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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

# Summaries with Trial Analysis

## *$3,500,000 COMBINED MID-TRIAL RECOVERY – NEGLIGENT CONSTRUCTION OF COLUMN FOR ZINC REFINERY – EXCESSIVE REFRACTORY MORTAR LEFT INSIDE COLUMN – MOLTEN ZINC FLOW CLOGGED – REFINERY EXPLOSION - WRONGFUL DEATH OF TWO WORKERS – SURVIVAL ACTIONS*

**Beaver County, PA**

**This consolidated wrongful death/ survival action arose from the death of two workers in an explosion at the Potter Township, PA, zinc refinery in 2010. The defendant at trial was the corporation responsible for rebuilding one of the refinery columns. The plaintiff alleged that the column was not properly constructed, clogged the flow of molten zinc, and caused the fatal explosion. The defendant argued that it performed the rebuild of the refinery column in accordance with industry standards, and that the cause of the back-up of zinc into the column was not known. The plaintiffs stipulated to release several defendants from the case after discovery showed they had no liability or causal connection with the explosion. A settlement was reached with another defendant prior to trial.**

The two decedents were working at the zinc refinery on July 22, 2010, when the explosion occurred. Evidence showed that the defendant corporation had rebuilt one of the refinery columns 12 days earlier. The plaintiff's engineer opined that the defendant negligently left foreign material, in the nature of excessive refractory mortar, inside the column. The plaintiff contended that the refractory mortar clogged the flow of molten zinc during operations.

After 12 days of operation, the plaintiff claimed that the zinc flow began to back up into the super-heated column. The pressure caused by that back-up resulted in a massive explosion that took the lives of both decedents, according to the plaintiff's claims. The plaintiffs contended that their position was supported by post-explosion photographs, indicating the presence of loose and excessive mortar inside the column. The plaintiff's forensic pathologist opined that the decedents experienced conscious pain and suffering in the nature of total body burns and smoke inhalation before they perished. The defense agreed that a back-up of zinc into the column led to the explosion. However, the defendant maintained that the rebuild of the refinery column was performed in accordance with industry standards, and that there was no conclusive evidence that excessive mortar caused the back-up of the zinc into the column.

The defense contended that the zinc back-up was a result of a blockage that had occurred in the very bottom of the column in an area identified as the "sump." The defendant argued that this is an area where blockages can occur due to the molten zinc coming in contact with air before exiting the column, and is known to sometimes create a solid substance known as "dross."

The defense also argued that the decedents died instantaneously in the explosion, and would not have experienced any conscious pain and suffering.

A settlement was reached on the third day of trial in the amount of $1,750,000 for each of the plaintiff estates, for a total recovery of $3,500,000.

### REFERENCE

**Plaintiff's economic expert: James Kenkel from Pittsburgh, PA. Plaintiff's engineering expert: Mark Sokalski from Carnegie, PA. Plaintiff's forensic pathology expert: Eric Vey from Erie, PA.**

Taylor/Keller vs. Defendant Corporation. Case no. 11748 of 2011; Judge C. Gus Kwidis, 10-30-14.

**Attorneys for plaintiff Taylor: Michael B. Jones and Keith R. McMillen of McMillen, Urick, Tocci, Fouse & Jones in Aliquippa, PA. Attorney for plaintiff Keller: David Jividen of Jividen Law Offices in Wheeling, WV.**

### COMMENTARY

This case involved the horrific deaths of two refinery workers who died in a tragic 2010 refinery explosion. Although the defense maintained that the deaths were instantaneous, the plaintiff relied on the opinion of a forensic pathologist who described an awareness of intense heat, massive body burns, and smoke inhalation prior to the deaths.

Extensive discovery in the case lasted over two years, and involved taking in excess of 200 hours of depositions, with the production and review of more than 100,000 documents. Some of the plaintiff's most persuasive evidence on liability might have been in the form of post-explosion photographs, which the plaintiff argued demonstrated loose and excessive mortar inside the column, indicating a defective rebuild of the column by the defendant.

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The case settled after the jury heard two days of testimony. The total settlement of $3,500,000 was divided equally between the Taylor and Keller families.

## *$1,975,713 VERDICT – MEDICAL MALPRACTICE – FAILURE TO TIMELY DIAGNOSE AND TREAT LUNG CANCER – DECEDENT NOT INFORMED OF SUSPICIOUS LUNG NODULE – WRONGFUL DEATH – SURVIVAL ACTION*

### Philadelphia County, PA

**This medical malpractice action was brought against a hospital and several physicians based on the plaintiff's claims that the defendants failed to inform the decedent of a suspicious lung nodule visible on X-ray. As a result, the plaintiff alleged that the decedent's lung cancer was not treated until some 19 months later, diminishing her chance of survival. The defendants each denied negligence, and asserted that there was no evidence that earlier diagnosis of the plaintiff's lung cancer would not have made a difference in her treatment or medical outcome.**

The decedent, 68 years old at the time, presented to the defendant hospital with complaints of chest pain, shortness of breath, profuse sweating, nausea, and headache. She was admitted overnight by the defendant emergency room physician who ordered a chest x-ray, which was performed on May 3, 2007.

The plaintiff alleged that the results showed a suspicious nodule which required further examination and a follow-up CT scan. However, the plaintiff claimed that, during her overnight hospitalization, none of the defendant physicians advised the decedent of the 2.3 cm nodule in her left lung, nor advised her to seek follow-up care.

Evidence showed that the defendant radiologist, who reviewed the decedent's films, had identified the lung nodule and recommended a CT scan of the decedent's lung for further investigation. However, The CT scan was never performed, and the decedent was discharged from the hospital by the defendant attending physician the next day with instructions to follow-up with her primary care physician, but no mention of the suspicious nodule on her lung. The plaintiff argued that the discharging physician failed in his duty to check on the plaintiff's diagnostic test results before discharging her, and also alleged that the defendant hospital failed to enforce appropriate procedures to prevent the negligence that caused the decedent's fatal missed diagnosis.

The decedent was diagnosed with lung cancer in January 2009, some 19 months later. At that time, an 8 cm malignant nodule was discovered in her left lung, and the cancer had reached Stage IV with metastases to other parts of her body, including her brain, making her unsuitable for surgery. The decedent succumbed to the cancer on July 21, 2009, approximately six months after diagnosis.The plaintiff's emergency medicine expert testified that the defendant emergency room physician was required to obtain the results of the plaintiff's chest x-rays, since he had ordered the diagnostic tests.The plaintiff alleged that immediate performance of the CT scan in May of 2007 would have resulted in a diagnosis of the cancer, and appropriate treatment and would have significantly increased the decedent's chance of surviving the disease.The decedent was not formally employed, but provided babysitting services for family and friends.

The defendant hospital argued that the responsibility fell on the individual treating doctors who failed to adhere to hospital policy. The defendant attending physician, at time of discharge, maintained that he was advised that the results of the decedent's chest x-ray were normal, and therefore, he was not required to follow-up.

The defendants also maintained that there was no evidence that earlier diagnosis would have made a difference in the decedent's medical course, as it was not known when the cancer metastasized.

The jury found the defendant hospital 33.4% negligent, the defendant admitting emergency room physician 33% negligent, and the defendant attending physician at discharge 33% negligent. The defendant house physician was found not negligent, and the defendant radiologist was dismissed from the case prior to verdict. The plaintiff was awarded $1,975,000 in damages. Post-trial motions are currently pending.

### REFERENCE

Wilson vs. Roxborough Memorial Hospital, et al. Case no. 09-07-00901; Judge Frederica A. Messiah-Jackson, 11-06-14.

**Attorneys for plaintiff: Joseph L. Messa, Jr., Thomas N. Sweeney and Jenimae Almquist of Messa & Associates in Philadelphia, PA. Attorneys for plaintiff: Brian R. Fitzgerald, William T. Hill, Jr. and Matthew D'Annunzio of Klehr, Harrison, Harvey & Branzburg in Philadelphia, PA.**

### COMMENTARY

This was the second trial of this medical malpractice action which previously resulted in defense verdict for the defendant emergency room physician, and a $190,000 award against the hospital and attending physician at the time of the decedent's discharge.
The plaintiff was granted a new trial of the prior May, 2012, and the verdict was based on a comment by a defense medical expert that the plaintiff was a smoker, creating a cardiac risk factor. The statement violated a motion in limine, precluding evidence that the decedent smoked cigarettes, as that information was deemed irrelevant to the alleged failure to diagnose claim.
The court also levied sanctions against the defense attorney involved for allowing the "smoking" statement to be uttered in open court, and allegedly failing to properly instruct the expert. The sanctions are currently under appeal.
The most recent retrial of the case, in which the "smoking" evidence was not admitted was much more favorable to the plaintiff, and resulted in a damage award of almost $2,000,000.

## *$1,250,000 RECOVERY – EMOTIONAL INJURIES TO FAMILY OF WORKER KILLED ON JOB – ALLEGED UNSAFE WORK ENVIRONMENT AND NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES*

**Philadelphia County, PA**

**This action was brought on behalf of two minor children who witnessed their father crushed to death while working for the defendant company. The plaintiffs alleged that they suffered emotional injuries as a result of witnessing the death. The defendant argued that it had paid workers compensation benefits to the decedent's family, and that the plaintiff's action could not be maintained as a matter of law.**

The plaintiffs asserted negligence and negligent infliction of emotional distress in connection with their father's death when a storage pod fell on him while he was working underneath it. The decedent's two minor sons, ages five and 11 at the time, were at the site and witnessed the fatal accident.

The plaintiff alleged that the defendant allowed an unsafe work environment regarding the storage pod which had been lifted on metal jacks to facilitate repair. The plaintiff also claimed that the defendant failed to properly train and supervise its employees regarding safe handling and movement of the heavy storage units.

The plaintiffs' experts testified that the plaintiff children suffered emotional injuries as a result of witnessing their father's death, and that those injuries have not resolved, and will continue to affect their lives in the future.

The plaintiff's family had received workers compensation benefits from the defendant for the decedent's death. The defense maintained that the plaintiffs' exclusive remedy was the benefits already paid under the Pennsylvania Workers' Compensation Act, and that their separate claim against their father's employer was prohibited.

The case was settled under a structured settlement with a payout of $1,250,000. The funds will be equally divided between the two minor plaintiffs, held in trust until they turn 18 years old, and then paid over a period of time.

### REFERENCE

Mbodj vs. Defendant. Case no. 12-12-03529; Judge John W. Herron, 09-18-14.

**Attorney for plaintiff: Larry Bendesky, Robert W. Zimmerman and Adam J. Pantano of Saltz, Mongeluzzi, Barrett & Bendesky in Philadelphia, PA.**

### COMMENTARY

This case is believed to be a case of first impression under Pennsylvania law. The plaintiff's counsel successfully maintained that the emotional distress claims brought by the minor children against their deceased father's employer were not barred by workers' compensation statutes. The case was initially filed in Philadelphia Court of Common Pleas, removed to federal court, and then remanded back to the Court of Common Pleas for trial.

A distinguishing feature of the case is that the two minor plaintiffs were actually present at the job site and witnessed their father's death, creating a stronger claim for negligent infliction of emotional distress. The case was premised on the plaintiffs' establishment of a dangerous work environment, as well as negligent training and supervision of employees on the part of the defendant. Had the case continued, the defense was expected to assert a comparative negligence defense. The defendant claimed that the decedent himself had set up the jacks holding the storage unit in a faulty manner and then went underneath the unsafe unit, thereby causing the fatal accident. Progression of the case through the legal system and its ultimate settlement for a substantial $1,250,000 may open the door for similar claims to be brought by family members of workers injured on the job.

## *$750,000 RECOVERY – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – STAFF FAILS TO APPRECIATE SIGNIFICANCE OF DECEDENT'S SWELLING BRAIN – FAILURE TO TIMELY TREAT STROKE SYMPTOMS – WRONGFUL DEATH OF 50-YEAR OLD MALE*

**Bucks County, PA**

**The wife of the decedent brought this suit against the defendant hospital and several doctors who treated her husband, alleging that the defendants failed to properly monitor, evaluate, and treat the decedent's brain swelling following a stroke. The defendants denied all allegations of negligence, and maintained that it was not the actions of the defendants that caused the decedent's death, but the stroke itself.**

On April 18, 2009, the male decedent presented to the defendant hospital with symptoms of a stroke. He was quickly triaged, given a CT scan, and diagnosed with a stroke. He came under the care of the defendant neurologist and the defendant internist, was given TPA at the decedent's request, and admitted to the intensive care unit. The next day, another CT scan was performed which showed increased swelling of the brain, and an ominous progression of his stroke, and was transferred to a non party city hospital where he died the following day. The plaintiff maintained that the defendant died from brain herniation due to cerebral edema following right cerebral infarction. The plaintiff alleged that the decedent suffered the these injuries due to the following negligent acts by the defendants: Failing to administer drugs to reduce the swelling in the plaintiff's brain, failing to properly monitor and treat the ominous swelling in the plaintiff's brain, and failing to timely and appropriately take measures to reduce the decedent's intracranial pressure. The defendants denied all allegations of negligence and maintained that the decedent received care that was in accordance with all medical standards and died as a result of the stroke, and not any negligent acts of the defendants.

The parties settled their dispute for $750,000.

### REFERENCE

Estate of Tim Forsthoefel by Amanda Forsthoefel vs. Doylestown Hospital, Roy Jackal M.D., Richard Kondon D.O.,and Neurologic Group of Bucks and Montgomery County. Case no. 2010-01565; Judge Wallace Bateman, 11-18-14.

**Attorney for plaintiff: David F. Binder of Gold, Silverman, Goldenberg & Binder in Wayne, PA. Attorney for defendant: Joseph Leonard Hoynoski III of Marshall, Dennehey, Warner, Coleman & Goggin, P.C. in King of Prussia, PA. Attorney for defendant: Kevin H. Wright of Kevin H Wright Associates in Landsdale, PA.**

### COMMENTARY

The plaintiff was able to present expert testimony from a board certified neurologist that all the care the decedent received from the time of his collapse through receiving TPA treatment was proper and in accordance with all medical standards. This expert testified that immediately following the TPA, the defendants deviated from proper medical standards in failing to timely transfer the decedent to nearby tertiary care hospital that specialized in the treatment of strokes, failing to timely administer Decadron or another brain swelling reducing drug, and failing to provide specific instructions to the nurses and staff on how to react and treat the decedent if his condition did not improve or worsened following TPA, including contacting the defendant neurologist immediately. This expert's testimony which specifically laid out how the defendant's deviated from the standard of care suggested that had these deviations not occurred the decedent would have likely made a good recovery, and returned to a productive life.

## *$750,000 RECOVERY – ALLEGED NEGLIGENT SUPERVISION IN RESIDENTIAL GROUP HOME – CHOKING DEATH OF 48-YEAR-OLD MENTALLY DISABLED RESIDENT – WRONGFUL DEATH CLAIM – SURVIVAL ACTION*

**Luzerne County, PA**

**This action was brought against a small group home for the mentally disabled, where the plaintiff claimed that the 48-year-old decedent died from aspiration. The plaintiff alleged that the decedent was not properly supervised, and was permitted to walk into the kitchen of the facility and stuff donuts into his mouth, resulting in his choking, aspiration, and death. The plaintiff sought punitive, as well as compensatory damages. The defendant argued that the decedent was properly supervised during waking hours, but got out of bed on the night in question**

**and made his way into the kitchen unseen. The defense also maintained that the cause of the decedent's death was not definitively determined.**

The decedent's estate was represented by his younger brother. The decedent had been diagnosed with bipolar disorder, autism, severe mental retardation, and personality disorder. He had been a resident of the defendant's group home since 2005, which was small, and housed no more than four residents at once.

The plaintiff claimed that the decedent's individual service plan required that he receive one-to-one, line of sight supervision at all times. However, on September 14, 2010, the plaintiff argued that the decedent was permitted to walk out of his bedroom alone at about 10 p.m., some two hours after going to bed. The decedent went into the kitchen where he found jelly donuts, and put an estimated four to five donuts into his mouth and began to choke, according to the plaintiff's claims. The plaintiff contended that the decedent had previously stuffed food or other objects in his mouth, and was at a known risk for choking. The plaintiff contended that the decedent's bedroom door should have been equipped with an alarm to alert staff members if he left his bedroom, and also alleged that the defendant's employee, who initially discovered the decedent in the kitchen choking, had only worked at the facility for 16 days, and was not trained in CPR. The decedent was transported to the hospital, but was pronounced dead at 11:40 p.m. The plaintiff maintained that the cause of death was aspiration into his lungs.

The defendant contended that its staff acted promptly in an attempt to assist the decedent, and maintained that the cause of the decedent's death was not definitively established. The defense was also expected to argue that the decedent's service plan required one-to-one, line of sight supervision only during waking hours; not 24-hours a day, while the decedent was in bed. The defendant contended that a staff member checked on the decedent within an hour of the incident, and found nothing out of the ordinary.

The case was settled prior to trial for a total of $750,000.

## REFERENCE

Popple vs. Defendant. Case no. 12-CV-08941; Judge Lesa S. Gelb, 05-01-14.

**Attorneys for plaintiff: Melissa A. Scartelli and Peter Paul Olszewski, Jr. of Scartelli & Olszewski in Scranton, PA.**

## COMMENTARY

The mentally disabled decedent involved in this tragic wrongful death case was obviously well-loved by his family. They had placed him in a small group home, with what they believed would be one-on-one supervision, modified their homes for week-end visits, made improvements to his group home, and gave the defendant home a vehicle to make his transport more comfortable. Following resolution of the case, the decedent's family announced that a foundation was being set up in the decedent's name, and that their entire share of the settlement funds would be donated to charities to assist individuals such as the decedent.

The defendant group home made no admissions, and maintained that the settlement was being made despite the defensibility of the case. Under the Pennsylvania Mental Health and Mental Retardation Act, the defense contended that the plaintiff would be required to establish gross negligence or incompetence in order to recover from the defendant. The defense maintained that its alleged actions or omissions did not reach the level of gross negligence or incompetence.

The case settled four days before trial was scheduled to begin.

# *$65,000 RECOVERY – EEOC – DISABILITY DISCRIMINATION – EEOC SAYS PIPE FITTINGS MANUFACTURER FIRED DISABLED VETERAN INSTEAD OF PROVIDING A REASONABLE ACCOMMODATION – ALLEGED VIOLATION OF ADA*

### Allegheny County, PA

**In this suit, the Equal Employment Opportunity Commission (EEOC) accused a Pennsylvania company of disability discrimination. The matter was resolved through a consent decree.**

The defendant, Ezeflow USA, is a pipe fitting manufacturer in New Castle, Pennsylvania. The complainant, Iraq and Afghanistan U.S. Marine Corps veteran, Adam B., worked as a maintenance technician for the defendant. The complainant requested six weeks of unpaid medical leave after experiencing seizures caused by service-related disabilities. The defendant denied him his request because he was still a probationary employee. The defendant provides up to 26 weeks of paid leave to non-probationary employees.

The EEOC filed suit in the U.S. District Court for the Western District of Pennsylvania, after first attempting to reach a voluntary pre-litigation settlement through its conciliation process. The defendant was accused of disability discrimination in violation of the Americans with Disabilities Act (ADA). The EEOC sought recovery of damages for the complainant, as well as injunctive relief.

The matter was resolved through a settlement, in which the defendant agreed to pay $65,000 in damages to the complainant. The defendant further agreed to a 28-month consent decree, which requires they revise their policies to ensure reasonable accommodation is provided for probationary employees with disabilities. The defendant also agreed

to provide training on the ADA, report to the EEOC regarding its compliance with the consent decree, and post a notice about the settlement.

### REFERENCE

Equal Employment Opportunity Commission vs. Ezeflow USA, Inc. Case no. 2:14-cv-00527, 01-09-15.

**Attorneys for plaintiff: Regina Maria Andrew & Deborah A. Kane of Equal Employment Opportunity Commission in Richmond, VA. Attorney for defendant: John A. Connelly of Blank Rome LLP in Philadelphia, PA. Attorney for defendant: Patrick J. Fazzini & Donald D. Gamburg of Ogletree, Deakins, Nash, Smoak & Stewart, PC in Morristown, NJ.**

### COMMENTARY

The EEOC has issued two revised publications respecting the ADA and veterans with disabilities. Their Guide for Employers explains how protections for veterans with service-connected disabilities differ under the ADA and the Uniformed Services Employment and Reemployment Rights Act. The documents also explain how employers can prevent disability-based discrimination and provide reasonable accommodations.

## *DEFENDANT'S VERDICT – MEDICAL MALPRACTICE – DEFENDANTS FAIL TO INVESTIGATE PLAINTIFF'S PERSISTENT CLAIMS OF BREAST PAIN AND LOW MILK PRODUCTION – FAILURE TO TIMELY DIAGNOSE BREAST CANCER IN 34- YEAR-OLD WOMAN – STAGE IV BREAST CANCER*

### Allegheny County, PA

**The plaintiff, in this medical malpractice actio,n was 34 years old when she gave birth to her second child and had lactation difficulties following the birth. The plaintiff consulted with the defendants for symptoms of severe left breast pain and low milk production, which the plaintiff claims the defendants failed to properly investigate, resulting in a year long delay in diagnosing the plaintiff's breast cancer. The defendants argued that the care provided to the plaintiff was proper, and that there was no reason to suspect breast cancer in the plaintiff.**

On September 17, 2009, the female plaintiff gave birth to her second child. Following the birth, the plaintiff experienced difficulty in breastfeeding her newborn. The plaintiff had difficulty breastfeeding her first child as well, but this time, the difficulty was very different and involved severe pain the left breast. The plaintiff consulted with the defendant breastfeeding center and a lactation plan was devised and authorized by the defendant, Brent M.D. The plaintiff's husband had accompanied the plaintiff to this appointment, and inquired about whether or not the plaintiff should undergo a mammogram, and the plaintiffs were told "No, the plaintiff is too young." Following this visit, the defendant center sent a detailed letter to the plaintiff's ob/gyn defendant, Hoca M.D., which included the plaintiff's complaints of severe pain. None of the defendants recommended any testing to determine the cause of the plaintiff's pain. The plaintiff had follow-up visits with all of the defendants, at which, the plaintiff continued to complain of pain and a decrease in milk production, and still, no tests were ordered. Approximately one year later, on October 28, 2010, the plaintiff sought treatment for pain across her chest and left ribs, and tests revealed that the plaintiff was suffering from metastatic Stage IV breast cancer. The cancer has spread throughout her body, including her brain. The plaintiff alleged that the defendants were negligent in failing to detect the plaintiff's breast cancer, negligently advising the plaintiff that her breasts were normal, failing to identify the cause of the plaintiff's lactation problems, failing to identify the cause of the plaintiff's left breast pain, and failing to order diagnostic tests to determine the cause of the plaintiff's pain. The defendants denied all allegations of negligence, and argued that the plaintiff was treated properly and in accordance with all standards. In addition, the defendants argued that after the plaintiff's initial appointment with a lactation specialist, the plaintiff reported that the amount of the production of milk from both breasts was the same, and the pain in the left breast was gone, indicating that the pain in the breast was likely related to lactating.

The jury found no negligence against any of the defendants finding that the care the plaintiff was provided was proper, and in accordance with medical standards.

### REFERENCE

Maria and Brian Heddeleston vs. Renata Hoca M.D. and OB/GYN Associates of Pittsburgh Inc., Nancy Brent M.D., and Pediatric Alliance P.C. d/b/a The Breastfeeding Center of Pittsburgh. Case no. GD-12-010765; Judge Paul F. Lutty, 11-21-14.

**Attorney for plaintiff: Jason Archinaco of Archinaco/ Bracken LLC in Pittsburgh, PA. Attorney for defendant: Lynn Bell of Davis McFarland & Carroll in Pittsburgh, PA. Attorney for defendant: Daniel Stefko of Dickie, McCamey & Chilcote in Pittsburgh, PA.**

### COMMENTARY

Medical testimony, in this malpractice action, presented by the defendant concentrated in large part on the fact that breasts that are producing milk in a newly post-partum female are tender, lumpy, and dense, and that a standard breast exam is not recommended at this time, due to the changes in the breast resulting from lactation. The defense was able to produce several medical experts who opined that the plaintiff's complaints of breast pain and low milk production are not indicative of breast cancer, but rather, they are

common complaints of a post partum breastfeeding woman. These experts also were of the opinion that an earlier diagnosis of the plaintiff's breast cancer would not have changed the plaintiff's clinical management or outcome.

## *DEFENDANT'S VERDICT – PRODUCT LIABILITY – DEFECTIVE DESIGN OF ATV – MINOR PLAINTIFF SERIOUSLY INJURED WHEN THROTTLE OF ATV SHE WAS RIDING STUCK AND ACCELERATED SUDDENLY, CAUSING ATV TO SPEED UP A HILL AND OVERTURN – RIGHT FEMUR FRACTURE – HIP FRACTURE – RSD – ORIF SURGERY*

**Allegheny County, PA**

**The minor plaintiff, in this product liability action, was seriously injured and required several surgeries after the ATV she was riding overturned when the throttle stuck, resulting in the quad to suddenly accelerate up a hill. The defense maintained that the throttle and the ATV were properly designed, and that the minor plaintiff caused the accident.**

On May 13, 2007, the 14-year-old female was riding a ATV/quad manufactured by the defendant. As the plaintiff was riding the quad, the throttle of the ATV stuck, and the vehicle gained uncontrollable speed. At that point, it was traveling up a steep hill, causing the plaintiff to be thrown off the quad, which then landed on top of her, causing severe injuries to the plaintiff. The plaintiff maintained that the defendant company defectively designed the ATV, and negligently allowed fluid to enter the throttle box, causing interference with normal operation of the throttle. In addition, the defense was negligent in designing a vehicle that was both laterally and longitudinally unstable with a high center of gravity and no driver retention system. The plaintiff suffered a right femur fracture, hip fracture, vascular necrosis of femoral head, RSD, sciatic nerve injury, ORIF surgery of femoral neck, hip relocation, and hip reconstruction, followed by a full hip arthroplasty two years later. The defendant denied all allegations that the quad was defective in any way, and argued that the minor plaintiff was 14 years old at the time of the incident, and the quad was designed for those 16 years old and up. The defense maintained that the minor rode too fast and carelessly and caused the quad to overturn.

The jury found that the defendant's quad was not defectively designed.

### REFERENCE

Jessica Dolata a minor by and through her png Joseph and Lori Dolata vs. American Suzuki Motor Corporation. Case no. GD-09-023225; Judge Terrence O'Brien, 11-14-14.

**Attorney for plaintiff: Shanin Specter of Kline & Specter, P.C. in Phiadelphia, PA. Attorney for defendant: Clem Trischler of Pietragallo Gordon Alfano Bosick & Raspanti in Pittsburgh, PA.**

### COMMENTARY

The defense expert, in this product liability action, refuted the plaintiff's expert's claim that the throttle of the subject ATV malfunctioned because of the accumulation of dirt and fluid in the throttle control box, and that the box was defectively designed because it allowed dirt and fluids from nearby bearings to leak into the box, creating a sticking point. The defense expert opined that the design of the throttle control box was not defective in that it did not allow a significant amount of mud and fluid into the box unless the throttle control box was submerged in water or mud. Even then, the defense expert opined that there were sufficient drain holes to allow the dirt and fluids to escape the throttle control box without compromising the operation of the throttle. This expert also argued that nothing in the ATV's design caused it to be unstable longitudinally or latitudinally, and that the only cause of the accident in the question was the inexperience and unsafe operation of the ATV by the minor plaintiff.

# Verdicts by Category

## MEDICAL MALPRACTICE

## Dental

### *$25,000 RECOVERY*

**Medical Malpractice – Dental Negligence – Defendant dentists negligently performs dental implant surgery, resulting in implants failing to integrate to bone – Failure to recognize that bone was inadequate to hold implants – Loss of dentition – Loss of maxillary bone**

**Allegheny County, PA**

**In this dental malpractice action, the plaintiff maintained that the defendant dentist improperly recommended dental implants to the plaintiff, when the plaintiff's bone was inadequate to hold the implants. As a result, the plaintiff suffered complications, including surgical procedures, to retrieve a migrated implant. The defendant denied being negligent and that the plaintiff suffered anything more than a known and accepted risk of a dental implant procedure.**

On June 23, 2011, the male plaintiff underwent the extraction of nine teeth performed by the defendant in anticipation of the placement of dental implants. On September 16, 2011, the defendant placed ten dental implants in the plaintiff's maxilla. By February of 2012, seven of the 10 implants had not integrated with bone, and were determined to be useless. Of the remaining three implants, one could not be located, and the plaintiff was required to undergo surgery by a head and neck surgeon in order for the implant to be retrieved. Unfortunately, during that procedure, the plaintiff suffered a hemorrhage, which required a second surgical intervention. The remaining two implants were found to be lying horizontally and unusable. The plaintiff maintained that the defendant dentist was negligent in failing to recognize that the maxilla bone was inadequate to hold the implants, failing to conduct proper radiographic tests prior to placing the implants, and failing to timely and properly test the integration of the implants to the bone. As a result, the plaintiff has suffered loss of dentition, loss of maxillary bone, damage to maxillary sinuses, and improperly positioned foreign body implants. The defendant denied the plaintiff's allegations, and argued that eight out of the 10 implants did take to the bone, and that it was only the one implant that required surgical removal. The defendant argued that the plaintiff suffered a known and accepted risk of dental implant surgery for which there was injury in the absence of negligence.

The parties settled their dispute for $25,000.

**REFERENCE**

James D. Wehs vs. Steve Kukunas D.M.D. Case no. GD-13-009009; Judge Paul F. Lutty, 06-05-14.

**Attorney for plaintiff: John Caputo of Law Office of John Caputo in Pittsburgh, PA. Attorney for defendant: David White of Burns White LLC in Pittsburgh, PA.**

## Pediatrics

### *$18,000 VERDICT*

**Medical Malpractice – Pediatrics – Defendant health care providers fail to diagnose minor patient with chronic kidney infection due to congenital obstruction – Failure to refer minor to a urologist – Loss of kidney – Surgical procedures**

**Montgomery County, PA**

**The parents of the minor plaintiff maintained that the defendant health care providers failed to appreciate the recurring symptoms suffered by their minor daughter, and therefore, caused a delay in the diagnosis of chronic kidney infection caused by a congenital obstruction. The minor's kidney was eventually removed. The defendants denied being negligent and argued that the care the minor received was proper and in accordance with all standards.**

The female minor plaintiff was born in September of 2001,and was a patient of the defendant doctors and nurse practioner for pediatric care. In 2003, the minor presented to the defendants with a high fever, and petechiae on her left arm and chest. The defendants sent the minor to a local hospital, which then transferred her to a children's hospital. The hospital diagnosed the minor with a severe urinary tract infection with enlarged kidneys. Over the next several years, the minor continued to present to the defen-

dant with the same symptoms, in addition to lesions that formed on the minor's skin. These lesions necessitated the need for a labial fusion. In June of 2007, the minor again presented to the defendants with the same symptoms of high fever and petechiae, along with back and flank pain. She was sent to the hospital where she was diagnosed with an infected and enlarged left kidney, which required removal. After the kidney was removed, a biopsy was performed on the kidney which showed chronic pylonephritis as a result of congenital obstruction. The plaintiffs maintain that the defendants were negligent in failing to refer the minor to a urologist, failing to recognize the significance of an abnormal urinalysis and blood tests, failing to recognize the significance of lesions and petechiae, and failing to diagnose chronic pyelonephritis. As a result, the minor female suffered loss of kidney, petechiae, lesions, labial fusion, nephro ureterectomy, placement of left ephrostomy tube, pain and suffering, along with humiliation and disfigurement. All defendants denied all allegations of negligence and injury. They argued that the minor was properly treated in accordance with all medical standards.

The jury found the nurse practitioner, whom the minor saw the most often, and the defendant, Klein, to be negligent. Liability was apportioned at 65% to the nurse practitioner, and 35% to the defendant doctor. The jury awarded damages of $18,000. The plaintiffs have filed a motion for a new trial or additur. The motion is pending in court.

### REFERENCE

Samantha Stofflet a minor by and through her png Matthew and Nicole Stofflet vs. Gregory Giamo D.O., Hermine Stein D.O. and Claire Dufort CRNP. Case no. 2009-35753; Judge Thomas M. Del Ricci, 08-11-14.

**Attorney for plaintiff: Derek Layser of Layser & Freiwald, P.C. in Philadelphia, PA. Attorney for defendant: Michael McGilvery of Young & McGilvery, P.C. in Philadelphia, PA.**

# Plastic Surgery

## *DEFENDANT'S VERDICT*

**Medical Malpractice – Plastic Surgery – Defendant improperly performs breast reduction surgery on plaintiff, leaving plaintiff scarred and deformed – Failure to use required degree of skill while performing surgery – Breast deformity – Humiliation**

### Montgomery County, PA

**The female plaintiff sought relief from back pain by undergoing breast reduction surgery by the defendant plastic surgeon. Following the surgery, the plaintiff was left with uneven and deformed breasts, and required additional surgery in order to correct the condition. The defendant argued that the plaintiff was provided care that was in accordance with all medical standards.**

On November 14, 2007, the female plaintiff underwent breast reduction surgery performed by the defendant plastic surgeon. During the procedure, the defendant doctor lost a needle, or part of a needle in the breast, and palpitated and examined the breasts for over an hour in an attempt to locate the needle. Following the procedure, the plaintiff's breast were obviously deformed, and of different sizes. The defendant assured the plaintiff that the breast would drop and shape in the months following surgery, and would look normal. Five months after the original procedure, the defendant admitted that the plaintiff's breast were deformed, and that the plaintiff would require corrective surgery in order to make the breasts a more similar size, move the left nipple, and reduce a large flap of skin under the plaintiff's left breast. The plaintiff's allegations against the defendant surgeon were failing to do the following: Properly perform breast reduction surgery, use the degree of skill required, and providing care that fell below standards. As a result, the plaintiff alleged she suffered breast deformity, different sized breasts, and humiliation, and was required to undergo corrective surgery. In addition, the plaintiff's husband made a claim for loss of consortium. The defendant denied all liability, and argued that the surgery was properly performed, and all care was in accordance with all standards.

The jury found that the defendant was not negligent.

### REFERENCE

Patricia and Laurence Laslett vs. Rosalyn Souser M.D. Case no. 2010-12874; Judge Arthur Tilson, 08-18-14.

**Attorney for plaintiff: Holly Dobrosky of Law Office of Holly C. Dobrosky in Philadelphia, PA. Attorney for defendant: Robert Pugh of Kane Pugh Knoell Troy & Kramer LLP in Norristown, PA.**

# DISCRIMINATION

## SETTLEMENT

**Religious Discrimination – Justice Department settles religious discrimination lawsuit against school district of Philadelphia – Violation of Title VII**

### Philadelphia County, PA

**In this action, the Department of Justice filed suit on behalf of a man accusing a school district of religious discrimination. The matter was resolved through a settlement privately with the complainant, as well as a separate settlement with the Justice Department.**

The complainant and co-plaintiff, Siddiq A-B., is a school police officer. As a Muslim, the Mr. A-B. maintains a beard longer than one-quarter inch for religious purposes. In October 2010, the school district implemented a new grooming policy that strictly prohibited school police officers from having a beard longer than one-quarter inch. The complainant was at that time a 27-year employee of the defendant school district, and had maintained a beard of longer than the one-quarter inch limit for the entirety of his tenure, with no indication of its diminishing his performance. When complainant requested an accommodation to the grooming policy, the school district disciplined him for violating the policy, and denied his religious accommodation request.

In March of 2013, the United States filed suit in the U.S. District Court for the Eastern District of Pennsylvania, accusing the School District of Philadelphia of religious discrimination in violation of Title VII of the Civil Rights Act of 1964. The defendant was accused of violating the reasonable accommodation requirement of the Civil Rights Act, as well as maintaining a discriminatory policy, under which it routinely denied all accommodation requests to the grooming policy involving beard length. Mr. A-B. also filed a complaint in intervention, asserting claims similar to those of the United States. He later dismissed his complaint after reaching a private settlement agreement with defendant. The Justice Department sought changes to the defendant's policy to prevent further violation of the law.

As per terms of the settlement, the defendant will develop and distribute a revised school police officer proper attire and appearance policy, include a procedure for officers requesting religious accommodation, notify past and present officers that their accommodation requests will be considered individually under the revised school police officer proper attire and appearance policy. In addition, the defendant will provide training to on religious accommodation to all supervisors, managers, human resources officials, and other individuals who may receive inquiries from school police respecting the revised policy. Finally, the defendant will pay compensatory damages to two similarly-situated employees, and will expunge related disciplinary actions from their personnel files.

**REFERENCE**

United States of America vs. School District of Philadelphia. Case no. 2:14-cv-01334, 09-08-14.

**Attorney for plaintiff: Raheemah Abdulaleem & Catherine Sellers of Justice Department in Rockville, MD. Attorney for defendant: Michael A. Davis of General Counsel in Philadelphia, PA.**

# MOTOR VEHICLE NEGLIGENCE

## Auto/Bus Collision

## $26,000 VERDICT

**Motor Vehicle Negligence – Auto/Bus collision – Defendant attempts to change lanes and collides with side of bus the plaintiff is operating – Operating a vehicle in a careless and reckless manner – Whiplash – Cervical radiculitis – Sciatica**

### Philadelphia County, PA

**In this vehicular negligence action, the plaintiff maintained while he was operating city Septa bus, it was struck on the side by the defendant who was attempting to change lanes. The defendant maintained that it was the negligence of the plaintiff that caused the accident.**

On October 26, 2011, the male plaintiff was operating a Septa bus northbound on 33rd Street between Walnut and Chestnut Street in the City of Philadelphia, when his bus was struck on the left side by the defendant who was attempting to change lanes from the middle lane to the right lane. The plaintiff maintained that the defendant driver was negligent in operating a vehicle in a careless and reckless manner, operating vehicle at an excessive rate of speed, failing to have vehicle under proper and adequate control, and failing to keep a proper lookout. The plaintiff alleged that he suffered cervical radiculitis, cervical hy-

per acceleration injury, thoracic/lumbar sprain, lumbar facet syndrome, and sciatica as a result of the accident. The defendant denied all liability and injury, and argued that the plaintiff was comparatively or contributorily negligent.

The jury found the defendant only negligent, and awarded the plaintiff $26,000 in damages.

**REFERENCE**

John Williams vs. Roland Henderson. Case no. 130401077; Judge George Overton, 06-25-14.

**Attorney for plaintiff: Marc Simon of Simon and Simon in Philadelphia, PA. Attorney for defendant: Lee Rosenau of Dion, Rosenau & Aaron in Philadelphia, PA.**

# Auto/Pedestrian Collision

## *$15,000 RECOVERY*

**Motor Vehicle Negligence – Auto/Pedestrian – Minor plaintiff crossing street when struck by defendant driver – Failure to yield right of way to pedestrians – Femur fracture – Tibia fracture requiring surgery.**

### Philadelphia County, PA

**The minor plaintiff was crossing the street when she was struck the defendant uninsured driver. The defendant failed to answer the complaint, and the plaintiff settled with the defendant PA Assigned Claims Plan, which provides up to $15,000 in damages for those hurt by an uninsured driver.**

On May 9, 2011, the five-year-old female plaintiff was a lawful pedestrian walking on 13th Street at its intersection with Butler Street in the City of Philadelphia, Pennsylvania. At the same time, the defendant was operating his vehicle northbound on 13th Street when suddenly, and without warning, the uninsured defendant struck the minor. The plaintiff maintained that the defendant was negligent in failing to do the following: Properly operate and control vehicle, driving at an unsafe rate of speed, maintain a proper and adequate lookout, yield the right of way to pedestrians, and properly operate and control vehicle. The minor suffered a femur fracture, and a fracture of the tibia requiring surgery, as a result of the accident. The defendant driver failed to answer the plaintiff's claim, and the defendant PA Assigned Claims plan cross claim.

The defendant PA Assigned Claims Plan settled with the minor for the maximum $15,000, available to those who are injured by uninsured drivers.

**REFERENCE**

Eva Parker a minor by and through her png Brittney Parker vs. Cornell Malone and Pennsylvania Assigned Claims Plan. Case no. 130500709; Judge Lisette Sheridan Harris, 06-13-14.

**Attorney for plaintiff: Robert Baccari of Law Office of Robert Bond in Philadelphia, PA. Attorney for defendant: John Fitzpatrick of Wilbraham, Lawler & Buba in Philadelphia, PA.**

## *DEFENDANT'S VERDICT*

**Motor Vehicle Negligence – Auto/Pedestrian – Defendant driver runs over minor plaintiff's foot – Failure to keep a proper lookout and maintain a proper lane – Crush injury to the left foot – Surgery required**

### Montgomery County, PA

**In this vehicular negligence action, the parent of the minor male maintained that the defendant driver failed to maintain her lane and drove up on curb where the minor was playing, running over the minor's foot. The defendant denied leaving her lane of travel, and maintained that the minor stepped out into the road, causing the incident.**

On April 4, 2012, the minor male was playing with his cousins on the sidewalk in front of his aunt's house on Powell Street, in Norristown, Pennsylvania. At the same time, the defendant was traveling on Powell Street when she ran over the minor's foot. The allegations of negligence against the defendant contained in the plaintiff's complaint were failure to have the vehicle under proper and adequate control, failure to maintain proper lane of travel, and failure to keep a proper lookout. As a result, the plaintiff suffered a crush fracture of left foot requiring open reduction and internal fixation. The defendant denied all liability and injury, and argued that one of the minor's playmates lunged at the minor, causing him to step out far into the defendant's lane, which caused the subsequent incident.

The jury found that the defendant was not negligent.

**REFERENCE**

Elias Stewart a minor by and through his png Shaneka Stewart vs. Tonya Mincer. Case no. 201310691; Judge Thomas M. Del Ricci, 08-12-14.

**Attorney for plaintiff: Craig Robinson of Lundy Law in Philadelphia, PA. Attorney for defendant: James Godin of Palmer and Barr in Willow Grove, PA.**

# Head-on Collision

## $50,000 VERDICT

**Motor Vehicle Negligence – Head- on Collision – Defendant loses control of vehicle and collides with plaintiff's vehicle head on – Negligently operating vehicle at an excessive rate of speed – Neck and back disc injuries**

### Philadelphia County, PA

**The plaintiff, in this vehicular negligence action, maintained that the defendant driver negligently lost control of his vehicle, crossed over into the plaintiff's lane, and collided with the plaintiff's vehicle head on. The defendant denied that the accident occurred as alleged by the plaintiff, and denied that the plaintiff was injured in the collision.**

On February 9, 2013, the female plaintiff was lawfully proceeding north on 5th Street in the 4900 block of North 5th Street when her automobile was suddenly and violently struck by the vehicle, operated by the defendant, Gonzales, or alternatively, the defendant, Gaytan. At the time of the accident, defendant, Gonzales, or alternatively defendant, Gaytan, was proceeding south in the 4900 block of North 5th Street, when he negligently and carelessly lost control of his vehicle, causing it to travel into the plaintiff's lane of travel and collide into the plaintiff's automobile. The plaintiff maintained that the defendants were negligent in failing to have and keep his vehicle under proper and adequate control, operating vehicle in a careless and reckless manner, operating vehicle at an improper rate of speed, and causing his vehicle to crossover into the oncoming lane of traffic. As a result of the collision, the defendant suffered cervical and lumbosacral spine strain and sprain, cervical radiculopathy, contusions, muscle spasms, cervical, lumbar and sacral segmental dysfunction. The defendants made a general denial of all liability and injury.

The board of arbitrators found for the plaintiff against both defendants, and awarded the plaintiff $50,000.

### REFERENCE

Allencya Allen vs. Jorge Gonzales and Roselio Gaytan. Case no. 130700044, 03-19-14.

**Attorney for plaintiff: Joseph DiGiovanni of Kleeman & DiGiovanni, P.C. in Philadelphia, PA. Attorney for defendant: Ryan Donnelly of Law Office Of Heather Cicalese in Trevose, PA.**

# Intersection Collision

## DEFENDANT'S VERDICT

**Motor Vehicle Negligence – Intersection collision – Defendant runs a red light and strikes the plaintiff's vehicle on passenger side – Negligently disregarding a red light – Back injuries to both plaintiffs**

### Philadelphia County, PA

**The plaintiffs, in this vehicular negligence action, are brother and sister, and they contend that they were lawfully traveling through a city intersection with green light when the defendant negligently entered an intersection against a red light, and struck the plaintiffs' vehicle. The defendant made a general denial of all allegations of negligence and injury.**

On or about April 5, 2011, the male plaintiff was operating a vehicle northbound on Parkside Avenue, at its intersection with Wynnefield Avenue, in the City and County of Philadelphia, Pennsylvania, in which the female plaintiff was a passenger, At the same date, place, and time, the defendant was operating a vehicle westbound on Wynnefield Avenue traveling toward the plaintiffs, when she disregarded a red light and struck the plaintiff's vehicle on the passenger side. The plaintiffs maintained that the defendant was negligent in traveling at an excessive rate of speed, failing to maintain a proper lookout, failing to heed the plaintiffs' vehicle, and failing to observe traffic rules and regulations. As a result, the male plaintiff suffered lumbar sprain and strain with dysfunction, and sacroiliac sprain and strain with dysfunction, while his sister suffered lumbar and sacral sprain and strain with dysfunction. The defendant denied all allegations of liability, and denied that the plaintiffs were seriously or permanently injured in the collision.

The judge found for the defendant.

### REFERENCE

Tylid and Ciera Alexander vs. Stacey Thomas. Case no. 130303471; Judge Albert Snite, 07-21-14.

**Attorney for defendant: Scott R. Gallant of Gallant & Parlow in Philadelphia, PA. Attorney for defendant: Francesca Iacovangelo of Law Offices of Twanda Turner-Hawkins in Philadelphia, PA.**

## DEFENDANT'S VERDICT

**Motor Vehicle Negligence – Intersection Collision – Defendant runs a red light and enters an intersection striking plaintiff's vehicle – Neck and back sprain and strain – Knee and arm sprain – Headaches**

### Philadelphia County, PA

**In this vehicular negligence action, the plaintiff maintained that she was injured when her vehicle was struck by the defendant driver after the defendant disregarded a red light and negligently entered an intersection. The defendant denied being negligent, and that the plaintiff was injured in the incident.**

On January 5, 2012, the female plaintiff was operating her vehicle westbound on Wayne Avenue, proceeding with a green light through the intersection with Harvey Road in Philadelphia, Pennsylvania. At the same time and place, the defendant was proceeding on Harvey Road when the defendant disregarded a steady red traffic signal and entered the intersection, colliding with the plaintiff's vehicle. The plaintiff argued that the defendant was negligent in failing to have her vehicle under proper and adequate control, operating her vehicle at an excessive rate of speed, negligently disregarding a red light, and failing to make a timely application of the brakes. As a result, the plaintiff suffered cervical/trapezius/thoracic/lumbar sprain and strain, knee contusion, left forearm sprain, carpi ulnaris tensynovitis, dizziness, and headaches. The defendant made a general denial of all liability and injury.

The jury found that the defendant was not negligent.

### REFERENCE

Sophie Stepanyan vs. Rochelle Thomas. Case no. 130403283; Judge Lisette Shirdan Harris, 07-08-14.

**Attorney for plaintiff: Peter Mylonas of Peter George Mylonas. Attorney At Law in Broomall, PA. Attorney for defendant: John DeRose of Bennett, Bricklin & Saltzburg LLC in Philadelphia, PA.**

## $200 VERDICT

**Motor Vehicle Negligence – Intersection Collision – Red light/Green light – Defendant runs a red light and strikes plaintiff's vehicle – Failure to obey a steady red traffic light – Cervical spine injuries.**

### Montgomery County, PA

**The plaintiff, in this vehicular negligence action, maintained that the defendant driver negligently ran a red light and struck the plaintiff's vehicle while the plaintiff was proceeding through the same intersection with a green light. The defendant denied all allegations of negligence and injury.**

On March 5, 2009, the male plaintiff was lawfully traveling in an eastbound direction on Township Line Road with a green light, in East Norriton, Pennsylvania. At the same time and place, the defendant was traveling northbound on DeKalb Pike facing a red light when the defendant disregarded the red light and entered the intersection, striking the plaintiff's vehicle. The plaintiff maintained that the defendant was negligent in driving at an excessive and unsafe rate of speed, failing to have vehicle under proper and adequate control, improperly and illegally entering an intersection, and failing to obey a steady red traffic light. As a result of the collision, the plaintiff suffered cervical sprain and strain, C5-6 nerve root irritation, including contusions, abrasions, and lacerations. The defendant denied all liability and argued that the plaintiff was comparatively or contributorily negligent. In addition, the defendant denied that the plaintiff sustained any serious or permanent injury in the minor collision.

The board of arbitrators found in favor of the plaintiff, and awarded the plaintiff $200.00 in damages.

### REFERENCE

Darren and Nicola Jones vs. Jayde Clone. Case no. 2010-24948; Judge R. Stephen Barrett, 05-09-14.

**Attorney for plaintiff: Cheryl Wolf of Rovner, Allen, Rovner, Zimmerman & Nash in Feasterville, PA. Attorney for defendant: Deborah Bailey of Stief Gross Sagoskin Gilman & Classetti in Newtown, PA.**

## $100,000 RECOVERY

**Motor Vehicle Negligence – Intersection Collision – Decedent's vehicle struck by defendant in a suburban intersection – Decedent's estate maintain was improperly designed, causing poor visibility – Wrongful death of 58-year-old male**

### Bucks County, PA

**This negligence action involves several defendants whom the plaintiff maintains caused a fatal accident that killed the plaintiff's 58-year-old decedent. All of the defendants denied being negligent, and argued that the actions of the decedent in making an improper left turn caused the fatal collision.**

In the early morning hours of August 26, 2011, the male decedent was traveling on Cranberry Road in Buckingham, Pennsylvania. At the same time, the defendant, Chapman, was operating a box truck on Route 202 at its intersection with Cranberry Road. As the decedent was attempting a left turn onto Route 202, his vehicle was struck broadside by the defendant, Chapman. The plaintiffs argued that the negligence of all the defendants caused or contributed to the accident that caused fatal injuries to the decedent. The estate alleged that the defendant driver was negligent in operating a vehicle at an excessive rate of speed, and the owner of the defendant driver's box truck negligently entrusted the vehicle to defendant driver. In addition, the estate alleged that the Defendant township, county, and state were negligent in failing to properly design and maintain the intersection. The defendant premises owners were, according the plaintiff, negligent in failing to properly maintain the property at the intersection, causing road signs to be obstructed and denying a clear view of the intersection. All defendants denied all liability and argued that it was the actions of the decedent that caused the accident.

The parties settled for a lump sum gross settlement of $100,000.

**REFERENCE**

Michele Malkin Executrix of the Estate of Gary Shoap vs.. Brian Chapman, North Penn Polishing and Plating, Buckingham Township, County of Bucks, Pennsylvania Department of Transportation, Francis and Joanne Lee, Michele Rose and Denver Cook. Case no. 2013-03652; Judge Alan M. Rubenstein, 08-12-14.

**Attorney for plaintiff: Barry Krengel of Dolchin, Slotkin & Todd, P.C. in Philadelphia, PA. Attorney for defendant: Alton Grube of State of Pennsylvania, Office of the Attorney General in Philadelphia, PA. Attorney for defendant: Ralph Michetti of Marshall Dennehey Warner Coleman & Goggin in Doylestown, PA. Attorney for defendant: Frederick Lachat of Margolis Edelstein in Philadelphia, PA. Attorney for defendant: Sean Corr of Eastburn and Gray in Doylestown, PA.**

# Left Turn Collision

## *$850,000 VERDICT*

**Motor Vehicle Negligence – Left Turn/Parking Lot Collision – Plaintiff sues both defendant driver and parking lot for negligence after plaintiff's motorcycle was struck by defendant while exiting defendant convenience store's parking lot – Tibia fracture – Scrotum injury – Close head injury.**

### Philadelphia County, PA

**The plaintiff, in this negligence action, argued that both the defendant driver and the defendant convenience store contributed to causing a crash that left the plaintiff seriously and permanently injured. Both defendants denied being negligent, and each blamed the other for causing the accident.**

On October 24, 2010, the male plaintiff was operating his motorcycle lawfully northbound on Frankford Avenue in the City of Philadelphia. At the same time, the defendant driver was exiting the defendant retail establishment's parking lot on Frankford Avenue, when the defendant made a left turn from the parking lot directly in front of the plaintiff, causing the plaintiff to collide with the defendant's vehicle. The plaintiff alleged that the defendant driver was negligent in pulling her vehicle onto the roadway without the right of way, failing to observe traffic before pulling onto the highway, and failing to keep a proper lookout. The plaintiff also maintained that the defendant convenience store negligently designed the parking lot on Frankford Avenue, and failed to post signs to prevent patrons from turning left from the parking lot. As a result, the plaintiff suffered a right comminuted displaced open tibia fracture, loss of consciousness, scrotal laceration resulting in the loss of right scrotum, neck, back, and shoulder strains and sprains, scarring on leg and scrotum, closed head injury, and post-concussion syndrome. Both defendants denied all allegations of liability, and each blamed the other. Both denied all allegations of injury.

The jury found each defendant to be 50% liable, and awarded the plaintiff $850,000 in damages.

**REFERENCE**

James Nugent vs. Deborah Werschek and Wawa Incorporated. Case no. 120402838; Judge Marlene Lachman, 08-11-14.

**Attorney for plaintiff: Howard Silverman of Kane & Silverman in Philadelphia, PA. Attorney for defendant: John McCarthy of Rawle & Henderson LLP in Philadelphia, PA. Attorney for defendant: Kristen Meindl of Goldberg, Miller & Rubin, P.C. in Philadelphia, PA.**

## DEFENDANT'S VERDICT

**Motor Vehicle Negligence – Left Turn Collision – Defendant makes a left turn in front of plaintiff's vehicle, causing a collision – Failure to yield right of way – Lumbar disc injuries with nerve root irritation**

### Philadelphia County, PA

**In this vehicular negligence action, the plaintiff maintained that plaintiff and defendant were traveling in opposite direction when the defendant made a sudden left turn in front of the plaintiff causing a collision. The defendant denied causing the collision, and argued that it was the actions of the plaintiff that caused the accident.**

On November 27, 2012, the male plaintiff was traveling northbound on Oxford Avenue, at or near its intersection with Levick Street, in Philadelphia, Pennsylvania. At the same time, the defendant was traveling southbound on Oxford Avenue when the defendant attempted to make a left turn in front of the plaintiff causing a collision. The allegations of negligence contained in the plaintiff's complaint were operating a vehicle at an excessive rate of speed under the circumstances, failing to stop for traffic having the right of way, failing to yield the right of way, and failing to have vehicle under proper and adequate control. As a result, the plaintiff suffered acute thoracic, lumbosacral and sacroiliac sprain/strain, left shoulder sprain and strain, disc protrusions at L4-5 and L5-S1, acute irritation of L5 nerve roots, and post traumatic cephalgia. The defendant denied all allegations of negligence and injury. The defendant argued that the negligent actions of the plaintiff caused the accident.

The jury determined that the defendant was not negligent.

### REFERENCE

Matthew Harm vs. Sopheap Reth. Case no. 130402605; Judge Marlene Lachman, 07-30-14.

**Attorney for defendant: Thomas Holland of Law Offices of Thomas More Holland in Philadelphia, PA.**
**Attorney for defendant: Whitney Lomax of Law Offices of Twanda Turner-Hawkins in Philadelphia, PA.**

# Multiple Vehicle Collision

## $115,000 VERDICT

**Motor Vehicle Negligence – Multi Vehicle Collision – Defendant strikes a car that is then pushed into plaintiff's vehicle – Right AC shoulder separation – Lumbar disc bulge with radiculopathy – Possible future surgery required**

### Philadelphia County, PA

**In this vehicular negligence action, the plaintiff maintained that he suffered serious and permanent injury to his shoulder and back when his car was struck by a car that had been struck by the defendant. The defendant admitted liability in causing the collision, but argued that the plaintiff's injuries were exaggerated and not all related to the accident.**

On August 14, 2011, the male plaintiff was operating his vehicle on I-95 near the Aramingo Avenue exit, in the City of Philadelphia, Pennsylvania. At the same time and place, the defendant was also operating his vehicle on I-95 when he lost control of his vehicle, collided with another vehicle that then collided with the driver's side of the plaintiff's vehicle. Originally, the driver of the vehicle that struck that the plaintiff's car was named as a defendant, however, he was dismissed from the action prior to trial. The plaintiff maintained that the defendant was negligent in operating a vehicle at an excessive rate of speed, failing to yield the right of way, failing to maintain a proper lookout, negligently striking another vehicle, and causing a chain reaction collision. As a result of the accident, the plaintiff suffered an AC separation of the left shoulder, tendinitis of left shoulder, disc bulge at C2-C5, disc bulge at L4-5, along with bilateral S1 radiculopathy, which required lumbar steroid injections. The plaintiff's doctor has indicated that a future lumbar discogram and microsurgery may be necessary. The plaintiff missed over three months of work following the accident. The defendant admitted liability, but denied the nature and extent of the plaintiff's injuries.

The jury found that the defendant was negligent and awarded the plaintiff $115,000 in damages.

### REFERENCE

Jonathan Sanchez vs. Ryan Cullen. Case no. 130602307; Judge Esther Sylvester, 07-17-14.

**Attorney for plaintiff: Jeffrey Rosenbaum of Rosenbaum & Associates in Philadelphia, PA.**
**Attorney for defendant: Robert Good of Robert J. Casey, Jr. & Associates in Philadelphia, PA.**

# Rear End Collision

## $120,000 VERDICT

**Motor Vehicle Negligence – Rear End Collision – Defendant strikes rear of plaintiff's vehicle – Failure to stop within assured clear distance – Lumbar disc protrusions – Radiculopathy – Knee sprain – Damages only**

### Philadelphia County, PA

**The plaintiff, in this vehicular negligence action, maintained that he was injured when his vehicle was struck in the rear by the defendant who was operating a taxi owned by the defendant cab company. The defendants admitted liability, but denied that the plaintiff's injuries were causally related to the accident.**

On August 7, 2011, the male plaintiff was operating his vehicle at the intersection of 29th Street and Poplar Avenue in the City and County of Philadelphia, Pennsylvania. At the same time and place, the defendant operated his vehicle in a reckless manner, and collided with the rear of the plaintiff's vehicle. The plaintiff maintained that the defendant was negligent in operating a motor vehicle in a careless manner, failing to have said vehicle under proper and adequate control, failing to observe the position of plaintiff and to take such action was necessary to prevent striking plaintiff, and failing to stop within an assured clear distance. In addition, the plaintiff maintained that the defendant cab company negligently entrusted their vehicle to the defendant driver. As a result, the plaintiff suffered disc protrusions at L4-5 and L5-S1, lumbar spine radiculopathy, lumbar sprain and strain, and left knee sprain and strain. The defendants admitted liability, but denied that the plaintiff sustained any serious injury related to the accident.

The jury awarded the plaintiff $120,000 in damages. The plaintiff's passenger originally filed suit against the defendants, but his claim was dismissed prior to trial. The verdict of $120,000 was against both defendants.

### REFERENCE

Shawn Walker vs. Ty-Altee Reynolds and Maher Cab. Case no. 130201121; Judge Esther Sylvester, 03-27-14.

**Attorney for plaintiff: Marc Greenfield of Rand Spear in Philadelphia, PA. Attorney for defendant: Sheldon Goodstadt of Oxman Goodstadt Kuritz, PC in Philadelphia, PA.**

## $86,000 VERDICT

**Motor Vehicle Negligence – Rear end collision – Defendant strikes rear of plaintiff's vehicle – Failure to maintain a proper distance between vehicles – Tear of medial meniscus of right knee – Neck and back sprain – Damages only**

### Philadelphia County, PA

**The plaintiff, in this vehicular negligence action, maintained that the defendant driver collided with the rear of the vehicle the plaintiff was operating, causing serious injury to the plaintiff's knee and various injuries to his body. The defendant admitted that his actions caused the accident, but denied that the plaintiff's injuries were causally related to the accident, or were serious or permanent.**

On or about September 4, 2010, the male plaintiff was the operator of a motor vehicle, in which a now dismissed female plaintiff was a passenger, which was traveling on Easton Road, near or between Gilbert Street and Rugby Street, in Philadelphia, PA. At the same date and time, the defendant was the operator of a motor vehicle, also traveling on Easton Road, behind the plaintiff's vehicle, when he failed to stop his vehicle and collided with the rear of the plaintiff's vehicle. The female plaintiff settled her claim. The plaintiff maintained that the defendant driver was negligent in failing to maintain proper distance between vehicles, failing to have said vehicle under proper and adequate control, violating the assured clear distance rule, and failing to maintain a proper lookout. As a result, the plaintiff suffered cervical/thoracic/lumbar sprain and strain, right knee sprain, lumbar disc bulge, chondromalacia of the patella, as well as a tear of the posterior horn of medial meniscus of right knee. The defendant admitted liability, but denied that the plaintiff sustained any serious or permanent injury in the collision.

The jury found in favor of plaintiff in the amount of $86,000. The verdict was molded to $25,000 to reflect the defendant's underinsured motorist policy limits.

### REFERENCE

Charles Patterson vs. Vinnie Taylor. Case no. 130502892; Judge Albert Snite, 07-09-14.

**Attorney for plaintiff: Marc Simon of Simon & Simon, PC in Philadelphia, PA. Attorney for defendant: Brooks Foland of Marshall Dennehey Warner Coleman & Goggin, P.C in Camp Hill, PA.**

## DEFENDANT'S VERDICT

**Motor Vehicle Negligence – Rear End Collision – Plaintiff's vehicle struck in rear while plaintiff slowed for traffic – Operating a vehicle while distracted on a cell phone – Cervical and lumbar disc injuries**

### Philadelphia County, PA

**In this vehicular liability action, the plaintiff maintained that defendant driver was driving distractedly by talking on his cell phone, causing him to collide with the rear of the plaintiff's vehicle. The defendant admitted liability, but denied that nature and extent of the plaintiff's injuries.**

On or about March 1, 2012, at approximately 9 a.m., the female plaintiff was operating her vehicle southwest on Algon Avenue at the intersection of Solly Street, in the City of Philadelphia, when suddenly, and without warning, the plaintiff's vehicle was struck in the rear by the defendant who talking on a cell phone. The plaintiff maintained that the defendant was negligent in operating the vehicle at a high and excessive rate of speed under the circumstances, failing to maintain a proper lookout, and driving and operating his vehicle while talking on a cell phone. As a result, the plaintiff suffered disc herniations at L4-5 and C4-5, radiculopathy at C6, and limited range of motion in her spine and shoulders. The defendant admitted liability, but argued that no serious or permanent injury was sustained by the plaintiff.

The jury found that the defendant's negligence was not a factual cause of harm to the plaintiff.

**REFERENCE**

Young Ran Oh vs. Anthony Quattrone. Case no. 130301531; Judge Eugene Maier, 07-08-14.

**Attorney for plaintiff: Jimmy Chong of The Chong Law Firm in Philadelphia, PA. Attorney for defendant: Kristen Meindl of Goldberg, Miller & Rubin, P.C. in Philadelphia, PA.**

## DEFENDANT'S VERDICT

**Motor Vehicle Negligence – Rear End Collision – Defendant strikes rear of plaintiff's vehicle – Failure to drive at a speed that would allow the defendant to stop within assured clear distance – Cervical/thoracic/lumbosacral sprain and strain – Radiculitis**

### Bucks County County, PA

**The plaintiff, in this rear end collision case, maintained that she was injured when her stopped car was struck in the rear by the defendant. The defendant denied all allegations of negligence and denied that the plaintiff sustained any serious or permanent injury in the collision.**

On May 27, 2011, the female plaintiff was operating her vehicle,and stopped in a line of traffic, southbound on Valley Road, at or near in Warrington Township, Pennsylvania. At the same time and place, the defendant was operating her vehicle directly behind the plaintiff when she struck the rear of the plaintiff's vehicle. The plaintiff alleged that the defendant was negligent in failing to drive at a speed that would allow her to stop within the assured clear distance, failing to keep alert and maintain a proper watch, and failing to apply the brakes in time to avoid colliding with the rear of the plaintiff's vehicle. As a result of the collision, the plaintiff claimed that she suffered cervical/thoracic/lumbosacral sprain and strain, right arm and hand numbness and tingling, brachial neuritis/radiculitis, thoracic and lumbosacral neuritis/radiculitis, and a disc disorder of the cervical spine. In addition, the plaintiff's husband made a claim for loss of consortium. The defendant denied all liability and argued that the plaintiff was comparatively or contributorily negligent in causing the collision. In addition, the defendant argued that the plaintiff did not sustain any serious or permanent injury as a result of the crash.

The jury found that the defendant was negligent, but that her negligence was not a factual cause of harm to the plaintiff.

**REFERENCE**

Linda and Charles McHenry vs. Laura M. Arnold. Case no. 2013-00373; Judge Susan Devlin Scott, 08-09-14.

**Attorney for plaintiff: Timothy Knowles of Warren & Mcgraw LLC in Blue Bell, PA. Attorney for defendant: James Blumenthal of Bennett, Bricklin & Saltzburg LLC in Philadelpia, PA.**

## $60,000 VERDICT

**Motor Vehicle Negligence – Rear end Collision – Defendant collides into rear of the plaintiff's vehicle – Failure to maintain a sharp and proper lookout – Herniated lumbar disc – Sprains and strains – Damages only**

### Philadelphia County, PA

**In this vehicular negligence action, the plaintiff maintained that the defendant driver negligently drove into the rear of the plaintiff's vehicle, causing injury to the plaintiff. The defendant**

**admitted liability in causing the accident, but denied that the plaintiff's injuries were causally related to the accident.**

On or about October 16, 2012, in the eastbound lane of Lancaster Avenue, at or near 569 Lancaster Avenue in Ardmore, Pennsylvania, the male plaintiff was lawfully and carefully operating a motor vehicle when the defendant crashed into the rear of the plaintiff's vehicle. The allegations of negligence contained in the plaintiff's complaint were operating a vehicle at an unsafe rate of speed, driving into the rear of the plaintiff's vehicle, being inattentive, and failing to maintain a sharp lookout. As a result, the plaintiff maintained that he suffered a herniated lumbar disc, injuries to the neck, spine, back, muscles, nerves, discs, and other parts of the body, strains and sprains, loss of strength, loss of range of motion, trauma, aches and pains, chronic pain, and suffering of body and mind.

The jury found that the defendant's negligence was a factual cause of harm to the plaintiff, and awarded the plaintiff $60,000.

**REFERENCE**

Alfonzo Harris vs. Michelle Lynn Perry. Case no. 130102643; Judge Karen Shreeves Johns, 03-14-14.

**Attorney for plaintiff: Val Wilson of Wilson & Johnson Law Firm in Philadelphia, PA. Attorney for defendant: Natalie Plummer of Bennett Bricklin & Saltzburg in Philadelphia, PA.**

# PREMISES LIABILITY

## Fall Down

### *DEFENDANT'S VERDICT*

**Premises Liability – Trip and fall – Plaintiff trips on an uneven floor in defendant's hospital – Allowing a dangerous and defective condition to exist on premises – Internal bleeding – Aggravation of congestive heart failure – Contusions**

**Philadelphia County, PA**

**In this premises liability action, the plaintiff maintained that the defendant hospital allowed a dangerous condition to exist on their premises in the form of an uneven floor, which caused the plaintiff to trip and fall. The defendant denied that the floor was uneven or dangerous in any way.**

On August 31, 2010, the male plaintiff was treating at the defendant's hospital, specifically in the Pearlman Center for Advanced Medicine, when he tripped and fell on an uneven floor as a result of two tiles not being joined together properly. The plaintiff maintained that the defendant was negligent in failing to maintain the said the premises in a safe manner which would protect lawful patrons, failing to warn the plaintiff of said defective and dangerous condition on the premises, allowing defect to exist on the premises, and failing to provide a safe area of passage for the plaintiff and other lawful patrons. The plaintiff maintained that the incident caused him to suffer aggravation of congestive heart failure, aggravation of renal failure and gout, altered mental status, internal bleeding, contusions, hypotension, and dehydration necessitating hospital and outpatient treatment and rehabilitation. The defendant denied all liability, and argued that no defective or dangerous condition existed on the premises.

The jury found no negligence on the part of the defendant.

**REFERENCE**

Robert Smith and Virginia Smith, h/w vs. The Trustees of the University of Pennsylvania. Case no. 120401846; Judge Marlene Lachman, 08-21-14.

**Attorney for plaintiff: Lee Rosenfeld of Messa and Associates in Philadelphia, PA. Attorney for defendant: Andrew Fuga of Burns White LLC in Conshohocken, PA.**

### *$100,000 VERDICT*

**Premises Liability – Trip and fall – Defendant utility company leaves cable wire in plaintiff's yard, causing the plaintiff to trip on cable – Failure to warn of the existence of cable – Right meniscal tear – Neck and back sprains**

**Philadelphia County, PA**

**In this premises liability action, the plaintiff maintained that the defendant cable company negligently left a cable wire exposed in the plaintiff's yard. While the plaintiff was walking in his yard at night, he tripped on the cable and was injured. The defendant denied being negligent, and argued that it was the negligent acts of the plaintiff that caused the incident.**

On July 2, 2011, the male plaintiff tripped and fell on a black cable that had been left in his yard by the utility company when they were performing work in the vicinity of the plaintiff's home. The plaintiff maintained that the defendant was negligent in failing to warn of the dangerous condition, allowing and creating a hazardous and dangerous condition, failing to make proper inspection of the premises, and failing to remove the dangerous condition. The plaintiff maintained that the incident resulted in the plaintiff suffering a right meniscal tear, right knee sprain, aggravation of right knee osteoarthritis, cervical/thoracic/lumbar sprain and strain, cephalgia, chronic myofascitis, and insomnia. The defendant cable company denied all liability and injury, and argued that the plaintiff was comparatively negligent.

The jury found for the plaintiff and awarded $100,000 in damages, which was reduced by 25% comparative negligence for a total of $75,000.

**REFERENCE**

Clyde Williams vs. Comcast Corporation. Case no. 130602813; Judge Esther Sylvester, 07-11-14.

**Attorney for plaintiff: Charles Schleifer of Haggerty Goldberg Schleifer in Philadelphia, PA. Attorney for defendant: Steven Cholden of Reilly Janiczek, & Mcdevitt in Philadelphia, PA.**

## *$40,000 VERDICT*

**Premises Liability – Slip and fall – Plaintiff slips and fall on an accumulation of water and or broken glass on floor of the defendant restaurant – Failure to correct the dangerous condition despite knowledge of condition – Fracture of left hand and wrist**

### Philadelphia County, PA

**The plaintiff, in this premises liability action, maintained that the defendant restaurant had actual knowledge of a dangerous condition in the form of a spilled and broken glass of water, which was on the floor of the restaurant, but still they failed to clean it up in a timely manner. As a result, the plaintiff slipped on the spill and was injured. The defendant argued that the plaintiff was negligent in failing to avoid the spill before the defendant could get it cleaned up.**

On February 24, 2012, the female plaintiff was business invitee of the defendant restaurant. While walking across the restaurant floor, the plaintiff was caused to slip and fall on an accumulation of water and/or broken glass. The hazard had been allowed to remain on the floor for an unreasonable amount of time, even after the defendant had been notified about the condition. The plaintiff contended that the defendant restaurant was negligent in allowing a dangerous condition to exist on the premises for an unreasonable amount of time, failing to make proper inspections of the premises, and failing to take corrective measures after being notified of the dangerous condition. The plaintiff suffered a fracture of left hand and wrist requiring surgery, and additional future surgery may be required. The defendant denied all liability, and argued that the condition was about to be corrected when the plaintiff walked through the hazard without using due care or caution.

The jury found the defendant 65% negligent, and the plaintiff 35% negligent reducing the plaintiff's $40,000 award to $31,539.

**REFERENCE**

Alison Dean vs. S62 Limited d/b/a Smith's Restaurant and Lounge. Case no. 130502404; Judge Mark Bernstein, 07-23-14.

**Attorney for plaintiff: James Golkow of Golkow Hessel LLC in Philadelphia, PA. Attorney for defendant: William Sweeney of Baginski, Mezzanotte, Hasson & Rubinate in Philadelphia, PA.**

## *$17,500 VERDICT*

**Premises Liability – Fall down – Plaintiff grabs for handrail while descending steps owned by defendant, and handrail comes out of wall, causing plaintiff to fall down steps – Cervical disc protrusions – Contusions, lacerations, and abrasions**

### Philadelphia County, PA

**In this premises liability action, the plaintiff maintained that the defendant property owner negligently allowed a handrail to become loose on the property where the plaintiff rented from the defendant. Consequently, while the plaintiff was utilizing the handrail, it came loose from the wall, causing the plaintiff to fall down the steps. The defendant denied all allegation of negligence, and argued that it was the negligence of the plaintiff that caused the incident.**

On March 31, 2011, the male plaintiff was a tenant of a premises owned and maintained by the defendants. At 3:00 a.m. while descending the stairs of the said apartment, the handrail came loose from the wall, causing the plaintiff to fall down the steps. The allegations of negligence contained in the plaintiff's complaint were: Failing to maintain and repair the premises, including the stairs and railing, permitting the stairs and railing to become and remain in a defective and dangerous condition, and failing to provide safe and proper steps and handrails. As a result

of the fall, the plaintiff alleged he suffered C4-5 and C5-6 disc protrusions, exacerbation of degenerative disc disease, cervical and thoracic sprain, exacerbation of degenerative joint disease, as well as contusions lacerations and abrasions. The defendant denied all liability and injury, and argued that the negligence of the plaintiff caused the incident.

The jury found that the defendants were negligent and awarded the plaintiff $17,500 in damages.

**REFERENCE**

Joseph Ragan vs. Kathleen Dragoni and Thomas Garofolo. Case no. 130203344; Judge Eugene Maier, 07-17-14.

**Attorney for plaintiff: Daniel Breen of The Law Firm Of Allen L. Rothenberg in Philadelphia, PA. Attorney for defendant: Denise Mandi of Law Offices of Twanda Turner-Hawkins in Philadelphia, PA.**

## *$97,050 VERDICT*

**Premises Liability – Slip and Fall – Plaintiff slips and falls on ice and snow in defendant's hotel parking lot – Failure to properly treat the parking lot for ice and snow – Left shoulder fracture – Surgery required**

### Philadelphia County, PA

**In this premises liability action, the plaintiff maintained that the defendant hotel negligently allowed ice and snow to accumulate on their parking lot, causing the plaintiff to slip on the ice and snow while she was walking to her car. The defendant argued that the parking lot was properly maintained, and that the plaintiff's own negligence caused the incident.**

On January 19, 2011, the female plaintiff was walking along a sidewalk that connects the defendant's hotel to the parking lot. The plaintiff slipped and fell on a patch of ice that had been allowed to accumulate and/or remain on the sidewalk due to the careless, negligent and reckless acts and/or omissions of the defendants. The plaintiff maintained that the defendant was negligent in failing to properly supervise, inspect, and maintain the sidewalk, permitting the aforesaid icy condition to accumulate, and/or remain for an unreasonable period of time and failing to warn of the icy and slippery condition. Consequently, the plaintiff suffered a left shoulder fracture, subscapularis tendinosis, and infraspinatus tendinosis with hydroxyapatite deposition requiring physical therapy, multiple rounds of major joint injection treatment, and ultimately surgical intervention. The plaintiff's husband made a claim for loss of consortium. The defendant hotel denied all liability and injury, and argued that the plaintiff was comparatively or contributorily negligent.

The jury found that the defendants were negligent, and did not find the plaintiff comparatively negligent. The jury awarded the plaintiff $97,050 in damages.

**REFERENCE**

Christina and Edward Walsh vs. Residence Inn Philadelphia Great Valley, W2005/Fargo Hotels (Pool C) Realty, L.P., Pillar Hotels & Resorts, L.P. and Residence Inn by Marriott, LLC. Case no. 130102321; Judge Esther Sylvester, 03-05-14.

**Attorney for plaintiff: Robert Kelly of Duane Morris LLP in Philadelphia, PA. Attorney for defendant: Robert Mickle of Campbell, Lipski & Dochney in Philadelphia, PA.**

# Hazardous Premises

## *DEFENDANT'S VERDICT*

**Premises Liability – Hazardous Premises – Defendants instruct another patron to move her vehicle as plaintiff walks in front of service bay, causing patron to strike plaintiff- Failure to note point and position of the plaintiff – Cervicobrachial syndrome – Thoracic and Lumbar sprain**

### Philadelphia County, PA

**The plaintiff, in this negligence action, maintained that both the defendant driver and a mechanic at the defendant, Auto Store, were negligent in causing an incident in which the plaintiff, a pedestrian, was struck by the defendant driver. Both the defendant driver and the Auto Store denied negligence, and argued that it was the actions of the plaintiff that caused the incident.**

On April 9, 2011, the male plaintiff had just exited the automotive repair retail store. He was crossing the front of the service bay where the defendant, Jiffy Lube, worked on the vehicles. At the same time, an employee of the defendant, Jiffy Lube, instructed the defendant driver to reverse her vehicle, and she did so, reversing her vehicle into the plaintiff. The plaintiff maintained that the defendant driver was negligent in putting her vehicle into reverse without yielding the right of way to the plaintiff pedestrian, and failing to keep a proper lookout The allegations against the defendant auto store were negligently and carelessly instructing the plaintiff to put her vehicle into reverse and back up into the parking lot at the same time the plaintiff was walking in the parking lot, and failing to note the position of the plaintiff before instructing the defendant driver to reverse. As a result, the plain-

tiff suffered injuries to right shoulder and right hip, cervicobrachial syndrome, thoracic sprain, lumbar sprain, nerve damage, headaches, anxiety, insomnia and depression. In addition his wife made a claim for loss of consortium. Both defendants denied being negligent and argued that the plaintiff walked into the path of the defendant driver's vehicle. The auto store defendant was dismissed prior to trial, and the case proceeded against the driver defendant only.

The jury found no negligence against the defendant.

**REFERENCE**

Karl and Lois Schaaf vs. Stephanie Nacci and Mid Atlantic Lubes Inc. d/b/a Jiffy Lube Store 262. Case no. 130400653; Judge Karen Shreeves Johns, 05-30-14.

**Attorney for plaintiff: Thomas Blackburn of Drake, Hileman & Davis, P.C. in Doylestown, PA. Attorney for defendant: Eleanor Good of Snyder & Barrett in Philadelphia, PA.**

# TOXIC TORT

## *DEFENDANT'S VERDICT*

**Toxic Tort – Plaintiff exposed to benzene-containing products manufactured by defendants – Failure to warn of dangers of benzene – Acute Myelogenous Leukemia.**

### Philadelphia County, PA

**The plaintiff, in this toxic tort action, claimed that years of exposure to benzene containing products produced by the defendants while the plaintiff worked as a mechanic caused the plaintiff to contract Leukemia, which claimed the plaintiff's life in 2012. The defendant denied that the decedent's exposure to benzene caused the Leukemia, and argued that it was the decedent's smoking habit that caused his disease.**

As a condition of his employment as a mechanic with Pep Boys, the male plaintiff worked directly and indirectly with various benzene-containing products, including, but not limited to, gasoline, penetrating solvents, solvents, and degreasers, which products and/or their ingredients, were manufactured, refined, designed, produced, processed, compounded, converted, packaged, sold, distributed, marketed, re-labeled, supplied and/or otherwise placed into the stream of commerce by the defendants. As a direct result of his exposure, the plaintiff contracted Myelodysplastic Syndrome and Acute Myelogenous Leukemia, with which he was diagnosed in August of 2010. He died from the disease on October 7, 2012 at age 55. The defendant, Sunoco, was the only remaining defendant at trial. The widow of the decedent continued the plaintiff's case after his death, and alleged that the defendants knew, and or should have known that benzene causes cancer, leukemia, and other blood and bone marrow disease and damage, and is otherwise extremely dangerous to human health. In addition, the plaintiff argued that the defendants failed to take precautions to warn and/or adequately warn the plaintiff and his employers of the reasonably safe, sufficient, and necessary safeguards, protective equipment, wearing apparel, appliances, and engineering controls necessary to protect them from exposure to benzene. The defense argued that benzene studies do not support the assertion that gasoline causes AML. The defense offered expert testimony of studies showing there was no increased risk of AML from exposure to gasoline. It was also argued that the plaintiff's AML was caused by his two-pack-per-day smoking habit, as cigarette smoke is a known cause of AML.

The jury found no negligence against the defendant.

**REFERENCE**

David Butler and Teri Rhodes h/w vs.. Sunoco Inc., Radiator Specialty Co., Pep-Boys Inc. Case no. 120301641; Judge Rosalyn Robinson, 08-08-14.

**Attorney for plaintiff: Andrew DuPont of Locks Law Firm in Philadelphia, PA. Attorney for defendant: Richard Biedrzycki of McElroy, Deutsch, Mulvaney & Carpenter, L.L.P. in Philadelphia, PA.**

# TRANSIT AUTHORITY LIABILITY

## *DEFENDANT'S VERDICT*

**Transit Authority Negligence – Defendant bus operator closes the bus doors on plaintiff's arm and pulls away from the stop as the plaintiff attempted to board the bus – Careless and reckless operation of the bus – Arm ligament damage requiring surgery.**

### Philadelphia County, PA

**In this negligence action, the plaintiff maintained that the defendant bus operator negligently closed the bus doors on the plaintiff's arm as the plaintiff was attempting to board the defendant's**

**bus. The defendant denied being negligent, and argued that the actions of the plaintiff caused the incident.**

On June 18, 2011, the female plaintiff was attempting to board the defendant's Route G bus at the intersection of 57th and Media Streets in the City of Philadelphia Pennsylvania. As the plaintiff was attempting to board the bus, the defendant's bus operator closed the doors on the plaintiff's arm and pulled away from the stop, causing injury to the plaintiff. The plaintiff maintained that the defendant bus driver negligently closed the door on the plaintiff's arm as the plaintiff attempted to get on the bus, failed to properly observe the plaintiff as she boarded the bus, and carelessly and recklessly operated the bus so as to cause injury to the plaintiff. The plaintiff alleged that the defendant transit authority was vicariously liable for the acts of the defendant bus operator. As a result of the incident, the plaintiff suffered a right arm ligament injury requiring surgery. The defendant denied all liability, and argued that the actions of the plaintiff caused the incident.

The jury found no negligence on the part of the defendant.

## REFERENCE

Nafiysa Muhammad vs. Southeastern Pennsylvania Transportation Association. Case no. 120601339; Judge John M. Younge, 08-08-14.

**Attorney for plaintiff: Peter McNamara in Philadelphia, PA. Attorney for defendant: Janice Kolber of Kolber & Randazzo, PC in Philadelphia, PA.**

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.**

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