NEW JERSEY
JURY VERDICT REVIEW & ANALYSIS®
www.JVRA.com

FEATURED CASES

$2,900,000 RECOVERY – Motor vehicle negligence – Truck/auto collision – Plaintiff driver struck in rear by box truck – Lumbar and cervical herniations requiring surgeries – Knee and dominant rotator cuff tears. 2

$475,000 RECOVERY – Motor vehicle negligence – Intersection collision – Right hip labral tear necessitating 2 surgeries – Total hip replacement recommended within 5 years 2

$299,802 VERDICT – Motor vehicle negligence – Rear end collision – Lumbar spine injuries including disc herniation at L5-S1 – Pain management; chiropractic care – 3 surgical lumbar facet blocks. 3

DEFENDANT'S SUMMARY JUDGMENT – Motor vehicle negligence – Rear end collision – Second defendant strikes first defendant's vehicle and pushes it into rear of plaintiff's vehicle – Disc herniation at C5-6, C6-7 and C3-4 with annular tear; disc bulge at C3-4 – 3 cervical epidural injections; lumbar strain/sprain – Shoulder tear . . 4

$1,000,000 (POLICY LIMIT) RECOVERY – Medical malpractice – Cardiology – Failure of defendant cardiologist to order angiogram following positive stress test – Fatal infarct 6

$725,000 RECOVERY – Municipal liability – Auto/pedestrian collision – 14-year-old plaintiff struck by fire director while crossing in crosswalk across from school – Left femur fracture – Intramedullary rod 6

$650,000 RECOVERY – Premises liability – Fall down – Excessive height between slabs on handicap ramp – Plaintiff pushing hand truck to make delivery to liquor store falls into door – Cervical herniation – Fusion surgery . . 7

$475,000 RECOVERY – Homeowner's negligence – Fall from zip line – Fractured left elbow requiring 4 surgeries – Permanent deformity and residual limitations. 7

Volume 43, Issue 5
October 2022

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

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

VERDICTS BY CATEGORY

Civil Rights 9

Contract 9

Dog Attack 10

Insurance Obligation. 11

Motor Vehicle Negligence

Auto/Motorcycle Collision. . . . 12
Head-on Collision 13
Intersection Collision 13
Left Turn Collision 14
Multiple Vehicle Collision 15
Parking Lot Exit Collision 16
Parking Spot Collision 17
Rear End Collision 17
Sideswipe Collision 20
Single Vehicle Collision 20

Premises Liability

Fall Down 21
Hazardous Premises 22

Supplemental Verdict Digest 23

Copyright 2022 Jury Verdict Review Publications, Inc.

FEATURED CASES

$2,900,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/AUTO COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY BOX TRUCK ON NJ TPK – LUMBAR AND CERVICAL HERNIATIONS REQUIRING FUSION SURGERIES – KNEE AND DOMINANT ROTATOR CUFF TEARS REQUIRING ARTHROSCOPIC SURGERY.

Middlesex County, NJ

This motor vehicle negligence case involved a 58-year-old plaintiff trucker who was operating his personal vehicle when he was struck in the rear by the defendant operator of a box truck as he was slowing for traffic on the NJ Turnpike. The plaintiff contended that he suffered lumbar and cervical herniations that required fusion surgeries as well as a tear of the dominant rotator cuff that prompted arthroscopic surgery. Finally, the plaintiff asserted that he sustained a knee tear that required arthroscopic surgery.

The plaintiff established that the property damage was so severe that his seat broke. There was no contention that regulations relating to weight, by the defendant, who was hauling cases of wine, were violated. The plaintiff maintained that he had worked as a commercial truck driver for many years without difficulties. The plaintiff maintained that day-to-day activities and chores are painful and difficult. The plaintiff has a wife and 2 teenage children. The plaintiff contended that he continued to work after the accident out of economic necessity, but after a number of years, could no longer do so.

The plaintiff made a past and future lost wage claim of approximately $300,000. The plaintiff had exhausted his PIP medical payments. The plaintiff further asserted that he will require extensive therapies; home care, medication and physician visits and the plaintiff's life care plan approximated $1,500,000.

The defendant contended that the plaintiff made a better recovery than claimed and that his economic claims should be rejected.

The case settled prior to trial for $2,900,000.

REFERENCE

Plaintiff's economist expert: Thomas Rooney from Dallas, TX. Plaintiff's life care planning expert: Linda Lajterman from Stockholm, NJ. Plaintiff's orthopedic surgeon (cervical & lumbar) expert: David Adin, M.D. from Woodbridge, NJ. Plaintiff's orthopedic surgeon (shoulder & knee) expert: David M. Deramo, M.D. from Englewood, NJ.

Villada vs. Cabrera-Reyes, et al., 06-27-22.

Attorney for plaintiff: Gary M. Price of Gary M. Price, LLC in South Plainfield, NJ. Attorney for plaintiff: Raymond A. Gill, Jr. of Gill & Chamas.

COMMENTARY

The plaintiff continued to work after the accident until he could no longer do so and the defendant denied that any injuries sustained in the collision was related to his cessation of work. The plaintiff countered this position by stressing that he had worked for many years without difficulties before the collision and only continued to work out of economic necessity because he had 2 teenage children. Additionally, the evidence that the force was so great that the plaintiff's seat actually broke significantly helped his leverage in obtaining the settlement.

$475,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – RIGHT HIP LABRAL TEAR NECESSITATING 2 SURGERIES – TOTAL HIP REPLACEMENT RECOMMENDED WITHIN 5 YEARS – PLAINTIFF UNABLE TO WORK FOR ONE YEAR.

Middlesex County, NJ

In this work-related motor vehicle negligence case, the plaintiff, a 37-year-old parcel deliveryman, asserted that the defendant driver struck his vehicle when she ran through a stop sign. As a result, the plaintiff suffered significant injury that impacted his ability to work. The defendant denied liability and contested the plaintiff's damages.

On June 9, 2016, the plaintiff was operating a motor vehicle in the course of his employment with United Parcel Service, traveling on Bennington Parkway East at the intersection with Evelyn Avenue in Franklin. The defendant was operating a motor vehicle which had been traveling north on Evelyn Avenue. The plaintiff argued that the defendant negligently and carelessly failed to stop at the stop sign controlling her entry into the intersection and collided 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 a right hip labral tear necessitating two surgeries. Total hip replacement was recommended to be completed within five years at a cost of approximately

Reproduction in any form without the express permission of the publisher is strictly prohibited by law.

Subscribe Now

NEW JERSEY JURY VERDICT REVIEW & ANALYSIS
www.JVRA.com

Founder
Ira J. Zarin, Esq.
President
Jed M. Zarin
Contributing Editors
Brian M. Kessler, Esq.
Michael Bagen
Laine Harmon, Esq.
Cristina N. Hyde, J.D.
Deborah McNally, Paralegal
Ruth B. Neely, Paralegal
Cathy Schlecter-Harvey, Esq.
Julie L. Singer, Esq.
Tammy A. Smith, Esq.
Kate Turnbow, Paralegal
Susan Winkler
Business Development
Gary Zarin
Production Coordinator
Cathryn A. Peyton
Professional Search
Timothy P. Mathieson
Court Data Coordinator
Jeffrey S. Zarin
Customer Services
Meredith Whelan
Circulation Manager
Ellen Loren

Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081
www.jvra.com

Main Office:
973/376-9002 Fax 973/376-1775
Circulation & Billing Department:
973/535-6263

New Jersey Jury Verdict Review & Analysis is a trademark of Jury Verdict Review Publications, Inc.

Reproduction in any form with out the express written permission of the publisher is strictly prohibited by law.

New Jersey Jury Verdict Review & Analysis (ISSN 8750-8060) is published monthly at the subscription rate of $395/year by Jury Verdict Review Publications, Inc., 45 Springfield Avenue, Springfield, NJ 07081. Periodical postage paid at Springfield, NJ and at additional mailing offices.
Postmaster: Send address changes to: New Jersey Jury Verdict Review & Analysis, 45 Springfield Avenue, Springfield, NJ 07081.

$147,000 to $187,000. The plaintiff was unable to work for one year following the accident and ultimately relinquished his job with UPS and took a lower-paying job, less physically demanding job.

The defendant argued that some of the plaintiff's injuries were from other incidents and not caused by the subject collision. At the time that the plaintiff had hip surgery, he also underwent bilateral shoulder surgery for injury sustained on the job, not as a result of the subject collision. The defendant argued that the combination of the shoulder surgeries and the hip surgery were what prevented the plaintiff from working for a year and led him to take a different job, thus his diminished income and change of positions was not solely attributable to the subject incident. The plaintiff also suffered a second shoulder injury at his new job, requiring further surgery and further physical limitation for which the defendant was not responsible.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $750,000. Following arbitration and prior to trial, the parties settled for $475,000.

REFERENCE

PROOF Raymond vs. Trecozzi. Docket no. L-006607-17; Judge Michael V. Cresitello, Jr., 01-17-20.

Attorney for plaintiff: Patrick J. Flinn of Levinson Axelrod in Edison, NJ.
Attorney for defendant: Regina G. DiStefano of Martin Kane Kuper in East Brunswick, NJ.

$299,802 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – LUMBAR SPINE INJURIES INCLUDING DISC HERNIATION AT L5-S1 – PAIN MANAGEMENT; CHIROPRACTIC CARE – 3 SURGICAL LUMBAR FACET BLOCKS, 1 WITH RADIOFREQUENCY ABLATION – 2 MONTHS LOST WAGES.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 23-year-old commercial truck driver, asserted that the defendant driver struck his vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On July 13, 2016, the plaintiff was stopped in traffic when his car was struck by a vehicle operated by the defendant driver. The plaintiff contended that the impact was forceful and pointed to the defendant's testimony that he was traveling at 20 mph at the time of impact. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained traumatic injury to the lumbar spine including disc herniation at L5-S1. The plaintiff treated with pain management; chiropractic care; and underwent three surgical lumbar facet blocks, one with radiofrequency ablation. The plaintiff was out of work for 2 months following the collision. The plaintiff presented expert testimony that his injuries were permanent.

The defendant denied that the plaintiff suffered any permanent injury and that his injuries were a combination of soft tissue injuries, which resolved, and degenerative disc herniation at L5-S1. The defendant presented expert testimony that the plaintiff sustained no permanent injury in the collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $34,000. Following arbitration, the plaintiff made an offer to take judgment in the amount of $65,000. The offer was not accepted and the matter went to trial.

The jury found in favor of the plaintiff and against the defendant by a vote of 6-1 and awarded damages in the amount of $250,000 in damages together with $21,653 in prejudgment interest; lost wages of $4,640; costs of $5,550 and attorney fees of $17,960 for a total award of $299,802.

REFERENCE

Martinez vs. White. Docket no. L-003573-16; Judge James Hely.

Attorney for plaintiff: Johnathan S. Druckman of Druckman & Hernandez, P.C. in Elizabeth, NJ.
Attorney for defendant: David Della-Badia of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ.

COMMENTARY

Following the verdict, the defendant moved for a new trial asserting that the court made 2 errors during trial that prejudiced the jury to award the plaintiff damages that were not in line with the facts presented at trial. The defendant argued that the court unilaterally, and without notice to counsel, undertook to advise the jury that any award to the plaintiff would not be paid by the defendant, thus clearly signaling to the jury that not only did the defendant have liability insurance, but adequate liability insurance to satisfy even a large verdict – an assertion that is belied by the procedural post-verdict position in which the defendant found himself – faced with an excess verdict.

Additionally, during defense counsel's cross-examination of the plaintiff, which included authentication of property damage photographs, the court advised the jury of the jury charge regarding photographs and without any consultation with counsel, used an analogy that was egregiously prejudicial to the defense, given the neutral, non- partisan position the trial court is supposed to occupy and project to the jury at any trial. The court advised the jury that everyone is familiar with the situation of an "egg carton" being purchased at a store in an undamaged state, only to bring the carton home to find that one of the eggs inside is broken, thereby implying that that was precisely what happened to the plaintiff as an occupant of his scantly-damaged auto in the case being tried, indeed, as depicted by the photographs.

Defense counsel argued that the trial court's assault on the photographs depicting minimal damage to the plaintiff's auto continued during the jury charge, where the court deviated from the written charge provided to counsel in advance of the charge, and prefaced the photograph charge by advising the jury, "here we go again with the photos," thus minimizing the photographs and significantly downplaying their importance to the case.

Finally, immediately prior to defense counsel presenting its defense expert via video, the court advised the jury that they would be viewing a "tedious" video. The defense argued, with respect, that this was an uncalled for swipe at the defense presentation in circumstances where neutrality by the trial court is fundamentally required. Thus, the defendant moved for a new trial, arguing that the verdict was against the weight of the evidence, and further demonstrating that certain comments made throughout the trial were improper, and, particularly when considered together, may cumulatively have led to an unjust result.

The plaintiff objected to the defendant's motion for a new trial. The plaintiff maintained that the defendant did not allege any conduct by the plaintiff, or plaintiff's counsel that formed the basis for reversal of the verdict. The plaintiff argued that the statement by defense counsel in his opening, suggesting that the defendant was responsible to pay money to the plaintiff, was improper. Upon appropriate objection by plaintiff's counsel, the court correctly instructed the jury that if they found in favor of the plaintiff, they were not to be concerned from where the ultimate payment would come.

The defendant argued that the court improperly interjected the issue of insurance into the case, yet N.J.R.E. 411 does not act as a shield that permits an attorney to hide behind it after they make improper comments. It was, the plaintiff argued, defense counsel who opened the door to the issue of who would be responsible for the verdict by making the statement that it was "the plaintiff trying to get money from my client," as the defendant sat at the counsel table. It was defense counsel's improper conduct which required the judge to give a curative instruction to the jury.

Further, defendant's counsel claimed the defendant was then exposed to $150,000 of the verdict, but failed to mention that his insurance company acted in bad faith by first rejecting a settlement offer well below the policy limits and then refused to entertain a high/low discussion that would have capped exposure at the policy limit of $100,000. The plaintiff maintained that it was only after a verdict was returned in excess of the insurance policy limit that the defense assembled their list of transgressions, which they alleged yielded a verdict with no relationship to the evidence.

As to the defendant's second argument of error by the court, the plaintiff refuted defense counsel's argument that the trial court's use of the egg carton analogy was one-sided in favor of the plaintiff. The plaintiff put forth that defense counsel made no objection to the jury instruction regarding the photographs put into evidence. Presumably, if defense counsel believed the statements made by the court regarding the photos were so prejudicial, he would have objected, thereby giving the court the opportunity to provide a curative instruction. However, there was no such objection, presumably because the analogy was innocuous and, indeed, could cut both ways. An egg carton could be crushed on the outside and the eggs inside be intact. The plaintiff argued that it was only with the hindsight of an adverse verdict that defense counsel found the judge's analogy to be prejudicial to the jury.

The court denied the motion for new trial and the verdict stood.

DEFENDANT'S SUMMARY JUDGMENT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – SECOND DEFENDANT STRIKES FIRST DEFENDANT'S VEHICLE AND PUSHES IT INTO REAR OF PLAINTIFF'S VEHICLE – DISC HERNIATION AT C5-6, C6-7, AND C3-4 WITH ANNULAR TEAR; DISC BULGE AT C3-4 – 3 CERVICAL EPIDURAL INJECTIONS; LUMBAR STRAIN/SPRAIN – SHOULDER TEAR.

Mercer County, NJ

In this motor vehicle negligence case, the plaintiff, a 47-year-old woman, asserted that the defendants jointly caused her vehicle to be struck from behind in a chain reaction collision with such force that she sustained significant, permanent injury. Both defendants argued that the plaintiff's injuries were degenerative in nature and not caused by the subject collision as confirmed by IME.

On November 23, 2016, the plaintiff was traveling in the center lane of Route 73 southbound in Maple Shade. The first defendant was traveling directly behind the plaintiff's vehicle. The second defendant was traveling behind the first defendant. The plaintiff as-

Subscribe Now

serted that the first defendant negligently failed to stop behind the plaintiff and struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff suffered disc herniation at C5-6, C6-7, and C3-4 with annular tear; disc bulge at C3-4 treated with 3 cervical epidural injections; lumbar strain/sprain; and shoulder tear with multiple surgical recommendations.

The first defendant asserted that traffic was stop-and-go on the day in question and she was stopped behind the plaintiff when the second defendant struck the rear of her vehicle and pushed it forward but she denied that her vehicle contacted the plaintiff's vehicle. The second defendant testified that he looked in his rearview mirror and when he looked back, the first defendant was stopped in front of him and he was unable to avoid collision. The second defendant was issued a summons for careless driving as a result of the incident. The first defendant denied contact with the plaintiff's vehicle and the second defendant argued that he was traveling at such a low rate of speed that there was not enough force to push the first defendant's vehicle into the plaintiff's vehicle; and, if it did, the impact would be negligible and not enough to cause injury.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the second defendant and 0% to the first defendant. The arbitration set damages at $102,500 Following arbitration and prior to trial, the first defendant moved for summary judgment dismissal. The motion was granted and summary judgment was granted in favor of the first defendant. The plaintiff and second defendant settled for an undisclosed sum prior to trial.

REFERENCE

Hritz vs. Boden, et al. Docket no. L-001839-18; Judge William Anklowitz, 01-10-20.

Attorneys for plaintiff: John A. Sakson, Bryan M. Roberts and Stephanie M. Lockspeiser of Stark & Stark, PC in Princeton, NJ. Attorney for defendant first defendant: Sonya Lopez Bright of Law Offices of Marie A. Carey in Florham Park, NJ. Attorney for defendant second defendant: Denise M. Neuffer of Law Offices of Pamela D. Hargrove in Wall Township, NJ.

COMMENTARY

The court granted the first defendant's motion for summary judgment, stating in its statement of reasons for the decision: the standard for summary judgment in New Jersey is well settled. "A motion for summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Judson v. Peoples Bank and Trust Company of Westfield, 17 N.J. 67, 73 (1954); R. 4:46-2. A genuine issue of material fact must be a disputed issue of fact that is of a substantial nature, having substance and real existence. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995).

Similarly, a disputed issue of fact of an insubstantial nature should not preclude a court from granting summary judgment. Prant v. Sterling, 332, N.J. Super. 369, 377 (Ch. Div. 1999). Bare conclusions without factual support cannot defeat summary judgment; instead, evidence submitted in support of the motion must be admissible, competent, non-hearsay evidence. Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999); Jeter v. Stevenson, 284 N.J. Super. 229, 233 (App. Div. 1995). The moving party must sustain the burden of showing clearly that there is no genuine issue of material fact in the case, and that they are entitled to judgment as a matter of law. Judson, at 73; R. 4:46-2. In determining whether a dispute is genuine, the court is to make all legitimate inferences in favor of the non-moving party and deny the motion if there is the slightest doubt about the existence of a material issue of fact. Saldana v. DiMedio, 275 N.J. Super. 488 (App. Div. 1998). The court must "consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party in consideration of applicable evidentiary standards, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party." Brill, at 523.

On motion for summary judgment, the court must engage in an analytical process essentially the same as that necessary to rule on a motion for directed verdict, namely, "'whether evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that a party must prevail as a matter of law.'" Id. at 533 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (U.S. 1986). "That weighing process requires the court to be guided by the same evidentiary standard of proof – by preponderance of evidence or clear and convincing evidence – that would apply at trial when deciding whether there exists a 'genuine' issue of material fact." Brill, 142 N.J. at 533, 34.

In this case, the first defendant submitted a motion for summary judgment contending that she should be granted summary judgment as she was not negligent in causing the accident. The defendant further contended that the negligence in this accident rests solely with the second defendant and there was no indication of improper operation on the part of the first defendant. In Dolson v. Anastasia, the New Jersey Supreme Court held that it is elementary that a following car in the same lane of traffic is obligated to maintain a reasonably safe distance behind the car ahead, having due regard to the speed of the preceding vehicle and the traffic upon and condition of the highway. Dolson v. Anastasia, 55 N.J. 2, 10 (1969). Failure to do so resulting in a collision is negligence and a jury should be so instructed. Id.

In this case, the first defendant asserted that the uncontroverted facts show that she was not negligent in causing this accident, as she was stopped in traffic behind the plaintiff's vehicle when she was struck from behind by the second defendant. This impact forced her vehicle into the plaintiff's vehicle. The second defendant pled guilty to the careless driving ticket that he received from this accident and placed no fault on plaintiff or the first defendant. The plaintiff submitted a letter stating that she did not oppose this motion. As there seemed to be no evidence of negligence on the part of the first defendant, the court granted the defendant's motion.

$1,000,000 (POLICY LIMIT) RECOVERY – MEDICAL MALPRACTICE – CARDIOLOGY – FAILURE OF DEFENDANT CARDIOLOGIST TO ORDER ANGIOGRAM FOLLOWING POSITIVE STRESS TEST – DEFENDANT REASSURES DECEDENT CHEST PAIN NOT CARDIAC IN NATURE – DECEDENT DOESN'T GO TO HOSPITAL – FATAL INFARCT.

Ocean County, NJ

In this action for medical malpractice, the plaintiff contended that the defendant cardiologist negligently failed to consider ischemia as a risk factor for the 40-year-old decedent's chest pain. The plaintiff further contended that the defendant negligently advised that a second test conducted approximately one week later, a stress echocardiogram, was not diagnostic, negligently failed to take the patient's blood pressure and negligently failed to order an angiogram. The plaintiff also asserted that the defendant compounded the problem by inaccurately reassuring the decedent that he was not suffering cardiac difficulties. The plaintiff claimed that 4 days later as he was visiting his mother in Florida, he developed chest pain, told a friend who suggested he visit a hospital that he had been cleared from a cardiac standpoint and suffered a fatal heart attack shortly thereafter.

The plaintiff maintained that once the plaintiff was positive on the first test, the defendant should have ordered an angiogram which would have revealed a blockage, allowing for a simple angioplasty that would have prevented the fatal infarct. The plaintiff contended that such a procedure was especially necessary because of a family history in which both his brother and father died from cardiac causes. The defendant maintained that he acted properly on the second test which was read as negative. The plaintiff countered that the test was suboptimal and not diagnostic

The decedent left a wife and 4 children, ages 18, 17, 15 and 7 at the time of the death. The decedent had recently completed Rabbinical school and was interning at the time of his death. The evidence reflected that he planned on commencing work shortly. The wife owned a business and the decedent often helped. The evidence also reflected that the decedent spent a great deal of time caring for the family.

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

REFERENCE

Cweiber vs. Kadosh. Docket no. OCN-L-1837-19, 06-22-22.

Attorneys for plaintiff: Matthew R. Mendelsohn and Cory J. Rothbort of Mazie Slater Katz & Freeman, LLC in Roseland, NJ.

COMMENTARY

The defendant took the position that it was reasonable to rule out cardiac causes after the second test was read as negative. The plaintiff' expert, however, concluded that the test was suboptimal and not diagnostic and an acceptance of this plaintiff position would clearly add to the expected strong jury response. Finally, the plaintiff would have also emphasized that by inaccurately reassuring the decedent that his chest pain was not cardiologic in nature, the decedent did not go to the hospital when the chest pain returned shortly thereafter.

$725,000 RECOVERY – MUNICIPAL LIABILITY – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – 14-YEAR-OLD PLAINTIFF STRUCK BY FIRE DIRECTOR WHILE CROSSING IN CROSSWALK ACROSS FROM SCHOOL – LEFT FEMUR FRACTURE – INTRAMEDULLARY ROD – ALLEGED RELATED MUSCLE HERNIATION.

Middlesex County, NJ

This motor vehicle negligence case involved a plaintiff who was age 14 at the time of the 2014 accident. The plaintiff contended that she was struck by the defendant fire director who was operating a city owned car as she crossed in the crosswalk next to the school with 2 other children, causing her to sustain serious injury. The other children were also struck, but not involved in this action. The defense denied that the plaintiff met the subjective prong of title 59 injury threshold. The defendants pointed out that the plaintiff joined the HS track team and participated in long distance running after recuperating from the accident.

The plaintiff maintained that as a result of being struck, she sustained a left femur fracture and had interlocking intramedullary rod placement, and concussion. The concussion substantially resolved. The plaintiff had home schooling and underwent P.T. for the balance of that school year. In March 2016, the plaintiff underwent surgery in which some hardware was removed. The plaintiff had the rod removed in January 2019. The plaintiff asserted that although she made a relatively good recovery, she will permanently suffer intermittent pain.

The case settled prior to trial for $725,000. The settlement was only against the municipality and technically, the case against the individual defendant was dismissed.

REFERENCE

Pelaez vs. City of New Brunswick, et al. Docket no. MID-L-6833-15, 12-20.

Attorneys for plaintiff: Edward J. Rebenack and Howard Buckner of Rebenack Aronow & Mascolo, LLP in Somerville, NJ.

Subscribe Now

$650,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – EXCESSIVE HEIGHT BETWEEN SLABS ON HANDICAP RAMP TO SIDE OF LIQUOR STORE AT DEFENDANT STRIP MALL – PLAINTIFF PUSHING HAND TRUCK TO MAKE DELIVERY TO LIQUOR STORE FALLS INTO DOOR – CERVICAL HERNIATION – FUSION SURGERY – 2 DOMINANT ROTATOR CUFF TEARS TREATED CONSERVATIVELY.

Bergen County, NJ

In this action for premises liability, the plaintiff delivery person in his early 40s, who was using a hand truck to make a delivery to a liquor store at the defendant mall, contended that the defendant negligently failed to conduct required inspections, resulting in an excessive elevation between sidewalk slabs located on an disability ramp that ran parallel to the liquor store door. The plaintiff contended that as a result, he fell directly into the liquor store door to his side as the hand truck struck the height differential, suffering a cervical herniation that required fusion surgery and 2 rotator cuff tears that required arthroscopic surgery. The defendant denied that the area was unsafe or the applicable codes were violated.

The plaintiff elicited testimony during the deposition of the mall's property manager that many of his inspections were made from his car and the plaintiff asserted that such inspections were inadequate. The incident was captured on surveillance video. The plaintiff's expert engineer related that the configuration involved a 9/16 inch height discrepancy and was greater than the ¼ inch allowed by the ADA. The plaintiff's expert further maintained that the defendants violated the ANSI code.

The plaintiff also contended that he suffered a transitory loss of consciousness upon striking the door with his head but this aspect resolved. The plaintiff asserted that she suffered a cervical herniation that will cause permanent symptoms despite fusion surgery. The plaintiff also maintained that she suffered 2 rotator cuff tears to the dominant shoulder which will permanently cause some pain and limitations despite conservative care. There was no evidence that shoulder surgery will be necessary.

The defendant would have also argued that the jury should consider that the plaintiff had regularly been lifting for a significant number of years and that it was likely that any difficulties were degenerative in nature. The plaintiff countered that he had no prior symptoms or treatment. The plaintiff maintained that he will permanently suffer pain difficulties.

The plaintiff is planning to return to work and the plaintiff made no future income claims.

The case settled prior to trial for $650,000.

REFERENCE

Plaintiff's engineer expert: Bryan J. Smith, P.E. from Abbington, PA. Plaintiff's spinal surgeon expert: Carl Spivak, M.D. from Hackettstown, NJ.

Castillo vs. National Shopping Center Assoc., LLC, et al. Docket no. BER-L-2617-20, 03-22-22.

Attorney for plaintiff: Paul F. Romano of Law Office of Brandon J. Broderick, LLC in River Edge, NJ.

COMMENTARY

The incident was captured on surveillance video and the plaintiff would have emphasized that the jury could well observe that as the hand truck stuck the height differential; the plaintiff fell directly into the liquor store door to his side. In this regard, the plaintiff would have argued that it was clear that the defect and not his history as a delivery person caused the plaintiff's injuries.
Additionally, the plaintiff stressed that he had no prior symptoms or treatment, Finally, the plaintiff elicited discovery testimony from the defendant's property manager that at time, he would make inspections of the property from his car.

$475,000 RECOVERY – HOMEOWNER'S NEGLIGENCE – FALL FROM ZIP LINE – FRACTURED LEFT ELBOW REQUIRING 4 SURGERIES – PERMANENT DEFORMITY AND RESIDUAL LIMITATIONS.

Morris County, NJ

In this homeowner's negligence case, the plaintiff, a 9-year-old boy, asserted that the defendant homeowners were negligent in maintaining a zip line on their property and failing to supervise its users. The plaintiff fell from the zip line and suffered significant, permanent injury. The defendants denied liability, arguing that the plaintiff assumed the risk of use of the zip line and that he was contributorily negligent in failing to use the zip line properly and safely.

On July 28, 2016, the minor plaintiff was an invitee at the home of the defendants on 15 Polhemus Terrace in Whippany. While visiting at the defendants' home, the plaintiff fell off a zip line being utilized at the premises. The plaintiff fell approximately 12 feet to the ground below. The plaintiff contended that the defendant negligently supervised users of the zip line and that they failed to take such measures and care so that the zip line was safe to be utilized by invitees. The plaintiff claimed that the defendants' negligence and carelessness caused the plaintiff's fall. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a fractured left elbow requiring 4 surgeries. The plaintiff maintained that his injury resulted in permanent, re-

sidual limitations and deformity. The defendants maintained that the plaintiff was responsible for his own injury due to his own negligence.

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 $525,000 reduced to $472,500 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled the matter in the amount of $475,000 broken down as follows: $128,517 in attorney fees and $345,483 in net damages to the minor plaintiff.

REFERENCE

Palmisano vs. DeNunzio. Docket no. L-000879-18; Judge David J. Weaver, 06-05-20.

Attorneys for plaintiff: John R. Connelly, Jr. and Dennis A. Drazin of Drazin and Warshaw in Red Bank, NJ. Attorney for defendant: Jane C. Nehila of Law Offices of Patricia A. Palma in Woodbridge, NJ.

Subscribe Now

Verdicts By Category

CIVIL RIGHTS

$500,000 RECOVERY

Civil rights – False arrest – Failure of defendant municipality to properly supervise officers – Plaintiff incarcerated for 1 1/2 years year until concession by officers that drugs subject of arrest planted – Emotional distress.

Camden County, NJ

This was a civil rights/false arrest case involving a plaintiff, age 51 at the time of his arrest who had pled guilty to a drug offense, resulting in his incarceration for 1 1/2 years. The conviction was vacated after officers admitted planting the drugs. The defendant asserted that it provided appropriate supervision and that it was not liable for the actions of the officers or the police department.

The plaintiff maintained that the municipality failed to properly supervise the officers and the police department after the subject and other incidents occurred, and that the municipality was liable for such failure. The plaintiff contended that although innocent, he pled guilty because he did not believe that as an African American he had a reasonable chance of being found not guilty. The plaintiff asserted that he suffered severe emotional distress.

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

REFERENCE

Plaintiff incarcerated after police plant drugs vs. Defendant municipality.

Attorney for plaintiff: Oliver T. Barry of Barry Corrado & Grassi, PC in Wildwood, NJ.

CONTRACT

$85,000 RECOVERY

Contract – Plaintiff bar/restaurant and property owner seeks to dissolve and sell assets of business and property and divide proceeds with co-defendant partners but claims defendants refuse to cooperate – Defendants deny hindering dissolution and sale of businesses.

Mercer County, NJ

In this complaint to dissolve a corporation and order sale of assets and property, the plaintiff asserted that the defendants had developed a deep-seated animosity towards the plaintiff that made it impossible to reach an agreement to sell a co-owned business and property. The plaintiff maintained that the defendants falsely accused the plaintiff of personal misconduct and made slanderous remarks about the plaintiff. The defendants' actions caused irreconcilable differences between the parties and destroyed the mutual confidence that must exist between partners. The plaintiff sought a court order to dissolve the business and sell the property, distributing the proceeds by percentage of ownership. The defendants denied creating a hostile relationship between the parties and argued that they have not hindered the potential sale of the business.

The plaintiff was a 55% shareholder in a bar/restaurant and 50% owner of the property, at 533-535 North Clinton Avenue in Trenton, where the business was located. The defendants were a man and woman engaged in two separate partnerships with the plaintiff. The defendant woman was a 45% shareholder in the business and the defendant man was a 50% owner of the property. The plaintiff became no longer willing or able to manage the bar/restaurant. The plaintiff and defendant co-owner attempted to mutually agree to dissolve the corporation that owned the bar/restaurant, however, they were unsuccessful. The plaintiff wished to dissolve the corporation and sell its assets. The plaintiff also wished to sell the building; however, the sale could not happen without dissolving the corporation. The plaintiff maintained that the defendants refused to cooperate in selling the business and the building. The plaintiff also claimed that $33,053 in business sales tax had been lodged against the plaintiff's business for taxes owed by a restaurant, housed in the subject building, but owned solely by the co-defendant and in which the plaintiff had no personal or business interest.

The plaintiff claimed that she would suffer irremediable loss and damages if she was not permitted to sell her building and dissolve the corporation. The plaintiff

sought to sell the assets of the bar/restaurant and divide the proceeds with the plaintiff receiving 55% of the proceeds and the defendant 45%. The plaintiff also sought to sell the property and receive judgment against the co-defendant man for $38,000 to be paid from the proceeds of the sale.

The defendant still runs a business out of the co-owned property and did not wish to sell the property and lose the location for his restaurant. The defendants argued that the plaintiff's claims should be denied based on the Doctrine of Unclean Hands.

The parties settled the matter prior to trial in the amount of $85,000 paid by the defendants to the plaintiff in payment installments.

REFERENCE

Smith, et al. vs. Lester, et al. Docket no. L-002507-18; Judge F. Patrick McManimon, 02-06-20.

Attorney for plaintiff: H. Lee Wearing, Esq. in Trenton, NJ. Attorney for defendant: Gregory G. Johnson, Esq. in Lawrenceville, NJ.

$17,000 RECOVERY

Breach of contract – Plaintiff contends defendant realtors and mortgage corporation failed to pay for plaintiffs' services improving condition of properties to prepare them for sale.

Burlington County, NJ

In this breach of contract case, the plaintiff owner of a property management company asserted that the defendants, a realtor and his realty company and a mortgage corporation, failed to pay for services rendered by the plaintiffs. The plaintiff settled with the third-party defendant mortgage corporation for an undisclosed sum during discovery and the matter proceeded only as to the defendant realtors. The defendant realtors denied that there was ever a contract with the plaintiffs or that the contract was with an entity not joined to this action, not the defendants.

The plaintiffs were engaged in the business of conducting services for realtors to improve the conditions of properties and homes that were subject to purchase, sale or eviction. On multiple dates between 2014 and 2015, the defendant realtors contacted the plaintiffs and requested that he perform services at multiple properties in New Jersey. The property improvement services included winterizing properties, repairs, yard repairs and clean-ups, roof inspections, re-keying locks, removal of debris, installation of new custom made safety pool cover and steps, pump water from basement, reseal windows, snow removal, performance of eviction services, storage of items, installation of handrails and appliances, and more. The plaintiffs performed the services in reliance on the defendants' promise to pay for said services.

The plaintiffs were damaged by the defendant's failure to pay for services performed. The plaintiffs contended that they sent invoices to the defendant seeking payment for the services performed totaling $52,405 but the defendant failed to pay and, in addition, incurred loss of interest, attorneys' fees and costs of suit.

The defendant realtors contended that it never received the value of any work performed by the plaintiffs, the plaintiffs failed to submit a timely invoice to the entities who did receive the value of the work. The defendant realtors asserted that they sought out contractors on behalf of the third-party defendant mortgage corporation and that the third-party defendant was responsible for any payments due to the plaintiffs.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant realtors with damages of $52,160. The plaintiff made a motion to confirm the arbitration order and the motion was granted.

Following arbitration and prior to trial, the plaintiff settled with the defendant realtors for $17,000.

REFERENCE

Smyth Property Management, LLC, et al. vs. Brown, Sr., et al. Docket no. L-001343-18; Judge Susan L. Claypoole, 03-11-20.

Attorney for plaintiff: Michael C. Mormando of Attorneys Harman, Chartered in Moorestown, NJ. Attorney for defendant realtors: Nicolas Fausto, Esq. in Atlantic City, NJ. Attorney for defendant third-party mortgage corporation: Gregg Tabakin of Fein, Such, Kahn & Shepard, PC in Parsippany, NJ.

DOG ATTACK

$35,000 RECOVERY

Dog attack – Minor plaintiff attacked when mother is pet sitting defendant's dogs – Multiple bite wounds to legs, arm, and buttocks – Significant scarring.

Camden County, NJ

In this multiple dog attack case, the 10-year-old plaintiff asserted that the defendant's 2 dogs attacked her causing her significant, permanent injury and scarring. The defendant argued that the plaintiff mother was solely responsible for negligence resulting in the injuries to the minor plaintiff. The defendant maintained that the

Subscribe Now

plaintiff mother should not have allowed the minor plaintiff to open the door to the home where the dogs were located.

On July 26, 2018, the plaintiff mother was dog sitting for the defendant at the defendant's home. The plaintiff mother brought her minor daughter with her with the defendant's approval. After entering the backyard of the home, the minor plaintiff went to open the door to the house whereupon one of the defendant's dogs began to bite the minor plaintiff's legs and the defendant's second dog also began to attack the minor plaintiff. The minor plaintiff briefly lost consciousness and had deep puncture wounds to her legs.

The plaintiff mother called EMS who bandaged the plaintiff. The plaintiff then sought treatment at the emergency room the next day where the wounds were cleaned and dressed and a course of antibiotics was prescribed. The plaintiff also received follow-up wound treatment from her pediatrician and a dermatologist. The plaintiff claimed permanent scarring; possible permanent numbness; anxiety around dogs; and self-consciousness about the appearance of her scars.

The parties settled the matter prior to trial in the amount of $35,000 broken down as follows: $310 in costs; $1,726 in medical expenses and $32,964 in net damages to the minor plaintiff.

REFERENCE

Pineda vs. Sutphen and Farmers Insurance. Docket no. L- 003766-19; Judge Michael J. Kassel, 01-02-20.

Attorney for plaintiff mother: pro se on behalf of minor plaintiff. Attorney for defendant Mt. Laurel: Stephen C. Wolf of Law Offices of Nancy L. Callegher.

INSURANCE OBLIGATION

$12,443 RECOVERY

Subrogation – Motor vehicle negligence – Head-on collision with significant property and personal damages – Plaintiff insurer seeks subrogation of damages paid to insured as result of collision with defendant driver.

Middlesex County, NJ

On July 5, 2018, the defendant was operating her vehicle on County Route 701 West in New Brunswick in such a negligent manner as to cause her vehicle to strike the plaintiff's insured's vehicle head on, thereby causing severe and significant property damage to the plaintiff's insured's vehicle and personal injuries to the plaintiff. As a result of the defendant's negligence, the plaintiff's subrogee incurred medical expenses and made an underinsured motorist claim against the plaintiff. The plaintiff paid those claims and brought this action against the defendant to recover those funds. The defendant denied liability and contested the plaintiff's damages.

The defendant claimed that all injuries and damages alleged to have been suffered by the plaintiff were caused solely by the negligence of the plaintiff's insured. The defendant argued that the plaintiff's personal injuries were not caused by the subject collision.

The parties settled the matter prior to trial in the amount of $12,443 broken down as follows: $4,943 to be paid by the defendant's insurance company; $14,725, having been negotiated down to $7,500 to be paid directly by the defendant.

REFERENCE

Sharma, et al. vs. Krigger. Docket no. L-003322-19; Judge Bruce Kaplan, 01-13-20.

Attorney for plaintiff: Paul R. Duffy of Kearns Duffy & Vaccaro, P.C. in Liberty Corner, NJ. Attorney for defendant: Amanda B. Tosk of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Insurance obligation – UIM case – Head-on collision – Cervical and lumbar herniation treated with injections – Bursitis/tendonitis to knee – Right shoulder tear – Lidocaine injection to knee and right shoulder – Defendant points out plaintiff's deposition and trial testimony inconsistent with each other – Damages only.

Hudson County, NJ

The UIM carrier received credit for the $25,000 policy limits previously paid by the tortfeasor and liability was stipulated by the UIM carrier in exchange for a $70,000 cap in this expedited trial. The defendant denied that the plaintiff suffered a permanent injury.

The plaintiff driver, in his 50s, contended that he suffered a lumbar and a cervical herniation that were confirmed by MRI, and which will cause permanent symptoms despite injections. The plaintiff contended that he also suffered a meniscal tear and right shoulder tear which were treated with an injection and which will also cause permanent pain and limitations.

The defendant argued that the plaintiff's credibility was very suspect. The defendant pointed out that that the plaintiff testified at trial that a prior accident occurred approximately 20 years earlier and indicated in his deposition that it happened approximately 10 years earlier.

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

REFERENCE

Garcia vs. Cabrera. Docket no. HUD-L-3470-17, 04-21.

Attorney for defendant: Ryan J. Gaffney of Chasan Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ.

DEFENDANT'S VERDICT ON VERBAL THRESHOLD

Insurance obligation – UIM case – Rear end collision – Plaintiffs claim cervical herniations requiring chiropractic care – Plaintiff with prior MVAs – Damages only.

Camden County, NJ

The plaintiffs' motion for summary judgment on liability was granted in this case. The plaintiffs settled with the tortfeasor for the limited available coverage of $15,000. Each plaintiff, husband and wife, had $100,000 in UIM protection. Both plaintiffs were subject to the verbal threshold.

The 53-year-old plaintiff underwent a year of chiropractic care and a cervical epidural injection. This plaintiff had 3 prior motor vehicle accidents win which he claimed injury to his cervical and lumbar spine. This plaintiff maintained that he had been asymptomatic for approximately 2 years before the subject accident occurred. This plaintiff's orthopedic surgeon testified that the accident had aggravated plaintiff's pre-existing cervical and lumbar conditions and caused a new cervical herniation.

The 56-year-old plaintiff had no prior accidents or injuries. She underwent a year of chiropractic care, four months of physical therapy and two lumbar epidural steroid injections. Her orthopedist testified that plaintiff had an aggravation of a pre-existing asymptomatic spondylolisthesis and a new cervical herniation as a result of the accident. He opined that she would need lumbar fusion surgery in the future. According to the plaintiffs' orthopedist, the condition was permanent in nature.

The defendant's orthopedic surgeon denied that either plaintiff suffered a permanent injury in the accident. The physician indicated that the 53-year-old plaintiff's MRI films showed pre-existing degeneration unrelated to the accident. He compared prior MRI films and found no change from before and after the accident. The defense expert further maintained that the 56-year-old's MRIs showed degeneration in her cervical and lumbar spine as well as a pre-existing spondylolisthesis unrelated to the accident.

The jury found that neither plaintiff suffered a permanent injury, rendering a verdict for the defense.

REFERENCE

Plaintiff's orthopedist expert: Lawrence Barr, D.O. from Cherry Hill, NJ. Defendant's orthopedist expert: Thomas O'Dowd, M.D. from Turnersville, NJ.

O'Brien vs. GEICO. Docket no. CAM-L-2847-18; Judge Steven Polansky, 10-15-21.

Attorney for defendant: Darren C. Kayal of Rudolph & Kayal, PA in Manasquan, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$99,500 PRE-SUIT RECOVERY

Motor vehicle negligence – Auto/motorcycle collision – Defendant makes left turn into path of plaintiff motorcyclist – Bilateral wrist fractures with surgery on dominant side – Separated shoulder – Knee laceration.

Cumberland County, NJ

In this action for motor vehicle negligence, the plaintiff motorcyclist, in his late 20s, contended that the defendant driver negligently made a left hand turn into his path, causing the accident in which the plaintiff sustained serious injuries. The defendant had a $100,000 policy.

The plaintiff sustained bilateral wrist fractures and required surgery on the dominant side. The plaintiff maintained that he will suffer pain and limitations on both sides. The plaintiff maintained that he suffered a shoulder separation on the dominant side which will permanently cause some intermittent instability. The plaintiff also asserted that he suffered a knee laceration which was sutured and which will permanently cause occasional pain.

The case settled prior to the institution of suit for $99,500.

REFERENCE

Ortiz vs. State Farm. 10-20.

Attorney for plaintiff: Christian P. Fleming of Jabin & Fleming in East Brunswick, NJ.

Subscribe Now

Head-on Collision

$98,500 RECOVERY

Motor vehicle negligence – Head-on collision – Plaintiff front seat passenger contends defendant non-host driver crosses over, causing collision – Micro-fracture of knee – Arthroscopic surgery.

Somerset County, NJ

In this action for motor vehicle negligence, the plaintiff front seat passenger, approximately age 30, contended the defendant non-host driver negligently crossed the center line. The plaintiff maintained that as a result, she suffered a micro-fracture of the left knee and required a synovectomy after striking her knee on the dashboard.

The plaintiff asserted that she will permanently suffer some pain and difficulties walking. The plaintiff was single and had no children. The plaintiff made no economic claims.

The defendant had $100,000 in coverage. The case settled prior to the completion of discovery for $98,500.

REFERENCE

Plaintiff's orthopedic surgeon expert: Sheref E. Hassan, M.D. from Old Bridge, NJ.

Pecci vs. Smith. Docket no. SOM-L-623-21, 07-07-21.

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

Intersection Collision

$13,500 RECOVERY

Motor vehicle negligence – Intersection collision – Plaintiff passenger injured in collision in intersection – 2 cervical herniations; lumbar herniation and bulge; left hip labral tear; right knee discoid meniscus – Epidural injections.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant drivers collided in an intersection with such force that it caused the plaintiff significant, permanent injury. The defendants each claimed the other was liable for causation of the collision.

On July 23, 2017, the plaintiff was a passenger in a vehicle being driven by the first defendant. The plaintiff's vehicle was traveling on East Central Boulevard intersecting 3rd Street in Palisades Park. At the same time the second defendant was also traveling through the same intersection. The plaintiff maintained that both drivers were negligent and caused a collision between the vehicles. There was evidence that the second defendant driver had proceeded from a stop sign and was more than halfway into the intersection when the collision occurred. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained 2 cervical herniations; lumbar herniation and bulge; left hip labral tear and right knee discoid meniscus. The plaintiff underwent epidural injections for her disc injuries. Both defendants contested the plaintiff's damages, arguing that the plaintiff's spinal injuries were degenerative and that there was no definitive evidence of hip or knee injury. The defendants pointed to negative EMG and MRI of the hip.

The first defendant driver claimed that he was on a main road with the right-of-way and that the side streets had stop signs controlling their entry into the main road. He contended that the second defendant failed to stop and drove into the intersection when the first defendant was traveling past with the right-of-way. The second defendant asserted that he had time to cross the intersection but the first defendant did not slow or stop to let him complete his pass through the intersection and struck his vehicle on the driver's side near the rear of the vehicle.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 30% liability to the defendant driver of the plaintiff's vehicle and 70% to the defendant driver of the second vehicle. The arbitration assigned $45,000 in damages not inclusive of medical expenses.

Following arbitration and prior to trial, the plaintiff settled with the defendant driver of the vehicle in which she was a passenger for $13,500.

REFERENCE

Park vs. No, et al. Docket no. L-008034-17; Judge John D. O'Dwyer, 03-05-20.

Attorney for plaintiff: David M. Wasserman of Law Offices of Andrew Park, P.C. in New York, NY.

DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Defendant pulls into intersection, does not see plaintiff approaching, and collides with plaintiff's vehicle – Aggravation of multilevel cervical and lumbar herniations with radiculopathy; new herniation at C4-5; complex regional pain syndrome in left leg – Orthopedic treatment, chiropractic treatment and pain management.

Cape May County, NJ

In this motor vehicle negligence case, the plaintiff, a 44-year-old woman, asserted that the defendant driver struck her vehicle, in an intersection, with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On October 12, 2016, the plaintiff was operating a motor vehicle traveling eastbound on State Highway 83 at the intersection with County Route 628 in Dennis. The defendant, traveling north on County Route 628, stopped at the stop sign controlling the intersection. The defendant then attempted to make a left turn onto State Highway 83 and failed to see the plaintiff's vehicle approaching on State Highway 83. The defendant negligently failed to observe traffic and entered the intersection without ascertaining that the way was clear to do so, striking the plaintiff's vehicle in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained aggravation of multilevel cervical and lumbar herniations with radiculopathy; new herniation at C4-5; complex regional pain syndrome in left leg. The plaintiff received chiropractic care and pain management and was recommended for future laminectomy. The plaintiff claimed $2,707 in unpaid medical expenses. The defendant pointed to the plaintiff's extensive history of spinal issues and argued that the plaintiff failed to pierce the AICRA threshold and did not sustain permanent injury caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $135,000 plus medical lien of $2,708 for a total of $137,708. The arbitration was not confirmed. After arbitration and prior to trial, the plaintiff made an offer to take judgment in the amount of $50,000. The offer was not accepted and the matter proceeded to trial.

The jury returned a verdict in favor of the defendant.

REFERENCE

Melady, et al. vs. Hickman. Docket no. L-000104-18; Judge James P. Savio, 01-06-20.

Attorney for plaintiff: David K. Cuneo of Law Offices of David K. Cuneo in Collingswood, NJ. Attorney for defendant: Malcolm McPherson of Hoagland, Longo, Moran, dunst & Doukas, LLP in Hammonton, NJ.

Left Turn Collision

$150,000 VERDICT

Motor vehicle negligence – Left turn collision – Alleged cervical herniation – 8 months chiropractic care –Social media posts after accident depicting plaintiff engaging in active lifestyle – Damages only.

Middlesex County, NJ

Liability was stipulated in this case in this motor vehicle negligence case in which the defendant driver negligently failed to make adequate observations before turning left at a T-intersection.

The 28-year-old plaintiff contended that she sustained a cervical herniation that was confirmed by MRI, and which will permanently cause symptoms. The plaintiff's treatment was limited to 8 months of chiropractic care. The defendant denied that the plaintiff suffered the claimed injuries or that she met the verbal threshold.

The defendant pointed to the limited treatment. The defendant also stressed that the plaintiff had placed photos on her social media page in which she was seen engaging in various indoor and outdoor activities. The plaintiff countered that she opted to live as full a life as possible and sometimes engaged in physical activity to remain as strong as she could.

The jury awarded $150,000 in non-economic damages.

REFERENCE

Plaintiff's chiropractor expert: Anthony Deluca, D.C. from Old Bridge, NJ. Plaintiff's orthopedic surgeon expert: Joshua Landa, M.D. from Old Bridge, NJ. Plaintiff's pain management expert: Michael O'Hara, D.O. from Old Bridge, NJ.

Lovera vs. Haber, et al. Docket no. MID-L3708-18; Judge Dina Desai, 05-22.

Attorney for plaintiff: Mark E. Zabel, Jr. of Wishnic & Jerushalmy in New Brunswick, NJ.

Subscribe Now

$21,925 RECOVERY

Motor vehicle negligence – Left turn collision – Plaintiff passenger contends defendant failed to stop at stop sign and attempted left turn, striking side of vehicle where plaintiff seated – 2 cervical and 2 lumbar disc herniations and 3 cervical disc bulges – Chiropractic treatment.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver made a left turn without ascertaining that the way was clear and struck the vehicle in which the plaintiff was a passenger with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On December 18, 2015, the plaintiff was a passenger in a vehicle traveling on Inman Avenue at the intersection of Rahway Road. The defendant was traveling on Rahway Road turning left onto Inman Avenue. The plaintiff contended that the defendant failed to stop at the stop sign on Rahway Road and, without yielding to or observing oncoming traffic, made a left turn from Rahway Road onto Inman Avenue and struck the rear passenger side of the vehicle in which the plaintiff was a passenger.

The plaintiff contended that the defendant negligently failed to yield the right-of-way and failed to observe oncoming traffic, thus causing the collision. The plaintiff alleged that the force of the impact resulted in permanent injuries. As a result of the collision, the plaintiff sustained 2 cervical and 2 lumbar disc herniations; and 3 cervical disc bulges. The plaintiff underwent approximately 5 months of chiropractic treatment and claimed $10,000 in unpaid medical expenses. The defendant argued that the impact between the vehicles was not significant enough to cause the plaintiff's claimed injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $30,000. Following arbitration and prior to trial, the parties settled for $21,925.

REFERENCE

Moz-Aguilar vs. Bright, et al. Docket no. L-000180-17; Judge Jamie D. Happas, 02-10-20.

Attorney for plaintiff: Sean M. Mahoney of Stathis & Leonardis in Edison, NJ. Attorney for defendant: Arthur Arnold of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Multiple Vehicle Collision

$220,000 RECOVERY

Motor vehicle negligence – Multiple-vehicle rear end collision – Plaintiff claims defendant struck third-party vehicle and caused it to strike rear of plaintiff's vehicle in chain reaction – Disc herniations at C3-4 and C5-6; disc bulges at C4-5, C6-7, L3-4, L4-5, L5-S1 – 2 epidural injections.

Union County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck a third party vehicle and pushed it into the plaintiff's vehicle from behind in a chain reaction rear-end collision which caused the plaintiff to suffer injuries. The plaintiff filed suit against both drivers: the first vehicle that struck the second vehicle and the second vehicle that struck the plaintiff. The driver of the second vehicle was dismissed on summary judgment and the case proceeded as to the first defendant. The plaintiff moved for summary judgment against the defendant as to liability and the motion was granted. The case proceeded as to damages only. The defendant denied the nature and extent of the plaintiff's claimed damages given what the defendant characterized as a not significant impact between the vehicles.

On May 15, 2017, the plaintiff was traveling in an easterly direction near milepost 8.3 on New Jersey Route 24 in Summit. A vehicle was traveling behind the plaintiff's vehicle and the defendant was traveling behind that vehicle. The plaintiff's vehicle was stopped in traffic when the vehicle operated by the defendant struck the rear of the third-party vehicle and pushed it into the rear of the plaintiff's vehicle. The plaintiff maintained that the force of the collision caused significant, permanent injury.

As a result of the collision, the plaintiff sustained right shoulder tears requiring arthroscopic surgery; disc herniations at C3-4 and C5-6 with radiculopathy; disc bulges at C4-5, C6-7, L3-4, L4-5, L5-S1 with radiculopathy and facet syndrome. The plaintiff treated with 2 lumbar epidural injections and pain management. The defendant presented expert testimony challenging the extent and causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $225,000. Following arbitration and prior to trial, the parties settled the matter in the amount of $220,000.

REFERENCE

Intriago vs. Hoag. Docket no. L-003700-17; Judge Alan G. Lesnewich.

Attorney for plaintiff: Salvatore Imbornone, Jr. of McHugh & Imbornone, P.A. in Florham Park, NJ. Attorney for defendant: Christopher M. Kolb of Law Offices of Viscomi & Lyons in Morristown, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Multiple vehicle collision – Co-defendant drivers collide with each other and plaintiff's vehicle secondarily – Anterior and posterior cervical disc bulges at C4-5; bilateral C5 radiculopathies with positive EMG; chronic dorsal myositis; chronic lumbosacral sprain with radiculitis; left shoulder sprain and sprain of left hip – 11 months of physical therapy; trigger point injections.

Hudson County, NJ

In this motor vehicle negligence case, the 34-year-old plaintiff asserted that the defendant driver struck the vehicle in which she was a passenger with such force that it caused significant, permanent injury. The plaintiff brought suit against 2 defendant drivers and the defendant owner of 1 of the vehicles. The defendants denied liability and contested the plaintiff's damages.

On November 4, 2016, the plaintiff was a passenger in a vehicle traveling north on Route 440 in Jersey City. The plaintiff alleged that the first defendant was driving on the shoulder of the road and caused the co-defendant to collide with the plaintiff's vehicle. The plaintiff maintained that one or both of the defendant drivers were negligent in causing their vehicles to collide with each other and secondarily collide 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 anterior and posterior cervical disc bulges at C4-5 impinging on the thecal sac; bilateral C5 radiculopathies with positive EMG finding; chronic dorsal myositis; chronic lumbosacral sprain with radiculitis; left shoulder sprain and sprain of the left hip. The plaintiff underwent 11 months of physical therapy, one epidural injection, and trigger point injections.

The first defendant driver testified that the co-defendant driver cut him off and came into his lane, forcing his vehicle into the side of the plaintiff's vehicle. The co-defendant denied this version of event and pointed to the defendant's testimony to officers at the scene that he was driving on the shoulder of the road. The co-defendant asserted that she moved into the right lane to make a right turn and that the defendant had come from the shoulder into the co-defendant's turning lane and collided with her vehicle pushing it into the plaintiff's vehicle. The defendants presented the report of an IME who opined that the plaintiff's disc bulge was degenerative in nature and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 40% liability to the first defendant and 60% to the co-defendant driver. The arbitrator set damages at $35,000 apportioned per the breakdown of liability by defendant. The co-defendant driver settled with the plaintiff prior to trial for an undisclosed sum. The matter proceeded to trial as to the first defendant wherein the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Persaud vs. Pesanello et al. Docket no. L-002904-17; Judge Anthony V. Delia, 10-17-19.

Attorney for plaintiff: Alexander Bentsen of Miller Meyerson & Corbo in Jersey City, NJ. Attorney for defendant: Ryan J. Gaffney of Chasan Lamparello Mallon & Cappuzzo, P.C. in Secaucus, NJ.

Parking Lot Exit Collision

$650,000 GROSS VERDICT

Motor vehicle negligence – Parking lot exit collision – Plaintiff contends defendant fails to yield as he turns right from parking lot – Tears of knee and shoulder – Otherwise necessary arthroscopic surgeries contraindicated because of pre-existing cardiac and pulmonary conditions.

Bergen County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in his early 60s, contended that the defendant driver negligently failed to yield before turning right from a parking lot, causing the collision in which the plaintiff sustained injuries. The defendant asserted that the plaintiff failed to make observations and was comparatively negligent.

The defendant maintained that he was established in the right lane when the plaintiff collided with him. There was no independent eyewitness testimony,

The plaintiff suffered tears of the knee and dominant shoulder. The plaintiff contended that otherwise necessary arthroscopic surgery to the knee and shoulder is contraindicated because of preexisting cardiac and pulmonary conditions and that the substantial pain and limitations will remain permanently.

The plaintiff made no income claims.

The jury found the defendant 90% negligent, the plaintiff 10% comparatively negligent and the $650,000 gross award was reduced accordingly.

Subscribe Now

REFERENCE

Plaintiff's orthopedic surgeon expert: Robert Greenblum, M.D. from Fairlawn, NJ. Plaintiff's physiatry expert: Thomas Finley, M.D. from Saddle Brook, NJ. Plaintiff's spinal surgeon expert: Steven Schiebert, M.D. from Bridgewater, NJ.

Nasruddin vs. Plati. Docket no. BER-L-355-18; Judge Michael Bukas.

Attorney for plaintiff: Eugene S. Wishnic of Wishnic & Jerushalmy in New Brunswick, NJ.

Parking Spot Collision

$10,000 RECOVERY

Motor vehicle negligence – Parking spot collision – Plaintiff passenger claims defendant failed to look while pulling out of parking space and struck plaintiff's vehicle – Disc herniation at L5-S1 and disc bulge at L4-5.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the vehicle in which she was a passenger with such force that it caused significant, permanent injury. The defendant denied liability, claiming that the driver of the plaintiff's vehicle caused or contributed significantly to the collision between the vehicles.

On August 22, 2016, the plaintiff was a passenger in a vehicle traveling at 60 Park Avenue in Plainfield. The defendant was pulling out from a parking space. The plaintiff contended that the defendant negligently failed to ascertain that it was safe to leave the parking space and enter the roadway. As the defendant was exiting the parking space, she struck the plaintiff's vehicle resulting in permanent injuries to the plaintiff.

As a result of the collision, the plaintiff sustained lumbar disc herniation at L5-S1, confirmed on MRI and disc bulge at L4-5. The defendant denied that the plaintiff suffered a permanent injury sufficient to seek reparation.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $12,500. Following arbitration and prior to trial, the parties settled for $10,000.

REFERENCE

Oxlaj vs. Lema-Montufar. Docket no. L-005924-18; Judge Robert Gardner, 02-17-20.

Attorney for plaintiff: Michael W. Carr, Esq. in North Arlington, NJ. Attorney for defendant: Dominick Ciallella of Gregory P. Helfrich & Associates in Summit, NJ.

Rear End Collision

$160,000 RECOVERY

Motor vehicle negligence – Rear end collision – Lumbar and cervical herniations – Lumbar surgery without hardware – No property damage – No income claims.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff driver in his mid 40s contended that he was struck in the rear while stopped at a red light. The plaintiff asserted that he developed severe radiating lumbar and cervical pain and herniations were confirmed by MRI. The defendant pointed out that there was no damage to the plaintiff's vehicle.

The plaintiff maintained that extensive conservative care was inadequate and that he subsequently required lumbar surgery. The plaintiff contended that he will permanently suffer very substantial symptoms. The defendant denied that the plaintiff suffered the claimed injuries.

The plaintiff made no income claims.

The defendant had a combined, single limit policy of $300,000. The case settled prior to trial for $160,000.

REFERENCE

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

Gomez vs. Barria, et al. Docket no. MRS-L-1234-21, 06-20-22.

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

$5,712 VERDICT

Motor vehicle negligence – Rear end collision – C5-6 disc bulge with radiculopathy; C6-7 disc herniation; post acute cervical and lumbar strain/sprain and acute aggravation of chronic low back pain – Chiropractic treatment and pain management.

Burlington County, NJ

In this motor vehicle negligence case, the plaintiff, a dog groomer, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff husband made a claim for loss of consortium. The defendant denied liability and contested the plaintiff's damages. On February 16, 2016, the plaintiff was traveling northbound on Route 130 in Willingboro when she was suddenly and unexpectedly struck from behind by a motor vehicle driver by the defendant. The plaintiff had stopped as she approached the intersection of Route 130 and Rancocas Road. The plaintiff argued that the defendant negligently failed to observe that the plaintiff had stopped and struck her vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries. The plaintiff was taken from the scene to the emergency room where she complained of shoulder pain.

As a result of the incident, the plaintiff sustained C5-6 disc bulge with radiculopathy; C6-7 disc herniation; post acute cervical and lumbar strain/sprain; and acute aggravation of chronic low back pain. The plaintiff reported that she wears a neck brace and takes prescribed pain medication. The plaintiff claimed that she has constant pain, trouble sleeping, use of a TENS unit, modified work, inability to lift, and other limitations on activities of daily living.

The defendant argued that the plaintiff operated her vehicle negligently and contributed to or caused the collision. The defendant also argued that the plaintiff's injuries were not permanent. The defendant pointed out that the plaintiff made no complaint of pain or injury at the scene and did not indicate that she had any neck pain 2 days later when she presented to her chiropractor.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $75,000 to the plaintiff and $25,000 to the plaintiff husband for loss of consortium. Following arbitration, the plaintiff made an offer to take judgment in the amount of $45,000. The offer was not accepted and the matter went to trial.

The jury found in favor of the plaintiff and against the defendant and awarded damages in the amount of $5,712 broken down as follows: $5,600 in damages and $112 in interest.

REFERENCE

Hatcher vs. Miraglia. Docket no. L-000343-18; Judge Janet Z. Smith.

Attorney for plaintiff: Yoonieh Ahn of Hagner & Zohlman, LLC in Cherry Hill, NJ. Attorney for defendant: Brad A. Parker of Parker Young & Antinoff, LLC in Marlton, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Rear end collision – Herniated discs at L5-S1, C3-4 and C4-5 confirmed by MRI – Epidural injections recommended – Arbitration finds defendant 100% liable with 35,000 in damages.

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 January 9, 2016, the plaintiff was traveling westbound on Bloomfield Avenue at its intersection with Claremont Avenue in Verona, New Jersey. The plaintiff asserted that the defendant, traveling behind the plaintiff, negligently failed to maintain speed and control of his vehicle and failed to stop behind the plaintiff. The plaintiff was suddenly and forcibly rear-ended by the defendant's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained herniated discs at L5-S1, C3-4, and C4-5 confirmed by MRI. Epidural injections were recommended but not done. The defendant argued a lack of causal relationship between the subject collision and plaintiff's injuries. The defendant also had an expert radiologist who would disagree with the findings on the plaintiff's MRIs.

Prior to arbitration, the plaintiff made an offer to take judgment in the amount of $37,500. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $35,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Fano-Galeotafiore vs. Conley, et al. Docket no. L-0008577-17; Judge Bridget A. Stecher, 01-14-20.

Attorney for plaintiff: Alan J. Markman of Markman & Canaan, LLC in Bloomfield, NJ. Attorneys for defendant: James W. McCartney and Mark S. Kundla of Hardin, Kundla, McKeon & Poletto in Springfield, NJ.

Subscribe Now

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniation and disc bulges – Plaintiff claims $18,000 in unpaid medical expenses – Conservative treatment – Defendant denies permanent injury – Plaintiff recovers $2,500 per high/low agreement.

Bergen 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 February 27, 2016, the plaintiff was traveling in a westerly direction on East Palisades Avenue at the intersection of East Street in Englewood. The defendant was traveling directly behind the plaintiff. The plaintiff asserted that the defendant was negligently driving at excessive speed and failed to make proper observations of traffic. The defendant struck the rear of 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 one disc herniation and three disc bulges. The plaintiff claimed $18,000 in unpaid medical expenses. The defendant denied that the plaintiff suffered a permanent injury. The defendant asserted that the plaintiff sustained nothing more than neck strain/sprain.

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

The parties entered into a pre-trial high/low agreement wherein the plaintiff would receive a maximum of $55,000 in the event of the jury awarding damages above that amount, and a minimum of $2,500 in the event of a defendant's verdict or an award below that amount. The jury found in favor of the defendant; thus the plaintiff recovered $2,500 in damages.

REFERENCE

Greenidge vs. Chartouni. Docket no. L-001217-18; Judge Mary F. Thurber, 01-22-20.

Attorney for plaintiff: Bertram Siegel of Law Office of Siegel & Siegel in Teaneck, NJ. Attorney for defendant: Sarah K. Resch of Law Office of Eric H. Bennett in Hackensack, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniations at C4-5 and C5-6; annular tear at both levels; disc bulges at L5-S1 and L4-5 and soft tissue right shoulder injury – Emergency room treatment – Pre-trial arbitration finds defendant liable with $35,000 in damages.

Hudson County, NJ

In this motor vehicle negligence case, the plaintiff, a 38-year-old woman, 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 March 13, 2016, the plaintiff was traveling east on Montgomery Street, west of Summit Avenue in Jersey City. The defendant was also traveling east on Montgomery Street behind the plaintiff's vehicle. The plaintiff asserted that the defendant negligently operated her vehicle such that she collided with the rear of the plaintiff's vehicle and caused the plaintiff serious injury. The defendant fled the scene of the accident.

As a result of the collision, the plaintiff sustained disc herniations at C4-5 and C5-6; annular tear at both levels; disc bulges at L5-S1 and L4-5 and soft tissue right shoulder injury. The plaintiff had no prior injuries and received treatment in the emergency room following the accident.

The defendant disputed the nature and extent of the plaintiff's injuries. The defendant's IME opined that the plaintiff did not suffer herniations, but rather disc bulges and soft tissue injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $35,000. Following arbitration, the plaintiff made an offer to take judgment against the defendant in the amount of $75,000. The offer was declined and the matter proceeded to trial wherein the jury returned a verdict in favor of the defendant.

REFERENCE

Jimenez vs. Gomez. Docket no. L-000973-17; Judge Mary K. Costello.

Attorney for plaintiff: George Rios of Law Office of George A. Rios, P.A. in Jersey City, NJ. Attorney for defendant: Mindy Fox of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Sideswipe Collision

$120,000 RECOVERY

Motor vehicle negligence – Sideswipe collision – Plaintiff driver and plaintiff passengers injured in collision caused by defendant driver on on-ramp – First plaintiff passenger: cervical spine sprain with disc herniations at C4-5, C5-6 and C6-7 confirmed on MRI and right carpal tunnel syndrome with surgical release – Second plaintiff passenger: cervical spine sprain with disc herniations at C4-5 and C5-6; lumbar spine sprain with disc bulges at L4-5 and L5-S1; 3 epidural injections – Plaintiff driver: cervical spine sprain with disc herniations at C5-6 and C6-7; cervical epidural.

Hudson County, NJ

This motor vehicle negligence case arose form a collision which occurred on April 34, 2017 when the plaintiffs' vehicle was traveling north on the ramp on Secaucus Road to Tonnelle Avenue. The defendant driver was operating a vehicle in the course of his employment also traveling on Secaucus Road. The plaintiffs contended that the defendant negligently failed to observe the plaintiffs' vehicle on the ramp and struck the vehicle with such force that the collision resulted in permanent injuries to all 3 plaintiffs. The defendant stipulated liability but contested causation of the plaintiffs' injuries.

As a result of the collision, the first plaintiff passenger, a 62-year-old woman, sustained cervical spine sprain with disc herniations at C4-5, C5-6 and C6-7 confirmed on MRI; and right carpal tunnel syndrome with surgical release. The second plaintiff passenger, a 63-year-old man, suffered cervical spine sprain with disc herniations at C4-5 and C5-6; lumbar spine sprain with disc bulges at L4-5 and L5-S1; he treated with 3 cervical spine epidural injections. The plaintiff driver, a 40-year-old woman, sustained cervical spine sprain with disc herniations at C5-6 and C6-7 with annular tear at C4-5; she treated with one cervical spine epidural.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $55,000 to the first plaintiff passenger; $60,000 to the second plaintiff passenger; and $40,000 to the plaintiff driver. Following arbitration and prior to trial, the parties settled for $120,000 broken down as follows: $50,000 to the first plaintiff passenger; $35,000 to the second plaintiff passenger; and $35,000 to the plaintiff driver.

REFERENCE

Pereira, et al. vs. Yurkow, et al. Docket no. L-001525-18; Judge Kimberly Espinales-Maloney, 02-19-20.

Attorney for plaintiff: Nicolas Barone of Peter N. Davis & Associates in Paterson, NJ. Attorney for defendant: Michael J. Kelly of Law Office of Patricia A. Palma in Berkeley Heights, NJ.

Single Vehicle Collision

$265,000 RECOVERY

Motor vehicle negligence – Single vehicle collision – Passenger ejected after driver loses control and car flips over – Death of 21-year-old unmarried woman.

Bergen County, NJ

This motor vehicle negligence case involved a single vehicle accident which occurred when the car turned over after the defendant host driver lost control and crashed upon trying to change lanes, killing the plaintiff passenger. The host driver was inebriated and settled for her $15,000. She is currently incarcerated. The defendant auto sales company contended that the car was properly sold as is. This defendant maintained that the sole cause of the collision was the negligence of the defendant inebriated host driver.

The decedent suffered numerous painful skeletal fractures and lacerations of liver and spleen due to blunt impact. The plaintiff maintained that she experienced more than half an hour of severe conscious pain and suffering before succumbing.

The car was the first purchased by the driver and she did not test driver it before purchase approximately one month earlier. The plaintiff's mechanical engineer contended that the car was dangerous and should not have been sold. The expert concluded that the wheels had been out of alignment for some time, resulting in uneven wear on the tires, with the sides of several tires becoming bald.

The case settled prior to trial for $250,000 from the dealership and the driver's $15,000 policy.

REFERENCE

Plaintiff's mechanical engineer expert: Joseph R. Barrett from Allentown, PA.

Gomez vs. Cruz, et al. Docket no. BER-L-2205-18, 03-22.

Attorney for plaintiff: Lisa A. Lehrer of Davis Saperstein & Salomon, PC in Teaneck, NJ.

Subscribe Now

PREMISES LIABILITY

Fall Down

$20,000 RECOVERY

Premises liability – Fall down – 2-year-old plaintiff trips on umbrella stand at defendant apartment complex swimming pool deck area – 1.5 cm laceration at left eyebrow – Cleaning and closing laceration with 3 sutures.

Middlesex County, NJ

In this premises liability case, the infant plaintiff, a 2-year-old girl, asserted that the defendant apartment complex negligently placed an umbrella stand in the pool area where it created a tripping hazard and, in fact, caused the minor plaintiff to trip and fall sustaining serious injury. The defendant made no opposing argument to the plaintiff's claims and settled the matter.

On May 26, 2019, the minor plaintiff was at the defendant apartment complex where she resided, playing at the complex swimming pool. The plaintiff tripped on a negligently placed outdoor umbrella stand, fell and sustained injury. The plaintiff contended that the defendant was the owner in possession and control of the residential complex, specifically of all the common areas of the complex, including the swimming pool area. The plaintiff claimed to have sustained injury because of the negligence of the defendant in failing to make the pool area safe for tenants and their children.

As a result of the fall, the plaintiff sustained a 1.5 cm laceration at the left eyebrow. The plaintiff's treatment consisted of cleaning the wound, and closing the laceration with 3 sutures. The sutures were removed on June 1, 2019, and the plaintiff was discharged from treatment with the diagnosis of a well healed laceration warranting no further treatment.

The parties settled the matter prior to trial in the amount of $20,000 broken down as follows: $4,930 in attorney fees; $278 in costs and disbursements and $14,791 in net damages to the minor plaintiff.

REFERENCE

Perrone vs. Governors Pointe Village II. Docket no. L-004077-18; Judge Michael V. Cresitello, Jr., 02-06-20.

Attorney for plaintiff: Michael R. Byron of Devlin Associates, P.C. in Philadelphia, PA.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Defective curbing – Plaintiff falls on defendant hotel property between her room and pool – Non-displaced fracture of right radial head and traumatic joint effusion; avulsion fracture of lateral malleolus of right fibula – Medical lien of $2,500 – Arbitrator finds each party 50% at fault with gross damages of $60,000.

Cape May County, NJ

In this premises liability case, the plaintiff asserted that the defendant hotel knew or should have known of a defect in curbing on the property leading from the hotel to its pool. The plaintiff asserted that the defendant failed to repair, maintain or mitigate the defect such that the plaintiff was caused to fall and suffer significant injury. The defendant denied liability.

On August 26, 2016, the plaintiff was a business invitee at the defendant hotel located on Kennedy Beach Drive in North Wildwood. The plaintiff was walking out of her hotel room to the pool when she was caused to lose her balance, slip, stumble and fall sustaining serious and permanent injuries.

As a result of the fall, the plaintiff sustained a nondisplaced fracture of the right radial head and a traumatic joint effusion; and avulsion fracture of the lateral malleolus of the right fibula. The plaintiff claimed a medical lien of $2,500. The plaintiff claimed continued pain in her right ankle and foot daily. The defendant denied any negligence in maintenance of its property and asserted that the plaintiff's fall and resulting injuries were due to the negligence of the plaintiff herself.

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 $60,000 reduced to $30,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Glackin vs. Wyoming Properties, Inc. et al. Docket no. L-000137-18; Judge James H. Pickering, Jr.

Attorney for plaintiff: Laura J. Levenberg of Schatz & Steinberg, P.C. in Cherry Hill, NJ. Attorney for defendant: Michael Muscio of Muscio, Kaplan & Helfrich, LLC in Denville, NJ.

DEFENDANT'S VERDICT

Premises liability – Fall down – Disc herniations at C4-5, T3-4, T6-7, T7-8, T10-11; disc bulges at C3-4; multiple rib fractures; pneumothorax; nondisplaced fracture of transverse process at T10; displaced fractures of transverse process and subsequent lung and breast infection – Hospitalization for 5 days – Defendant argues plaintiff intoxicated and fell due to alcohol impairment.

Hudson County, NJ

In this premises liability case, the plaintiff, a 42-year-old lawful business invitee on the defendant's premises, asserted that the defendant failed to prevent or warn of a hazardous condition on the property and, in fact, pointed the plaintiff toward the hazard causing her to fall and sustain serious injuries. The defendant denied liability and maintained that the plaintiff should have exercised reasonable precautions for her own safety. The defendant also contended that the plaintiff's fall was due to her intoxication.

On May 29, 2016, the plaintiff attended a beach party in Long Branch with friends. While driving home from the party, the plaintiff needed a restroom and the group stopped at the defendant gas station, located at 71 Highway 36 West in West Long Branch, where the plaintiff requested use of the restroom. The defendant's employee told the plaintiff the restroom was under construction and directed her toward the back of the building. The plaintiff believed there to be a portable restroom in the back and walked around the building where the attendant had pointed. The plaintiff slipped on a foreign substance in the area behind the building and fell 6 feet down an embankment onto a paved area. The plaintiff alleged that the fall resulted in permanent injuries.

As a result of the fall, the plaintiff, who had a prior history of spinal fusion surgery at C5-6, sustained disc herniations at C4-5, T3-4, T6-7, T7-8, T10-11; disc bulges at C3-4; post-op changes at C5-6; multiple rib fractures; pneumothorax; nondisplaced fracture of the transverse process at T10; displaced fractures of the transverse process at L1 and L2 and L5-S1 radiculopathy. The plaintiff was hospitalized for 5 days while she underwent insertion of chest tubes for pneumothorax. Her other injuries were treated with orthopedic treatment, epidural injections, physical therapy and chiropractic treatment. The plaintiff developed a lung infection after her pneumothorax which required re-hospitalization for an additional 5 days. The plaintiff claimed significant ongoing pain and limitations due to her injuries.

The defendant noted that the portion of the property where the plaintiff fell was not owned, maintained or controlled by the defendant at the time of the subject accident. The defendant presented the opinion of an expert on drug and alcohol intoxication who opined that the plaintiff's blood/alcohol level was between.18% and.20% and that the relative risk for a fall-down injury was more than 60 times greater compared with being sober. The defendant's expert asserted that the plaintiff's excessive alcohol use and intoxication on the day in question impaired the plaintiff's cognitive and psychomotor abilities and were the primary cause of the plaintiff's fall-down injury.

The jury found no negligence by the defendant and returned a verdict in favor of the defendant.

REFERENCE

Pelardis vs. Avenue Le Club, et al. Docket no. L-001282-18; Judge Kimberly Espinales-Maloney, 02-13-20.

Attorney for plaintiff: Lane M. Ferdinand of Law Offices of Lane M. Ferdinand, P.C. in Springfield, NJ. Attorney for defendant: Lisa Marie DeRogatis of Law Offices of James H. Rohlfing in Morristown, NJ.

Hazardous Premises

$175,000 RECOVERY

Premises liability – Hazardous premises – Fall down – Failure of defendant cemetery to warn of dangerous drop-off between parking lot and grave site – Ankle fracture.

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

In this action for premises liability, the 53-year-old plaintiff contended that a dangerous and hidden drop-off of several feet was situated between the car and the grave site at the cemetery. The plaintiff maintained that as a result, she fell and suffered an ankle fracture. The defendant maintained that the premises were safe and denied that prior incidents had occurred.

The plaintiff asserted that the incident could have been avoided by the simple placement of a warning sign. The plaintiff required an open reduction/internal fixation and claimed she will suffer permanent pain and difficulties.

The plaintiff was on disability because of unrelated kidney difficulties.

The case settled prior to trial for $175,000.

REFERENCE

Plaintiff's engineer expert: Blake Pantuk, PE from Malverne, PA.

Plaintiff attending funeral of family friend vs. Defendant cemetery.

Attorney for plaintiff: Scott M. Wilhelm of Winegar, Wilhelm, Glynn & Roemersma, P.C. in Phillipsburg, NJ.

Subscribe Now

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

$2,425,000 CONFIDENTIAL PRE-SUIT RECOVERY – MEDICAL MALPRACTICE – ANESTHESIOLOGY – DECEDENT NOT PROPERLY MONITORED DURING UPPER ENDOSCOPY PROCEDURE – DEPRIVATION OF OXYGEN – CARDIAC ARREST AND SEVERE BRAIN INJURY – WRONGFUL DEATH OF 46-YEAR-OLD FEMALE.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant anesthesiologist was negligent and failed to properly monitor the decedent while she was under sedation for an elective procedure. As a result of the defendant's negligence, the decedent suffered cardiac arrest and brain injury from lack of oxygen which led to her death.

The anesthesia was started at 12:05 p.m. 4 minutes later, the patient's vitals were showing no O2 saturation and pulse rates between 1 and 114. The defendant anesthesiologist failed at that time to awaken the patient and instead elected to administer additional anesthesia to the patient. Finally, 13 minutes after anesthesia was initially administered, the procedure was aborted. The patient had no pulse and it was determined that she had suffered cardiac arrest; CPR was commenced and she was transported to the hospital by emergency medical services She was taken off life support 3 days after the procedure.

The defendant anesthesiologist agreed to resolve the claim prior to institution of suit for the sum of $2,425,000 in a confidential settlement between the parties.

REFERENCE

Estate of Decedent vs. Anesthesiologist Roe. 10-15-21.

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

$1,750,000 RECOVERY – MEDICAL MALPRACTICE – GYNECOLOGY – DEFENDANT'S PRACTICE CONTINUES TO PRESCRIBE ESTROGEN CREAM TO PLAINTIFF'S DECEDENT WITHOUT PROPERLY MONITORING FOR INCREASED RISK OF CANCER – ENDOMETRIAL CANCER – WRONGFUL DEATH OF 58-YEAR-OLD FEMALE.

Montgomery County, PA

In this medical malpractice matter, the decedent's husband brought this wrongful death action against the doctors, nurses and staff that treated his wife for painful intercourse by prescribing his wife unopposed estrogen which caused her to develop endometrial cancer that resulted in her death. The defendants denied all allegations of negligence and maintained that the decedent was treated in accordance with all medical standards.

The estate maintained that the defendants were negligent in failing to obtain appropriate and timely diagnostic tests including ultrasound and radiographic imaging, failing to provide progesterone for a patient receiving estrogen in order to reduce the risk of endometrial cancer, failing to properly monitor a patient receiving unopposed estrogen, and failing to recognize the decedent's signs and symptoms of endometrial cancer. The defendant's negligence resulted in the premature death of the plaintiff's decedent

A settlement of $1,750,000 was reached between the parties.

REFERENCE

Plaintiff's ob/gyn expert: Miriam Sivkin, M.D. from Milford, CT. Plaintiff's oncology expert: Richard Hirshman, M.D. from New York, NY.

Estate of Sharon Zirin-Korger by Charles Korger vs. Sharon Rudo M.D., Mainline Healthcare dba Lawrence Park Ob/Gyn, Margaret Dooley CRNP, Melanie Winter CRNP and Mainline Hospitals dba Lankenau Medical Center. Case no. 201625944; Judge Melissa Sterling, 05-26-22.

Attorney for plaintiff: Matthew Casey of Ross Feller Casey, LLP in Philadelphia, PA. Attorney for defendant: Carolyn Bohmueller of O'Brien & Ryan in Plymouth Meeting, PA.

$1,000,000 RECOVERY – MEDICAL MALPRACTICE – SURGEON NEGLIGENCE – DEFENDANT SURGEON PERFORMS LAPAROSCOPIC HERNIA SURGERY ON PLAINTIFF'S DECEDENT – TROCAR INJURY WHICH RESULTS IN FATAL ABDOMINAL BLEED – WRONGFUL DEATH OF 56-YEAR-OLD FEMALE.

Montgomery County, PA

The parties in this medical malpractice action settled for a million dollars following the death of the plaintiff's decedent after trocar injury caused an abdominal bleed during routine hernia repair surgery. The estate sued the defendant surgeon, the physician's assistant who assisted with the procedure and the hospital where the procedure was performed. All defendants denied all allegations of negligence and injury.

The estate of the decedent maintained that the defendants were negligent in failing to protect the decedent's wellbeing during the laparoscopic procedure and negligently hiring, training, and retaining the defendant doctor and physician's assistant. In addition, the estate made claims for wrongful death and survival. The decedent is survived by adult daughter.

The parties settled the case for $1,000,000.

REFERENCE

The Estate of Deborah J. Grubb by Karalee Acito vs. William Asihene, M.D., Pottstown Clinic Company LLC, Pottstown Hospital, LLC, Pottstown Memorial Medical Center, Aaron Serulneck PA-C, Surgical Partners of Pottstown, Tower Health. Case no. 2020-17922; Judge Lois E. Murphy, 06-09-22.

Attorney for plaintiff: Joseph DeAngelo of Barrett DeAngelo in Philadelphia, PA. Attorney for defendant: Amy Blackmore of Saxton & Stump in Philadelphia, PA.

PRODUCT LIABILITY

$107,000,000 RECOVERY – PRODUCT LIABILITY – FAILURE TO WARN – STATE SOUGHT RECOVERY OF DAMAGES ON BEHALF OF INDIVIDUALS SUFFERING FROM OPIOID-RELATED ADDICTION, ABUSE AND DEATH – 2 OPIOID MANUFACTURERS AGREE TO SUPPLY NALOXONE TO RESOLVE ROLE IN OPIOID EPIDEMIC – ALLEGED MISREPRESENTATION OF RISKS ASSOCIATED WITH PRESCRIPTION OPIOIDS.

Providence County, RI

In this action, the State of Rhode Island resolved claims against 2 prominent drug manufacturers, the last remaining opioid defendants in the state's principal opioid litigation. The matter was resolved with a settlement.

The defendants Teva Pharmaceuticals and Allergan are manufacturers of synthetic opioids including those containing codeine, fentanyl, morphine, oxycodone, and clonazepam. The defendants are among a larger industry of prescription opioid providers including the defendant companies Purdue Pharma and its subsidiaries, Janssen Pharmaceuticals, and multiple distributors associated with these products. These defendants were collectively accused of having knowingly misrepresented the risk posed by prescription opioids in order expand their use and drive up profits. The defendants, particularly distributors, were accused of disregarding obligations to identify suspicious orders and customers, contributing to the opioid abuse within the state, and the opioid abuse crisis on the whole.

The matter was resolved with a settlement, including $28.5 million over 13 years, $21 million from Teva and $7.5 million from Allergan. The settlement also includes one million free units of Naloxone spray over the next 10 years. The state will also receive 67,000 free 30-pill bottles of the treatment drug Suboxone in various doses over the next 10 years. The estimated total value of the settlement is $107 million.

REFERENCE

Attorney General Peter F. Neronha vs. Purdue Pharma L.P., et al. Case no. PC-2018- 4555, 03-21-22.

Attorney for plaintiff: Adi Goldstein of State of Rhode Island in Providence, RI. Attorneys for plaintiff: Fidelma Fitzpatrick, Robert J. McConnell, Vincent Greene and Kate E. Menard of Motley Rice, LLC in Providence, RI.

Subscribe Now

MOTOR VEHICLE NEGLIGENCE

$7,011,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – TAXI NEGLIGENCE – BROADSIDE COLLISION – DEFENDANT DRIVER OPERATING DEFENDANT TRANSPORTATION COMPANY'S VEHICLE DISREGARDS STOP SIGN AND ENTERS INTERSECTION STRIKING PLAINTIFF'S VEHICLE – CERVICAL DISC HERNIATIONS – BILATERAL RADICULOPATHY – SURGERY.

Harris County, TX

The plaintiff in this motor vehicle negligence action maintained that she suffered serious and permanent injuries to her neck when she was lawfully proceeding through a Texas intersection and her vehicle was struck by the defendant who entered the same intersection without stopping for a stop sign. The defendant driver and his employer both denied liability and injury.

Following the accident, the plaintiff presented for neck pain with numbness and tingling down both arms. Diagnostic tests revealed disc herniations at C5-6 and C6-7 with radiculopathy and compression of the spinal cord. She underwent epidural steroid injection and facet blocks. She underwent radiofrequency ablation, but the pain and numbness persisted. She eventually required fusion surgery.

The jury found that the defendant driver was negligent and that his negligence caused the accident. The jury also found that at the time of the accident the defendant driver was in the course and scope of his employment with the defendant transportation company. The jury awarded the plaintiff past damages of $1,135,000 and future damages of $5,876,000, for a total of $7,011,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Stephen I. Esses, M.D. from Houston, TX.

Diane Perez vs. Delwende Nikiema and Greater Houston Transportation Company dba Yellow Cab. Case no. 201632437; Judge Lauren Reeder, 05-18-21.

Attorney for plaintiff: Joseph Brent Stephens of The Stephens Law Firm Accident Lawyers in Houston, TX. Attorney for defendant: James L. Gascoyne of Gascoyne & Bullion in Sugarland, TX. Attorney for defendant: Martyn B. Hill of Pagel, Davis & Hill in Houston, TX.

$1,125,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – CERVICAL HERNIATION AND SEVERE CORD COMPRESSION – 3-LEVEL FUSION – LIMITED PRIOR EARNINGS.

Union County, NJ

This motor vehicle negligence case involved a 60-year-old plaintiff driver who was stopped at a yield sign waiting to enter Route 22 West in Mountainside when he was struck from behind. The plaintiff contended that the defendant failed to keep a proper following distance. The plaintiff asserted that as a result of the accident, he developed unrelenting neck pain with radiating, shooting pain and numbness into his left hand. The plaintiff maintained that he suffered herniated discs at C4-5, C5-6 and C6-7 with resulting cord compression. The defendant maintained that the accident did not cause herniations, and that the plaintiff's cervical complaints were attributable to pre-existing degenerative disease.

The plaintiff underwent conservative care, which included physical therapy, injections, acupuncture and chiropractic care. This conservative care provided short-term relief only and the plaintiff then underwent a 3-level anterior cervical discectomy and fusion at C4-5, C5-6 and C6-7. The defendant had $500,000 in primary coverage and a $5,000,000 umbrella. The case settled prior to trial for $1,125,000.

REFERENCE

Plaintiff's biomechanical expert: Steven C. Batterman, Ph.D. from Cherry Hill, NJ. Plaintiff's life care planning expert: Linda Lajterman, RN, CCM from Stockholm, NJ. Plaintiff's orthopedic surgeon expert: Gregory Charko, M.D. from Union, NJ.

Sillecchia vs. Wyman. Docket no. UNN-L-3399-18, 05-16-22.

Attorney for plaintiff: Raymond A. Gill, III of Gill & Chamas in Woodbridge, NJ.

$336,000 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/BUS COLLISION – INEBRIATED HOST DRIVER COLLIDES WITH LEFT TURNING BUS – INSTANT DEATH OF HOST WHO LEFT 2 YOUNG CHILDREN – EMOTIONAL DISTRESS OF CHILDREN.

Galveston County, TX

The plaintiff in this action for motor vehicle negligence contended that the driver of a city bus negligently failed to yield before turning left and through a break in the median divider. The bus was perpendicular to the host vehicle before turning, and struck the host vehicle, killing the driver.

The verdict sheet contained an advisement that if the jury found the host more than 50% negligent, they should refrain from rendering an award.

The jury found the defendant 51% negligent, the host 49% negligent and rendered a gross award of $336,000. In their award, the jury advised that the net award should be shared equally by the daughters only and that no award was rendered to the decedent's mother.

REFERENCE

Reyna vs. City of Galveston, et al. Case no. 20-CV-0248, 06-07-22.

Attorney for plaintiff: Nolan McConville of The Benton Law Firm in Dallas, TX.

$750,000 RECOVERY – PREMISES LIABILITY – FALLING OBJECT – MINOR PLAINTIFF INJURED WHEN CROCK POT OF BOILING WATER FALLS AND SPILLS ONTO HIM AT DEFENDANT SOCIAL CLUB – 10% TOTAL BODY SURFACE AREA SECOND DEGREE BURNS INVOLVING CHIN, NECK, RIGHT THIGH, LEFT THIGH, AND LEFT KNEE – SURGERY REQUIRED.

Westchester County, NY

In this premises liability action, the minor plaintiff was injured when a crock pot full of boiling water fell onto him at the defendant social club. The defendants generally denied all allegations of negligence.

The plaintiffs maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises. Consequently, the minor plaintiff sustained injuries, including 10% total body surface area second degree burns involving the chin, neck, right thigh, left thigh, and left knee. The minor plaintiff's injuries required surgery, including debridement of the burns and wound dressing.

The parties entered into a settlement for $750,000.

REFERENCE

Plaintiff's pediatric psychotherapy expert: Lauren Arnau, Ph.D. from Scarsdale, NY. Plaintiff's plastic surgery expert: Kenneth O. Rothaus, M.D. from New York, NY.

K. J. O. an infant, Jennifer B. O'Rourke mother and natural guardian of K.J.O., an infant vs. The Amackassin Club, Inc. Index no. 64106/2020; Scp Part, 11-18-21.

Attorney for plaintiff: William H. Bave of Wilson, Bave, Conboy, Cozza, & Couzens, P.C. in White Plains, NY. Attorney for defendant: Katrine A. Beck of Fullerton Beck, LLP in White Plaints, NY.

PREMISES LIABILITY

$525,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF SLIPS AND FALLS AT BAR – DOMINANT ELBOW FRACTURE – SURGERY – PLAINTIFF THEN DEVELOPS CELLULITIS – NO INCOME CLAIMS.

Bergen County, NJ

In this action for premises liability, the plaintiff contended that he slipped and fell on a wet floor near the bar sustaining serious injury. There was no evidence that the plaintiff was inebriated. The plaintiff brought the action under a $1,000,000 general liability policy. The defendant denied that it was negligent and contended that the cause of the incident was the failure of the plaintiff to be more careful.

The plaintiff asserted that he suffered a fracture of the right, dominant elbow and required an ORIF. The plaintiff maintained that cellulitis developed after the surgery and that the plaintiff required anti-inflammatory medication and antibiotics. The plaintiff contended that he will permanently suffer extensive pain and limitations. The plaintiff made no income claims.

The case settled prior to trial for $525,000.

REFERENCE

Strasser vs. Sea Shell Club Inc. Docket no. BER-L-2461-18, 12-08-21.

Attorney for plaintiff: Michael J. Epstein of The Epstein Law Firm, PA in Rochelle Park, NJ.

Subscribe Now

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Elevator Negligence

$7,710,000 VERDICT – ELEVATOR NEGLIGENCE – DEFENDANT PERFORMING MAINTENANCE ON ELEVATOR WHEN PLAINTIFF STEPS THROUGH OPEN ELEVATOR DOORS AND DROPS DOWN 3 TO 5 FEET INTO ELEVATOR – KNEE AND LUMBAR INJURY COMPLICATED BY PRE-EXISTING CONGENITAL CONDITION – STEROID INJECTIONS, ORTHOPEDIC TREATMENT AND PHYSICAL THERAPY.

Broward County, FL

In this negligence case, the plaintiff, a professional DJ, asserted that the defendant elevator company negligently allowed an elevator to be in operation while it was being worked on, causing the plaintiff to fall into the elevator and suffer significant, permanent injury. The defendant ultimately stipulated liability for negligence but contested the plaintiff's damages.

As a result of the fall, the plaintiff sustained knee and lumbar injury. The plaintiff treated with steroid injections, orthopedic treatment, and physical therapy. The plaintiff also faces future lumbar surgery which is traumatizing due to the many surgeries the plaintiff had as a child and his resulting fear of surgery.

The jury found in favor of the plaintiff and awarded damages in the amount of $7,710,000 broken down as follows: $410,000 in past lost wages; $2,000,000 in future lost earning potential; $90,000 in past medical expenses; $800,000 in future medical expenses; $30,000 for past loss of consortium; $180,000 for future loss of consortium; $600,000 in past non-economic damages; and $3,600,000 in future non-economic damages.

REFERENCE

Mendez vs. Oracle Elevator Company. Case no. CACE17005967; Judge Keathan B. Frink, 04-22-22.

Attorney for plaintiff: Todd Poses of Poses Law Group, P.A. in Miami, FL. Attorney for defendant: Michael C. Rotunno of Marlow Adler Abrams Newman & Lewis in Coral Gables, FL.

Insurance Obligation

$2,982,984 VERDICT – INSURANCE OBLIGATION – UNINSURED MOTORIST CLAIM – FAILURE TO STOP FOR RED LIGHT – HERNIATED CERVICAL AND LUMBAR DISCS – TORN ROTATOR CUFF – MULTIPLE SURGERIES PERFORMED.

Indian River County, FL

This action arose when the plaintiff's vehicle collided with a vehicle driven by an uninsured and unlicensed driver. The plaintiff contended that the tortfeasor was texting, speeding and disregarded a red light to cause the collision. The case proceeded to trial against the plaintiff's insurance company under the uninsured motorist provision of the policy. The defendant stipulated to the tortfeasor's negligence in causing the collision. Accordingly, the case was tried only on the issues of permanency, causation and damages. The defendant argued that any symptoms experienced by the plaintiff were caused by extensive preexisting degenerative disc disease in his cervical and lumbar spine, not the subject accident.

The plaintiff alleged that the collision caused disc herniations in his cervical and lumbar spine as well as denervation and cervical nerve root irritation. The plaintiff underwent cervical surgery on October 15, 2018. In addition, the plaintiff claimed bilateral rotator cuff tears resulting from the impact. Rotator cuff repair surgery was performed in November 2018 and a lumbar fusion in November 2020.

The plaintiff's claim for Insurance Bad Faith and Unfair Claims Settlement Practices (bad faith claim) was abated by order of the court, pending the outcome of this underlying action for uninsured motorist benefits.

The jury found that the plaintiff sustained a permanent injury as a result of the accident. The plaintiff was awarded total damages of $2,982,984.

REFERENCE

Plaintiff's (treating) orthopedic spine surgeon expert: John G. Atwater, M.D. from Vero Beach, FL. Plaintiff's (treating) orthopedic surgeon expert: Omar D. Hussamy, M.D. from Vero Beach, FL. Plaintiff's neurology expert: Sonia M. Canaves-Nunes, M.D. from Jupiter, FL. Plaintiff's radiology expert: Ronald Landau, M.D. from Boca Raton, FL.

Crowe vs. Florida Farm Bureau Casualty Insurance Company. Case no. 2017-CA-000518; Judge Janet C. Croom, 02-28-22.

Attorneys for plaintiff: David M. Carter, Jason L. Odom of and Dane R. Ullian of Gould, Cooksey, Fennell, P.A. in Vero Beach, FL.

Labor Law

$825,000 RECOVERY – LABOR LAW SEC. 240 (1) – PLAINTIFF WORKER FALLS 15 FEET FROM UNSECURED LADDER – BURST FRACTURE AT L-1 – CAUDA EQUINA SYNDROME – PARTIAL INCONTINENCE OF BOWEL AND BLADDER.

Greene County, NY

In this labor law case, the plaintiff, in his early 40s, contended that as he was working at a construction site, the ladder from which he was working kicked our and that he fell approximately 15 feet sustaining life-altering injuries. The plaintiff maintained that the defendants were liable under the absolute liability provisions Sec. 240 (1).

The plaintiff suffered a burst fracture at L-1 and developed cauda equina syndrome (a condition that usually requires urgent surgical treatment). The plaintiff asserted that he will permanently suffer partial bowel and bladder incontinence as well as some difficulties walking.

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

REFERENCE

Plaintiff's neurosurgeon expert: John German, M.D. from Albany, NY.

Stevenson vs. Joseph, et al. Index no. 0094/18, 06-21.

Attorney for plaintiff: Michael C. Conway of Conway, Donovan & Manley, PLLC in Albany, NY.

School Liability

$7,500,000 RECOVERY – SCHOOL LIABILITY – NEGLIGENT SUPERVISION OF SEVERELY AUTISTIC 16-YEAR-OLD CHILD WITH CAPACITY OF 3RD-4TH GRADER – RUNNING GOLF CART LEFT NEXT TO SCHOOL – CHILD GETS IN GOLF CART AND CRASHES CART, SUFFERING FATAL INJURIES TO CHEST AND ABDOMEN – DEATH OF MINOR CHILD SURVIVED BY PARENT.

Orange County, CA

This case involved the death of a decedent 16-year-old severely autistic child who had the mental capacity of a 3rd-4th grader. The plaintiff contended that the defendant school improperly failed to follow the child's IEP and left a running golf car next to be used as a reward to the child when the list of approved rewards did not include the golf cart. The plaintiff contended that as a result, the child crashed and suffered extensive injury to his abdomen and chest, dying that day. The minor decedent was survived by his parent mother.

The defendant would have maintained that the incident occurred despite proper efforts. The plaintiff would have countered that if proper supervision had been provided, and if the cart had not been left running in a very accessible area, the incident would not have occurred.

The case settled prior to trial for $7,500,000.

REFERENCE

Corona vs. Orange Unified School District, et al. Case no. 30-2019-01109866-CU-PO-CJC, 09-14-20.

Attorneys for plaintiff: Robert S. Glassman and Nathan E. Werksman of Panish Shea & Boyle, LLP in Los Angeles, CA.

Subscribe Now