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FEATURED CASES

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

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

VERDICTS BY CATEGORY

FEATURED CASES

$1,610,003 VERDICT – RELIGIOUS AND DISABILITY DISCRIMINATION – EMPLOYMENT DISCRIMINATION – PLAINTIFF EMPLOYEE CLAIMS DEFENDANT TOWNSHIP EMPLOYER SYSTEMATICALLY DISCRIMINATED AGAINST AND HARASSED HER ON BASIS OF HER RELIGION AND ANXIETY DISORDER AND FURTHER RETALIATED AGAINST HER ON SAME BASIS – SEVERE PAIN, SUFFERING AND PERMANENT INJURIES – PHYSICAL HEALTH ISSUES, SEVERE EMOTIONAL DISTRESS, HUMILIATION, PSYCHOLOGICAL HARM AND ANXIETY.

Ocean County, NJ

In this workplace discrimination case, the plaintiff employee of the defendant township asserted that the defendant's employees, supervisors of the plaintiff, repeatedly violated New Jersey Law Against Discrimination in their interactions with the plaintiff. The plaintiff claimed religious discrimination, hostile work environment based on religious discrimination and disability discrimination, and retaliation. The defendant denied the plaintiff's claims and countered that the plaintiff's performance was substandard and that she was often absent for long periods of time on the claim of FMLA.

The plaintiff was a Jewish female suffering from anxiety who resided in Bayville and was employed by the defendant since 2002 and as the Supervisor of the Recreation Program from September 2017 through the time of filing of her complaint. From the onset of her employment and through to the present, the plaintiff claimed that multiple employees of the defendant township, in supervisory capacities or upper management, engaged in a severe and pervasive pattern of mentally abusive and offensive behavior directed at the plaintiff for being of the Jewish faith and being disabled. The plaintiff alleged that this conduct was intended to punish the plaintiff for being Jewish and disabled.

The plaintiff maintained that some of the defendant's upper management aided and abetted or were willfully indifferent to the discrimination, harassment or retaliation and wrongful treatment of the plaintiff at her workplace. The plaintiff reported instances of discrimination and harassment including: harassing the plaintiff for taking a religious holiday; calling the plaintiff a "moron;" telling the plaintiff that they intended to change the name of a "Holiday Tree Lighting" to "Christmas Tree Lighting" to ensure that the event was not associated with the Jewish holiday of Hanukkah; banning the plaintiff from working the holiday event to ensure no one of the Jewish faith was participating; chastising the plaintiff for bringing blue and white decorated cupcakes to an office holiday party saying they were inappropriate for a Christmas party; taking away the plaintiff's employee discount for the township's preschool program while all non-Jewish employees continued to receive the discount; making discriminatory comments to the plaintiff such as "stupid Jews," "Jews are cheap," and telling anti-Semitic "jokes" in the workplace.

The plaintiff also claimed incidents of retaliation such as punishing the plaintiff by ordering her to clean office closets. The plaintiff asserted that the defendant's employee singled her out for being Jewish and accused her of stealing town funds, terminating the Municipal Alliance work portion of the plaintiff's salary and, on April 12, 2108, while the plaintiff was on FMLA leave due to anxiety caused by the workplace discrimination and harassment, took away the plaintiff's office and had all of her belongings dropped off at the plaintiff's home so that she had to transport everything back to work when she returned.

The plaintiff claimed that the behavior of the defendant and its employees was systematic, improper, intentional, constituted religious discrimination, and created an openly hostile work environment for the plaintiff. As a result of the actions of the defendant and its employees, the plaintiff believed that the working environment at the defendant township was hostile, abusive and discriminatory. The plaintiff was a victim of conduct that a reasonable person would consider sufficiently severe or pervasive so as to alter the conditions of employment or create an intimidating, hostile or offensive working environment. As a proximate cause and reasonably foreseeable result, the plaintiff sustained severe pain, suffering and permanent injuries including physical health issues, severe emotional distress, alarm, humiliation, psychological harm, embarrassment, and anxiety.

The plaintiff was caused to expend money for professional care and treatment. At trial, the plaintiff presented an expert psychologist who testified that the main specific symptoms related to the plaintiff's day-to-day employment caused her to experience tremendous anxiety and panic when she went to the of-

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fice and that she lived in a high state of anxiety or anticipation because she didn't know what to expect when she went into the office. His diagnosis included moderate depressive disorder, acute stress disorder, post-traumatic stress disorder, generalized anxiety disorder and panic attacks. The plaintiff called an economist who testified as to all aspects of the probable range of the plaintiff's economic loss.

The defendant countered the plaintiff's claim of retaliatory reduction of her salary, arguing that it was a result of financial and budgetary concerns of the Recreation Department after conducting an operational audit of the financial records of the Municipal Alliance Grant Program. The defendant maintained that the audit revealed that the plaintiff paid herself approximately seventy percent of the grant funds for her role as the grant coordinator and consultant to the grant program. In response to the audit results, the defendant's business administrator, acting within the scope of his duties, stopped the grant stipends for both the plaintiff and another employee. The defendants called an expert psychiatrist who disagreed with the plaintiff's diagnosis except for depressive disorder and panic disorder.

The jury found that the defendant mayor, business administrator and recreation department director aided and abetted the defendant township in violation of the NJLAD and were liable individually and personally for these violations. The jury awarded the plaintiff compensatory damages of $500,001 for emotional distress and $110,000 for economic loss. The jury further found the plaintiff proved that the harm caused to her because of the violation of her rights under the NJLAD was the result of conduct that was malicious or was done in wanton and willful disregard of her rights and awarded the plaintiff $1,000,002 in punitive damages for a total award of $1,610,003.

REFERENCE

Reuter vs. Berkeley Township, et al. Docket no. L -002806-18; Judge James Den Uyl, 05-25-23.

Attorneys for plaintiff: Crystal Dozier and William R. Stoltz of Law Offices of Rosemarie Arnold, LLP in Fort Lee, NJ. Attorneys for defendant: Brigit Zahler and Christopher A. Khatami of Dasti & Staiger Attorneys at Law in Forked River, NJ.

COMMENTARY

Following the verdict, the defendants moved for a new trial arguing that the plaintiff's trial testimony materially deviated from her factual pleadings in the complaint, her answers to interrogatories, and her deposition testimony constituting an unfair surprise; that the jury's verdict was against the weight of the evidence; that the court gave an improper jury charge; that the jury's punitive damages award is excessive and contrary to the weight of the evidence; plaintiff's counsel made statements manifestly capable of confusing and misleading the jury producing an unjust result that deprived the township defendants of a fair trial. The defendants asserted that the plaintiff, on direct examination, testified that she believed the Municipal Alliance Grant position was taken away from her to trigger her anxiety and depression and to retaliate against her for obtaining legal counsel, even though the plaintiff never pleaded or claimed until her trial testimony that these two allegations were temporally related. The defendant also maintained that the jury's verdict stood against the weight of the evidence presented at trial because the plaintiff presented no evidence that the defendant township engaged in conduct because of her alleged mental disability. Moreover, the defendant held, the plaintiff presented no evidence that the defendant's recreation director knew the medical reason for the plaintiff's first FMLA leave in February 2018 or her second FMLA leave in March 2019.

The defendant maintained that the plaintiff presented no evidence that the defendant mayor or business administrator engaged in any acts that created a hostile work environment because of the plaintiff's alleged mental disability. Nor did the plaintiff present evidence at trial that the defendants retaliated against her for obtaining legal counsel. The defendant also claimed that the court gave a confusing jury charge for legal elements that the plaintiff must satisfy to prevail on her hostile work environment claim based on disability discrimination, LAD retaliation, and punitive damages. As to the plaintiff's summation, the defendant argued that plain-

tiff's counsel made statements that could mislead and confuse the jury about the sequence of factual allegations in support of the plaintiff's LAD claims for disability discrimination and retaliation, and the legal elements of the plaintiff's LAD claims for disability discrimination and retaliation. Lastly, the defendant asserted that the jury's award for compensatory damages was against the weight of the evidence. According to the defendant's claim, the plaintiff presented no proof that the defendants committed acts of discrimination against her because of her disability. Moreover, they argued, the jury's award for economic loss was wholly inappropriate and unjust given that the plaintiff presented no evidence at trial that she suffered any economic loss because of disability discrimination or retaliation.

The only alleged adverse employment action that bore on economic loss was the taking away of her grant stipend, which preceded the dates that she filed her FMLA leave paperwork and obtained legal counsel who sent the defendant township a letter of representation in January of 2018. More critically, the defendant held, the jury's exorbitant award for punitive damages was against the weight of the evidence presented at trial and was excessive to the degree that it impaired the substantive due process rights of the township defendants.

The plaintiff opposed the motion, arguing that the defendants' motion was a confusing hodge-podge of alleged claimed errors made by the court and plaintiff's counsel which they claimed warranted the granting of a new trial. However, most of these supposed errors were not properly preserved by objections at trial and in the end would not warrant a new trial. When the record of this case is examined in its entirety it cannot reasonably be said that the jury's verdict was against the weight of the evidence. The plaintiff held that the defendants' argument that the plaintiff's trial testimony deviated from the factual allegations pleaded in her complaint and the facts asserted in her certified answers to interrogatories, and the portions of deposition testimony regarding allegations of disability discrimination were entirely without merit because the defendants failed to preserve any such claim by failing to timely object to supposedly offending testimony at trial or moving for a mistrial. Additionally, the plaintiff's testimony was not materially different from her prior pleadings and, even if the plaintiff's testimony did materially deviate, the defendants suffered no prejudice in their ability to present their case. The plaintiff pointed out that a party's primary remedy for a witness' inconsistent testimony is not a mistrial or refusal to admit evidence, but rather vigorous cross-examination per Parker v. Poole, 440 N.J. Super. 7, 22 (App. Div. 2015).

The plaintiff had unequivocally stated, since the pleading stage, that she faced discrimination both because of her Jewish faith and because of her disability. The plaintiff maintained that the defendants' attempt to paint this case as involving an "either/or" choice between claims was erroneous because the simple fact was that, as the plaintiff's case developed, these issues were frequently intertwined. The plaintiff testified extensively and directly concerning a variety of specific acts of discrimination based on both her religion and anxiety disorder. The plaintiff further testified that, because of the stress generated by the religious harassment, she was forced to take a total of 12 weeks of FMLA leave and that she was then further discriminated against because of taking leave, which amounted to disability discrimination. The plaintiff argued that there was no good faith basis for the defendants' claim that they were surprised by the plaintiff's testimony at trial to the point that they were prejudiced.

As to the defendants' contention that the court's jury charge was improper, the plaintiff maintained that the defendants again did not object to the charge as read; and did not identify the supposedly offending language of the charge in their brief. As such, the defendants' motion on defects in the jury charge must be denied. With regard to plaintiff's counsel's summation, although the defendants spent nearly a quarter of their brief arguing that supposedly improper comments made during summation warranted the granting of a new trial, the defendants again pressed arguments that were not preserved via timely objection. Lastly, the plaintiff argued that the contention that the jury's punitive damages award was excessive and against the weight of the evidence was belied by the factual record. The court must consider the degree of reprehensibility of the conduct that formed the basis of the civil suit; the disparity between the harm or potential harm suffered and the plaintiff's punitive damages award; and the difference between this remedy and other penalties authorized or imposed in comparable cases of misconduct per Baker v. Nat'l State Bank, 353 N.J. Super. 145, 153-54 (App. Div. 2002). Considering the severity of the conduct in this case and in light of the clearly small ratio involved, the plaintiff argued that it could not be reasonably argued that the jury's punitive damages award was excessive.

The court issued an opinion stating that it did not find the issues raised by the defendant constituted "error" or that they reached the threshold of "error of such a nature as to have been clearly capable of producing an unjust result…" The court opined that jury verdicts should be set aside sparingly and only in cases of clear injustice, per Kittle v KIA Motors America Inc., 425 N.J. Super. 82, 92 (App. Div. 2012). The court denied the defendants' motion.

$695,000 RECOVERY – PREMISES LIABILITY – FALL DOWN – PLAINTIFF FALLS IN POTHOLE IN PARKING LOT OF DEFENDANTS' STRIP MALL – CUTS FROM BROKEN GLASS; NECK INJURY; HIP INJURY AND RIGHT KNEE INJURY – PHYSICAL THERAPY FOR KNEE; EPIDURAL INJECTIONS FOR KNEE AND NECK – CERVICAL FUSION SURGERY – KNEE SURGERY – HIP REPLACEMENT SURGERY –PERMANENT LIMITATIONS AND SURGICAL SCARRING.

Passaic County, NJ

In this premises liability case, the plaintiff, a 62-year-old woman, asserted that she fell in a hole in the defendants' commercial parking lot causing significant, permanent injury. The co-defendants denied negligence and each claimed the other was liable for maintenance of the parking area of the property.

On April 11, 2016, the plaintiff was lawfully on the premises of a strip mall known as the West Belt Plaza located at 57 Route 23 South in Wayne. The property was owned by the first co-defendant and leased by

the second co-defendant home goods store. The plaintiff had shopped in the defendant home goods store, purchasing a comforter and glassware and exited the store into the defendants' parking lot. The plaintiff claimed that as she pushed her shopping cart down a curb towards her car, her foot went into a pothole, causing her and the cart to fall over. Glass shattered on the ground and the plaintiff fell on the glass. The plaintiff alleged that the force of the fall resulted in multiple, permanent injuries.

The plaintiff maintained that the defendants did not maintain the premises in a reasonably safe condition; did not exercise proper care; caused a dangerous and hazardous condition to exist; failed to provide proper, safe and clear access for those persons using and accessing the premises; failed to provide safeguards or warnings; failed to properly inspect the premises; and were negligent. As a result of the fall, the plaintiff landed on the broken glass, sustaining cuts and bleeding from the side of her abdomen. An ambulance was called to the scene and the plaintiff was taken to the hospital.

The plaintiff's cuts were glued and she was released. The plaintiff continued to suffer pain in her right knee and sought physical therapy. The plaintiff also had pain in her neck and back for which she received epidural injections. Eventually, the plaintiff could no longer stand the pain in her knee and got injections in the knee. She was not experiencing relief in her back or knee and went to a doctor who performed an anterior cervical disc fusion surgery. After her neck surgery, the plaintiff was also recommended for hip replacement surgery which she underwent and which left her with a large surgical scar. The plaintiff claimed a long, slow recuperation from the surgeries during which time she needed extensive help from her husband, who made a claim for loss of consortium. The plaintiff asserted that she still had a lot of pain and took anti-inflammatory medication up to the time of filing of the subject lawsuit. She claimed limited movement in her head and neck and significant limitations in activities of daily living and driving.

Both defendants asserted the affirmative defense that the plaintiff was herself negligent in failing to see an open and obvious condition in the form of a hole in the pavement of the parking lot and, as such, she was responsible for her own injuries. The defendants pointed to the plaintiff's pre-existing injuries, including a fall down a flight of stairs where she sustained an L1 fracture; a time when she struck her head on a steel beam and was knocked unconscious; and a subsequent incident with policy which resulted in her receiving treatment at the hospital. The defendants argued that, in light of these facts, not all of the plaintiff's injuries could be attributed to the subject fall. The defendants maintained that the plaintiff made an excellent recovery without any permanent injury and presented surveillance video which showed the plaintiff carrying multiple shopping bags up two flights of stairs without difficulty.

The parties submitted to non-binding arbitration wherein the arbitrator assigned 60% liability to the defendant property owner, 20% to the defendant tenant of the property and 20% to the plaintiff with gross damages of $500,000 reduced to $400,000 for plaintiff's comparative negligence. The arbitration was not confirmed and the matter proceeded.

After several delays in the progress of the case, the parties agreed to forego trial and enter into binding arbitration with a high/low agreement of $700,000/$275,000 with all parties waiving the right to appeal and pre-judgment interest. The parties agreed to an arbitrator and the binding arbitration hearing was held on December 22, 2022.

As a result of the arbitration, the arbitrator awarded gross damages to the plaintiff of $695,000 broken down as follows: $660,000 in damages to the plaintiff and $35,000 for loss of consortium to the plaintiff husband. The award was reduced by 15% for the plaintiff's comparative negligence, pre-existing conditions, and as a result of information from the surveillance video. Thus the plaintiff's net damages were $596,000 comprising $561,000 in damages to the plaintiff and $35,000 for the loss of consortium claim.

REFERENCE

Johnson vs. Segal Development Associates, et al. Docket no. L-000489-18; Judge Raymond A. Reddin.

Attorney for plaintiff: Gregg A. Wisotsky of Law Offices of Gregg A. Wisotsky in Parsippany, NJ. Attorney for defendant property owner: John M. Sapata of McDermott & McGee, LLP in Millburn, NJ. Attorney for defendant tenant store: Scott H. Goldstein of Bonner Kiernan Trebach & Crociata, LLP in Parsippany, NJ.

COMMENTARY

This case was complicated by a long discovery and procedural history, partly due to the COVID-19 pandemic, including four discovery extensions, one arbitration adjournment, and five trial adjournments. Finally, after terms of a binding arbitration were agreed upon and a date for arbitration was able to be held, resulting in a settlement, the plaintiff refused to sign the closing statement and check endorsement authorizations. Defense counsel was forced to file a Motion to Enforce Settlement. The defendants maintained that it was clear from emails that the plaintiff in fact proposed binding arbitration and then agreed to the material terms for submitting the matter to binding arbitration. Defense counsel argued that they and the plaintiff engaged and entered into good faith negotiations and had agreed upon all the material terms of the agreement. However, the defendant maintained, after the arbitration, the plaintiff sought to unjustifiably rescind and breach the agreement.

In their motion, the defendants pointed to well settled law that parties may effectively bind themselves by an informal memorandum where they agree upon the essential terms of the contract and intend to be bound by the memorandum, even though they contemplate the execution of a more formal document, citing Comerata v. Chaumont, Inc., 52 N.J. Super. 299 (App. Div. 1958); see also Zuendt v. A. Eisenstein, Inc., 139 N.J. Eq. 476 (Ch. 1947). Further, they asserted, "A contracting party is bound by the apparent intention he or she outwardly manifests to the other party. It is immaterial that he or she has a different, secret intention from that outwardly manifested." per Hagrish

v. Olson, 254 N.J. Super. 133, 138 (App. Div. 1992). Thus, they submitted, the defendants were entitled to enforcement of the Agreement against the plaintiff because "[t]o permit the unilateral dissolution of deliberate settlements for reasons like this would be to impair the orderly and expeditious management of the disposition of our trial lists." citing Jannarone v. W.T. Co,, 65 N.J. Super. 472, 477 (App. Div. 1961). The defendants claimed that the waiver of trial in favor of the desire to go to binding arbitration, for a final determination, without an appeal, by the plaintiff was clear and unambiguous as evidenced by emails presented in evidence. There were benefits for the defendants to proceed forward with binding arbitration which were inherent which the defendants would lose if they were required to proceed with a trial before the court from economical, evidentiary, procedural and strategic perspectives. The defendants argued they were entitled to the benefits of its bargain, especially when the plaintiff, after agreeing, without justification or cause, simply no longer wished to honor the agreement.

The court granted the defendants' motion to enforce the settlement.

DEFENDANT'S SUMMARY JUDGMENT DISMISSAL – PREMISES LIABILITY – HAZARDOUS PREMISES – PLAINTIFF ARGUES DEFENDANT HOTEL ALLOWED DANGEROUS CONDITION TO EXIST ON ITS PREMISES AND DID NOT WARN PATRONS OF DANGER IN FORM OF POOL DECK SO HOT IT BURNED BOTTOMS OF PLAINTIFF'S FEET – ULCERATIONS, LESIONS, THIRD-DEGREE BURNS, CELLULITIS, EDEMA AND CHRONIC WOUNDS REQUIRING SURGICAL PROCEDURE ON BOTH FEET – DEFENDANTS DENY NOTICE OR BREACH OF ANY DUTY TO PLAINTIFF AND FILE MOTION FOR SUMMARY JUDGMENT ARGUING PLAINTIFF FAILED TO ESTABLISH PRIMA FACIE CASE AGAINST DEFENDANTS.

Passaic County, NJ

In this premises liability case, the plaintiff hotel guest asserted that the defendant hotel, casino, and spa failed to warn patrons of a dangerous condition in that the pool deck at the hotel became superheated in the summer sun and caused significant injury to the plaintiff's feet. The defendants denied negligence and argued that the plaintiff was at fault for his own injuries.

On July 30, 2019, the plaintiff was a guest at the defendant hotel, casino, and spa, located at One Borgata Way in Atlantic City, New Jersey. The defendant's hotel was a 38-story, boutique hotel connected to co-defendant's hotel, featuring indoor and outdoor pools, retail shops, meeting and event space, and guest suites. On the day in question, the plaintiff was at one of the defendant's outdoor pools. He proceeded to walk and stand around the deck surrounding the pool for a short period of time. Unexpectedly and without warning, the plaintiff noticed that the bottoms of both of his feet were bleeding.

After he returned to his hotel room, he decided to go to the emergency room where it was discovered that he had sustained serious and significant injuries to both feet. The plaintiff asserted that the defendants allowed the temperature of the pool deck to exceed safe levels and was thus responsible for the plaintiff's injuries. The plaintiff argued that the defendants knew that a hazardous condition existed prior to the time of the plaintiff's accident and failed to use reasonable care in remedying the situation or properly warning the plaintiff and other individuals walking and traversing the subject hot deck surface of the pool.

As a result of the incident, the plaintiff sustained ulcerations, lesions, third-degree burns, cellulitis, edema and chronic wounds requiring a surgical procedure. The plaintiff presented a physician's statement that the plaintiff's wounds were causally related to the subject incident at the defendant's pool deck and that the plaintiff will have permanent edema and residual susceptibility to re-ulceration due to his injury.

The defendants pointed to the plaintiff's 20-year history of diabetes and specific testimony that his physician had warned him that his condition could lead to issues with his feet such that he might have the inability to feel certain sensations or might have decreased sensation in his feet. The plaintiff admitted that, prior to the alleged incident; he was diagnosed with diabetic neuropathy. The defendants asserted that the plaintiff presented no proof of negligence. The defendants argued that they had no notice of a hazardous condition and disputed the causal relationship between the plaintiff's injuries and the pool deck.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 70% liability to the defendants and 30% to the plaintiff with gross damages of $28,000 reduced to $19,600 for plaintiff's comparative negligence.

The defendants moved for and were granted summary judgment and the plaintiff's case was dismissed.

REFERENCE

Kaiser vs. Borgata Hotel Casino & Spa, et al. Docket no. L-002314-21; Judge Vicki A. Citrino, 04-14-23.

Attorney for plaintiff: Peter J. Koulikourdis of Koulikourdis and Associates in Hackensack, NJ. Attorney for defendant: Victor P. Wasilauskas, III of Cooper Levenson, P.A. in Atlantic City, NJ.

COMMENTARY

In their motion for summary judgment, the defendants argued that the plaintiff presented no admissible evidence that the defendants were negligent. The defendants maintained that the plaintiff's claim failed because he could not show that the defendants created or had any notice, actual or constructive, of an alleged, identifiable dangerous condition. The plaintiff did not cite one fact showing that defen-

dants or any of their employees knew or should have known about some alleged dangerously hot pool deck surface in the area where the plaintiff walked. The mere presence and operation of an outdoor pool deck during a hot summer day, in and of itself, is not a dangerous condition of which the defendants knew or should have known. The defendants argued that the plaintiff did not possess a single fact that could support a conclusion by a factfinder that the defendants "should have known" of any alleged dangerous condition with regard to the pool deck.

The defendants noted that, in this matter, as in all matters involving a claim of negligence in which a dangerous condition is alleged, a sufficient factual basis is needed for a factfinder to conclude that a defendants created or had knowledge of the condition. The dangerous condition in this matter was certainly not a visible condition. Further, there was no evidence from the plaintiff or otherwise produced during discovery that showed that the defendants had any prior notice of any issues whatsoever with the pool deck surface or the operation of the pool deck, either on the date of the incident or on any prior date. There was no evidence before the court that the alleged danger to the plaintiff was open, obvious, or known to the defendants or any of their employees. The defendants had no reason, based upon the facts (or lack thereof) in the record, to expect that a patron with diabetes, such as the plaintiff, would suffer physical harm from walking barefoot on the outdoor pool deck due to some alleged superheating of the deck surface. Notably, the defendants argued, prior New Jersey case law held that "[t]he owner of a pool was under no duty to warn his social guest, who swam in the pool on 20 prior occasions, about the varying depths of the pool." Id. at 1172 (citing Tighe v. Peterson, 175 N.J. 240, 814 A.2d 1066 (2002). Assuming that a dangerous condition existed, there were no material facts that could be provided by the plaintiff showing that the defendants should have become aware, prior to learning of this unique incident, of the alleged pool deck condition.

For example, there was no evidence of prior complaints by patrons regarding the pool deck or prior similar claims of patrons burning their feet. Further, the defendants maintained, the plaintiff had no liability expert or medical expert and thus could not provide the admissible opinion testimony necessary to establish a prima facie case of negligence against the defendants. In his complaint, the plaintiff alleged that the defendants were negligent however he failed to present any evidence in support of his allegations. In particular, the defendants maintained, the plaintiff failed to demonstrate that the defendants created or had any notice of an alleged dangerous condition, that any of the defendants' actions or inactions breached a known duty owed to him, or that the defendants were the proximate cause of his incident and alleged injuries. The defendants maintained that no facts were elicited in discovery that the defendants failed to do something that they were legally required to do or did something they were prohibited from doing at the time of the subject incident. In addition, no facts were elicited during discovery that the defendants created or knew about any alleged dangerous condition before the plaintiff's alleged injury. The defendants held that the plaintiff could not meet the requirement to demonstrate a genuine issue of material fact and, thus, summary judgment was warranted.

The plaintiff's opposition to the motion argued that there were disputes of the material fact. The plaintiff pointed to the defendants' motion, wherein the defendants asserted that there was "no admissible, causal medical link between the Plaintiff's use of the outdoor pool deck and his claimed injuries." and further stated that "no expert report was produced." The plaintiff's expert report by Dr. Theodore Roberto, D.P.M., dated June 14, 2021, was served to the defendant's counsel during discovery. The report contains the doctor's summary of the findings that "in all medical probability and within a reasonable of medical certainty, that these pathologies are directly related to his injury which occurred in July 2019." Based on the expert's observations based on the objective medical evidence, the plaintiff's physician recommended the "need for surgical intervention" and opined that the plaintiff "will unfortunately have permanent edema and residual susceptibility to re-ulceration due to his injury." Contrary to the defendants' inferences or assertions, the plaintiff was never given any special precautions regarding his feet due to the neuropathy or diabetic issues. Given the lack of any special precautions regarding his feet due to certain existing medical conditions, the defendants' assertions that the plaintiff should have taken additional precautions based on medical advice or recommendations for these preexisting conditions were without merit.

Further, any preexisting medical conditions that the plaintiff may have had prior to the date of the accident did not negate or invalidate the defendants' duty of care. The defendants' duty of care extended to warning its guests and patrons of the potentially dangerous condition, including any objects or surface materials that are capable of transmitting and radiating extreme heat. Further, this duty extended to any "hidden defects." Notwithstanding these "hidden" defects or dangers, there were no warning signs at the pool deck on July 30, 2019. It was common and reasonable to expect the guests and patrons of the hotel to walk around the pool deck. However, given the scorching heat during the peak summer day (upwards of 98 degrees), the defendants had a duty to protect its invitees from dangerous conditions on their property and warn them of any "hidden" defects or dangers. As such, the duty rested with the defendants to regularly inspect their property to ensure the premises were free of defects and safe for its guests and patrons.

The plaintiff held that it was abundantly clear that the defendants failed in their duty because the plaintiff sustained severe injuries while being on the premises as a guest. Moreover, the extreme hot surface temperature of the pool deck was the sole contributing factor to the plaintiff's injuries. The plaintiff concluded that, having established that the defendants breached their duty; their negligence was the proximate cause; and that the plaintiff sustained serious and permanent injuries, the plaintiff did establish a prima facie showing to overcome a Motion Summary Judgment. The plaintiff requested that the defendants' Motion for Summary Judgment be denied in its entirety.

$1,050,000 VERDICT – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – PLAINTIFF CLAIMS DEFENDANT DRIVER NEGLIGENT IN FAILING TO OBEY STOP SIGN AND CO-DEFENDANT OWNER OF COMMERCIAL TRUCK BEING DRIVEN BY DEFENDANT LIABLE FOR ACTIONS OF DEFENDANT DRIVER – FRACTURED RIGHT WRIST; COMPLEX REGIONAL PAIN SYNDROME IN RIGHT WRIST AND HAND AND RIGHT SHOULDER IMPINGEMENT – 2 SURGERIES FOR WRIST: CLOSED REDUCTION AND ORIF WITH PLATE AND 3 GANGLION BLOCK INJECTIONS FOR SHOULDER – PERMANENT ATROPHY OF RIGHT ARM.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver, driving the co-defendant's commercial truck, ran a stop sign and struck the plaintiff's vehicle with such force that it caused significant, permanent injury. The defendants denied negligence and alleged that the plaintiff had her right blinker on, but instead of making a right, went straight as the defendant driver was making a left turn, whereupon the vehicles collided.

On June 10, 2019, the plaintiff was traveling eastbound on Stults Road through the intersection of Stults Road and Herrod Boulevard in South Brunswick. The defendant was operating a commercial truck owned by the co-defendant trucking company traveling southbound on Herrod Boulevard when it improperly pulled out from a stop sign and struck the plaintiff's vehicle on the driver's side. The plaintiff maintained that the defendant driver was negligent in failing to obey traffic controls at the intersection and that the defendant owner of the truck was responsible for the actions of its employee driver.

The plaintiff sustained a fractured right wrist that required 2 surgeries including closed reduction and then open reduction with internal fixation with plate. The plaintiff developed complex regional pain syndrome in the right wrist and hand. The plaintiff also suffered right shoulder impingement for which she had 3 ganglion block injections. The plaintiff claimed permanent atrophy of the right arm. The plaintiff made no lost wage claim or claim for outstanding medical bills. The defendants' IME opined that the plaintiff had excellent results from the ORIF procedure and only had mild functional limitations in the right wrist, hand and shoulder.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $650,000. The arbitration was not confirmed and the matter proceeded to trial.

The jury awarded damages in the amount of $1,142,932 broken down as follows: $1,050,000 in damages and $92,932 in prejudgment interest.

REFERENCE

Kiln vs. Shiwratan. Docket no. L -004101-20; Judge Aravind Aithal, 05-05-23.

Attorney for plaintiff: Mark V. Kuminski of Levinson Axelrod in Jamesburg, NJ. Attorney for defendant: Susan A. Lawless of Florio, Perrucci, Steinhardt, Cappelli, Tipton & Taylor, LLC in Bethlehem, PA.

$750,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – HEAD-ON COLLISION – PLAINTIFF'S VEHICLE STRUCK HEAD-ON BY DEFENDANT'S VEHICLE WHEN DEFENDANT ATTEMPTS TO TURN LEFT OUT OF PARKING LOT – LUMBAR DISC HERNIATION AND L5-S1 LUMBAR RADICULOPATHY – EPIDURAL INJECTIONS.

Middlesex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck head-on by the defendant's vehicle when the defendant attempted to make a left turn into traffic from a parking lot. As a result of the defendant's negligence, the plaintiff sustained injuries. The defendant generally denied all allegations of negligence.

On December 13, 2018, the plaintiff's vehicle was traveling southbound in the left lane on St. George's Avenue in Woodbridge, New Jersey. At this time, the defendant's vehicle was attempting to pull out of a store parking lot, which was located on the southbound side of St. George's Avenue. At the time of the incident, the defendant's vehicle pulled out of the parking lot in an attempt to cross the plaintiff's lane of travel and turn left into traffic in the northbound lane. However, when she attempted to turn left, the defendant pulled out directly in front of the plaintiff's vehicle, causing the plaintiff's vehicle and the defendant's vehicle to collide head-on.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to obey traffic conditions, failing to wait for clearance before making a left turn, failing to safely and properly merge into traffic, failing to yield, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehi-

cle. Consequently, the plaintiff sustained injuries, including a lumbar disc herniation at L5-S1, as well as lumbar radiculopathy, both of which required epidural injections.

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

REFERENCE

Rodriguez Kimberly vs. Galdi Mariselle. Docket no. L003116-20; Judge Bruce Kaplan, 10-17-22.

Attorney for plaintiff: Nicholas J. Leonardis of Stathis & Leonardis in Edison, NJ. Attorney for defendant: Christopher W. Ferraro of Cooper Maren Nitsberg Voss & DeCoursey in Iselin, NJ.

COMMENTARY

Following the accident in this case, the plaintiff continued to experience severe back pain related to her spinal injuries. An expert physician for the plaintiff testified that despite the administration of three epidural injections to her lumbar spine, the plaintiff would likely still need to undergo surgery for her back pain in the future. The physician testified that the plaintiff would likely need to undergo both a decompression procedure, as well as a discectomy procedure. The settlement amount in this case was likely determined by the severity of the plaintiff's pain, as well as her need for future medical care.

$850,000 RECOVERY – LEAD POISONING – INFANT PLAINTIFF LIVES AT PROPERTY OWNED BY 2 SETS OF OWNERS OVER COURSE OF YEAR WHILE 2-3 YEARS OLD – PLAINTIFF CONTENDS DEFENDANTS KNEW OF EXISTENCE OF LEAD PAINT AND FAILED IN DUTY TO KEEP PROPERTY IN REASONABLY SAFE CONDITION, IN GOOD REPAIR, AND FREE FROM PEELING, AND DETERIORATED LEAD-BASED PAINT IN COMPLIANCE WITH GOVERNMENT REGULATIONS – PERMANENT ATTENTION DEFICIT SYNDROME; ADHD; BRAIN DAMAGE; COGNITIVE DISABILITIES; DEVELOPMENTAL DELAY; DECREASE IN IQ AND LEARNING DISABILITY.

Essex County, NJ

In this case, the plaintiff, a 2-year-old boy, asserted that 2 sets of defendant property owners failed to abate lead paint from their property where the plaintiff resided from age 2 to age 3 and where he was exposed to lead paint resulting in lead poisoning and the cognitive effects of being exposed. Both sets of defendants, the owners during the first period of time that the plaintiff lived in the building and the owners during the second period of time that the plaintiff lived in the building, denied negligence.

During the time period from May 2010 to July 2011, the infant plaintiff resided in an apartment at the defendants' property at 17 Summit Street in East Orange, New Jersey. 2 different sets of owners owned and maintained the property during the period of time that the plaintiff lived there. The first defendant owners of the property controlled, managed, operated and maintained the property from August 2003 to April 2011. The second defendant owners, a realty management company and 2 individuals, owned the property from April 2011 thereafter. The plaintiff alleged that, during all the time while the infant plaintiff resided at the property, the apartment contained peeling, chipped, flaking and deteriorated lead-based paint on interior and exterior walls, windows, window sills, ceilings, doors, baseboards and other accessible areas and lead-based paint dust throughout the apartment.

The property was constructed before interior lead-based paint was banned in 1978. The plaintiff argued that all the defendants had actual or constructive knowledge of the existence of the lead-based paint and its hazards and knew or should have known that there was a high degree of risk that lead paint and lead-based paint dust hazards and danger existed at the property prior to and during the infant plaintiff's residency. The plaintiff asserted that the defendants failed in their duty to keep the property in a reasonably safe and proper condition, in good repair, and free from peeling, cracked, chipping, flaking and deteriorated lead-based paint in compliance with federal, state and local regulations. The plaintiff maintained that the defendants failed to remove or remediate the dangerous and hazardous condition from the property to protect residents from exposure.

On June 3, 2011, the City of East Orange Department of Health & Human Services inspected the property and reported that multiple areas on the property contained significant amounts of lead-based paint that exceeded federal, state and local regulatory limits and ordered the defendants to abate the lead paint hazards. Despite receiving the order to abate the hazards, the defendants failed to abate the premises in a proper and timely manner, thereby further contributing and causing the infant plaintiff to sustain further irreparable lead exposure injuries.

The plaintiff claimed that, as a result of exposure to lead-based paint, he was diagnosed with lead poisoning having an elevated blood lead level at or above 31 mcg/dcl, which was the direct result of his exposure to, ingestion of, or inhalation of, hazardous lead paint or lead-based paint dust at the defendants' property. The plaintiff claimed the following injuries: attention deficit syndrome; ADHD; brain damage; cognitive disabilities; developmental delay; decrease in IQ; learning disability; acute lead poisoning; lead intoxication; erythrocyte protoporphyrins in the blood and potential future injuries yet to be discovered.

The plaintiff asserted that his injuries are permanent and that he will continue to suffer permanent and irreversible effects of lead poisoning that will impede his ability to interact socially with others; engage in social relationships; be employable or reach his full potential and earning capacity. The defendants asserted that the plaintiff's parents were responsible for contributing to the plaintiff's exposure to such a degree that it barred their recovery. Each set of owners also claimed the other was responsible for failing to abate the lead paint.

The parties settled the matter prior to trial in the gross amount of $850,000 less $205,851 in attorney fees and $26,598 in costs and disbursements. The plaintiff's recovery was structured with a period certain annuity and additional guaranteed lump sums when the plaintiff reaches the ages of 18, 21, and 25.

REFERENCE

Cummings vs. Clifridge Associates, LLC, et al. Docket no. L-004043-18; Judge Annette Scoca, 05-22-23.

Attorney for plaintiff: Anna Kull of Levy Konigsberg, LLP in Lawrenceville, NJ. Attorney for defendant first owners of the property: Kevin J. Conyngham of Zimmerer, Murray, Conyngham & Kunzier in Saddle Brook, NJ. Attorney for defendant first owners of the property: Christopher Joseph Hoare of Capehart Scatchard in Mt. Laurel, NJ. Attorney for defendant second owners of the property: Edward J. DePascale of McElroy, Deutsch, Mulvaney & Carpenter, LLP in Morristown, NJ. Attorney for defendant second owners of the property: Joseph F Herbert of Hall Booth Smith, P.C. in Paramus, NJ.

$293,800 VERDICT – BREACH OF CONSTRUCTION CONTRACT – PLAINTIFF CLAIMED DEFENDANT BREACHED CONTRACT AND WARRANTY FOR INSTALLATION OF CEILING AND LIGHTING SYSTEM AT PLAINTIFF'S NEWLY CONSTRUCTED TENNIS FACILITY, CAUSING COLLAPSE OF CEILING AND RESULTING IN LOST BUSINESS AT FACILITY.

Union County, NJ

In this breach of contract case, the plaintiff, a tennis center, asserted that the defendant lighting and ceiling contractor failed to perform under 2 contracts between the parties and breached the agreements by its actions. The plaintiff also claimed breach of the implied covenant of good faith and fair dealing, violations of the New Jersey Consumer Fraud Act, unjust enrichment, breach of warranty, and negligence. The defendant denied the plaintiff's claims and argued that it did not breach the contracts, but rather that the plaintiff misrepresented the design of the structure which made the defendant's systems inappropriate for the facility.

In 2016, the plaintiff tennis center decided to construct two new indoor clay tennis courts at its facility in Mountainside, New Jersey. The plaintiff wished to construct the new clay courts in a steel reinforced fabric structure, as was common at similar facilities. The plaintiff retained companies to provide the structural steel and fabric covering as well as the engineering required for municipal approval. The plaintiff solicited the defendant to install a reflective lighting and ceiling system consisting of lights that shine upward towards the companion ceiling system, as opposed to traditional lighting that shines downward onto the courts. This type of reflective lighting illuminates the tennis courts.

The plaintiff maintained that it chose the defendant because their website claimed they had over 25 years of experience in the tennis lighting industry and operated 11 tennis clubs and athletic facilities with innovative lighting solutions. The defendant represented to the plaintiff that it could adequately install its lighting system in the plaintiff's proposed structure. Between September and October 2016, the defendant presented the plaintiff with two separate contracts for the lighting and ceiling system. Both contracts required the plaintiff to pay 25% upon execution and the balance upon completion. The plaintiff contended that, during the performance of the contracts, the defendant failed to identify various issues regarding the ceiling system and continued to represent that it could adequately install the system.

The defendant purported to complete the system in the summer of 2017. Upon completion, the plaintiff paid the balance of the contract payments, in total, $59,592, after which, the system began to fail. The plaintiff claimed that pieces of the ceiling tore, causing insulation to fall on the tennis courts. The plaintiff believed the defendant used cheaper, inadequate and non-waterproof insulation to save itself money and that the defendant knew or should have known that the insulation was not adequate for the project. The issues worsened as the temperature dropped during the fall and winter of 2017 with condensation forming and causing the ceiling system to collapse. The plaintiff maintained that the defendant failed to disclose that it had never installed its ceiling system in a steel and fabric structure like the plaintiff's facility.

The plaintiff contended that the defendant negligently failed to properly repair or remediate the issues with the ceiling system per the warranty of the ceiling's materials and workmanship. The plaintiff maintained that the defendant did not perform the proper and professional installations to which it agreed under contract. The failed system caused direct damage to the plaintiff's business operations. The plaintiff claimed decreased season-long memberships and a deprivation of expected lesson and rental revenue because of the difficulty in using the facility due to the defendant's conduct. The plaintiff sought a refund of the contract price of $29,792 for the ceiling

system as well as $285,691 which represented the replacement/repair costs. The plaintiff also claimed treble damages for violation of consumer fraud statutes for a total damage claim of $1,514,481.

The defendant held that the plaintiff failed to use the services of an architect, engineer, general contractor or construction manager for the construction of the structure and failed to have a vapor barrier installed which was necessary for such a structure. The defendant denied that it represented to the plaintiff that it could install its lighting system and separate ceiling system in the plaintiff's structure because the defendant was unaware that the structure would consist of clay tennis courts or that the steel reinforced fabric structure would not have a foundation. The defendant also denied that the complaints made by the plaintiff were covered under the warranty in the agreements. However, the defendant still returned to the plaintiff's facility on multiple occasions in a good-faith effort to attempt to resolve the issues, even though they did not arise out of issues with the ceiling system or the separate lighting system installed by the defendant.

The defendant argued that it had no obligation to remedy the circumstances and ensuing damage or that any of it was covered under the warranty. The defendant argued that the failure of the system had nothing to do with the defendant's system or installation but was caused by the fact that the plaintiff's structure had a dirt surface with allowed water to pool and condense within the structure, The defendant admitted that it received $59,592 from the plaintiff but denied that it had not performed the proper and professional installations which it agreed to perform.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found no cause of action and returned an arbitration opinion in favor of the defendant.

The jury found in favor of the plaintiff and awarded damages in the amount of $293,800.

REFERENCE

Mountainside Real Estate Associates, LLC vs. Sports Interiors, Inc. Docket no. L-001643-18; Judge Daniel R. Lindemann, 05-16-23.

Attorneys for plaintiff: Harris S. Freier and Michael K. Fortunato of Genova Burns, LLC in Newark, NJ. Attorney for defendant: Glenn R. Moran of Leary, Bride, Tinker & Moran in Cedar Knolls, NJ.

COMMENTARY

Following the verdict, the defendant moved for judgment notwithstanding the verdict or new trial. A critical factual issue in the case was whether there were building codes that applied to the plaintiff's fabric structure that plaintiff did not comply with, resulting in the severe condensation problem and damage to the ceiling liner and insulation. The plaintiff's expert engineer testified that no such codes existed because the fabric structure was a temporary one. The defendant's expert engineer testified that the plaintiff's expert was incorrect. He elaborated that temporary structures are not conditioned spaces (heat and/or air conditioning) and are not intended to remain in place for an extended time. He also testified that any structure that has a "crawl space" and/or "attic" was required to meet building codes involving condensation to prevent the undermining of the structure itself and component parts. The defendant maintained that this was precisely what caused the plaintiff's problems and its claimed damages.

The plaintiff's witness admitted in cross examination that he and his partners contemplated the structure being in place for many years to recoup the nearly $700,000 investment they made and, less than six months after the red clay courts opened in the structure, 2 furnaces were added to provide heat in the cold weather months. In addition to the overwhelming evidence presented that the plaintiff's facility was not a temporary structure and, therefore, there was no support for the experts opinions that no building codes applied to the fabric structure, the fact that this structure was 240'x57'x35' and made of 27 galvanized steel trusses all with cross-bracing as well as the weight of the exterior cover to be occupied 12 months a year by numerous individuals and groups, led to the conclusion that building codes applied to it for the safety of all occupants and surrounding neighbors. In view of what the defendant concluded was a total lack of support for the plaintiff's expert's opinion that no building codes applied to the fabric structure, it "clearly and convincingly appears that" the jury's verdict was a "miscarriage of justice under the law." per Barber v. Shoprite of Englewood, 406 N.J. Super. 32, 51-52 (App. Div.), certif. den. 200 N.J. 210 (2009) and Judgment Notwithstanding the Verdict was required in the interest of justice.

The defendant also argued that the plaintiff did not prove by a preponderance of the evidence that the defendant made a misrepresentation related to the ceiling liner (by a vote of 8 to 0) on Jury Question No. 1. Although the Jury Verdict Form instructed the jury not to answer Jury Questions Nos. 2 and 3 if they answered Jury Question No. 1 "No" they did so anyway and answered no to ascertainable loss and the amount of such loss. During deliberation, the jury asked 3 questions of the court. The first two questions asked: 1. "What is the definition of 'misrepresentation'?" The court answered that question by reading the jury charge definition of "misrepresentation" to the jury four times. 2. "Is "ceiling liner" including insulation as a representation of the 'ceiling liner system'" to which the court requested clarification of the question. The jury returned to the jury room and returned with the following "In questions 1 through 6 of the verdict sheet the term 'ceiling liner' is used. What is the definition of 'ceiling liner." The court answered the question saying ceiling liner was the white material that covers the ceiling.

Prior to trial, the defendant made several pre-trial and/or in limine motions, all of which were denied, including: 1. To bar the testimony of plaintiff's expert as a net opinion. That motion was denied after an N.J.R.E. 104 Hearing. 2. To bar opinion testimony from the plaintiff's expert regarding poor workmanship by the defendant that caused or contributed to the damages alleged by the plaintiff. 3. To dismiss the plaintiff's lost profits claim pursuant to the New Business Rule because the indoor red clay courts were a new business having no basis upon which future lost profits could be reasonably determined. 4. For a ruling as a matter of law and lack of proof of evidence that the defendant acted with knowledge and the required element of intent to support plaintiff's Consumer Fraud Act claim of "Omission." In addition to the pre-trial and in limine motions, several objections were made during the trial that the defendant argued warranted a Judgment Notwithstanding the Verdict or a new trial. They included: 1. At the conclusion of counsel for plaintiff's summation, he exhorted the jury to "send a message" to contractors who perform work in New Jersey that they will be held accountable for their actions. There was an

objection to that statement and the court gave the jury an instruction regarding that "message" saying this is a dispute between the 2 parties only.

Although that instruction was given to the jury, the defendant argued that the prejudice from the jury hearing the argument was unduly prejudicial to the defendant and warranted a Judgment Notwithstanding the Verdict or a new trial. 2. The plaintiff introduced evidence of damages including the cost of replacing the liners and insulation in the amount of $167,656 following tree damage to the fabric structure in August of 2020. Although the plaintiff's witness testified that such sum was paid by the insurance company, he also said that the plaintiff must pay the insurance company back to eliminate the increase in its insurance premiums. The defendant argued that the subject case was not filed as a subrogation action on behalf of the plaintiff's insurer. If the plaintiff was permitted to retain the cost of replacing the liner and insulation, it would receive a "double recovery" to which it was not entitled.

The plaintiff submitted a brief in opposition to the defendant's Motion for Judgment Notwithstanding the Verdict or a new trial. The plaintiff asserted that the defendant's arguments failed to satisfy the substantial burden required to demonstrate that it was entitled to JNOV or a new trial. The plaintiff maintained that the defendant appeared to ask the court to usurp the function of the jury, by ignoring the evidence presented by the plaintiff at trial as to key legal issues, simply because the defendant disagreed with the jury's ultimate conclusion. The plaintiff argued that that was not proper under the law, and did not warrant JNOV. The plaintiff argued that the defendant further sought a new trial as to matters addressed, and ruled upon by the court, in its sound discretion, again, on the basis that the defendant disagreed with the court's rulings. The plaintiff concluded that the defendant's motion was insufficient to warrant disturbing the jury's verdict.

The court denied the defendant's motion.

Verdicts By Category

CONSUMER FRAUD

$20,000 RECOVERY

Consumer Fraud – Breach of contract – Violation of Consumer Fraud Act – Plaintiff claims defendant former fiancé owed her $29,619 in unpaid loans made over course of 6 years and co-defendant jeweler sold ring belonging to plaintiff and gave funds to defendant in violation of Consumer Fraud Act.

Middlesex County, NJ

In this breach of contract and Consumer Fraud Act case, the plaintiff asserted that the defendant individual and co-defendant jeweler sold a ring and kept the proceeds which were, the plaintiff contended, owed to her to reimburse loans made to the defendant. The defendant fiancé denied the plaintiff's claims and argued that the plaintiff was paid the money owed to her by the defendant or received fair value for such payments.

In the 6 years preceding the filing of this complaint, the plaintiff loaned to the defendant various sums of money. The plaintiff contended that there remained a balance of $29,619 due to the plaintiff from those loans. The defendant last made a payment on September 30, 2021. Despite the plaintiff's demands, and the defendant's efforts to comply with an agreed repayment schedule, the defendant did not pay back the money loaned. In an attempt to resolve the issue, plaintiff took a valuable ring, a gift that the defendant had given her to a jeweler to see if proceeds from that sale would satisfy the defendant's debt. The plaintiff took the ring to the defendant jewelers to have the ring exposed for sale. The co-defendant jeweler turned the ring over to the defendant debtor, who absconded with it, knowing it did not belong to him.

The plaintiff maintained that, while holding the ring, the co-defendant had conversations with the plaintiff about the status of the ring and what might be an acceptable price and that the co-defendant understood that it was to sell the ring for the benefit of both the plaintiff and the defendant. The plaintiff charged that the co-defendant sold the ring to a third party and delivered the proceeds to the defendant without authorization from the plaintiff in violation of the Consumer Fraud Act.

The defendant fiancé asserted that the plaintiff had no right to sell the ring because it was an engagement ring and belonged to him once the engagement was broken. The co-defendant jeweler asserted that, on July 19, 2019, the jeweler sold an engagement ring to the defendant individual who advised the co-defendant that he intended to propose to the plaintiff. Thereafter, the co-defendant was advised by the defendant that the engagement was broken off and that the plaintiff would deliver the ring to the co-defendant at his behest as the defendant intended to sell the ring back to the co-defendant jeweler. The co-defendant maintained that all negotiations from that point on were between the defendant and co-defendant alone as the co-defendant was advised by the defendant that the defendant was the only owner of the ring since it had been given to the plaintiff in contemplation of marriage then returned by her when she called the engagement off. The co-defendant argued that it had no duty whatsoever to the plaintiff as the plaintiff did not own the ring and there was no sufficient nexus between the 2 for the plaintiff to bring a claim against the co-defendant.

The co-defendant eventually bought the ring from the defendant for $11,000 and later sold it to an unrelated party for $11,500. The defendant fiancé settled with the plaintiff prior to trial in the amount of $5,000 and the matter proceeded to trial only as to the co-defendant jeweler.

The jury found against the co-defendant jeweler and awarded the plaintiff damages in the amount of $5,000, trebled pursuant to the Consumer Fraud Act, for a total award of $15,000.

REFERENCE

Perricho vs. Paglio, et al. Docket no. L-006687-21; Judge Joseph L. Rea, 05-16-23.

Attorney for plaintiff: Edward Hanratty of The Law Office of Edward Hanratty in Freehold, NJ. Attorney for defendant jeweler: Frederic C. Goetz of Frederic C. Goetz, Esq., LLC in Hackensack, NJ. Attorney for defendant former fiancé: Eugene Killian, Jr. of The Killian Firm, P.C. in Iselin, NJ.

DAYCARE CENTER NEGLIGENCE

$30,000 GROSS RECOVERY

Daycare center negligence – Negligent supervision – Plaintiff asserts defendant daycare negligent in supervision of children during pick-up time such that 2-½-year-old plaintiff's finger closed in door frame, causing serious injury – Avulsion of fingertip and fingernail of right thumb – Plaintiff traumatized and fearful of returning to defendant daycare resulting in mother resigning job to stay home with plaintiff.

Ocean County, NJ

In this daycare negligence case, the plaintiff, a 2-½-year-old girl, asserted that the defendant day care facility failed to keep the plaintiff safe in its care, resulting in an injury that caused significant, permanent injury. The defendant denied negligence and argued that the plaintiff was injured due to her own negligence and that the plaintiff parents voluntarily assumed the risk of accidental injury in a daycare setting.

On April 27, 2022, the infant plaintiff was in the care and custody of the defendant's day care facility located at 2 Hospital Drive in Plainsboro Township. The plaintiff was able to put her hand in a door frame and no one from the defendant day care moved her away from the danger. The plaintiff's fingertip was closed in the frame of the door causing her significant injury. The plaintiff maintained that the incident happened during the later afternoon, busy, pick-up time and that the defendant should have provided extra supervision during that time to avoid the type of accident that happened to the plaintiff. The plaintiff contended that the defendant negligently failed to supervise children, including the plaintiff, in its custody and that the defendant's negligence was a direct cause of injury to the plaintiff.

As a result of the incident, the plaintiff sustained avulsion of the fingertip and fingernail of the plaintiff's right thumb. The plaintiff claimed that the injury caused significant pain and suffering and that the plaintiff was traumatized and fearful about returning to the defendant daycare. The plaintiff mother was therefore compelled to stay at home with her daughter and ultimately resigned from her job to do so.

The parties settled the matter prior to trial in the amount of $30,000 broken down as follows: $7,409 in attorney fees; $363 in costs and disbursements; $2,017 in medical expenses and $20,210 in net damages to the minor plaintiff.

REFERENCE

Gan, et al. vs. Discovery Years Child Learning Center. Docket no. L-006051-22; Judge Gary K. Wolinetz, 05-18-23.

Attorney for plaintiff: Edward P. Shamy, Jr., Esq. in North Brunswick, NJ. Attorney for defendant: Brielle K. Winkler of Marshall Dennehey in Mt. Laurel, NJ.

DOG ATTACK

$200,000 RECOVERY

Dog attack – 10-year-old plaintiff at riding stable when defendant's dog attacks her – Bite wounds to face and left hand – Permanent scarring; emotional distress and fear – Non-binding arbitration assigns 100% liability to defendant dog owner with damages of $200,000.

Somerset County, NJ

In this dog bite case, the plaintiff, a 10-year-old girl, asserted that the defendant dog owner failed to control her dog and that the dog bit the plaintiff. The plaintiff also brought suit against the co-defendant premises where the attack took place, claiming the co-defendant riding stable allowed the dog on its premises. The defendant dog owner and co-defendant riding stable both denied negligence.

On October 8, 2020 the minor plaintiff was legally on the premises of the co-defendant riding stable at 107 West Woodschurch Road in Flemington, New Jersey. The defendant dog owner was on the same premises with her dog. The plaintiff contended that the defendant negligently failed to secure, confine, restrain and control her dog to prevent the dog from biting the plaintiff. As the plaintiff was walking on the co-defendant premises, the defendant's dog, suddenly and without provocation, came upon the minor plaintiff and attacked her. The plaintiff alleged that the attack resulted in permanent injuries.

As a result of the attack, the plaintiff sustained bite injuries to her face and left hand. The plaintiff was treated for her wounds and was left with a 1 cm scar on her upper lip and pigmentation lacerations to nose, left cheek, and left ring finger. The plaintiff claimed pain and suffering, facial scarring and emotional distress and fear.

The defendant dog owner argued that the damage allegedly sustained by the plaintiff was caused solely by her own negligence in approaching the dog that was not known to her. The defendant dog owner also made a cross claim for indemnification against the co-defendant. The co-defendant stable asserted that

the defendant dog owner and the plaintiff were responsible for the circumstances of the attack and that the defendant had no duty and was not negligent in any way.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant dog owner and 0% to defendant riding stable with damages of $200,000. Following arbitration and prior to trial, the plaintiff settled with the defendant dog owner in the amount of $200,000 broken down as follows: $51,734 in attorney fees; $1,342 in costs; $16,555 to the plaintiff mother as her individual net settlement proceeds and $130,370 in net damages to the minor plaintiff.

REFERENCE

Capriglione vs. Maeder, et al. Docket no. L-000905-21; Judge Kevin M. Shanahan, 05-16-23.

Attorney for plaintiff: Stewart M. Levis of Berkowitz, Lichstein, Kuritsky, Giasullo & Gross, LLC in Roseland, NJ. Attorney for defendant dog owner: Andrew M. Horun of Gregory P. Helfrich & Associates in Summit, NJ. Attorney for defendant riding stable: Lane M. Ferdinand of The Law Offices of Lane M. Ferdinand in Springfield, NJ.

$150,000 RECOVERY

Dog attack – Minor plaintiff attacked by defendants' pit bull on defendant store premises – Extensive bite wounds – Hospitalization and extensive plastic surgery procedures – Significant, permanent scarring; pain and suffering and emotional and mental distress.

Cumberland County, NJ

In this dog attack case, the minor plaintiff asserted that the defendants' dog attacked her on the co-defendant retail premises causing significant, permanent injury. The defendant dog owners filed an appearance but did not answer the plaintiff's claims. The co-defendant rental company argued that it did not permit the dog to run loose on the premises and was not aware of the propensities of the dog or its being unrestrained at the time of the attack.

On September 6, 2020, the minor plaintiff was with her parents at the co-defendant equipment rental store located at 1044 West Landis Avenue in Vineland. The defendants were on the premises with their pit bull breed dog. The plaintiff contended that the defendants' dog, suddenly, without warning or provocation, attacked the minor plaintiff.

The plaintiff contended that the defendants knew or had reason to know that their dog had vicious propensities and were careless and negligent in owning a vicious animal; failing to restrain and control the dog; failing to protect others from attacks by the dog and failure to warn the plaintiff of the danger presented by the animal. The plaintiff maintained that the co-defendant shop negligently allowed the defendants to bring a vicious animal on their premises; allowed the defendants' dog to run at large on the premises; and, thus, permitted a dangerous condition to exist on their premises.

As a result of the attack, the plaintiff was rushed to the hospital where she was kept overnight and received treatment for her wounds. She then followed up with several plastic surgery appointments to mitigate scarring. Despite all of her treatment, the plaintiff was left with extensive, permanent scarring; pain and suffering and emotional and mental distress. The plaintiff presented photos of her extensive scarring and a statement from her treating plastic surgeon that the scars could not be fully mitigated and there would remain permanent scarring due to the attack. The plaintiff alleged that the attack resulted in permanent injuries and emotional trauma. The co-defendant maintained that the defendant owners of the dog were solely responsible for the plaintiff's damages.

The parties settled the matter prior to trial in the amount of $150,000 with the defendant dog owners paying $125,000 of the settlement total and the co-defendant rental store paying $25,000. The settlement was broken down as follows: $37,395 in attorney fees, $420 in costs and disbursements and $112,185 in net damages to the minor plaintiff.

REFERENCE

Jones, et al. vs. Foster, et al. Docket no. L-000148-23; Judge James R. Swift, 05-18-23.

Attorney for plaintiff: Henry J. Kowalski, III of Rone & Kowalski in Milmay, NJ. Attorney for defendant rental company: Jeffrey S. Craig of Cockerill, Craig & Moore, LLC in Woodbury, NJ. Attorney for defendant dog owners: Janet L. Pisansky of Burke & Potenza, P.A. in Parsippany, NJ.

INSURANCE OBLIGATION

$15,000 RECOVERY

Insurance obligation – Auto/pedestrian collision – 7-year-old plaintiff struck by phantom vehicle in crosswalk – Pelvic fracture, concussion, laceration of scalp and facial abrasions – Orthopedic surgery; sutures and use of walker.

Somerset County, NJ

In this case, the plaintiff, a 7-year-old boy, asserted that an unknown driver struck the plaintiff pedestrian with such force that it caused significant, permanent injury. The defendant filed a notice of appearance and then settled with the plaintiff.

On October 31, 2022, the minor plaintiff was a pedestrian who was struck by a phantom vehicle that left the scene of the accident. The plaintiff was crossing Mountain Avenue in North Plainfield and was in the crosswalk when he was struck by the unknown driver. The defendant was the uninsured motorist insurance carrier for the plaintiff's parents. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained a pelvic fracture, a concussion, and a laceration of his scalp with facial abrasions. The plaintiff treated with orthopedic surgery for his hip; sutures and required a walker due to his hip injury. The plaintiff continued to treat with a neurologist for intermittent headaches and ongoing neck pain.

The parties settled the matter prior to trial in the amount of $15,000 broken down as follows: $3,644 in attorney fees; $425 in costs and disbursements; $214 in medical expenses and $10,717 in net damages to the minor plaintiff.

REFERENCE

Jones vs. Esurance Insurance Company of New Jersey. Docket no. L-000209-23; Judge Kevin M. Shanahan, 05-09-23.

Attorney for plaintiff: Mitchell H. Portnoi of The Law Office of Mitchell H. Portnoi, P.C. in Mountainside, NJ. Attorney for defendant: Regina D. Geise of Law Offices of Pamela D. Hargrove in Clark, NJ.

$12,159 RECOVERY

Insurance obligation – Auto subrogation claim – T-bone collision – Plaintiff's insured backing into driveway when vehicle struck on side by defendant intoxicated driver traveling at high rate of speed – Plaintiff seeks reimbursement for property damages paid to insured in amount of $19,306.

Monmouth County, NJ

In this auto subrogation claim for property damage, the defendant was intoxicated and struck the side of the plaintiff's insured's vehicle as he backed into his driveway. The defendant argued that the plaintiff failed to yield to oncoming traffic.

On October 6, 2020, while operating her motor vehicle in Union Beach, the defendant traveled on Pine Street at an excessive rate of speed and inattentive manner causing her to strike the plaintiff's insured's motor vehicle, as the plaintiff's insured was backing into his driveway, causing extensive property damage to his vehicle. The defendant had consumed alcoholic beverages on the day of the incident and prior to the time of the accident. At the time of the accident, the defendant had a Blood Alcohol Concentration of.08 percent or greater. The defendant was convicted of driving while intoxicated under N.J.S.A. 39:4-50 as a result of her operation of a motor vehicle during this incident.

The plaintiff maintained that the accident was a direct and proximate result of the defendant's negligence, carelessness, recklessness and other liability-producing conduct. Pursuant to the insurance policy the plaintiff provided to the insured, the plaintiff incurred and paid expense and other damages on behalf of its insured. The plaintiff sought reimbursement for the damages caused by the defendant that the plaintiff paid under the insured's policy in the amount of $19,306. The defendant denied negligence and argued that the plaintiff's insured was at fault for backing into the driveway without ascertaining that the way was clear to do so and that the defendant had the right-of-way when traveling down the street.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $19,306. Following arbitration and prior to trial, the parties settled for $12,159 with the defendant's insurer agreeing to pay the policy limit of $4,159 and the defendant agreeing to pay $8,000.

REFERENCE

New Jersey Manufacturers Insurance Co. vs. Newrock. Docket no. L -003490-21; Judge Kathleen A. Sheedy, 06-27-23.

Attorney for plaintiff: Robert W. Allen of Gluck & Allen, LLC in Toms River, NJ. Attorney for defendant: Ryan W. Kelly of Martin Gunn & Martin, P.A. in Westmont, NJ.

LANDLORD NEGLIGENCE

$75,000 VERDICT

Landlord negligence – Plaintiff trips and falls over loose bricks near entrance to her residence – Left bimalleolar ankle fracture – Surgery required.

Bergen County, NJ

In this action, the plaintiff tripped and fell over several loose or broken bricks near the entrance to her residence casu9ing her to sustain injuries. The defendants generally denied all allegations of negligence.

On November 24, 2019, the plaintiff was lawfully attempting to enter her residence, located on the premises of 120 Maitland Place in Garfield, New Jersey. On this day, the premises was owned, operated, and maintained by the defendants. At the time of the incident, the plaintiff was attempting to ascend a small concrete stairway that led to the entrance of her residence. While attempting to ascend the stairs, the plaintiff tripped over several loose or broken bricks adjacent to the stairway. The plaintiff then fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to repair broken or loose bricks on the premises, failing to remove broken or loose bricks, failing to inspect the premises failing to ensure the safety of the outdoor stairway on the premises, failing to prevent a tripping hazard, failing to warn of loose bricks or other hazardous conditions, failing to provide safe passage, and failing to regard for the health and safety of visitors and residents on the premises including the plaintiff. Consequently, the plaintiff sustained injuries, including a bimalleolar ankle fracture, which required open reduction and internal fixation surgery to repair.

The jury found in favor of the plaintiff and awarded $75,000.

REFERENCE

Vasquez Maria vs. Castellano Giovanna. Docket no. L007363-21; Judge Peter G. Geiger, 04-12-23.

Attorney for plaintiff: Aileen Perez-Gjikova of The Law Offices of Perez and Bonomo in Hackensack, NJ.

LANDLORD/TENANT

$80,040 VERDICT

Landlord/Tenant – Breach of contract – Plaintiff contends defendant tenant at commercial property stopped paying rent and vacated premises prior to end of lease term – Plaintiff forced to retrofit property and lower rent to get new tenant for the space.

Monmouth County, NJ

In this breach of contract case, the plaintiff property owner asserted that the defendant tenant broke a lease for a commercial property causing the plaintiff loss of rent and other damages. The defendant disputed the reasonableness of the plaintiff's alleged damages.

The plaintiff was the owner of a property located at 106 Apple Street in Tinton Falls. The plaintiff rented the commercial premises to the defendant in 2017 with an extension of the lease through March 31, 2023. The defendant stopped paying rent in 2020 and subsequently vacated the property after going out of business. The plaintiff was able to re-rent the premises but at a lower rent and had to refit the premises for the new tenant at a cost of approximately $15,000.

The plaintiff alleged damages of $80,040 including unpaid rent prior to the defendant leaving, shortfall of rent due to lower rent and concessions to the new tenant, and expenses, less the security deposit. The parties submitted to non-binding arbitration prior to trial. The plaintiff's representatives testified as to the lease and additional expenses. The defendant did not testify or offer evidence at the arbitration.

The arbitrator found in favor of the plaintiff with damages of $80,040. The plaintiff made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Apple Street Holding, LLC, et al. vs. Twin Lights Financial Group, LLC. Docket no. L-000743-21; Judge David F. Bauman, 05-05-23.

Attorney for plaintiff: Carl J. Dallarda of Indik, McNamara & Dallarda, P.C. in Monmouth Junction, NJ. Attorney for defendant: Matthew J. Lammertse of Law Office of Michael C. Schonberger, LLC in Jersey City, NJ.

$43,000 VERDICT

Landlord/Tenant – Plaintiff claims defendant winter rental tenant in plaintiff's property refused to leave at end of lease – Plaintiff claims lost rent from secured 24-month lease for which it would have been paid $115,200 as well as unpaid rent of $4,800 per month for period defendant occupied premises at summer rental rate.

Ocean County, NJ

In this tenancy case, the plaintiff landlord asserted that the defendant tenant failed to vacate the plaintiff's property at the end of the lease period. The defendant maintained that she was unable to find alternate housing for herself and her three children during the COVID-19 pandemic and that she attempted to continue to pay rent but the plaintiff refused.

The plaintiff LLC was the owner of the premises at 100 Harvard Avenue, Point Pleasant. The plaintiff leased the premise to the defendant as a winter rental under a written lease for a term of three months. The lease commenced on December 15, 2019 and ended on March 19, 2020. By way of agreement, due to the COVID-19 pandemic, the plaintiff consented to allow the defendant to remain in the premises until May 19, 2020. Pursuant to the lease, the defendant agreed to pay the plaintiff $6,900, with $2,300 due per month. The defendant failed to leave the premises when her tenancy concluded and a Notice to Quit was served on May 29, 2020, via e-mail and regular mail.

Under the Notice to Quit and Notice of Rent Increase, the defendant was advised that her tenancy could not be extended and as she was a winter rental, and the summer rental season had started. Her rental rate of $2,300 was solely for a winter rental term. Under the Notice to Quit she had 30 days to vacate the premises. She was advised that the rent was increasing to $4,800 per month for summer tenants. The premises rented for the summer, Memorial Day through Labor Day, for between $35,000 and $40,000. The plaintiff maintained that, due to COVID-19, the summer rentals were going for higher than usual rates.

The defendant finally vacated the property on April 19, 2021 and only upon the plaintiff selling the property.

The plaintiff claimed to have lost a minimum of $40,000 for a summer rental due to the defendant's failure to vacate the premises. The plaintiff had a tenant set to move into the premises on July 1, 2020, on a 24-month lease at $4,800 per month for a total of $115,200. Due to the defendant's failure to vacate the premises, that lease could not be honored and the plaintiff was forced to breach that agreement. The defendant occupied the property when the rent was $4,800 per month from June 29, 2020 to April 19, 2021 for a total $48,000 owed. In addition, the plaintiff was forced to file an eviction action against the defendant and incur attorney's fees for doing so.

The defendant argued that she occupied the premises when the monthly rent was $ 2,300 and did make a timely, month to month good faith attempt to pay the monthly rent in the amount of $2,300, but the plaintiff refused to accept the rent. By refusing to accept rent and mitigate her damages, the defendant argued, the plaintiff attempted to profit from her own neglect and fault. Further, the defendant maintained that she made a timely and diligent effort to find other living accommodations for herself and her three children at the end of the lease period. Because of the Covid-19 pandemic, leasable real estate in Ocean County was almost non-existent and, if available, it was unaffordable and therefore she had to remain in occupancy of the plaintiff's premises.

After hearing the matter at a bench trial, the court found in favor of the plaintiff and awarded $43,000 in damages plus costs.

REFERENCE

Knapp Family, LLC vs. Griffin. Docket no. L-002166-21; Judge Craig L. Wellerson, 05-25-23.

Attorney for plaintiff: Amanda F. Wolf of Wolf Law, PC in Red Bank, NJ. Attorney for defendant: Harold M. Savage of The Law Office of Piotr Rapciewicz, LLC in Brick, NJ.

LEMON LAW

DEFENDANT'S VERDICT

Lemon Law – Plaintiff contends 2016 Ford Fusion has defective charging system and after repeated attempts at repair, vehicle unable to be utilized by plaintiff – Defendant argues battery replaced at no cost and testing of vehicle showed no issue with charging system – Arbitration finds in favor of defendant.

Monmouth County, NJ

In this Lemon Law case, the plaintiff asserted that he purchased a vehicle manufactured by the defendant automobile manufacturer that turned out to be defective and that the defendant failed to remedy the defect. The plaintiff claimed violation of the Magnuson-Moss (FTC) Warranty Improvement Act and breach of Uniform Commercial Code. The defendant denied liability and all allegations made by the plaintiff.

On February 2, 2018, the plaintiff purchased a used 2016 Ford Fusion vehicle. The purchase included an express warranty as well as other guarantees and affirmations. During the warranty period, the plaintiff complained about defects and non-conformities to the vehicle, primarily that the battery continually went dead. The plaintiff maintained that the defect was not in the battery itself, which the defendant replaced, but in the charging system.

The plaintiff argued that he gave the defendant a reasonable number of opportunities to conform the vehicle to its express warranties, implied warranties and contracts. The defendant made attempts on several occasions to comply with the terms of its warranties; however, such repair attempts were ineffective. The plaintiff contended that the defendant failed to remedy the defect in the vehicle it manufactured and sold to the plaintiff as required by the warranty and Lemon Law statutes. The plaintiff presented expert testimony that the vehicle's charging system was defective and that replacing the battery would not return the vehicle to proper working order.

The plaintiff maintained that, as a result of the ineffective repair attempts made by the defendant, the vehicle was rendered substantially impaired, unable to be utilized for its intended purposes and was worthless to the plaintiff. The plaintiff asserted that he was due the price of the vehicle, including registration charges, fees, tax, finance, bank charges, and other charges specified by the Lemon Law in the amount of $14,537. The defendant argued that it replaced the vehicle's battery in July 2018 at no charge and that 2 tests done after the battery was replaced showed no defect in the charging system.

The parties submitted to non-binding arbitration prior to trial. The arbitrator found in favor of the defendant and found no damages warranted. The defendant made a motion to confirm the arbitration order and the motion was granted.

REFERENCE

Rockhill vs. Ford Motor Co. Docket no. L-001355-22; Judge David F. Bauman, 05-12-23.

Attorney for plaintiff: Timothy J. Abeel, Jr. of Timothy Abeel & Associates, P.C. in Mt. Laurel, NJ. Attorney for defendant: Paul K. Russell of Dobis, Russell & Peterson, P.C. in Livingston, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$7,500 RECOVERY

Motor vehicle negligence – Auto/bicycle collision – 11-year-old plaintiff riding bicycle struck by defendant driver – Left knee contusion and abrasions, lower back pain – Orthopedic treatment, physical therapy and anti-bacterial cream.

Middlesex County, NJ

In this motor vehicle negligence case, the plaintiff, an 11-year-old bicycle rider, asserted that the defendant driver struck him on his bicycle with such force that it caused significant, permanent injury. The defendant denied negligence arguing that the plaintiff was responsible for the incident that caused his purported injuries.

On June 28, 2019 the minor plaintiff was riding a bicycle crossing Elms Street in Rocky Hill Boro, New Jersey. The defendant was approaching the stop sign on Elm Street and Old Bridge Turnpike. The plaintiff asserted that he was in the crosswalk and the defendant driver was looking in the opposite direction and proceeded without seeing the plaintiff on his bicycle. The plaintiff contended that the defendant negligently failed to observe traffic, including the plaintiff on his bicycle and struck the plaintiff in the roadway. The police report from the accident revealed the defendant to be at fault for driver inattention. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff was taken to the emergency room. He sustained left knee contusion and abrasions. The plaintiff complained of continuing knee pain and low back pain which was diagnosed as muscle pain; herniation was ruled out. The plaintiff treated with an orthopedist treatment, underwent a diagnostic MRI, and used antibacterial topical cream. The plaintiff was recommended for physical therapy but did not attend due to COVID protocols. The plaintiff later had left heel pain when running, jumping, or walking and was prescribed rubber heel cups, a stretching program, and physical therapy. The defendant contested the plaintiff's damages. The defendant argued that the plaintiff had suffered non-permanent sprains and strains which resolved without permanency.

The parties settled the matter prior to trial in the amount of $7,500 broken down as follows: $1,749 in attorney fees; $505 in costs and disbursements; $1,246 in medical liens and $4,000 in net damages to the minor plaintiff.

REFERENCE

Owens vs. Desilva. Docket no. L -002997-21; Judge Christopher D. Rafano, 05-02-23.

Attorney for plaintiff: Gregg A. Williams of Law Offices of Gregg A. Williams in East Brunswick, NJ. Attorney for defendant: Robert S. Helwig of Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ.

Auto/Pedestrian Collision

$15,000 RECOVERY

Motor vehicle negligence – Auto/pedestrian collision – Minor plaintiff crossing street struck by defendant driver's vehicle – Right ankle fracture – Open reduction and internal fixation.

Union County, NJ

In this motor vehicle negligence case, the minor plaintiff pedestrian asserted that the defendant driver struck him with her vehicle causing him significant, permanent injury. The defendant filed a notice of appearance and then settled the matter with the plaintiff.

On October 4, 2021, the plaintiff was a pedestrian attempting to cross South Broad Street in Elizabeth, New Jersey. The defendant was driving in the same area. The plaintiff contended that the defendant negligently failed to observe the plaintiff attempting to cross the street and struck the plaintiff with her vehicle. The plaintiff alleged that the force of the impact resulted in significant injuries.

As a result of the collision, the plaintiff sustained a right ankle fracture. The plaintiff treated with open reduction and internal fixation by a foot and ankle surgeon. The plaintiff's injury took approximately 5 weeks to heal.

The parties settled the matter prior to trial in the amount of $15,000 broken down as follows: $3,675 in attorney fees; $300 in costs and disbursements; $2,153 in medical expenses and $8,872 in net damages to the minor plaintiff.

REFERENCE

Fulton, et al. vs. Amaya, et al. Docket no. L-001672-22; Judge John G. Hudak, 05-05-23.

Attorney for plaintiff: Dan T. Matrafajlo of Beninato & Matrafajlo, Attorneys at Law, LLC in Elizabeth, NJ. Attorney for defendant: Ahmed Adam of Law Office of Cindy L. Thompson in Piscataway, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Auto/pedestrian collision – Plaintiff claims she was crossing street when struck by defendant taxi as it cut across lanes – 2 cervical disc herniations; 3 herniated/bulging lumbar discs; torn left meniscus and tendonitis in the left shoulder – Chiropractic care; bilateral knee and right shoulder epidural steroid injections; left knee arthroscopic surgery; cervical and lumbar medial branch block injections; lumbar discectomy; rhizotomy and physical therapy – Defendant denies striking plaintiff; claims plaintiff walked into roadway, not in crosswalk, from between 2 stopped vehicles while talking on cell phone and walked into side of defendants' taxi cab.

Union County, NJ

In this motor vehicle negligence case, the plaintiff pedestrian asserted that the defendant taxi driver struck her in the roadway with such force that it caused significant, permanent injury. The defendants denied negligence and argued that the plaintiff was at fault for any injuries she sustained.

On March 28, 2019, the plaintiff was a pedestrian near the southbound curb of Broad Street in Elizabeth. The defendant driver was operating a vehicle belonging to the defendant cab company traveling southbound on Broad Street 2 lanes from the curb where the plaintiff was crossing. The plaintiff claimed she was 2/3 of the way across the street when the defendant taxi struck her after he pulled from the main lane into the left turning lane.

The plaintiff asserted that the defendant driver was negligent in that he abruptly cut across 2 lanes to the right in an effort to enter the turning lane without ascertaining that the way was clear. The plaintiff held that the defendant negligently failed to observe the plaintiff pedestrian because he was looking to the left intending to turn. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff claimed two cervical disc herniations; three herniated/bulging lumbar discs; torn left meniscus; and tendonitis in the left shoulder. The plaintiff underwent multiple procedures for her injuries including chiropractic care; bilateral knee and right shoulder epidural steroid injections; left knee arthroscopic surgery; cervical and lumbar medial branch block injections; lumbar discectomy; rhizotomy; and physical therapy.

The defendants asserted that the plaintiff was attempting to cross the street outside of a crosswalk and walked from in between 2 buses in the middle of the block while on her cell phone. The plaintiff did not cross the street in a safe manner and at the appropriate place for pedestrians to cross and, in fact, was crossing illegally. Further, the defendants maintained, she was distracted by her phone and walked directly into the side of the defendants' vehicle. The defendants pointed to video footage of the incident which showed the defendant driver alert and looking straight into the line of traffic before the plaintiff walked into the right passenger side door of the taxi, rather than the defendant striking the plaintiff.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 25% liability to the defendant and 75% to the plaintiff with no damages. 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

Fields vs. Green Cab of Linden. Docket no. L 001229-19; Judge Daniel R. Lindemann, 05-24-23.

Attorney for plaintiff: John J. Pisano, Esq. in Cranford, NJ. Attorney for defendant: Todd A. Rossman of Rossman Law Firm, LLC in Brooklyn, NY.

Intersection Collision

$35,000 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff passenger injured when defendant driver strikes another vehicle after failing to stop at stop sign – Right shoulder impingement – Cervical disc bulge – Lumbar disc bulge.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff passenger was injured when the defendant driver collided with another vehicle after failing to stop at a stop sign. The defendant generally denied all allegations of negligence.

On September 20, 2016, the plaintiff was a restrained front-seat passenger in the host vehicle, which was being operated by the defendant. On this day, the host vehicle was traveling in a straight direction on Harrison Avenue in Harrison, New Jersey. At the time of the incident, the host vehicle came to an intersection. At this intersection, there was a stop sign in favor of the host vehicle, but opposing traffic did not have a stop sign. The defendant driver proceeded through the intersection without stopping for the stop sign, causing the host vehicle to collide with another vehicle that had the right-of-way at the subject intersection.

The plaintiff maintained that the defendant driver was negligent in failing to keep a proper lookout, failing to exercise due care, failing to obey a stop sign, failing to observe traffic conditions, failing to yield the right-of-way, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid causing a collision. Consequently, the plaintiff sustained injuries, including right shoulder impingement, cervical disc bulge, and lumbar disc bulge.

The jury found in favor of the plaintiff and awarded $35,000.

REFERENCE

Cigarroa Rony vs. Flores Javier. Docket no. L004826-18; Judge Jeffrey B. Beacham.

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

$30,000 VERDICT

Motor vehicle negligence – Intersection collision – Plaintiff's vehicle struck by defendant's vehicle while proceeding through intersection – Cervical and lumbar radiculopathy – Lumbar disc bulge – Cervical disc bulge – Soft tissue injury to left shoulder.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck broadside by the defendant's vehicle as the plaintiff proceeded through an intersection causing the plaintiff to sustain injury. The defendant generally denied all allegations of negligence.

On May 31, 2016, the plaintiff's vehicle was traveling northbound on Passaic Avenue, at or near its intersection with Hancox Avenue in Nutley Township, New Jersey. At the same time, the defendant's vehicle was traveling westbound on Hancox Avenue, toward the same intersection. At the time of the incident, both vehicles stopped at their respective stop signs at the aforementioned intersection, but the plaintiff had mistakenly switched on her right turn signal. Thinking that the plaintiff was going to turn right, the defendant attempted to proceed straight through the intersection. However, the plaintiff's vehicle also attempted to proceed straight, resulting in a collision.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to yield the right-of-way, failing to wait, failing to obey a stop sign, failing to remain adequately attentive, failing to observe traffic conditions, failing to obey traffic signals, failing to slow or stop, failing to apply the brakes, and failing to avoid a collision with the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical and lumbar radiculopathy, lumbar disc bulge, cervical disc bulge, and soft tissue injury to the left shoulder.

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

REFERENCE

Guerino Mildred vs. Tolve Gerard. Docket no. L003731-18; Judge Russell J. Passamano, 06-19-23.

Attorney for plaintiff: Daniel R. Bevere of Piro, Zinna, Cifelli, Paris & Genitempo, LLC in Nutley, NJ.

Lane Change Collision

$45,500 VERDICT

Motor vehicle negligence – Lane change collision – Sideswipe collision – Plaintiff's vehicle struck in rear driver's side after defendant improperly switches lanes on bridge – Cervical disc herniations – Cervical disc bulge – Lumbar disc bulge – Cervical radiculopathy.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was sideswiped by the defendant's vehicle after the defendant improperly changed lanes on a bridge causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On February 24, 2020, the plaintiff's vehicle was traveling northbound on the upper departure of the George Washington Bridge in Fort Lee, New Jersey, in the right travel lane. At this time, the defendant's vehicle was also traveling northbound on the bridge, in the left travel lane. At the time of the incident, the defendant's vehicle attempted a sudden lane change into the right travel lane. While merging, the defendant's vehicle struck the plaintiff's vehicle in the rear driver's side, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain in the correct lane of travel, failing to warn that the vehicle was merging, failing to observe traffic conditions, failing to observe the plaintiff's vehicle, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc herniations, cervical disc bulge, lumbar disc bulge, and cervical radiculopathy.

The jury found in favor of the plaintiff and awarded $45,500.

REFERENCE

Castro Raysa vs. Gelinas Bryant. Docket no. L003033-21; Judge Robert H. Gardner.

Attorney for plaintiff: Gary J. Grabas of Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC in Scotch Plains, NJ.

Left Turn Collision

$30,000 VERDICT

Motor vehicle negligence – Left turn collision – Plaintiff passenger in vehicle involved in collision with left-turning vehicle – Disc herniations at C3-4, C6-7, L3-4, L4-5 and L5-S1 – Treated conservatively with no injections or surgery – Plaintiff settles with defendant driver of plaintiff's vehicle prior to trial for $2,750.

Union County, NJ

In this motor vehicle negligence case, the plaintiff, a 38-year-old man, asserted that the defendant driver made a left turn across the lane of travel of a vehicle in which the plaintiff was a passenger. The plaintiff asserted that a collision between the vehicles with such force that it caused significant, permanent injury. The plaintiff brought suit against both defendant drivers. The defendant driver of the plaintiff's vehicle denied negligence, arguing that the co-defendant driver of the left-turning vehicle violated traffic rules by turning across the defendant's right-of-way, causing the collision and being solely responsible for the plaintiff's damages.

On August 3, 2019, the plaintiff was a passenger in a vehicle driven by the first defendant, traveling on Vauxhall Road at the intersection with Kirkman Place in Union. The second defendant driver was making a turn onto Kirkman Place and negligently made a left turn in front of the vehicle in which the plaintiff was a passenger, 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 disc herniations at C3-4, C6-7, L3-4, L4-5, and L5-S1. The plaintiff treated conservatively and claimed ongoing numbness in his extremities. The plaintiff had no unpaid medical expenses but claimed approximately $3,500 in economic losses for co-payments and deductibles.

The co-defendant driver of the left-turning vehicle denied negligence and asserted that the plaintiff's injuries were not caused by the subject collision. The co-defendant's IME confirmed the plaintiff's herniations at C4-5 and C5-6 but found that to be degenerative and not causally related to the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 5% liability to the defendant driver of the plaintiff's vehicle and 95% to the co-defendant driver of the left-turning vehicle with damages of $55,000. The arbitration was not confirmed and the matter proceeded to trial.

Prior to trial, the plaintiff settled with the defendant driver of the plaintiff's vehicle for $2,750. The matter went to trial as to the co-defendant driver only.

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

REFERENCE

Alvarez vs. Blair. Docket no. L-003497-20; Judge John G. Hudak, 05-22-23.

Attorneys for plaintiff: Kate Carballo, Grace E. Robol and Missy Duarte of Davis, Saperstein & Salomon, P.C. in Teaneck, NJ. Attorney for defendant driver of plaintiff's vehicle: Sean Del Duca of Voss Nitsberg DeCoursey & Hawley in Iselin, NJ. Attorney for defendant driver of left-turning vehicle: Joseph A. Campbell of McElroy, Deutsch, Mulvaney & Carpenter, LLP in Newark, NJ.

Multiple Vehicle Collision

$42,500 VERDICT

Motor vehicle negligence – Multi-vehicle rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle and pushed forward into third vehicle – Lumbar disc bulge at L4-L5.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by the defendant's vehicle, causing the plaintiff's vehicle to be pushed forward into the rear of another vehicle and the plaintiff to be injured. The defendant generally denied negligence.

On September 13, 2018, the plaintiff's vehicle was traveling in a straight direction on Paramus Road in Paramus, New Jersey. At this time, the plaintiff was stopped for a red traffic light at an intersection, behind another vehicle. The defendant's vehicle was also stopped at the same intersection, directly behind the plaintiff's vehicle. At the time of the incident, the defendant driver was handling an ice pack from a cooler that he was traveling with. The defendant driver then dropped the ice pack into the driver's side foot well, and while reaching to pick it back up, stepped on the accelerator. The defendant's vehicle then struck the plaintiff's vehicle in the rear, causing the plaintiff's vehicle to be pushed forward into the vehicle ahead.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to remain adequately attentive, failing to observe traffic conditions, in negligently handling items inside the car while driving, in failing to maintain a safe distance from other vehicles, failing to keep the vehicle under proper and adequate control, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including a lumbar disc bulge at L4-L5.

The jury found in favor of the plaintiff and awarded $42,500.

REFERENCE

Costa Amber vs. Ellis Brandon. Docket no. L005747-20; Judge Russell J. Passamano, 04-17-23.

Attorney for plaintiff: Charles M. Hammer of Charles M. Hammer, Esq. in Fort Lee, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Multi-vehicle rear end collision – Plaintiff's vehicle struck from rear by vehicle hit and pushed into plaintiff by defendant driver – Right shoulder pain; cervical radiculopathy; sprain of cervical and thoracic spine ligaments; lumbar radiculopathy and strain of muscle, fascia and tendon of low back – Epidural injection, chiropractic treatment and physical therapy – Defendant concedes liability but denies plaintiff sustained injury in accident.

Monmouth County, NJ

In this motor vehicle negligence case, the plaintiff asserted that the defendant driver struck the rear of a non-party vehicle with such force that it pushed the vehicle into a collision with the plaintiff's vehicle and caused significant, permanent injury to the plaintiff driver. The defendant stipulated liability but contested the plaintiff's damages.

On September 13, 2018, the plaintiff was stopped for traffic on Route 524 in Howell Township when she was struck by a vehicle which had been struck by the vehicle behind it. The plaintiff contended that the defendant driver of the first vehicle negligently failed to observe traffic stopped in the road and rear-ended the non-party vehicle with enough force to propel it into the rear of the plaintiff's vehicle. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained right shoulder pain; cervical radiculopathy; a sprain of the cervical and thoracic spine ligaments; lumbar radiculopathy and strain of the muscle, fascia and tendon of the low back. The plaintiff treated with C7-T1 interlaminar epidural injection, chiropractic treatment and physical therapy. The plaintiff claimed permanently restricted range of motion of the cervical and lumbar spine and presented a certificate of permanency from her treating physician.

The defendant argued that the plaintiff's injuries were pre-existing and not caused by the subject collision. The defendant claimed that the plaintiff only sustained cervical sprain and strain on top of existing prior conditions. The defendant presented an expert

who had reviewed the plaintiff's post-accident MRI and indicated that the plaintiff had degenerative findings on that study and diagnosed degenerative disc disease.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $45,000. 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

Chudkowski vs. Nowicki, et al. Docket no. L-002760-20; Judge Owen C. McCarthy, 05-16-23.

Attorney for plaintiff: Michael N. Colacci of Law Offices of Robert R. Hynes in Perth Amboy, NJ. Attorney for defendant: Michael J. Lynch of Carton Law Firm, LLC in Manasquan, NJ.

Rear End Collision

$200,000 POLICY LIMIT RECOVERY

Motor vehicle negligence – Rear end collision – Plaintiff passenger suffers cervical herniation requiring fusion surgery – No income claims – Case settles approximately 11 months after accident.

Morris County, NJ

In this action for motor vehicle negligence, the plaintiff, in his 30s, was a front seat passenger in a vehicle which was stopped at a traffic light when the host car was struck in the rear. As a result, the plaintiff suffered serious injuries which required surgery.

The plaintiff contended that he suffered a cervical herniation and that after more conservative treatment was inadequate, he required fusion surgery. The plaintiff maintained that he will nonetheless suffer permanent symptoms.

The plaintiff made no income claims.

The case settled after approximately 11 months for the $200,000 policy limits.

REFERENCE

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

Rodas-Ardita, et al. vs. Ortega-Ordava, et al. Docket no. MRS-L-1344-22, 03-07-23.

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

$27,500 VERDICT

Motor vehicle negligence – Rear end collision – Plaintiff's vehicle struck in rear by defendant's vehicle while slowing for traffic – Lumbar disc herniations and bulges – Cervical sprain/strain – Lumbar sprain/strain – Cervical and trapezial myofascitis.

Essex County, NJ

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

On November 13, 2018, the plaintiff's vehicle was traveling northbound on US Highway 1 in Edison, New Jersey. At this time, the defendant's vehicle was also traveling northbound on Us Highway 1, directly behind the plaintiff in the same travel lane. At the time of the incident, the plaintiff noticed heavy traffic ahead and began to slow down significantly. While slowing down, the plaintiff's vehicle was suddenly struck in the rear by the defendant's vehicle, causing the plaintiff to become injured.

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

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

REFERENCE

Bush vs. Mitlo. Docket no. L008131-19; Judge Russell J. Passamano, 04-15-23.

Attorney for plaintiff: William A. Mitchell, Jr. of Greenberg Minasian, LLC in West Orange, NJ. Attorney for defendant: Gary N. Coutu of Travelers Insurance.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Disc herniations at C3-4, C4-5, C6-7, T1-T2; and disc herniation at L5-S1 with annular tear and radiculopathy – Treated conservatively with recommendation for injections and nerve blocks declined by plaintiff – Defendant stipulates liability but argues plaintiff did not sustain permanent injury.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff, a 46-year-old woman, asserted that the defendant driver struck her vehicle from the rear with such force that it caused significant, permanent injury. The defendant stipulated as to liability for the accident but asserted that the plaintiff did not sustain any permanent injuries as a result of the accident.

On May 4, 2021, at the intersection of Route 70 and Garden State Boulevard, in Camden County, the plaintiff was the operator of a vehicle stopped on Route 70 for a traffic light. At the same time, the defendant operated a vehicle in the same direction and behind the vehicle operated by the plaintiff. The plaintiff alleged that the defendant was negligent in failing to observe stopped traffic and stop behind the plaintiff's vehicle, and that his negligence caused the collision. The plaintiff claimed 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.

As a result of the collision, the plaintiff experienced immediate lower back pain following the collision, but declined emergency medical attention at the scene. The plaintiff presented to a spine and rehabilitation center, where she treated conservatively from June 2019 to March 2020. The plaintiff was referred for diagnostic testing during the course of her treatment, as well as pain management. The plaintiff was diagnosed with disc herniations at C3-4, C4-5, C6-7, T1-T2; and disc herniation at L5-S1 with annular tear and radiculopathy. The plaintiff claimed her injuries were permanent. The defendant produced an expert medical report from an IME which disputed the extent, permanency and causation of the plaintiff's claimed injuries from the subject collision.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant with damages of $46,000. The arbitration was not confirmed and the matter proceeded to trial.

At trial, the jury unanimously found that the plaintiff did not sustain a permanent injury caused by the subject accident and returned a verdict in favor of the defendant.

REFERENCE

Price-Briscoe vs. Lee. Docket no. L-003954-20; Judge Steven J. Polansky, 05-10-23.

Attorney for plaintiff: Jeremy M. Weitz of Spear, Greenfield Richman, Weitz & Taggart, P.C. in Marlton, NJ. Attorney for defendant: Sheigh E. Fanous of Voss Nitsberg DeCoursey & Hawley in Iselin, NJ.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – County liability – Plaintiff claims defendant driver rear-ended him while plaintiff operating van on behalf of employer, defendant county – Disc herniation at C5-7; disc bulges at C3-4, C4-5; disc asymmetry at C5-6 – Epidural injection at C7-T1; facet joint injections at C4-5 and C5-6 – Defendant driver claims phantom truck rear-ended him and pushed vehicle into rear of plaintiff's vehicle.

Camden County, NJ

In this motor vehicle negligence case, the plaintiff, a 48-year-old sheriff's department employee, asserted that the defendant driver struck a vehicle the plaintiff was operating in the course of his employment with such force that it caused significant, permanent injury. The plaintiff brought suit against the defendant driver, the defendant county for whom the plaintiff was working at the time of the accident, and against the county's insurer for uninsured motorist coverage. All defendants contested causation and permanency of the plaintiff's injuries.

On November 26, 2019, the plaintiff was operating a van for the county sheriff's department in a southbound direction on the Garden State Parkway at milepost 145.6 in Irvington Township, New Jersey. The defendant driver was traveling directly behind the plaintiff. The plaintiff contended that the defendant negligently failed to observe traffic and keep a safe distance between his vehicle and that of the plaintiff. The defendant struck the plaintiff's vehicle from the rear. The plaintiff alleged that the force of the impact resulted in permanent injuries.

As a result of the collision, the plaintiff sustained disc herniation at C5-7; disc bulges at C3-4, C4-5; disc asymmetry at C5-6. The plaintiff treated with epidural injection at C7-T1; facet joint injections at C4-5 and C5-6. The plaintiff claimed chronic vertical strain/sprain and aggravation of pre-existent degenerative changes leading to permanent injury.

The defendant driver denied negligence, arguing that a phantom vehicle struck him from behind and pushed his vehicle into the plaintiff then fled the scene. The defendant county and its insurer denied the existence of the phantom vehicle and pointed to the fact that neither the defendant driver nor the plaintiff mentioned a phantom vehicle to police responding to the accident. The defendants argued that the plaintiff's injuries were age-related, soft tissue aggravation of preexisting condition and not caused by the subject collision, and not permanent in nature. The defendants relied on the report of an IME who opined that the plaintiff sustained soft tissue neck and back injuries and that his lumbar symptoms had resolved by the time of the IME.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 100% liability to the defendant driver and 0% to the plaintiff or a phantom driver. The arbitrator found damages of $52,000, inclusive of a workers' compensation lien of $8,800 for medicals and $12,000 indemnity. The arbitration was not confirmed and the matter proceeded to trial.

The jury found that the defendant driver was not negligent in operation of his motor vehicle; that a phantom driver of a white truck was negligent and caused the accident; that the plaintiff failed to prove a permanent injury; and that the plaintiff failed to prove a disability as a result of injuries sustained in the subject accident. The jury returned a verdict in favor of all defendants.

REFERENCE

Marengo vs. Klar, et al. Docket no. L -001178-20; Judge Michael J. Kassel, 05-19-23.

Attorney for plaintiff: Herbert J. Stayton, Jr. of Stayton Law, L.L.C. in Cherry Hill, NJ. Attorney for defendant county: Krista A. Schmid of County Counsel, Camden County in Camden, NJ. Attorney for defendant county's UM insurer: Joseph P. Bernhardt of Law Offices of Michael G. David in Marlton, NJ. Attorney for defendant driver: Harold H. Thomasson of Earl R. Uehling & Associates in Mt. Laurel, NJ.

Tractor-Trailer Negligence

$120,000 VERDICT

Motor vehicle negligence – Tractor-trailer negligence – Plaintiff's vehicle sideswiped by tractor trailer operated by defendant when defendant tried to change lanes – Cervical disc bulges – Cervical tear at C4-5 – Lumbar disc bulges.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was sideswiped by the defendant's tractor trailer as the defendant tried to change lanes causing the plaintiff to sustain injuries. The defendant generally denied all allegations of negligence.

On September 17, 2019, the plaintiff's vehicle was traveling northbound in the right travel lane on the New Jersey Turnpike in Secaucus, New Jersey. At the same time, the defendant was operating a tractor trailer in the same area, in the center lane of the Turnpike. At the time of the incident, the defendant attempted to change lanes and merge into the right lane, where the plaintiff was traveling. The defendant's tractor trailer then sideswiped the plaintiff's vehicle, causing the plaintiff to become injured.

The plaintiff maintained that the defendant was negligent in failing to keep a proper lookout, failing to exercise due care, failing to safely and properly change lanes, failing to wait for clearance before changing lanes, failing to observe the plaintiff's vehicle, failing to observe traffic conditions, failing to remain adequately attentive, failing to operate the vehicle at a reasonable rate of speed, failing to apply the brakes in a timely manner, failing to slow or stop, and failing to avoid striking the plaintiff's vehicle. Consequently, the plaintiff sustained injuries, including cervical disc bulges, a cervical tear at C4-5, and lumbar disc bulges.

The jury found in favor of the plaintiff and awarded $120,000.

REFERENCE

Joseph Marphene vs. Amaro Felix. Docket no. L007030-20; Judge Mayra V. Tarantino, 09-02-23.

Attorney for plaintiff: John J. Sheptock of Sheptock, Chelland, & Grieves, LLC in Union, NJ.

PREMISES LIABILITY

Fall Down

$225,000 VERDICT

Premises liability – Fall down – Plaintiff slips and falls on water on floor of defendant's grocery store – Injuries to hip, groin and left knee – Hernia surgery – Total knee replacement.

Morris County, NJ

The plaintiff in this premises liability action was a lawful business invitee of the defendant store when she slipped and fell on water on the floor from a nearby self-serve seafood display causing her to sustain serious injuries. The defendant denied all allegations of negligence and argued that some injuries were not related to the incident.

On August 1, 2020, the 41-year-old female plaintiff was a customer shopping at the defendant's retail supermarket located on Flanders Bartley Road in Flanders, New Jersey. While the plaintiff was walking through the premises she slipped and fell on ice that had fallen from a self-service seafood display onto the floor where it then melted creating a slipping hazard.

The plaintiff maintained that the defendant was negligent in failing to maintain the premises in a safe condition, failing to make routine inspections of the premises, failing to remedy the hazardous condition, and failing to warn of or barricade the dangerous condition. Plaintiff suffered injuries to her left hip, groin and left knee requiring extensive physical therapy spent three surgeries including left inguinal hernia repair, total left knee replacement and nerve block and trigger point injections to the left hip with a future surgery scheduled. The plaintiff also suffered injuries to her cervical and lumbar spine vine and a resolved left knee contusion. The defense denied notice of the condition of the floor and maintained that several of the plaintiff's injuries predated the incident.

The arbitrator found that the defendant was 100% liable for the incident and awarded the plaintiff damages in the amount of $225,000.

REFERENCE

Lauren Battifarano vs. Shop Rite, Inc. Docket no. MRS-L-000026-21; Judge Jodi L. DeMarco, 02-23-23.

Attorney for plaintiff: Edward C. Lutz in Parsippany, NJ. Attorney for defendant: Stephen Wellinghorst of Harwood Lloyd, LLC in Hackensack, NJ.

$90,000 VERDICT

Premises liability – Fall down – Plaintiff injured after slipping and falling in shower at defendant gym and fitness center – Left shoulder labral tear – Tear of posterior horn of right medial meniscus – Head injury with bleeding.

Camden County, NJ

In this premises liability action, the plaintiff was injured after he slipped and fell in a shower at the defendant gym and fitness facility. The defendants generally denied negligence.

On March 31, 2019, the plaintiff was a member at the defendant gym and fitness facility, located on the premises of 1006 Mantua Pike in Woodbury, New Jersey. At this time, the plaintiff had just finished using the gym equipment and was attempting to take a shower in the locker room on the premises. The plaintiff maintained that while using the shower, he slipped on an unidentified substance on the floor, causing him to fall and become injured. The plaintiff's injuries included a left shoulder labral tear, a tear of the posterior horn of the right medial meniscus, and head injury with bleeding.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to inspect the showers on the premises, failing to dry the shower floors, failing to remove wet or slippery substances from shower floors, failing to place non-slip mats in the showers, failing to prevent slippery or otherwise hazardous conditions, failing to warn of hazardous conditions associated with the showers, and failing to regard for the health and safety of members and visitors on the premises of the gym, including the plaintiff. The defendants maintained that there would not have been an unidentified wet substance on the shower floors, and that the defendant had just slipped on water while he was showering.

The jury found in favor of the plaintiff and awarded $90,000.

REFERENCE

Babu John vs. Fitness International, Llc. Docket no. L000249-21; Judge Donald J. Stein, 06-03-23.

Attorney for plaintiff: Melissa M. Baxter of Rosetti & DeVoto, P.C. in Cherry Hill, NJ.

$24,000 VERDICT

Premises liability – Fall down – Plaintiff slips and falls on ice in parking garage on defendants' premises – Neck pain – Back pain – Lumbar radiculopathy.

Atlantic County, NJ

In this premises liability action, the plaintiff slipped and fell on a patch of ice in a parking garage on the defendants' premises, sustaining injuries. The defendants generally denied all allegations of negligence.

On February 3, 2019, the plaintiff was a guest preparing to check into the defendant hotel and casino, located on the premises of 1000 Boardwalk in Atlantic City, New Jersey. On this day, the premises was owned, operated, and maintained by the defendants. Upon arriving at the defendant hotel, the plaintiff parked her car in the parking garage attached to the building. The plaintiff then began walking through the parking garage toward the hotel when she suddenly slipped on a patch of ice and fell, causing her to become injured.

The plaintiff maintained that the defendants were negligent in failing to maintain safe and adequate conditions on the premises, failing to remove ice and snow from the premises, failing to place salt on the ground or otherwise attempt to melt ice, failing to provide safe passage, failing to warn of a slipping hazard, failing to cordon off the hazardous area, failing to prevent hazardous or unsafe conditions, and failing to regard for the health and safety of hotel guests and visitors including the plaintiff. Consequently, the plaintiff sustained injuries, including neck pain, back pain, and lumbar radiculopathy.

The jury found in favor of the plaintiff and awarded $24,000.

REFERENCE

Woolfolk-Yarborough Sherice vs. 1000 Boardwalk, LLC d/b/a Hard Rock Casino and Hotel of Atlantic City. Docket no. L004199-20; Judge Sarah B. Johnson, 04-08-23.

Attorney for plaintiff: Marc Fredric Greenfield of Spear Greenfield in Marlton, NJ. Attorney for defendant: Russell L. Lichtenstein of Cooper Levenson in Atlantic City, NJ.

Negligent Maintenance

$42,500 GROSS VERDICT

Premises liability – Negligent maintenance – Plaintiff claims defendant restaurant's door malfunctioned while she was exiting premises causing her to fall through door onto sidewalk outside – Cervical disc herniation; concussion – Chiropractic treatment – Arbitration assigns 75% negligence to defendant and 25% to plaintiff.

Bergen County, NJ

In this premises liability case, the plaintiff asserted that the defendant restaurant allowed a defectively secured door to exist on its premises that caused the plaintiff to fall through the door and suffer significant, permanent injury. The defendant denied negligence and contested the plaintiff's damages.

On February 9, 2019, the plaintiff was a lawful invitee at the defendant's restaurant and bar located at 116 14th Street in Hoboken. The plaintiff contended that the defendant negligently maintained, operated and controlled the premises such that it allowed patrons to use an improperly secured and maintained exit door. The door was not functioning properly and caused the plaintiff to fall onto the sidewalk while exiting the premises. The plaintiff alleged that the fall resulted in permanent injuries.

As a result of the fall, the plaintiff sustained a cervical disc herniation and concussion. The plaintiff treated with chiropractic treatment. The plaintiff claimed $6,600 in out-of-pocket medical expenses. The defendant argued that the plaintiff was at fault for her injuries because she was leaning against the door rather than using it as an exit. The defendant asserted that the plaintiff misused the door in a manner that caused her fall. The defendant also argued that the plaintiff's injuries were not caused by the subject incident. The defendant's IME would testify at trial that the plaintiff's injuries consisted of unrelated degenerative conditions and a resolved concussion.

The parties submitted to non-binding arbitration prior to trial. The arbitrator assigned 75% liability to the defendant escalator company and 25% to the plaintiff with gross damages of $42,500 reduced to $31,875 for plaintiff's comparative negligence. Neither party moved for trial and the time to respond elapsed. The court then confirmed the arbitration award and the matter was set down as resolved via arbitration.

REFERENCE

Sisti vs. Urban Coal House. Docket no. L-000628-21; Judge John D. O'Dwyer, 05-12-23.

Attorney for plaintiff: Patrick M. Metz of Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz & Krouse in Hackensack, NJ. Attorney for defendant: Terence Michael King of Law Office of Terence M. King, LLC in Lavallette, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$25,933,331 VERDICT – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – DEFENDANTS FAIL TO DIAGNOSE AND TREAT PLAINTIFF'S KNEE DISLOCATION AND VASCULAR INJURY RESULTING IN EXTENDED HOSPITAL STAY AND THROUGH-THE-KNEE AMPUTATION – LOSS OF RIGHT LOWER LEG – EMOTIONAL DISTRESS.

Philadelphia County, PA

In this action for medical malpractice, the plaintiff had to undergo a right leg through-the-knee amputation after presenting to the defendant hospital following an assault where the plaintiff was kicked in the lower leg. The defendants failed to diagnose and treat the plaintiff's knee dislocation and vascular injury resulting in the amputation. The defendants denied all allegations of negligence and argued that the plaintiff delayed getting medical assistance which resulted in his medical outcome.

Post-operatively, nursing records indicated that doppler pulses were weak or absent. Still, at this time, no vascular consult was ordered, no ankle brachial index was performed, no further imaging was ordered, and there was no further exploration done to find the source of the hematoma. The plaintiff continued to have vascular issues with his lower leg and he was eventually returned to the O.R. and diagnosed with a knee dislocation and popliteal artery injury. Despite several operations and debridements of necrotic tissue, the plaintiff underwent surgical amputation of his leg on January 22, 2018.

All defendants except the defendant orthopedist and the defendant hospital were dismissed prior to trial. On the evening prior to trial, the defendants stipulated liability and the case proceeded to trial on the issue of damages.

The jury awarded the plaintiff $20 million for past and future non-economic loss and $5.9 million for future medical expenses.

REFERENCE

Eddie Parks vs. Temple University Hospital and Matthew Lorei, M.D. Case no. 190605457; Judge James Crumlish, 05-10-23.

Attorney for plaintiff: Jordan Strokovsky in Philadelphia, PA. Attorney for defendant: Chandler Hosmer of Marshall Dennehey Warner Coleman & Goggin, P.C. in King of Prussia, PA.

$4,000,000 VERDICT – MEDICAL MALPRACTICE – PODIATRIST NEGLIGENCE – DEFENDANT SURGEON SEVERS PLAINTIFF'S PERONEAL NERVE DURING ORIF PROCEDURE – FAILURE TO PROTECT NERVE DURING OPEN REDUCTION AND INTERNAL FIXATION PROCEDURE – COMPLEX REGIONAL PAIN SYNDROME.

Fulton County, GA

The plaintiff in this medical malpractice action maintained that she suffered permanent and severe injury to her left lower extremity when the defendant surgeon lacerated the plaintiff's peroneal nerve during an ORIF procedure. The defendant denied all allegations of negligence and injury and maintained that the plaintiff was provided care that was proper and in accordance with all medical standards.

The plaintiff maintained that the defendant doctor was negligent in performing the open reduction and internal fixation procedure, failing to protect the peroneal nerve during the procedure, negligently lacerating the peroneal nerve during the procedure and providing substandard care. The defendant's negligence caused the plaintiff to suffer from complex regional pain syndrome. The defendant argued that it could not be determined if the nerve was lacerated preoperatively, intraoperatively, or post-operatively.

The jury found for the plaintiff and awarded the plaintiff $4,000,000 in damages.

REFERENCE

Christine Perron vs. Bryan S. Russell, D.P.M, Village Podiatry Group. Case no. 17EV005257, 05-23-23.

Attorney for plaintiff: Lloyd Bell of The Bell Law Firm in Atlanta, GA.

$3,000,000 RECOVERY – MEDICAL MALPRACTICE – E.R. – DEFENDANTS FAIL TO WORK UP PLAINTIFF'S DECEDENT FOR PULMONARY EMBOLISM – DEATH WHILE BEING DISCHARGED FROM E.R. – WRONGFUL DEATH OF 44-YEAR-OLD FEMALE.

Morris County, NJ

In this action for medical malpractice, the estate of the decedent maintained that the defendants negligently treated the decedent when she was taken to the E.R. with shortness of breath and heart palpitations. After a short stay in the E.R. the decedent was discharged and while she was leaving the hospital, she fainted and her condition deteriorated rapidly. She coded and died several days later. The defendants generally denied all allegations of negligence and injury.

The estate of the decedent maintained that the defendants failed to exercise the necessary degree of care, failed to properly assess the decedent for myocardial injury prior to discharge, failed to place the decedent on a cardiac monitor, failed to request cardiac biomarkers on an emergent basis, failed to obtain exertional vital signs, failed to recognize significant findings on the ECG and failed to rule out a pulmonary embolism.

The decedent is survived by her husband and 2 adult children.

The parties settled for $3,000,000.

REFERENCE

Ronald Cantoni as executor of the Estate of Cheryl Miskimon, and Timothy Miskimon vs. Anar Dinesh Shah, M.D.; Cosimo Laterza, M.D.; Envision Physician Services; Atlantic Health System D/B/A Morristown Medical Center. Docket no. MRSL002611-21; Judge Stuart A. Minkowitz, 03-07-23.

Attorney for plaintiff: David A. Mazie of Mazie Slater Katz & Freeman, LLC in Roseland, NJ.

MOTOR VEHICLE NEGLIGENCE

$4,200,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – PLAINTIFF DRIVER SUSTAINS THORACIC VERTEBRAL FRACTURES, INTERNAL BLEEDING IN BRAIN AND MASSIVE HEAD TRAUMA – SURGERY – WRONGFUL DEATH OF PLAINTIFF'S ONE-YEAR-OLD DAUGHTER.

Essex County, NJ

In this motor vehicle negligence action, the plaintiff's vehicle was struck in the rear by a dump truck, which was being operated by the defendant, while the plaintiff's vehicle was stopped for traffic. The accident resulted in serious injuries to the plaintiff driver and the death of the plaintiff's one-year-old daughter. The defendant generally denied all allegations of negligence.

The plaintiff's included thoracic vertebral fractures, which required surgery with the placement of hardware to repair. The plaintiff also sustained internal bleeding into the brain. The plaintiff's daughter, the decedent, sustained massive head trauma, which resulted in the wrongful death of a one-year-old female.

The parties entered into a settlement for $4,200,000.

REFERENCE

Yarrish vs. Hines, Sanzari Asphalt Co. Docket no. ESXL008653-20; Judge John Keefe, 08-03-22.

Attorney for plaintiff: Evan Goldman of Goldman, Davis, Krumholz & Dillon in Hackensack, NJ.
Attorney for plaintiff: Anthony Guidice of Barry, McTiernan & Wedinger in Edison, NJ.

$1,050,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – TRUCK/MOTORCYCLE COLLISION – SEVERAL FRACTURES IN ARMS REQUIRING ORIF SURGERY – PERMANENT HEARING LOSS IN RIGHT EAR.

Passaic County, NJ

In this action for motor vehicle negligence, the 65-year-old plaintiff motorcyclist, who was riding along with 7 other people on motorcycles, contended that the defendant tractor-trailer driver negligently failed to make adequate observations. The plaintiff contended that as a result, he suffered fractures in his right elbow and both of his wrists, as well as non-fracture injuries to his right shoulder, 100% hearing loss in his right ear and 15% hearing loss in his left ear. During his deposition, the defendant, an experienced truck driver, contended that the motorcyclist had attempted to speed past him as the trucker was changing lanes, and in doing so, the motorcyclist struck his truck. The defendant also contended that the motorcyclist had been in his blind spot, which is why could not see and avoid him.

The investigating police officers determined that the truck driver had struck the motorcyclist after attempting to merge onto Route 33 North. In their follow-up interview with the truck driver, the driver stated that he

had struck the motorcyclist – not that the motorcyclist had struck him. This was affirmed by the police officers' follow-up interview with the motorcyclist and at the deposition of the investigating police officer. There was a summons issued to the truck driver but was ultimately dismissed by the Court.

The case settled prior to trial for $1,050,000.

REFERENCE

65-year-old motorcyclist vs. defendant trucker.

Attorneys for plaintiff: Garry Salomon and Adam Lederman of Davis Saperstein & Salomon, PC in Teaneck, NJ.

PREMISES LIABILITY

$13,000,000 VERDICT – PREMISES LIABILITY – NEGLIGENT SECURITY – PLAINTIFF PUNCHED IN FACE BY NIGHT CLUB BOUNCER – CATASTROPHIC BRAIN INJURY – EXTENSIVE HOSPITALIZATION, 3 SURGERIES AND INTENSIVE REHABILITATION.

Miami-Dade County, FL

In this negligent security case, the plaintiff alleged that he was brutally attacked by a bouncer at the Rubi Lounge Nightclub in Miami in 2016. The plaintiff claimed that the attack caused a catastrophic and permanent brain injury that left him in a coma for several weeks and caused him to undergo emergency brain surgery. The plaintiff underwent extensive hospitalization, 3 surgeries and intensive rehabilitation. The trial defendants included the company retained for security at the premises as well as the individual security personnel involved in the incident. The court ruled that the defendant company was vicariously liable for the actions of its employee. The court also determined that the individual defendant's plea to a criminal battery charge collaterally estopped the defendant security company from asserting liability defenses to the vicarious liability claim. Accordingly, the case was tried on the issue of damages only. Several other defendants, including the owner of the night club, business owner and property owner were dismissed from the case prior to trial. The defendants argued that the plaintiff has made a good recovery from his brain injury and that his condition is not likely to worsen.

Doctors reported that he has been left with a permanent loss of smell, and cognitive deficits including memory problems and difficulty focusing. The defense contended that the plaintiff will not need future surgery and has no medical treatment scheduled.

The jury was instructed that the only issue it must decide was the amount of the plaintiff's damages. The jury awarded the plaintiff $13,000,000 in damages. The award included $200,000 in past medical expenses; $6,800,000 in past pain and suffering and $6,000,000 in future pain and suffering.

REFERENCE

Gonzalez Gotera vs. Bourciquot, et al. Case no. 2016-019669CA01; Judge Thomas Rebull, 03-08-23.

Attorneys for plaintiff: Judd Rosen and Mustafa Dandashly of Goldberg & Rosen in Miami, FL.

$4,600,000 VERDICT – PREMISES LIABILITY/MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN COLLISION – PLAINTIFF ATTEMPTING TO HELP DEFENDANT DRIVER PARK LARGE TRUCK IN DEFENDANT RETAIL STORE'S DELIVERY SPACE STRUCK BY DEFENDANT DRIVER – PELVIC FRACTURES – RUPTURE OF BLADDER – SURGERIES.

Philadelphia County, PA

The plaintiff in this motor vehicle negligence action suffered serious injuries when he was a pedestrian, assisting the defendant driver in parking his large delivery truck in the defendant store's delivery area. Suddenly and without warning, the defendant driver struck the plaintiff. The plaintiff suffered multiple fractures of the pelvis with unstable disruption of the pelvic ring, fracture of the sacrum, rupture of the bladder, post-hemorrhagic anemia, hypotension, urethra injury, traumatic arthritis, multiple surgical procedures, and emotional distress. The defendants denied all allegations of negligence.

The plaintiff maintained that the defendant Schneider was negligent in failing to properly supervise and train the defendant driver and the defendant Family Dollar was negligent in failing to warn the other defendants of the space limitation in the delivery area of the store. All defendants denied all allegations of negligence and each blamed the others for the incident.

The jury found that all 3 defendants were negligent and that the plaintiff was comparatively negligent. The jury awarded the plaintiff damages in the amount of $4,600,000.

REFERENCE

Brian Winterstein vs. Cecil Tyrel McNeil, his employer, Schneider National, Inc. and Family Dollar Stores, Inc. Case no. 180400614; Judge Ann Butchart, 02-07-22.

Attorney for plaintiff: Ara Avrigian of Saltz Mongeluzzi Barrett & Bendesky in Philadelphia, PA. Attorney for defendant: Kevin M. Blake of Smtih Mirabella Blake in Philadelphia, PA.

ADDITIONAL VERDICTS OF PARTICULAR INTEREST

Construction Site Negligence

$48,000,000 VERDICT – CONSTRUCTION SITE NEGLIGENCE – PLAINTIFF FALLS FROM UNSECURED LADDER/STAIRCASE WHILE WORKING ON CONSTRUCTION SITE – SPINAL CORD INJURY – EXTENSION TEARDROP FRACTURE OF CERVICAL SPINE – FRACTURES OF T2, T3, AND T4 IN THORACIC SPINE – THORACIC EDEMA AND HEMATOMA – FUSION OF THORACIC VERTEBRAL BODIES – FRACTURES OF LUMBAR SPINE – WHITE MATTER DISEASE – SURGERY REQUIRED.

Kings County, NY

In this construction site negligence action, the plaintiff, working as an employee at a construction site, fell from an unsecured ladder/temporary staircase, causing him to become severely injured. The plaintiff's injuries included spinal cord injury, extension teardrop fractures of the cervical vertebrae, acute anterior inferior teardrop fractures of the cervical vertebrae, fractures of T2, T3, and T4 in the thoracic spine, thoracic edema and hematoma, fusion of thoracic vertebral bodies, fractures of the lumbar spine, and white matter disease. The plaintiff's injuries required numerous surgeries to repair. The defendants generally denied all allegations of negligence.

The plaintiff maintained that the defendants were negligent in failing to maintain safe conditions at the construction site, failing to secure the temporary stairs, failing to inspect construction equipment, failing to keep the stairs from falling, failing to equip the staircase with protective guardrails or handrails, failing to warn that the staircase was not secured, and failing to regard for the health and safety of construction workers at the site including the plaintiff.

The jury found in favor of the plaintiff and awarded $48,000,000.

REFERENCE

Dariusz Hrychorczuk vs. 1677 43rd St Llc, Bbm Construction Corp. Index no. 502912/2017; Judge Wayne Saitta, 05-24-23.

Attorney for plaintiff: Michael L. Taub of The Platta Law Firm in New York, NY. Attorney for defendant: Joseph T. Redd of O'Connor Redd Orlando, LLP in Port Chester, NY.

Restaurant Negligence

$800,000 VERDICT – RESTAURANT NEGLIGENCE – FAILURE TO WARN – DEFENDANT FAST FOOD RESTAURANT SERVES EXCESSIVELY HOT CHICKEN NUGGETS TO PLAINTIFFS AND MINOR PLAINTIFF DROPS CHICKEN NUGGET LAP BURNING HER THIGH – SECOND DEGREE BURN TO 4-YEAR-OLD MINOR – SCARRING.

Broward County, FL

The plaintiffs in this negligence action maintained that the minor child suffered a second degree burn to her thigh when she dropped the defendant's chicken nugget on her lap after purchasing a happy meal from the drive through. The plaintiff sued the franchisee and the fast food company. The defendants denied all allegations of negligence and injury.

The plaintiffs sued the defendants for strict liability arguing that the defendant placed for sale and distributed to the plaintiffs extremely hot food that was not fit for human handling. The plaintiffs also maintain that the defendants failed to employ and retain competent employees, and failed to adequately train the employees relied on to operate the restaurant. In addition, the defendant breached its implied and express warranties.

The jury returned a verdict in favor of the plaintiffs awarding the plaintiffs $400,000 in past damages and $400,000 in future damages.

REFERENCE

O.V.C. a minor by and through her pngs Philana Holmes and Humberto Caraballo Estevez vs. UpChurch Foods Inc dba McDonald's. Case no. CACE19019340; Judge David Haimes.

Attorney for plaintiff: Jordan Redavid of Fischer Redavid, PLLC in Hollywood, FL. Attorney for defendant: George Duncan of Garrison, Yount, Forte & Mulcahy, LLC in Tampa, FL.