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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

Summaries with Trial Analysis

$9,900,000 RECOVERY – SEC 240 (1) OF LABOR LAW – FAILURE TO PROVIDE LADDER ON SCAFFOLD DURING CONSTRUCTION – PLAINTIFF FALLS APPROXIMATE TEN FEET WHILE CLIMBING ON CROSS-MEMBERS OF SCAFFOLD – COMPRESSION LUMBAR FRACTURES

New York County, NY

This was a Sec. 240 (1) Labor Law action involving a plaintiff Union laborer in his mid-40s who contended that an attachable ladder, which would have provided safe access to the top work platform of a the rolling scaffold, had not yet been delivered to the work site when worked started that day. The plaintiff also supported that because of ice and snow, the scaffold was slippery. The plaintiff maintained that he and other workers had to climb up and down the scaffold using its horizontal round railings as steps, and that because of the absence of a ladder, he fell approximately ten-feet to the sidewalk below. The plaintiff suffered comminuted fractures of the calcaneus, and also supported that he suffered compression fractures that included fractures at L2 and T12, and that although the pain from the back injury was initially only moderate, it continued to progress, that he developed radicular symptoms and that modalities such as facet block injection medication provided temporary relief only. The plaintiff ultimately underwent surgery and the implantation of a pain medication pump. The plaintiff contended that although the installation of the pump provided some improvement, he will, nonetheless, suffer extensive pain and limitation, and will be unable to work. The plaintiff made a motion for summary judgment on liability, arguing that there was no proof that a ladder was available, or that workers were made aware of the availability of a ladder. The plaintiff's motion was granted, and the App Div, 1st Dept. affirmed.

The plaintiff was brought to the hospital where the fractured calcaneus was treated by way of open reduction and internal fixation. He complained of radiating pain, and wore a Jewett brace for a period, maintaining that the severe pain continued, and that he went through a series of treatment modalities, including injections and medications. The plaintiff stated that although most modalities provided some relief, it was temporary in nature. The evidence reflected that after having injections and oral medication, the plaintiff underwent surgery in which an intrathecal pump, that provides medication to surrounding tissues, was implanted. The plaintiff argued that irrespective of the lack of understanding by a treating physician that such spinal fractures would cause as much pain as described by the plaintiff, the fact that he chose to undergo surgery to have such a pump installed, reflected that his claim as to the extent of the pain was clearly accurate. The plaintiff maintained that although the use of the pump provided some relief, he, nonetheless, continues to suffer severe pain and limitations, cannot sit or stand for extended periods, and that such impediments are permanent in nature. The plaintiff also supported that the history of treatment modalities providing some, albeit temporary relief, was inconsistent with an individual who was fabricating his complaints, arguing that a malingerer would be expected to advise that treatment had no effect whatsoever. The plaintiff contended that he will be permanently unable to work. The defendant countered that the plaintiff could be retrained and command comparable earnings in a sedentary capacity, and further pointed out that the plaintiff has completed much of the course work needed to become an engineer and could complete the remainder in an approximate one-year period. The plaintiff countered that since he can't sit for extended periods without experiencing severe pain, it is evident that he would not be able to complete this education or work.

The case settled prior to trial for $9,900,000.

REFERENCE

Plaintiff's economist expert: Kristin Kuszma, MA from Livingston, NJ. Plaintiff's neurosurgeon expert: Charles Garell, M.D., from Camel, NY. Plaintiff's orthopedic surgeon expert: David E. Aspirino, MD from Hawthorne, NY. Plaintiff's vocational expert: Richard Schuster, Phd from New York, NY. Defendant's neurologist expert: Allan E. Rubenstein, M.D from New York, NY. Defendant's orthopedic surgeon expert: Pierce Ferriter, M.D from New York, NY.

Nechifor vs. R.H. Atlantic-Pacific, LLC. et. al. Index no. 108080109; Judge Jane Solomon, 03-14-14.

Attorneys for plaintiff: David H. Perecman and Adam M. Hurwitz of Perecman Firm PLLC in New York, NY.

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Founder
Ira J. Zarin, Esq.

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Contributing Editors
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Published by Jury Verdict Review Publications, Inc. 45 Springfield Avenue, Springfield, NJ 07081
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COMMENTARY

The plaintiff prevailed on his motion for summary judgment on liability, and it should be noted that 9% interest was running. The defendant pointed out that a treating physician had found that the extent of the back pain described was not consistent with the nature of the fractures. The plaintiff, who overcame this factor, emphasized that the pain was so intense that he ultimately opted to have an intrathecal pump surgically implanted. Additionally, the plaintiff emphasized that he underwent the implantation of the pump only after a number of treatment modalities, including injections and medication, provided temporary relief only. In this regard, the plaintiff argued that the very fact that he had reported some short-term relief from the modalities was inconsistent with a malingerer, whom the plaintiff argued, would be expected to deny that treatment had any impact whatsoever.

$2,750,000 RECOVERY – REAR END COLLISION – PLAINTIFF POLICE DETECTIVE SERGEANT CLAIMS HERNIATION AND MILD TBI – LENGTHY DELAYS BETWEEN ACCIDENT AND DIAGNOSES

New York County, NY

The plaintiff police detective sergeant, in his 40s, who supervised approximately 20 police officers, and who was driving his own car while off duty, contended that as a result of the negligence of the defendant driver, who struck him in the rear, he suffered a mild TBI, cervical herniation, and shoulder injuries, The plaintiff supported that it ultimately became apparent that he could no longer function safely at work, and took an early retirement. The defendant denied that the collision was the cause of any work-related disability, and pointed out that the police board had found that he was fit for duty and denied responsibility for the economic loss, which the plaintiff contended stemmed from the early retirement. The defendant also pointed out that the plaintiff continued to work everyday for three years after the accident, although on restricted duty.

The evidence disclosed that the plaintiff made complaints of headaches at the emergency room. He did not visit a physician again for approximately five weeks, and made complaints of shoulder and neck pain, denying any cognitive deficits. An MRI taken approximately two months after the physician's visit disclosed a shoulder tear, rotator cuff tear, and a cervical bulge. The plaintiff embarked on a course of P.T. and epidural injections, and maintained that such therapy was inadequate, and that he underwent arthroscopic shoulder surgery approximately one-year and three months after the accident. He was then placed on restricted duty, in which he was not permitted to work in the field.

The plaintiff supported that during the period he was restricted to desk duty, he visited another orthopedist because of continuing neck pain. A cervical herniation was then diagnosed, and he underwent a microdiscectomy and fusion. The defendant denied that this injury was related, and the plaintiff countered that he had believed that the continuing headaches were related to shoulder and neck issues, but that when the headaches continued after his recuperation from the fusion surgery, it became apparent that other causes were related to the headaches.The plaintiff related on a post surgical visit with the orthopedist that he had been having concentration and memory difficulties ever since the collision. The defendant contended that the plaintiff made no earlier mention to five physicians over the course of some 35 visits, and it was clear that this position should be rejected. The plaintiff presented both a neuropsychologist and the police surgeon, who indicated that denial of the symptoms is very common in such cases. The plaintiff also contended that he was afraid that memory and concentration deficits would result in his being found not fit for duty, adding to this denial. The neuropsychologist contended that the deficits were confirmed by a bat-

tery of tests, which were caused by the collision, and permanent in nature. The evidence disclosed that after a year on restricted duty, in which an officer cannot work in the field, he must be retired on a disability unless he is found to be capable of duty in the field. The plaintiff was sent to the police medical board and cleared to return to full duty. The plaintiff presented the police surgeon and his treating orthopedist, who testified that they strongly disagreed with the board's findings. The orthopedist related that he had told the plaintiff that he believed that if he returned to duty, he would pose a risk to himself and others, resulting with the plaintiff opting to take an early retirement. The plaintiff contended that if it had not been for the injuries, he would have worked for the NYPD another 10-15 years. The plaintiff participated in a brain rehabilitation program for two years after he left the force and contended that although the program provided some improvement, he will permanently suffer very significant deficits. The defendant denied that the plaintiff''s claims of causal relationship should be accepted, pointing to the extensive delay.

The case settled during jury selection for $2,750,000.

REFERENCE

Plaintiff's economic expert: Thomas Fitzgerald from Bronxville, NY. Plaintiff's life care planning expert: Charles Kincaid from Hackensack, NJ. Plaintiff's neuropsychological expert: Kristin Dams-OConnor, Phd from New York, NY. Plaintiff's neurosurgical expert: Paul Brisson, MD from New York, NY.

Plaintiff's orthopedic surgical expert: Eric Crone from New York, NY. Plaintiff's psychological expert: Paula Reid, PhD from New York, NY.

Brattasani vs. Lisman. Index no. 112169/09; Judge George J. Silver, 09-14.

Attorney for plaintiff: Philip A. Russotti of Wingate Russotti Shapiro & Halperin, LLP in New York, NY.

COMMENTARY

The plaintiff was thought to have been able to command a recovery, which was particularly substantial in view of the significant delay between the time of the collision and the ultimate diagnosis of a cervical herniation, and the even later diagnosis several years after the accident of a mild TBI. The plaintiff, in the arguments regarding the herniation, stressed that he believed that the cervical complaints were related to the shoulder injuries, and that it was not until after his recuperation from the arthroscopic shoulder surgery that he realized that the cervical pain was not caused by the shoulder alone. Regarding the TBI: The plaintiff obtained this recovery despite the absence of any mention of such complaints over the course of some 35 visits to five physicians, in addition to the police surgeon. The plaintiff's neuropsychologist's EBT was preserved for trial testimony because the expert was to be unavailable at trial. It is felt that her testimony that denial of such cognitive deficits is very common, and that in the plaintiff's case, this factor was magnified because of concerns about his career was very effective. Finally, the plaintiff obtained this recovery, notwithstanding that he retired from the force when the police board found that he was fit to return to duty. The plaintiff emphasized that his own physicians strongly disagreed with the findings of the board, and that he only decided to retire when one of the physicians warned him that by continuing, he would pose a risk to himself and others.

$2,506,666 VERDICT – PODIATRIC MALPRACTICE – FAILURE OF DEFENDANT TO AVOID HALLUS LONGUS TENDON DURING ARTHROSCOPIC ANKLE LIGAMENT REPAIR SURGERY – FAILURE TO CONSULT MRI TO NOTE AREA IN WHICH TENDON SITUATED – LACERATION OF TENDON

Bronx County, NY

The plaintiff contended that as a result of the negligence, she developed Complex Regional Pain Syndrome (CPRS) that primarily affects the lower left leg and foot. She maintained that prior to the surgery, the defendant should have conducted an MRI to ascertain the location of the tendon, which would enable him to avoid it as he was performing the arthroscopic ligament repair. The plaintiff further supported that although the use of a sharp instrument was appropriate to create the incision, the defendant should have used a cannula with a blunt instrument once he delved deeper into the tissue, which the defendant countered that he did use a blunt instrument at this point in the surgery. The plaintiff stated that the records reflected that a sharp instrument was used, and argued that the defendant's position should be rejected.

The lower leg and foot were placed in a cast for several weeks after the surgery, and the plaintiff maintained that when it was removed, she realized that she could no longer move the great toe, and had extensive loss of mobility of the ankle joint. She stated that the MRI reflected that a portion of tendon near the ankle was severed, and the plaintiff contended that it was very likely that rather than retract the tendon out of the way during the ligament repair, the defendant had severed it. The defendant denied that he performed the surgery negligently or severed the tendon. The plaintiff countered that in view of the MRI evidence, as well as the inability to move the great toe once the cast was removed, it was clear that the tendon was severed during the surgery, including that despite the attempt at repair surgery, she will permanently have no dorsiflexion in her left ankle or great toe on the left foot. The plaintiff contended that she experienced extensive instability because of the injury, and that such instability resulted in two falls, one of which fractured the metatarsal on the same left

side,as well as a second fractured great toe on the right foot. The plaintiff maintained that both injuries required surgery, and have substantially resolved. The plaintiff, who is an insulin dependent diabetic, and also suffered from preexisting fibromyalgia, supported that the trauma caused CRPS that primarily affected the lower left leg and foot, and which caused signs of the condition, such as color and temperature changes, and hair loss. The plaintiff contended that the CRPS will permanently cause exquisite pain and hypersensitivity. The plaintiff, who was not working at the time of the defendant's surgery, made no income claims, and maintained that she has great difficulties engaging in everyday tasks, and that a home health aide for five days a week has been recommended.

The jury found that the defendant was negligent and awarded $2,506,666.

REFERENCE

Plaintiff's podiatric expert: Kevin Jules, DPM from New York, NY.

Dean vs. Persich. Index no. 303201/11; Judge Kenneth Thompson, 07-16-14.

Attorneys for plaintiff: Richard L. Giampa and Zachary K. Giampa of R Giampa,PC in Bronx, NY.

COMMENTARY

The plaintiff, cognizant of the common reluctance on the part of a jury to render a large award to a plaintiff suffering diabetes, irrespective of the "egg shell head" instruction, delved extensively into this issue during voir dire, endeavoring to ascertain if any potential jurors would be able to follow the court's instructions regarding the pre-existing vulnerabilities. Additionally, it is felt that in this case, the evidence that the plaintiff suffered conditions that are not associated with a progression of diabetes, such as the severed tendon and resulting complaints in the loss of dorsiflexion in the ankle and great toe was very significant.

Regarding the allegations of negligence, the defendant's ability to overcome the allegations that he should have been able to locate the severed nerve, were undoubtedly compromised by the failure to use an MRI to assist in avoiding injury to structures which might well be in the operative field. Additionally, the plaintiff emphasized that the records supported the plaintiff's claims that the defendant did not switch to a blunt instrument after using the sharp instrument to create the incision, as claimed by the defendant. Finally, the plaintiff effectively utilized custom prepared demonstrative evidence in the form of anatomical models showing the proximity of the medial portal site to the tear of the ligament that was visible on the sagittal view of the MRI.

$2,035,000 RECOVERY – DOJ – FRAUD – "NOTORIOUS" DOCTOR SETTLES ALLEGATIONS OF FALSE CLAIMS ACT VIOLATIONS – INAPPROPRIATE MEDICARE BILLING

Eastern District County, NY

This action resolved false claims allegations against a prominent New York oncologist known for advertising radiosurgery cancer treatment on the radio. The matter was resolved through a settlement.

The defendant, Gilbert L., M.D., is the former Chief of Radiation Oncology at the co-defendant, Staten Island University Hospital. The defendant was accused of filing for Medicare reimbursement for radiosurgery cancer treatments that were not eligible under the federal Medicare program. The defendant was further accused of fraudulent billing practices, resulting in Medicare wrongfully paying millions for body radiosurgery cancer treatment of thousands of patients.

In 2004, Elizabeth M.R., a widow of a deceased cancer patient, filed suit in the U.S. District Court for the Eastern District of New York, pursuant to the qui tam provision of the False Claims Act. The United States subsequently intervened in the case against the doctor and hospital after an investigation of the whistleblower's claims. The defendant was accused of submitting false claims to the federal Medicare program. In 2008, the defendant hospital settled with the United States for $25,000,000.

The suit against the defendant doctor was resolved on the eve of trial with defendant's agreement to pay $2,035,000 in damages to the United States. The whistleblower will receive 15 percent of this settlement. The defendant doctor will also pay an additional $175,000 in legal fees to the whistleblower's counsel.

REFERENCE

United States ex rel. Elizabeth M. Ryan vs. Gilbert Lederman and Gilbert Lederman M.D., P.C. Index no. 1:04-cv-02483–JG-CLP; Judge John Gleeson, 11-24-14.

Attorney for plaintiff: Richard Reich of Lifflander & Reich LLP in New York, NY. Attorney for plaintiff: Loretta Lynch, Laura Mantell a&nd Richard Hayes of U. S. Attorney's Office - Eastern District of New York in New York, NY.

COMMENTARY

Prior to settlement, Judge G. of the U.S. District Court, Eastern District of New York, determined that Dr. L.'s claims for reimbursement for body radiosurgery from Medicare were legally and factually false, as the services he billed for were not covered by Medicare. The judge further found that the doctor misrepresented the nature of the services for which he was billing. According to the

whistleblower's counsel, the settlement with the defendant hospital is one of the largest global settlements of health care fraud cases against a single hospital in the United States.

$1,750,000 RECOVERY – MEDICAL MALPRACTICE – FAILURE TO WORK-UP HYPERMETABOLIC FOCUS SEEN ON PET SCAN TAKEN WHEN LUNG CANCER SUSPECTED – REFER TO GASTROENTEROLOGIST LEADS TO APPROXIMATE ONE YEAR DELAY IN DIAGNOSIS OF ESOPHAGEAL CANCER – METASTASIS – DEATH

Orange County, NY

The plaintiff contended that the two defendant pulmonologists negligently failed to refer the patient, then 58, to a gastroenterologist despite PET scan findings showing abnormal focus in esophagus that was taken because of suspected lung cancer. The plaintiff supported that if such a referral had been made, and an endoscopy performed, the cancer probably would have been detected prior to metastasis, providing the decedent a significantly greater chance of survival. The decedent died approximately five years after the diagnosis, leaving a wife and three adult children.

The evidence revealed that the plaintiff decedent presented to his non-party internist with complaints of chest pain, coughing, and shortness of breath. A chest x-ray and CT scan were performed, which demonstrated masses in the lungs, believed to be lung cancer. A PET scan was ordered and the plaintiff decedent was referred to the first defendant pulmonologist. A PET scan, which measures metabolic activity, can detect areas of abnormality before a mass forms, not only demonstrated abnormal, hypermetabolic areas in the lungs, it also showed in addition a separate hypermetabolic focus at, or near the junction of the esophagus and stomach.

Following the PET scan, the plaintiff decedent was evaluated by the pulmonologist, who did not believe that the appearance of the lung lesions showed cancer, and that the patient likely had pneumonia and was prescribed antibiotics and steroids. A follow up chest CT was subsequently performed, which demonstrated that the lung masses shrunk— further supporting the diagnosis of pneumonia rather than lung cancer.

The plaintiff decedent, who wanted a second opinion, saw the second defendant pulmonologist who noted the results of the prior chest CT and PET scans and recommended an aspiration (which was inconclusive) then biopsy of the lung mass. The biopsy was negative for cancer and showed pneumonia. The plaintiff decedent continued to obtain treatment with this physician for approximately nine months.The plaintiff decedent supported that both defendants were negligent in failing to recommend a work-up, with respect to the abnormal, hypermetabolic focus at the gastroesophageal junction noted on the PET scan, and maintained that although not necessarily diagnostic of esophageal cancer, this sign was suspiscious and dictated a referral to a gastroenterologist for further investigation.

The evidence revealed that approximately one-year later, the decedent sought the care of a gastroenterologist for complaints of abdominal pain. An upper endoscopy was performed, which demonstrated a suspicious lesion at the gastroesophageal junction— the same area where the PET scan had detected the hypermetabolic focus. A biopsy was performed, which confirmed esophageal cancer. The defendants maintained that they acted properly in concentrating on the lesions that were suspicious for lung cancer. The plaintiff decedent countered that the suspicious area in the esophagus was unrelated to the lung cancer, and should have been worked up by endoscopy.

When the cancer was diagnosed, the decedent underwent staging tests, which determined that he had Stage IV esophageal cancer. The decedent plaintiff contended that if testing had been done shortly after the PET scan, metastasis of the cancer would have been avoided, and he would have had a much greater chance for cure or survival.

The plaintiff decedent further supported that the absence of the onset of any symptoms as of the time of the visits to the defendants, lent additional support for the plaintiff's position that the esophageal cancer was in an early stage at the time of the PET scan.

The decedent underwent continuous chemotherapy and other therapy for approximately five years, but eventually died of esophageal cancer, maintaining that the pain and suffering was great.

The case settled prior to trial for $1,750,000. The amounts contributed by each defendant were not disclosed.

REFERENCE

plaintiff showing signs of abnormal metabolism in esophagus visible on PET scan vs. Defendant pulmonoligists.

Attorney for plaintiff: Jason M. Rubin of Wingate Russotti Shapiro & Halperin, LLP in New York, NY.

COMMENTARY

The plaintiff decedent would have argued that, although the defendants were concentrating on the masses that were suspicious for the lung cancer that was ultimately ruled out, the PET scan also

showed abnormalities that could well be indicative of esophageal disease, and dictated further investigation by a gastroenterologist. In this regard, the plaintiff decedent would have argued that it was probable that the defendants had focused so intently on the pulmonary masses, that they failed to follow-up on the esophageal abnormality that was clearly reported on the PET scan. Additionally, the plaintiff would have stressed that since the PET scan measures metabolic activity, it can detect abnormalities significantly earlier than a CT scan, and before the formation of a mass.

$1,700,000 RECOVERY – MEDICAL MALPRACTICE – FAILURE OF EMERGENCY DEPARTMENT TO TREAT PATIENT ADMITTED FOR SICKLE CELL TO ALSO TREAT FOR AN UNDERLYING UNDIAGNOSED INFECTION/ELEVATED WHITE COUNT IN BLOOD TEST – SEPSIS

Bronx County, NY

This was a medical malpractice action involving a medicaid patient in her early 30s who was a long time sufferer of sickle cell anemia. The plaintiff contended that because of a recurring sickle cell crisis causing severe hip pain, she was brought to the emergency room by ambulance, and was admitted but released with an undiagnosed infection, despite laboratory findings of elevated temperature and elevated WBC indicating an underlying infection. Within two days, she was urgently transported back to the hospital, and was in septic shock and hypotensive, and was diagnosed with septicemia from cholecystitis. She was administered life saving Levophed to increase her blood pressure, but which also caused vasoconstriction, leading to the gangrenous partial loss of all of her fingers on her right hand, three of her fingers on her left hand, three toes on her left foot, and the total loss of four toes on her right foot. The plaintiff supported that she was an immunocompromised patient due to her chronic sickle cell disease, Lupus, and chronic use of prednisone. The plaintiff further maintained that upon presentation to the hospital during her first admission, the standard of care required the physicians to perform imaging studies and blood cultures, and that she should have been administered intravenous broad spectrum antibiotics.

The defendant denied that plaintiff suffered from cholecystitis during her first admission, and claimed that the two admissions were unrelated. The defendant maintained that the first admission was only for a sickle cell crisis, and that there was no reason to suspect an underlying severe infection would result, and also that during the second admission, Levophed was required to be administered as a life saving drug to increase her blood pressure, despite the risk of vasoconstriction. It was undisputed that a blood test was taken, and that the results showed an elevated white count.

The plaintiff had two minor children, and because she was unable to care for them, the plaintiff and her children moved into a small apartment with her cousin and cousin's family, and required the round-the-clock assistance of others for her care and that of her children.

At the time of the settlement, the patient was in and out of the hospital and fearful of dying without ensuring the financial security of her children. The plaintiff was also fearful that, should she have died prior to a settlement, Medicaid would have been entitled to most if not all of the settlement proceeds as she was a long-term Medicaid patient. The plaintiff settled for $1,700,000 and died shortly thereafter, thus preserving financial security for her children.

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REFERENCE

Haidara vs. NYCHHA., 07-14.

Attorney for plaintiff: Natascia Ayers of Law Offices of Natascia Ayers in New York, NY. Attorney for plaintiff: Michael Aviles of Law Office of Michael Aviles in New York, NY.

COMMENTARY

The medicaid patient had incurred extensive medical bills because of her Sickle Cell Anemia, Lupus, and other medical conditions. The plaintiff's counsel advises that if the patient died before the settlement, the medicaid rules provide that Medicaid is entitled to be reimbursed for all monies expended on behalf of the Medicaid recipient, regardless of whether the expenditures were related to the case, before any proceeds are paid to the heirs. Since the settlement was reached prior to her death, plaintiff's estate need only pay the expenses related to the malpractice, which were negotiated and settled prior to her death, for approximately $60,000. The plaintiff's counsel also advises that had plaintiff lived, she would no longer have been eligible for Medicaid, because she opted to not enter into a Supplemental Needs Trust, so that she could use the proceeds of her settlement to live and take care of her children. Arrangements were made for plaintiff to secure private health insurance. Unfortunately, plaintiff died before the health insurance would have taken effect.

$1,000,000 VERDICT – MEDICAL MALPRACTICE – NEGLIGENT FAILURE TO PREVENT DECUBITUS ULCERS AND TO ADEQUATELY TREAT SORES DURING APPROXIMATE ONE MONTH HOSPITALIZATION OF PATIENT WHO HAD UNDERGONE LIVER TRANSPLANT – STAGE IV DECUBITUS ULCERS ON PENIS AND SACRUM

Erie County, NY

This was a medical malpractice action involving a patient in his mid 60s who had previously undergone liver transplant surgery. The plaintiff contended that when the decedent was admitted with severe back pain, which was feared to be indicative of complications of the liver transplant, he was assessed at being at moderate risk for bed sores. The plaintiff supported that the defendant failed to follow its own protocol of repositioning the patient every two hours to prevent the formation of bed sores. A "condom" catheter, which entails covering the top of the penis, rather than an internal Foley catheter, was more appropriate, and the plaintiff maintained that the defendant's staff negligently failed to use sufficient care to avoid abrasion when placing the catheter, and to avoid leaving it in place for too long a continuous period. The plaintiff supported that he developed a decubitus ulcer on the penis, in addition to a sore in the sacral area. The plaintiff also contended that once the decubitus ulcers formed, the defendants failed to adequately treat the sores and prevent progression. He maintained that once a sore forms, it is required to carefully observe the characteristics of the ulcer at least one time per week, and that during the hospitalization, such assessment was completed only once, and contended that this factor significantly contributed to the progression. The plaintiff further maintained that the defendant failed to turn the patient every two hours as is required by its own protocols, and that the hospital records should be interpreted as supporting the plaintiff's claims. The defendant supported that a proper interpretation of the records would support it's contentions that the patient was repositioned at appropriate intervals, and also that the frail nature of the plaintiff prevented it from better controlling the decubitus ulcers. The plaintiff countered that in view of the evidence that the patient was assessed at, for moderate risk for bedsores upon admission, this defense contention should clearly be rejected. The plaintiff maintained that the progression of the sores was very painful despite the use of medication. The evidence also established because of issues related to the risk of contamination, the patient required a colostomy, and that remained until his death from causes that were unrelated to the decubitus ulcers approximately five months after the decedent was admitted to the defendant hospital.

The jury found that the defendant was negligent and awarded $1,000,000. The defendant's post trial motions were denied, and the defendant has filed a notice of appeal.

REFERENCE

Plaintiff's internal medicine expert: Nicholas Sweet, MD from Hollywood, FL. Plaintiff's nursing expert: Christina Decker, RN from Tampa, FL. Defendant's internal medicine expert: Michael Perskin, MD from New York, NY.

Groff vs. Strong Memorial Hospital, et al. Index no. 2009-1518; Judge Timothy J. Walker, 12-18-13.

Attorneys for plaintiff: Michael C. Scinta and Angelo S. Gambino of Brown Chiari LLP in Lancaster, NY.

COMMENTARY

The death was not related to the negligence and the jury rendered this award for approximately five months of pain and suffering. It is felt that the evidence of a severe progression of the decubitus ulcers not only in the sacral area, but also the highly sensitive area of the penis prompted this jury result. In this regard, it should be noted that the plaintiff's primary focus during trial was on the sacral sore, rather than the injury in the groin area, which was the type of injury that would be expected to evoke a strong jury response, even if presented in a relatively low key manner. Additionally, the plaintiff emphasized that because of the risk of contamination, the colostomy could not be reversed. Regarding liability, the defendant argued that the frail nature of the decedent prevented the decubitus ulcers from progressing. The plaintiff effectively countered this contention by stressing that upon admission, the defendant had evaluated the patient as being at only moderate risk of decubitus ulcers.

UNDISCLOSED RECOVERY – COMMUTER PLANE CRASHES INTO HOUSE – CASE INVOLVES FATHER, MOTHER AND DAUGHTER LIVING IN HOME – FATHER KILLED

Erie County, NY

Liability was stipulated in this action, in which the approximate 70 passenger plane crashed into the plaintiff's home, killing the 61-year-old father and injuring the plaintiff mother in her mid 50s, and the 22-year old daughter who lived at home. One other child was not at home, and the other two lived away from home. This trial did not address the cases involving the passengers on the plane.

The plaintiffs mother and daughter testified that although the decedent was in a portion of the home that immediately caught on fire, they were not, and were able to escape the home before the fire spread to the remaining portions.

The plaintiff maintained that the father suffered some period of pain and suffering that was clearly excruciating. The defendant denied that this contention should be accepted, and maintained that the decedent died instantly. The plaintiff pointed to the testimony of the medical examiner that, although she initially believed that the death occurred on impact, as reflected in the initial report, she realized after viewing edema on the lung slides that there was some period of conscious pain and suffering, and that in view of the nature of the severe trauma, it was clear that the physical pain and suffering was unusually great. The plaintiff also pointed out that, although the legs were traumatically amputated, they were found in the the immediate vicinity of the rest of the body. The plaintiff contended that if the death had been instantaneous, it is likely that the legs would have been blown some distance from the body. The plaintiff also presented a goodly number of friends and neighbors who attested to the usually giving nature of the decedent. One of the witnesses is an antique dealer with whom the decedent, who had a large sports memorabilia collection, had done business. The witness related that when he was younger, he was a star pitcher in high school and college, and had also played semi-pro baseball. The witness testified that when the decedent heard how the witnesses mother had disposed of many of the press clippings about him, the decedent went to great lengths, including contacting libraries and historical societies, and had been able to replace much of it. The plaintiff further introduced evidence of help given by the decedent to neighbors, including an elderly woman who lived across the street, for whom the decedent performed painting services. The plaintiff also contended that the evidence clearly reflected that the decedent was an exemplary father and husband, who worked as a marketing manager and that he had planned on continuing to work for some years. The evidence also disclosed that the decedent had a very valuable collection of memorabilia that was destroyed in the incident, valuing at $2-2,400,000. The evidence also disclosed that several years before the incident, the decedent had sold a minor portion of his collection for $360,000. The wife related that when the plane struck, she was in a portion of the house that did not erupt in flames. This plaintiff suffered a fractured collar bone and maintained that this injury rendered her ability to move the ruble enough to free herself very difficult. The daughter indicated that she was in a different area of the house that did not immediately become engulfed in flames. The daughter, who was bare foot, suffered lacerations to her feet as she ran over broken glass. The mother and daughter did not suffer permanent physical injuries. The plaintiff argued that the testimony of the wife and daughter clearly showed that the fire, which had spread to the entire home by the time emergency personnel and the media arrived, did not immediately burn the whole house, but had spread. These plaintiffs maintained that the PTSD sustained is profound and permanent, and the mother and daughter testified that they have daily intrusive thoughts, and that even hearing a plane pass overhead is a trigger. The plaintiffs mother and daughter also testified that the fact that the event occurred in their home, where they would otherwise feel safe, rendered the incident all-the-more traumatic, and that they have been deprived of the feeling of security, even in their home. The surviving plaintiffs also testified that they continue to experience very substantial "survivor's guilt." The plaintiff's contended that they will require psychotherapy for the foreseeable future.

The case settled during trial for an undisclosed sum. The plaintiff's counsel relates that the settlement is essentially unprecedented in Western New York State.

REFERENCE

Plaintiff Doe vs. Defendant Roe., 10-30-14.

Attorney for plaintiff: Anne Beltz Rimmler and Phillip L. Rimmler of Paul William Beltz,PC in Buffalo, NY.

COMMENTARY

The plaintiff's counsel relates that interviews with juror members after the case settled following approximately seven weeks of trial reflected that the impact of the plaintiff's evidence was profound. The plaintiff, on the question of conscious pain and suffering on the part of the decedent, countered the defense contention that the death was instantaneous by pointing to the pathology slides showing lung edema, and pointing out that, although the medical examiner initially believed that the death was immediate, she changed her opinion after observing this slide. In this regard, although the plaintiff's experts could not conclude from this evidence that the decedent was conscious for more than a brief period, the plaintiff emphasized the horror which he must have experienced as he knew his life was ending. Regarding the wrongful death claim, the evidence of an unusually devoted individual prompted one of the jurors to comment during the interview that the evidence made the juror reevaluate ways he could become an even better husband and father.

In the cases of the mother and daughter, the amounts allocated were unusually high in view of the evidence that neither plaintiff suffered long term physical injury. In addition to the obvious factor of such a highly traumatic event rendering the claim of PTSD especially believable, the fact that the trauma occurred at home where the plaintiffs would otherwise feel safe, and the manner in which the feeling of such security has been permanently stripped from them was clearly very important. Finally, the testimony of the mother and daughter as to how the fire initially started in only a portion of the home and then spread was thought to be especially significant, because the documentary proof such as video and photographs, depicted particularly severe damage which otherwise would probably have lent great weight to the defendant's position that the death of the decedent was immediate.

Verdicts by Category

MEDICAL MALPRACTICE

Hospital Negligence

$1,000,000 VERDICT

Hospital Negligence – Negligence resulted in pressure sores during hospital stay

Erie County, NY

In this medical malpractice matter, the plaintiff alleged that the defendant hospital was negligent in its care of the plaintiff during his hospital stay, which resulted in pressure sores. The defendant denied the allegations and disputed causation and damages.

The plaintiff was admitted to the defendant hospital for a liver transplant. Following the transplant, he was re-admitted to the defendant hospital with complaints of lower back pain and discomfort. While a patient at the hospital, the plaintiff alleged he was not properly treated by the hospital staff, and developed pressure sores. The pressure sores were so severe that the plaintiff ultimately underwent surgery, and brought suit against the defendant alleging negligence in the care and treatment of the plaintiff, which resulted in the pressure sores, surgery, and debilitated quality of life as a result.

The defendant denied the allegations and disputed negligence, as well as the plaintiff's allegations of damages, and maintained that its care and treatment of the plaintiff was different than that provided by a nursing home or other rehabilitation facility. The plaintiff countered that the standard of care is similar in that pressure sores need to be avoided for patient care during any stay at any facility.

The matter proceeded to trial over a period of approximately nine days.

At the conclusion of the trial, the jury deliberated and returned its verdict in favor of the plaintiff.

REFERENCE

Ronald H. Groff vs. Mercy Hospital of Buffalo. Index no. 003508/2008; Judge Timothy J. Walker, 12-18-13.

Attorneys for plaintiff: Michael Scinta and Angelo Gambino of Brown Chiari in Lancaster, NY. Attorney for defendant: Kimberly Mason of Martin Clearwater & Bell in White Plains, NY.

Ob/gyn

$1,000,000 RECOVERY

Defendant ob/gyn negligently sutures ureters after bladder tear occurs during vaginal hysterectomy – Physician negligently fails to determine that ureters were closed even when he looked in bladder with a scope looking for lost sponge – Kidney damage and frequent urinary tract infections

New York County, NY

This medical malpractice action involved a plaintiff in her mid 50s who underwent a vaginal hysterectomy that was performed by the defendant ob/gyn at the defendant hospital. The plaintiff contended that ob/gyn negligently sutured both ureters closed during the repair of the bladder tear. The plaintiff contended that the ob/gyn should have recognized that the ureters were included in the bladder repair, and were not free from injury prior to closure. However, even more egregious was that intraoperatively, the sponge count reflected that a surgical sponge was missing, and in an effort to locate the missing sponge, the defendant ob/gyn performed a cystoscopy to look in the bladder for it. During that procedure, he should have recognized that the two ureteral openings were not visible, and therefore, sutured shut during the bladder repair. The plaintiff did not contend the recognized tearing of the bladder was negligence. The plaintiff contended that she suffered permanent bilateral kidney damage, frequent urinary tract infections requiring several hospitalizations, and episodes of urinary stress incontinence requiring extensive pelvic floor therapy. The plaintiff maintained that she will permanently be subject to infections and bouts of incontinence. The evidence disclosed that approximately four years earlier, the plaintiff had complaints of mild urinary stress incontinence, and maintained that

after the use of a vaginal sling and two sessions of pelvic floor therapy, the symptoms resolved until the subject alleged malpractice.

The plaintiff made no income claims.

The case settled prior to trial for $1,000,000, including $900,000 from the ob/gyn, and $100,000 from the hospital.

REFERENCE

Plaintiff undergoing vaginal hyserectomy vs. Defendat ob/gyn.

Attorney for plaintiff: Victoria Wickman of Law Office of Victoria Wickman in New York, NY.

Oncology

$2,444,718 VERDICT

Oncology Negligence – Failure to timely diagnose and treat neuroma – Paralysis to left side of face – Impairment of speech – Impairment of balance – Motor skills and ambulation abilities impaired

Nassau County, NY

In this medical malpractice matter, the plaintiff alleged that the defendant oncologist was negligent in failing to properly diagnose and treat the plaintiff's neuroma, which resulted in various neurological and physical impairments and limitations, including facial paralysis and impaired ambulation. The defendant denied the allegations of negligence, and disputed causation and damages alleged by the plaintiff.

The 50-year-old female plaintiff was diagnosed with a large acoustic neuroma, which is a non-cancerous brain tumor. The plaintiff came under the care of the defendant oncologist following a second opinion she sought in connection with another doctor's recommendation that the tumor be removed. The plaintiff maintained that the defendant recommended a procedure called fractionated sterotactic radiotherapy, or FSR, that utilizes radiation beams to stop the growth of the tumor. The plaintiff underwent a course of FSR treatment with the defendant over a two-week period. After the treatment, diagnostic testing indicated that the tumor had not shrunk, and had, in fact, grown larger. The plaintiff developed hydrocephalus due to the tumor, and underwent several surgeries for the removal. The plaintiff alleged that due to the delay in treating the neuroma, it had grown in size and compromised vital structures in her brain. As a result, the plaintiff alleged that she suffers from left sided facial paralysis, speech impairment, balance impairment, and ambulation issues which require her to use a wheelchair to ambulate. The plaintiff brought suit against the defendant, alleging that his actions were the cause of these neurological impairments and disabilities, and the defendant's delay in referring the plaintiff to a neurosurgeon for removal of the tumor caused her damages.

The defendant denied the allegations and disputed negligence, causation, and damages. The defendant maintained that the procedure was properly performed by the defendant, and any neurological damages suffered by the plaintiff were as a result of the surgeon's negligence, and not the negligence of the defendant oncologist.

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

The jury deliberated for eight hours, and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff the sum of $2,486,171 in damages, consisting of $250,000 in past lost earnings capabilities; $200,000 in past pain and suffering; $232,500 in future cost of physical therapy; $480,500 future cost of speech therapy; $27,900 future cost of motorized wheelchair; $1,302 in future cost of assistive walking devices; $16,000 for modification of residence; $4,985 in future neurological treatment; $4,985 in future orthopedic treatment; $448,000 future lost earnings; $600,000 future pain and suffering; $100,000 for past loss of consortium and $120,000 for future loss of consortium.

REFERENCE

Plaintiff's economics expert: Debra Dwyer, Ph.D. from Stony Brook, NY. Plaintiff's neurology expert: Richard Lechtenberg, M.D. from Brooklyn, NY. Plaintiff's neurosurgery expert: James Melisi, M.D. from Fairfax, VA.

Schrank vs. Lederman. Index no. 20903/06; Judge Thomas Feinman, 06-25-13.

Attorney for plaintiff: James F. Wilkens of Duffy & Duffy PLLC in Uniondale, NY.

CIVIL RIGHTS

$92,500 TOTAL RECOVERY

False arrest of moving man after woman across the street calls 911 after seeing a person flee from her apartment onto fire escape

U.S. District - Eastern County, NY

This case involved plaintiff movers in which the plaintiff contended that when a neighbor across the street in an apartment building of the person being moved realized that she was a victim of a break-in and observed the back of one of the criminals running away, she called the police and gave a description that included clothing worn by one of the plaintiffs. The plaintiff maintained that, although the tenant could not identify this plaintiff mover, and notwithstanding that none of her possessions were found, the police placed this plaintiff under arrest. The tenant had also reported losing cash and the police believed that $590 that this plaintiff was carrying was stolen from the apartment. This plaintiff countered that he had obtained this money from a tax refund, and that there was clearly no probable cause for the arrest.

The charges were dismissed after two court appearances.The case also involved a plaintiff who was assisting and who was not indicted on criminal charges stemming from the incident. The plaintiff brought a malicious prosecution charge as to this plaintiff, and maintained that although the eye witness neighbor across the street could not identify him, this plaintiff was required to attend a number of court appearances before the criminal charges were ultimately dismissed.

The case involving the co plaintiff who was not indicted settled prior to trial for $85,000. The case of the other plaintiff settled in Spring 2014 for $7,500

REFERENCE

Pahtomchik, et al. vs. City of New York, et al. Index no. 13 cv 3821; Judge Vera M. Scanlon, 12-14.

Attorney for plaintiff: David A. Zelman of Law Office of David A. Zelman in Brooklyn, NY.

$40,000 VERDICT

Civil Rights – Police Negligence – False arrest and Malicious Prosecution - Defendants falsely arrest the plaintiff and file false police reports with the District Attorney's office – Violating plaintiff's rights under 42 U.S.C. § 1983

Foley Square County, NY

The plaintiff, in this civil rights violation action, maintained that the defendants arrested the plaintiff without cause or justification and filed false arrest reports alleging that the plaintiff was selling or in possession of a controlled substance. The defendants denied all allegations of violating the plaintiff's rights.

On, or about February 12, 2011, at approximately 2:45 p.m., the male plaintiff was lawfully present inside of 340 Alexander Avenue in Bronx County in the City and State of New York.

At the aforesaid time and place, the plaintiff received a phone call alerting him that his father was being arrested outside. The plaintiff rushed downstairs to see what was happening and was immediately placed under arrest. The defendant officers handcuffed the plaintiff's arms tightly behind his back and charged him with Criminal Sale of a Controlled Substance in the Third Degree. At no time on February 12, 2011 did the plaintiff sell, possess, or control any amount of a controlled substance, nor did he act unlawfully in any way. Thereafter, the plaintiff was transferred to a nearby police precinct where he was subjected to an invasive strip search revealing no evidence of criminal or unlawful activity whatsoever. As a result of his unlawful arrest, the plaintiff spent approximately 48 hours in police custody and approximately three months making court appearances. In connection with his arrest, the defendants filled out false and/or misleading police reports, and forwarded them to prosecutors at the Bronx County District Attorney's Office. Specifically, the defendants falsely alleged that plaintiff sold crack cocaine to his father. All charges against the plaintiff were dismissed on May 18, 2011. The plaintiff maintained that the defendants violated the plaintiff's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983. The defendant denies violating the plaintiff's rights, and argued that the plaintiff, and his father, had been seen exchanging currency and a small object while on the street at the above address. The plaintiff then entered a nearby apartment, at which point he received a call that his father was being arrested. When the plaintiff went back to the street to inquire about the arrest, he too was arrested for the sale of a controlled substance. The plaintiff had over $400 dollars in cash on him at the time of his arrest.

The jury found the defendant officer did not have probable cause to arrest the plaintiff, and was awarded $40,000.

REFERENCE

Juther Perez vs. The City of New York and Police Officer Elvis Duran. Index no. 11-cv-05399; Judge Samuel Conti, 11-04-14.

Attorney for plaintiff: Joshua Paul Fitch of Cohen & Fitch LLP in New York, NY. Attorney for defendant: Joshua Joseph Lax of New York City Law Department in New York, NY.

DEFENDANT'S VERDICT

Civil Rights – Prison Rights – Defendant corrections officer assaults, batters, and degrades the plaintiff prisoner based on the plaintiff being Muslim – Violation of plaintiff's civil rights under 42 U.S.C Section 1983

Rochester County, NY

In this prisoner civil rights action, the plaintiff maintained that the defendant corrections officer was prejudiced against Muslims, and assaulted and degraded the plaintiff on several occasions because the plaintiff is a Muslim. The defendant denied all allegations of negligence, and maintained that any actions taken against the plaintiff were the result of the plaintiff's combative and disruptive behavior.

The male plaintiff, in this prisoner rights action, supported that several times in 2009, while he was incarcerated in the New York State Department of Corrections Services, he was subject to physical and verbal mistreatment by the defendant corrections officer. The plaintiff contended that the reason for this mistreatment was because the plaintiff is a Muslim, and the defendant is prejudiced against Muslims. As a result of an incident on June 17, 2009, the plaintiff alleged he suffered contusions and sprains after being assaulted by the defendant. The plaintiff maintained that the treatment he endured by the defendant violated his constitutional rights, including the right to be free from the excessive use of force. The defendant denied mistreating the plaintiff, and argued that plaintiff was treated fairly and afforded his civil rights at all times.

The jury found in favor of the defendant.

REFERENCE

Jason Sherman vs. Kevin Clark Western District of New York. Index no. 11-cv-06277; Judge Marian W. Payson, 01-06-15.

Attorney for plaintiff: Pro Se. Attorney for defendant: Hillel David Deutsch of NYS Attorney General's Office in Rochester, NY.

DISCRIMINATION

$2,600,000 VERDICT

Disability Discrimination – Pharmacist sues after fear of needles Leads to firing – Violation of ADA

Northern District County, NY

In this action, a pharmacist sued after he was fired due to his phobia. The matter was resolved by a jury verdict.

The plaintiff, Christopher S., was a pharmacist for Eckert when it was bought out by the defendant, Rite Aid, in 2007. In 2011, the plaintiff was required to undergo mandatory retraining including use of needles in order to administer flu shots. The plaintiff suffers from trypanophobia, the fear of needles. The plaintiff was fired after he refused to attend training due to his disability.

The plaintiff filed suit in the U.S. District Court for the Northern District of New York. The defendant, Rite Aid, was accused of violating the Americans with Disabilities Act (ADA), and the State of New York's Human Rights Act. The plaintiff sought recovery of damages for the complainant, as well as injunction against further violation of the law.

The plaintiff asserted that administering vaccinations were not part of his job. The defendant denied that trypanophobia was a disability under the ADA.

After six days of trial, the jury returned a finding for the plaintiff. The plaintiff was awarded $2,600,000 in damages, including $1,227,188 in front pay, $485,633 in back pay, and $900,000 in non-pecuniary damages.

REFERENCE

Christopher Stevens vs. Rite Aid Corporation. Index no. 6:13-cv-00783; Judge Thomas J. McAvoy, 01-22-15.

Attorney for plaintiff: Daniel B. Berman of Hancock Estabrook, LLP in Syracuse, NY. Attorney for defendant Rite Aid: Keith Raven of Raven and Kolby in New York, NY.

$250,000 VERDICT

Disability discrimination – Failure to accommodate plaintiff doorman's requests for more frequent bathroom breaks due to hypertension medication that caused incontinence – As a result, Plaintiff soiled himself on two separate occasions – Emotional distress

U.S. District - Southern County, NY

The plaintiff doorman, in his early 40s, contended that the defendant apartment building and management company failed to accommodate his request for more frequent bathroom breaks due to a side effect of his blood pressure medication for hypertension.

The plaintiff maintained that he made numerous complaints to the defendants for bathroom relief, and that his co-workers refused to relieve him, and that the failure accommodate him resulted in two incidents in an approximate five-year period in which he soiled himself. The defendants supported that the plaintiff was accommodated, and that his schedule was altered so that he would be on duty during periods in which it was more likely that co-workers would be available to watch his post.

The plaintiff countered that he was only periodically given different hours to cover for those who were on vacation, or otherwise not working, and that after temporary reassignments, he was returned to primarily weekend duty when there were fewer other workers available.

The plaintiff also maintained that he was the victim of retaliation for making complaints. The adverse employment aspect involved only a couple of suspensions without pay and the plaintiff's claim was for emotional distress and punitive damages only.

The jury found for the plaintiff and awarded $100,000 for emotional distress, and $150,000 in punitive damages.

REFERENCE

Fields vs. 800 Grand Concourse, et al. Index no. 11 cv 5241; Judge Lorna Schofields, 12-03-14.

Attorney for plaintiff: Alex Umansky and Edward J. Kennedy of Phillips & Associates in New York, NY.

DEFENDANT'S VERDICT

Civil Rights Violations – Racial Discrimination – Defendant discriminates against the African American female and fails to promote her for a job she qualified for, and instead hires a less qualified Caucasian female – Failure to promote.

White Plains County, NY

The plaintiff, in this racial discrimination action, maintained that she and another African American female with the most qualifications for open positions in the defendant's customer service department were not promoted for the open positions, due, in part, the plaintiff alleged, to their race. The defendant denied all allegations of racial discrimination.

The African American female plaintiff began her employment with the defendant in May of 2006 in the customer service department in the lowest position in the department. Through her years of employment she climbed the ranks of the department until she achieved the status of highest rank of classification of customer service representatives. In January of 2012, the defendant posted four supervisory and management openings in the customer service department. The plaintiff and nine other employees applied for the various positions, with the plaintiff, and one other employee, the only African American applicants. The plaintiff specifically applied for the position of Customer Account Services Supervisor for Consumer Outreach. The defendant then promoted a Caucasian applicant who had limited customer service experience, and had only worked for the defendant company since 2011. The other

African America applicant was also granted an open position. The plaintiff maintained that the defendant discriminated against her because of her race violation her rights under Title VII of the Civil Rights Act of 1964, and The New York Human Rights Law. The defendant denied discriminating against the plaintiff and maintained that although the plaintiff performed well in the interview, and had the qualifications for the job, the interview panel was concerned that the plaintiff did not handle conflicts with her co-workers well, and that her interpersonal skills were slightly below the criteria set by the defendants. The defendant denies that race played any part in the promotion process and claimed that the plaintiff was not promoted for legitimate business reasons.

The jury found no negligence against the defendant.

REFERENCE

Kara McKinney vs. Central Hudson Gas and Electric Corp. Index no. 12-cv-04089; Judge Lisa Margaret Smith, 12-22-14.

Attorney for plaintiff: Michael Howard Sussman of Sussman & Watkins in Goshen, NY. Attorney for defendant: Joseph Anthony Saccomano , Jr of Jackson Lewis LLP in White Plains, NY.

DOG ATTACK

PLAINTIFFS' VERDICT

Dog Bite – Plaintiff contends prior vicious propensities as evidenced by previous bite in which defendant's mother was victim – Defendant dog owner's mother doesn't testify – Missing witness charge – Liability only

Erie County, NY

In this case, the 10-year-old infant plaintiff contended that he, his sister, and parents were visiting the home of the defendants. It was contended that after playing with the defendant's dog, a Jack Russell Terrier, the dog was placed into an open soft sided container. The dog came partially out of the open container, and the infant plaintiff's sister bent down and petted the dog without incident. The infant plaintiff then bent over to pet the dog, and the dog bit the infant plaintiff on the upper lip. The plaintiff supported that a prior bite had occurred in which the defendant's mother was bitten, and that this incident showed prior viscous propensities, rendering the defendants liable for the subject bite. The previous incident occurred in Italy about eight months earlier where the dog then resided with defendant's mother. The defendant maintained that in the prior incident, the dog mistakenly bit the defendant's mother while attempting to retrieve a toy.

The defendant's mother happened to be visiting the Western New York area at the time of trial, but the defendants did not present her. The plaintiff obtained a missing witness charge.

The jury found for the plaintiff.

REFERENCE

Flynn vs. Conti. Index no. I2012-2112; Judge Joseph Glownia, 12-10-14.

Attorney for plaintiff: Stephen C. Ciocca of Cellino & Barnes, PC in Buffalo, NY.

FRAUD

$2,800,000 RECOVERY

DOJ – Fraud – Government accuses medical device company of False Claim allegations relating to SubQ stimulation procedures – Alleged violation of False Claims Act

Western District County, NY

In this action, the U.S. accused a medical device manufacturer of violating the False Claims Act. The suit was resolved through a settlement.

The defendant, Medtronic, Inc., is a medical technology company based in Minnesota and a manufacturer of devices used in a medical procedure known as SubQ stimulation. The procedure involves use of a spinal cord stimulation devices intended to alleviate chronic pain. The United States alleged that defendant promoted the procedure to physician-customers through defendant-sponsored "on-site training programs," despite the procedure's safety and efficacy not having been established as required by the Food and Drug Administration (FDA).

The whistleblower, Jason N., a former sales rep for the defendant, filed suit under the qui tam provision of the False Claims Act. The United States later joined the suit, alleging that from 2007 through 2011, the defendant knowingly caused dozens of physicians in over 20 states to submit claims to Medicare and TRICARE for a non-reimbursable medical procedure.

The matter was resolved via settlement for $2,800,000. The whistleblower will receive $602,000 of that amount. The matter was resolved with no admission or determination of liability.

REFERENCE

United States ex rel. Nickel vs. Medtronic, Inc. Index no. 09-cv-00203, 02-06-15.

Attorney for plaintiff: Joyce R. Branda of U.S. Department of Justice - Civil Division in Washington, DC.

LABOR LAW

$1,475,000 RECOVERY

Labor Law Sec. 240 (1) – Approximate 20 ft fall from scaffold – Cervical herniation diagnosed several months after incident – Surgery – Scapula fracture and non-displaced thoracic fractures treated conservatively – Inability to work

Bronx County, NY

The plaintiff, non-union laborer, contended that as he was working on the construction of a multi-level building, he was moving wood planking from one level of a scaffold to a higher level, in order to set up the scaffold for exterior brick work to be performed by masons, a clamp holding the cross bracing in place gave way, causing the cross bracing to move and his falling approximately 20 feet to the ground below. The plaintiff moved for summary judgment on liability under the absolute liability provisions of Sec. 240 (1). The defendant denied that the plaintiff was permitted to stand on the cross beam, and maintained that the actions of the plaintiff constituted the sole proximate cause. The plaintiff denied that he was instructed not to work on a cross bracing, and that the defendant should have provided fall protection, such as a safety vest and a lanyard. The court granted the plaintiff's motion. The defendants filed a motion to renew and re-argue, which was pending at the time of settlement.

The plaintiff was brought to the E.R., and complained of: Shoulder pain, neck pain, mid back pain and low back pain. The plaintiff was diagnosed with a fractured scapula and non-displaced transverse process fractures at T10-T11 and L1-L5, and did not require surgery.

The plaintiff embarked on an initial conservative course of treatment, and maintained that because of continuing neck pain, he underwent an MRI several months after the incident, which disclosed a cervical herniation. The plaintiff contended that despite surgery, he will suffer permanent symptoms and cannot return to work.

Verdict for the plaintiff for $1,475,000.

REFERENCE

John vs. Urban Pathways, et al. Index no. 311547/11; Judge Ann Brigantti-Hughes, 10-14-14.

Attorney for plaintiff: S Joseph Donahue of Block Otoole & Murphy in New York, NY.

$415,000 VERDICT

Sec. 240 (1) Labor Law – Plaintiff contends falls six feet when unsecured ladder shifts during rainy conditions as plaintiff is effectuating repairs on supermarket roof – Leg fractures – Inability to work as roofer – Damages only

Rockland County, NY

The plaintiff's motion for summary judgment on liability was granted under the absolute liability provisions of Labor Law Sec. 240 (1) in this case, in which the plaintiff roofer engaged in repairing a supermarket roof contended that the unsecured ladder slipped during rainy conditions, resulting in his falling approximately six feet. The defendant maintained that the plaintiff was ordered to stop work because of the rain, did not do so, and that in view of this evidence of a recalcitrant employee, the plaintiff's summary judgment motion should be denied. The plaintiff, who denied being so advised, also argued that irrespective of this factual question, other violations, including the failure to tie off the ladder, were causes of the incident, and that the plaintiff's motion should be granted. The plaintiff contended that he required an open reduction and internal fixation because of tibia/fibula fractures, and that he will suffer permanent pain and restriction because of an inability to climb ladders, where he can no longer work as a roofer. The plaintiff has worked as an auto mechanic, but maintained that such work is difficult to obtain, and that he faces a very significant diminution in earning capacity. The defendant denied that the plaintiff's earning history supports any future wage claims.

The jury awarded $415,000, including $30,564 for past medical expenses, $24,000 for past loss of earnings, $40,000 for

past impairment of earning ability $40,500, $125,000 for past pain and suffering, $125,000 for future pain and suffering, and $70,000 for future earning capacity. The judgment amount, including post judgment interest and costs as of 1-20-15 is: $465,137. The defendant has filed a notice of appeal.

REFERENCE

Plaintiff's orthopedic surgeon expert: Steven Nehmer, MD from Union, NJ.

Marcano vs. Tailor, Inc., et al. Index no. 3227/11, 09-14.

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

MOTOR VEHICLE NEGLIGENCE

Auto/Pedestrian Collision

$300,000 RECOVERY

Auto/Pedestrian – The plaintiff was struck by defendant's vehicle while lying on beach – Head injury requiring staples – Cervical and lumbar injuries – Shoulder injury requiring surgery

Richmond County, NY

In this negligence matter, the plaintiff alleged that the defendant was negligent when its vehicle struck the plaintiff while she was laying on the beach sunbathing. As a result of the incident, the plaintiff suffered head, shoulder, neck, and back injuries. The defendant denied the allegations and disputed the nature and extent of the plaintiff's injuries and damages.

On May 26, 2012, the 36-year-old female plaintiff was sunbathing on a public beach in Staten Island. As she was lying on the beach, the plaintiff was struck by a parks and recreation vehicle owned by the defendant, which was driving on the beach.The defendant's sport utility vehicle struck the plaintiff's head, and as a result of being struck, the woman sustained injuries to her head, shoulder, neck, and back. The plaintiff was diagnosed with a head injury that required her to obtain four medical staples, and a shoulder injury requiring surgery. The plaintiff brought suit against the defendant city alleging negligence by its employee in the operation of its vehicle.

The defendant denied the allegations and disputed negligence as well as the plaintiff's injuries and damages. The plaintiff filed a motion for summary judgment on the issue of liability, which was granted by the court.

The plaintiff and the defendant agreed to resolve the plaintiff's claim for the sum of $300,000 in damages.

REFERENCE

Aneta Kurkowska vs. City of New York. Index no. 100218/2013; Judge Thomas Aliotta, 01-14-14.

Attorney for plaintiff: Michael H. Bush of Chelli & Bush in Staten Island, NY.

Bicycle/Pedestrian

$450,000 RECOVERY

Plaintiff jogger struck by defendant bicyclist who entered lane reserved for joggers during organized bike tour – Femur fracture – Surgery and installation of a rod – Plaintiff is able to return to work

Kings County, NY

The plaintiff jogger, in his mid 50s, contended that the group of bikers participating in an organized tour, in which Prospect Park was part of the route, inundated the roadway, and that the defendant biker negligently entered a lane reserved for joggers, striking the plaintiff. The plaintiff also maintained that the co-defendant bike tour, that was insured by the same carrier, failed to provide adequate supervision. The plaintiff supported that he suffered a fractured femur and required surgery, as well as the installation of a rod, and contended that he will suffer pain and some difficulties ambulating for the remainder of his life. The plaintiff is an attorney and was able to return to work.

The case settled prior to trial for $450,000. The city was also named, but all liability was aimed at the bike tour and the biker. The city did not contribute to the settlement.

REFERENCE

Plaintiff park jogger vs. Defendants bicyclist and organized bicycle tour., 09-00-14.

Attorney for plaintiff: William Hepner of Wingate Russotti Shapiro & Halperin, LLP in New York, NY. Attorney for plaintiff: Mitchell Kahn, of counsel to of Wingate Russotti Shapiro & Halperin, LLP in New York, NY.

Head-on Collision

$250,000 RECOVERY

Host vehicle struck head on by intoxicated driver who is traveling wrong way on highway – Plaintiffs residents of NJ and plaintiff wife pursuing UIM benefits

Westchester County, NY

This case involved a plaintiff driver who was in her late 40s at the time, her front seat passenger husband who was then in his mid 50s, and their rear seat passenger/daughter who was in her mid 20s when the collision occurred. The plaintiff contended that the defendant was intoxicated and traveled in the wrong direction on the highway, causing the collision. The plaintiff driver maintained that she suffered a cervical compression fracture, and that she required a fusion from T10-T12, supporting that she will suffer permanent pain and extensive restriction.

The driver also sustained a head trauma and a brief loss of consciousness. The trauma and internal injuries involving the liver and lung, which prompted exploratory surgery, essentially resolved. The rear seat passenger/daughter contended that the moderate scarring from the chin laceration will remain permanently. This plaintiff also suffered dental injuries, including several fractured teeth, and required bridgework. The front seat passenger/husband suffered a non-displaced hip fracture that was treated conservatively.

The driver's case settled for $250,000. The plaintiffs reside in NJ, and the wife has $500,000 in UIM protection, of which $250,000 remains available. The driver is pursuing this claim in NJ. The plaintiff daughter settled for $175,000, and the plaintiff front seat passenger/husband settled for $35,000.

REFERENCE

Kwon vs. Huapaya. Index no. 793/12, 10-14.

Attorney for plaintiff: Lawrence M. Simon of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins,PC in New York, NY.

Intersection Collision

$250,000 VERDICT

Failure to stop at red light – Tears of meniscus and shoulder – Arthroscopic surgery – Lumbar and cervical bulges – Plaintiff construction worker returns after four months – Damages only – Summary Jury Trial

Bronx County, NY

Liability was stipulated in this case, in which the plaintiff driver, in his mid 30s, contended that the defendant driver negligently failed to stop at a red light, causing the collision. The parties agreed to have the case heard as a Summary Jury Trial, and the medical reports were introduced without medical testimony. The plaintiff supported that he suffered a tear of the medial meniscus and of the dominant shoulder, and that despite arthroscopic surgery, he will suffer permanent symptoms.

The plaintiff further asserted that he suffered cervical and lumbar bulges which were confirmed by MRI, and which will cause permanent pain and weakness. There was no evidence that disc surgery is indicated.

The defendant denied that the plaintiff suffered the claimed injuries in the collision. and maintained that any complaints were related to his job as a construction worker. The plaintiff countered that he had no prior symptoms or treatment, and missed approximately four months from work.

The jury awarded $250,000.

REFERENCE

Smith vs. Nelson and Hernandez. Index no. 304268/10, 06-13.

Attorney for plaintiff: Michael A. Lindstadt of counsel The Law Offices of Alexander Bespechny in Brooklyn, NY.

DEFENDANT'S VERDICT

Rear end collision – Alleged causally-related concussion, headaches, and visual disturbance – Summary Jury Trial – Damages only

Putnam County, NY

Liability was stipulated in this rear-end collision case, and damages were presented by way of a Summary Jury Trial. The plaintiff driver, in his mid

30s, contended that he sustained a concussion and related headaches, vomiting, and visual disturbances. The plaintiff's medical reports did not reflect permanency, and maintained that he was unable to work full-time for four months, and slowly was able to resume most of his activities.

The case was submitted to the jury under the alleged inability to engage in substantially all of his customary and usual activities for at least 90 out of the first 180 days following the collision. The defendant denied that the plaintiff satisfied the no-fault threshold.

The jury found for the defendant.

REFERENCE

Ferreira vs. Dempsey. Index no. 903/13, 01-28-15.

Attorney for defendant: Christina M. Piracci of McCabe & Mack LLP in Poughkeepsie, NY.

$195,000 RECOVERY

Rear-end collision – Aggravation of three lumbar herniations and one cervical herniations – Three prior accidents in preceding 10-15 year period – Spinal cord stimulator installed several years later and removed after short period

Kings County, NY

The plaintiff driver contended that the defendant driver negligently struck him in the rear. The plaintiff had previously been diagnosed with three lumbar herniations, and had been involved in three accidents in the preceding 10-15 year period. The plaintiff maintained that the subject collision caused aggravations at all levels, and that he will suffer permanent pain and limitations. There was no evidence that surgery is indicated. The defendant contended that any difficulties stemmed from the prior injuries only.

The plaintiff countered that he had been essentially asymptomatic for some years before the subject collision occurred. The plaintiff also pointed out that several years after this collision, he underwent surgery for the installation of a spinal stimulator, which was removed a short time later, because the plaintiff did not fare well with the device.

The case settled prior to trial for $195,000

REFERENCE

Cofield vs. Weill. Index no. 15242/10, 09-14.

Attorney for plaintiff: Lawrence M. Simon of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins,PC in New York, NY.

$650,000 RECOVERY

Plaintiff automobile driver struck in rear by defendant school bus driver – Cervical herniation necessitating discectomy and fusion – Epicondritis to non-dominant elbow essentially resolves with surgery

Queens County, NY

The plaintiff automobile driver, in his mid 40s at the time of the recovery, contended that he was struck in the rear by the defendant school bus driver as he was slowing in traffic on the approach to a tunnel. None of the children on the bus sustained injury.

The plaintiff, who missed an initial approximate one week period from his job as a construction worker, maintained that continuing cervical symptoms ultimately led to a finding of a cervical herniation that was confirmed by MRI. The plaintiff supported that after a conservative course of treatment proved to be inadequate, he underwent a cervical discectomy and fusion. The plaintiff lost approximately three months from work after the cervical surgery, and stated that despite such surgery, he will suffer permanent cervical symptoms. The plaintiff further contended that he suffered epidcondritis to the non-dominant elbow that ultimately essentially resolved with surgery, and missed approximately two months from work following the elbow operation.

The defendant denied that the collision caused the claimed injuries, pointing to evidence of minimal impact damage, and maintained that physical stress from the plaintiff's job as a construction worker and degenerative disc disease occasioned the surgery.

The plaintiff countered that he had no prior symptoms or treatment.

The case settled prior to trial for $650,000.

REFERENCE

Plaintiff's orthopedic surgeon expert: Louis Rizzo, MD from Livingston, NJ.

Razzetto vs. Logan Bus Co,, Inc, et al. Index no. 15186/11; Judge Phylis Flug.

Attorney for plaintiff: Lawrence M. Simon of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins,PC in New York, NY.

PREMISES LIABILITY

Fall Down

$450,000 RECOVERY

Plaintiff decedent falls backwards on defendant homeowner's deck steps that had yet to have handrails attached – Subdural hematoma – Death several days later – No income claims – Hospital records do not reflect significant pain and suffering

Nassau County, NY

The plaintiff contended that the defendant homeowners had had recently renovated a wooden deck, and had not yet fastened handrails to the deck stairs. The plaintiff supported that, as a result, the 62-year-old plaintiff decedent fell backwards as she was halfway up the steps, landing on her head.

The defendant contended that the decedent was having trouble walking prior to the incident, and that because of this factor, they offered to help her up the steps, or take her around to the front, however, the decedent refused. The plaintiff denied this position should be accepted. Although, the decedent did not lose consciousness, a hematoma was discovered on her brain in the hospital. Surgery was performed shortly thereafter, however, the plaintiff never regained consciousness after surgery and died a few days later. Although medical records indicated that plaintiff never regained consciousness, and was not in any significant pain before she was operated on, the family would have testified that she squeezed their hands to indicate cognition during her stay in the hospital. The defendant denied that the decedent experienced conscious pain and suffering. There were no lost earnings claimed. The decedent was survived by her husband and adult children.

The case settled prior to trial for $450,000.

REFERENCE

Plaintiff's engineering expert: Stuart Sokoloff, PE from New York, NY. Plaintiff's forensic pathologist expert: Peter Farmer, MD from New Hyde Park, NY.

Plaintiff in case of decedent suffering fatal fall at barbecue vs. Defendant homeowner., 01-29-15.

Attorney for plaintiff: William Hepner of Wingate Russotti Shapiro & Halperin, LLP in New York, NY.

$334,000 VERDICT

Dangerous entrance to convenience store section of gas station – Plaintiff contends design and narrow nature of landing after step requires patrons to step back after opening door before patron can enter – Fall – Ankle fracture suffered by 78-year old patron – Unrelated death two years later

Broome County, NY

The plaintiff contended that the entrance way was dangerously designed, and that patrons could not enter without first stepping back after opening the door. The plaintiff contended that the entrance would not comply with code if built currently, as it was "grandfathered" under the prior code.The defendant denied that the the area was unreasonably dangerous, and also maintained that the patron failed to made adequate observations, and was comparatively negligent.

The patron suffered ankle fractures and required surgery, and contended that the pain and immobility were very significant and prevented the previously active individual from continuing many endeavors, including volunteer work with her church.

The patron died approximately two years after the incident from unrelated causes.

The jury found the defendant 100% negligent. They also awarded $300,000 for pain and suffering, and $34,000 for medical bills.

REFERENCE

Plaintiff's engineering expert: George S. Kennedy, PE from Baslston Spa, NY.

Zanker vs. United Refining Co. Index no. 2010/0002540, 12-00-14.

Attorney for plaintiff: Ronald R. Benjamin of :Law Offices of Ronald R. Benjamin in Binghamtom, NY.

SEXUAL HARRASSMENT

$320,000 VERDICT

Sexual discrimination/harassment – Plaintiff cashier contends she is subjected to incidents of inappropriate touching – Portions captured on video – Individual defendant contends he told supervisor of consensual relationship, and supervisor denies being so advised

Bronx County, NY

The plaintiff fast food restaurant cashier, 18 years old at the time, and 21 years old at trial, contended that she was subject to unwanted and repeated touching by one of her superiors. The plaintiff contended that the conduct persisted for approximately six months, and resulted in a constructive discharge. The plaintiff introduced a video which she stated supported her position. The plaintiff also maintained that the supervisor exposed himself to her several occasions, which was not on the video, however, other contact was. The supervisor maintained that the relationship was consensual in nature, and that he so advised his manager during an investigation. The manager denied being so advised.

The plaintiff maintained that she suffered severe emotional distress that has prompted psychotherapy.

The jury found for the plaintiff and awarded $300,000 for emotional distress, and $20,000 for past lost income.

REFERENCE

Belton vs. LAL Chicken, Inc., et al. Index no. 33275/12; Judge Alexander W. Hunter, Jr., 12-14.

Attorney for plaintiff: Steven T. Sledzik of Jones, Morrison, LLP in Scarsdale, NY.

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.