



NEW JERSEY

JURY VERDICT

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FEATURED CASES

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

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FEATURED CASES

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

Essex County, NJ

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

The evidence reflected that the host vehicle was struck in the rear while stopped at a light. The plaintiff, who was wearing a seat belt, contended that she nonetheless developed severe radiating lumbar pain after the accident. The evidence also reflected that the plaintiff was diagnosed with a bulge at the same level approximately 8 years earlier. The plaintiff asserted that the prior condition responded well to chiropractic care and that she had been essentially asymptomatic for an extended period as of the time the subject accident occurred.

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

The plaintiff would have presented an orthopedic surgeon who conducted a Polk/comparative analysis and who found that 20% of the plaintiff's complaints were caused by the prior condition and 80% by the subject collision. The plaintiff would have argued that she will permanently suffer extensive pain from the herniation and permanent pain from the meniscal tear.

The plaintiff worked for an office cleaning service. The plaintiff maintained that because of the continuing pain and restriction, she requires frequent breaks and is limited in the extent she can continue to work. The plaintiff has a husband and 3 children. She also maintained that she has great difficulties performing work around the house. The plaintiff maintained that she suffered a diminution in earning capacity and the plaintiff's economic proofs reflected \$331,154-\$445,000, including the loss of household services. The case settled prior to trial for \$1,300,000.

REFERENCE

Plaintiff's economist expert: Kenneth Betz from Livingston, NJ. Plaintiff's economist expert: Kristin Kusma from Livingston, NJ. Plaintiff's orthopedic surgeon expert: David Basch, M.D. from Sparta, NJ. Plaintiff's orthopedic surgeon expert: Michael Meese, M.D. from Hackensack, NJ. Plaintiff's vocational expert: Edmond A. Provder from Lodi, NJ.

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

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

COMMENTARY

Although the host vehicle was struck in the rear by a commercial truck and the plaintiff was not technically required to present evidence of a Polk/comparative analysis regarding the extent to which the plaintiff, who was diagnosed with a bulge at the same level 8 years earlier, in this non-verbal threshold situation, the plaintiff nonetheless produced evidence that 20% of the plaintiff's condition was attributable to the earlier condition and 80% to the accident. In this regard, the plaintiff would have argued that this position supported the plaintiff's claims of causal relationship. Additionally, it is felt that the use of this evidence enhanced the believability of the plaintiff's case, which in view of the prior diagnosis was particularly important to the plaintiff's case.

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Main Office:

973/376-9002 Fax 973/376-1775

Circulation & Billing Department:
 973/535-6263

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\$750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – PLAINTIFF DRIVER STRUCK IN REAR BY DEFENDANT TOW TRUCK BEFORE STRIKING PARKED VEHICLE AND LANDING ON ITS SIDE – BRIEF LOSS OF CONSCIOUSNESS – TBI.

Somerset County, NJ

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

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

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

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

REFERENCE

Plaintiff's TBI expert: Brian Greenwald, M.D. from Edison, NJ.

Defendant's neuropsychologist expert: George Carnavalle, Ph.D. from Clifton, NJ.

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

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

\$600,000 RECOVERY – PREMISES LIABILITY – NEGLIGENT MAINTENANCE – PLAINTIFF RESIDENT SLIPS AND FALLS ON ACCUMULATED ICE ON DEFENDANT CONDOMINIUM'S PREMISES CAUSED BY IMPROPER DRAINAGE – LEFT KNEE MEDIAL MENISCUS TEAR; LEFT KNEE CHONDROMALACIA PATELLA; DISC HERNIATION AT L3-4 AND DISC BULGE AT L5-S1 – LEFT KNEE ARTHROSCOPIC SURGERY.

Union County, NJ

In this premises liability case, the plaintiff, a human resources manager, asserted that the defendants failed to maintain the driveway of the condominium complex in a safe condition free from snow or ice or frozen run-off from the building. As a result, the plaintiff fell and suffered significant, permanent injury. The defendant condo association argued that it receives a proposal each year from the defendant landscaping company listing all of the services to be provided and the corresponding prices. The defendant condo association maintained that the defendant landscaper is thus responsible for adequate snow and ice removal and remediation. Further, both defendants contended that the plaintiff was negligent

in failing to exercise due caution under the circumstances and was responsible for failing to avoid slippery conditions and caused her own fall and resulting injury.

On March 17, 2017, the plaintiff was legally on the premises owned, operated, maintained, repaired, controlled and supervised by the defendant condominium association and defendant landscaping company 1 Euclid Avenue in Summit. The plaintiff, a resident of the condominium complex, slipped and fell on accumulated ice on the premises in the driveway of the building.

The plaintiff contended that the defendants negligently failed to adequately remove or remediate the ice that the plaintiff asserted came from "weep holes" in the balconies above the driveway that allowed melting snow to run from the balconies onto the driveway where, overnight when the temperature dropped, it froze into ice. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result, the plaintiff sustained left knee medial meniscus tear; left knee chondromalacia patella; left knee synovitis; disc herniation at L3-4; disc bulge at L5-S1; left hip sprain and right shoulder sprain. The plaintiff underwent left knee arthroscopic partial medial meniscectomy, chondroplasty, patellofemoral joint, synovectomy and plica resection. The plaintiff claimed ongoing pain and difficulty with activities of daily living. The plaintiff was on disability from work, due to the subject injuries, at the time of the suit.

The defendant landscaping company maintained that it did not have a contract with the defendant condominium association and owed no duty to the plaintiff or other pedestrians in and around the complex. The defendant landscaping company argued that it monitors the weather and goes to the condo complex when necessary and will return to the property to provide additional or follow-up services upon request of the defendant condo association's building superintendent. The defendant landscaping company also maintained that the defendant condo's building supervisor kept a shovel and ice melt on hand in the building and applied them as needed, only calling the defendant landscaper for more significant removal.

The parties settled the matter prior to trial in the amount of \$600,000 broken down as follows: \$470,000 in damages from the defendant condominium association and \$130,000 from the defendant landscaper.

REFERENCE

Ostenfeld vs. One Euclid Avenue Condo Association, et al. Docket no. L-002267-17; Judge Robert J. Mega, 01-21-20.

Attorney for plaintiff: Gary J. Grabas of Bramnick, Rodriguez, Grabas, Arnold & Mangan in Scotch Plains, NJ. Attorney for defendant condominium association: John Sapata of McDermott & McGee in Millburn, NJ. Attorney for defendant landscaping company: Gregory S. Pennington of Traub Lieberman Straus & Shrewsbury, LLP in Red Bank, NJ.

\$540,000 RECOVERY – BREACH OF CONTRACT – PLAINTIFF LOANS \$600,000 TO 2 RESTAURANT PARTNERS – RESTAURANT EVENTUALLY EVICTED FOR FAILURE TO PAY RENT AND CLOSED – PLAINTIFF DEMANDS REPAYMENT OF LOAN – PLAINTIFF SETTLES WITH FIRST DEFENDANT FOR \$200,000 AND WITH SECOND DEFENDANT FOR \$340,000.

Bergen County, NJ

On February 6, 2013, the plaintiff extended a loan to a restaurant management company in the sum of \$600,000. The 2 defendants, as principals of the company, executed personal guarantees wherein they unconditionally and absolutely guaranteed payment of all sums due on the loan. The plaintiff maintained that, on March 5, 2018, the company failed to make the loan payment due and the plaintiff exercised his rights under the call option, demanding payment of the whole of the unpaid principal and interest. The plaintiff brought this suit for breach of loan agreement.

The plaintiff entered into a settlement in the amount of \$200,000 with the first principal of the company, resolving all issues between the plaintiff and that defendant. The plaintiff received summary judgment against the second principal of the company in the amount of \$415,050 on November 1, 2019. The defendant then filed a contested motion for reconsideration of the summary judgment.

During the pendency of the defendant's motion for reconsideration, the parties settled the matter in the amount of \$340,000 to be paid in installments. The

defendant agreed not to further transfer any of his assets to third parties without full and fair consideration during the pendency of the agreement. The agreement also stated that, in the event that the defendant defaulted in any of his obligations under the stipulation, the plaintiff was permitted to reinstate the judgment together with interest and costs accrued.

The settlement only resolved the claims between the plaintiff and the second individual defendant. The cross claims between the 2 defendants continued to be litigated.

REFERENCE

Noah Bank vs. Mastorakos and Rossakis. Docket no. L-002217-18; Judge Walter F. Skrod, 01-03-20.

Attorney for plaintiff: Philip Kaufman, Esq. in Highland Park, NJ. Attorney for defendant first principal: Joseph C. Nuzzo, Esq. in Wayne, NJ. Attorney for defendant second principal: Francis J. Devito of Francis J. Devito, PA in Moonachie, NJ.

\$500,000 POLICY LIMIT RECOVERY – DOG BITE CASE – BILATERAL FACIAL LACERATION SECONDARY TO LEFT CHEEK TRAUMATIC FLAP INVOLVING LEFT NASAL ALA, LEFT CHEEK AND LEFT ORAL COMMISSURE – SIGNIFICANT FACIAL SCARRING DESPITE PLASTIC SURGERY – NO INCOME CLAIMS.

Essex County, NJ

This case was brought under the strict liability dog bite statute. The plaintiff, approximately age 50, contended that as she was visiting the defendants' home, she was suddenly bit in the face by the defendants' Australian Shepherd sustaining serious permanent injuries. The defendant did not have the plaintiff examined.

The plaintiff maintained that she sustained a bilateral facial laceration secondary to a left cheek traumatic flap involving the left nasal ala, left cheek and left oral commissure measuring 7 cm x 5 cm x 5 cm and a right cheek laceration measuring 4 cm which required an operation which involved exploration of the penetrating trauma to the bilateral face with ligation of the branch of the facial artery and a complex layered repair with debridement of the bilateral laceration involving the left nasal ala, left cheek, left oral commissure and right cheek with a total length of 22 cm.

The physician contended that the plaintiff will suffer permanent noticeable scarring. The plaintiff's second plastic surgeon would have testified that he subse-

quently examined the plaintiff and concurred that the scarring is permanent although she might experience some improvement in the future.

The plaintiff was not working at the time and made no income claims.

The defendant had \$500,000 in coverage. The case settled slightly more than a year after the incident for the policy.

REFERENCE

Plaintiff's first plastic surgeon expert: Ashley Ignatiuk, M.D. from Newark, NJ. Plaintiff's second plastic surgeon expert: Ross Zbar, M.D. from Glen Ridge, NJ.

Rose-Bronner, et al vs. McMorrow, et al. Docket no. ESX-L-668-20, 01-09-21.

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

UNDISCLOSED RECOVERY – CONSTRUCTION SITE NEGLIGENCE – UNSTABLE CEMENT MIXER SPLASHES CEMENT INTO PLAINTIFF'S RIGHT EYE – APPROPRIATE SAFETY EQUIPMENT NOT PROVIDED – COMPLETE CORNEA REPLACEMENT – PERMANENT, PARTIAL BLINDNESS – ARBITRATION ASSIGNS 75% LIABILITY TO DEFENDANTS WITH GROSS DAMAGES OF \$600,000.

Essex County, NJ

In this construction site negligence case, the plaintiff, a construction worker, in his mid-30s, asserted that the defendants, the contractor, the developer, and site manager on a construction job, failed to maintain a safe construction environment and failed to provide safe and properly installed equipment such that the plaintiff suffered a serious accident on the site that caused him permanent injury. The defendants each contended that the plaintiff was responsible for his own injury and also contended that each of the other defendants was responsible for the plaintiff's safety and safety equipment on the job.

On March 21, 2017, the plaintiff worked as a cement laborer for a company owned by his uncle. That company was hired to perform cement work on the foundations of multiple townhouse buildings located in New Brunswick. The defendants were the general contractor at the site, the developer, and the site manager who hired the plaintiff's employer as a subcontractor. On the day in question, the plaintiff maintained that he was instructed to use an unsteady cement mixer that was dangerously propped up by a 2"x4", which was an unsafe work condition, which

caused the cement mixer to shake and to vibrate excessively, spitting water and cement as it turned. The plaintiff was using the cement mixer and, while adding water into the machine, the cement splashed into his right eye, permanently blinding him.

The plaintiff put forth that the defendants were negligent for violating the principles and practices of construction safety management because they collectively failed to take reasonable steps to hire safe contractors and violated the industry standards by failing to plan, monitor and ensure that the work was done safely and in compliance with OSHA regulations.

The splashed concrete caused a severe central corneal infection that perforated the plaintiff's cornea necessitating a complete cornea transplant in his right eye, partially and permanently blinding him. There was a worker's compensation lien of \$64,440. The parties submitted to arbitration prior to trial. The arbitrator assigned 25% liability each to the 3 defendants and 25% to the plaintiff. The arbitrator set damages at \$600,000 gross, \$450,000 net after reduction for plaintiff's liability. Following arbitration, all parties settled with the plaintiff for an undisclosed sum.

REFERENCE

Pereira vs. 4 Concrete Construction, LLC et al. Docket no. L-004965-17; Judge Keith E. Lynott, 09-16-19.

Attorney for plaintiff: Christopher L. Musmanno of Einhorn, Barbarito, Frost & Botwinick in Denville, NJ. **Attorney for defendant 4 Concrete Construction, LLC:** Richard Barber of Haworth Barber & Gerstman, LLC in Hackensack, NJ. **Attorney for defendant MAR Acquisition Group, LLC:** Michael A. Kosar of Marks, O'Neill, O'Brien, Doherty & Kelly, P.C. in Cherry Hill, NJ. **Attorney for defendant CIS Construction, LLC:** Joseph J. McGlone of O'Toole Scrivo Fernandez Weiner VanLieu, LLC in New York City, NY.

COMMENTARY

The plaintiff's claims of job site negligence were extensive and included: the plaintiff was never provided with clean running water to use in the mixer or to clean his eye after the incident, and the water used was whatever standing puddle water could be located at the site. There was no running water at the site. The plaintiff was never provided with any type of safety equipment such as goggles, protective eyewear, safety helmet or other such equipment that a cement construction laborer at a commercial site should be reasonably afforded. The defendants did not maintain a workplace trailer on the job site, nor did they have any process in place to ensure that site workers possessed the proper job training and were supplied with the appropriate safety equipment. The plaintiff pointed to numerous OSHA violations at the site including: 29 CFR 1926.16(a)(b)(c) and (d); 29 CFR 1926.20(b)(1) and (2); 29 CFR 1926.32(f); and 29 CFR 1926.21(b)(2).

Additionally, the plaintiff filed a Motion to Suppress the Answer and Defenses of the defendant general contractor due to the fact that the owner of the business failed to cooperate with his own counsel, refused to comply with the case management order, and refused to appear for deposition. Defense counsel for the defendant general contractor argued that, despite the defendant's refusal to submit to

deposition, he had, in fact, executed responses to interrogatories. Furthermore, defense counsel argued, the facts developed during discovery, through the testimony of other witnesses and exchange of paper discovery, provided a substantive liability and damages defense to plaintiff's claims.

Defense counsel submitted that, rather than suppress the entirety of the defenses without prejudice, that the court instead issue an order barring the defendant from producing its principal as a witness at trial should he fail to appear for a deposition prior to trial. The court ordered that the defendant was barred from offering the testimony of its principal at the trial should he fail to provide deposition testimony prior to trial but did not order suppression of the defendant's Answer. The third-party defendant contractor filed a Motion for Partial Summary Judgment claiming that the defendant was entitled to contractual indemnification from the defendant developer for any negligence or fault of either the defendant contractor or the defendant developer. The defendant developer retained the defendant contractor for construction services related to a renovating and redevelopment project pursuant to a written agreement which evidenced an intent for the developer to indemnify the contractor for its own negligence.

The defendant developer opposed the Motion claiming that the defendant contractor failed to produce a complete copy of the contract between the parties and that the developer did not agree to hold the contractor harmless against claims arising outside the scope-of-work set forth in the contract. The defendant developer held that the scope of work with respect to the plaintiff's claim was limited to 2 issues: to provide project superintendent; and to coordinate project schedule/safety with subcontractors. However, the plaintiff's claims of negligence arose out of numerous issues specifically not included in the scope-of-work including: provision of safety equipment, provision of construction equipment, provision of a construction trailer, and the defendant contractor's independent obligations for worksite safety under OSHA. The case settled before the court ruled as to this Motion.

SUMMARY JUDGMENT FOR DEFENDANT – VIOLATION OF CIVIL RIGHTS – PLAINTIFF INMATE CLAIMS ATTACK AND SERIOUS INJURY BY GROUP OF INMATES AT DEFENDANT COUNTY JAIL – FAILURE TO PROTECT AND FAILURE TO PROVIDE ADEQUATE MEDICAL TREATMENT INCLUDING PSYCHOLOGICAL TREATMENT – DEFENDANT DENIES ANY VIOLATIONS, CLAIMS PLAINTIFF TREATED FOR INJURIES.

Ocean County, NJ

This action arose from the plaintiff's claim that the defendant county's Department of Corrections failed to protect him from physical harm and to provide him with adequate medical assistance in violation of his state constitution right against cruel and unusual punishment asserted under the New Jersey Civil Rights Act. The defendant denied violation of the plaintiff's civil rights and filed a motion for summary judgment.

During the relevant time period, the plaintiff was incarcerated at the defendant county jail from November 10, 2015 to May 2016. The plaintiff was serving a 5-year sentence for robbery. On February 16, 2016, the plaintiff was sleeping in his cell when 6 inmates from the same unit entered his cell and attacked him, inflicting multiple lacerations to his back and head.

The plaintiff argued that the defendant violated his Eighth Amendment rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, et seq. in failing to protect him from harm and provide him with adequate medical assistance. The plaintiff maintained that, prior to the attack, he had notified the defendant's officers of a threat to his physical safety but that his warnings were ignored. The plaintiff also alleged that the defendant's medical unit staff failed to diagnose a Staph infection until he brought it to their attention and that medical unit staff failed to provide him any medical treatment for post-traumatic stress.

The defendant maintained that corrections officers arrived within moments of the attack and notified the medical unit. The plaintiff was taken from his cell to the sally port area to be medically evaluated. Nurses evaluated the plaintiff's condition, and provided basic first aid treatment until EMS arrived to transport the

plaintiff to hospital. The defendant asserted that the plaintiff received treatment for his lacerations at the hospital and was discharged back to the step-down unit of the jail pending his further recovery. Upon return to the general population, the plaintiff continued to receive treatment for his wounds including for a Staph infection. The defendant asserted that the plaintiff received all appropriate treatment and care for his injuries and that there was no violation of his rights with regard to medical assistance.

The court granted the defendant's motion for summary judgment filed prior to trial and dismissed the case.

REFERENCE

Grenci, Jr. vs. Ocean County. Docket no. L-000224-18; Judge Craig L. Wellerson, 09-27-19.

Attorney for plaintiff: Plaintiff Pro Se. Attorney for defendant: Christopher A. Khatami of Berry Sahradnik Kotzas & Benson in Toms River, NJ.

COMMENTARY

An account of the events, whereby the defendant asserted that it took charge of the matter and vigorously pursued protection and medical treatment of the plaintiff was as follows. Within one hour of the attack on the plaintiff, the Criminalistics Investigation Unit of the Sheriff's Department immediately commenced an investigation of the subject incident involving the plaintiff and 6 other inmates. On the same day of the attack, the case detective interviewed the plaintiff while he was at the hospital and took a written and photographic inventory of the plaintiff's physical injuries. In conjunction with the investigative report, the detective personally visited the plaintiff's cell within hours of the incident and prepared a report including written and photographic evidence. Less than one hour after the assault on the plaintiff, investigators archived digital recording footage in connection with investigation of the incident and described his observations of the footage in a written report.

In addition, 2 days after the incident, the Commander of Investigations and a lieutenant interviewed 7 inmates regarding their involvement in the assault of the plaintiff and prepared a written report. Upon re-entry from the step-down unit, the plaintiff was assigned to a new cell block and 3 months later was transferred to a different facility. Further, the defendant maintained that the plaintiff, during his incarceration at the defendant's facility, received a copy of the Policies and Procedures in the Inmate Rule Book, which outlined the inmate grievance procedure, and was aware of the Inmate Grievance Procedure.

Throughout his period of incarceration at the defendant facility, until his transfer to state prison in May 2016, the jail records show that the plaintiff submitted a single Inmate Grievance form on April 17, 2016, requesting that he remain in a single cell because he objected to recent assignment of a cellmate. The defendant provided a written response to the plaintiff's request, indicating that there was no medical or safety reason to permit the plaintiff to be housed in a single cell by himself. The response was reviewed by the Captain and provided to the plaintiff. The defendant's database indicated that the plaintiff did not submit any other grievance forms.

The defendant filed a motion for summary judgment requesting that the plaintiff's complaint be dismissed as a matter of law. The defendant pointed to the Prison Litigation Reform Act, 42 U.S.C. §

1997e(a), which the defendant claimed foreclosed the plaintiff from bringing this action based on his failure to exhaust all available administrative remedies. The defendant argued that, although the plaintiff asserted his claims under the New Jersey Civil Rights Act, the PLRA applied because the plaintiff's Eighth Amendment claim arose out of the federal constitution and Eighth Amendment claims under the New Jersey Civil Rights Act are interpreted through the lens of federal constitutional law's deliberate indifference standard. Second, the defendant put forth that the absence of any evidence that the plaintiff had any knowledge of a specific threat to his physical safety or notified the defendant regarding any specific threat defeated the plaintiff's Eighth Amendment claim for failing to protect him from attack by other inmates.

Lastly, the defendant asserted that the plaintiff's Eight Amendment claim for inadequate medical assistance similarly collapsed under the weight of undisputed evidence that the defendant promptly notified medical unit personnel to administer treatment and transport the plaintiff to the hospital. Defense counsel argued that there was not a scintilla of evidence that the defendant ignored or prevented the plaintiff from receiving continuing treatment for his wounds after his release from the hospital. For those reasons, the defendant argued, the plaintiff's complaint should be dismissed.

The plaintiff opposed the motion arguing that the defendant failed to demonstrate that summary judgment was appropriate as a matter of law because the plaintiff's claim of cruel and unusual punishment based on a failure to prevent harm and protect the plaintiff was cognizable under law; cruel and unusual punishment based on a failure to provide medical services to the plaintiff was cognizable under law specifically the non-treatment of PTSD after a brutal attack on the plaintiff's life had occurred; the violation of equal protection principles of the N.J. Constitution by refusing to prosecute inmates who were videotaped attacking the plaintiff; and on the assertion that material facts remained in genuine dispute for resolution at trial. The plaintiff disputed the defendant's version of events, noting that the defendant attempted to minimize the plaintiff's injuries by referring to them as "lacerations" when, in fact, the plaintiff was viciously stabbed, sliced and beaten over his entire body with injuries including: a partly severed ear and over 50 wounds. The plaintiff also objected to the defendant's characterization that the plaintiff was found within "moments" of the attack whereas the plaintiff argued that the videotape showed that the plaintiff lay bleeding from his wounds for eleven minutes until an officer doing a routine head-count found him.

The plaintiff further disputed the defendant's contention that he was serving time at the facility. The plaintiff was a pre-trial prisoner guaranteed the full protection of the Constitution including the right to be free from cruel and unusual punishment. The plaintiff claimed, with regard to cruel and unusual punishment, that the defendant refused to dispense the pain medication prescribed to the plaintiff by the hospital and despite repeated oral and written requests (another fact disputed in the defendant's account), prevented him from being treated by the defendant's jail psychiatrist for symptoms of PTSD, thereby constituting deliberate indifference.

The court granted the defendant's motion and dismissed the plaintiff's case finding that the plaintiff failed to exhaust all administrative remedies.

Verdicts By Category

CONTRACT

\$31,032 VERDICT

Breach of contract – Plaintiff medical billing service contends defendant doctors failed to pay for services – Defendants assert there was never a contract and plaintiff acted as defendants' representative without authorization.

Bergen County, NJ

In this breach of contract case, the plaintiff medical billing company asserted that the defendant doctors refused to pay for services rendered. The defendants denied any fraudulent practices and asserted that there was never a contract between the parties, and thus, there was no breach by the defendants or money owed to the plaintiff.

The plaintiff began performing medical billing services for the defendants on May 27, 2016. The plaintiff maintained that, despite the plaintiff making numerous requests for both defendants to sign a formal contract for the medical billing, they both refused repeatedly, saying they needed more time to sign the contract. The plaintiff argued that the defendants' refusal to sign the medical billing contract was a violation of HIPAA laws and regulations. The plaintiff also asserted that, over the course of performing medical billing for the defendants, the plaintiff discovered that both defendants were committing fraud in their billing practices. After the defendants' repeated failure to cease their fraudulent billing practices and commingling of funds, the plaintiff ceased further work for them on December 16, 2016.

As a result of the plaintiff's work, the defendants owed the plaintiff a total of \$31,032. Additionally, the plaintiff claimed that the defendants also owed the plaintiff all the Explanation of Benefits for all their transactions and claims. The defendants claimed that the plaintiff failed to comply with provisions of the Fair Debt Collection Practices Act and Truth in Lending Act.

The defendants counterclaimed that the plaintiff, without the knowledge or consent of the defendants, began collecting medical bills on the defendants' accounts, claiming to be the defendants' representative despite never having been authorized to act as a representative for the defendants. The defendants argued that they demanded that the plaintiff cease the unauthorized collection of medical bills and that the plaintiff ignored the request. The defendants then demanded that the plaintiff provide the defendants with activity reports for all amounts collected, and the plaintiff refused that request as well.

The defendants demanded that the plaintiff turn over the money collected on all of the defendants' accounts, the plaintiff refused. When the defendants hired a third-party collection company to collect outstanding medical bills on the defendants' accounts, the collection agency was unable to do so because the defendants were unable to provide them with a report on what money was collected by the plaintiff. The defendants counterclaimed for Unjust Enrichment and Tortious Interference with Prospective Economic Advantage.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found in favor of the plaintiff and set damages at \$31,032 inclusive of costs, interest and counsel fees. The arbitration was not confirmed and the matter proceeded to bench trial wherein the court awarded the plaintiff damages of \$31,032.

REFERENCE

Reliable Medical Billing vs. Ramez and Abdelshahad. Docket no. L-005888-17; Judge Avis Bishop-Thompson, 02-26-20.

Attorney for plaintiff: Daniel Barli of Barli & Associates, LLC in Little Falls, NJ. Attorneys for defendant: Lee M. Levitt and Stacy L. Dwyer of Lee M. Levitt, LLC in Dover, NJ.

DOG ATTACK

\$10,000 RECOVERY

Dog attack – 2-year-old plaintiff attacked, bitten and clawed by defendant's shepherd dog – Pain, suffering and mental anguish.

Camden County, NJ

In this dog attack case, the minor plaintiff, a 2-year-old boy, asserted that the defendant's dog attacked him and caused him significant injury. The defendant stipulated liability and the parties settled the matter prior to trial.

On July 21, 2014, the plaintiff was lawfully on the premises of 2011 Main Street in Voorhees. The defendant was also on the premises with her dog which, the plaintiff maintained, was not safely restrained. The plaintiff asserted that the defendant's dog was vicious and that the defendant negligently owned, harbored, and failed to control the dog such that it attacked the minor plaintiff.

As a result of the attack, the plaintiff sustained claw and bite injuries which required medical treatment and caused the plaintiff pain, suffering and mental anguish.

DEFENDANT'S VERDICT

Dog attack – Permanent scarring and psychotherapy – Defendant asserts plaintiff contributorily negligent – Plaintiff offers to take judgment for \$20,000 – Non-binding arbitration assigns 100% liability to defendant with damages of \$25,000.

Monmouth County, NJ

In this dog attack case, the plaintiff asserted that the defendant dog owner was negligent in failing to contain or control his dog, which then attacked the plaintiff and caused significant, permanent injury. The defendant asserted that the plaintiff was guilty of contributory negligence and that liability should be apportioned as such. Further, the defendant contested the permanency of the plaintiff's injuries.

On October 8, 2016, the plaintiff was lawfully at the defendant's residence when, he claimed, he was viciously attacked by the defendant's German shepherd. The plaintiff asserted that the defendant was strictly liable for the injuries suffered by the plaintiff as a result of the attack. The plaintiff alleged that the attack resulted in permanent scarring and psychological trauma.

The parties settled the matter prior to trial in the amount of \$10,000 broken down as follows: \$4,462 in attorney fees and costs and \$5,538 in net damages to the minor plaintiff.

REFERENCE

Reed vs. McVeigh. Docket no. L-000131-19; Judge Sherri L. Schweitzer, 11-12-19.

Attorney for plaintiff: Adam S. Getson of Wapner, Newman, Wigrizer, Brecher & Miller in Marlton, NJ. Attorney for defendant: Stephen C. Wolf of Law Offices of Nancy L. Callegher in Mt. Laurel, NJ.

As a result of the attack, the plaintiff sustained bite injuries to his body. The plaintiff was left with a permanent scar on his right hip. The plaintiff also claimed 2 psychotherapy visits stemming from the subject incident.

The plaintiff made an offer to take judgment in the amount of \$20,000. The offer was declined and the matter proceeded. The parties then submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$25,000. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Mendez vs. Wilson. Docket no. L-003484-17; Judge Kathleen A. Sheedy, 01-28-20.

Attorney for plaintiff: Mario A. Ferraro of Mezzacca & Kwasnik, LLC in Edison, NJ. Attorney for defendant: Sean M. Doherty of Law Offices of Pamela D. Hargrove in Wall Township, NJ.

INSURANCE OBLIGATION

\$365,000 RECOVERY

Insurance obligation – UIM – Rear end collision – Aggravation of lumbar and cervical herniations requiring lumbar and cervical surgery several years earlier – Ultimate left-sided cervical surgery – Plaintiff dentist works with difficulties.

Morris County, NJ

In this action, the 58-year-old plaintiff dentist contended that he sustained injury when the defendant underlying driver struck him in the rear. The defendant had a \$15,000 policy and the plaintiff had a \$500,000 UIM policy with \$485,000 available.

The plaintiff had been involved in a prior accident several years earlier and underwent lumbar and cervical disc surgery for the prior injuries. The plaintiff maintained that the subject accident caused a severe aggravation in both the lumbar and cervical areas and over the next approximate 2-year period, he underwent extensive care, including numerous injections, as well as radiofrequency ablations. The plaintiff then underwent cervical surgery.

The plaintiff asserted that he will nonetheless suffer extensive pain permanently. The plaintiff made no income claims.

The case settled prior to trial for \$365,000, including \$350,000 from the UIM carrier and the \$15,000 policy from the underlying tortfeasor.

REFERENCE

Plaintiff's orthopedic surgeon expert: Charles Gatto, M.D. from Morristown, NJ.

Rothstein vs. Johnson, et al. Docket no. MRS-L-530-21, 06-21-22.

■ \$320,459 GROSS VERDICT

Insurance obligation – Rear end collision – Plaintiff seeks recovery from underinsured motorist policy – Disc herniation at C6-7; cervical radiculopathy; disc protrusion at C5-6 – Chiropractic care – 10 cervical epidural injections – Recommendation for anterior cervical discectomy.

Middlesex County, NJ

In this case, the plaintiff, a special needs teacher, asserted that the tortfeasor driver struck her vehicle from behind with such force that it caused significant, permanent injury. The plaintiff collected \$15,000 from the tortfeasor and brought this cause of action against the defendant insurer for coverage from her underinsured motorist policy. The defendant stipulated liability but contested the plaintiff's damages. The defendant disputed the nature, extent and causation of the plaintiff's injuries.

On November 11, 2014, the plaintiff was traveling westbound on Main Street in South River towards the intersection with Jackson Street. The tortfeasor was traveling directly behind the plaintiff's vehicle. The plaintiff asserted that the defendant negligently failed to observe traffic conditions and failed to slow or stop behind the plaintiff, striking the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff, who had no prior injuries, was diagnosed with a disc herniation at C6-7; cervical radiculopathy and disc protrusion at

■ \$70,000 GROSS VERDICT

Insurance obligation – Left turn collision – Multiple disc bulges and one herniation – Plaintiff recovers \$65,000 after offset of \$15,000 settlement with tortfeasor.

Union County, NJ

In this case, the plaintiff asserted that the tortfeasor driver struck his vehicle with such force that it caused significant, permanent injury. The plaintiff collected the policy limit from the tortfeasor driver and filed the subject action for underinsured motorist against the defendant insurer. The defendant stipulated liability but contested the plaintiff's damages.

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

C5-6. The plaintiff treated with a chiropractic care; received 10 cervical epidural injections and was recommended for anterior cervical discectomy. The defendant presented the testimony of an IME who opined that the plaintiff had no residual objective or subjective findings and that everything was normal in her neck and lower back.

Prior to trial, the plaintiff made an offer to take judgment in the amount of \$145,000. The offer was not accepted and the case proceeded. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$175,000 reduced to \$160,000 after offset for recovery from the tortfeasor. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded non-economic damages in the amount of \$275,000 less \$15,000 offset for damages received from the tortfeasor. The plaintiff recovered \$320,459 broken down as follows: \$260,000 in damages; \$5,303 in litigation costs; \$20,946 in interest and \$17,000 in attorney fees.

REFERENCE

Persad vs. Allstate Insurance Company. Docket no. L-002413-17; Judge Patrick J. Bradshaw, 02-20-20.

Attorney for plaintiff: Michael D. Drivas of Law Office of Michael D. Drivas, LLC in Springfield, NJ. Attorney for defendant: Mary Lou Dennis-Suckow of Law Offices of Pamela D. Hargrove in Cranford, NJ.

On March 12, 2014, the plaintiff was traveling south on Locust Avenue towards the intersection of West Westfield Avenue in Roselle. The tortfeasor negligently made a left turn across the plaintiff's path of travel and collided with the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained multiple disc bulges and one herniation. The defendant argued that the plaintiff's injuries were not permanent. The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with gross damages of \$25,000 reduced

to \$10,000 for offset from settlement with tortfeasor. The arbitration was not confirmed and the matter proceeded to trial.

The jury found in favor of the plaintiff and awarded damages in the amount of \$70,000 reduced to \$55,000 for offset from settlement with tortfeasor.

■ \$25,000 RECOVERY

Insurance obligation – Plaintiff homeowners claim defendant insurer failed to pay for damage, loss of property and depreciation following water damage to basement as result of fire – Defendant claims it paid all damages related to fire but basement water damage caused by storm.

Burlington County, NJ

In this insurance obligation case, the plaintiff homeowners asserted that the defendant insurer failed to pay on a claim which the plaintiffs claimed was covered under their homeowner's insurance policy. The plaintiffs claimed breach of contract and insurance in bad faith. The defendant denied owing the plaintiffs for the damages claimed. The defendant asserted that the basement damage was the result of a snow storm which occurred several weeks after the fire.

On December 14, 2017, the plaintiffs' home suffered at their home located at 606 N. Lenola Road in Moorestown. At the time of the loss, the property was insured under a homeowner's policy issued by the defendant. As a result of the fire, the plaintiffs submitted an insurance claim to the defendant. The plaintiffs claimed that their basement suffered water damage as a result of attempts to extinguish the fire. The plaintiffs lost possessions that were in the basement at the time as well as depreciation of the value of the property.

The defendant's adjuster noted no water damage to the basement when he inspected the property following the fire. The defendant claimed that it ultimately

■ DEFENDANT'S VERDICT

Insurance obligation – UM case – Motor vehicle negligence – Multi-vehicle rear end collision – Plaintiff driver struck in rear and propelled into car in front – Alleged cervical and lumbar herniations and bulges treated with epidural injections – Defendant stresses only defendant's expert points to MRI results – Damages only.

Middlesex County, NJ

Liability was stipulated in this case in which the 57-year-old plaintiff driver was struck in the rear and propelled into the vehicle in front. The rear striking driver fled the scene, was not apprehended, and the case was brought under the plaintiff's UM policy. The plaintiff maintained

REFERENCE

Mintelli vs. GEICO Insurance. Docket no. L- 002467-17; Judge James Hely, 11-21-19.

Attorney for plaintiff: Richard P. Krueger of Krueger & Krueger, Esqs. in Linden, NJ. Attorney for defendant: Adam Carman of Law Office of Robert A. Raskas in Piscataway, NJ.

made payments totaling \$173,182 for damage to the plaintiffs' property, and \$24,788 for loss of personal property, as well as the policy's 9-month maximum policy limit for additional living expenses. The defendant argued that it did not owe the plaintiffs for damages sustained as a result of the snow storm, nor were the plaintiffs entitled to recover additional sums for alleged damage to personal property when they did not submit an itemized list of allegedly damaged personal property to the defendant, did not claim the damaged property, did not present the property for inspection, and were no longer in possession of the property. The plaintiffs, according to the defendant, were also prohibited from recovery for depreciation when they had not repaired or rebuilt or replaced the damaged property within the 180-day period required by their policy.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned liability to the defendant for the amount of basement repair of \$44,559 for not for the loss of personal property or depreciation costs.

Following arbitration and prior to trial, the case settled for \$25,000.

REFERENCE

Peterson vs. Allstate Insurance. Docket no. L-002578-18; Judge Aimee R. Belgard, 02-05-20.

Attorney for plaintiff: Matthew J. Gindele of Singley, Gindele & Rinaldi Attorneys at Law in Gibbsboro, NJ. Attorney for defendant: Mark J. Walters of Labletta & Walters, LLC in Eatontown, NJ.

that she sustained several lumbar and cervical herniations and bulges which the plaintiff's treating pain management doc contended will cause permanent symptoms despite injections. The defendant denied that the plaintiff suffered a permanent injury or met the verbal threshold.

There was no evidence that surgery will be necessary. The plaintiff, who works as a toll collector, asserted that spending long periods on her feet causes additional pain. The plaintiff further claimed that prior to the accident, she was very active, greatly enjoyed dancing, and had not been forced to lead a more sedentary lifestyle.

The defendant pointed out that only the defendant's expert orthopedist, who found the absence of signs of trauma and the presence of only degenerative disc disease on the imaging studies, pointed to the MRI films during his testimony.

The jury found that the plaintiff did not suffer a permanent injury.

REFERENCE

Defendant's orthopedic surgeon expert: Steven Fried, M.D. from New Brunswick, NJ.

Whitfield vs. Smith. Docket no. MID-L-2714-17.

Attorney for defendant: Manuel J. Almeida, Jr. of Rudolph & Kayal, PA in Manasquan, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

\$75,000 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Fracture of C-1 vertebrae – Right shoulder rotator cuff tear – Non-displaced fracture of left femur.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck him while he was riding his bicycle with such force that it caused significant, permanent injury. The defendant denied liability arguing that the plaintiff caused the accident by veering into the path of the defendant's vehicle creating a sudden emergency wherein the defendant could not avoid collision.

On June 13, 2016, the plaintiff was operating a bicycle westbound on Longport Boulevard at the intersection with Hospitality Drive in Egg Harbor. The defendant was operating a motor vehicle westbound on Longport Boulevard. The plaintiff asserted that the defendant negligently failed to maintain proper speed, make observations of the traffic conditions and maintain control of her vehicle. As a result, the

defendant collided violently with the plaintiff's bicycle. The plaintiff alleged that the force of the impact resulted in permanent injuries including a fracture of the C-1 vertebrae; right shoulder rotator cuff tear; non-displaced fracture of the greater trochanter left femur and bursitis in the left shoulder.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of \$150,000 (inclusive of all liens and outstanding medical bills) reduced to \$75,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for the terms of the arbitration.

REFERENCE

Mottola vs. Sterling. Docket no. L-000696-18; Judge Joseph L. Marczyk, 01-08-20.

Attorney for plaintiff: Robert T. Fendt of Robertson & Fendt, LLC in Northfield, NJ. Attorney for defendant: Joseph A. Lowe of Benedetti & Lowe in Mount Laurel, NJ.

\$59,500 PRE-SUIT RECOVERY

Motor vehicle negligence – Auto/bicycle collision – Alleged medial meniscal tear and lumbar herniations – Injections.

Bergen County, NJ

In this action for motor vehicle negligence, the 63-year-old plaintiff bicyclist contended that the defendant 17-year-old driver negligently failed to make observations before turning left into a driveway, causing the collision. The plaintiff maintained that he suffered a tear of the medial meniscus as well as herniations at L3-4 and L4-5 that were confirmed by MRI. The defendant did not have the plaintiff examined before the case resolved.

The plaintiff asserted that he will suffer permanent pain and limitations. The plaintiff declined recommended arthroscopic surgery and there was no evidence that disc surgery is indicated. The plaintiff underwent injections to the neck and lower back.

The plaintiff worked as a helper in a supermarket and missed 3 days from work.

The case settled prior to the institution of suit for \$59,500.

REFERENCE

Plaintiff's orthopedic surgeon expert: David Deramo, M.D. from Morristown, NJ. Plaintiff's pain management expert: Steven Waldman, M.D. from North Bergen, NJ.

Morris vs. McCauley. 05-22-20.

Attorney for plaintiff: Todd I. Siegel of Siegel & Siegel in Teaneck, NJ.

Auto/Pedestrian Collision

■ \$40,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff pedestrian, wearing all black clothing and crossing outside crosswalk, struck by defendant driver – Oblique fracture of 4th metacarpal – Open reduction and internal fixation.

Bergen County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian, a 24-year-old student, asserted that the defendant driver struck him with such force that it caused significant, permanent injury. The defendant denied liability and argued that the plaintiff was crossing outside of the crosswalk in a poorly lit area, was wearing all black clothing, and had been drinking, per the police report of the accident. Thus, the defendant maintained, he could not reasonably have expected for the plaintiff to be in the roadway where he was, nor could the defendant see the plaintiff pedestrian in the road.

On February 11, 2018, the plaintiff was a pedestrian on East Central Boulevard, 20 feet east of Roff Avenue in Palisades Park. The defendant was traveling on

East Central Boulevard. The plaintiff contended that the defendant negligently failed to observe the plaintiff crossing the road and struck the plaintiff in the roadway. The plaintiff alleged that the force of the impact resulted in permanent injuries including an oblique fracture of the 4th metacarpal. The plaintiff underwent surgical repair with open reduction and internal fixation.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 51% liability to the defendant and 49% to the plaintiff with gross damages of \$80,000 reduced to \$40,800 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$40,000.

REFERENCE

Lee and Bang vs. Moon. Docket no. L-004382-18; Judge Lisa Perez-Friscia, 02-03-20.

Attorney for plaintiff: Andrew Park of Law Offices of Andrew Park, P.C. in New York, NY. Attorney for defendant: Michael A. Graziul, II of Law Office of Patricia A. Palma in Berkeley Heights, NJ.

■ \$15,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – 3-year-old plaintiff struck by defendant's vehicle while waiting at bus stop with his mother – Infant plaintiff rendered unconscious and sustains suspected non-displaced skull fracture with laceration to scalp – Plaintiff airlifted and hospitalized for one week of observation; followed by physical therapy and psychotherapy – Significant, permanent scar on scalp.

Atlantic County, NJ

In this motor vehicle negligence case, the plaintiff, a 3-year-old boy, was struck by the defendant vehicle while walking along the street. The plaintiff claimed that the incident caused permanent scarring. The defendant denied liability for the accident but did not file an answer.

On January 10, 2010, the infant plaintiff was waiting at a bus stop with his mother on South Maine Street in Pleasantville. The defendant was driving on the same street. The plaintiff contended that the defendant negligently failed to observe pedestrians and struck

the infant plaintiff with his vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the infant plaintiff was rendered unconscious and sustained a suspected non-displaced skull fracture with laceration to the scalp that remains visible. The infant was airlifted to the hospital where he remained for a week of observation of the head injury. The plaintiff followed up with psychotherapy and physical therapy and has since recovered with the exception of a prominent, permanent scar on the top of his scalp.

Due to the defendant's limited assets, the plaintiff agreed to settle the matter prior to trial for the defendant's auto insurance policy limit in the amount of \$15,000 broken down as follows: \$3,625 in attorney fees; \$500 in costs and disbursements and \$10,875 in net damages to the minor plaintiff.

REFERENCE

Lugo vs. Harrigan-Rosario. Docket no. L-000404-18; Judge James P. Savio, 02-13-20.

Attorney for plaintiff: Jeff Sheppard, Esq. in Hammonton, NJ.

Driveway Exit Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Driveway exit collision – Defendant strikes plaintiff's vehicle while backing out of driveway – 2 lumbar disc herniations.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver negligently failed to ascertain that it was safe to enter the roadway when backing out of a driveway and struck the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendant denied liability and contested the plaintiff's damages.

On March 31, 2016, the defendant, suddenly and without warning, backed out of a driveway without checking that there were no vehicles approaching. The defendant struck the plaintiff's vehicle as he drove down the roadway with the right-of-way. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained 2 lumbar disc herniations. The plaintiff presented the testimony of his treating physician who opined that the plaintiff's injuries were permanent and will have permanent sequelae as evidenced by physical findings, clinical response to treatment, and MRI testing.

The defendant asserted that the plaintiff was guilty of comparative negligence greater than that of the defendant as the plaintiff was speeding when he passed the defendant backing out of the driveway. The defendant argued that the plaintiff's herniations stemmed from long-standing disc abnormalities and not caused by the subject collision.

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

The jury unanimously found that the plaintiff failed to prove that he sustained a permanent injury proximately caused by the subject collision and returned a verdict of no cause of action in favor of the defendant.

REFERENCE

Mendez vs. Rios, et al. Docket no. L-007543-17; Judge Dennis Nieves, 01-17-20.

Attorneys for plaintiff: Ronald W. Spevack and Robert H. Heck of Spevack Law Firm in Woodbridge, NJ. Attorney for defendant: Arthur Arnold of Law Offices of Pamela D. Hargrove in Cranford, NJ.

Head-on Collision

\$33,000 VERDICT

Motor vehicle negligence – Head on collision – Wrist contusion; first degree burns on wrist – Disc bulges at C3-4, C4-5, C5-6, and L4-5; disc protrusions at C7-T1 and L5-S1; left cervical radiculopathy and left lumbar radiculopathy.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver failed to obey a traffic signal and failed to control her vehicle, striking the plaintiff's vehicle head on with such force that it caused significant, permanent injury. The defendant stipulated liability but contested the plaintiff's damages.

On August 21, 2015, the plaintiff was the operator of a vehicle which was stopped in the northbound left-turning lane of Springdale Road, waiting to make a left turn onto Morris Drive in Cherry Hill. The plaintiff maintained that the defendant, who was traveling southbound on Springdale Road, failed to make proper observations, crossed over the centerline and negligently struck the plaintiff's vehicle head on. Both vehicles suffered significant damage and airbag deployment. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a wrist contusion; first degree burns on the wrist; disc bulges at C3-4, C4-5, C5-6, and L4-5; disc protrusions at C7-T1 and L5-S1; left cervical radiculopathy and left lumbar radiculopathy. The defendant argued that some of the plaintiff's injuries were not permanent and contested the nature and extent of injuries caused by the subject collision.

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 \$0 in the event of a defendant's verdict. The parties agreed to an expedited trial on damages only. The jury found in favor of the plaintiff and awarded \$33,000 in damages.

REFERENCE

Oh vs. Gayster. Docket no. L-003231-17; Judge Sherri L. Schweitzer.

Attorney for plaintiff: Jay L. Solnick of Solnick & Associates, LLC in Jenkintown, PA. Attorney for defendant: Thomas D. Foti of Lamb Kretzer, LLC in Secaucus, NJ.

Intersection Collision

■ \$14,000 DEFAULT JUDGMENT

Motor vehicle negligence – Intersection collision – Plaintiff passenger in vehicle, driven by defendant, that fails to stop at stop sign and collides with another vehicle – Disc herniation at C5-6 – 6 months of chiropractic treatment.

Passaic County, NJ

In this motor vehicle negligence case, the plaintiff, a 20-year-old woman, asserted that the defendant driver struck the vehicle in which she was a passenger with such force that it caused significant, permanent injury. The defendant driver failed to answer or appear before the court.

On September 21, 2016, the plaintiff was a passenger in a vehicle being driven by the defendant driver. The vehicle was traveling southbound on Summer Street at the intersection of Hamilton Avenue in Paterson. The plaintiff contended that the defendant negligently failed to stop at a stop sign controlling the intersection and violently collided with a third-party vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

■ DEFENDANT'S VERDICT

Motor vehicle negligence – Intersection collision – Disc herniations at C3-4, C4-5, C5-6; disc bulges at C6-7 and C7-T1; lumbar spine fracture and questionable left shoulder supraspinatus and labral tears – Recommendation for shoulder surgery – Pain management.

Passaic County, NJ

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

On July 17, 2016, the plaintiff was traveling north of Spruce Street in Paterson. The defendant was the driver of a vehicle traveling west on Oliver Street and turning onto Spruce Street. The plaintiff contended that the defendant negligently failed to stop at a stop sign controlling the intersection and crashed into 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 was taken from the scene in an ambulance to the local hospital. The plaintiff sustained disc herniation at C5-6. The plaintiff underwent 6 months of chiropractic treatment. The plaintiff claimed \$10,511 in unpaid medical expenses.

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

A default judgment was entered as to liability against the defendant wherein the court awarded the plaintiff \$14,000 in damages.

REFERENCE

Parham vs. Brown, et al. Docket no. L-002723-18; Judge Frank Covello, 05-08-20.

Attorney for plaintiff: Jared E. Drill of The Vespi Law Firm, LLC in Totowa, NJ. Attorney for defendant NJPLIGA: Michael C. Trifolis of Litvak & Trifolis, P.C. in Florham Park, NJ.

As a result of the collision, the plaintiff sustained disc herniations at C3-4, C4-5, C5-6; disc bulges at C6-7 and C7-T1; lumbar spine fracture and questionable left shoulder supraspinatus and labral tears. The plaintiff was recommended for shoulder surgery, treated with pain management and claimed no unpaid medical expenses. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision.

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

The jury unanimously found no cause of action, that the plaintiff failed to prove a permanent injury and returned a verdict in favor of the defendant.

REFERENCE

Zavallos vs. Dobres, et al. Docket no. L- 003378-17; Judge Joseph S. Conte, 02-05-20.

Attorney for plaintiff: James Vasquez of The Law Offices of James Vasquez, P.C. in Clifton, NJ. Attorney for defendant: Manuel J. Almeida, Jr. of Rudolph & Kayal in Manasquan, NJ.

Lane Change Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Lane change collision – Cervical and lumbar disc herniations at C2-3, C3-4, C4-5, C5-6, C6-7, L3-4 and L4-5 – Epidural injections, 2 discectomies and 2 cervical disc arthroplasties with disc implants.

Palm Beach County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the plaintiff's vehicle, when attempting a lane change, with such force that it caused significant, permanent injury. The defendant denied negligence, arguing that it was the plaintiff who negligently attempted to move into the defendant's lane and caused the collision.

On February 2, 2018, the plaintiff and defendant were traveling separately on Interstate 95 northbound in Palm Beach Gardens. The defendant negligently

attempted to merge into the plaintiff's lane causing the vehicles to collide. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained cervical and lumbar disc herniations at C2-3, C3-4, C4-5, C5-6, C6-7, L3-4 and L4-5. The plaintiff treated with epidural injections, 2 discectomies and 2 cervical disc arthroplasties with disc implants. The plaintiff claimed \$189,600 in medical expenses. The defendant denied the plaintiff's alleged injuries and the extent of the injuries and argued that the plaintiff's medical treatment and billing were in excess of customary practices and fees.

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

REFERENCE

Bearsby vs. Vander Werf. Docket no. 2018-CA-013977; Judge Donald W. Hafele, 02-18-22.

Left Turn Collision

UNDISCLOSED RECOVERY

Motor vehicle negligence – Left turn collision – Traumatic right knee injury; disc herniation at L5-S1 – Arthroscopic surgery for knee injury – Numerous epidural injections for back injury – Arbitration found defendant 100% liable with \$85,000 in damages.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the vehicle in which the plaintiff was a front seat passenger, while attempting to make an illegal left turn from the right lane. Consequently, the plaintiff passenger sustained injuries. The defendant denied liability arguing that she was merging over into the left lane with her blinker on and did not see the plaintiff approaching before the collision occurred.

On June 28, 2015, the plaintiff was the front seat passenger in a vehicle driven by her husband with their 2 children in the back seat. The plaintiff's vehicle was in the left lane of Haddonfield Road in Cherry Hill. The defendant was operating a vehicle in the right lane on Haddonfield Road. The defendant attempted to make a left turn from the right lane into a business on the left side of the road and struck the front passen-

ger side of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in injuries to all 3 occupants of the plaintiffs' vehicle. The matter was settled as to the driver and the minor passengers of the plaintiff's vehicle.

The matter continued as to the plaintiff front seat passenger. As a result of the collision, the plaintiff passenger sustained traumatic injury to the right knee and back with disc herniation at L5-S1. The plaintiff underwent arthroscopic surgery for the knee injury and treated the back injury with numerous epidural injections.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$85,000. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Haswell vs. Morrissey. Docket no. L-002556-17; Judge Morris G. Smith, 10-28-19.

Attorney for plaintiff: Jordan R. Irwin of Begelman & Orlow, P.C. in Cherry Hill, NJ. Attorney for defendant: Jaunice M. Canning of Law Offices of William E. Staehle in Marlton, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Left turn collision – Plaintiff maintains defendant turned left across plaintiff's lane of travel without warning – Disc herniations at C3-4, L4-5 and L5-S1 – Physical

therapy; pain management and recommendation for epidural injections – Defendant argues plaintiff did not prove permanent injury related to subject collision.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck his vehicle when making a left turn across the plaintiff's right-of-way, with such force that it caused significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On May 20, 2016, the plaintiff was traveling south on St. Georges Avenue in Woodbridge when a vehicle, operated by the defendant traveling north on St. Georges Avenue, suddenly and without warning, negligently made a left turn across the plaintiff's lane of travel causing a collision. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff complained of sustained headaches, bilateral shoulder pain, and neck pain radiating to the extremities. The plaintiff sustained disc herniations at C3-4, L4-5 and L5-S1. The plaintiff treated with 4 months of physical therapy

and pain management. There was a recommendation for epidural injections that had not yet been performed at the time of filing. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision as they consisted of degenerative disc disease unrelated to trauma.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$55,000. The arbitration was not confirmed and the matter proceeded to trial.

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

REFERENCE

Mansour vs. Shill. Docket no. L-006937-17; Judge Thomas J. Buck, 02-21-20.

Attorney for plaintiff: Brian R. Goodman of Palmisano & Goodman, P.A. in Woodbridge, NJ. Attorney for defendant: Jill L. Peel of Law Offices of Viscomi & Lyons in Morristown, NJ.

Multiple Vehicle Collision

\$15,000 RECOVERY

Motor vehicle negligence – Multi-vehicle rear end collision – First vehicle strikes rear of second vehicle, pushing it into rear of plaintiff's vehicle – Multiple lumbar herniations and bulges with cervical radiculopathy.

Mercer County, NJ

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

On November 5, 2015, the plaintiff was traveling southbound on the Princeton Pike approaching the intersection with Franklin Corner Road in Lawrence and began to stop his vehicle for the upcoming red light. The defendants were operating 2 vehicles traveling consecutively behind the plaintiff. The plaintiff asserted that the first defendant negligently failed to slow or stop and that the co-defendant was negligently following the plaintiff's vehicle too closely. The first defendant struck the co-defendant and pushed her vehicle into the back 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 multiple lumbar herniations and bulges with cervical radiculopathy. The plaintiff claimed a \$1,200 Medicare lien. The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision and contested the plaintiff's claimed Medicare lien. The defendant's IME disputed causation of the plaintiff's injuries.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the first defendant driver and 0% to the co-defendant driver with gross damages of \$15,000.

Following arbitration and prior to trial, the plaintiff settled with the first defendant for \$15,000.

REFERENCE

Miller vs. Estate of Edward Conroy, et al. Docket no. L-001047-17; Judge F. Patrick McManimon, 01-29-20.

Attorney for plaintiff: Kenneth W. Thayer of Gaylord Popp, LLC in West Trenton, NJ. Attorney for plaintiff first driver: Sheri Nelson Oliano of Amy F. Loperfido & Associates in Mt. Laurel, NJ. Attorney for defendant second driver: John J. Gentile of Law Office of John J. Gentile in Wall Township, NJ.

Parking Lot Exit Collision

\$50,000 RECOVERY

Motor vehicle negligence – Parking lot exit collision – Defendant driver, exiting parking lot into roadway, enters plaintiff's lane of travel and

strikes front passenger side of plaintiff's vehicle – L1-2, L2-3, L3-4 and L4-5 disc bulges confirmed by MRI.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck her vehicle while exiting a parking lot and caused the plaintiff permanent injury. The defendant asserted that the plaintiff was at least contributorily negligent in causation of the collision and contested the plaintiff's damages.

On August 22, 2017, the plaintiff was traveling on White Horse Road at the intersection with Laurel Oak Road in Voorhees. The defendant was the operator of a motor vehicle traveling on White Horse Road at the same intersection. The plaintiff asserted that the defendant negligently disregarded traffic patterns while exiting a parking lot. The defendant entered the plaintiff's lane of travel and struck the front passenger side 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 L1-2, L2-3, L3-4, and L4-5 disc bulges confirmed by MRI. The plaintiff presented certification from her treating physician indicating that the plaintiff's injuries are permanent. The defendant challenged causation and permanency of the plaintiff's injuries.

The plaintiff offered to take settlement in the amount of \$95,000. The offer was not accepted and the matter proceeded. The parties settled the matter prior to trial in the amount of \$50,000.

REFERENCE

Mason vs. Fazio. Docket no. L-003724-18; Judge Steven J. Polansky, 01-03-20.

Attorney for plaintiff: Marc I. Simon of Simon & Simon, P.C. in Philadelphia, PA. Attorney for defendant: Terence J. Lynch of Law Offices of James H. Rohlfing in Marlton, NJ.

Rear End Collision

\$50,000 RECOVERY

Motor vehicle negligence – Rear end collision – Cervical disc herniations at C5-6, C6-7 and C7-T1; right shoulder labral tear and rotator cuff tendonitis – Chiropractic care, physical medicine and rehabilitation and pain management.

Gloucester County, NJ

This motor vehicle negligence case arose out of a collision that occurred on January 4, 2015 on Clements Bridge Road at its intersection with Almonesson Road in Deptford Township. The plaintiff, a 40-year-old woman, was the owner and operator of a vehicle that was rear-ended by a vehicle operated by the defendant. The plaintiff alleged that the defendant was negligent and that his negligence caused the collision. The plaintiff further alleged to have sustained serious and permanent injuries caused by the defendant's negligence and she sought damages for past and future pain and suffering, loss of enjoyment of life, disability and impairment. The defendant disputed that he was negligent and that his negligence was a cause of the subject motor vehicle collision.

As a result of the collision, the plaintiff presented to the emergency room where she was diagnosed with cervical disc herniations at C5-6, C6-7 and C7-T1 ; cervical disc bulges at C2-3, C3-4 and C4-5; lumbar disc herniations at L3-4, L4-5 and L5-S1; acute left L5

and S1 radiculopathies; right shoulder labral tear and rotator cuff tendonitis. The plaintiff treated with chiropractic care, physical medicine and rehabilitation and pain management. The plaintiff's expert physician opined that the plaintiff sustained permanent injuries and will continue to deteriorate.

The defendant disputed the nature and extent of the injuries sustained by the plaintiff. The defendant argued that the plaintiff's injuries were not trauma-induced and pointed to a long lapse in treatment with no pain management, injections, or recommendation for surgery.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of \$75,000 inclusive of all economic damages, lost wages, and medical expenses.

Following arbitration and prior to trial, the parties settled for \$50,000.

REFERENCE

Iezzi vs. Tiska. Docket no. L- 000727-16; Judge Samuel J. Ragonese, 01-23-20.

Attorney for plaintiff: Marc F. Greenfield of Spear, Greenfield, Richman, Weitz & Taggart, P.C. in Marlton, NJ. Attorney for defendant: Frank J. Caruso of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

UNDISCLOSED RECOVERY

Motor vehicle negligence – Rear end collision – Right supraspinatus and infraspinatus tendon tears; glenoid labral tears; disc herniation at C4-5 with impingement; disc bulges at C3-4, C5-6, C7; L3-4; T1 and L4-5 with annular tears –

Arthrocentesis, aspiration and injections for shoulder; 3 interlaminar epidurals and 1 lumbar epidural for the spinal injuries – Arbitration finds defendant 100% liable with damages of \$32,500.

Bergen County, NJ

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

On March 2, 2016, the plaintiff was traveling east on Van Nostrand Avenue in Englewood. The defendant was operating a vehicle which was also traveling east on Van Nostrand Avenue directly behind the plaintiff. The plaintiff asserted that the defendant negligently failed to slow or stop behind the plaintiff's vehicle and struck it from the rear, causing the plaintiff injury.

As a result of the collision, the plaintiff sustained right shoulder tears of the supraspinatus and infraspinatus tendons; glenoid labral tears; disc herniation at C4-5 with impingement on left C5-6 nerve root; disc bulges at C3-4, C5-6, C7; L3-4; T1 and L4-5 with annular tears. The plaintiff underwent ultrasound guided

arthrocentesis, aspiration and injections for the shoulder; 3 interlaminar epidurals and 1 lumbar epidural for the spinal injuries. The defendant argued that an IME indicated the plaintiff's injuries were not causally related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant and set damages at \$32,500. Following arbitration and prior to trial, the parties settled for an undisclosed sum.

REFERENCE

Kang vs. Cerny. Docket no. L-001539-18; Judge Lisa Perez Friscia.

Attorney for plaintiff: Henry L. Kim of Kim, Cho & Kim, LLC in Palisades Park, NJ. Attorney for defendant: Douglas M. Barnett of Gregory P. Helfrich & Associates in Summit, NJ.

PREMISES LIABILITY**Fall Down****\$49,926 RECOVERY**

Premises liability – Fall down – Plaintiff slips and falls in defendant restaurant – Disc herniation at L4-5 and lumbar radiculopathy – Lumbar epidural injections – Recommendation for possible surgery.

Middlesex County, NJ

In this premises liability case, the plaintiff, a 57-year-old woman, asserted that the defendant restaurant allowed a dangerous condition to exist on its premises and the danger caused the plaintiff to fall and suffer significant, permanent injury. The defendant denied negligence arguing that the plaintiff was responsible for her own injuries due to her failure to keep a proper lookout when walking through the defendant restaurant. The defendant denied notice of any spill prior to the plaintiff's fall and that the plaintiff could have avoided falling if she had exercised due care.

On September 20, 2017, the plaintiff was a lawful business invitee at the defendant restaurant in Iselin. The plaintiff contended that the defendant negligently failed to maintain the premises in a safe con-

dition for visitors such as the plaintiff and that as a result, the plaintiff slipped on a foreign substance on the floor of the restaurant and fell. The plaintiff alleged that the impact from the fall resulted in permanent injuries.

The plaintiff sustained disc herniation at L4-5 and lumbar radiculopathy. The plaintiff treated with lumbar epidural injections, which did not resolve her pain. She has been recommended for possible surgical intervention.

The plaintiff made an offer to take judgment in the amount of \$95,000. The parties settled the matter prior to trial in the amount of \$49,926 inclusive of \$4,926 in medical expenses.

REFERENCE

Pagano vs. Jose Tejas, et al. Docket no. L-002109-18; Judge Bruce J. Kaplan, 02-07-20.

Attorneys for plaintiff: Alexander R. DeSevo and Patrick L. Falcon of Falcon Law Firm, LLC in Oakhurst, NJ. Attorney for defendant: Thomas Zammatore of Law Office of John P. Hendrzak in Parsippany.

\$12,500 RECOVERY

Premises liability – Fall down – Plaintiff claims he tripped and fell on unattended pallet jack in defendant store – Multi-level lumbar herniations at L1-5 – Conservative treatment.

Bergen County, NJ

In this premises liability case, the plaintiff, a 62-year-old man, asserted that the defendant store negligently allowed a dangerous condition to exist where it might injure customers in the store. The plaintiff claimed that the dangerous condition caused him to fall and sustain permanent injury. The defendant denied liability, arguing that it had

no notice, either actual or constructive, of any potentially dangerous condition that could have caused the subject incident.

On September 19, 2015, the plaintiff was shopping at the defendant wholesale club store. The plaintiff asserted that he tripped and fell over an unattended pallet jack which was obscured by a pallet of bananas on the floor of the store. The plaintiff maintained that he inadvertently stepped on the fork of the pallet jack, which then began to move causing him to lose his balance and fall.

The plaintiff put forth that the pallet jack violated the defendant's policy prohibiting leaving pallet jacks unattended in retail areas, due to the potential danger to customers. The plaintiff alleged that the fall resulted in permanent injuries including multi-level lumbar herniations at L1-5. The plaintiff treated conservatively.

The defendant maintained that workers were in the process of putting a pallet in place when the plaintiff disregarded their verbal warnings and intentionally stepped onto the pallet to reach an item. The defendant argued that the plaintiff, therefore, was liable for

his injuries. The defendant also contested the plaintiff's damages. The defendant argued that the plaintiff's injuries were degenerative in nature. The defendant presented an IME report wherein the plaintiff was diagnosed with mild sprains which had resolved at the time of examination.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of \$25,000 reduced to \$12,500 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for the terms of the arbitration with the plaintiff recovering \$12,500.

REFERENCE

Winfield vs. Costco Wholesale Corporation. Docket no. L-006022-17; Judge Walter F. Skrod, 02-04-20.

Attorney for plaintiff: Jason Mastrangelo of Fishman McIntyre Berkeley Levine Samansky in East Hanover, NJ. Attorney for defendant: Sander Budanitsky of Law Offices of Sander Budanitsky, LLC in Roselle, NJ.

\$10,000 RECOVERY

Premises liability – Fall down – Plaintiff falls on cracked, broken sidewalk on defendant fast food restaurant's property – Significant facial laceration; 2 rib fractures; right shoulder injury and right wrist injury.

Hudson County, NJ

In this premises liability case, the plaintiff asserted that the defendant restaurant failed to keep its property in a safe condition and that a defect in the sidewalk outside the restaurant caused the plaintiff to fall sustaining significant, permanent injury. The defendant denied having constructive or actual notice of the defect in the sidewalk and also maintained that the portion of the property where the plaintiff fell was not under the control or responsibility of the defendant.

On February 14, 2018, the plaintiff was walking on the sidewalk outside the defendants' restaurant located at 600-08 Paterson Plank Road in Union. The plaintiff asserted that the defendants were in control and possession of the premises and failed to keep the premises in a safe condition for pedestrians in the area. There was a cracked/broken sidewalk outside the premises on which the plaintiff tripped and fell.

The plaintiff argued that the defendants knew of the dangerous and defective condition for a long period of time prior to the plaintiff sustaining injury at the location. As a result of the defendant's negligence, the plaintiff fell and alleged that the impact of the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a significant laceration on the forehead; two rib fractures; right shoulder injury and right wrist injury. The plaintiff claimed a \$17,000 Medicare lien. The defendant argued that the plaintiff was responsible for his own fall and resulting injuries for failure to take reasonable care while walking on the sidewalk.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 50% liability to the defendant and 50% to the plaintiff with gross damages of \$20,000 reduced to \$10,000 for plaintiff's comparative negligence. The parties settled prior to trial for \$10,000.

REFERENCE

Mendez vs. KBP Foods/Franchisee KFC, et al. Docket no. L-003645-18; Judge Mary K. Costello, 02-10-20.

Attorney for plaintiff: Patrick G. Patel of The Law Offices of Patrick G. Patel in Jersey City, NJ. Attorney for defendant: Joseph A. Breyemeier of Naulty, Scaricamazza & McDevitt, LLC in Philadelphia, PA.

DEFENDANT'S ARBITRATION

Premises liability – Fall down – Fall on spilled substance at gas pump – Broken tooth #11; laceration of upper lip; multiple abrasions of face; disc bulges; cervical and lumbar sprain; trapezoid sprain and various abrasions – Surgical implant placement of broken tooth and sutures.

Camden County, NJ

In this premises liability case, the plaintiff asserted that the defendant convenience store and gas station negligently maintained its property such that the plaintiff slipped and fell, sustaining injury. The defendant denied liability pointing to the plaintiff's deposition testimony wherein the plaintiff stated that he did not see what was on the ground prior to or after he fell. The defendant

argued, therefore, that there was nothing on the ground to see or that the plaintiff should have seen something significant enough to have caused his fall.

On April 14, 2016, the plaintiff, a resident of New Jersey, was pumping fuel into his vehicle at the defendant's self-serve gas pump in Chester, Virginia. The defendant gas station/convenience store chain is incorporated in New Jersey. As the plaintiff was in the process of purchasing/pumping gas into his vehicle, he slipped and fell on a slick, foreign substance on the ground.

The plaintiff opined that the substance was likely spilled gas or oil that the defendant knew or should have known was present. The plaintiff maintained that the defendant failed to provide customers with a safe and level parking lot and sidewalk, free from hazards likely to cause harm. The plaintiff alleged that the force of the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a broken tooth #11; laceration of upper lip; multiple abrasions of the face; disc bulges at C3-4, C4-5, C5-6, C6-7, and C7-T1; cervical and lumbar sprain; trapezoid sprain; abrasions to the right knee, right thumb, and left hand. The plaintiff underwent surgical endosteal

implant placement of the tooth and received 5 sutures to close his lip laceration. The plaintiff claimed ongoing sensitivity in one tooth which may require a replacement implant.

The defendant asserted that the plaintiff's testimony established that he had no evidence to show that the defendant created the condition he blames his fall on, or to show that the defendant had either constructive or actual notice of the alleged condition.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause of action citing the fact that the incident took place in Virginia, a pure contributory negligence/liability state. The arbitrator awarded \$0 in damages to the plaintiff. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Palmer vs. Wawa, Inc. Docket no. L-001334-18; Judge Sherril Schweitzer, 10-11-19.

Attorney for plaintiff: Adam S. Malamut of Malamut & Associates, LLC in Cherry Hill, NJ. Attorney for defendant: William J. Kohler of Hurvitz & Waldman, LLC in Pleasantville, NJ.

Hazardous Premises

\$60,000 RECOVERY

Premises liability – Hazardous premises – Pallet in supermarket aisle caused plaintiff to trip and fall – Neurological injury; cervical and lumbar sprain/strain and aggravation of prior lumbar injury – 2 lumbar epidural injections and physical therapy.

Bergen County, NJ

In this premises liability case, the plaintiff, a 60-year-old woman, asserted that the defendant supermarket negligently allowed a hazardous condition to exist on its premises without remedy or warning to shoppers of the dangerous condition. As a result, the plaintiff tripped and fell, suffering significant, permanent injury. The defendant denied liability and contested the plaintiff's damages. The defendant argued that the pallet was an open and obvious condition and the plaintiff tripped because she was not taking care when navigating the store.

On November 25, 2015, the plaintiff was a lawful invitee on the premises of the defendant's supermarket located at 3147 Kennedy Boulevard in North Bergen. On the day in question, the defendant had placed a pallet display of squashes on the premises. The plaintiff asserted that the pallet was placed in a negligent manner such as it posed a tripping hazard to customers like the plaintiff. The plaintiff tripped over the pallet and hit her head as she fell to the ground.

As a result of the fall, the plaintiff suffered ongoing episodes of dizziness where she had to sit down and the dizziness, at times, caused her to fall. The plaintiff

claimed that one of her falls resulted in a fractured clavicle requiring surgery. The plaintiff claimed neurological injury; cervical and lumbar sprain/strain; and aggravation of prior lumbar injury. The plaintiff underwent 2 lumbar epidural steroid injections and physical therapy.

The defendant maintained that the plaintiff's injuries were pre existing and not caused by the subject fall. The plaintiff's IME opined that 70% of the plaintiff's lumbar complaints and 100% of the plaintiff's cervical complaints were degenerative in nature and not causally related to the plaintiff's fall.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 80% liability to the defendant and 20% to the plaintiff with gross damages of \$40,000 reduced to \$30,000 for plaintiff's comparative negligence.

Following arbitration and prior to trial, the parties settled for \$60,000.

REFERENCE

Saleh vs. LML Supermarkets, et al. Docket no. L-001583-17; Judge Avis Bishop-Thompson, 01-03-20.

Attorney for plaintiff: Lisa A. Lehrer of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant: Charles B. Carey of Carey & Grossi in Livingston, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

\$17,579,437 VERDICT – MEDICAL MALPRACTICE – ANESTHESIOLOGY – USE OF EXCESSIVE INTERSCALINE NERVE BLOCK DURING RIGHT SHOULDER REVISION SURGERY – BRACHIAL PLEXUS INJURY AND CRPS – ESSENTIAL LOSS OF USE OF DOMINANT ARM.

New York County, NY

This medical malpractice case involved a then 39-year-old plaintiff who underwent the allegedly offending shoulder revision surgery in 2013. The plaintiff contended that the defendant anesthesiologist, who used an interscalene nerve block, utilized an excessive amount of medication over too rapid an administration and failed to available ultrasound technology. The plaintiff contended that as a result, the plaintiff suffered a brachial plexus injury and CRPS will that manifest in a severe loss of use of the dominant right hand and arm. The defendant contended that the nerve block was performed appropriately and that the cause of the post-operative abnormal EMG was Parsonage-Turner syndrome, an autoimmune disorder that can follow such surgery, but which is of unknown origin.

The plaintiff was an immigrant from then-Slovakia, had been in the US since 2002, and at the time of the surgery worked as a house cleaner. The plaintiff asserted that she clearly cannot continue this work. The plaintiff also contended that because of the loss

of use of the right, dominant hand, everyday activities such as dressing and combing her hair, brushing teeth, cleaning home, etc. are extremely difficult without assistance.

The jury found for the plaintiff and awarded \$17,579,437, including \$646,000 for past and future lost wages, \$1,933,437 for future health costs, \$5,000,000 for past pain and suffering and \$10,000,000 for future pain and suffering.

REFERENCE

Plaintiff's anesthesiologist expert: Brian McAlary, M.D. from Culpepper, VA. Plaintiff's economist expert: Stan Smith from Chicago, IL. Plaintiff's life care planning expert: Harold Bialsky from Jersey City, NJ. Plaintiff's neurologist expert: David Roenbaum, M.D. from New York, NY. Plaintiff's neuroradiologist expert: Alkies Lapas, D.O. from Nutley, NJ.

Sikarova vs. Coopersmith and NYU Medical Center. Index no. 805212/14; Judge Erika Edwards, 06-15-22.

Attorney for plaintiff: James S. Lynch of Lynch Lynch Held Rosenberg, PC in Hasbrouck Heights, NJ.

\$375,000 CONFIDENTIAL RECOVERY – MEDICAL MALPRACTICE – DENTAL NEGLIGENCE – IMPROPER INSTALLATION OF DENTAL IMPLANTS IN 75-YEAR-OLD PLAINTIFF – BONE LOSS, NUMBNESS, DROOLING AND PAINFUL SENSATIONS.

Withheld County, MA

In this medical malpractice matter, the plaintiff patient alleged that the defendant dentist was negligent in unnecessary dental implants that resulted in dental issues including bone loss, numbness, drooling and pain. The defendant dentist denied any wrong doing and disputed causation and damages.

The plaintiff's complaints to the defendant were casually ignored as being temporary in nature and they did not subside. The plaintiff was prepared to offer expert testimony that the defendant's treatment of the plaintiff was sub-par, he used improper implants for the plaintiff's mouth and dental history, he improperly

inserted the implant posts which resulted in the lower left implant to transect a nerve which caused both the electrical sensations and numbness as well as drooling experienced by the plaintiff.

The parties agreed to resolve the plaintiff's claims for the sum of \$375,000 which sum took into account the plaintiff's advanced age, and her trial demeanor which indicated that she would not have been a good witness at trial.

REFERENCE

Plaintiff Jane Doe vs. Dentist Roe. 03-01-22.

Attorney for plaintiff: E. Steven Coren of Kerstein, Coren & Lichtenstein in Wellesley, MA.

\$300,000 VERDICT – MEDICAL MALPRACTICE – UROLOGIST NEGLIGENCE – DEFENDANT UROLOGIST NEGLIGENTLY PLACES URETERAL STENT IN PLAINTIFF’S PELVIS CAUSING INJURY AND INFECTION – SEPSIS – REVISION SURGERY – ADDITIONAL PROCEDURES AND PROLONGED HOSPITALIZATION.

Bucks County, PA

The plaintiff in this medical malpractice action maintained that the defendant doctor negligently placed a stent in the plaintiff’s left pelvis to treat the plaintiff’s kidney stones. The stent was improperly placed and allowed to remain causing injury and infection and the need for revision surgery. The defendant argued that the plaintiff was provided care in accordance with medical standards.

The defendant improperly pushed the double J stent into the plaintiff’s left renal pelvis and was subsequently unable to remove the stent due to bleeding in the renal pelvis. The defendant then abandoned attempts for fragment removal and placed a second stent in the plaintiff’s left side to drain the kidney. This second stent was properly placed.

The jury found that the defendant deviated from the standard of care and awarded the plaintiff damages of \$275,000 and her husband was awarded \$25,000, for a total combined award of \$300,000.

REFERENCE

Christine and Kenneth Deitrich vs. Peter Sinaiko, M.D., Premier Urology Associates and Urology Care Associates. Case no. 2014-05915; Judge Robert J. Mellon, 05-13-22.

Attorney for plaintiff: Thomas F. Sacchetta of Sacchetta & Baldino in Media, PA. Attorney for defendant: Suzanne Utke of Weber Gallagher Simpson Stapleton Fires & Newby, LLP in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

\$8,172,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – PLAINTIFF’S DECEDENT KILLED IN HEAD-ON COLLISION WITH DEFENDANT DRIVER UNDER INFLUENCE DRIVING CO-DEFENDANT’S VEHICLE – COURT FINDS DEFENDANTS LIABLE – MATTER GOES TO TRIAL AS TO DAMAGES ONLY.

Miami-Dade County, FL

In this motor vehicle negligence case the defendant driver caused a head-on collision wherein the plaintiff’s decedent, a 33-year-old pharmacist, was killed. The defendants failed to appear or answer the plaintiff’s complaint.

In addition, the defendant caused the subject crash while driving under the influence of alcoholic beverages with a breath alcohol of .200 and .198, which is more than twice the legal limit. The co-defendant was also liable for the negligence of the defendant driver who was using her vehicle. As a result of the head on crash and the injuries sustained, the plaintiff’s decedent was killed.

The defendants were found negligent by the court and the case went to trial only as to monetary damages necessary to compensate the estate of the decedent on behalf of her survivors for their harms and losses.

The jury awarded damages in the amount of \$8,172,000 broken down as follows: \$572,000 in lost earnings of the decedent; \$1,600,000 in damages to the plaintiff husband for the loss of his wife’s support and services and for funeral expenses; \$6,000,000 in for damages sustained by the plaintiff husband for the loss of his wife’s companionship and protection and for mental pain and suffering.

REFERENCE

Estate of Akamune vs. Davis, et al. Case no. 2020-027886-CA-01; Judge Oscar Rodriguez-Fonts, 05-04-22.

Attorney for plaintiff: Randy M. Weber of Pita Weber Del Prado in Miami, FL.

\$1,250,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – DEFENDANT STRIKES PLAINTIFF’S DECEDENT’S VEHICLE WHILE PLAINTIFF PUTTING MINOR PLAINTIFF IN CAR – PLAINTIFF’S DECEDENT SUCCUMBS TO INJURIES – MINOR PLAINTIFF SERIOUSLY INJURED.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, widow of the decedent and mother of the minor plaintiff, asserted that the defendant driver struck the decedent’s vehicle with such force that it caused the death of the plaintiff’s decedent and serious injury to the minor plaintiff.

The plaintiff contended that the defendant negligently failed to operate his vehicle in a safe and proper manner, failed to maintain control of his vehicle, failed to make proper observations, failed to remain alert and observe vehicle, pedestrian, and foot traffic while operating his vehicle, as well as failed to obey all traffic laws, statutes and ordinances.

The parties settled the matter prior to trial in the amount of \$1,250,000 broken down as follows: \$12,511 in attorney fees; \$123,749 to the minor plain-

tiff for her personal injuries; \$123,749 to the plaintiff widow for her claims of loss of consortium; \$898,991 to persons entitled to recover in an action pursuant to the Wrongful Death Act at 77.68% to the plaintiff widow and 22.32% to the plaintiff daughter.

REFERENCE

Navarrete vs. Walsh. Docket no. L-006241-18; Judge James E. Hyland, 02-12-20.

Attorney for plaintiff widow and minor plaintiff: William F. Mueller of Clemente Mueller, P.A. in Morristown, NJ. Attorney for plaintiff intervenor, daughter of decedent: Blagoja Petreski of Petreski Law Offices in Butler, NJ. Attorney for defendant: Steven I. Litvak of Litvak & Trifoliolis, P.C. in Cedar Knolls, NJ.

\$210,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – TRACTOR TRAILER NEGLIGENCE – DEFENDANT’S 18-WHEELER STRIKES REAR OF VEHICLE THAT IS PUSHED INTO REAR OF PLAINTIFF’S VEHICLE – TORN BICEPS – TORN ROTATOR CUFF – LEFT SHOULDER ARTHROSCOPIC LABRAL REPAIR WITH OPEN ROTATOR CUFF REPAIR – ANTERIOR CERVICAL DISCECTOMY WITH CERVICAL INSTRUMENTATION, FUSION, BONE GRAFTING AND PLACEMENT OF STRUCTURAL CAGE.

Harris County, TX

The plaintiff in this motor vehicle negligence action maintained that he suffered significant injuries to his left arm and neck and back when the defendant’s tractor trailer failed to notice that traffic had slowed and struck a vehicle in the rear that was then pushed into the plaintiff’s vehicle. The plaintiff sued the defendant driver and tractor trailer owner for negligence. The defendants denied all allegations of negligence. The defendants also denied that the plaintiff’s neck and back complaints were causally related to the incident.

Following the accident, the plaintiff felt immediate pain in his left shoulder and arm. He was treated in the E.R. and discharged with pain medication. He followed up for continued pain in the left arm in mid-November of 2015 and was now experiencing neck and back pain. Diagnostic testing revealed a torn biceps tendon, a partial tear of the left rotator cuff, and cervical, thoracic and lumbar disc injuries. The plaintiff required a left shoulder arthroscopic labral repair with open rotator cuff repair, an anterior cervical discectomy at C4-C5 and C6-C7, partial C5-C6, with

cervical instrumentation, fusion, bone grafting, and placement of structural cage. A future 2-level lumbar fusion has also been recommended. The plaintiff claimed his past and future medical expenses total \$639,274.11.

The jury found that the defendants were negligent and that the defendants’ negligence was a factual cause of bringing harm to the plaintiff. The jury awarded the plaintiff past medical expenses of \$80,000, past pain and suffering of \$75,000. The jury awarded the plaintiff future medical expenses of \$5,000 and future pain and suffering of \$50,000 for a total award of \$210,000.

REFERENCE

Gilberto Gonzalez vs. Houston Distributing Company and Ronnell Belizeard. Case no. 201733373; Judge Beua Miller, 05-19-22.

Attorney for plaintiff: Paula A. Wyatt of Wyatt Law Firm, LTD. in San Antonio, TX. Attorney for defendant: Gregory Holloway of Taylor, Book, Allen & Morris, L.L.P. in Houston, TX.

PREMISES LIABILITY

\$1,300,000 VERDICT – PREMISES LIABILITY – NEGLIGENT SECURITY – ASSAULT AND BATTERY – PLAINTIFF MAINTAINS OFF-DUTY POLICE OFFICER ACTING AS SECURITY FOR DEFENDANT SUPERMARKET ASSAULTED AND BATTERED HIM WHILE HE WAS RESTRAINED, CAUSING HIM SIGNIFICANT INJURIES – BROKEN RIB – SEVERE INJURY TO COCCYX REQUIRING SURGERY TO REPAIR AND TO STOP BLEEDING.

Miami-Dade County, FL

In this negligent security case, the plaintiff, a 51-year-old man, asserted that the defendant's agent, acting as a security officer, viciously, maliciously, wrongfully, unlawfully, and without legal justification or excuse wrongfully detained, assaulted, and battered the plaintiff. The plaintiff argued that the defendant negligently hired, retained and supervised its employee breaching its duty of care to customers and the plaintiff. The plaintiff argued that the defendant was vicariously liable for the assault and battery by its employee on the plaintiff. The security officer argued that he had to intervene because the plaintiff got into an argument with the defendant's store clerk. The officer noted that the plaintiff had been arrested several times prior to the incident in this case, has anger control problems, and a psychiatric history.

As a result of the assault, the plaintiff sustained a broken rib and severe injury to the coccyx and required emergency surgery to repair his anus and stop the

bleeding. The plaintiff claimed that he continues to suffer pain and bleeding from his injuries, which are permanent.

The plaintiff settled with the defendant security officer individually. The defendant supermarket failed to respond and was found liable by default and the matter went to trial as to damages against the defendant supermarket only.

The jury awarded the plaintiff damages in the amount of \$1.3 million.

REFERENCE

Chinea vs. La Mia Market, Inc. et al. Case no. 2016-015722-CA-01; Judge Lisa Walsh, 05-09-22.

Attorneys for plaintiff: Manuel Arther Mesa, Moises A. Saltiel and Jose I. Leon of Law Offices of Mesa & Associates, P.A. in Miami, FL. Attorneys for defendant security officer: Oscar E. Marrero and Lourdes E. Wydler of Marrero & Wydler in Miami, FL. Attorneys for defendant Presidente Supermarket: Stephanie Pidermann and Yina Cabrera of Lydecker, LLP in Miami, FL.

\$1,250,000 VERDICT – PREMISES LIABILITY – HAZARDOUS PREMISES – PLAINTIFF FALLS THROUGH HOLE IN FLOOR AND FALLS 8-10 FEET WHILE LAWFULLY ON RENOVATION PROJECT ACTING AS INDEPENDENT CONTRACTOR FOR DEFENDANTS – LUMBAR FRACTURES – PERMANENT PAIN – DEPRESSION.

Philadelphia County, PA

The plaintiff in this premises liability action maintained that he was lawfully on the property owned and controlled by the defendants that was being renovated. The plaintiff was working as an independent contractor for the defendant property owners when he fell through a hole in the third floor and suffered injury. The defendants all denied being negligent and blamed each other and the plaintiff for causing the incident.

The plaintiff was rushed to the hospital where he was diagnosed with lumbar fractures L1 through L4, L4 lumbar burst fracture, injuries to the head, neck, right shoulder, coccyx, depression and anxiety.

The jury found that the defendant general contractor was 80% negligent, the female property owner 15% negligent and the male property owner 5% negligent and awarded the plaintiff \$1,250,000.

REFERENCE

Paul Nye vs. Joshua and Kara Angotti, and Shane Alilkakos. Case no. 190605198; Judge Angelo Foglietta, 05-13-22.

Attorney for plaintiff: Christopher J. Heavens of Heavens Law Firm, PLLC in Boothwyn, PA. Attorney for defendant: Andrew Benedict in Philadelphia, PA.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

\$4,879,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – CRANE OPERATOR EMPLOYED BY RENTER OF CRANE LIFTS JOIST BEFORE SIGNAL OBTAINED FROM PLAINTIFF OR CO-EMPLOYEE – UNSECURED GIRDER BECOMES ENTANGLED WITH JOIST AND FALLS ONTO PLAINTIFF’S FOOT – SEVERE CRUSH FRACTURES – FULL AMPUTATION OF TOES 2-5 – PARTIAL AMPUTATION OF GREAT TOE – INABILITY OF IRON WORKER TO RETURN.

Cook County, IL

This case involved a plaintiff iron worker in his mid 40s. The plaintiff, working for subcontractor, at a construction project involving the erection of a new warehouse, contended that the defendant subcontractor’s employee who was operating a crane, negligently failed to wait for a signal from any crew member before attempting to lift a 40 ft. 8000 lb. steel joist. The plaintiff had just attached the joist to the crane and as he was moving to a safe zone, the crane lofted an unsecured girder with the joist and it fell, striking the plaintiff on the left foot. The defendants included the crane operator and his employer, the general contractor and the full-time superintendent charged with supervising the subcontractors performing per the contract, the means and methods laid out in the plans, and to ensure that the work was done in a safe manner.

The plaintiff suffered multiple crush fracture and ultimately required the total amputation of toes 2-5 and a partial amputation of the big toe. The plaintiff also

maintained that he suffered a torn medial meniscus. The plaintiff maintained that he will permanently be unable to work

The case settled prior to trial for \$4,879,000 plus a waiver of the \$503,664 compensation lien. The settlement was allocated as follows: \$1,269,000 from the G.C.; \$2,950,000 from the crane operator; \$550,000 fresh money from the employer (in addition to the waiver of the comp lien); \$60,000 from a subcontractor at the scene and \$45,000 from a second subcontractor.

REFERENCE

Plaintiff’s mechanical engineer and safety expert: William R. Keefe, P.E. from Lake Zurich, IL.

Gonzalez vs. Morgan/Harbour Construction, LLC, et al. Case no. 2018 L 004989; Judge Bridget Hughes, 02-10-22.

Attorneys for plaintiff: Philip Harnett Corboy, Jr., Edward G. Willer and Michelle M. Kohut of Corboy & Demetrio, P.C. in Chicago, IL.

Consumer Fraud

\$5,800,000 RECOVERY – CONSUMER FRAUD – MEDICARE – PHARMA BENEFITS MANAGER SETTLES OVERCHARGE CLAIMS BY STATE AG – ALLEGED CONSUMER OVERPAYMENT FOR PRESCRIPTION DRUGS.

Suffolk County, MA

In this action, the Massachusetts Attorney General accused a pharmacy benefits manager of failing to follow worker’s compensation prescription pricing procedures. The matter was resolved with a settlement in Suffolk Superior Court.

The respondent Optum Rx, Inc. is a pharmacy benefits manager based in Costa Mesa, California. The Respondant pays pharmacies that issue workers’ compensation drugs to patients, but also charges insurers and self-insured companies for those drugs under the workers’ compensation insurance system.

The respondent was subject to an investigation by the Massachusetts AG for alleged failure to abide by state workers compensation laws and regulations. Investigators concluded that respondent had allowed harmed workers on the job by failing to apply the

Federal Upper Limit for Medicare and the Massachusetts Maximum Allowable Cost, to its pricing determination when evaluating workers’ compensation insurance prescription drug charges.

The matter was resolved with a settlement in Suffolk County Court for \$5.8 million in compensation, as well as agreement to remedial procedures to prevent overcharges in the future under the workers’ compensation insurance system. The respondent will also cooperate with the AG’s office regarding monitoring of future regulatory compliance.

REFERENCE

Office of Attorney General Maura Healey vs. Optum Rx, Inc., 02-24-22.

Attorney for plaintiff: Glenn Kaplan of Office of the Attorney General in Boston, MA. Attorney for defendant: Christopher Zaetta in Schaumburg, IL.

Insurance Obligation

\$995,000 RECOVERY – INSURANCE OBLIGATION – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – PLAINTIFFS’ DECEDENT STRUCK AND KILLED WHILE WORKING AS TOW TRUCK DRIVER – PLAINTIFFS SEEK DAMAGES ON BEHALF OF DECEDENT’S ESTATE TO BENEFIT DECEDENT’S MINOR CHILDREN.

Somerset County, NJ

In this case, the plaintiff, the fiancé and the mother of the decedent, brought suit against the defendant driver and insurer to recover damages on behalf of the decedent’s minor children after their father was killed in a collision with the defendant.

As a result of the collision, the plaintiffs claimed that the decedent suffered severe injuries resulting in conscious pain and suffering and ultimately his death.

The plaintiffs settled the matter with the defendant driver in the amount of \$265,000, the defendant’s policy limits, and prior to filing of the subject action. The plaintiffs maintained that the value of the plaintiffs’ injuries exceeded \$265,000, thus, the defendant insurer’s UIM coverage applied.

The plaintiffs settled the subject matter with the decedent’s insurer in the amount of \$745,000 allocated to settlement of the claims pursuant to Wrongful death Act, N.J.S.A. 2:31-1, et seq., broken down as follows:

\$186,250 in attorney fees; and \$279,375 for each of the decedent’s surviving children. Additionally \$250,000 to the plaintiff fiancé allocated to settlement of the claims pursuant to the Survivorship Act, N.J.S.A. 2A:15-3 broken down as follows: \$86,372 for attorney fees; \$124,033 for worker’s compensation lien; and \$19,797 for each of the decedent’s surviving children. The plaintiffs recovered a total settlement of \$995,000.

REFERENCE

Ramos, et al. vs. Raiti, et al. Docket no. L-000833-19; Judge Thomas C. Miller, 07-24-19.

Attorney for plaintiff: Tyler Hall of Rebenack, Aronow and Mascolo, LLP in Somerville, NJ. Attorney for defendant AXIS Insurance Company: Pasquale A. Pontoriero of Kennedys CMK, LLP in Basking Ridge, NJ. Attorney for defendant Carmela Raiti, driver: Karen Quinn Sopko of Law Office of Cindy Thompson in Piscataway, NJ.

Labor Law

\$1,200,000 RECOVERY – SEC. 240(1) LABOR LAW – NON-UNION PLUMBER WITHOUT BENEFITS FALLS 12 FEET ONTO CONCRETE FROM UNSECURED LADDER – RIGHT WRIST FRACTURE – SURGERY – LEFT ROTATOR CUFF TEAR – SURGERY – HIP TRAUMA RESULTS IN AVASCULAR NECROSIS – INABILITY TO WORK.

Queens County, NY

This Labor Law Sec. 240 (1) case involved a 60-year old plaintiff at a construction site who contended that he fell approximately 12 feet while standing on an unsecured ladder. The plaintiff maintained that he suffered a fracture of the right, dominant wrist, a tear of the left shoulder and a trauma to the left hip that resulted in avascular necrosis. The plaintiff, who was employed as a non-union plumber, contended that he will permanently be unable to work.

The evidence revealed that at the time of the accident, the plaintiff was standing at the top of a ladder that had been resting against two vertical steel wall frame studs. The studs gave way causing the ladder to fall forward and resulting in the accident. The plaintiff maintained that the 12 foot fall directly onto the

concrete was highly traumatic. The plaintiff asserted that he will suffer extensive pain and restriction despite the upper extremity surgery.

The case settled prior to trial for \$1,200,000.

REFERENCE

Plaintiff’s expert: Kristin K. Kucsma, MA, from Livingston, NJ. Plaintiff’s orthopedic surgeon expert: David H. Delman, M.D. from New York, NY. Plaintiff’s vocational rehabilitation expert: Sonya M. MocarSKI, MS from Atco, NJ.

Zholani vs. 52 Wooster Owner, LLC, et al. Index no. 0512897/16, 04-01-22.

Attorney for plaintiff: Pat James Crispi of Keogh Crispi, P.C. in New York, NY.

Property Owner Liability

\$46,750,000 VERDICT – PROPERTY OWNER LIABILITY – TOXIC TORT – DEFENDANT EXPLOSIVES MANUFACTURER ALLOWS EXCESSIVE NITROGEN OXIDE TO EMIT FROM IT'S SMOKESTACK CAUSING POISONOUS CLOUD TO BLOW ONTO ADJACENT FACILITY WHERE PLAINTIFF WORKED RESULTING IN PLAINTIFF INHALING TOXIN AND SUFFERING PERMANENT INJURY – PERMANENT PULMONARY AND NEUROLOGIC INJURIES – PLAINTIFF PERMANENTLY DISABLED.

U.S.D.C. - Eastern District of Missouri

In this negligence action, the plaintiff maintained that he suffered serious injury when he inhaled poisonous gas from a cloud that emitted from the defendant's smokestack and floated over to the adjacent facility where the plaintiff was a foreman. The defendant denied being negligent and denied the nature and extent of the plaintiff's injuries.

The plaintiff argued that the defendant had a duty to manage and operate the plant in a reasonable manner and in a manner so as to avoid discharge of highly toxic substances from its smokestacks when it was foreseeable that the discharge of those substances could drift into the working environment of workers at the nearby facility.

Consequently, the plaintiff suffered permanent pulmonary and neurologic damage. The plaintiff suffers from irritable larynx syndrome which causes him to feel like he is choking to death and often results in him losing consciousness. He suffered an attack while walking once and passed out causing him to fall and sustain serious injury to his back. The plaintiff is permanently disabled due to his injuries. He suffers from depression and anxiety.

A jury in the Eastern District of Missouri federal court awarded \$13.75 million for Teddy Scott and \$3 million for Melanie Scott in compensatory damages and \$30 million in punitive damages.

REFERENCE

Teddy and Melanie Scott vs. Dyno Nobel Incorporated. Case no. 16-cv-01440; Judge Henry Edward Autrey, 04-29-22.

Attorney for plaintiff: Robert W. Schmieder, II of SL Chapman, LLC in St. Louis, MO. Attorney for defendant: Julianne P. Blanch of Parsons and Behle in Salt Lake City, UT. Attorney for defendant: William S. Thomas of Gausnell O'Keefe, LLC in St Louis, MO.