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FEATURED CASES

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

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

VERDICTS BY CATEGORY

FEATURED CASES

$509,482 VERDICT – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF CONTENDS PHANTOM TRACTOR TRAILER MADE RIGHT TURN FROM LEFT LANE IN FRONT OF PLAINTIFF CAUSING HER TO STOP WHEREUPON DEFENDANT DRIVER REAR-ENDED PLAINTIFF'S VEHICLE – RIGHT SHOULDER SLAP TEAR; DISC HERNIATION AT C4-5 AND C5-6 AND DISC BULGE AT L4-5 – 2 CERVICAL EPIDURAL STEROID INJECTIONS, 2 CERVICAL BLOCK INJECTIONS; RADIOFREQUENCY ABLATIONS AND 2 LUMBAR EPIDURAL INJECTIONS.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that a phantom vehicle caused the plaintiff to brake suddenly and the defendant driver then struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff brought suit against the defendant driver and against her automobile insurer for uninsured motorist coverage as to the phantom vehicle. The defendant denied negligence and contested the plaintiff's damages.

On July 16, 2019, the plaintiff was traveling southbound in the right lane on Route 1 in South Brunswick, New Jersey. The defendant was traveling directly behind the plaintiff. The plaintiff contended that a phantom tractor-trailer truck attempted a right turn from the center lane directly in front of the plaintiff's vehicle, causing her to brake to avoid the truck. When she braked to avoid collision, the defendant negligently failed to brake behind her and was following too closely such that he struck her vehicle from behind. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained right shoulder SLAP tear; disc herniation at C4-5 and C5-6 and disc bulge at L4-5. The plaintiff treated with 2 cervical epidural steroid injections, 2 cervical block injections; radiofrequency ablations and 2 lumbar epidural injections. The plaintiff claimed $263,200 in medical expenses and $15,174 in lost wages.

The defendant asserted that the plaintiff braked suddenly and without warning in front of the defendant driver causing an emergency situation wherein the defendant could not avoid collision. The defendant argued that the plaintiff and the phantom vehicle were at fault for the collision. The defendant also challenged the nature, extent and permanency of the plaintiff's injuries.

The plaintiff made an offer to take judgment in the amount of $250,000. The offer was not accepted and the matter proceeded.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant driver and 20% to the defendant insurer with damages of $350,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury found the defendant driver to be solely negligent and awarded $350,000 in non-economic damages triggering the R. 4:58-2(b) Offer of Judgment sanctions; and counsel fees pursuant to R. 4:58-2(a) totaling $75,930; litigation expenses pursuant to R. 4:58-2(a) totaling $11,627 and pre-judgment interest per - 4:42-ll(a)(iii) and (b) and - 4:58-2(a) totaling $71,624 for a total recovery of $509,482.

REFERENCE

Kelly vs. Lim, et al. Docket no. L 001189-20; Judge Bina K. Desai, 05-16-23.

Attorney for plaintiff: John R. Gorman of Lutz, Shafranski, Gorman, Mahoney and Lazzaro, P.A. in New Brunswick, NJ. Attorney for defendant driver: John A. Camassa of Camassa Law Firm, P.C. in Wall, NJ. Attorney for defendant insurer: Kimberly A. Frankiewicz of Voss Nitsberg Decoursey & Hawley in Iselin, NJ.

COMMENTARY

Following the trial, the defendant driver moved for a new trial, arguing that plaintiff's counsel's summation included improper comments. The defendant asserted that the plaintiff initially commented that the defendant was a "nice person" and "has a nice family." The defendant maintained that this was absolutely irrelevant to the issues of liability and damages, and being that the defendant was only 18 years old at the time of the accident, clearly had the capacity to influence the jury into thinking that the defendant would not be stuck paying any potential verdict because he had his nice family to assist him in that regard.

The defendant pointed to plaintiff's counsel's further biomechanical arguments during summation which were not supported by any of the testimony elicited at trial. The defendant held that plaintiff's counsel improperly argued that the plaintiff's hands were on the steering wheel and hips were pinned to the seat resulting in injury to the shoul-

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der and hips, though there was no qualified expert testimony at trial offering any biomechanical opinions, therefore, the defendant argued, this commentary was improper.
When discussion the time unit rule, plaintiff's counsel instructed that if one of them thought that entering a verdict amount would "punish" the defendant, then changing the verdict would be "illegal," and if someone thought they were going to "hurt" the defendant with a verdict, it would also be "illegal" to change the verdict amount. Counsel further instructed the jurors that if they agreed on a number and then if one or any of them wanted to recalculate that amount, then that would also be "illegal." The defendant argued that it was highly improper and prejudicial to introduce criminality into a civil case, and doing so usurped the jury's ability to freely deliberate for fear of doing something "illegal". The defendant maintained that plaintiff's counsel's inflammatory comments during summation were wholly inappropriate and capable of producing an unjust result. Based on, what the defendant characterized as, gross deviations from the acceptable parameters of summation, the defendant argued he was entitled to a new trial.
The plaintiff opposed the motion, arguing that there was nothing improper in plaintiff's counsel's summation. The plaintiff maintained that counsel correctly, if inartfully, told the jury in essence that to award less than they individually and collectively agreed upon was fair, was improper. Plaintiff's counsel never mentioned a "cap" on damages or invited the jury to tell the judge if one juror was recalcitrant. After the plaintiff's summation, the court gave the jury a specific instruction before the general jury instructions telling the jury that, contrary to plaintiff's counsel's comment, if they used the time unit method to calculate damages, they were free to go back and recalculate the individual time unit amount to arrive at a different verdict. If there was a problem, as suggested by the defendant, the plaintiff claimed the court had remedied it.
The plaintiff argued that, once the jury got to the damage question on the verdict sheet, the only things it was allowed to consider would be the full extent of the harms and losses suffered by the plaintiff as a result of the subject collision. Thus, the plaintiff asserted, it would in fact be contrary to the law for any juror, for any reason, including hurting the defendant, to refuse to award full and fair damages for all of the plaintiff's collision-related harms and losses. Plaintiff's counsel invited the jury to apply the standard time unit argument. Although forceful, the use of the word "illegal" in explaining the rule, was a perfectly permissible argument. Further, the plaintiff held that the dash-cam footage presented at trial, which showed the plaintiff stopped a full car length behind the tractor-trailer truck when the truck began its turn, supported the jury's verdict against the defendant.
The dash-cam footage supported the negligence of both the driver of the truck and the defendant driver but clearly supported the plaintiff's contention that the defendant had time enough to stop behind the plaintiff but failed to do so. The plaintiff also rebutted the defendant's contention as to counsel's statements about the defendant being a "nice" person not only did not influence the jury in favor of the plaintiff but had the potential to influence the jury in favor of the defendant. The plaintiff concluded that no comment by plaintiff's counsel, either alone or in combination, in context and in light of the court's curative instruction and the jury instructions, was inappropriate, let alone sufficient to warrant a new trial.
The defendant's motion was denied.

$340,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – SINGLE VEHICLE COLLISION – PLAINTIFF PASSENGER INJURED WHEN DEFENDANT DRIVER'S VEHICLE STRIKES GUARDRAIL AFTER STREET RACING WITH CO-DEFENDANT – FACIAL LACERATION – MULTIPLE RIB FRACTURES – VERTEBRAL FRACTURE – FRACTURES OF SACRUM AND COCCYX – FRACTURE OF RIGHT FOOT.

Camden County, NJ

In this motor vehicle negligence action, the plaintiff passenger was injured when the defendant driver's vehicle struck a guardrail after street racing with the co-defendant. The defendants generally denied all allegations of negligence.

On May 7, 2019, the plaintiff was a restrained, front-seat passenger in the defendant's vehicle, which was traveling on Route 43 in Bellmawr, New Jersey. At the same time, the co-defendant, a friend of the defendant

driver, was operating his own vehicle on Route 42, in a travel lane directly beside the primary defendant's vehicle. The defendant driver, as well as the co-defendant, began "street racing" with one another, which included driving very fast and "weaving in and out of traffic" according to the plaintiff. While they were racing, the defendant suddenly lost control of the host vehicle and collided with a guardrail, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey the speed limit, failing to keep the vehicle under proper and adequate control, failing to operate the vehicle at a reasonable rate of speed, failing to obey traffic conditions, failing to obey traffic signals, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid causing a collision. Consequently, the plaintiff sustained injuries, including facial lacerations, multiple rib fractures, vertebral fractures, fractures of the sacrum and coccyx, and a fracture of the right foot.

The jury found in favor of the plaintiff and awarded $340,000.

REFERENCE

Deas Catrice vs. Decoursey, Elemgad. Docket no. L000871-21; Judge Michael J. Kassel, 05-30-23.

Attorney for plaintiff: Anthony Lopresti of Law Offices of Ronald A. Clearfield & Associates, P.C. in Philadelphia, PA. Attorney for defendant: John A. Dingle of Law Office of Pamela D. Hargrove.

COMMENTARY

Following the accident in this case, the plaintiff sustained several fractures that greatly reduced her ability to ambulate and function on her own. As such, the plaintiff remained in the hospital for several weeks, both for initial medical care and for an inpatient course of physical therapy. Currently, the plaintiff continues to experience severe back pain related to vertebral fractures, as well as uneven gait and difficulty walking due to fractures of the sacrum and coccyx. The plaintiff may need to undergo surgery in the future to correct her long-term pain and disability that resulted from the accident. The settlement amount in this case was likely determined by the severity of the plaintiff's injuries, as well as her prolonged need for medical care.

$410,000 VERDICT – LANDLORD NEGLIGENCE – FALL DOWN – PLAINTIFF SLIPS ON PUDDLE OF WATER IN HALLWAY IN APARTMENT COMPLEX IN WHICH SHE RESIDES AND FALLS – FEMUR FRACTURE – INTERNAL FIXATION SURGERY REQUIRED – AGGRAVATION OF PRIOR KNEE REPLACEMENT .

Atlantic County, NJ

In this landlord negligence action, the plaintiff slipped on a puddle of water in a hallway in the defendants' apartment building, where she resided, causing her to fall and become injured. The defendants generally denied all allegations of negligence.

On November 6, 2019, the plaintiff was lawfully traversing inside the apartment building where she lived, located on the premises of 227 North Vermont Avenue in Atlantic City, New Jersey. On this day, the apartment building was owned, operated, and maintained by the defendants. At the time of the incident, the plaintiff was walking down a hallway inside the building, near a security office. While she was walking in the hallway, the plaintiff encountered a puddle of water on the floor, which caused her to slip, fall, and become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to remove a puddle of water from the floor on the premises, failing to adequately clean the premises, failing to prevent hazardous conditions, failing to erect signs or otherwise warn of a wet floor, failing to provide adequate lighting in the subject hallway, failing to hire adequate maintenance/janitorial staff, and failing to regard for the health and safety of building tenants including the plaintiff. Consequently, the plaintiff sustained injuries, including a femur fracture, which required open reduction and internal fixation surgery to repair. Additionally, the plaintiff sustained knee pain, and maintained that her fall had aggravated a prior knee replacement.

The jury found in favor of the plaintiff and awarded $410,000.

REFERENCE

Messatzzia Catherine vs. Jeffries Tower Apartments. Docket no. L000032-21; Judge Ralph A. Paolone, 04-22-23.

Attorney for defendant: Teddy C. Strickland, Jr. of Pender & Strickland in Atlantic City, NJ.

$350,000 VERDICT – DOG ATTACK – PLAINTIFF ATTACKED, BITTEN AND KNOCKED DOWN BY DEFENDANT'S DOGS – FAILURE TO KEEP DOGS ON LEASH – RIGHT KNEE FRACTURE WITH DISLOCATION – DOG BITE INJURY – SUTURES.

Essex County, NJ

In this dog attack action, the plaintiff was attacked by the defendant's 2 dogs while she was out walking near the defendants' home causing her to sustain multiple injuries. The defendant generally denied all allegations of negligence.

On September 28, 2018, the plaintiff was lawfully walking on a sidewalk near the defendant's home in Essex County, New Jersey. At this time, the defendant was walking toward the plaintiff on the same sidewalk, and was walking his 2 dogs. While the plaintiff was passing, the defendant's dogs became agitated. The dogs then broke loose from their leashes and began to attack the plaintiff, biting her and knocking her to the ground.

The plaintiff maintained that the defendant was negligent in failing to properly train his dogs, failing to keep the dogs leashed, failing to keep violent dogs away from strangers, failing to warn of the dogs' violent tendencies, failing to keep the dogs under control, failing to muzzle or otherwise prevent violent dogs from biting, failing to prevent the dogs from attacking, and in negligently allowing 2 violent dogs to approach pedestrians using a public sidewalk. Consequently, the plaintiff sustained injuries, including a right knee fracture with dislocation, as well as a laceration associated with a dog bite injury on her right calf, which required wound debridement, sutures, and a course of antibiotics to repair.

The jury found in favor of the plaintiff and awarded $350,000.

REFERENCE

Pathel Nathi vs. Cruz David. Docket no. L000092-20; Judge Annette Scoca, 04-22-23.

Attorney for plaintiff: Lance J. Bitterman of Fredson Stratmore Bitterman, LLC in Bloomfield, NJ. Attorney for defendant: Angelo C. Lorenzo of Tango, Dickinson, Lorenzo, McDermott & McGee in Millburn, NJ.

COMMENTARY

Following the accident in this case, the plaintiff continued to experience pain in the right knee and severe difficulty ambulating, even after her right knee fracture had healed. Because she had continued discomfort, the plaintiff continued to seek medical care, as well as attended several months of physical therapy. Despite these efforts, the plaintiff's knee continued to cause pain, and the plaintiff's ability to walk did not improve. As such, the plaintiff was required to undergo a total knee replacement surgery approximately one year after the initial dog attack. After the surgery, the plaintiff was required to attend additional and intensive physical therapy. The verdict amount in this case was likely determined by the severity of the plaintiff's injuries, as well as her prolonged need for medical care.

$330,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT MAINTENANCE – PLAINTIFF CLAIMS ESCALATOR NEGLIGENTLY MAINTAINED BY DEFENDANTS MOVED SUDDENLY WHILE SHE WAS WALKING UP ESCALATOR, CAUSING HER TO FALL – DISC HERNIATION AT L4-5; LEFT KNEE MENISCUS AND ACL TEARS; AND HIP CONTUSION – TOTAL KNEE REPLACEMENT.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant department store's escalator malfunctioned, causing the plaintiff to fall and suffer significant, permanent injury. The plaintiff brought suit against the department store where the escalator was located and the defendant escalator company. The defendants denied negligence and contested some of the plaintiff's damages.

On November 3, 2018, the plaintiff was an invitee at the defendant store in a mall. The defendants were the lessee of the property located at 500 Garden State Plaza in Paramus and the manufacturer of the subject escalator. The plaintiff was walking up the defendant's escalator in the defendant department store. The subject escalator was stopped and not functioning so the plaintiff was walking up the escalator as if they were regular stairs; suddenly and without warning, the escalator activated in a downward motion causing the plaintiff to fall.

The plaintiff contended that the defendants negligently failed to properly maintain the escalator in a reasonably safe condition, failed to block off the escalator from use, and failure to warn of the danger of using the escalator. The plaintiff alleged that the impact of the fall resulted in permanent injuries. The plaintiff planned to present the testimony of an engineering expert who opined that the escalator experienced a brake failure due to the defendants' failure to properly inspect, test and maintain the escalator. As a result of falling on the defendants' escalator, the plaintiff sustained disc herniation at L4-5; left knee meniscus and ACL tears and hip contusion. The plaintiff's knee injury necessitated a total knee replacement surgery. The plaintiff claimed outstanding medical bills of $30,000.

The defendants argued that they had no notice of the escalator brake issue. The defendants presented records to show proper, timely maintenance of the escalator. They asserted that the escalator had just shut down from an unknown cause and thus they had no opportunity to block off the escalator or warn of the malfunction. The defendants argued that the plaintiff was negligent in using the escalator when it was obviously not in operation. The defendants also challenged the plaintiff's injury claims, presenting a medical expert who opined that the plaintiff had pre existing arthritis which caused her injury and that she had made a good recovery.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant escalator company and 50% to the plaintiff with gross damages of $330,000 reduced to $165,000 for plaintiff's comparative negligence. Neither party moved for trial and the time to respond elapsed. The court then confirmed the arbitration award and the matter was set down as resolved via arbitration.

REFERENCE

Aguirre vs. Schindler Elevator Corp., et al. Docket no. L-001962-20; Judge John D. O'Dwyer, 05-31-23.

Attorney for plaintiff: David J. Zwerling of The Russell Friedman Law Group, LLP in Hackensack, NJ. Attorney for defendant: Edward J. De Pascale of McElroy, Deutsch, Mulvaney & Carpenter, LLP in Morristown, NJ.

$211,451 VERDICT – MEDICAL MALPRACTICE – DENTIST NEGLIGENCE – PLAINTIFF CONTENDS DEFENDANT DENTIST IMPROPERLY PERFORMED ROOT CANALS CAUSING INFECTION AND SIGNIFICANT PAIN AND SUFFERING – EXTENSIVE REVISION OF ALL ROOT CANALS PERFORMED BY DEFENDANT.

Burlington County, NJ

In this medical malpractice case, the plaintiff asserted that the defendant dentist and practice breached the standard of care by improperly performing root canals leading to infection; failing to recognize and treat the post-root canal infections; and failing to provide informed consent with respect to the root canal therapy. The defendant denied any breach.

On August 14, 2013, the plaintiff passed out at work and hit her chin, split 2 teeth and cracked 6 teeth. The plaintiff presented to the defendant dentist at the defendant dental practice in Willingboro, New Jersey for dental work related to her fall. The plaintiff required 8 root canals and was in constant pain, especially when eating. Every time she returned to the defendant he would tell her the problem was her bite and would shave down the crowns on her teeth. The defendant assured the plaintiff that she would not feel any pain because, due to her root canals, she no longer had nerves connected to the teeth.

The plaintiff developed abscesses in her gums which, she contended, the defendant failed to properly treat. The plaintiff made over 20 visits to the defendant dental practice from 2013 through 2015. On her last visit, the plaintiff contended that the defendant shaved the plaintiff's top left crown too much, causing the crown metal to fracture into the gums resulting in intense pain and necessitating removal of the tooth. The plaintiff also required treatment from another doctor for her infections. Ultimately, the plaintiff went to another dental office where x-rays revealed that the plaintiff's teeth were infected and the root canals had been improperly performed. The plaintiff had to undergo additional root canal therapy and required new root canals on all of the prior root canals done by the defendant.

The plaintiff presented expert testimony that the improper root canals performed by the defendant were the cause of the plaintiff's infection and necessitated the subsequent treatment and revision procedures. As a result of the defendant's breach of the standard of care in treating the plaintiff, she required medical treatment and suffered the loss of teeth, damaged crowns, pain and suffering disability and loss of the normal enjoyment of life.

The defendant denied any breach of the standard of care and argued that the plaintiff was fully informed of the risks and benefits of the procedures performed. The defendant denied that he performed all of the plaintiff's root canals and denied that the root canals were the cause of infection. The defendant asserted that another dentist at the practice performed the plaintiff's root canals. The defendant also asserted that he did not fail to diagnose infection because the plaintiff did not have an infection until November of 2015 at which point he did diagnose the infection and referred the plaintiff for treatment of the infection.

The jury found that the defendant did not breach his duty of informed consent to the plaintiff but did deviate from acceptable standards of medical care in his treatment the plaintiff. The jury found that the deviation from the standard of care was the proximate cause of the plaintiff's damages and awarded the plaintiff $211,451 broken down as follows: $200,000 in compensatory damages; $250 in costs and $11,201 for a worker's compensation lien molded by the court.

REFERENCE

Bobo vs. Willingboro Family Dental, et al. Docket no. L-002265-17; Judge Eric G. Fikry, 05-12-23.

Attorneys for plaintiff: Mark J. Molz and Marisa P. Molz of Law Office of Mark J. Molz in Hainesport, NJ. Attorney for defendant: Timothy M. Crammer of Crammer, Bishop & O'Brien in Absecon, NJ.

DEFENDANT'S VERDICT – TOXIC TORT – MOLD SICKNESS – PLAINTIFF AND MINOR CHILDREN CLAIM LEAK IN APARTMENT AT DEFENDANT'S APARTMENT COMPLEX CAUSED MOLD TO DEVELOP AND LED TO HEALTH PROBLEMS FOR ALL 3 TENANTS – RESPIRATORY INJURIES INCLUDING BRONCHITIS AND CHRONIC COUGH – DEFENDANTS DENY FAILURE TO MAINTAIN PROPERTY AND QUESTION CAUSATION AND PERMANENCY OF PLAINTIFF'S CLAIMED ILLNESS.

Passaic County, NJ

In this toxic tort case, the plaintiff alleged negligence against the defendant landlord and property owners for illness sustained from mold exposure. The plaintiff asserted that the defendants were strictly liable in tort for not taking measures to ensure the safety of the plaintiffs. The defendants claimed they were not negligent in the maintenance and supervision of the premises and did not breach the terms of the lease.

The plaintiffs, a mother and her 2 minor children, lived in an apartment building owned and operated by the defendants located at 114 Straight Street in Paterson from 2009 to the time of filing of the complaint. The plaintiff contended that she and her children were caused to ingest mold spores while living on the property. For several years prior to March of 2020, there was a water leak in the plaintiffs' premises as a result of a leak in the windows. Thereafter, the plaintiff noticed the formation of mold in various parts of her apartment. On May 28, 2020, mold spores were discovered on the property.

The plaintiff held that the defendants did not respond to complaints about the mold, and the plaintiff ultimately hired a remediation company on her own. The plaintiff maintained that the length of exposure was unknown due to the defendant's failure to remediate. The plaintiff contended that the defendants were negligent in causing a dangerous condition to exist; not exercising proper care and maintenance of the property; allowing a nuisance to exist; violating various NJ building codes and statutes; and otherwise being negligent in the general supervision, ownership and maintenance of the property. The plaintiff asserted that the defendants breached the warranty of habitability and implied warranty of quiet enjoyment of the property.

Due to the mold exposure, all 3 plaintiffs suffered respiratory injuries including bronchitis and chronic cough. The plaintiff held that, as a proximate result of the dangerous condition created by the defendants, the plaintiff suffered severe personal injuries, pain and suffering, loss of enjoyment of life, wage losses and has been and will in the future require medical treatment and refrain from her normal pursuits. The defendants argued that the plaintiff's injuries could not be causally connected to the mold exposure. The defendants contested the duration and permanency of the plaintiff's condition based on the plaintiff's primary care physician's records. The defendant pointed to the fact that the plaintiff received very little treatment for what were claimed to be significant and permanent injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendants with damages of $107,500. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Ortisha vs. Acorn NJ Straight Apartments, et al. Docket no. L - 003858-20; Judge Vicki A. Citrino, 05-11-23.

Attorney for plaintiff: Joseph Collini of Emolo & Collini, Esqs. in Paterson, NJ. Attorney for plaintiff: Caesar D. Brazza of Brazza Law in Morristown, NJ. Attorney for defendant: Colin P. Hackett of Lewis Brisbois in Newark, NJ.

COMMENTARY

Following the defense verdict, the plaintiff moved for new trial arguing that there were errors made during the trial and that the verdict was against the weight of the evidence. During the trial, the defendants admitted to continuous water damage inside of the plaintiff's apartment for years and admitted that mold was present. The plaintiffs proffered evidence, both testimonial and photographic, of water damage and mold inside of the apartment. None of that evidence was ever refuted by the defendants. The plaintiffs also proffered evidence, through a medical doctor, of injuries to all 3 plaintiffs.

The defendants never provided any rebuttal medical evidence. Additionally, the plaintiff maintained that the defendant made numerous highly prejudicial and inappropriate statements. The defendants inappropriately elicited testimony regarding the plaintiff's prior unrelated lawsuits. During sidebar to object to side, the defendant shouted that the plaintiff was the "gift that keeps on giving." The plaintiff claimed that the jury clearly heard the highly prejudicial remarks. During closing arguments, despite being ordered by the court not to bootstrap opinions regarding non-testifying doctors into closing arguments, the defendant stated that the plaintiff's injuries were "diagnosed" as something unrelated to the mold exposure.

Also during closing arguments, the defendant inappropriately characterized the plaintiff as a liar who used her children to further her litigious tendencies. Defense counsel ended his argument by pointing at the plaintiff and repeating, "shame!" In addition to these highly prejudicial and inappropriate statements, the jury was not provided with the correct instructions regarding negligence. Rather than being instructed regarding the liability of a landlord pursuant to jury charge 5.20D, the jury was only instructed with regard to regular negligence. Finally, the initial question on the jury verdict sheet was clearly confusing as it called for a finding that the landlord "caused" the mold, rather than a finding that the landlord negligently failed to remediate the mold.

The plaintiff concluded that, though each of these errors was enough to request a new trial, their cumulative effect clearly had the ability to confuse the jury and cause a miscarriage of justice. Based on the amount of evidence produced by the plaintiff throughout trial, as well as the lack of any rebuttal evidence from defendant, in conjunction with the defendants' admission that water damage and mold were present for years, the plaintiff concluded that the jury's verdict was clearly against the weight of the evidence. Furthermore, there was a clear miscarriage of justice as the jury was not properly advised of the correct law regarding a landlord's duty. As such, the plaintiffs requested a new trial pursuant to R. 4:49-1.

The defendant opposed the motion, arguing that an eight person jury returned a unanimous "no cause" verdict in fifty-one minutes in the referenced matter. On Thursday May 4, 2023 the jury retired to begin deliberations at 2:25 p.m. and returned at 3:16 p.m. the same day. Jury deliberations concluded after the jury unanimously responded "no" to the first question of the jury questionnaire: "Did Plaintiffs establish by a preponderance of evidence that Defendants were negligent in the maintenance of their property such as to cause mold?" The defendants argued that the first question posed was simple, clear and conformed to the plaintiffs' claim and the evidence put forth at trial. The plaintiffs agreed to the form of the jury questionnaire on the record. The plaintiffs voiced no objection to it whatsoever. The defendant put forth that the plaintiffs themselves not only agreed to and voiced no objection to the negligence charge provided to the jury, but the plaintiffs themselves requested the charge.

The first question of the Jury Questionnaire clearly and correctly set forth the first issue for the jury to decide. The negligence charge provided to the jury by the court adequately conveyed the law for the jury to apply when deciding the first question of the questionnaire. The defendants held that the plaintiffs had not cited any portion of the trial record in support of their motion for a new trial and did not obtain the trial transcript. Indeed, defense counsel argued, to have obtained the trial transcript would expose the plaintiffs' motion for a new trial for what it was: an unfettered misrepresentation of what transpired at trial, the evidence presented at trial by the plaintiffs and the defendants, and the arguments presented to the jury by the defendants.

Further, obtaining the trial transcript would expose the plaintiffs' case as having been no case at all. All of which the 8-person jury appeared to have recognized unanimously in less than an hour of deliberations. The defendants concluded that the plaintiffs' motion was nothing but a desperate attempt to overturn a verdict on a claim which, as the jury concluded, was meritless.

The plaintiff's motion was denied and the defendant's verdict stood.

Verdicts By Category

CONTRACT

$110,000 RECOVERY

Breach of construction contract – Plaintiff hires defendant company to replace roof of nursing home facility with deadline for completion made possible by $550,000 advance payment for purchase of materials – Defendant removes ballast but fails to complete further work.

Bergen County, NJ

In this matter, the plaintiff owned and operated a senior care and nursing home facility in Bergen County, which provided permanent housing to elderly residents and also provided rehabilitation services. The plaintiff endeavored to install solar panels on the roof of its facility, and in doing preliminary site inspection work discovered that the roof required a complete replacement. The plaintiff ultimately decided that a full roof replacement was urgently needed. In February 2021, the plaintiff participated in discussions and negotiations with several potential roofing contractors, including the defendant and its principal, the president and owner of the defendant company. During the negotiations, the defendants, and specifically the principal, indicated that the necessary materials were available and would be purchased, and also that, if the plaintiff funded a 50% up front deposit, the defendant would complete the roofing work within 21 to 24 days of receiving the check. The plaintiff relied on this information in deciding to award the project to the defendant. The plaintiff maintained that the defendant breached the contract. The defendants denied breaching the contract and maintained that they acted in good faith at all times.

Additionally, the plaintiff specifically adopted and relied upon the written proposal submitted by the defendants regarding the need to make a significant down payment to secure the necessary materials and complete the project in the noted 21-24 days. On July 7, 2021, the plaintiff and defendant entered into a contract pursuant to which the defendant was obligated to provide all labor, material, and equipment necessary to perform the roof replacement work. The plaintiff made the $550,000 payment to the defendant premised upon the defendant's representation that payment of this advance deposit would assure timely completion of the work, and that the funds would in fact be used to acquire all materials and make other preparations necessary to meet the schedule.

The plaintiff contended that, following execution of the contract, it became evident that the defendant was neither qualified, nor willing, to complete its work in accordance with the contract, and the assurances made by the defendant as to its ability to timely complete the work, so long as the advance deposit was paid, were untrue. In fact, the defendant did not meet the deadline to achieve substantial completion (July 31, 2021), and did not perform any work until August 19, 2021, which consisted of a subcontractor's removal of the ballast. The ballast removal work was the only work performed to date. The residence's roof membrane, therefore, was left exposed to the elements. The plaintiff informed the defendant of the situation and pointed out that leaving the existing roof unballasted created a substantial risk of serious damage to the facility, as well as exposing the residents, staff and visitors of the plaintiff residence to potential bodily injury or death.

In seeking to mitigate its damages, the plaintiff discovered from a vendor that there was indeed a shortage of roofing materials but that the defendant had had the opportunity to purchase the material in ample time to perform the contract but chose not to do so. The plaintiff claimed that the defendants' complete dereliction of the contract exposed the residence to property damage, left the residence in a worse condition than prior to the defendant commencing its work, and more importantly, its elderly and sensitive resident population, to unnecessary increased risk of injury or harm. The coming fall and winter weather amplified these risks.

On September 30, 2021, after providing the defendants with several opportunities to cure its default and complete its work, the plaintiff terminated the contract. The plaintiff, having been left with no other option, was in the process of hiring another contractor to complete the project for an anticipated price of approximately $1,175,000. The defendants argued that the material required by the contract was unavailable due to an industry shortage which prevented the defendant from completing the project. The defendants countered that the plaintiff breached the contract and thus the defendants were entitled to retain the $550,000 deposit in accordance with the terms of the contract.

The plaintiff made an offer to take judgment in the amount of $168,000 and he parties settled the matter prior to trial with the defendant agreeing to pay the plaintiff $110,000.

REFERENCE

Jewish Home at Rockleigh vs. J&M Industries, et al. Docket no. L-006682-21; Judge David V. Nasta, 06-15-23.

Attorneys for plaintiff: Robert S. Peckar and Patrick J. Greene, Jr. of Peckar & Abramson, P.C. in River Edge, NJ. Attorney for defendant: Robert J. DeGroot, Esq. in Newark, NJ.

$17,000 RECOVERY

Breach of contract – Consumer fraud, conversion, negligence and recovery in bailment – Plaintiff contends defendant restoration company breached contract to clean, warehouse, transfer, store and return plaintiff's property after fire damaged property – Defendant denies it breached contract and argues plaintiff signed off on contract for cleaning and drying services only and signed certificates of job completion to satisfaction.

Bergen County, NJ

On August 2, 2017, a fire occurred at the plaintiff's residence, located at 132 North Prospect Street in Bergenfield, which resulted in water and fire damage to the plaintiff's personal property requiring restoration, disposal, cleaning and storage services. On August 15, 2017, the plaintiff signed a contract with the defendant to preserve and protect her belongings from further damage and to clean her residence after the damage. After the fire and water damage repairs were made to plaintiff's residence, the plaintiff scheduled the return of her personal property being held in the care and custody of the defendant. The plaintiff asserted that the defendant's actions and conduct in the care and custody of the plaintiff's property included returning damaged and broken property; failing to return certain property that defendant had taken for safekeeping; delivering property that did not belong to the plaintiff; causing property damage to plaintiff's garage; causing property damage to plaintiff's 1985 Mercedes Benz 380 SL; and leaving plaintiff's property unprotected on her lawn. The defendant denied breaching the contract.

The plaintiff claimed that the defendant and its independent contractors or representatives and workmen engaged in an unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation against plaintiff relating to its cleaning, warehousing, transfer, storage and return of plaintiff's property. The plaintiff contended that the defendant knowingly concealed, suppressed or omitted material facts from plaintiff with intent that the plaintiff rely upon those misrepresentations. These material facts included representations and inferior services concerning the safekeeping of the plaintiff's property by the defendant and third party contractors. Had the plaintiff known the defendant's representations to be false, she would not have entered into the transaction.

The plaintiff claimed that the defendant breached the contract by not restoring her property and by converting her property. The plaintiff alleged breach of contract, consumer fraud, conversion, negligence, and recovery in bailment. As a result of defendants' misconduct, the plaintiff sustained an ascertainable loss in excess of $35,000. The defendant argued that the contract with the plaintiff contained a statutory 3-day right of rescission, was printed in at least 10-point boldface font, included a waiver of trial by jury in capitalized letters, and, further, the defendant provided the plaintiff with a copy of its commercial general liability insurance certificate. The plaintiff acknowledged and initialed the contract.

Moreover, the defendant pointed to the contract's explicit provision that its services were limited to cleaning and drying services only. The defendant performed in full all services under its contract with the plaintiff. In fact, the defendant maintained, the plaintiff executed Certificates of Job Completion, acknowledging all contracted services were performed to the customer's satisfaction.

The parties settled the matter prior to trial in the amount of $17,000.

REFERENCE

Franco vs. Property Damage Restoration, Inc., et al. Docket no. L-003962-19; Judge Peter G. Geiger, 05-01-23.

Attorney for plaintiff: S. Gregory Moscaritolo of S. Gregory Moscaritolo, LLC in River Edge, NJ. Attorney for defendant: Matthew A. Green of Obermayer Rebmann Maxwell & Hippel, LLP in Cherry Hill, NJ.

DOG ATTACK

$175,000 VERDICT

Dog attack – Plaintiff contends 2 dogs belonging to defendant attacked her – Bite wounds all over body – Hospitalization for more than 5 days for treatment – Permanent scarring and some physical limitations due to injuries as well as psychological damages.

Mercer County, NJ

In this dog attack case, the plaintiff asserted that the defendant's dogs viciously cornered and attacked her, leaving her with extensive permanent injuries. The defendant denied that the dog that attacked the plaintiff belonged to him.

On July 23, 2020, the plaintiff was lawfully on the premises of 571 Bellevue Avenue in Trenton where, the plaintiff contended, the defendant's pit bull dog at-

tacked and bit the plaintiff. The plaintiff was walking her own dog, a Chihuahua when she was attacked by 2 dogs, one of which belonged to the defendant. The plaintiff's dog ran home without the plaintiff, alerting the plaintiff's son that something was wrong. The plaintiff's son arrived in time to witness the end of the attack. 2 bystanders were able to subdue the phantom dog and one of the bystanders mortally wounded the phantom dog.

An ambulance and police officer arrived on the scene and the police officer took statements from the witnesses, one a neighbor of the defendant, who testified that the defendant identified the phantom dog as belonging to him, both at the scene and later at the E.R. The plaintiff contended that the defendant negligently failed to keep control of his dog and negligently allowed the dog to run loose and partake in the attack on the plaintiff. The plaintiff argued that the defendant exhibited a careless disregard for the safety of others. The plaintiff alleged that she sustained permanent injuries as a result of the attack.

As a result of the attack, the plaintiff was taken from the scene by ambulance. She claimed both physical and psychological injuries. The plaintiff suffered bite wounds all over her body. Immediately after the incident, the plaintiff had more than nine stitches to close her bite wounds and was hospitalized for 5 days while being treated with antibiotics, pain medication and a series of rabies shots she described as extremely painful. After discharge, the plaintiff used a walker for 5 weeks and underwent 6 weeks of home therapy focusing on the injuries to her knee and right arm.

The plaintiff claimed permanent scarring to her upper right arm, lower right arm, collar bone, cheek, ear, and knees. She testified that the skin around her knee was tight due to scarring and bothered her 3-4 times daily. Additionally, the plaintiff alleged pain in her left eye. The plaintiff testified that she was limited in her movement and installed a railing in her house to aid her mobility and was unable to pursue her pastime of gardening as frequently as she used to due to her injuries from the attack. Lastly, the plaintiff contended that she had developed a fear of dogs and even temporarily gave up her own dog to the care of her children following the attack.

The defendant denied that it was his dog that bit the plaintiff. The defendant asserted that the only dog he owned at the time was a pit-bull with black and white markings, which was not the dog that attacked the plaintiff. Further, the defendant maintained that his dog was inside his home at all times that the plaintiff contended the attack occurred. The defendant alleged that an unknown phantom stray dog accessed the curtilage area of his property, via a broken latch, in order to partake in the dog food stored there and that it was that dog that attacked the plaintiff. The defendant, in fact, asserted that the stray phantom dog attacked the defendant and, when the defendant retreated to administer first aid to himself inside his home, the dog remained on the property and subsequently attacked the plaintiff a short time later.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $350,000. The arbitration was not confirmed and the matter proceeded to bench trial.

The court found that the plaintiff met the burden of proof that the dog belonged to the defendant and awarded damages in the amount of $175,000.

REFERENCE

Teel vs. Ganie. Docket no. L-001696-20; Judge R. Brian McLaughlin, 05-01-23.

Attorney for plaintiff: Gabriel R. Lependorf of Lependorf & Silverstein in Princeton, NJ. Attorney for defendant: Eric Broadway, Esq. in Ewing, NJ.

HOMEOWNER'S NEGLIGENCE

$16,000 RECOVERY

Homeowner's negligence – 13-year-old plaintiff burned on face and scalp by exploded hot water pipe in defendants' home – Second-degree burns treated by dermatologist and burn surgeon – Permanent hyperpigmentation scar, sun sensitivity and embarrassment about scarring – Defendant homeowners and utility company deny prior knowledge of defect with pipe.

Union County, NJ

In this case, the plaintiff, a 13-year-old girl, asserted that a hot water pipe exploded at the defendants' home due to the negligent maintenance of the defendant homeowners and the defendant utility company, causing the plaintiff significant, permanent injury. The defendants denied negligence and argued that there had been any indication of an issue with the pipe prior to the subject incident.

On January 12, 2021, the minor plaintiff was visiting on the premises of the defendants' home located at 16 Princeton Road in Cranford. While she was on the premises helping her mother do laundry, a metal pipe exploded shooting hot water at the plaintiff and causing her permanent injuries. The plaintiff contended that the defendant homeowners and utility company were negligent in allowing a dangerous condition to exist on the property and in failing to warn the plaintiff of the dangerous condition.

As a result of the incident, the plaintiff sustained second-degree burns to her face and scalp. The plaintiff treated with a dermatologist and a burn surgeon. After all her treatment, the plaintiff was left with hyperpigmentation scarring and sun sensitivity. The plaintiff's treating dermatologist opined that the 4 cm by 2 cm scar on the plaintiff's forehead was permanent in nature. The plaintiff claimed that she is self-conscious of the hyperpigmentation and becomes emotional when the burn scar changes color.

The parties settled the matter prior to trial in the amount of $16,000 broken down as follows: the amount of $15,000 payable by defendant homeowners; and the amount of $1,000 payable by the defendant utility company. The plaintiff recovered $10,266 in net damages after a reduction of $3,551 for attorney fees; ERISA lien of $385 and $1,798 for medical expenses and costs.

REFERENCE

Reguera vs. Cabrera, et al. Docket no. L-003268-22; Judge Mark P. Ciarrocca, 05-22-23.

Attorney for plaintiff: Lisa A. Lehrer of Brandon J. Broderick, LLC in River Edge, NJ. Attorney for defendant homeowners: Steven A. Unterburger of Methfessel & Werbel in Edison, NJ. Attorney for defendant utility company: William Jeffrey Kohler of Cooper Levenson, P.A. in Cherry Hill, NJ.

LANDLORD NEGLIGENCE

$170,000 VERDICT

Landlord negligence – Fall down – Plaintiff slips and falls on icy front steps at her apartment residence – Fracture of left fibula.

Essex County, NJ

In this action, the plaintiff slipped and fell on icy conditions on the front steps of her apartment residence causing her to sustain injury. The defendant denied all allegations of negligence.

On December 1, 2017, the plaintiff was lawfully attempting to exit her apartment residence, located on the premises of 106 Smith Street in Newark, New Jersey. On this day, the premises was owned, operated, and maintained by the defendant. At the time of the incident, the plaintiff was attempting to descend the residence's front steps as she was leaving. As she was descending the steps, the plaintiff slipped on an accumulation of ice and snow and fell, causing her to become injured.

The plaintiff maintained that the defendant was negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the premises, failing to remove ice and snow from the premises, failing to place salt or other materials to prevent ice and snow buildup, failing to provide safe passage, failing to warn of hazardous conditions on the premises, failing to warn of ice and snow on the front steps, and failing to regard for the health and safety of building tenants including the plaintiff. Consequently, the plaintiff sustained injuries, including a fracture of the left fibula.

The jury found in favor of the plaintiff and awarded $170,000.

REFERENCE

Hankerson Lucinda vs. Mckenzie Milton. Docket no. L005294-18; Judge Keith E. Lynnott, 04-22-23.

Attorney for plaintiff: David S. Silverman of Silverman & Roedel in Union, NJ.

LANDLORD/TENANT

$9,500 RECOVERY

Landlord/tenant – Breach of rental agreement – Plaintiff claims defendant tenants violated several terms of lease including late payment of rent and cost plaintiff sale of property and profits from sale by failing to vacate property – Defendants argue they did not violate any lease clauses and were protected from eviction by emergency COVID-19 moratorium on evictions.

Burlington County, NJ

In this case, the plaintiff landlord asserted that the defendant tenants violated terms of their lease and terms of an agreement with regard to their repayment of back rent and tenancy on the property, causing the plaintiff to lose profits from the potential sale of the property. The defendants denied the plaintiff's allegations and argued that, while the defendants admitted they fell behind on rent because of income reduction due to the COVID pandemic, they eventually caught up on their back rent and, in fact, had a credit on their account.

The plaintiff was the owner of a property at 71 Arbor Lane in Sewell, New Jersey and the defendants were tenants on the property who failed to timely pay their rent in June and July of 2020. The defendants also brought pets into the home in violation of the lease terms and installed a trampoline which the plaintiff's homeowners insurance would not cover. In December 2020, the plaintiff wished to sell the property and offered the sale to the defendants, who declined the offer. The plaintiff then listed the property on the open market at the end of the defendants' lease in February 2021.

The plaintiff contended that the defendants did not leave at the end of the lease and blocked all showings of the property until ordered by the court to permit showings. The plaintiff eventually accepted an offer on the property and defendants were given notice on April 15th that they needed to vacate the premises on June 14th, with the closing set for June 26th. The plaintiff inspected the property on May 28, 2021 and found that none of the defendants' belongings had been packed nor were they making efforts to leave within 2 weeks. The plaintiff attempted to extend the sale of the home while seeking court action to remove the defendants. The court did not remove the defendants and the plaintiff claimed to have lost the sale of the home. The plaintiff eventually sold the home on September 20, 2021.

The plaintiff claimed damages from lost profits while she paid the mortgage, taxes, insurance for three months and management fees for 2 months due to the defendants' failure to leave the premises. The plaintiff claimed the defendants owed her $23,262. The defendants pointed to the rental portal in denying the plaintiff's claim that they were permitted a holdover status. The defendants asserted that, under the CDC Moratorium on Evictions resulting from COVID-19, which was in effect during the tenancy of the defendants, the plaintiff was forbidden from increasing the rent and thus the plaintiff could not charge a holdover fee during the emergency period. The defendants denied that the lease had a "no pets" clause and provided proof that their pets were certified as emotional support animals.

Further, as to the plaintiff's claim that she lost the potential sale of the property due to the defendants not leaving, she provided nothing in writing from the potential buyer stating the reason why they backed out was due to the defendants not vacating the property. The defendants adamantly denied the plaintiff's claim of damage to the property and asserted that they left the house in excellent condition including steam cleaning, and a fresh coat of paint on all rooms that required it. The defendants argued that the plaintiff received all rent payments owed to her through the Rental Assistance Program, which included charges she claimed for interest, taxes, homeowners' insurance and property management fees. The defendants maintained that the plaintiff also misrepresented her alleged losses due to the first potential sale falling through. In fact, she made approximately $22,950 more when selling to the new buyer than she claimed to have lost by the defendants not moving out.

The parties settled the matter prior to trial with the defendants agreeing to pay the plaintiff $9,500.

REFERENCE

Cromley vs. Lister. Docket no. L-002106-21; Judge Richard L. Hertzberg, 05-30-23.

Attorney for plaintiff: Raymond J. Noonan of Raymond J. Noonan, LLC in Brick, NJ. Attorney for defendant: Pro Se.

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$50,000 VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff pedestrian struck by defendant's vehicle in parking lot – Post-traumatic cervical facet syndrome – Cervical disc herniation – Cervical disc bulge.

Burlington County, NJ

In this motor vehicle negligence action, the plaintiff pedestrian was struck by the defendant's vehicle in a parking lot. The defendant generally denied all allegations of negligence.

On September 25, 2019, the plaintiff was a pedestrian, lawfully traversing in a parking lot on the premises of 8 Terry Lane in Burlington Township, New Jersey. At this time, the defendant's vehicle was parked in the same lot and was attempting to back out of a parking space in order to leave the premises. While traversing the lot, the plaintiff was suddenly struck by the defendant's vehicle as it was backing out. The defendant's vehicle briefly moved forward, and then attempted to back out again, striking the plaintiff a second time, and causing him to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff, failing to wait for clearance before backing out of a parking space, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff. Consequently, the plaintiff sustained injuries, including post-traumatic cervical facet syndrome, cervical disc herniation, and cervical disc bulge.

The jury found in favor of the plaintiff and awarded $50,000.

REFERENCE

Mcclinton William vs. Mann Jeffrey. Docket no. L000304-21; Judge Christopher Costello, 06-02-23.

Attorney for plaintiff: Christopher F. Costello of Costello Law Firm in Burlington, NJ.

$19,250 VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff pedestrian struck by defendant's vehicle while crossing street – Lumbar disc bulges – Left knee effusion.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff pedestrian sustained injuries after being struck by the defendant's vehicle while crossing the street. The defendant generally denied all allegations of negligence.

On April 29, 2019, the plaintiff was a pedestrian walking on West Market Street, at or near its intersection with Bergen Street in Newark, New Jersey. At this time, the plaintiff was attempting to cross West Market Street in order to board a public bus on the other side of the road. At the same time, the defendant's vehicle was traveling on West Market Street, toward the aforementioned intersection. As the plaintiff was crossing the street, she was suddenly struck by the defendant's vehicle, causing her to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff, failing to yield, failing to wait for clearance before proceeding through the intersection, failing to remain adequately attentive, failing to warn of the vehicle's approach, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff pedestrian. Consequently, the plaintiff sustained injuries, including lumbar disc bulges and left knee effusion.

The jury found in favor of the plaintiff and awarded $19,250.

REFERENCE

Kouassi Ahou vs. Evans Sabria. Docket no. L001574-21; Judge Mayra V. Tarantino, 04-26-23.

Attorney for plaintiff: Ronald D. Istivan of Law Offices of Ronald D. Istivan in Montclair, NJ. Attorney for defendant: Andrew Vo Ha of Progressive Insurance.

Broadside Collision

$37,500 VERDICT

Motor vehicle negligence – Broadside collision – Plaintiff's vehicle struck by defendant's vehicle pulling out of parking lot – Lumbar disc herniations – Lumbar disc bulges – Cervical disc herniations – Right shoulder supraspinatus tendon tear – Right knee sprain.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in its passenger side by the defendant's vehicle pulling out of a parking lot causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On May 7, 2017, the plaintiff's vehicle was traveling westbound in the right lane on Springfield Avenue, near its intersection with Lyons Avenue in Irvington, New Jersey. At the same time, the defendant's vehicle was attempting to pull out of a parking lot located at 1212 Springfield Avenue and merge into the plaintiff's lane of traffic. As the plaintiff's vehicle was traveling in a straight direction, the defendant's vehicle abruptly pulled out of the parking lot and into the plaintiff's travel lane. The defendant's vehicle then struck the plaintiff's vehicle in its passenger side, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to safely and properly exit a parking lot, failing to safely merge, failing to wait for clearance before merging into traffic, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to obey traffic conditions, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including lumbar disc herniations, lumbar disc bulges, cervical disc herniations, right shoulder supraspinatus tear, and right knee sprain.

The jury found in favor of the plaintiff and awarded $37,500.

REFERENCE

Babula-Chmielewska vs. Clifton. Docket no. L003418-18; Judge Annette Scoca, 05-13-23.

Attorney for plaintiff: Gary J Grabas of Bramnick, Rodriguez, Grabas, Arnold & Mangal, LLC in Scotch Plains, NJ. Attorney for defendant: Erica Tiffany Parkes of Geico.

Intersection Collision

$95,000 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff's vehicle struck by defendant's vehicle attempting to make illegal left turn in intersection – Shoulder tear – Cervical disc bulge – Lumbar disc bulge.

Bergen County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck by the defendant's vehicle while the defendant attempted to make an illegal left turn in an intersection causing the plaintiff to become injured. The defendant generally denied all allegations of negligence.

On February 15, 2019, the plaintiff's vehicle was traveling eastbound on Essex Street, at or near its intersection with Riverview Avenue, in Rochelle Park, New Jersey. At this time, the plaintiff's vehicle was attempting to proceed straight through the aforementioned intersection. At the same time, the defendant's vehicle was traveling northbound on Riverview Avenue, toward the same intersection. While the plaintiff's vehicle was proceeding through the intersection with a green traffic signal, the defendant's vehicle suddenly attempted to make a left turn into a driveway on a red traffic signal. The defendant's vehicle then struck the plaintiff's vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey traffic signals, failing to remain adequately attentive, failing to wait for a green traffic signal before turning, failing to safely and properly execute a left turn, failing to observe the plaintiff's vehicle, failing to yield the right-of-way, failing to operate the vehicle at a reasonable rate of speed, failing to slow or stop, and failing to avoid causing a collision with the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including shoulder tear, cervical disc bulge, and lumbar disc bulge.

The jury found in favor of the plaintiff and awarded $95,000.

REFERENCE

Musbeh vs. Haowang. Docket no. L000916-21; Judge Gregg A. Padovano, 04-20-23.

Attorney for plaintiff: Robert Kealy of Agrapidis & Maroules, P.C.

$25,000 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff's vehicle struck in front driver's side by defendant's vehicle after defendant neglects stop sign – Shoulder sprain – Knee sprain – Cervical disc herniations.

Union County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the front driver's side by the defendant's vehicle after the defendant neglected a stop sign causing the plaintiff to sustain injury. The defendant generally denied all allegations of negligence.

On October 12, 2020, the plaintiff's vehicle was traveling northbound on Maple Avenue in Irvington, New Jersey, at or near a 4-way stop intersection with another undisclosed road. At the same time, the defendant's vehicle was traveling eastbound on the undisclosed road, toward the same intersection. At the time of the incident, the plaintiff stopped at her designated stop sign, and then began to proceed straight through the intersection. The defendant neglected to stop at his own designated stop sign and also began to proceed through the intersection, at which point the defendant's vehicle struck the plaintiff's vehicle in the front driver's side.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey a stop sign, failing to obey traffic signals, failing to observe the plaintiff's vehicle, failing to observe the plaintiff's vehicle, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including shoulder sprain, knee sprain, and cervical disc herniations.

The jury found in favor of the plaintiff and awarded $25,000.

REFERENCE

Lovelace Shelby vs. Humphrey Alexander. Docket no. L001159-21; Judge Richard T. Sules, 05-03-23.

Attorney for plaintiff: Jonathan Druckman of Druckman & Hernandez, P.C. in Elizabeth, NJ.

Lane Change Collision

$46,000 VERDICT

Motor vehicle negligence – Lane change collision – Plaintiff's vehicle struck in driver's side by defendant's vehicle switching lanes – Neck pain – Back pain – Spinal injury.

Burlington County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was sideswiped by the defendant's vehicle when the defendant's vehicle suddenly changed lanes causing the plaintiff to sustain injury. The defendant generally denied all allegations of negligence.

On February 4, 2021, the plaintiff's vehicle was traveling in the right lane on Church Road in Evesham, New Jersey. At the same time, the defendant's vehicle was also traveling on Church Road, but was traveling in the left/passing lane, directly parallel to the plaintiff's vehicle. At the time of the incident, the defendant's vehicle abruptly changed lanes. In doing so, the defendant's vehicle struck the drivers' side of the plaintiff's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to obey traffic conditions, failing to warn of a lane change, failing to wait, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including neck pain, back pain, and spinal injury.

The parties entered into a settlement for $46,000.

REFERENCE

Krell Jason vs. Strazzeri Leo. Docket no. L002546-21; Judge Richard L. Herzberg, 05-03-23.

Attorney for plaintiff: John D. Borbi of Borbi, Clancy & Patrizi, LLC in Marlton, NJ.

Left Turn Collision

$50,000 VERDICT

Motor vehicle negligence – Left turn collision – Plaintiff's vehicle struck by defendant's vehicle turning left in front of plaintiff – Right shoulder supraspinatus tendon tear – Cervical disc herniations – Cervical and lumbar radiculopathy.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck by the defendant's vehicle, which turned left in front of the plaintiff's vehicle causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On October 13, 2017, the plaintiff's vehicle was traveling westbound on West Northfield Road, near its intersection with Winchester Road, in Livingston, New Jersey. At the same time, the defendant's vehicle was traveling southbound on Winchester Road, and was preparing to make a left turn onto West Northfield Road at the same intersection. At this time, the defendant had a stop sign in his favor on Winchester Road. The plaintiff did not have a stop sign. As the plaintiff was proceeding in a straight direction on West Northfield Road, the defendant's vehicle neglected its stop sign and attempted to turn left directly in front of the plaintiff's vehicle, causing a collision.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to wait for clearance before executing a left turn, failing to yield the right of way, failing to wait, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including a right shoulder supraspinatus tendon tear, cervical disc herniations, and cervical and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded $50,000.

REFERENCE

Baez Luis vs. Amin Krusha. Docket no. L007290-19; Judge Annette Scoca, 06-10-23.

Attorney for plaintiff: Sean T. Payne of Ginarte, Gallardo Gonzalez & Winograd, L.L.P. in Newark, NJ.

Rear End Collision

$100,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while plaintiff slows for traffic – Cervical disc herniations – Lumbar disc herniations – Lumbar disc bulges – Neck pain.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while the plaintiff was slowing for traffic causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On February 21, 2019, the plaintiff's vehicle was traveling eastbound on Route 46 in Newark, New Jersey. At this time, the defendant's vehicle was also traveling eastbound on Route 46, directly behind the plaintiff's vehicle. At the time of the incident, the plaintiff noticed heavy traffic ahead and began to slow her vehicle. As the plaintiff was slowing down, her vehicle was suddenly struck in the rear by the defendant's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe traffic conditions, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, lumbar disc herniations, lumbar disc bulges, and neck pain.

The jury found in favor of the plaintiff and awarded $100,000.

REFERENCE

Donayre Yovana vs. Hoffman Frank. Docket no. L001378-20; Judge Russell J. Passamano, 06-17-23.

Attorney for plaintiff: Kristofer Petrie of Brach Eichler, LLC in Roseland, NJ.

$30,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while slowing for traffic ahead – Lumbar disc herniations – Cervical disc herniations – Left elbow epicondylitis.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while the plaintiff was slowing for traffic causing the plaintiff to sustain multiple injuries. The defendant generally denied all allegations of negligence.

On April 21, 2017, the plaintiff's vehicle was traveling eastbound of Ferry Street in Newark, New Jersey. At this time, the defendant's vehicle was also traveling eastbound on Ferry Street, directly behind the plaintiff's vehicle. At the time of the incident, the plaintiff noticed heavy traffic ahead and began to slow her vehicle. While slowing for traffic, the plaintiff's vehicle was suddenly struck in the rear by the defendant's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff's vehicle, failing to obey traffic conditions, failing to remain adequately attentive, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including lumbar disc herniations, cervical disc herniations, and left elbow epicondylitis.

The jury found in favor of the plaintiff and awarded $30,000.

REFERENCE

Acuna William vs. Jorge Nicole. Docket no. L002618-19; Judge Annette Scoca, 04-15-23.

Attorney for plaintiff: Michael Alvarez of Lord, Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ.

$27,500 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while stopped on bridge – Cervical disc bulges – Lumbar disc herniations.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle while stopped in traffic on a bridge causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On March 29, 2019, the plaintiff's vehicle was traveling northbound on the George Washington Bridge, toward I95 North, in Fort Lee, New Jersey. At this time, the defendant's vehicle was also traveling northbound on the George Washington Bridge, directly behind the plaintiff's vehicle and in the same travel lane. At the time of the incident, the plaintiff's vehicle

was completely stopped in heavy traffic. While the plaintiff's vehicle was stopped, it was suddenly struck in the rear by the defendant's vehicle.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to maintain a safe distance from other vehicles, failing to remain adequately attentive, failing to observe traffic conditions, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulges and lumbar disc herniations.

The jury found in favor of the plaintiff and awarded $27,500.

REFERENCE

Deane Andressa vs. Cameron David. Docket no. L002002-21; Judge Bridget A. Stecher, 06-06-23.

Attorney for plaintiff: Anthony Mazza of Bendit Weinstock, PC in West Orange, NJ. Attorney for defendant: Nicholas J. Lombardi of Harrington & Lombardi, LLP in Wayne,

$10,000 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle strikes defendant's vehicle in rear after defendant cuts off plaintiff in traffic – Compression fracture at L4 – Lumbar disc bulge.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle struck the defendant's vehicle in the rear after the defendant abruptly changed lanes and cut the plaintiff's vehicle off causing the plaintiff driver to sustain multiple injuries. The defendant generally denied all allegations of negligence.

On June 26, 2019, the plaintiff's vehicle was traveling southbound on Route 1 South in Newark, New Jersey, in the right travel lane. At the same time, the defendant's vehicle was also traveling southbound on Route 1 South, in the left travel lane, directly next to the plaintiff's vehicle. At the time of the incident, the defendant's vehicle made a sudden attempt to change lanes, and abruptly merged into the right lane, cutting the plaintiff's vehicle off. The plaintiff's vehicle then struck the defendant's vehicle in the rear, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to safely and properly change lanes, failing to warn that the vehicle was changing lanes, failing to maintain a safe distance from other vehicles, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid causing a collision with the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including compression fracture at L4, lumbar disc bulge, and right hip pain.

The jury found in favor of the plaintiff and awarded $10,000.

REFERENCE

Clesca Frank vs. Abraham Quran. Docket no. L001628-21; Judge Robert H. Gardner, 05-18-23.

Attorney for plaintiff: Ann M. Merritt of Tobin Kessler Greenstein Caruso Wiener & Konray, PC in Clark, NJ.

Truck/Auto Collision

$235,000 RECOVERY

Motor vehicle negligence – Truck/auto collision – Rear end collision – Lumbar herniation necessitating surgery following injection.

Morris County, NJ

In this action for motor vehicle negligence, the 20-year-old plaintiff passenger contended that his host vehicle was struck in the rear by the defendant driver of a commercial Mack truck. The defendant had a $2,000,000 CSL policy. The plaintiff maintained that he suffered a lumbar herniation that was confirmed by MRI and radiculopathy that was confirmed by EMG. The defendant would not have presented a medical expert.

The plaintiff asserted that after he underwent physical therapy for a number of months, he underwent an injection. The plaintiff maintained that this course was insufficient, and that he underwent surgery, which was relatively minor and did not involve the use of hardware, approximately one year after the accident.

The plaintiff asserted that although improved, he will permanently suffer some symptoms. The plaintiff made no income claims.

The case settled prior to trial for $235,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Sujal Patel, M.D. from Glen Rock, NJ.

Istrefi, et al. vs. Davis, et al. Docket no. MRS-L-287-21.

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

Truck/Bicycle Collision

$247,500 RECOVERY

Motor vehicle negligence – Truck/bicycle collision – 3-year-old on tricycle cruises downhill out of driveway and into road where defendant tow truck driver fails to see her and strikes her with tow truck – Plaintiffs' decedent instantly killed.

Ocean County, NJ

In this motor vehicle negligence case the plaintiff estate of the decedent, a 3-year-old girl, asserted that the defendant tow truck driver struck the decedent on a tricycle in the street outside her house with such force that it caused her death. The defendants denied negligence and argued that they could not have foreseen that the plaintiff would suddenly appear in the roadway.

On August 24, 2017, the infant was riding her tricycle in the driveway of her home at 424 7th Street in Lakewood. The defendant driver was driving a commercial tow truck in the scope and course of his employment with the co-defendant owner of the tow truck and was proceeding on 7th Street. The driveway of the plaintiffs' home sloped downward toward the street and, in operating the tricycle, the child rolled down the driveway and exited the driveway into the street. The plaintiffs contended that the defendant negligently failed to observe the child and tricycle as he drove down the road and failed to stop or avoid colliding with the child.

As a result of the collision, the plaintiff died due to blunt force trauma. The plaintiff's sisters, ages 7 and 5 at the time, witnessed the accident and received therapy from a family trauma center for approximately 6 months. The plaintiff sought damages for the decedent's wrongful death, negligent infliction of emotional distress as to the decedent's parent and as to her siblings who witnessed the incident.

The defendant driver reported that he did not see the plaintiff at all and only stopped his vehicle when he heard the truck hit something. The police report of the incident indicated that there was no evidence that the motor vehicle was traveling at an excessive rate of speed and toxicology reports were negative for any drugs, alcohol, or medications. The police report concluded that the combination of the tricycle accelerating downhill and the inexperience of the three-year-old rider, contributed to the failure to stop before entering the path of the defendants' tow truck.

The parties settled the matter prior to trial in the amount of $247,500 broken down as follows: $63,915 in attorney fees; $7,813 in costs; $53,930 to the estate of the decedent; $31,958 in damages to the plaintiff mother; $44,942 in damages to the decedent's first sister and $44,942 in damages to the decedent's second sister.

REFERENCE

Krohn, et al. vs. Goodman, et al. Docket no. L-001276-22; Judge Robert E. Brenner, 05-04-23.

Attorney for plaintiff: John A. Underwood of Law Offices of Underwood & Micklin, LLC in Cherry Hill, NJ. Attorney for plaintiff: Beth Halpern of The Rothenberg Law Firm, LLP in Cherry Hill, NJ. Attorney for defendant: Heather A. Ragone of Gallo Vitucci & Klar, LLP in Hackensack, NJ.

MUNICIPAL LIABILITY

$150,000 VERDICT

Municipal liability – Fall down – Plaintiff steps into pothole in road causing her to trip and fall – Fracture of base of fifth metatarsal – Surgery.

Essex County, NJ

In this municipal liability action, the plaintiff stepped into a pothole in the road, causing her to trip, fall, and become injured. The defendants generally denied all allegations of negligence.

On June 14, 2018, the plaintiff was lawfully walking on a sidewalk on Lincoln Park Street, just outside the premises of 27 Lincoln Park Street in Newark, New Jersey. While she was walking, the plaintiff noticed an obstruction on the sidewalk, and so decided to walk in the road. As she was walking in the road, the plaintiff encountered a large and deep pothole. The plaintiff then stepped into the pothole, causing her to trip, fall, and become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the subject roadway, failing to fill a pothole, failing to remove an obstruction from the sidewalk, failing to repair a broken or uneven road, failing to warn of a potential tripping hazard, failing to cordon off a large pothole, failing to provide safe passage, failing to prevent hazardous or unsafe conditions, and failing to regard for the health and safety of pedestrians in the area including the plaintiff. Consequently, the plaintiff sustained injuries, including a fracture of the base of the fifth metatarsal, which required open reduction and internal fixation surgery to repair.

The jury found in favor of the plaintiff and awarded $150,000.

REFERENCE

Fortenberry vs. City Of Newark. Docket no. L003569-20; Judge Robert H. Gardner, 09-05-23.

Attorney for plaintiff: Nicholas M. Torres of Nicholas M. Torres, LLC in West New York, NJ.

PLAINTIFF'S VERDICT

Municipal liability – Planning board decision – Plaintiff files compliant application to build duplexes on multi-family zoned lot in defendant township – Plaintiff claims application wrongfully denied due to failure to include cul-de-sac in plans – Defendant argues it acted in best interests of safety in neighborhood because cul-de-sac necessary to allow for access by emergency vehicles.

Ocean County, NJ

In this action in Lieu of Prerogative Writs, the plaintiff alleged improper denial, by the defendant township planning board, of plaintiff's application to subdivide a tract of land for development. The defendant argued that its denial of the plaintiff's application was not arbitrary, capricious or unreasonable.

The plaintiff owned a property with frontage along 8th Street in Lakewood which contained 0.69± acres. The premises were located in the R-M Multi-Family Residential Zoning District. On November 12, 2021, the plaintiff applied to the defendant planning board for Preliminary and Final Site Plan approval in order to create 6 new tracts for 3 duplex structures. At the time, located on the premises were the remains of a one-story building that was damaged by a fire. Most of the building had been removed and much of the land was impervious surface. The site plan was prepared by an engineering firm with a plan date of October 28, 2020, and last revised on December 28, 2021.

The plaintiff contended that the proposed uses set forth in plaintiff's application for Preliminary and Final Site Plan were permitted in Multi-Family Residential R-M Zone. Duplex housing was a permitted use in the zone. Zero lot line subdivisions for duplexes were permitted in the zone district. The plaintiff maintained that, pursuant to township ordinances, its development application was fully conforming. The plaintiff provided for on-site parking consistent with the township code, with four off-street parking stalls per unit. The grading and drainage were addressed by the substantial reduction in impervious coverage. Consistent with the Residential Site Improvement Standard the premises did not require a cul-de-sac. The Residential Site Improvement Standards did not require that developments built before the rules became operative (June 3, 1997) be improved to meet the standards.

The plaintiff's application for Preliminary and Final Site Plan approval was properly noticed and published in compliance with the Municipal Land Use Act of 1975, N.J.S.A 40:55D-1 et seq. ("MLUL"), and was the subject of a public hearing on April 5, 2022. During the course of the public hearing, the plaintiff introduced testimony from a New Jersey Licensed Engineer and Planner who testified that the proposed use was a permissible use of the premises within the R-M Zone, and that no variances were required, and none were sought. The board indicated concern about the turnaround and possible need for a cul-de-sac. The plaintiff's engineer correctly argued the application was fully conforming and the ordinances did not require any cul-de-sac at the end of the street. Further, the plaintiff's engineer stated the RSIS was the only document that would require a turnaround, and due to the nature of the location the RSIS did not apply to that premises.

In addition, despite the application conforming without these suggestions, the plaintiff took an additional step to go beyond the conforming ordinance, and proposed a 22 foot wide hammerhead, as requested by the board and its professionals. The plaintiffs' attorney went as far as to introduce an Exhibit which was a plan to show a hammerhead installed. The plaintiffs' attorney confirmed that the Fire Department approved the application without a turnaround, and submitted a copy of the Fire Department Letter dated January 19, 2022. Despite rebuttal by the Planning Board, the plaintiff was an "As-Right" application, the Planning Board adopted a resolution of denial of the plaintiff's application on June 14, 2022. The plaintiff filed suit seeking reversal of the defendant planning board's decision.

The defendant board contended that it did not base its denial on the "broad purposes of the Municipal Land Use Law". Rather, the board had significant concerns regarding specific issues, as evidenced by specific examples directly tied to the plaintiff's piece of property as testified to by residents of Eighth Street, who commented that adding 6 new duplex units would compromise the safety of the block. Neighbors commented that, currently, vehicles "can't move" on the block and that there is not enough parking. A special needs child's family had to move away because ambulances could not physically travel down Eighth Street, and, on 2 separate occasions, there were house fires on Eighth Street where fire engines had to wait for people to move their cars out of the way to physically access the sites of the fires.

The defendant's engineer recommended an RSIS complaint turnaround, which was a full-sized cul-de-sac turnaround. The defendant board ultimately made it known to the plaintiff that it wanted to see provision of a full-sized cul-de-sac, and the plaintiff made it clear that it was not interested in exploring the provision of a full-sized cul-de-sac, which would require variance relief. Considering all of these very specific concerns related to parking and safety on Eighth Street, coupled with the fact that the applicant confirmed this application would be effectively adding another twenty-four cars to the already substantial traffic on the street, the defendant board felt that its overwhelming safety and quality of life concerns for the residents of Eighth Street prevented anyone from approving this application in good conscience.

The board also argued it was not unreasonable in requesting an RSIS compliant cul-de-sac at the site. The plaintiff's engineer testified at the public hearing and the plaintiff submitted in its trial brief that "development preceding through June 3, 1997 does not require that development built before the rules became operative be improved to meet the standard". However, the development at issue had not been built yet, and neither the plaintiff's engineer nor counsel provided any cited authority as to the contention that the lack of necessity of compliance held true when a proposed development relied on an existing development for its street network. The defendant board asserted that it was carrying out its duty as per 28 N.J.R. 2671(a) when it requested that the applicant provide an RSIS compliant cul-de-sac, and given the public comment received and the recommendations of its own engineer it was not acting unreasonably or capriciously in doing so.

At a bench trial, the court found in favor of the plaintiff, reversing and vacating the defendant's decision denying the plaintiff's application and requiring a RSIS compliant cul-de-sac.

REFERENCE

Bitton vs. Lakewood Township Planning Board. Docket no. L-001467-22; Judge Francis R. Hodgson, Jr., 05-18-23.

Attorneys for plaintiff: Adam Pfeffer and Casandra Taylor of Levin, Shea, Pfeffer & Goldman, P.A. in Jackson, NJ. Attorney for defendant: Jilian McLeer of King, Kitrick, Jackson Mcweeney & Wells, LLC in Manasquan, NJ.

POLICE LIABILITY

DEFENDANT'S VERDICT

Police liability – NJ Tort Claims Act – Corrections facility negligence – Plaintiff being escorted to housing unit beaten and battered with excessive force by defendant corrections officer – Right rotator cuff tear; strain of right shoulder; left knee sprain and back pain – Cortisone injections; physical therapy and stabilization of shoulder – Defendant asserts plaintiff threatened and punched him and force necessary to secure plaintiff for safety of defendant.

Atlantic County, NJ

In this corrections facility negligence case, the plaintiff asserted that the defendant corrections officer used excessive force against the plaintiff and caused significant, permanent injury. The plaintiff claimed violation of his rights under N.J.S.A. 10-6:2 and the New Jersey Tort Claims Act to be secure in his person, free from excessive force and with equal protection under the law. The plaintiff also claimed negligence of the defendant and vicarious liability of the defendant's employer, Atlantic County. The defendant denied negligence.

On June 1, 2018, the plaintiff was an inmate at the Atlantic County Jail located at 5060 Atlantic Avenue in Mays Landing. The defendant was a corrections officer working at the facility. The plaintiff contended that the defendant negligently assaulted, beat, battered and used excessive force on the plaintiff as he was being escorted back to his housing unit by the defendant. Immediately prior, the defendant had canceled the plaintiff's visitation privileges with family members. At that time, the plaintiff and defendant were attempting to utilize the elevator in the building for the purpose of returning the plaintiff to his housing unit when the elevator door would not close due to a known malfunction. As the plaintiff attempted to correct the issue with the elevator door, without warning, the defendant assaulted, battered, and beat him. The plaintiff contended he was lying on the floor in a defenseless position when he was further beaten, battered, assaulted and subject to excessive force. The plaintiff alleged that the assault and battery resulted in permanent injuries.

As a result of the incident, the plaintiff complained of pain in his left knee, right shoulder and back. An MRI of the right shoulder revealed a partial small undersurface tear of the right rotator cuff for which the plaintiff was treated with multiple cortisone injections and physical therapy. An MRI of the right knee revealed a mild contusion/ACL sprain which was treated conservatively. An orthopedic evaluation of the shoulder indicated a low-grade partial tear for which the plaintiff was recommended a non-operative approach with therapy, strengthening and stabilization.

The defendant asserted that, while he was escorting several inmates to visitation, he witnessed the plaintiff make a gesture of blowing a kiss and asking for a kiss toward a female officer in the building while stepping extremely close to her face. The defendant advised the plaintiff that his behavior was unacceptable, to which the plaintiff responded with vulgarity and the intention to continue his actions. Based on the defendant's belief that the plaintiff would keep harassing and making inappropriate statements to the female officer, and after conversation with a sergeant, the defendant canceled the plaintiff's visitation and escorted him back to his cell. Upon entering the elevator, the plaintiff stated that he was in jail for life, and thus, could kill the defendant and it would not matter to him.

The defendant testified that the plaintiff then violently grabbed the elevator door and began shaking and pulling it, whereupon the defendant attempted to place himself between the plaintiff and the door. The plaintiff then knocked the defendant off his feet and began punching him; grabbing his legs; and attempting to tackle him. The defendant believed he was being threatened and physically attacked, at which point he then used force against the plaintiff to secure him. Other officers were called and testified that they witnessed the plaintiff punching and attacking the defendant and that the plaintiff refused orders to stop resisting. With the help of other officers, the plaintiff was restrained and returned to his cell.

The defendant pointed to a use of force investigation that indicated that the force utilized was spontaneous based on a physical threat to an officer and that the use of force was justified. The report was reviewed 2 additional times by other individuals and the warden who determined that the force was justified and no further action was needed. The plaintiff was charged with several offenses as a result of the incident. The defendant maintained that the plaintiff was fully aware of the grievance and appeal process and was familiar with the required forms as he submitted numerous inmate request forms but that he did not submitted any formal grievances or appeals with regard to the incident.

The jury returned a verdict in favor of the defendant corrections officer.

REFERENCE

Green vs. Corrections Officer Justin Marco, et al. Docket no. L-001217-21; Judge Danielle J. Walcoff, 07-13-23.

Attorney for plaintiff: Brian M. Dratch of The Dratch Law Firm, P.C. in Livingston, NJ. Attorney for defendant: Murianda L. Ruffin, Assistant County Counsel of Atlantic County Law Department in Atlantic City, NJ.

PREMISES LIABILITY

Fall Down

$100,000 VERDICT

Premises liability – Fall down – Plaintiff falls from porch after bench collapses at defendant realty office – Right knee ACL tear – Right knee medial meniscus tear – Lumbar disc herniations.

Essex County, NJ

In this premises liability action, the plaintiff fell from a porch after a bench collapsed at the defendant realty office causing her to sustain serious injuries. The defendants generally denied all allegations of negligence.

On August 24, 2018, the plaintiff was a lawful visitor and business invitee at the defendant realty office, located on the premises of 20 Kings Highway in Haddonfield, New Jersey. At this time, the plaintiff was waiting for an appointment in the office and decided to sit on a bench on the building's front porch before entering the building. When the plaintiff sat on the bench, it collapsed, causing the plaintiff to fall backward off of the porch. The plaintiff became injured as a result.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the premises, failing to inspect the subject bench, failing to repair, replace, or remove a broken or hazardous bench, failing to prevent hazardous or unsafe conditions on the premises, failing to warn of the hazardous or unsafe nature of the bench, failing to prevent the bench from collapsing, and failing to regard for the health and safety of business invitees on the premises including the plaintiff. Consequently, the plaintiff sustained injuries, including a right knee ACL tear, a right knee medial meniscus tear, and lumbar disc herniations.

The jury found in favor of the plaintiff and awarded $100,000.

REFERENCE

Gonzalez Joan vs. Eric A. Shore, P.C., Coldwell Banker. Docket no. L002773-20; Judge Bridget A. Stecher, 05-30-23.

Attorney for plaintiff: David L. Wikstrom of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins in Springfield, NJ. Attorney for defendant: Frank J. Caruso of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

$21,746 VERDICT

Premises liability – Fall down – Plaintiff trips over vacuum cord plugged in across aisle at defendant department store – Head injury – Cervical disc herniations – Lumbar disc herniations – Lumbar disc bulges.

Essex County, NJ

In this premises liability action, the plaintiff tripped over a vacuum cord, which was plugged in across an aisle, at the defendant department store causing her to sustain injuries. The defendants generally denied all allegations of negligence.

On July 8, 2019, the plaintiff was a lawful visitor and business invitee at the defendant department store, located on the premises of 1100 Willowbrook Mall in Wayne, New Jersey. On this day, the defendant department store had been cleaned by several employees of a professional cleaning service, who had left a vacuum plugged in on one end of the store. While the plaintiff was walking down an aisle inside the store, she encountered the vacuum wire, which had been stretched across the aisle floor. The plaintiff then tripped over the wire and fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to unplug the subject vacuum, failing to remove the vacuum and its cord, failing to prevent a tripping hazard, failing to warn of a potential tripping hazard, failing to hire a competent cleaning company, failing to remove cleaning materials from the store floor before opening to customers, failing to provide safe passage, failing to prevent hazardous or unsafe conditions on the premises, and failing to regard for the health and safety of visitors and business invitees including the plaintiff. Consequently, the plaintiff sustained injuries, including head injury, cervical disc herniations, lumbar disc herniations, and lumbar disc bulges.

The jury found in favor of the plaintiff and awarded $21,746.40.

REFERENCE

Maloney-Matich Jane vs. Macy's Retail Holdings. Docket no. L005298-20; Judge Cynthia D. Santomauro, 04-29-23.

Attorney for plaintiff: James C. Mescall of Mescall & Acosta, P.C. in West Orange, NJ.

Falling Object

$7,500 VERDICT

Premises liability – Falling object – Plaintiff injured when storage unit door falls onto him – Headaches – Neck pain.

Essex County, NJ

In this premises liability action, the plaintiff was visiting his storage unit at the defendant self-storage facility when the storage unit door fell onto him. The defendants generally denied all allegations of negligence.

On July 4, 2018, the plaintiff was lawfully visiting his own storage unit at the defendant self-storage facility, located on the premises of 688 Route 46 in Clifton, New Jersey. At this time, the plaintiff had opened his storage unit and was removing some items from inside. While the plaintiff was moving items, the sliding storage unit door suddenly began to fall back downward. The storage unit door then struck the plaintiff, causing him to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the premises, failing to ensure the safety of storage units on the premises, failing to prevent the storage unit door from falling, failing to repair or replace a broken, hazardous, or otherwise defective storage unit door, failing to hire adequate maintenance staff, failing to warn of the door's potential to fall, and failing to regard for the health and safety of storage unit lessees including the plaintiff. Consequently, the plaintiff sustained injuries, including headaches and neck pain.

The jury found in favor of the plaintiff and awarded $7,500.

REFERENCE

Rafailov Nasim vs. Clifton Route 46 Self Storage. Docket no. L000312-20; Judge Thomas M. Moore, 04-29-23.

Attorney for plaintiff: Richard Isolde of Gelman, Gelman Wiskow & McCarthy in Bernardsville, NJ.

Hazardous Premises

$22,227 VERDICT

Premises liability – Hazardous premises – Plaintiff sitting at foot of bed in defendant hospital while visiting patient struck in back by stretcher – Cervical and lumbar disc bulges; left knee injury – Chiropractic treatment.

Burlington County, NJ

In this premises liability case, the plaintiff asserted that the defendant hospital allowed seating in an area where there was hospital traffic and that she was struck by a stretcher with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On September 3, 2019, the plaintiff was an invitee at the defendant hospital visiting her granddaughter who was a patient in the defendant's same-day surgery center. While the plaintiff was seated in a chair at the foot of the patient's hospital bed, a passing stretcher, being operated by the defendant's employee, struck the plaintiff's chair and caused her injury.

The plaintiff contended that the defendant negligently failed to provide a safe environment for their visitors and permitted unsafe or dangerous conditions and defects to exist without warning to the plaintiff or other visitors. The plaintiff also argued that the defendant was negligent in the hiring, training and monitoring of employees as to the operation of stretchers and proper safety procedures for their operation in the hospital.

As a result of the incident, the plaintiff sustained injuries to her cervical and lumbar spine and her left knee. These injuries include both aggravation of pre-existing disease and new injuries. She treated primarily with a chiropractor. The defendant argued that the plaintiff was responsible for her own injuries by not taking proper care that her chair was out of the path of hospital personnel.

The defendant also asserted that the plaintiff's injuries were pre-existing and not caused by the subject incident. The defendant pointed to the plaintiff's medical records indicating pre-existing complaints and pathology in all spinal regions including age-related degeneration.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $30,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury awarded damages in the amount of $27,872 broken down as follows: $15,000 in damages; $6,478 for chiropractic care and $6,394 in other medical expenses. After reduction for collateral source payment and addition of $584 in interest, the plaintiff's adjusted judgment was $22,227.

REFERENCE

Nemeth vs. Virtua Willingboro Hospital. Docket no. L-002005-20; Judge M. Patricia Richmond, 08-23-23.

Attorneys for plaintiff: W. Robb Graham and Robert I. Segal of Robert I. Segal, P.A. in Medford, NJ. Attorneys for defendant: Thomas M. Walsh and Andrew S. Winega of Law Offices Parker McCay, P.A. in Mount Laurel, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$1,650,000 VERDICT – MEDICAL MALPRACTICE – PULMONOLOGY – PLAINTIFF'S DECEDENT PRESENTING TO DEFENDANT WITH SEVERE SHORTNESS OF BREATH DIAGNOSED WITH COPD WHEN SUFFERING PULMONARY EMBOLISM – WRONGFUL DEATH OF 53-YEAR-OLD FEMALE.

Philadelphia County, PA

In this action for medical malpractice, the estate of the decedent alleged that the defendant doctors failed to diagnose the decedent pulmonary embolism and instead diagnosed COPD, discharging the decedent from the hospital once she was stable. Shortly after discharge, the decedent collapsed and died. She died of a cardiac arrest caused by pulmonary embolism. The defendants denied all allegations of negligence and injury.

The estate maintained that the defendant was negligent in failing to apply the applicable standard of care in the treatment of the decedent for the symptoms she exhibited upon admission, failing to perform appropriate testing and procedures on the decedent to determine if she was suffering from deep venous thrombosis and/or pulmonary embolism, failing to properly assess the decedent's risk for deep venous thrombosis and/or pulmonary embolism, failing to properly rule out deep venous thrombosis and/or pulmonary embolism and failing to perform appropriated diagnostic testing and procedures upon the plaintiff's decedent to diagnose deep venous thrombosis or pulmonary embolism, such as MRI, ultrasound, and D-Dimer testing. The defendants argued that the decedent was treated properly in accordance with medical standards.

The jury found that the defendant Warples was 55% negligent and the defendant Sayeed was 45% negligent. The jury awarded the estate $1,000,000 in wrongful death damages and $650,000 in survival damages.

REFERENCE

Anthony Dixon, individually and as personal representative of the Estate of Faith Dixon vs. St. Joseph's Hospital, Charles Waples, M.D. and Mohammed Sayeed, M.D. Case no. 150602339; Judge Glynnis Hill, 06-27-23.

Attorney for plaintiff: Eric Zajac of Zajac & Padilla in Ardmore, PA.

$400,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – DEFENDANTS FAIL TO INITIATE ANTIBIOTIC TREATMENT TO PLAINTIFF'S DECEDENT SHOWING CLEAR SIGNS OF INFECTION – WRONGFUL DEATH.

Montgomery County, PA

In this action for medical malpractice, the plaintiff's decedent presented to the defendant hospital on several occasions with symptoms consistent with an infectious process. Despite the decedent's symptoms, antibiotic therapy was not initiated by the defendants allowing the infection to worsen and cause the plaintiff's decedent's death. The defendants denied all allegations of negligence and injury.

The plaintiff's complaint stated that the defendants failed to commence broad spectrum antibiotics, failing to appreciate and treat signs and symptoms of sepsis, failing to immediately start antibiotics when blood cultures were positive on the morning of May 8th, and deciding to observe the decedent overnight without starting medication for the flu, Lyme disease or sepsis

The parties settled for $400,000.

REFERENCE

The Estate of Blanch Johnson by Lena McNair Johnson vs. Einstein Healthcare Systems and Susan Ginsberg, M.D. Case no. 2019-01507; Judge Jeffrey Saltz, 02-23-23.

Attorney for plaintiff: Daniel Thistle of Stampone Law in Cheltenham, PA. Attorney for defendant: Christine Dantonio of O'Brien & Ryan in Plymouth Meeting, PA.

PRODUCT LIABILITY

$21,000,000 VERDICT – PRODUCT LIABILITY – AUTOMOBILE DESIGN DEFECT – MOTOR VEHICLE NEGLIGENCE – PLAINTIFF PASSENGER STRIKES HER HEAD ON B PILLAR OF VEHICLE MANUFACTURED BY DEFENDANT DURING COLLISION WITH DEFENDANT DRIVER'S VEHICLE – CATASTROPHIC BRAIN INJURY – DIFFUSE AXONAL INJURY – TRAUMATIC BRAIN INJURY – 24/7 CARE REQUIRED.

Los Angeles County, CA

The plaintiff in this product liability/motor vehicle negligence action maintained that she suffered a serious and permanent brain injury when her head struck the side of the inside of the passenger side of the vehicle in which she was riding when the defendant intoxicated driver struck the plaintiffs' vehicle. The plaintiffs sued the defendant driver and the automobile manufacturer. The defendants denied negligence, and each blamed the other for the plaintiff's injuries.

The plaintiffs sued the defendant driver for driving under the influence and failing to stop for a red light. The plaintiffs also sued the defendant auto manufacturer for product liability stating that they used a defective design in the passenger-side airbag that did not protect a passenger's head from impacting the "B-pillar" - a structural support that divides the front section of the car from the rear and failed to properly test the design of the passenger side air bag. The defendant car manufacturer denied that there was any flaw in the design, testing or manufacturing of their products.

The jury found that the plaintiff was entitled to recover $21,000,000 in damages for her traumatic brain injury. The jury assigned liability against the defendant intoxicated driver only. The plaintiff already entered into a confidential settlement with the airbag's manufacturer.

REFERENCE

Nicole Salinas vs. Fernando Galvis Ortiz, Nissan Automotive. Case no. BC569227; Judge J. Stephen Czuleger, 04-12-23.

Attorney for plaintiff: Arash Homampour of Homampour Law Firm in Sherman Oaks, CA. Attorney for defendant: Tom Klein of Klein Thomas Lee & Fresard in Irvine, CA.

MOTOR VEHICLE NEGLIGENCE

$10,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – WRONGFUL DEATH – PLAINTIFF PARENTS ASSERT DEFENDANT DRIVER NEGLIGENT IN OPERATION OF CO-DEFENDANT'S RENTAL RV AND STRUCK PLAINTIFF'S DECEDENT PEDESTRIAN SON AS HE WALKED ALONG ROAD TO WORK – FATAL INJURIES.

Volusia County, FL

In this motor vehicle negligence case, the defendant driver struck the plaintiff's decedent, their 29-year-old son, resulting in his death. The defendants denied that the defendant driver was negligent and claimed that the plaintiffs' decedent was negligent and caused his own death.

The plaintiffs sought damages for pain and suffering; loss of support and services; medical and funeral expenses and loss of companionship as a result of the death of their son. The defendants maintained that the plaintiffs' decedent walked directly into the recreational vehicle; walked dangerously on a heavily trafficked roadway; failed to avoid walking into traffic; failed to remain attentive when walking on a heavily trafficked road, including wearing headsets; not keeping proper lookout and generally taking no steps to avoid traffic.

The jury found the defendant driver negligent and did not find comparative negligence by the plaintiff's decedent. The jury awarded total compensatory damages in the amount of $10,031,536 broken down as follows: $5 million each to the plaintiff mother and plaintiff father for mental pain and suffering; $31,536 in damages to the decedent's estate for medical, funeral and burial expenses resulting from the decedent's death.

REFERENCE

Robert Branen, the Estate of Jacob Branen, Deceased vs. La Mesa RV Center. Case no. 2019 31641 CICI; Judge Mary G. Jolley, 03-03-22.

Attorneys for plaintiff: Matthew Schwencke and David Vitale of Searcy, Denney, Scarola, Barnhart & Shipley, P.A. in West Palm Beach, FL. Attorney for defendant: Brendan Smith of Bromagen, Rathet, Klee & Smith P.A. in Fort Lauderdale, FL.

$5,806,741 VERDICT – MOTOR VEHICLE NEGLIGENCE – TRUCK/AUTO COLLISION – PLAINTIFF ATTEMPTS TO CROSS ROADWAY ON WHICH DEFENDANT TRAVELING WITHOUT HEADLIGHTS ON RESULTING IN DEFENDANT T-BONING PLAINTIFF'S VEHICLE – ORTHOPEDIC INJURIES TO SHOULDER, RIBS AND NECK ALONG WITH LACERATIONS – CONCUSSION – POST-CONCUSSION SYNDROME.

Sherburne County, MN

The plaintiff in this vehicular negligence action maintained she suffered serious injuries, including a concussion with visual impairments that prevent her from being able to return to school to become a teacher when her vehicle was t-boned by a truck owned and operated by the defendants. The plaintiff contends that the truck was traveling without it's headlights on. The defendants denied all allegations of negligence.

The plaintiff maintained that the defendant driver negligently operated the semi, and failed to use the truck's headlights. In addition, the plaintiff maintained that the defendant company was vicariously liable for the acts of the defendant driver. The defendant denied that her lights were not on at the time of the accident and maintained that she turned her lights off when she exited the truck's cab after the accident.

The court found that the defendant was negligent and that the plaintiff and her husband were entitled to damages totaling $5,806,741.

REFERENCE

Crystal Sweet and David Sweet vs. Vallerie Neary, Brokings Transport of Grand Rapids, Inc. Crystal Sweet, David Sweet versus Vallerie Neary, Brokings Transport of Grand Rapids, Inc. Case no. 71-CV-20-4347; Judge Karen B. Schommer, 02-10-23.

Attorney for plaintiff: Nathaniel Dahl of Meshbesher & Spence in Waite Park, MN. Attorney for defendant: John Crawford of Lommen Abdo in Minneapolis, MN.

$4,100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – PLAINTIFF'S VEHICLE STRUCK BROADSIDE BY DEFENDANT'S VEHICLE AFTER DEFENDANT DISREGARDS STOP SIGN – L4-L5 POST-TRAUMATIC DISC HERNIATION – INTERNAL AND EXTERNAL CERVICAL SCARRING – INTRACTABLE CERVICALGIA WITH RADICULOPATHY – CERVICAL COMPRESSION AND RADICULOPATHY – SURGERY.

Middlesex County, NJ

In this motor vehicle negligence action, the plaintiffs' vehicle was struck broadside by the defendant's vehicle after the defendant driver disregarded a stop sign. Consequently, the plaintiffs both sustained injuries. The plaintiff driver sustained post-traumatic disc herniation at L4-L5, as well as internal and external cervical scarring, and intractable cervicalgia with radiculopathy. The plaintiff passenger sustained cervical compression and radiculopathy. Both plaintiffs were required to undergo surgery to repair their injuries. The defendant generally denied all allegations of negligence.

The plaintiffs maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey traffic signs and signals, failing to remain adequately attentive, failing to observe the plaintiffs' vehicle, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiffs' vehicle.

The parties entered into a settlement for $4,100,000.

REFERENCE

Hoppe-Bermeo Orlando vs. Depena Wamdell. Docket no. L000600-21; Judge Ana C. Viscomi, 04-22-23.

Attorney for plaintiff: Daniel N. Epstein of Epstein Ostrove, LLC in Edison, NJ. Attorney for defendant: Michael Lynch of Law Offices of Linda S. Baumann in Morristown, NJ.

$1,600,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – PLAINTIFF'S VEHICLE STRUCK HEAD-ON BY DEFENDANT'S VEHICLE WHEN DEFENDANT CROSSES CENTER LINE – COMPLETE ROTATOR CUFF TEAR WHICH REQUIRED SHOULDER ARTHROSCOPY – SEVERAL HERNIATED DISCS IN CERVICAL SPINE – NECK PAIN – BACK PAIN – SHOULDER PAIN – ABRASIONS TO FACE.

Ocean County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck head-on by the defendant's vehicle after the defendant crossed the center line. As a result, the plaintiff sustained serious injuries including a complete rotator cuff tear which required shoulder arthroscopy, and several herniated discs in the cervical spine. The defendant generally denied all allegations of negligence.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to remain adequately attentive, failing to keep the vehicle under proper and adequate control, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle head-on. Consequently, the plaintiff sustained injuries, including neck pain, back pain, shoulder pain, and minor abrasions to the face.

The jury found in favor of the plaintiff and awarded $1,600,000.

REFERENCE

Hacker Keith vs. Jaime-Valdez Carlos. Docket no. L003112-19; Judge Walter H. Must, 08-02-23.

Attorney for plaintiff: John Borbi of Borbi, Clancy & Patrizi, LLC in Marlton, NJ. Attorney for defendant: Thomas Giardina of Goldberg, Miller and Rubin in Cherry Hill, NJ.

PREMISES LIABILITY

$1,575,000 RECOVERY – PREMISES LIABILITY – PLAINTIFF INJURED AFTER SLIPPING AND FALLING ON ICY OUTDOOR STAIRWAY AT TOWN HOME RESIDENCE – TRIMALLEOLAR FRACTURE WITH DISLOCATION OF LEFT ANKLE – SURGERY.

Sussex County, NJ

In this premises liability action, the plaintiff was injured after she slipped and fell on an icy outdoor stairway at her own town home. The plaintiff's injuries included a trimalleolar fracture with dislocation of the left ankle, which required surgery to repair, including an open reduction and internal fixation procedure with the placement of hardware. residence. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to remove ice and snow from the subject outdoor steps, failing to place salt or other measures to prevent icy conditions, failing to warn of icy conditions on the premises, failing to provide safe entry and exit from the plaintiff's residence, failing to prevent hazardous or unsafe conditions on the premises, and failing to regard for the health and safety of town home tenants, including the plaintiff.

The parties entered into a settlement for $1,575,000.

REFERENCE

Rigotty Sharon vs. All-American Landscaping. Docket no. L000142-20; Judge William J. McGovern, 05-10-23.

Attorney for plaintiff: William O. Crutchlow of Eichen Crutchlow Zaslow, LLP in Edison, NJ. Attorney for defendant: Peter M. Perkowski, Jr. of Riker Danzig, LLP in Morristown, NJ.

care after the original accident.

$1,500,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT SECURITY – PLAINTIFF SHOT IN BACK OF HEAD DURING ROBBERY ATTEMPT AT GAS STATION – PLAINTIFF'S DOCTORS REPORTED HE MADE GOOD RECOVERY FROM INJURIES.

Broward County, FL

This premises liability action involved a 2021 shooting at the defendants' gas station in Fort Lauderdale. Evidence showed that, inside the convenience store, the defendants' employees saw the plaintiff being assaulted, locked the doors and called the police. Eventually, the plaintiff was able to break free from his attacker and ran to the convenience store, only to find that the doors were locked. The plaintiff's attacker caught up to him, while the plaintiff was still waiting to be let into the convenience store. The attacker pushed the plaintiff to the ground. As the plaintiff lay helpless on the ground, his attacker shot him in the back of the head, execution style.

The plaintiff argued that the defendants negligently failed to implement adequate security at the location to prevent foreseeable crime. The chase and shooting were captured by a surveillance camera on the property. The attacker left the property after the shooting and eventually paramedics arrived and took the plaintiff to the hospital where they performed life-saving procedures. The plaintiff's doctors reported that he has made a good recovery from his injuries.

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

REFERENCE

Gustafson vs. Port Everglades Service Station, LLC and Baby Marathon, LLC. Case no. CACE 22-002333; Judge Michele Towbin Singer, 03-24-23.

Attorneys for plaintiff: Joshua Padron and Todd Michaels of The Haggard Law Firm in Coral Gables, FL. in Coral Gables, FL.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Contract

$498,082 JUDGMENT – BREACH OF CONTRACT IN SALE OF LUXURY MOTOR YACHT – MISREPRESENTATION OF FUEL CAPACITY – CLAIMED INABILITY TO MAKE EXTENDED, NON-STOP VOYAGES.

Broward County, FL

This action involved the purchase of a luxury motor yacht by the plaintiff company and its principal from the defendants at a cost of $2,072,940. The defendants included the yacht broker with whom the plaintiff had contracted, Maritimo Offshore Yacht Sales, Inc. ("MOYS") as well as the company which the plaintiff asserted was the successor to the bankrupt yacht manufacturer, Maritimo (MFG) International Pty, LTD. The plaintiff claimed that the defendants intentionally misrepresented the yacht's fuel capacity making the boat inappropriate for long, non-stop voyages. The plaintiff sought punitive as well as compensatory damages. The defendants denied breach of contract and the co-defendant, Maritimo (MFG) International Pty, claimed that it was not a party to the contract and was not the successor to the manufacturer. The defendants filed a counterclaim against the plaintiff company and also named its principal as a third-party defendant. Allegations in the counterclaim included civil conspiracy; defamation; tortious interference with advantageous business relationships and trade libel.

Evidence showed that the principal of the plaintiff company was interested purchasing a new M58-14 Maritimo Motor Yacht, a 58-foot customized luxury yacht with 3 levels. The plaintiff claimed that the defendant yacht broker and manufacturer provided brochures, website advertisement and numerous other information regarding range and performance specifications of the vessel, specifically with regard to the size of the fuel tanks and cruising range. The plaintiff showed that the M58-14 was listed as having a fuel capacity of 1,321 U.S. gallons. After the purchase and delivery, the plaintiff claimed it was discovered that the vessel had less fuel capacity than advertised.

The Court directed a verdict in favor of the plaintiff company with respect to all counterclaims. The jury found for the plaintiff against both defendants on all counts and rejected the counterclaims against the plaintiff's principal (third-party defendant). The jury found that punitive damages were not appropriate. The jury also found that the defendant Maritimo (MFG) International Pty was the successor to the manufacturing entity, Maritimo Offshore Pty. Ltd. It awarded no damages against MOYS. Final judgement was entered for the plaintiff against the defendant Maritimo MFG International Pty Ltd in the amount $498,082.60.

REFERENCE

Plaintiff's yacht valuation expert: Gerald Slakoff from Sedona, AZ.

Many Waters, LLC vs. Maritimo Offshore Yacht Sales, Inc. and Maritimo (MFG) International Pty, LTD. Case no. CACE -16-012247; Judge Martin J. Bidwill, 01-07-23.

Attorneys for plaintiff: Jonathan S. Robbins and Scott Miller of Akerman, LLP in Fort Lauderdale, FL. Attorney for plaintiff: Paul L. Kobak of The Kobak Law Firm, P.A. in North Miami Beach, FL.

REFERENCE

Gustafson vs. Port Everglades Service Station, LLC and Baby Marathon, LLC. Case no. CACE 22-002333; Judge Michele Towbin Singer, 03-24-23.

Attorneys for plaintiff: Joshua Padron and Todd Michaels of The Haggard Law Firm in Coral Gables, FL. in Coral Gables, FL.

Country Club Negligence

$1,000,000 RECOVERY – COUNTRY CLUB NEGLIGENCE – PLAINTIFF SUSTAINS SEVERE INJURIES AFTER BEING STRUCK BY GOLF CART AT DEFENDANT COUNTRY CLUB – CRUSH INJURY OF BILATERAL LEGS – CRUSH INJURIES TO LEFT KNEE AND ANKLE – LUMBAR SPINAL COMPRESSION – POST-CONCUSSION SYNDROME – SURGERY REQUIRED.

Essex County, NJ

In this personal injury action, the plaintiff sustained severe injuries, including crush injuries to the bilateral legs, crush injuries to the left knee and ankle, lumbar spinal compression, and post-concussion syndrome, after she was struck and run over by a golf cart at the defendant country 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 of the country club, failing to ensure the safety of golf carts on the premises, failing to inspect golf carts, failing to hire competent employees, failing to properly train employees regarding golf carts and related safety procedures, failing to instruct employees to shut golf carts off after disembarking, in negligently allowing a golf cart to be parked within ten feet of the pro shop and its visitors, and failing to regard for the health and safety of business invitees and members on the premises, including the plaintiff.

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

REFERENCE

Sutton Deborah vs. Glen Ridge Country Club. Docket no. L002348-19; Judge Russell J. Passamano, 05-01-23.

Attorney for plaintiff: Bruce H. Nagel of Nagel Rice, LLP in Roseland, NJ. Attorney for plaintiff: Rocco Casale of Schwab Haddix & Millman in Berkeley Heights, NJ.

Dram Shop

$95,527,108 VERDICT – DRAM SHOP – WRONGFUL DEATH – PLAINTIFF FATHER ASSERTS DEFENDANT DRUNK DRIVER CONSUMED ALCOHOL AT DEFENDANTS FITNESS FACILITY AND BAR BEFORE COLLIDING HEAD-ON WITH VEHICLE DRIVEN BY PLAINTIFF'S DAUGHTER, KILLED INSTANTLY, AND PLAINTIFF'S SON, WHO SURVIVED BUT RENDERED DISABLED BY INJURIES.

Miami-Dade County, FL

In this wrongful death dram shop case, the plaintiff asserted that the defendant driver, defendant fitness gym, and defendant bar were responsible for the wrongful death of the plaintiff's decedent daughter, and the catastrophic injuries sustained by the plaintiff's son after the defendant driver drank alcohol at the defendant gym and defendant bar before the subject accident. The defendant gym moved for summary judgment arguing that no alcohol was furnished or served at its event on the night in question and that it was a "social host," not a "vendor."

The defendant driver initially denied negligence and pointed to evidence in the accident report indicating no smell of alcohol on him at the scene or at the hospital afterward and that the blood alcohol results were not forensically reliable. The defendant driver ultimately settled with the plaintiff prior to trial and the matter proceeded as to the defendant bar only.

On April 24, 2018, a Clerk's Default was entered against the remaining defendant, the bar where the defendant driver drank after the holiday party. The defendant bar was found to be negligent and that its negligence was a legal cause of death to the plaintiff's decedent and injury to the plaintiff's son. The matter proceeded to trial as to damages only.

The jury awarded damages to the surviving plaintiff passenger, son of the plaintiff and brother of the decedent driver, in the amount of $58,527,108 broken down as follows: $1,527,108 in past medical expenses; $50,000,000 in future pain and suffering; and $7,000,000 in past pain and suffering. The jury awarded damages to the plaintiff mother in the amount of $18,500,000 broken down as follows: $15,000,000 in future pain and suffering; and $3,500,000 in past pain and suffering The jury awarded damages to the plaintiff father in the amount of $18,500,000 broken down as follows: $15,000,000 in future pain and suffering and $3,500,000 in past pain and suffering. The total of all damages was $95,527,108.

REFERENCE

Criales, et al. vs. Chavez, et al. Case no. 2017-006062-CA-01; Judge Mark Blumstein, 06-21-22.

Attorneys for plaintiff: Thomas Scolaro and Adam T. Rose of Leesfield Scolaro, P.A. in Miami, FL. Attorney for defendant: Thomas S. Ward of Rennert Vogel Mandler & Rodriguez, P.A. in Miami, FL. Attorneys for defendant dram shop: Alexander Heydemann and Lawrence E. Burkhalter of Weinberg Wheeler Hudgins Gunn & Dial, LLC in Miami, FL. Attorneys for defendant driver: David O. Caballero and Henry Salas of Cole Scott & Kissane, P.A. in Miami, FL. Attorney for defendant gym: Elizabeth M. White of Baumann Gant & Keeley, P.A. in Fort Lauderdale, FL.