TEXAS
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$40,000,000 VERDICT – FRAUD – INDUCEMENT – JURY FINDS SWISS BANK LIABLE FOR FRAUDULENT INDUCEMENT RESPECTING REFINANCING OF LAS VEGAS DEVELOPMENT DEAL – $172,000,000 IN DAMAGES

Dallas County, TX

In this action, a Dallas jury found an international investment bank liable for fraudulent inducement in connection with a Las Vegas real estate deal. The matter was heard in the 134th Judicial District Court of Dallas County, Texas.

The plaintiff, Claymore Holdings, LLC, is a limited liability corporation owned by funds managed by Highland Capital Management, L.P. The plaintiff funds participated in a 2007 refinancing of the Lake Las Vegas development, a 3,592-acre residential and resort master-planned community. The plaintiff's underwriter and arranger for this syndicated loan was defendant, Credit Suisse of Zurich, Switzerland. In 2007, the $540,000,000 refinancing was closed based on a CBRE appraisal, concluding that the value of the underlying collateral was between $511,000,000 and $891,000,000. The defendant received more than $20,000,000 in fees from the investing syndicate (of which Highland Capital was a member) for underwriting and arranging the initial 2004 loan and the 2007 refinancing. The year following the refinancing, Lake Las Vegas filed for bankruptcy protection, and the underlying collateral eventually was sold for less than two percent of its appraised value.

Claymore Holdings filed suit in July 2013, accusing Credit Suisse of fraudulently inducing the plaintiff funds to invest over $250,000,000 in the refinancing. Specifically, defendant was accused of inflating the value of the property in order to secure fees for underwriting and arranging the refinancing. The plaintiff sought $172,000,000 in net damages. The defendant denied the accusation.

At trial, the plaintiff showed that the initial draft appraisals of the Lake Las Vegas property failed to place sufficient value on the collateral to warrant the $540,000,000 refinancing target. The plaintiff asserted that after receiving the initial appraisal drafts, Credit Suisse worked with the appraiser and the developer to inflate the value of the project's collateral by over $230,000,000 over a single weekend. Among other things, defendant was accused of having identified, but choosing to ignore a material discounting error in the appraisal. The plaintiff alleged that defendant's conduct and the grossly inflated appraisal fraudulently induced the funds to proceed with the refinancing, which allowed Credit Suisse to collect their multi-million dollar fees for underwriting and arranging the deal. Finally, the plaintiff showed that Credit Suisse began taking steps to exit its position in the loan on the day the refinancing closed, despite telling investors that they had also put their own money at risk in the investment.

After three weeks of trial, the 12-person jury returned a finding of fraudulent inducement on clear and convincing evidence for the plaintiff, and awarded $40,000,000 in damages against the defendant Credit Suisse.

REFERENCE

Claymore Holdings LLC vs. Credit Suisse. Case no. 13-07858, 12-19-14.

Attorneys for plaintiff: William T. Reid IV, Lisa S. Tsai, & Nathaniel J. Palmer of Reid Collins & Tsai LLP in Austin, TX. Attorneys for defendant: T. Ray Guy & David J. Lender of Weil, Gotshal & Manges LLP in New York, NY. Attorney for defendant: Jeffrey M. Tillotson of Lynn, Tillotson, Pinker & Cox LLP in Dallas, TX.

$19,000,000 VERDICT – BREACH OF CONTRACT – MISAPPROPRIATION – SHALE PROSPECTING COMPANY SUES OIL COMPANY FOR BREACHING CONFIDENTIALITY AND NON-CIRCUMVENTION – COMPENSATORY AND PUNITIVE DAMAGES

Harris County, TX

In this matter, a prospecting company sued an oil and gas company for violating a series of contracts relating to an oil and gas find. The matter was resolved via verdict.

The plaintiff, Shale Exploration, LLC,is a Fort Worth-based oil and gas exploration company. In 2011, the plaintiff and its business partners approached the defendant, Eagle Oil & Gas of Dallas, about participating in an oil and gas prospect called the Jayhawk that they were developing in Montana. Before disclosing confidential and proprietary information about the prospect, the plaintiff and its business partners negotiated a confidentiality and non-circumvention agreement with the defendant. Ultimately, the plaintiff and its partners entered into an arrangement with Apache Corporation to develop the Jayhawk prospect. The plaintiff charged that

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when Eagle discovered this, they took the plaintiff's proprietary information and began leasing in the Jayhawk under a company called Montana Lease Holdings (MLH). The plaintiff asserted that defendant helped set up MLH, specifically to hide their involvement in the Jayhawk leasing effort. The plaintiff discovered the defendant's involvement with MLH in April 2012.

The plaintiff filed suit in the 152nd Judicial District Court, accusing the defendant of breach of contract, as well as misappropriation of trade secrets and proprietary information, and sought compensatory damages for the leases Eagle took in the Jayhawk, using their proprietary information and the unlawful competition that also drove up plaintiff's leasing costs, in addition to seeking punitive damages. The defendant denied the accusation, and their subsidiary Eagle Wes-Tex filed counterclaims against Shale, accusing them of tortious interference with existing contract, tortious interference with prospective contract and conspiracy.

After a two-and-a-half week trial, the jury found the defendant breached its confidentiality and non-circumvention agreement with the plaintiff, as well as unlawful taking of trade secrets and proprietary information about Shale's prospect for its own use. The jury awarded plaintiff $14,300,000 in compensatory damages, and $4,500,000 in punitive damages. The jury also rejected all counter-claims.

REFERENCE

Shale Exploration, LLC vs. Eagle Oil & Gas Co. and Eagle Wes-Tex, LP. Case no. 2012-25694; Judge Robert Schaffer, 09-16-14.

Attorney for plaintiff Shale Exploration, LLC: Matthew R. Pearson & Valerie L. Cantu of Gravely & Pearson in San Antonio, TX. Attorney for defendant Eagle Oil & Gas: Bruce Bowman & Ira Bowman of Godwin Lewis, LP in Dallas, TX.

$4,780,000 VERDICT MOTOR VEHICLE NEGLIGENCE – AUTO/PEDESTRIAN – DEFENDANT DRIVER OPERATING HER VEHICLE UNDER INFLUENCE OF DRUGS STRIKES DECEDENT CAUSING FATAL INJURIES – WRONGFUL DEATH OF 31-YEAR-OLD FEMALE

Harris County, TX

This vehicular negligence action stems from a fatal accident in which a 31-year-old married mother of three minors was killed when struck by the defendant driver. The defendant driver had a long history of driving under the influence, and was operating her vehicle under the influence at the time of this accident as well. Further, the defendant failed to stop at the accident scene after striking the decedent. A witness followed the defendant who was apprehended by the police almost 15 miles away from the scene. The defendant admitted liability, but denied the allegations of gross negligence.

On Sept. 29, 2011, the plaintiffs' decedent a 3-year-old female was driving a full-size sport utility vehicle on the Sam Houston Tollway, in Houston. She began having car trouble and pulled onto the shoulder. She was standing next to her vehicle when the defendant, also in a full-size SUV, struck and killed her.

At the time of the accident, the decedent was under the influence of several drugs including: Clonazepam, temazepam, Soma, and marijuana. The plaintiff maintained that the defendant was negligent in fialing to do the fol-

lowing: Operating her vehicle under the influence of drugs or alcohol, maintain her proper lane of travel, control her speed, and violating various ordinances in the state of Texas.

The decedent died from blunt force trauma at the scene. She is survived by a husband three minor children. The defendant admitted striking the decedent, but argued that she suffered a seizure, which caused her to leave her lane. The defendant also argued that the decedent was comparatively negligent in standing at the edge of the shoulder of the road.

The jury found the defendant grossly negligent, and awarded the plaintiff's estate 1,048,000 in compensatory damages, and 3,300,000 in punitive damages.

REFERENCE

Plaintiff's Toxicology expert: Jeffrey Walterscheid from Houston, TX.

Mario Bernal, individually, as heir at law, as representative of the estate of Gabriela Deyanira Rodriguez, deceased, and as next friend of minors MAB, YVB, and JYB vs. Terry Cox Ferguson. Case no. 2011-72784; Judge Jaclanel McFarland, 09-24-14.

Attorney for plaintiff: Robert E. Ammons of The Ammons Law Firm in Houston, TX. Attorney for defendant: Robert H. Bateman of Bateman Pugh Chambers PLLC in Houston, TX.

COMMENTARY

The defendant, in this vehicular negligence action, admitted liability in striking the decedent, but denied being grossly negligent. The plaintiff was able to produce records from the district attorney office stating that the defendant had been arrested for driving under the influence in 2007, and twice in 2009. This testimony, coupled with the testimony from an eyewitness, which stated that the after the decedent was struck, her body was propelled over 30 feet, and the defendant drove away from the scene, which likely led to the large award of over 3,000,000 in punitive damages. The large compensatory verdict for an unemployed mother was likely largely due to testimony of the closeness of the family, and the decedent's great value as the homemaker.

$2,600,000 RECOVERY – DOJ – FRAUD – OPERATORS OF HOUSTON AREA DIAGNOSTIC CENTERS SETTLE WITH JUSTICE DEPARTMENT – VIOLATION OF FALSE CLAIMS ACT

Harris County, TX

In this action, two groups of medical centers were accused of violating the False Claims Act and Stark Statute. Accusations were resolved through a settlement.

Defendants in this action consisted of two groups of diagnostic centers based in Houston, Texas. The first group was operated under the name, One Step Diagnostic, and was owned and controlled by Fuad C. Those centers were accused of entering into sham consulting and medical director agreements with referring physicians. The second group, owned by Ruhal D., consisted of Complete Imaging Solutions LLC (d/b/a Houston Diagnostics), Deerbrook Diagnostics & Imaging Center, LLC, Elite Diagnostic Inc., Galleria MRI & Diagnostic LLC, Spring Imaging Center Inc., and West Houston MRI & Diagnostics, LLC. That group was accused of having improper financial relationships with referring physicians. The latter group was further accused of improperly billing Medicare, using the provider number of a physician who had not authorized them to do so, and was not involved in the provision of services being billed.

Three whistleblowers filed suit in the U.S. District Court for the Southern District of Texas under the qui tam provisions of the False Claims Act. The defendants were accused of violating both the False Claims Act and the Stark Statute.

The matter was resolved via settlement, in which the defendants agreed to pay a total of more than $2,600,000 to resolve the allegations. Fuad C.'s group agreed to pay $1,200,000, and Ruhal D.'s group will pay $1,457,686. No admission of liability was made through the settlement, and the matter was resolved without further commencement of litigation.

REFERENCE

United States ex rel. Holderith, et al. vs. One Step Diagnostic, Inc., et al. Case no. 12-CV-2988, 10-17-14.

Attorney for plaintiff: Kenneth Magidson of U.S. Attorney's Office in Houston, TX. Attorney for plaintiff: Joyce R. Branda of Justice Department - Civil Division in Washington, DC.

$2,08,000 – MOTOR VEHICLE NEGLIGENCE – WRONGFUL DEATH – MAN KILLED IN MULTI-CAR COLLISION ON TEXAS HIGHWAY – DEATH OF ROGER MILLER

Wilson County, TX

This lawsuit involved the death of a retired police officer in a Wilson County multi-vehicle collision. The matter was resolved through a settlement.

On March 26, 2014, at approximately 8:45 a.m., the decedent, Roger M., 86, was eastbound on State Highway 97 in Wilson County, Texas. At that time, Miguel R., was driving eastbound on State Highway 97 behind the decedent. The plaintiff, Robert L., was, at that time, proceeding westbound on the other side of Highway 97. The defendant, James K., (individually and doing business as J&J Transportation) was driving behind him in a Peterbilt Tractor Trailer. While the preceding circumstances were contested at trial, the incident occurred after Mr. L. was rear-ended by the tractor trailer. Mr. L.'s vehicle was propelled into the opposing lane of traffic, where it collided head-on with Mr. M.'s vehicle. Mr. M's vehicle spun around and skidded into a ditch, where it struck Mr. R's vehicle in the rear driver's side area. Mr. M. sustained massive injuries in the collision and perished at the scene. The plaintiff, Mr. L., sustained serious injuries, including cervical and lumbar spinal fractures, and was airlifted to University Hospital. He underwent emergency spinal surgery and spend seven days in an intensive care unit. Mr. R. also sustained minor injuries.

The plaintiff, Robert L., filed suit in the 218th Judicial District Court of Wilson County, naming as defendant, James K., and J&J Trucking. The M. family later intervened in the suit, also naming Priscilla K. as a defendant, as she was listed as the owner of J&J Transportation by the US Department of Transportation. Both plaintiffs alleged the negligence of James K. as the cause of the fatal collision, however, the decedent's family asserted the negligence of Robert L. as well. The plaintiff denied the comparative negligence claim, as did the defendant.

At trial, the M. family brought download data from the engine control module (ECM) of Mr. L's vehicle that showed he'd slowed down to 27 miles-per-hour on a rural highway with a speed limit of 70 mph. The plaintiff argued this showed that, despite his testimony that he was being tailgated by defendant, his own sudden speed change was a contributing factor to his being rear-ended.

The matter was resolved through a $2,080,000 settlement, including $1,580,000 for the family of the deceased.

REFERENCE

Robert Lazcano, et al. vs. James Kemp, et al. Case no. I4-05-0328-CVW, 01-15-15.

Attorneys for plaintiff: Shalimar Wallis & Frank Guerra of Watts Guerra in San Antonio, TX. Attorney for plaintiff: Tom Crosley of Crosley Law Firm, PC in San Antonio, TX. Attorney for defendant Kemp/J&J Trucking: Robert Ramey in Scranton, PA. Attorney for defendant Lazcano: Claudia Brown of Gendry Sprague in San Antonio, TX.

COMMENTARY

Total compensation for the estate plaintiff included the $50,000 policy limits of the decedent's uninsured motorist coverage. According to plaintiff's counsel, the uninsured motorist claim could not be made until after the other claims involved had been resolved. The plaintiff's counsel states that there has been an inordinate amount of fatal collisions in Texas, with an increase in dangerous traffic noted in the area surrounding the Eagle Ford Shale region. The counsel states that while the nation has experienced an overall reduction in traffic deaths, Texas has experienced an increase, with fatalities in Texas linked to use of commercial vehicle traffic having risen by over 50 % in the past four years.

$1,300,000 VERDICT – DTPA – VERDICT FOR CHILD SEVERELY INJURED IN FALL AT INFLATABLE PARTY ROOM – SEVERE SKULL FRACTURE – BLEEDING ON THE BRAIN

Harris County, TX

In this case, the family of a child who suffered a traumatic brain injury at a children's inflatable party room sued for negligence, gross negligence, and violations of the Texas Deceptive Trade Practices Act. The matter was resolved by a Texas jury after the defendant denied liability.

In 2010, the nine-year-old child of the plaintiffs was playing at the Pump It Up party room in the Woodlands, Texas. The child was playing in a room with four inflatables, and a single attendant was instructed to supervise two rooms, containing four inflatables each. The plaintiffs' child ultimately fell and struck his head on a concrete floor, resulting in a severe skull fracture, and bleeding on his brain. The child now suffers from emotional struggles and learning disabilities.

The plaintiffs filed suit in Harris County District Court for negligence, seeking recovery of damages from Bounce Zone, Inc., the owners of Pump It Up of the Woodlands. The plaintiff sought damages for the child's pain and suffering, mental anguish, and disability. The defendant denied liability. At trial, the plaintiff asserted liability for a failure to properly supervise the area. At the time of the fall, the plaintiff asserted that there were no employees in the room, and the child and his brother were not told

that the areas were unsafe. They further argued that the managers had made a conscious choice to have only one attendant between the two rooms.

The jury returned a finding for the plaintiff and awarded $1,300,000 in damages.

REFERENCE

Kimberly Croghan, Individually and as next friend of Carter Croghan vs. Bounce Zone Inc. d/b/a Pump It Up. Case no. 201204647; Judge Randy Wilson, 11-06-14.

Attorney for plaintiff: Eric D. Nielsen of Nielsen & Mukerji, LLP in Houston, TX.

$952,812.04 VERDICT – CONSTRUCTION SITE NEGLIGENCE – DEFENDANTS FAIL TO PROVIDE A SAFE ENVIRONMENT – FAIL TO WARN PLAINTIFF OF DANGEROUS CONDITION – INJURIES AND MEDICAL EXPENSES

Dallas County, TX

The plaintiffs brought this construction site negligence suit against the defendants for injuries that plaintiff, Jorge R., sustained while working in the course and scope of his employment. The plaintiff was ordered to conduct work in a dangerous environment and conditions. The defendant failed to warn the plaintiff of the risky working areas, and the plaintiff contended that the defendants knew, or should have known that the wall the plaintiff was working on was a hazardous repair. The defendant denied the plaintiffs' allegations.

The plaintiff alleged that on March 18, 2011, the defendant construction company was the general contractor on a remodeling/construction project at a Texas university, in Lubbock, Texas. He asserted that he was an employee of AMX Enterprises, a subcontractor for the defendant, and maintained that, on this day, he was ordered by the defendant's employee and job superintendent, to climb to the top of a 20-foot ladder and demolish a recalcitrant wall. The plaintiff supported that as he began the work, the wall collapsed, causing him to fall to the ground with massive, heavy pieces of the wall falling on top of him. The plaintiff alleged that the wall was not properly secured, fastened, and/or retained.

The jury reached a verdict in favor of the plaintiff. The jury attributed 50 % negligence on the plaintiff's employer, AMX, 50% negligence on defendant construction company, and zero on the plaintiff. The jury awarded plaintiff, Jorge R., $348,390, for past damages; $41,567 for pre-judgment interest; $529,275 for future damages against defendant, construction company; $30,000 to plaintiff, Sandra T., for past damages, and $3,579 for pre-judgment interest from defendant construction company.

REFERENCE

Jorge Rodriguez, et ux, Sandra Tonche vs. Lee Lewis Construction, Inc. Case no. CC-12-01898-D; Judge Ken Tapcott, 08-12-14.

Attorney for plaintiff: Luis M. Avila in Costa Mesa, CA. Attorney for defendant Lee Lewis Construction, Inc.: John S. Kenefick & John R. Sigety of MacDonald Devin, PC in Dallas, TX.

DEFENSE VERDICT – FIDUCIARY DUTY – DEFENSE VERDICT IN CASE AGAINST CORPORATE OFFICER – BREACH OF FIDUCIARY DUTY

Dallas County, TX

In this case, a financial services company sued its client for the mismanagement of funds, resulting in loss of potential contracted income. The matter was resolved by a jury verdict.

The defendant, in this action, was the Richardson Trident Company of Richardson, Texas, as well as Thomas E. B., its former Chief Restructuring Officer. In April 2010, the plaintiff, White Rock Advisors, LLC, contracted with the defendant to provide services for the sale of their securities. Per terms of that contract, the plaintiff was entitled to hourly rates for consulting, as well as a success fee for the sale of securities in connection with a financial plan, as well as a sale fee for any sale of the company during the contract period. Thomas B. was later accused of tortious and fraudulent collusion with members of Trident's management to divert funds to B., his creditors, his management team, and his friends. In doing so, defendant violated their pre-existing financial arrangements, damaged the defendant's financial standing in the eyes of current and potential financial partners, and thus thwarted the plaintiff's efforts to consummate pending financial arrangements. The plaintiff asserted that the defendant had, thereby, impeded their financial relationships and deprived them of substantial rights and subsequent fees under their agreement.

The plaintiff filed suit in the 134th Judicial District Court of Dallas County, Texas, accusing the defendant, Richardson Trident, and its former officer of breaching fiduciary duties. The plaintiff sought approximately $8,000,000 dollars in damages, plus punitives. The plaintiff denied liability.

After six days of trial, the jury returned a finding for the defendant.

REFERENCE

White Rock Advisors, LLC vs. The Richardson Trident Company, et al. Case no. DC-12-12902; Judge Dale Tillery, 12-26-14.

Attorney for plaintiff: James W. Grau of Grau Law Group in Dallas, TX. Attorney for defendant: Jeff Tillotson of Lynn Tillotson Pinker & Cox in Dallas, TX.

COMMENTARY

According to defense counsel, the case proved a challenge after the court ruled that defendant was a former fiduciary of one of the plaintiffs. However, the defendant asserted, and the jury later agreed, that there was no relationship of trust and confidence between the parties. Thereafter, the burden of proof shifted to the defense. The defendant then presented the argument that the transaction at issue was both fair and equitable to the plaintiffs.

Following trial, the plaintiffs filed a motion to set aside the verdict. Court documents indicate that the motion was denied and a final judgment was entered on December 6, 2014, upholding the verdict.

Verdicts by Category

MEDICAL MALPRACTICE

Plastic Surgery

DEFENDANT'S VERDICT

Medical Malpractice – Plastic Surgery – Plaintiff sues defendant physician for failing to provide adequate care and treatment after breast implant surgery – Disfigurement of left and right breasts; medical expenses

Harris County, TX

The plaintiff brought this medical malpractice lawsuit against the defendant physician for negligence for failing to provide adequate care and treatment of the plaintiff's injuries. The defendant denied the plaintiffs' allegations, and contended that the injuries the plaintiff complained of were pre-existing conditions, and known complications of this type of surgery.

On May 17, 2007, the plaintiff alleged that she presented to defendant physician with a complaint of breast pain, tenderness, and deformity. The defendant physician performed surgery on the plaintiff, and removed the implants with capsulectomies, transferring new saline implants. The plaintiff maintained that after the operation, she had nipple discoloration with poor circulation. Within a week, the plaintiff contended that there was evidence of necrosis and drainage of her left nipple, and was treated with antibiotics. The implant began to extrude through the nipple areola, and surgery was performed again on August 16, 2007, to remove the implant, as well as for some peripheral and intrapocket necrotic tissue to be debrided. The plaintiff alleged that she suffered extreme disfigurement to her left and right breast tissue.

The jury found in favor of the defendant.

REFERENCE

Linda Morrow and Robert Morrow vs. Victor J. Atun, M.D. Case no. 2009-47755; Judge Alexandra Smoots-Hogan, 07-03-14.

Attorney for plaintiff: John A. Davis Jr. of Davis & Davis in Houston, TX. Attorney for defendant: Barbara A. Hilburn of Harris Hilburn, LLP in Houston, TX.

AGE DISCRIMINATION

$210,000 RECOVERY

EEOC – Age Discrimination – Industrial supply business accused of using age criterion in hiring and recruitment practices – Violation of ADEA

Dallas County, TX

This suit involved EEOC claims that an employment agency included age-based criteria in its recruiting and hiring process. The matter was resolved via consent decree.

The defendant, HiLine Electric Co., is a Dallas-based industrial supply business. According to an internal recruiter, the defendant provided a form with a list of bulleted criteria/considerations for position candidates that included a printed text box listing an age-based hiring consideration. Upon receipt of additional information regarding screening instructions, the EEOC asserted that the criteria defendant used resulted in the non-selection of qualified applicants over 50 years of age, including eight applicants who were over 50, when they unsuccessfully sought employment as territory managers.

The EEOC filed suit in U.S. District Court for the Northern District of Texas, Dallas Division, after first attempting to reach a pre-litigation settlement through its conciliation process. The defendant was accused of violating the Age Discrimination in Employment Act (ADEA). The EEOC sought injunctive relief, as well as compensation for victims of the alleged practice.

The matter was resolved via three-year consent decree for $210,000. The defendant further agreed to cease any advisory or preparation, production or publication of materials, or lists to any recruiter, manager, supervisor, or any other employee, in which chronological age or any proxy for age is a consideration for recruitment, hiring, or promotion.

REFERENCE

Equal Employment Opportunity Commission vs. HiLine Electric Co. Case no. 3:09-CV-1848-F; Judge Barbara Lynn, 10-06-14.

Attorney for plaintiff: Suzanne M. Anderson, Devika Seth, Robert A. Canino, Jr. & Toby W. Costas of Equal Employment Opportunity Commission in Dallas, TX. Attorney for defendant: Robert H. Walker & Walter D. Willson of Wells Marble & Hurst PLLC in Ridgeland, MS.

CONTRACT

$897,000 VERDICT

Breach of contract – Negligence – Subcontractor sued after truckload of cell phones stolen – Breach of contract – Lost merchandise

Tarrant County, TX

In this action, a shipping contractor was sued by its client after their load was stolen. The matter was resolved with a bench verdict after the defendant denied allegations of negligence and breach of contract.

The defendant, High Definition Logistics, was hired by plaintiff, RadioShack, to ship a load of cell phones from Louisville, KY, to Fort Worth, Texas. The defendant subcontracted the job to a trucking company named DNR Expedite Co. The load was stolen after DNR left the truck unattended, resulting in the loss of over $892,000 in the plaintiff's product. The empty trailer was later found in the port of Miami.

The plaintiff filed suit in the 48th Judicial District Court of Tarrant County, Texas. The defendant, High Definition Logistics, was accused of breaching its contract with the plaintiff, as well as negligence for lack of supervision, failure to implement safety mechanisms to protect the shipment, and lack of oversight on the subcontractor. The plaintiff sought damages for the loss of their product, as well as attorney's costs and fees.

The matter resolved through a bench verdict, in which the plaintiff was awarded $897,953, plus attorneys fees.

REFERENCE

RadioShack Corp. vs. High Definition Logistics, LLC, et al. Case no. 048-258128-12, 11-10-14.

Attorneys for plaintiff: Coby L. Wooten & Dawn Smith of Coby L. Wooten, Attorney at Law, P.C. in Fort Worth, TX. Attorney for defendant: Gregory Jones in Grapevine, TX.

DISCRIMINATION

DEFENDANT'S VERDICT

Racial and Gender Discrimination – Plaintiff sues defendant employer for negligently accusing her of assaulting a citizen – Compensatory damages

Harris County, TX

The plaintiff brought this racial and gender discrimination lawsuit against the defendant, alleging that her employers had negligently accused her of assaulting a citizen. The plaintiff contended that the defendant violated her civil rights. The plaintiff suffered back wages, benefits, and compensatory damages. The defendant denied the plaintiffs' allegations.

The plaintiff is an African American, and was employed by defendant City of Houston, Houston Police Department, as an officer, who began her employment in October 1983. The plaintiff alleged that on March 27, 2009, she was accused of excessive use of force and abusive language against a citizen. This allegation was presented by her supervisor, Sgt. Provost. In 2005, the plaintiff contended that she filed a complaint of discrimination on the basis of sex, race, and sexual orientation, and she settled the complaint. In the March 2009 incident, the plaintiff contended that her supervisor, Sgt. Provost, accused her for assaulting a citizen, maintaining that after that accusation failed, he added another complaint stating that a second citizen was assaulted by the plaintiff. When the issue was challenged, Sgt. Provost dropped the complaint. An investigation was conducted on the new complaint, and the plaintiff was disciplined and given a supervisory intervention. No action was taken against Sgt. Provost for his false allegations against the plaintiff, who was removed from the department from March 2009 until March 8, 2010.

The defendant contended that the plaintiff was an officer in the Houston Police Department and had been assigned to the Auto Dealers Division since May 2006. In 2005, the plaintiff was the subject of an internal affairs complaint due to allegations of insubordination, untruthfulness, and failure to report to work. The defendant maintained that when the plaintiff learned of the complaint, she provided a statement accusing her superiors of taking excessive breaks, conducting personal business on duty, and sleeping on duty. She claimed that her superiors also subjected her to a hostile work environment. To settle this matter, the Department allowed the plaintiff to transfer to work in a unit of her choice, where she selected Auto-Dealers and was transferred on May 6, 2006. The defendant contended that in February 2009, the plaintiff was the subject of a citizen complaint regarding her conduct performing her official duties as an inspector of an auto facility. An investigation was conducted, and the plaintiff was given training and counseling regarding courtesy to citizens. This was not considered discipline in the Department.

The jury returned a verdict in favor of the defendant.

REFERENCE

Angelita K. Williams vs. City of Houston. Case no. 2010-41031; Judge Michael Gomez, 08-21-14.

Attorney for plaintiff: Anthony P. Griffin in Galveston, TX. Attorney for defendant: City of Houston Legal Department in Houston, TX.

$237,000 RECOVERY

DOJ – Discrimination – Justice department settles lawsuit against Texas bus company for discriminating against U.S. workers – Violation of INA

Harris County, TX

In this action, the United States accused a transport company of discrimination. The matter was resolved via settlement.

The defendant, Autobuses Ejecutivos LLC, who does business as Omnibus Express, is a bus company based in Houston, Texas. Between August 2012 and February 2013, the defendant allegedly discriminated against U.S. workers by preferring to hire workers on temporary H-2B visas for its bus driver positions.

In August 2013, action was commenced on behalf of the United States by the Office of Special Counsel for Immigration-Related Unfair Employment Practices to enforce the provision of the Immigration and Nationality Act relating to immigration-related unfair employment practices. The defendant was accused of violating the anti-discrimination provision of the Immigration and Nationality Act (INA) through its alleged discrimination

against U.S. citizens and other protected individuals for bus driver positions in favor of temporary non-immigrant visa holders who are not protected individuals.

The matter was resolved through a settlement, in which the defendant agreed to establish a $208,000 fund to compensate victims of its discriminatory practices, pay $37,800 in civil penalties to the United States, and be subject to monitoring of its hiring and recruiting practices for a two-year period.

REFERENCE

United States of America vs. Autobuses Ejecutivos LLC., 09-26-14.

Attorney for plaintiff: A. Baltazar Baca of Justice Department - Civil Rights Division in Washington, DC.

MALICIOUS PROSECUTION

$900,000 VERDICT

Malicious Prosecution – Man arrested years later over loan collateral bank claims never received – Damage to reputation – Pain and mental anguish

Hopkins County, TX

In this action, a Texas bank was accused of the malicious prosecution of one of its customers. The matter was resolved via jury trial.

In 2005, the plaintiff, John Alexander S., was arrested during a routine traffic stop on an outstanding warrant for hindering a secured creditor, a violation of the Texas Penal Code. Several years prior, the plaintiff had received a loan from City National Bank of Sulphur Springs, in order to purchase a Toyota 16-needle embroidery machine with the intention of using it to launch a business. After the business failed to take off, the plaintiff delivered the machine to the bank, who agreed to sell the machine and apply the proceeds to his loan. However, the bank did not do so. Instead, the bank's vice president filed a felony complaint against him, accusing him of refusing to return collateral, and he was subsequently indicted for selling the machine and keeping the money. In 2008, the district attorney dismissed the criminal case against the plaintiff after a week in jail, dozens of court appearances, and almost two years of indictment. Even then, the bank continued to assert the plaintiff's guilt.

The plaintiff filed suit in the 62nd District Court of Hopkins County, accusing the defendant of malicious prosecution. The plaintiff sought recovery of compensatory damages for physical pain and mental anguish, damage to his reputation, as well as punitive damages for defendant's false accusations and bully tactics employed by bank officials. The defendant denied the accusation.

At trial, the plaintiff showed that the defendant had provided police with a written security agreement that referred to "All equipment now or hereafter owned," and included specific mention of the Toyota 16-needle embroidery machine, but did not specify any other equipment. The defendant asserted that when making their report to the police, they informed the authorities that the machine had been returned, and that they were seeking other collateral. However, the police testified that had this been the case, the officer would have noted this in his report. That report, prepared on the same date the officer met with the banker, stated that no collateral on the loan had been returned. The plaintiff argued this as the bank's failure to fully and fairly disclose all material information to the police, as the bank gave this agreement to the police which identified the embroidery machine as collateral without explaining that it was (allegedly) other equipment that they were concerned about.

The plaintiff also showed that the defendant told the authorities that the collateral was worth $23,100. However, the bank's own records showed that the alleged collateral (other than the machine) was worth approximately $5000, and the machine was worth $8000.

After a week of trial, the jury returned a finding for the plaintiff, Mr. S., who was awarded $900,000 in damages, including $150,000 for physical pain and mental anguish, $250,000 for the damage to his reputation, and $500,000 in punitives.

REFERENCE

John Alexander Smith vs. City National Bank of Sulphur Springs. Case no. CV 40681; Judge Will Biard, 11-24-14.

Attorney for plaintiff: Mark Sudderth of Noteboom: The Law Firm in Hurst, TX. Attorney for defendant: Coy Johnson & Clay Johnson of Johnson & Johnson in Suplhur Springs, TX.

MOTOR VEHICLE NEGLIGENCE

Auto/Bicycle Collision

$30,000 RECOVERY

Motor Vehicle Negligence – Auto/Bicycle collision – Defendant driver fails to stop at a red light while making a right-hand turn – Injuries and medical expenses

Tarrant County, TX

The plaintiffs brought this auto/bicycle collision lawsuit against the defendant for negligence when he failed to keep a lookout for the minor plaintiff, a 12-year-old female, who was riding a bicycle. The plaintiffs contended that the defendant driver failed to timely apply the brakes to his pickup truck to avoid hitting the minor plaintiff. As a result of the defendant's negligence, the minor plaintiff sustained injuries and incurred medical expenses. The defendant denied the plaintiffs' allegations.

The plaintiffs alleged that on April 4, 2012, the minor plaintiff was riding her bicycle and traveling east on Mid Cities Boulevard, in Tarrant County, Texas. The plaintiffs contended that the defendant driver was traveling north in his pickup truck on Rufe Snow Drive in the right lane, and maintained that the defendant driver ran the red light and struck the minor plaintiff as she was making a right turn.

The police report stated that the defendant was traveling north on Rufe Snow Drive in the right turn lane to turn right on Mid Cities Boulevard. The minor plaintiff was traveling east on Mid Cities Boulevard and was crossing Rufe Snow Drive and Mid Cities Boulevard. The defendant driver failed to stop at the intersection before turning right at the red light. The minor plaintiff struck the defendant's vehicle on the left rear fender.

The parties reached a settlement in the amount of $30,000.

REFERENCE

Gerald Case, Individually and A/N/F of S.C., Minor vs. Ricky J. Wadley. Case no. 348-260031-12; Judge Dana Womack, 08-14-14.

Attorney for plaintiff: Hilary Cochrane of Ben Abbott, PC in Garland, TX. Attorney for plaintiff Guardian Ad Litem: Mark Mansfield of Mansfield & Mansfield, PC in Hurst, TX. Attorney for defendant: Brad R. Timms of Brackett & Ellis, PC in Fort Worth, TX.

Auto/Pedestrian Collision

$30,000 RECOVERY

Motor Vehicle Negligence – Auto/Pedestrian Collision – Defendant driver runs over minor plaintiff's foot – Foot injuries and medical expenses

Dallas County, TX

In this auto/pedestrian collision case, the plaintiff alleged that her son sustained injuries when the defendant driver ran over the child's foot with his vehicle. The plaintiff maintained that the defendant driver was on the telephone and playing music at a loud level, which prevented him from monitoring his surroundings. As a result of the defendant's negligence, the minor plaintiff sustained injuries to his foot, which required surgery. The defendant denied the plaintiff's allegations, and contended that plaintiff, Sable K., failed to exercise a degree of care and caution in the supervision and care of her son.

The plaintiff, Sable K., alleged that on September 26, 2011, her son was playing outside with a group of fellow children at Bicker Street, in Dallas, Texas. The plaintiff maintained that she was supervising the children, when the minor plaintiff stepped off the curb into a parking lot.

At the same time, the defendant driver was operating his vehicle in the parking lot of an apartment complex. The plaintiff contended that she saw that her son had entered the parking lot and noticed the vehicle driven by the defendant driver had approached her son at a parking lot speed. She began yelling at the defendant driver to stop, but he was on the telephone, and had his music turned up. The plaintiff asserted that when the defendant finally stopped his vehicle, he did so while his vehicle was on the minor plaintiff's foot. The plaintiff had to bang on the defendant's hood to get him to move his vehicle off the child's foot. The minor plaintiff was rushed to the hospital, and sustained injuries to his foot which required surgery.

The parties reached a settlement of $30,000.

REFERENCE

Sable Kelley, Individually and A/N/F of S.G., a minor vs. Gregory G. Green. Case no. CC-13-04124-C; Judge Sally Montgomery, 08-07-14.

Attorney for plaintiff: Jeremy McKey of McKey & Sanchez, PC in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Sherrie R. Abney in Carrollton, TX. Attorney for defendant: Randall G. Walters & Oralia Guzman Petrasek in Dallas, TX.

$30,000 RECOVERY

Motor Vehicle Negligence – Auto/Pedestrian Collision – Minor plaintiff is struck by defendant's vehicle while walking in a crosswalk – Injuries and medical expenses

Tarrant County, TX

The plaintiffs brought this auto/pedestrian collision lawsuit against the defendant driver when he failed to avoid striking plaintiff, Ebony S., and her daughter, while they were walking in a crosswalk. As a result of the collision, the minor plaintiff sustained injuries and incurred medical expenses. The defendant denied the plaintiffs' allegations.

The plaintiffs alleged that on March 7, 2013, the minor plaintiff was struck by the defendant's vehicle while crossing Tuskegee Street with her mother, and asserted that the defendant driver did not see the plaintiff pedestrians, striking them with his vehicle.

The parties reached a settlement in the amount of $30,000.

REFERENCE

Ebony Standback, Individually and A/N/F of M.H., a minor vs. Bobby Landoe Greene. Case no. 67-270657-14; Judge Don Cosby, 08-29-14.

Attorney for plaintiff: Aaron Godsey of Godsey Martin, PC in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Anna Evans Piel in Arlington, TX. Attorney for defendant: Bria L. Hofland in Dallas, TX.

Head-on Collision

CONFIDENTIAL RECOVERY

Motor Vehicle Negligence – Head-on Collision – Defendant driver fails to control his speed while driving in wrong lane of travel – Neck, back, and knee injuries; medical expenses.

Dallas County, TX

The plaintiffs brought this head-on collision lawsuit against the defendant driver for negligence when he failed to control his speed while exciting a parking lot and driving in the wrong lane. The defendant driver struck the plaintiffs' vehicle head-on. As a result of the defendant driver's negligence, the plaintiff sustained injuries to her neck and back. Her daughter, who was a passenger in the vehicle, sustained injuries to her knee. The plaintiffs incurred medical expenses for the treatment of their injuries. The defendant denied the plaintiffs' allegations.

The plaintiff alleged that on November 8, 2013, she was turning left onto West Lovers Lane, in Dallas County, Texas, when the defendant driver unexpectedly exited the parking lot. The plaintiff contended that the defendant driver entered the wrong lane of travel, and was operating his vehicle against the flow of traffic at a high speed, when he struck the plaintiffs' vehicle head-on.

The plaintiff settled for an undisclosed amount. The minor plaintiff had $3,000 in medical bills, and her settlement was $11,000.

REFERENCE

Plaintiff Doe vs. Defendant Roe. Case no. CC-14-00397-B; Judge King Fifer, 09-11-14.

Attorney for plaintiff: Edward W. Sampson in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Al Ellis in Dallas, TX. Attorney for defendant: Alexander G. Blue in Richardson, TX.

Intersection Collision

$8,129 VERDICT

Motor Vehicle Negligence – Intersection Collision – Defendant disregards a red light and enters intersection striking plaintiff's vehicle – Failure to obey a traffic control device – Neck and back disc injuries

Harris County, TX

In this vehicular negligence action, the plaintiff maintained that the defendant disregarded a red light and struck the plaintiff's vehicle which was lawfully traveling through an intersection. The defendant denied disregarding a red light, and claimed that the accident was caused by the negligence of the plaintiff.

On December 23, 2011, the female plaintiff was traveling eastbound on FM 2920 at its intersection with Rhodes Road in Houston, Texas. At the same time and place, the defendant was traveling southbound on Rhodes Road when she ran a red light and struck the plaintiff's vehicle. The plaintiff maintained that the defendant was negligent in disregarding a traffic control device, failing to pay proper attention, driving at an excessive rate of speed, and failing to yield the right of way. As a result of the collision, the plaintiff alleged she suffered a cervical disc herniation and a lumbar disc protrusion. In addition, she suffered an aggravation to degenerative disc disease of the spine. The defendant denied running a red light and argued that the accident was caused by the negligent actions of the plaintiff. In addition, the defendant argued that the plaintiff's injuries were all degenerative in nature, and not causally related to the accident.

The jury found that the defendant was 60% negligent and the plaintiff was 40% negligent in causing the collision. The jury awarded the plaintiff past medical expenses of $8,129, which was reduced by 40% comparative negligence for an award of $4,877.

REFERENCE

Patricia Everett vs. Heather Holland. Case no. 201306486; Judge Alexandra Smoots Hogan, 07-09-14.

Attorney for plaintiff: James Amaro of Amaro Law Firm in Houston, TX. Attorney for defendant: Brian Chandler of Ramey, Chandler, Quinn & Zito, P.C. in Houston, TX.

Left Turn Collision

$28,000 RECOVERY

Motor Vehicle Negligence – Left turn collision – Defendant driver fails to yield right of way while making a left turn – Injuries and medical expenses

Tarrant County, TX

In this "friendly suit", the plaintiffs brought this left turn collision action against the defendant driver for negligence when he failed to yield the right of way while turning left. The minor plaintiff sustained injuries as a result of the collision. The defendant denied the plaintiffs' allegations.

The plaintiffs motioned that on September 11, 2012, the defendant driver, who was traveling west on Clifford Street, made a left turn in front of their vehicle, in which the plaintiff were passengers. The plaintiffs asserted that the defendant driver collided into the vehicle in which they were riding. As a result of the defendant driver's negligence, the minor plaintiff sustained injuries from the collision.

The parties reached a settlement in the amount of $28,000.

REFERENCE

Krysta Mullins, Individually and A/N/F of Mikayla Mullins vs. Russell Smith. Case no. 067-265915-13; Judge Don Cosby, 08-14-14.

Attorney for plaintiff: Brian Mincher of Godsey Martin in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: J. Kevin Carey of Carey Law Firm, PLLC in Fort Worth, TX. Attorney for defendant: Joshua Weems of Law Office of Cherie K. Batsel in Dallas, TX.

$15,147 VERDICT

Motor Vehicle Negligence – Left turn collision – Defendant driver fails to yield right of way to plaintiffs' vehicle while making a U-turn – Injuries and medical expenses

Dallas County, TX

In this left turn collision case, the plaintiffs alleged that the defendant driver failed to yield the right of way to their vehicle while attempting to make a

left turn. As a result of the collision, the plaintiffs sustained injuries and medical expenses. The defendant denied the plaintiffs' allegations.

Plaintiff, Kristin B., alleged that on October 1, 2011, she was traveling on Preston Road, in Dallas, Texas, and plaintiff, Ashley F., was riding as a passenger. The plaintiffs asserted that the defendant driver was traveling in the northbound lane of Preston Road, in the left turn lane, and the plaintiff was in the southbound lane in the same road, in the left turn lane. The plaintiffs contended that the defendant driver failed to yield the right of way when she attempted to make a U-turn and caused a collision.

Prior to trial, plaintiff, Ashley F.'s lawsuit against the defendant was non-suited.The jury found that the defendant was responsible for the occurrence in question, and awarded the plaintiff $13,963 for expenses of past medical care, plus $761 for pre-judgment interest, and $422 for court costs.

REFERENCE

Ashley Raquel Ferguson and Kristin Brown vs. Anne Snell. Case no. CC-12-05114-C; Judge Ted Akin, 08-07-14.

Attorney for plaintiff: Elizabeth A. Miller of Law Office of Roderick C. White in Dallas, TX. Attorney for defendant: Damian A. Perez of Hoagland, Farish & Palmarozzi in Irving, TX.

Parking Lot Collision

$7,420 VERDICT

Motor Vehicle Negligence – Illegal Turn – Defendant makes an improper and illegal turn out of parking lot and strikes plaintiff's vehicle – Negligently making an illegal turn – Injuries to the cervical/lumbar and thoracic spine.

Harris County, TX

The plaintiff, in this vehicular negligence action, maintained he suffered permanent injury to his neck and back when the defendant made an illegal turn out of parking lot and into the plaintiff's vehicle. The defendant denied all allegations of negligence and denied that the plaintiff sustained any serious or permanent injury in the collision.

On July 12, 2011, the male plaintiff was driving on the 13800 block of FM 1092, when suddenly, the defendant made an illegal turn from a parking lot, and collided with the plaintiff's vehicle. The plaintiff maintained that the defendant was negligent in failing to yield the right of way, making an illegal turn from a parking lot, failing to keep a proper lookout, and failing to make a timely application of brakes. As a result of the collision, the plaintiff suffered lumbago, cervicalgia, cervical disc displacement, spinal stenosis, and lumbar sprain. The defendant denied all allegations of negligence and that the plaintiff was injured in the collision. Specifically, the defendant asserted that the accident was unavoidable, and that it was the negligent acts of the plaintiff that caused the collision.

The jury found that the defendant was 87% negligent in causing the collision, and the plaintiff was 13% negligent. The jury awarded the plaintiff $7,420 in damages, which was reduced by 13% for an award of $6,455.

REFERENCE

Amir Khan vs. Pedro Santillan-Plaza. Case no. 201254410; Judge Larry Weiman, 08-01-14.

Attorney for plaintiff: Leonid Kishinevsky in Houston, TX. Attorney for defendant: John W. Palisin in Houston, TX.

Rear End Collision

$39,108 VERDICT

Motor Vehicle Negligence – Rear End Collision – Defendant strikes rear of the plaintiff's stopped vehicle – Failure to make a proper application of the brakes – Internal derangement of jaw – Surgery required – Neck and back pain – Damages only

Harris County, TX

In this vehicular negligence action, the plaintiff argued that as a result of the defendant crashing into the rear of the plaintiff's vehicle, the plaintiff suffered a severe aggravation of a previously asymptomatic jaw condition, causing pain and a locking of the jaw which will require surgery. The plaintiff also suffers from headaches and neck and back pain as a result of the collision. The defendant admitted liability, but denied that the plaintiff sustained any injury in the collision.

On November 4, 2009, the female plaintiff was stopped in traffic on West FM 1960 in Harris County, Texas. Suddenly, and without warning, the plaintiff's vehicle was struck in the rear by the defendant. The plaintiff main-

tained that the defendant was negligent in failing to maintain a proper lookout, failing to make a proper application of the brakes, failing to take proper evasive action to avoid a collision, and negligently operating a vehicle at a speed which was greater than prudent or reasonable. As a result of the collision, the plaintiff suffered exacerbation of internal derangement of the temporomandibular joint, headaches, cervical, thoracic, and lumbar spine pain. The defendant originally made a general denial of all allegations of negligence and injury. Prior to trial, the defendant admitted liability, but denied that the plaintiff sustained any serious or permanent injury in the collision.

The jury found that the defendant's negligence was a factual cause of harm to the plaintiff and awarded the plaintiff $39,108 in damages, of which a little over $26,000 is for future medical expenses.

REFERENCE

Brianna Briggs vs. Linh Doan. Case no. 201159982; Judge Alfred H. Bennett, 07-21-14.

Attorney for plaintiff: Jorge Luis Gomez in Houston, TX. Attorney for defendant: Christopher Michael Rucker of David Black and Associates in Houston, TX.

$3,187 VERDICT

Motor Vehicle Negligence – Rear End Collision – Plaintiff stopped in heavy traffic when struck in rear by defendant – Failure to make a timely application of brakes – Cervical disc injuries – Injections required – Radiculopathy

Harris County, TX

In this vehicular negligence action, the plaintiff maintained that she suffered significant injury to her neck when her stopped vehicle was struck in the rear by the defendant in heavy stop-and-go traffic. The defendant made a general denial of all allegations of negligence and injury.

On November 18, 2011, the female plaintiff was on the exit of Beltway 8 to I-10 South. Traffic was heavy and it was stop-and-go. While the plaintiff was stopped waiting for traffic to move again, her vehicle was struck in the rear by the defendant who was operating a pickup truck. The force of the impact pushed the plaintiff into the vehicle in front of her, and the plaintiff maintained that the defendant, in failing to keep a proper lookout, while traveling at an excessive rate of speed, failed to make a timely application of brakes and to operate the vehicle in accordance with traffic laws and regulations. As a result of the accident, the plaintiff suffered injury to her cervical and lumbar spine with radicular symptoms, as well as sprain and strain to the knee and injury to the right lateral humeral condyle. The defendant denied causing the accident, and supported that the plaintiff was comparatively or contributorily negligent. In addition, the defendant argued that the plaintiff's injuries were exaggerated and not related to the accident.

The jury found that the defendant was negligent and caused harm to the plaintiff. The plaintiff was awarded $3,187 in damages.

REFERENCE

Sharon Khalil vs. Jonathan Godwin. Case no. 201338758; Judge Patricica Kerrigan, 07-17-14.

Attorney for plaintiff: Adam P. Criaco of Criaco & Associates in Houston, TX. Attorney for defendant: Allen Arlen King Jr. in Houston, TX.

CONFIDENTIAL SETTLEMENT

Motor Vehicle Negligence – Rear-End Collision – Defendant driver negligently travels at an unsafe speed – Plaintiff's vehicle explodes from collision – Wrongful death

Dallas County, TX

In this rear-end collision case, the plaintiffs alleged that the defendant, a commercial driver, negligently traveled at an unsafe speed when he slammed into the plaintiff/decedent's vehicle from behind. The plaintiffs maintained that as a result of this impact, the plaintiff/decedent's vehicle exploded. The plaintiffs contended that defendant foundation drilling corporation and defendant waste services group were liable for gross negligence, which caused the death of the plaintiff/decedent when these defendants failed to provide safety training to employees operating vehicles transporting drilling rigs, and failed to timely inspect the drilling rig transport truck in order to discover any dangerous conditions. As a result of the defendant driver's negligence, the plaintiff/decedent and the intervenor/decedent died from the collision. The defendant denied the plaintiffs' allegations.

The plaintiffs alleged that on August 12, 2013, Lorenzo H., the decedent, was traveling on Interstate Highway 45, in Corsicana, Texas, in the course and scope of his employment with defendant foundation drilling corporation. Defendant driver, Victorio C., an employee of defendants waste services group, was operating a commercial vehicle and was traveling behind the plaintiff/decedent. Defendant driver, Victorio C., failed to keep a lookout, was driving at an unsafe speed, and slammed into the rear of plaintiff/decedent's vehicle. The plaintiffs maintained that as a result of the impact, the plaintiff/decedent's vehicle exploded, and the plaintiff/decedent was burned alive and died of his injuries.

Intervenor, Damaris Perez, the Administratrix of the Estate of David P., asserted that David P., a 40-year-old male, was employed by the defendant foundation drilling corporation, and was a passenger in a pickup truck on August 12, 2013, driven by his co-worker, plaintiff Lorenzo H. He maintained that the two men were traveling north on Interstate 45 and following a drilling rig owned by their employer, defendant foundation drilling corporation. The intervenor alleged that near mile marker 234 south of Corsicana, Texas, a tire on the drilling rig blew out. After changing the tire, the drilling rig resumed its travel north, followed by the pickup truck in which the intervenor was a passenger. The intervenor alleged that without warning, the pickup truck was struck in the rear by a Mack truck, owned and operated by defendant waste services group, and driven by defendant, Victorio C., an employee of defendant waste services group, and was propelled into the rear of the drilling rig. The impact was so severe that both the plaintiff/decedent and David P. were trapped in the pickup and unable to escape. Almost immediately, the pickup was engulfed in flames with both men suffering the horrendous fate of being burned alive.

The parties reached a settlement for an undisclosed amount.

REFERENCE

Plaintiff Doe vs. Defendant Roe. Case no. CC-13-04956-E; Judge Mark Greenberg, 08-29-14.

Attorneys for plaintiff: Domingo Garcia & Albert Villegas of Law Offices of Domingo Garcia, PC in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Daniel Perez in Dallas, TX. Attorney for defendant: Mike Bassett & Matthew Samuel in Dallas, TX.

$13,300 VERDICT

Motor Vehicle Negligence – Rear-end collision – Defendant driver fails to maintain a clear distance between both vehicles – Injuries and damages

Dallas County, TX

In this rear-end collision case, the plaintiff alleged that the defendant driver failed to maintain a safe distance between both vehicles causing a collision. The plaintiff sustained injuries and damages as a result of the defendant driver's negligence. The defendant denied the plaintiff's allegations.

The plaintiff alleged that on March 4, 2009, he was traveling on Carrier Parkway, in Grand Prairie, Texas, north of Interstate 20, and that he had turned into a parking lot and had brought his vehicle to a stop due to traffic conditions existing in the lot. While he was stopped, the defendant driver turned his vehicle into the parking lot and rear-ended the plaintiff's vehicle. The plaintiff contended that he was unable to avoid the collision.

The court found that the defendant was negligent in causing damages to the plaintiff, and awarded the plaintiff a total of $13,300 ($8,300 for medical expenses, and $5,000 for pain and suffering).

REFERENCE

Bobby E. Farmer vs. Antwuan Calvin, A/K/A Antwuan Washington, A/K/A Antwon Washington. Case no. CC-11-01554-C; Judge Sally Montgomery, 07-15-14.

Attorney for plaintiff: Pro Se. Attorney for defendant: Pro Se.

$18,748 VERDICT

Motor Vehicle Negligence – Rear-end collision – Defendant causes collision with plaintiff's vehicle when she fails to properly apply her brakes – Injuries and medical expenses

Dallas County, TX

The plaintiff brought this rear-end collision suit against the defendant driver for failing to properly apply her brakes. As a result of the defendant's negligence, the plaintiff suffered physical pain, mental anguish, and incurred medical expenses. The defendant denied the plaintiff's allegations.

The plaintiff alleged that on December 23, 2010, around 6:00 p.m., she was traveling on Preston Road, approached a red traffic signal, and stopped her vehicle. The plaintiff asserted that the defendant driver was also traveling in the same lane directly behind her vehicle. When both vehicles came to a stop, the defendant driver tried to come around the plaintiff's vehicle, when the defendant hit the plaintiff's back right bumper with her front left fender. Neither of the vehicles sustained damage.

The jury found that the defendant was negligent in causing the accident and awarded the plaintiff $15,476 ($4,000 for physical pain and mental anguish sustained in the past; $4,000 for physical pain and mental anguish that the plaintiff will sustain in the future; $7,476 for reasonable and necessary medical care in the past) plus $2,014 for prejudgment interest, and $1,257 for court costs.

REFERENCE

Erlinda Ramirez vs. Valerie Hardison. Case no. CC-12-01292-E; Judge Mark Greenberg, 08-22-14.

Attorney for plaintiff: Hardin R. Ramey of Ramey Law Firm, PLLC in Dallas, TX. Attorneys for defendant: Carlos A. Balido & Ashley Whatley of Walters, Balido & Crain, LLP in Dallas, TX.

DEFENDANTS' VERDICT

Motor Vehicle Negligence – Plaintiff sues defendant driver for failure to yield the right-of-way while backing out of a driveway – Injuries, damages and medical expenses.

Dallas County, TX

The plaintiff driver brought this lawsuit against the defendant driver for negligence, when he failed to yield the right-of-way while backing out of a driveway, causing a collision with the plaintiff's vehicle. The plaintiff sued the owners of the vehicle for negligent entrustment of their vehicle to defendant, Austin I. As a result of the defendant driver's negligence, the plaintiffs sustained injuries, and damages, and incurred medical expenses. The defendants denied the plaintiffs' allegations, and contended that the plaintiffs' injuries were the result of the plaintiff driver's failure to keep a proper lookout for his own safety.

On September 1, 2011, plaintiff, George J., was driving his vehicle on Smokey Mountain Trail, in Mesquite, Texas, and the minor plaintiff was riding as a passenger. At the same time, defendant, Austin I., was driving his vehicle and was backing out of the driveway of his friend's residence onto Smokey Mountain Trail. The plaintiff alleged that he honked his horn, but the defendant driver failed to yield the right-of-way and collided with his vehicle.

A jury of six reached a unanimous verdict in favor of the defendant. The court directed a verdict dismissing the plaintiff's claims against Dewayne and Mechelle I. The jury found that both parties caused the occurrence in question. The percentages of negligence found to be attributable to the occurrence was 75% for the plaintiff, and 25% for the defendant.

REFERENCE

George E. Johnson, Individually and A/N/F of E.J. vs. Austin Ivy, Mechelle L. Ivy and Dewayne G. Ivy. Case no. CC-12-07437-B; Judge King Fifer, 10-31-14.

Attorney for plaintiff: Pro Se. Attorney for defendant: D. Keith Harrison of Gallerson & Yates in Irving, TX.

Single Vehicle Collision

$4,567 RECOVERY

Motor Vehicle Negligence – Defendant driver negligently accelerated his vehicle while pulling into a parking space – Defendant driver hits plaintiff's storefront with vehicle – Building and product damages

Dallas County, TX

In this motor vehicle negligence case, the plaintiff alleged that the defendant driver failed to apply his brakes while parking his vehicle in front of the plaintiff's store. The plaintiff maintained that the defendant driver accelerated the vehicle instead of his applying the brakes. The plaintiff sustained damages to the building and the products inside the store.

On June 5, 2012, defendant, driver Daniel H., was operating a vehicle owned by defendant, Helen T. The plaintiff alleged that the defendant driver was parking his vehicle in front of the building, when he negligently accelerated his vehicle and collided into the storefront, causing damage to the building and the products inside the store. The police report stated that the driver left the scene on foot with the passenger after briefly speaking to an employee. The driver returned to the scene and met with the manager/witness. The witness stated he did not want to file any criminal charges on the driver. The plaintiff maintained that the Dallas police arrived at the scene, and cited the defendant driver for failure to maintain financial responsibility.

The parties agreed to settle for $4,567 plus $439 for court costs.

REFERENCE

7-Eleven, Inc. vs. Daniel G. Hailu and Helen Gebregiorgis Tesfaselase. Case no. CC-14-02663-E; Judge Mark Greenberg, 08-22-14.

Attorney for plaintiff: Richard L. Anderson of Anderson Burns & Vela, LLP in Dallas, TX. Attorney for defendant: Kenneth Sword in Dallas, TX.

$4,000 RECOVERY

Motor Vehicle Negligence – Defendant driver was in process of repossessing the vehicle in which the plaintiffs were passengers – Defendant driver pulls in front of vehicle and negligently proceeds forward causing a collision – Injuries; medical expenses.

Dallas County, TX

In this motor vehicle collision case, the plaintiffs alleged that the defendant driver failed to keep a proper lookout and control his speed while he was in the process of repossessing the vehicle in which the plaintiffs were riding. The defendant driver pulled in front of the vehicle and negligently proceeded forward causing a collision. As a result of the defendant driver's negligence, the minor plaintiffs sustained injuries and incurred medical expenses. The defendant denied the plaintiffs' allegations.

The plaintiffs alleged that on July 23, 2011, around 11:30 a.m., plaintiff, Telisha S., was traveling with Anthony G. in a vehicle, with the plaintiff's daughters riding as passengers. Plaintiff, Telisha S., maintained that Anthony G. had stopped to get gas at a station on CF Hawn Freeway, in Dallas, Texas. The defendant, who was operating a pickup truck, under the employment of defendant motor corporation, was in the process of repossessing the vehicle in which the plaintiffs were riding. The defendant driver pulled in front of the plaintiffs' vehicle and proceeded forward resulting in the defendant driver colliding into the vehicle.

The parties reached a settlement agreement of $4,000 for the plaintiffs.

REFERENCE

Telisha Sims, A/N/F to M.F, M.M and M.M, minors vs. Mega Motors, Inc. and Rawicus Demun Jackson. Case no. CC-14-01295-C; Judge Sally Montgomery, 08-21-14.

Attorney for plaintiff: Steven L. Eason of Law Offices of Fuller & Eason in Dallas, TX. Attorney for defendant: Philip K. Bcan of The Bassett Firm in Dallas, TX.

$132,474 BENCH VERDICT

Motor Vehicle Negligence – Single vehicle collision – Plaintiff/passenger sues intoxicated defendant driver due to negligent reckless driving and operating a vehicle under influence of alcohol – Plaintiff sues defendant driver's father for negligent entrustment – Injuries and medical expenses

Harris County, TX

The plaintiff brought this single vehicle collision action against the defendant driver due to negligent reckless driving and operating a vehicle under the influence of alcohol. The plaintiff also sued the defendant driver's father, defendant, Robert C., for allowing his son to heavily drink at his home and take the vehicle, when he knew he was unable to operate it in a responsible manner. Defendants, Guadalupe and Christine M., were the owners of the property where the defendant had been drinking, and who had a history of drinking heavily on the property. The plaintiff sustained injuries, damages, and medical expenses. The defendants denied the plaintiff's allegations.

The plaintiff alleged that on August 8, 2011, he was riding in defendant, Adrian C.'s, vehicle and traveling on Navigation Road, in Harris County, Texas, when defendant, Adrian C., caused a collision. The plaintiff asserted that the defendant driver ran off the roadway and hit a pole so hard it caused the pole to be ripped out of the ground, snapping in half. The plaintiff contended that he was stuck inside the vehicle that was smoking and had to be pulled out. The defendant driver was intoxicated and arrested for driving under the influence of alcohol. The plaintiff maintained that prior to the collision, the defendant driver had been drinking in his father's home, who allowed his son to drink heavily and take the car, knowing he was unable to drive in a responsible manner.

The court awarded a total of $132,474 for the plaintiff and against defendant, Adrian C., ($102,474 for damages incurred in the past and $30,000 for damages incurred in the future). The plaintiff took nothing in his claims against defendants, Robert C., Christine M., and Guadalupe M.

REFERENCE

Ricardo Monroy, Jr. vs. Adrian Cantu, et al. Case no. 2012-46449; Judge Robert K. Schaffer, 07-15-14.

Attorney for plaintiff: Rico C. Reyes of Rico C. Reyes & Associates in Houston, TX. Attorney for defendant: Pro Se.

PERSONAL NEGLIGENCE

$39,619.53 VERDICT

Personal Negligence – Plaintiffs sue defendant for not properly securing or supervising his mule – Plaintiff is kicked by defendant's mule – Ribs, neck, back, arm, and lung injuries; medical expenses

Tarrant County, TX

The plaintiffs brought this personal negligence lawsuit against the defendant for damages when he failed to use reasonable care to prevent his mule from injuring the plaintiff. The plaintiff contended that the defendant's mule was not properly secured or supervised when it kicked the plaintiff, who was kicked in the right side of her body, including her right arm and torso, and underneath her right shoulder blade. When the defendant's mule kicked the plaintiff, this caused her to slam into the metal trailer and then to the ground. She sustained severe and permanent damage to her ribs, neck, back, arm, and punctured lung. The defendant denied the plaintiffs' allegations, and contended that the plaintiff's injuries were due to her own negligence and failure to use ordinary care as she knew horses and mules were in the area.

The plaintiffs alleged that on January 12, 2008, plaintiff, Beverly P., participated in the Fort Worth Stock Show parade by riding her horse. The plaintiff contended that the defendant also participated in the show's parade by riding his mammoth mule. When the parade ended, the plaintiff alleged that she returned to her horse trailer at LaGrave Field to unsaddle her horse and to put the horse in the stock panels which she had constructed next to her own trailer for her protection, as well as others. The plaintiff maintained that as she was behind her trailer in the rear tack room, she was putting her head stall into the tack hangers of her trailer, when the defendant's mule kicked her with both feet. The plaintiff sustained broken ribs, as well as life threatening and permanent injuries, and contended that the defendant's mule kicked her so hard she ended up almost all the way under her trailer. The mule was not secured or supervised adequately when it kicked the plaintiff.

The jury apportioned liability of 60% against the defendant, and 40% against the plaintiff. The jury found in favor of the plaintiffs for $29,100 in damages, which represented 60% of the total damages awarded, plus prejudgment interest of $8,753, plus court costs of $1,765.

REFERENCE

Beverly Petty and Rod Petty vs. Rick L. Miller. Case no. 048-238883-09; Judge David Evans, 08-29-14.

Attorney for plaintiff: Susan E. Hutchison of Eberstein & Witherite, LLP in Fort Worth, TX. Attorney for defendant: Robert B. Wagstaff and Rick L. Miller of McMahon Surovik Suttle, PC in Abilene, TX.

PREMISES LIABILITY

Fall Down

DEFENSE SUMMARY JUDGMENT

Personal Injury – Tyson Foods granted summary judgment in slip and fall case – Back injury

Northern District County, TX

In this action a man sued his former employer after suffering an injury on the job. The matter was resolved through a summary judgment in the defendant's favor.

The plaintiff, Billy W., is a former employee at the defendant, Tyson Foods plant in Vernon, Texas. The defendant is one of the largest food processors in the United States. The plaintiff sustained a back injury on the job while walking down steps at the plant.

The plaintiff filed suit in the Northern District of Texas, Wichita Falls Division, for premises liability, naming as defendant Tyson Foods, Inc. The plaintiff sought damages from defendant for medical expenses, lost wages, pain and suffering, mental anguish, disfigurement, and impairment. The defendant asserted that Billy W. had participated in an employee benefit plan with them, through which he received medical and other benefits in exchange for agreeing to resolve all disputes with his employer arising from the incident outside of the court system.

At trial, plaintiff asserted that he either did not have knowledge of his agreement with his employer, or, in the alternative, that the agreement was reached under duress.

The matter was resolved when the defendant's motion for summary judgment was granted by the federal judge. The court determined that plaintiff failed to raise a genuine issue of material fact on the question of whether he previously agreed to exchange his right to sue his employer for medical and other benefits that were provided to him following the workplace injury incident. The decision states that there was no evidence of artifice or trickery presented by plaintiff, and therefore, the common-law presumption that plaintiff had read and understood the agreement that he signed was applicable.

REFERENCE

William Walkup vs. Tyson Foods, Inc. Case no. 7:13-cv-0150-O; Judge Honorable Reed O'Connor, 09-26-14.

Attorney for plaintiff: Eric Marye of The Marye Firm in Dallas, TX. Attorneys for defendant: Zach T. Mayer & Brian J. Fisher of Kane Russell Coleman & Logan, P.C. in Dallas, TX.

Falling Object

$32,500 RECOVERY

Premises Liability – Falling object – Minor Plaintiff knocked to ground by wood retaining wall structure on defendants' premises – Head injuries; medical expenses

Dallas County, TX

In this premises liability lawsuit, the plaintiffs alleged that they were business invitees at defendant's funeral home, when a retaining wall structure fell where the minor plaintiff was playing. The minor plaintiff was knocked to the ground and struck in the forehead by part of the wood retaining wall structure. The plaintiffs contended that the defendants failed to keep the structure in good repair, and denied the plaintiffs' allegations.

The plaintiffs alleged that on June 8, 2011, they were business invitees at defendant Grove Hill Memorial Park, in Dallas, Texas, for the purpose of attending a funeral for minor plaintiff, Ariana D.'s, mother. The plaintiffs maintained that while the funeral attendees were being ushered into the funeral home, the minor plaintiff, a five-year-old female, was playing near a retaining wall, and without warning, the wall structured was compromised, and the minor plaintiff was knocked to the ground and struck in the forehead by part of the wood retaining the structure.

Defendants, Hughes Family Funeral Home, and R. W. Hughes Group, LLC, agreed to settle with the plaintiffs for $32,500.

REFERENCE

Maria P. Gonzalez, Individually, A/N/F of A. D., a minor vs. Hughes Funeral Home, Inc., The R.W. Hughes Group, L.L.C., HFJC Holdings, Inc., Ed C. Smith & Brothers Funeral Directors, James E. Breaux, Debra Breaux, Josephine I. Emmett, Grove Hill Memorial Park, Dignity Memorial Network, Inc., SCI Texas Funeral Services, Inc. and Service Corporation, Inc. Case no. CC-13-03451-A; Judge D'Metria Benson, 10-17-14.

Attorney for plaintiff: Joshua Klinck of Law Offices of Eric Cedillo, PC in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Cynthia Solls in Dallas, TX. Attorney for defendant: James Bertsch & Timothy Smith in Dallas, TX.

$5,000 VERDICT

Premises Liability – Falling Object – Defendant hotel fails to warn plaintiff of condition of bathroom stall – Fails to make premises safe – Left foot injuries and medical expenses

Dallas County, TX

The plaintiff brought this premises liability action against the defendant for negligence, when it failed to warn the plaintiff of the condition of the bathroom stall, and declined to make the condition safe. As a result of the defendant's negligence, the plaintiff sustained left foot injuries and incurred medical expenses. The defendant denied liability alleged by the plaintiff, and contended that the plaintiff failed to use caution, which caused or contributed to her injuries.

The plaintiff purported that on July 10, 2009, she was on the premises of defendant's hotel, in Dallas, Texas, as an invitee, and that while she was using the bathroom facilities in the main lobby of the hotel, a metal trash can that sat in a metal box attached to the bathroom stall door, fell and landed on her left foot. The plaintiff supported that this incident caused her injuries and damages.

The jury found that the defendant caused the occurrence, and awarded the plaintiff $5,000 for physical pain and mental anguish sustained in the past.

REFERENCE

Thandi Zulu vs. Anatole Partners III, LLC. Case no. CC-11-04360-E; Judge Mark Greenberg, 08-22-14.

Attorney for plaintiff: Evan Lane (Van) Shaw of Law Offices of Van Shaw in Dallas, TX. Attorney for defendant: John R. Lawson of Law Office of Gallerson & Yates in Irving, TX.

Negligent Supervision

$7,500 RECOVERY

Premises Liability – Negligent Supervision – Minor plaintiff sustains arm injuries while in the care of defendant 's daycare personnel – Broken right arm and medical expenses

Tarrant County, TX

The plaintiffs brought this premises liability action against the defendant fitness center, when its personnel failed to supervise the minor plaintiff. As a result of the defendant's negligence, the minor plaintiff sustained a broken right arm, incurring medical expenses. The defendant denied the plaintiffs' allegations.

The plaintiffs alleged that on October 15, 2012, the minor plaintiff, a nine-year old male, was an invitee on the defendant's premises, and in the care of defendant's daycare personnel. The plaintiffs asserted that the minor plaintiff was injured on a slide when two larger children slid down too close to him, causing him to fall off the slide. The parties reached a settlement in the amount of $7,500.

REFERENCE

Kristin Taylor, Individually and A/N/F of H.T., a minor vs. L. A. Fitness International, LLC. Case no. 067-270543; Judge Don Cosby, 08-27-14.

Attorney for plaintiff: Chelsea Tucker of Jim S. Adler, PC & Associates in Dallas, TX. Attorney for plaintiff Guardian Ad Litem: Anna Evans Piel in Arlington, TX. Attorney for defendant: Steven A. Springer of Fee, Smith, Sharp & Vitullo, LLP in Dallas, TX.

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

Supplemental Verdict Digest

MEDICAL MALPRACTICE

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

Bucks County, PA

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

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

REFERENCE

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

Attorney for plaintiff: Thomas Kline of Kline & Specter, P.C. in Philadelphia, PA. Attorney for defendant: Joan Orsini Ford of Marshall Dennehey in King of Prussia, PA. Attorney for defendant: John F.X. Monaghan of Harvey

Pennington in Philadelphia, PA. Attorney for defendant: Mary Reilly of Post & Schell, P.C. in Philadelphia, PA. Attorney for defendant: William Pugh of Kane, Pugh, Knoell, Troy & Kramer LLP in Norristown, PA.

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

Hartford County, CT

This was a medical malpractice action involving a then 40-year-old female patient who contended that in August, 2000, the defendant radiologist negligently interpreted a mammogram spot compression and lateral views. The plaintiff maintained that as a result of the defendant's negligence, there was an approximate ten-month delay in diagnosis, allowing the cancer to progress from a very treatable II cancer to a stage III cancer, which spread to six out of 24 lymph nodes. The patient died from the cancer in July of 2009 at the age of 49. She left a husband and two teen-aged children. The defendant maintained that despite his findings of a normal mammogram, he told the plaintiff to return in four months for a further mammogram on her right breast. The defendant contended that he mentioned in his report that he would recommend that the plaintiff return in four months, however, the defendant was unable to produce copies of any correspondence sent to the plaintiff advising her to follow-up.

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

REFERENCE

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

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

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

Queens County, NY

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

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

handicapped home renovations; $150,000 to the wife for loss of society and consortium; $25,000 to the wife for loss of past household services and $3,500 per year for 26.6 years with a 1% growth rate to the wife for future loss of household services.

REFERENCE

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

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

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

Ocean County, NJ

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

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

REFERENCE

Plaintiff Doe vs Defendant Roe.

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

PRODUCTS LIABILITY

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

Dallas County, TX

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

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

REFERENCE

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

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

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

Hillsborough County, FL

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

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

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

REFERENCE

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

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

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

Kings County, NY

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

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

REFERENCE

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

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

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

Fairfield County, CT

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

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

REFERENCE

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

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

MOTOR VEHICLE NEGLIGENCE

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

Orange County, FL

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

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

REFERENCE

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

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

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

Bergen County, NJ

The male plaintiff in his early 30s contended that after he completed crossing approximately three quarters of the roadway in the crosswalk, the defendant bus driver, who was making a left turn, struck him. The plaintiff contended that the bus driver did not see him and that he continued driving approximately 50 feet after the impact.

Upon hearing a "thud," the bus driver stopped and saw that the plaintiff was stuck beneath the bus' wheel well. The bus driver then had to back the bus approximately three feet off him, and the plaintiff maintained that he was still under the front bumper of the bus, even when the bus was rolled back. The plaintiff maintained that as a result, he suffered a severe wound to the left lower quadrant of the abdomen, requiring both the installation of a wound vacuum device, as well as a skin graft. The evidence reflected that upon admission, tire treads were noted on the plaintiff's back. The plaintiff also stated that he suffered cervical and lumbar herniations, and needed an anterior cervical discectomy, fusion surgery, and instrumentation with reconstruction, including a lumbar decompression and fusion. The plaintiff maintained that despite the surgeries, he will permanently suffer extensive pain and weakness. The defendant argued that based upon the estimated speed and distances as reported by the parties and eyewitnesses on the bus, the plaintiff was crossing outside of the crossing.

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

REFERENCE

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

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

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

Nassau County, NY

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

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

REFERENCE

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

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

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

Allegheny County, PA

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

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

REFERENCE

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

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

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

PREMISES LIABILITY

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

Bergen County, NJ

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

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

REFERENCE

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

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

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

Palm Beach County, FL

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

The named defendants included: The Diocese of Palm Beach; general contractor, Hunter Construction Services, Inc. and Civil Cadd Engineering, Inc., who was the subcontractor who built the sidewalk. The plaintiff sought recovery of damages for past and future medical treatment, past lost wages, and past and future pain and suffering. The defendant Civil Cadd settled with the plaintiff and the remaining defendants denied liability.

The defendants offered as much as $500,000 for settlement. Ultimately, defendants Hunter and the Diocese conceded liability, and the trial commenced solely on the subject of damages. After four days, the jury returned a finding for the plaintiff, who was awarded over $2,500,000 in damages.

REFERENCE

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

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

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

Dallas County, TX

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

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

REFERENCE

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

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

ADDITIONAL VERDICTS OF INTEREST

Contract

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

Withheld County, VT

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

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

REFERENCE

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

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

Employment Law

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

Smith County, TX

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

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

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

REFERENCE

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

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

Fraud

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

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

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

In December 2013, the court concluded that defendant had acted to free substantially all of its assets with the intent to hinder or delay creditors, including those resulting from 85 years of environmental and tort liability. The matter was ultimately resolved via $5.15 billion settlement agreement. Of the total amount, $4.4 billion will be paid to fund environmental clean-up and for environmental claims, pursuant to a 2011 agreement between the United States, certain state, local and tribal governments, and the bankruptcy estate.

REFERENCE

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

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

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

Philadelphia County, PA

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

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

REFERENCE

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

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

Notes:

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