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SUMMARIES WITH TRIAL ANALYSIS

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Summaries with Trial Analysis

$31,044,520 RECOVERY – DOJ – CERCLA – COMPANY SEEKS RECOVERY OF RESPONSE COSTS ASSOCIATED WITH ATOMIC ENERGY COMMISSION CONTRACTS – RECOVERY UNDER CERCLA

Hartford County, CT

In this action, a former government contractor sued to recover response costs associated with the establishment and operation of the Navy's nuclear-powered surface and submarine fleet. The matter was resolved via consent decree.

The plaintiff, ABB Inc., and Combustion Engineering, Inc. (CE), are both wholly-owned subsidiaries of ABB Holdings, Inc. Since 1955, CE has owned the property at 2000 Day Hill Road in Windsor, Connecticut. There, CE developed the Windsor Site at the request of the Atomic Energy Commission (AEC), a division of the United States Government, to support AEC and Navy efforts to establish a nuclear-powered surface and submarine fleet. Between 1955 and 1961, CE worked on approximately 100 AEC contracts for nuclear research, fabrication of nuclear fuels for the Navy, and other tasks. As part of their contracted work, CE worked with nuclear materials, including high and low enriched uranium, as well as natural and depleted uranium. As a result of the contracted work, the site was contaminated with waste materials, including nuclear and chemical waste and residues.

CE asserted that the defendant United States, through the AEC and Navy, exercised direct and pervasive control over their use and management of materials and chemicals at the site. The plaintiff further asserted that title and ownership of materials (including waste materials) for the contracts were with the defendant, and that their contracts provided broad indemnification for liabilities and costs associated with the materials and chemicals.

The U.S. has designated the site for cleanup under the federal Formerly Utilized Sites Remedial Action Program (FUSRAP). With the oversight and approval of the defendant, the plaintiff implemented response actions to address the discharge of waste materials at the site. The plaintiff asserted the expenditure of over $64,000,000 in response costs for that effort. The United States has reimbursed none of plaintiff response costs.

The plaintiffs filed suit in August 2013 in the U.S. District Court for the District of Connecticut. The plaintiff sought recovery of response costs incurred at the site, as well as declaratory judgment respecting defendant United States' liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The matter was resolved via consent decree, in which the defendant agreed to pay $31,044,520 in damages.

REFERENCE

ABB, Inc. vs. United States of America. Case no. 3:13-cv-01265-CSH, 12-09-14.

Attorney for plaintiff: Peter R. Knight of Robinson & Cole LLP in Hartford, CT. Attorney for plaintiff: James A. Thompson, Jr. of Pepper Hamilton LLP in New York, NY. Attorney for defendant: Donald G. Frankel of U.S. Department of Justice - Environment and Natural Resources Division in Washington, DC.

COMMENTARY

The Formerly Utilized Sites Remedial Action Program (FUSRAP) was first developed by the AEC under the Atomic Energy Act of 1954. The program provides federal funds for investigation and clean-up of residual contamination on sites where nuclear national defense and security activities had been conducted by contractors indemnified from harms associated with the work. Under FUSRAP, the defendant acknowledges responsibility for these remedial activities, and is responsible for FUSRAP remedial costs.

$11,320,000 VERDICT – MEDICAL MALPRACTICE – FERTILITY PHYSICIAN NEGLIGENCE – FAILURE TO TIMELY DIAGNOSE OVARIAN CANCER IN 41-YEAR-OLD FEMALE PLAINTIFF

Middlesex County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant physician was negligent in failing to diagnose the plaintiff's ovarian cancer despite an ultrasound showing a pelvic abnormality. The plaintiff was diagnosed with Stage III ovarian cancer. The defendant

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denied negligence, and maintained that the cancer was of rare form, and the delay in diagnosis did not affect the plaintiff's prognosis.

The 41-year-old female plaintiff began treating with the defendant, a reproductive endocrinologist, when she was 35 years old. Over the course of a year, the defendant oversaw multiple fertility treatment that ultimately were not successful. As part of the fertility testing and treatment, the plaintiff underwent several pelvic ultrasounds which showed an area of abnormality. The plaintiff contended that the defendant was negligent in failing to pursue further diagnostic testing of this abnormality. After a year of unsuccessful fertility treatments with the defendant, the plaintiff changed facilities, where her new doctor performed a laparoscopic procedure to remove the area of abnormality. As a result, the plaintiff was diagnosed with Stage III ovarian cancer. The plaintiff brought suit against the defendant alleging negligence in failing to conduct further diagnostic testing of the abnormality, and failing to timely diagnose the ovarian cancer. The plaintiff contended that as a result of the delay in diagnosis, her prognosis has deteriorated, rendering her diagnosed incurable.

The defendant denied the allegations of negligence, and contended that the plaintiff suffers from a rare form of ovarian cancer, and the plaintiff's prognosis is not at all affected by the alleged delay in diagnosis. The defendant claimed that the abnormality did not have any of the characteristics of cancer and appeared to be cystic in nature. It lacked thickened walls and lacked nodules.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff a total of $11,320,000 in damages, consisting of $5,000,000 for pain and suffering, and other general damages to the present, as well as $4,000,000 for pain and suffering and other general damages in the future. The jury also awarded $500,000 to her husband for loss of consortium together with interest.

REFERENCE

Cristen Lebel vs. Kim Thornton, M.D. Case no. 2010-00804; Judge Bruce Henry, 10-31-14.

Attorney for plaintiff: William J. Thompson of Lubin & Meyer in Boston, MA.

COMMENTARY

There was no offer made prior to trial and during the trial. After two hours of deliberations, the jury asked a question about future damages. Only then did the insurer make a settlement offer. The offer was for $2,500,000, which was rejected by the plaintiff. Additionally, the defendant argued that the plaintiff's own behavior contributed to any damages that she alleged. The defendant maintained that following diagnosis, the plaintiff sought to preserve her fertility. As a result, she did not choose removal of all her reproductive organs, which the defendant argued was the safest and most effective treatment for a cure. Instead, the defendant argued that the plaintiff chose organ sparing surgery, which would have preserved her ability to carry a child. The plaintiff disputed these allegations and maintained that she was following her physician's advice regarding the best course of treatment for her cancer. The defendant disputed this and maintained that the plaintiff chose this option solely because it was the less aggressive therapy went along with her desire to be able to conceive in the future.

$3,224,186 VERDICT – BREACH OF CONTRACT – TRESPASS – NUISANCE – INDEMNIFICATION – CONSUMER PROTECTION – PLAINTIFF IS HELD LIABLE FOR NITRATE CONTAMINATION FROM DEFENDANT'S BLASTING AT DEVELOPMENT SITE

Rockingham County, NH

On July 12, 2006, the town planning board granted the plaintiff development company various waivers and subdivision approval with conditions to improve property. The developer plaintiff was required to substantially complete the main road in the project within two years of issuing the road construction permit. The plaintiff developer hired the co-plaintiff general contractor who was to perform the site work, including clearing, grubbing, removing top soil, removing soil over the ledge, and ledge removal. The co-plaintiff drilling company performed the blasting work at the property. The drilling company hired the defendant to supply and to install an explosive agent called bulk emulsion into the majority of the blast holes that the co-plaintiff drilling company drilled into the ledge to be removed. The plaintiffs allege that under the terms of the drilling company's contract, the defendant was engaged to supply the bulk emulsion down the holes drilled by the drilling company. The plaintiffs alleged that the defendant understood that its services benefited, and were provided to all the plaintiffs.

The plaintiffs alleged that the defendant represented to them that it was an expert in its ability to supply bulk emulsion in conformity with all laws, regulations, rules, and customary and acceptable practices in the industry, and would act accordingly in its dealing with the plaintiffs. The plaintiffs maintain that when the blasting began in October 2006 about 119 blasts occurred in the next year. In October 2007, the town stopped the on-site blasting at the property, and the following month the New Hampshire Department of Environmental Services identified the plaintiff developer as a potentially responsible party related to a suspected discharge of nitrates into the groundwater.

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As a result, an environmental site investigation was developed and the further studies occurred, with the town and state stopping any further construction on the property. The plaintiffs brought suit against the defendant alleging that the manner in which the defendant delivered and discharged its bulk emulsion caused the nitrate concentration. The plaintiffs further alleged that damages from an inability to develop the land, sell the industrial lots, and sell the crushed rock that would have been processed from the property. The plaintiffs brought suit alleging negligence, trespass, nuisance, breach of contract, statutory recovery, contribution, indemnification, and claims under the consumer protection act.

The defendant denied all claims and argued that the source of the nitrate concentration was not its bulk emulsion product, but rather off-site sources. The defendant alternatively argued that even if its product was the source of the contamination, that the plaintiffs' damages were limited by comparative fault and contractual provisions. The defendant further contended that delays in the property development were not due to any alleged contamination, but instead, from the plaintiffs' own conduct.

The matter proceeded to trial over a period of 14 days.

At the conclusion of the trial, the jury deliberated for four days and returned its unanimous verdict in favor of the plaintiffs and against the defendant. The jury awarded the plaintiffs the sum of $3,224,186. The verdict consisted of damages to the plaintiff developer consisting of $500,000 for breach of contract; $500,000 for negligence; $500,000 for trespassing, and $224,186 for indemnification. Damages for the plaintiff general contractor consisted of $1,200,000 for breach of contract and $300,000 for negligence. No damages were awarded to the plaintiff drilling company.

REFERENCE

Plaintiff's accounting expert: Richard Maloney from Auburn, NH. Plaintiff's civil engineering expert: Thomas S. Bobowski, PE, PG from Concord, NH. Plaintiff's construction management and estimating expert: Sylvan Noiseux from Bedford, NH. Plaintiff's real estate appraisal expert: Wesley G. Reeks, MAI from Bedford, NH. Defendant's accounting expert: Glenn Ricciardelli CPA, CVA, CFE, CFF from Boston, MA. Defendant's bulk emulsion expert: Byron Fidler from Salt Lake City, UT. Defendant's environmental impact of blasting expert: Neal Olsen from Salt Lake City, UT. Defendant's explosives/blasting expert: David Warpula from Holyoke, MA. Defendant's geology expert: Richard Groll from Tyngsborough, MA. Defendant's hydrology expert: Matthew F. Eichler from Greenland, NH.

Meadowcroft Development, LLC, John J. Paonessa Co. Inc. and Precision Drilling and Blasting LLC vs. Dyno Nobel, Inc. Case no. 217-2010-CV-00662; Judge Marguerite L. Wageling, 04-24-14.

Attorney for plaintiff: Roy S. McCandless and Neil B. Nicholson of McCanless & Nicholson PLLC in Concord, NH. Attorney for plaintiff: Bruce Marshall of D'Amante Couser Pellerin & Associates PA in Concord, NH. Attorney for defendant: Thomas J. Fay and Elsabeth Foster McGohey of Boyle Shaughnessy & Campo PC in Manchester, NH.

COMMENTARY

One of the plaintiffs' claims was that the defendant violated the New Hampshire Consumer Protection Act by engaging in unfair and deceptive trade practices by illegally advertising the quality of its services. The court found in favor of the plaintiffs and found that the defendant engaged in a willful violation. The court only awarded the plaintiffs nominal damages of $1,000 per plaintiff, doubled for willful conduct. The court was required to award attorney fees, which substantially exceeded the nominal damages.

In apportioning fault on the negligence claim, the jury found that the defendant was 55% at fault and the drilling company was 45% at fault. At trial, the defendant had argued that the drilling company, through its blasters, had physical control over the job site, and therefore, were in the best position to monitor and prevent any discharge of bulk emulsion that might have impacted the environment. The defendant also argued that the drilling company's personnel were all in the blasting business and had been for years, and that they knew, or should have known the characteristics of bulk emulsion being used on site as the explosive of choice, and therefore could have taken steps to alleviate and/or eliminate any possible contamination. The jury ultimately awarded no damages to the plaintiff drilling company, and so the comparative apportionment of liability was academic.

The defendant's delivery slips and invoices contained language on the reverse side listing certain terms and conditions of the sale/delivery. After hearing testimony at trial, the court concluded that the exculpatory clauses contained on those documents were unenforceable and did not allow that evidence to be considered by the jury during deliberations.

There was a confidential settlement entered into among the parties after trial, prior to the judgment being certified by the court.

$3,165,000 VERDICT – MEDICAL MALPRACTICE – EMERGENCY DEPARTMENT NEGLIGENCE – FAILURE TO PERFORM PROMPT SURGERY FOR CAUDA EQUINA SYNDROME – PLAINTIFF SUFFERS PERMANENT NEUROLOGICAL INJURIES

Worcester County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant emergency department, physicians, and defendant surgeon were negligent in failing to recognize that cauda equina syndrome was a surgical emergency, and the delayed surgery resulted in neurological damage to the plaintiff, which affects both her

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bowel and bladder. The defendants denied the allegations and maintained that there was no clear indication of cauda equina syndrome, as well as no deviation from acceptable standards of care.

The then 38-year-old female plaintiff was working as a machine operator in a plastics factory and hurt her back. She treated with her primary care physician, but re-injured her back approximately one month later and went to the emergency department. She was diagnosed with a back sprain and released with instructions to follow-up with her primary care physician. She instead returned to the emergency department approximately five days later with complaints of numbness in her buttocks extending down her legs. She was admitted by the emergency room physician due to concerns of cauda equina syndrome. The next morning, she underwent an MRI and a consult with the defendant spine surgeon who did not read the MRI until the next day, and scheduled surgery for a disc herniation for Monday. The discectomy was performed on Monday, but due to the length of time that the plaintiff's nerves were compressed, she sustained permanent neurological injuries. The plaintiff brought suit against the defendants alleging that they were negligent in failing to recognize the nerve compression was a surgical emergency, and required prompt surgical attention. The plaintiff alleged that her injuries resulted from the delay in reading the MRI and performing the necessary spinal decompression surgery.

The defendants denied the allegations, and maintained that the plaintiff's symptoms did not clearly indicate cauda equina syndrome, which is extremely rare. The defendants maintained that there was no deviation from acceptable standards of care.

The matter was tried over a period of nine days.

The jury deliberated for a day and a half and returned its verdict in favor of the plaintiff and against the defendants. The jury awarded the plaintiff the sum of $3,165,000, consisting of $2,340,000 for general damages, and $825,00 for lost earning capacity.

REFERENCE

Parry-Gravel vs. James Bayley, M.D. Case no. 2008-01628; Judge Janet Kenton-Walker, 12-30-14.

Attorney for plaintiff: William J. Thompson of Lubin & Meyer in Boston, MA.

COMMENTARY

With interest, the plaintiff's attorney advised that the judgment will be approximately $4,000,000.

The plaintiff asserted that the spine surgeon was waiting on the results of the MRI, but there was no radiologist available to read the MRI over the weekend. The defendant surgeon read the MRI himself on Sunday, and still not believing that the plaintiff was suffering from cauda equina syndrome, scheduled the surgery for Monday. The plaintiff maintained that the defendants failed to recognize the cauda equina syndrome is a surgical emergency, and blamed poor communication between the attending physician (who also suspected cauda equina syndrome) and the surgeon. If the defendants could not have performed an earlier surgery, it was incumbent upon them to transfer the plaintiff to a higher level care facility that could have performed immediate surgery on the plaintiff.

As a result of the plaintiff's neurological damages, she is required to self-catheterize to pass urine and manually dis-impact her stool. She has lost sensation in her buttocks and pelvic area, which includes loss of sexual sensation in the now 46-year-old woman.

$1,000,000 CONFIDENTIAL RECOVERY – MOTOR VEHICLE NEGLIGENCE – DRAM SHOP – PEDESTRIAN IS STRUCK BY DRUNK DRIVER WHO DROVE ONTO SIDEWALK – ABOVE-KNEE AMPUTATION OF RIGHT LEG

Withheld County, MA

In this matter, the plaintiff pedestrian alleged that the defendant driver was negligent in operating his vehicle while intoxicated, which resulted in his riding onto the sidewalk and striking the pedestrian plaintiff. The plaintiff alleged that the defendant establishments that served the defendant driver were also negligent under dram shop theories of liability. The plaintiff suffered injuries which required an above-the-knee amputation of the plaintiff's right leg. The defendants denied liability and disputed the plaintiff's alleged injuries and damages.

The 48-year-old male plaintiff, a cook, was walking home from work on the morning of August 19, 2011 when the intoxicated defendant's vehicle came up onto the sidewalk and struck the plaintiff. The plaintiff suffered serious injuries to his right leg, which ultimately resulted in an above-the-knee amputation. The plaintiff brought suit against the defendant driver alleging negligence in the operation of his vehicle while intoxicated and against the defendant establishments that served the defendant driver alcohol, alleging dram shop claims.

The defendants denied the allegations and disputed liability and damages. The defendants also disputed the nature and extent of the plaintiff's injuries and damages.

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The parties agreed to mediate the plaintiff's claim. The matter was resolved at the mediation for the sum of $1,000,000 in a confidential settlement between the parties

REFERENCE

Plaintiff Injured Pedestrian vs. Defendant Driver et al., 07-18-14.

Attorney for plaintiff: Michael F. Maloney and Ryan P. Gilday of Law Office of Michael F. Mahoney in Lynn, MA.

COMMENTARY

The resolution of this matter was complicated by the mandated liquidation of one of the establishment's insurers. The plaintiff's counsel was required to attempt to lift the order of another court which stayed proceedings as to the one insurer. The plaintiff's counsel was successful in arguments that the foreign court order was not enforceable in this case. The plaintiff's counsel was able to attach assets of the establishment including its liquor license.

The defendant driver pleaded guilty in the underlying criminal case, and the settlement consisted of $700,000 from the insurer for the establishment, $200,000 from the private assets attached from the other establishment, and the driver's policy limits of $100,000 on the motor vehicle policy available in the matter.

$799,989 AWARD – GENDER DISCRIMINATION – RACE DISCRIMINATION – PLAINTIFF PROFESSOR ALLEGED SHE WAS DENIED A PROMOTION DUE TO HER GENDER AND RACE

Withheld County, MA

In this discrimination matter, the plaintiff alleged that the defendant university discriminated against the defendant based upon her gender and ethnicity. The plaintiff contended that she was not given a promotion due to this discrimination. The defendant denied the allegations and disputed the plaintiff's claim of injuries and damages.

The female Taiwanese plaintiff, employed as an associate English professor at the defendant university, maintained that she was denied a promotion to full professor due to her race and her gender. The plaintiff was employed by the university in 1994 as an assistant professor in the English department, and after three years, she applied for – and received – tenure and was promoted to associate professor. In September 2003, the plaintiff applied for a full professorship with the defendant. The plaintiff satisfied all the applicable requirements for the promotion, but maintained that she was denied the promotion solely as a result of her gender and national origin. She alleged that during the meeting with the white male superior, who refused to recommend her for a promotion, he told her that her application would be an "embarrassment," and then he patted her on the back as she left and said, "it's okay Lulu." The plaintiff refused to withdraw her application and was subjected to retaliatory conduct by the defendants, particularly when her courses were reduced. In addition, she was denied travel grants that she had applied for following the refusal to withdraw her promotion application. The plaintiff complained about the disparate treatment, and in retaliation, she alleged her request for promotion was denied. The plaintiff brought suit against the defendant, alleging that she was subjected to gender and race discrimination and sought a promotion and damages.

The defendant denied the allegations and maintained that the plaintiff was not promoted because she did not satisfy the requirements laid out for a full professorship. The defendant additionally contended that the denial was based solely upon her application and credentials, and not as a result of any discrimination.

The matter came before a hearing officer that found in favor of the plaintiff. The plaintiff was awarded back wages of $154,503, emotional distress damages of $200,000, and the defendant was instructed to promote the plaintiff to a full professor. The defendant was also penalized $10,000. The defendant appealed to the Massachusetts Commission Against Discrimination which upheld the hearing officer's award. The plaintiff was then also awarded attorney fees.

REFERENCE

Lulu Sun vs. University of Massachusetts-Dartmouth. Case no. 05BEM00783/06BEM02993, 05-13-14.

Attorneys for plaintiff: Jeffrey Petrucelly and Eliza J. Minsch of Petrucelly Nadler & Norris in Boston, MA.

COMMENTARY

At the conclusion of the hearing before the hearing officer, the defendant promoted the plaintiff as it had been directed and paid her back pay in the amount of $154,503. The defendant was also required to pay a civil penalty of $10,000 to the state of Massachusetts, as well as conduct anti-discrimination training for all involved university positions. The defendant, however, refused to pay emotional distress damages of $200,000, and appealed to the Commission Against Discrimination.

Following the hearing before the Commission, the plaintiff also received attorney fees of approximately $435,000, and the defendant was required to provide mandatory anti-discrimination training for its staff including the human resources staff, the dean of the College of Arts and Sciences, the provost, and the chancellor.

The plaintiff presented evidence that at five fellow professors – all males – were promoted to full professors in the English department during the same time that she was seeking promotion. The plaintiff contended that her qualifications were the same as these individuals, yet her promotion request was denied.

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The plaintiff presented evidence that she suffered from inability to sleep, weight loss, and a rash as a result of the defendant's actions in failing to promote her, as well as the retaliation she suffered as a result of complaining about the inequity of the application review she received.

The hearing tribunal found that the plaintiff who was in all respects similarly situated to her male fellow applicants was subject to disparate treatment by the defendant in the promotion application. It was determined that she was retaliated against when she complained about the treatment she received, and the request that she voluntarily withdraw her application.

$700,000 CONFIDENTIAL RECOVERY – VAN DRIVER NEGLIGENCE – SEXUAL ABUSE OF SPECIAL NEEDS STUDENT.

Withheld County, MA

In this matter, the plaintiff alleged that the defendant van company was liable for the actions of its driver who sexually assaulted the minor plaintiff, a special needs student, who was a passenger on the defendant's bus. As a result of the assault, the plaintiff sustained emotional and psychological damage. The defendant disputed the nature and extent of the plaintiff's alleged injuries and damages.

The 12-year-old female plaintiff, who suffers from pervasive development disorder, was a passenger on the defendant's van which provided transportation between the child's home and school. The child, who has minimal communication abilities, related to her mother that she was sexually abused by the defendant's driver, who was arrested and criminally charged. The plaintiff alleged that as a result of the incident, the child suffered emotional and psychological damage, and brought suit against the defendant van company for the actions of its driver under negligence theories.

The defendant disputed the nature and the extent of the child's injuries and damages. The defendant maintained that the plaintiff minor did not exhibit any outward indication that the incident had caused her to suffer damages. The defendant pointed to the child's success in her classes and continued ability to socialize and participate in extracurricular activities.

The plaintiff maintained that the child suffered damages and her language barrier precluded those damages from being easily determined.

The parties were able to mediate the plaintiff's claim and arrive at a settlement of $700,000 to resolve the plaintiff's claims in a confidential settlement between the parties.

REFERENCE

Plaintiff Special Needs Student vs. Defendant Van Company., 04-30-14.

Attorney for plaintiff: Eric J. Parker and Susan M. Bourque of Parker Scheer in Boston, MA.

COMMENTARY

Investigation disclosed that the driver of the van had made unauthorized stops with the minor in the vehicle at a nearby park on inclement days. The plaintiff was able to corroborate this, despite her limited communication skills by directing the police to the park. The plaintiff provided a child psychiatrist who evaluated the child and reported that the child would be at a greater risk of trauma from the event due to her inability to communicate and express her feelings, fears, and emotions. The plaintiff's expert would have testified that as a result of the child's limited communicative skills, the impact of the driver's sexual assault upon her would be exacerbated, causing her emotional distress. The plaintiff began to act out in a sexual manner following the incident, and the evidence disclosed that she lifted her skirt when she was anxious, which she had never done before this incident. The plaintiff maintained that this behavior was directly related and as a result of the abuse.

DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – SURGERY NEGLIGENCE – FAILURE TO OBTAIN INFORMED CONSENT – WRONGFUL DEATH OF 19-YEAR-OLD MALE FOLLOWING CARDIAC SURGERY

Chittenden County, VT

In this medical malpractice matter, the plaintiff alleged that the defendant was negligent in failing to obtain informed consent regarding the valve replacement procedure performed on the 19-year-old decedent. The decedent died as a result of a bleed, approximately one week following surgery. The defendant denied any deviation from acceptable standards of care and disputed the plaintiff's claim of lack of informed consent and damages for conscious pain and suffering.

The 19-year-old male decedent suffered from a congenital heart condition called bicuspid aortic valve. The decedent was referred by his cardiologist to the defendant medical facility, specifically to Dr. Joseph Schmoker for consideration of the appropriate procedure for a valve repair or replacement. The referring cardiologist suggested the Ross procedure as a possible appropriate procedure. The defendant's surgeon saw the decedent on three occasions prior to the surgery to discuss the possible options for repair or replacement. It was agreed that repair was not a feasible option, given the decedent's medical condi-

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tion, and it was decided that the Ross procedure would be the procedure undertaken. The surgery was performed, and the decedent was discharged from the hospital approximately three days following the surgery. Seven days following the surgery and approximately three to four days after discharge, the decedent complained to the defendant's doctor of chest pain. He was instructed to go to the emergency department where he collapsed. The defendant's physician was present at the emergency department and was the one to open the decedent's chest and massage his heart to resuscitate him. It was determined that he suffered a bleed. The patient did not regain consciousness, and several days later, he suffered another bleed and died. The plaintiff brought a wrongful death suit against the defendant alleging medical negligence and lack of informed consent.

Following discovery, the plaintiff dismissed the medical negligence claim, and the matter proceeded solely on the issue of lack of informed consent.

The defendant denied the allegations, and argued that its physician had spent considerable time with the decedent prior to the surgery, and there was informed consent. The plaintiff attempted to argue that the defendant's physician was not experienced sufficiently in this type of procedure, although the plaintiff's own medical expert could not specifically point to anything that the defendant's physician had done, or failed to do, that caused the decedent's death.

The matter was tried over the period of one week.

At the conclusion of the trial, the jury deliberated for approximately two hours and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

Plaintiff's cardiovascular surgery expert: Paul E. Stelzer, M.D. from New York, NY. Defendant's cardiac thoracic surgery expert: Ross M. Ungerleider, M.D. from Winston-Salem, NC.

Wissell vs. Fletcher Allen Health Care. Case no. 232-2-12 Cncv; Judge Helen M. Toor, 12-12-14.

Attorney for plaintiff: Thomas Sherrer in Burlington, VT. Attorney for defendant: S. Crocker Bennett II of Paul Frank & Collins in Burlington, VT.

COMMENTARY

The Ross procedure is a type of specialized aortic valve replacement surgery where the patient's own pulmonary value is used to replace the aortic valve. A cadaver pulmonary valve is then used to replace the removed pulmonary valve.

The plaintiff attempted to argue that the decedent endured pain and suffering from the time he presented in the emergency department until his death, however, the defendant maintained that he was not conscious from the time that he collapsed until his death. The plaintiff's own medical expert during depositions testified that the Ross procedure was the best procedure available for the decedent's condition, and did not find any fault with the manner that the surgery was performed by the defendant's physician. Rather, the plaintiff's expert attempted to argue that since the defendant's physician had not performed a lot of these procedures, he should have advised the patient accordingly, thereby giving the patient the option of seeking out a physician who had more extensive experience with this particular procedure. The plaintiff's expert did concede that the defendant physician was well trained in the Ross procedure and had performed some of these procedures in the past without any incident or problems.

The plaintiff's attorney additionally advised that the jury charge for informed consent proved troublesome for both attorneys and the judge in this matter, since informed consent is usually associated with an elective or non-critical procedure. However, in this situation, all parties agreed that the patient required the surgery or he would have died. Consequently, a charge that the patient would not have proceeded with the procedure if he had received informed consent would not be applicable since it was clear that such an option was not available to this particular patient. The issue, however, of whether or not there was any error with regard to the jury charge is moot, since the jury did not consider any issues of causation due to its finding on liability.

No appeal or post trial motions are anticipated.

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Verdicts by Category

MEDICAL MALPRACTICE

Ob/Gyn

DEFENDANT'S VERDICT

Medical Malpractice – Ob/Gyn negligence – Surgery negligence – Perforated bowel – Sepsis

Essex County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant ob/gyn was negligent during a laparotomy procedure, perforating the plaintiff's bowel. As a result of the defendant's negligence, the plaintiff required a small bowel resection, and was diagnosed with sepsis. The defendant denied the allegations, and maintained that he was not negligent.

The 21-year-old female plaintiff came under the care of the defendant ob/gyn. Due to complaints of ongoing abdominal and gastrointestinal pain, the plaintiff underwent an exploratory laparotomy and adhesiolysis. During the surgery, the plaintiff alleged that the defendant failed to evaluate the plaintiff's bowel prior to concluding the surgery. In fact, the plaintiff alleged that the defendant perforated the plaintiff's bowel. As a result, the plaintiff was required to undergo a small bowel resection, and suffered from both sepsis and peritonitis. The plaintiff brought suit against the defendant alleging negligence in the performance of the surgery, which resulted in the bowel perforation.

The defendant denied the allegations of negligence and disputed the plaintiff's claim of damages. The defendant maintained that the plaintiff was aware that injury to the bowel was a recognized complication of the procedure, to which she gave informed consent. The defendant further contended that he was concerned about the bowel during the procedure, and consulted with another surgeon prior to concluding the surgery. The defendant maintained that he was not required to perform any bowel integrity test when it did not appear to either he, or the surgical consult, that any injury had occurred to the bowel. The defendant argued that any complaints by the plaintiff of continued pain were not related to the surgery, but were related to other gastrointestinal problems that the plaintiff was experiencing, such as possibly Crohn's disease.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

Defendant's ob/gyn expert: Renee Goldberg, M.D. from Needham, MA. Defendant's urogynecology expert: Peter Rosenblatt, M.D. from Cambridge, MA.

Katelyn Watts vs. Thomas Davidson, M.D. Case no. 2011-01468; Judge Thomas Dreschsler, 10-09-14.

Attorney for plaintiff: Carol-Ann T. Fraser of Fraser Law in Andover, MA. Attorney for defendant: A. Bernard Guekguezian and Alexander E. Terry of Adler Cohen Harvey Wakeman Guekguezian LLP in Boston, MA.

Psychiatry

DEFENDANT'S VERDICT

Medical Malpractice – Psychiatry – Plaintiff contended that the defendant failed to property manage his medication during an involuntary hospitalization – Emotional distress alleged

Plymouth County, MA

In this medical malpractice matter, the plaintiff patient alleged that the defendant psychiatrist was negligent in failing to properly manage his medication during an involuntary psychiatric commitment. The plaintiff alleged that he suffered emotional distress as a result of the defendant's negligence. The defendant denied any wrongdoing, and maintained that there was no deviation from acceptable standards of care.

The 44-year-old male plaintiff came under the care of the defendant following his attempted suicide by ingestion of an overdose of Oxycontin. The plaintiff was placed on a three-day involuntary psychiatric hold by the defendant. During this period of time, the plaintiff alleged that the defendant was negligent in

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failing to properly monitor the plaintiff's medication, and failed to obtain a second opinion of his psychiatric condition. The plaintiff supported that during his compromised period of mental health, the defendant also attempted to obtain monies from the plaintiff for a research project that the defendant was performing. The plaintiff brought suit against the defendant alleging medical malpractice in the defendant's care of the plaintiff during this period of time. The plaintiff alleged that he suffered emotional distress as a result of the defendant's action during this period of hospitalization.

The defendant denied the allegations, and stated that there was no deviation from acceptable standards of care. The defendant argued that he did not cause the alleged emotional distress that the plaintiff alleged in his pleadings.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

James Thorndike vs. Ajay Wasan M.D. Case no. CV-2010-01668; Judge Christopher J. Muse, 04-08-14.

Attorney for plaintiff: Peter F. Brady of Brady & Brady in Boston, MA. Attorney for defendant: Claudia A. Hunter of Hunter & Faggiano PC in Boston, MA.

Radiology

DEFENDANT'S VERDICT

Medical Malpractice – Radiology negligence – Internal medicine negligence – Failure to timely diagnose and treat respiratory infection – Wrongful death of 52-year-old decedent

Plymouth County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant physicians were negligent in failing to timely diagnose and treat the decedent's respiratory infection, which resulted in the untimely death of the 52-year-old woman. The defendants denied any deviation from acceptable standards of care, and denied any negligence or liability for the plaintiff's alleged damages.

The female decedent, 52 years of age, came under the care of the defendants at the hospital. The plaintiff had a history of diabetes and bipolar disorder, and maintained that the defendant radiologist, who read the chest x-ray, failed to appreciate evidence that the plaintiff's decedent was suffering from pneumonia and recommend any follow-up diagnostic testing in the form of a CT scan. The defendant internists attending to the plaintiff's decedent failed to order CT scans to diagnose the decedent's condition, and failed to treat her pneumonia. The plaintiff's decedent was suffering from a fever, respiratory difficulties, and low oxygen, yet the plaintiff contended that the defendants failed to asses her for pneumonia and begin proper treatment, which would have prevented her untimely death. The decedent died as a result of undiagnosed pneumonia and septic shock. The plaintiff brought suit against the defendant radiologist and the defendant internists alleging negligence in failing to timely diagnose and treat her condition.

The defendants denied the allegations and maintained that there was no deviation from acceptable standards of care, and disputed that there was any need for additional testing, and that there was anything that they did or did not do, which resulted in the death of the decedent.

The matter proceeded to trial.

At the conclusion of the evidence, the jury deliberated and returned its verdict in favor of the defendants and against the plaintiff, finding there was no deviation from acceptable standards of care in the defendants' treatment of the plaintiff's decedent.

REFERENCE

Defendant's infectious disease expert: Philip Carling, M.D. from Boston, MA. Defendant's internal medicine expert: Roy Christopher, M.D. from Boston, MA. Defendant's internal medicine expert: Joseph Zibrak, M.D. from Boston, MA.

Withem Individually and as Administrator of the Estate of Jeanne M. Withem, deceased vs. Philip T. O'Sullivan, M.D., et al. Case no. CV-2010-00507; Judge Robert J. Kane, 06-12-14.

Attorneys for defendant: Edward T. Hinchey, Timothy B. Sweetland of Sloane & Walsh LLP in Boston, MA. Attorney for defendant: Peter C. Knight and Rachel E. Moynihan of Morrison Mahoney LLP in Boston, MA.

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Walk-in Clinic Negligence

$950,000 CONFIDENTIAL RECOVERY

Medical Malpractice – Walk-in clinic negligence – Failure to treat patient complaining of chest pain – Wrongful death of 55-year-old male

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant clinic was negligent in failing to treat the decedent who presented with complaints of chest pain. He was advised to get an antacid by the nurse, who did not examine him. The patient died from a cardio-pulmonary event, approximately one hour later. The defendant denied any negligence and disputed the plaintiff's claim of damages.

The 55-year-old male decedent went to the walk-in clinic at his place of employment complaining of abdominal pain that radiated into his chest. He was informed by the nurse who spoke to him in the waiting room that the clinic was not yet open, and if she examined him she would only send him by ambulance to the hospital. The nurse suggested that the man obtain an antacid from a pharmacy nearby, since she was uncertain if any treatment she might render would be covered by his insurance. The plaintiff decedent left the clinic, purchased the antacid, and returned home. Approximately one hour later, he suffered a massive cardio-pulmonary event and was pronounced dead upon arrival at the hospital. The plaintiff estate brought suit against the clinic alleging negligence in failing to treat the plaintiff decedent, or arrange for transportation to the hospital for treatment given the symptoms which were indicative of a cardiac incident.

The defendant clinic denied any wrongdoing, and maintained that it was not liable for the decedent's death since it did not treat him.

The matter was resolved for the sum of $950,000 in a confidential settlement between the parties prior to a trial in this matter.

REFERENCE

Plaintiff Estate of 55-year-old male vs. Defendant Walk-in Clinic., 08-30-14.

Attorney for plaintiff: Neil Sugarman and Benjamin R. Zimmerman of Sugarman & Sugarman in Boston, MA.

CIVIL RIGHTS

PLAINTIFF'S RECOVERY

Civil Rights – Americans With Disability Act violation – Failure to provide assistance due under medicaid program due to lack of state funding

Kennebec County, ME

In this litigation, the plaintiff class alleged that the defendant state violated the plaintiff's rights by failing to provide support services in a timely manner. The defendant denied liability and disputed any violation of the Americans with Disabilities Act.

The plaintiffs are a class of individuals who suffer from various developmental and intellectual disabilities, including autism, and are entitled to benefits under Medicaid. The individuals allege that they are entitled to services for housing and other community support services under Medicaid. Due to lack of funding, the plaintiff class was left without services by the defendant and placed on waiting lists for services, some waiting as long as five or more years. The services were to be provided under the state's waiver system. The housing benefit, available to individuals who require housing assistance, is provided under Section 21 and is intended to assist people to stay out of institutional housing. The other service, Section 29 waivers, were provided to provide day support for disabled individuals. The plaintiffs allege that they were denied these benefits which amount to violations of the Americans with Disabilities Act and state law. The plaintiffs contended that their claims for support services were not attended to with reasonable promptness by the state.

The defendant denied the allegations and maintained that they had no legal obligation to raise the authorized numbers for waivers and denied the plaintiffs' claims that the state was violating the ADA by failing to increase the authorized numbers.The class of individuals affected in this matter totals approximately 1,000 individuals.

The parties agreed to resolve the plaintiffs' claims, and the state agreed to provide services for all those class members. The agreement will be implemented through June 31, 2015 as approved by the court.

REFERENCE

Kathleen Aldrich et al vs. Paul R. Lepage et al. Case no. CV-2013-25; Judge Michaela Murphy, 11-24-14.

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Attorney for plaintiff: Gerald Petrucelli and Bruce McGlauflin of Petrucelli Martin & Haddow LLP in Portland, ME.

CONSTRUCTION SITE NEGLIGENCE

$100,000 CONFIDENTIAL RECOVERY

Construction Site Negligence – General contractor negligence – Failure to provide safe work site – Plaintiff worker falls from ladder – Ankle fracture requiring surgery

Withheld County, MA

In this construction site negligence matter, the plaintiff worker alleged that the defendant general contractor was liable for his injuries due to failure to provide a safe work site. The plaintiff fell from a ladder and fractured his ankle. The defendant denied the allegations and disputed liability, causation, and damages.

The male plaintiff was working at a construction site where the defendant was the general contractor. On the date of the incident, the plaintiff was working at the top of a ladder, when he fell from the ladder and fractured his ankle. He was required to undergo surgery to repair the fracture. The plaintiff brought suit against the defendant general contractor alleging negligence at the workplace, which led to the plaintiff's fall due to unsafe working conditions.

The defendant denied the allegations of negligence and disputed causation, as well as the nature and extent of the plaintiff's injuries and damages.

The plaintiff had a worker's compensation lien of $200,000 that was reduced to $35,000. The parties agreed to a settlement of $100,000 to resolve the plaintiff's claims.

REFERENCE

Plaintiff Worker Doe vs. Defendant General Contractor Roe., 05-13-14.

Attorney for plaintiff: Simon Dixon of Dixon & Associates in Lawrence, MA.

DISCRIMINATION

Disability

DEFENDANT'S VERDICT

Disability discrimination – Violation of Americans with Disabilities Act – Wrongful termination – Plaintiff alleged that defendant failed to accommodate her disability and terminated her employment

Withheld County, CT

In this matter, the plaintiff alleged that the defendant refused to give her accommodations in violation of federal law for her disability of skin cancer. The defendant denied any wrongdoing or discrimination, and maintained that the plaintiff quit and was not terminated.

The 49-year-old female plaintiff was employed by the defendant restaurant as a head chef since April 2006, and worked in a seasonal capacity. The plaintiff was diagnosed with skin cancer in 2002, and maintained that when she attempted to change schedules with another chef to accommodate a medical appointment, the defendant's owner became irate with the plaintiff and made comments to the effect that he was, "Tired of dealing with her cancer and health issues," and contended that he was "done with her." The plaintiff left the building and claimed that she was terminated solely due to her disability, and therefore, the defendant violated the Americans with Disabilities Act. The plaintiff brought suit against the defendant alleging disability discrimination and wrongful termination.

The defendant denied any wrongdoing, and maintained that it did not discriminate against the plaintiff as a result of her disability. The defendant argued that the plaintiff voluntarily quit and left her job.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. The jury determined that the defendant did not wrongfully terminate the plaintiff's employment. No damages were awarded.

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REFERENCE

Barbara Cervone vs. Three Seasons Cafe LLC. Case no. 3:12-cv-01469; Judge Vanessa L. Bryant, 08-28-14.

Attorney for plaintiff: James V. Sabatini and Megan L. Piltz of Sabatini & Associates LLC in Newington, CT. Attorney for defendant: Diane C. Mokriski and Robert B. Flynn of O'Connell Attmore & Morris LLC in Hartford, CT.

Racial

$15,000 VERDICT

Racial discrimination – Wrongful termination – Retaliation – African American plaintiff alleged that he was subjected to racial discrimination and when he complained he was terminated

Withheld County, NH

In this racial discrimination matter, the plaintiff, an African American, alleged that the defendant discriminated against him based upon his race. The defendant further advised that when he filed a complaint about the disparate treatment, he was quickly terminated. The defendant denied any wrongdoing, and maintained that the plaintiff was demoted, and ultimately was terminated due to insubordination and failure to follow policy.

The male plaintiff was employed by the defendant as a line service technician, and maintained that for approximately four and one-half years, he was subjected to racial jokes and derogatory comments by his fellow workers and supervisors. He supported that when he complained about two nooses that were left in his work space, he was demoted, and then was suspended, and ultimately termination. The plaintiff brought suit against the defendant alleging racial discrimination, retaliation, and wrongful termination.

The defendant denied the allegations, and maintained that there was no racial discrimination, nor retaliation, and contended that the plaintiff was demoted because he failed to follow company policy and abandoning his shift without clocking out. The defendant maintained that he confronted his supervisor in a physical altercation, which resulted in his suspension and terminated for failure to follow policy with regard to flight clearance.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff on the retaliation claim. The jury awarded the plaintiff the sum of $15,000 in damages.

REFERENCE

George Wilson vs. Port City Air, Inc. Case no. 1:13-cv-00129; Judge Landya B. McCafferty, 08-26-14.

Attorney for plaintiff: Matthew T. Broadhead of New Hampshire Attorney General's Office in Concord, NH. Attorney for plaintiff: Christine M. Rockefeller of Burns Bryant Cox Rockefeller & Durkin P.A. in Dover, NH. Attorney for defendant: Jacob J.B. Marvelley of Shaines & McEachern P.A. in Portsmouth, NH.

Religion

DEFENDANT'S VERDICT

Civil Rights – Religious discrimination – Plaintiff alleged that defendant discriminated against him by fixing a meeting date concerning plaintiff's continued employment on plaintiff's religious holiday, preventing him from attending due to religious beliefs

Winooski County, VT

In this religious discrimination matter, the Jewish plaintiff alleged that the defendant discriminated against him by scheduling a hearing regarding his continued employment on the Jewish holidays when he was unable to attend. The defendant denied any discrimination, and maintained that there was no wrongdoing on its part.

The male plaintiff was employed by the defendant as the city manager,and contended that his future employment was in a state of uncertainty when the city council voted to put him on suspension and remove him from office, unless he requested a public hearing on the issue of suspension. The plaintiff gave the notice on September 27, and was advised that the hearing would take place on September 30. The plaintiff, who is Jewish, objected to the hearing date, maintaining that it conflicted with the Jewish high holy day of Rosh Hashanah, preventing his attendance. The plaintiff maintained that the defendant refused to accommodate him and move the hearing date, effectively preventing him from appearing, and advocating on his own behalf,and contended that he was discriminated against by the defendant, since it removed him from office in his absence, and discrimi-

nated against him due to his religious preference. The plaintiff brought suit against the defendant city alleging religious discrimination.

The defendant city denied the allegations,and supported that it had offered to move the date if the plaintiff would agree to waive his rights with regard to any actions taken by the city after the September 30 date. In other words, the city asked the plaintiff to agree that any action taken at the newly rescheduled date would be deemed timely taken. The plaintiff refused to agree to this condition, requiring the defendant, by law, to proceed with the hearing on the original date. The defendant maintained that it was willing to accommodate the plaintiff's request, however, the plaintiff's own actions caused the hearing to be conducted on the original date. The defendant also disputed any damages claimed by the plaintiff with regard to the actions of the defendant.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant. No damages were awarded.

REFERENCE

Joshua Handverger vs. City of Winooski. Case no. 5:08-cv-00246; Judge Christina Reiss, 11-01-13.

Attorney for defendant: Kaveh S. Shahi of Cleary Shahi & Archer P.C. in Rutland, VT

DOG ATTACK

$90,000 VERDICT

Dog Bite – Plaintiff alleged that she was attacked and bitten by defendant's dog when she went to door of her landlord's apartment – Degloving injury to ankle – 12cm laceration – Ruptured Achilles tendon – Permanent Scarring

Bristol County, MA

In this dog attack matter, the plaintiff alleged that the defendant was negligent in failing to restrain the defendant's dog, which attacked and bit the plaintiff when she went to speak to the defendant, her landlord. The plaintiff suffered serious injuries to her ankle, including: Wounds, lacerations, an Achilles Tendon injury, scarring, and nerve damage. The defendant denied the allegations and maintained that the plaintiff repeatedly struck at the dog with the door, hurting it, causing it to attack her.

The female plaintiff contended that went to the defendant's apartment, and when the defendant's girlfriend opened the door, the defendant's dog got loose from the apartment and attacked the plaintiff. The plaintiff suffered serious injuries as a result of the attack, and was diagnosed with a degloving injury to her ankle, a 12 cm laceration, an Achilles Tendon injury, and nerve damage as well as disfigurement and scarring from the dog's attack. The plaintiff brought suit against the defendant alleging negligence and liability on the part of the defendant for the dog's attack. The defendant denied the allegations and disputed the plaintiff's version of the incident, maintaining that the plaintiff antagonized the dog by repeatedly hitting it in the face with the door. The defendant also disputed the nature and extent of the plaintiff's injuries and damages.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff the sum of $90,000 in damages.

REFERENCE

Plaintiff's neurology expert: Muhammed Ramzan, M.D. from Worcester, MA. Plaintiff's neurology expert: Andreas Shoeck, M.D. from Lawrence, MA. Plaintiff's orthopedics expert: Brad Blankenhorn, M.D. from Providence, RI.

Tammy Simmons vs. Joseph Botelho. Case no. CV 2012-00068; Judge Frances A. McIntyre, 09-22-14.

Attorney for plaintiff: Sharon D. Sybel of Brian Cunha & Associates in Fall River, MA. Attorney for defendant: Robert F. Feeney of Haverty & Feeney in Plymouth, MA.

LANDLORD/TENANT

$4,500 PLAINTIFF'S VERDICT

Landlord/Tenant – Violation of Fair Housing Act – Discrimination – Plaintiff tenant alleged that defendant failed to properly attend to bedbug infestations per the lease agreement – Plaintiff alleged she was retaliated against when she complained about defendant's conduct

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Withheld County, NH

In this matter, the plaintiff tenant alleged that the defendant landlord was negligent in failing to attend to bedbug infestations in a timely manner as stated in the lease, which resulted in the plaintiff suffering bedbug bites. The plaintiff also alleged that the defendant violated federal law by retaliating against her when she complained about the landlord's negligence. The defendant denied the allegations and disputed any negligence or retaliation.

The female plaintiff was a resident at the defendant's apartment complex, an affordable housing facility under the federal Fair Housing Act. The plaintiff tenant maintained that she suffered bedbug bites as a result of the defendant's negligence, and when she complained to the federal authorities about the defendants' failure to attend to the infestations in a timely manner in accordance with the lease terms, she was retaliated against and threatened with eviction. The plaintiff brought suit in federal court alleging negligence on the part of the landlord for failure to attend to the infestations in accordance with the terms of the lease agreement, and in violation of federal Fair Housing laws.

The defendants denied the allegations and disputed liability and damages. The defendant disputed the plaintiff's contentions.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and found for the plaintiff on her negligence claim. The jury awarded the plaintiff the sum of $4,500 in damages. The jury declined to find for the plaintiff on the retaliation claim.

REFERENCE

Cathy Wyrenbeck vs. Mennino Place, L.P., et al. Case no. 1:13-cv-00287; Judge Joseph LaPlante, 10-24-14.

Attorney for plaintiff: Leslie H. Johnson in Center Sandwich, NH.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Negligence

$50,000 VERDICT

Motor Vehicle Negligence – Motorcycle Collision – Defendant driver attempted to pass another vehicle and caused a collision – Female plaintiff is thrown from motorcycle following collision – Concussion – Finger fracture – Soft tissue injuries to entire left side of body

Waldo County, ME

In this motorcycle collision, the plaintiff passenger alleged that the defendant driver was negligent in causing the collision between his motorcycle and another vehicle that resulted in the plaintiff's injuries. The plaintiff suffered several injuries, including a fractured finger, concussion, ulnar nerve injury, and soft tissue injuries to the left side of her body. The defendant denied liability and disputed the nature and extent of the plaintiff's injuries and damages.

In April 2011, the female plaintiff, in her 40's, was riding as a passenger on the defendant, her husband's, motorcycle. The motorcycle was part of a caravan of approximately 14 motorcyclists that were traveling together. When the motorcycle in front of the defendant's passed another vehicle on the roadway, the defendant attempted to pass as well. The defendant did not have sufficient time to pass the vehicle and he clipped the motorcycle in front of him. As a result, the plaintiff was thrown from the defendant's motorcycle and landed in a ditch on the side of the road. The plaintiff was not wearing a helmet at the time of the collision, and was taken to the hospital by a family member following the collision, and was diagnosed with a concussion, fractured pinky finger, and soft tissue injuries to her entire left side of her body, including her left extremities. The plaintiff also suffered an ulnar nerve injury as a result of the collision. The plaintiff brought suit against the defendant alleging negligence in the operation of his motorcycle. The plaintiff incurred approximately $18,000 in medical expenses as a result of the injuries sustained in the collision.

The defendant denied liability and disputed the nature and extent of the plaintiff's injuries and damages. The defendant's insurer attempted to argue that the plaintiff was a malingerer, and her injuries were not significant or permanent. The defendant initially offered $15,000 to resolve the plaintiff's claim, and then increased that offer to $20,000. The available insurance was $100,000. The defendant finally admitted liability after several years of litigation, approximately one week before trial. The matter, therefore, proceeded to trial on the issue of damages alone. Since the plaintiff and the defendant were married to each other, the plaintiff called the defendant husband as a "friendly witness" to testify on the plaintiff's behalf as to the severity of the wife's injuries and limitations she experienced following the collision. The defendant's expert witness was not viewed with great significance by the jury since the expert merely did a records review, and the plaintiff's attorney was able to demonstrate that the expert never met or examined the plaintiff in person.

At the conclusion of the three-day trial, the jury deliberated approximately two hours and returned its verdict in favor of the plaintiff and against the defendant in the amount of $50,000.

REFERENCE

Plaintiff's neurology expert: Eric Omsberg, M.D. from Waterville, ME. Defendant's neurology expert: Seth Kolkin, M.D. from Falmouth, ME.

Kimberly Wood vs. Neal Wood. Case no. CV-2013-00022; Judge Robert E. Murray, Jr., 08-26-14.

Attorney for plaintiff: Sarah Gilbert of Elliott & Maclean LLP in Camden, ME.

Auto/Pedestrian Collision

$500,000 CONFIDENTIAL RECOVERY

Motor Vehicle Negligence – Automobile/pedestrian collision – Plaintiff was struck by the defendant as he crossed the street – Fractured elbow – Closed head injury

Withheld County, MA

In this motor vehicle negligence matter, the plaintiff pedestrian alleged that the defendant driver was negligent in striking him as he was lawfully crossing the road. The plaintiff suffered multiple injuries, including a closed head injury and fractured elbow as a result of the collision. The defendant denied liability and maintained that the plaintiff crossed suddenly in front of his vehicle, which was his own negligence on the basis for his injuries.

The 52-year-old male plaintiff, a pedestrian, was lawfully crossing the roadway on the date of the incident when he was struck by the defendant's vehicle. As a result of the collision, the plaintiff was knocked to the ground and sustained a fractured elbow and closed head injury. The plaintiff brought suit against the defendant driver alleging negligence in the operation of the defendant's vehicle.

The defendant denied the allegations,and disputed the plaintiff's version of the incident and maintained that the plaintiff pedestrian darted out suddenly in front of the plaintiff's vehicle, causing the defendant to strike him. The defendant also disputed the nature and extent of the plaintiff's injuries and damages, citing a prior stroke as the reason for the plaintiff's alleged head injuries. The plaintiff was able to provide eyewitnesses who corroborated the plaintiff's version of the incident.

The parties agreed to resolve the plaintiff's case for the sum of $500,000 in a confidential settlement between the parties.

REFERENCE

Plaintiff Male Pedestrian vs. Defendant Driver Roe., 11-30-14.

Attorneys for plaintiff: Douglas K. Sheff and Stephen J. Chiasson of Sheff Law Offices in Boston, MA.

$1,400,000 CONFIDENTIAL RECOVERY

Motor Vehicle Negligence – Automobile/pedestrian collision – Pedestrian plaintiff was struck by defendant's vehicle when he accelerated in error instead of braking – Fractured pelvis – Loss of consortium – PTSD

Withheld County, MA

In this motor vehicle negligence matter, the plaintiff pedestrian alleged that the defendant driver was negligent when he accelerated instead of braking, and struck the pedestrian plaintiff. As a result of the incident, the plaintiff suffered multiple injuries, including a fractured pelvis. The defendant denied the allegations and disputed the nature and extent of the plaintiff's injuries and damages.

The female plaintiff, 42 years of age, was standing with her small son on the side of the roadway when the defendant's vehicle struck her, knocking her to the ground. The plaintiff, a stay-at-home mother of two small children, was diagnosed with a fractured pelvis. She developed post traumatic stress disorder as a result of the incident, and brought suit against the defendant, alleging negligence in the operation of his vehicle. The defendant stated that he accidentally accelerated instead of braking, and ran into the plaintiff. The plaintiff maintained that although she did not lose wages, she was unable to participate in her school and civil commitments, and her injuries affected both her children and her marriage. The plaintiff's husband brought a claim for loss of consortium.

The defendant admitted that he inadvertently accelerated instead of braking, but disputed the nature and extent of the plaintiff's alleged damages.

The parties agreed to resolve the plaintiff's claim for the sum of $1,400,000 in a confidential settlement between the parties.

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REFERENCE

Plaintiff Pedestrian Female vs. Defendant Driver Roe., 08-30-14.

Attorneys for plaintiff: Adam H. Becker and Douglas K. Sheff of Sheff Law Offices in Boston, MA.

$26,436 VERDICT

Motor Vehicle Negligence – Automobile/ pedestrian collision – Plaintiff was struck by defendant's vehicle in a parking lot – Right foot and ankle injuries – Mental distress

Fairfield County, CT

In this motor vehicle collision matter, the plaintiff pedestrian alleged that the defendant driver was negligent in striking her, as the plaintiff was walking through the parking lot where the incident occurred. As a result of being struck by the defendant's vehicle, the plaintiff suffered injuries to her right foot and ankle. The defendant denied any liability and disputed the plaintiff's version of the incident.

The female plaintiff was walking through the parking lot where the collision occurred, when she was suddenly struck by the defendant's vehicle as it was navigating the parking area. The plaintiff was caused to suffer injuries to her foot and ankle, and was diagnosed with contusions and a sprain to her right foot and ankle, as well as abrasions to her right calf. The plaintiff alleged that the incident caused her mental stress and anxiety, and brought suit against the defendant driver alleging negligence in the operation of her vehicle, including that the defendant failed to yield the right-of-way, and failed to drive at a reasonable rate of speed.

The defendant denied the allegations and maintained that the plaintiff was responsible for any injuries or damages since she failed to watch where she was going.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff the sum of $26,436 in damages, consisting of $18,500 for pain and suffering; $7,619 for past medical expenses, and $317 in past wages.

REFERENCE

Plaintiff's emergency physician expert: Justin Cahill, M.D. from Bridgeport, CT. Plaintiff's physical medicine and rehabilitation expert: Sean Kelly, M.D. from Bridgeport, CT.

Edeline Noger vs. Shirley Veres. Case no. CV-13-6032880; Judge Dale Radcliffe, 10-07-14.

Attorney for plaintiff: R. Christopher Meyer in Bridgeport, CT.

Rear End Collision

$40,000 VERDICT

Motor Vehicle Negligence – Rear end collision – Plaintiff's vehicle was struck in the rear by defendant's vehicle while stopped for a red light – Aggravation of pre-existing cervical radiculopathy

Chittenden County, VT

In this motor vehicle negligence matter, the plaintiff alleged that the defendant was negligent in striking the rear of the plaintiff's vehicle, which was stopped for a red light. The plaintiff alleged aggravation of a pre-existing neck injury as a result of the incident. The defendant admitted liability, but disputed the nature and extent of the plaintiff's injuries and damages.

The 49-year-old male plaintiff, a construction worker, was operating his vehicle on the date of the incident and had stopped for a red traffic signal. While stopped, his vehicle was struck from behind by the defendant's vehicle. As a result of the incident, the plaintiff contended that he suffered an aggravation of his pre-existing neck injury and radiculopathy. The plaintiff brought suit against the defendant alleging negligence in the operation of her vehicle, and sought damages for his injuries and lost profits from his construction work.

The defendant admitted liability for the incident, but disputed causation and the nature and extent of the plaintiff's injuries and damages.

The matter proceeded to trial on those issues.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff and awarded damages, amounting to $40,000. The jury declined to award lost profits damage or any damages for future pain, suffering, and loss of enjoyment of life.

REFERENCE

Dana Shappy vs. Debbie Normand. Case no. 0915-2012-Cnc; Judge Dennis R. Pearson, 07-17-14.

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Attorney for plaintiff: Jerome F. O'Neill and Navah C. Spero of Gravel & Shea PC in Burlington, VT.

DEFENDANT'S VERDICT

Motor Vehicle Negligence – Rear end collision – Dimunition in value to vehicle alleged

Fairfield County, CT

In this motor vehicle negligence matter, the plaintiff driver alleged that the defendant driver was liable for damages due to the diminution in value to the plaintiff's vehicle as a result of the rear-end collision. The defendant disputed the plaintiff's claim of damages and maintained he was not liable to the plaintiff.

The plaintiff's vehicle was struck in the rear by the defendant's vehicle on the date of the collision. The plaintiff failed to claim any personal injuries as a result of the collision, but claimed that the value of the plaintiff's vehicle had been reduced by the sum of $7,441, as a result of the collision. The plaintiff brought suit against the defendant seeking damages for the loss of value of the vehicle, as a result of the defendant's alleged negligence.

The defendant denied liability and disputed the plaintiff's claim. The defendant maintained that the plaintiff's vehicle was not badly damages as a result of the collision and disputed the plaintiff's figure of $7,441 in damages.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

Yuyi Jin vs. Ryan McDermott. Case no. CV-13-6034282-S; Judge William Rush, 07-02-14.

Attorneys for defendant: Tiffany L. Sabato and Christopher M. Russo of Loccisano Turret & Rosenbaum in Wallingford, CT.

Right Turn Collision

DEFENDANT'S VERDICT

Motor Vehicle Negligence – Turning Collision – Plaintiff alleged that defendant's vehicle cut his vehicle off while he was making a right turn and caused a collision between the vehicles – Lumbar and cervical injuries alleged

Waterbury County, CT

In this motor vehicle negligence matter, the plaintiff driver alleged that the defendant driver was negligent in passing his vehicle and then turning right in front of the plaintiff's vehicle, causing a collision. As a result of the collision, the plaintiff alleged neck and back injuries. The defendant denied the allegations and disputed the plaintiff's version of the incident. The defendant contended that the plaintiff's vehicle was stopped and then pulled into traffic as the defendant turned.

The male plaintiff was operating his vehicle in a northbound direction on the roadway near the intersection where the collision occurred. When the plaintiff began to make his turn, he claimed that the defendant's vehicle passed him and attempted to also make a right turn, causing a collision between the two vehicles. As a result, the plaintiff said that he suffered neck and back injuries, which were soft tissue in nature. The plaintiff brought suit against the defendant driver alleging negligence in the operation of her vehicle and seeking damages for his personal injuries.

The defendant denied the allegations and disputed the plaintiff's version of the incident. The defendant contended that the plaintiff's vehicle was pulled to the side of the road, and out into traffic as the plaintiff was making a lawful right turn, causing the collision between the vehicles. The defendant argued that the plaintiff failed to yield to traffic and failed to watch where his vehicle was going at the time of the collision.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

David Johnson vs. Judith Correa, et al. Case no. CV-13-6019648S; Judge Andrew W. Roraback, 09-14-14.

Attorney for defendant: John W. Mills of The Mills Law Firm in New Haven, CT.

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MUNICIPAL LIABILITY

$105,000 CONFIDENTIAL RECOVERY

Municipal Liability – Negligence of school aides and physical therapists – Child suffers two fractured legs in two incidents under defendant's supervision

Withheld County, MA

In this negligence matter, the plaintiff alleged that the municipal defendant was liable for the actions of its school aides and therapist who caused the plaintiff, a special needs child, to suffer multiple leg fractures. The defendant denied the allegations and disputed causation and damages.

The six-year-old minor plaintiff is a special needs student attending school in the defendant's district. He is confined to a wheelchair and dependent entirely upon his caregivers. At the end of the school day involving the first incident, the child was wheeled to the sidewalk in front of the school, waiting to board a van for a ride home. The aide attending to the plaintiff was also attending to another student due to a staff shortage that day. As a result, the unattended plaintiff's wheelchair rolled to the edge of the sidewalk and tipped over into the side of the van. The child was diagnosed later that evening with a fractured right leg when the plaintiff's mother noticed that something was wrong with her son. One year later, the defendant's physical therapist forgot to undo a shin strap prior to lifting the child from his wheelchair, and caused the child to suffer a fracture of his left leg. The plaintiff brought suit against the defendant alleging negligence on the part of its employees with regard to their care and treatment of the plaintiff that resulted in bilateral leg fractures.

The defendant denied the allegations, and maintained through expert testimony that the child's bones were more susceptible to fracture due to the child's immobility.

The matter was mediated as to both claims and a confidential settlement of $105,000 was agreed upon between the parties.

REFERENCE

Plaintiff Doe vs. Defendant Municipality., 09-30-14.

Attorney for plaintiff: Michael T. Lennon of Lennon Law Offices in Boston, MA.

PREMISES LIABILITY

Fall Down

DEFENDANT'S VERDICT

Premises Liability – Fall down – Plaintiff alleged she slipped and fell as a result of poorly maintained curbing in parking area – 5% permanent partial impairment of neck and upper shoulder

New Haven County, CT

In this premises liability, fall down action, the plaintiff store patron alleged that the defendants were negligent in allowing a poorly maintained curbing to create a dangerous condition. The plaintiff tripped over the broken curbing and fell, injuring her neck and shoulder, and was diagnosed with a 5% permanent partial impairment of her neck and upper shoulder. The defendants denied liability and causation.

The female plaintiff was shopping at the Burlington Coat Factory store in New Haven on the date of the incident, and as she was walking from where she had parked her car to enter the store, she tripped and fell as a result of uneven and broken curbing. The plaintiff suffered injuries to her shoulder, neck, back, hip, and knee. The plaintiff brought suit against the defendant store owner, management company, and property owner, alleging negligence. The plaintiff contended that the poorly maintained curbing created a dangerous condition, which caused her fall.

The defendants denied the allegations, and in fact, several of the defendants were removed as parties to the action prior to the trial. The remaining defendant, the management company, denied the plaintiff's allegations and disputed liability, causation, and damages. The defendant argued that any condition of the curbing was open and obvious, and the plaintiff failed to exercise due care while she was walking, causing her own injuries and damages.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

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REFERENCE

Joanne Crudup vs. DLC Management Corporation, Burlington Coat Factory Direct Corporation, DGM Partners Rye LLC and Orange Improvements Limited Partnership. Case no. CV12-6032638-S; Judge John Nazzaro, 10-31-14.

Attorney for defendant: Cynthia A. Watts of Law Office of Cynthia M Garraty in Hamden, CT.

$135,000 RECOVERY

Plaintiff tenant trips and falls over raised concrete in apartment walkway – Hazard obscured by snow – knee injuries – Aggravation of knee arthritis – Knee replacement surgery

Withheld County, NH

The 64-year old plaintiff tenant contended that she tripped and fell on a defective walkway in her apartment complex. The plaintiff was walking to the parking lot of the complex when she tripped over a raised portion of the walkway that was also obscured by snow, and fell to the ground.

The plaintiff maintained that the defective walkway had been present for an extended period of time. The plaintiff took photographs of the walkway, and her expert landscape artist and architect concluded that the walkway was a dangerous condition that violated numerous safety standards. The expert would have testified that the condition existed for a substantial period of time, and that the defendant should have warned the tenants or repaired the condition. The plaintiff contended that as a result of the accident, she sustained a right tibial plateau fracture, a right medial meniscus tear, and an aggravation of pre-existing degenerative condition in the right knee. The plaintiff contended that because of the injuries, she required a total joint arthroplasty. The defendant contended the injuries claimed pre-existed the accident, and that the surgery was not causally related to the accident.

The plaintiff made no income claims.

The case settled prior to trial for $135,000.

REFERENCE

Plaintiff's architecture expert: Elise Dann., T.A. C.L.A. from Mendham, NJ. Plaintiff's orthopedic surgeon expert: David Weiss, DO from North Brunswick, NJ. Defendant's orthopedic surgeon expert: Michael Bercik, MD from Elizabeth, NJ.

Reid vs. Briarcliff. Case no. MID-L 3520-13, 11-00-14.

Attorney for plaintiff: J Silvio Mascolo of Rebenack Aronow Mascolo,LLP in New Brunswick, NJ.

$225,000 VERDICT

Premises Liability – Fall down – 91-year-old female plaintiff tripped and fell on walkway at senior citizen residence – Fractured skull – Fractured finger – Facial fractures – Subdural hematoma – Craniotomy

Withheld County, VT

In this fall down matter, the plaintiff alleged that the defendant property owner was negligent in failing to provide proper lighting and handrails in a common area of the defendant's senior citizen center. As a result of the defendant's negligence, the plaintiff fell and suffered numerous fractures, including a fractured skull and subdural hematoma. The defendant denied the allegations of negligence, and maintained that the plaintiff was negligent and caused her own injuries due to her lack of attention.

The 91-year-old female plaintiff was at the defendant's senior citizen residence. On the date of this incident, while visiting a patient at the facility, the plaintiff tripped and fell on a concrete walkway in a common area. As a result of the fall, the plaintiff suffered serious injuries. She was diagnosed with a fractured skull, fractured finger, various facial fractures, as well as bruises and lacerations. She also was diagnosed with a subdural hematoma and had to undergo a craniotomy. The plaintiff brought suit against the defendant, alleging negligence, including that the area was dangerous, since it lacked proper lighting and handrails, contending that the walkway was not properly maintained.

The defendant denied the allegations, and supported that there was no negligence on its part. The defendant maintained that the plaintiff was liable for her own injuries, as she failed to exercise due care.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff the sum of $225,000 in damages.

REFERENCE

Katherine Gallant vs. Bicknell, d/b/a The Meadows. Case no. 5:12-cv-00071; Judge Christina Reiss, 11-06-13.

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Attorney for plaintiff: Robert W. Crowley in Boston, MA. Attorney for defendant: Richard H. Wadhams of Pierson Wadhams Quinn Yates in Burlington, VT.

DEFENDANT'S VERDICT

Premises Liability – Fall down – Plaintiff fell when the stair on courthouse disintegrated when she stepped on it – Knee injury – Knee replacement surgery

Lamoille County, VT

In this premises liability matter, the plaintiff alleged that the defendant was negligent in failing to maintain the exterior stairs to the county courthouse. The plaintiff fell and injured her knee when a step fell apart as she stepped onto it while using the staircase. The defendant denied the allegations, and maintained that the plaintiff's injuries if any were the result of her own negligence.

The female plaintiff was using the exterior stairs at the county courthouse on the date of the incident. As the plaintiff placed her foot on the stair in question, it crumbled, causing the plaintiff to loose her balance and fall. The plaintiff was required to undergo knee replacement surgery as a result of her injury, and brought suit against the defendant county, alleging that it was negligent in failing to properly maintain the exterior staircase of the courthouse, and in failing to warn the plaintiff, and others, using the staircase that it was in dangerous condition.

The defendant denied the allegations, and disputed the plaintiff's claim of negligence. The defendant argued that the stairs complied with applicable laws, and was not dangerous or defective, and maintained that the plaintiff's own negligence was the sole cause of her fall and resulting injuries.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and found in favor of the defendant and against the plaintiff. The jury determined that the condition of the stairs was not unreasonably dangerous, and therefore, the defendant was not liable to the plaintiff for her injuries and damages. No damages were awarded.

REFERENCE

Barbara Turner vs. County of Washington. Case no. 204-09-12; Judge Michael Kupersmith, 11-08-13.

Attorney for defendant: Leo A. Bisson of Primmer Piper Eggleston & Cramer in Burlington, VT.

DEFENDANT'S VERDICT

Premises Liability – Fall down – Plaintiff slipped and fell on loose stone in the driveway of defendant's building – Dislocation of kneecap – Knee surgery required

Fairfield County, CT

In this slip and fall matter, the plaintiff tenant alleged that the defendant property owners were negligent in failing to maintain the driveway area. As a result, the plaintiff slipped and fell, injuring his knee, and causing him to have to undergo surgery. The defendants denied liability and maintained that the plaintiff was liable for any injuries resulting from his failure to pay attention.

The male plaintiff was a tenant at the defendant's property. On the date of the incident, the plaintiff was walking to his car. As the plaintiff was walking along the asphalt driveway, his foot slipped on loose stones. As a result, he fell injuring his knee. He was diagnosed with a dislocation of his right kneecap, an internal derangement of his right knee, and a traumatic osteochondral injury to his knee that required arthroscopic repair. The plaintiff brought suit against the defendant owners, alleging that they were negligent in failing to properly maintain the driveway area, and in failing to keep the premises safe and free from hazard.

The defendants denied the allegations, and disputed any negligence and maintained that the plaintiff's injuries were solely as a result of his own negligence and failure to watch his surroundings.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendants and against the plaintiff. No damages were awarded.

REFERENCE

Plaintiff's engineering expert: Richard Ziegler, P.E. from Cheshire, CT. Plaintiff's orthopedic surgery expert: John Mullen, M.D. from New Milford, CT. Defendant's engineering expert: Michael Dion, P.E. from Manchester, CT.

Jonathan Baisley vs. Robert Curcio and Lynn Curcio. Case no. CV-2013-6032422; Judge William Rush, 11-14-14.

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Attorney for plaintiff: Agustin Sevillano and Jeffrey M. Cooper of Cooper Sevillano LLC in Brideport, CT. Attorney for defendant: Christopher J. Kenworthy of Law Offices of Cynthia M Garraty in Hamden, CT.

DEFENDANT'S VERDICT

Premises Liability – Fall down – Plaintiff alleged that she slipped and fell as a result of debris in the shower stall at defendant health club – Fractured ankle

Middlesex County, MA

In this premises liability matter, the plaintiff health club patron alleged that the defendant club was negligent in its maintenance of the shower stalls. Debris in the stall caused the plaintiff to slip and fall, fracturing her ankle. The defendant denied the allegations, and maintained that there was no negligence on the part of the defendant, and any damages were as a result of the plaintiff's own negligence.

The 75-year-old female plaintiff was a patron at the defendant's health club on the date of this incident. She was using one of the defendant's shower stalls when she slipped and fell. As a result of her fall, the plaintiff suffered a fractured ankle, and alleged aggravation of a pre-existing elbow injury, which was caused as a result of the need to use crutches for the fracture. The plaintiff alleged that the shower stall where she fell contained debris, which created a dangerous condition.

The plaintiff brought suit against the defendant alleging negligence, and failure to maintain its shower facilities in a safe condition. The plaintiff contended that the defendant failed to clean the shower stalls, and there was debris which created a hazardous condition, causing the plaintiff's fall.

The defendant denied the allegations, and argued that the shower stalls had been regularly inspected and cleaned. The defendant maintained that it had no prior notice of any dangerous condition, and that any debris in the shower stall was visible to the plaintiff, and her own negligence was the sole cause of her fall and resulting injury.

The matter proceeded to trial.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

Sunita Tuli vs. TSI Waltham LLC. Case no. CV-2012-02496L; Judge Kathe M. Tuttman, 09-30-14.

Attorney for defendant: Tracy M. Waugh of Wilson Elser Moskowtiz Edelman & Dicker in Boston, MA.

DEFENDANT'S VERDICT

Premises liability – Fall down – Slip and fall on ice – Lower back injuries including L5-S1 disc bulge

Hartford County, CT

In this slip and fall matter, the plaintiff alleged that the defendant management company was negligent in failing to properly maintain the premises. As a result of the defendant's negligence, the plaintiff slipped and fell on ice and snow, and as a result of the fall, the plaintiff suffered injuries to her back. The defendant denied negligence and disputed the nature and extent of the plaintiff's injuries and damages, as well as causation.

The female plaintiff was traversing the defendant's parking lot on the date of the incident. As she was walking through the parking lot, the plaintiff slipped and fell as a result of accumulated ice and snow on the ground. The plaintiff sustained injuries to her back and was diagnosed with facet arthropathy at C4-C5 and L5-S1. The plaintiff was also diagnosed with disc bulge at L5-S1. The plaintiff brought suit against the defendant, alleging that it was negligent in failing to properly maintain the premises and keep it free and clear of ice and snow. The plaintiff also alleged that the defendant was negligent in failing to warn the plaintiff and others of the dangerous condition of the parking lot area.

The defendant denied the allegations, and contended that the plaintiff was negligent in failing to make proper observations, and it was her negligence that contributed to her injuries. The defendant also disputed causation and the nature and extent of the plaintiff's injuries and damages.

The matter was tried.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the defendant and against the plaintiff. No damages were awarded.

REFERENCE

Debra Landry vs. R.M. Bradley Management Corp. Case no. CV-13-6038937; Judge Constance Epstein, 10-02-14.

Attorney for defendant: Thomas P. Chapman of Law Offices of Charles G. Walker in Hartford, CT.

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Negligent Maintenance

$400,000 CONFIDENTIAL RECOVERY

Premises Liability – Fall down – Negligent maintenance – Failure to give access to ice melt – Plaintiff slips and falls on icy walkway – Fractures to lumbar discs – Surgery required

Withheld County, MA

In this premises liability matter, the plaintiff resident of the condominium defendant alleged that the defendants were negligent in failing to keep the walkways free of ice, and in locking the ice melt containers so that the material could not be used by residents on slippery walkways. The plaintiff suffered fractures to her lumbar spine that required surgical repair. The defendants denied that there was ice present at the time of the plaintiff's fall.

The female plaintiff was a resident at the defendant condominium property. On January 26, 2010, the plaintiff was walking on the condominium walkway when she slipped and fell due to an accumulation of ice. The plaintiff contended that the defendant's property management company had locked the ice melt containers that were along walkways, citing excessive ice melt use. As such, the plaintiff maintained a dangerous condition existed in the form of icy walkways. As a result of the condition of the walkway, the plaintiff fell and fractured discs in her lumbar spine. She was required to undergo surgery to repair the injuries to her back. The plaintiff brought suit against the defendant condominium association, property owner, and the management company, alleging negligence.

The defendants denied the allegations and disputed negligence, as well as the plaintiff's version of the incident. The defendants disputed the plaintiff's claim that the conditions were icy that day, maintaining that temperatures were above freezing. The plaintiff presented proof regarding the weather in the form of an expert meteorologist who stated that ice is capable of forming on walkways, despite above-freezing outdoor temperatures. The plaintiff also presented evidence that the ice melt barrels were unlocked shortly after the plaintiff's fall, and residents were advised of such in writing by the defendants.

The matter was resolved between the parties for the sum of $400,000 in a confidential agreement.

REFERENCE

Plaintiff Resident vs. Defendant Management Company., 05-15-14.

Attorney for plaintiff: Simon Dixon of Dixon & Associates in Lawrence, MA.

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STATE LIABILITY

$1,000,000 VERDICT

Eminent Domain – Impairment to value of property remaining – Defendant condemned plaintiff's property for construction of a communications tower and building

Rutland County, VT

In this eminent domain matter, the plaintiffs owners of property allege that the defendants failed to compensate them properly for property taken by eminent domain for the construction of a communications tower for the defendant utility. The defendants denied the allegations, and disputed the value sought by the plaintiffs.

The plaintiffs are the owners of property located in Wells, Vermont, on a mountaintop. The defendant utility companies obtained an order to condemn a portion of the plaintiffs' property in order to construct a communication tower and other small building to house equipment to facilitate a statewide communications network. The property housed an existing radio tower that had been used by the prior owner for a radio station. When the plaintiffs purchased the property, they did not obtain the easement to the tower and underground wires run to it. The prior owner, instead, sold the easement to the defendants, who then attempted to obtain additional land to expand the existing easement. The plaintiffs contended that this would render their mountaintop home uninhabitable, and were awarded the sum of $25,570 for the eminent domain condemnation. The plaintiffs brought suit appealing the utility board award, and seeking just compensation for the taking. The plaintiffs allege that, in addition to just compensation for the property taken, they were also entitled to damages for impairment to the value of the property that remained, which included their home.

The defendants denied the plaintiff's allegations and disputed that any additional monies were due. The defendants disputed that the plaintiffs were damaged by the taking, due to the fact that there was an existing easement on their property.

The matter was tried.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiffs and against the defendants. The jury awarded the plaintiffs the sum of $1,000,000, representing $100,000 for the value of the land taken by eminent domain, and $900,000 for the impairment of their remaining property.

REFERENCE

Olga Julinska and Sergei Kniazev vs. Vermont Transco LLC and Vermont Electric Power Company, Inc. Case no. 620-08-12-rdcv; Judge William D. Cohen, 12-13-13.

Attorney for plaintiff: Robert E. Woolmington of Witten Woolmington & Campbell P.C. in Manchester Center, VT.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$7,000,000 RECOVERY - MEDICAL MALPRACTICE - EMERGENCY DEPARTMENT - DEFENDANT DOCTORS FAIL TO APPRECIATE SIGNS OF SYMPTOMS OF SEVERE INFECTION AND DISCHARGE INFANT MINOR WHO REQUIRED HOSPITALIZATION - SEPSIS - MENINGITIS - SEVERE MITRAL VALVE REGURGITATION REQUIRING SURGERY - CORTICAL BLINDNESS - CEREBRAL PALSY

Bucks County, PA

In this medical malpractice action, the mother of an infant male maintained that she presented her son to the defendants on several occasions with a high fever and flu-like symptoms, only to be discharged on each occasion with prescriptions. The infant was suffering from occult bacteremia, which went undiagnosed and the minor developed sepsis, which resulted in cerebral palsy. The defendants denied all allegations of negligence, and argued that the minor was treated in accordance with medical standards.

The parties settled their dispute for $7,000,000.

REFERENCE

Elijah Jackson a minor by and through his png Vera Jaryee vs. Ovunda Ndu-Lawson D.O., EPA Physicians Er Physician Group, Lower Bucks Hospital, Kadisha Rapp M.D., and Anne Warden Shannon M.D. Case no. 2011-06896; Judge Susan Devlin Scott, 08-18-14.

Attorney for plaintiff: Thomas Kline of Kline & Specter, P.C. in Philadelphia, PA. Attorney for defendant: Joan Orsini Ford of Marshall Dennehey in King of Prussia, PA. Attorney for defendant: John F.X. Monaghan of Harvey Pennington in Philadelphia, PA. Attorney for defendant: Mary Reilly of Post & Schell, P.C. in Philadelphia, PA. Attorney for defendant: William Pugh of Kane, Pugh, Knoell, Troy & Kramer LLP in Norristown, PA.

$6,900,000 GROSS VERDICT - MEDICAL MALPRACTICE - TEN-MONTH DELAY IN DIAGNOSIS OF BREAST CANCER - METASTASIS - DEATH 8 YEARS AFTER DIAGNOSIS.

Hartford County, CT

This was a medical malpractice action involving a then 40-year-old female patient who contended that in August, 2000, the defendant radiologist negligently interpreted a mammogram spot compression and lateral views. The plaintiff maintained that as a result of the defendant's negligence, there was an approximate ten-month delay in diagnosis, allowing the cancer to progress from a very treatable II cancer to a stage III cancer, which spread to six out of 24 lymph nodes. The patient died from the cancer in July of 2009 at the age of 49. She left a husband and two teen-aged children. The defendant maintained

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that despite his findings of a normal mammogram, he told the plaintiff to return in four months for a further mammogram on her right breast. The defendant contended that he mentioned in his report that he would recommend that the plaintiff return in four months, however, the defendant was unable to produce copies of any correspondence sent to the plaintiff advising her to follow-up.

The jury found the defendant 50% negligent, the decedent 50% comparatively negligent, and rendered a gross award of $6,900,000, including $3,000,000 for economic loss, and $3,900,000 for non-economic loss. The jury further found that the plaintiff failed to mitigate her damages and reduced the net award by an additional 13.5%, resulting in a net verdict of $2,984,250.

REFERENCE

Sawicki vs. Mandell & Blau, MD, PC. Case no. HHD-CV-Xo7-CV 02-081629-S; Judge Kevin Dubay, 05-02-14.

Attorney for plaintiff: Danielle George, pro hac vice of Phillips & Paolicelli, LLP in New York, NY. Attorney for plaintiff: Oliver Dickins in Simsbury, CT.

$3,600,000 NET VERDICT - MEDICAL MALPRACTICE - FAILURE OF PHYSICIAN ASSISTANT TO CALL ATTENDING BEFORE RULING OUT COMPARTMENT SYNDROME IN EMERGENCY ROOM - FASCIOTOTMY PERFORMED TOO LATE TO AVOID FOOT DROP AND TIBIAL NERVE PALSY - CRPS IN LEG AND BACK - SEVERE LEG TREMORS.

Queens County, NY

This medical malpractice action involved a male plaintiff, in his mid-40s, who visited the defendants' emergency room with severe lower leg pain and was seen by a physician assistant. The pain had begun the night before while playing soccer and he had been seen at another emergency room and diagnosed with myalgia. The plaintiff contended that at the time that he was seen by the defendants, he presented with signs and symptoms of compartment syndrome, including severe pain at the mid-shin, swelling, tenderness and increased pain upon dorsiflexion. The defendant maintained that compartment syndrome was part of the differential diagnosis and that the PA had never seen a case of compartment syndrome before. However, based upon his clinical examination, he diagnosed the plaintiff with a muscle strain, administered pain medication, and discharged him with instructions to see an orthopedist the following day if he was not better. The plaintiff further contended that the attending physician supervising the PA, who was ultimately responsible for the PA's actions, negligently signed off on the PA's note without realizing that the note indicated no evidence of compartment syndrome despite the fact that it contained findings suspicious of compartment syndrome. The plaintiff maintained that calling an orthopedic consultation and/or measuring compartment pressures was indicated at the time of plaintiff's visit, which would have led to a timely diagnosis of compartment syndrome and an emergency fasciotomy.

The jury found the PA 20% negligent, the supervising attending physician 40% negligent and attributed 40% responsibility to the plaintiff's culpable conduct in failing to return to the emergency room that night. They then rendered a gross award (before reduction to present value or reduction for plaintiff's culpable conduct) that approximated $7,000,000. The gross award was allocated as follows: $750,000 for past pain and suffering; $119,000 for past lost earnings; $2,000,000 for future pain and suffering; $25,000 per year for ten and a-half years with a 1% growth rate for loss of future earning capacity; $130,950 per year for future medical and related expenses for 26.6 years with a 1% growth rate; $48,000 for handicapped home renovations; $150,000 to the wife for loss of society and consortium; $25,000 to the wife for loss of past household services and $3,500 per year for 26.6 years with a 1% growth rate to the wife for future loss of household services.

REFERENCE

Shajan vs. South Nassau Community Hospital, et al. Index no. 22355/08; Judge Jeffrey D. Lebowitz, 12-06-13.

Attorney for plaintiff: Joan P. Brody of counsel to A. Paul Bogaty in New York, NY.

$1,125,000 CONFIDENTIAL RECOVERY - MEDICAL MALPRACTICE - CARDIOLOGIST NEGLIGENCE - NEGLIGENT MANAGEMENT OF RARE COMPLICATION OF DISSECTION DURING ANGIOGRAPHY - INADEQUATE STENTING AND NEGLIGENT FAILURE TO SEEK CONSULTATION FOR BYPASS SURGERY LEADS TO MASSIVE HEART ATTACK AND NEED FOR CARDIAC TRANSPLANT SURGERY

Ocean County, NJ

This was a medical malpractice action involving a then 41-year-old female who contended that the defendant interventional cardiologist negligently failed to obtain a surgical consult after the patient suffered a rare, but known risk of a spiral dissection during a cardiac catheterization. The plaintiff also maintained that the defendant, who attempted to deal with the condition by placing four stents, negligently left a gap between stents three and four. The plaintiff contended that she suffered a clot and a massive myocardial infarction approximately one week later, requiring that she undergo a heart transplant. The defendant maintained that he was confronted with an emergent situation and that it was essential to restore blood flow to the left coronary system. The plaintiff's expert maintained that although this position had merit, the defendant still should have arranged for a surgical consult when it appeared as if the blood flow was restored,

The case settled prior to trial for $1,250,000.

REFERENCE

Plaintiff Doe vs Defendant Roe.

Attorneys for plaintiff: Charles A. Cerussi and David Pierguidi of Cerussi & Gunn, PC in Shrewsbury, NJ.

PRODUCTS LIABILITY

$73,500,000 VERDICT - PRODUCT LIABILITY - DEFECTIVE MEDICAL DEVICE - VAGINAL MESH LAWSUIT TRIAL ENDS AS JURY ORDERS BOSTON SCIENTIFIC TO PAY VICTIM OF OBTRYX SLING - PAIN, INFECTION AND OTHER COMPLICATIONS OF DEVICE FAILURE.

Dallas County, TX

This first transvaginal mesh case to be heard in a Texas court has ended in a plaintiff's verdict. The jury found the defendant liable for defective product and failure to warn. In 2011, the female plaintiff, Martha S., a former employee of a property management firm, underwent the surgical implantation of an Obtryx product to treat stress urinary incontinence (SUI). The 42-year-old woman later suffered nerve damage, infections, and persistent pain as a result of the mesh's erosion, as well as pain, scarring, infection, and other complications. The plaintiff underwent 42 additional procedures, including four major surgeries, to treat complications of the implant's failure. She can now no longer sit comfortably and walks with a pronounced limp. The defendant denied the plaintiff's accusations.

After a nine-day trial and one day of deliberation, the jury returned a finding for the plaintiff, concluding that the Obtryx device was defectively designed, and that Boston Scientific failed to provide adequate warnings to doctors and patients about its potential risks. The medical device maker was ordered to pay $23,500,000 in compensatory damages, and $50 million in punitive damages.

REFERENCE

Martha S. vs. Lopez. Case no. DC-1214349, 09-10-14.

Attorney for plaintiff: David Matthews of Matthews & Associates in Houston, TX. Attorney for plaintiff: Tim Goss of Freese & Goss in Dallas, TX. Attorney for plaintiff: Kevin L. Edwards of Edwards & de la Cerda, PLLC in Dallas, TX. Attorney for plaintiff: Richard A. Capshaw of Capshaw & Associates in Dallas, TX.

$37,000,000 VERDICT - PRODUCT LIABILITY - ASBESTOS - FLORIDA ASBESTOS VERDICT FOR FORMER MECHANIC - MESOTHELIOMA CAUSED BY ASBESTOS EXPOSURE

Hillsborough County, FL

In this action, a Florida Jury decided a case involving asbestos-containing brake linings. The matter was heard in the 13th Judicial Circuit of Hillsborough County. Gary H. was an automotive mechanic for approximately seven years during the 1970s. In that time, the plaintiff alleged that he was exposed to asbestos in brake products, and as a result at the age of 65, he developed peritoneal mesothelioma, a deadly form of cancer of the lining of the abdomen associated with asbestos exposure.

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The plaintiffs, Gary H., his wife, Mary, and 12-year-old adopted daughter Jasmine, filed suit in the Judicial Circuit court for Hillsborough County, named as defendants, Pneumo Abex, Ford Motor Company, and other former manufacturers of asbestos-containing products. The defendants were accused of willfully exposing the decedent to asbestos-containing brake linings. The plaintiff sought recovery of damages for medical expenses, pain and suffering, and loss of consortium for Mary and Jasmine. The defendant, Pneumo Abex, asserted that their products were safe, and denied all negligence.

After two-and-a-half weeks of trial, the jury deliberated for just over two hours before returning a finding for the plaintiff. The jury found defendant, Pneumo Abex, 75 percent liable for Gary's condition, concluding that defendant negligently failed to warn defendant of the dangers of its asbestos-containing brake linings. Strict liability was also found against the defendant for placing a defective product in the stream of commerce. The jury awarded $36,984,800 in damages.

REFERENCE

Hampton, et al. vs. Pneumo Abex, et al.. Case no. 13-CA-009741; Judge Manuel Menendez Jr., 08-27-14.

Attorney for plaintiff: David Jagolinzer of The Ferraro Law Firm in Miami, FL. Attorney for defendant: Tom Radcliffe of Dehay & Elliston LLP in Baltimore, MD. Attorney for defendant: Clarke Sturge of Cole Scott & Kissane, P.A. in Miami, FL.

$3,750,000 RECOVERY REACHED IMMEDIATELY BEFORE JURY SELECTION - PRODUCT LIABILITY - DEFECTIVE DESIGN OF MAPP GAS CYLINDER - DECEDENT SUFFERS EXTENSIVE BURN INJURIES AND IS KEPT IN MEDICALLY INDUCED COMA UNTIL HIS DEATH.

Kings County, NY

This was a product liability/defective design action involving a 40-year-old decedent who was using the defendant's gas cylinder attached to a torch while renovating the kitchen in a home he had bought for his extended family. The cylinder contained gas that was comprised of stabilized methylacetylene-propadiene propane (MAPP). The cylinder was constructed using a braze which consisted of copper, nickel and phosphorus. The plaintiff contended that the use of phosphorus in a braze was contraindicated because it tended to render the metal more brittle and less ductile or pliable, and increased the risk of a crack in the neck if subjected to a relatively low energy force. This could result in the leaking of gas, which, in the presence of an ignition source, would cause a fireball. The plaintiff relied upon sophisticated metallurgical testing to support its contentions that the fractured area had become embrittled, causing a fatal explosion. The defendant denied that the product was defective and denied that phosphorus is contraindicated for use in low carbon steels. It also denied that the cylinder had become embrittled. The defendant maintained that it was likely that the decedent had failed to handle the cylinder with sufficient care, resulting in the leak that led to the incident. Specifically, the defendant pointed out that the decedent had a fractured metatarsal at the hospital. The defendant contended that it was likely that the decedent had tripped and fallen onto the torch/cylinder assembly and bent it sufficiently to cause the breach.

The case settled immediately before jury selection for $3,700,000.

REFERENCE

Tran vs. Worthington Industries, Inc., et al. Index no. 4777/10, 03-14.

Attorney for plaintiff: Jay W. Dankner of Dankner Milstein & Ruffo, PC in New York, NY.

$1,300,000 RECOVERY FOLLOWING MEDIATION - PRODUCT LIABILITY - DEFECTIVE DESIGN - RETRACTABLE DOG LEASH RECOILS AND STRIKES PLAINTIFF IN THE EYE - RUPTURED GLOBE - LOSS OF VISION IN LEFT EYE DESPITE MULTIPLE SURGERIES.

Fairfield County, CT

In this product liability matter, the 54-year-old male plaintiff alleged that the defendant distributor was liable for the defective design of its retractable dog leash, which recoiled back and struck the plaintiff in the eye when his dog suddenly pulled on the leash. The plaintiff maintained that as a result of the incident, he lost vision in his left eye due to a ruptured globe. The defendant denied that the leash was manufactured by its supplier and disputed any liability to the plaintiff for his injuries and damages.

The parties agreed to settle the plaintiff's claim for the sum of $1,300,000 following a mediation session.

REFERENCE

Michael Slugg vs. M2 Products, LLC. Case no. FST-CV11-601-5535-S, 05-27-14.

Attorney for plaintiff: Brenden P. Leydon of Tooher Wocl & Leydon LLC in Stamford, CT. Attorney for plaintiff: Paul R. Thomson, III of The Thomson Law Firm in Roanoke, VA. Attorney for defendant: James Mahar of Ryan Ryan DeLuca LLP in Stamford, CT.

MOTOR VEHICLE NEGLIGENCE

$15,206,113 GROSS VERDICT - MOTOR VEHICLE NEGLIGENCE - DEFENDANT TRUCKER MAKES LEFT TURN IN PATH OF MOTORCYCLIST - DEATH OF HUSBAND - SON BORN THREE MONTHS AFTER DEATH

Orange County, FL

The plaintiff contended that the defendant truck driver negligently made a left-hand turn directly into the path of the decedent motorcycle operator, causing his death. The decedent left a wife and a son who was born three months after the death of his father. The collision occurred on a roadway which had a 55 mph speed limit and the defendant contended through accident reconstruction testimony that the decedent was traveling at approximately 70 mph. The plaintiff countered through accident reconstruction testimony that the decedent's speed was between 55 and 61 mph, arguing that the decedent was riding a newer bike that had light weight fairings and was sufficiently aerodynamic to significantly impact the stopping distance, accounting for longer skid marks at a slower speed. The plaintiff also contended that the defendant truck driver had falsified the paper logs relating to the amount he drove in the past 24 hours, as well as the amount of rest time taken. The plaintiff asserted that the defendant trucking company permitted its drivers to use paper logs when most of the industry used electronic logs that are more difficult to falsify. The plaintiff contended that the defendant trucking company probably knew that its drivers were on the road longer than they should have been, and that the trucking company placed profits over the safety of the public.

There was no evidence of conscious pain and suffering. The decedent was a seven-year veteran of the Navy and served in Iraq. The jury found the defendant 93% negligent, the decedent 7% comparatively negligent, and rendered a gross award of $15,206,113, including $5,114,947 to the wife for loss of support and services, $5,000,000 to the wife for loss of companionship, including pain and suffering stemming from the death, $5,000,000 to the son for loss, companionship, and pain and suffering, and $91,166 to the son until age 21 for loss of support and services.

REFERENCE

Simmons vs. Wirick and Landstar Ranger Trucking Company. Case no. 2011 CA 012901-0 DIV 39, 09-00-14.

Attorney for plaintiff: Thomas Schmitt of Goldstein, Schmitt & Cambron, PL in Stuart, FL.

$1,250,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - PEDESTRIAN STRUCK BY LEFT TURNING BUS - PLAINTIFF LODGED IN BUS WHEEL WELL - SEVERE ABDOMINAL WOUND - USE OF VACUUM WOUND DEVICE - SKIN GRAFT - CERVICAL AND LUMBAR HERNIATIONS - DISC SURGERY

Bergen County, NJ

The male plaintiff in his early 30s contended that after he completed crossing approximately three quarters of the roadway in the crosswalk, the defendant bus driver, who was making a left turn, struck him. The plaintiff contended that the bus driver did not see him and that he continued driving approximately 50 feet after the impact. Upon hearing a "thud," the bus driver stopped and saw that the plaintiff was stuck beneath the bus' wheel well. The bus driver then had to back the bus approximately three feet off him, and the plaintiff maintained that he was still under the front bumper of the bus, even when the bus was rolled back. The plaintiff maintained that as a result, he suffered a severe wound to the left lower quadrant of the abdomen, requiring both the installation of a wound vacuum device, as well as a skin graft. The evidence reflected that upon admission, tire treads were noted on the plaintiff's back. The plaintiff also stated that he suffered cervical and lumbar herniations, and needed an anterior cervical discectomy, fusion surgery, and instrumentation with reconstruction, including a lumbar decompression and fusion. The plaintiff maintained that despite the surgeries, he will permanently suffer extensive pain and weakness. The defendant argued that based upon the estimated speed and distances as reported by the parties and eyewitnesses on the bus, the plaintiff was crossing outside of the crossing.

The case settled prior to trial for $1,250,000.

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REFERENCE

Massey vs. NJ Transit, et al. Docket no. BER-L-7541-11, 06-30-14.

Attorney for plaintiff: Donald Caminiti of Breslin & Breslin in Hackensack, NJ.

$1,150,255 RECOVERY - MOTOR VEHICLE NEGLIGENCE - DEFENDANT DRIVER CROSSES DOUBLE YELLOW LINE CAUSING HEAD-ON COLLISION WITH PLAINTIFF DRIVER - HOST CAR DEMOLISHED - PLAINTIFF SUFFERS CLOSED HEAD TRAUMA AND MULTIPLE FRACTURES THROUGHOUT BODY - PLAINTIFF HOSPITALIZED FOR FOUR MONTHS AND RETURNS TO WORK FIVE MONTHS AFTER DISCHARGE DESPITE CONTINUING SEVERE PAIN.

Nassau County, NY

In this action, the female plaintiff in her 50s, who was traveling on straight portion of the roadway, contended that the defendant on-coming driver negligently lost control of his vehicle and swerved across the double yellow line, causing a head-on collision. The defendant was driving a Cadillac and the plaintiff was operating a Corvette. The plaintiff maintained that the severe impact demolished the host vehicle, that the police initially believed that the plaintiff might well die, and photographs showed that the host car was demolished. The plaintiff maintained that she suffered a closed head trauma that resolved with relatively moderate deficits, multiple fractures, including a non-displaced cervical fracture, a shoulder fracture, a humeral fracture, multiple rib fractures, a hip fracture and leg fractures.

The defendant had $1,250,000 in coverage. The case settled prior to trial for $1,150,255.96.

REFERENCE

Martucci vs. Rooney. Index no. 2847/12, 04-07-14.

Attorney for plaintiff: Steven R. Payne of Ginarte O'Dwyer Gonzalez Gallardo & Winograd, LLP in New York, NY.

$565,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - AUTO/TRUCK COLLISION - DECEDENT'S VEHICLE COLLIDES WITH REAR OF DEFENDANT'S SLOW MOVING AND UNSAFE DUMP TRUCK - FAILURE TO OPERATE DUMP TRUCK IN ACCORDANCE WITH FEDERAL SAFETY REGULATIONS - WRONGFUL DEATH OF 63-YEAR-OLD FEMALE AND HER 40-YEAR-OLD SON - ORTHOPEDIC INJURIES TO SURVIVOR.

Allegheny County, PA

In this vehicular negligence action, the estates of the decedents and the individual plaintiff maintained that the defendant construction company negligently owned and maintained a dump truck which was involved in a collision that claimed the lives of a mother and son, and severely injured the father. The defendants argued that it was the actions of the deceased son, the driver, which caused the accident.

The estate of the decedent Patricia B. settled with the defendant for $210,000, and with the decedent son's insurance company for $40,000. The survivor, Robert B., settled with the defendant for $210,000, and with the decedent son's insurance company for $40,000 for his own injuries. The estate of the decedent driver, Robert B. Jr., settled with the defendant construction company for $65,000.

REFERENCE

Defendant's orthopedics expert: Jeffrey Cann M.D. from Pittsburgh, PA.

Robert M. Bair, Ind. & as Administrator of Estate of Patricia A. Bair and Theresa Bair Administratrix of the Estate of Robert Edward Bair vs. Derry Construction. Case no. gd12-007072; Judge Ronald Folino, 04-07-14.

Attorney for plaintiff: Larry Coben of Anapol Schwartz in Philadelphia, PA. Attorney for defendant: Arthur Leonard of Robb Leonard Mulvihill LLP in Pittsburgh, PA.

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PREMISES LIABILITY

$7,800,000 RECOVERY - PREMISES LIABILITY - NEGLIGENT SECURITY AT APARTMENT BUILDING - THIRD PARTY DEFENDANT ASSAILANT INFLICTS MULTIPLE STAB WOUNDS ON DECEDENT/MOTHER AND SURVIVING SEVEN-MONTH-OLD SON DURING ROBBERY - MOTHER DIES AT SCENE FROM STAB WOUNDS - BABY STABBED EIGHT TIMES.

Bergen County, NJ

The plaintiff contended that the defendant landlord of the family's apartment, who provided a uniformed security guard between the hours of midnight and 8:00 am, was negligent in failing to station a uniformed security guard 24 hours per day. The plaintiff contended that as a result, an assailant "tailgated" into the building by entering the building at approximately 8:30 am when another tenant was leaving the front door vestibule of the building. The assailant then stabbed the 29-year-old mother 34 times, killing her, and stabbed the seven-month-old child eight times, causing wounds that required a two month hospitalization and which has left him with deficits that primarily involved expressive speech delays. The father, who was at work at the time of the attack, found the mother and child when he returned to the apartment during lunch, and the father made a claim for severe emotional distress under Portee vs. Jaffee. The defendant denied that the crime statistics for the area showed that it was a "dangerous area," and argued that posting a guard round-the-clock was necessary. The plaintiff would have argued that irrespective of the issue as to whether the statistics in the general area reflected a sufficiently high crime rate to mandate a 24-hour per day guard, the jury should consider that much of the surrounding area had been gentrified, and that the building in question remained low income, and that it was likely that criminals would be that much more likely to target this building.

The defense made a pretrial motion for Summary Judgment on the issue of the plaintiff father's claim for emotional distress and the Court held that the jury could consider the claim. The case settled prior to trial for $7,800,000.

REFERENCE

Reyes vs. Westgate, et. al. Docket no. BER-L-111-12; Judge Charles Powers, 06-06-14.

Attorneys for plaintiff: Daryl L. Zaslow and Edward McElroy of Eichen Crutchlow Zaslow & McElroy,LLP in Edison, NJ.

$2,500,000 VERDICT - PREMISES LIABILITY - SLIP AND FALL - WOMAN SLIPS ON POORLY-MADE SIDEWALK OUTSIDE CHURCH - CRUSHED KNEE.

Palm Beach County, FL

In this action, the 39-year-old female sued the defendant church after slipping on their sidewalk. In 2009, the plaintiff claimed that she fell and crushed her knee while walking on an exterior sidewalk at Ascension Catholic Church in Boca Raton, FL. The plaintiff has undergone four knee surgeries as a result of her injuries, and will need at least two total knee replacement surgeries in the future. The defendant denied negligence.

The named defendants included: The Diocese of Palm Beach; general contractor, Hunter Construction Services, Inc. and Civil Cadd Engineering, Inc., who was the subcontractor who built the sidewalk. The plaintiff sought recovery of damages for past and future medical treatment, past lost wages, and past and future pain and suffering. The defendant Civil Cadd settled with the plaintiff and the remaining defendants denied liability. The defendants offered as much as $500,000 for settlement. Ultimately, defendants Hunter and the Diocese conceded liability, and the trial commenced solely on the subject of damages. After four days, the jury returned a finding for the plaintiff, who was awarded over $2,500,000 in damages.

REFERENCE

Andrea Thompson vs. Diocese of Palm Beach Inc.,. Case no. 50-2010-CA-017448-MB-AI; Judge Neenu Sasser, 09-29-14.

Attorney for plaintiff: Matt Kobren of Glotzer & Kobren, P.A. in Boca Raton, FL. Attorney for defendant: Neal Coldin of Law Office of Peter J. Delahunty - Zurich North America in Juno Beach, FL.

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$2,410,000 GROSS VERDICT - PREMISES LIABILITY - DEFENDANT MANUFACTURER FAILS TO KEEP WORKING CONDITIONS SAFE FOR OUTSIDE CONTRACTORS - DEFENDANT'S EMPLOYEES REMOVE A SAFETY GUARD ON A BELT AND PULLEY SYSTEM - PLAINTIFF SUB-CONTRACTOR SUSTAINS LEFT KNEE AND LOWER BACK INJURIES - MEDICAL EXPENSES.

Dallas County, TX

The plaintiff brought this property owner liability lawsuit against the defendant for negligence when it failed to keep the working conditions and environment safe, in addition to failure to warn others of the dangers on the premises. The plaintiff maintained that the defendant's employees removed a safety guard on a belt and pulley system, knowing that the plaintiff and others would be working in the vicinity and exposed to danger. As a result of the defendant's negligence, the plaintiff sustained severe injuries to his left knee and lower back. He incurred medical expenses, and has experienced past and future physical disfigurement. The defendant denied the plaintiff's allegations.

A jury of six found that the plaintiff and defendant were both negligent in causing the plaintiff's injuries. The jury found the plaintiff 10% comparatively, the defendant University 51%, the defendant Siemen's, 15%, and defendant Universal 24% attributable to the occurrence. The jury awarded the plaintiff a total of $2,410,000 ($100,000 for physical pain and mental anguish sustained in the past; $500,000 for physical pain and mental anguish in the future; $160,000 for reasonable and necessary medical care in the past; $210,000 for reasonable and necessary medical care in the future; $150,000 for physical impairment sustained in the past; $550,000 for physical impairment in future; $180,000 for loss of earning capacity in the past; and $560,000 for loss of earning capacity in the future). The court ruled that the verdict should be reduced by the plaintiff's 10% comparative negligence, and by defendant Siemen's settlement amount of $55,000, which resulted in a net jury verdict of $2,114,000. The court found that the liability of the defendant medical center for damages to the plaintiff was capped at $250,000.

REFERENCE

Johnny Felipe Munoz vs. The University of Texas Southwestern Medical Center. Case no. CC-1000309-E; Judge Mark Greenberg, 07-11-14.

Attorneys for plaintiff: Kirk M. Claunch, Jim Claunch & James D. Piel of The Claunch Law Firm in Fort Worth, TX. Attorney for plaintiff Guardian Ad Litem: Kimberly Fitzpatrick of Harris * Cook, LLP in Arlington, TX. Attorneys for defendant Energy Club, Inc., Scotty Shipman, Individually and d/b/a Shipman's Snack Services and Khaled Dalgam: James W. Watson & Brian Scott Bradley of Watson, Caraway, Midkiff & Luningham, LLP in Fort Worth, TX. Attorneys for defendant YMCMart.com, Inc.: George N. Wilson (Trey) & Amber E. Edwards of Thompson, Coe, Cousins & Irons, LLP in Dallas, TX.

ADDITIONAL VERDICTS OF INTEREST

Contract

$19,500,000 RECOVERY - CONTRACT - DEFENDANTS TRANSFERRED OR DISTRIBUTED TO CLASS MEMBERS THE VALUE OF THEIR ACCOUNT AS OF THE EFFECTIVE DATE, RATHER THAN THE PROCESSING DATE, RESULTING IN DEFENDANT RETAINING MONIES ALLEGED TO PROPERLY BELONG TO PLAINTIFF CLASS.

Withheld County, VT

In this ERISA matter, the plaintiff class of 755 college professors alleged that the defendant violated its fiduciary duty under the law by failing to transfer any gains into the plaintiffs' account which accrued between the date of the receipt of fully executed forms, and the effective date of the transfer of monies from various retirement accounts into new retirement accounts. The plaintiffs alleged that they were entitled to these monies, which should have accrued to their accounts upon the defendant's receipt of the transfers during a seven-day window. The defendant denied the plaintiffs' allegations and maintained it kept these gains in order to offset losses in accounts that lost monies during the same seven-day window.

The matter was settled after four years of litigation. The defendant agreed to pay the class members the sum of $19,500,000 and an additional $3,300,000 to offset attorney fees and expenses in the litigation.

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REFERENCE

Christine Bauer-Ramazani and Carolyn B. Duffy, on behalf of themselves and all others similarly situated vs. Teachers Insurance and Annuity Association of America - College Retirement and Equities Fund. Case no. 1:09-cv-00190; Judge J. Garvan Murtha, 09-03-14.

Attorneys for plaintiff: Norman Williams and Robert B. Hemley of Gravel & Shea PC in Burlington, VT.

Employment Law

$25,000 RECOVERY - EEOC - DISABILITY DISCRIMINATION - EEOC CHARGES CHICKEN FRANCHISE WITH DISCRIMINATING AGAINST HIV-POSITIVE APPLICANT - VIOLATION OF ADA.

Smith County, TX

In this action, the EEOC charged a Popeye's franchise with unlawfully denying employment to an HIV-positive applicant.

The defendant, Famous Chicken of Shreveport, L.L.C., is the owner of a Popeye's Chicken franchise in Longview, Texas. The EEOC charged that a general manager at that location refused to hire Noah C. for a position despite his qualifications and experience, upon learning that he was HIV-positive. This information came to light after complainant listed "medical" as his reason for leaving his previous position. The complainant was subsequently interviewed by the general manager and was asked to disclose the "medical" condition referenced. When he did so, he was immediately informed that he would be denied the position, due to his condition. The defendant also owns chicken franchise restaurants in Laredo, El Paso and Killeen, Texas, and Louisiana. In October 2011, the EEOC filed suit in the U.S. District Court for the Eastern District of Texas after first attempting to reach a pre-litigation settlement through its conciliation process. The EEOC accused the defendant Famous Chicken of Shreveport of violating the Americans with Disabilities Act (ADA). The plaintiff sought damages for the complainant, as well injunction from further violation of the law.

The matter was resolved through a three-year consent decree, in which the defendant agreed to pay $25,000 to Mr. C. in damages, as well as furnishing other relief. The defendant agreed to provide training to all managers, supervisors, and HR professionals on the ADA, including instruction on medically-related pre-employment questions.

REFERENCE

Equal Employment Opportunity Commission vs. Famous Chicken of Shreveport, LLC d/b/a Popeye's Chicken and Biscuits. Case no. 6:13-cv-00664; Judge Leonard Davis, 09-04-14.

Attorney for plaintiff: Suzanne M. Anderson of Equal Opportunity Commission in Dallas, TX.

Fraud

$5,150,000,000 RECOVERY - FRAUD - FRAUDULENT CONVEYANCE - OIL AND NATURAL GAS COMPANY ACCUSED OF SHELL GAME TO DUCK ENVIRONMENTAL DAMAGE LIABILITY - FRAUDULENT CONVEYANCE.

U.S. Bankruptcy Court, Southern District of New York

In this matter, the United States Government and a Trust plaintiff resolved their litigation against subsidiaries of a petroleum company. The case for fraudulent conveyance was ended with a settlement agreement. The defendant, Kerr-McGee, is a division of Anadarko Petroleum Company, a producer of oil and natural gas. The United States maintained that between 2002 and 2005, the defendant created a new corporate entity, the New Kerr-McGee, and transferred its oil and gas exploration assets into the new company. The old Kerr-McGee was renamed Tronox, and was left with the legacy environmental liabilities and was spun off as a separate company in 2006. As a result of this transaction, Tronox was rendered insolvent and unable to pay its environmental and other liabilities. Tronox went into bankruptcy in 2009. The co-plaintiff, Anadarko Litigation Trust, was formed to pursue Tronox's fraudulent conveyance claims on behalf of its environmental and torts creditors. That plaintiff and the United States accused the defendant New Kerr-MCGee of shifting its profitable oil-and-gas business to a new entity, leaving the bankrupt shell Tronox in its wake. This, the plaintiffs asserted, was done in an attempt to evade its civil liabilities, including liability for environmental clean-up of contaminated sites around the United States. The defendant denied the plaintiffs' accusations.

In December 2013, the court concluded that defendant had acted to free substantially all of its assets with the intent to hinder or delay creditors, including those resulting from 85 years of environmental and tort liability. The matter was ultimately resolved via

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$5.15 billion settlement agreement. Of the total amount, $4.4 billion will be paid to fund environmental clean-up and for environmental claims, pursuant to a 2011 agreement between the United States, certain state, local and tribal governments, and the bankruptcy estate.

REFERENCE

Tronox/United States vs. Kerr-Gee Corporation. Index no. 09-10156; Judge Allan L. Gropper, 04-03-14.

Attorney for plaintiff United States: Robert William Yalen & Joseph Pantoja of Department of Justice in New York, NY. Attorney for defendant Anadarko Litigation Trust: David J. Zott, Andrew A. Kassof & Jeffrey J. Zeiger of Kirkland & Ellis LLP in Chicago, IL. Attorney for defendant Anadarko Petroleum Corporation & Kerr-McGee Corporation: Melanie Gray, Lydia Protopapas & Jason W. Billeck of Winston & Strawn LLP in Houston, TX. Attorney for defendant Anadarko Petroleum Corporation & Kerr-McGee Corporation: Kenneth N. Klee & David M. Stern of Klee, Tuchin, Bogdanoff & Stern LLP in Los Angeles, CA. Attorney for defendant Anadarko Petroleum Corporation & Kerr-McGee Corporation: James J. Dragna, Thomas R. Lotterman & Duke K. McCall, III of Bingham McClutchen LLP in Washington, DC.

$58,900,000 RECOVERY - OFF-LABEL DRUG MARKETING - FALSE CLAIMS ACT - SHIRE PHARMACEUTICALS FOUND LIABLE OVER OFF-LABEL MARKETING OF DRUGS - VIOLATION OF FALSE CLAIMS ACT

Philadelphia County, PA

In this action, the United States pursued action against a drug company for claims and marketing in respect to several of its products. The defendant, Shire Pharmaceuticals, is the maker of the drugs Adderall XR, Vyvanse, Daytrana, Lialda, and Pentasa. The government accused the defendant of off-label marketing Adderall XR, Vyvanse, and Daytrana for the treatment of Attention Deficit Hyperactivity Disorder(ADHD) in children. The plaintiff asserted that the defendant Shire made unsubstantiated claims that Adderall XR and the other drugs would help prevent "certain issues linked to ADHD," including poor academic performance, car accidents, divorce, loss of employment, criminal behavior, arrest, and sexually transmitted disease. The defendant asserted that their drug Vyvanse was "not abusable," accusing its reps of making false and misleading statements on the efficacy and abuseability of the drug in an effort to avoid requirements for Medicaid's authorization for "abuseable" drugs.

In 2008, the complainant, a former Shire executive, filed a qui tam complaint in the U.S. District Court for the Eastern District of Pennsylvania. The plaintiff, and later, the U.S. government, accused defendant of violating the False Claims Act through off-label marketing of its products. The matter was resolved through a settlement for $58,900,000 in damages.

REFERENCE

United States ex rel. Torres et al. vs. Shire Specialty Pharmaceuticals et al. Case no. 08-cv-04795, 09-24-14.

Attorney for plaintiff: Natalie Priddy of Justice Department - Civil Frauds Division in Washington, DC. Attorneys for plaintiff: David Degnan & Paul Kaufman of U.S. Attorney's Office in Philadelphia, PA. Attorney for plaintiff: Stephen A. Sheller of Stephen A. Sheller and Sheller, P.C. in Philadelphia, PA.

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