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SUMMARIES WITH TRIAL ANALYSIS

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

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

VERDICTS BY CATEGORY

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SUMMARIES WITH TRIAL ANALYSIS

$7,000,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – FAILURE OF DEFENDANT HOSPITAL AND NURSES TO PROVIDE PATIENT WITH CPAP MACHINE WHILE ADMINISTERING NARCOTIC PAIN MEDICATION TO "OPIOID NAÏVE" PATIENT FOLLOWING LUMBAR COMPRESSION FRACTURE – SEVERE ANOXIC BRAIN INJURY – DECEDENT AWARE OF SURROUNDINGS AND FED THROUGH TUBE – DEATH 5 YEARS AFTER INJURY.

Monmouth County, NJ

In this action for medical malpractice, the plaintiff contended that the defendant nurses and the defendant hospital negligently failed to provide a CPAP machine when the 55-year-old opioid naïve patient, who had obstructive sleep apnea (OSA) and had been using a CPAP machine for a significant number of years, was administered narcotic pain killing medication following a painful lumbar compression fracture when the patient fell from a ladder. The plaintiff maintained that the patient suffered a severe anoxic brain injury and died 5 years later. The plaintiff contended that the decedent was aware during most of this period, recognized his family, and had to be fed through a tube. The defendant denied that the wife advised of the history of obstructive sleep apnea

The evidence disclosed that the decedent fell from a 4 foot ladder and suffered a lumbar compression fracture. A determination was correctly made that the treatment should be conservative in nature. The patient was administered opioid medications twice in the emergency room and was admitted where he provided a button that he could push for pain for a finite amount and would be locked out for a period until he could effectively push the button again.

The defendants' records reflected that the patient was opiate naïve. The records did not reflect that the patient used a CPAP machine at home for the approximate last 10-year period because of sleep apnea. The morning after he was admitted, the decedent was ultimately noted to be unresponsive and it was determined that he suffered a severe anoxic brain injury.

The plaintiff maintained that the combination of opiates and the absence of a CPAP machine caused the anoxic brain injury. The plaintiff asserted that if the patient had been treated properly, he would have avoided any brain damage. The wife testified in discovery that she advised one of the nurses of the history of a CPAP machine. The defendant denied that the wife advised of the history of obstructive sleep apnea or that the decedent had been using a CPAP machine at home. The plaintiff would have argued that the wife's testimony that she had so advised a nurse of the history was clearly accurate and that it made no sense that she would fail to so inform them. The plaintiff would have introduced evidence that the decedent had, in fact, used a CPAP machine for a significant number of years before he fell from the ladder.

The decent had been employed as a distribution mechanic for 16 years before retiring in 2015. The plaintiff's economist concluded that the past and future wage lost amounted to $969,672. The decedent left 3 adult children in addition to the wife. The plaintiff contended the loss of guidance and advice was very significant.

The plaintiff further maintained that during the approximate 5-year period between the alleged negligence and the death, the decedent was often aware of his surroundings and cognitive of his family's presence. The plaintiff would have presented a video take that depicted that when his family sang "Happy Birthday" to him, he was aware and followed them with his eyes. The plaintiff also contended that the decedent often followed his family with his eyes when they visited.

The case settled prior to trial for $7,000,000.

REFERENCE

Plaintiff's economist expert: Kristin Kucsma, MA from Livingston, NJ. Plaintiff's emergency medicine expert: Bennett Ojserkis, M.D. from Somers Point, NJ. Plaintiff's respiratory therapist expert: Thomas Paolillo, RRT from New York, NY.

Daley vs. Jersey Shore Medical Center, et al. Docket no. MON-L-1183-17, 05-12-21.

Attorney for plaintiff: Daryl Zaslow of Eichen Crutchlow Zaslow & McElroy, LLP in Edison, NJ. Attorney for plaintiff: James A. Maggs of Maggs McDermott & DiCicco, LLC in Wall, NJ.

COMMENTARY

There was no mention in the hospital records regarding the patient's history of using a CPAP machine and the defendant denied in discovery that the wife informed a nurse of this history. The plaintiff would have vigorously argued that in view of the history of CPAP usage, documented by the patient's prior physicians and the SD card from the

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Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081
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Main Office:
973/376-9002 Fax 973/376-1775
Circulation & Billing Department:
973/535-6263

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CPAP machine at home, it made no sense that the wife would fail to so advise the nurse, and that the absence of a mention of the history of sleep apnea underscored the plaintiff's position that the defendant acted negligently in failing to obtain a proper history from the family. Regarding damages, the evidence that the decedent was conscious most of the time during the 5-year period between the injury and death, but could not speak to his family and required feeding by tube, would have clearly produce a large award if the case had been tried. In this regard, it is felt that such reaction would have been heightened by the evidence of very clear negligence.

$1,800,000 RECOVERY – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT – HOSPITAL NEGLIGENCE – 7-YEAR-OLD PLAINTIFF PRESENTS 3 TIMES TO DEFENDANT HOSPITAL AND STAFF WITH LEG INJURY MISDIAGNOSED AND RELEASED EACH TIME, ULTIMATELY RESULTING IN SEVERE COMPARTMENT SYNDROME AND DVT – LIFE-SAVING LEFT LEG AMPUTATION.

Hudson County, NJ

In this medical malpractice case, the minor plaintiff, a 7-year-old boy, asserted that the defendant hospital staff violated the standard of care in assessing the plaintiff, resulting in permanent, life-long injury.

On March 24, 2014, the plaintiff presented to the defendant's emergency room with an injury wherein his left leg had been caught between the mat and outer frame of a trampoline. The plaintiff contended that the defendants negligently assessed the plaintiff in a deficient and incomplete manner contributing to his misdiagnosis. The plaintiff pointed to one defendant nurse's testimony that the plaintiff should have received a focused assessment; the nurse was on duty that day and did not perform one. The plaintiff was X-rayed, showing no fracture or dislocation, was diagnosed with foot sprain and discharged.

The plaintiff's pain persisted over the next 2 days, whereupon his parents took him back to the defendant's emergency room 2 more times. When he presented to the defendants the second time, the plaintiff's father reported that he had been restless and in pain and had run a fever. The defendant triage nurse, although noting foot pain and swelling, failed to assess the foot. She did not take the plaintiff's blood pressure, though noting an elevated heart rate. The plaintiff was given a splint and again discharged with a diagnosis of foot sprain.

The third time the plaintiff presented, his foot was still not assessed with checking of foot pulses, examination of the foot, or skin sensation assessment, despite performing gastrointestinal, genitourinary, integumentary, neurological, and respiratory assessments. The plaintiff was again diagnosed with foot sprain, splinted, and released.

The plaintiff mother took him to work with her the following day where she noted that his leg was purple and he stopped responding to her. She rushed him to a different hospital where a Doppler signal showed no pulses in his lower left extremity and an ultrasound revealed deep vein thrombosis. The plaintiff was diagnosed with severe compartment syndrome and he underwent a fasciotomy. Following the surgery, he developed septic shock and went into respiratory distress requiring ventilator support, which led to a lifesaving, above-the-knee amputation.

The plaintiff maintained that the defendants' multiple lack of assessments over 3 visits by the plaintiff led to a failure to timely diagnose compartment syndrome resulting in DVT, secondary infection, and streptococcus with related complications requiring amputation of the plaintiff's leg about the knee. The plaintiff presented expert medical testimony that the

care and diagnosis of the plaintiff was performed below the standard of care and contributed directly to the plaintiff's resulting condition.

The plaintiff's expert vascular surgeon testified that it is likely that the plaintiff suffered a left leg crush injury and developed compartment syndrome that was not tested for or diagnosed in a timely fashion at the defendant hospital on multiple occasions. Additionally, he likely developed an infection of his compromised muscle with Group A Strep that led to further and progressive tissue injury, septic shock and systemic inflammatory response syndrome. Deep venous thrombosis likely occurred in a secondary fashion.

The plaintiff's specialist in infectious diseases opined that had the plaintiff's compartment syndrome been diagnosed and treated in a timely fashion, the deep vein thrombosis and secondary infection that led to the amputation would have been avoided. He further opined that even without a compartment syndrome diagnosis, it was likely appropriate laboratory testing would have yielded abnormal results demonstrating early systemic infection. The plaintiff's expert asserted that had the defendants initiated anti-microbial therapy on the plaintiff's second or even third visit, when he "had a much lighter bacterial burden," the infection would likely have been successfully treated and amputation avoided.

The defendants initially denied all substantive allegations by the plaintiff. The defendants noted no edema, ecchymosis, crepitus, or neurovascular deficit on his presentations to the defendant hospital. The defendants argued that the plaintiff did not present with symptoms of compartment syndrome and was appropriately diagnosed, treated and released.

The plaintiff settled the matter as to the defendant hospital and its nursing staff in the amount of $1.8 million in a structured settlement funding a special needs trust on behalf of the minor plaintiff.

REFERENCE

Piperato, et al. vs. Lam, M.D., et al. Docket no. L-002081-15; Judge Vincent J. Militello, 05-14-20.

Attorney for plaintiff: James S. Lynch of Lynch Lynch Held Rosenberg, P.C. in Hasbrouck Heights, NJ. Attorney for plaintiff: Christopher J. Donadio of Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf in New York, NY. Attorney for defendant hospital and nursing staff: Catherine J. Flynn of DeCotiis, FitzPatrick, Cole & Giblin, LLP in Teaneck, NJ.

COMMENTARY

The plaintiff presented the expert testimony of a life care planner, vocational expert, and an economist. They testified as to the plaintiff's care needs and limitations on the plaintiff's abilities for the remainder of his life.

The defendants refuted that treatment of the plaintiff, given his presentation and description of the injury, was inappropriate. The defendants also denied that they delayed diagnosis or that the delay was the proximate cause of the plaintiff's ultimate diagnosis and infection. The defendants argued that the infection occurred outside of the scope of their treatment of the plaintiff and was not diagnosed by parties other than the defendants.

$3,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/PEDESTRIAN COLLISION – CROSSWALK PLAINTIFF STRUCK BY RIGHT TURNING TRUCK – CRUSH FRACTURES TO LEG – ABOVE-THE-KNEE AMPUTATION.

Ocean County, NJ

In this case of motor vehicle negligence, the plaintiff pedestrian, in his early 60s, contended that as he was crossing in the crosswalk, the defendant driver of a relatively large truck, facing opposite the plaintiff, negligently failed to make adequate observations before turning right, striking the plaintiff. The plaintiff maintained that he suffered severe crush injuries to the leg and that after several unsuccessful attempts to surgically salvage the leg, he required an above-the-knee amputation. The evidence disclosed that both parties had a green light and that the plaintiff was approximately 2/3 of the way though the crosswalk when struck.

The incident was captured on a nearby business's surveillance camera and the plaintiff would have argued that it was clear that the plaintiff did not have an opportunity to avoid being struck. The plaintiff is unmarried and had recently retired and moved to a retirement community, He lives alone. The plaintiff had difficulties being fitted with a prosthesis and currently has been able to use one with some success. The plaintiff contended that everyday activities such as housework are painful and difficult.

The plaintiff further maintained that he loved to walk and that before the accident occurred, he would typically walk 4 miles per day. The plaintiff contended that although he continues to a much lesser extent, he will be permanently restricted. The plaintiff would have argued that ability to enjoy his golden years after a lifetime of work warranted very significant compensation.

The case settled prior to trial for $3,500,000.

REFERENCE

63-year-old man vs. Defendant truck driver and employer.

Attorney for plaintiff: David M. Fried of Blume Forte Fried Zerres & Molinari, PC in Chatham, MA.

COMMENTARY

The plaintiff commanded a very substantial recovery. In addition to the above-the-knee amputation in and of itself, the plaintiff would have stressed that the injury occurred shortly after the plaintiff retired

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and that the injury interfered with the ability of the plaintiff to remain as active during the important golden years. Additionally, it is felt that the plaintiff made an unusually likable and determined appearance during discovery.

In this regard, the evidence would have disclosed that the plaintiff had previously walked approximately 4 hours per day and that despite some initial difficulties being fitted with a prosthetic device, he now accomplishes walking approximately 1 mile per day. Regarding liability, the incident was captured on a nearby business's surveillance camera and the plaintiff would have argued that the jury could determine that the plaintiff did not have an opportunity to avoid the truck.

$1,000,000 POLICY LIMIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – DEFENDANT DRIVER OF LANDSCAPING TRUCK MAKES LEFT TURN IN PATH OF PLAINTIFF DRIVER – COLLISION CAPTURED ON DASH-CAM OF PATROL CAR TRAVELING BEHIND DEFENDANT – 2 CERVICAL HERNIATIONS – SURGERY – CONCUSSION AND POST-CONCUSSION SYNDROME.

Monmouth County, NJ

In this action for motor vehicle negligence, the plaintiff driver, age 29 at the time of the accident, contended that the defendant driver of a landscaping truck negligently made a left turn into her path, causing the collision. The plaintiff contended that as a result, she suffered 2 cervical herniations that required surgery, as well as a concussion and post-concussion syndrome. The defendant was covered by a combined, single-limit policy of $1,000,000. The defendant maintained in discovery that the plaintiff was speeding and contributed to the happening of the accident,

The plaintiff would have countered that a patrol car was proceeding behind the defendant and the collision was captured on the dash-cam from the police car. The plaintiff would have argued that a viewing of the footage clearly showed that the defendant turned directly into the path of the plaintiff and that the plaintiff was not speeding.

The plaintiff maintained that she suffered herniations at C5-6 and C-7 with radiculopathy and that the injuries were confirmed by MRI and EMG. The plaintiff asserted that after more conservative measures were inadequate, she required a 2-level anterior fusion. The plaintiff asserted that although she had improved after the surgery, she will permanently suffer some pain and extensive restriction. The plaintiff further contended that she suffered a concussion and post-concussion syndrome. The plaintiff's proofs reflected that although improved, she will permanently suffer periodic headaches.

The plaintiff was able to return to work and the plaintiff made no economic claims.

The case settled approximately 1 ½ years after the accident for the $1,000,000 policy, including $987,158 for personal injury and $12,842 for property damage.

REFERENCE

Plaintiff's neuropsychologist expert: Theodore J Batlas, Psy.D. from Brick Twp, NJ. Plaintiff's orthopedic surgeon expert: Cary Glastein, M.D. from Tinton Falls, NJ.

Mukherjee vs. Jaume; Judge Owen McCarthy, 03-25-21.

Attorney for plaintiff: Nicholas J. Leonardis of Stathis & Leonardis, LLC in Edison, NJ.

COMMENTARY

The case settled for the policy limits early in the litigation process and although a commercial vehicle was involved, the medical bills of the plaintiff driver of a passenger car were nonetheless paid by PIP. The fact that a patrol car was traveling behind the defendant and that its dash-cam captured the actual collision was undoubtedly a significant factor. In this regard, the plaintiff would have argued that the footage strongly supported the plaintiff's claims that the defendant turned directly in front of her and that she had no opportunity to take evasive action.

Additionally, the plaintiff was able to return to work and made no future income claims, The plaintiff would have argued that irrespective of this factor, the jury should consider, on the issue of pain and suffering, that she will experience the effects of the injuries for the remainder of a lengthy life expectancy.

$1,370,785 VERDICT – PREMISES LIABILITY – COUNTY LIABILITY – FALL DOWN – PLAINTIFF FALLS ON SNOW AND ICE OUTSIDE DEFENDANT ARENA AFTER ATTENDING CONCERT – PERMANENT SHOULDER INJURY – SURGERY USING 3 ANCHOR SUTURES – ONGOING LIMITATIONS AND TREATMENT.

Mercer County, NJ

In this action for premises liability, the plaintiff claimed he was seriously injured on February 14, 2015 when he slipped and fell on an accumulation of snow and ice on the sidewalk adjacent to a concert venue, sustaining serious injuries. The arena itself was owned by the county. The defendant denied it was negligent in the operation of the Arena by failing to take action to prevent the plaintiff's fall.

The plaintiff was leaving the venue after having attended a concert promoted and managed by the defendant operator and lessor of the arena. As the plaintiff and his stepdaughter left the building and began walking on the sidewalk, the plaintiff slipped and fell approximately 10 to 20 feet from the entrance of the building. He struck his right shoulder and back on the ground.

As a result of the fall, the plaintiff sustained a serious and permanent shoulder injury including a full thickness, complete tendon tear with long head of the biceps attenuation and partial tear as well as AC joint arthrosis requiring surgery using 3 anchor sutures to repair a large rotator cuff tear. The plaintiff was undergoing ongoing cortisone shots to alleviate pain at the time of trial.

The county owned the property and its Improvement Authority oversaw the lease agreement with the defendant. The plaintiff maintained that, under the agreement with the Improvement Authority, the defendant was obligated to "completely operate and manage the Arena with respect to all activities…" The plaintiff argued that the defendant was responsible for cleaning and maintaining the Arena, including the entrances, ground, and sidewalks (but not parking areas) surrounding the facility and adjacent to it. The plaintiff put forth that the agreement specifically called for the defendant to be responsible for snow and trash removal. However, despite its contractual obligation under the lease, the defendant did not hire any contractors or employees to remove snow and ice from the sidewalks adjacent to the Arena. Instead, the defendant relied on an informal agreement with the County, through its Department of Transportation, to remove snow and ice at no cost to the defendant.

According to County records, the DOT dispatched a crew of 5 employees at around 8:00 p.m. on the night in question to perform snow and ice removal at the Arena. Nonetheless, according to the plaintiff, upon leaving the building, shortly after 11:00 p.m., there was no evidence that anyone had shoveled the sidewalks as the sidewalks and parking lots were snow covered, including the area where the plaintiff fell. Light, thin ice was under the snow where the plaintiff fell.

The defendant contended that they, in fact, acted reasonably and with due care at all times and that its conduct was in keeping with the applicable industry standard of care. The defendant also argued that the plaintiff was at least comparatively negligent in failing to take care under the conditions when walking on snow and ice

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 $225,000 reduced to $202,500 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $1,300,000 broken down as follows: $1,250,000 in damages to the plaintiff plus interest of $68,064; $50,000 in loss of consortium damages to the plaintiff wife, plus interest of $2,721, for a total award of $1,370,785.

REFERENCE

Scott vs. The Mercer County Improvement Authority, et al. Docket no. L-001157-16; Judge Robert T. Lougy, 01-29-20.

Attorneys for plaintiff: Alan H. Sklarsky and David M. Cedar of Williams Cedar, LLC in Haddonfield, NJ. Attorney for defendant: Samuel J. McNulty of Hueston McNulty, P.C. in Florham Park, NJ.

COMMENTARY

The plaintiff initially filed his complaint against the defendant lessor of the building, as well as the defendant Mercer County Improvement Authority, the Mercer County Board of Chosen Freeholders and the Mercer County Department of Transportation and Infrastructure. On October 27, 2017, the court granted summary judgment to the county defendants based on tort claims immunity, relying on common law snow removal immunity.

On January 12, 2018, the defendant lessor filed a motion for summary judgment arguing that it was entitled to summary judgment on the premise that it did not owe or breach any duty to the plaintiff. The defendant also claimed that it was entitled to derivative immunity pursuant to the Tort Claims Act. The trial court heard oral argument on March 2, 2018, and granted the defendant's motion for summary judgment, dismissing the plaintiff's complaint with prejudice. The plaintiff filed a Notice of Appeal on April 12, 2018.

On April 10, 2019, the appellate division reversed the decision and remanded the case for trial. The trial judge viewed the County as a private contractor hired by the defendant to perform snow removal and then determined a reasonable jury could not find there was negligence in the snow removal activity performed by the County. The Appellate Division disagreed. The court concluded "[w]e part company

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with the judge's determination, concluding he erred in holding defendant, through the County, properly exercised its duty of care to plaintiff."

The court stated: A jury should consider whether defendant made reasonable efforts to shovel, salt, or sand the area where plaintiff slipped and fell, or otherwise arrange for such precautions, to provide safe passage for plaintiff from the Arena to his car. A jury should consider all relevant circumstances which may include: the extent and timing of the snowfall, the time of day or night, the nature of the efforts actually taken to maintain the premises, the practicality of cleaning up in stages or by priorities, the plaintiff's care for his own safety, including footwear and any other pertinent factors. [citing Moore v. Schering Plough, Inc. 328 N.J. super. 300, 307 (App. Div. 2000)].

The Appellate division recognized that "under its management and operation agreement with MCIA, defendant owed a duty to plaintiff, a business invitee, to maintain the area of the Arena where he slipped and fell in a safe condition." The appellate court reversed the trial court's determination, concluding that "He erred in holding defendant, through the County, properly exercised its duty of care to plaintiff. There was a genuine issue of material fact as to whether defendant breached its duty of care to plaintiff, which the judge should not have decided on summary judgment."

Subsequent to the remand of the case to the trial court, the defendant filed another summary judgment motion based on "derivative immunity" pursuant to the New Jersey Tort Claims Act. Notwithstanding the appellate division decision, the defendant argued that the county was nonetheless responsible for the snow removal activities and thus the defendant was entitled to dismissal based on derivative immunity. The court denied the motion on November 8, 2019 and the matter proceeded to trial.

Following the plaintiff's verdict, the defendant filed a motion for new trial asserting that the plaintiff failed to present any evidence for the jury to reasonably conclude that the defendant had notice and a reasonable opportunity to warn or remove the hazard alleged, this judgment notwithstanding the verdict was appropriate and a new trial warranted. The plaintiff opposed the motion arguing that the defendant's motion was without basis as the verdict was not excessive. The plaintiff argued that a verdict is presumed correct and should not be altered by the court, and that, in the subject matter, the evidence was more than sufficient to support both a duty to address the conditions on the night of the plaintiff's fall and a breach of such duty to the plaintiff. The defendant withdrew the motion prior to the court ruling on the motion.

DEFENDANT'S VERDICT – PREMISES LIABILITY – HAZARDOUS PREMISES – FALL DOWN – PLAINTIFF FALLS IN HOLE AT CURB ON DEFENDANT'S COMMERCIAL PROPERTY – FRACTURED LEFT FOOT – SURGICAL REPAIR WITH OPEN REDUCTION AND INTERNAL FIXATION – 3 SURGERIES: HARDWARE INSTALLATION; REPAIR OF SURAL NERVE AND REMOVAL OF HARDWARE – ONGOING PAIN AND MEDICATION FOR PAIN.

Morris County, NJ

In this premises liability case, the plaintiff, a volunteer fireman and home improvement supervisor, asserted that he fell on the premises known as the Powder Mill Plaza West, located on State Route 10 in Morris Plains due to negligent maintenance of the property. The plaintiff claimed that his fall caused significant, permanent injury. The defendant denied liability and contended that the plaintiff was himself negligent, and thus, responsible for his own injuries.

On July 18, 2015, the plaintiff parked his truck on the roadway in front of a furniture store in the defendant's shopping plaza. He was attempting to load a table into his truck when he tripped and fell on a hole in the curb outside the store, abutting the walkway and roadway. As a result of the fall, the plaintiff sustained a fractured left foot requiring surgical repair with open reduction and internal fixation at the fifth metatarsal. The plaintiff underwent a second surgery on the sural nerve, and a third to remove hardware.

The plaintiff maintained that the defendant was responsible for the maintenance and repair of the common area of the shopping plaza where he fell. The plaintiff argued that the hole into which he fell constituted a hazardous condition that the defendant negligently allowed to exist on the property breaching the duty to maintain the premises in safe condition for invitees of the property. The defendant asserted that the plaintiff, in choosing to move and load the furniture himself, assumed a known risk and the assumption of that risk was the proximate cause of the accident, and therefore, the defendant could not be held liable.

The plaintiff maintained that, due to his injury, he could no longer perform his duties as a fireman and that he has continuing pain and takes pain medication intermittently. The plaintiff claimed that he could no longer work as a home improvement supervisor and now supervises maintenance at a country club.

The jury unanimously found that the defendant was not negligent and returned a verdict in favor of the defendant.

REFERENCE

Gallagher vs. Pineview Homes, Inc. Docket no. L-000922-17, 07-16-19.

Attorney for plaintiff: Robert G. Alencewicz of Hack Piro, P.A. in Florham Park, NJ. Attorney for defendant Pineview Homes, Inc., landlord: John M Sapata of Tango, Dickinson, Lorenzo, McDermott & McGee, LLP in Millburn, NJ. Attorney for defendant Homeless Solutions, Inc., tenant: Melanie Rowan Quinn of Malpero, Prisco, Klauber & Licata, LLP in Paramus, NJ.

COMMENTARY

In this case, the premises where the plaintiff allegedly fell was a shopping center owned by the co-defendant owner and the co-defendant tenant ran a non-profit organization in the building. The plaintiff identified the area where he fell to be the edge of the curb of the walk abutting the common parking lot. The lease between the parties was a

"net lease" that required the tenants to pay all of the landlord's expenses. The lease also stated that the walking areas were part of the common areas of the shopping center and that the landlord was required to maintain and repair all common areas. The tenant's use of the common walks was non-exclusive and was shared with other tenants. The lease between the parties stated that the landlord maintained and repaired the common areas including the walks and that the tenants were required to pay a proportionate share of the landlord's maintenance and repair costs.

The owner of the property did not retain a management company, but performed inspections himself and retained a handyman/contractor to perform repairs and maintenance. The lease stated that the landlord was required to maintain Commercial General Liability Insurance in the amount of $2 million in regard to injuries sustained by any person within the common areas of the premises and the tenants were required to pay a proportionate share of the landlords' insurance costs. The lease stated that the landlord was required to indemnify tenants in respect of any action arising from the landlord's violation or breach of the lease.

Prior to trial, the co-defendant tenant moved for summary judgment to be released from the subject action based on the terms of the tenant's lease with the co-defendant landlord wherein the landlord was deemed solely responsible for the maintenance and repair of the location where the plaintiff fell. The co-defendant tenant asserted that the plaintiff's complaint should be dismissed as against the tenant because it did not have a duty to maintain the location of the plaintiff's fall. Further, the plaintiff argued, as a charitable organization, the co-defendant tenant was immune from liability for the plaintiff's alleged injuries. Finally, the lease required the co-defendant landlord to indemnify the co-defendant tenant against the plaintiff's claims in this action.

The co-defendant landlord opposed the tenant's motion asserting that there was a genuine issue of material fact as to whether the co-defendant tenant operated exclusively for charitable purposes. The landlord disputed the location where the plaintiff fell, identifying it as occurring just outside the store, not in a common area. The landlord claimed that it was common for the customers of the co-defendant tenant to carry furniture through the front doors of the store where there was a known hazardous condition directly outside, and that the co-defendant was aware of a prior fall in the same area. The landlord maintained that there was a loading dock at the rear of the store, but that the store's customers were only instructed to use that dock if the item of furniture was too big to fit through the front doors. The landlord asserted that the co-defendant's motion for summary judgment should be denied because a genuine issue of material fact existed as to whether or not the co-defendant tenant fell under the charitable immunity statute and whether they were negligent in instructing their customers to carry furniture through the front doors of the store in an area where there was a known, hazardous condition.

The court granted the motion for summary judgment as to all claims against the co-defendant tenant, but denied the portion of the motion that obligated the co-defendant landlord to reimburse the co-defendant tenant all costs and fees incurred in defense of the subject litigation. The action proceeded against the defendant owner of the shopping center only.

$1,350,000 RECOVERY – WRONGFUL TERMINATION – RETALIATION – PLAINTIFF CLAIMS HARASSMENT, RETALIATION AND ULTIMATELY TERMINATION FOR COMPLAINING ABOUT DANGEROUS CONDITIONS IN WORKPLACE AND ASSAULT BY CO-WORKER – DEFENDANTS DENY RETALIATION AND CONTEND PLAINTIFF HAD HISTORY OF DISCIPLINARY ACTIONS AND WAS TERMINATED FOR CAUSE.

Essex County, NJ

In this wrongful termination case, the plaintiff Department of Corrections Officer asserted that the defendant DOC and its agents and employees harassed and retaliated against the plaintiff when he complained about workplace hazards and assault, that they frivolously investigated him, transferred him against his wishes, and ultimately terminated his employment. The defendants argued that the plaintiff was fired for repeated absences, lateness, and violation of secondary employment restrictions.

The plaintiff was hired by the New Jersey Department of Corrections and began working as a law enforcement officer at East Jersey State Prison in 1989. On May 14, 2008 the plaintiff filed a report complaining of asbestos containing materials in the prison basement due to work crews removing piping in the area. No warnings were posted, no ventilation system was in place, and no plastic barriers were erected. The plaintiff evacuated his inmates and staff and notified the appropriate authorities. The plaintiff was evaluated by the defendants' medical staff and referred to an outside physician. The plaintiff also filed a Workers Compensation Claim and Employer's First Report of Accidental Injury or Occupational Disease.

On July 11, 2008, the plaintiff filed a formal PEOSHA complaint with the State of New Jersey alleging exposed ACM in basement and airborne ACM because of ventilation system and fan usage; removal of ACM in basement without permits and warnings posted; and no containment walls or notices of removal in the affected area. The defendant was found to be in violation and was issued a citation and order to comply by PEOSHA. 2 months later, the plaintiff was notified by the defendant that it had investigated his 2002 taxes (from 6 years prior) and determined that federal taxes withheld were understated by approximately $9,000 due to employer error.

On April 1, 2009, the plaintiff was assaulted by a coworker in the workplace. The plaintiff reported the assault and an internal affairs investigation was done; however, the plaintiff maintained that no witnesses were interviewed. The complaint was deemed to lack probable cause and was closed. One month later, the plaintiff was notified that he was being investigated for allegedly violating the chain of command when he complained that he was being retaliated

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against. The plaintiff was subsequently served a Notice of Discipline. The coworker eventually pled guilty to harassing the plaintiff and was served a Notice of Disciplinary Action.

In September 2009, the plaintiff again filed a report relating to safety concerns with the defendant coworker being returned to the same prison as the plaintiff and complaining that the plaintiff was denied opportunities to work overtime because of the coworker's presence at the prison. The plaintiff was reassigned to a less desirable position. He was also investigated for his participation in a program that permitted corrections officers to work when off-duty for the NJDOT removing snow from NJ roadways during winter storms. The plaintiff was exonerated of any wrongdoing in that investigation.

The plaintiff was notified that the defendant employer was seeking to terminate the plaintiff for his participation in the DOT snow removal program despite his being approved to do so since 2002. The day after being exonerated by report of the Senior Investigator of the Internal Affairs bureau, the plaintiff was suspended without pay. The plaintiff was offered a 5-day suspension if he signed a waiver releasing the defendants from any and all liability for all of the conduct the plaintiff endured up to and including his termination. The plaintiff refused and his employment was terminated by the defendant DOC.

The plaintiff maintained that he was targeted, discriminated, and retaliated against for complaining of hazardous work conditions and pursuing a complaint against the co-worker who assaulted the plaintiff. The plaintiff argued that he was given the work assignments no one wanted, was investigated multiple times, despite no wrongdoing ever being found, was transferred to accommodate the assaulting coworker, and ultimately terminated all in retaliation for his legitimate complaints.

The defendants denied any discriminatory treatment or retaliation against the plaintiff arguing that the plaintiff had been disciplined by the employer 47 times in the course of his employment with the defendant. The defendant maintained that the plaintiff had a history of unsatisfactory attendance, unexcused lateness, absence without permission, chronic absenteeism, failure or delay to carry out orders, and others. The defendants maintained that the plaintiff's transfers, suspensions and termination were all with cause and properly recorded and documented. The defendant asserted that the plaintiff was granted permission for secondary employment but would call in sick to his shifts with the defendant in order to take secondary work assignments, which was prohibited, because employees were only allowed to participate in secondary work on days they were not scheduled to work for the defendant.

The parties settled the matter via mediation whereby the defendants agreed to pay the plaintiff $1,350,000 (inclusive of attorney's fees and costs).

REFERENCE

Little vs. Lanigan, et al. Docket no. L- 002859-11; Judge Stephen L. Petrillo, 02-10-20.

Attorney for plaintiff: David J. Heintjes of The Law Offices of David J. Heintjes, Esq., LLC in Jersey City, NJ. Attorney for plaintiff: John P. Nulty, Jr. of Cammarata, Nulty & Garrigan, LLC in Jersey City, NJ. Attorney for defendant: Jemi G. Lucy of Greenbaum, Rowe, Smith & Davis, LLP in Iselin, NJ.

COMMENTARY

Following the mediation and settlement, the defendants claimed that the plaintiff had 2 outstanding liens; the first in the amount of $30,000 from the State Division of Taxation, for failure to file state income taxes and the second a claim that the plaintiff owed the State Public Defender's Office $80. The plaintiff disputed the purported liens and filed a motion to enforce settlement.

The defendants opposed the motion stating the state is required to follow strict procedures for payment of settlement funds, including clearance of any liens prior to payment of settlement. The state offered the plaintiff 2 options to satisfy the liens, either by paying them independently and providing proof of payment or by allowing satisfaction of the liens from the proceeds of the settlement. The defendants maintained that the plaintiff refused both of the options and, rather than attempt to resolve the liens, filed a motion to enforce settlement. The defendant then generated 2 vouchers for payment to the plaintiff in the amount of $1,291,142 and $28,778, representing the settlement amount less the outstanding liens of $30,080.

The defendants filed a cross-motion to enforce the liens against the plaintiff. The defendants argued that the 90-day period for payment of the settlement proceeds to the plaintiff started upon the state's receipt of the executed New Jersey Payment Vouchers and that the plaintiff agreed to those terms pursuant to the terms of the General Release executed by the plaintiff and returned to defense counsel's office. The defendant DOC recognized that the plaintiff might be frustrated with the time expended to receive his settlement payment, but his arguments that payment was overdue as of July 6, 2020 was fatally and logically flawed. The defendant argued that the plaintiff should not be afforded unlimited time to resolve the outstanding liens and, as such, the defendants' motion to enforce the liens should be granted.

The court denied the plaintiff's motion to enforce the settlement and granted the defendants' motion to enforce the liens and pay the plaintiff the proceeds of the settlement less the outstanding liens.

DEFENDANT'S VERDICT ON SUMMARY JUDGMENT – MUNICIPAL LIABILITY – FALL DOWN – PLAINTIFF FALLS IN POTHOLE ON DEFENDANT TOWNSHIP'S ROADWAY/ PARKING AREA – FRACTURE OF 5TH METATARSAL OF RIGHT FOOT – ORTHOPEDIC BOOT AND PAIN MEDICATION – ONGOING PAIN; INABILITY TO WORK; DIFFICULTY WALKING – DEFENDANT ASSERTS IMMUNITY UNDER TORT CLAIMS ACT.

Somerset County, NJ

In this municipal liability case, the plaintiff, a 61-year-old medical office manager, asserted that the defendant township allowed a dangerous condition, a pothole, to exist on its roadway and that the condition caused the plaintiff to trip and suffer significant, permanent injury. The defendant's IME conceded that the plaintiff sustained a mild permanent injury; however, the defendant township asserted that the plaintiff was prevented from bringing a claim against the defendant under the Tort Claims Act.

On June 28, 2016, the plaintiff was going to the dry cleaners on Maple Avenue in Basking Ridge. The plaintiff parked her car on Maple Avenue and removed her dry cleaning from the trunk. As she stepped away from the trunk of her vehicle, she tripped in a pothole that she did not see. The plaintiff contended that her right foot and ankle went into the hole. As a result of the incident, the plaintiff was transported by ambulance to the hospital. She sustained a fracture of the 5th metatarsal in her right foot. The plaintiff treated with an orthopedic boot and pain medication.

The plaintiff contended that the defendant negligently failed in its duty to maintain the township roadways and parking areas in a safe condition for people to park and walk. The plaintiff alleged that the negligence of the defendant township was the proximate cause of her injury. The plaintiff claimed she continues to have tremendous pain, difficulty walking, is unable to work and has become depressed due to the subject injury. The plaintiff claimed that she paid $7,000 for out-of-pocket medical expenses and $12,000 for home health aide services.

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 $125,000 reduced to $62,550 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded.

The defendant filed a motion for summary judgment to dismiss the plaintiff's claim and the motion was granted.

REFERENCE

Akhavanazari vs. Township of Bernards. Docket no. L-000785-18; Judge Yolanda Ciccone, 01-24-20.

Attorney for plaintiff: Frederick B. Zelley of Bisogno, Loeffler & Zelley, L.L.C. in Basking Ridge, NJ.
Attorney for defendant: Brian S. Davis of Difrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C. in Warren, NJ.

COMMENTARY

The defendant moved for summary judgment arguing that the plaintiff failed to establish that the defendant's conduct was palpably unreasonable under N.J.S. A. 59:4-2 and failed to show a permanent loss of substantial bodily function required to recover under the Tort Claims Act.

In the court's opinion on the case, it noted that, under N.J.S. A. 59:4-2, no liability lies against a public entity for a dangerous condition "if the action the entity took to protect against the condition or the failure to take such act was not palpably unreasonable." Palpably unreasonable behavior "implies behavior that is patently unacceptable under any given circumstances" per Polzo v. Cnty of Essex (Polzo II), 209 N.J. 51 at 75 (2012) citing Muhammad v. NJ Transit, 176 N.J. 185, 195 (2003). Palpably unreasonable action must be the result of "capricious, arbitrary, whimsical or outrageous decisions of public servants." Waldorf v. Shuta, 896 F. 2d 723, 738 (Third Circuit 1990). Where there is no credible evidence of palpably unreasonable conduct, the question of palpable unreasonableness may be decided by the court as a matter of law upon application for summary judgment.

In the subject matter, the court deemed that the plaintiff did not prove the duration of the pothole and did not prove the defendant was unreasonable. The plaintiff stated that the condition of the pothole had been there for a period of time and that the duration of the dangerous condition should go to the jury. However, the record lacked evidence of how long the alleged pothole was in the parking lot. As such, the court found that summary judgment was appropriate because the plaintiff could not provide evidence that the township was palpably unreasonable in failing to repair the alleged pothole because of the lack of prior notice and the lack of any evidence as to the duration of the pothole.

Furthermore, according to the court's opinion, in order for a party to maintain a personal injury claim under Title 59 against a public entity, said party, pursuant to N.J.S. A. 59:4-2 provides: No damages shall be awarded against a public entity or public employee for pain and suffering resulting from an injury; provided, however, that this limitation on the recovery of damages for pain and suffering shall not apply in cases of permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment exceeds $3,600. In Brooks v. Odom, 150 N.J. 395 (1997), the New Jersey Supreme Court offered guidance for assessing whether an injury satisfies the requisite standard: "To recover under the Tort Claims Act for pain and suffering, a plaintiff must prove by objective medical evidence that the injury is permanent. Temporary injuries, no matter how painful and debilitating, are not recoverable. One recognized test stated '[t]o be considered permanent within the meaning of this subsection, an injury must constitute an objective impairment, such as a fracture.' Absent such an objective abnormality, a claim for permanent injury consisting of 'impairment of plaintiff's health and ability to participate in activities' merely iterates a claim for pain and suffering. Brooks, supra, 150 N.J. at 402-3.

The court noted that the plaintiff submitted two expert reports with the first being from April 1, 2019 wherein the physician mentions that the plaintiff suffered a permanent injury but openly admits that he had not examined the plaintiff since 2016 and "Does not know her

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present condition." A month later, the plaintiff was examined again by the same physician who then opined that the plaintiff's range of motion was within normal limits as was the right ankle motion. She had minimal tenderness to touch and an X-ray revealed a completely healed fracture at the base of the fifth metatarsal with excellent alignment of the joint surfaces. The final diagnosis was a healed comminuted fracture. Given the plaintiff's objective medical reports, the court cited Knowles v. Mantua Township Soccer Ass'n, 176 N.J. 324, 331 (2003) (quoting Gilhooley, 164 N.J. at 541): "An injury causing lingering pain, will not suffice because [a] plaintiff may not recover under the Tort Claims Act for mere subjective feelings of discomfort."

Based on the plaintiff's lack of proof that the defendant township was palpably unreasonable and based on the doctor's treating records, indicating that the plaintiff had not sustained an objective permanent injury and a permanent loss of bodily function that was substantial as required by law, the court found that the plaintiff did not satisfy the statutory requirements of N.J.S. A. 59:4-2 and granted summary judgment dismissal in favor of the defendant.

VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Cardiology

$825,000 RECOVERY

Medical malpractice – Cardiology – Failure to properly diagnose heart attack – Decedent cardiac patient allegedly advises of chest pain – EKG shows signs of evolving heart attack – Death of 64-year-old man 8 days later.

Bergen County, NJ

The plaintiff in this medical malpractice action contended that the 64-year-old decedent, with a history of cardiac issues, and who was a long-term smoker and clinically overweight, presented to the defendant cardiologist with complaints of chest pain in addition to neck pain. The plaintiff claimed that the defendant physician failed to properly diagnose the heart attack, and instead incorrectly diagnosed his neck pain as an orthopedic injury. The plaintiff maintained that the defendant's negligence resulted in the death of the plaintiff's decedent. The plaintiff maintained that the EKG showed signs of an ongoing infarct and asserted that the defendant should have referred the decedent to a hospital for an immediate cardiac work-up. The defendant referred the decedent to a neurologist because of the neck pain. The defendant argued that his referral to a neurologist met the standard of care in that setting.

The plaintiff asserted that the pain and suffering between the negligence and the death 8 days later was extensive. The decedent was not working and left a wife and no children. The defendant claimed that he believed the decedent's EKG illustrated a less emergent cardiac event than plaintiff's experts claimed, and that the decedent was possibly experiencing a stroke. The defendant's causation experts argued that the decedent had a severe cardiac condition before visiting the defendant which would have resulted in the massive heart attack, irrespective of the care by the cardiologist.

The case settled prior to trial for $825,000.

REFERENCE

Plaintiff's anesthesiologist expert: Peter Salgo, M.D. from New York, NY. Plaintiff's cardiologist expert: Alan Feit, M.D. from New York. Plaintiff's economist expert: Kristin Kucsma, M.A. from Livingston, NJ. Plaintiff's pathology expert: Jonathan Eisenstat, M.D. from Decatur, GA.

Case of 64-year-old decedent vs. Defendant cardiologist.

Attorney for plaintiff: Harris S. Feldman of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

Pulmonology

DEFENDANT'S VERDICT

Medical malpractice – Pulmonology – Plaintiff claims decedent not fully informed of risks of treatment in light of pre-existing lung condition and he was not monitored properly resulting in development of Amiodarone lung toxicity and death – Defendants argue treatment was appropriate and plaintiff's decedent did not develop toxicity, but died of underlying, terminal lung disease.

Hudson County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants deviated from the standard of care in treatment of the plaintiff's decedent resulting in his untimely death from Amiodarone lung toxicity. The defendants denied that the plaintiff suffered toxicity and claim he died from his underlying, terminal lung condition.

The plaintiff decedent had pre-existing lung disease at the time he was treated by the defendant cardiologist and pulmonologist. The defendants recommended treatment with the medication Amiodarone, which carries a risk of development of toxicity in the lungs. The plaintiff alleged that the defendants failed to properly monitor the plaintiff decedent, which allowed him to develop a drug-induced pulmonary toxicity – namely, Amiodarone Lung Toxicity.

The plaintiff contended that the defendants were negligent in failing to diagnose Amiodarone-induced lung toxicity and that the delay in diagnosis caused

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him to suffer severe injuries to his lungs, which ultimately resulted in his death. During his course of treatment, the decedent underwent a lung biopsy which found, "vacuolization in the pneumocytes and macrophages suggest pulmonary toxicity (Amiodarone, etc.)." The plaintiff contended that the defendants' negligence in treatment of the decedent posed in an increased risk of harm to the decedent, given his pre-existing condition and that the defendant physician failed to give the plaintiff and decedent all the information that a reasonable person would expect him to disclose including the risk of lung toxicity so that he could make an informed decision about his course of treatment with Amiodarone.

The plaintiff asserted that the decedent would not have consented to treatment with Amidarone if he had been properly informed of the risk of lung toxicity. The plaintiff presented experts who opined that the chance of the patient's death was exacerbated by the defendants' alleged negligence. The plaintiff argued that the decedent lost the chance of a better outcome because of the defendants' deviations from the standards of medical practice. The plaintiff wife brought suit to compensate for the wrongful death of her husband and on behalf of their children for their loss of advice, guidance, counsel and companionship due to his death. The plaintiff claimed that the decedent suffered emotional pain, suffering, disability, impairment leading up to his death.

The defendants argued that informed consent was appropriately done in the case of the decedent and that the benefit of using Amiodarone outweighed the risk of potential toxicity given the decedent's diagnosis of terminal lung disease. Prescribing Amiodarone was entirely appropriate under the circumstances according to the defendants. Further, the defendants denied that the use of Amiodarone treatment exacerbated, caused, or played any role in the plaintiff's decedent's death. The defendants also denied that there was any evidence that the plaintiff decedent developed Amiodarone Induced Lung Toxicity and maintained that he died from his underlying lung condition. The defendants presented expert testimony indicating that the decedent never developed Amiodarone toxicity and that it was not a contributing factor to his death.

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

REFERENCE

Mikhail vs. Ciechankowski, M.D., et al. Docket no. L-004487-16; Judge Joseph V. Isabella, 02-20-20.

Attorneys for plaintiff: Paul M. da Costa and Daniel B. Devinney of Snyder Sarno D'Aniello Maceri & da Costa, LLC in Roseland, NJ. Attorneys for defendant cardiologist and cardiology practice: Tess J. Kline and Daniel R. Esposito of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ. Attorney for defendant pulmonologist: Justin F. Johnson of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

AGE DISCRIMINATION

DEFENDANT'S VERDICT

Age discrimination – Wrongful termination – 78-year-old plaintiff asserts she was fired by defendant propane company due to age – Defendant counters plaintiff terminated for violation of strict safety policy when she failed to dispatch technician for reported gas leak.

Morris County, NJ

In this employment discrimination case, the plaintiff, a 78-year-old woman, asserted that the defendant propane company illegally terminated her employment due to her age and that the defendant's employee, and supervisor of the plaintiff, illegally aided and abetted the illegal conduct of the defendant with malice and calculated disregard of her rights. The defendant denied discrimination against the plaintiff and asserted that she was terminated for cause.

The plaintiff, a customer service representative, began working for the defendant's predecessor in 1959 and remained with the company through many owners until it was purchased by the defendant. In total, the plaintiff had worked in the same position for the company for 52 years and had worked under numerous managers, without issue. In October of 2017, the defendant terminated the plaintiff's employment. The plaintiff asserted that she was terminated due to her age.

The plaintiff contended that, after 52 years of service and at age 78, she was abruptly terminated and without any just cause was told to gather her belongings and was escorted out of her office in the presence and view of longstanding co-employees and was subjected to severe humiliation and told to leave the facility immediately. The plaintiff asserted that the defendants' conduct was egregious, unlawful and wanton, and reckless regarding the plaintiff's rights, causing her severe emotional damages, and pain and suffering of the humiliation she experienced upon termination and thereafter.

The defendant maintained that the plaintiff violated the defendant's safety policy in handling a customer report of potential gas leak. The defendant argued that it had a zero tolerance policy with regard to safety issues due to the dangerous nature of the in-

dustry. The defendant records all customer calls and presented the transcript of a call from October 10, 2017 wherein the plaintiff took a call from a customer requesting removal of a tank that he believed to be leaking. The defendant asserted that the plaintiff violated safety protocol when she failed to dispatch a service technician to check the reported leaking tank. Violations of safety protocols, per the defendant's policies, require termination and, in fact, other employees, not in a protected class, had been terminated for similar cause.

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

REFERENCE

Spinozzi vs. Amerigas Propane, Inc. Docket no. L-002625-17; Judge William J. McGovern, III, 11-20-19.

Attorney for plaintiff: Glenn A. Montgomery of Montgomery Fetten in Bridgewater, NJ. Attorneys for defendant: John T. McDonald and Melissa M. Ferrara of Reed Smith, LLP in Princeton, NJ.

CONSTRUCTION NEGLIGENCE

$590,000 RECOVERY

Construction negligence – Defendants G.C. and engineering company at town home improvement project fail to advise plaintiff town home owner of defect in deck noticed day before siding planned to be replaced – Deck collapses causing plaintiff to fall 14 feet – Fractured calcaneus – Surgery.

Essex County, NJ

This case involved a plaintiff town home owner in his early 70s. The complex was planning to perform improvements, including the replacement of siding of more than 40 units. The plaintiff contended that the day before the project was to begin, the defendants G.C. and engineering company noticed that the decks outside of the units did not have sufficient support, and that excessive weight was placed on the decks, including tools, ladders, and other objects. The plaintiff proofs would have reflected that when he ventured onto the deck to speak with workers, it suddenly collapsed, falling 14 feet. The plaintiff suffered a fractured calcaneus and underwent surgery. The plaintiff also named the Town home Association.

The plaintiff asserted that prior to the incident he was very active, having enjoyed endeavors such as playing soccer with his grandchildren and horseback riding. The plaintiff maintained that he is now very sedentary and has difficulties walking upstairs. The plaintiff asserted that his condition is likely to deteriorate in the future and he is at risk for traumatic arthritis.

The case settled prior to trial for $590.000, including $250,000 from the engineer, $125,000 from the property manager/association and $215,000 from the G.C.

REFERENCE

Plaintiff's architect expert: Kenneth J. Stoyack, AIA from Nutley, NJ. Plaintiff's engineer expert: Wayne Nollte, P.E. from Hazlet, NJ. Plaintiff's orthopedic surgeon expert: Mark Adams, M.D. from Newark, NJ. Plaintiff's orthopedic surgeon expert: Wendel Scott, M.D. from New Providence, NJ.

Bobrowsky vs. Falcon Engineering, et al. Docket no. ESX-L-1342-17, 07-21.

Attorney for plaintiff: Harris S. Feldman of Blume Forte Fried Zerres & Molinari, PC in Chatham, NJ.

CONTRACT

$44,000 RECOVERY

Breach of contract – Unpaid real estate commission – Plaintiff realtor and agency claim defendant purchased property and failed to pay 1% commission – Non-binding arbitration assigns 100% liability to defendants with damages of $54,400.

Hudson County, NJ

In this breach of contract case, the plaintiff real estate brokerage office asserted that the defendant client failed to pay the commission on a sale of property. The defendants argued that the Property Sale Agreement did not require that the 1% commission be paid at the closing.

In July 2015, the defendant signed a contract to purchase real property located at 9033 Wall Street in North Bergen. The property consisted of 10 townhouses. The contract purchase price was $6.8 million. Pursuant to the terms of the contract of sale, the defendant agreed to pay the plaintiff 1% real estate commission, $68,000, at the time of closing. The defendant subsequently assigned the contract of sale to the defendant company, of which he was a mem-

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ber. At the time of closing, the defendants claimed that they did not have sufficient assets to pay the plaintiff the full commission of $68,000. Instead, the defendants paid the plaintiff $13,500 and promised to pay the balance of $54,500 to the plaintiff shortly after the closing.

At the time of filing of the subject suit, 2 years had passed since the closing and, despite frequent demands, the defendants had failed to pay the balance of the commission. The plaintiff maintained that the defendants misrepresented their willingness or ability to pay the agreed-upon commission of $68,000. In reliance on those misrepresentations, the plaintiff agreed to forego immediate payment of the entire real estate commission and agreed to allow the closing to proceed. The plaintiff brought suit for damages under the breach of contract and fraud.

The defendants maintained that they did not pay the commission at the closing because, prior to the closing, the defendant individual/member of the defendant LLC confirmed that the commission was not due at the closing and, further, the payment of any commission was to be deferred pursuant to a separate agreement between the plaintiff's agent and the LLC, to be established after the closing. The arrangement that the parties discussed prior to and after the closing involved the defendant LLC converting the property into condominium ownership and the plaintiff's agent becoming the exclusive listing agent for the sale of 10 condominium units.

The defendant claimed that the plaintiff's agent agreed that the 1% commission would not be due and owing unless and until he procured purchasers for 10 condominium units at the property. The parties agreed that the plaintiff would be paid a commission for the sale of each of the 10 units and further that with each condominium closing, the plaintiff was to be paid 1/10 of the $68,000 commission referenced in the PSA. The defendants maintained that the plaintiff was unable to procure purchasers for the condo units and eventually abandoned its efforts to procure purchasers. The defendant maintained that the failure to pursue purchasers for the condominium units constituted a breach of the agreement and therefore, the $54,500 was not owed to the plaintiff.

The plaintiff maintained that it tried to work with the defendants in an effort to obtain deferred payment and that the defendants initially promised to pay the balance owed in a lump sum shortly after the closing. They then promised the plaintiff's agent that they were going to convert the townhouses into condo units and that they would list the condos for sale with the plaintiff. The defendants never converted the townhouses into condominiums and never allowed the plaintiff or its agent to list the units for sale. Thus, the plaintiff could not sell them and recoup its commission. The plaintiff countered the defendants' argument, alleging that the defendants, in a second breach of contract, refused to allow the individual units to be marketed.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of $54,400. Following arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of $54,400. The parties ultimately settled for $44,000.

REFERENCE

Keller Williams Team Realty vs. 9033 Wall Street, LLC, et al. Docket no. L-004963-17; Judge Kimberly Espinales-Maloney, 02-04-20.

Attorney for plaintiff: Robert A. Fortunato of Robert A. Fortunato, PC in Rochelle Park, NJ. Attorney for defendant: James C. McCann of Connell Foley, LLP Jersey City.

$2,500 RECOVERY

Breach of construction contract – Plaintiff claims to have performed excavation work per terms of oral agreement with defendant but defendant refused to pay upon completion of work – Defendant files counterclaim for damages – Non-binding arbitration assigns 100% liability to defendant.

Hunterdon County, NJ

In this breach of contract case, the plaintiff asserted that the defendant failed to pay for construction excavation work performed by the plaintiff per the terms of an agreement between the parties. The plaintiff maintained that the defendant hired the plaintiff to perform installation of dry wells, a downspout collection system and grading of a site. The parties did not put the agreement in writing, but set terms verbally. The plaintiff maintained that he was directed by the defendant's agent on site as to what excavation work to perform. The plaintiff performed the work he was directed to do from August 24, 2018 to September 5, 2018; 8.5 days of work. The total cost of the plaintiff's services, per the agreement between the parties, was $12,520. The plaintiff asserted that the defendant agreed to pay at a rate of $1,500/day for the excavation work, but then refused to pay upon completion of the job. The defendant admitted that the parties entered into a verbal agreement, but disputed the pay rate of that agreement.

The defendant argued that the plaintiff represented that his work was in the nature of a 3-day project and that he owned a backhoe which he could use to do the work. The defendant maintained that it agreed to pay the plaintiff $4,000 for the job and that the defendant would supply the relevant materials and the plaintiff would provide necessary services. The defen-

dant argued that the plaintiff did not complete the agreed-upon project; rather, he prolonged the project before abandoning it after 5 days.

The defendant brought a counterclaim for damages it claimed the plaintiff caused to the subject site and a neighboring property. As a result of his negligence, the plaintiff unearthed live utility wires passing to property owned by the defendant's neighbor and tore the meter panel from that neighbor's house. The defendant argued that, due to the plaintiff's actions, it has been constrained to pay $595 for a new meter panel; $4,000 to remediate and complete work originally contracted for with the plaintiff; and attorney's fees in excess of $1,000.

The defendant asserted that, notwithstanding the damage he caused, the plaintiff billed the defendant in the amount of $12,250 for his services. Among other things, the plaintiff's bill reflected costs of renting a backhoe, after the plaintiff had claimed to own a backhoe. The defendant offered to pay the plaintiff $2,500 in satisfaction of their agreement. The plaintiff refused and sought to impose a lien claim on the defendant's property.

The plaintiff maintained that he communicated to defense counsel a willingness to release the lien, however, counsel refused to withdraw the motion unless his court costs and fees were paid. The plaintiff therefore filed a response requesting that the court release the lien, rather than discharge the lien as the defendant still owed the plaintiff fees for his work.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $4,000. The arbitrator found no damages in the defendant's counterclaim against the plaintiff. Following arbitration and prior to trial, the parties settled for $2,500.

REFERENCE

Limitless Industries vs. Van Holten Group IV, LLC. Docket no. L-000138-19; Judge Michael F. O'Neill, 02-19-20.

Attorney for plaintiff: Robert A. Russell, Esq. in Hackettstown, NJ. Attorney for defendant: Robert Michael Castagua of Law Office of Mick Castagna, LLC in Frenchtown, NJ.

EMPLOYER'S LIABILITY

$87,000 RECOVERY

Employer's liability – Wrongful death – Plaintiff husband and father working on lighting ballast at defendant hospital/employer suffers electrical shock, falls from ladder and sustains fatal head injury – Defendant employer argues plaintiff responsible for turning off current before working on lighting fixture.

Hudson County, NJ

In this wrongful death case, the plaintiffs, the wife of the decedent and her 4 children, asserted that the defendant hospital/employer of the decedent created an unsafe work environment wherein the decedent sustained fatal injuries while working on a lighting ballast that contained a live electrical current, in violation of safety regulations. The resulting accident caused the death of the plaintiffs' husband/father. The defendant denied liability and argued that the plaintiff decedent was responsible for the negligent contact with live current that caused his fall, subsequent injuries, and ultimately, his death.

On May 18, 2016, the plaintiffs' decedent, a maintenance technician employed by the defendant hospital, was standing on a 6-foot ladder, replacing a lighting ballast, when he received an electric shock which caused him to fall backwards off the ladder. As a result of the electric shock, the plaintiff decedent struck his head and torso on the floor and suffered severe traumatic injuries. He received immediate medical attention from nearby hospital personnel. He was transported to the emergency department and, following subsequent surgery, he did not regain consciousness and was pronounced dead 3 weeks later as a result of blunt head trauma.

The plaintiffs contended that the defendant negligently failed to provide a safe work environment and to follow all applicable codes and safety regulations for workers. The plaintiffs alleged that the defendant's negligence was the cause of the untimely death of the plaintiffs' decedent. Following the incident, OSHA conducted an investigation which determined that the plaintiff decedent was changing ballasts for overhead fluorescent lighting with a live 277 volt A/C current. OSHA found that the defendant hospital/employer failed to ensure that energized circuits were locked out, failed to maintain an electrical lockout/tag out program, failed to ensure that only qualified persons worked on live circuits, failed to provide personal protective equipment and failed to ensure that workers did not work on live circuits. The Department of Labor issued citations and fines to the defendant hospital for the subject incident.

The accident was investigated in connection with a Workers' Compensation claim wherein investigators determined that the accident was caused by the plaintiff decedent's failure to turn off the power to the area in which he was working. They further determined that when the decedent replaced the non-

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working ballast with live current running, a broken circuit was completed; causing the electric shock that caused the plaintiff's decedent to fall.

The parties settled the matter prior to trial in the amount of $83,000 to the plaintiff wife and $1,000 to each of the four minor plaintiff children, for a total settlement of $87,000. The case was settled for a nominal amount on the premise that, in the alternative, the defendant employer would file for summary judgment dismissal which would likely be granted as the only remedy appropriate for recovery in this case was Workers' Compensation.

REFERENCE

Estate of Youssef Ghobrial, et al. vs. Jersey City Medical Center, et al. Docket no. L- 002354-18; Judge Mary K. Costello, 02-05-20.

Attorney for plaintiff: Randy Grossman of Greenberg, Walden & Grossman, LLC in West New York, NJ. Attorney for defendant: MaryJane Dobbs of Bressler, Amery & Ross, P.C. in Florham Park, NJ.

INSURANCE OBLIGATION

$135,000 RECOVERY

Insurance obligation – Head-on collision – Tortfeasor, driving stolen vehicle, collides into plaintiff's vehicle – 2 cervical disc herniations; 1 lumbar disc herniation and several thoracic herniations – Epidural injections – Non-binding arbitration assigns 100% liability to defendant.

Essex County, NJ

In this insurance obligation case, the plaintiff, a 40-year-old man, asserted that the tortfeasor driver struck his vehicle head-on with such force that it caused significant, permanent injury. The tortfeasor was uninsured and the plaintiff brought the subject action to collect damages from the defendant insurance carrier of the plaintiff's UM policy. The defendant stipulated liability, but contested the plaintiff's damages.

On August 26, 2016, the plaintiff was traveling north on Passaic Avenue at the intersection with Route 3 in Nutley. The uninsured tortfeasor driver was operating a vehicle stolen from the Nutley Police department. The plaintiff contended that the defendant negligently operated the vehicle in a reckless manner that caused the tortfeasor's vehicle to forcefully collide head-on 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 two cervical disc herniations; one lumbar disc herniation and several thoracic herniations with positive cervical and lumbar EMGs for radiculopathy. The plaintiff treated with multiple epidural injections and claimed one week of lost work. The plaintiff claimed $10,000 in losses and $10,600 in medical liens.

The defendant argued that the plaintiff's injuries were degenerative in nature and not caused by the subject collision. The defendant planned to present expert testimony that all of the plaintiff's complaints stemmed from degenerative disc disease and not traumatic injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $175,000. Following arbitration and prior to trial, the parties settled for $135,000.

REFERENCE

Anselmi vs. New Jersey Manufacturers Insurance Company. Docket no. L-003274-18; Judge Thomas M. Moore, 02-25-20.

Attorney for plaintiff: John S. Voynick, Jr. of Renda & Voynick in Cedar Grove. Attorney for defendant: Glenn T. Dyer of Dyer & Peterson in Parsippany, NJ.

$15,378 VERDICT

Insurance obligation – Left turn collision – Plaintiff seeks subrogation of property damages paid to its insured driver as result of negligence of defendant's tortfeasor employee – Defendant denies permissive use of vehicle by tortfeasor.

Middlesex County, NJ

In this insurance obligation case, the plaintiff sought subrogation for property damage that occurred in a collision between the plaintiff's insured driver and the defendant's employee driver. The defendant denied that the tortfeasor was a permissive driver of the vehicle and asserted that the damages were caused by the concurrent negligence of the insured driver and the tortfeasor and that the defendant was not liable.

On September 20, 2016, the plaintiff insured a driver for collision, comprehensive and rental reimbursement under an automobile policy of insurance. On the date in question, the insured was traveling east on River Road in Summit. The tortfeasor driver was operating a vehicle owned by the defendant and was using the vehicle in the course of his employment.

The tortfeasor driver negligently caused a collision with the insured's vehicle while making a left turn across the insured's lane of travel.

As a result of the collision, the plaintiff was obligated to pay the insured all property damage losses in accordance with the terms of the insurance policy and became subrogated to the rights of the insured against the defendant. The tortfeasor driver was no longer living in the United States and the case against him was dismissed since January 2019. The defendant moved for summary judgment on the premise that there was no evidence that the tortfeasor was acting as the defendant's agent at the time of the subject collision. The defendant's motion was denied and the case proceeded.

The parties submitted to non-binding arbitration prior to trial. The arbitrator determined that there was permissive use of the vehicle, thus the defendant was liable. The arbitrator assigned damages of $17,269. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $15,378 broken down as follows: $15,046 in damages and $332 in costs.

REFERENCE

Allstate vs. Rives, et al. Docket no. L-003787-18; Judge Dennis V. Nieves, 02-04-20.

Attorney for plaintiff: Mary C. Brennan of Law Offices of Pamela D. Hargrove in Morristown, NJ. Attorney for defendant: Yi-Hwa Jessica Park of Gregory P. Helfrich & Associates in Summit, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$50,000 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Minor plaintiff suffers left shoulder displaced comminuted mid-shaft clavicle fracture – Open reduction and internal fixation – 2 months of physical therapy – Permanent hardware and permanent scarring.

Cape May County, NJ

In this motor vehicle negligence case, the minor plaintiff bicyclist asserted that the defendant driver struck her with such force that it caused significant, permanent injury.

On July 13, 2018, the plaintiff was riding a bicycle on 35th Street in Ocean City. The defendant was traveling on Bay Avenue. The plaintiff contended that the defendant negligently failed to see the plaintiff and stop, causing a collision between the defendant's vehicle and the plaintiff's bicycle. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant filed a notice of appearance in the case and subsequently settled with the plaintiff prior to any further filings.

As a result of the collision, the minor plaintiff suffered a fractured clavicle. She was initially evaluated and treated at the hospital but due to the severity and complexity of the injury she was transferred to another facility where surgery was recommended. She then was evaluated at an orthopedic specialty facility and underwent surgery on July 20, 2018. The plaintiff's preoperative diagnosis was left shoulder displaced comminuted mid-shaft clavicle fracture, and the procedure consisted of left shoulder open reduction, internal fixation of clavicle using a variax stryker 8 hole superior mid-shaft plate.

The plaintiff underwent post-operative physical therapy for approximately 2 months. The plaintiff has permanent hardware in her clavicle, as well as scarring related to the surgical procedure. These conditions are permanent.

The parties settled the matter prior to trial in the amount of the defendant's policy limit of $50,000 broken down as follows: $0 in attorney fees (waived); $672 in costs and disbursements; $1,413 in medical expenses and $47,915 in net damages to the minor plaintiff.

REFERENCE

Beckmann vs. Wiederhold, et al. Docket no. 000439-19; Judge James H. Pickering, Jr., 02-12-20.

Attorney for plaintiff: Christopher S. Lipari of Lipari & Walcoff, LLC in Pleasantville, NJ. Attorney for defendant: Jennifer A. Hindermann of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

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Intersection Collision

$84,778 ARBITRATION CONFIRMATION

Motor vehicle negligence – Intersection collision – Plaintiff proceeding through red light as part of funeral procession when defendant driver enters intersection and strikes plaintiff's vehicle – Aggravation of lumbar herniations and new lumbar herniation – Parties agree to confirmation of non-binding arbitration award plus pre-judgment interest.

Camden 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 stipulated liability, but contested the plaintiff's damages.

On August 3, 2016, the plaintiff was driving in a funeral procession on Cropwell Road at the intersection with Route 70 in Evesham. The defendant was traveling on Route 70 at the intersection with Cropwell Road. The plaintiff admitted to having a red light, but contended that vehicles had stopped to allow the funeral procession to continue through the intersection. The plaintiff asserted that the defendant, with disregard for the safety of others, negligently proceeded into the intersection even though it was obvious that a funeral procession was moving through the intersection. The defendant struck the plaintiff's vehicle and the plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained aggravation of lumbar herniations and one new lumbar herniation. 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 $90,000 reduced to $81,000 for plaintiff's comparative negligence. The defendant made a motion to confirm the arbitration order, the plaintiff did not oppose but requested prejudgment interest be added to the arbitration award. The motion to confirm the arbitration award was granted and the plaintiff recovered $81,000 plus $3,778 in interest for a total recovery of $84,778.

REFERENCE

Weiss vs. Johnson, et al. Docket no. L-002738-18; Judge Michael E. Joyce, 01-10-20.

Attorney for plaintiff: Deborah S. Dunn of Stark & Stark in Marlton, NJ. Attorney for defendant: Robert M. Kaplan of Margolis Edelstein in Mount Laurel, NJ.

$15,000+ RECOVERY

Motor vehicle negligence – Intersection collision – Passenger vehicle and ambulance collide in intersection where passenger vehicle had right-of-way but emergency vehicle claims to have been operating lights and siren – Disc injuries at L3-4, L4-5, C2-3, C4-5 with radiculopathy – Failed back syndrome following surgery – Epidural injections and L4-5 laminectomy and decompression.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff passenger asserted that the defendant drivers collided in an intersection through the negligence of one or both drivers. The impact of the collision caused the plaintiff significant, permanent injury.

On May 7, 2015 the plaintiff was the passenger in a vehicle operated by the defendant driver. The defendant driver of the plaintiff's vehicle was proceeding through an intersection with a green light. The defendant driver of an ambulance came through the intersection at a red light and struck the vehicle in which the plaintiff was a passenger. The plaintiff was taken to the emergency room from the scene of the accident. The plaintiff alleged that the force of the impact resulted in permanent injuries.

The defendant ambulance driver denied liability, claiming that the ambulance proceeded through the intersection with lights and siren engaged. The defendant driver of the plaintiff's vehicle admitted that the ambulance came through the intersection, but disputed that the emergency vehicle's lights and siren were deployed.

As a result of the collision, the plaintiff sustained disc injuries at L3-4, L4-5, C2-3, C4-5 with radiculopathy. The plaintiff treated with epidural injections; and L4-5 laminectomy and decompression with failed back syndrome. The plaintiff's PIP coverage was exhausted at $250,000. The plaintiff claimed a Medicare lien of $21,456 and $200 in unpaid medical expenses.

The defendant ambulance driver contended that the defendant driver of the plaintiff's vehicle was at fault for failing to yield the right-of-way to an approaching emergency vehicle using lights and sirens. The defendant driver of the plaintiff's vehicle asserted that he entered the intersection with a green light and that the ambulance entered on a red light without lights or siren which is why the defendant driver of the plaintiff's vehicle didn't see the ambulance coming.

The plaintiff settled with the defendant driver of the vehicle in which he was a passenger for the policy limit of $15,000 prior to arbitration. The parties submitted to non-binding arbitration prior to trial. The arbitra-

tor assigned 25% liability to the defendant driver of the vehicle in which the plaintiff was a passenger; and 75% to the defendant ambulance driver. The arbitrator set gross damages at $2,000,000.

Following arbitration and prior to trial, the plaintiff settled with the defendant ambulance driver and hospital for an undisclosed sum.

REFERENCE

Webb vs. Chernock, et al. Docket no. L-008092-16; Judge Bahir Kamil, 10-21-19.

DEFENDANT'S VERDICT ON DAMAGES

Motor vehicle negligence – Intersection collision – Failure to obey stop sign – Alleged cervical herniation and percutaneous discectomy – Jury finds plaintiff did not suffer injury in crash and does not reach issue of verbal threshold.

Passaic County, NJ

In this action for motor vehicle negligence, the plaintiff driver contended that the defendant driver negligently failed to obey a stop sign, causing the accident in which the plaintiff sustained injuries. The defendant maintained that a vehicle was illegally parked and that the accident occurred as he was inching out, contending that the phantom parked vehicle was comparatively negligent. The plaintiff countered that the impact was between the front of the defendant's car and the side of the plaintiff's car.

The plaintiff contended that he suffered a cervical herniation which will cause permanent symptoms despite a percutaneous discectomy. The defendant denied that the plaintiff suffered any injury in the accident and the defendant's orthopedic surgeon concluded that any difficulties were the result of degenerative disc disease.

The jury found that the defendant was 100% negligent. The first damages question related to whether the plaintiff sustained any injury in the accident. The jury answered no and did not reach the issue of permanent injury under the verbal threshold.

REFERENCE

Zevallos vs. Dobres, et al. Docket no. PAS-L-3378-17; Judge Joseph S. Conte, 01-30-20.

Attorney for defendant: Manuel J. Almedia of Rudolph & Kayal in Manasquan, NJ.

Multiple Vehicle Collision

$6,499 ARBITRATION CONFIRMATION

Motor vehicle negligence – Multiple-vehicle rear end collision – Acute cervical, lumbar and thoracic strain and sprain – Disc herniations at C5-6, C6-7, T1-2, L2-3, L3-4, L4-5, and L5-S.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck a vehicle with such force that it caused a chain reaction of collisions amongst 4 vehicles, resulting in significant, permanent injury to the plaintiff. The defendant denied liability and contested the plaintiff's damages.

On February 1, 2017, the plaintiff and two other vehicles were stopped in traffic on Route 73 northbound in Voorhees when a fourth vehicle struck one of them and caused a chain reaction of collisions. The plaintiff contended that the defendants negligently failed to control their vehicles such that the plaintiff's vehicle was impacted by two other vehicles. Multiple drivers and passengers were transported from the scene to the hospital. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained injuries to his head, face, mouth, arms and legs including acute cervical, lumbar and thoracic strain and sprain, and disc herniations at C5-6, C6-7, T1-2, L2-3, L3-4, L4-5, and L5-S1. The defendant argued that the plaintiff's injuries were not permanent 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 driver who initiated the chain reaction, but determined that the plaintiff did not pierce the verbal threshold. However, the arbitrator found that the plaintiff was entitled to unpaid medical expenses in the amount of $6,499. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Camacho vs. Rosado, et al. Docket no. L-002984-18; Judge Donald J. Stein, 02-28-20.

Attorney for plaintiff: Marc Sigal of Stanshine & Sigal, PC in Philadelphia, PA. Attorney for defendant: Robert R. Nicodemo, III of Law Offices of Nicodemo & Connell in Haddonfield, NJ.

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Parking Spot Collision

$10,500 RECOVERY

Motor vehicle negligence – Parking spot collision – Bus negligence – Auto/bus collision – Left paracentral herniation at L4-5 and lumbar radiculopathy – Chiropractic treatment and physical therapy.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 50-year-old teacher and passenger on an NJ transit bus, asserted that the defendants caused a collision between the bus and a third-party vehicle wherein the plaintiff suffered significant, permanent injury. Each defendant asserted that the other was the cause of the collision.

On October 31, 2017, the plaintiff was a passenger in the defendant transit company's bus traveling on Newark Avenue near Baldwin Avenue. The defendant third-party driver was operating a motor vehicle, also on Newark Avenue. The plaintiff contended that the defendant drivers of the bus and third-party vehicle negligently caused a collision between their vehicles wherein the plaintiff suffered permanent injuries. As a result of the collision, the plaintiff sustained cervical sprain; left paracentral herniation L4-5 displacing nerve root and lumbar radiculopathy. The plaintiff treated with chiropractic treatment and physical therapy.

The defendant third-party driver stated that she was parking at the curbside when the defendant bus struck her vehicle. The defendant bus driver alleged that the defendant third-party driver struck the bus as she was attempting to park. The defendants also contested the plaintiff's damages. The defendants argued that the plaintiff did not suffer injury and pointed to an IME report indicating normal diagnostic tests, including MRI, and no evidence of injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the third-party defendant driver and 0% to the defendant transit company and bus driver. The arbitrator set damages at $21,500. Following arbitration and prior to trial, the plaintiff settled with the defendant driver for $10,500.

REFERENCE

Wilson vs. Clamer, et al. Docket no. L- 001628-18; Judge Joseph V. Isabella, 01-14-20.

Attorney for plaintiff: Patrick G. Patel of Law Offices of Patrick G. Patel in Jersey City, NJ. Attorney for defendant transit company and bus driver: Paul T. Szpiotko of Deputy Attorney General of New Jersey in Newark, NJ. Attorney for defendant third-party driver: Suzanna Baidon-Ciobanu of The Law Offices of Eric H. Bennett in Hackensack, NJ.

Rear End Collision

$750,000 RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff driver struck in rear by minibus – Cervical, thoracic and lumbar herniations – Cervical surgery – Minor impact.

Bergen County, NJ

In this action for motor vehicle negligence, the 38-year-old plaintiff driver contended that she was struck in the rear by the defendant's minibus when stopped causing him to sustain serious injuries. The defendant denied that the plaintiff suffered the claimed injuries in the accident, which involved only minor property damage.

The plaintiff maintained that she sustained 3 cervical herniations, as well as thoracic and lumbar herniations that were confirmed by MRI. The plaintiff further asserted that she suffered radiculopathy at one cervical level that was confirmed by EMG. The plaintiff underwent epidural injections in both the cervical and thoracic areas. The plaintiff also underwent cervical surgery.

The plaintiff argued that the extent of property damage was not necessarily indicative of the extent of injury and the plaintiff would have argued that the jury should be so charged. The plaintiff would have also argued that it was clear that such a young individual with no history of back complaints, would undergo such extensive treatment, including surgery, unless she had sustained significant injury.

The plaintiff, who worked for a family deli, made limited income claims.

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

REFERENCE

Plaintiff's accident reconstruction expert: Steven Batterman, Ph.D. from Cherry Hill, NJ. Plaintiff's orthopedic surgeon expert: Gregory Goldberg, M.D. from North Bergen, NJ. Defendant's biomechanical engineer expert: Ronald Fijalkowski, Ph.D. from Philadelphia, PA.

Rivera-Orellana vs. Fuji Express, Inc., et al. Docket no. BER-L-8413-17, 10-19.

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

$450,000 RECOVERY

Motor vehicle negligence – USA Tort Claims Act – Rear end collision – Plaintiff driver struck in rear by on-duty FBI agent – Plaintiff chiropractor claims cervical and lumbar herniations – Cervical fusion surgery – Prospective lumbar fusion – Plaintiff able to continue working.

U.S.D.C. - District of New Jersey

In this action for motor vehicle negligence, the plaintiff driver, in his 60s, contended that he was struck in the rear by the on-duty FBI agent sustaining serious injuries to his cervical and lumbar spine. The USA Tort Claims Act case would have been tried by the court. The defendant indicated that the accident occurred after the sun was in his eyes.

The plaintiff asserted that he required a 3-level cervical fusion and will suffer permanent symptoms. The plaintiff also maintained that it is yet unclear as to which lumbar levels need surgery and that the risks of waiting until deterioration are outweighed by the risks of current surgery. The plaintiff claimed that the lumbar condition will continue to grow worse as he ages.

The defendant contended that the cervical condition was preexisting. The plaintiff countered that although cervical degeneration was diagnosed in the early 2000s, but required conservative treatment only. The plaintiff also suffered a herniation in a 2008 MVA in which he struck a driver in the rear. The plaintiff maintained that the treatment was limited to an injection and manipulations by chiropractic colleagues for which there were no bills.

The plaintiff asserted that he was pain free until this accident and that his condition was much worse after the subject collision. The plaintiff was able to return to work.

The case settled prior to trial for $450,000.

REFERENCE

Plaintiff's neurosurgeon expert: John Cifelli, M.D. from Clifton, NJ. Plaintiff's orthopedic surgeon expert: Anthony Corollo, M.D. from Paramus, NJ. Plaintiff's pain management expert: Warren Bleweiss, M.D. from Paramus, NJ.

Blake vs. USA, et al. Docket no. CV19-cv-14450.

Attorney for plaintiff: Trevor J. Warden of Bongiovanni Collins & Warden, PC in Denville, NJ.

$15,000 RECOVERY

Motor vehicle negligence – Rear end collision –Plaintiff driver suffers herniated disc with 6 months of chiropractic treatment – Plaintiff passenger sustains herniated disc at L5-S1 treated with chiropractic care – Arbitration finds defendant liable with driver sustaining $25,000 in damages and passenger incurring $15,000 in damages.

Middlesex County, NJ

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

On May 11, 2016, the plaintiffs were the driver and passenger in a vehicle traveling north on the Garden State Parkway at milepost 142.7 in Hillside. The defendant driver was traveling north directly behind the plaintiffs' vehicle. The plaintiffs maintained that the defendant negligently failed to observe traffic and failed to stop behind their vehicle. The defendant struck the plaintiffs' vehicle from the rear. The plaintiffs alleged that the force of the impact resulted in permanent injuries to both plaintiffs.

As a result of the collision, the plaintiff driver sustained a herniated disc with 6 months of chiropractic treatment. The plaintiff passenger sustained a herniated disc at L5-S1, and treated with chiropractic care. The defendant argued that the plaintiffs did not sustain bodily injuries as a result of the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $25,000 to the plaintiff driver and $15,000 to the plaintiff passenger. Following arbitration and prior to trial, the parties settled for a total of $15,000 apportioned as follows: $8,500 to the plaintiff driver and $6,500 to the plaintiff passenger.

REFERENCE

Webb vs. Russoniello. Docket no. L-002140-18; Judge Michael V. Cresitello, Jr., 01-07-20.

Attorney for plaintiff: David T. Ercolano of Fusco & Macaluso Partners, LLC in Passaic, NJ. Attorney for defendant: Mark A. Trudeau of Law Offices of Cindy L. Thompson in Piscataway, NJ.

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DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniation at C6-7; herniation and bulge at L3-4 and L4-5 confirmed on MRI – 5 months chiropractic care and physical therapy – $5,000 recovery per high/low agreement.

Essex 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 stipulated liability, but contested the plaintiff's damages.

On May 8, 2016, the plaintiff was driving a motor vehicle traveling southbound on Passaic Avenue in East Newark. The defendant was also traveling southbound directly behind the plaintiff. The plaintiff maintained that the defendant negligently operated his vehicle in such a manner that he suddenly and without warning struck the rear of the plaintiff's vehicle while she was stopped at a red light.

As a result of the collision, the plaintiff sustained disc herniation at C6-7 aggravated by a bulge from a prior work accident; herniation and bulge at L3-4 and L4-5 confirmed on MRI. Treatment included 5 months each of chiropractic care and physical therapy; and a recommendation for epidural injections, which was not done due to plaintiff's diabetic condition. The defendant disputed the causation and permanency of the plaintiff's injuries due to the minor damage to the plaintiff's vehicle indicating insignificant impact.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $25,000. The arbitration was not confirmed and the matter proceeded to trial as to damages only.

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $200,000 in the event of the jury awarding damages above that amount, and a minimum of $5,000 in the event of a defendant's verdict or an award below that amount. The jury unanimously found in favor of the defendant; thus, the plaintiff recovered $5,000 in damages.

REFERENCE

Braswell vs. Estate of Eric T. Nebenzahl. Docket no. L-006322-17; Judge Keith Lynott, 03-03-20.

Attorney for plaintiff: Anthony M. Juliano of Brach Eichler, LLC in Roseland, NJ. Attorney for defendant: Moira T. Dillaway of Law Offices of Viscomi & Lyons in Morristown, NJ.

PREMISES LIABILITY

Fall Down

$200,000 RECOVERY

Premises liability – Fall down – Plaintiff tavern patron slips on wet area on floor – ACL tear allegedly caused by fall – ACL ruptures second time and plaintiff suffers quadriceps tendon tear when knee gives way – Arthroscopic surgery.

Union County, NJ

In this action for premises liability, the 38-year-old plaintiff, who was at the defendant tavern to watch a football game, contended that the defendant failed to provide adequate maintenance, resulting in the presence of a wet spot that was the approximate size of a plate. The plaintiff asserted that she fell, striking her right knee, resulting in serious injury. The defendant would have contended that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff would have maintained that the area of the fall was very dim. The defendant would have also asserted that the plaintiff may well have been inebriated. The plaintiff would have countered that she only consumed several drinks and denied intoxication.

The plaintiff's orthopedist initially diagnosed retro patellar compression injury and recommended physical therapy. The plaintiff maintained that the severe pain and restriction heightened and that an ACL tear was then diagnosed. The plaintiff underwent arthroscopic surgery and asserted that her knee subsequently gave way, causing a second rupture of the ACL and a quadriceps rupture. The plaintiff maintained that despite the surgery, she will permanently suffer extensive pain and difficulties.

The defendant's orthopedist denied that the injuries were caused by the fall and contended that any difficulties were degenerative in nature. The defendant pointed to prior bilateral knee complaints. The plaintiff countered that the prior difficulties were relatively minor.

The plaintiff made no income claims.

The defendant had $1,000,000 in coverage. The case settled prior to trial for $200.000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Todd P. Krell, M.D. from Westfield, NJ. Defendant's orthopedic surgeon expert: Charles R. Carozza, M.D. from Ridgewood, NJ.

Ospina vs. Amikle Restaurant, Inc., et al. Docket no. UNN-L-1005-20, 06-14-21.

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

$75,000 RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on nylon strap left on floor of defendant supermarket – Displaced fracture of coracoid in left shoulder with internal derangement – Labral tear of rotator cuff – Cervical injury.

Ocean County, NJ

In this premises liability case, the plaintiff, a 76-year-old woman, asserted that the defendant supermarket allowed a dangerous condition to exist on its premises that caused the plaintiff to fall and suffer significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On March 9, 2018 the plaintiff was a lawful business invitee on the defendant's premises at 668 Route 70 in Brick. The defendant was a grocery supermarket. While shopping in the defendant store, the plaintiff slipped on a nylon strap left on the aisle floor of the supermarket. The plaintiff alleged that her fall resulted in permanent injuries. As a result of the fall, the plaintiff sustained a displaced fracture of the coracoid in the left shoulder with internal derangement, and labral tear of the rotator cuff; and cervical disc injury. The plaintiff claimed $7,895 in unpaid medical expenses.

The plaintiff contended that the defendant negligently managed, maintained and operated the premises in a dangerous condition unsafe for the public. The defendant asserted it had no notice, constructive or actual, of the strap on the floor of the store and that the item was in plain view where the plaintiff could have avoided stepping on it; thus, the plaintiff was negligent herself. The defendant also argued that the plaintiff had a prior left shoulder condition unrelated to the subject fall.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $95,000. Following arbitration and prior to trial, the parties settled for $75,000.

REFERENCE

Sheerer vs. Shoprite of Bricktown, et al. Docket no. L-000922-18; Judge Robert E. Brenner, 01-13-20.

Attorney for plaintiff: Donald W. Bedell, Jr. in Brick, NJ. Attorney for defendant: David G. Lucas, Jr. of Wolff, Helies, Sparth & Lucas, P.A. in Manasquan, NJ.

$30,661 ARBITRATION CONFIRMATION

Premises liability – Fall – Municipal liability – Hazardous condition – Plaintiff falls on defective water meter covers on defendants' properties – Fracture of 10th rib; aggravation of lumbar degeneration; hip pain – Non-binding arbitration finds defendant property owners liable.

Camden County, NJ

In this municipal liability/premises liability case, the plaintiff asserted that the defendant city owned, installed, inspected and negligently maintained two water meters located side-by-side at 302-304 North 36th Street in Pennsauken. The defendant property owners owned and maintained the properties at 302 and 304 North 36th Street, respectively, and the plaintiff argued that they were negligent in maintaining their respective properties such that they allowed the defective water meters to remain in a dangerous condition. Due to the defendants' negligence, the plaintiff sustained serious injury. The defendant city argued that its municipal codes required property owners to maintain and repair curb stops, valve boxes, meter pits and all operations from the street curb to the service connection. The defendant city was dismissed on summary judgment. The defendant property owners failed to appear or answer the plaintiff's complaint.

On July 9, 2017, the plaintiff was delivering pizza in front of 302-304 North 36th Street in Pennsauken. The plaintiff stepped on a defective utility cover on the grass strip between the curb and the sidewalk. In an attempt to break his fall, the plaintiff stepped on a utility cover on the adjacent property which also collapsed causing him to drop down into the second weather meter hole. As a result of the fall, the plaintiff sustained a fracture of the 10th rib; aggravation of lumbar degeneration; and hip pain. The plaintiff treated conservatively and claimed $5,661 in unpaid medical expenses.

The plaintiff alleged that the defendants had a duty to warn the plaintiff of any conditions existing at or on the water meters, sidewalk and street curb and that the meters were defective for a period of time sufficient for the defendants to take measures to remedy the condition and avoid the plaintiff's injury. The plaintiff alleged that the fall resulted in permanent injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant property owners with gross damages of $30,661 inclusive of pain and suffering and medical expenses. The plaintiff made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Santana vs. City of Camden, et al. Docket no. L-002034-18; Judge Anthony M. Pugliese, 01-10-20.

Attorney for plaintiff: Michael W. Landis of Lowenthal & Abrams, P.C. in Cherry Hill, NJ.

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UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff falls on wet, glossy tile floor of bathroom adjacent to pool area of defendant condominium – Hip fracture requiring surgery with open reduction and internal fixation – Arbitrator assigns 50% liability to defendant condominium complex; 10% to defendant pool management company; 15% to defendant maintenance company and 25% to plaintiff with gross damages of $150,000 reduced for comparative negligence.

Essex County, NJ

In this premises liability case, the plaintiff asserted that the defendants were negligent in the maintenance of a bathroom area where the plaintiff fell and sustained serious injury. The plaintiff brought suit against the defendant condominium association, pool maintenance company, defendant maintenance company and the defendant management company. The defendants denied liability claiming that the plaintiff fell due to her own negligence in failing to take proper precautions and that she was wearing inappropriate footwear, flip-flops, that were the cause of her fall.

On July 19, 2015 the plaintiff was a guest of the defendant condominium complex in Rockaway. The plaintiff walked from the pool area into the bathrooms intended for use by people at the pool. The plaintiff maintained that the bathroom floor was a glossy tile which was improper for a bathroom adjacent to a pool. The plaintiff testified that there were no rubber or other anti-skid mats inside or outside of the bathroom. The plaintiff slipped on water on the floor of the bathroom and fell to the tile floor. The plaintiff alleged that the fall resulted in permanent injuries.

The plaintiff argued that the defendants were jointly and severally responsible for the maintenance of the bathrooms adjacent to the pool where the plaintiff fell. The plaintiff asserted that it was the duty of the defendants to inspect and keep the premises in a safe condition and free from any pitfalls, obstacles or traps that would likely cause injury to persons lawfully on the premises. The plaintiff argued that the defendants failed in this duty and that their negligence in maintaining a safe environment was the proximate cause of the plaintiff's fall and injury.

As a result of the fall, the plaintiff sustained a hip fracture requiring surgery with open reduction and internal fixation. The plaintiff claimed $9,505 in unpaid medical expenses and $2,000 in lost wages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant condominium complex; 10% to the defendant pool management company; 15% to DLS and 25% to the plaintiff. The arbitrator set gross damages at $150,000 reduced to $112,500 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Garrido vs. The Pointe at Stoneview Condominium Association, et al. Docket no. L-003765-16; Judge Keith E. Lynott, 10-31-19.

Attorney for plaintiff: Jon Rory Skolnick of Jon Rory Skolnick, Esq. in Springfield, NJ. Attorney for defendant pool management company: John Burke of Burke & Potenza in Parsippany, NJ. Attorney for defendant condominium association and management company: Richard M. Tango of Tango, Dickinson, Lorenzo, McDermott & McGee, LLP in Millburn, NJ. Attorney for defendant maintenance company: Brian C. Harris of Braff, Harris, Sukoneck & Maloof in Livingston, NJ.

Falling Object

$263,348 ARBITRATION CONFIRMATION

Premises liability – Falling object – Hazardous premises – HVAC vent falls on plaintiff dinner patron's head and face while at defendant restaurant – Concussion and facial trauma – Significant dental remediation work – Ongoing cognitive issues and memory loss due to head injury.

Cumberland County, NJ

In this premises liability case, the plaintiff, a retiree and Freeholder of her county, asserted that the defendant restaurant failed to maintain its premises in a condition safe for patrons and that the negligence of the defendants was the cause of significant, permanent injury to the plaintiff.

On August 10, 2015, the plaintiff husband and wife were business invitees of the defendant tavern and restaurant at 59 West Broad Street in Bridgeton, where they went for dinner during business hours. While on the premises, a vent covering an HVAC duct fell from the ceiling and struck the plaintiff wife on the head and hand, causing her serious injury. The defendant denied liability arguing that the premises was kept in a safe condition for all patrons and that the defendant did not know, nor could have known, that the vent cover would fall from the ceiling onto the plaintiff.

As a result of the incident, the plaintiff sustained a concussion and facial trauma requiring significant dental work to remedy the damage caused. The plaintiff suffers from memory loss and has trouble

concentrating due to her head injury. The plaintiff contended that some of her injuries are permanent and cause ongoing limitations to her life. The plaintiff claimed that she was unable to complete her duties as a Freeholder for 6 months following the subject incident.

The plaintiff contended that the defendants' premises were in a dangerous condition wherein the air conditioning vent was in disrepair and not secured properly in the ceiling, creating a substantial risk that an individual sitting near the vent would be struck. The plaintiff alleged that the force of the impact resulted in permanent injuries. The defendant argued that it had no actual or constructive notice of the alleged loose HVAC vent and that any problems with the HVAC were not due to the actions or omissions of the defendant. The defendant also disputed causation of some of the plaintiff's damages.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant as to causation of dental injuries, but not as to the sinus condition or the concussion, which the arbitrator found had resolved. The arbitrator also found aggravation of a prior psychological condition and awarded medical liens of $19,048 and $2,700 included in a gross award of $250,000, also inclusive of claim for loss of consortium. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $250,000 in damages plus $13,348 in interest, for a total recovery of $263,348.

REFERENCE

Barber vs. Terrigno, et al. Docket no. L- 000559-17; Judge Jean Chetney, 02-19-20.

Attorney for plaintiff: Kevin P. McCann of Chance & McCann, LLC in Bridgeton, NJ. Attorney for defendant: Jeffrey Swanson of Morrison Mahoney, LLP in Parsippany, NJ.

Hazardous Premises

$120,000 RECOVERY

Premises liability – Hazardous premises – Fall down – Plaintiff's shopping cart strikes defect near cart corral in parking lot of defendant supermarket on defendant landlord's property – Plaintiff's hands trapped in cart as it flips backward – Crush injury to left middle and ring fingers – Amputation of tip of left middle finger – Multiple fractures.

Ocean County, NJ

In this premises liability case, the plaintiff asserted that the defendant tenant supermarket and the defendant landlord/property owner allowed a defect to exist on their property such that it caused the plaintiff significant, permanent injury. The defendants denied any negligence and asserted the incident and injuries sustained by the plaintiff were caused or contributed to by the negligence of the plaintiff.

On April 24, 2016, the plaintiff was a business invitee on the premises of the defendant supermarket on the defendant property in Brick. The plaintiff asserted that there was a defect in the parking lot near the cart corral. The plaintiff's shopping cart struck the defect and the plaintiff's hands became entrapped in the handle or frame of the shopping cart as the shopping cart flipped backwards and fell, with the plaintiff's hands caught in the cart. The plaintiff also fell. As a result of the incident, the plaintiff sustained crush injury to the left middle and ring fingers. The plaintiff required amputation of the tip of the left middle finger and treatment for multiple fractures.

The plaintiff argued that the defendants negligently owned, operated, managed and controlled the premises such that it violated its duty to maintain its premises in a reasonably safe and prudent manner, free from dangerous and hazardous conditions. The defendant supermarket asserted that it was a tenant on the property and that the condition of the parking lot was the responsibility of the defendant owner of the property. The defendant property owner asserted that the defendant supermarket was responsible for the duty of inspection for safe access to the cart corral area.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 30% liability to the defendant supermarket; 30% to the defendant property owner; and 40% to the plaintiff with gross damages of $275,000 reduced to $165,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $120,000.

REFERENCE

Prince vs. Saker Shoprites, Inc., et al. Docket no. L-000869-18; Judge Mark A. Troncone, 01-06-20.

Attorney for plaintiff: Riaz A. Mian of Law Offices of Riaz A. Mian in Fair Haven, NJ. Attorney for defendant supermarket: Peter R. Errico of Wolff, Helies, Sparth & Lucas, P.A. in Manasquan, NJ. Attorney for defendant property owner: William J. Riina of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP in Florham Park, NJ.

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$30,000 RECOVERY

Premises liability – Hazardous premises – Fall down – Minor plaintiff falls on slippery tile floor and strikes head on bookcase – Facial laceration with residual scarring – Defendant asserts comparative negligence.

Union County, NJ

In this premises liability case, the minor plaintiff asserted that the defendant health center failed to maintain a safe environment for the public, causing the plaintiff to fall and suffer injury. The defendant argued that the plaintiff's injuries were caused by or contributed to by the negligence of the plaintiff.

On November 7, 2016, the plaintiff was a business invitee lawfully on the premise of the defendant health center. The plaintiff asserted that the defendant or its agents or employees did not exercise proper care and failed to keep the premises in a safe condition, allowing a dangerous condition or nuisance to exist. The plaintiff described the hazard as small bookcases stacked on a slippery tile floor. The plaintiff lost her footing and fell on the slippery tile floor, striking her head on the bookcases.

As a result of the incident, the plaintiff sustained a one centimeter laceration on the forehead. The plaintiff was treated in the emergency room with skin adhesive, no stitches. The plaintiff has a residual scar from the laceration.

The parties settled the matter prior to trial in the amount of $30,000 broken down as follows: $7,415 in attorney fees; $300 in medical bills; $342 in costs and expenses and $21,944 in net damages to the minor plaintiff.

REFERENCE

Hughes vs. Neighborhood Health Services Corporation. Docket no. L-003706-18; Judge Mark P. Ciarrocca, 11-06-19.

Attorney for plaintiff: Evan Harris of Aiello, Harris, Marth, Tunnero & Schiffman, P.C. in Watchung, NJ. Attorney for defendant: Natalie Donis of Methfessel and Werbel, P.C. in Edison, NJ.

Negligent Security

$175,000 RECOVERY

Premises liability – Negligent security – Assault – Plaintiff patron punched in face by defendant individual at defendant bar with no security personnel on staff – Neck injury – Orbital fracture resulting in chronic dry eye – Fractured fingers on both hands – 2-level cervical fusion; dry eye surgery, and chiropractic treatment.

Ocean County, NJ

In this assault and negligent security case, the plaintiff bar patron asserted that the defendant individual assaulted him at the defendant bar, where there was no security to prevent such occurrences and protect customers. As a result, the plaintiff sustained serious injuries. The defendant bar denied liability and contended that there was no requirement or duty by the bar to have security or a bouncer.

On April 3, 2015, the plaintiff and defendant were patrons at the defendant bar. The defendant was standing in front of the dart board while the plaintiff was attempting to play a game of darts. The plaintiff asked the defendant to move away from the dart board whereupon the defendant punched the plaintiff in the face at full force and further assaulted him. The plaintiff contended that the defendant negligently failed to have security on staff at the bar. The plaintiff argued that the only forms of security on the premises were cameras and two bartenders who had to act as security while tending bar. The plaintiff alleged that the assault resulted in permanent injuries. As a result of the assault, the plaintiff sustained neck injury; orbital fracture resulting in chronic dry eye; and fractured fingers on both hands. The plaintiff treated with a 2-level cervical fusion; dry eye surgery, and chiropractic treatment. The plaintiff claimed he was forced to give up activities such as fishing and playing darts due to his injuries. The plaintiff offered to take judgment in the amount of $475,000. The offer was declined and the matter proceeded.

The defendants also contended that the plaintiff's neck injuries were degenerative in nature per an IME report. The defendant filed a cross claim against the defendant individual. The defendant individual failed to respond to the plaintiff's or co-defendant's complaints.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 20% liability to the defendant bar and 80% to the defendant individual with damages of $200,000. Following arbitration and prior to trial, the plaintiff settled with the defendant bar for $175,000. The defendant individual never answered or appeared. Motions for default against the defendant individual were filed by both the plaintiff and co-defendant.

REFERENCE

Plaschke vs. Arrowhead Inn, et al. Docket no. L-000959-17; Judge Mark A. Troncone, 01-06-20.

Attorney for plaintiff: Victoria S. Kavanagh of Kavanagh & Kavanagh in Millville, NJ. Attorney for defendant bar and bar owner: Terence M. King of Law Office of Terence M. King, LLC in Lavalette, NJ.

TRANSIT AUTHORITY NEGLIGENCE

$17,500 RECOVERY

Transit Authority negligence – Bus negligence – Plaintiff driver of vehicle sideswiped by NJ Transit bus – L4-5, L5-S1, and T12-S1 herniations – Partially ruptured Baker's cyst on knee – Lumbar facet injections – Non-binding arbitration assigns 100% liability to defendants, but finds no piercing of Tort Claims Act threshold; thus, no damages.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff, a 60-year-old man, asserted that the defendant bus driver sideswiped his vehicle causing the plaintiff significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

On April 22, 2016, the plaintiff was the driver of a motor vehicle traveling south on Martin Luther King Boulevard at the intersection with Southard Street in Trenton. The defendant was the operator of a bus owned by the defendant NJ Transit Authority also traveling south on MLK Boulevard. The plaintiff contended that the defendant negligently pulled away from a bus stop at the curb and sideswiped 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 L4-5, L5-S1, and T12-S1 disc herniations; annular tear at L3-4; partially ruptured Baker's cyst on knee and anterolisthesis at L5-S1 confirmed on discogram. The plaintiff was recommended for fusion surgery. The plaintiff treated with lumbar facet injections.

The defendant bus driver claimed that the plaintiff sped up and tried to pass the defendant bus as it pulled from the curb, causing the collision. The defendant also argued that all of the plaintiff's injuries were pre-existing and not permanent.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants but deemed that the plaintiff had not pierced the Tort Claims Act threshold and awarded no damages. Following arbitration and prior to trial, the parties settled for $17,500.

REFERENCE

Bernardo, III vs. Pierre, et al. Docket no. L-000558-18; Judge F. Patrick McManimon, 02-13-20.

Attorney for plaintiff: Brian W. Banasiak of Brandon J. Broderick, Esq., LLC in Ewing, NJ. Attorney for defendant: Joseph Neal of Office of Attorney of New Jersey General in Trenton, NJ.

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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

$5,801,237 VERDICT – MEDICAL MALPRACTICE – OB/GYN NEGLIGENCE – DECEDENT PRESENTS MULTIPLE TIMES FOR TREATMENT OF FIBROIDS WITH HEAVY BLEEDING AND ENLARGED UTERUS WHICH DEFENDANTS FAIL TO APPRECIATE AS SYMPTOMS OF UTERINE CANCER – WRONGFUL DEATH OF 48-YEAR-OLD FEMALE.

Philadelphia County, PA

In this action for medical malpractice, the estate of the decedent maintained that their decedent died due to the defendants' negligence in not diagnosing the decedent's uterine cancer before it metastasized. As a result of the cancer going undiagnosed, it grew in the decedent's lungs and caused her death. The defendants generally denied all allegations of negligence and injury.

On September 4, 2015, the patient presented to Abington memorial Hospital with sudden and severe shortness of breath. She was subsequently diagnosed with Stage IV metastatic leiomyosarcoma. On September 29, 2015, the decedent died at the age of 48. The immediate cause of death was listed as respiratory insufficiency due to lung metastasis and leiomyosarcoma of the uterus.

The jury found in favor of the Estate against defendant, Claire Robinson, M.D., as agent of Einstein Health Care Network (80% negligent) and defendant, Einstein Health Care Network through its agent, Maria Abadilla Florendo, M.D. (20% negligent). The estate was awarded $801,237.00 in wrongful death act damages and $5,000,000 in survival act damages, for a total award of $5,801,237.

REFERENCE

Estate of Lucretia Burgess by Milton and Mary Burgess vs. Claire Robinson, M.D., Einstein Physicians Wadsworth, Maria Abadilla Florendo, M.D. and Einstein Healthcare Network. Case no. 170400698; Judge Stella Tsai, 07-21-21.

Attorney for plaintiff: Robert Ross of Ross Feller Casey, LLP in Philadelphia, PA. Attorney for defendant: Donald Camhi of Post & Schell in

$4,000,000 RECOVERY – MEDICAL MALPRACTICE – PRIMARY CARE – PLAINTIFF'S DECEDENT, WITH HISTORY OF BLOOD CLOTTING DISORDER, PRESENTS TO DEFENDANTS WITH SHORTNESS OF BREATH DISCHARGED HOME 3 TIMES BEFORE FINALLY SUCCUMBING TO DEEP VENOUS THROMBOSIS – WRONGFUL DEATH OF 45-YEAR-OLD FATHER.

Middlesex County, NJ

In this medical malpractice case, the defendants were a family practice physician, a specialist in internal medicine and a family care practice. The plaintiff contended that the defendants breached the standard of care in their treatment of the plaintiff's decedent by failing to diagnose a pulmonary embolism, after he presented several times with shortness of breath, resulting in his premature death. The defendants denied any breach of the standard of care and contended that all treatment of the plaintiff's decedent was within the bounds of reasonable medical care.

The 45-year-old father of 2 children began treating as a patient at the defendant medical practice. Shortly after becoming a patient of MedEmerge, it was discovered that he had a blood clotting disorder known as Factor V Leiden, which was initially noted in his medical records. He had several follow-up appointments with the defendants, all of which ended up in them sending him home.

On September 23, 2016, the decedent was transported via ambulance to Robert Wood Johnson University Hospital after EMS workers found him on the floor of his bedroom at home complaining of severe respiratory distress. While at Robert Wood Johnson University Hospital, the decedent went into cardiac arrest. Despite extensive efforts by hospital doctors and staff, he was pronounced dead. The decedent's

cause of death was listed as deep venous thrombosis of the lower extremities with pulmonary thromboembolism.

After all fact and expert discovery was completed, and prior to trial, the parties settled for $4 million.

REFERENCE

Danzy vs. Carrieri, et al. Docket no. L-003634-17; Judge Thomas J. Buck, 01-29-20.

Attorneys for plaintiff: David A. Mazie, Matthew R. Mendelsohn and Adam M. Epstein of Mazie Slater Katz & Freeman in Roseland, NJ. Attorneys for defendant family medicine practice and family medicine physician: Julie E. Gendel and James B. Sharp of Schenck, Price, Smith & King, LLP in Florham Park, NJ. Attorney for defendant internal medicine physician: E. Burke Giblin of Giblin Combs Schwartz Cunningham & Scarpa in Morristown, NJ.

$1,150,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – PLAINTIFF'S DECEDENT PRESCRIBED LETHAL COMBINATION OF MEDICATIONS AT DEFENDANT HOSPITAL – FAILURE TO MONITOR PLAINTIFF'S DECEDENT'S RESPIRATORY RATE AND PULSE OXIMETRY WHILE SLEEPING DESPITE KNOWN FATAL EFFECTS OF MEDICATION – COMBINED DRUG INTOXICATION – WRONGFUL DEATH OF MALE DECEDENT.

Montgomery County, PA

In this medical malpractice action, the plaintiff's decedent was a patient at the defendant hospital for addiction recovery, where he was administered a lethal combination of medications, resulting in his death. The defendant hospital generally denied negligence.

On November 15, 2016, the plaintiff's decedent died in his sleep after having taken his prescribed doses of Diazepam, Temazepam, Methadone, and Fluoxetine over the course of 3 days. The plaintiff's decedent's autopsy determined that the decedent's death was caused by combined drug intoxication, specifically, Diazepam, Temazepam, Methadone, and Fluoxetine.

The parties entered into a settlement for $1,150,000.

REFERENCE

Erin Myers, Admin of the Estate of Christopher Myers, Jr. deceased vs. Eagleville hospital. Case no. 2018-22474; Judge Garret D. Page.

Attorney for plaintiff: Francis J. Curran of Curran Law Offices in Pittsburgh, PA. Attorney for defendant: Russell Lieberman of White and Williams, LLP in Philadelphia, PA.

$1,150,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – BREACH OF STANDARD OF CARE – THIRD PARTY GAINS ACCESS TO SECURE UNIT AND SEXUALLY ASSAULTS RESIDENT PLAINTIFF – POST-TRAUMATIC STRESS DISORDER.

Withheld County, MA

In this medical malpractice matter, the plaintiff resident alleged that the defendant nursing home was negligent in failing to provide a secure environment and in breaching its duty of care to residents when a third party was allowed access to the secure dementia unit where the plaintiff was residing and sexually assaulted the plaintiff. The plaintiff was diagnosed with post-traumatic stress disorder as a result of the incident. The defendant nursing home denied any wrongdoing and disputed causation and damages.

The plaintiff's guardian brought a claim against the defendant nursing home alleging negligence and seeking damages for the plaintiff's injuries. The plaintiff maintained, through the plaintiff's expert, that the facility was negligent by failing to require visitors to log their visits, providing access codes to the secured area where the plaintiff provided to visitors and allowing third parties, with no affiliations to residents, access to the secure memory

The parties agreed to resolve the plaintiff's claim for the sum of $1,150,000 in a confidential settlement prior to a trial in this matter.

REFERENCE

Plaintiff Jones vs. Defendant Nursing Home. 05-01-20.

Attorney for plaintiff: Paul L. Tetzel of Tetzel Law in Boston, MA.

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PRODUCT LIABILITY

$3,300,000 VERDICT – PRODUCT LIABILITY – VENA CAVA FILTER DEFECT – FAILURE TO WARN – DEFENDANT'S FILTER MIGRATES AND FRACTURES LEAVING FRACTURED STRUT LODGED IN RIGHT VENTRICLE – PLAINTIFF AT SERIOUS RISK OF FUTURE COMPLICATIONS, INCLUDING INFECTION, CHRONIC PAIN AND HEMORRHAGE.

U.S.D.C. - Western District of Wisconsin

The plaintiff in this medical product liability action maintained that the defendants negligently manufactured, distributed and failed to warn of the dangers of the Meridian Inferior Vena Cava filter and its tendency to migrate and fracture inside the body. The defense argued that the plaintiff suffered a known and accepted risk of IVC filter placement for which she gave her informed consent.

On August 6, 2013, the female plaintiff underwent placement of the defendant's IVC filter as a preventative measure against pulmonary embolism before the plaintiff was to undergo treatment for varicose veins. Following the procedure, the plaintiff developed abdominal pain and a CT-scan showed that the filter had already tilted, perforated the IVC and struck had extended into the right renal vein. The filter was to remain in place for about a year. In 2014, a CT-scan showed that the filter perforated the plaintiff's inferior vena cava ("IVC") wall and fractured, with a fractured strut migrating and becoming embedded in the wall of the right ventricle, where it remains.

The plaintiff is now at serious risk of future complications, including infection, chronic pain, and hemorrhage. Removal of the strut in the right ventricle would likely require open heart surgery, risking significant morbidity and death. As a result, the plaintiff suffers from extreme anxiety about the possible harm the struts that remain in her body could cause.

The unanimous jury of seven found in favor of plaintiff awarding her $3,300,000.

REFERENCE

Natalie Johnson vs. C. R. Bard Incorporated, Bard Peripheral Vascular Incorporated. Case no. 19-cv-00760; Judge William C. Conley, 06-17-21.

Attorney for plaintiff: Ben C. Martin of Martin Baughman, PLLC in Dallas, TX. Attorney for defendant: Catherine A. Faught of Mallery & Zimmerman, S.C. in Milwaukee, WI.

MOTOR VEHICLE NEGLIGENCE

$17,142,635 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – DEFENDANT UPS DRIVER BACKS OVER PLAINTIFF ON LOADING DOCK WHERE BOTH PARTIES WERE IN COURSE AND SCOPE OF EMPLOYMENT – SKULL FRACTURE – SUBDURAL HEMATOMA – TRAUMATIC BRAIN INJURY.

Harris County, TX

The plaintiff in this motor vehicle negligence action sustained catastrophic injuries, including a skull fracture with subdural hematoma requiring drain holes and resulting in a traumatic brain injury, along with a severely lacerated spleen, when he was standing on the loading dock of the Museum of Natural Science, where he was employed, and was struck by the defendant driver who was in the course of his employment making deliveries for UPS. The defendants denied all allegations of negligence and maintained that it was the actions of the plaintiff that caused the occurrence.

On May 21, 2019, the 67-year-old male plaintiff was standing on the loading dock of his place of employment, in Houston, Texas. On that day, the defendant driver was operating a UPS truck in the course of his employment with UPS in the same loading area when suddenly and without warning, the defendant backed into the plaintiff. The force of the impact buckled the plaintiff's knees and he struck his head on the truck before falling and striking his head on the ground. The truck then continued over the plaintiff until a witness was able to alert the defendant driver that he had just run the plaintiff over.

The jury found that the defendant UPS was not negligent and that it was the defendant driver and the plaintiff who were negligent. The jury apportioned liability at 65% against the defendant and 35% against the plaintiff. The jury awarded the plaintiff past damages of $6,142,635 and future damages of $11,000,000 for $17,142,635. The plaintiff's wife was awarded $2,000,000 in loss of consortium for a total award of $19,142,635. The reduction for comparative negligence brought the award to $12,442,713.

REFERENCE

Abraham and Adela Casarez vs. Corey Taylor and United Parcel Service. Case no. 201938019; Judge Christine Weems, 04-28-21.

Attorney for plaintiff: Jason Itkin of Arnold & Itkin, LLP in Houston, TX. Attorney for defendant: Douglas T. Gosda of Manning, Gosda & Arredondo, LLP in Houston, TX.

$2,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER NEGLIGENCE – 52-YEAR-OLD BICYCLIST STRUCK AND KILLED BY TRACTOR-TRAILER AFTER RIG FAILS TO STOP AT STOP SIGN – DEFENDANT THEN BACKS UP AND STRIKES DECEDENT SECOND TIME – INCIDENT CAPTURED ON LOCAL BUSINESSES SURVEILLANCE CAMERA.

U.S.D.C. - District of New Jersey

In this action for motor vehicle negligence, the plaintiff contended that the defendant tractor-trailer driver negligently failed too stop at a stop sign, striking and killing the 52-year-old decedent bicyclist. The decedent left a wife and 3 adult children who remained in his native Brazil after the decedent moved to this country approximately 1 ½ years before his death. The defendant contented that he came to a "rolling stop," and that he struck the decedent only because his view was obstructed by his side view mirror.

The plaintiff maintained that when the decedent fell under the truck, the defendant panicked and backed up, striking the decedent a second time. The plaintiff's pain management specialist would have testified that the decedent's pelvis and sternum were fractured at this time. The plaintiff would have argued that the decedent was probably conscious. The defendant denied that this position should be accepted.

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

REFERENCE

Plaintiff's pain management expert: Peter Salgo, M.D. from New York, NY. Defendant's accident reconstruction expert: Robert Lynch, P.E. from Abington, PA. Defendant's trucking expert: Donald L. Hess from Abington, PA.

Gomes vs. Bozali. Docket no. 2:19-cv-07985, 05-21.

Attorneys for plaintiff: Michael Gallardo and Robert Baumgarten of Ginarte Gallardo Gonzalez Winograd, LLP in Newark, NJ.

$100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – DEFENDANT DRIVER RUNS RED LIGHT AND ENTERS INTERSECTION STRIKING CAR IN WHICH INFANT PLAINTIFF WAS REAR-SEAT PASSENGER – FORCE OF IMPACT CAUSED FATAL INJURIES TO INFANT'S GRANDMOTHER DRIVER AND VARIOUS INJURIES TO INFANT'S MOTHER – LACERATIONS AND CONTUSION TO MINOR.

Dallas County, TX

The minor in this action for motor vehicle negligence was an infant strapped into a car seat in the rear seat of a vehicle being operated by her grandmother. The infant's mother was a front-seat passenger in the car. The vehicle was proceeding through an intersection with a green light when the defendant entered the same intersection against a red light causing a violent collision that resulted in fatal injuries to the grandmother. The minor suffered lacerations and contusions in the accident. The defendant denied being negligent.

The plaintiff's maintained that the defendant driver was negligent in disregarding a traffic control signal and running a red light, failing to control the speed, failing to yield the right-of-way, failing to keep a proper lookout and driving his vehicle too fast under the circumstances. The defendant generally denied all allegations of negligence and injury and specifically argued that at the time of the accident he was suffering from an adverse health condition causing him to become temporarily incapacitated.

The estate of the decedent and the adult plaintiff who suffered the broken nose and emotional distress settled out of the court. The minor and the defendant settled for $100,000.

REFERENCE

Jim Newberry, Individually and on behalf of The Estate of Mary Jane Newberry, Julie Newberry, Individually and on behalf of Minor J.N. vs. Bilimac Coleman Bradley. Case no. CC-17-04691; Judge Sally Montgomery, 03-26-19.

Attorney for plaintiff: Marc C. Tecce of The Law Offices of Marc Tecce in Dallas, TX. Attorney for plaintiff: Thomas Shaw in Dallas, TX. Attorney for defendant: Douglas D. Fletcher of Fletcher, Farley, Shipman & Salinas, L.L.P. in Dallas, TX.

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PREMISES LIABILITY

$11,950,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT MAINTENANCE – UNSAFE COMMUNITY POOL – NEGLIGENT CONDOMINIUM MANAGEMENT – FAILURE TO REPAIR POOL ENTRANCE GATE – FOUR-YEAR-OLD BOY SUBMERGED AND NEARLY DROWNED – CATASTROPHIC BRAIN INJURY – WRONGFUL DEATH.

Broward County, FL

This action arose from the tragic death of a four-year-old boy in a closed pool located on the property of the defendant condominium association. The defendants in the case included the condominium association where the pool was located, the management company for the premises, a pool cleaning company and a pool service contractor.

On the date of this incident, the children left the playground and entered the defendant condominium association's closed community pool without the father's knowledge. While the defendant's community pool was meant to be closed, the plaintiff contended that the gate was recently broken. As a solution, the gate was secured by a loosely-fit chain and padlock that allowed for a 13-inch gap when opened. The boys entered the pool by squeezing through the gate's opening. They played in the pool area for several minutes before the younger son became submerged in the pool and nearly drowned. He regained consciousness, but suffered a catastrophic brain injury due to lack of oxygen. The boy died 17 months later as a result of the injuries sustained.

The case was settled prior to trial for $11,950,000 with all defendants contributing.

REFERENCE

Plaintiff's architectural expert: George Zimmerman from Wellington, FL. Plaintiff's pool safety expert: Gerald Dworkin from Kennebunkport, ME.

Mohamed Salim as Personal Representative for the Estate of Monzer Ahmed vs. Arbor Keys Condominium Association, Inc., et al. Case no. CACE-20-001351; Judge Michele Towbin-Singer, 05-22-21.

Attorneys for plaintiff: Michael Haggard and Adam Finkel of The Haggard Law Firm in Coral Gables, FL. Attorney for plaintiff: Julie A. Hager of Law Offices of Julie A. Hager, L.L.C. in Fort Lauderdale, FL.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Civil Rights

$4,500,000 RECOVERY – CIVIL RIGHTS – EXCESSIVE FORCE BY POLICE – PLAINTIFF SHOT AND PARALYZED FROM CHEST DOWN – DEFENSE MOTION FOR SUMMARY JUDGMENT ON QUALIFIED IMMUNITY DENIED.

Erie County, NY

This was an excessive force, 1983 action involving a 17-year-old plaintiff who was shot in the thoracic region by the police and rendered a paraplegic. The facts of the events leading up to the shooting were disputed. The defendants moved for summary judgment on the issue of qualified immunity. The plaintiffs argued that the defendant officers' use of force was objectively unreasonable and violated clearly-established law. The Court denied the defendants' motion.

The plaintiff argued that the defendant officers violated his Constitutional right, afforded by the Fourth Amendment, to be free from unreasonable and excessive use of force during a seizure. The plaintiffs' medical expert opined that, based upon the entry wound and positioning of the bullet inside the body, the infant plaintiff was shot as he was driving away. The plaintiffs' police policy and procedures expert opined that the defendant officers use of force was unreasonable, reckless, and excessive and violated accepted police standards, policies, and procedures, including the department's own procedures regarding pursuits, traffic stops, and use of force.

The infant plaintiff was paralyzed from the chest down. The plaintiffs contended that the infant plaintiff would require extensive future medical care and treatment costing between approximately $14,000,000 and $27,000,000. The plaintiff claimed lost earnings of approximately $1,700,000.

The case settled prior to trial for $4,500,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: William Capicotto, M.D. from Buffalo, NY. Plaintiff's police policy and procedures expert: George Kirkham from Palm Beach Gardens, FL.

Lopez, et al. vs. Schultz, et al. Index no. 2012-2132; Judge John F. O'Donnell, 02-20.

Attorneys for plaintiff: Jonathan M. Gorski, Marc C. Panepinto and Sean E. Cooney of Dolce Panepinto, PC in Buffalo, NY.

Construction Site Negligence

$26,600,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – DEFENDANT NEGLIGENTLY PROVIDES SCAFFOLDING FOR BRIDGE EXTENDED BY WORKERS IN 2-FOOT INTERVALS – PLAINTIFF FALLS IN 2-FOOT GAP BETWEEN PLANKS – SAFETY HARNESS LIMITS FALL TO 5 FEET – MULTIPLE DISC INJURIES – ADJACENT SEGMENT DISEASE – 7 DISC SURGERIES ULTIMATELY INVOLVING FUSION OF MOST LEVELS – NEUROGENIC BOWEL AND BLADDER.

Middlesex County, MA

This was a construction site negligence case in which the plaintiff, age 51 at the time and age 58 at trial, contended that the defendant joint venture, which had successfully bid for the contract to refurbish a bridge, negligently failed to provide proper scaffolding. The plaintiff, who was tied off, contended that he fell in a 2-foot gap between planks and was stopped by his lanyard and twisted to avoid being impaled by a ladder. The plaintiff did not fall farther. The plaintiff, who did not immediately realize that he suffered significant injury, maintained that severe pain and tingling developed in both his hands and feet over the next several weeks. The defendant maintained that the plaintiff, a highly experienced worker, was comparatively negligent in failing to tie himself off in a proper location.

The plaintiff maintained that after a fusion of 3 thoracic levels, he developed severe adjacent segment disease and required a total of some 7 disc surgeries and ultimately had all but 3 levels of the entire spine fused. The plaintiff also suffered bladder and bowel difficulties, necessitating a catheter and at times was required to be attached to a Foley catheter enabling him to go out. The bowel difficulties necessitate medicine that causes frequent gastric distress, including diarrhea.

The jury found the defendants 100% negligent and awarded $26,600,000, including $1,000,000 for past medical bills, $2,100,000 for lost earning capacity, $5,500,000 for past pain and suffering and $18,000,000 for future pain and suffering.

REFERENCE

Plaintiff's orthopedic spinal surgeon expert: Tony Tannoury, M.D. from Boston, MA. Plaintiff's OSHA expert: David Grafti from Punta Gorda, FL.

Rooney vs. JF White, et al. Case no. 1581CV05652, 08-21.

Attorney for plaintiff: Andrew M. Abraham of Keches Law Group in Milton, MA. Attorney for plaintiff: Melissa A. Brennan of Feinberg, Dumont & Brennan in Boston, MA.

Municipal Liability

$120,000,000 VERDICT – MUNICIPAL LIABILITY– MOTOR VEHICLE NEGLIGENCE – NEGLIGENT OPERATION OF VEHICLE BY CITY OF GAINESVILLE EMPLOYEE – FAILURE TO STOP FOR STOP SIGN – PERMANENT PARAPLEGIA TO 20-YEAR-OLD – LIFETIME CONFINEMENT TO WHEELCHAIR.

Alachua County, FL

This case involved a motor vehicle accident wherein the 20-year-old plaintiff sustained spinal cord injuries which paralyzed him from the chest down and confined him to a wheelchair for the remainder of his life. The defendants in the case included the driver of the Gainesville Regional Utilities truck which struck the plaintiff's vehicle and the City of Gainesville which employed the driver. The defendants admitted that the utility truck failed to stop for a stop sign. However, the defense asserted that the accident was caused by the host driver who was driving at an unsafe speed and that the plaintiff was comparatively negligent for failing to wear a seat belt. The host driver was named as a Fabre defendant on the verdict form.

The plaintiff's doctors testified that the plaintiff is permanently paralyzed from the chest down and his life expectancy has been reduced by 10 years. Witnesses also testified that the plaintiff suffers urinary infections with bowel and urinary incontinence and will require continuing medical care and daily living assistance for the remainder of his life.

The jury found that the admitted negligence of the defendant employee was a legal cause of injury to the plaintiff. It found no negligence on the part of the plaintiff (seatbelt defense) or host driver (Fabre defendant). The plaintiff was awarded $120,000,000 in total damages.

REFERENCE

Plaintiff's vocational rehabilitation expert: Andrea Bradford from Austin, TX. Defendant's accident reconstruction expert: Andy Irwin from Dallas, TX. Defendant's biomechanical expert: Christine Raasch from Phoenix, AZ.

Rodgers vs. City of Gainesville d/b/a Gainesville Regional Utilities, et al. Case no. 01-2016-CA-00650; Judge Donna M. Keim, 05-06-21.

Attorneys for plaintiff: Jeffrey J. Humphries, Brian K. McClain and Brian J. Lee of Morgan & Morgan in Jacksonville, FL.

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