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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

Summaries with Trial Analysis

$6,500,000 RECOVERY – PLAINTIFF PEDESTRIAN STRUCK BY BUS IN CROSSWALK AFTER TRAFFIC LIGHT TURNS GREEN FOR BUS, WHILE PLAINTIFF PARTIALLY ACROSS ROADWAY – DRIVER PLACES BUS IN REVERSE AND FRONT WHEELS RUN OVER PLAINTIFF A SECOND TIME – SEVERE CRUSH FRACTURES

Essex County, NJ

The plaintiff pedestrian, then 42 years old, contended that she stepped off the curb and into the crosswalk while the light was green, and after walking approximately 30 feet, was struck by the defendant driver, whose traffic light had turned green, but who failed to make observations. The plaintiff further supported that after she was struck and knocked down, the driver placed the bus in reverse, running her over a second time, stopping with the front wheels on top of her. The plaintiff suffered severe bilateral degloving injuries to the legs, and underwent 13 surgical interventions in the first several months. A below-the-knee right leg amputation was ultimately performed. The plaintiff regained significant function in the left leg but the cosmetic deficit is severe. The defendant's on-board video system was comprised of two cameras, including one that was on the top of the bus facing forward, and one that was trained on the driver. The video did not show the plaintiff being struck.

The plaintiff related that the traffic light was still green when she stepped off the curb and into the crosswalk. The bus had pulled from a bus stop down the block, and the plaintiff argued that the driver was not paying adequate attention as she drove through the intersection. The plaintiff, using the scenes depicted on the defendant's video system and the dimensions of the intersection, prepared a video animation which the plaintiff argued would have, if the case was tried before a jury, clearly underscore the plaintiff's claim that the collision simply would not have occurred if the defendant bus driver had been paying adequate attention. The plaintiff pointed out that after the bus rolled back and the wheels came to rest on her, the authorities were initially reluctant to move her because of the fear that she might bleed to death. The plaintiff was not moved for 20-30 minutes and was conscious and in great pain. The evidence also disclosed that the plaintiff's son was walking a short distance ahead of her, carrying his cell phone that had a camera, and the son took photographs of the plaintiff under the bus with her legs protruding. The plaintiff was under the bus with the wheels on top of her for 20-30 minutes. She was ultimately extricated and brought to the hospital, and maintained that she sustained severe crush fractures and degloving injuries to both legs. Over the course of the next two months, the plaintiff underwent 13 surgical interventions, including several which were performed in the hopes of salvaging the leg. The plaintiff required a below-the-knee amputation of the right leg, however, and contended that she will permanently suffer extensive pain, have difficulties ambulating, and that the residual cosmetic injury, especially to the left leg, is severe. The plaintiff made no income claims.

The case settled after after being assigned for trial and following several days of pre-trial rulings for $6,500,000.

REFERENCE

Plaintiff's Accident Reconstruction and 3D Animation expert: Steven M. Schorr, PE from DJS Associates, PA. Plaintiff's orthopedic surgeon expert: Peter De Noble, M.D. from Wayne, NJ.

Galeno vs. NJ Transit. Docket no. ESX-L-1432-13, 10-08-14.

Attorney for plaintiff: John D. O'Dwyer of Ginarte O'Dwyer Gonzalez Gallardo & Winograd, LLP in Newark, NJ.

COMMENTARY

It is felt that the plaintiff effectively utilized demonstrative evidence to maximize the recovery in this case involving severe degloving injuries to both legs and a below-the-knee amputation to the right leg that were suffered as an alleged result of the negligence of a bus driver who failed to make observations, striking the plaintiff crosswalk pedestrian, and then backing up with the front wheels coming to rest on the plaintiff. In this regard, the plaintiff utilized the defendant's own photographs, taken from two bus cameras and data that included the actual dimensions of the intersection, to prepare a computer animation which, the plaintiff argued, clearly underscored the horrific nature of the incident. Moreover, such demonstrative evidence is often a particularly productive settlement tool because the presentation enables the ultimate decision makers, who typically are not present during actual negotiations, to fully appreciate and anticipate the extent of the expected jury reaction. Finally, in this case, such demonstrative evidence also included photographs of the plaintiff under the bus with her legs protruding, which were taken by her son who was walking slightly ahead of her, and had a cell phone with a camera.

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$2,760,000 GROSS VERDICT – ROAD CONSTRUCTION INSPECTOR IS APPARENTLY DISTRACTED BY WORK AND IS STRUCK BY STEAMROLLER TRAVELING AT 2 MPH – DECEDENT PLACED IN MEDICALLY-INDUCED COMA APPROXIMATELY ONE HOUR AFTER INCIDENT AND DIES 11 DAYS LATER

Middlesex County, NJ

This action involved a 29-year old construction inspector who was struck by a steam roller that was traveling at two mph when he was apparently involved in looking at his clipboard. The plaintiff contended that the operator of the defendant's steamroller negligently failed to make proper observations of the decedent approaching. The decedent was married approximately one year earlier, and had no children. He was in this country on a work visa that was set to expire three years after the death, unless the decedent was sponsored by another employer. The defendant contended that the primary cause of the incident was the negligent failure of the decedent to make observations, and maintained that in view of the slow speed of the steam roller, it was evident that the negligence of the decedent was particularly great.

The plaintiff supported that the jury should consider that the decedent was wearing a bright orange vest and should have been very visible to the defendant, who was operating potentially deadly equipment. The evidence disclosed that the decedent was bending down at the moment he was struck, and that the lower portion of his body was crushed into the hot asphalt. The decedent shouted that water should be poured onto him, and the response was that such water would instantly change into fatal steam. The decedent suffered third degree burns to 27% of his total body and multiple fractures, and that the pain and suffering associated with the incident was clearly excruciating. The defendant contended that the decedent was placed in a medically-induced coma approximately one hour after the incident occurred, and did not regain consciousness before dying 11 days later. The plaintiff's economist projected income losses of approximately $2,100,000. The decedent was an Indian national in this country on a work visa that would expire three years after the death, unless an employer would sponsor him. The defendant presented an expert immigration attorney who related that unless so sponsored, it was likely that the decedent would have been deported.

The defendant's economist offered projections of lost income that were based upon the expected earnings in India. The economist estimated $290,000 in such losses. The court held that the defendant had the burden of proof on the issue of whether the decedent would have remained in this country.

The jury found the defendant 70% negligent and the decedent 30% comparatively negligent. They then rendered a gross award of $2,760,000. The gross award was allocated as follows: $960,000 for medical bills, $500,000 for pain and suffering, $300,000 for the loss of guidance, and advice under Green vs. Bitner, $200,000 for past income loss and $800,000 for future income loss.

REFERENCE

Plaintiff's Burn specialist/pain management expert: Sigred Blume-Eberweis MD from Allentown, PA. Plaintiff's construction safety expert: William Guila from Bridgewater, NJ. Plaintiff's economic expert: Kristin Kusma from Livingston, NJ. Defendant's construction safety expert: Scott

Derector from Edison, NJ. Defendant's economic expert: Michael Soudry from Roseland, NJ. Defendant's immigration attorney expert: Robert Gottfried, Esq, from New York, NY.

Thakkan vs. Tarheel Enterprises Inc. Docket no. MID-L-7071-11; Judge Douglas Wolfson, 10-08-14.

Attorney for defendant: Ed of Methfessel & Werbel,PC in Edison, NJ.

COMMENTARY

The defendant emphasized that the evidence of such a horrific event that the records reflected the decedent did not regain consciousness after being placed in a medically induced coma approximately one hour after the incident. Moreover, the evidence that the decedent and his wife had been married for only one year was thought to clearly have a moderating effect on the award. it is interesting that the burden of proving that no employer would have sponsored the decedent past his visa expiration date was on the defendant, and that the defendant had the burden of showing the rate of compensation of an engineer/inspector in India (about 1/8th of the U.S. rate) was on the defendant.

$1,900,000 RECOVERY – PLAINTIFF AUTOMOBILE DRIVER CONTENDS DEFENDANT PICK-UP TRUCK DRIVER STRIKES HER IN REAR ON GSP AND IS PROPELLED INTO TREE – CLOSED HEAD INJURY

Essex County, NJ

The plaintiff driver, in her early 60s, contended that the defendant pick-up truck driver struck her in the rear on the GSP, resulting in her losing control and striking a tree. The plaintiff contended that as a result, she struck her head, sustaining a closed head injury and subdural hematoma that was treated medically. The plaintiff also contended that she suffered a fractured pelvis and a transverse process fracture in the lumbar area.The defendant denied that he had contacted the plaintiff's car, and supported that she lost control after swerving into his lane. The defendant maintained that he stopped to see if assistance was needed. The defendant's version was consistent with the police report. The plaintiff's counsel relates that, in accordance with routine investigation relating to MVAs that occur on State roadways, it uncovered evidence of a computer-aided dispatch (CAD) report that was prepared by the State Police. The report led to the identification of an independent eyewitness who testified for the plaintiff that he observed the defendant strike the rear of the plaintiff's car, resulting in it being propelled into the tree.

The plaintiff suffered a closed head trauma and subdural hematoma. She was an in-patient for several days, and a patient in a rehabilitation hospital for several weeks, and the subdural hematoma was treated medically. The plaintiff maintained that she was left with permanent and significant deficits involving memory and concentration. The plaintiff had been employed as a chemist for a long period of time, and supported that the work was intellectually demanding, and that because of the cognitive deficits, she was unable to return to work, and that she would have continued for a number of more years if she did not suffer the injuries.

The plaintiff also suffered a fractured pelvis and an external fixation device was used for some time. The plaintiff maintained that this injury and a transverse process fracture in the lumbar area will permanently cause pain some difficulties ambulating.

The case settled prior to trial for $1,900,000.

REFERENCE

Trikalsaransukh vs. Statewide Striping. Docket no. ESX-L-10395-10.

Attorney for plaintiff: Scott G. Leonard of Leonard & Leonard, PA in Morristown, NJ.

COMMENTARY

The defendant pick-up truck driver denied any involvement in the collision and contended that after the plaintiff swerved into his lane and cut him off, she lost control and went off into the tree without contacting his vehicle. The police report was consistent with the defendant's version. The plaintiff was, nonetheless, able to obtain a very substantial recovery from the defendant. The plaintiff's counsel, when investigating this accident that occurred on the GSP, obtained the computer-aided dispatch report, and the information contained in this report, led to the independent eyewitness who supported the plaintiff's claims, if the case had been tried.

$1,500,000 POLICY LIMIT RECOVERY – SINGLE VEHICLE COLLISION – PLAINTIFF PASSENGER IN DEFENDANT'S RECENTLY PURCHASED CORVETTE CONTENDS DEFENDANT REACHES ALMOST 100 MPH AND BECOMES AIRBORNE UPON ENCOUNTERING DIP IN ROADWAY – AUTOMOBILE CRASHES INTO TREE

Ocean County, NJ

The plaintiff, in his early 20s, contended that the defendant host driver, who had recently bought a Corvette, reached 98 mph as he approached Rt. 71 in Brielle. The plaintiff maintained that when the defendant encountered a dip in the roadway, he lost control of the car, which went airborne into a tree. The plaintiff contended that he sustained extensive fractures of the cervical vertebrae and vertebral artery damage, which required multiple surgeries. The plaintiff supported that he suffered a skull fracture brain hemorrhage, and required the placement of a number of shunts during the 30-day hospitalization. The plaintiff required a ventilator and a tracheotomy that was revised twice, which was also needed. The plaintiff further suffered multiple pelvic fractures that were treated conservatively, five rib fractures, and a fractured clavicle. The plaintiff, who worked as a landscaper, maintained that he has only been able to work intermittently since the time the injuries were sustained.The defendant had $500,000 in primary coverage, and a $1,000,000 umbrella.

The evidence disclosed that the defendant had purchased the Corvette approximately one week earlier. The collision occurred at an intersection controlled by a light, and an off duty police officer from another municipality was stopped at the red light perpendicularly from the defendant's car. The witness testified that although he did not see the automobile approach the intersection, he observed it airborne and strike the tree. The Corvette was equipped with a vehicle dynamic recorder (a.k.a. a black box). The data showed that the Corvette was traveling at 98 mph when it became airborne. The evidence reflected that the right side of the car struck the tree, sustained major damage, and that the left side suffered very little damage.

The plaintiff was an in patient for 30 days, and was in rehabilitation hospital for 23 days. The plaintiff contended that for the first week or so, his survival was very much in doubt. The plaintiff required surgery to dissect the vertebral artery, and to affix it. The plaintiff also suffered fractures at C1 and C2, and a halo collar was initially used. The plaintiff then underwent a fusion down to C5 to achieve stability, and required a ventilator during a portion of the hospitalization, where the initial tracheotomy was revised twice. The pelvic fractures were treated conservatively.

The plaintiff maintained that he suffers continual pain, and has very limited strength. The plaintiff had worked full-time as a landscaper, and the plaintiff related that he attempted to return, but realized that he could only do so sporadically. The plaintiff would have argued that the jury should consider that in view of the fact that he was in his early 20s at the time of the accident, it was to be expected that he had a limited work history. The plaintiff would have maintained that it is clear that he will suffer extensive future income losses.

The case settled approximately nine months after suit was filed for the policy limits of $1,500,000.

REFERENCE

Lelievre vs. Kowalski:. Docket no. OCN-L-1667-13,, 09-05-14.

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

COMMENTARY

The plaintiff resolved this case for $1,500,000 policy limits approximately nine months after suit was filed. The vehicle dynamic recorder in the Corvette that was recently purchased by the defendant driver showed that he reached speeds of 98 mph before becoming airborne and crashing into a tree, causing the severe and diffuse injuries that were suffered by the plaintiff passenger. In this regard, the carrier realized that in view of the clear liability issues, and the likelihood that a jury would award an amount that exceeded the policy, incurring additional expense from more protracted litigation would not be fruitful.

$1,000,000 VERDICT – FOUR VEHICLE CHAIN COLLISION – PLAINTIFF DRIVER SUFFERS CERVICAL HERNIATION AND LUMBAR BULGES WITH AGGRAVATION OF PRIOR LUMBAR BULGE

Middlesex County, NJ

In this action, the plaintiff driver, in her mid 20s, contended that the defendant driver precipitated the accident by initially striking a stopped car in the rear. The plaintiff maintained that she was struck by that vehicle and pushed into the vehicle stopped in front of her car. The plaintiff's motion for summary judgment on liability against the initially striking driver was granted, and the case was tried on damages only. The plaintiff maintained that she suffered a herniation at C4-5, and a bulge at C5-6, that were confirmed by MRI, and which she contended will cause permanent radiating pain and weakness. The evidence disclosed that approximately three years earlier, the plaintiff had sustained a bulge at L1-2

in a work related accident, and supported that she had been essentially asymptomatic after her recuperation until the subject collision occurred. The plaintiff also maintained that she suffered a new lumbar bulge that was confirmed by MRI as well. The plaintiff underwent a cervical and a lumbar epidural injection, and there was no evidence that disc surgery will be necessary at the present time. The defendant's orthopedist denied that the imaging studies showed any evidence of trauma, and further denied that the plaintiff satisfied the verbal threshold. The plaintiff countered that all of the treating physicians had concurred that the collision caused the disc injuries and aggravation of a pre-existing lumbar bulge, and maintained that the defendant's position should clearly be rejected. The plaintiff works as a perfumer, and supported that she continues to work despite the extensive pain, virtually every hour. The plaintiff also contended that she generally wakes up several times during the night because of the discomfort.

The plaintiff argued that the jury should consider that the plaintiff will suffer severe aches for a total of 459,024 hours over the course of her life expectancy. The jury awarded $1,000,000.

REFERENCE

Plaintiff's pain management physician expert: Wayne Fleischhacker, MD from Union, NJ.

Casale vs. Ringshia. Docket no. MID-L- 6670-12; Judge Philip Pailey, 12-05-14.

Attorney for plaintiff: Gregory G. Goodman of Palmisano & Goodman in Woodbridge, NJ.

COMMENTARY

This case points out the manner in which a plaintiff's demeanor and soft spokenness can combine with evidence of continuing pain over the remainder of a lengthy life expectancy, and culminate in a jury fully appreciating that the injuries warrant very significant compensation. In this regard, this believability was obviously critical in this case, in which the plaintiff, who did not undergo surgery, and who indicated that she continues to work in spite of the continual pain, discussed over 450,000 hours in her time/unit analysis.

$900,000 RECOVERY – DRAM SHOP – DEFENDANT TAVERN OWNER CONTINUES TO SERVE PLAINTIFF PATRON ALCOHOL AFTER SHE SHOWS SIGNS OF INTOXICATION – PLAINTIFF CONTENDS DEFENDANT ENCOURAGES INEBRIATED PLAINTIFF TO STAND ON BAR - PLAINTIFF FALLS AND SUFFERS SERIOUS SPINAL CORD INJURY

Morris County, NJ

The plaintiff, in her mid-40s, was a patron and business invitee at the defendant's tavern on March 27, 2011. The plaintiff asserted that the defendant owner, who acted as a bartender, served her alcoholic beverages while she was visibly intoxicated. The plaintiff further contended that the defendant owner encouraged her to stand up on top of the bar, in spite of knowing her inebriated state. She fell backwards off the bar, striking her head, neck, and shoulder. She sustained a fracture subluxation at C5-C6, and significant spinal cord damage. The plaintiff also contended that the defendant bar owner, and his employees, failed to timely call for medical assistance, allowing plaintiff to lay behind the bar for approximately one-and-a-half hours while they continued to serve customers, contending she was exaggerating her paralysis.The plaintiff's forensic science and analytical chemistry consultant would have testified that the plaintiff's blood alcohol concentration (BAC) was 0.23 at the time of the fall. The expert maintained that she had to show visible signs of intoxication when she reached .15, and that the defendant, nonetheless, continued to serve her. The plaintiff's expert opined that the serving of alcoholic beverages to plaintiff during this time period was a substantial contributing cause of the incident and injury. The defendant was prepared to argue that the jury should assess comparative fault against the plaintiff based on her voluntary consumption of alcoholic beverages and climbing onto the bar. Presumably, the defendant argued that climbing onto the bar was not a foreseeable consequence of the service of alcoholic beverages to the plaintiff.

The plaintiff's treating neurosurgeon opined that she suffered a significant spinal cord injury with a fracture subluxation at C5-C6 as a result of the March 27, 2011 fall. The physician maintained that the CAT Scans of the cervical, thoracic, and lumbar spines demonstrated bilateral jumped and locked facets at C5-C6, significant dislocation, and quadriparesis. Due to the severity of her injuries, she was transferred to a major trauma center. At this second hospital, a CAT Scan of the cervical spine demonstrated bilateral jumped facets at C5-C6 with underlying disk ridging at C4-C5, C5-C6, as well as C6-C7. An MRI of the cervical spine showed injury to the cord at C5-C6, consisting of fracture subluxation and locked facets. It also showed cord compression extending from C3-C4 through C6-C7. There was extensive interligamentous and posterior paraspinal edema, and likely disruption of the anterior and posterior longitudinal ligaments at C5-C6. That night, the plaintiff's surgeon performed an open reduction and internal fixation of C5-C6 for fracture dislocation, C3, C4, C5, C6, C7 decompressive laminectomy, a C3-C4, C4-C5, C5-C6, C6-C7 posterolateral fusion, a C3-C7 segmental stabilization with lateral mass screws and a fashion local autograft. She remained an inpatient until April 6, when she was transferred to a rehabilita-

tion hospital. There, she underwent an inpatient course of comprehensive spinal cord injury rehabilitation until her discharge on April 20, 2011. She then underwent a course of outpatient physical and occupational therapy for approximately six months. The plaintiff's neurosurgeon opined that the effects of having a spinal cord injury necessitating neck fusion from C3 to C7 which are permanent. The plaintiff has a long-term risk of developing arthritic changes above and below the level of the fusion. She experiences left sided numbness from the underarm to her feet, causing difficulty walking. She has neck and lower back pain, which increases when she attempts to lift a heavy item.

The plaintiff continues to have residual neuropathic symptoms in her hands, including pain, spasms, cramps, and inability to straighten her right hand. Her treating neurologist recommended an EMG and nerve conduction study of the plaintiff's upper extremities. It revealed chronic C7-C8 cervical radiculopathies with abnormal median H reflexes, consistent with an upper motor neuron process. The neurologist opined that the findings were residual effects of the cervical spine cord injury. He noted bilateral neuropathic pain involving C7 and 8 dermatomes with spasticity and left sided loss of pinprick feeling, along with a spastic gait with decreased tandem.

The plaintiff is unable to participate in recreational activities with her children. She cannot do yard work, laundry, and other household chores involving lifting. The injury has impaired her ability to work as a hair stylist, which is her trained profession.

The defendant had $1,000,000 in dram shop coverage. The case settled prior to trial for $900,000.

REFERENCE

Plaintiff's forensic science and analytical chemistry consultant expert: Thomas A. Brettell, Ph.D., D-ABC from Allentown, PA. Plaintiff's neurosurgical expert: John J. Knightly, M.D. from Morristown, NJ.

Mazzarisi, et al vs. Chaplin's Bar and Liquors, et al. Docket no. MRS-L-2043-12.

Attorney for plaintiff: Stephen S. "Skippy" Weinstein, and Gail S. Boertzel of Stephen S Weinstein PA in Morristown, NJ.

COMMENTARY

The court would have instructed the jury that they could only consider the plaintiff's comparative negligence only up to the point she became visibly intoxicated. The plaintiff, who had a BAC of .023 at the time of the incident, and the plaintiff's expert contended that she would have shown such requisite visible signs when she reached .15. The evidence that the defendant continued to serve her for a significant period after she showed signs of inebriation, coupled with a possible acceptance by the jury that the plaintiff had been encouraged to stand on the bar by the defendant, would be expected to undermine the defense contentions. However, a jury confronted with the evidence that the plaintiff went into the bar and drank to the extent that she would engage in such potentially dangerous behavior, would be expected to assess a significant portion of responsibility on the plaintiff, notwithstanding such instructions. The plaintiff's counsel relates that the bar owner appeared hostile and antagonistic at his deposition, and it is felt that this demeanor, combined with the very serious nature of the permanent injuries, factored significantly into the willingness of defendant to resolve the case even in the face of the plaintiff's comparative fault component.

$899,000 RECOVERY – DEFECTIVE DESIGN OF LOG SPLITTING MACHINE – 79-YEAR-OLD PLAINTIFF SUFFERS CRUSH INJURIES AND AMPUTATION OF TWO AND ONE HALF MIDDLE FINGERS ON RIGHT, DOMINANT HAND AS HE IS ASSISTING DEFENDANT NEIGHBOR

Union County, NJ

This action involved a plaintiff, who was 79 years old at the time of the incident, in which the plaintiff contended that the defendant rental company supplied a log splitter, which was defectively designed because of the absence of a "cradle" that would prevent the wood from shifting. The plaintiff, who was assisting the co-defendant, his neighbor, who was operating the device, reached to steady the wood as it appeared to shift and his right hand was struck by the mechanism and caught in the pinch point formed between the log and end-plate. The plaintiff also maintained that inadequate warnings were provided, and further named the neighbor, who had a $300,000 homeowner's policy on a negligence theory, and this aspect settled for $300,000 more than one year before the settlement of the case against the rental company. The plaintiff suffered the traumatic amputation of two and one half fingers on his right, dominant hand, maintaining that he will permanently experience difficulties with everyday tasks, such as buttoning a shirt. Prior to the incident, the plaintiff had provided very significant care to his wife, who was ill. He also contended that the log splitter should have been equipped with a safety "cradle," which is designed to stabilize the log being split, thereby, preventing it from falling off the log splitter. The plaintiff supported that he observed the log appearing to shift reached to steady it with his hand, resulting in the incident. The plaintiff's engineer also maintained that the machine should have had a legible safety warning, which would have alerted both the co-defendant and the plaintiff of the need to read an operating manual. The plaintiff pointed out that the defendant also failed to provide an operator's manual.

The plaintiff's engineer maintained that such a cradle was readily available, and that the machine should have been so equipped. The plaintiff's engineer also maintained that the warnings should have advised

that only one individual use the machine at a time, explaining that if only one person was operating the relatively long machine, the hand could not reach the point of operation if a log appeared to shift. The plaintiff's expert maintained that such warnings should have been supplied. The plaintiff and the owner indicated that no warning labels were on the machine when rented. The evidence disclosed that the defendant rental company had two machine which were identical, except that one had a partially obscured label. The defendant rental company records did not reflect which machine was rented to the co-defendant. The plaintiff's engineer inspected both machines.The plaintiff argued that the need for such warning was underscored by the fact that a label was on one of the machines, and argued that the product was defective for failure to warn, irrespective of the machine that was actually rented. The plaintiff also argued that in this design defect/failure to warn case in which the plaintiff was injured by the very danger which should have been referred to in the warnings, a defense of comparative negligence should not be available, notwithstanding that the incident did not occur while the plaintiff was in a work-place setting. There was no judicial ruling on this issue prior to the settlement. The plaintiff suffered crush fractures and the traumatic amputation of significant portions of two and one half middle fingers on the dominant hand, undergoing surgery that included debridement, the surgical amputation of fragments of the middle finger, and the use of wires to address fractures. The plaintiff maintained that he will permanently suffer pain that is heightened during cold weather, and that everyday tasks, such as buttoning a shirt, are cumbersome and difficult.

The plaintiff also contended that he is limited in the extent to which he continue to provide day to day assistance to his wife, who is ill. The plaintiff also testified that he is very embarrassed as a result of the cosmetic deficit, and that such embarrassment is heightened when he is called upon to shake hands.

The case against the rental company settled in 9-14 for $599,000, yielding a total recovery of $899,000, including the policy limit recovery with the defendant neighbor's homeowners' carrier.

REFERENCE

Plaintiff's engineering expert: Thomas J. Cocchiola, P.E. (as to rental company only) from Caldwell, NJ. Plaintiff's plastic surgery expert: Richard E. Tepper, MD from Summit, NJ.

Guerino vs. E Z Rental Center, Inc., et al. Docket no. UNN-L-3957-12, 09-14.

Attorney for plaintiff: Steven J. Greenstein of Tobin Kessler Greenstein Caruso Wiener & Konray, P.C in Clark, NJ.

COMMENTARY

An interesting issue that was raised in this case related to the availability of the defense of comparative negligence in a products liability/failure to warn case that did not involve a worker who was injured in a work-place situation. The plaintiff argued that in a case in which the failure to warn resulted in an injury which a warning would be meant to prevent, a defendant should not be permitted to offer such a defense, even though the injured person was not working. It should be noted that the case settled before there were any judicial rulings on the question.

The plaintiff settled with the neighbor for the $300,000 homeowner's policy relatively early in the litigation. It is felt that although pursuing a case against the homeowner was very difficult, the risks to the carrier in this case involving such traumatic injuries to the dominant hand were great, and prompted the carrier to dispose of the matter as early as was practicable.

$800,000 RECOVERY – PLAINTIFF DRIVER STRUCK IN REAR BY AMBULANCE THAT IS NOT PROCEEDING TO EMERGENCY – EXTENSIVE PROPERTY DAMAGE – AGGRAVATION OF LUMBAR HERNIATION

Hudson County, NJ

This action involved a plaintiff driver in his 30s who was struck in the rear by the defendant ambulance driver. The plaintiff contended that he suffered an aggravation of a prior lumbar herniation that had prompted a worker's compensation case approximately five years earlier, and the re-opening of this comp case approximately two years before the accident because of renewed pain. The plaintiff maintained that he had been asymptomatic in the lumbar area between the time of shortly after the completion of treatment, until shortly after the subject collision. The plaintiff maintained that surgery had not been previously suggested, and he now required a lumbar microdisectomy. The plaintiff further contended that the accident caused a cervical herniation, and that he required a cervical fusion. The defendant supported that the plaintiff's complaints of a lumbar injury should clearly be rejected, and pointed out that the plaintiff did not make complaints of pain in the lumbar area at the emergency room and did not complain about lower back symptoms for approximately four weeks. The plaintiff contended that lower back pain commenced within several days of the accident, that he had hoped that both this lumbar and the cervical pain would dissipate, but that when it continued for several weeks, he commenced treatment. The plaintiff also supported that the cervical pain was significantly more pronounced during the several week period following the subject collision, contributing to the fact that he did not make earlier complaints of lumbar pain. The plaintiff also argued that the jury should take into account that lumbar surgery

had not been suggested during the treatment for the prior lumbar injury, and that when conservative care proved to be inadequate for both the lumbar and cervical herniations, he embarked on a treatment path that included discograms in both areas. The plaintiff's orthopedist, who compared the prior lumbar MRI results with films taken after the subject rear end collision, indicated that the aggravation was not apparent on the imaging studies. The expert maintained, however, that a discogram resulted in reports of pain at the same locations, regarding that the plaintiff was making complaints with respect to both the lumbar and cervical regions. The plaintiff's orthopedist contended that this evidence lent strong support for the plaintiff's claims that the aggravation leading to the need for the lumbar microdiscectomy was the rear end collision in question. The plaintiff's expert also contended that the causal connection between the collision and need for the cervical fusion was especially great. The plaintiff, who made no future income claims, argued that the jury should consider that he will experience pain and limitation in both the lumbar and cervical areas for the remainder of a very significant life expectancy.

The case settled prior to trial for $800,000.

REFERENCE

Moralez vs. Amcare, Inc., et al. Docket no. HUD-L-4986-12, 08-14.

Attorney for plaintiff: Joseph LaBarbiera of LaBarbiera & Martinez in North Bergen, NJ.

COMMENTARY

The plaintiff had to overcome the challenges stemming from both the fact that he had a history of lower back complaints that prompted the opening and then re-opening of the worker's compensation cases, and the fact that he did not make lumbar complaints for approximately four weeks after the subject collision occurred. The plaintiff stressed that irrespective of his need for prior low back treatment, there was never any suggestion that lumbar surgery was necessary. Additionally, the plaintiff endeavored to minimize the impact of the delay in the reporting of symptoms by stressing both that he was more concerned with the more prominent cervical pain, and reported it when it became apparent that the symptoms were not resolving and were, in fact, becoming more pronounced. Further, it is felt that the evidence of very heavy property damage that occurred when the plaintiff driver was struck in the rear by the ambulance would have been very significant if the case had been tried. Finally, the plaintiff emphasized that the pain and weakness will continue for the remainder of a very lengthy life expectancy.

Verdicts by Category

ASBESTOS

$7,500,000 VERDICT

Asbestos – Boiler installer sues after contracting asbestos-related cancer – Mesothelioma

Middlesex County, NJ

In this matter, a man sued after he was diagnosed with asbestos-related cancer. The matter was resolved by a New Jersey jury.

The plaintiff, William C., 67, installed heating and air conditioning systems, including boilers, for eleven years. In that time, asbestos, including Asbestos Furnace Cement (a product of defendant Pecora Corporation), came with the boilers he installed. The plaintiff was diagnosed with mesothelioma in June of 2013.

The plaintiff and his wife filed suit in the Superior Court of New Jersey, Law Division, Middlesex County for product liability. The couple named as defendants several manufacturers of asbestos-containing products, including the Pecora Corporation.

At trial, the plaintiff presented evidence that before the period when plaintiff had worked with its Asbestos Furnace Cement, the defendant was warned about the hazards of asbestos by its own asbestos suppliers. Pecora took no action to eliminate the hazards, or warn the plaintiff or anyone else of those hazards. Finally, during the period when plaintiff worked with their product, the defendant's own President was diagnosed with mesothelioma and filed his own lawsuit for his asbestos-related cancer. Even then, kept making asbestos-containing products, and finally only removed asbestos from its products five years later when its insurers would no longer cover asbestos-related risk.

After a month of trial, the jury returned a $7,500,000 verdict against Pecora, including $1,000,000 in punitive damages.

REFERENCE

William Condon and Debbie Condon vs. Advanced Thermal Hydronics, et al. Docket no. MID-L-5695-13AS; Judge Ana C. Viscomi, 01-16-15.

Attorneys for plaintiff: Moshe Maimon & Joseph J. Mandia of Levy Konigsberg LLP in New York, NY. Attorney for defendant: Robert Baum & Pooja Patel of McGivney & Kluger in Florham Park, NJ.

CIVIL RIGHTS

DEFENDANT'S VERDICT

Civil Rights – Prisoner Rights – Assault by corrections officers – While undergoing a pat down by defendant corrections officers, defendants assault plaintiff – Violating plaintiff's civil rights – Contusions, lacerations and sprains

Trenton County, NJ

The plaintiff, in this civil rights action, is a state inmate of the New Jersey Department of Corrections. He maintains that the defendants assaulted him and deprived him of his civil rights in retaliation for the plaintiff supposedly being involved in a plot to attack a corrections officer and start an uprising. The defendants denied that the plaintiff was deprived of his rights, and contend that the plaintiff was combative and assaulted an officer, causing the defendants to have to forcefully restrain the plaintiff.

On July 9, 2008, the male plaintiff was incarcerated at a Southern State Corrections Facility in New Jersey. He alleged that during a pat down, he was assaulted by some of the defendants while other defendants failed to intervene. The plaintiff maintained that the assault occurred because the plaintiff had been accused of plotting to attack a corrections officer several years earlier, which caused the plaintiff to be transferred to Northern State Prison. The plaintiff was transferred back to Southern State on July 9, 2008, and was assaulted. The defendants handcuffed the plaintiff and patted him down, and then threw the plaintiff on the ground and rammed the plaintiff's head into a wall. The defendants then filed false disciplinary charges against the plaintiff for disorderly behavior, and placed him isolation. As a result of the assault, the plaintiff suffered contusions and lacerations to his head and skull, as well as sprains and strains to various body parts. The defendants denied all allegations of negligence and supported that the plaintiff was patted down when he was observed trying to hide something in a nearby footlocker. When questioned about the item he was attempting to hide, the plaintiff struck one of the defendant correction officers in the head with his elbow. That defendant then attempted to restrain the plaintiff, and the plaintiff resisted prompting the other defendants to come to aid in the situation. The defendants maintain that only the force necessary to restrain the plaintiff was used.

The jury found in favor of all defendants.

REFERENCE

Rasool Jenkins vs. Kyle Myers, Mark Weinstein, Ronald Hundt, Brian Labonne, John Manera, James Pruszinski, James Conrey, and Brian Mikus. Docket no. 09-cv-04989; Judge Michael A. Shipp, 12-19-14.

Attorney for plaintiff: Craig S. Hilliard of Stark & Stark in Princeton, NJ. Attorney for defendant: Daniel Michael Vannella of Office Of The NJ Attorney General in Trenton, NJ.

DRAM SHOP

DEFENDANT'S VERDICT

Defendant who secures fire house for use to hold baby shower provides alcohol to visibly intoxicated driver who has $25,000 in coverage and crosses center line, causing head-on crash – Injuries include: Transected aorta, ruptured diaphragm, and bilateral foot drop

Bergen County, NJ

In this action, the defendant inebriated driver, who was tested with a.18 BAC after the accident, crossed the center line and caused the head on collision. The driver had $25,000 in coverage, which was paid. The driver had been drinking at a baby shower, and the parents of the baby were uninsured. The plaintiff contended that the defendant, a friend of the mother, had secured the use of the firehouse, was very involved in decorating and setting up the party, and had printed invitations. The plaintiff contended that this defendant was a social host who should be liable for providing alcohol to the driver, whom the plaintiff maintained was visibly intoxicated.The defendant denied that she should be considered a social host, and denied that she had any duty, and also denied that the driver had shown visible signs of intoxication. The defendant produced a number of guests from the party who supported this position. The plaintiff presented the responding officer who testified that the driver showed signs of visible intoxication at the scene of the accident. The plaintiff's toxicologist maintained that the driver would have shown such signs.

The plaintiff suffered a, transected aorta, ruptured diaphragm, crushed pelvis, herniated stomach, herniated spleen and liver, drop foot in both legs, damaged vocal cords, and nerve damage to the arms. He required a five-month inpatient stay, and contended that he suffered permanent residuals from these injuries. The plaintiff also maintained that

he will incur substantial future medical expenses. The $100,000 offer was rejected. The plaintiff demanded $300,000 from the carrier, Met Life Auto and Home.

The jury found that the defendant was not a social host and did not reach the issue of whether she provided alcohol to a visibly intoxicated person.

REFERENCE

Plaintiff's toxicologist expert: Robert Pandina, PhD from New Brunswick, NJ.

Keefe vs. Chartoff, et al. Docket no. BER-L-2250-11, 01-15-15.

Attorney for defendant: Anthony J. Accardi of Accardi & Mirda, PC in East Hanover, NJ.

ENVIRONMENTAL LIABILITY

$530,520 RECOVERY

DOJ – Environmental – DuPont sued for alleged leaks at New Jersey chemical plant – Alleged violation of CAA & EPCRA

Withheld County, NJ

In this action, the United States accused a prominent chemical company of violating the Clean Air Act. The matter was resolved through a consent decree.

The defendant, E.I. du Pont de Nemours, and Company, Inc., is the owner/operator of the Chambers Works Plant in Deepwater, New Jersey. The DOJ asserted that the plant leaked air pollutants, such as HCFC-22 (a refrigerant) in violation of federal regulations.

The United States filed suit on behalf of the U.S. Environmental Protection Agency (EPA) in the U.S. District Court for the District of New Jersey. The defendant was accused of violating the Clean Air Act and its implementing regulations, as well as provisions of the Facility's CAA Title V Operating Permit and the Emergency Planning and Community Right-to-Know Act (EPCRA). The plaintiff sought injunctive relief, as well as damages.

The matter was resolved via consent decree filed concurrently with the complaint. The defendant agreed to pay a civil penalty of $530,520, and treat any refrigeration units with secondary refrigeration loops at the facility as covered by the CFC regulations.

REFERENCE

United States of America vs. E.I. Du Pont De Nemours and Company, Inc. Docket no. 1:15-cv-00102-NLH-AMD, 01-15-15.

Attorneys for plaintiff: Paul J. Fishman & Allan B. K. Urgent of U.S. Attorney's Office in Trenton, NJ. Attorneys for plaintiff: John Cruden & Brian D. Donohue of U.S. Department of Justice - Environment and Natural Resources Division in Washington, DC.

FRAUD

DEFENDANT'S VERDICT

Consumer Fraud Case – Sale and installation of high-end safes to jewelry exchange – Plaintiff burglarized on two occasions and allegedly suffered more than $10,000,000 in compensatory damages – Plaintiff demanded treble damages under Consumer Fraud Act Statute

Bergen County, NJ

This action was brought by jewelry exchange who contended that the defendant violated the CFA by making affirmative misrepresentations regarding the security levels of safes, installation of the safes, and for refusing to sell plaintiff a larger vault. The plaintiff also alleged breach of contract vis a vis an implied warranty. The plaintiff contended that on two occasions (both occurring on Super Bowl weekend in February 2010 and 2011 respectively), it suffered burglaries and lost a total of approximately $10,000,000 worth of inventory, including diamonds, jewels, and fine metals. The plaintiff's store was closed on Sunday, pursuant to the Bergen County blue laws.

The defendant contended that its TL30X6 safes—tested and listed by United Laboratories—are widely recognized in the jewelry industry to prevent an attack from hand tools for 30 minutes on all six sides.

The defendant maintained that the plaintiff was aware of the safes limitations, and that he did not request a vault or safes with higher security. The defendant also argued that given the attack time available to the burglars, a higher security safe or vault would not have prevented a breach of the safes. The defendant also disputed the plaintiff's contentions on damages, arguing that the plaintiff could not produce adequate documentation of the alleged losses.

The jury was not aware that the plaintiff was not insured for the loss.

The jury found for the defendant.

REFERENCE

Jacobson Diamond Center vs. Lacka Safe Corp. Docket no. BER-L-1177-12; Judge Robert C. Wilson, 10-02-14.

Attorneys for defendant: Everett E. Gale, III and Patrick F X. Fitzpatrick of McElroy Deutsch Mulvaney & Carpenter,LLP in Morristown, NJ.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$183,500 RECOVERY

55-year-old plaintiff was traveling in a designated bicycle lane and struck by a vehicle making a right turn – displaced nasal bone fractures, closed head injuries – multiple laceration on face and right arm requiring sutures, sprain to the MPC joint of right hand

Morris County, NJ

This was a case involving a 55-year-old architect and an avid bicyclist contended that he was traveling in a designated bike lane on a residential road when the defendant, without warning, made a right turn in front of him and suddenly decelerated her vehicle. The plaintiff attempted to brake and steer around the defendant's vehicle, but had no time to avoid the collision.

The plaintiff sustained displaced nasal bone fractures, close head injuries, multiple lacerations on his face and right arm requiring sutures, and a sprain to the MPC joint of his right hand. He contended that he was not able to service his clients as the sole practitioner in his architectural practice for a period of approximately three to four months. During that period, his production was diminished and resulted in lost income claim of approximately $70,000.

The underlying claim was settled with the defendant's liability carrier for the policy limits of $100,000 (less a credit of $7,500 for trial expenses) on the day of trial. At an Underinsured Motorist Arbitration with his UIM carrier, the plaintiff received a non-binding gross award of $190,000 (less credit for the $100,000 policy limits of the defendant driver.). The plaintiff agreed to a settlement of $60,000 for the UIM claim.

REFERENCE

Truilo vs. Whitcomb, et al. Docket no. MRS-L-3346-12.

Attorney for plaintiff: Michael Ventura of Ventura Miesowitz Keough & Warner in Summit, NJ.

Auto/Motorcycle Collision

DEFENDANTS' VERDICT

Lead automobile stops at train crossing when signals not indicating that train is approaching – Co-defendant driver of sewer truck situated behind initial defendant stops short, avoiding striking lead car – Plaintiff motorcycle operator strikes truck in rear – Displaced clavicle fracture

Monmouth County, NJ

The plaintiff motorcycle operator, who was the third driver in line, contended that the lead driver negligently stopped at a train crossing, despite the absence of signals that a train was approaching.The plaintiff also contended that the middle driver of a sewer truck negligently failed to make appropriate observations, stopping short, and resulting in the plaintiff striking the rear of the truck. The plaintiff's accident reconstruction expert maintained that the lead driver's sudden stop precipitated the incident. The plaintiff's liability expert also contended that the evidence reflected that the plaintiff had been traveling at a relatively low speed. The defendant lead driver maintained that she acted appropriately in looking before crossing the tracks, and the middle driver supported that he was suddenly confronted with the lead driver stopping short and that this factor, and the negligence of the plaintiff who was traveling too closely behind him, caused the

accident. The plaintiff maintained that he suffered a displaced clavicle fracture that will cause permanent pain and limitations.

The jury found the lead driver 40% negligent, that the middle driver was not negligent, and that the plaintiff was 60% negligent. A defense verdict was then entered.

REFERENCE

Plaintiff's accident reconstruction expert: James Eastmond from Brooklyn, NY.

Scannella vs. Monahan, et al. Docket no. MON-L-4423-11; Judge David Bauman, 09-14.

Attorney for defendant: Patricia Bray Adams for lead driver of s Campbell Foley Delano & Adams,LLC in Asbury Park, NJ. Attorney for defendant: Angela E. Cameron for middle (truck) driver of Law Offices of Linda S Bauman in East Brunswick, NJ.

Auto/Pedestrian Collision

$215,000 PRE-SUIT RECOVERY

Left turn case – Death of 67-year-old – Plaintiff contends decedent is conscious at scene and in ambulance – Ambulance records reflect severe head trauma and that decedent is "combative: at scene and in ambulance.

Bergen County, NJ

The plaintiff contended that as the 67-year-old decedent was crossing a "T" intersection at the location where there would have been a crosswalk, he was struck by the driver of a large SUV and violently knocked him to the pavement. The decedent suffered a severe head injury and was bleeding from his head and face. The incident occurred at approximately 6 p.m. in the fall, where it was dark out. The decedent retired engineer was taken by ambulance to the hospital and died 16 days later, never leaving the hospital. His wife had predeceased him, and he had no children, no dependents, or any heirs.

The SUV driver told the police officers at the scene of the crash she was attempting to exit the parking lot of an A&P and make a left turn. As she proceeded into the roadway, she observed the pedestrian as he was struck by the right front portion of her vehicle. She stated she did not see him prior to entering the roadway. The Police Officer determined the accident was caused by driver inattention, which was contained in the officer's report

The emergency services reports reflect that while the decedent was severely injured with head injuries, and that he was "combative" at the scene, and during the ambulance ride to the hospital. He was intubated and medicated upon arrival at the emergency room and hospitalized for the remaining 16 days of his life. The plaintiff's expert pathologist confirmed that the decedent had suffered a temporal bone fracture, subdural hematoma, and subarachnoid hemorrhage. The expert would have testified that the decedent had suffered pain at the scene of the accident, as well as in ambulance and the ER. The expert would have also testified that the hospital records indicated that there was some level of semi-consciousness and pain during the 16 days in the hospital, which varied little from day to day. The decedent was bedridden, not able to speak, or otherwise communicate while in the hospital.

The defendant maintained that the decedent was unconscious in the hospital, and had no responses to deep, painful stimulation.

The case settled prior to the filing of suit for $215,000.

REFERENCE

Plaintiff's pathologist expert: William Manion, MD PhD from Salem, NJ.

Rorhbach vs. Shepard., 01-20-15.

Attorney for plaintiff: John R. Altieri of Law Offices of John R. Altieri in Hackensack, NJ.

$555,000 RECOVERY

Plaintiff contends his car door is sideswiped by defendant driver of delivery truck as he is standing next to his car with door slightly open – Impact results in door slamming shut while plaintiff's dominant right hand is on door – Severe injuries to hand

Bergen County, NJ

In this action, the plaintiff, in his late 70s, contended that as he was returning to his car, parked on a busy street containing one lane in each direction, he opened the driver's door, and since he saw the defendant driver of a delivery truck approaching, he only opened it approximately 20 inches. The plaintiff maintained that there was ample room for the defendant to drive through the area, and that the defendant

negligently traveled too close to the side. The defendant maintained that the incident occurred when the plaintiff opened his driver's side door much farther into the roadway than claimed by the plaintiff. The defendant further maintained that the incident occurred in stop-and-go traffic and not in moving traffic as claimed by the plaintiff. The plaintiff countered his position should be rejected since the defendant had given varying versions at the scene, and maintained that in view of inconsistencies regarding whether the plaintiff approached the plaintiff's car from behind it or from in front of it, and if the defendant was double-parked or not.

The plaintiff's dominant right hand was caught and suffered severe crush fractured and lacerations. The maintained that despite surgery, he will suffer permanent severe pain, and inability to move his ring finger, extensive limitations moving other fingers and will be permanently unable to engage in simple activities such as picking up a coin. The plaintiff maintained that he also suffered a severe loss of grip strength. The plaintiff had been retired for many years.

The case settled prior to trial for $550,000.

REFERENCE

Bohan vs. Mercadeo, et al. Docket no. BER-L-5323-13; Judge Set after med bef ret J Mark Epstein, 12-14.

Attorney for plaintiff: Marvin R. Walden, Jr. of Greenberg Walden & Grossman,LLC in West New York, NJ.

$245,000 RECOVERY

Auto/Pedestrian – Plaintiff crossing in crosswalk is struck by left turning defendant driver – Comminuted fractures to ulnar and radial head on right side – Surgery – Permanent swelling and lifting limitations – $250,000 policy

Middlesex County, NJ

The 47-year-old plaintiff contended that as she was crossing the intersection of Texas Road and Route 9 in Old Bridge, she was struck by the defendant driver who was making a left turn.

The defendant denied that she was negligent, and maintained that the cause of the collision was the failure of the plaintiff to make adequate observations.

The plaintiff contended that she sustained comminuted fractures to the ulnar and radial head of the right arm, which required open reduction surgery and internal fixation, as well as a subsequent corrective surgery. The plaintiff was admitted to Robert Wood Johnson Hospital, and ultimately came under the care of orthopedic surgeons in her home state of Tennessee where she had a subsequent corrective surgery.

The plaintiff supported that she was left with a permanent limitation and disfigurement to her arm, and that she has daily swelling in her arm, and a limitation in the amount of weight she can lift and carry.

The defendant had $250,000 in coverage. The case settled prior to trial for $245,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: James Calandruccio, MD from Memphis, TN.

Patel vs. Ming. Docket no. MID- L-5199-13, 12-14.

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

Intersection Collision

$690,000 RECOVERY

Failure to stop at stop sign – Aggravation of herniations, bulges and scoliosis – Trigger point injections inadequate – Surgery – Plaintiff returns to job doing makeup and cutting hair, but accepts fewer customers.

Monmouth County, NJ

The plaintiff driver, currently in her mid-50s, contended that the defendant driver, who was operating a "loaner" car obtained from the dealership, negligently failed to stop at a stop sign, causing the collision. The defendant maintained that the plaintiff failed to make adequate observations, and was comparatively negligent.

The plaintiff had pre-existing moderate scoliosis as well as herniations and bulges at several levels that were previously treated conservatively. The plaintiff's proofs reflected that after the subject collision, she suffered aggravations, and that that trigger point injections were inadequate. The plaintiff then underwent a T10 to pelvis instrumentation and fusion, w L4-5 decompression laminectomy, medial facetectomy, transforaminal lumbar interbody fusion L4-5, and intervertebral device placement at L4-5. The plaintiff maintained that she will suffer permanent pain and limitations, and that although she

has returned to work doing makeup and hair, she stated that she was not able to take as many jobs as before.

$675,000 was obtained from the driver's carrier. The defendant was operating a "loaner" car provided by the co-defendant dealership, which provided $15,000 in coverage. The total settlement was $690.000.

REFERENCE

Falco vs. Shamosh, et al. Docket no. MON-L-002878-14, 01-15.

Attorneys for plaintiff: Matthew Mendolsohn and Adam Epstein of Mazie Slater Katz & Freeman,LLC in Roseland, NJ.

Left Turn Collision

$865,000 RECOVERY

Left turning defendant driver collides with co-defendant whose car broadsides plaintiff's automobile – Lumbar herniations and bulges – Surgery in both areas – Inability of auto mechanic to return to work

Hudson County, NJ

The plaintiff driver, in his late 30s, contended that the initial defendant negligently made a left turn into the path of the co-defendant, whom the plaintiff maintained was not paying adequate attention. The plaintiff supported that as a result, the second defendant was propelled into the side of the plaintiff's car. The plaintiff maintained that he sustained herniations and C5-6 and C6-7, as well as lumbar bulges at L1-2, L2-3 and L4-5 with impingement on the thecal sac.

The plaintiff proof would have reflected that he required surgery in both levels, including fusion surgery in the neck, that involved a bone graft and placement of a cage. The plaintiff stated that he will nonetheless suffer very significant pain and limitations, and that he will permanently be unable to return to work.

The left turning driver had $1,000,000 in coverage, and the co-defendant had $100,000 in coverage The case settled prior to trial for $865,000, including $750,000 from the left turning defendant, and $90,000 from the co-defendant.

REFERENCE

Maldonado vs. Kepetz and Robles. Docket no. HUD-L-5361-12, 01-13-15.

Attorneys for plaintiff: Richard LaBarbiera and Joseph LaBarbiera of LaBarbiera & Martinez in North Bergen, NJ.

Multiple Vehicle Collision

$282,973 VERDICT

Defendant driver precipitates collision by changing lanes in path of plaintiff driver – Plaintiff collides with defendant and then with another car – Plaintiff contends accident causes cervical herniation and aggravation of thoracic herniation

Middlesex County, NJ

Liability was conceded in this case, in which the plaintiff driver, in her early 50s, contended that the defendant driver negligently switched from the right to the center lane, cutting off the plaintiff, and causing the collision. The plaintiff was struck a second time by a driver behind her and had initially named this driver. The parties stipulated that this driver was not negligent prior to the damages trial.

The case was heard as an expedited trial with a $4,000/$50.000 high/low agreement. The plaintiff supported that she suffered a cervical herniation in the subject collision that was confirmed by MRI, which prompted cervical median nerve block injections and radio frequency ablation. The plaintiff also maintained that the subject accident caused an aggravation of a previously sustained thoracic herniation, and that the aggravation also prompted nerve block injection and a radio frequency ablation procedure. The defendant denied that the subject collision caused a permanent injury, and maintained that any difficulties were pre-existing and caused by the previous accidents and/or degenerative disc disease. The plaintiff countered that the cervical herniation was not previously diagnosed, and that although she had required significant pain management treatment after the prior collisions, she had ceased treatment approximately six months before the subject accident, only to require additional treatment after this collision. The plaintiff, who is a public school teacher, made no income claims. The court instructed the jury as to a 28.2 year life expectancy.

The jury awarded the plaintiff $282,973.

REFERENCE

Plaintiff's orthopedic expert: David Adin, DO from Woodbridge, NJ. Defendant's orthopedic expert: Andrew Piskun, MD from Piscataway, NJ.

Hosford vs. Mangsatabam. Docket no. MID-L-5815-12; Judge Bryan Garruto, 01-16-15.

Attorney for plaintiff: Daniel J. Williams of Rabb Hamil, PA in Woodbridge, NJ.

Rear End Collision

DEFENDANT'S VERDICT

Rear-end collision – Alleged permanent disc injuries – Damages only – Expedited trial – High/low agreement

Bergen County, NJ

Liability was stipulated in this rear end collision, which was heard as an expedited trial with a $2500/$75.000 high low agreement.

The plaintiff, in her mid 50s, contended through the MRI findings of her radiologist that she sustained a cervical herniation and multiple lumbar bulges. The plaintiff's pain management physician concluded, following testing that included a discogram, that the plaintiff suffered a herniation at one of the lumbar levels, and that the injury at this level was not limited to a bulge. The plaintiff underwent a lumbar injection. There was no evidence that disc surgery is indicated. The plaintiff maintained that the injuries will cause permanent pain and limitation, and was able to return to work as a construction estimator. The plaintiff contended that she works despite continuing pain and that most activities of daily living are painful and difficult.The defendant denied that the plaintiff suffered a permanent injury in the collision, which did not involve significant impact damage and contended that any complaints were related to degenerative disc disease.

The jury found that the plaintiff did not suffer a permanent injury and a defense verdict under the verbal threshold was entered. The case then settled for $2,500 in accordance with the high/low agreement.

REFERENCE

Perez vs. Moskowitz. Docket no. BER-L-6718-12; Judge Lisa Perez Friscia, 01-15.

Attorney for defendant: Kenneth R. Foreman of Harwood Lloyd in Hackensack, NJ.

$550,000 RECOVERY

Rear-end collision – Plaintiff passenger suffers cervical and lumbar herniations – Lumbar surgery – Approximately $200,000 in unpaid medical bills

Middlesex County, NJ

The plaintiff passenger, in his 40s, contended that the defendant driver negligently struck the host vehicle in the rear when stopped at a light. The plaintiff maintained that he suffered cervical and lumbar herniations that were confirmed by MRI, and which will cause permanent symptoms. The plaintiff supportedthat after a course of conservative care, injections, and physical therapy proved to be inadequate, he underwent lumbar surgery.The plaintiff's PIP medical coverage was limited to $15,000, and the plaintiff would have introduced approximately $200,000 in unpaid medical bills. The plaintiff, who works in construction, stated that continuing has been difficult, but was, however, able to continue working. The defendant denied causal relationship, and supported that the plaintiff had degenerative disc disease only. The plaintiff countered that he had no prior symptoms or treatment.

The case settled prior to trial for $550,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Marc Cohen, MD from Parsippany, NJ.

Haywood vs. Watkins. Docket no. MID-L3092-11, 12-14.

Attorney for plaintiff: Christopher F. Struben of Law Office of Michael A. Percario in Linden, NJ.

DEFENDANT'S VERDICT

Rear end collision – Cervical herniations and bulge – Lumbar bulge – Plaintiff self-employed in music equipment business claims difficulties working – Damages only – Jury finds no permanent injury

Ocean County, NJ

This damages only rear end collision case was brought by a plaintiff driver in his 50s, who contended that he sustained cervical herniations and bulges, as well as a lumbar bulge, and will suffer permanent symptoms. There was no evidence that surgery will be necessary. The plaintiff is self-employed in a field that includes

selling musical instruments to night clubs, and supported that he has been restricted in his endeavors to some extent. There was no evidence that surgery will be necessary. The defendant denied that the plaintiff suffered a permanent injury in the collision.The subject accident occurred in 2009. The defendant also established that in 2000, the plaintiff visited a neurosurgeon for evaluation of neck and lower back pain. There was no recommendation for surgery.

The jury found that the plaintiff did not suffer a permanent injury, and a defense verdict under the verbal threshold was entered.

REFERENCE

Plaintiff's chiropractor expert: Jeffrey Savitt, DC from Brick, NJ. Plaintiff's orthopedic surgeon expert: Robert Dennis, MD from Neptune, NJ. Defendant's orthopedic surgeon expert: Michael Gordon, MD from New York, NY.

Conacchio vs. Brown. Docket no. OCN-L-2105-11; Judge David Lord, 08-14.

Attorney for defendant: Patricia Bray Adams of Campbell Foley Delano & Adams,LLC in Asbury Park, NJ.

$235,000 RECOVERY

Rear end collision – Low impact – Previously undiagnosed genetic occular condition of pserudoexfoliation combines with trauma to render plaintiff more susceptible to glaucoma, which was diagnosed ten months post accident – No blunt trauma to eye area – Cervical disc protrusion with Degenerative Disc Disease-Anticipated surgery – No past wage losses

Monmouth County, NJ

This was a rear-end collision case involving a plaintiff driver, 56 years old at the time of the accident, and 62 years old at the time of the recovery.

The plaintiff, who did not suffer blunt trauma to the eye area, was diagnosed ten months after the collision with glaucoma, and the defendant denied causal relationship, and countered that his preexisting condition of pseudoexfoliation, coupled with a traumatic whiplash injury, increased his chances of developing glaucoma, which was ultimately confirmed through objective tests and surgeries. The plaintiff's ophthalmologists performed an iridotomy & lens replacement surgery to relieve the pressure, and the operations revealed findings of blockages in two parts of the eye, and ultimately stabilized the eye pressure. The cause of the blockages was hotly disputed by the defense.The plaintiff suffered from some mild peripheral vision deficit in the one eye, but no central vision loss,and his neurosurgical and pain management experts further contended that he suffered a cervical disc protrusion that will require a two level fusion.

The defense denied that the discogenic findings were caused by the collision, and disputed the need for surgery. The defendant's orthopedic expert diagnosed a temporary cervical strain, and the defense procured documentary proof of the absence of radicular complaints, which was elicited during cross-examination.

The defense disputed the extent of orthopedic injury, and cross-examinations elicited that the plaintiff continued to work, in spite of the claimed impairments.

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

REFERENCE

Plaintiff's neurosurgeon expert: Andrew Fineman, MD from Sarasota, FL. Plaintiff's ophthalmologist expert: Daniel Goldberg, MD from Little Silver, NJ. Plaintiff's ophthalmologist expert: L. Jay Katz, MD from Will's Eye Institute, NJ. Defendant's orthopedic surgeon expert: David Loya, MD from West Orange, NJ.

Rafferty vs. McGivney. Docket no. L-666-11, 12-08-14.

Attorney for plaintiff: Max Stagliano of Gill & Chamas in Woodbridge, NJ.

Van/Auto Collision

$600,000 RECOVERY

Defendant driver backed into plaintiff campus police officer – Initial injury to alar ligament supporting skull essentially resolves – Head trauma results in aggravation of cerebella ectopia and culminates in Chiari malformation – Inability to continue as campus police officer

Essex County, NJ

The plaintiff campus police officer, in his early 30s, contended that the defendant driver, who lived a few blocks away, and who worked at a bookstore next to the defendant tavern, decided to drive the van situated next to the bookstore, despite being inebriated. The plaintiff supported that the defendant mistakenly believed that the van was in drive, when in fact, it was in reverse, backing into plaintiff as he was traveling towards him. The defendant driver had a BAC of.19 when tested, and the plaintiff's toxicologist maintained that at a level of.15 or higher, the driver would show visible signs of inebriation.The defendant tavern denied that the driver showed the requisite signs of visible intoxication.

The evidence disclosed that three days after the accident, the plaintiff passed out and was taken to the hospital where x-rays and an MRI reflected asymmetry in the odontoid process that involved injury to the right alar ligament that supports the skull. It was initially feared that the condition could well constitute a surgical emergency until flexion and extension x-rays showed an absence of laxity that reflected the condition would remain stable without surgery.

The evidence also showed that following an accident some years earlier, the plaintiff developed significant headaches, which the plaintiff maintained that, although lasting a relatively short period, it was caused by led cerebella ectopia, in which the brain tonsils protruded into the foramen magnun at the base of the skull. The plaintiff stated that the subject collision caused an aggravation, In which additional brain matter was displaced, such that it was now considered a symptomatic Chiari malformation that will cause permanent headaches,. The plaintiff maintained that a future head would be much more serious than would otherwise be the case, and that he can no longer work in law enforcement.

The defendant maintained that a comparison of the pre-incident MRI and the MRI taken after the subject collision did not reflect an aggravation.

The case settled on the second day of trial for $600,000, including $575,000 from the defendant driver, and $25,000 from the defendant tavern.

REFERENCE

Plaintiff's neurology expert: Edward Von Der Schmidt, MD from Princeton, NJ. Plaintiff's toxicologist expert: Robert Pandini, PhD from Rutgers Univ, NJ. Defendant's neurological expert: Sidney Bender, MD from Livingston, NJ. Defendant's neurological expert: William Head, MD from New York, NY.

Cox vs. Mueller, et al.; Judge Thomas Vena, 12-02-14.

Attorney for plaintiff: Frank Cofone, Jr. of D'Amico & Cofone in New Brunswick, NJ. Attorney for plaintiff: Jerry Eisdorfer in Elizabeth, NJ. Attorney for defendant: Terrence Bolan for defendant tavern. of Bolan Jahnsen Dacey in Shrewsbury, NJ.

PREMISES LIABILITY

Fall Down

$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, NJ

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.

DEFENDANTS' VERDICT

Defendant janitorial service at office building found negligent, but no proximate cause – Plaintiff slips and falls on lavatory floor that was left wet after mopping – Ankle fracture – Ligament damage – Inability to continue career as Special Agent for Social Security Administration.

Middlesex County, NJ

The plaintiff, approximately 50 years old, contended that the defendant janitorial service's matron negligently left the lavatory floor wet and failed to place a warning sign when mopping the floor. The plaintiff supported that the floor was extremely wet and slippery, resulting in his falling when he entered. The plaintiff also named the building owner as a defendant, contending that the tile did not have a sufficiently high co-efficient of friction. The plaintiff suffered an ankle fracture and ligament damage, and maintained that he will permanently suffer extensive pain and difficulties walking. The plaintiff had been employed as a Special Agent for Social Security Administration, and maintained that since he cannot spend extensive time on his feet, he was let go after having desk duty for approximately nine months. The defendant building owner stated that the tile was proper. The defendant janitorial service's matron testified that it is her custom and practice to place a warning sign until the floor is dry, and this defendant denied that it was negligent. The defendant janitorial service contended that the plaintiff had not met his burden of proof including establishing a timeline of when the bathroom had been mopped, in relation to the time of the incident, and further maintained that plaintiff likely fell on water from the sink.The incident occurred at approximately 9:30 a.m.

The jury found 5-1 that the janitorial service was negligent, but determined 6-0 that there was an absence of proximate cause. The jury also found that the building owner was not negligent.

REFERENCE

Plaintiff's economic expert: Stan Smith, PhD from Chicago, IL. Plaintiff's engineering expert: Michael Natole, PE from Albany, NY.

Guevara vs. Maverick Building Services, Inc, et al. Docket no. MID-L-3671-12; Judge Hedi Willis Currier, 12-14.

Attorney for defendant: Frank J. Kontely for defendant janitorial service of Hoagland Longo Moran Dunst & Doukas in New Brunswick, NJ. Attorney for defendant: Charles E. Reynolds for defendant building owner of Law Office of Ann M McGuffin in East Brunswick, NJ.

$400,000 VERDICT

Failure to provide snow and ice maintenance at construction site – Plaintiff contends he slips and falls as he steps off ladder and onto icy floor – Plaintiff severs nerve in hand upon contacting knife in plaintiff's tool box as plaintiff falls - permanent pain and numbness in hand

Hudson County, NJ

The plaintiff, in his early 20s, contended that the defendants general contractor and owner of a construction site negligently failed to remove snow and ice. The plaintiff maintained that in the three to four days that elapsed since the last precipitation of several inches of snow, no snow removal activity had taken place, and that the extensive snow and ice was present throughout the site. The plaintiff supported that as he stepped off a ladder in a building that was exposed to the elements because a door had yet to be placed, he slipped on the icy floor and fell, while he was carrying a canvass tool bag that was closed. The plaintiff contended that irrespective of the bag being closed, the force resulted in his hand being cut by a knife that was in the tool box. The plaintiff supported that he suffered a severed a digital nerve in the palmar aspect of the right hand, and will permanently suffer numbness and pain that is heightened upon using power tools, despite surgery, and missed several months from work due to this negligence.

The defendant contended that the plaintiff failed to make observations and was comparatively negligent, and also established that in the days leading up to the incident, the plaintiff voiced no complaints about the conditions, and maintained that he was naturally reluctant to complain about conditions at the work site. The contract between the defendants and the employer provided for indemnification if the employer was negligent to any degree. The third party aspect was presented to the jury.

The jury found that the defendants owner and general contractor were each 50% negligent, that although the plaintiff was comparatively negligent, there was an absence of proximate cause, and that the third party defendant was not negligent. The jury then awarded $400,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Michael Wujciak, MD from Nutley, NJ. Plaintiff's OSHA expert: Vincent Gallager from Audobon, NJ.

Scavo vs. SJD Construction, LLC, et al. Docket no. HUD-L-3907-12; Judge Lisa Rose, 11-19-14.

Attorney for plaintiff: Ronald J. Ricci of Ricci & Fava, LLC in Woodland Park, NJ.

$150,000 RECOVERY

Plaintiff trips and falls over 1/4 in. elevation of boardwalk plank – Fracture of distal radius on dominant side – Three surgeries – Traumatic arthritis – Plaintiff misses 10 weeks from job as bartender

Atlantic County, NJ

The plaintiff, 57 years old at the time of the incident, contended that the defendant municipality acted in a palpably unreasonable manner in failing to properly repair the boardwalk, resulting in her tripping and falling over a board that was raised approximately 1/4 in. The defendant denied notice of any dangerous condition.

The plaintiff countered that the defendant had conducted inspections of repairs on two occasions in the several week period leading up to the incident, and maintained that that based on photographs that showed wear, the condition had been present for an extended period. The defendant also supported that the plaintiff failed to make adequate observations, and was comparatively negligent. The plaintiff contended that she suffered impacted, comminuted, intra articular fractures of the right distal radius, and required three separate surgeries and two steroid injections. The plaintiff maintained that she will suffer permanent pain and restriction, and that traumatic arthritis has commenced.

The plaintiff stated that she has greatly enjoyed fishing and pedal boating, and that although she continues, she does so in significant pain. The plaintiff also declared that she frequently requires a brace on the wrist that renders fishing very cumbersome. The plaintiff returned to work as a bartender.

The case settled prior to trial for $150,000.

REFERENCE

Romano vs. City of Atlantic City. Docket no. ATL-6145-12, 09-14.

Attorney for plaintiff: Thomas J. Vesper of Westmoreland Vesper Quattrone & Beers,PA in Pleasantville, NJ.

Hazardous Premises

DEFENDANT'S VERDICT

Alleged dangerous condition of protruding nail on boardwalk – Fall – Lis Franc fracture – Jury finds no dangerous condition and does not reach issue of palpably unreasonable conduct

Ocean County, NJ

The plaintiff contended that a nail that was protruding from the boardwalk, rendering the boardwalk dangerous, resulting in her tripping and falling. The plaintiff asserted that the defendant municipality acted in a palpably unreasonable manner.

The defendant denied that one nail out of so many that was protruding rendered the boardwalk dangerous, and also maintained that the jury should consider that it conducted daily inspections during the summer season, in which the accident occurred. The fall happened on a sunny day. The plaintiff suffered a Lis Franc fracture, and contended that because of the severe nature of the foot fracture, she will probably require future fusion surgery. The plaintiff did not produce expert liability testimony.

The jury found that a dangerous condition did not exist, and a defense verdict was entered.

REFERENCE

Barone vs. Borough of Seaside Heights. Docket no. OCN-L-881-13; Judge Mark A. Troncone, 01-18-15.

Attorney for defendant: Thomas E. Monahan of Gilmore & Monahan in Toms River, NJ.

$400,000 RECOVERY

Palpably unreasonable failure to repair raised boardwalk plant – Plaintiff's bike strikes defect and she is thrown off bike – Hip fracture – Surgery – Traumatic arthritis – Moderate leg scarring

Cape May County, NJ

The plaintiff bicyclist, in her early 50s, contended that the defendant municipality acted in a palpably unreasonable manner in failing to correct a dangerous condition involving a raised boardwalk plank. The plaintiff maintained that an approximate 15 ft. area was in disrepair, and that she fell and suffered a fractured hip when her bike struck the defect and stopped short. The defendant denied that notice of any dangerous condition. The plaintiff presented an expert builder who supported that signs of wear at the defect reflected that it had been in that condition for a lengthy period. The plaintiff related that when she fell, she experienced the immediate onset of severe pain and a fractured hip was diagnosed shortly thereafter, and underwent surgery and extensive physical therapy. The plaintiff maintained that despite the treatment, she continues to suffer continuing pain, with

difficulties ambulating, and stated that traumatic arthritis is very likely in the future, and she may well require a total hip replacement.

The plaintiff, who commenced working for a marketing company approximately six years before the incident, and after her children had grown, related that she missed several months of employment, and has been required to give up a favored activity of bicycle riding. The plaintiff also argued that the jury should consider that the plaintiff will experience pain and suffering for the remainder of 33.8 year life expectancy.

REFERENCE

Plaintiff's construction expert: Dean Abrams from Baltimore, MD. Plaintiff's orthopedic surgical expert: Ayotunde Adeyeri, MD from Holmdel, NJ. Plaintiff's orthopedic surgical expert: George Alber, MD from Galloway, NJ.

Ippolitti vs. City of Wildwood. Docket no. CPM-L-509-11.

Attorney for plaintiff: Thomas J. Vesper of Westmoreland Vesper Quattrone & Beers,PA in Pleasantville, NJ.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

$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 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 Simbsbury, 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.

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.

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.

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.

$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.

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 $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.

Notes: