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SUMMARIES WITH TRIAL ANALYSIS

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

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

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SUMMARIES WITH TRIAL ANALYSIS

$10,000,000 RECOVERY – MEDICAL MALPRACTICE – NEUROLOGY – HEALTHY 27-YEAR-OLD PLAINTIFF CONTENDS FAILURE TO DIAGNOSE AND TREAT CEREBRAL ARTERIOVENOUS MALFORMATION – NUMEROUS UNNECESSARY SURGERIES CULMINATING IN LEFT CRANIOTOMY – PERMANENT, CHRONIC SPASTICITY OF RIGHT SIDE OF BRAIN, GLOBAL APHASIA AND HEMIPLEGIA – PLAINTIFF IMMOBILE, MARGINALLY VERBAL, FULLY DISABLED AND WILL REQUIRE LIFELONG CARE.

Camden County, NJ

This medical malpractice action arose from the defendants' collective failure to properly diagnose and treat a cerebral arteriovenous malformation in an otherwise healthy 27-year-old woman, leading to serious, permanent injury. The defendants denied any malpractice and asserted that the care of the plaintiff was appropriate under the presenting circumstances. The defendants argued that the plaintiff's condition was such that her outcome would not have changed if certain actions by the defendants were or were not undertaken in her treatment.

On December 6, 2012, the plaintiff presented to the emergency department of the defendant hospital with complaints of headache, visual disturbance, and dizziness. While in the E.R., diagnostic testing was performed and the plaintiff was found to have a superficial lesion on the posterior left occipital region consistent with arteriovenous malformation. The plaintiff was admitted to the ICU of the hospital for left occipital AVM. The plaintiff came under the care of the defendant staff of the defendant hospital until her discharge on December 10, 2012 following a cerebral angiography and embolization of her left AVM. Resection of the plaintiff's AVM was not performed, but instead, the plaintiff underwent 4 additional embolization procedures.

The plaintiffs contended that they did not receive appropriate or adequate information regarding the material risks, benefits, and alternatives of the repeated embolization procedures, including but not limited to the significant risk of the plaintiff sustaining a stroke. On November 18, 2013, the plaintiff was admitted to Kennedy Hospital for her fifth embolization procedure during which the plaintiff consequently developed and suffered significant complications that were not timely recognized. The subject surgery had to be aborted and the plaintiff was thereafter taken for a CT-scan followed by an MRI of the head after a significant delay under the clinical circumstances. The CT-scan of the head revealed a left subdural hemorrhage, subarachnoid hemorrhage and effacement of the grey white matter junction involving the left cerebral hemisphere. As a result of the negligence of the defendants, the plaintiff required placement of a right-sided extraventricular drain intraoperatively. The plaintiff was thereafter intubated and admitted into the Intensive Care Unit on November 19, 2013. The plaintiff continued to suffer postoperatively from elevated intracranial pressure and subsequent imaging in the days following the aborted embolization procedure demonstrated worsening of cerebral edema. The plaintiff was not returned to the operating room until November 22, 2015, when the defendants performed a left craniectomy. After a lengthy hospital course, the plaintiff was discharged to an intensive rehabilitation facility.

The plaintiffs maintained that as a result of the defendants' malpractice, the plaintiff sustained severe and permanent brain damage, as well as other permanent neurological injury and full disability. The plaintiff sustained grievous and permanent injuries including traumatic brain injury with subdural hematoma and subarachnoid hemorrhage, left frontal burr hole, left parietal burr holes, chronic spasticity of the right side of the brain after brain injury, global aphasia, and hemiplegia. The plaintiff is able to perform only mild verbalization; however, most is incomprehensible. Her right upper extremity is plegic and her right lower extremity has only minimal movement.

The parties settled the matter prior to trial in the amount of $10 million in damages. The settlement proceeds were comprised of: $3,220,916 in attorney fees; $337,751 in costs;.$250,000 paid to the plaintiff's guardian for caretaking services; $232,753 in medical liens and $5,959,079 in net damages to be set up in trust for the benefit of the plaintiff.

REFERENCE

Crosley vs. Nair, M. D., et al. Docket no. L-004331-15; Judge Deborah Silverman Katz, 04-17-20.

Attorney for plaintiff: Andrew J. Stern of Kline & Spencer in Cherry Hill, NJ. Attorney for defendant: Kim Gasparon of O'Brien & Ryan, LLP in Plymouth Meeting, PA. Attorney for defendant: Kathryn A. Somerset of Parker McCay, P.A. in Mount Laurel, NJ.

COMMENTARY

As a result of her injuries, the plaintiff has limited mobility, requiring a wheelchair and cane for ambulation. The plaintiffs maintained that as a result of the defendants' negligence as described, the plaintiff underwent multiple unnecessary neurosurgical procedures over the course of a two-year period, with substantial associated pain, suffering, and distress. The plaintiff will require lifelong care.

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Main Office:
973/376-9002 Fax 973/376-1775
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973/535-6263

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$6,500,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL – INFANT PLAINTIFF SUFFERS RESPIRATORY DISTRESS AFTER ABORTED SURGERY – CHRONIC ENCEPHALOPATHY WITH SEVERE DEVELOPMENTAL DELAY, LANGUAGE IMPAIRMENT, MODERATE TO SEVERE INTELLECTUAL DISABILITY – LIMITED AMBULATION WITH PERSISTENT MOTOR DELAYS – LIFELONG CARE REQUIRED.

Monmouth County, NJ

In this medical malpractice case, the plaintiff asserted that the defendants deviated from the standard of care in treatment of the infant plaintiff for a hernia resulting in profound injury. The plaintiff brought suit against all medical personnel involved in the treatment of the plaintiff. Numerous parties were dismissed during discovery and the remaining defendants were: the defendant anesthesiologist and his practice, and the defendant hospital. The defendants asserted that the plaintiff was stable following the cancelled surgery and was transported to the PICU where she received appropriate treatment and care. The defendants also asserted that there was no breach of the standard of care or that it is impossible to determine when and by whom any breach occurred.

The infant plaintiff was born prematurely on April 20, 2012 at the defendant hospital. She remained in the NICU for 75 days. The plaintiff progressed well and was released on July 5, 2012 with mild GERD treated with Zantac. The infant plaintiff then presented to the emergency room of the defendant hospital on August 1, 2012 with a bulge in her groin area. The plaintiff's parents were concerned that she had a hernia. The plaintiff was seen by a pediatric emergency room physician who diagnosed and manually reduced the hernia. The plaintiff's parents were then informed that the plaintiff would require surgical intervention.

The plaintiff asserted that, during introduction of anesthesia, the plaintiff experienced desaturation of oxygenation and the plaintiff was intubated and surgery aborted. The plaintiff was transported to the PICU. There were no notes indicating treatment of the plaintiff from the point of the aborted surgery until one hour later. The plaintiff asserted that the lack of documentation was in itself a breach of the standard of care and made it difficult to ascertain who treated the plaintiff and what treatment, if any, she received between the end of the surgery, where the last vitals were reported at 1:00 a.m. and her arrival in the PICU at 3:00 a.m.

The plaintiff underwent an uneventful hernia repair later in the day on August 1. After that surgery, and after emerging from anesthesia, the plaintiff was noted to manifest rhythmic twitching of an upper extremity. The plaintiff was treated, but continued to show signs of clinical seizure activity and abnormal EEG. Several electroencephalographic seizures were noted.

The plaintiff asserted that the defendants breached the standard of care during the plaintiff's initial attempt and second successful hernia surgery. The plaintiff maintained that she was unobserved following the aborted surgery for one to two hours during which she suffered hypoxia and that the defendants breached the standard of care by continuing with the second surgery when the plaintiff had suffered respiratory distress hours earlier in the PICU. As a result of the defendants' malpractice, the plaintiff suffered chronic static encephalopathy with severe global developmental delay, receptive and expressive language impairment, moderate to severe intellectual disability, limited ambulation with persistent motor delays and remote symptomatic focal epilepsy.

The defendant anesthesiologist argued that the plaintiff was stable at the conclusion of the aborted first surgery and was transported to the PICU by a pediatric nurse. The defendant maintained that, at his last contact with the plaintiff she was not injured or at risk of injury. The defendant hospital asserted that the plaintiff was treated appropriately at all times, including while in the PICU and that her injuries were a known risk of surgery especially given the plaintiff's presentation as a newborn, premature infant but were not caused by the actions or inactions of the defendants.

The parties settled the matter prior to trial in the amount of $6.5 million broken down as follows: $1,644,629 in attorney fees; $260,635 in costs and disbursements; $82,260 in outstanding medical expenses and $3,000,000 in net damages to the minor plaintiff.

REFERENCE

Roman vs. Mami, M.D., et al. Docket no. L-004550-13; Judge Joseph P. Quinn, 02-19-20.

Attorney for plaintiff: Peter Chamas of Gill & Chamas, LLC in Woodbridge, NJ. Attorney for defendant anesthesiologist and practice: David J. Bishop of Crammer Bishop & O'Brien, PC in Absecon, NJ. Attorney for defendant hospital: Paul F. Schaaff of Orlovsky Moody Schaaff Conlon & Gabrysiak in West Long Branch, NJ.

COMMENTARY

The plaintiff asserted that her injuries could have been avoided had there not been departures from the accepted standard of care. Additionally, due to the discrepancies in versions of what happened to the plaintiff, and the lack of documentation, it was difficult to ascertain when and under the care of which practitioners the injury occurred. The plaintiff will require lifelong care and significant medical treatment throughout her life and she has a shortened life expectancy.

$3,175,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – MULTIPLE VEHICLE COLLISION – AFTER INITIAL ACCIDENT WITH LEFT-TURNING DEFENDANT, HOST VEHICLE STRUCK IN REAR BY CO-DEFENDANT – DRIVER SUFFERS FRACTURE OF TIBIAL PLATEAU AND BILATERAL KNEE TEARS – FRONT-SEAT PASSENGER SUSTAINS BILATERAL ARM FRACTURES AND ANKLE FRACTURE; BOTH REQUIRED SURGERY – CHILD SUFFERS MINOR INJURIES.

Middlesex County, NJ

This motor vehicle negligence case involved a plaintiff driver in her 40s, her mother, a front-seat passenger and a then-6-year-old daughter who was a rear-seat passenger. The plaintiffs contended that the initial defendant driver negligently made a left turn in front of them, causing the initial crash. The plaintiffs further contended that they were then struck in the rear by the co-defendant. The plaintiff driver maintained that she suffered bilateral knee tears, and a fracture to a tibial plateau. The plaintiff passenger contended that she sustained bilateral arm fractures that required surgery, an ankle fracture which required surgery and which resulted in a non-union. The child suffered soft tissue cervical sprains and strains, as well contusions of the arm and chest and required no additional treatment. The left turning defendant had a primary policy of $100/300.000 with an excess of $10,000,000. The rear striking defendant had $250,000/$500,000 in primary coverage and a $3,000,000 umbrella.

The plaintiffs maintained that when the initial defendant turned left in front of them the host struck the side their vehicle and while they were stopped they were struck by the co-defendant. The co-defendant denied that he could reasonably have avoided the accident. The plaintiffs countered that if the rear-striking defendant had paid proper attention, the second impact, which the host occupants contended occurred several seconds after they stopped, would not have occurred. The plaintiff's motion for summary judgment on liability against the rear-striking driver was granted.

The driver asserted that she sustained a fracture to the tibial plateau and bilateral knee tears. This plaintiff underwent an open reduction/open reduction to treat the tibial plateau injuries and arthroscopic surgery on each knee. The plaintiff further maintained that a lumbar fusion may well be necessary in the future. The plaintiff driver asserted that she will suffer permanent pain and limitations.

This plaintiff would have related that she has 2 young biological children and formerly enjoyed remaining active with them and attending their soccer games. The plaintiff related that she can essentially no longer do so and that on her son's 10th birthday, she was particularly upset because she missed her son scoring 2 goals during a soccer game. The driver further related that the family had recently gotten a dog and that after the accident, they had to give up the pet. This plaintiff had also adopted a child who lives in Egypt and contended that because of the injuries, she was unable to travel to her child's high school graduation. The host vehicle was on its way to church when the accident occurred. This plaintiff would have presented church members who would have described the before and after lifestyle of the plaintiff.

The driver's mother, the plaintiff in the front passenger seat, contended that she suffered bilateral arm fractures that were treated surgically, a right clavicle fracture and a mid-sternal fracture that were treated conservatively and a fracture of the left ankle. The

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plaintiff did not undergo recommended ankle surgery and related that she was afraid of the procedure. This plaintiff suffered a non-union and contended that the pain and limitations will permanently remain severe.

The child, age 6 at the time, suffered soft tissue cervical sprains and strains, as well contusions of the arm and chest. This plaintiff underwent emergency room care and did not have further treatment.

The plaintiffs made no income claims.

The case settled for a combined $3,175,000.

REFERENCE

Adly vs. Grieco, et al. Docket no. MID-L-4024-17, 09-20.

Attorney for plaintiff driver: Gregg A. Williams of Law Office of Gregg A. Williams in East Brunswick, NJ. Attorney for plaintiff passengers: Michael S. Williams of Gold Albanese Barletti & Locascio, LLC in Red Bank, NJ.

COMMENTARY

The defendants had very substantial coverage and it is felt that the jury may well have responded strongly to the injuries that effected the entire family unit. In this regard, the evidence of two very significant impacts would inure to the benefit of the plaintiffs' cases. Additionally, the plaintiff driver's leverage was undoubtedly increased by the lay testimony detailing the manner in which the plaintiff was changed from an active and vibrant individual who greatly enjoyed her family to a much more sedentary type person.

$1,100,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/MOTORCYCLE COLLISION – FAILURE TO STOP AT STOP SIGN – THORACIC BURST FRACTURE – 4-LEVEL FUSION – PLAINTIFF ABLE TO RESUME MOST ACTIVITIES AND CHANGES TO MORE LUCRATIVE JOB.

Hudson County, NJ

In this case of motor vehicle negligence, the plaintiff motorcycle operator, in his mid 20s, contended that the defendant driver negligently failed to stop at a stop sign and pulled out into the path of the plaintiff, resulting in the plaintiff striking the defendant's car. The plaintiff contended that as a result, he suffered a burst fracture at T-8 which required a 4-level fusion and which will cause symptoms which will probably deteriorate in the future. The plaintiff further maintained that he sustained a pneumothorax, multiple rib fractures and a left scapula fracture. The defendant indicated in discovery that he stopped at the stop sign momentarily, saw vehicles in the distance, but that he proceeded without seeing the plaintiff's motorcycle approach.

The plaintiff was hospitalized for 12 days, during which he underwent the fusion surgery that incorporated significant hardware. The plaintiff would have also argued that the jury should consider that the plaintiff will experience the effects of the injury and the probable deterioration through the remainder of a lengthy life expectancy. The plaintiff further asserted that the jury should consider that in order to suffer such a burst thoracic fracture, extensive force was involved. The plaintiff also contended that the surgical scar, which was approximately 18 inches long, is very upsetting and permanent in nature.

The plaintiff maintained that although he was able to resume most activities, he was unable to continue working as a mechanic. The plaintiff obtained the alternative employment a few months thereafter. The plaintiff's vocational expert would have testified that because of factors that include the need to take frequent breaks and the substantial risk of a deterioration of the plaintiff's condition, the plaintiff probably suffered a very significant work -life reduction. The plaintiff's economist would have concluded that the projected loss ranged from slightly more than $500,000 to slightly more than $600,000. The defendant would have claimed that this projection should be rejected.

The defendant had $250,000 in primary coverage and a $1,000,000 umbrella. The case settled prior to trial for $1,100,000.

REFERENCE

Plaintiff's economist expert: Kristin Kucsma from Livingston, NJ. Plaintiff's neurosurgeon expert: Kangmin Lee, M.D. from Oradell, NJ. Plaintiff's vocational expert: Edmond Provder from Hackensack, NJ.

Perez vs. Mejia. 04-12-21.

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

COMMENTARY

The plaintiff commanded a significant recovery, irrespective of the evidence that a few months after the accident, the plaintiff changed jobs to one that pays significantly more than the mechanic position which he formerly held. In this regard, the evidence of the extensive force necessary to cause the burst thoracic fracture that led to the 4-level fusion would have been very significant. Additionally, the jury's observation of the approximate 18-inch long surgical scar also added to the plaintiff's leverage. Moreover, although the plaintiff is currently earning significantly more than he had prior to the collision, the plaintiff would have argued that because of the extensive surgery and hardware entailed, he faces a very uncertain future because of probable deterioration and an associated reduction in his anticipated earnings.

$1,500,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – INTRAFAMILIAL SUIT – PLAINTIFF FATHER SLIPS AND FALLS ON DEFENDANT SON'S MAT SITUATED ON DECK – INCIDENT CAPTURED ON VIDEO – FRACTURE OF RIGHT DISTAL TIBIA AND FIBULA – SURGERY – INFECTION NECESSITATES SECOND SURGERY – MAT MISLAID BEFORE EXAMINED BY EXPERTS.

Essex County, NJ

In this premises liability action, the 70-year-old plaintiff, who was the father of the defendant, contended that the mat situated on the deck and next to the door was slippery on the bottom. The plaintiff contended that as a result, the mat slipped and he fell as he was venturing on the deck to assist the plaintiff in the completion of a security system. The plaintiff asserted that he suffered severe fractures to the distal tibia and fibula and required surgery with the installation of hardware. The plaintiff also suffered an infection and required a second surgery to remove hardware. The camera portion of the system had already been installed and the fall was captured on video. The defendant would have argued that the plaintiff failed to pay adequate attention and was comparatively negligent.

The evidence disclosed that although the camera had already been installed, the defendant needed help constructing the housing in which the camera would be situated. The plaintiff would have argued that the jury could well observe that the plaintiff simply stepped on the mat when it slipped out from under him. The defendants contended that the mat was already present when they purchased the home several years earlier and that they did not realize that the mat was slippery. The plaintiff would have denied that this position should be accepted.

The plaintiff asserted that he had not seen the mat before and would have argued that the defendant had created the hazard by placing a dangerous mat. The defendants could not produce the mat, of which the defendant argued was inadvertently disposed. The plaintiff would have pointed out that the alleged inadvertent disposal occurred before any expert examined the mat and the plaintiff would have argued that the defendant's position was highly suspect.

The plaintiff fell onto his right leg and suffered fractures of the right distal tibia and fibula. The plaintiff underwent an initial open reduction/internal fixation. The evidence also revealed that the plaintiff subsequently suffered an infection in the leg and required subsequent surgery in which hardware was removed. The plaintiff maintained that he will permanently suffer pain and limitations.

The plaintiff was retired and made no income claims.

The defendants had $3,000,000 in coverage. The case settled prior to trial for $1,500,000.

REFERENCE

Merkel vs. Merkel. 05-03-21.

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

COMMENTARY

The jury would have clearly reacted strongly to the failure of the defendants to keep the mat, In this regard, it is felt that this factor was especially significant in view of the nature of the case in which a father was suing his son. Additionally, the fact that the fall was captured on video would have enabled the plaintiff to stress that he simply walked over the mat when it slipped, arguing that he was clearly not comparatively negligent.

$400,000 RECOVERY – PREMISES LIABILITY – WRONGFUL DEATH – PLAINTIFF'S 2-YEAR-OLD SON DROWNS IN DEFENDANT HOMEOWNER'S SWIMMING POOL AT FAMILY PARTY WHILE BEING SUPERVISED BY DEFENDANT RELATIVES – NON-BINDING ARBITRATION FINDS DEFENDANT HOMEOWNER 50% LIABLE AND DEFENDANT RELATIVES 50% LIABLE WITH DAMAGES OF $1 MILLION.

Monmouth County, NJ

In this premises liability case, the plaintiff asserted that the defendants were supervising the minor plaintiff while he was at their home and he drowned in their swimming pool due to negligence of the defendants. The defendants were the owner of the property and relatives who were supervising the infant plaintiff. All but the defendant homeowner had been released from the case during the progress of the case. The remaining defendant homeowner denied liability arguing that she was not negligent and had breached no duty owed to the plaintiff.

On August 30, 2015, the plaintiff's son was attending a family party at the home of the defendant, located in Cliffwood. During the party, the infant plaintiff fell into the pool and drowned. The defendants included the defendant homeowner and family members of the extended family who were also guests at the party. The plaintiff, individually and as Administrator of the Estate of the minor plaintiff, was included for failing to supervise the child. The defendants owned, operated, controlled and maintained the property.

The plaintiff contended that the defendant homeowner negligently failed to secure the ladder to the above-ground pool, allowing the minor plaintiff ac-

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cess to the pool and the defendant family members failed to supervise the minor plaintiff, contributing to his drowning. The defendant argued that the co-defendants, entrusted with the care of the plaintiff, were responsible for his supervision at a party that included adults and access to the pool. The defendant maintained that the co-defendants owed a duty to the plaintiff and that their breach of that duty was the cause of the plaintiff's accident and death.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant property owner and 50% to the defendant relatives of the minor plaintiff. The arbitrator set gross damages at $1,000,000. The arbitration was not confirmed and the matter proceeded.

The plaintiff settled with the defendant homeowner for $400,000.

REFERENCE

Estate of BB, Jr. vs. Anonymous. Docket no. withheld; Judge Linda G. Jones, 01-14-20.

Attorney for plaintiff: Michael G. Degrande of Quinn Law Group, LLC in Philadelphia, PA. Attorney for defendant homeowner: John Burke of Burke & Potenza in Parsippany, NJ.

COMMENTARY

Following the settlement in January 2020, the plaintiff filed a motion to enforce the settlement arguing that nearly five months after the release was executed, the settlement funds had not been delivered to plaintiffs' counsel. Plaintiff's counsel asserted that the settlement of litigation ranks high in our public policy. Jannarone v. W. T. Co., 65 N.J. Super. 472, 476, 168 A.2d 72, 74 (Super. Ct. App. Div. 1961) and that the court will enforce settlement agreements "absent a demonstration of fraud or other compelling circumstances. In re Estate of Kanter, 2015 N.J. Super. Unpub. LEXIS 2023, at 16. Where the terms and conditions of a settlement agreement are clear and unambiguous, the non-breaching party is entitled to enforcement. Schor v. FMS Financial Corp., 357 N.J. Super. 185, 191-92, 814 A.2d 1108 (App. Div. 2002). The plaintiff argued that, in the subject action, the terms of the settlement were clear and enforcement of payment was proper, and, therefore, the plaintiff requested that the court enforce the settlement and enter the proposed order granting the plaintiff's motion.

The defendant opposed the motion arguing that, on January 14, 2020, the defendant sent an email confirming the settlement of the matter in the amount of $400,000 and requesting that I provide a release for his review. On January 17, 2020, I forwarded to Mr. DeGrande a proposed release and requested that he return an executed copy along with letters of administration, a certificate as to further security pursuant to R.4:95-4, a clear child support judgment search and his firm's W-9 Form. On February 3, 2020, Mr. DeGrande responded that he did not feel that a certificate of further security was necessary. No mention was made of the letters of administration. On February 15, 2020, I responded to DeGrande that I still needed proof that Branden Burnett, Sr. was the administrator of the estate. On February 21, 2020, plaintiff's counsel wrote inquiring as to the status of the settlement check and, on that same day, defense counsel reminded him that proof that the plaintiff was the administrator of the estate was required, and suggested that letters of administration must have been issued.

On March 16, 2020, the plaintiff's representatives forwarded an email to the defendant inquiring as to the status of the settlement check. Defense counsel replied informing that by both email and telephone conversations, he had told plaintiff's counsel that he needed documentation as to the administrator of the estate of the plaintiff and also called his attention to the section of New Jersey's Wrongful Death Act, N.J.S.A.2A:31-6, which provides that no payment in settlement of an action brought under the Act shall be made to anyone other than the duly appointed general administrator of the estate of the decedent. Defense counsel maintained that he further informed the plaintiff's representatives that this section also required the general administrator to post a bond adequate to protect the persons entitled to receive the settlement monies. Defense counsel was willing to forgo the requirement that the administrator post a bond but could not waive the requirement for proof that the plaintiff was the administrator of the estate.

Plaintiff's counsel responded, inquiring if letters of administration would be adequate proof. Defense counsel replied that it would be and asked why it was taking so long. Plaintiff's counsel replied that he had been out of the office as his father had been ill and ultimately passed away. Defense counsel replied with condolences and asked that the letters of administration be forwarded and a request for the check from the defendant's insurer would be made. All of these exchanges took place on March 16, 2020. Having not yet received the letters of administration, on April 30, 2020, defense counsel emailed plaintiff's counsel advising that his client was anxious to issue the check and requesting that he forward the letters of administration. The defendant put forth that plaintiff's counsel responded that day as follows: "Jack, this is my fault. Completely flaked. I'm heading into the office tomorrow and will scan/email. Best, Sean."

Defense counsel asserted that the next he heard of the matter was a fax transmission on June 19, 2020 enclosing the letters of administration and the renunciation executed by the decedent's mother of any right to administer the estate. Defense counsel then forwarded the Letters of Administration to the insurer and requested that it issue the settlement check. The defendant maintained that responsibility for any delay in consummating the settlement of this matter rested entirely with the office of the plaintiff's attorney. The requirement that the defendant be provided with the letters of administration demonstrating proof of the administrator of the estate of the decedent was communicated to that office on numerous occasions over the course of many months. The initial response from the office of the plaintiff's attorney - that letters of administration were unnecessary - was utter nonsense.

Defense counsel argued that N.J.S.A.2A:31-6 is quite clear as to whom the settlement monies are to be paid. If the defendant were to have paid the settlement monies to a party who was not the administrator of the estate, it would have been liable for the entire amount of the settlement had it turned out that the parties entitled to receive the settlement monies never received them.

Plaintiff's counsel did not dispute the defendant's entitlement to proof of who was the administrator of the estate. It simply took him three months to supply that proof. The defendant argued that the plaintiff's motion was nothing short of frivolous and insulting, and displayed a continued, astounding ignorance of the requirements of New Jersey law. Defense counsel argued that, if the plaintiff had been aggrieved by the delay in the issuance of the settlement monies, responsibility rested with his attorneys. Defense counsel concluded that the motion should be denied in its entirety. Plaintiff's counsel withdrew the motion.

$271,567 VERDICT – CONTRACT – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING – PLAINTIFF LAND DEVELOPMENT CORPORATION CLAIMS DEFENDANT INVESTMENT COMPANY/LENDER ENGAGED IN DECEPTIVE PRACTICES IN ITS DEALINGS WITH PLAINTIFF REGARDING LOAN FOR DEVELOPMENT OF SUBJECT PROPERTY – PLAINTIFF CLAIMS LOSSES FROM FEES AND COSTS DURING LOAN PROCESS AS WELL AS LOSS OF LAND PURCHASE OPTION AND LOST SALES PROFITS TOTALING MORE THAN $29 MILLION.

Bergen County, NJ

In this liability case, the plaintiff was a corporation organized and created for the purpose of developing a proposed subdivision on a tract of vacant land located at 905 Route 9 South in Middle Township. The defendants were an investment broker that facilitates loans to commercial entities including loans for real estate purchase and development and its president/ CEO. The parties were engaged in an arrangement for the plaintiff to get loans from the defendants to develop and sell properties in a proposed subdivision. The plaintiff brought suit against the defendants under the Consumer Fraud Act; Common Law Legal Fraud; Equitable Fraud; Breach of Contract; Breach of the Duty to Act in Good Faith; Unjust Enrichment; Professional Negligence; Tortious Interference with Prospective Economic Advantage; and Civil Conspiracy. The defendants argued that, because their adherence to the terms of the Loan Commitment did not result in a loan offer which was accepted by the plaintiff, the plaintiff could not then claim that the fact that a loan closing failed to occur constituted a misrepresentation.

The plaintiff argued that the totality of the evidence plainly illustrated a downward progression of loan offers, purportedly based on various appraisals. The plaintiff claimed that the direct and circumstantial evidence overwhelmingly showed that it lost the opportunity to acquire 161 acres of a unique tract of real estate for the required $5 million price and, with that, it lost the opportunity to develop it into 202 residential units, which had already been fully approved.

By the time the plaintiff's land purchase option expired on December 13, 2014, the plaintiff had paid the defendant a total of $236,000 in related loan acquisition and extension fees. The plaintiff alleged that the deck was stacked against it all along, having been hamstrung with appraisal mistakes and with behind-the-scenes ethical violations committed by the defendants, resulting in the payment of a massive amount of fees to the defendant with nothing but losses for the plaintiff in return. The plaintiff claimed it suffered significant and irreparable damage as a result of the actionable and intentional conduct of the defendants, their appraisers and agents. The plaintiff asserted that it paid in excess of $240,000 in fees and costs during the entire loan commitment period based on the willfully and intentionally false representation that the defendants would make a loan in the amount of $10.6 million.

Furthermore, as a result of the wrongful conduct of the defendants, the plaintiff alleged that it lost its land purchase option and $4.5 million in approval costs expended over several years in perfecting the proposed subdivision. Finally, the plaintiff claimed to have lost the opportunity for development sales profits in excess of $25 million when it lost the land purchase option. As to the breach of contract claim, the defendants maintained that the sole basis for the plaintiff's breach of contract claim is that it was a breach of the Letter of Commitment for the defendants to have made its loan offers based on the disposition values, rather than the market values determined by the appraisers. The defendant argued that it engaged both sets of appraisers to determine the market value based on a 12-month sale to a cash buyer which was the exact language the parties agreed to in the Loan Commitment. Notwithstanding the different terminology of "market value" versus "disposition value," the defendants maintained that it was clear that the terms were functionally identical. As such, there was simply no breach. In fact, the defendants followed the Loan Commitment to the letter. The defendants offered the plaintiff loans based on appraisals received from qualified, approved appraisers.

The defendants made an offer of judgment to the plaintiff in the amount of $350,000 during the progress of the case. The offer was not accepted and the matter proceeded. Prior to trial, the defendants made a second offer of judgment to the plaintiff of $160,000. The offer was not accepted and the matter proceeded to bench trial.

The court found in favor of the plaintiff and against the defendant investment broker/lender on the plaintiff's claim for breach of duty to act in good faith. The court awarded damages in the amount of $271,567 broken down as follows: $236,000 in damages and $35,567 in interest.

REFERENCE

Stone Harbor Estates, Inc. vs. Kennedy Funding Financial, LLC, et al. Docket no. L-008363-15; Judge Estela M. De La Cruz, 09-22-20.

Attorney for plaintiff: Thomas D. Flinn of Garrity, Graham, Murphy, Garofalo & Flinn, PC in East Hanover, NJ. Attorney for plaintiff: Brian M. Gerstein of Harkavy, Goldman, Goldman & Gerstein in West

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Caldwell, NJ. Attorneys for defendant: Evan M. Goldman and Brett M. Buterick of A.Y. Strauss, LLC in Roseland, NJ.

COMMENTARY

The court, in support of its judgment in favor of the plaintiff, stated that the plaintiff did not prove its claims as to conspiracy, breach of contract, or fraud, but did find that the plaintiff proved a breach of the covenant of good faith and fair dealing by the defendants as well as highly questionable ethical behavior. The plaintiff claimed that the direct and circumstantial evidence overwhelmingly showed that it lost the opportunity to acquire 161 acres of a unique tract of real estate for the required $5 million price and, with that, it lost the opportunity to develop it into 202 residential units due to the intentional, fraudulent actions of the defendants.

The court found the first loan offer extended to the plaintiff was insufficient for its project and, yet, the defendants' offers never went any higher, no matter what the plaintiff or its representatives did or said. Salient to this point, were the plaintiff's actions after the first loan offer in excess of $10 million was extended. While sizable, this loan offer did not provide the plaintiff with sufficient funds to complete all the tasks related to the acquisition, which included the payment of the $13.5 million purchase price for the land and approvals. As a result, the plaintiff requested additional time from the plaintiff to accept or reject the loan offer. The parties eventually agreed to revised terms and the plaintiff paid an additional $106,000 to reinstate the loan commitment and to extend its expiration. At that point, the plaintiff had paid a total of $236,000 in fees to the defendant.

The plaintiff tried to make the deal work, forcing the plaintiff's principal to work out priorities for securing the subject property as collateral. While the offer was pending, the assumptions were conceptually considered to be true, but the agreement required that they be actually true at the time of closing. The fact that the agreement affirmatively required that all the assumptions considered be a reality at the time of closing did not deem the defendant's research about the assumptions considered a frivolity, nor was there evidence of a breach of contract on their part. The court found that the breach of contract claim had not been proven and was dismissed, due to volatility and uncertainty on both sides, following the original reach agreement, citing Frederico v. Home Depot, 507 F.3d 188, 203 (3d Cir. 2007).

The court concluded that the evidentiary record did not support the plaintiff's civil conspiracy claim as there was no evidence of two or more persons (one being the lender and the other being one of the appraisers) conspiring to inflict a wrong against the plaintiff. While there were communications in the record between the defendants and his appraisers, there was no evidence that those appraisers were involved in a scheme or conspiracy to inflict a wrong against the plaintiff. The court dismissed the conspiracy claim.

With regard to the plaintiff's claims of fraud, the court stated that the record failed to prove that the defendants made any misrepresentation or omission that resulted in any reasonable reliance by the plaintiff and the damages that the plaintiff claimed. The plaintiff failed to prove by clear and convincing evidence that it believed and justifiably relied upon the defendants' statements and was indeed by it, and that, as a result of that reliance, sustained the colossal damages sought. The reliance was not reasonable nor was the totality of the damages the plaintiff claimed to have suffered.

Under the remaining claim for breach of the implied covenant of good faith and fair dealing, it was implied or understood that each party to the contract must act in good faith and fairly deal with the other party in performance or enforcement of the terms of the contract. On this claim, the plaintiff was required to prove that the defendant, with no legitimate purpose acted with bad motives or intentions or engaged in deception or evasion in the performance of the contract; and, by such conduct, denied the plaintiff of the initially intended deal between the parties.

The court found that the evidence reflected that the defendant president/CEO, as the operative on the frontline on behalf of the defendant firm, engaged in communications with the appraiser before the appraisal company finalized its report. In fact, a witness from the appraisal firm testified that he "wouldn't have changed the appraisal unless [the president/CEO] had asked." The court found that it was evident that the appraiser tinkered with and lowered the valuation of the property at the request of the defendant. The court observed that the first two appraisal reports were structured like the last one, in that they did not put a value on all 202 lots "as if completed." Instead, they value only Phase I, Section 1 "as if completed" and reflected the income from the final 123 lots as raw or unimproved land.

The court found that the preponderance of the evidence showed that the defendant participated by providing his opinion or approval before the final appraiser issued his report. The record plainly showed the defendants' hand in the appraisal process right at the point before the reports were issued. The court found that the changes in valuations did not make sense if the defendant's denials were to be believed, because there was no logical explanation or basis for the changes after the first appraisal was issued. As a result of the valuation changes, the offers went lower and lower and included at least one glaring mathematical mistake by the final appraiser. The court concluded that the plaintiff had proven that the defendants breached the covenant of good faith and fair dealing in that the evidence showed the defendants injected themselves into the valuation process, resulting in lower and lower loan offers, giving the undeniable impression that the defendant was calling the shots. It represented a manipulation of the process and subverted the purpose of an independent and professional appraisal of the project. The court deemed that the resultant puppetry breached the covenant of good faith and fair dealing and the plaintiff recovered damages only through this count of its claims against the defendant.

However, the court found that the evidence led it to conclude that the plaintiff was not entitled to the millions of dollars it proposed. The basis for the plaintiff's multi-million-dollar claim was not found to be reasonable and was based on wishful speculation and uncertainties. The court asserted that the plaintiff's projections appeared to be impervious to a myriad of market and time elements that could easily affect such a project. The damages presented by the plaintiff did not simulate the terms of the Loan Commitment and thus were not reasonable. The amount of damages claimed was not foreseeable to the parties in any sense of interpretation. The court found that the damages evident included all the fees that the plaintiff paid due to the defendants' machination and covert wrongdoing. The plaintiff had paid a total of $236,000 and had proven that the defendants' conduct caused it to suffer harm in the form of the fees milked throughout the extended loan application process. Were it not for the defendants' machinations and influence on the various appraisals, the deal would have been consummated earlier and without the extraction of thousands of dollars in fees. For the foregoing reasons, the court concluded that the plaintiff was entitled to the amount of fees paid and that the balance of the damages claimed were not supported in the evidence, were speculative, exaggerated and not based on reliable factors upon which the court could form a basis for an award of lost profits with any reasonable certainty. And order entering judgment in favor of the plaintiff for $236,000 plus prejudgment interest was entered.

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$65,000 RECOVERY – DOG BITE – MINOR PLAINTIFF BITTEN ON HAND BY DOG PLACED BY CO-DEFENDANT RESCUE ORGANIZATION WITH CO-DEFENDANT'S OWNER WHILE AT CO-DEFENDANTS' HOME – PERMANENT SCARRING – DEFENDANT OWNER CONTRIBUTES $60,000; DEFENDANT RESCUE $4,000 AND DEFENDANT HOMEOWNERS $1,000.

Ocean County, NJ

On December 25, 2016, the minor plaintiff, a 10-year-old boy, was in the custody of his mother at his mother's home. There were various family members present for the Christmas holiday and one of the guests brought her dog. The plaintiff's mother asked the guest (her aunt) how the dog was with meeting new people. The dog owner replied that the dog did okay. Later in the day, the plaintiff put his hand out to pet the dog and the dog bit the plaintiff's hand. The defendant homeowners denied any knowledge of any vicious propensities of the dog and argued that they did not own the dog and were not liable for its actions. The defendant rescue organization and its representative denied knowledge that the dog was aggressive and asserted that it had no history of such.

As a result of the incident, the plaintiff sustained traumatic dog bite injury to the hand with permanent scarring The minor plaintiff brought suit against his mother and grandmother (the owners of the premises where the bite occurred) and the dog owner, the rescue from whom the owner had received the dog, and the rescue employee who placed the dog with the defendant owner and represented to the owner that the dog was good with children.

The parties settled the matter prior to trial in the amount of $65,000 broken down as follows: $60,000 from the defendant dog owner; $4,000 from the defendant rescue organization, and its representative, and $1,000 from the defendant homeowners.

REFERENCE

Prendeville vs. Baker, et al. Docket no. L-001165-17; Judge Arnold B. Goldman, 07-01-19.

Attorney for plaintiff: Deborah J. Banfield of Morgan Melhuish Abrutyn in Livingston, NJ. Attorney for defendant Rachel Prendeville and Nancy Lovering, homeowners: Thomas DeNoia of DeNoia Tambasco & Germann, LLC in Toms River, NJ. Attorney for defendant Doreen Nespolini d/b/a Derrek's Gleeful Rescue: James F. Paguiligan of Paguiligan Law Firm in Toms River, NJ. Attorney for defendant Elaine Baker, dog owner: Janet L. Pisansky of Burke & Potenza in Parsippany, NJ.

COMMENTARY

The co-defendant homeowners, in this case the mother and grandmother of the minor plaintiff, moved for summary judgment on the argument that they did not own the dog and were therefore not responsible for its actions. The defendants asserted that they were entitled as a matter of law on the claims of common law negligence because they did not own the dog that bit the plaintiff.

The court opined that the dog bite statute provided that in a cause of action for negligence, "The owner of any dog which shall bite a person shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness." N.J. Stat. Ann. § 4.19-16. The court noted that the defendants in this case argued that the plaintiff has no evidence that the defendants knew of the dog's vicious propensities and the defendants were not otherwise negligent. The plaintiff opposed the motion arguing that there was a genuine issue of material fact as to whether the dog that bit the plaintiff was vicious and whether the defendants' actions allowing the dog among children was negligent.

The plaintiff advised that the defendant grandmother testified at her deposition that she knew the dog was a foster dog and a rescue and knew the defendant owner had had the dog for approximately two months. However, it is unclear whether the defendant grandmother knew about the dog's history or its listing with the rescue site as preferring a home without dogs, cats or young children. Specifically, the plaintiff argued that the defendant shared the responsibility of taking care of the plaintiff since the plaintiff lived at the defendant's home since 2012 and listed it as his home address for school. As such, the plaintiff argued that the defendant homeowner's credibility as to whether or not she was negligent should be a decision made at trial.

Similarly the plaintiff argued that the testimony of the defendant mother of the plaintiff was contradictory. First, the plaintiff advises the defendant mother's statement of facts provided that before the accident, the plaintiff was playing with the dog. However, the defendant also stated that she was in the bathroom when the attack happened and did not observe her son's actions preceding the dog bite. The plaintiff also pointed to the defendant's testimony that the plaintiff was watching television before the attack. However, the defendant dog owner's testimony was that the dog bit the plaintiff when he put his hand under the table to pet it. Again, issues of material fact indicated, according to the court, that this matter should be decided at trial.

The court denied the defendant's motion for summary judgment, stating that the matter was riddled with genuine issues of material fact. The court found that the plaintiff had shown competent evidence of various genuine issues of material fact. With all inference to be given in favor of the non-moving party under Brill, the court deemed it clear that summary judgment was not warranted in this case.

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VERDICTS BY CATEGORY

MEDICAL MALPRACTICE

Otolaryngology

DEFENDANTS' VERDICT

Medical malpractice – Otolaryngology – Plaintiff contends she suffered stroke as result of improper surgical positioning or traumatic dissection of ICA – Right upper extremity paralysis and loss of speech – Extensive treatment to regain mobility and speech – Defendants deny causal relationship between procedure and plaintiff's stroke.

Bergen County, NJ

In this medical malpractice case, the plaintiff, a 25-year-old woman, asserted that the defendants caused her to suffer a stroke during or as a result of a surgical procedure to remove a mass from her neck. The defendant radiologist and diagnostic center were dismissed from the case prior to trial. The remaining defendants denied that the surgery caused the stroke and pointed to the plaintiff's admission and diagnosis notes on the day of her stroke which indicate that a CT angiogram showed the surgical site and that the area was "well disparate from the carotid bifurcation."

Beginning on August 25, 2014, the plaintiff presented to and came under the medical and surgical care of the defendant radiologist, diagnostic center, otolaryngologist, osteopathic physician and otolaryngology practice. The plaintiff presented with a mass in her neck which the defendants surgically removed and diagnosed as a schwannoma. The plaintiff contended that she suffered a stroke due to negligent surgical positioning or traumatic dissection of the carotid artery during or as a result of the surgery performed by the defendants.

The plaintiff underwent surgery on October 7, 2014 to remove the neck mass. On October 8, 2014, the plaintiff was admitted through the E.R. for a change in mental status with a diagnosis of stroke. The plaintiff maintained that the surgery caused the subsequent stroke. The plaintiff presented evidence that the stroke was caused by traumatic dissection of the left internal carotid artery with occlusion of the left ICA, and embolization from the dissection flap to the middle cerebral artery causing infarctions in the brain. The plaintiff asserted that the stroke was caused by hyperextension of the neck during surgery or inadvertent dissection of the ICA during the surgical procedure.

The plaintiff suffered right upper extremity paralysis with inability to speak following the stroke. The plaintiff underwent speech therapy, occupational therapy, and physical therapy to rehabilitate from the stroke. The defendants refuted causation, arguing that the plaintiff's stroke was completely unrelated to the surgery ordered and performed by the defendants.

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

REFERENCE

Garcia vs. Sarti, M.D., et al. Docket no. L-006178-16; Judge Mary F. Thurber, 03-12-20.

Attorneys for plaintiff: Elizabeth Hamlin and Craig M. Rothenberg of Rothenberg Rubenstein Berliner & Shinrod in Clinton, NJ. Attorney for defendant radiologist: G. Warren Baldwin of Giblin Combs Schwartz Cunningham & Scarpa in Morristown, NJ. Attorneys for defendant otolaryngology practice, otolaryngologist and osteopathic physician: Michael McBride and Haley K. Grieco of Mattia & McBride in Fairfield, NJ. Attorney for defendant diagnostic center: Heather LaBombardi of Marshall Dennehey Warner Coleman & Goggin in Roseland, NJ.

Radiology

DEFENDANT'S VERDICT

Medical malpractice – Radiology – Plaintiff contends defendant radiologist failed to report absence of visualization of central line on chest x-ray resulting in guide wires being retained in plaintiff's heart – Defendant denies liability and argues physician who placed central line and failed to retrieve wires only party responsible for any harm to plaintiff – Open heart surgery to remove wires – Plaintiff settles with physician who placed central line and matter proceeds as to radiologist.

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Camden County, NJ

In this medical malpractice case, the plaintiff contended that the defendant radiologist was negligent in the treatment and care of the plaintiff during an admission to the hospital in July 2007, and that as a result of his negligence, the plaintiff suffered injury. The plaintiff asserted that another physician, an osteopathic doctor, involved in his care deviated from the standard of care and caused his injuries. The plaintiff settled with the osteopathic physician and that party was no longer involved in the matter. The defendant denied any negligence or deviation from accepted standards of practice. The defendant also argued that any alleged deviation did not result in harm to the plaintiff.

On July 29, 2007, the plaintiff was admitted through the E.R. and diagnosed with acute pancreatitis. Due to the diagnosis, a total parenteral nutrition via central line was ordered. The defendant radiologist was part of the team that undertook the diagnosis and care of the plaintiff. A chest X-ray was done on the morning of admission and it showed no significant abnormality other than slight enlargement of the heart. The following day, the defendant radiologist reported that no central line was visualized. He did not report anything else. The central line was reportedly removed on August 3, 2007 and the plaintiff was discharged the following day.

The plaintiff was next admitted to the hospital in May 2016 with suspicion of endocarditis and a chest X-ray was ordered. The X-ray showed two metallic wires overlying the expected locations of the superior vena cava, right atrium and inferior vena cava. The radiologist at that time indicated that the wires correlated with prior intervention for placement of the central line in 2007. Due to the defendant's not identifying the central line in 2007, the guide wires utilized for the insertion of the central line were retained in the plaintiff's heart for 9 years.

The plaintiff contended that the defendant radiologist failed to report the findings from the portable chest X-ray that he interpreted in 2007, specifically that he did not see a central line on the X-ray even though the reason for the X-ray was to confirm placement of the line, and that the failure to report those findings caused injury to the plaintiff. As a result of the failure to identify and remove the central line guide wires, the plaintiff required open heart surgery to remove the retained guide wire. The defendant asserted that another party, with whom the plaintiff had already settled, deviated from accepted standards of medical practice in the performance of a central line placement and that this was what caused the plaintiff's harm.

Prior to trial, the plaintiff made an offer to take judgment in the amount of $300,000. The offer was not accepted and the matter proceeded to trial.

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

REFERENCE

Schenk vs. Derr, D.O., et al. Docket no. L-000348-17; Judge Donald J. Stein, 02-26-20.

Attorneys for plaintiff: Kevin Haverty and Shauna L. Friedman of Williams Cedar, LLC in Cherry Hill, NJ. Attorney for defendant: William G. Theroux of Buckley Theroux Kline & Cooley, LLC in Princeton, NJ.

CIVIL ASSAULT

$7,500 RECOVERY

Assault and battery – Plaintiff taxi driver picks up underage intoxicated co-defendant passengers who subsequently refuse to pay fare and assault plaintiff – Closed head injury; concussion and bilateral nasal fracture – Non-binding arbitration assigns each defendant 50% liability with damages of $50,000.

Monmouth County, NJ

In this civil assault case, the plaintiff asserted that the co-defendants assaulted and beat him with such force that it caused significant, permanent injury. The plaintiff brought suit against the 2 co-defendant individuals who assaulted him and against the defendant bar where the underage assailants had been drinking. The defendant bar was dismissed on summary judgment. The remaining defendants each denied liability and asserted that the plaintiff was at fault for instigating the fight or that the other co-defendant was the one who caused the plaintiff's injuries.

On July 17, 2015, the underage co-defendants were drinking at the defendant bar and were too intoxicated to drive. The co-defendants called for a cab and the plaintiff taxi driver picked them up at the defendant bar. The co-defendants refused to pay the plaintiff taxi driver, taunted him, and tried to take his cell phone, which he begged them to give back because it contained photos of the plaintiff's children back in Egypt. The plaintiff asserted that the defendants then made racial slurs to the plaintiff and beat him unconscious.

The plaintiff contended that the defendant bar negligently over-served alcohol to the co-defendants and that the co-defendant individuals struck him with the intent to do so with unlawful force and committed assault and battery on the plaintiff. The plaintiff alleged

that the violence of the attack resulted in permanent injuries. The co-defendant individuals were criminally charged with assault, theft of services, and robbery by force as a result of the incident.

As a result of the attack, the plaintiff sustained closed head injury; concussion; bilateral nasal fracture; hand contusion; forearm contusion and lacerations to the arms and hands. The plaintiff claimed $12,660 in unpaid medical expenses. During discovery, the plaintiff made an offer to take judgment from the second co-defendant in the amount of $25,000.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned each defendant 50% liability with damages of $50,000. Following arbitration and prior to trial, the plaintiff settled with the second co-defendant for $7,500.

REFERENCE

Elmnshawy vs. Sturner, et al. Docket no. L-002709-17; Judge Mara Zazzali-Hogan, 01-09-20.

Attorney for plaintiff: Linda T. Tran of Ronner Weiner & Tran in Avon, NJ. Attorney for defendant second co-defendant: Michael J. Pappa of Rudnick, Addonizio, Pappa & Casazza, P.C. in Hazlet, NJ.

CONTRACT

$32,144 JUDGMENT

Breach of contract – Plaintiff well-drilling company maintains it drilled wells for defendant per terms of contract between parties and defendant failed to pay plaintiff for services – Defendant claims plaintiff did not substantially perform per terms of contract because it did not submit records for drilled wells.

Camden County, NJ

In this breach of contract case, the plaintiff well-drilling company asserted that the defendant failed to pay the plaintiff per the terms of a contract between the parties. The plaintiff claimed breach of contract, unjust enrichment and violation of the prompt payment law.

On November 8, 2017, the plaintiff entered into a contract with the defendant whereby the plaintiff agreed to provide the defendant with certain drilling services pursuant to a proposal for a project located at 1095 Washington Blvd. in Robbinsville. The plaintiff maintained that it performed all of the work the defendant requested on the project and at the rates set forth in its proposal. At the conclusion of the work, the plaintiff invoiced the defendant for the work requested that the plaintiff performed at the rates set forth in the parties' proposal. The plaintiff put forth that it performed all of its work in a good and workmanlike manner.

The plaintiff asserted that the defendant had a duty to pay Allied for the work performed according to the unit prices set forth in the contract. The defendant breached that duty when it failed to pay the plaintiff. The plaintiff maintained that because of the defendant's breach of contract, the plaintiff company suffered damages in the amount of $26,693.

The defendant denied that it was liable for breach of contract, unjust enrichment, or costs and fees under the Prompt Payment Act because the plaintiff did not substantially complete its work under the terms of the contract. The defendant maintained that the plaintiff failed to submit well records for 6 of the 7 wells it drilled on the Robbinsville Project and further failed to timely submit a well record for the seventh well. The defendant argued that the plaintiff submitted its initial invoice to the defendant for the Robbinsville Project on November 8, 2017. Based on the plaintiff's initial invoice, November 8, 2017 was the latest date the plaintiff could argue that it completed the drilling of the wells for the Robbinsville Project.

The defendant asserted that the plaintiff had presented no evidence that it submitted the required 7 well records to the NJ DEP within the time limitation set forth in N.J.A.C. 7:9D-1.15. The defendant contracted for wells that complied with New Jersey statutes and regulations, which it did not receive. The defendant maintained that, because the timely submission of well records to the NJ DEP was an essential, material part of the contract, which the plaintiff failed to complete, the plaintiff failed to substantially perform under the terms of the contract and cannot assert a claim for breach of contract.

After a bench trial, the court ruled in favor of the plaintiff on all counts and entered judgment in the amount of $21,322 in damages; plus $2,026 in interest; $7,950 in attorneys fees and $846 in costs, for a total award of $32,144.

REFERENCE

Allied Environmental Services, Inc. vs. ATC Group Services, LLC. Docket no. L-001864-19; Judge Sherri L. Schweitzer, 04-16-20.

Attorney for plaintiff: Wally Zimolong of Zimolong, LLC in Villanova, PA. Attorneys for defendant: William P. Shelley and Kirsten F. Mazzeo of Gordon Rees Scully Mansukhani, LLP in Florham Park, NJ.

DOG ATTACK

$500,000 VERDICT

Dog attack – Defendant dog owner and parents, who care for dogs, lived on opposite sides of plaintiff's home – Dogs escaped from parents' home and attacked plaintiff – Dog bite lacerations – Cervical injury requiring epidural injections.

Gloucester County, NJ

In this dog bite case, the plaintiff asserted that the defendants owned or had control over 2 dogs that attacked and injured the plaintiff.

On February 21, 2016, the plaintiff resided on Lycoming Avenue in Deptford Township. The defendants were 2 separate households, one being that of the defendant adult son and the other being his parents. The defendant son lived next door to the plaintiff, and his parents lived 2 houses down from the plaintiff. On the evening in question, the plaintiff walked out his front door to move his vehicle from the street into his driveway. He walked approximately 10 feet from his door and heard dogs barking. The next thing he knew, a dog had jumped up at him, he tried to run and ended up on the ground where a second dog attacked him. The plaintiff believed that one of the dogs belonged to the defendant son living next to the plaintiff and the other belonged to the defendant parents.

As a result of the attack, the plaintiff sustained significant bite lacerations with permanent scarring and cervical injury incurred when he fell and was fighting off the dogs. The cervical injury was treated with epidural injections. The plaintiff asserted that both the defendant son, owner of the dogs, and the defendant parents were negligent because the dogs were under the control of the dogs at the time of the incident and had independent negligence liability.

The defendant parents denied ownership of either dog and argued that their son owned both dogs and they were merely dog sitting on the day in question. The defendant parents stated that the defendant son came to the house to collect his dogs, whereupon the pit bull mix got loose and ran towards the plaintiff's property. The defendants maintained that the other dog was barking but did not attack the plaintiff. The defendant son yelled and the dogs returned to him and were put inside the defendant son's house. The defendant son denied liability and disputed the plaintiff's damages.

Prior to trial, the plaintiff settled the matter with the defendant parents and the matter continued only as to the defendant son, owner of the dogs.

The jury found in favor of the plaintiff and against the defendant dog owner and awarded damages in the amount of $500,000.

REFERENCE

Emma vs. May, et al. Docket no. L-000877-17; Judge Timothy W. Chell, 03-11-20.

Attorney for plaintiff: Brian L. Katz of Dansky Katz Ringold in Marlton, NJ. Attorney for defendant parents of dog owner: John A. Dingle of Law Offices of Pamela D. Hargrove in Moorestown, NJ. Attorney for defendant dog owner: James A. Tamburro of Tamburro Law Office in Medford, NJ.

INSURANCE OBLIGATION

$50,000 RECOVERY

Insurance obligation – Auto/pedestrian collision – Plaintiff mother and minor son struck by tortfeasor driver while crossing street in crosswalk – Plaintiff mother sustained 2 lumbar bulges, 1 lumbar herniation and 5 cervical disc herniations – Multiple left knee tears; right knee tear; right shoulder tear and left shoulder tear – Minor plaintiff sustained complex tear of meniscus and left knee effusion – Chiropractic treatment.

Union County, NJ

In this uninsured motorist case, the plaintiffs, a mother and her 11-year-old son, asserted that the tortfeasor driver struck them with her vehicle while they were crossing the street, causing significant, permanent injury.

On October 24, 2018, the plaintiffs were pedestrians walking eastbound within the crosswalk on Sheridan Avenue at the intersection of Alina Street in Elizabeth. The tortfeasor driver was executing a left turn from Elina Street onto Sheridan Avenue. The plaintiffs contended that the tortfeasor driver was negligent in failing to yield the right-of-way to pedestrians in a crosswalk. The plaintiffs alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff mother claimed 2 lumbar bulges; a lumbar herniation; 5 cervical disc herniations; multiple left knee tears; a right knee tear; a right shoulder tear and a left shoulder tear. The minor plaintiff sustained complex tear of the anterior horn of the lateral and medial meniscus and left knee effusion. The plaintiffs were both treated with chiropractic care.

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The police report in this case reflected only that the minor plaintiff was struck by the car and only the minor plaintiff sought treatment at the E.R. Accordingly, there was a dispute as to whether the plaintiff mother was injured in this accident. There was also a dispute as to the scope of injury. The plaintiff mother claimed injury to her neck, back, both knees, and both shoulders. She had had a prior injury to her neck and back in 2016 for which she sued for permanent injury. MRIs reflected pathology in all affected areas, but the findings were disputed by the defendant's doctor. Treatment for the plaintiff mother was conservative consisting of chiropractic care for an undetermined time and physical therapy under the supervision of an orthopedist for several months.

Upon review of documents, the defendant offered the minor plaintiff $25,000 and the parties settled the matter. The minor plaintiff's recovery was broken down as follows: $6,200 in attorney fees; $199 in costs and disbursements; $300 in medical expenses and $18,301 in net damages to the minor plaintiff.

The plaintiff mother and defendant insurer submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $25,000. Following arbitration and prior to trial, the plaintiff mother settled with the defendant insurer for $25,000 broken down as follows: $6,200 in attorney fees; $199 in costs and disbursements; $300 in medical expenses and $18,301 in net damages to the minor plaintiff, for a total combined recovery of $50,000.

REFERENCE

Cieza, et al. vs. Delcastillomedran, et al. Docket no. L-003676-18; Judge Mark P. Cirrocca, 01-14-20.

Attorney for plaintiff: John J. Pisano, Esq. in Cranford, NJ. Attorney for defendant: Thomas W. Matthews of Soriano, Henkel, Biehl & Matthews in Roseland, NJ.

$12,000 RECOVERY

Insurance obligation – Left turn collision – 4 cervical disc herniations; 2-level radiculopathy and right shoulder tear – No surgery due to diabetic complication.

Bergen County, NJ

In this insurance obligation case, the plaintiff asserted that the tortfeasor driver struck his vehicle while attempting a left turn. The plaintiff settled with the tortfeasor driver for $15,000 and brought the subject action against his motor vehicle insurance carrier for underinsured motorist benefits. The defendant contested the plaintiff's damages.

On February 20, 2014, the plaintiff was traveling on Secaucus Road at the intersection with Liberty Avenue in Jersey City. The tortfeasor driver was making a turn onto Secaucus Road and negligently crossed the plaintiff's lane of travel without the right-of-way and when it was not safe to do so. The tortfeasor driver struck the plaintiff's vehicle in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained 4cervical disc herniations; 2-level radiculopathy and right shoulder tear. The plaintiff did not have surgery for the shoulder tear due to being diabetic. The plaintiff was involved in a subsequent motor vehicle accident. The defendant's medical expert disputed the extent of the plaintiff's injuries and causation and argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of $50,000 reduced to $35,000 after offset of $15,000 for plaintiff's recovery from settlement with tortfeasor. Following arbitration and prior to trial, the parties settled for $12,000.

REFERENCE

Aguilar vs. New Jersey Manufacturers Insurance Company. Docket no. L-000971-18; Judge Estela M. De La Cruz, 02-18-20.

Attorneys for plaintiff: Kate Carballo and Sherwin Tsai of Davis, Saperstein & Salomon, PC in Teaneck, NJ. Attorney for defendant: John Tuntevski of Chasen Lamparello Mallon & Cappuzzo, PC in Secaucus, NJ.

DEFENDANT'S VERDICT

Insurance obligation – Motor vehicle negligence – Traumatic exacerbation of prior spinal condition – Lumbar fusion extension from prior lumbar fusion site – Plaintiff settles with tortfeasor driver prior to trial for policy limit of $15,000 – Plaintiff files underinsured motorist claim.

Ocean County, NJ

In this insurance obligation case, the plaintiff, a 35-year-old man, asserted that the tortfeasor driver struck his vehicle from behind with such force that it caused significant, permanent injury. The plaintiff settled with the tortfeasor driver for the $15,000 policy limit and brought the subject action for underinsured motorist benefits from the defendant insurer. The defendant argued that the

plaintiff had significant pre-existing injuries and that his present injuries could not be attributed solely to the subject collision.

On April 12, 2012, the plaintiff was operating his vehicle, owned by his employer, in an easterly direction on Landis Avenue in Bridgeton. The tortfeasor driver was also traveling in the same direction directly behind the plaintiff. The plaintiff asserted that the tortfeasor negligently failed to operate his vehicle in a reasonably prudent and safe manner such that he failed to stop behind the plaintiff and struck the rear of the plaintiff's vehicle.

As a result of the collision, the plaintiff sustained traumatic exacerbation of prior spinal condition necessitating a lumbar fusion extension from a prior lumbar fusion site. The plaintiff claimed total disability from the accident. The plaintiff had a worker's compensation lien of $164,000 which included $79,000 in medical expenses and $85,000 indemnity. The defendant also denied the plaintiff's contention that the injury was permanent.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $200,000 including the Worker's Compensation lien. The arbitration was not confirmed and the matter went to trial wherein the jury found no cause of action and returned a verdict in favor of the defendant.

REFERENCE

Lindstrom, Jr. vs. New Jersey Manufacturer's Insurance Company. Docket no. L-000759-18; Judge Robert E. Brenner, 10-22-19.

Attorney for plaintiff: Jean Donoghue-Simon, Esq. in Toms River, NJ. Attorney for defendant: Kevin F. Sheehy of Leyden, Capotorto, Ritacco, Corrigan & Sheehy in Toms River, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$10,000 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Minor plaintiff argues defendant failed to use caution while proceeding and struck plaintiff bicyclist – Aggravation of fractured incisal edge of tooth; pain while eating – Defendant denies negligence and asserts comparative negligence of plaintiff.

Union County, NJ

In this motor vehicle negligence case, the minor plaintiff asserted that the defendant driver struck him while he was riding his bicycle and caused him significant, permanent injury. The defendant denied liability and asserted that the plaintiff was contributorily negligent in causing the collision.

On August 22, 2015, the plaintiff was riding his bicycle traveling east on East Sixth Street in Elizabeth. The plaintiff contended that the defendant driver negligently and without caution proceeded through East Sixth Street, colliding with the plaintiff on his bicycle The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained an aggravation of previously fractured incisal edge of tooth. The prior fracture had been asymptomatic until the subject incident after which the plaintiff claimed pain while eating. The plaintiff required dental treatment.

The parties settled the matter prior to trial in the amount of $10,000 broken down as follows: $2,377 in attorney fees; $490 in costs and disbursements; $598 in medical expenses and $6,534 in net damages to the minor plaintiff.

REFERENCE

Collao vs. Chito-Behavidez. Docket no. L-002847-17; Judge James Hely, 01-15-20.

Attorney for plaintiff: Stephen A. Mennella of Lord, Kobrin, Alvarez & Fattell, LLC in Mountainside, NJ. Attorney for defendant: Michael J. Jubanyik of Reilly, McDevitt, Henrich & Cholden P.C. in Cherry Hill, NJ.

Auto/Pedestrian Collision

$500,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – 63-year-old pedestrian walking on sidewalk struck by driver entering gas station – Massive blunt force trauma and internal injuries – Death following several surgeries – UIM case.

Monmouth County, NJ

In this action for motor vehicle negligence, the plaintiff contended that the defendant driver negligently failed to make observations and traveled too rapidly as he entered a gas station. The plaintiff contended that as a result, the 63-year-old was struck by the defendant as the decedent was walking past the gas station and suffered injuries which led to his death later that

day. The defendant had an underlying policy of $25,000. This amount was paid and the plaintiff had a $500,000 UIM policy with $475,000 available.

The decedent was rushed to the hospital, underwent several surgeries, but died later that day.

The decedent was divorced and worked as a secretary for a financial company earning $109,000 per year. She left three children, including a 37-year-old son and 27-year-old daughter who resided at home and a 26-year-old daughter who lived nearby. The plaintiff contended that the family was very close and that the loss of guidance and advice was great.

The case against the UIM carrier settled for the $475,000 limits before counsel was retained.

REFERENCE

Illiano vs. Masongo. Docket no. MON-L-1053-20, 08-20.

Attorney for plaintiff: Craig S. Laughlin of Gale & Laughlin, LLP in Hazlet, NJ.

Head-on Collision

$475,000 RECOVERY

Motor vehicle negligence – Head-on collision – Defendant driver loses control and crosses into on-coming traffic – Death of 86-year-old passenger from massive blunt trauma – Short period of pain and suffering – Several adult children.

Ocean County, NJ

The plaintiff's motion for summary judgment on liability was granted in this motor vehicle negligence case in which the defendant driver lost control and began traveling into on-coming traffic, causing the collision which resulted in the death of the plaintiff's decedent.

The 86-year-old passenger died from massive blunt force trauma. The host driver, who was not a defendant, would have testified as to a very brief period of conscious pain and suffering. The defendant denied that such observations were accurate.

The decedent left several adult children and the plaintiff contended that the loss of guidance and advice was extensive.

The defendant had $250,000 in primary coverage and a $1,000,000 umbrella. The case settled prior to the trial on damages for $475,000.

REFERENCE

Est of 86-year-old passenger vs. Defendant non-host driver.

Attorney for plaintiff: Kevin M. Stankowitz of Rosenberg Kirby Cahill Stankowitz & Richardson in Toms River, NJ.

Intersection Collision

$60,000 RECOVERY

Motor vehicle negligence – Intersection collision – Cervical disc herniations at C3-4 and C5-6 with positive EMG – Lumbar herniations at L2-3 and L3-4 – Cervical epidural injections – Recommendation for cervical discectomy – Non-binding arbitration finds defendant liable with $100,000 in damages.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 57-year-old postal worker, asserted that the defendant driver struck her vehicle in an intersection with such force that it caused her significant, permanent injury. The defendant contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were not permanent.

On May 20, 2017, the plaintiff was traveling southbound on Ford Avenue at the intersection with Atlantic Street in Woodbridge. The defendant was traveling eastbound on Atlantic Street at the intersection with Ford Avenue. The plaintiff contended that the defendant failed to stop at a stop sign and negligently entered the intersection against traffic controls. The defendant struck the plaintiff's vehicle in the intersection. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc herniations at C3-4 and C5-6 with positive EMG; lumbar herniations at L2-3 and L3-4. The plaintiff treated with cervical epidural injections, and was recommended for cervical discectomy. The defendant's medical expert opined that the injuries were strains and sprains that had resolved.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $100,000. Following arbitration and prior to trial, the parties settled for $60,000.

REFERENCE

Chi Schaefer vs. Soreira. Docket no. L-004029-18; Judge James D. Happas, 01-27-20.

Attorney for plaintiff: Nicole M. Lombardi of Lombardi & Lombardi, P.A. in Edison, NJ. Attorney for defendant: Jerry Santer of Law Offices of Cindy L. Thompson in Piscataway, NJ.

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DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Cervical disc bulges at C5-6 and C6-7 – Lumbar disc bulge at L5-S1 – Post-concussion syndrome with headaches – TMJ – Rib sprain; thoracic and lumbar spine sprain/strain – Trigger point injections – Minimal chiropractic treatment.

Camden County, NJ

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

On March 26, 2017, the plaintiff was traveling southbound on Stokes Road in Shamong Township. The defendant was driving a pickup truck and, the plaintiff contended, he negligently ran a stop sign and entered the intersection without the right-of-way. The defendant braked, but his truck skidded and slid into the intersection, colliding with the front of the plaintiff's vehicle. The plaintiff's vehicle sustained heavy front-end damage and multiple airbag deployment. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical disc bulges at C5-6 and C6-7 with C6-7 radiculopathy confirmed on MRI; lumbar disc bulge at L5-S1 confirmed on MRI; post-concussion syndrome with headaches ongoing; TMJ; rib sprain; thoracic and lumbar spine sprain/strain. The plaintiff treated with trigger point injections, minimal chiropractic treatment and physical therapy. The plaintiff claimed one week of lost wages with economic damages of $1,018. The defendant argued that the plaintiff's injuries were not permanent in nature and not caused solely by the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $8,500 inclusive of wage loss. The arbitration was not confirmed and the matter proceeded.

The parties entered into a pre-trial high/low agreement wherein the plaintiff's damages were capped at $25,000 with stipulated economic losses of $800. The jury found that the plaintiff failed to prove a permanent injury and returned a verdict in favor of the defendant. The plaintiff recovered $800 per the pre-trial stipulation of the parties.

REFERENCE

Coar vs. McWilliams. Docket no. L-002146-18; Judge Steven J. Polansky, 02-20-20.

Attorney for plaintiff: Daniel F. Ashton of Schwartz & Schwartz in Cherry Hill, NJ. Attorney for defendant: Charles F. Blumenstein, II of Green, Lundgren & Ryan in Cherry Hill, NJ.

Multiple Vehicle Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Multiple vehicle collision – Rear end collision – Third-party vehicle crosses plaintiff's lane causing plaintiff to stop short whereupon defendant strikes plaintiff's vehicle from behind – Defendant claims third party caused accident – Closed head injury; cervical and lumbar disc injuries – PTSD.

Essex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant disputed any liability for the accident and contended that the third-party driver was the sole cause of the accident.

On July 18, 2011, the plaintiff was traveling eastbound in the right lane of West Northfield Road at the intersection of Relkin Road in Livingston. The defendant was traveling directly behind the plaintiff when the third-party driver of a landscaping truck, who was in the left lane, made a sudden right turn from the left lane onto Relkin Road, across the plaintiff's lane of travel. The plaintiff attempted to stop because the truck crossed in front of her vehicle, but she was unable to stop and struck the third-party vehicle. The defendant also attempted to stop behind the plaintiff but struck the plaintiff from the rear. The third-party driver fled the scene and eventually admitted fault for the accident and pled guilty to charges of unsafe driving and impeding traffic.

As a result of the collision, the plaintiff sustained traumatic injury to the head, neck, and back, including concussion and loss of consciousness. The plaintiff was diagnosed with significant cognitive and memory impairment and post-traumatic stress disorder and was referred for cognitive behavioral therapy and treatment of anxiety. The defendant contested the nature, extent and causation of the plaintiff's injuries. The plaintiff was involved in a subsequent motor vehicle accident on April 2, 2014 in which she claimed to have suffered similar neck and back injuries.

The jury returned a verdict in favor of the defendant.

REFERENCE

Guerrier vs. Rosenfeld. Docket no. L-002644-13; Judge Robert H. Gardner, 11-21-19.

Attorney for plaintiff: K. Raja Bhattacharya of Bendit Weinstock, P.A. in West Orange, NJ. Attorney for defendant: John C. Simons of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

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Parking Lot Collision

$180,000 RECOVERY

Motor vehicle negligence – Parking lot collision – Defendant fails to stop at stop sign in shopping center and collides with plaintiff's' vehicle – Non-dominant shoulder tear – Arthroscopic surgery – Pulmonary embolism several weeks after surgery.

Ocean County, NJ

In this action for motor vehicle negligence, the 67-year-old plaintiff driver contended that as she was on an exit ramp from a shopping center, the defendant driver ran a stop sign, colliding with her vehicle and causing her to sustain serious injuries. The defendant asserted that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff maintained that she suffered a rotator cuff tear on the left, non-dominant side that was treated with arthroscopic surgery. The plaintiff contended that within several weeks, she suffered a pulmonary embolism that required hospitalization. There was no evidence that the plaintiff is at heightened risk for future emboli.

The plaintiff made no income claims.

The case settled approximately 8 months after suit was filed for $180,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Kenneth Churn, MD from Neptune, NJ.

Decandia vs. Motruk. Docket no. OCN-L-2325-20, 06-21.

Attorney for plaintiff: Frank Lazzaro of Lutz Shafranski Gorman & Mahoney in New Brunswick, NJ.

Rear End Collision

$315,901 VERDICT

Motor vehicle negligence – Rear end collision – Disc bulging at C5-6; mild left foraminal narrowing at C6-7 and muscle spasm – Plaintiff husband makes per quod claim.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 32-year-old woman, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On August 30, 2016, the plaintiff was traveling northbound on Interstate 287 near Somerville. The defendant was traveling directly behind the plaintiff on the same roadway. The plaintiff claimed that the defendant was negligent in operation of his vehicle such that he collided with the rear of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc bulging at C5-6; mild left foraminal narrowing at C6-7 and muscle spasm. The plaintiff's husband made a claim for loss of consortium. The defendant presented the testimony of a medical orthopedic surgeon who opined that the plaintiff did not suffer any permanent injuries as a result of the subject collision.

The plaintiff made a pre-trial offer to take judgment in the amount of $17,500. The offer was not accepted. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at $3,500. The arbitration was not confirmed and the matter went to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of $315,901 broken down as follows: damages of $300,000; interest of $15,850 and costs of $51. The jury awarded no damages for the per quod claim.

REFERENCE

Coleman vs. McGrath. Docket no. L-000014-18; Judge Melvin J. Gelade, 10-19-19.

Attorney for plaintiff: James W. Taylor, Jr. of Law Office of James W. Taylor, Jr. in Jersey City, NJ.
Attorney for defendant: Michael J. McCaffrey of Purcell, Mulcahy & Flanagan, LLC in Bedminster, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Rear end collision – Disc herniations at C4-5, C5-6, C6-7 and L4-5 with annular tear suggesting acute injury – Arbitrator finds defendant liable and sets damages at $85,000.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff, a 37-year-old woman with no prior history of neck or back injury or condition, asserted that the defendant driver struck her vehicle from behind with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

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On October 31, 2017 the plaintiff was traveling on Route 9 at the intersection of Surf Avenue in South Toms River. The defendant was also traveling on Route 9 behind the plaintiff's vehicle. The plaintiff asserted that the defendant negligently disregarded a stop sign and failed to stop behind the plaintiff's vehicle, striking it from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniations at C4-5, C5-6, C6-7, and L4-5 with annular tear suggesting acute injury. The plaintiff had positive EMGs in the neck and back. The plaintiff made an offer of judgment prior to arbitration in the amount of $85,000.

The parties entered into arbitration wherein the arbitrator found the defendant 100% liable and set damages at $85,000. The parties subsequently settled the matter prior to trial for an undisclosed sum.

REFERENCE

Coffey vs. Doran. Docket no. L-001963-18; Judge Marc C. Lemieux, 08-16-19.

Attorney for plaintiff: Charles M. Crocco of Nelson, Fromer, Crocco & Jordan in Neptune, NJ. Attorney for defendant: Christopher W. Ferraro of Cooper Maren Nitsberg Voss & Decoursey in Iselin, NJ.

Sideswipe Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Multiple level disc herniations in cervical and lumbar spine – 6 months of physical therapy – Defendant denies causation and permanency – Plaintiff recovers $1,000 per high/low agreement.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, an 81-year old woman, was traveling southbound on Ryders Lane approaching the exit of The Jewish Center on May 20, 2015. The defendant was exiting the lot of The Jewish Center and failed, according to the plaintiff, to yield to southbound traffic causing the defendant to crash into the plaintiff's passenger side door and front bumper. The plaintiff asserted that the defendant's negligence in operation of his vehicle caused the plaintiff permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

As a result of the collision, the plaintiff sustained traumatic injury to the neck and back. MRI revealed multiple level disc herniations in both cervical and lumbar spine. The plaintiff treated with 6 months of physical therapy. The defendant asserted that the plaintiff suffered from degenerative disc disease. The defendant maintained that the plaintiff's injuries were degenerative in nature and not permanent.

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

REFERENCE

Foote vs. Streisand. Docket no. L-003753-17; Judge 07-23-19, 07-23-19.

Attorney for plaintiff: Seamus Boyle of The Haddad Law Firm in Woodbridge, NJ. Attorney for plaintiff: Leonard V. Jones of Viscomi & Lyons in Morristown, NJ.

MUNICIPAL LIABILITY

$42,500 RECOVERY

Municipal liability – Hazardous premises – Trip and fall – Minor plaintiff trips over roots/stump on defendant borough's public playground – Closed head injury; facial scarring – Defendant borough brings in defendant landscaping company responsible for maintenance in park.

Union County, NJ

In this municipal liability case, the minor plaintiff asserted that the defendant township failed to maintain its park and playground in a non-hazardous condition for use by members of the public, and that that failure caused the plaintiff significant, permanent injury. The defendant landscaping company was added as a defendant during discovery. The defendant denied liability and asserted that the plaintiff was barred from recovery by comparative negligence greater than that of the defendant.

On February 28, 2016, the minor plaintiff was playing on playground equipment at a public park owned and operated by the defendant borough. The plain-

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tiff argued that the defendant negligently failed in its duty to maintain the premises in a safe and non-hazardous condition. Specifically, the plaintiff argued that the defendant allowed a hazardous mound of roots and a bush stump to exist on the playground surface. The minor plaintiff tripped over the roots or stump and fell. As a result of the fall, the plaintiff sustained traumatic injury to head and face with permanent facial scarring.

The defendant maintained that the plaintiff assumed the inherent risk of using the playground. The defendant township made a cross-claim as to the defendant landscaping company that had been contracted to remove trees or bushes from the park.

The parties settled the matter prior to trial in the amount of $42,500 with $40,000 contributed by the defendant borough and $2,500 contributed by the defendant landscaping company. The recovery was broken down as follows: $11,658 in attorney fees and $30,842 in net damages to the minor plaintiff.

REFERENCE

I. Krukowski vs. Borough of Roselle Park, et al. Docket no. L-004105-17; Judge James Hely, 11-07-19.

Attorney for plaintiff: Diane M. Lucianna of Lucianna & Lucianna, P.A. in Hackensack, NJ. Attorney for defendant landscaping company: Cynthia M. Moline of Law Office of Steven J. Tegrar in Warren, NJ. Attorney for defendant borough: Nicholas A. Grieco of Inglesino, Webster, Wyciskala & Taylor, LLC in Parsippany, NJ.

PREMISES LIABILITY

Fall Down

$50,000 RECOVERY

Premises liability – Fall down – Slip and fall on ice in parking lot – Plaintiff supermarket patron falls on ice while trying to assist another shopper who had fallen on ice in defendants' parking lot – Disc herniations at C3-4 and C6-7; disc bulges at L3-4, L4-5, C4-5, C5-6; left shoulder sprain and left hip pain – Epidural injections.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, a 53-year-old man, asserted that the defendants' property was hazardous with accumulated ice in the parking lot and that it caused him significant, permanent injury when he fell on the ice. The defendant supermarket contended that the defendant management company was solely responsible for snow removal in the parking lot. The defendant property management company stipulated liability but contested the plaintiff's damages.

On December 30, 2016, the plaintiff was in the parking lot of the defendant supermarket, at 877 St. Georges Avenue in Woodbridge when he saw an obese woman had fallen down. In attempting to assist her to standing, the plaintiff himself fell on accumulated black ice on the parking lot surface. As a result of the fall, the plaintiff sustained disc herniations at C3-4 and C6-7; disc bulges at L3-4, L4-5, C4-5, and C5-6; left shoulder sprain; and left hip pain. The plaintiff underwent two epidural injections and otherwise treated conservatively. The plaintiff claimed in excess of $19,000 in outstanding medical expenses.

The plaintiff asserted that the defendant supermarket and defendant property management company were responsible to keep the area in a safe condition for patrons, including removal/remediation of snow and ice. The plaintiff asserted that the defendants failed in their duty to keep the premises free of hazards and, as a direct result of their negligence, the plaintiff was caused to fall and suffer permanent injuries. The defendants argued that the plaintiff's injuries were not permanent in nature and did not warrant damages. The defendant's IME opined that the plaintiff's injuries consisted only of sprains which had resolved.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 5% liability to the defendant supermarket; 75% to the defendant property management company and 20% to the plaintiff with gross damages of $50,000 reduced to $40,000 for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for $50,000 with $45,000 coming from the defendant management company and $5,000 from the defendant supermarket.

REFERENCE

Hawthorne vs. Levin Management, et al. Docket no. L-004459-18; Judge James F. Hyland, 01-13-20.

Attorney for plaintiff: Ronald Wm. Spevack of Spevack Law Office in Iselin, NJ. Attorney for defendant supermarket: Peter R. Errico of Wolff, Helies, Spaeth & Lucas, P.A. in Manasquan, NJ. Attorney for defendant property management company: Shoshana C. Hyman of Law Office of John P. Hendrzak in Parsippany, NJ.

$35,015 ARBITRATION AWARD

Premises liability – Fall down – Plaintiff falls on snow/ice on walkway of condominium complex – Prior lumbar bulge progressed to herniation – Cervical, left shoulder and left wrist injuries – Defendant condo association and landscaping company each claim other was negligent.

Atlantic County, NJ

In this premises liability case, the plaintiff asserted that the defendants failed to remove or remediate accumulated snow and ice on the property where the plaintiff resided, resulting in a fall wherein the plaintiff suffered significant, permanent injury. The defendants each claimed the other was liable for the condition of the property and both contested the extent of the plaintiff's injuries.

On January 9, 2017, the plaintiff was a resident of the defendant condo association. While traversing the parking lot outside of her building, she slipped and fell on snow or ice that had accumulated on the ground. The plaintiff asserted that the defendant condo association and the defendant landscaping company were responsible for snow removal, salting and sanding the walkways and parking lots to make them safe for residents and guests. The plaintiff maintained that the defendants, jointly and severally, failed to take measures to prevent or warn the public of the dangerous condition and failed to maintain the premises in a reasonably safe state. The plaintiff alleged that her fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained exacerbation of prior lumbar bulge which progressed to a herniation and cervical, left shoulder and left wrist injuries. The plaintiff claimed $9,000 in liens and unpaid medical expenses. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject incident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 40% liability to the defendant landscaping company; 40% to the defendant condo association; and 20% to the plaintiff. The arbitrator assessed gross damages of $42,000 reduced to $33,600 (inclusive of medical liens and outstanding expenses) for plaintiff's comparative negligence. The plaintiff made a motion to confirm the arbitration order and the motion was granted. The plaintiff recovered $33,600 in damages plus $1,415 in interest, for a total recovery of $35,015.

REFERENCE

Gray vs. Oyster Bay Condominium Association, et al. Docket no. L-001864-18; Judge Christine Smith, 12-20-20.

Attorney for plaintiff: Michael A. Gibson of D'Arcy Johnson Day in Egg Harbor Township, NJ. Attorney for defendant condominium association: William J. Markwardt of Thomas, Thomas & Hafer, LLP in Marlton, NJ. Attorney for defendant landscaping company: David D. Duffin of MacDonald & Herforth in Moorestown, NJ.

UNDISCLOSED RECOVERY

Premises liability – Fall down – Plaintiff slips and falls on liquid on floor of defendant hotel – Ligament tear in left ankle – Surgery – Arbitration finds both parties equally liable with gross damages of $20,000.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant hotel negligently failed to maintain a premise safe for guests and allowed a hazardous condition to exist which led the plaintiff to fall and sustain permanent injury. The defendant denied liability and contested the plaintiff's damages.

On July 7, 2016, the plaintiff was an invitee at the defendant hotel in Atlantic City. The plaintiff alleged that she fell in a common area of the defendant hotel on a substance that spilled from a cup. Immediately after the plaintiff's fall, she traveled to Egypt to visit family for 3 months. The plaintiff received her diagnosis and treatment when she returned. As a result of the fall, the plaintiff sustained traumatic injury to the left ankle for which she had surgery 18 months after the subject fall. An MRI indicated a possible ligament tear in the left ankle.

The defendant pointed to video from the hotel lobby showing a 3 minute time period between the item being dropped on the floor and the plaintiff's fall. Thus, the defendant argued, there was an issue of lack of constructive notice of the defect. Further, the defendant argued that, due to the gap in time between the incident and the plaintiff's diagnosis and treatment, the plaintiff's injuries could not be objectively attributed to the subject incident.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability each to the defendant and the plaintiff. The arbitrator set damages at $20,000 gross, 10,000 net after reduction for plaintiff's comparative negligence. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Gaber vs. The Borgata Hotel Casino & Spa, Inc. Docket no. L-005976-17; Judge Michael N. Beukas, 11-11-19.

Attorneys for plaintiff: Edward P. Capozzi and Jeremy Hylton of Brach Eichler, L.L.C. in Roseland, NJ. Attorney for defendant: Justin A. Britton of Cooper Levenson, P.A. in Atlantic City, NJ.

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Falling Object

$13,500 RECOVERY

Premises liability – Falling object – Table in house-ware store falls on minor plaintiff's foot – Non-displaced fracture of left foot first metatarsal – Plaintiff treated with stabilizing boot for 3 weeks.

Passaic County, NJ

In this premises liability case, the minor plaintiff asserted that the defendant store negligently displayed a table in such a fashion that the table fell on the plaintiff's foot and caused injury. The defendant denied liability and contested the plaintiff's damages.

On March 5, 2016 the minor plaintiff was on the premises of the defendant house-ware store on Route 17 in Paramus with her mother. The plaintiff argued that the defendant store negligently and carelessly maintained and carelessly failed to give proper notice or warning of the hazardous conditions of the premises to the plaintiff. As a result of the negligence of the defendant, the plaintiff was caused to be injured when a table fell on her foot on the premises.

The plaintiff sustained a non-displaced fracture of the left foot first metatarsal. The plaintiff was required to wear a stabilizing boot for 3 weeks following the injury. The defendant asserted that the plaintiff was responsible for her own injury because her negligence caused the table to fall on her foot. The defendant argued that the plaintiff's exam revealed no fracture, only a sprain.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant damages of $13,500. Following arbitration and prior to trial, the parties settled the matter in the amount of $13,500 broken down as follows: $3,752 in attorney fees and $9,748 in net damages to the minor plaintiff.

REFERENCE

Morales vs. TJX Companies/Home Good, et al. Docket no. L-000727-18; Judge Bruno Mongiardo, 02-28-20.

Attorney for plaintiff: Dennis G. Polizzi of Pitts & Polizzi, LLP in Clifton, NJ. Attorney for defendant: Paul I. Konopka of Bonner, Kiernan, Treback & Crociata, LLP in Parsippany, NJ.

SCHOOL LIABILITY

$200,000 RECOVERY

School liability – Hazardous condition – Minor plaintiff student injured by exposed screw in defendants' school bathroom – Severe laceration to cheek – Permanent scarring – Non-binding arbitration assigns 100% liability to defendant with damages of $250,000.

Passaic County, NJ

In this school liability case, the plaintiff, an 8-year-old student, asserted that the defendants negligently maintained their school premises such that a defect on the premises caused the plaintiff permanent injury. The plaintiff brought suit against the defendant school district, acting superintendent, and the school itself. The defendants denied liability and contested the plaintiff's damages.

On April 12, 2017, the minor plaintiff was a student under the care and supervision of the defendants on their premises of Paterson Public School No. 20 at 500 East 37th Street in Paterson. The plaintiff went to the bathroom at the defendant school with another student. The plaintiff and his classmate were unsupervised by faculty or staff. The plaintiff claimed that the bathroom stall he used was in an unreasonably dangerous condition because metal screws jutted out from the handle of the stall door at face-level to the plaintiff and other children. The plaintiff's classmate, engaged in horseplay, kicked the stall door while the plaintiff was inside the stall. As a result, the metal screws on the door handle slashed open the plaintiff's cheek.

The plaintiff contended that, despite knowing or having reason to know that children should not be without supervision in the vicinity of a dangerous condition, the defendants negligently and carelessly failed to provide the children with a safe environment at school. The plaintiff also contended that, prior to the subject incident, the defendants knew or had reason to know that the door of one of the stalls was in a dangerous and unsafe condition. The plaintiff argued that the defendants failed to maintain their bathroom in a safe condition. The plaintiff maintained that the negligent failure to remove the dangerous condition and the negligent supervision of children in the bathroom were the proximate cause of the plaintiff's injury.

As a result of the incident, the plaintiff sustained a severe laceration to the left cheek with permanent scarring. The plaintiff claimed $3,627 in unpaid medical expenses. The defendants argued that the plaintiff was barred in whole or in part for failure to mitigate damages. The defendants maintained that the plaintiff's injuries were caused by the plaintiff assuming the risk inherent in engaging in the activity the plaintiff

and his classmate engaged in, not by any action or omission of the defendants. Or, in the alternative, that the negligence of the defendant, in the form of an exposed screw, was not the proximate cause of any losses or damages sustained by the plaintiff. As to damages, the defendant's IME confirmed the plaintiff's injury, but opined that the plaintiff required no further treatment.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $250,000. The parties settled the matter prior to trial in the amount of $200,000 broken down as follows: $48,890 in attorney fees; $4,440 in costs and disbursements; $4,958 in medical expenses and $141,712 in net damages to the minor plaintiff.

REFERENCE

Fields-Nelson vs. The Board of Education of Paterson, et al. Docket no. L-000966-18; Judge Frank Covello, 06-27-20.

Attorney for plaintiff: Ammar S. Wasfi of The Killino Firm, P.C. in Philadelphia, PA. Attorney for defendant: Michael A. Cifelli of Florio Kenny Raval, LLP in Hoboken, NJ.

$75,000 RECOVERY

School liability – Assault and battery – Sexual assault – Preschool students left unsupervised and 4-year-old plaintiff sexually assaulted by another student while using restroom – Laceration and bruising in vaginal area – Ongoing depression, fear and anxiety – Post-traumatic stress disorder.

Ocean County, NJ

In this school liability case, the plaintiff asserted that the defendant school, security guards, teachers and administrators were negligent in their supervision of students under their care such that a 4-year-old was sexually assaulted by another student. The defendants denied failure to supervise students.

This matter arises out of a sexual assault of a 4-year-old minor while enrolled as a student at the defendants' elementary school in the defendant district. The plaintiff maintained that the defendant classmate of the plaintiff repeatedly bullied, harassed and intimidated the plaintiff. On October 18, 2016, the plaintiff was left unattended in the restroom when the defendant child entered and sexually molested the plaintiff by putting his hand inside the plaintiff's vagina causing laceration, bleeding and bruising.

On the date in question, one of the defendants was the principal of the school while the other defendants were teachers and staff members. The plaintiff contended that the defendants did not properly supervise the preschool students who were required to use the restroom facilities located outside of the classroom. The plaintiff maintained that the defendant child and the plaintiff were not supervised inside the restroom, thus allowing the incident to occur. The defendants denied liability and contested the 4-year-old plaintiff's recollection of the details of where the purported incident took place and who was involved.

The plaintiff's parents report that the defendants ignored repeated warning signs, failed to take responsive action; failed to conduct an investigation until it was too late and never completed a thorough and complete investigation. The defendant district ignored the plaintiff's pleas for help and, only belatedly, agreed to transfer the plaintiff to a building on the same campus where she would still potentially be in contact with the student who assaulted her. The parents refused to return the plaintiff to the defendant school. As a result, the minor plaintiff suffered severe mental anguish, psychological traumas and emotional distress. She is depressed, anxious, and afraid. She suffers nightmares, trouble being left alone or using the bathroom and not wanting to undress. The minor plaintiff has received and continues to receive extensive counseling for post-traumatic stress disorder and depression.

The parties settled the matter prior to trial in the amount of $75,000 broken down as follows: $14,250 in attorney fees; $18,000 in costs and disbursements and $42,750 in net damages to the minor plaintiff.

REFERENCE

F.C., et al. vs. Board of Education of the Township of Lakewood, et al. Docket no. L-001323-17; Judge Craig L. Wellerson, 03-13-20.

Attorneys for plaintiff: R. Amen McOmber and Austin B. Tobin of McOmber, McOmber & Luber, P.C. in Red Bank, NJ. Attorney for defendant: Cherylee O. Melcher of Hill Wallack, LLP in Princeton, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$7,200,000 RECOVERY – MEDICAL MALPRACTICE – OBSTETRICS – DEFENDANT MATERNAL MEDICINE SPECIALIST'S DECISION TO INDUCE PREMATURE LABOR AND DELIVERY OF INFANT PLAINTIFF RESULTS IN LIFELONG INJURY – TWO WEEKS IN NICU WITH CPAP AND INTUBATION FOR RESPIRATORY SUPPORT – CEREBRAL PALSY.

Middlesex County, NJ

In this medical malpractice case, the plaintiffs, a 34-year-old mother and her infant daughter, brought suit relative to care and treatment regarding the labor and delivery and neonatal outcome of the minor plaintiff. As a result of the defendant's negligence, the plaintiff mother's labor was prematurely induced and the infant plaintiff was born with multiple medical issues related to premature birth. The infant plaintiff was in the NICU for two weeks. She required CPAP and intubation for respiratory support and ultimately developed a collapsed lung requiring chest tubes. She was ultimately diagnosed with spastic diplegia and cerebral palsy. All parties were released at various times on various motions during the progression of the case. The remaining defendant at the time of settlement was the attending obstetrics and gynecology faculty member. The defendant denied liability and argued that the care provided to the plaintiffs was within the standard of care. The defendant maintained that the induction of labor was appropriate given the plaintiff's mother's presentation with preterm labor and indications of sub-clinical infection.

The plaintiff alleged that the defendant should not have recommended or performed an elective induction and that doing so was a breach of the standard of care. The infant plaintiff will require lifelong care and the plaintiff's family have been deprived of the company and consortium of the infant plaintiff.

The plaintiff settled with the defendant obstetrician prior to trial in the amount of $7,200,000 broken down as follows: $2,321,874 in attorney fees; $227,407 in costs; $38,230 to Pennsylvania DHS; and $1,612,490 in net damages set up in a trust for the benefit of the minor plaintiff.

REFERENCE

Plaintiff's maternal-fetal medicine expert: Steven L. Warsof, M.D. from Virginia Beach, VA.

Szumski, et al. vs. Al-Khan, M.D., et al. Docket no. L-000035-16; Judge Michael V. Cresitello, Jr., 04-09-20.

Attorney for plaintiff: Jennifer L. Emmons of Locks Law Firm, LLC in Cherry Hill, NJ. Attorney for defendant: James A. Vasios of Vasios, Kelly & Strollo, P.A. in Union, NJ.

$4,158,851 VERDICT – MEDICAL MALPRACTICE – OPHTHALMOLOGIST NEGLIGENCE – DEFENDANT DOCTOR PERFORMS EYE SURGERY ON 17-MONTH-OLD THAT WAS NOT INDICATED AND REMOVED TOO MUCH EYE TISSUE RESULTING IN PERMANENT INJURIES – LEFT EYE DISFIGUREMENT – LEGAL BLINDNESS OF LEFT EYE.

Philadelphia County, PA

The plaintiffs in this medical malpractice action maintained that their son sustained permanent and serious injuries to his eyes, as well as exacerbation of developmental delays, when he underwent bilateral eye surgery performed by the defendant ophthalmologist. The plaintiffs maintained that the surgery was not necessary and was not performed properly causing eye injury and the minor's exposure to anesthesia exacerbated his preexisting developmental delays. The defense denied all allegations of negligence and denied that the minor suffered any adverse complication from the anesthesia and maintained that the minor suffered a known and accepted complication of the procedure.

The male minor was diagnosed with bilateral congenital ptosis and strabismus (crossed eyes). He presented to the defendant ophthalmologist at the defendant hospital for assessment and evaluation.

Surgery was ultimately performed when the minor was 17 months old. The surgery was performed incorrectly and too much tissue was excised causing the eyelashes to turn inward and resulting in the left eye being unprotected.

The jury determined that the defendant was negligent and that the doctor's negligence was a factual cause of harm to the minor. The jury awarded the plaintiffs $2,000,000 in past and future pain and suffering and $2,158,851 in past and future medical expenses, for a total award of $4,158,851.

REFERENCE

J.Y. a minor by and through his png Hope Yasovsky and Jared Austin Yasovsky vs. William Katowitz, M.D. and The Children's Hospital of Philadelphia. Case no. 170500721; Judge Sean F. Kennedy, 06-11-21.

Attorney for plaintiff: Joseph Messa, Jr. of Messa & Associates, PC in Philadelphia, PA. Attorney for defendant: Andrew Susko of White & Williams in Philadelphia, PA.

PRODUCT LIABILITY

$10,314,175 VERDICT – PRODUCT LIABILITY – MANUFACTURING DEFECT FOUND TO PREVENT DEVICE FROM PROPERLY STAPLING SIDES OF COLON DURING RESECTION – ALLEGED NEGLIGENCE OF DEFENDANT COLORECTAL SURGEON – NEED FOR PERMANENT COLONOSCOPY BAG.

Miami County, OH

This product liability case involved a then-48-year-old woman who underwent a resection in the rectum to remove a benign polyp. The surgery involved a medical device known as a Contour Curved Cutter Stapler that was manufactured by a defendant. The defendant general surgeon used this device during the resection. The plaintiff maintained that the device was defectively manufactured and that it failed to attach the staples. The plaintiff also named the general surgeon who performed the resection, contending that he performed the surgery improperly. The plaintiff contended that because of the alleged defect and/or the alleged negligence, she lost a large section of her intestines and that she will permanently have to use an ileostomy bag 3 times a day. The defendant surgeon asserted that he used the device in the recommended manner, but that it did not place the staples. The medical device manufacturer denied that the device was defective.

The plaintiff asserted that she required several additional surgeries, including an additional colonoscopy and ileostomy. The plaintiff required to be fed through a tube during her stay in the hospital. The plaintiff also suffered a rectal-vaginal fistula which she maintained will require surgery in the relatively near future.

The jury exonerated the surgeon. They also found against the medical device company and awarded $9,314,175 to the plaintiff and $1,000,000 to the husband on his derivative claim. The award was allocated as follows: $2,000,000 for past pain and suffering, $7,000,000 for future pain and suffering and $314,175 for past medical bills.

REFERENCE

Plaintiff's engineer expert: Brian M. Davis, P.E. from Cincinnati, OH. Plaintiff's general surgery expert: William J. Schirmer, M.D. from Delaware, OH. Defendant's colorectal surgeon expert: Timothy J. Pritchard, M.D. (for defendant physician) from Mentor, OH. Defendant's colorectal surgeon expert: Jonathan R. Snyder, M.D. (for defendant physician) from Cincinnati, OH.

Simon vs. Ethicon, et al. Case no. 18 CV 00443; Judge Jeannine N. Pratt, 03-25-21.

Attorney for plaintiff: Marc Pera of Crandall & Pera Law, LLC in Cincinnati, OH. Attorney for plaintiff: John Holschuh of Santen & Hughes in Cincinnati, OH. Attorney for plaintiff: Todd B. Naylor of Goldenberg Schneider, LPA in Cincinnati, OH. Attorneys for defendant exonerated surgeon: Susan Blasik-Miller and Robert Snyder of Freund, Freeze & Arnold in Dayton, OH.

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MOTOR VEHICLE NEGLIGENCE

$7,011,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – TAXI CAB NEGLIGENCE – INTERSECTION COLLISION – CAB FAILS TO STOP AT STOP SIGN – 2 CERVICAL HERNIATIONS SUPERIMPOSED ON PREVIOUSLY ASYMPTOMATIC ARTHRITIS – FUSION SURGERY NOT SUCCESSFUL – FAILED BACK SYNDROME – NEED FOR EXTENSIVE FUTURE MEDICAL CARE.

Harris County, TX

In this action for motor vehicle negligence, the defendant cab driver failed to stop at stop sign, striking the plaintiff's vehicle and causing him to sustain serious injuries. The plaintiff's MRIs showed that she suffered 2 cervical herniations. The plaintiff ultimately had fusion surgery. The taxi driver had, by law, $30,000 in self-insurance coverage provided by Yellow Cab and the plaintiff initially recovered this amount which Yellow Cab paid on behalf of the driver.

The plaintiff asserted that the pain increased and that, ultimately, she was diagnosed with failed back syndrome. The plaintiff maintained that she will require extensive future care, including a radial frequency ablation and the implantation of a spinal stimulator.

The plaintiff's treating doctor testified that she would accrue $3,360,000 in future medical costs over the next 23 years of her future life expectancy for Radiofrequency Ablation surgery and a spinal column stimulator.

The jury found that the driver was acting in the course of his employment for Yellow Cab. They awarded $7,011,000. Past medical bills of $90,000 were stipulated. Yellow Cab also received credit for the $30,000 previously obtained from the driver. The verdict, after molding, amounted to $7,071,000. After prejudgment interest, the court entered Judgment for $7,381,952.

REFERENCE

Plaintiff's chiropractor expert: Timothy Zeller, D.C. from Houston, TX. Plaintiff's family medicine expert: Gordon Sack, M.D. from Pasadena, TX. Plaintiff's pain management expert: Basem Hamid, M.D. from Houston, TX. Defendant's orthopedic surgeon expert: Allen Deutsch, M.D. from Houston, TX.

Perez vs. Greater Houston Transportation, Co. et al. Case no. 2016-32437; Judge Lauren Reeder, 05-17-21.

Attorney for plaintiff: Joseph (Joe) Stephens of The Stephens Law Firm Accident Lawyers in Houston, TX.

$7,000,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – CROSSWALK PEDESTRIAN STRUCK BY DEFENDANT DRIVER TURNING LEFT FROM BEHIND HER – SKULL FRACTURE AND BRAIN HEMORRHAGE – LOSS OF CONSCIOUSNESS 6 HOURS LATER – DEATH NEXT DAY – LIABILITY STIPULATED DURING TRIAL.

Hampden County, MA

This motor vehicle negligence case involved the death of 52-year-old woman who was struck by the defendant as he was turning left from behind her in a company pickup truck. The plaintiffs contended that the decedent suffered a skull fracture and became progressively more incoherent over the next 6 hours until she lost consciousness. Life support was subsequently withdrawn. The decedent was divorced and left 2 adult daughters. The defendant stipulated to liability during trial after evidence of alleged blindness in one eye was introduced and portions of the defendant's video deposition were shown to the jury.

The plaintiff contended that although the daughters did not receive financial contributions from the decedent, they were very close, spoke on the phone and texted very frequently, and that the loss of intangibles such as guidance, advice, society, comfort and companionship was great. The decedent had been divorced for many years and the daughters were essentially raised by a single mother.

The jury awarded $7,000,000, including $1,000,000 for conscious pain and suffering and $3,000,000 to each daughter for wrongful death.

REFERENCE

Plaintiff's critical care expert: Andrew R. Doben, M.D. from Springfield, MA.

Castillo vs. Davignon. Case no. 1879CV00247; Judge Richard J. Carey, 04-22-21.

Attorney for plaintiff: Benjamin R. Novotny of Trial Lawyers for Justice in Decorah, IA. Attorney for plaintiff: Nicholas C. Rowley of Trial Lawyers for Justice in Decorah, IA. Attorney for plaintiff: Charlotte E. Glinka of Keches Law Group in Taunton, MA.

$4,000,000 VERDICT – FEDERAL TORT CLAIMS ACT – MOTOR VEHICLE NEGLIGENCE – LEFT TURN COLLISION – POSTAL WORKER MAKES LEFT TURN AT INTERSECTION IN PATH OF HOST VEHICLE – CERVICAL FRACTURES – INITIAL QUADRIPLEGIA – PLAINTIFF PARTIALLY REGAINS USE OF NON-DOMINANT SIDE.

U.S.D.C. - Northern District of New York

This case of motor vehicle negligence involved a plaintiff belted rear-seat passenger in his 60s. The plaintiff contended that the defendant driver of a postal vehicle negligently failed to make observations before turning left, colliding with the host vehicle. The plaintiff sustained fractures at C4-5 with a spinal cord indentation. The plaintiff was initially rendered a quadriplegic and the left-hand dominant plaintiff gradually partially regained the use of his right side, leaving him with quadriparesis. The defendant driver did not dispute the plaintiff's account of the accident.

The plaintiff contended that he has extensive contractures that include a clawing of the right hand that is permanent in nature. The plaintiff maintained that extensive edema is also permanent in nature. The plaintiff claimed that he suffers constant nerve pain.

The Court found the defendant 100% negligent and awarded $4,000,000.

REFERENCE

Stokes vs. USA, et al. Index no. 1:18-cv-1445, 02-21.

Attorney for plaintiff: Laura M. Jordan of Powers & Santola, LLP in Albany, NY.

$1,500,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO OBEY STOP SIGN – PLAINTIFF, WHO UNDERWENT PRIOR TWO-LEVEL FUSION FOLLOWING ACCIDENT THAT OCCURRED FIVE YEARS EARLIER SUFFERED CERVICAL HERNIATIONS IN SUBJECT ACCIDENT AND REQUIRED EXTENSION OF FUSION TO FIVE LEVELS – LUMBAR HERNIATION – RADIOFREQUENCY ABLATION – SLAP TEAR TO LEFT SHOULDER – ARTHROSCOPIC SURGERY – BILATERAL HIP INJURIES REQUIRE INJECTIONS.

Bergen County, NJ

In this action for motor vehicle negligence, the plaintiff driver, in her mid 40s, contended that the defendant SUV driver failed to stop at a stop sign, causing the accident in which the defendant struck the passenger side of the plaintiff's car. The plaintiff contended that she suffered an aggravation of cervical herniations that occurred approximately five years earlier. The prior injuries required a two-level fusion and the plaintiff asserted that after this subject accident, she required injections and ultimately the extension of the cervical fusion to five levels. The defendant would have maintained that the plaintiff failed to make adequate observations and was comparatively negligent.

The plaintiff further contended that she suffered a lumbar herniation that required epidural injections and a radiofrequency ablation and which will add to her pain and difficulties for the remainder of her life.

The plaintiff is unmarried. The plaintiff, who taught disabled children at their homes, was able to return to work.

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

REFERENCE

Plaintiff's orthopedic spinal surgeon expert: Michael Gerling, M.D. from Jersey City, NJ. Plaintiff's orthopedic surgeon expert: David Feldman, M.D. from Englewood, NJ. Plaintiff's pain management expert: Thomas Ragukonis, M.D. from Paramus, NJ.

Watts vs. Seneca. Docket no. BER-L-6615-17, 03-23-21.

Attorneys for plaintiff: Jeffrey Hasson and Robert Florke of Law Office of Jeffrey S. Hasson, PC in Teaneck, NJ.

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$1,000,000 POLICY LIMIT RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRACTOR-TRAILER NEGLIGENCE – AUTO/TRUCK COLLISION – DEFENDANT TRUCK DRIVER MAKES NEGLIGENT LEFT TURN IN INTERSECTION, STRIKING PLAINTIFF'S DECEDENT'S VEHICLE – FATAL INJURIES TO 57-YEAR-OLD MALE – DEFENDANT CLAIMS PLAINTIFF NOT WEARING AVAILABLE LAP BELT.

Fresno County, CA

In this motor vehicle negligence case, the plaintiff contended that the defendant tractor-trailer driver failed to yield before turning left into the path of the 57-year-old decedent driver. The plaintiff contended that as a result, the decedent suffered fatal injuries and died at the scene. The decedent left a wife and two sons, age 19 and 16 at the time of death. The defendant asserted that the decedent failed to make proper observations and was comparatively negligent.

The decedent died at the scene and under California law involving this case, the plaintiff, pursuing a death action, could not make a claim for conscious pain and suffering on the part of the decedent. The plaintiff contended that the decedent, a fabricator, would have worked a number of years into the future if he had not been killed, with economic losses of $508,394.

The defendant had a $1,000,000 policy. The case settled prior to trial for this amount.

REFERENCE

Richardson vs. JCT Trucking, et al. Case no. 20CECG00127, 09-20.

Attorney for plaintiff: Richard C. Watters of Miles, Sears & Eanni, PA in Fresno, CA.

PREMISES LIABILITY

$1,320,000 GROSS VERDICT – PREMISES LIABILITY – NEGLIGENT SECURITY AT FORT LAUDERDALE HOTEL – PLAINTIFF ATTACKED IN COURTYARD – FINGER FRACTURE WITH PERMANENT DEFORMITY – 10% COMPARATIVE NEGLIGENCE FOUND.

Broward County, FL

The plaintiff in this negligent security action was a 49-year-old television host, brand ambassador and minister who was attacked and injured while a guest at the defendant's Fort Lauderdale, Florida, hotel. The plaintiff alleged that the attack resulted from the defendant's lack of adequate security. The defendant denied the claims and argued that the plaintiff was comparatively negligent for leaving his room and injecting himself into an altercation which was taking place in the hotel's courtyard.

The plaintiff was attacked in the courtyard by a male holding a cement sprinkler brick. The plaintiff sustained a fracture of his pinkie finger. He contended that the finger fracture did not heal properly causing permanent deformity, pain, and limitation of movement. The plaintiff made no claim for loss of wages or future medical expenses.

The jury found the defendant 90% negligent and the plaintiff 10% comparatively negligent. The plaintiff was awarded $1,320,000 in gross damages, reduced accordingly.

REFERENCE

Plaintiff's security expert: Russell Kolins from Philadelphia, PA.

Wiley Lowe vs. North Beach Hotel, LLC, d/b/a Elysium Resort. Case no. CACE 19-013188; Judge Sandra Perlman, 06-25-21.

Attorneys for plaintiff: Todd Michaels, Shelby Walton and James Blecke of The Haggard Law Firm in Coral Gables, FL.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

$3,750,000 CONFIDENTIAL RECOVERY – CONSTRUCTION SITE NEGLIGENCE – GENERAL CONTRACTOR NEGLIGENCE – FAILURE TO ENSURE SAFETY PROTOCOLS IN PLACE AND BEING FOLLOWED – IRONWORKER TRIPS AND FALLS 25 FEET FROM ROOF – SUBDURAL HEMATOMA – SUBARACHNOID HEMORRHAGE – MULTIPLE FRACTURES INCLUDING SEVERE ELBOW FRACTURE – POST-TRAUMATIC STRESS DISORDER.

Withheld County, MA

In this construction site negligence matter, the plaintiff ironworker alleged that the general contractor was negligent in failing to follow safety protocols and provide a safe, OSHA compliant work site. The plaintiff fell from the roof and landed 25 feet down on the ground sustaining multiple fractures, head injuries and post-traumatic stress disorder. The defendant maintained that the plaintiff was an experienced ironworker and was familiar with and failed to follow safety protocols while working on the project; therefore, the defendant maintained, the plaintiff was at least partially responsible for his own injuries and damages.

The plaintiff was wearing a safety harness at the time of his fall, but maintained there were no anchors to tie off to as he was working, creating a hazardous working condition. The plaintiff maintained that the job supervisor admitted that he had never been up on the roof and was unaware of what, if any, safety protocols were in place for the workers.

The matter was mediated and a settlement of $3,750,000 was agreed upon by the parties shortly thereafter, prior to any trial in this matter.

REFERENCE

Doe Plaintiff vs. General Contractor Roe., 01-15-20.

Attorneys for plaintiff: Robert I. Feinberg and John B. Johnson of Feinberg & Alban in Boston, MA.

Defamation

$5,064,449 VERDICT – DEFAMATION – LIBEL/SLANDER – DEFENDANT AND PARTNER PUBLISH FALSE AND INTENTIONALLY DEFAMATORY STATEMENTS ABOUT PLAINTIFF AND HIS BUSINESS AFTER PLAINTIFF ENDS BRIEF RELATIONSHIP PLAINTIFF HAD WITH DEFENDANT – LOSS OF REPUTATION, CAPITAL AND REVENUE.

Philadelphia County, PA

The plaintiff brought this defamation suit against the defendants maintaining that they were on a personal crusade to ruin the plaintiff's personal and business reputations because the plaintiff and the female defendant had a prior relationship which the plaintiff ended. The female defendant made an initial appearance in the case and then refused to participate in the case. The male defendant denied the plaintiff's allegations and maintained that any harm to the plaintiff was the result of actions of the female defendant.

The essence of the false statements alleged that the plaintiff is a violent, alcohol and drug abuser who assaults women and is a sexual deviant and that companies should stay away from such a vile human. As a direct and proximate result of these statements, the plaintiffs have suffered significant reputational harm and sustained actual damages including, but not limited to, loss of capital and revenue and lost productivity.

The court found that the plaintiff was entitled to compensatory damages of $1,314,449, emotional distress of $350,000, reputational harm of $3,000,000, pain and suffering of $150,000 and punitive damages of $250,000, for a total of $5,064,449.

REFERENCE

Gary Dumais & Dumais Human Resources, LLC, dba Select Human Resources vs. Megan Bentzley and Jeffrey Roberts. Case no. 170500444; Judge Susan Schulman, 05-04-21.

Attorney for plaintiff: David P. Heim of Bochetto & Lentz, P.C. in Philadelphia, PA. Attorney for defendant: Pro Se.

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Labor Law

$2,526,940 VERDICT – LABOR LAW SEC. 240 (1) – PLAINTIFF CONSTRUCTION WORKER STRUCK BY BAG OF CONCRETE THAT FELL FROM SIGNIFICANT HEIGHT – LUMBAR HERNIATION – SURGERY – BROKEN HARDWARE IN ANKLE WHICH HAD BEEN PLACED 10 YEARS EARLIER – ALLEGED NEED FOR FUTURE ANKLE FUSION – NO INCOME CLAIMS.

Kings County, NY

This was a Sec. 240 (1) Labor Law case involving a plaintiff construction worker in his late 30s. The plaintiff contended that he was struck with an approximately 75 lb bag of concrete that fell from a significant height, landing on his ankle and pushing him backwards causing him to injure his back. The plaintiff contended that as a result, he suffered lumbar herniations that required surgery and the installation of hardware. The defendant denied that the event did not occur as the plaintiff said it did.

The plaintiff countered that he visited the hospital the day of the accident, and that the records supported his position. The plaintiff asserted that a lumbar herniation with radiculopathy was confirmed by MRI and EMG. The plaintiff claimed that a course of more conservative therapy was inadequate and that he required a lumber discectomy and fusion.

The plaintiff, who maintained that he can no longer work in the construction field, obtained alternative employment, and made no income claims.

The jury awarded $2,526,940, including $600,000 for past pain and suffering, $850,000 for future pain and suffering and $1,000,000 for future medical expenses. The parties had stipulated to past medical expenses of $76,940.37.

REFERENCE

Ortiz vs. 470 4th Ave Investors, LLC, et al. Index no. 511286/15; Judge Genine Edwards (dam), 05-18-21.

Attorney for plaintiff: Jason L. Paris of Paris & Chaikin, PLLC in New York, NY.

Municipal Liability

MULTI-MILLION DOLLAR VERDICT – MUNICIPAL LIABILITY – WORKER'S COMPENSATION CLAIM – CITY COMMISSIONER STRUCK BY MOTOR VEHICLE IN COURSE AND SCOPE OF EMPLOYMENT – PERMANENT QUADRIPLEGIA – 24-HOUR ATTENDANT CARE REQUIRED.

Miami-Dade County, FL

This was a workers' compensation claim brought against the City of Sunny Isles Beach, Florida, by one of its commissioners. The claimant alleged that he was struck by a motor vehicle and rendered a permanent quadriplegic in the course and scope of his employment with the city. The respondent argued that the claimant was not in the course and scope of employment at the time of the accident and that the accident was not compensable under the "going and coming" rule. The third-party action, against those responsible for the motor vehicle accident, was previously settled for a confidential amount.

The claimant, age 66 at time of injury, is currently unable to move any part of his body below his neck and will require attendant care 24 hours a day 7 days a week, according to his experts.

The court determined that the claimant's injuries were compensable and that he should be compensated for a permanent and total disability from January 18, 2017, as well as treatment and attendant care for 24 hours a day, 7 days a week. The claim for interest and penalties for late payment of benefits was also granted along with attorney fees and costs.

REFERENCE

Aelion vs. City of Sunny Isles Beach/Preferred Government Claims Solution/PGCS. Case no. 17-004278JIJ; Judge Jeffrey I. Jacobs.

Attorney for plaintiff: Brett A. Panter of Panter, Panter & Sampedro in Miami, FL. Attorney for plaintiff: Barry A. Stein of De Cardenas, Freixas, Stein & Zachary, PA in Miami, FL.

Unsafe Workplace

$4,675,000 VERDICT – UNSAFE WORKPLACE – WORKSITE ACCIDENT – DEFENDANTS IMPROPERLY RIG HVAC UNIT ON CRANE RESULTING IN UNIT FALLING FROM CRANE AND STRIKING PLAINTIFF – RIB FRACTURE – CERVICAL AND LUMBAR INJURIES – OCCIPITAL NEURALGIA.

Bexar County, TX

The plaintiff in this personal injury action was in the course and scope of his employment installing HVAC units when he was struck by a unit that fell from a crane as it was being lowered onto the roof on which the plaintiff was standing causing him to sustain serious life-altering injuries. The plaintiff was transported to the hospital. He was eventually diagnosed with cervical and lumbar disc injuries with radiculopathy and occipital neuralgia. He underwent steroid injections and a lumbar fusion. The defendants denied liability and argued that it was the actions of the plaintiff or a third party that caused the incident and the damages suffered by the plaintiff.

The plaintiff maintained that the defendants were negligent in failing to properly secure the HVAC unit in question, failing to provide proper equipment to employees and failing to operate the crane in a safe manner during the incident in question.

The jury found that the defendant Howell Crane was 70% liable, the plaintiff's employer, Service Mechanical was 20% liable and the plaintiff was 10% liable. The jury awarded the plaintiff past damages of $1,125,000 and future damages of and future damages of $3,550,000, for a total of $4,675,000.

REFERENCE

Robert Lee Wammack, Jr. vs. Howell Crane & Rigging, Inc. and Service Mechanical Group, LLC. Case no. 2016-CI-09279; Judge Angelica Jimenez, 02-12-20.

Attorney for plaintiff: Amanda Esparza Carollo of Law Offices of George Salinas in San Antonio, TX. Attorney for defendant: John Holman Bar in Dallas, TX.

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