at the Ocean Beach Marina in Lavallette, New Jersey, to the DeTournays to facilitate a small cocaine sale and there was circumstantial evidence from which one could infer Kamienski was present at Alongi's house at the time of the murders.

The prosecution also argued there was a mix of direct and circumstantial evidence indicating Alongi used his small motorboat to take the DeTournays' bodies out in the Barnegat Bay and argued there was circumstantial evidence implying Kamienski had some unspecified role in helping Alongi do this. The jury found there was insufficient evidence to support the charge that Kamienski had conspired with Marzeno and Alongi to kill the DeTournays. However, they found there was sufficient evidence to support the prosecution's theory that Kamienski was Marzeno's accomplice to the murders. This was based solely on Kamienski's supposed role in helping to hide the bodies after the killings took place. The judge who oversaw the trial disagreed. On post-trial motions, he entered a judgment notwithstanding the verdict (JNOV) in favor of Kamienski and Alongi on the homicide charges.

The judge reasoned that Kamienski could not be found lawfully guilty as an accomplice because there was no evidence Kamienski knew in advance of Marzeno's plans to kill the DeTournays and because there was no evidence Kamienski did anything before or during the murders to aid Marzeno in committing them or the robbery. The judge further reasoned that, as a matter of law, anything Kamienski might have done after the homicides were completed could not, by itself, support murder accomplice liability. The judge applied the same reasoning to Alongi. The Ocean County Prosecutor's Office appealed the JNOV ruling. In early 1989 it submitted a brief to the New Jersey Ap-

pellate Division claiming there was sufficient evidence adduced at trial to show Kamienski had premeditated the DeTournay murders and purposefully assisted Marzeno in carrying them out. The appellate court was persuaded by the Ocean County Prosecutor's submission and reinstated Kamienski's murder convictions. The matter was remanded and, in 1992, Kamienski was sentenced on the murder counts to two life terms, with 30 years of parole ineligibility.

For the next 17 years, while incarcerated by the New Jersey Department of Corrections, Kamienski fought to overturn his convictions. First, he exhausted his rights on direct appeal and in petitions for post-conviction relief in the state courts. Then, beginning in 2002, he turned to the federal courts by filing a petition for habeas corpus. By that time Kamienski had already served the full sentence on his drug convictions and did not have the right to use the federal habeas corpus statute to overturn them. Kamienski's efforts at the United States District Court were unsuccessful. However, in May 2009 the United States Court of Appeals for the Third Circuit vacated Kamienski's murder convictions and ordered his release from state custody. The ground was insufficient evidence. The Third Circuit court also agreed with the state trial judge's post-trial holding that if all Kamienski was accused of was helping hide the victims' bodies after the murders, evidence of that would not be sufficient to make Kamienski an accomplice to murder. As to this point the Third Circuit held that, "[T]he state's murder theory against Kamienski had been based on some abstract notion that the crime of murder is a continuing offense that includes attempts to dispose of the victim's body. That is a theory that is as unique as it is baseless and the state has not pursued it on appeal." Kamienski v. Hendricks, 332 F. App'x at 749. It is also a matter of public record that the federal appeals court castigated the Ocean County Prosecutor's Office for submitting a "misleading" brief to that court. Kamienski v. Hendricks, 332 F. App'x at 744, n.8 & n.9. So offensive were the State's misrepresentations in its brief that when reading it the senior judge on the panel said he became "almost apoplectic." The Appellate Court also noted during oral argument that the Ocean County Prosecutor's Office had also filed a "totally improper" and similarly misleading brief to the state appellate court to get the murder convictions reinstated against Kamienski. Id. at p. 21. After a flurry of litigation by the Ocean County Prosecutor's Office to prevent his release, Kamienski was finally set free on June 16, 2009.

Thereafter he commenced the subject action under New Jersey's mistaken imprisonment act, N.J. Stat. 52:4C-1, et seq. The Act was intended to provide a streamlined process by which, regardless of whether it was due to error or deliberateness, a person who was mistakenly imprisoned obtains some compensation for the loss of his liberty, without precluding him from seeking other forms of relief that might take more time and resources. There is no indication in the Act's legislative history that a claimant would have to completely re-litigate his criminal trial in order to receive compensation. Rather, the Act speaks in terms of a judge making relatively summary rulings, if necessary, to determine the claimant's eligibility and damages. Ironically, given this matter's procedural history, the Act was intended to lessen not increase the "frustration" that mistakenly imprisoned persons face when seeking legal redress. Following discovery, where neither side hotly contested any of the facts, Kamienski filed, and prevailed on, a motion for summary judgment as to liability. The State prevailed on a dispute over the measure of damages. Both sides appealed.

The Appellate Division ruled that Kamienski was not precluded by his drug conviction from filing a claim under the Act, but it held that the lower court erred in prematurely granting summary judgment in his favor. The Appellate Division construed the Act to require a claimant, such as Kamienski, to affirmatively prove by clear and convincing evidence he did not commit the crime for which he was mistakenly convicted. The appeals court determined that the lower court had not been presented with sufficient evidence of Kamienski's innocence before ruling in his favor on summary judgment. It therefore remanded the matter to this court to conduct an evidentiary hearing for that limited purpose. On remand, discovery was renewed and completed. Kamienski then moved again for summary judgment. He had been out of custody for nearly 9 years and had been litigating this case for almost as long. The plaintiff had yet to receive even 1 penny for the years of liberty he lost because of his mistaken imprisonment when he filed the subject action.

$1,300,000 VERDICT – PREMISES LIABILITY – FALL DOWN – FAILURE OF LESSEE OF AREA OWNED BY COUNTY TO ADEQUATELY CLEAR SNOW WHICH HAD BEEN FORECASTED – SNOW STARTS DURING CONCERT ATTENDED BY PLAINTIFF AND 3 INCHES FALLS BEFORE END OF CONCERT – LARGE SHOULDER TEAR – NEED FOR OPEN SURGERY AND USE OF HARDWARE – NO INCOME CLAIMS.

Mercer County, NJ

This premises liability action involved a plaintiff in his 40s in which the plaintiff contended that the defendant, which contracted with the county to manage the arena, negligently failed to send sufficient people to treat the sidewalks when a forecasted snow storm arrived during a concert. The plaintiff maintained that as a result, he slipped and fell on the sidewalk as he was leaving the concert and after approximately 3 inches of snow fell as he was attending the show. The plaintiff asserted that he suffered a massive tear to the tendons in his dominant shoulder and underwent open surgery with the insertion of hardware. The defendant maintained that 4 workers had been sent by the state DOT and that the use of this number of workers was reasonable.

The evidence disclosed that the county, which owned the building, leased it to the defendant. The lease provided that the defendant had the obligation to remove snow from the adjacent sidewalks. The plaintiff related that when he entered the arena, it had yet to begin snowing. The plaintiff indicated that when he left a few hours later, approximately 3 inches had fallen.

The plaintiff contended that the defendant was well on notice that its snow removal efforts would be needed, especially since a concert was being held. The defendant relied on an informal arrangement

with the county DOT to remove snow and ice. The plaintiff contended that defendant had a non-delegable duty and that it was responsible to the alleged failure of the county to adequately staff the snow removal effort or pre-treat the sidewalks. The plaintiff and his stepdaughter did not observe anyone attending to snow removal upon leaving the concert.

The defendant also maintained that it was not reasonable to expect it to remove snow during an ongoing storm. The plaintiff countered that even if this testimony was accurate, the workforce was clearly inadequate; pointing out that the area of the defendant's responsibility was relatively large. The defendant further maintained that the plaintiff failed to walk with sufficient care and was comparatively negligent. The plaintiff maintained that he did not have an alternative route to his car. The defendant further maintained that the plaintiff, who was aware of the forecast, should have worn boots.

The plaintiff asserted that he suffered a massive tear to the right, dominant shoulder. An attempt at an arthroscopic repair was made, but the plaintiff contended that it became evident that this attempt was inadequate, and that the procedure was converted to an open surgery. The evidence disclosed that the plaintiff required the use of anchors to repair the tendon. The plaintiff maintained that he will suffer very significant pain and limitations permanently and that using his arm over his head is painful and difficult, as well as loss of strength. The plaintiff made no income claims.

The jury found the defendant 100% negligent and awarded $1,250,000 to the plaintiff and $50,000 to his wife, for a total of $1,300,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Laura Ross, D.O. from Hainesport, NJ.

Scott vs. Global Spectrum. Docket no. MER-L-1157-16; Judge Anthony Massi, 01-29-20.

Attorneys for plaintiff: Alan H. Sklarsky, David M. Cedar and Kevin Haverty of Williams Cedar in Haddonfield, NJ.

COMMENTARY

The plaintiff had also named the county as a defendant and the case against the county was dismissed on the basis of portions of the Tort Claims Act dealing with immunity for failure to remove ice and snow. Additionally, the defendant did not have the benefit of an allocation of resources argument which would have been available to a public entity. Moreover, the plaintiff argued that in view of the fact that the ticket prices for the concert were relatively high, and the fact that snow had been predicted, the defendant clearly should have paid for additional workers to clear snow from the relatively large area covered by its contract with the county. In this regard, it should be noted that the 4 workers who were present were actually borrowed by the defendant from the DOT, who routinely sent workers to the area. Finally, it is interesting that the jury declined to assess any comparative negligence in this fall down case. It is felt that the failure of the defendant to assign an adequate number of workers when it knew snow was in the forecast was very significant in the decision by the jury to assess 100% culpability against the defendant.

$1,100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SIDESWIPE COLLISION – DEFENDANT TRUCKER FAILS TO MAKE ADEQUATE OBSERVATIONS IN RIGHT LANE OF NJ TPK – BACK UP OF TRAFFIC FROM EXIT RESULTS IN DEFENDANT MOVING TO LEFT AND SIDESWIPING PLAINTIFF WHO IS OPERATING UPS TRUCK – DEFENDANT NOT WEARING SEAT BELT EJECTED AND RUN OVER BY OWN TRUCK, SEVERING BODY – OBSERVATION CAUSES SEVERE PTSD – CERVICAL HERNIATION – FUSION SURGERY – INABILITY TO WORK.

Union County, NJ

Liability was not in issue in this motor vehicle negligence case in which the plaintiff UPS driver, age 60 at the time of the settlement, contended that the defendant driver of a truck negligently failed to make adequate observations as the parties were traveling on the NJ Turnpike. The defendant was in the right lane when traffic at an exit backed up, resulting in his swerving to the left and colliding with the side of the vehicle of the plaintiff, who was in the middle lane. The defendant was not wearing his seat belt, was ejected from his truck and run over by his own truck, severing his body. The plaintiff maintained that his observations of the defendant being severed caused severe and disabling PTSD. The plaintiff further asserted that he suffered a cervical herniation and ultimately required fusion surgery which will permanently cause symptoms despite a relatively good recovery.

The evidence disclosed that after striking the side of the plaintiff's truck, the defendant struck the rear of a second truck. The driver of this second truck was also a plaintiff who settled for an undisclosed sum and this article does not delve into this aspect. This plaintiff's vehicle, however, was equipped with a video camera and captured the defendant being run over by his truck.

The plaintiff's psychologist would have testified that the plaintiff's observations of the defendant being killed caused severe PTSD. The psychologist would have related that the plaintiff underwent approximately 2 years of psychotherapy and was then discharged from care because he reached the

pinnacle of his recovery. The psychologist would have concluded that the plaintiff will permanently suffer anxiety and depression, nightmares and flashbacks of the event. The psychologist would have maintained that the reaction will permanently prevent the plaintiff from working. The plaintiff was declared totally disabled by SSA because of the PTSD. The plaintiff was earning approximately $ 90,000 annually from UPS.

The plaintiff also maintained that the PTSD had physical consequences, including hypertension, nosebleeds and erectile dysfunction. The plaintiff's internist maintained that the injuries are permanent in that he will require medication for the remainder of his life. The plaintiff further asserted that he suffered a cervical herniation that was confirmed by MRI. The plaintiff's proofs would have reflected that after conservative care was inadequate, the plaintiff underwent a cervical fusion. The plaintiff contended that although he made a good recovery, he will permanently suffer pain and limitations. The plaintiff's neurosurgeon concurred in the prognosis.

The defendant had $1,000,000 in primary coverage and a $2,000,000 umbrella. The case settled prior to trial for $1,100,000.

REFERENCE

Plaintiff's internal medicine expert: John Huang, M.D. from Wallingford, CT. Plaintiff's neurosurgeon expert: Judith Gorelick, M.D. from Waterbury, CT. Plaintiff's psychologist expert: Leonard Goldstein, Ph.D. from Waterbury, CT.

Smyth vs. Cruz. Docket no. UNN-L-2650-19, 06-26-20.

Attorney for plaintiff: John E. Molinari of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

COMMENTARY

The plaintiff's primary complaint revolved around alleged PTSD that was caused by his observation of the defendant being ejected from his truck and being run over by his own truck, severing the defendant's body. In this regard, the defendant's truck also struck a different plaintiff trucker in the rear and this aspect was not a subject of this article. This other plaintiff's truck was equipped with a video camera and that incident was captured on video. It is felt that the jury's observation of this evidence would have been very likely to produce a strong jury reaction and result in an unpredictable verdict.

$370,971 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – CLOSED HEAD INJURY WITH COGNITIVE DEFICITS – POST-CONCUSSIVE SYNDROME – AGGRAVATION OF PREEXISTING DEPRESSION – DISC BULGES AT C4-5, C5-6 – HERNIATIONS AT T5-6, T6-7 AND T8-9 – GRADE 3 LABRAL/PARTIAL ROTATOR CUFF TEAR; LEFT SHOULDER GRADE 1 LABRAL TEAR – INTERNAL DERANGEMENT OF LEFT KNEE – 5 SURGERIES.

Camden County, NJ

This action for motor vehicle negligence arose from a collision which occurred on April 12, 2012 when a vehicle operated by the plaintiff was struck from the rear by a vehicle operated by the defendant driver and owned by the co-defendant employer of the defendant driver causing the plaintiff to sustain severe injuries. The defendants stipulated liability, but contested the plaintiff's damages.

The plaintiff sustained a closed head injury with cognitive deficits; post-concussive syndrome; aggravation and acceleration of a preexisting depression; post-traumatic cephalalgia; disc bulges at C4-5, C5-6 with herniation; T3-4 and T4-5 with left extremity radiculitis; left C6-7 radiculopathy; herniations at T5-6, T6-7 and T8-9; disc bulges at L3-4 and L4-5 with herniation and lower extremity radiculitis; L5 radiculopathy; impingement tendinopathy of the right shoulder with grade 3 labral/partial rotator cuff tear; impingement syndrome of the left shoulder with grade 1 labral tear; and internal derangement of the left knee with subchondral lesion. The plaintiff underwent 5 separate surgeries over the course of 4 years including: left shoulder arthroscopy with subacromial decompression and debridement; left partial synovectomy, resection of plica, and chondroplasty medial femoral condyle and lateral tibial plateau fissure of the left knee; left shoulder arthroscopy, biceps tenotomy, extensive debridement and subacromial decompression; arthroscopic right subacromial decompression, debridement, partial rotator cuff tear and open distal clavicle osteotomy; and arthroscopy right shoulder, biceps tenodesis, right shoulder surgical debridement. The plaintiff was recommended for anterior cervical discectomy and fusion at C5-6 and C6-7 and a lumbar discectomy.

The defendants argued that the plaintiff's injuries were preexisting and not caused by the subject collision. The defendants also asserted that the plaintiff's injuries were not permanent.

The found in favor of the plaintiff and awarded damages in the amount of $327,840 plus pre-judgment interest in the amount of $43,131, for a total of $370,971.

REFERENCE

Brooks vs. Ryan and Steris Corp. Docket no. L-000950-14; Judge Daniel A. Bernardin, 07-16-19.

Attorney for plaintiff: Jonathan R. Ivans of Puff & Cockerill, LLC in Woodbury, NJ. Attorney for defendant: Christopher J. Conover of Ahmuty Demers & McManus, Esqs. in Morristown, NJ.

COMMENTARY

This case is unique in that, while it is a relatively routine rear-end motor vehicle liability case, it took nearly 5 years to litigate due to extenuating circumstances that may or may not have been related to the underlying accident. During the process, a settlement of $600,000 was reached, but the plaintiff contended that the settlement was made without her approval and the matter went to trial. The issues intervening in this case are detailed below.

The court granted the parties permission to file, on an emergent basis, their joint motion for leave to appeal from an April 29, 2019 Law Division order which denied the motion to appoint a guardian ad litem for the plaintiff. The court also granted a stay of the May 7, 2019 trial date, pending disposition of the emergent application. The plaintiff herself had submitted written opposition and argued against the appointment of a GAL before the trial court. The court then granted leave to appeal pursuant to Rule 2:2-4 and affirmed the trial court's order therefore denying as moot the joint application for a stay.

The plaintiff commenced the underlying personal injury action in September 2014, alleging injury. The plaintiff's medical reports indicated the accident aggravated her preexisting Major Depressive Disorder. The plaintiff submitted letters to her counsel and the court claiming those reports to be false, and that her attorney engaged in fraud by submitting them in this litigation. In April 2017, the trial court appointed the plaintiff's son to serve as limited guardian for the sole purpose of assisting the plaintiff in determining her best interest and options in the resolution of this case. During a January 2018 settlement conference, the court determined the limited guardian did not have the authority to settle the matter without the plaintiff's consent. Settlement discussions between counsels continued with the defendant's offer remaining at $700,000 and the plaintiff's demand remaining at $1,000,000.

In March 2019, the plaintiff's counsel filed a motion and correspondence by Dr. Robert J. Pasahow, Ph.D. which indicated that he had met and evaluated the plaintiff 2 times and was of the opinion that she should not go through any legal process including deposition, settlement, conference or trial. He indicated that her depression was severe enough that it would be difficult for her to answer questions or make decisions. The plaintiff, however, testified that Dr. Pasahow was a psychologist to whom she had been referred for pain management and that she did not feel he did an evaluation necessary to draw inference about her mental capacity. She stated, "..I, again, oppose appointing someone over me because I would feel like a slave..but, more importantly I am capable of making my own decision." After reviewing the testimony and evidence, the trial court denied the motion, finding counsel failed to establish that the plaintiff lacked sufficient mental ability to make decisions needed to conduct the case. On appeal, counsel renewed their claim that the trial court misapplied the standard for appointment of a GAL. The court rejected the arguments and affirmed the decision of the trial court.

Upon the jury's verdict, the plaintiff wrote to the court requesting that the proceeds of the verdict be sent directly to her and not through her attorney. The plaintiff stated that she had not consented to her attorney undertaking any further action or motion with respect to this case by way of appeal. The plaintiff's attorney filed a motion for new trial.

Plaintiff's counsel asserted that a January 25, 2017 arbitration was conducted with an award entered in favor of the plaintiff in the amount of $375,000 with 100% liability assigned to the defendant driver. In June, 2017 a $400,000 settlement offer was made by defense counsel. On October 23, 2017, a mediation was conducted and a $600,000 settlement offer was made by defense counsel. The plaintiff refused to participate in the mediation.

Plaintiff's counsel argued that, in the year preceding the trial, there was a fair and reasonable offer on the table to settle the case in the amount of $700,000 which plaintiff's counsel recommended that the plaintiff accept - the plaintiff refused and also refused to provide a counteroffer to the defendant. Plaintiff's counsel maintained that there was a settlement to be reached if he had been able to gain the cooperation of his client, but he could not. Plaintiff's counsel stated that the plaintiff repeatedly insisted that she wanted to settle her case for $1,000,000. This raised concerns about the plaintiff's ability to participate in litigation and a GAL was sought. The GAL was ultimately denied and the trial proceeded with counsel placing an objection on the record objecting to the continuation of the trial without a GAL.

Plaintiff's counsel moved that a new trial be granted because a GAL was not appointed to determine the plaintiff's mental capacity to participate and make cogent decisions regarding her litigation and the jury's damage verdict was so disproportionate to the plaintiff's injuries and resulting disability that to sustain such an award would be unjust. The court denied the plaintiff's motion for new trial.

DEFENDANT'S VERDICT – EMPLOYER LIABILITY – WRONGFUL DEATH – HAZARDOUS WORKPLACE – PLAINTIFF'S DECEDENT FALLS THROUGH HATCH AND LADDER DEVICE AT DEFENDANT RESTAURANT WHERE HE WAS EMPLOYED AND DIES FROM HIS INJURIES.

Hudson County, NJ

In this premises liability case, the plaintiff asserted that the defendants negligently permitted a hazardous condition to exist on their property resulting in a dangerous workplace that caused the death of the plaintiff's decedent. The defendant argued that, because there were no witnesses and there was no evidence to reconstruct this accident, there was no way to know how the accident occurred.

On August 4, 2013, the plaintiff's decedent, a 59-year-old husband and father, was employed as a cook at the defendant restaurant and bar housed within a property owned and insured by the defendant property owner. The plaintiff claimed that the decedent fell down through a rudimentary hatch and ladder system, used to access the basement, at the subject property. The plaintiff's decedent died as a result of the fall.

The plaintiff claimed that the hatch and ladder system was negligently installed by the defendant and caused a hazard to employees in the workplace. The

hatch and ladder system consisted of a hole in the floor of a locked storage room with a square, wooden hatch door covering the hole. When lifted, the hatch door revealed a 4'5" mounted ladder leading down to a small platform and then an unmounted aluminum ladder extending another 5'8.5" down from the platform to the cement floor of the basement, attached to the platform by a bungee cord. The total distance from the trap door to the cement floor exceeded 10 feet. The plaintiff asserted that an OSHA officer conducted an investigation of the premises 2 years after the decedent's death and found 5 violations regarding the hatch ladder system, 3 of which listed "Death" as the possible injury from the defect.

The plaintiff theorized that, with reliance on the opinions of a biomechanical expert, the decedent fell from an elevated position, which was described during the course of discovery as the hatch and ladder system located near the kitchen, used for accessing the basement. The decedent's co-worker found the decedent unconscious in the basement of the restaurant, at the bottom of the hatch ladder. 2 days later, the decedent died at a local hospital without regaining consciousness. The plaintiff contended that the decedent sustained fatal head injuries when he slipped or fell down the unsafe, illegally installed hatch and ladder system and there was no evidence that the fall was due to the construction of the hatch and ladder system.

The defendant maintained that there had been no citations, despite numerous municipal inspections, or warnings for use of the hatch ladder system prior to the decedent's accident, or any OSHA violations. Further, the defendant asserted that the plaintiff's decedent had, at the time of the accident, worked at the defendant restaurant for a year and was familiar with and used the hatch ladder countless times during that period and thus was on notice of the workings of the system. The defendant pointed to the fact that neither the decedent, nor anyone else ever complained or reported the condition of the hatch ladder as hazardous. Additionally, the defendant argued, there were 2 ways to access the basement: from the hatch and ladder or from an outside door on the street. The defendant maintained that employees were free to use either access to the basement and that the decedent chose to access the basement via the hatch ladder, implying that he found that system adequate and safe to use. The defendant also pointed to the decedent's blood/alcohol level of 0.228 at the time of his death as evidence that his impairment might have caused his fall, having nothing to do with the ladder system.

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

REFERENCE

Soriano vs. 70 Hudson Street Realty, LLC, et al. Docket no. L-003086-15; Judge Joseph V. Isabella, 07-12-19.

Attorney for plaintiff: Richard M. Chisholm of Bannon, Rawding, McDonald & Mascara in Verona, NJ. Attorney for defendant 70 Hudson St. Realty, LLC: Terrence J. Bolan of Bolan Jahnsen Dacey in Shrewsbury, NJ. Attorney for defendant Hazel Rock Inc.: Vincent J. LaPaglia, Esq. in Hoboken, NJ.

COMMENTARY

The plaintiff brought suit against multiple defendants, including the owner of the involved property. The defendant owner of the property sought summary judgment based on the provisions of the lease between the defendant owner and the defendant restaurant/tenant. The defendant owner of the property asserted that certain clauses of the lease released the defendant owner from any duty toward the employees or guests of the property. The co-defendant restaurant/tenant leased the involved premises from the defendant owner/landlord. The lease between the parties was a triple net lease, meaning that the tenant was responsible for all maintenance and repair duties at the leased premises. The lease also addressed "Improvements or alterations necessary or desirable to make the Premises suitable for Tenant's use and occupancy." According to the Build-Out Addendum, any improvement or alteration "shall be performed by Tenant at Tenant's own cost and expense…" Subject to the terms of the Build-Out Addendum, the defendant tenant was required to obtain the defendant landlord's written approval prior to any improvement or alterations being made on the premises. The defendant tenant did not obtain written approval to install a hatch and ladder system in the restaurant. The defendant argued, however, that this was immaterial as the Build-Out Addendum further indicated, "The approval by Landlord of any Tenant's plans and specifications shall not constitute an assumption of any liability on the part of the Landlord for their accuracy or their conformity with applicable law, and Tenant shall be solely responsible therefore. Landlord's approval does not relieve Tenant from complying with all other terms of this paragraph." The Build-Out Addendum concludes, "It is expressly understood and agreed that Landlord shall not be responsible for any repair, replacement or maintenance of any of Tenant's Work or Permanent Building Improvements."

According to the police investigation report, the plaintiff's decedent was found lying on his back unresponsive on the basement floor by another employee. The theory was that the hatch and ladder system installed by the defendant tenant/restaurant was defective and caused the decedent's fall and resulting death. The hatch and ladder system was installed by the defendant tenant after it entered into the lease with the defendant property owners, including a portion of the basement at the involved premises. The defendant property owner/landlord contended that there was no recorded evidence, or even allegation, that any work was ever performed on the hatch and ladder system by or on behalf of the property owners. Defense counsel moved for summary judgment that the defendant property owner/landlord should be dismissed from all claims of negligence asserted by the plaintiff. Summary judgment was entered in favor of the defendant property owner/landlord dismissing it from the case. The motion was appealed and the defendant property owner was re-joined to the matter and went to trial.

The defendant employer was released on summary judgment in 2017, on the argument that there was no evidence to sustain an "Intentional wrong" claim against the defendant restaurant (the decedent's employer) and the plaintiff's remedies, if any, should be heard in the compensation court. The defendant argued that the Workers' Compensation Act N.J.S.A. 34: 15-1 to -142 provides "The exclusive remedy for an employee who sustains an injury in an accident that

arises out of and in the course of employment," therefore, as to the defendant employer, the plaintiff's only remedy for the injuries the decedent sustained. The defendant employer further argued that the plaintiff's complaint should be dismissed because she had no competent evidence of causation between the condition of the restaurant and the decedent's death.

Defense counsel asserted that the plaintiff's claim failed against the defendant employer because there is no evidence of whether any condition of the hatch and ladder system caused the decedent to fall. The defendant asserted that a stairway could be constructed negligently and in violation of a safety and a banana peel could be left on one of the steps, but that does not mean that either of them is the cause of someone falling down the stairs. In the absence of evidence, the defendant argued, for example, was the decedent on the upper ladder or the lower ladder, or the landing, was he ascending or descending, or standing still, did he lose his grip, or lose his footing or did he simply pass out, was he jumping on the ladder, or off the landing? None of these are known and with the lack of evidence as to the details, there is no ability to discern causation of the plaintiff's fall.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Emergency Department

$650,000 GROSS VERDICT

Medical malpractice – Emergency department negligence – Failure of non-settling emergency room physician to either admit or arrange for cardiac consult when plaintiff presents with recent onset of chest pain radiating down left arm – Failure to timely diagnose infarct – Loss of 50% cardiac function – No income claims.

Morris County, NJ

In this medical malpractice case, the plaintiff, in his mid 40s, contended that the defendant emergency room physician negligently failed to either admit him to the hospital and/or arrange for a cardiac consult in the emergency room when he presented with chest pain that was radiating down the left arm. The plaintiff asserted that although he did not have a cardiac history, his co-morbidity factors, including diabetes and smoking, should have, along with the onset of symptoms earlier that day, prompted such action. The plaintiff asserted that the non-settling physician discharged him with pain mediation. The defendant emergency room physician maintained that all of the testing, including an EKG, chest X-ray and enzyme testing, were negative and that in view of this factor, the care was proper.

The plaintiff countered that in view of the recent onset of the symptoms earlier that day, it was not surprising that such tests would be negative and that the defendant E.R. physician should have considered that the tests might well show a false negative. The defendant emergency room physician also maintained that the plaintiff left AMA. The plaintiff denied that this position was accurate and pointed to the absence of an AMA form.

The plaintiff saw his family physician the following day and the plaintiff previously contended that this defendant should have made a timely diagnosis as well. The case against the family physician settled prior to trial for an undisclosed sum.

The plaintiff maintained that the infarct was confirmed at the hospital later that second day. The LAD was 100% occluded and the RCA 80% occluded. The plaintiff underwent stenting, but suffered an approximate 50% loss of cardiac function. The plaintiff asserted that earlier stenting would have enabled him to avoid or minimize the loss of function.

The plaintiff related that he cannot walk more than 100-200 feet without becoming out of breath. The plaintiff works in the tech industry and was able to return to work.

The jury found the settling family physician 85% negligent, the emergency room physician 15% negligent and the $650,000 gross award was molded accordingly.

REFERENCE

Plaintiff's cardiology expert: Brian C. Swirsky, M.D. from Baton Rouge, LA. Plaintiff's emergency medicine expert: Bruce D. Janiak, M.D. from Augusta, GA. Defendant's cardiology expert: Marc Cohen, M.D. from Newark, NJ. Defendant's emergency medicine expert: Marc A. Borenstein, M.D. from Poughkeepsie, NY.

Haney vs. Lofaro, et al. Docket no. MRS-L-001102-17; Judge Peter A. Bogaard, 03-20.

Attorney for plaintiff: Daniel B. Devinney of Snyder Sarno D'Aniello Maceri & daCosta, LLC in Roseland, NJ.

INSURANCE OBLIGATION

$290,000 RECOVERY

Insurance obligation – UIM case – Head-on collision – Plaintiff in course of employment sitting on box in employer's truck that does not contain passenger seat – Non-host driver crosses over and strikes host vehicle – Plaintiff ejected and strikes tree – Separation of AC joint of dominant shoulder – Surgery – Resolving soft tissue cervical injuries – Plaintiff misses a year from job as wood floor installer.

Atlantic County, NJ

The plaintiff in this action was in his mid 30s and was a passenger in a truck owned by his employer. He was sitting on a box in the front of the truck that did not contain a passenger seat. The plaintiff contended that the defendant non-host driver, proceeding in the opposite direction, negligently swerved over the center line, colliding with the truck operated by a co-worker, causing the plaintiff to sustain serious injury. The plaintiff was ejected from the vehicle and struck a tree. The defendant had a $100,000 policy, which was paid. The plaintiff was covered by a $300,000 UIM policy and $200,000 was available.

The plaintiff asserted that he suffered a separation of the AC joint on the dominant shoulder. The plaintiff maintained that he required surgery and that despite the operation, he will suffer permanent pain and limitations. The plaintiff also sustained resolving soft tissue cervical injuries. The plaintiff missed a year from his job as a wood floor installer.

The UIM carrier contended that in view of the ability of the plaintiff to return to work, it was clear that his claims should be significantly questioned. The plaintiff maintained that he worked despite continuing pain and restriction because of economic necessity. The plaintiff's wife offered detailed testimony during her deposition as to the apparent pain and difficulties encountered by the plaintiff in performance of everyday activities.

The case settled prior to trial for $290,000. The compensation lien approximates $60,000 and the plaintiff is responsible for 2/3 of the lien.

REFERENCE

Plaintiff's orthopedic surgeon expert: Glenn Zuck, M.D. from Somers Point, NJ. Plaintiff's radiology expert: Alan Cummings, M.D. from Galloway, NJ. Plaintiff's rheumatologist expert: David M. Sagransky, M.D. from Linwood, NJ.

Penesse vs. United Farm Family Ins. Co. Docket no. ATL-L- 221-19, 08-20.

Attorney for plaintiff: Robert S. Sandman of Hankin Sandman Palladino & Weintrob in Atlantic City, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Underinsured motorist – Rear end collision – Disc herniation at L5-S1 with radiculopathy – Epidural injections.

Monmouth County, NJ

In this uninsured motorist claim, the plaintiff asserted that the tortfeasor struck her vehicle from behind with enough force to cause significant, permanent injury. Because the tortfeasor was underinsured, the plaintiff filed this action to recover from her insurer with a credit of $15,000.

On June 29, 2013, the plaintiff was operating a motor vehicle in Belmar when suddenly and without warning, her vehicle was hit by a vehicle traveling behind hers. The plaintiff alleged that the force of the impact resulted in permanent injuries. The tortfeasor had a policy limit of $15,000 at the time of the incident and that amount was paid to the plaintiff.

As a result of the collision, the plaintiff sustained disc herniation at L5-S1 with radiculopathy. The plaintiff required epidural injections to treat her injury. The defendant stipulated liability, but contested the plaintiff's damages. The defendant argued that the plaintiff's injury constituted a preexisting, degenerative condition and was not caused by the subject collision.

The jury found no cause of action, having determined that the plaintiff did not suffer permanent injury, and returned a verdict in favor of the defendant.

REFERENCE

Rocha vs. Allstate Insurance Company. Docket no. L-001711-17; Judge Owen C. McCarthy, 06-20-19.

Attorney for plaintiff: Christopher A. DeAngelo of Levinson Axelrod, P.A. in Howell, NJ. Attorney for defendant: William E. Wells of King, Kitrick, Jackson, McWeeney & Wells in Manasquan, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$250,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Displaced lateral plateau fracture requiring surgery with bone graft – Femoral nerve block – Lumbar herniations at T12-L1, L1-2 and L5-S1 – Permanent scarring of leg.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 63-year-old pedestrian, asserted that the defendant driver struck her with such force that it caused significant, permanent injury. The defendant initially denied liability and claimed that the plaintiff was guilty of contributory negligence.

On April 30, 2016, the plaintiff was a pedestrian on the crosswalk with the right-of-way crossing 47th Street at the intersection of Palisade Avenue in Union City. The plaintiff claimed that the defendant negligently operated her vehicle such that she forcefully struck the plaintiff in the crosswalk. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a displaced lateral plateau fracture requiring bone graft and bone substitute; femoral nerve block; lumbar herniations at T12-L1, L1-2, and L5-S1; and permanent scarring of leg. The plaintiff claimed that her damages exceeded the PIP limit of $250,000 and she had $8,658 in unpaid medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $358,658, inclusive of outstanding medical expenses. Following arbitration and prior to trial, the parties settled for $250,000.

REFERENCE

Blazquez vs. Villegas. Docket no. L-004062-17; Judge Joseph A. Turula, 01-15-20.

Attorney for plaintiff: Michael A. Gallardo of Ginarte Gallardo Gonzalez Winograd, LLP in Newark, NJ. Attorney for defendant: Michael Forcino of Law Offices of Pamela D. Hargrove in Cranford, NJ.

$15,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Unidentified driver strikes plaintiff pedestrian and flees scene – Plaintiff brings action under NJPLIGA – Right knee fracture with tear; non-displaced fibula fracture and right hip injury – Plaintiff undergoes surgery for knee tear as well as physical therapy – Arbitration finds defendant 100% liable with damages of $50,000.

Hudson County, NJ

In this motor vehicle negligence case, the 64-year-old plaintiff pedestrian asserted that an unknown driver struck her as she crossed the street with such force that it caused significant, permanent injury. The driver was never found and the plaintiff filed the subject claim under New Jersey Property Liability Insurance Guaranty Association (NJPLIGA).

On October 5, 2016, the plaintiff was crossing Summit Avenue near Newkirk Street in Jersey City. The plaintiff claimed that an unknown driver negligently operated their vehicle at a high and unlawful rate of speed and without warning of its approach along Summit Avenue. The unknown defendant driver struck the plaintiff in the roadway and fled the scene. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a right knee fracture with tear; non-displaced fibula fracture; and right hip injury. The plaintiff underwent surgery for the knee tear, as well as physical therapy. The defendant initially claimed that the plaintiff was guilty of negligence that caused or contributed to the subject incident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $50,000. Following arbitration and prior to trial, the parties settled for $15,000.

REFERENCE

Andrews vs. Doe, et al. Docket no. L-002658-18; Judge Vincent J. Miliello, 10-23-19.

Attorney for plaintiff: Joseph M. Szesko of Zavodnick, Perlmutter & Boccia, LLC in Jersey City, NJ. Attorney for defendant: Kenneth A. Resnick of Burke and Potenza in Parsippany, NJ.

Broadside Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Broadside collision – Left shoulder rotator cuff tear – Physical therapy and injections – Ultimate surgical repair – Defendant denies injury related to subject collision.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from the side with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On January 29, 2015, the plaintiff was traveling eastbound in the left hand travel lane of Black Horse Pike in Hamilton. The plaintiff claimed that her vehicle was struck on the passenger side by the defendant's vehicle as the defendant exited a car dealership and attempted to get to the left hand turn lane of the roadway. The plaintiff asserted that the defendant failed to observe traffic and wait to enter the roadway when it was clear to do so. The defendant was issued a traffic summons due to the incident.

As a result of the collision, the plaintiff sustained traumatic, permanent injury to the left shoulder consisting of a rotator cuff tear. The plaintiff underwent physical therapy and injections, but received no relief. The

plaintiff ultimately underwent arthroscopic repair of the left shoulder followed by physical therapy. The plaintiff made no claim for lost wages. Prior to trial, the plaintiff made an offer of judgment in the amount of $40,000. The offer was not accepted and the matter went to trial.

The defendant noted that the plaintiff's MRI revealed subacromial subdeltoid bursitis, acromioclavicular arthropathy, and repetitive stress subcortical cyst, but made no mention of rotator cuff tear. The only injury that the plaintiff's physician designated as permanent was the rotator cuff tear which, the defendant argued, was not substantiated by any objective evidence. The defendant also pointed to the plaintiff's significant history of complaints and injury referable to the left shoulder.

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

REFERENCE

Flack vs. Kolbe, et al. Docket no. L-000145-17; Judge James P. Savio, 10-30-19.

Attorney for plaintiff: Thomas F. Reynolds of Law Offices of Reynolds & Scheffler, LLC in Northfield, NJ. Attorney for defendant: Malcolm McPherson of Hoagland, Longo, Moran, Dunst & Doukas, LLP in Hammonton, NJ.

Intersection Collision

$113,431 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff passenger suffers disc herniations at C3-4, C4-5 and C2-3; disc bulges at L1-2, L5-S1, C5-6 and C6-7 – L4-5 disc herniation contacting nerve root – C8 right and S1 right radiculopathy – Chiropractic treatment.

Middlesex County, NJ

This action for motor vehicle negligence arose from a collision which occurred on July 27, 2015 when the plaintiff was the restrained front-seat passenger in a vehicle driven by the co-defendant, his sister. The vehicle was struck in an intersection by the defendant driver on the front passenger side, where the plaintiff was seated. The plaintiff asserted that the defendant driver struck the vehicle with such force that it caused the passenger significant, permanent injury. The plaintiff claimed past and future pain and suffering, disability, impairment and loss of enjoyment of life. The plaintiff collected PIP damages from his sister's insurance carrier and dismissed the case against her prior to trial. The defendant driver of the second vehicle questioned the nature and extent of the plaintiff's injuries. The defendant argued that the plaintiff declined medical attention at the scene of the accident, did not, in fact, receive any emergency medical attention at any time, and only underwent a course of conservative treatment with chiropractic care which did not commence until more than a month after the accident.

As a result of the collision, the plaintiff reported that he was taken by ambulance to the hospital, treated and released. He continued to experience pain and sought treatment with a back specialist approximately one month later. The plaintiff was diagnosed with cervical/lumbar disc syndrome with disc herniations at C3-4, C4-5 and C2-3 contacting the thecal sac; disc bulges at L1-2, L5-S1, C5-6 and C6-7;L4-5 disc herniation contacting the nerve root; C8 right and S1 right radiculopathy. The plaintiff underwent chiropractic treatment for his injuries. The plaintiff presented a report from his treating physician establishing the extent, cause, and permanency of his injuries.

The defendant pointed to the fact that the plaintiff did not undergo any invasive treatment in the form of injections or surgery related to the accident at any time. The defendant, on cross-examination of the plaintiff's treating physician, elicited testimony that the plaintiff's injuries could be due to degeneration. The defendant also presented testimony of its own expert orthopedic surgeon who opined that the plaintiff sustained a temporary aggravation of preexisting degenerative conditions and no permanent trauma.

The jury found the defendant driver of the second vehicle 70% liable and the defendant driver of the vehicle in which the plaintiff was a passenger 30% liable. The jury awarded total damages of $150,000, assessing the defendant driver of the second vehicle $105,000 in gross damages with pre-judgment interest in the amount of $8,431, for a total judgment in the amount of $113,431.

REFERENCE

Encarnacion vs. Paulino-Castillo, et al. Docket no. L-004279-17; Judge Christopher Rafano, 09-30-19.

Attorney for plaintiff: Anira Clericuzio of Law Office of Robert R. Hynes in Perth Amboy, NJ. Attorney for defendant: Scott Krupa of Law Offices of Gregory P. Helfrich in Summit, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Hip contusion; bilateral knee contusions; sprain/tear of right shoulder – Disc bulges at L3-4 and L4-5; chronic post-traumatic lumbosacral sprain and strain with myofasciitis – Pretrial arbitration finds no cause for damages – Plaintiff makes pretrial offer to take judgment of $14,000.

Gloucester County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle in an intersection with such force that it caused her to sustain significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant asserted that the plaintiff was at least contributorily negligent in failing to observe the defendant's vehicle and avoid collision.

On September 6, 2016, the plaintiff was traveling southbound on Auburn Road in Woolwich Township and the defendant was at the stop sign eastbound on Oldman's Creek Road. The plaintiff asserted that the defendant negligently failed to obey the stop sign and proceeded to cross over Auburn Road, failing to observe the plaintiff. As a result, the plaintiff's vehicle was struck by the defendant's vehicle on the passenger side. As a result of the collision, the plaintiff claimed hip contusion; bilateral knee contusions; sprain/tear of the right shoulder; disc bulges at L3-4 and L4-5; chronic post-traumatic lumbosacral sprain and strain with myofasciitis.

The defendant argued that the plaintiff did not sustain significant injury in the subject collision to warrant damages. The defendant pointed to the lack of medical proof of injury including an MRI of the plaintiff's shoulder that was negative for anything other than tendinopathy. The defendant also noted that the plaintiff received treatment only at the emergency room immediately after the collision and received no EMG or orthopedic treatment and tests showed no spinal canal impingement, no extension, and no nerve root involvement. The defendant asserted that the plaintiff's proofs were insufficient to satisfy the verbal threshold of AICRA.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant, but found no cause for damages. Following arbitration, the plaintiff made an offer to take judgment in the amount of $14,000. The offer was not accepted and the matter continued to trial. At trial, the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Braxton vs. Munoz. Docket no. L-001290-17; Judge Samuel J Ragonese, 10-16-19.

Attorneys for plaintiff: Kevin McCann and Matthew Weng of Chance & McCann, LLC in Bridgeton, NJ. Attorney for defendant: Nicole M. Downs of Law Offices of Pamela D. Hargrove in Moorestown, NJ.

Lane Change Collision

$400,000 RECOVERY

Motor vehicle negligence – Lane change collision – Sideswipe – Pelvic fracture and lumbar herniations – Continuing difficulties with weight baring – Recommended lumbar disc surgery.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her early 70s, contended that the defendant driver, traveling in the same westerly direction, suddenly attempted to change from the left lane to the right lane lanes without making proper observations. The plaintiff maintained that the driver's side of her car was struck and that she was propelled into the right median divider, sustaining serious life-altering injuries. The defendant claimed that the plaintiff failed to pay adequate attention and maintained that she was comparatively negligent.

The plaintiff asserted that she suffered a left-sided pelvic fracture, had great difficulties ambulating, and will suffer permanent pain and difficulties walking for the remainder of her life. Lumbar surgery has been recommended and the plaintiff indicated that she is attempting to postpone the surgery for as long as possible, or avoid it. The defendant produced no medical testimony.

The defendant had $750,000 in coverage. The case settled prior to trial for $400,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Joel Spielman, M.D. from Dover, NJ.

Zimmerman vs. Vandertoorn, et al. Docket no. MRS-L-855-19, 01-16-20.

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

Multiple Vehicle Collision

$250,000 VERDICT

Motor vehicle negligence – Multiple vehicle collision – Intersection collision – Type II SLAP superior labral tear extending anterior to posterior – Damages stipulated at $250,000 – Liability trial.

Bergen County, NJ

In this liability-only motor vehicle negligence case, the plaintiff asserted that the co-defendant drivers struck her vehicle from behind with such force that it caused significant, permanent injury. The defendants blamed each other for the collision.

On October 11, 2016 in Hackensack, 4 vehicles, including the plaintiff's vehicle, were involved in a collision at a "T" intersection. Both the plaintiff and the co-defendant Sithideth were eastbound on Vreeland Avenue. The co-defendant Sithideth was stopped just at the intersection of Washington Street, which was the street to his right. The plaintiff asserted that co-defendant Sithideth waived out the co-defendant Caseres onto Vreeland Avenue. Co-defendant Caseres then proceeded to take a left turn out of Washington Street onto Vreeland Avenue to go westbound. The plaintiff was the car behind co-defendant Sithideth. Co-defendant Sofia was proceeding westbound on Vreeland Avenue approaching Washington Street and a collision ensued involving all 4 vehicles.

The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff sustained Type II SLAP superior labral tear extending anterior to posterior. The plaintiff's physician certified that her injury was permanent. Damages were stipulated at $250,000.

The co-defendant Sofia contended that the accident was unavoidable as she was struck by the co-defendant Caceres, who took a left hand turn from the "T" intersection causing or contributing to the 4-car collision. Co-defendant Caceres' insurance carrier settled with the plaintiff prior to discovery and the co-defendant was deceased before being deposed. However, the co-defendant Caceres had answered the complaint and contended that he was struck by the defendant Sofia and pushed into the co-defendant Sithideth, who subsequently struck the plaintiff. Co-defendant Sithideth maintained that he was at a full stop at the intersection waiting for traffic to clear and was struck and pushed into the plaintiff by the other 2 co-defendants colliding.

The jury rendered a verdict in favor of the plaintiff and apportioned the fault of the defendants at 67% as to co-defendant Sofia; 33% as to co-defendant Caceres and 0% as to co-defendant Sithideth. The parties stipulated to damages of $250,000.

REFERENCE

Fonfara vs. Sofia, et al. Docket no. L-002724-17; Judge John D. O'Dwyer, 10-25-19.

Attorney for plaintiff: Kristofer Petrie of Brach Eichler, L.L.C. in Roseland, NJ. Attorney for defendant Sofia: Gregory A. Drews of Deutchman & Drews, LLC in Somerville, NJ. Attorney for defendant Sithideth: Bilal Jaloudi of Law Offices of Eric H. Bennett in Hackensack, NJ.

$10,500 VERDICT

Motor vehicle negligence – Multiple vehicle collision – Left turn collision – Plaintiff driver: disc herniation at C4-5; bulging disc at C5-6 with herniation; lumbar bulges with herniation at L4-5 – Plaintiff passenger: lumbar and cervical disc bulges with right shoulder impingement – Both plaintiffs treated with epidural injections.

Union County, NJ

In this motor vehicle negligence case, the plaintiffs, a 26-year-old male driver and his 23-year-old female passenger, were involved in a motor vehicle collision wherein they asserted that the defendant driver struck a vehicle while making a left turn and propelled it into the plaintiff's vehicle causing the plaintiffs significant, permanent injury. The defendant stipulated liability, but contested the plaintiffs' damages.

On May 27, 2016, the plaintiffs were traveling when the defendant made a left turn and struck a third-party vehicle, propelling it into the plaintiffs' vehicle. The plaintiffs asserted that the defendant driver failed to ascertain that the way was clear before turning and negligently struck a vehicle that caused a collision with the plaintiffs' vehicle. The plaintiffs alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff driver sustained disc herniation at C4-5; bulging disc at C5-6 with herniation; lumbar bulges with herniation at L4-5. The plaintiff driver treated with 2 epidural injections. The plaintiff passenger suffered lumbar and cervical disc bulges with right shoulder impingement. The plaintiff passenger treated with one epidural injection. The defendant argued that the collision was low impact and that the plaintiffs' injuries were not permanent.

The jury found in favor of the plaintiffs and awarded damages in the amount of $3,500 as to the plaintiff passenger and $7,000 as to the plaintiff driver, for a total recovery of $10,500.

REFERENCE

Evans vs. Vidal, et al. Docket no. L-003247-16; Judge Alan G. Lesnewich, 07-02-19.

Attorney for plaintiff: Laura A. Rabb of Rabb, Hamill, P.A. in Woodbridge, NJ. Attorney for defendant: Derrick DiFrancesco of Law Offices of Pamela D. Hargrove in Cranford, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Multiple vehicle collision – Disc herniations at C6-7 with C7 nerve root impingement – Disc bulges at C3-4, C4-5, L4-5 and L5-S1 – Plaintiff claims permanent injury – Defendants admit liability, but contest nature and extent of damages.

Camden County, NJ

The motor vehicle negligence case arose form a collision which occurred on July 31, 2015 when the plaintiff was a passenger in a vehicle proceeding on the Garden State Parkway at milepost 181 in Bass River. The defendant and co-defendant drivers were involved in an almost collision causing the defendant to lose control of his vehicle and strike the vehicle in which the plaintiff was a passenger. The force of the impact to the plaintiff's host vehicle was so great as to cause it to cross over several lines of travel and into a cluster of trees on the right side of the road, causing the plaintiff to sustain injuries. The defendants stipulated liability, but contested the plaintiff's damages.

As a result of the impact, the plaintiff sustained disc herniations at C6-7 with C7 nerve root impingement and C5-6. She also suffered disc bulges at C3-4, C4-5, L4-5 and L5-S1. The plaintiff presented the testimony of a physician who opined that the plaintiff's injuries were permanent. The plaintiff testified as to the major impact her injuries have had on her life and lifestyle. The defendants denied the nature and extent of the plaintiff's injuries. The defendants argued that the plaintiff's injuries were not permanent, and thus, she could not collect damages.

The jury determined that the plaintiff did not prove a permanent injury pursuant to J.J.S.A. 39:6A-8 and found in favor of the defendants.

REFERENCE

Barber vs. Sestino and Cancelosi. Docket no. L-001680-17; Judge Donald J. Stein, 06-12-19.

Attorney for plaintiff: Marc Sigal of Stanshine & Sigal, P.C. in Philadelphia, PA. Attorney for defendant Drew Sestino: Charles F. Blumenstein, II of Green, Lundgren & Ryan in Cherry Hill, NJ. Attorney for defendant Sherry L. Cancelosi: Raymond Danielewicz of Law Offices of Raymond L. Danielewicz, LLC in Haddonfield, NJ.

Parking Spot Collision

$12,500 RECOVERY

Motor vehicle negligence – Parking spot collision – Headaches, neck pain and lower back pain radiating to extremities – MRI reveals annular tear at L4-5; disc herniations at L4-5 and L5-S1 – Physical therapy and pain management.

Atlantic County, NJ

This motor vehicle negligence case arose from a collision which occurred on April 10, 2017 when the plaintiff, a 13-year-old boy, was the backseat passenger in a vehicle traveling with the right of way on Liberty Court in Galloway. At the same time, the defendant was parked on Liberty Court. The plaintiff contended that, without warning, the defendant failed to observe the plaintiff's vehicle and backed her vehicle out of the parking spot causing a violent collision with the plaintiff's vehicle.

As a result of the collision, the plaintiff presented to his physician with headaches, neck pain and lower back pain radiating to his lower extremities. The plaintiff underwent MRI and was diagnosed with an annular tear at L4-5; disc herniations at L4-5 and L5-S1. He was referred for 6-8 weeks of physical therapy and pain management.

The defendant filed a Notice of Appearance, but settled prior to trial for $12,500 broken down as follows: $3,393 in attorney fees; $500 in medical fees and $8,607 in net damages to the minor plaintiff.

REFERENCE

Demosthne vs. Raudabaugh. Docket no. L-000671-19; Judge Mary C. Siracusa, 06-28-19.

Attorney for plaintiff: Daniel K. Snyder of Aronberg, Kouser, Snyder & Lindemann, PA in Cherry Hill, NJ. Attorney for defendant: Donna E. Geoghan of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

Pull out Collision

$425,000 RECOVERY

Motor vehicle negligence – Pull out collision – Sideswipe – Plaintiff tow truck driver sustains aggravation of cervical herniation treated with conservative care for approximately 4 years – Fusion surgery – No income claims – UIM case.

Somerset County, NJ

In this action for motor vehicle negligence, the plaintiff tow truck operator in his 40s contended that as he was proceeding on the main roadway, the defendant entered and struck him causing him to sustain an aggravation of preexisting injuries. The plaintiff was in the course of his employment when struck. The defendant had $100,000 in coverage, which was paid. The employer supplied $1,000,000 in UIM protection and $900,000 was available.

The plaintiff had a history of cervical complaints which were treated conservatively for approximately 4 years as of the time the subject accident occurred. The plaintiff maintained that he suffered an aggravation and that he developed a herniation that will cause permanent symptoms despite fusion surgery. The defendant denied that the accident was causally related to the herniation, which the defendant maintained was the result of the preexisting difficulties only. The plaintiff countered that there was no suggestion that surgery might be indicated until the subject collision occurred, and that he required a cervical fusion after the collision.

The plaintiff was paid for missed time from work and was ultimately able to return.

The case settled prior to trial for an additional $325,000, yielding a total recovery of $425,000.

REFERENCE

Femdt vs. Richard. Docket no. SOM-L-1423-19, 04-20.

Attorney for plaintiff: Edward J. Rebenack of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

Rear End Collision

$15,000 RECOVERY

Motor vehicle negligence – Rear end collision – Traumatic cervical, thoracic and lumbar spine injuries – Defendant vehicle owners dismissed; defendant driver settles with plaintiff.

Cumberland County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant owners of the vehicle asserted that they were not involved in nor caused the subject collision.

On August 7, 2016, the plaintiff was operating her vehicle on West Walnut Road at the intersection with Delsea Drive in Vineland. The defendant driver was operating a vehicle owned by the defendant owners in the same location. The plaintiff maintained that the defendant driver failed to control his vehicle and failed to observe and adjust for traffic such that he struck the plaintiff's vehicle. As a result of the collision, the plaintiff sustained traumatic injury to the cervical, thoracic, and lumbar spine.

The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant driver maintained that the plaintiff driver was at least comparatively negligent in causation of the collision wherein she was injured.

The defendant owners were dismissed from the suit and the plaintiff and defendant driver settled the matter prior to trial in the amount of $15,000.

REFERENCE

Arce vs. Lascarez, et al. Docket no. L-000517-18; Judge James R. Swift, 10-03-19.

Attorney for plaintiff: Adam S. Malamut of Malamut & Associates in Cherry Hill, NJ. Attorney for defendant: Eric S. Robinson of Law Office of Debra Hart in Mount Laurel, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Cervical herniations at C2-3, C3-4, C5-6, C6-7; lumbar herniations at L2-3, L3-4, L4-5 – Trigger point injections, chiropractic care, physical therapy and pain management – Claim of need for future surgery.

Camden County, NJ

This action for motor vehicle negligence arose fro an incident which occurred on May 3, 2016 when the plaintiff, a 52-year-old woman, was traveling northbound on the Atlantic City Expressway in Gloucester. The defendant was traveling behind the plaintiff. The plaintiff contended that the defendant failed to control her vehicle and failed to stop behind the plaintiff, striking her vehicle from the rear and causing the plaintiff injury. The defendant denied negligence and contested the nature and extent of the plaintiff's injuries.

As a result of the collision, the plaintiff sustained multiple cervical disc herniations at C2-3, C3-4, C5-6 and C6-7; lumbar disc herniations at L2-3, L3-4 and L4-5;

cervical thoracic and lumbar sprains and strains, facet syndrome and myofascitis; aggravation of cervical and lumbar spondylosis. The plaintiff claimed her injuries were confirmed by MRI. The plaintiff treated with trigger point injections, chiropractic care, physical therapy and pain management.

The plaintiff's physician opined that the plaintiff sustained permanent injuries and would require further pain management and surgery. The defendant contended that the plaintiff did not meet the statutory requirements that would allow the plaintiff to receive compensation.

The jury determined that the plaintiff had not met her burden to prove that she sustained a permanent injury and found in favor of the defendant.

REFERENCE

Brewster vs. Lombardi. Docket no. L-003266-17; Judge Sherri L. Schweitzer, 07-01-19.

Attorney for plaintiff: Jeremy M. Weitz of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Camden, NJ. Attorney for defendant: Charles F. Blumenstein of Green, Lundgren & Ryan in Cherry Hill, NJ.

PREMISES LIABILITY

Fall Down

$200,000 GROSS ARBITRATION AWARD

Premises liability – Fall down – Plaintiff falls in parking lot of college-leased property owned by defendant – Issue as to which party responsible for maintenance – Comminuted fracture of right distal radius – Open reduction with internal fixation and second surgery to remove hardware.

Bergen County, NJ

In this premises liability case, the plaintiff, a 64-year-old employee of the defendant college, asserted that the defendants failed to properly maintain the college's parking lot such that there was a defect that caused her to fall and become injured. The plaintiff brought suit against the defendant owner of the property. The defendant denied liability and contested the plaintiff's damages.

After finishing her duties at the defendant college on September 8, 2015, the plaintiff exited the building, began walking toward her vehicle in an upper parking lot, and fell as she approached the rear of her vehicle. The plaintiff maintained that she fell on a crack in the center of the area and a large hole in the crack caught her foot, causing her to fall. The weather on that day was dry and clear. The college's security cameras recorded the plaintiff's fall.

As a result of the fall, the plaintiff sustained a comminuted fracture of the right distal radius. The plaintiff underwent open reduction with internal fixation and a second surgery to remove hardware. There was a worker's compensation lien of approximately $70,000.

The defendant owner of the property argued that, under the lease agreement, the tenant, the college and employer of the plaintiff, was responsible for all maintenance on the property. Further, the president of the college was also an investor in the defendant company that owned the property. The defendant argued that there was no defect and that the plaintiff fell in an area where there were no cracks or potholes in the asphalt. The defendant maintained that the plaintiff fell because she was looking at her keys as she approached her car, rather than looking at the ground and watching where she was going. The defendant pointed to the plaintiff's deposition testimony wherein she said that she should have been looking at the road instead of her key. The defendant asserted that the plaintiff had a history of falls and had fallen on a number of occasions prior to the subject incident. The defendant also pointed to the fact that the plaintiff had had arthroscopic surgery on her knee and later a bilateral knee replacement before working at the defendant college.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant property owner and 20% to the plaintiff. The arbitrator set gross damages at $200,000 and net damages at $160,000 after reduction for the plaintiff's comparative negligence. The arbitrator noted an issue with the lease as to responsibility for maintenance that was not decided by the arbitrator. Neither party took any action following the arbitration, and the court issued a 50-day notice of dismissal.

REFERENCE

Romero vs. TKL Landholdings, LLC. Docket no. L-005070-17; Judge Rachelle L Harz, 10-08-19.

Attorney for plaintiff: Craig M. Pogosky of Law Offices of Joseph C. Zisa, Jr. in Hackensack, NJ. Attorney for defendant: W. Thomas McBride of Brown & Connery, LLP in Westmont, NJ.

$100,000 RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on wet floor at defendant restaurant – Left knee tear – Arthroscopic surgery – Plaintiff claims $62,000 in outstanding medical expenses – Arbitration finds defendant 75% negligent and plaintiff 25% negligent with gross damages of $60,000 exclusive of unpaid medical expenses.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant restaurant allowed a dangerous condition on its premises in the form of a wet floor. The plaintiff asserted that the defendant was negligent in failing to remove or warn patrons of the hazardous condition which caused the plaintiff to slip and fall and sustain injuries. The defendant asserted that the plaintiff failed to exert reasonable caution when navigating a busy restaurant and that the defendant had no actual or constructive notice of a dangerous condition on the premises.

On June 18, 2017, the plaintiff was a patron at the defendant restaurant in Teterboro. The plaintiff alleged that she slipped and fell on a wet floor at the defendant establishment. The plaintiff presented video from the defendant security camera which showed another patron having a slippage issue in the time prior to the plaintiff's fall. The plaintiff alleged that her fall resulted in permanent injuries. As a result of the fall, the plaintiff sustained a left knee tear requiring arthroscopic surgery. The plaintiff claimed $62,000 in outstanding medical expenses.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant and 25% liability to the plaintiff with gross damages of $60,000 reduced to $45,000 by the plaintiff's comparative negligence, exclusive of any outstanding medical expenses. After arbitration, the defendant made an offer of judgment in the amount of $75,000. Following arbitration and prior to trial, the parties settled for $100,000 inclusive of any medical liens and unpaid medical bills.

REFERENCE

Prokus vs. The Habit Burger Grill. Docket no. L-006364-17; Judge Estela M. De La Cruz, 10-29-19.

Attorney for plaintiff: Brent Bramnick of Bramnick Rodriguez Grabas Arnold & Mangan in Scotch Plains, NJ. Attorney for defendant: Richard B. Smith of The Law Offices of Gerald F. Strachan in Woodbridge, NJ.

DEFENDANT'S VERDICT

Premises liability – Fall down – Plaintiff claims she tripped on lifted or buckled plastic covering on basement stairs causing her to fall down flight of stairs – Comminuted, displaced fracture of left distal radius; ulnar styloid fracture deformity; left facial, periorbital/supraorbital and left frontotemporal soft tissue swelling with scalp contusion – Open reduction with internal fixation with second surgery to remove hardware and third surgical procedure to improve outcome.

Hudson County, NJ

In this premises liability case, the plaintiff, a restaurant and catering supervisor, asserted that the defendants owned or rented a property that had a defect in a staircase upon which the plaintiff fell and was caused significant, permanent injury. The defendants denied liability, arguing that the plaintiff failed to serve an expert report or retain an expert to establish that there existed a dangerous condition or defect that caused the plaintiff to fall.

On June 7, 2016, the plaintiff was visiting the apartment of friends at 1625 79th Street in North Bergen. The apartment building was owned by the defendant owners and rented by the defendant tenants. As the plaintiff was heading from the first floor to the bathroom in the basement, she tripped and fell down the stairs. The plaintiff asserted that her foot or shoe got stuck on something and she fell down the flight of stairs. The plaintiff maintained that there was plastic covering the steps and that a portion of the plastic was lifted or buckled and caused her to fall. The plaintiff fell down approximately 10 steps and was rendered unconscious. She was taken to the emergency room of the local hospital.

As a result of the fall, the plaintiff sustained a comminuted, impacted and dorsally displaced fracture of the left distal radius; ulnar styloid fracture deformity; left facial, periorbital/supraorbital and left frontotemporal soft tissue swelling with scalp contusion. The plaintiff was admitted to the hospital and open reduction with internal fixation was performed on the left wrist. She was kept overnight and then discharged. The plaintiff had a second surgery to remove the hardware from her wrist and a third surgery in an attempt to improve the condition of the wrist. The plaintiff continues to have pain and limitations of the wrist and hand and cannot put any pressure on the hand or wrist. The plaintiff claimed lost wages of $10,053.

The defendants argued that the plaintiff failed to show that the step where she allegedly fell was a dangerous condition or created an unreasonable risk of harm or injury. The plaintiff did not establish that the defendant tenants had control over the premises to make repairs or had concealed any latent defect, nor did she establish that the defendant property owners had knowledge, either constructive or actual, of any dangerous condition in the apartment.

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

REFERENCE

Jimenez vs. Barco, et al. Docket no. L- 001028-17; Judge Kimberly Espinales-Maloney, 10-15-19.

Attorney for plaintiff: Joseph Guiseppi Boccia of Zavodnic, Perlmutter & Boccia, LLC in Jersey City, NJ. Attorney for defendant tenants: Lewis Greenberg of Fuchs, Greenberg & Sapin in Jersey City, NJ. Attorney for defendant property owners: Michael Forcino of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Negligent Maintenance

$15,000 RECOVERY

Premises liability – Negligent maintenance – Plaintiff walks into metal half door at defendant Walmart store – Traumatic injury to back, neck and thumbs – Defendant points to plaintiff's negligence and preexisting conditions.

Passaic County, NJ

In this premises liability case, the plaintiff, a 67-year-old woman, asserted that the defendant store negligently maintained its premises such that, entering through a doorway, the plaintiff fell and sustained significant, permanent injury. The defendant denied liability and asserted that the plaintiff attempted to enter the store through an opening intended for shopping carts.

On September 26, 2015, the plaintiff walked into a metal header above a half-door at the defendant retail store on Route 23 in Franklin. The plaintiff attempted to enter when she was injured by what she maintained was a half door that was improperly maintained, inspected or repaired by the defendant resulting in a dangerous condition that caused serious injury to the plaintiff. As a result of the incident, the plaintiff sustained traumatic injury to the back, neck and thumbs on both hands. The plaintiff had a Medicare lien of $42,000.

The defendant maintained that the plaintiff's negligence was significant and that the defendant could not be held responsible for the negligent acts of the plaintiff. Further, the defendant asserted that the plaintiff had a significant history of preexisting conditions and that some or all of her injuries were unrelated to the subject incident. The defendant also noted that the plaintiff's Medicare lien was inordinately high at $42,000.

The parties settled the matter prior to trial in the amount of $15,000 in damages to the plaintiff.

REFERENCE

Johnson vs. Walmart. Docket no. L-003085-17; Judge Bruno Mongiardo, 07-26-19.

Attorney for plaintiff: Robert S. Maider of Birkhold & Maider, LLC in Nutley, NJ. Attorneys for defendant: Brian M. Kerr and Edward Solensky, Jr. of Cottrell Solensky, P.A. in Newark, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$33,280,000 VERDICT – MEDICAL MALPRACTICE – CARDIOLOGY NEGLIGENCE – ANESTHESIOLOGY NEGLIGENCE – FAILURE TO OBTAIN INFORMED CONSENT FOR PROCEDURE PERFORMED BY CARDIOLOGIST – ANOXIC BRAIN INJURY – SEVERE MYOCLONUS.

Suffolk County, MA

In this medical malpractice matter, the plaintiff patient alleged that the defendant cardiologist and the defendant anesthesiologist were negligent in performing a procedure that was not necessary and for which the cardiologist failed to obtain informed consent which resulted in the plaintiff sustaining an anoxic brain injury. The defendants denied that there was any deviation from acceptable standards of care in their treatment of the plaintiff.

The male plaintiff came under the care of the defendant cardiologist for evaluation of residual vegetation on his heart valve from his preexisting endocarditis. The defendant cardiologist examined the plaintiff and determined that due to the plaintiff's symptoms being consistent with atrial flutter; he should be admitted and placed on medication. The defendant cardiologist further determined that the plaintiff should undergo a trans-esophageal echocardiogram and a cardioversion in the event that the medication did not work. The plaintiff's heart rate had stabilized by the next day; however, the plaintiff contended that the defendant cardiologist continued with the procedure despite the fact that there was no apparent need to perform it. The defendant cardiologist and the defendant anesthesiologist had to immediately terminate the procedure, however, as soon as the plaintiff was anesthetized since he stopped breathing. There were several attempts to ventilate the plaintiff that were not successful.

The plaintiff brought suit against the defendant cardiologist and the defendant anesthesiologist alleging negligence. The jury awarded the plaintiff the sum of $33,280,000 in damages for his brain injury. The jury, however, failed to reach a consensual verdict on the negligence claims. The parties had agreed to a confidential high/low agreement prior to the verdict.

REFERENCE

Frederick Graham vs. Richard A. Goldman, M.D., et al. Case no. 1684CV02426; Judge Robert B. Gordon, 11-09-19.

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

$1,500,000 RECOVERY – MEDICAL MALPRACTICE – URGENT CARE NEGLIGENCE – DEFENDANT PHYSICIAN'S ASSISTANT AND ATTENDING PHYSICIAN FAIL TO APPRECIATE SIGNS AND SYMPTOMS OF ABDOMINAL AORTIC ANEURYSM AND INSTEAD DIAGNOSE PLAINTIFF'S DECEDENT WITH UTI, DISCHARGING DECEDENT WITH UNDIAGNOSED LIFE-THREATENING CONDITION – WRONGFUL DEATH OF 58-YEAR-OLD MALE.

Buck County, PA

In this action for medical malpractice, the estate of the decedent alleged that the defendant employees of the defendant urgent care facility failed to properly recognize, diagnose and treat the decedent's abdominal aortic aneurysm, and instead treated the decedent for a UTI. The decedent later presented to the hospital and was diagnosed with the aortic aneurysm, but died before emergency surgery could be performed. The defendants generally denied all allegations of negligence and injury.

On November 2, 2014, the 58-year-old male presented to the defendant urgent care facility located on West Street Road in Warminster, Pennsylvania, with complaints of pain in the groin and lower abdomen. He was examined by the defendant physician's assistant. His blood pressure, pulse and respiration were all elevated. A rapid urine dip did not show nitrates. The

PA discussed the decedent's condition with the attending doctor, defendant Bluestein. The defendants determined that the decedent was suffering gastrointestinal issues and likely had a UTI. The decedent was discharged with antibiotics and Zofran, an anti-nausea medicine.

The estate alleged that the defendant physician and PA were negligent in failing to properly evaluate the medical condition of the decedent, failing to treat the decedent's medical condition promptly and properly, failing to properly rule out abdominal aortic aneurysm, failing to order an ultrasound or CT-scan, and diagnosing the decedent with a UTI which was unsupported by the decedent's symptoms. The estate also alleged that the doctors group was vicariously liable for acts of attending physician and PA. The estate made claims for wrongful death and survival action. The estate settled with the defendants for $1,500,000.

REFERENCE

The Estate of Dennis Kelly by Janis Kelly vs. Premier Urgent Care, Hazel Bluestein, M.D., Victoria Martin PA-C and HMB Healthcare, LLC. Case no. 2016-04467; Judge Robert O. Baldi, 10-02-20.

Attorney for plaintiff: Timothy Lawn in Philadelphia, PA. Attorney for defendant: John Shusted of German Gallagher & Murtagh in Cherry Hill, NJ. Attorney for defendant: John F. X. Monaghan, Jr. of Goldfein & Joseph in Philadelphia, PA.

$120,000 RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – PLAINTIFF'S DECEDENT SUFFERS FALL AT DEFENDANT'S FACILITY SUSTAINING HIP FRACTURE CAUSING DECLINE IN CONDITION AND RESULTING IN DEATH – FAILURE TO PROVIDE PROPER FALL RISK PREVENTION – WRONGFUL DEATH OF 83-YEAR-OLD MALE.

Bucks County, PA

This wrongful death action was brought by the decedent's estate against the defendant skilled nursing facility alleging that the defendant failed to prevent a fall in which the decedent broke his hip which led to a decline in the decedent's health and his eventual death 2 weeks later. The defendant denied all allegations of negligence.

On August 9, 2016, the elderly male decedent was admitted to the defendant skilled nursing facility located in Langhorne, Pennsylvania. On August 29, 2016, the decedent fell at the facility and suffered a hip fracture. The fracture required medical treatment. The decedent died 2 weeks later. The decedent was survived by his wife and 3 adult children.

The parties settled for $120,000.

REFERENCE

The Estate of Paul G. Smith by Paul Smith vs. Attleboro Nursing and Rehabilitation Center, Brockie Healthcare Incorporated and McWil Management Company. Case no. 2018-04433; Judge Brian T. McGuffin, 09-10-20.

Attorney for plaintiff: Ronald Lebovits of Zarwin Baum in Philadelphia, PA. Attorney for defendant: William Mundy of Burns White, LLC in West Conshocken, PA.

PRODUCT LIABILITY

$2,000,000 RECOVERY – PRODUCT LIABILITY – FAILURE TO WARN – ADULTERATED WEIGHT LOSS SUPPLEMENT CAUSES LIVER FAILURE AND NEED FOR LIVER TRANSPLANT – NO INCOME LOSS.

Middlesex County, NJ

In this action for product liability, the defendant was criminally charged in connection with the product (a weight loss supplement) and the civil case was stayed until 5 defendants pleaded guilty. The plaintiff maintained that after taking the defendant's supplement, he will require anti-rejection drugs for the remainder of his life. The plaintiff was able to return to his job. Shortly thereafter, reports reflected that the substance was indeed related to liver damage and the FDA, finding that the product was adulterated, ordered the defendant to take the supplement off the market. The defendant declined, contending that the damage was related to counterfeit versions of the substance.

In the summer of 2013, the plaintiff began taking the supplement for the purpose of losing weight and adding muscle tissue. The evidence reflected that several months earlier, the FDA warned the defendant that the manufacture was not proper. The plaintiff asserted that shortly thereafter, the plaintiff began to experience liver difficulties, and his liver failed in October necessitating a liver transplant. Approximately 1 month later, the defendant acknowledged that there was a link between the substance and liver

difficulties and the defendant recalled the product. The plaintiff contended, however, that the damage was already done.

The plaintiff brought suit in April, 2014.The DOJ brought a criminal action in Texas in January 2015 and that April, the defendant company and 5 individuals pleaded guilty to felonies. The plaintiff asserted that the defendant acted in a wanton and willful manner and that punitive damages were appropriate. The case settled prior to trial for $2,000,000.

REFERENCE

Plaintiff's transplant expert: Lewis Pepperman, M.D. from Hofstra University, Long Island, NY.

Viloria vs. U.S P. Labs. Docket no. MID-L-L-2374-14, 04-27-20.

Attorney for plaintiff: Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC in Roseland, NJ.

MOTOR VEHICLE NEGLIGENCE

$4,662,572 VERDICT INCLUDING $1,000,000 IN PUNITIVE DAMAGES – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – DRIVING ON WRONG SIDE OF ROAD WHILE UNDER INFLUENCE OF HEROIN – ROLL-OVER COLLISION – CERVICAL DISC HERNIATION – PATELLA FRACTURE – SHOULDER DISLOCATION – POST-TRAUMATIC STRESS DISORDER – DAMAGES/CAUSATION ONLY.

Miami-Dade County, FL

In this action for motor vehicle negligence, the defendant admitted negligence in swerving into the plaintiff's lane of travel from the opposite direction and causing a head-on, roll-over collision while he was under the influence of heroin. The plaintiff sought both compensatory and punitive damages. The plaintiff, age 46 at the time, was transported to the hospital and was treated and released. She was subsequently diagnosed with a disc herniation at the C5-C6 level for which cervical surgery was recommended, a shoulder separation caused by the seatbelt strap and a patella fracture which her doctors causally related to the accident. She underwent arthroscopic shoulder surgery, as well as left knee surgery. The defense maintained that the great majority of the plaintiff's conditions and her ongoing complaints were not a result of the accident, but were caused by longstanding health issues which predated the collision.

The defendant, a 52-year-old unemployed man at time of trial, testified that he had no memory of the collision. He testified "There's enough stuff that's been brought forward that I can't deny that I was on heroin." He also took full responsibility for his actions and stated, "I know my actions need to be punished."

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $4,662,572 in damages including $1,000,000 in punitive damages. The plaintiff has moved for attorney fees and costs. The defendant has filed a notice of appeal.

REFERENCE

Plaintiff's economic expert: David Williams from Miami, FL. Plaintiff's psychiatry expert: Martha Kato, M.D. from Coral Gables, FL. Plaintiff's psychology expert: Doug Johnson-Greene, Ph.D. from Coral Gables, FL.

Winkeljohn vs. Callari. Case no. 2018-020841-CA-01; Judge Mavel Ruiz, 03-03-20.

Attorney for plaintiff: Christopher M.S. Drury of Diamond, Kaplan & Rothstein in Miami, FL. Attorney for plaintiff: Todd L. Wallen of Wallen | Kelley in Coral Gables, FL.

$2,940,000 PRE-SUIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF DRIVER STRUCK IN REAR BY DUMP TRUCK AND PROPELLED INTO ON-COMING TRAFFIC WHERE HE IMPACTS ANOTHER CAR – CERVICAL FRACTURE – PLAINTIFF PARALYZED FROM CHEST DOWN.

Sussex County, NJ

This was a motor vehicle negligence case involving a plaintiff driver in his mid 50s who was struck in the rear by the driver of a dump truck on Route 23 and propelled into on-coming traffic where he impacted with another driver, who was not alleged to be negligent. The plaintiff contended that he suffered a cervical fracture that left him with permanent paralysis below the level of the chest. The plaintiff was not working at the time of the accident.

The evidence disclosed that the plaintiff was placed in a medically induced coma for 42 days during an approximate 6-week hospitalization. The plaintiff then

spent approximately three months in a rehabilitation hospital. After the collision occurred, church members rallied behind him and volunteered in retrofitting his house, enabling him to live at home with the assistance of an LPN. The plaintiff also requires very frequent physician visits. The plaintiff has also obtained a handicap accessible van. The evidence further disclosed that because of extended times in his wheelchair, the plaintiff developed a decubitus ulcer and required surgery.

The case settled prior to suit being filed for $2,940,000.

REFERENCE

Plaintiff's life care planning expert: Diana Dunn-Roberts, RN from Medivest, Oviedo, FL.

DeMario vs. Supreme Mulch. 07-30-20.

$2,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF AUTOMOBILE DRIVER STRUCK WITH GREAT FORCE BY DEFENDANT VAN DRIVER – EXTENSIVE PROPERTY DAMAGE – CERVICAL AND LUMBAR HERNIATIONS – SURGERY – INABILITY TO CONTINUE JOB IN AERONAUTICS INDUSTRY.

Los Angeles County, CA

In this action for motor vehicle negligence, the 42-year-old plaintiff driver contended that as he was slowing in the right lane, he was struck with great force by the defendant van driver. The plaintiff asserted that he suffered cervical and lumbar herniations that required surgery. The plaintiff, who had worked in the aeronautics industry in a job that required him to travel throughout the world repairing entertainment systems on airlines, contended that he can no longer engage in this work and has suffered a significant diminution in earnings. The defendant had $1,000,000 in primary coverage and a $10,000,000 umbrella.

The plaintiff related that although most of his co-workers in his aeronautics industry job held advanced degrees, he did not, but was nonetheless able to virtually create a job for himself in which he traveled throughout the world performing repairs to entertainment systems manufactured by his employer and placed aboard aircraft. The plaintiff asserted that he can no longer engage in the travel required by his job and has not worked since the accident occurred.

The case settled prior to trial for $2,500,000.

REFERENCE

Plaintiff 42-year-old driver vs. Defendant van driver.

Attorney for plaintiff: Laura Davidson of Jacoby & Myers, LLP in Los Angeles, CA.

PREMISES LIABILITY

$1,500,000 RECOVERY – PREMISES LIABILITY – FALLING OBJECT – APPROXIMATELY 3 FT. HIGH PROMOTIONAL BOTTLE FALLS FROM TOP OF SPEAKER WHERE IT WAS PLACED DURING SPECIAL EVENT, STRIKING PLAINTIFF SECURITY GUARD IN HEAD – MULTIPLE LUMBAR AND CERVICAL BULGES – LUMBAR SURGERY – CEREBRAL CONCUSSION AND POST-CONCUSSION SYNDROME – FREQUENT HEADACHES – ALLEGED SPOLIATION OF EVIDENCE – CASE SETTLES DURING PENDENCY OF PRE-TRIAL MOTIONS.

Bronx County, NY

In this premises liability action, the 28-year-old plaintiff, who was employed by a security company and who was working at the defendant night club during a Halloween promotion of a brand of champagne, contended that as he was standing in front of a large speaker on the stage, an approximate 3-foot high, 50 pound promotional champagne bottle fell, striking him in the head. The plaintiff contended that he sustained close head trauma, severe headaches, decreased hearing on his right ear, multiple lumbar and cervical bulges and herniations. As a result of his severe injuries, the plaintiff had to undergo spinal surgery and multiple injections.

The plaintiff sought to recover damages for his serious and permanent personal injuries that he sustained. The defendants asserted that they were not liable in this case.

The plaintiff contended that the negligence of the defendant club caused, or was a proximate cause of the injuries suffered by plaintiff. The vibration of the stereo speaker or base box, caused by the loud music emanating therefrom, caused the decorative large bottle to crash on the plaintiff's head. The plaintiff maintained that this type of incident would not occur in the absence of negligence and that the jury should be instructed regarding Res Ipsa Loquitur. The defendant denied that the jury should be so instructed.

The defendant had $3,000,000 in primary coverage and a $6,000,000 umbrella. The case settled while the pretrial motions were pending for $1,500,000.

REFERENCE

Plaintiff's economist expert: Kristin Kuscma from Livingston, NJ. Plaintiff's neurologist expert: Jason Brown, M.D. from New York, NY. Plaintiff's neurologist expert: Aric Hausknecht, M.D. from New York, NY. Plaintiff's orthopedic surgeon expert: Sebastian Lattuga, M.D. from New York, NY.

Martinez vs. 10th Ave. Hospitality Group, et al. Index no. 22394/16; Judge Richard Byrne, 04-21-20.

Attorney for plaintiff: Todd J. Krouner of Todd J. Krouner, PC in Chappaqua,, NY.

ADDITIONAL VERDICTS OF INTEREST

Insurance Obligation

$2,300,000 CONFIDENTIAL RECOVERY – INSURANCE OBLIGATION – FAILURE TO DEAL IN GOOD FAITH – CHAPTER 93A VIOLATION – PLAINTIFF CONTENDED DEFENDANT'S INSURER FAILED TO MAKE UNCONDITIONAL TENDER OF LIABILITY POLICY WITHIN STATUTORY TIME PERIOD – PLAINTIFF SUFFERED 40% WHOLE BODY IMPAIRMENT AS RESULT OF INSURED'S MEDICAL MALPRACTICE'S NEGLIGENCE.

Withheld County, MA

In this matter, the plaintiff contended that the defendant insurer failed to tender its malpractice policy as required under the state's Chapter 93A statute when the defendant insurer failed to tender the policy. The plaintiff suffered a 40% whole person impairment as a result of the negligence of the insurer's gynecologist during a hysterectomy where the surgeon perforated multiple organs. The defendant denied the allegations and disputed the plaintiff's claim for damages.

The parties ultimately agreed immediately prior to disposition by the panel to resolve the plaintiff's claim for the sum of $2,300,000 consisting of remittance of the $1,000,000 policy limits and $1,300,000 to resolve the plaintiff's Chapter 93A claim.

REFERENCE

Patient Jane Doe vs. Defendant Insurer. 12-01-19.

Attorney for plaintiff: Charles G. Devine, Jr. of Devine Barrows, LLP in Wellesley, MA. Attorney for plaintiff: Steven T. Snow of Law Offices of Steven T. Snow in Mashpee, MA.

$416,448 GROSS VERDICT – INSURANCE OBLIGATION – UNDERINSURED MOTORIST BENEFITS – PLAINTIFF PURSUES UIM BENEFITS FROM DEFENDANT INSURANCE COMPANY AFTER SUSTAINING SERIOUS INJURIES IN REAR END COLLISION WITH TORTFEASOR – FAILURE TO PAY UIM BENEFITS – ORTHOPEDIC CERVICAL INJURIES – AGGRAVATION OF PREEXISTING SCOLIOSIS.

Dallas County, TX

The plaintiff in this insurance obligation maintained that despite adequate documentation to prove her need to recoup underinsured motorist benefits, the defendant insurance company denied the plaintiff's claim. The defendant maintained that the plaintiff's settlement with the tortfeasor adequately compensated the plaintiff for her injuries.

On March 29, 2014, the female plaintiff was operating her motor vehicle in a careful and prudent manner, in Dallas, Texas. The tortfeasor failed to remain reasonably attentive, keep a proper lookout, and control her speed and struck the rear of the plaintiff's vehicle causing the plaintiff to suffer serious and permanent orthopedic injuries to the neck along with upper extremity radiculopathy and a severe aggravation of scoliosis.

The jury found that the plaintiff was entitled past and future damages totaling $416,447.46, which was then capped out at $300,000 per the plaintiff's policy with the defendant.

REFERENCE

Lani Callaway Burgar vs. United Services Automobile Association and USAA Casualty Insurance Company. Case no. DC-17-11126; Judge Bonnie Goldstein, 01-28-20.

Attorney for plaintiff: Darrell W. Calvin, Jr. of Crain Lewis Brogdon, LLP in Dallas, TX. Attorney for defendant: Carlos A. Balido of Walters Balido and Crain in Dallas, TX.

Labor Law

$3,375,000 RECOVERY – LABOR LAW SEC. 240(1) – FAILURE TO PROVIDE PROPER LADDER – PLAINTIFF UNION TAPER PERFORMS WORK FROM TOP HALF OF EXTENSION LADDER – PLAINTIFF FALLS 12 FEET – FRACTURES OF NON-DOMINANT WRIST AND ELBOW ON SAME SIDE – FRACTURES TREATED CONSERVATIVELY – CERVICAL HERNIATIONS – FUSION – LUMBAR HERNIATIONS TREATED WITHOUT SURGERY –INABILITY TO WORK – PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY GRANTED.

Queens County, NY

This was a Labor Law Sec. 240 (1) case involving plaintiff union taper in his early 40s, who was involved in preparing a wall to be painted, in which the plaintiff contended that he was not provided with an appropriate ladder. The plaintiff maintained that only the top half of an extension ladder was available, and that he leaned it against a wall as he performed his work. The plaintiff asserted that the ladder did not have appropriate feet and slipped, resulting in his falling some 12 feet. The plaintiff maintained that he suffered multiple lumbar and cervical herniations that will permanently prevent him from working. The plaintiff's motion for summary judgment on liability was granted shortly before the settlement. The defendant argued that appropriate devices were available.

The plaintiff asserted that he suffered a scaphoid fracture of the left, non-dominant wrist and an intraarticular fracture of the proximal head on the left elbow. These injuries were treated conservatively. The plaintiff maintained that he will permanently suffer pain and difficulties with the activities of daily living. The plaintiff further contended that he that he suffered 3 cervical herniations that will cause permanent severe symptoms despite fusion surgery. The plaintiff also maintained that he sustained several cervical and lumbar herniations that were confirmed by MRI and which will cause permanent symptoms despite fusions.

The case settled prior to trial for $3,375,000.

REFERENCE

Plaintiff's economist expert: Conrad Berenson, Ph.D. from Woodbury, NY. Plaintiff's orthopedic surgeon expert: Jason M. Gallina, M.D. from New York, NY. Plaintiff's physical medicine expert: Joseph Carfi, M.D. from New York, NY.

Rodriguez vs. Extell 4110, LLC Gilbane Building Company. Index no. 708570/17, 04-22-20.

Attorney for plaintiff: Adam M. Orlow of The Orlow Firm in Flushing, NY.

Unsafe Workplace

$221,000 VERDICT – UNSAFE WORKPLACE – WORKSITE NEGLIGENCE – FORKLIFT ACCIDENT – DEFENDANT'S EMPLOYEE STRIKES PLAINTIFF WITH FORKLIFT – FAILURE TO PROVIDE PLAINTIFF WITH SAFE PLACE TO WORK – TIBIA/FIBULA FRACTURE.

Harris County, TX

The plaintiff in this worksite negligence action was standing in the recycling yard of the defendant company where the plaintiff was employed when he was struck by a forklift that was being operated by another employee of the defendant causing the plaintiff to suffer a fractured tibia/fibula.. The defendant maintained that it was the actions of the plaintiff that caused the incident and any resulting injuries.

On December 21, 2017, the male plaintiff was in the course and scope of his employment with the defendant BAB at the defendant's worksite located on Ronda Lane in Houston, Texas. Suddenly and without warning, the plaintiff was struck by a forklift being operated by a John Doe employee of the defendant.

The court found in favor of the plaintiff and awarded the plaintiff damages of $221,000.

REFERENCE

Shawn Smith vs. BAB Metal Recycling, LLC d/b/a Southwest Metal Recycling. Case no. 201929569; Judge Dedra Davis, 10-23-20.

Attorney for plaintiff: Randolph James Amaro, Jr. of Amaro Law Firm in Houston, TX. Attorney for defendant: Jerry Hecht in Houston, TX.

Worker's Compensation

$4,600,000 + VERDICT – WORKER'S COMPENSATION – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – PLAINTIFF RENDERED QUADRIPLEGIC – GOING AND COMING RULE – FUTURE BENEFITS OF $1,000,000 ANNUALLY AWARDED IN ADDITION TO PAST BENEFITS.

Miami County, FL

In this action to recover worker's compensation benefits, the complainant alleged that his catastrophic injuries were sustained while in the course and scope of his employment. The respondent worker's compensation insurance company argued that the matter should be guided by an exception known as the "Going and coming" rule and denied payment. As a result of the accident, the complainant was rendered a quadriplegic. To date, he requires care 24 hours a day, 7 days a week; costing millions of dollars. The claim was presented to the claimant's worker's compensation insurance company and, at first, the respondent insurance company paid for the required medial benefits. However, several months later, all benefits were denied pursuant to a worker's compensation exception known as the "Going and coming rule." The respondent argued that the claimant was not injured in the course and scope of his employment, but while he was traveling from a work meeting to his home. In support of this argument, the respondent highlighted the fact that, on the day of the injury, the claimant's calendar contained an appointment for a meeting that was not work-related.

On January 18, 2017, the complainant attended a business meeting in his official capacity as a City Commissioner. The meeting took place in the building next door to the building where the complainant lived; therefore, the complainant walked to the meeting. When the meeting ended, the complainant attempted to return to his condominium building and to pick up his car so that he could proceed with his daily work schedule. As he entered the condominium property, he was struck by a car operated by a valet driver and severely injured.

After hearing testimony, the Judge of Compensation Claims entered a detailed order concluding that the case was compensable. Therefore, the respondent was required to pay benefits that it had previously denied, interest, penalties, and all necessary future benefits. Aelion v. City of Sunny Isles Beach and PGCS, JCC 17-004278JIJ (October 26, 2017). The claimant not only recovered $4,600,000 in past benefits, but was also awarded approximately $1,000,000 annually for so long as he lives.

REFERENCE

Isaac Aelion vs. City of Sunny Isles Beach and PGCS. Case no. 17-004278JIJ; Judge Jeffrey I. Jacobs, 07-22-20.

Attorney for plaintiff: Brett A. Panter of Panter, Panter & Sampedro, PA in Miami, FL.