NEW JERSEY
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## SUMMARIES WITH TRIAL ANALYSIS



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

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

## VERDICTS BY CATEGORY

# SUMMARIES WITH TRIAL ANALYSIS

## *$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – FRONT-SEAT PASSENGER SUFFERS COLON TEAR AND REQUIRES ILEOSTOMY – CASE OF PLAINTIFF DRIVER WIFE REMAINS PENDING.*

**Middlesex County, NJ**

**This motor vehicle negligence action involved a front-seat passenger, in his early 50s, who was in a vehicle being driven by his wife in which the plaintiff contended that the defendant on-coming driver crossed over and struck the host car head-on. The plaintiff passenger's 18-year-old daughter was a rear-seat passenger and also a plaintiff, who suffered a fractured clavicle. Her mother was driving, made claims that included PTSD and the host driver's case remains pending. The defendant did not dispute crossing over and causing the head-on crash.**

The plaintiff front-seat passenger's injuries included multiple mesenteric injuries that required exploratory surgery, one of the results of which was sepsis, requiring a second surgery, following which this plaintiff's sepsis worsened, prompting a third exploratory which disclosed a serosal tear at the ascending colon, colonic ischemia and secondary surgical complication of hemorrhage, necessitating massive transfusions. This plaintiff required additional surgery in which an ileostomy bag was placed and plans on additional surgery to reverse the ileostomy.

The plaintiff also suffered bleeding from ileocolic branch requiring interventional radiology embolization with hemostasis and an IVC filter placement due to inability to tolerate anticoagulation. The plaintiff maintained that he will permanently suffer extensive gastric complaints, even if the planned reversal goes well. The plaintiff was hospitalized for 6 weeks that was followed by 6 weeks in a rehabilitation hospital. This plaintiff's injuries also entailed 6 left-sided rib fractures a pneumothorax which required the use of chest tube before essentially resolving, a nasal fracture and a fracture to the left tibia and fibula which this plaintiff contended will cause permanent pain and limitations despite conservative treatment. This plaintiff is currently a law student. The plaintiff made no income claims.

The passenger daughter suffered a fractured clavicle, which required an open reduction/internal fixation. The plaintiff would have argued that the jury should consider that she will have hardware for the remainder of a lengthy life expectancy.

The defendant had a $100,000/$300,000 policy. The plaintiff had a $250,000/$500,000UIM policy. The plaintiff also had a $1,000,000 umbrella which was added to the UIM policy. The father's case settled prior to trial for $1,250,000 and the daughter's case settled for $250,000.

### REFERENCE

Taylor vs. Mikhail. 09-22.

**Attorney for plaintiff: Michael J. Paragano of Nagel Rice, LLP in Roseland, NJ.**

### COMMENTARY

It is very interesting that the passengers' cases settled for the available coverage pre-suit and approximately 6 months after the accident occurred. In this regard, it is felt that the combination of the highly traumatic nature of the accident that involved a head-on collision, and the severe nature of the injuries suffered by the front seat passenger/father resulted in the umbrella carrier realizing that it faced extensive exposure and that the savings to the carrier in quickly resolving the action were significant,

## *$750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – LUMBAR HERNIATION – SURGERY 4 MONTHS AFTER ACCIDENT – PLAINTIFF ABLE TO RETURN TO NURSING JOB AND NO FUTURE INCOME CLAIMS.*

**Middlesex County, NJ**

**In this motor vehicle negligence case, the plaintiff driver, in her mid 40s, contended the defendant driver struck her in the rear while she was stopped at a light on Route 1 & 9. The plaintiff maintained that she suffered a lumbar herniation that required a hemilaminectomy and which will nonetheless cause permanent pain. The plaintiff is a nurse and missed no time from work until the surgery that occurred approximately 4 months after the accident. The plaintiff returned to work approximately one month after the surgery and the plaintiff made no future income claims. The defendant testified in discovery that that she had slowed for the light, but did not see the plaintiff's brake lights and assumed that she had started moving forward when the light turned green.**

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The defendant denied that the plaintiff suffered the claimed injuries in the collision. The defendant pointed out that the property damage was relatively light. The plaintiff countered that she had no prior symptoms or treatment and maintained that in view of the fact that she required surgery only 4 months after the accident, the defendant's position should clearly be rejected.

The plaintiff asserted that although the surgery improved the radiculopathy a great deal, she will suffer significant localized lower back pain for the remainder of her life. The plaintiff would have related that she was previously an avid runner and has been forced to give up this activity and lead a much more sedentary lifestyle. The plaintiff has a husband and 2 children and asserted that her ability to remain active with her family has been impacted.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $750,000.

## REFERENCE

Ringled vs. Claric, et al. Docket no. MID-L-5108-20, 07-22.

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

## COMMENTARY

It is felt as though the plaintiff obtained a substantial recovery, especially in view of the absence any future income claims. The plaintiff, who emphasized that she had no prior symptoms or treatment, stressed that she needed surgery within four months of the collision, arguing during negotiations that it was clear that the herniation was caused by the accident. Additionally, the plaintiff would have argued that in view of the often physical nature of a nurse's duties, her ability to return to work clearly reflected dedication and not the absence of substantial symptoms.

# *DEFENDANT'S VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – CONCUSSION WITH MILD BRAIN INJURY AND CHRONIC HEADACHES – DISC HERNIATION AT C5-6; DISC BULGE AT C3-4 AND C4-5; RIGHT C5 AND C6 RADICULOPATHY; L2-3 HERNIATION AND BULGING; L3-4 BULGE WITH ANNULAR TEAR; L4-5 BULGING AND LUMBAR RADICULOPATHY – PAIN MANAGEMENT; CHIROPRACTIC TREATMENT AND CERVICAL EPIDURAL INJECTIONS.*

## Middlesex County, NJ

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

On November 1, 2016, the plaintiff was traveling south on Route 9 at the intersection with Davis Lane in South Amboy. The defendant was operating her vehicle directly behind the plaintiff. The plaintiff contended that she brought her vehicle to a gradual, and then complete stop but the defendant negligently failed to observe traffic and collided directly into the rear of the plaintiff's fully stopped vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a concussion with mild brain injury and chronic headaches; disc herniation at C5-6; disc bulge at C3-4 and C4-5; right C5 and C6 radiculopathy; L2-3 herniation and bulging; L3-4 bulge with annular tear; L4-5 bulging; and lumbar radiculopathy. The plaintiff treated with chiropractic treatment and cervical epidural injections.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant pointed to a prior motor vehicle accident with similar injuries in which the plaintiff had been involved 15 years prior. The defendant also presented IME testimony confirming the plaintiff's cervical disc pathology but disputing causation. The defendant argued that the subject collision was a low-speed impact that could not have caused injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $85,000. The arbitration was not confirmed and the matter proceeded. Following arbitration, the plaintiff made an offer to take judgment in the amount of $100,000. The offer was not accepted and the matter went to trial.

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

## REFERENCE

Sun vs. Park. Docket no. L-007477-17; Judge Lisa M. Vignuolo, 03-03-20.

**Attorney for plaintiff: Nicholas J. Leonardis of Stathis & Leonardis, LLC in Edison, NJ. Attorney for defendant: John Raymond of Law Offices of Pamela D. Hargrove in Cranford, NJ.**

## COMMENTARY

Following the verdict, the plaintiff moved for a new trial. Prior to trial, the court entertained oral argument regarding the plaintiff's motion in limine to bar reference to the plaintiff's prior 2000 motor vehicle accident, injury sustained therein, and treatments stemming therefrom. The court issued a preliminary decision in the plaintiff's favor, pursuant to Allendorf v. Kieserman, 266 N.J. Super. 662 (App. Div 1993), agreeing that Allendorf generally disallowed reference to the prior accident, injuries, and treatment. However, the defense argued and the court discerned a potential credibility issue raised by the fact that the plaintiff underwent an injection following the 2000 accident but did not undergo the recommended epidural steroid injections following the subject 2016 accident.

Pursuant to the parties' request, the court did hold a Rule 104 hearing to determine the admissibility of the prior injection. During the Rule 104 hearing, the plaintiff testified that she did undergo one injection in the lower back following the 2000 accident. The plaintiff testified that she believed this was a cortisone injection. The injection was done in the doctor's office, not in a surgicenter or hospital. The plaintiff testified that she was sitting on an examining room table and was not face down with a fluoroscope overhead. The plaintiff testified that she was not sedated for the injection.

Ultimately, the court held that there was no relevance to the fact that the plaintiff underwent a prior injection following the 2000 accident for impeachment purposes because the "injection" was not the same type of procedure recommended following the subject accident. The court held that there was no probative value to the prior treatment being raised at trial and also held that the evidence was unduly prejudicial and therefore inadmissible. The plaintiff also made motions in limine to edit the de bene esse testimony of the plaintiff's and defendant's medical experts with regard to the prior accident and treatment. The court granted the portion of the plaintiff's motion in limine to edit out of the experts' video testimonies any and all references to the prior 2000 motor vehicle accident, injuries, and treatment related to that accident. Accordingly, the defense was ordered to edit out those portions of their expert's video testimony.

During the plaintiff's case, all mention of the prior 2000 motor vehicle accident was explicitly avoided pursuant to the court's ruling. Due to that ruling, the plaintiff's medical expert did not apprise the jury that he was aware of the prior accident injuries and treatment. Moreover, due to that ruling the plaintiff herself did not apprise the jury of the prior accident, injuries, and treatment; how those injuries had resolved following a conservative course of treatment; and how the injection she underwent in 2000 was different than the epidural injection she was recommended to undergo following the subject 2016 accident. When the defense called their medical expert to testify via video testimony, the jury heard the portion of his testimony which was supposed to be edited out. Unfortunately, by the time defense counsel and defense video technician were able to stop the video, the jury had heard the entirety of the defense expert's testimony about the 2000 accident, injury and treatment and irreparable damage had been done. During that time, there was chaos in the courtroom as multiple parties attempted to pause the video. The jury clearly perceived the commotion.

The court immediately excused the jury at the request of plaintiff's counsel and plaintiff's counsel immediately made a motion for a mistrial. The court took the motion under advisement and also advised that it would attempt to craft a curative instruction. When the court returned, the court advised the motion for a mistrial was denied. The court then read a proposed curative instruction to the attorneys and requested feedback. Plaintiff's counsel advised the court that it did not believe there was any curative instruction which could remedy the prejudice which was perpetrated; nonetheless, respecting the court's order, plaintiff's counsel did attempt to fashion a curative instruction, while explicitly maintaining the position that the mistake could not be cured. Ultimately, the court delivered a curative instruction to the jury.

The case was given to the jury for deliberations after closing arguments. After several hours of deliberation, the jury informed the court that it was divided. After several more hours, the jury ultimately returned a verdict in favor of the defendant. While plaintiff's counsel did not believe that playing the excluded portion of the video was done intentionally or with malice by defense counsel, it was unfortunately undeniable that it was careless and prejudicial. Plaintiff's counsel argued that extreme prejudice resulted from the error. The plaintiff pointed out that a large, quantifiable amount of time went into the preparation and prosecution of this matter, only to be wasted due to the defense's error. The plaintiff argued that a new trial was warranted.

The defendant objected to the motion, agreeing that the court had ruled that any references to plaintiff's prior accident in 2000 should be edited out of video testimony and that the defense had forwarded redactions to the videographer pursuant to the order. At trial when the video was played for the jury, defense counsel heard its expert start to mention the prior 2000 accident and jumped up saying "Stop." The videographer stopped the video. The court stopped the trial and after a brief recess and after hearing and considering plaintiff's request for a mistrial, the judge indicated that she had a proposed curative instruction. After consultation with both sides, the judge promptly gave her curative instruction and the video was played without further incident. Ultimately the jury determined that the plaintiff did not have a permanent injury, the objective evidence of permanent injury was found wanting by the jury and a no cause verdict was returned.

The defendant argued that a new trial was not warranted because the record in the present case did not indicate that the jurors were unable to comply with the court's curative instruction. The single mention of the 2000 accident when all the diagnostic testimony supporting the plaintiff's claim of permanency was from the fall of 2016 onwards was not a plainly "ineradicable" vice or error necessitating a new trial. The court's prompt ruling and curative instruction clearly followed the dictates of noted case law. All of the evidence heard by the jury followed the November 2016 accident: the treatment with her neurologist, her recovery from her concussive symptoms, the MRI results, the pain management treatment recommended and the demonstrative devices used to discuss plaintiff's treatment plans, all of this evidence was heard and considered, as well as testimony from the plaintiff and the defendant when the jury went back to deliberate.

Speculation that there was no way to issue a curative instruction to fix the brief reference to the 2000 accident, notwithstanding that plaintiffs' counsel's input went into the court's ultimate curative instruction, is just speculation, according to the defendant. It was clear that the jury reached its conclusion while soberly and deliberately considering all the evidence presented at trial. The defendant argued that the plaintiff had not established an adequate basis to have a new trial and the motion should be denied.

The plaintiff's motion for new trial was denied.

## *$1,400,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPPED ON PUDDLE IN CAR DEALERSHIP – LUMBAR AND CERVICAL HERNIATIONS – SURGERY – AGGRAVATION OF KNEE AND SHOULDER ARTHRITIS TREATED CONSERVATIVELY – ALLEGED AGGRAVATION OF EMOTIONAL ISSUES.*

**Bergen County, NJ**

**In this premises liability action, the plaintiff, approximately age 60, contended that as she was walking across the service area of a dealership, she slipped on a puddle. The plaintiff contended that as a result, she suffered lumbar and cervical herniations that required surgery, an aggravation of knee and shoulder arthritis that was treated conservatively. The plaintiff also maintained that the fall occasioned an aggravation of emotional difficulties which had previously required psychotherapy. The plaintiff would have pointed out that it was raining on the day in question. The plaintiff would have maintained that because of this potential hazard and the washing of cars that were just serviced, puddles were on the floor. The defendant denied that the area was unsafe and asserted that the cause of the incident was the failure of the plaintiff to walk more carefully. The plaintiff would have countered through the testimony of a defense employee who observed the fall, and who indicated in discovery that puddles were on the floor.**

The plaintiff asserted that she developed severe lumbar and cervical symptoms after the fall and that after more conservative therapy was inadequate, she underwent surgery to both areas. The plaintiff contended that she will nonetheless suffer permanent pain and limitations. The alleged aggravation of knee and shoulder arthritis was treated conservatively and the plaintiff maintained that she will permanently suffer additional symptoms. The defendant denied that the plaintiff suffered the claimed aggravation.

The plaintiff further contended that the incident caused an aggravation of emotional issues which were discussed in psychotherapy. The defendant would have strenuously argued that the history reflected significant prior difficulties and the defendant denied that the plaintiff's position should be accepted.

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

### REFERENCE

Plaintiff in her late 50s vs. Prestige Mercedes Benz. 02-04-22.

**Attorneys for plaintiff: Cory A. Casidy and Anthony J. Riposta of Riposta Cassidy, LLC in North Arlington, NJ.**

### COMMENTARY

The plaintiff stressed that the deposition description of a defense employee who saw the fall supported her claims that a wet floor from both rain puddles and water dripping from vehicles after they were washed in the service area. The plaintiff would have argued the need for disc surgery was in and itself warranted a large award. The plaintiff also claimed that this fall down caused an aggravation of preexisting emotional complaints. The defendant would have argued that the prior difficulties were very significant, and that a claim that any continuing emotional complaints were related, should be rejected. It is felt; however, that this aspect may well have rendered the plaintiff all-the-more vulnerable-appearing and it should be noted that the case resolved for slightly less than the policy.

## *$1,025,000 RECOVERY – DOG ATTACK – SEVERE BITES AND LACERATIONS TO RIGHT ARM – MULTIPLE SURGERIES – LOSS OF USE OF ARM AND HAND – SEVERE SCARRING – CO-DEFENDANT FENCE COMPANY NEGLIGENTLY FAILED TO ADEQUATELY MOVE FENCE AND FAILED TO ADEQUATELY SECURE FENCE PANEL.*

**Union County, NJ**

**In this case, the 69-year-old plaintiff contended that as she was standing on her porch, her neighbor's Rottweiler ran onto the porch, bit her in the right, dominant arm and held on, dragging her down her steps and onto her driveway where a Good Samaritan struck the dog with a stick until the dog let her go. In addition to naming the dog owners under the Strict Liability Statute, the plaintiff named the company that moved the dog owner's fence line several feet a few months earlier, contending that it negligently failed to secure the panels, resulting in one failing earlier that day and the dog escaping. The plaintiff asserted that she suffered severe bites and lacerations to the right arm. The plaintiff contended that despite multiple surgeries, she was left with a loss of use of the arm and hand as well as severe scarring. The defendant fence company denied that it improperly installed the fence.**

The plaintiff related that as she was on her porch, the dog ran up, bit her in the arm, and dragged her down the several steps and onto the driveway. The plaintiff contended that the dog owners were clearly liable under the statute. The evidence reflected that several months earlier, the co-defendant relocated the dog owners' fence 3 feet to render it equal to the property line. The dog owners asserted that they were not aware that the vinyl panel had dislodged a few hours earlier.

The plaintiff maintained that when the fence company did its work, it failed to securely attach the panels, resulting in a panel falling, enabling the dog to run from the yard and attack the plaintiff. The defendant fence company denied that it could be responsible for the actions of a dog it did not own. The plaintiff countered that it was highly foreseeable that the dog would escape through an open panel of the fence. The plaintiff also maintained that such foreseeability was underscored by the name of the fence company (Great escapes, LLC).

The proofs reflected that the dog latched onto the plaintiff's right arm and dragged the down the front steps of the porch as the dog was biting her until a Good Samaritan beat the dog off. The plaintiff maintained that she underwent multiple surgeries during an approximate one-month hospitalization and was then spent several weeks in a rehabilitation facility. The plaintiff was left with extensive scarring, which she asserted was permanent in nature. The plaintiff also contended that she suffered a permanent loss of use of her right arm, causing difficulties with everyday activities such as dressing. The plaintiff further maintained that she has developed a fear of dogs.

The defendant homeowners had $300,000 in coverage. The co-defendant fence company had $1,000,000 in coverage. The case settled prior to trial $1,025,000, including the homeowners' policy and $725,000 from the fence company.

### REFERENCE

**Plaintiff's engineering expert: Himad Beg, P.E. from HUB Engineering, New York, NY. Plaintiff's pain management expert: Warren Grace, M.D. from Union, NJ. Plaintiff's Plastic and reconstructive surgery expert: Matthew S. Coons, M.D. from Union, NJ.**

Martin vs. Henderson and Greatescapes. Docket no. UNN-L-002564-20, 06-20-22.

**Attorney for plaintiff: Howard P. Lesnik of Law Offices of Howard P. Lesnik, LLC in Mountainside, NJ.**

### COMMENTARY

The plaintiff, who settled with the dog owners for their $300,000 policy was able to obtain an additional $725,000 from the fence company, whom the plaintiff alleged, inadequately installed a panel when it was relocating the fence to comply with the fence line several months earlier. The fence company denied that it could be liable for the actions of a dog it did not own. In this regard, the plaintiff's position against the fence company included the argument that in light of its name as Great Escapes, this defense should be rejected. Regarding damages the plaintiff would have emphasized that in addition to the severe scarring, she has been left with the day to day difficulties associated with the loss of use of the dominant arm and hand, which plaintiff stressed, now is similar to a claw,

## $875,000 RECOVERY – MEDICAL MALPRACTICE – OB/GYN NEGLIGENCE – FAILURE TO RECOGNIZE 2 BOWEL PERFORATIONS DURING SURGERY – FAILURE TO SEE PLAINTIFF OR ADVISE TO VISIT EMERGENCY ROOM DESPITE SOME 5 CALLS ADVISING OF SIGNS AND SYMPTOMS OF PERITONITIS – 5 STENTS SURGICALLY PLACED – PLAINTIFF LIKELY TO REQUIRE PERMANENT COLOSTOMY BAG.

**Passaic County, NJ**

**This medical malpractice case involved a plaintiff in her mid 40s who had undergone previous bowel surgery in which the plaintiff contended that the defendant ob/gyn, who removed bowel adhesions in addition to a partial hysterectomy because of fibroids, negligently failed to realize that he perforated the sigmoid colon in 2 places. The plaintiff further maintained that although she developed signs and symptoms of peritonitis the second postoperative day, including a high fever, which prompted 5 phone calls to the defendant's office, the defendant did not call her back. The office did return her calls the day after the surgery and the plaintiff was told that the defendant had called in a prescription which was ineffective. The plaintiff asserted that she developed severe peritonitis, needed a colostomy and that some 5 attempts at stenting were inadequate. The plaintiff continues to use a colostomy bag. The defendant maintained that the fact that he did not recognize the perforation was not indicative of negligence.**

The defendant indicated that he removed a significant number of adhesions from the sigmoid colon. The plaintiff claimed that since the perforations were a known risk, the defendant should have should have taken greater precautions, including running the bowel. The plaintiff maintained that if the perforations had been repaired during the surgery, it is likely that the plaintiff would have avoided peritonitis. The plaintiff also asserted that because the defendant did not either see her the following day or advise her to go to the emergency room, the fecal matter continued to leak for an additional day. The plaintiff contended that it is likely that she will require a bag for the remainder of her life. The defendant denied that running the bowels was necessary.

The plaintiff was not working at the time and no income claims were made. The plaintiff is married and has a daughter.

The defendant had $1,000,000 in coverage. The plaintiff's initial demand of $990,000 was met with an offer of $400,000. The case settled after mediation for $875,000.

### REFERENCE

**Plaintiff's ob/gyn expert: Martin Gubernick, M.D. from New York, NY. Plaintiff's surgeon expert: Jeffrey Freed, M.D. from New York, NY.**

Espinel vs. Nunez, et al. Docket no. PAS-3901-20, 08-22.

**Attorney for plaintiff: David Pierguidi of Glugeth & Pierguidi in Hoboken, NJ.**

### COMMENTARY

The evidence that the defendant did not respond to the 5 phone calls the second day after the surgery when told of her symptoms would have created a particularly strong and unpredictable jury response if the case had proceed to verdict. Additionally, the age of the plaintiff, who was in her mid 40s at the time of the alleged negligence, would clearly have heightened the expected jury reaction. Finally, the plaintiff would have emphasized that she has already undergone some five unsuccessful attempts at stenting, and argue that the jury should consider that she is at significant risk of requiring a colostomy bag for the remainder of her life.

## $135,000+ RECOVERY – BREACH OF CONTRACT – NEGLIGENCE – PLAINTIFF CLAIMS DEFENDANT NEGLIGENTLY DAMAGED COMMERCIAL RENTAL PROPERTY CAUSING REDUCTION IN VALUE OF PROPERTY AT SALE AND VIOLATED TERMS OF LEASE – DEFENDANT CLAIMS PROPERTY IN POOR CONDITION AT ONSET OF LEASE AND RETURNED IN SAME CONDITION.

**Middlesex County, NJ**

**In this breach of contract and negligence case, the plaintiff landlord asserted that the defendant industrial tenant failed to meet the terms of its lease agreement with the plaintiff and was negligent in damaging the plaintiff's property. The defendant denied that it breached the relevant term of the parties' lease, the obligation to return the premises in the same condition as received.**

The plaintiff was the former landlord of the defendant tenant at an industrial warehousing space located at 1202 Airport Road in North Brunswick. Pursuant to a commercial lease agreement dated July 11, 2008, the parties agreed that the defendant would lease the premises from the plaintiff for a term of ten years. The defendant was engaged in the fabrication of metal products at the leased premises. Per the terms of the lease, the defendant was to keep the premise in good order and repair at its own expense and to return the property to the defendant in the same condition it was received.

Upon inspection of the property at the end of the lease term, the plaintiff discovered that the property sustained serious damage beyond normal wear and tear including missing gutters and roof panels; cut

pipes; damaged walls, doors and ceilings requiring replacement; 85% of the lights were non-operational; air compressors removed without consent; and ground cleanup requiring environmental approvals where an incinerator was removed.

The plaintiff maintained that the cost of repairing the property damage caused by the defendant to the plaintiff's property was approximately $175,000 and that the plaintiff was consequently forced to reduce the selling price of the leased premises by that amount. In addition to the property damage, the plaintiff claimed that the defendant still owed the plaintiff for significant resources invested to resolve water pressure issues in 2017. Additionally, the plaintiff argued that the defendant was required under the lease to comply with ground cleanup and obtain the NJ Department of Environmental Protections approval for the incinerator removal and, as a result of the defendant's refusal to comply, the plaintiff was required to hold $48,000 in escrow.

The defendant maintained that the premises was in generally poor condition when the defendant took possession requiring extensive maintenance and repairs by the defendant in the amount of approximately $300,000 including doors, gates, electrical panels, ducts, dock seals, roofing, windows and bathrooms. The defendant also asserted that the plaintiff was not entitled to damages as it did not intend to use the money to actually repair the premises, as the plaintiff had already sold the property "as is" to a third party. The defendant argued that the plaintiff's lawsuit was a last ditch "cash grab" by the plaintiff to obtain money from the defendant once the lease had expired.

The parties settled the matter prior to trial in the amount of $135,000.

## REFERENCE

1202 Airport Road, LTD. vs. BWAY Corporation. Docket no. L-006491-18; Judge Thomas Daniel McCloskey.

**Attorney for plaintiff: Christian M. Perrucci of Florio Perrucci Steinhardt & Cappelli, LLC in Bethlehem, PA. Attorney for defendant: Rodman E. Honecker of Windels Marx Lane & Mittendorf, LLP in New Brunswick, NJ.**

## COMMENTARY

Following the settlement in February 2020, the defendant filed a motion to enforce the terms of the settlement and for attorney's fees. Defense counsel argued that on January 9, 2020, he sent a written Settlement and Release Agreement memorializing the agreed-upon terms, i.e., that the defendant would pay the plaintiff an agreed-upon amount in exchange for the plaintiff releasing all of the claims it asserted against defendant in the First Amended Complaint. Consistent with the parties' agreement, the Agreement contained a release by the plaintiff of any environmental claims against the defendant, and representations and warranties by plaintiff that it did not intend to raise additional issues with the NJDEP regarding the defendant's tenancy and that the current owner of the premises had released any environmental claims it may have had relating to the prior ownership of the premises. Based on the parties' agreement to settle the case, the mediator advised the court of the settlement.

Nearly 2 months later, plaintiff's counsel sent the defendant a redline of the Agreement that deleted the environmental provisions to which the parties had previously agreed. In particular, the plaintiff struck a recital in the Agreement which relates to alleged environmental violations at the premises as set forth in its First Amended Complaint alleging that the defendant violated environmental laws during its tenancy. The effect of striking this recital would be to exclude the alleged environmental violations from the scope of the release, even though the plaintiff had previously agreed to release the defendant from these environmental claims.

In response, defense counsel advised the plaintiff that such changes were in direct contravention of the settlement terms to which the parties had already agreed, and requested that the plaintiff confirm its agreement to the previously negotiated terms. Plaintiff's counsel ignored the defendant's request and instead submitted a letter to the court attempting to file a Second Amended Complaint that deleted the environmental allegations at issue. Notably, while the plaintiff's letter vaguely stated that "it will be removing specific language from its Second Amended Complaint and not adding additional allegations," the plaintiff failed to inform the court that the allegations it removed from the proposed Second Amended Complaint are the alleged environmental violations by the defendant that were in the First Amended Complaint and that the parties agreed to settle. In other words, the plaintiff apparently believed that it could renege on its prior agreement to settle the environmental claims by filing a Second Amended Complaint that omitted those claims.

The defendant advised the court that the case has been settled and asked the court to deny the request to file a Second Amended Complaint in light of the parties' agreement (as confirmed in the mediator's filing with the Court on February 21, 2020). That same day, the court entered a Notice on the docket stating that "[t]he Second Amended Complaint was improperly filed in light of the settlement confirmed by the mediator by Order on the case jacket and will not be considered by the Court." As of the date of the defendant's filing of the motion to enforce the settlement, the defendant had failed to execute and return the Agreement. The Agreement provided that if a party sued to enforce any provision of the Agreement, that party could demand reasonable and necessary attorneys' fees, costs and expenses incurred as a result of the litigation. Accordingly, the defendant requested that the court grant its motion for an Order enforcing the parties' Agreement.

The plaintiff opposed the motion claiming that it could not be forced to honor the part of agreement with regard to the environmental issues. The plaintiff argued that agreeing to the terms as presented by the defendant could expose the plaintiff to potential criminality by demanding that the plaintiff not initiate contact with the DEP regarding the tenancy of the defendant and making a representation that the current owner would waive any claims. The plaintiff maintained that the proposed settlement agreement was inconsistent with the Spill Act, did not insulate the plaintiff from future liability and was not consistent with the plaintiff's understanding of the verbal settlement. The plaintiff also argued that the defendant was not entitled to attorneys' fees and expenses as the unilateral language in the release agreement should be stricken.

The plaintiff claimed that it attempted to resolve the matter in good faith. The plaintiff argued that the defendant's demand that the plaintiff not contact the NJ DEP relative to the defendant's tenancy at the subject property and the demand that the current owners of the premises release all claims that they may have, now and in the future

was not practical and could potentially subject the plaintiff to criminal prosecution by misleading a governmental agency. As a result, the defendant's language in the settlement and release agreement was unconscionable and performance of the contract resolution would make the plaintiff's responsibility impossible.

The court granted in part and denied in part the defendant's motion to enforce the settlement reached at mediation. The component of the defendant's motion that sought an Order of the Court holding the plaintiff and its counsel in contempt for their respective conduct in hindering the finalization and execution of a draft of the written settlement agreement prepared and presented to the plaintiff following consummation of the settlement at mediation was denied. The component of the defendant's motion seeking an Order awarding it reasonable attorneys' fees, expenses, and costs incurred in filing the motion was granted. The court limited the fee award to those fees and costs the defendant was caused to incur for the filing of its moving and reply papers in connection with the motion to enforce the settlement.

The court also ordered that the Order itself constituted a judicial determination that the matter, as was agreed upon by the parties, was settled for the sum of $135,000 to be paid by the defendant to the plaintiff, whereupon the Complaint and everything it alleged or could have alleged but did not – including especially the environmental claims – as well as the defenses raised by the defendant, were all deemed dismissed, with prejudice.

## *DEFENDANT'S VERDICT – BREACH OF CONTRACT – PLAINTIFF CLAIMS HE ENTERED INTO BUSINESS AGREEMENT WITH DEFENDANT AND DEFENDANT LATER BACKED OUT AND TOOK CRUCIAL OPERATING ELEMENTS OF BUSINESS, DEPRIVING PLAINTIFF OPPORTUNITY TO RUN BUSINESS AND GENERATE MONEY – DEFENDANT CLAIMS HE NEVER AGREED TO GO INTO BUSINESS WITH PLAINTIFF AND PLAINTIFF ACTING IN BAD FAITH AND TRYING TO PROCURE DEFENDANT'S PROPRIETARY SOFTWARE ENGINE.*

**Bergen County, NJ**

**In early 2017, the plaintiff engaged the defendant, whom he had previously known as both a friend and colleague for several years prior, to join in partnership to develop a web-based college baseball analytics' business, with the defendant's primary role to be the software engineer and technical architect. During the same time period, the plaintiff's role as to the company and its website was to provide the initial idea, the functional design of the site, and the solution architecture for its integration with a marketing website. While not reduced to writing, an agreement and understanding was reached between the plaintiff and the defendant around that time for the defendant's services, which it was anticipated could be completed in under a year's time. Among the defendant's responsibilities, for which he was specifically engaged, was to provide assistance for integrating college baseball analytics technical components and the WordPress application framework for the defendant's business. At a certain point, the defendant began to back away from the project and the relationship became contentious. The plaintiff asserted that the defendant refused to negotiate an exit plan with the plaintiff and instead failed to provide the plaintiff with access to the tools necessary to complete and launch the website/business.**

As a result of the breach, the plaintiff was deprived of the opportunity to generate a substantial amount of money and, to the extent that the business and website could be regenerated with the assistance of third parties, also cost the plaintiff a substantial amount of further time and money. The plaintiff brought suit against the defendant for breach of contract; intentional interference with prospective economic advantage; malicious interference with prospective economic advantage; breach of duty by co[partner; promissory estoppel; and wrongful refusal to continue business.

The defendant completely dismissed the plaintiff's claims arguing that the parties were not partners and never had a contract, written, oral or otherwise implied. As such, the defendant asserted that he owed no obligation to the plaintiff. In addition the plaintiff was not entitled to the defendant's software engine. The defendant argued that the underlying engine that the plaintiff sought was developed well before any contract or partnership alleged by the plaintiff and the plaintiff had no possessory right to it.

The jury found in favor of the defendant and against the plaintiff on all counts.

### REFERENCE

Crichlow, Jr., et al. vs. Ohri. Docket no. L-000482-18; Judge Susan L. Claypoole.

**Attorney for plaintiff: Paul S. Haberman of Law Offices of Paul S. Haberman, LLC in Tenafly, NJ.**
**Attorney for defendant: Hamill Patel of Law Office of Jarred S. Freeman in Edison, NJ.**

### COMMENTARY

The facts and timeline of this case were crucial to the claims made by both parties. The events, while vastly varying by account, unfolded as follows per each party's telling; the plaintiff claimed that, as early as February 9, 2017, the defendant was made aware of a business opportunity the plaintiff was researching related to college baseball recruiting. The plaintiff determined that college baseball recruiting analytics was a viable business opportunity, as the plaintiff had researched and collected all relevant college baseball analytics since his son's graduation from high school in 2014. On February 26, 2017, the parties met at the defendant's house to discuss the opportunity at length. 2 days later, the plaintiff claimed, he provided the defendant with a forecast model and forecast model guide. Throughout March 2017, the plaintiff provided the defendant with the mentoring infor-

mation outlining the business opportunity, an inventory of initial requirements, a range of sample analytics, data, and other materials to help in his construction of the website.

An initial sneak preview was provided by the defendant around mid-March 2017, as were prototypes of different portions of the eventual site. Throughout April 2017, the plaintiff claimed that he and the defendant participated in actions relevant to the business/site as the provision of the defendant with the plaintiff's Next College Student Athlete account to review framework, discussions on the version/release cycles, and sampling of the site with individuals in the college baseball community as proof of concept. Upon attending an enterprise summit in Las Vegas, the plaintiff procured three services for the business, Tax Sentry, for tax filing, Barrister Associates, for asset protection, and Your Entity Solutions to perform all necessary activities required to legally create the company.

In May 2017, the plaintiff, with the defendant's knowledge and involvement, engaged attorneys with regard to protecting their intellectual property as to the company. In reliance on the defendant's continued work with him, the plaintiff expended his own money to explore the intellectual property issues with counsel. Further development discussions also took place between the plaintiff, the defendant, and a third party that month. In June 2017, the defendant continued prototyping the project with the plaintiff, provided proof of concept to the plaintiff for integrating it with WordPress, started working on marketing analytics with the plaintiff, and the plaintiff and the defendant started working on the various mapping processes together. Also in June 2017, the company was formed, doing business in New Jersey.

The plaintiff relatedly provided the defendant and the third party with documents pertaining to the structure of the application. In July 2017, the plaintiff provided the defendant with reference articles on the target market, after which the defendant provided proof of concept for the college search aspect of the project and helped regenerate the website. A bank account was also opened in July 2017 which required signatures from both the plaintiff and the defendant. At this point, if not appreciably sooner, the defendant had actual notice about the structure of the parties' business relationship; the company would be a partnership between the plaintiff and the defendant. The month was rounded out with a purchasing of domain names and hosting sites as well as the signing of a contract with the third party consultant to develop business for the site, and the defendant's creation of the Amazon Web Services account to host the application for the project. As part of his business contingency planning, the plaintiff provided the defendant with an external hard drive to backup all critical components of the application prior to the defendant's travels to India.

In August 2017, the defendant traveled to India, but nonetheless, according the plaintiff, remained involved in the project by sending a new version of the project's marketing reports to the plaintiff and actively engaging in discussion with the plaintiff as to the target pre-launch date for the site and the application's functionality. Throughout September 2017, the plaintiff and the defendant engaged in specific/further discussion on the structure of their business team. The plaintiff suggested that they be regarded as founder and co-founder in recognition of the defendant's contributions. A proposed operating agreement was provided to the defendant in September. The defendant was focused on backend tasks throughout the month, including updating content on the Amazon Web Services and Cloudfront platform.

The plaintiff also provided the defendant data breach and privacy documents provided by the intellectual property counsel as well as a NCAA Division 2 launch plan, among other materials throughout October 2017. The outcome of the October pre-launch was that the then-current minimal viable product overwhelmed some users (early adopter plan) and that the website business name was not marketable. Subsequently, the D/B/A was changed, new domain names were purchased, and the consultant rebuilt the front-end marketing website with a new name. In November 2017, the defendant provided a help function solution to the third party consultant and another individual for integration purposes. The plaintiff claimed that the defendant further requested a more detailed business plan throughout the month and inquired about the plaintiff's target numbers of early adopters.

On November 21, 2017, the defendant requested another copy of the business development plan, which he had already received, even though he had started to show signs to the plaintiff of his backing away from the project, for reasons unclear to the plaintiff. The defendant was observed as not delivering on certain tasks that in the past he had been timely in delivering according to deadlines. No explanation was provided for project task slippage. Nonetheless, the parties planned to meet on November 30, 2017 to discuss the project plan, but the defendant canceled the meeting for no apparent reason.

In early December 2017, the plaintiff and the defendant had a dialogue about an early adopter plan which got contentious. On December 3, 2017, the defendant rejected a conference call with a web developer and, in the midst of not working on deliverables, requested a meeting with the plaintiff. At the meeting, the defendant requested removal of his name from the company's corporate papers and bank account. The plaintiff subsequently drew up a proposed resignation letter. The plaintiff maintained that the defendant agreed to load NCAA-D2 data to the production website by December 9, 2017 and agreed to create a testing system with National Association of Intercollegiate Athletes data while the removal of his name from the account and company got sorted out. The plaintiff and the defendant were directed by the bank to complete an L-102 ("Certificate of Amendment- Limited Liability Company") form to remove the defendant's name from the company's corporate papers so that they could then remove his name from the account. On December 12, 2017, despite earlier representations by the defendant that he would complete the aforementioned tasks prior to having his name removed from everything, the defendant advised the plaintiff that he would not proceed with loading the NCAA-D2 data to the production website or creating a testing system with NAIA data until his name was removed from the company. The defendant also deleted the test system which contained NCAA-D2 data. The plaintiff and the defendant met on December 20, 2017. The plaintiff provided the defendant with a Memorandum of Understanding detailing a post-partnership relationship and compensation plan after which the defendant demanded 80% of the company.

The plaintiff and defendant subsequently exchanged letters through counsel as to the aforementioned events which contained a representation that the defendant would not, apparently under any condition short of a court ruling, furnish to the plaintiff the technical design documents, technical architectural documents, computer code sufficient to generate cloudfront, all computer code used to develop the search functionality, all coding utilities required to build the website's content, all instructions necessary to run the system, and all supporting marketing analytic reports, including the computer code required.

The plaintiff relied on this timeline of events to support his claims for breach of contract and interference with his ability to run the business in the absence of the promised deliverables from the defendant. The plaintiff maintained that the defendant, in sum, refused to negotiate an exit plan with the plaintiff and instead made plain his unwillingness to provide the plaintiff with access to any materials that were required to run and operate the website that they had just spent the past

year designing together as a team, and thus deprived the plaintiff of the possibility of operating his website/business that he had the idea for prior to the defendant's involvement.

The defendant's version of events was, not surprisingly, quite different. The defendant asserted that the entire goal of the plaintiff was to have exclusive possession and use of the defendant's proprietary software engine and platform that he created in 2013, well before any of the plaintiff's allegations took place. The defendant saw the relationship as that of one friend helping another get started and that he never intended to be a partner in business with the plaintiff.

The defendant stated that he and the plaintiff had been close friends for many years and he was always excited to hear the plaintiff's stories of his son's adventures in baseball. The plaintiff and defendant became friends when the plaintiff was an employee of a client of the defendant-owned IT firm. The defendant noted that the plaintiff would sometimes pitch in and help the defendant as a friend, with no agreements or terms discussed and no expectation of compensation or partnership. Similarly when the plaintiff approached him in 2017, the defendant volunteered to help him as a friend and there were no terms or agreements discussed in early 2017, according to the defendant.

In 2014, the defendant developed a proof of concept web-based college baseball analytics application on his personal engine and platform. The plaintiff provided the defendant with data to test his application. The defendant claimed that the plaintiff was aware of the defendant's software engine and platform back in 2014 and was aware that he had been using the platform and engine to develop a number of other applications and websites. The defendant stated that the plaintiff would often visit the defendant and talk, as friends do. He contended that the plaintiff's visits in early 2017 were no different than many visits over the years. The plaintiff never came to the defendant's house to discuss business, but they would bounce ideas off each other to help each other out.

During the February 27, 2017 visit, the defendant claimed the parties chatted about many things including the business venture that was the subject of this case. The defendant claimed that he made a suggestion to the plaintiff about using a subscription-based website for his business but that the suggestion was an idea to a friend, not made with any expectation of compensation or involvement. The defendant insisted that no terms were discussed regarding a partnership or contract and, in fact, no terms were ever discussed as the plaintiff moved forward and the defendant helped however he could. The defendant asserted that he was not naive enough to enter into any partnership or contract without it being memorialized. Running his own IT firm for years, the defendant had entered into numerous contracts and knew the importance of a written contract.

The defendant continued to help the plaintiff on his website throughout the spring and summer of 2017 but was not engaged in hirings, business decisions, or other operations of the company during that time. The defendant countered the plaintiff's version of events in stated that there were never an discussions of ownership until late 2017, the plaintiff never treated the defendant as a partner, the defendant had no say in the management or marketing of the website, the plaintiff did not involve the defendant in managerial decisions, the plaintiff did not introduce him to his sources, did not provide forecasted sales and revenue, financial, or opportunity pipeline models. The defendant maintained that the plaintiff ordered him around like a task manager, not an equal. The defendant pointed to the clearest evidence of all in that the plaintiff established an LLC, not a partnership, and unilaterally added the defendant as a principal of that LLC without consulting the defendant or signing an operating agreement. The defendant stated that the plaintiff never provided him with any clarity on the business structure or his role and involvement in ongoing work. Instead he would ignore the defendant, brush him off, or ask him to complete another task.

The defendant contended that push came to shove in December 2017 when the defendant informed the plaintiff that he would no longer assist with the website. Only then, the defendant stated, did the plaintiff try to negotiate with him. The defendant claimed that the plaintiff's negotiations were in bad faith and unreasonable with the plaintiff's best offer being 5% of future net profits in exchange for the defendant's underlying engine. The defendant asserted that, ultimately, he had no choice but to quit helping his friend because it was clear he was taking advantage of the defendant's friendship for his own personal gain and had no intention of properly compensating the defendant for it.

The defendant put forth that the plaintiff, in his lawsuit, was demanding that the defendant turn over the entire technological infrastructure of the plaintiff's website because of his accusations that the defendant was wrongfully holding and misappropriating it. The defendant stated that, during the time that he helped the plaintiff, he helped create over 6,000 versions of output files and updates of around 300 content files, all of which the plaintiff had exclusive access to and continues to use. Additionally he created a CloudFront Solution on a new AWS, College Baseball Search Functionality, graphic output files, and marketing reports, for the plaintiff, all of which the plaintiff also still had use of. The only thing the plaintiff did not have was the underlying software engine which the defendant claimed was his own proprietary software that was developed solely by the defendant, on his own time, using his skills and code, with no contribution from the plaintiff whatsoever. The defendant asserted his intention to maintain the privacy of his engine, as he claimed was his right.

# Verdicts By Category

## CONTRACT

### *$64,000 CONSENT JUDGMENT*

**Breach of contract – Plaintiff claims defendant owes plaintiff for personal loan and several business loans – Defendant denies agreeing to repayment terms put forth by plaintiff.**

**Bergen County, NJ**

**This litigation arose from a series of business and personal loans the plaintiffs claim to have made to the defendants. The plaintiffs were an individual and the business of which he was the principal and the defendants were an individual and his restaurant business. For several years leading up to early 2017, the plaintiff made a series of personal loans to the defendant. The defendant repaid some of the loans with interest. However, as of early 2017, the plaintiff claimed that a balance of $15,000 remained, which was immediately due and payable. The defendants argued that they had not breached any agreement or violated any law or regulation relevant to the plaintiffs' claims.**

On April 9, 2017, the defendant asked the plaintiff to convert the $15,000 balance into a longer term loan of $18,000 to account for interest due and payable. The plaintiff agreed to the defendant's proposal provided that the defendant make payments on the loan beginning in July 2017 and each month thereafter and that the loan be paid in full no later than February 28, 2018. The plaintiff maintained that the proposal was agreed to and accepted by the parties.

Also in 2017, the plaintiff's business entity made a series of three separate loans to the defendant's restaurant with the defendant agreeing to serve as the guarantor of the loans. The total principal amount of the 3 loans was $15,000 and the loans were made for business purposes in connection with the defendant opening a new restaurant in Livingston. The defendant provided the plaintiff with checks payable to the plaintiff that were intended as security for the debt and which were available to the plaintiff for deposit as partial satisfaction of the debt in the event that the defendant defaulted.

The plaintiff brought suit for breach of contract due to the defendants' failure to meet the terms of the loan agreements between the parties. The plaintiff argued that the defendant never made any payments on the $18,000 personal loan in accordance with the loan agreement and that the loan remains due and payable with interest accruing at 20% per annum. The plaintiff also asserted that the full amount of the three business loans was also due and owing with interest. In total the plaintiff claimed that the defendant owed $44,860, at the time of filing of the complaint, with interest continuing to accrue on a daily basis.

The defendant admitted that a personal loan for $15,000 was made to the defendant by the plaintiff but denied the plaintiff's allegations including the conversion of the $15,000 to a larger loan of $18,000 or that the parties agreed to make payments on the schedule set forth by the plaintiff. The defendant also denied the plaintiff's claim that repayment of three business loans was due.

The parties consented to judgment in the amount of $64,000 to be paid by the defendants to the plaintiffs in satisfaction of all outstanding loans.

**REFERENCE**

Starwaze, et al. vs. Jabaly, et al. Docket no. L-005120-18; Judge Robert L. Polifroni, 02-18-20.

**Attorney for plaintiff: Anthony S. Bocchi of Cullen and Dykman, LLP in Hackensack, NJ. Attorney for defendant: Joseph A. Takach of Koulikourdis and Associates in Hackensack, NJ.**

## DOG BITE

### *$56,000 VERDICT*

**Dog bite – Plaintiff falls to driveway and suffers partial tendon tear to elbow – Slight permanent scarring to buttocks (site of bite).**

**Bergen County, NJ**

**In this case, the plaintiff, in his mid 30s, an employee of a phone company who was performing at the defendants' home, contended that he was bitten in the buttocks by the defendant's German Shepard, falling to the driveway and striking his elbow sustaining serious injury. The defendant asserted that the plaintiff returned after completing his work and that he was a trespasser when the incident occurred. The plaintiff countered that he had yet to complete his work when the bite occurred.**

The plaintiff contended that he will permanently suffer some pain and limitations in the elbow. Surgery to address the tendon injury was recommended but not done. The plaintiff also maintained that the slight scarring to the buttocks is permanent.

The case tried to verdict for $56,000.

**REFERENCE**

**Plaintiff's orthopedic surgeon expert: Michael Meese, M.D. from Hackensack, NJ.**

Bills vs. Elgohary. Docket no. BER-L-7635-19, 08-22.

**Attorney for plaintiff: Grace E. Robol of Davis Saperstein & Salomon, P.C. in Teaneck, NJ.**

# INSURANCE OBLIGATION

## *$150,000 VERDICT*

**Insurance obligation – Intersection collision – Uninsured driver fails to stop at red light – Alleged dominant shoulder tear and aggravation of previously asymptomatic degenerative disc disease in lumbar area treated conservatively – No income claims.**

### Union County, NJ

**In this case, the plaintiff driver, age 64 at the time and age 70 at trial, contended that the underlying tortfeasor, who was uninsured, failed to stop at a red light, causing the accident. The plaintiff proceeded under a $300,000 UM policy. The plaintiff asserted that he suffered a tear of the dominant shoulder which will cause permanent pain and restriction despite conservative care. The plaintiff further contended that he suffered an aggravation of previously asymptomatic degenerative disc disease. There was no evidence that surgery was necessary. The defendant maintained that the plaintiff suffered temporary strains and sprains only and denied that he met the verbal threshold.**

The defendant denied that the plaintiff suffered a rotator cuff tear. The plaintiff's orthopedist contended that the signs he observed included muscle spasms and the defendant's orthopedist denied that the plaintiff showed any signs of spasm. The plaintiff demonstrated the restricted range of motion during his testimony.

The plaintiff, who is a self-employed contractor, further indicated that he experiences increased difficulties when working. The plaintiff made no income claims.

The jury found that the plaintiff met the verbal threshold and awarded $150,000.

**REFERENCE**

**Plaintiff's orthopedic surgeon expert: David Weiss, M.D. from North Brunswick, NJ. Defendant's orthopedic surgeon expert: Michael Bercik, M.D. from Elizabeth, NJ.**

Stech vs. NJM. Docket no. UNN-L-3165-17; Judge Thomas Walch, 06-09-21.

**Attorney for plaintiff: Seamus Boyle of The Haddad Law Firm, PC in Woodbridge, NJ.**

## *DEFENDANT'S VERDICT*

**Insurance obligation – Head-on collision and tortfeasor flees scene – UM case – Alleged lumbar herniation and lumbar and cervical bulges – Conservative treatment – Defendant contends records contradict plaintiff on issues of prior accident and whether she made previous lumbar complaints – Damages only.**

### Bergen County, NJ

**Liability was stipulated in this case in which the tortfeasor fled the scene and the plaintiff proceeded under a $300,000 UM policy.**

The plaintiff driver in her early 50s contended that she suffered a lumbar herniation as well as lumbar and cervical bulges which were confirmed by MRI. The plaintiff asserted that she will suffer permanent symptoms despite approximately 6 months of chiropractic care.

The defendant maintained that any continuing complaints were related to degenerative disc disease only and denied that the plaintiff suffered a permanent injury. The defendant pointed to minimal property damage. The defendant further asserted that although the plaintiff denied a prior accident or making previous lumbar complaints, she had been involved in a prior accident and the medical records reflected a previous mention of lumbar pain.

The jury found for the defendant on the verbal threshold. The case was tried via Zoom.

**REFERENCE**

**Plaintiff's orthopedic surgeon expert: Albert Johnson, M.D. from Springfield, NJ. Defendant's orthopedic surgeon expert: Alan Miller, M.D. from Westwood, NJ.**

Sturm vs. NJM. Docket no. BER-L-6923-18; Judge Walter Skrod, 05-08-21.

**Attorney for defendant: Thomas Zuppa of Chasan Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ.**

# MOTOR VEHICLE NEGLIGENCE

## Auto/Bicycle Collision

### *$35,000 RECOVERY*

**Motor vehicle negligence – Auto/bicycle collision – Defendant strikes plaintiff bicyclist in intersection – Aggravation of prior L3-4 herniation and new herniation at L5-S1 – 2 lumbar epidural injections.**

**Mercer County, NJ**

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to yield and struck the plaintiff bicyclist with such force that it caused significant, permanent injury. The defendant denied liability, arguing that the plaintiff caused or failed to avoid the collision between the plaintiff and defendant. The defendant also asserted that the plaintiff's action was barred by the New Jersey No Fault Law.**

On December 30, 2015, the plaintiff was riding a bicycle eastbound on Ward Street at the intersection with South Main Street in Hightstown. The defendant was traveling north on South Main Street and had a stop sign controlling his entrance into the subject intersection. The plaintiff asserted that the defendant negligently failed to stop and yield the right-of-way to the plaintiff bicyclist and struck him in the roadway. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained aggravation of prior L3-4 herniation and new herniation at L5-S1. The plaintiff treated with 2 lumbar epidural injections.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $40,000 reduced to $36,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the plaintiff offered to take judgment in the amount of $45,000.

The parties ultimately settled the matter for $35,000.

**REFERENCE**

Rosales-Hernandez vs. Phillips, et al. Docket no. L-002655-17; Judge F. Patrick McManimon.

**Attorney for plaintiff: Alon Solon of LaRocca Hornik Rosen Greenberg & Crupi, LLC in Freehold, NJ. Attorney for defendant: David E. Madden of Martin, Kane & Kuper in East Brunswick, NJ.**

## Auto/Motorcycle Collision

### *$550,000 RECOVERY*

**Motor vehicle negligence – Auto/motorcycle collision – Negligent left turn – ACL tear treated with arthroscopic reconstruction and trigger finger on non-dominant hand requiring release – Ulnar nerve injury requiring surgery.**

**Warren County, NJ**

**In this action for motor vehicle negligence, the plaintiff motorcyclist in his early 30s contended that the defendant automobile driver negligently failed to yield before turning left into his path, causing the collision. The plaintiff suffered a tear of the ACL that was treated with arthroscopic interventions. The plaintiff maintained that he will nonetheless suffer permanent pain and limitations. The defendant would have maintained that the plaintiff failed to make adequate observations and speeding and was comparatively negligent.**

The plaintiff also suffered a trigger finger on the non-dominant side which was treated with a release. The plaintiff would have asserted that he will permanently experience some pain and difficulties from this injury. The defendant would have asserted that the plaintiff made a much better recovery than claimed.

The plaintiff missed approximately 5 months from his job in construction. The plaintiff received disability for most of the loss and the plaintiff did not make a significant income claim.

The defendant had primary coverage of $100,000 and $1,000,000 excess coverage. The case settled prior to trial for $550,000.

**REFERENCE**

**Plaintiff's orthopedic surgeon (knee) expert: Robert Defalco, M.D. from Hackettstown, NJ. Plaintiff's orthopedic surgeon (trigger finger) expert: Frank J. Corrigan, M.D. from Hackettstown, NJ. Plaintiff's orthopedic surgeon (ulnar surgery) expert: Daniel Siegerman, M.D. from New York.**

Plaintiff motorcyclist in his early 30s vs. Defendant driver.

**Attorney for plaintiff: Ralph G. Cretella, IV of Garces Grabler & LeBrocq in New Brunswick, NJ.**

# Auto/Pedestrian Collision

## *$150,000 RECOVERY*

**Motor vehicle negligence – Auto/pedestrian collision – Death of 56-year-old man crossing mid-block while inebriated – Decedent leaves adult daughter not seen for 20 years – Short period of conscious pain and suffering.**

### Union County, NJ

**In this motor vehicle negligence action, the plaintiff contended that the defendant driver negligently failed to make observations, striking the 56-year-old decedent who suffered fatal injuries, which included fractures with intracranial hemorrhage, a cervical spinal epidural hemorrhage and liver laceration, The decedent had a palpable pulse on the way to the hospital, but succumbed to cardiac arrest shortly after arriving. The defendant pointed out that the decedent was crossing mid-block, was inebriated and wearing dark clothing at the time of the collision which occurred after dark.**

The plaintiff's pain management physician would have concluded that the decedent experienced a brief period of conscious pain and suffering. The defendant denied that the decedent experienced such pain and suffering.

The defendant had $500,000 in coverage. The case settled prior to trial for $150,000

### REFERENCE

**Plaintiff's pain management expert: Adam J. Carinci, M.D. from Harvard University, Cambridge, MA.**

Samantha vs. Regan. Docket no. UNN-L-3117-19, 01-26-21.

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

## *$4,650 VERDICT*

**Motor vehicle negligence – Auto/pedestrian collision – Phantom vehicle runs stop sign and causes defendant driver to swerve to avoid collision, striking plaintiff pedestrian – Multiple spinal fractures; head and hip contusions.**

### Mercer County, NJ

**In this motor vehicle negligence case, the plaintiff pedestrian asserted that the defendant driver struck him with such force that it caused significant, permanent injury. The plaintiff sought recovery from the defendant driver and NJPLIGA on behalf of the phantom vehicle that caused the incident. The defendant driver denied any negligence and asserted that a phantom vehicle ran through the stop sign on Reading Avenue and forced the defendant to swerve, causing his vehicle to contact the plaintiff; thus, the defendant maintained he was not at fault for the incident wherein the plaintiff was injured.**

On May 28, 2018, the plaintiff was a pedestrian on Maple Avenue at Reading Avenue in Trenton. The defendant driver was driving a rental vehicle westbound on Maple Avenue. The plaintiff asserted that the defendant negligently struck the plaintiff pedestrian as he was crossing the roadway. The plaintiff attempted to jump out of the way but was hit and thrown to the opposite side of the street. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was taken from the scene to the hospital. The plaintiff suffered multiple spinal fractures; head and hip contusions. The defendant NJPLIGA argued that the plaintiff's injuries and damages were attributable to the plaintiff's comparative negligence or assumption of risk.

The plaintiff settled the matter with NJPLIGA prior to trial in the amount of $4,560.

### REFERENCE

Rockx vs. Collier, et al. Docket no. L-002599-18; Judge William Anklowitz.

**Attorney for plaintiff: Martin J. Hillman of Joseph D. Kaplan & Son, P.C. in Trenton, NJ. Attorney for defendant NJPLIGA: Richard D. Romano of The Law Office of Richard D. Romano in Spring Lake, NJ.**

# Auto/Truck Collision

## *$700,000 RECOVERY*

**Motor vehicle negligence – Auto/truck collision – Car transport truck backs out of dealership into highway causing accident – Death of 80-year-old man.**

### Morris County, NJ

**In this action for motor vehicle negligence, the plaintiff contended that as the 80-year-old driver was proceeding, the defendant driver of an auto transport truck negligently backed into the highway, causing the accident which resulted in the plaintiff's decedent's death. The plaintiff also named the dealership. The plaintiff maintained that the dealership often kept one of the 2 means**

**of egress blocked by its vehicles. The driver of the transport truck indicated that he had requested help backing up and that such help was not forthcoming. The defendants claimed that the decedent was exceeding the speed limit and failed to make adequate observations.**

The decedent struck the median divider and died as a result of massive blunt force trauma. The plaintiff asserted that the decedent experienced a brief period of conscious pain and suffering. The defendants contended that the decedent died instantly.

The decedent left a wife and 4 adult children. The plaintiff claimed that the family was very close and that the loss of guidance and advice was extensive.

The case settled prior to trial for $700,000, including $565,000 from the auto transport driver and $135,000 from the dealership.

**REFERENCE**

Terrulli vs. Garcia, et al. Docket no. MRS-L-2187-18, 04-22.

**Attorney for plaintiff: Shane A. Sullivan of Jae Lee Law, PC in Ft. Lee, NJ.**

# Head-on Collision

## *$20,000 RECOVERY*

**Motor vehicle negligence – Head-on collision – Plaintiff contends defendant driver crossed center line and struck plaintiff's vehicle head-on – Disc herniation at L5-S1; disc bulges at L4-5, L2-3, L3-4 and S1-2; fractured toe; aggravation of asymptomatic lumbar issues; chronic headaches, neck and low back pain – Chiropractic treatment.**

### Ocean County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle head-on with such force that it caused significant, permanent injury. The defendant originally denied liability, arguing that a phantom vehicle pushed her into the plaintiff's vehicle.**

On May 15, 2016, the plaintiff was traveling northbound on Toms River Road in Jackson. The defendant was traveling southbound on Toms River Road when she swerved into the plaintiff's lane of travel, striking the plaintiff's vehicle on the driver's side. The plaintiff contended that the defendant negligently and carelessly operated her vehicle such that she struck the plaintiff's vehicle, causing heavy impact with significant damage. The plaintiff maintained that the force of the impact resulted in permanent injuries. A police investigation found the defendant at fault for the collision and she was charged with multiple traffic offenses.

As a result of the collision, the plaintiff sustained disc herniation at L5-S1; disc bulges at L4-5, L2-3, L3-4 and S1-2; fractured toe; and the plaintiff's asymptomatic lumbar issues became symptomatic due to the subject collision. The plaintiff claimed chronic headaches, neck pain and low back pain. The plaintiff treated with chiropractic care.

The defendant later stated in interrogatories that she had fallen asleep at the wheel prior to the collision. The defendant also contested the nature, extent and causation of the plaintiff's damages. The defendant argued that some of the plaintiff's injuries were preexisting and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $40,000. Following arbitration and prior to trial, the parties settled for $20,000.

**REFERENCE**

Schweizer vs. Merk. Docket no. L-000595-18; Judge Robert E. Brenner.

**Attorney for plaintiff: Dwight P. Ransom, Esq. in Neptune, NJ. Attorney for defendant: John J. Jackson of King, Kitrick, Jackson & McWeeney in Manasquan, NJ.**

# Intersection Collision

## *$600,000 RECOVERY*

**Motor vehicle negligence – Intersection collision – Failure to stop at stop sign – Cervical and lumbar herniations – Non-dominant shoulder tear – No income claims.**

### Passaic County, NJ

**In this action for motor vehicle negligence, the plaintiff driver, in her early 50s, contended that the defendant driver negligently failed to stop at a stop sign, causing the collision. The plaintiff asserted that she suffered injuries including lumbar and cervical herniations which were confirmed by MRI.**

The plaintiff underwent a cervical ablation and then fusion surgery. The lumbar herniations were treated conservatively. The plaintiff underwent arthroscopic surgery to treat a left shoulder tear.

The plaintiff asserted that she will permanently suffer pain and difficulties sleeping.

The plaintiff would have introduced $273,586 in unpaid medical bills. The plaintiff made no income claims.

The defendant had a combined single limit policy of $500,000 and a $3,000,000 umbrella. The case settled prior to trial for $600,000.

### *$25,000 RECOVERY*

**Motor vehicle negligence – Intersection collision – Plaintiff and defendant collide in intersection – Plaintiff contends defendant failed to stop at red light when entering intersection – Soft tissue sprains and strains – Chiropractic treatment – Non-binding arbitration assigns 100% liability to defendant with damages of $15,000.**

#### Monmouth 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 denied liability and argued that the plaintiff caused or was contributorily negligent in causing the collision between the vehicles.**

On November 14, 2016, the plaintiff was traveling northbound on Hunt Road at the intersection with CR 537 in Freehold. The defendant was traveling eastbound on CR 537 at the same intersection. The plaintiff contended that the defendant negligently failed to obey the traffic signal controlling the intersection and entered the intersection without the right-of-way. The defendant struck the plaintiff's vehicle and the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained soft tissue sprains and strains treated with chiropractic care. The defendant disputed permanency of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $15,000. Following arbitration and prior to trial, the parties settled for $25,000.

#### REFERENCE

Shanahan vs. DaSilva. Docket no. L-000370-18; Judge Henry P. Butehorn, 01-17-20.

**Attorney for plaintiff: Dennis A. Drazin of Drazin and Warshaw in Red Bank, NJ. Attorney for defendant: Dennis B. O'Brien of Law Office of Bobbi J. Vilacha in Parsippany, NJ.**

## Lane Change Collision

### *$100,000 (POLICY LIMIT) RECOVERY*

**Motor vehicle negligence – Lane change collision – Defendant driver suddenly travels into adjoining lane – Plaintiff passenger sustains cervical and lumbar herniations – Cervical surgery.**

#### Passaic County, NJ

**The plaintiff in this action for motor vehicle negligence, a front seat passenger in her late 30s, contended that the defendant non-host driver negligently moved from the right to the left lane of Route 46 without making observations. The plaintiff asserted that as a result, she suffered herniations at C4-5 and L-4-5.**

The plaintiff maintained that she developed severe pain after the accident, that following a conservative course, she underwent MRIs which the plaintiff contended were positive. The plaintiff received injections and when the symptoms continued, she needed cervical surgery.

The plaintiff maintained that she will suffer permanent symptoms. The defendant denied that disc surgery was necessary and contended that any injuries resolved.

The plaintiff was subject to the verbal threshold. The plaintiff returned to her job as a payroll coordinator and made no income claims.

The case settled prior to trial for the defendant's $100,000 policy.

#### REFERENCE

**Plaintiff's neuroradiologist expert: Lisa Shepherd, M.D. from Flemington, NJ. Plaintiff's orthopedic surgeon expert: Kevin Aurori, M.D. from Morristown, NJ. Defendant's orthopedic surgeon expert: David Rubinfeld, M.D. from Dover, NJ.**

Rodriguez vs. Salem, et al. Docket no. PAS-L-2943-19, 11-21-21.

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

## DEFENDANT'S VERDICT

**Motor vehicle negligence – Lane change collision – 2 cervical disc herniations – Treated conservatively with no injections – Defendant denies permanency – Plaintiff recovers $1,500 per high/low agreement.**

### Camden County, NJ

**In this motor vehicle negligence case, the plaintiff, a 31-year-old woman, asserted that the defendant driver struck her vehicle while changing lanes and caused the plaintiff significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On June 25, 2016, the plaintiff was traveling north on Burnt Mill Road approaching the intersection with Berlin Road in Cherry Hill. The defendant was traveling in the same direction in a lane beside the plaintiff. The plaintiff asserted that the defendant negligently moved into the plaintiff's lane without it being safe to do so and struck the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained 2 cervical disc herniations. The plaintiff treated conservatively with no injections. The defendant argued that the plaintiff's injuries were not permanent and did not warrant award of damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $35,000. The arbitration was not confirmed and the matter proceeded to trial.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $75,000 in the event of the jury awarding damages above that amount, and a minimum of $1,500 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the defendant thus the plaintiff recovered $1,500 in damages.

### REFERENCE

Yun vs. Erving. Docket no. L-001818-18; Judge Steven J. Polansky, 01-31-20.

**Attorney for plaintiff: Thomas S. Farnish of Larrimore & Farnish, LLP in Philadelphia, PA. Attorney for defendant: Queen N. Stewart of Law Offices of Styliades and Jackson in Marlton, NJ.**

# Left Turn Collision

## $63,750 RECOVERY

**Motor vehicle negligence – Left turn collision – Disc bulges at L5-6 and L3-4; and left shoulder impingement – Plaintiff claims $23,800 in unpaid medical expenses – Arbitration finds defendant 90% liable and plaintiff 10% liable with gross damages of $75,000.**

### Middlesex County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle while making a left turn and caused the plaintiff significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.**

On April 28, 2016, the plaintiff was proceeding in an easterly direction on Downing Street in Old Bridge. The defendant driver, operating a car in the course of his employment as a livery driver, was on Downing Street at the intersection with Meleta Way. The plaintiff asserted that the defendant driver negligently made a left turn across the plaintiff's lane of travel, causing a collision between the vehicles. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained disc bulges at L5-6 and L3-4; and left shoulder impingement. No surgical recommendation was made. The plaintiff claimed unpaid medical expenses of $23,800.

The plaintiff brought suit against the defendant driver and his employer, the owner of the vehicle. The defendant driver maintained that the plaintiff could see the defendant turning and could have avoided the collision but failed to make proper observations and maneuvers to prevent the collision and thus was comparatively negligent. The defendant also argued that the plaintiff's injuries were not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant driver and 10% to the plaintiff with gross damages of $75,000 reduced to $67,500 for plaintiff's comparative negligence. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of $100,000. The offer was not accepted and the parties ultimately settled for $63,750 prior to trial.

### REFERENCE

Semano vs. Hussain. Docket no. L-002100-18; Judge Jamie D. Happas.

**Attorney for plaintiff: Margaret Kiehne Paterson of Law Offices of Karim Arzadi in Perth Amboy, NJ. Attorney for defendant: Robert J. Adams, Jr. of The Law Offices of Richard A. Reinstein, P.C. in Brooklyn, NY.**

## *$25,000 RECOVERY*

**Motor vehicle negligence – Left turn collision – Disc herniation at C5-6 with radiculopathy; lumbar sprain/strain and shoulder strain – Epidural injections and chiropractic treatment.**

### Ocean County, NJ

**In this motor vehicle negligence case, the plaintiff asserted that the defendant driver caused a collision when making a left turn. The accident caused the plaintiff significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On September 6, 2015, the plaintiff was traveling north on Sunset Road at the intersection with Caranetta Drive in Lakewood. The defendant was traveling south on Sunset Road approaching the intersection with Caranetta Driver. The plaintiff contended that the defendant negligently made a left turn into the plaintiff's path of travel and caused a collision with the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniation at C5-6 with radiculopathy; lumbar sprain/strain; and shoulder strain. The plaintiff treated with cervical epidural injections and chiropractic treatment.

The plaintiff claimed $23,732 in unpaid medical expenses. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $27,500. Following arbitration and prior to trial, the parties settled for $25,000.

### REFERENCE

Rotbart vs. Berkowitz. Docket no. L-002362-17; Judge Mark A. Troncone, 01-15-20.

**Attorney for plaintiff: Daniel Breen of The Rothenberg Law Firm, LLP in Cherry Hill, NJ.**
**Attorney for defendant: Jamie L. Barron of Law Offices of Pamela D. Hargrove in Wall Township, NJ.**

# Multiple Vehicle Collision

## *$100,000 POLICY LIMIT RECOVERY*

**Motor vehicle negligence – Multiple-vehicle rear end collision – Plaintiff driver struck in rear while slowing for traffic on GSP and propelled into car in front which is then pushed into next vehicle in front – Hairline fracture to dominant humerus treated conservatively – Cervical herniations – Fusion surgery – Unrelated mitral valve replacement performed prior to fusion.**

### Essex County, NJ

**In this action for motor vehicle negligence, the plaintiff driver, age 63 at the time of the accident and age 65 at the time of the settlement, contended that as he was slowing for traffic on the GSP, the defendant struck him in the rear with force, propelling his car into the vehicle in front which then continued into the rear of the next vehicle. The plaintiff maintained that he sustained a hairline fracture of the humerus which was confirmed by x-ray and which was treated conservative.**

The plaintiff further asserted that he suffered a cervical herniation which was confirmed by MRI and which will cause permanent symptoms despite fusion surgery. The evidence disclosed that prior to the fusion surgery; the plaintiff underwent unrelated mitral valve replacement surgery.

The case settled before the defendant retained an expert.

The case resolved for the $100,000 policy limits.

### REFERENCE

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

Sena vs. Streltzoff, et al. Docket no. ESX-L-7567-18.

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

## *$52,000 VERDICT*

**Motor vehicle negligence – Multiple-vehicle chain reaction collision – 17-year-old defendant driver fails to observe stopped traffic and collides with rear of plaintiff passenger's vehicle, causing it to collide with third-party vehicle – Significant impact causing plaintiff's vehicle to be totaled – Lumbar sprain/strain; lumbar disc herniations; right hip and knee injury.**

### Camden County, NJ

**In this motor vehicle negligence case, the plaintiff passenger, a 75-year-old woman, asserted that the defendant driver struck her vehicle with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On July 17, 2015, the plaintiff was a passenger in a vehicle traveling eastbound on the Atlantic City Expressway nearing Exit 7S for the Garden State Parkway. The defendant was a 17-year-old driver operating a vehicle along the same roadway. The plaintiff contended that her vehicle had stopped in heavy shore traffic and that the defendant negligently failed to observe traffic and stop as well, causing her to collide with the plaintiff's vehicle and push it into a third-party vehicle. The police report of the incident provided evidence that the accident was the fault of the defendant driver. Additionally, the impact was so significant that the plaintiff's vehicle was disabled, inoperable and totaled. The defendant was charged with careless driving. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff, who had no evidence of prior orthopedic injuries, sustained lumbar sprain/strain; and lumbar disc herniations in a setting of degenerative conditions; with right hip and knee injury. The plaintiff claimed a neck sprain that resolved quickly but lumbar and hip/sacroiliac pain and limitations persisted. The plaintiff asserted that she had significant functional limitations due to the spine and hip symptoms.

The plaintiff made an offer to take judgment in the amount of $125,000. The offer was not accepted and the matter proceeded. The defendant argued that the plaintiff's condition was pre-existing, degenerative in nature, and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator concluded that the plaintiff's lack of prior orthopedic symptoms supported a finding that the significant impact of the subject collision caused the underlying spinal conditions to become symptomatic and become a permanent condition that has and will leave the plaintiff with significant limitations. The arbitrator assigned 100% liability to the defendant with damages of $35,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $52,000 broken down as follows: $50,000 in damages and $2,000 in prejudgment interest and costs.

### REFERENCE

Schuler vs. Harkin. Docket no. L-002798-17; Judge Morris G. Smith.

**Attorney for plaintiff: Carol S. Harding of Karp Cohn, PC in Cherry Hill, NJ. Attorney for defendant: Charles F. Blumenstein, II of Green, Lundgren & Ryan, P.C. in Cherry Hill, NJ.**

# Parking Spot Collision

## *$10,000 RECOVERY*

**Motor vehicle negligence – Parking spot collision – Plaintiff contends defendant pulled from curbside parking space into roadway at great speed, striking plaintiff's vehicle as it passed – Right shoulder tendonosis; right knee medial meniscus tear; disc herniations at C3-4, C5-6, C6-7 and L4-5; multiple disc bulges and positive EMG – One injection to shoulder – Non-binding arbitration assigns 90% liability to defendant and 10% to plaintiff.**

### Bergen County, NJ

**In this motor vehicle negligence case, the plaintiff, a 52-year-old man, asserted that the defendant driver struck his vehicle when pulling out from a curbside parking space into the roadway with such force that it caused the plaintiff significant, permanent injury.**

On February 7, 2018 the plaintiff was traveling southbound on Broad Avenue 25 feet north of Henry Avenue in Palisades Park. The defendant was parallel parking along Broad Avenue southbound. The plaintiff contended that the defendant negligently pulled out of the parking space without signaling, failing to ascertain that the way was clear to do so and at a dangerous rate of speed, and struck the right side of the plaintiff's vehicle. The defendant was issued two traffic citations as a result of the incident. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained right shoulder tendonosis; right knee medial meniscus tear; disc herniations at C3-4, C5-6, C6-7 and L4-5; multiple disc bulges; and positive EMG. The plaintiff treated with one injection to the shoulder.

The defendant stipulated liability but contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $50,000 reduced to $45,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $10,000.

### REFERENCE

Seo vs. Kim. Docket no. L-004946-18; Judge Robert C. Wilson.

**Attorney for plaintiff: Thomas S. Kim of Kim & Cha, LLP in Englewood Cliffs, NJ. Attorney for defendant: Joelle Tadros of Law Offices of Eric H. Bennett in Hackensack, NJ.**

# Rear End Collision

## $250,000 TOTAL RECOVERY

**Motor vehicle negligence – 2 rear-end collisions occurring approximately one year apart – Plaintiff suffers non-dominant rotator cuff tear in first accident that requires him to quit job with water company because of lifting restrictions – Tear of dominant shoulder as well as lumbar and cervical herniations in second accident – Future disc surgery – Consolidated cases**

### Ocean County, NJ

**These motor vehicle negligence cases involved a 57-year-old driver who was struck in the rear in the first accident, suffering a tear of the non-dominant rotator cuff that was treated with arthroscopic surgery.**

The plaintiff maintained that after the first accident, he was required to resign from his job with a water company because of lifting restrictions. In the second accident, the plaintiff asserted that he suffered a tear of the other rotator cuff. The plaintiff also maintained that he suffered cervical and lumbar herniations which have been treated with injections and which will require disc surgery in the future.

The defendant in the first accident had $300,000 in coverage; this aspect settled for $150,000. The defendant in the second case had $100,000 in coverage; this case settled for the policy.

**REFERENCE**

Judson vs. Fitzgerald. Docket no. OCN-L20408–18, 01-22.

**Attorney for plaintiff: James J. Curry, Jr. of Law Offices of James J. Curry, Jr. in Toms River, NJ.**

## $76,503 ARBITRATION CONFIRMATION

**Motor vehicle negligence – Rear end collision – Traumatic injury to cervical and lumbar spine – Multiple epidural injections and rhizotomy.**

### Monmouth County, NJ

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

On January 6, 2016, the plaintiff was a passenger in a vehicle that was totally stopped for traffic in the right lane of Routes 1 and 9 North, just south of North Avenue in Fort Lee. The defendant was the operator of a truck in the course of his employment and was proceeding northbound on the same roadway directly behind the plaintiff's vehicle. The defendant negligently failed to observe and stop for traffic and struck the plaintiff's vehicle from the rear. As a result of the collision, the plaintiff sustained traumatic injury to the cervical and lumbar spine. The plaintiff treated with multiple epidural injections and a rhizotomy.

The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant argued that the plaintiff had a long history of back issues with multiple MRIs in the past. The defendant's IME opined that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $75,000. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $75,000 plus $1,503 in interest for a total recovery of $76,503.

**REFERENCE**

Igneri vs. Choe, et al. Docket no. L-004618-17; Judge Joseph P. Quinn, 01-24-20.

**Attorney for plaintiff: David J. Ades, Esq. in Aberdeen, NJ. Attorney for defendant: Barbara Jacob of Camassa Law Firm in Wall, NJ.**

## DEFENDANT'S VERDICT

**Motor vehicle negligence – Rear end collision – Disc herniation at C2-3, and at L4-5, C3-4 and C6-7 with bulging – Injuries attributed at 75% to subject collision – Plaintiff undergoes epidural steroid injections, discectomy and 2-level fusion surgery – Non-binding arbitration assigns 50% liability to defendant and 50% to plaintiff with gross damages of $750,000 reduced to $375,000.**

### Passaic County, NJ

**In this motor vehicle negligence case, the plaintiff, a hairdresser, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury that impacted her ability to work and to perform activities she previously enjoyed. The defendant denied liability, claiming the plaintiff driver cut in front of him and created a situation where he could not avoid collision.**

On September 2, 2015, the plaintiff was traveling eastbound on the George Washington Bridge in Fort Lee. The defendant was traveling directly behind the plaintiff. The plaintiff contended that the defendant negligently failed to stop behind the plaintiff and struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc herniation at C2-3, and at L4-5, C3-4 and C6-7 with bulging. The plaintiff underwent epidural steroid injections, discectomy and 2-level fusion surgery. Polk analysis attributed 75% of the plaintiff's condition to the subject collision. The plaintiff claimed approximately $500,000 in unpaid medical bills.

The defendant argued that the plaintiff caused the collision. The defendant also contested the plaintiff's damages. The defendant argued that the plaintiff's cervical condition was longstanding and degenerative as indicated by spurring and ridging. The defendant pointed to the plaintiff's MRI prior to the subject collision showing 2 cervical herniations.

The plaintiff made an offer to take judgment in the amount of $615,000. The offer was not accepted and the matter proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of $750,000 reduced to $375,000 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial.

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

### REFERENCE

Guerrero vs. Stacy, et al. Docket no. L-002647-17; Judge Thomas J. Laconte, 02-05-20.

**Attorney for plaintiff: David L. Kowzun of Gelman Gelman Wiskow & McCarthy, LLC in Dover, NJ. Attorney for defendant: Anthony Coppola of Gregory P. Helfrich & Associates in Summit, NJ.**

## *DEFENDANT'S VERDICT*

**Motor vehicle negligence – Rear end collision – C4-5 annular bulge/protrusion compressing thecal sac; C6-7 annulus indenting the thecal sac; annular bulges at C2-3, C3-4, and C5-6 with radiculopathy; right carpal tunnel syndrome and bilateral foraminal herniation at L4-5 – Muscle relaxers, pain management and trigger point injections – Non-binding arbitration finds defendant liable with $50,000 in damages.**

### Camden County, NJ

**In this motor vehicle negligence case, the plaintiff, a 48-year-old registered nurse, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.**

On October 11, 2016, the plaintiff was the driver of a vehicle traveling on I-76 northbound near milepost 0.1 in Bellmawr. At the same time, the defendant was the operator of a vehicle also traveling northbound directly behind the plaintiff's vehicle. The plaintiff maintained that the defendant negligently operated his vehicle such that he struck the rear of the plaintiff's vehicle and that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was taken from the scene by ambulance to a hospital. The plaintiff claimed C4-5 annular bulge/protrusion compressing the thecal sac; C6-7 annulus indenting the thecal sac; annular bulges at C2-3, C3-4, and C5-6 with radiculopathy; right carpal tunnel syndrome; and bilateral foraminal herniation at L4-5. The plaintiff treated with muscle relaxers, pain management and trigger point injections. The plaintiff claimed ongoing headaches, and back and neck pain.

The defendant argued that the plaintiff's injuries were not permanent and not caused by the subject collision. The defendant's IME indicated an absence of deficits in range of motion, no clinical evidence of radiculopathy, and subtle signs of carpal tunnel syndrome with no causal relationship to the subject collision. The defendant's IME found no structural disc damage and opined that the plaintiff had fully recovered from what were minor strain injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $50,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury rendered a verdict determining that the plaintiff did not meet her burden to prove that she had sustained a permanent injury and declined to make any award for damages.

### REFERENCE

Garris vs. Ogunkanmi. Docket no. L-001499-18; Judge Morris G. Smith, 01-24-20.

**Attorney for plaintiff: Alexander M. Kroupa of Bishop, Dorfman, Kroupa & Bishop, P.C. in Philadelphia, PA. Attorney for defendant: Charles F. Blumenstein, II of Green, Lundgren & Ryan, P.C. in Cherry Hill, NJ.**

# PREMISES LIABILITY

## Fall Down

### $260,000 RECOVERY

**Premises liability – Fall down – Failure to maintain parking lot block – Rebar protruding from block – Plaintiff trips over rebar – Knee replacement – 20-year history of knee difficulties – Prior recommendation for knee replacement.**

**Middlesex County, NJ**

**In this action for premises liability, the plaintiff, in her 50s, who was visiting the strip mall in which her physician was a tenant, contended that the parking block was in disrepair and that rebar was protruding. The plaintiff asserted that after she tripped and fell, sustaining injury, she noticed that the rebar had been bent into the shape of an upside-down horseshoe and that it was clear that the defendant owner of the strip mall had notice of the condition and had taken improper steps to repair it. The defendant denied notice or previously touching the rebar.**

The defendant also pointed out that the portions of the plaintiff's deposition were inconsistent with her portions as to her recalling from which side she approached the block after exiting her car. The plaintiff countered that she was confused and the plaintiff argued that the jury could determine from her testimony that the plaintiff was an honest, not confused individual.

The plaintiff had a 20-year history of pain in this knee and a knee replacement was recommended. The plaintiff related that after she fell and suffered additional pain and limitation from the aggravation, she realized she needed the surgery. The plaintiff asserted that she will nonetheless suffer additional pain and limitations despite the surgery.

The plaintiff made no wage claims.

The case settled prior to trial for $260,000.

**REFERENCE**

Vitale vs. Mukesh. Docket no. MID-L-3704-18, 06-21.

**Attorney for plaintiff: Joseph M. Marabondo of Eichen Crutchlow Zaslow, LLP in Edison, NJ.**

### $150,000 RECOVERY

**Premises liability – Fall down – Plaintiff falls on cracked, raised sidewalk abutting defendant's property – Lateral tear of left meniscus and medial tear of right meniscus; erosions of lateral tibial plateau; infrapatellar tendinosis; joint effusion; left wrist ligament tear – Injections to both knees.**

**Bergen County, NJ**

**In this premises liability case, the plaintiff, a preschool teacher, asserted that the defendant property owner negligently maintained a sidewalk abutting its property in a dangerous condition and failed to warn the public of the condition, such that the plaintiff tripped and fell on the hazard and suffered significant, permanent injury. The defendant denied negligence and denied the claims of the plaintiff.**

On April 25, 2016, the plaintiff fell on the sidewalk abutting 67 Broadway in Elmwood Park when her foot became caught in a depression in the sidewalk. The plaintiff claimed that the defendant was negligent in ownership and maintenance of the sidewalk leaving it in a dangerous condition of being raised and cracked. The plaintiff alleged that the fall resulted in permanent injuries.

As a result, the plaintiff sustained a lateral tear of the left meniscus and medial tear of the right meniscus; erosions of the lateral tibial plateau; infrapatellar tendinosis; joint effusion and a left wrist ligament tear. The plaintiff claimed ongoing stiffness and pain in the left knee. The plaintiff received injections in both knees. The plaintiff claimed all injuries were permanent and prevented her from attending to her regular routine, social and recreational activities. The plaintiff asserted that the injuries also impact her ability to perform her job as a preschool teacher where she now has to take breaks to rest and has difficulty standing and squatting to attend to the children.

The defendant argued that winter weather may have affected the sidewalk and warning cones had been placed over the affected areas pending repairs prior to the plaintiff's fall. The defendant alleged that the fall was caused by the plaintiff's negligence while walking on the sidewalk. The defendant also contested the plaintiff's damages. The defendant disputed the nature of the injuries and contended the fall did not cause all the injuries claimed by the plaintiff. The defendant pointed to a fall the plaintiff sustained at work in 2015 wherein she injured her left knee.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 90% liability to the defendant and 10% to the plaintiff with gross damages of $180,000 reduced to $162,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for $150,000.

**REFERENCE**

Smith vs. JJR Realty, LLC, et al. Docket no. L-000030-18; Judge Estela M. DeLaCruz, 01-13-20.

**Attorney for plaintiff: Kelly A. Conlon of Davis Saperstein & Salomon, PC in Teaneck, NJ. Attorney for defendant: Ray Kramkowski of Viscomi & Lyons in Morristown, NJ.**

## DEFENDANT'S ARBITRATION CONFIRMATION

**Premises liability – Municipal liability – Fall down – Plaintiff contends she tripped and fell on sidewalk in front of defendant property owner's building – Plaintiff brings suit against property owner and defendant city – Comminuted and displaced fracture of right humerus; chest wall contusion and forearm abrasion – Immobilization.**

### Cape May County, NJ

**In this premises case, the plaintiff, a 56-year-old school nurse, asserted that the defendant city and commercial property owner allowed a hazardous condition to exist via a poorly maintained/ repaired sidewalk that caused the plaintiff to fall and suffer significant, permanent injury. The defendant city argued that commercial property owners are responsible to repair and maintain sidewalks abutting their property; the city does not inspect sidewalks. The defendant property owner denied that the property where the plaintiff fell was a commercial property and argued that it was his family's second home, not a rental or commercial property.**

On August 11, 2016, the plaintiff was lawfully on the premises of 215-217 Grant Street in Cape May. The defendant property owner repaired, leased and maintained the premises, including the abutting sidewalks. The plaintiff also maintained that the defendant city was responsible for sidewalks adjacent to public streets in the city. The plaintiff tripped and fell on the sidewalk adjacent to the defendant commercial property in a public area of the defendant city.

The plaintiff contended that the defendants negligently repaired and maintained the sidewalk such that it was in a hazardous condition, specifically uneven, raised concrete that caused the plaintiff to trip. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result of tripping, the plaintiff fell forward landing on her chest and outstretched arms. She complained of pain in the left anterior chest region and her right shoulder and arm. The plaintiff was taken by ambulance to the hospital. She sustained a comminuted and displaced fracture of the right humerus; chest wall contusion; and forearm abrasion. She was placed in shoulder immobilizer and given pain medication. The plaintiff wore the immobilizer for approximately four months and declined a recommendation for joint replacement surgery. The plaintiff claimed she was unable for work for approximately 3 months due to her injuries.

The defendant property owner owns 215 and 217 Grand Street. He rents out 217 Grant Street, but the plaintiff fell in front of 215 Grant Street, the defendant's second home, not the rental property. The defendant maintained that he had never repaired or altered the sidewalk and that it was in the same condition it had been in since he purchased the property in 2001. The defendant property owner denied any knowledge, constructive or actual, of a hazardous issue with the sidewalk.

Following the plaintiff's fall, the defendant was contacted by the city and informed that he must repair the sidewalk. He hired a contractor and obtained a permit and repairs were made. Prior to the plaintiff's fall, he had received no notices or complaints about the sidewalk, thus he did not know, nor could have known that there was an issue with the sidewalk. The defendants also maintained that the plaintiff was responsible for not seeing the condition of the sidewalk and taking care when navigating the raised portion of the sidewalk.

The plaintiff presented evidence that refuted the defendant property owner's contention that the property was not commercial, including rental listing agreements, including a rental agreement for the property at 215 Grant Street for a period of time including the date of the plaintiff's fall. The plaintiff also presented a mercantile license issued to the defendant for the subject property.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 0% liability to the defendant city; 70% liability to the defendant property owner; and 30% to the plaintiff with gross damages of $120,000, inclusive of all liens and out of pocket losses including lost wages, reduced to $84,000 for plaintiff's comparative negligence.

The defendant city made a motion to confirm the arbitration order, the motion was granted, and a judgment of no cause in favor of the defendant city was entered. The plaintiff and remaining defendant property owner settled the matter for an undisclosed sum.

### REFERENCE

Somers vs. Bucci, Jr., et al. Docket no. L-000301-18; Judge Stanley L. Bergman, Jr.

**Attorney for plaintiff: James H. Hockenberry of Law Office of Leon Aussprung, M.D., LLC in Philadelphia, PA. Attorney for defendant city: Erin R. Thompson of Birchmeier & Powell, LLC in Tuckahoe, NJ. Attorney for defendant property owner: Jill L. Teague of Law Office of Charles A. Little, Jr. in Moorestown, NJ.**

# Negligent Maintenance

## *$48,000 RECOVERY*

**Premises liability – Negligent maintenance – Plaintiff claims defendant negligently maintained condition of parking lot resulting in large pothole causing plaintiff to fall – Disc herniation at L4-5, L5-S1, and C5-6 with radiculopathy; left MCL sprain and tear in left elbow tendon.**

### Middlesex County, NJ

**In this premises liability case, the plaintiff, a forklift operator, asserted that the defendant apartment complex owner/manager failed to maintain the premises in a safe condition for guests of the property such that it caused significant, permanent injury to the plaintiff. The defendant argued that the alleged pothole was an open and obvious condition and any fall was the fault of the plaintiff's inattention.**

On December 1, 2015, the plaintiff was lawfully in the parking lot of the defendant apartment building located at 847 Harned Street in Perth Amboy. The plaintiff stepped in a pothole and fell to the ground on his left side. The plaintiff contended that the defendant negligently failed to maintain its parking lot. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained disc herniation at L4-5, L5-S1, and C5-6 with radiculopathy; aggravation of disc bulge at C4-5; left MCL sprain and tear in the left elbow tendon. The plaintiff claimed $45,000 in unpaid medical expenses and liens. The defendant argued that the plaintiff's injuries were pre-existing from a prior work-related injury and not caused by the subject fall.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendant and 30% to the plaintiff with gross damages of $95,000, including medical expenses, reduced to $66,500 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for $48,000.

### REFERENCE

Sierra vs. Tower Management Service. Docket no. L-006361-17; Judge Bruce J. Kaplan, 02-07-20.

**Attorney for plaintiff: Ronald Wm. Spevack of Spevack Law Office in Iselin, NJ. Attorney for defendant: Gabrielle J. Pribula of McDermott & McGee, LLP in Millburn, NJ.**

# TRANSIT AUTHORITY NEGLIGENCE

## *UNDISCLOSED RECOVERY*

**Transit Authority negligence – Plaintiff claims public transit bus seat faulty and collapsed when bus driver braked suddenly – Massive left rotator cuff tear – Arthroscopic glenohumeral joint synovectomy; mini open double-row rotator cuff repair; subscapularis bursectomy and acromioplasty; acromioclavicular joint coplaning; distal claviculectomy and mumford procedure – Arbitrator assigns 100% liability to defendant with damages of $75,000.**

### Essex County, NJ

**In this motor vehicle negligence case, the plaintiff, a teamster steward, asserted that the defendants were negligent in the maintenance and operation of a public bus such that he fell to the floor of the bus and suffered significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.**

On November 24, 2015, the plaintiff was a passenger on a bus operated by the defendant driver who was acting in the course and scope of her employment with the defendant bus owners. The plaintiff was seated in the first passenger seat behind the driver, on the right side of the bus. The bus was traveling on the Hamburg Turnpike in Wayne. The plaintiff asserted that the seat in which he was sitting became detached and fell apart when the bus driver braked on a downhill slope. The plaintiff was thrown from his seat and struck the seat divider in front of him. The plaintiff alleged that the incident resulted in permanent injuries.

As a result of the incident, the plaintiff sustained a significant left rotator cuff tear and knee injury. The plaintiff underwent arthroscopic glenohumeral joint synovectomy along with mini open double-row rotator cuff repair with subscapularis bursectomy and acromioplasty as well as acromioclavicular joint coplaning, distal claviculectomy and mumford procedure. The plaintiff followed up with physical therapy. The plaintiff alleged a $65,000 worker's compensation lien and unpaid medical bills of $6,984.

The defendant bus driver stated that she checked the seat after the incident and that the seat cushion was loose, but in its place and that the seat itself was still secured to the body of the bus. The defendant claimed that the plaintiff was moving from one seat to another when the bus braked and the plaintiff fell because he was not properly seated, not due to any defect in the bus or the seat. The defendant also

pointed to multiple prior injuries, including a broken left arm less than one month prior to the subject injury; right shoulder work-related injury in 2012; and injury to his mid back in 2012 due to steel falling on his head. The defendant also noted that the plaintiff did not seek treatment for his shoulder injury until 3 days after the subject incident and never sought treatment for his alleged knee injury.

The plaintiff's medical records indicate that he was prescribed to undergo an MRI on his left rotator cuff following the accident in which he broke his arm but the plaintiff declined. The defendant's IME acknowledged the plaintiff's shoulder injury and its causation but disputed that the injury crossed the Title 59 threshold. The defendant asserted that the plaintiff's lien was not recoverable because it was not an ERISA claim.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $75,000, not inclusive of the disputed lien amount. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

## REFERENCE

Tricarico vs. New Jersey Transit Corporation, et al. Docket no. L-008135-17; Judge Keith E. Lynott, 03-10-20.

**Attorney for plaintiff: Christopher Perez of Hanna Perez, PC in Fort Lee, NJ. Attorney for defendant: Bryan Edward Lucas of Deputy Attorney General of New Jersey 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

### *$3,500,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – SURGERY NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE BOWEL OBSTRUCTION FOLLOWING APPENDECTOMY SURGERY – SHORT BOWEL SYNDROME – 3 FEET OF INTESTINE REQUIRED REMOVAL DUE TO NECROSIS.*

**Withheld County, MA**

**In this medical malpractice matter, the plaintiff patient alleged that the defendant surgeon and hospital staff was negligent in failing to timely diagnose her bowel obstruction following the surgery. The plaintiff was required to undergo a bowel resection and suffers from short bowel syndrome. The defendants denied negligence and disputed that there was any deviation from acceptable standards of care.**

The female plaintiff, 20 years of age, underwent an appendectomy for removal of her appendix. Following the surgery, she complained of intense abdominal pain which was dismissed by the defendant surgeon and hospital staff as gas pains related to the surgery.

The plaintiff was ultimately readmitted to the hospital due to the excruciating and unrelenting pain. At that point, 3 days after surgery, she finally underwent a CT-scan which showed that the plaintiff was suffering from a closed loop bowel obstruction. The plaintiff brought suit against the defendant surgeon and staff alleging negligence. The plaintiff maintained that the defendants were negligent in failing to timely order a CT-scan which would have shown the obstruction and would have prevented the necessity for the extreme resection.

The parties ultimately agreed to resolve the plaintiff's claim, prior to the trial date, for the sum of $3,500,000 in full settlement of the plaintiff's claims.

**REFERENCE**

20-Year-Old vs. Defendant Surgeon. 02-28-21.

**Attorneys for plaintiff: J. Tucker Merrigan and Mark Cashman of Sweeney Merrigan Law in Boston, MA. Attorney for plaintiff: Benjamin Novotny of Trial Lawyers for Justice in Decurah, IA.**

### *$230,000 RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – DEFENDANT FACILITY PROVIDES IMPROPER CARE ALLOWING PLAINTIFF'S DECEDENT TO SUFFER FALL – LACERATIONS TO HEAD REQUIRING STITCHES – DEVELOPMENT AND/OR WORSENING OF WOUNDS – INFECTIONS – WRONGFUL DEATH.*

**Allegheny County, PA**

**In this action for medical malpractice, the estate of the decedent alleged that the defendant skilled nursing facility provided improper care to their decedent resulting in injuries and a fall that contributed to the decedent's death. The defendant denied all allegations of negligence and injury and maintained that the decedent's comorbidities caused his death.**

Upon admission to the defendant facility, the decedent was alert and oriented to self with some confusion. Upon admission he was deemed a high fall risk and was a risk for developing pressure ulcers. Skin breakdown was noted in early August.

On September 25th, the decedent suffered an unwitnessed fall at the facility resulting in a head wound with bleeding. He was transferred to the hospital and returned to the facility the same day. On October 2, 2019, as skin assessment documented a right distal medial foot serum-filled blister and a right buttock shear. The decedent's condition continued to deteriorate, and he died on November 24, 2019. He is survived by his nephew.

The parties settled for $230,000.

**REFERENCE**

The Estate of Willie Holt, Jr. by Daniel Riley vs. Shadyside Nursing and Rehabilitation Center. Case no. GD-20-005005; Judge GD-20-005005, 08-27-20.

**Attorney for plaintiff: Ian Thomas Norris of Reddick Moss, PLLC in Philadelphia, PA.**

### *$125,000 RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE NEGLIGENCE – DEFENDANT DOCTOR PRESCRIBES DIFLUCAN TO PLAINTIFF'S DECEDENT ALREADY SUFFERING FROM TOXIC EPIDERMAL NECROLYSIS FROM PRIOR DOSE OF DIFLUCAN – FATAL DRUG SKIN ERUPTION – WRONGFUL DEATH OF 71-YEAR-OLD FEMALE.*

**Bucks County, PA**

**In this action for medical malpractice, the estate of the decedent maintained that the defendant doctor failed to appreciate that the decedent was already suffering a drug skin eruption when the defendant prescribed the same drug again that had caused the skin eruption. The rash caused by the drug worsened resulting in death. The estate sued the prescribing doctor and the drug companies involved in the manufacture and sale of the drug Diflucan. All defendants except the doctor were dismissed from the action.**

Shortly after taking the Diflucan, the decedent's rash worsened significantly and had spread across her arms and feet. On October 28th, the plaintiff's decedent presented to a local hospital with ongoing complaints of the rash. At the hospital the decedent was diagnosed with Stevens Johnson Syndrome and or toxic epidermal necrolysis. On October 31st, she was transferred to a burn center and her condition slowly declined. She died on November 6, 2014.

All defendants except the defendant doctor were dismissed from the action prior to the settlement. The estate and the doctor settled for $125,000.

**REFERENCE**

The Estate of Rosemarie Petrites by Diane Edwards vs. Catherine Spratt Turner MD and Newtown Family Practice. Case no. 201606546; Judge C. Theodore Fritsch, 07-14-22.

**Attorney for plaintiff: Kevin P. O'Brien of Stampone Law in Philadelphia, PA. Attorney for defendant: E. Chandler Hosmer of Marshall Dennehey Warner Coleman & Goggin in King of Prussia, PA.**

### *DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – ORTHOPEDIC SURGEON NEGLIGENCE – DEFENDANT PERFORMS SPINAL FUSION AND MALPOSITIONS PEDICLE SCREWS DURING PROCEDURE – 10 MONTHS OF DEBILITATING PAIN.*

**Tulsa County, OK**

**The plaintiff in this medical malpractice action maintained that the defendant orthopedic surgeon negligently performed spinal fusion surgery on the plaintiff causing malpositioning of pedicle screws resulting in severe pain. The plaintiff required a subsequent surgery to remove the hardware which was performed by a nonparty doctor and relieved the plaintiff's pain. The defendant maintained that the plaintiff was properly treated in accordance with all medical standards.**

The plaintiff maintained that the defendant was negligent in malpositioning the pedicle screws and then failing to recognize and replace the malpositioned pedicle screws, inadequately assessing the plaintiff's complaints of severe pain following surgery, failing to recognize that the plaintiff symptoms were likely caused by malpositioned screws, failing to inform the plaintiff that the radiologist felt the plaintiff's pain was due to the placement of the pedicle screws. The delay in removing the screws caused severe and debilitating pain to the plaintiff for approximately 10 months. The jury found in favor of the defendant.

**REFERENCE**

**Defendant's neurosurgeon expert: John Howard Sampson, M.D. from NC.**

James Richadson vs. Clinton Baird, M.D. Case no. CJ-2015-3355; Judge Daman H. Cantrell, 07-06-22.

**Attorney for plaintiff: Peter William Brolick of Riggs Abney in Tulsa, OK. Attorney for defendant: Sidney Smith, Jr. of Richards & Connor in Tulsa, OK.**

## MOTOR VEHICLE NEGLIGENCE

### *$1,300,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – DEFENDANT TRUCKER STRIKES HOST VEHICLE IN REAR – BACK SEAT PASSENGER SUFFERS AGGRAVATION OF LUMBAR BULGE – SURGERY – MENISCAL TEAR – ARTHROSCOPIC SURGERY.*

**Essex County, NJ**

**In this action for motor vehicle negligence, the plaintiff rear seat passenger, currently age 57, contended that the defendant truck driver negligently struck the host vehicle in the rear while stopped at a traffic light. The plaintiff contended that as a result, she suffered the aggravation of a lumbar bulge that was previously treated conservatively, and which ultimately prompted surgery 4 years after the accident occurred. The plaintiff also maintained that she suffered a tear of the medial meniscus that required arthroscopic surgery.**

The plaintiff asserted that when conservative care was inadequate, she underwent surgery and the plaintiff would have contended that it was clear that that the accident caused the need for surgery. The defendant asserted that ion view of the length of time between the accident and surgery, the plaintiff's claims should be rejected.

The plaintiff maintained that she suffered a diminution in earning capacity and the plaintiff's economic proofs reflected $331,154-$445,000, including the loss of household services.

The case settled prior to trial for $1,300,000.

**REFERENCE**

**Plaintiff's economist expert: Kenneth Betz from Livingston, NJ. Plaintiff's economist expert: Kristin Kuscma from Livingston, NJ. Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ.**

Villegas vs. Salson Logistics, Inc., 07-16-20.

**Attorneys for plaintiff: Anthony Riposta and Cory Anne Cassidy of Riposta Lawyers LLC in North Arlington, NJ.**

## *$750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT TOW TRUCK BEFORE STRIKING PARKED VEHICLE AND LANDING ON ITS SIDE – BRIEF LOSS OF CONSCIOUSNESS – TBI– PLAINTIFF CONTENDS DEFENDANT TOW TRUCK COMPANY RETAINS DEFENDANT DRIVER DESPITE NUMEROUS PRIOR ACCIDENTS.*

**Somerset County, NJ**

**In this action for motor vehicle negligence, the plaintiff driver, in his mid 40s, contended that he was struck in the rear by the defendant tow truck driver, colliding with a parked vehicle and landing on its side. The plaintiff maintained that he suffered a concussion, a brief loss of consciousness and a TBI that will permanently cause headaches and difficulties with memory and concentration. The defendant contended that the plaintiff suffered soft tissue cervical injuries only and that these injuries substantially resolved. The defendant denied that the plaintiff suffered a continuing neuropsychological injury.**

The plaintiff further contended that the defendant tow truck company, who was responsible to follow the Federal Motor Carrier Regulations and that punitive damages were appropriate. The plaintiff established that in the 19 months the driver worked for the tow company, the driver was involved in 8 accidents, 7 of which occurred when he struck another vehicle in the rear. The plaintiff contended that the tow truck company acted in willful and wanton fashion in failing to take earlier steps to prevent the hazard from continuing,

The tow truck company's motion to dismiss punitive damages was denied.

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

**REFERENCE**

**Plaintiff's TBI expert: Brian Greenwald, M.D. from Edison, NJ. Defendant's neuropsychologist expert: George Carnavalle, Ph.D. from Clifton, NJ.**

Pankowski vs. A Team Towing, et al. Docket no. SOM–L440-19, 05-20.

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

## *$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – SINGLE VEHICLE COLLISION – MUNICIPAL LIABILITY – DEFENDANT DRIVER/CORRECTIONS OFFICER LOSES CONTROL AND STRIKES POLE – LUMBAR AND CERVICAL HERNIATIONS – 20-YEAR-OLD PLAINTIFF PASSENGER REQUIRES LUMBAR SURGERY.*

**Bronx County, NY**

**This case involved a then-20-year-old plaintiff who was a passenger in a corrections vehicle. The plaintiff contended that the defendant driver negligently lost control of the vehicle and struck a pole. The plaintiff asserted that as a result, the plaintiff suffered lumbar and cervical herniations and will suffer permanent pain and difficulties despite the surgery. The defendant driver related that his boot inadvertently became struck between the accelerator pedal and the brake. The plaintiff's motion for Summary Judgment on liability was granted.**

The plaintiff asserted that she will suffer the effects of the injury for the remainder of a lengthy life expectancy. The plaintiff also maintained that the jury should consider that caring for a child adds to the pain and difficulties. The plaintiff made no future income claims.

The case settled prior to trial for $1,500,000.

**REFERENCE**

White vs. City of New York, et al. Index no. 32954/2018E, 05-22.

**Attorneys for plaintiff: Aaron R. Fishkin and Stephen J. Murphy of Block O'Toole & Murphy, LLP in New York, NY.**

### *$1,400,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – 55-YEAR-OLD MALE STRUCK WHILE CROSSING IN CROSSWALK – WRONGFUL DEATH – VIDEO FROM NEARBY BUSINESS SHOWS DECEDENT RUNNING TO AVOID BEING STRUCK – LOSS OF GUIDANCE AND ADVICE.*

**Queens County, NY**

**This motor vehicle negligence case involved the death of a 55-year-old pedestrian who was struck by the defendant, who was turning left from in front of him as the decedent reached the approximate mid point of the roadway while crossing the crosswalk. The plaintiff contended that the decedent was aware that he was about to be struck and that he experienced pre-impact terror. The plaintiff also maintained that the decedent suffered a short period of pain and suffering at the scene. The decedent did not regain consciousness before passing away 2 days later. The defendant contended that the decedent should have made better observations and was clearly comparatively negligent.**

The accident occurred during the day. The plaintiff would have introduced a video taken from a nearby establishment which the plaintiff asserted, showed the decent beginning to run as he reached the middle of the roadway. The plaintiff would have argued that it was clear that the decedent experienced pre-impact terror and fright as he knew he was about to be struck.

The decedent left a wife and 5 adult, 4 of whom lived in the area.

The defendant had $5,000,000 in coverage. The case settled prior to trial for $1,400,000.

**REFERENCE**

55-year-old pedestrian vs. defendant driver.

**Attorney for plaintiff: Mark A. Apostolos of Sullivan Papain Block McGrath Coffinas & Cannavo, PC in Garden City, NY.**

## PREMISES LIABILITY

### *$1,115,598 VERDICT – PREMISES LIABILITY – FALL DOWN – PLAINTIFF HOTEL INVITEE SLIPS AND FALLS ON HIGHLY GLOSSED AREA OF PAVEMENT ON DEFENDANT'S HOTEL PROPERTY – DISABLING INJURIES TO DISCS OF SPINE – PHYSICAL THERAPY AND SURGERY.*

**Bexar County, TX**

**The plaintiff in this premises liability action was a guest at the defendant hotel when he was walking on the grounds of the hotel and slipped and fell due to a highly painted and glossed area of the pavement. As a result, the plaintiff sustained serious injuries to the discs of his spine requiring physical therapy and surgery. The defendant denied all allegations of negligence and maintained that the incident was caused by the actions of the plaintiff.**

The plaintiff alleged in his petition that the defendants caused and/or negligently created a hazardous and dangerous condition on the premises, breached their duty of care to the plaintiff and negligently failed to warn the plaintiff of the condition of the premises.

The jury found no negligence on the part of the plaintiff and found that defendant was 100% liable for the incident. The jury awarded the plaintiff past pain and mental anguish of $175,000, future pain and mental anguish of $175,000, past wage loss of $68,475, future wage loss of $12,450, past impairment of $175,000, future impairment of $175,000, past medicals of $66,972 and future medicals of $267,698 for a total of $1,115,598.

**REFERENCE**

David Day vs. RIM SHM, LTD d/b/a Springhill Suites Marriott. Case no. 2018CI14386; Judge David A. Canales, 03-31-22.

**Attorney for plaintiff: James Tawney of Flores, Tawney, & Acosta, P.C. in El Paso, TX. Attorney for defendant: David R. Rangel of Davidson Troilo Ream & Garza in San Antonio, TX.**

# ADDITIONAL VERDICTS OF PARTICULAR INTEREST

## Construction Site Negligence

***$8,250,000 CONFIDENTIAL RECOVERY – CONSTRUCTION SITE NEGLIGENCE – MASON FALLS 28 FEET THROUGH GAP IN SCAFFOLDING AT CONSTRUCTION SITE – TRAUMATIC BRAIN INJURY – BLINDNESS IN ONE EYE – MULTIPLE FRACTURES – MAJOR DEPRESSIVE DISORDER.***

**Withheld County, MA**

**In this construction site negligence matter, the plaintiff worker alleged that the defendant general contractor and the defendant safety manager for the construction project were negligent for the fall which resulted in permanent, catastrophic injuries for the mason worker. The plaintiff was left with a severe traumatic brain injury, multiple fractures, blindness and other injuries as a result of the fall. The defendants denied liability and maintained that the plaintiff, or his employer were liable for the plaintiff's injuries and damages.**

The plaintiff brought suit against the defendant general contractor and the defendant site safety manager alleging that they failed to properly supervise the site, implement a safety plan and enforce the use of proper fall protection. The plaintiff demanded the sum of $13,000,000 to resolve his claims.

The plaintiff's claim was mediated and the parties agreed to a settlement of $8,250,000 which was the highest offer made by the defendants.

**REFERENCE**

Mason vs. General Contractor, et al., 10-15-21.

**Attorney for plaintiff: Thomas M. Bond of Kaplan Bond Group in Boston, MA.**

## Dram Shop

***$95,527,108 VERDICT – DRAM SHOP – INTOXICATED DRIVER SERVED ALCOHOL AT DEFENDANT DRAM SHOP BEFORE SPEEDING WRONG WAY ON HIGHWAY WITHOUT HEADLIGHTS AND CRASHING HEAD-ON INTO VEHICLE WITH 3 PASSENGERS, KILLING 23-YEAR-OLD MEDICAL STUDENT, PERMANENTLY DISABLING HER BROTHER, AND INJURING DRIVER/MOTHER.***

**Miami-Dade County, FL**

**In this dram shop case, the plaintiff, the personal representative of the decedent and guardian of the incapacitated plaintiff, asserted that the defendant bar served alcohol to a clearly intoxicated person who then left the bar and was involved in a collision that killed the plaintiff's daughter and rendered his son permanently disabled. The defendant failed to respond or defend against the plaintiff's complaint.**

The plaintiff proffered that Mr. Chavez, the defendant driver, was under the influence of alcohol at the time of the accident, with an estimated blood alcohol level of between 0.157g/100mL and 0.179 g/100mL. The plaintiff also proffered that Mr. Chavez was ultimately adjudicated guilty of vehicular homicide and 3 counts of reckless driving.

The plaintiff mother, also a passenger in the vehicle, suffered a brain injury, fractures and underwent multiple surgeries, from which she ultimately recovered.

The jury awarded damages in the amount of $95,527,108.

**REFERENCE**

Criales, et al. vs. The Georgetown Partnership, LLC, et al. Case no. 2017-006062 CA; Judge Mark Blumstein, 06-21-22.

**Attorneys for plaintiff: Adam T. Rose and Thomas Scolaro of Leesfield Scolaro, P.A. in Miami, FL. Attorney for defendant: Thomas S. Ward of Rennert Vogel Mandler & Rodriguez, P.A. in Miami, FL.**

# Insurance Obligation

***$2,500,000 VERDICT – INSURANCE OBLIGATION – UNDERINSURED MOTORIST CLAIM – PLAINTIFF PASSENGER IN RIDESHARE VEHICLE WHEN UNDERINSURED DRIVER RUNS RED LIGHT AND STRIKES REAR SIDE OF VEHICLE – COMMINUTED FRACTURE OF LEFT SCAPULA; NONDISPLACED FRACTURES OF LEFT 1ST THROUGH 5TH RIBS – BLUNT FORCE TRAUMA TO HEAD – TRAUMATIC BRAIN INJURY/CONCUSSION – CERVICAL COMPRESSION INJURIES.***

**Miami-Dade County, FL**

**In this case, the plaintiff asserted that the defendant's insured vehicle, operating as a rideshare in which the plaintiff was a passenger, was struck by another vehicle with such force that it caused the plaintiff significant, permanent injury. The defendant did not dispute that the tortfeasor was negligent and caused the subject accident. However, causation and damages were heavily disputed. In the course of discovery, the defendant insurer attempted to raise a seat belt defense which the plaintiff blocked via motion for partial summary judgment prior to trial.**

As a result of the collision, the plaintiff sustained a comminuted fracture of her left scapula; nondisplaced fractures of the left 1st through 5th ribs; and blunt force trauma to the head which resulted in a traumatic brain injury/concussion and cervical compression injuries. The plaintiff claimed $171,581 in medical expenses to date. The defendant challenged causation and extent of the plaintiff's claimed brain injury.

The jury found in favor of the plaintiff and awarded damages in the amount of $2,500,000 broken down as follows: $171,581 in past medical expenses; $560,000 in future medical expenses; $768,419 in past non-economic damages and $1,000,000 in future non-economic damages.

**REFERENCE**

Gonzalez vs. Progressive Express Insurance Company. Case no. 2018-042041-CA-01; Judge Beatrice Butchko, 04-05-22.

**Attorney for plaintiff: John P. Fischer of Fischer Redavid, PLLC in Hollywood, FL. Attorney for defendant: Robert M. O'Malley of Wicker Smith O'Hara Mccoy & Ford, P.A. in Fort Lauderdale, FL.**

# Sexual Harassment

***$570,000 VERDICT – SEXUAL HARASSMENT – ASSAULT – DEFENDANT GRABS AND SMACKS PLAINTIFF IN SEXUAL MANNER SHORTLY AFTER PLAINTIFF STARTS WORKING FOR DEFENDANTS – VIOLATING PLAINTIFF'S CIVIL RIGHTS – WRONGFUL TERMINATION.***

**Harris County, TX**

**In this case, the plaintiff started working for the defendants as a case manager and shortly after beginning her employment, the defendant began sexually assaulting the plaintiff. The plaintiff complained to human resources and was fired less than 2 weeks later. The defendants denied all allegations presented by the plaintiff.**

The plaintiff claimed wrongful termination and emotional distress. The defendants denied all allegations of negligence, denied having ever touched the plaintiff, denied that he used pet names when addressing the plaintiff and argued that the plaintiff was fired for excessive absences and tardiness along with insubordination.

The jury found that the defendant did commit an assault against the plaintiff and determined that the plaintiff was entitled to recover $20,000 in past pain and suffering, $500,000 in future pain and suffering and $50,000 in future medical/therapy expenses.

**REFERENCE**

Bernita Smith vs. Clearmycase.com and John Bordelon. Case no. 201916620; Judge Fredericka Phillips, 08-29-22.

**Attorney for defendant: Maverick J. Ray of Maverick Ray & Associates in Houston, TX. Attorney for defendant: Pro Se.**