FLORIDA
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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

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Summaries with Trial Analysis

$3,000,000 RECOVERY – DOJ – FALSE CLAIMS – IMPORTERS ACCUSED OF EVADING CUSTOMS DUTIES – ALLEGED VIOLATION OF FALSE CLAIMS ACT

Middle District County, FL

In this action, the United States accused several companies of mislabeling their products country of origin. The matter was resolved through a series of settlements.

The defendant California-based, C.R. Laurence Co. Inc., Florida-based Southeastern Aluminum Products Inc., and Texas-based, Waterfall Group, LLC, sell shower doors and shower enclosures made with aluminum extrusions, manufactured by Tai Shan Golden Gain Aluminum Products, Ltd in the People's Republic of China (PRC). The defendants allegedly made false declarations to the U.S. Department of Homeland Security's Customs and Border Protection (CBP) to avoid paying anti-dumping and countervailing duties on aluminum extrusions imported from the manufacturer. Specifically, the defendants allegedly misrepresented the extrusions', "country of origin" as Malaysia, when the goods were manufactured in the PRC, and merely shipped through Malaysia, a practice called "transshipping," Imports of PRC-manufactured aluminum extrusions have been subject to anti-dumping and countervailing duties since 2010. No such duties are due on imports of such items from Malaysia.

The whistleblower, James F. V. Jr., filed suit in the U.S. District Court for the Middle District of Florida under the qui tam provisions of the False Claims Act. The United States later intervened in the case, accusing the defendant of violating the False Claims Act through their misinterpretation of their items "country of origin," purchasing PRC-made aluminum extrusions imported by other domestic companies, and caused or conspired with those importers to make false declarations to CBP to evade duties.

The matter was resolved through a series of settlements, with the defendants, C.R. Laurence, Southeastern Aluminum, and Waterfall, agreeing to pay $2,300,000, $650,000 and $100,000, respectively. The whistleblower will receive $555,100 of these settlements. The settlement resolved the allegations with no admission or determination of liability.

REFERENCE

United States ex rel. Valenti vs. Tai Shan Golden Gain Aluminum Products Ltd., et al. Case no. 11-cv-00368, 02-12-15.

Attorneys for plaintiff: Judith Rabinowitz, Christelle Klovers & Michael D. Granston of U.S. Department of Justice - Civil Division in San Francisco, CA. Attorney for plaintiff: Ronnie S. Carter of U.S. Attorney's Office in Jacksonville, FL.

COMMENTARY

According to the U.S. Department of Justice (DOJ), The Department of Commerce assesses, and CBP collects, antidumping and countervailing duties to protect U.S. businesses and level the playing field for domestic products. The DOJ states that antidumping duties protect against foreign companies "dumping" products on U.S. markets at prices below cost, while countervailing duties offset foreign government subsidies.

$1,155,806 GROSS VERDICT – PREMISES LIABILITY – FAILURE TO PROVIDE SLIP-RESISTANT SURFACE NEAR HOTEL ICE MACHINE – SLIP AND FALL – LUMBAR AND SHOULDER INJURIES – 10% COMPARATIVE NEGLIGENCE FOUND

Broward County, FL

The plaintiff was eight months pregnant with her third child when she slipped and fell near an ice machine in the defendant's hotel. The plaintiff alleged that the standard of care required that the floor at a hotel ice machine be slip-resistant, or has carpeting or mats. The defendant argued that the plaintiff was solely negligent, and/or comparatively negligent, and disputed the injuries which she claimed as a result of the fall.

The plaintiff was 29 years old and single at the time of the fall on June 7, 2007. She complained of shoulder and low back pain, and was transported to the emergency room by paramedics. The plaintiff was treated and released from the hospital with instructions to follow-up with her primary care physician. She was subsequently diagnosed with lumbar disc bulges and facet hypertrophy, which she claimed was caused by the subject fall.

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The plaintiff alleged that the injuries sustained in the hotel fall caused a gait change, which made her susceptible to falling; resulting in a fall down the stairs at her boyfriend's house approximately two months after the subject fall, and while she was still under treatment for the first fall.

The plaintiff underwent a series of injections (totaling 17 injections), including epidurals, sacroiliac injections, and facet nerve blocks. The plaintiff testified that none of the injections resolved her pain, and she continues to suffer persistent low back pain with radiculopathy.

The defendant argued that the plaintiff's subsequent fall at her boyfriend's house was unrelated to the subject fall, and the subsequent fall resulted in her symptoms. Evidence also showed that, in May of 2009, the plaintiff was in a car accident. The plaintiff then cancelled a physical therapy appointment, stating that the car accident worsened her back pain, although she did not disclose the car accident to any other doctor whom she later saw, according to evidence offered by the defendant.

The plaintiff missed approximately 70 days of work over the course of seven years as a result of the hotel fall. She was making more money at the time of trial as a deli manager than she earned at the time of the fall, and she had been promoted since the subject slip and fall.

The defense additionally argued that a 2002 intake form indicated that the plaintiff suffered from sickle cell anemia, which could account for her complaints of continuing pain. The plaintiff countered that she actually had iron deficient anemia, not sickle cell anemia.

The jury found the defendant 90% negligent and the plaintiff 10% comparatively negligent. The plaintiff was awarded $1,155,806 in damages, reduced accordingly. The case is currently on appeal.

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REFERENCE

Plaintiff's pain management expert: Scott Berger from Boca Raton, FL. Defendant's orthopedic surgery expert: Alan Routman from Fort Lauderdale, FL.

Johnson vs. Tamarac Hotels, Inc. Case no. 2010CA 045804; Judge Thomas Lynch, IV, 11-03-14.

Attorneys for plaintiff: Dan Cytryn and Edgar Velazquez of Law Offices of Cytryn & Velazquez, P.A. in Coral Springs, FL. Attorney for defendant: C. Richard Fulmer, Jr. of Fulmer, Leroy, Albee, Baumann & Glass in Fort Lauderdale, FL.

COMMENTARY

The bulk of this premises liability trial was conducted by video depositions and reading of deposition transcripts. Plaintiff's counsel called only three live witnesses: The plaintiff, her minor son, and a medical expert.

The defense called only a live medical expert in an attempt to refute the plaintiff's claimed fall-related injuries.

Interestingly, the jury, which returned a favorable plaintiff's verdict, included a registered nurse and a worker's compensation adjuster; professions typically seen as "defense friendly." The plaintiff had served a proposal for settlement that was less than half of the verdict obtained at trial.

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$1,496,750 VERDICT – MOTOR VEHICLE NEGLIGENCE – UNINSURED MOTORIST CLAIM - REAR END COLLISION – LUMBAR DISC HERNIATION – DROP FOOT TO PLAINTIFF ATTORNEY – DAMAGES/CAUSATION ONLY

Broward County, FL

The plaintiff was a 37-year-old male criminal defense attorney whose car was stopped at a stop sign, when it was impacted from behind by an uninsured motorist. The plaintiff pursued this action against the automobile insurance carrier, which had issued his UM/UIM coverage. The defendant insurance company stipulated that the tortfeasor was negligent in causing the collision, however, the defense disputed the extent and nature of the injuries and damages which the plaintiff suffered as a result.

The collision occurred in June of 2008 in Coral Springs, Florida. The plaintiff was diagnosed with a lumbar disc herniation and radiculopathy, which his physician causally related to the accident. In addition, he claimed that an extruded disc caused loss in nerve function, and a permanent left foot drop. He underwent a lumbar laminectomy at the L4-L5 level of his spine, and his orthopedic surgeon opined that future lumbar surgery is indicated. The plaintiff testified that he had no significant back pain before the date of the collision.

The plaintiff returned to his practice as a criminal defense attorney, and made no claim for loss of future wages. He complained of ongoing back pain and limitation of physical activities.

The defendant maintained that the impact to the back of the plaintiff's car was light, and argued that the plaintiff's complaints stemmed from preexisting degenerative conditions and/or an intervening injury after the subject accident. The defense stressed that the plaintiff did not seek medical treatment for some three months, post-accident.

The jury found that the plaintiff sustained a permanent injury as a result of the accident, and awarded him $1,496,750 in damages.

REFERENCE

Plaintiff's accident reconstruction expert: Donald Felicella from West Palm Beach, FL. Plaintiff's neuroradiology expert: Kenneth Stein from Fort Lauderdale, FL. Plaintiff's orthopedic surgery expert: Benham Myers from Hollywood, FL. Plaintiff's spinal surgery expert: Jeffrey Cantor from Fort Lauderdale, FL. Defendant's biomedical engineering expert: Anastasios Tsoumanis from Deerfield Beach, FL. Defendant's orthopedic surgery expert: Stephen Jacobs from Plantation, FL.

Plaintiff vs. 21st Century Insurance co. of California. Case no. CACE 09-046947; Judge Mily Rodriguez Powell, 08-24-14.

Attorney for plaintiff: Bradley Winston of Winston & Wigand in Fort Lauderdale, FL. Attorneys for plaintiff: Kenneth Cohen and Stewart Valencia of Holman, Cohen & Valencia in Hollywood, FL.

COMMENTARY

The applicable uninsured motorist policy had a $100,000 limit, and the $1,496,750 damage award creates an excess judgment situation. However, the plaintiff's bad faith insurance action has been pending the defendant's appeal of the verdict.

The case was vigorously fought on causation and damages, and the defense hired a private investigator to record surveillance video of the plaintiff. However, those surveillance videos were not submitted into evidence; leading one to believe that they would have supported the plaintiff's claims of injury, pain, and physical limitations.

The plaintiff's counsel was also able to negate the opinion of the defendant's biomechanical engineer regarding the severity of the impact, by introducing an accident reconstruction expert, as well as extensive photographs of damage to the plaintiff's vehicle, and its undercarriage. The bulk of the damage award ($955.000) was slated for the cost of future care, including additional lumbar surgery.

$1,000,000 RECOVERY – NEGLIGENT SECURITY – SHOOTING OUTSIDE WEST PALM BEACH NIGHTCLUB – WRONGFUL DEATH OF 19-YEAR-OLD

Palm Beach County, FL

The estate of the 19-year-old male decedent contended that he was an innocent bystander outside a nightclub located in a West Palm Beach mall owned and managed by the defendants when he was shot and killed. The plaintiff alleged that the shooting occurred as a result of the defendant's failure to provide adequate security at the premises. The defendants contended that the (uninsured) bar assumed security for the area in front of its premises. The defense also argued that the decedent was a participant in the altercation, which led to the fatal shooting and that the incident could not have been prevented by additional security.

The plaintiff alleged that the decedent happened to be outside the bar in the parking lot in June of 2008 when an altercation took place. The nightclub employed security personnel "bouncers" inside the bar, but there were none outside the bar. The incident was captured on security video and showed two different groups of individuals smoking cigarettes at a table in the parking lot. Words were exchanged and pushing began followed

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by the throwing of a water bottle. Punches were exchanged and the shooter went to his truck, retrieved a gun, and began randomly shooting at the other group.

The plaintiff alleged that the premises was located in a high crime area with several violent crimes occurring in the three years prior to the subject shooting, including another shooting death less than a year earlier.

The decedent was shot twice in the chest and was pronounced dead upon arrival at the hospital. He was an undocumented alien from Honduras, and was not employed. The decedent lived with his brother and was survived by his parents who resided in Honduras.

The defendant argued that the co-defendant bar had undertaken security in the area in front of its business as it had placed tables there and used that area for customers to gather and smoke.

The defense also maintained that the plaintiff was involved in the brawl, and that the crime was one of passion and could not have been prevented by additional security.

The case was settled prior to trial for a total of $1,000,000.

Attorneys for plaintiff: Joseph P. D'Ambrosio and Sean L. Wilson of D'Ambrosio & Wilson in Delray Beach, FL. Attorney for plaintiff: Joel S. Perwin of Joel S. Perwin, P.A., in Miami, FL.

COMMENTARY

Although a provision in the lease assigned responsibility for security of the common areas to the defendant landlord, the landlord argued that the (uninsured) bar used the area in front of its establishment for the convenience of its customers and therefore, had undertaken its security.

However, on the plaintiff's motion for partial summary judgment, the court ruled that the defendant property owner had a non-delegable duty to ensure that its premises were safe. Thus, even if the bar had been found partially responsible as a Fabre defendant, the defendant property owner would still have been joint and severally liable.

The court also made a pre-trial ruling that the decedent's parents, who resided in Honduras and were financially assisted by the decedent, would be permitted to testify via live Skype had the case proceeded to trial.

Following these important rulings, the case settled without the necessity of trial for a total of $1,000,000. The shooter reportedly fled to Mexico where he was arrested on drug charges with Palm Beach County extradition efforts being attempted.

REFERENCE

Estate of Santos-Vasquez vs. Defendants. Case no. 09-1679; Judge Lucy Chernow Brown, 09-10-15.

$806,289 VERDICT – NEGLIGENT SECURITY – PLAINTIFF BEATEN WITH POOL STICKS AT HOLLYWOOD BAR – MAXILLA (UPPER JAW) FRACTURE – RECONSTRUCTIVE JAW SURGERY PERFORMED – DENTAL INJURIES – DAMAGES/CAUSATION ONLY

Broward County, FL

The plaintiff alleged that the defendant failed to have adequate security at its Hollywood, Florida, bar, resulting in the plaintiff being beaten unconscious with pool sticks. A default was entered against the defendant on liability, and the case was heard on the issue of damages and causation only. The defense disputed the severity of the injuries suffered by the plaintiff as a result of the incident.

The plaintiff was a 40-year-old male who worked for a landscaping company at the time of the incident on October 17, 2012. He testified that he was a patron at the defendants bar when he was attacked by several other patrons with pool sticks. The plaintiff alleged that he was beaten about the head and face with the sticks, until he ultimately lost consciousness, alleging that his assailants had a history of criminal behavior and violence, which was known to the defendant bar. The plaintiff maintained that the bar lacked adequate security to protect the plaintiff and other patrons.

The plaintiff was transported from the defendant's bar to the emergency room by ambulance, and was diagnosed with a fracture of the maxilla (upper jaw), which required multiple surgical procedures, including jaw wiring and the implantation of titanium plates. He also claimed dental injuries, including fracture of several teeth.

The defendant maintained that a police report documented that the plaintiff was not seriously injured during the altercation at the defendant's bar. The defense contended that the plaintiff's jaw fracture, and other serious injuries, occurred subsequently at another location.

The jury found for the plaintiff in the amount of $806,289.

REFERENCE

Barnes vs. Princes' Beach Bar d/b/a DP's. Case no. CACE 13-022624; Judge Carol-Lisa Phillips, 10-17-14.

Attorneys for plaintiff: Bradley J. Edwards and Gabriel F. Zambrano of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman in Fort Lauderdale, FL.

COMMENTARY

In light of a default judgment on liability, the defense raised a causation and damage defense and challenged the plaintiff to prove that his significant jaw fracture and dental injuries occurred at its Hollywood bar.

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In this regard, the plaintiff's counsel was able to introduce contemporaneous medical records documenting medical care and treatment received by the plaintiff immediately following the event. The records reflected the time and location of the attack and supported the plaintiff's assertions.

The plaintiff's motion to tax costs was granted. The defendant's motion for rehearing, reconsideration, and new trial, was denied on December 16, 2014.

$620,000 VERDICT – MEDICAL MALPRACTICE – PHARMACY NEGLIGENCE – WRONG DOSAGE OF METHOTREXATE – METHOTREXATE NEUROTOXICITY – BRAIN INJURY – TOTAL DISABILITY FROM EMPLOYMENT CLAIMED

Miami-Dade County, FL

The plaintiff brought this action against the defendant, Wal Mart Stores East LP, after the defendant's pharmacy made a mistake in filling the plaintiff's prescription for Methotrexate. The plaintiff claimed that overdose of the medication caused methotrexate neurotoxicity, and a permanent, disabling brain injury. The defendant stipulated to negligence, but denied that the plaintiff sustained a brain injury, or other permanent injury, as a result of the pharmaceutical mistake.

Methotrexate was developed for use as a chemotherapy drug, but is also used to treat inflammation associated with rheumatoid arthritis, and was prescribed to the plaintiff for that purpose.

Evidence showed that Methotrexate was prescribed for the plaintiff to be taken once per week, six pills every Wednesday. However, the defendant's pharmacist mistakenly labeled the pills to be taken six pills per day. Based on the label instruction, the plaintiff took the Methotrexate six pills per day for 5 days, until the 30-day supply was exhausted.

The plaintiff experienced lesions in her mouth and returned to her physician who instructed her to retrieve the Methotrexate pill bottle, and discovered the pharmaceutical error. The plaintiff was immediately admitted to the hospital for detoxification of the Methotrexate.

The plaintiff's expert testified that overdose of the drug caused the plaintiff to suffered Methotrexate neurotoxicity, resulting in neurological damage to the brain and memory loss. The plaintiff argued that medical literature shows that neurotoxicity may result from the drug crossing the blood-brain barrier and damaging neurons in the cerebral cortex. This has been documented in cancer patients who receive the drug and often nickname these effects, "Chemo brain" or "Chemo fog". The plaintiff, a 54-year-old female at the time in question, claimed that her memory problems, and associated neurotoxicity injuries, prevented her from returning to her employment with a dry cleaner. The plaintiff was present, but did not testify at trial.

The defense argued that Methotrexate in the low-dosage, oral form ingested by the plaintiff, was incapable of passing the blood brain barrier, causing neurotoxicity. The only reported cases of neurotoxicity from Methotrexate have been in a hospital setting with very high intravenous dosages associated with cancer treatment, according to the defense.

The defendant's neuropsychologist testified that the plaintiff showed no objective evidence of a brain injury, but exhibited evidence of exaggeration and malingering. The defendant argued that all objective testing, including CT scans and MRIs of the plaintiff's brain were normal.

The defense asserted that the pharmacist who made the error was terminated, and that the plaintiff suffered no permanent injury.

The jury found that the defendant's negligence was a legal cause of injury to the plaintiff and awarded her $620,000 in damages.

REFERENCE

Plaintiff's neurology expert: Kestor Nedd from Miami, FL. Defendant's neurology expert: Michael Aptman from Miami, FL. Defendant's neuropsychology expert: Bonnie Levin from Miami, FL.

Fray vs. Wal Mart Stores East LP. Case no. 2013-034123-CA01; Judge Stanford Blake, 11-20-14.

Attorneys for plaintiff: Gary Allen Friedman and John Seligman of Friedman & Friedman in Coral Gables, FL.

COMMENTARY

In a case where credibility was a central issue on damages, the plaintiff's counsel chose not to call the plaintiff to the witness stand. The plaintiff's potential testimony may have been somewhat confused, and could have been a double-edged sword, which either supported her brain injury, or jeopardized her credibility.

The plaintiff faced a formidable defense structured on strong medical ammunition, including a lack of objective evidence to support the neurotoxicity, or the plaintiff's claimed brain injury.

Hospital records were obtained only after the medication would have filtered through the plaintiff's kidneys, and therefore, showed only a small trace of Methotrexate remaining in the body; insufficient to strongly support the plaintiff's claims. In addition, diagnostic films of the brain were all negative, and neuropsychological testing conducted by the plaintiff's expert was inconclusive, and not was introduced.

However, the plaintiff's counsel apparently found the perfect balance in presenting the case. The plaintiff's treating neurologist did not make a distinction between administration of oral or IV

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Methotrexate, and testified that he has seen neurotoxicity in his practice, and, in the absence of a prior history of memory deficits, he was able to causally link the plaintiff's decline in cognitive function to the undisputed overdose.

DEFENDANT'S VERDICT – PREMISES LIABILITY – ALLEGED NEGLIGENT MAINTENANCE OF LANDSCAPE AREA IN OFFICE BUILDING – TRIP AND FALL – LUMBAR DISC HERNIATIONS – FUSION SURGERY PERFORMED – FAILED BACK SYNDROME – FOOT DROP

Palm Beach County, FL

The plaintiff alleged that the defendants, the owner and property manager of an office building, negligently maintained an indoor landscape area in the entranceway of the building. As a result, the plaintiff claimed that she was caused to trip and fall. The defendant maintained that the landscaping area, built into the floor of the atrium, was open and obvious, and that the plaintiff failed to watch where she was walking. In addition, the defendant contended that the plaintiff's injuries pre-existed the fall for many years.

The plaintiff, and her business associate, testified that the plaintiff tripped and fell in the landscape planter, which was located near the entrance to the atrium of the office building where the plaintiff was attending a business networking luncheon. The plaintiff testified that her attention was drawn to the left of the atrium, where the destination restaurant and security guard station were situated. The plaintiff's human factor's expert opined that the grey floor tile (although bordered by pink tile) created an illusion that the white landscape rocks were actually floor tile. The plaintiff's engineer testified that the constructions plans called for plants to be planted where the rocks had been placed.

The plaintiff, age 61 at the time, was diagnosed with lumbar disc herniations, which her doctors causally related to the fall. She underwent three lumbar surgeries, ultimately fusing four levels of her lumbar spine. The result was failed back syndrome, which caused the plaintiff to develop foot drop and walk with a walker. The plaintiff contended that she could no longer work as a salesperson for a national cosmetic chain. Her doctor also opined that additional lumbar surgery is indicated for the plaintiff in the future.

The plaintiff claimed past medical bills totaling $1,016,000. The plaintiff retained a life care planner and an economist, who projected future medical expenses in a "best case/ worse case scenario" from $175,000 to $554,000. The plaintiff's husband asserted a claim for loss of services in the amount of $117,000.

The defendants called no witnesses, but vigorously cross examined the plaintiff's medical and retained experts, regarding the plaintiff's past medical history dating back 11 years before the fall, and including two work-related lumbar injuries. The defense contended that the records showed preexisting herniated discs and a surgical recommendation, and that there were inconsistencies in the plaintiff's post-accident medical records.

The plaintiff's liability experts were also thoroughly cross examined as to the logic of their conclusions based on photographs of the contrasting colors of the tile pattern leading up to the landscape rocks where the fall occurred.

After a week and a half of trial, the jury deliberated for an hour before finding no negligence on the part of the defendants, which was a legal cause of injury to the plaintiff. The defendants claim entitlement to costs and attorney fees based on a proposal for settlement.

REFERENCE

Plaintiff's engineering expert: Ronald Zollo from Miami, FL. Plaintiff's human factors expert: Jeff Andre from Harrisonburg, VA. Plaintiff's neurosurgery expert: Steven Ducher from West Palm Beach, FL. Plaintiff's rehabilitation expert: Craig Lichtblau from West Palm Beach, FL.

Levitt vs. Abern Companies Inc. Case no. 50 2001 CA 10211; Judge Greg Keyser, 02-12-15.

Attorneys for defendant: Lee M. Cohen and James T. Sparkman of Cole, Scott & Kissane in West Palm Beach, FL.

COMMENTARY

The plaintiff in this premises liability action sought in excess of $1,000,000 in past medical expenses, including the cost of multiple lumbar surgeries, as well as extensive future medical costs. The plaintiff's counsel asked the jury to double the economic damages to compensate the plaintiff for her pain and suffering, and also sought consortium damages for her husband.

However, the plaintiff faced the difficult challenge of explaining how she walked into a large landscape planter built into the floor of the defendant's office building. During closing argument, plaintiff's counsel suggested that the plaintiff could be 10% at fault for the fall. This contradicted the plaintiff's assertions during cross-examination that she bore no liability.

After the plaintiff's case rested, the defense team made the decision to call no witnesses. The defense took the successful position that the plaintiff failed to prove her case by the greater weight of the evidence as to liability and causation. After deliberating for an hour, the jury agreed and returned a complete defense verdict.

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DEFENDANT'S VERDICT – APPARENT ROAD RAGE INCIDENT – PLAINTIFF STRUCK IN EYE WITH HEAVY LOCK – LOSS OF EYE – ARTIFICIAL EYE INSTALLED – PUNITIVE DAMAGES SOUGHT

Palm Beach County, FL

The plaintiff asserted assault and battery claims against the individual defendant after a confrontation involving a traffic incident. The plaintiff alleged that he was walking up to the defendant's car when the individual defendant intentionally threw a heavy lock out the window and struck him in the eye. The plaintiff sought punitive, as well as compensatory damages. The defendant maintained that he acted in self-defense after the plaintiff approached his vehicle in a threatening manner. The defendant was in the course and scope of his employment at the time in question, and the furniture company which employed him was also a defendant at trial on a vicarious liability theory.

The plaintiff initially alleged that there was an impact between his vehicle and a furniture delivery van, driven by the defendant driver and owned by the defendant company, and that, after the impact on the roadway, both vehicles pulled into a driveway, and the confrontation occurred.

The defendant's automobile insurance carrier was dismissed from the suit on declaratory judgment based on a lack of evidence that an impact occurred. The general liability carrier for the business (employer) took up the defense of the claims against the company. The plaintiff called a witness who was working on a road crew across the street from the incident, who testified that he saw the plaintiff walking towards the defendant's vehicle, and saw the plaintiff struck in the eye with the lock. Evidence showed that the plaintiff sustained an eye injury which required surgical removal of the eye, and was fitted with an artificial one.

The defendant testified that the plaintiff was very angry and was trying to pull him out of his car. He claimed he grabbed the lock from the area between the front seats and hit the plaintiff with it out of self-defense.

The corporate defendant called an elderly woman who was positioned approximately ten feet away from the defendant's vehicle at the time of the incident. This witness testified that the plaintiff exited his vehicle and approached the defendant's vehicle waving his arms in the air. The witness testified that she then saw a lock come out of the defendant's window and strike the plaintiff in the eye. The plaintiff fell to the ground and the defendant left the scene.

On damages, the defense argued that the plaintiff has gone on with his life. The defendant introduced "Facebook" photographs showing the plaintiff riding a motorcycle and operating a jet ski after the date of the incident.

The jury found that the defendants actions were in self-defense and justifiable, and a defense verdict was entered.

REFERENCE

Valeo vs. East Coast Furniture Company, et al. Case no. 502009CA019440XXXXMB; Judge Edward Fine, 08-21-14.

Attorney for defendant furniture company: David J. Weiss of Parrillo, Weiss & O'Halloran in Boca Raton, FL. Attorney for defendant driver: Joey P. Neering, Lewis, Leo IV, and Joel Medgebow of Medgebow Law in Coconut Creek, FL.

COMMENTARY

In this case, the defendant did not assert a "Stand Your Ground" defense in the criminal proceedings, but pled guilty to lesser charges. The statute mandates that an individual will not be prosecuted for use of force, if it is shown that he/she reasonably believed that such conduct was necessary to defend against the other's imminent use of unlawful force.

The defense counsel, in this civil suit, argued that the defendant could still assert the defense. A hearing was held, but the court refused to dismiss the case on that basis.

The plaintiff initially asserted claims of negligent hiring, retention, and supervision against the defendant employer, as well as vicarious liability for the defendant driver. The employer was granted summary judgment on all counts; but the summary judgment was reversed on appeal as to the vicarious liability theory only. The defendant's motion in limine precluded evidence of the defendant driver's criminal history, including a prior assault charge.

The undisputed loss of the plaintiff's eye presented substantial exposure for the defendants and there was also a claim for punitive damages. The plaintiff's counsel requested $3,200,000 in total damages during closing statements, with the plaintiff rejecting a $100,000 pre-suit settlement offer. The jury ultimately determined that the defendant was justified in his actions, and a complete defense verdict was entered.

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Verdicts by Category

MEDICAL MALPRACTICE

Dental

DEFENDANT'S VERDICT

Medical Malpractice – Dental Negligence – Alleged negligent extraction of wisdom teeth – Nerve injury – Claimed lack of informed consent

Pinellas County, FL

The plaintiff alleged negligence and lack of informed consent against the defendant dentist who extracted her four wisdom teeth. The plaintiff claimed that the defendant caused a permanent nerve injury during the extractions. The defendant denied negligence, and maintained that the plaintiff's nerve injury was a known complication of the procedure which occurred in the absence of negligence, and of which the plaintiff was fully informed.

The plaintiff was a 43-year-old female at the time in question, and testified that, after the defendant dentist pulled four wisdom teeth, she experienced numbness on the right side of her lip, chin, left cheek, and left side of her tongue.

The plaintiff's dental expert testified that the defendant deviated from the required standard of care in performing the extraction, thereby causing permanent injury to the plaintiff's nerves. The plaintiff's expert opined that the defendant was not qualified to perform surgery on impacted wisdom teeth, and that he injured the right alveolar nerve and the left lingual nerve, when he extracted the lower left molar and the upper right molar. The plaintiff also alleged that the defendant failed to inform her of the possibility of such nerve injury, prior to the extractions.

The defendant maintained that the extractions were properly performed, but the plaintiff suffered a known complication of the procedure. The defense also contended that the plaintiff signed a written consent form listing nerve damage as a possible complication before the extractions were performed.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The jury also found for the defendant on the informed consent claim.

REFERENCE

Popovich vs. Daniel. Case no. 2013-7386; Judge Anthony Rondolino, 09-18-14.

Attorney for defendant: Kenneth C. Deacon Jr. of Deacon & Moulds in St. Petersburg, FL.

Primary Care

DEFENDANT'S VERDICT

Medical Malpractice – Primary Care Negligence – Plaintiff allegedly left unattended on examination table – Fall from table – Hip fracture with surgery

Palm Beach County, FL

The plaintiff was an 81-year-old female who brought this action against her treating internist, and his practice group. The plaintiff alleged that she was negligently left alone on an examination table, resulting in her fall from the table. The defendant denied that the plaintiff was left on the examination table, and contended that she was instructed to sit in a chair, but took it upon herself to climb onto the table.

The plaintiff was at the defendant's office for a routine medical check-up. She claimed that she was helped onto the examination table by a Caucasian nurse who then left the room. The plaintiff fell from the table and sustained a hip fracture, which required hip replacement surgery.

The defense agreed that a patient should not be left alone on an examination table. However the defendant's medical assistant testified that she instructed the plaintiff to sit in a chair until the doctor came in. The medical assistant testified that she closed the door to the examination room and heard a thud a few minutes later. The defense argued that the plaintiff attempted to get on the examination table herself.

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The defense also argued that the plaintiff's version of the event was inconsistent as both medical assistants employed by the defendant were African Americans, not Caucasian, as the plaintiff described.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff.

REFERENCE

Frankel vs. Schwartz. Case no. 2014-CA-004321; Judge Gregory M. Keyser, 10-29-14.

Attorney for defendant: James L. White of Bobo, Ciotoli, White & Russell in North Palm Beach, FL.

Urology

DEFENDANT'S VERDICT

Medical Malpractice – Urology negligence – Alleged negligent prophylactic use of antibiotics in patient with urinary stricture and neurogenic bladder

Duval County, FL

This was a medical malpractice action that involved a plaintiff who had a history of a urinary stricture, and a number of urinary infections. He contended that the defendant urologist was negligent in prophylactically prescribing the antibiotic macrodantin, which carries a risk of the development of pulmonary fibrosis, and which was used by the patient for approximately seven years. The plaintiff maintained that in view of the risks, and the fact that the medication was prescribed prophylactically, subjecting the patient to such a risk was clearly negligent.

The defendant contended that prescribing the medication as a preventative measure was proper, as in, performing the risk vs. benefit analysis, the physician used appropriate judgment in prescribing the drug.

The defendant also contended that in view of the fact that the onset of pulmonary fibrosis occurred three years after the drug was ceased, there was no correlation.

The defendant maintained that there was no indication in the literature showing an association after such a long time frame elapsed.

The jury found for the defendant.

REFERENCE

Plaintiff's pulmonological expert: Carl Schoenberger, MD from Rockville, MD. Plaintiff's urological expert: Bruce Witta, MD from Chicago, IL. Defendant's infectious disease specialist expert: Patrick Joseph, MD from San Francisco, CA. Defendant's pulmonological expert: Stuart Jacobs, MD from Baltimore, MD. Defendant's urological expert: Joseph Camps, MD from Tallahassee, FL.

Estes vs. Schwartz, et al. Case no. 1620-12-CA-007406; Judge Tyrie Boyer, 02-20-15.

Attorneys for defendant: Richard E. Ramsey and E. Holland Howanitz of Wicker, Smith, O'Hara, McCoy & Ford, P.A. in Jacksonville, FL.

CONTRACT

$196,000 VERDICT

Breach of promissory note – Failure to pay sum due and owing under informal promissory note

Pinellas County, FL

This action pitted a brother against brother in a dispute over a written informal promissory note, which the plaintiff claimed evidenced a debt of $225,000. The defendant denied that the plaintiff was entitled to the money, and contented that he was tricked into signing the alleged promissory note.

The plaintiff, who resides in Canada, testified that he came to Florida to assist the defendant with financial difficulties. The plaintiff contended that he put money into the defendant's business, and spent time and money to assist the defendant.

Evidence showed that the defendant signed a handwritten document promising to pay the plaintiff $225,000. The plaintiff alleged that the defendant failed to make any payments, and breached the agreement.

The defendant argued that the plaintiff had no ownership interest in the defendant's business, and should be equitably estopped from enforcing the unconscionable agreement. The defendant also asserted a five-year statute of limitations defense and a usury defense. The court reserved decision on these defenses, but ultimately found for the plaintiff post-verdict.

The jury found that the parties entered into an agreement, which was not unconscionable, and the plaintiff did not waive his right to enforce the agreement, and

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was not equitably estopped from enforcing the agreement. The plaintiff was awarded $196,000 in damages. Statutory interest increased the judgment to $287,000.

REFERENCE

Sherwani vs. Sherwani. Case no. 08-4421CI020; Judge Jack St. Arnold, 08-19-14.

Attorney for plaintiff: Thomas H. McGowan of Law Office of Thomas H. McGowan in St. Petersburg, FL.

DEFAMATION

$277,409 VERDICT

Defamation – Malicious prosecution – Plaintiff home healthcare worker falsely accused of writing bad checks from patient account – 29-days incarceration.

Duval County, FL

The plaintiff was employed as a home health care nurse for the defendant company for approximately a year and a half. She alleged that the defendant defamed her and caused her malicious prosecution for writing bad checks from a patient's account. The defendant, healthcare home, which has since gone out of business, contended that it reported information to the police, and the police determined that the plaintiff should be arrested and prosecuted.

The plaintiff testified that she initially gave the defendant three weeks notice of her resignation, but after an altercation with her supervisor, she left the company immediately. The plaintiff claimed that her supervisor was angry because he knew he would have difficulty replacing the plaintiff in the downtown Jacksonville area.

Approximately a year after her resignation, the defendant's supervisor identified the plaintiff as the person shown in a police video writing bad checks from a patient's account. The plaintiff denied the allegations, and said that she had never gone to that client's home.

The plaintiff claimed that information provided by the defendant resulted in a warrant for her arrest. One of the plaintiff's co-workers testified that, after the plaintiff's arrest, she overheard the defendant's supervisor say "We got the bitch."

The plaintiff served 29 days in jail in 2001 before it was determined that the person shown in the surveillance video was not the plaintiff, and the charges against her were dismissed. The plaintiff claimed that the defendant improperly accused her of being a thief and falsely told the police that she was terminated from her employment.

The defendant argued that the woman in the surveillance video looked like the plaintiff, and that its employee gave his honest opinion to the police. It was the state attorney who issued the arrest warrant for the plaintiff, according to defense arguments.

The jury found for the plaintiff on both defamation and malicious prosecution. The plaintiff was awarded $277,409 in damages. The award included $166,381 in past pain and suffering; $196,903 in past loss of income, and $4,125 in legal costs of defending the underlying criminal charges. The defendant's motion for new trial is pending, and the plaintiff is seeking attorney fees and costs.

REFERENCE

Plaintiff vs. Advanced Homecare, Inc. Case no. 16-2012-CA-011027XXXXMA; Judge Thomas Beverly, 01-30-15.

Attorneys for plaintiff: Dexter Van Davis and Kelly L. Kobielush of David Law Group in Jacksonville, FL.

EMPLOYER'S LIABILITY

DEFENDANT'S VERDICT

Retail outlet negligence – Chair moved from behind plaintiff – Fall to floor – Cervical disc herniation – Cervical fusion performed.

Hillsborough County, FL

The plaintiff was browsing in the defendant's electronics store when she claimed that one of the defendant's employees negligently moved a chair from behind her. The plaintiff alleged that she went to sit on the chair, which had been moved without her knowledge, and she fell to the floor. The defendant denied negligence and maintained that plaintiff was standing in front of the chair for a couple minutes before attempting to sit without looking or feeling behind her. The defense contended that the plaintiff was personally responsible for her own injury.

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The plaintiff was a female, 45 years old at the time of the incident on July 17, 2010. She testified that a chair was positioned in front of a 3-D television floor display in the defendant's store. The plaintiff claimed that she was standing in front of the chair for a few seconds and was unaware that the chair had been moved by one of the defendant's employees.

The plaintiff was diagnosed with a cervical disc herniation, which medical experts on both sides agreed was causally related to the fall. The plaintiff underwent a C5-C6 anterior discectomy and fusion with application of a titanium cervical plate. The jury viewed approximately three to four minutes of video taken during the surgery. The plaintiff sought $95,000 in past medical expenses.

The defendant argued that the chair was out of place and was moved back some 20 feet to the customer center, where it belonged. The defense counsel impeached the plaintiff's trial testimony (that she was standing in front of the chair for a few SECONDS) by using her deposition testimony, in which she stated she was standing there for a couple MINUTES before she attempted to sit.

The defendant argued that it was unreasonable for the plaintiff to sit down without first looking back, or feeling the seat of the chair on her legs. The defendant's medical expert testified that the plaintiff had no ongoing physical limitations or disability as a result of her neck injury.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The defendant waived attorney fees and costs. The plaintiff waived post-trial motions or an appeal.

REFERENCE

Nevalta-Newton vs. Gregg Appliances, Inc. Case no. 12-CA-002404; Judge D.M. Sisco, 11-06-14.

Attorney for defendant: Peter W. Kociolek Jr. of Law Offices of Jack D. Evans in Tampa, FL.

$146,114 GROSS VERDICT

Employer's Liability – Negligent failure to hold ladder – 15-foot fall – Multiple rib fractures – Laceration to spleen – Cervical and lumbar injuries – 50% comparative negligence found

Hillsborough County, FL

The plaintiff was voluntarily assisting with repairs to an air condition on the roof of the defendant company's building, when he fell from a ladder and sustained injuries. The plaintiff alleged that the fall was caused by the negligence of one of the defendant's employees in failing to hold the aluminum extension ladder as the plaintiff climbed. The defendant maintained that the employee was not asked to hold the ladder, and that the plaintiff was comparatively negligent in causing the fall.

The plaintiff testified that he was assisting his friend who owned the defendant produce packing company, and he asked one of the defendant's employees to hold the ladder as he climbed to the roof. However, while the plaintiff was on the ladder, he claimed that the employee walked away, the ladder slipped and he fell some 15 feet to the ground.

The plaintiff, age 34 at the time, was diagnosed with seven rib fractures and a lacerated spleen, which required surgical repair, and he also claimed that the fall caused a herniated cervical disc and lumbar disc bulges. He complained of continuing neck and back pain and limitation of physical activities.

The defendant contended that the employee initially undertook to hold the ladder, but was never asked to do so by the plaintiff. The defense argued that the plaintiff should have ensured that the ladder was secure before using it.

The defendant also asserted that the plaintiff had made a good recovery from his fall-related injuries, and that his neck and back conditions were not related to the incident.

The jury found the defendant 50% negligent and the plaintiff 50% comparatively negligent. The plaintiff was awarded $146,114 in damages, reduced accordingly.

REFERENCE

Silkworth vs. G&S Mellons, LLC. Case no. 12-CA-018800; Judge Sam D. Pendino, 11-13-14.

Attorney for plaintiff: Paul M. Weekley of Weekley Schulte Valdes, LLC in Tampa, FL. Attorney for plaintiff: Rick Terrana in Tampa, FL. Attorney for defendant: Harold A. Saul of Kubicki Draper in Tampa, FL.

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INSURANCE OBLIGATION

DEFENDANT'S VERDICT

Insurance Obligation – Underinsured motorist claim – Intersectional collision - Labral tear of hip – Manipulation under anesthesia – Damages/ causation only.

Palm Beach County, FL

This was an underinsured motorist claim, in which the tortfeasor, who was driving a rental car, struck the plaintiff's vehicle, as well as two other vehicles. The rental car company tendered an underlying $10,000 liability policy limit. The defendant underinsured motorist carrier stipulated that the tortfeasor was negligent in causing the accident. Accordingly, the case was tried on the issues of damages and causation only.

The vehicle driven by the tortfeasor struck the plaintiff's car in an intersection, and then proceeded to strike two other vehicles at the next intersection.

The plaintiff was a male in his 40s who was employed as a physical therapy assistant at a sports medicine clinic. He received treatment at his place of employment a week post-accident for a hip injury. The plaintiff alleged that the subject accident caused a labral tear of his hip, which necessitated manipulation under anesthesia. The plaintiff sought approximately $80,000 in past medical expenses.

The defendant argued that the plaintiff presented no diagnostic films or objective evidence to substiantiate his claim that he sustained a labral tear of the hip as a result of the subject collision. Evidence showed that the plaintiff was involved in a prior motor vehicle accident with neck and back injuries several months before the subject accident.

The defendant argued that, after the subject collision, but before the plaintiff began treating at his place of employment, he went to a chiropractor for injuries sustained in the prior accident, and made no mention of hip complaints.

In addition, the defense argued that when the plaintiff was treated at his place of employment for hip pain, he never mentioned the prior automobile accident.

The jury found that the tortfeasor's negligence was not a legal cause of injury to the plaintiff. The defendant has filed a post-trial motion for attorney fees and costs. The plaintiff has filed an appeal.

REFERENCE

D'Agostino vs. American Home Assurance Company. Case no. 502013CA11253XXXXMB; Judge Edward Fine, 10-06-14.

Attorney for defendant: Kerri E. Utter of Sanabria, Llorente & Associates in Plantation, FL.

$54,000 GROSS VERDICT

Insurance Obligation – Underinsured motorist claim – Rear end collision – Claimed rotator cuff injury with surgery – Damages/causation only – No permanent injury found

Sarasota County, FL

The defendant insurance carrier admitted that the tortfeasor was at fault in causing the rear end collision which gave rise to this underinsured motorist claim. The tortfeasor tendered a $50,000 underlying liability policy limit prior to trial.

The plaintiff testified that she was holding the steering wheel of her vehicle when the impact occurred. Her surgeon testified that the accident caused a tear of the plaintiff's rotator cuff, necessitating the performance of arthroscopic shoulder surgery.

The plaintiff claimed that she was unable to continue working as a waitress at her pre-accident level.

The defense argued that the plaintiff's shoulder injury was consistent with her repetitive motion employment as a waitress, and was not caused by the rear end automobile collision.

The jury found that the plaintiff did not sustain a permanent injury as a result of the accident. The plaintiff was awarded $54,000 in economic damages. A high/low agreement resulted in the plaintiff's recovery of $25,000.

REFERENCE

Drabin vs. 21st Century Insurance. Case no. 2013 CA 008326 NC; Judge n/a, 01-10-15.

Attorney for defendant: Carlos M. Llorente of Sanabria, Llorente & Associates in Plantation, FL.

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$484,785 VERDICT

Insurance Obligation – Underinsured motorist claim – Negligent left turn – Front end collision – Rotator cuff tear with surgery – Damages/causation only

Palm Beach County, FL

The plaintiff was a female nurse in her 50s, when the tortfeasor made a left turn from the opposite direction in front of her car and caused a front-end collision. The tortfeasor tendered his underlying $10,000 liability policy limit, and the case proceeded as an underinsured motorist claim. The defendant insurance company stipulated to the tortfeasor's negligence in causing the collision, but disputed causation and damages.

The plaintiff's doctor testified that the collision caused a rotator cuff tear, which necessitated that the plaintiff undergo shoulder surgery. The plaintiff contended that she was previously physically active, but her activities are now limited.

The defendant argued that the plaintiff's shoulder condition was preexisting and not causally related to the accident. The defense claimed that medical records showed that the plaintiff experienced prior pain in her shoulder. However, the plaintiff countered that the prior pain radiated from her neck, and did not indicate a preexisting shoulder injury.

The jury found that the plaintiff sustained a permanent injury as a result of the accident, and awarded her $484,785 in damages. The applicable underinsured motorist policy limit was $250,000. The case was resolved post-verdict.

REFERENCE

McLennan vs. State Farm Mutual Automobile Insurance Company. Case no. 502013CA011218XXXXMB; Judge Jack S. Cox, 11-06-14.

Attorneys for plaintiff: Edward V. Ricci and Donald J. Ward III of of Searcy, Denney, Scarola, Barnhart & Shipley, P.A., in West Palm Beach, FL.

$748,373 VERDICT

Insurance Obligation – Underinsured motorist claim – Four-vehicle rear end collision – Cervical and lumbar disc herniations – Synovitis of knee – Damages/causation only

Duval County, FL

The plaintiff collected $5,000 from the tortfeasor's underlying $10,000/$20,000 liability policy limit (against which multiple personal injury claims had been made), and the case continued as an underinsured motorist claim. The defendant stipulated to the tortfeasor's negligence in causing the four-vehicle collision, and the case was tried on the issues of damages and causation only.

Evidence showed that the tortfeasor struck the back of another vehicle which was pushed into the back of the plaintiff's vehicle. The plaintiff's vehicle, in turn, was pushed forward into the rear of a fourth vehicle.

The plaintiff's car was deemed a total loss as a result of the accident. The plaintiff, age 32 at the time, was taken to the emergency room later on the night of the collision. She claimed that the collision caused herniations in both her cervical and lumbar spine, as well as synovitis in her knee.

The plaintiff underwent pain management, including epidural steroid injections to her low back and knee. Her pain management specialist testified that the plaintiff will require lifelong pain management and future injections for her knee condition.

The defense maintained that the plaintiff did not sustain a permanent injury as a result of the collision. The defendant's orthopedic surgeon opined that the plaintiff's MRI studies were normal.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $748,373 in damages. The plaintiff has filed for costs and attorney fees based on a proposal for settlement in the amount of $37,499. The defendant has filed a post-trial motion for new trial. The applicable UIM policy limit was $50,000.

REFERENCE

Plaintiff's family medicine expert: Vincent Galiano from Jacksonville, FL. Plaintiff's orthopedic surgery expert: Paul Shirley from Jacksonville, FL. Plaintiff's pain management expert: Christopher Roberts from Jacksonville, FL. Defendant's orthopedic surgery expert: John Von Thron from Jacksonville, FL.

Winston vs. State Farm Mutual Automobile Insurance Company. Case no. 16-2013CA008048XXXXMA; Judge James H. Daniel, 01-29-15.

Attorneys for plaintiff: Curry G. Pajcic and Thomas F. Slater of Pajcic & Pajcic in Jacksonville, FL.

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DEFENDANT'S VERDICT

Insurance obligation – Jury in underlying rear end collision/ UIM case renders award in excess of available UIM benefits – Plaintiff, who requires surgery for disc herniations, obtains medical reports concluding permanent injury, but no subsequent Civil Remedy Notice filed

U.S. District - Southern County, FL

This was a bad faith refusal to settle case. The plaintiff had UIM benefits, and the jury in the underlying case rendered an award which exceeded the available UIM benefits. The plaintiff brought this bad faith refusal to settle action, and had filed a Civil Remedies Notice in a timely fashion, which is a prerequisite to the bringing of a bad faith action. The statute provides the carrier with a 60-day period, in which to effectuate a "cure" by settling for the available UIM coverage. The defendant contended that, although the plaintiff required surgery because of cervical herniations, there were no medical reports during this 60-day window for it to consider it reasonable, and that a jury would find a permanent injury, which would be required for an award for non-economic loss.

The jury found for the defendant carrier.

REFERENCE

Candy vs. GEICO. Case no. 13-CV-1053; Judge Jose Martinez, 11-05-14.

Attorneys for defendant: B. Richard Young and Adam Duke of Young Bill Roumbos & Boles in Miami, FL.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

$348,472 VERDICT

Motor vehicle negligence – Auto/Motorcycle Collision – Motorcycle swerves to avoid striking stopped dump truck – Aggravation of preexisting neck and back conditions

Duval County, FL

The plaintiff was a 54-year-old motorcycle operator driving on Interstate Route 95 South at dusk. The plaintiff claimed that he encountered the defendant's dump truck stopped in the travel lane, forcing him to swerve to the right, where he impacted another vehicle (which was traveling in front of him). The defendant denied that the dump truck was stopped, and maintained that it simply slowed down to turn into a construction site. The driver of the vehicle traveling in front of the plaintiff was listed as a Fabre defendant on the verdict form.

The plaintiff called the driver of the vehicle traveling in front of him, another motorcycle operator who was riding in the same lane as the plaintiff, as well as the driver of a vehicle traveling behind him. The witnesses all testified that the defendant's dump truck was stopped in the travel lane of the highway. The plaintiff also contended that the incident occurred at a point which was some 200 yards south of the access to the construction site.

The plaintiff claimed that the impact caused aggravation of his preexisting neck and back conditions, as well as injury to the facet joint at L4-L5 level of his spine, and radiculopathy into his leg. Permanency was not an issue as the plaintiff was operating a motorcycle at the time.

The defendant truck driver testified that he was slowing to turn into the construction site to his left. The defense contended that the plaintiff's back and neck injuries dated back to 1984, including a lumbar fusion performed in 1999. The defendant's medical expert opined that the plaintiff's condition was not a result of the subject collision, and that any accident-related injuries would have resolved within six to 12 weeks.

The jury found the defendant 100% negligent, and awarded the plaintiff $348,472 in damages. The defendant has filed a post-trial motion for new trial.

REFERENCE

Nelson vs. Lonnie Jones Trucking, Inc. Case no. 16-2013-CA-004054; Judge Karen Cole, 01-23-15.

Attorneys for plaintiff: Ronald R. Oberdier and Kate Hatfield of The Consumer Law Firm, P.A., in Jacksonville, FL.

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Broadside Collision

DEFENDANT'S VERDICT ON LIABILITY

Plaintiff driver contends defendant moves into him from left turn lane on highway as plaintiff is traveling straight with right of way – Head trauma and alleged mild TBI – Cervical herniation – Aggravation of lower back complaints

Hillsborough County, FL

The plaintiff driver contended that as he was traveling straight with the right of way, the defendant suddenly moved from the left turn lane, and struck the side of his vehicle. The defendant denied that the plaintiff's version was accurate. The defendant contended that as he was in the left turn lane, the plaintiff drifted into his lane, causing the collision. There was no independent eyewitness testimony.

The defendant maintained that the jury should consider that the plaintiff testified during the trial that he had little recollection of the accident, and had given a version to physicians shortly after the incident. The defendant contended that it was clear that the plaintiff's believability was highly suspect.

The plaintiff contended that he suffered a head trauma and large laceration, and maintained that he was left with a mild TBI and related cognitive deficits that are permanent in nature. The plaintiff also supported that he suffered a cervical herniation that was confirmed by MRI, which will cause permanent symptoms, as well as an aggravation of pre-existing low back complaints.

The jury found that the defendant was not negligent.

REFERENCE

Plaintiff's neurological expert: Kimberly Tobon, MD from Tampa, FL. Plaintiff's radiologist expert: Michael Foley, MD from St. Petersburg, FL. Defendant's neurological expert: Robert Martinez, MD from Tampa, FL. Defendant's radiologist expert:. Reed Murtagh, MD from Tampa, FL.

Ulvano vs. Alvarez. Case no. 131-CA-013576; Judge Martha Cook, 01-29-15.

Attorneys for defendant: William G.K. Smoak and John V. Trujillo, Jr. of Smoak, Chistolini & Barnett, PLLC, in Tampa, FL.

Intersection Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Improper lane change – Knee injury with surgery – Cervical and lumbar disc injuries claimed – Damages/causation only

Palm Beach County, FL

The plaintiff alleged that the defendant made an improper lane change, and caused a collision with his vehicle. The defendant stipulated to negligence, but disputed the injuries which the plaintiff claimed resulted from the collision.

The defendant was in route to a nail salon when she missed a turn, made an improper lane change, and collided with the plaintiff's vehicle.

The plaintiff was a 52-year-old male delivery man at the time of the accident, who claimed that the impact caused injuries to his knee, which necessitated arthroscopic knee surgery. The plaintiff also claimed cervical and lumbar injuries with disc involvement.

The plaintiff underwent epidural injections to his neck and back, a lumbar discogram, and multiple MRI scans. He was scheduled for lumbar surgery, but did not undergo the surgery because he could not pass the pre-operative examination, due to unrelated medical issues. The plaintiff sought $95,000 in past medical expenses.

The plaintiff did not seek treatment at the scene, and delayed treatment for two months due to issues regarding caring for his ill wife, a cancer patient, who died shortly after the accident.

The defense presented surveillance video, which the defendant argued was inconsistent with the plaintiff's deposition testimony regarding his limitations in activities of daily living.

The jury found that the defendant's negligence was not a legal cause of damage to the plaintiff. The defendant filed a proposal for settlement in the amount of $17,500, including claims entitlement to attorney fees and costs.

REFERENCE

Crespo vs. McGrew. Case no. 502012CA009629XXXXMB; Judge Edward Artau, 01-14-15.

Attorney for defendant: James T. Sparkman of Cole, Scott, & Kissane in West Palm Beach, FL.

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DEFENDANT'S VERDICT

Motor vehicle negligence – Intersectional collision – Lumbar disc herniation with surgery – Cervical sprain and strain

Manatee County, FL

The plaintiff alleged that a vehicle driven by the defendant driver negligently pulled out from a stop sign and violated his right-of-way as he made a left turn. The defendant maintained that the plaintiff could have avoided the impact and disputed the injuries suffered by the plaintiff, as a result. The defendant driver's employer was also named as a defendant in the case, as the defendant driver was in the course and scope of employment at the time of the collision.

The plaintiff was a 28-year-old male at the time of the accident, and testified that he was making a left turn, when the defendant pulled out from a stop sign on the street into which he was turning (to the plaintiff's left), and the defendant's vehicle impacted the side of his vehicle. The plaintiff introduced photographs depicting a significant impact to the driver's side door of his vehicle. He presented to the emergency room the day after the collision.

The plaintiff was diagnosed with a lumbar disc herniation and cervical sprain and strain which his doctor causally related to the accident. The plaintiff underwent lumbar surgery, and his physician opined that additional lumbar surgery will be required in the future. The plaintiff, a native of Honduras, asserted that he had no significant neck or back complaints before the date of the collision.

The plaintiff sought in excess of $200,000 in past medical expenses, for which letters of protection had been issued, and approximately $100,000 for future medical expenses.

The defendant contended that he pulled forward from the stop sign and braked, but the plaintiff cut his left turn short, and crossed in front of the defendant's vehicle.

The defendant's medical experts opined that the plaintiff's neck and back conditions were degenerative in nature, and were not causally related to the accident.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The case was previously tried and resulted in a mistrial after a juror asked if the plaintiff was an American citizen.

REFERENCE

Defendant's orthopedic surgery expert: Mark Lonstein from Sarasota, FL. Defendant's radiology expert: Michael Foley from Tampa, FL.

Reyes vs. Wilson, et al. Case no. 2011 CA 3901; Judge Gilbert A. Smith, Jr., 05-10-14.

Attorney for defendant: J. Scott Brasfield of Brasfield, Freeman, Goldis & Cash, P.A., in St. Petersburg, FL.

Left Turn Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Left turn Collision – Alleged improper passing on left – Cervical and lumbar disc herniations claimed

Hillsborough County, FL

The plaintiff was a 70-year-old male who claimed that the vehicle in which he was a passenger was making a left turn when the defendant negligently passed it on the left side, thereby causing a collision. The defendant presented a different version of the accident and maintained that the host vehicle was stopped on the right side of the road, and then suddenly entered the travel lane the defendant's vehicle was passing.

The plaintiff claimed that the host vehicle was turning left in a residential neighborhood, when the defendant approached from behind, entered the oncoming lane, and attempted to pass the host vehicle on the left. The plaintiff claimed that the collision occurred as the host driver attempted to complete the left turn.

The plaintiff presented to the emergency room several days, post-accident, claiming that the collision caused disc herniations in both his cervical and lumbar spine. The plaintiff was treated conservatively without surgery.

The defendant driver testified that the host vehicle was stopped on the right side of the road with its parking lights on. As the defendant passed the host vehicle, he claimed that it suddenly pulled out in front of him and caused the collision. The defendant contended that he was driving at a speed of approximately 10 mph at the time, and that the impact was minimal.

The defense also disputed that the plaintiff's neck and back conditions were causally related to the collision and maintained that they were degenerative and preexisting.

The jury found no negligence on the part of the defendant which was a legal cause of injury to the plaintiff. The plaintiff's motion for new trial is pending. The defendant has filed for attorney fees and costs.

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REFERENCE

Morgan-Gobert vs. Dumont. Case no. 11-CA-003482; Judge Martha J. Cook, 11-19-14.

Attorney for defendant: Dale L. Parker of Banker Lopez Gassler, PA in Saint Petersburg, FL.

Rear End Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Claimed lumbar disc herniation – Lumbar fusion performed – Wrongful death – Survival action – Damages/causation only

Palm Beach County, FL

The plaintiffs alleged that a rear end collision, admittedly the fault of the defendant, led to the decedent's subsequent death. The defense argued that the impact to the back of the decedent's car was light, and did not cause her death.

The decedent was a 70-year-old female at the time of the accident, who was diagnosed with a lumbar disc herniation, which her doctor causally related to the collision. The plaintiff underwent lumbar fusion surgery and was being transported to a nursing home four days later, when she died. The plaintiff argued that the initial injury, and resulting surgery, led to the decedent's death.

The defendant maintained that the plaintiff's lumbar condition preexisted the date of the accident. The defendant's radiologist testified that the plaintiff's lumbar condition was degenerative, with no acute or new injury.

The defense maintained that the decedent died as a result of cardiomegaly (enlarged heart), which was not related to the collision.

Evidence showed that the collision caused approximately $1,000 in property damage to the back of the decedent's car.

The jury found no negligence on the part of the defendant, which was a legal cause of loss, injury, or damage to the decedent.

REFERENCE

Defendant's radiology expert: Michael Raskin from Stuart, FL.

Purro vs. Lamensdorf. Case no. 50-2012-CA-011804XXXXMB; Judge Meenu Sasser, 10-27-14.

Attorneys for defendant: Carlos M. Llorente and Jennifer L. Rosinski of Sanabria, Llorente & Associates in Plantation, FL.

$10,432 COMBINED GROSS VERDICT

Motor vehicle negligence – Rear end collision – Neck and back injuries claimed by husband and wife plaintiffs – Damages/causation only – No permanent injury found

Pinellas County, FL

This motor vehicle negligence action was tried on behalf of the husband and wife plaintiffs against the parents of a teenaged driver who struck the plaintiffs' vehicle from behind. The teenage driver settled the case prior to trial, and the parents remained in the case as vicariously liable owners of the sports utility vehicle involved. The defendants stipulated to negligence, and the case was tried on the issue of damages and causation only.

The plaintiff wife was three months pregnant at the time of the collision. She alleged that the accident caused unresolved sprain and strain injuries to her hip, cervical, and lumbar spine. She also claimed TMJ stemming from the impact. The female plaintiff sought $12,690 in past medical expenses.

The plaintiff husband, age 27 at the time, alleged a cervical disc herniation with extrusion touching the spinal cord and nerve root. The male plaintiff argued that before and after MRI results confirmed that the disc extrusion was new. The plaintiff's orthopedic surgeon opined that future cervical surgery is indicated. The male plaintiff also claimed injuries to his lumbar spine, right shoulder, and knee. He claimed $15,679 in past medical expenses.

The defendant argued that any injuries sustained by the plaintiffs as a result of the collision had fully resolved. Records showed that the male plaintiff was involved in a prior motor vehicle accident. The defense introduced a letter from the plaintiff's treating chiropractor stating that the male plaintiff had sustained "serious permanent injuries" from the prior motor vehicle accident.

The jury found that neither plaintiff sustained a permanent injury as a result of the accident. The female plaintiff was awarded $2,053 in past medical expenses, reduced to zero after collateral source set offs. The male plaintiff was awarded $8,379 in past medical expenses, reduced to a net award of $379. The defendant claims entitlement to attorney fees based on a proposal for settlement. Post-trial motions are currently pending.

REFERENCE

Anderson vs. Sullivan. Case no. 12-007985 CI-7; Judge Bruce Boyer, 02-12-15.

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Attorney for defendant: Paul A. Bernardini, Jr. of Law Office of O'Hara, Bernardini & Mortime in Clearwater, FL.

$17,209 GROSS VERDICT

Motor vehicle negligence – Rear end collision – Neck and back injuries – Knee injury with surgery – 30% comparative negligence – No permanent injury found

Palm Beach County, FL

The plaintiff claimed that his car was stopped when it was impacted from behind by the defendant's vehicle. The defendant argued that the plaintiff was comparatively negligent for making a sudden unexpected stop, and also that the plaintiff's medical complaints were unrelated to the subject collision.

The plaintiff's vehicle was traveling in front of the defendant, eastbound on Northlake Boulevard in Palm Beach County, and testified that he stopped for traffic and was suddenly struck from behind by the defendant's vehicle.

The plaintiff testified that his right knee struck the center console of his car on impact, and that he experienced tingling of his fingers and toes, followed by severe neck pain. The plaintiff was placed in a cervical collar and transported on a back-board to the emergency room.

The plaintiff claimed that the collision caused an aggravation of thoracic and lumbar injuries sustained in a 2010 motor vehicle accident. The plaintiff's radiologist testified that the plaintiff's before and after cervical/lumbar MRI films showed that the subject accident caused new herniations, as well as an annular tear.

The plaintiff's orthopedic surgeon testified that the plaintiff also sustained a patella contusion and meniscus tear of the right knee. The plaintiff underwent three injections for back pain and arthroscopic surgery to his right knee. He sought past medical expenses of $97,500 and his orthopedic surgeon estimated that future medical expenses will be $50,000 to $100,000.

The defendant testified that the plaintiff stopped suddenly at a location on Northlake Boulevard indicating "No U-turn," with his front tires angled towards the "No U-turn" area. As a result of plaintiff's sudden and unexpected stop, the defendant claimed he was unable to stop in time, and his vehicle impacted the rear of plaintiff vehicle.

The defense maintained that the plaintiff's neck and back conditions preexisted the date of the accident, and that he, at most, sustained sprain and strain to his cervical, thoracic, and lumbar spine.

The defendant obtained a directed verdict on future medical expenses, permanency, and pain & suffering regarding the plaintiff's claimed cervical, thoracic, and lumbar injuries.

The defense stressed that the plaintiff did not voice knee complaints for a considerable period of time after the accident, and that his medical records documented complaints of right and left knee pain before the date of the collision.

The jury found the defendant 70% negligent and the plaintiff 30% comparatively negligent. The jury also found that the plaintiff did not sustain a permanent injury as a result of the accident. The plaintiff was awarded $17,209 in damages, reduced to a net verdict of $12,046. The defendant waived entitlement to attorney fees & costs. The plaintiff agreed not to pursue post-trial motions or an appeal.

REFERENCE

Plaintiff's orthopedic surgery expert: M. Christopher MacLaren from Tampa, FL. Plaintiff's radiology expert: Brian Young from Palm Beach Gardens, FL. Defendant's orthopedic surgery expert: Michael Zeide from Lake Worth, FL.

Godwin vs. Coscia. Case no. 502013CA017227XXXXMB; Judge Donald W. Hafele, 10-09-14.

Attorney for defendant: C. Richard Penalta of Nicholas J. Ryan and Associates in Fort Lauderdale, FL.

$95,000 VERDICT

Motor vehicle negligence – Underinsured motorist claim - Rear end collision – Shoulder injury with surgery – Damages/causation only – No permanent injury found.

Palm Beach County, FL

This action was brought against the defendant tortfeasor, whose car struck the plaintiff's vehicle from behind, as well as the plaintiff's underinsured motorist carrier. The defendants stipulated to the tortfeasor's negligence in causing the impact, and the case was tried on the issues of damages and causation only.

The plaintiff's medical expert testified that the accident caused tears of the ligaments in the plaintiff's right shoulder. The plaintiff underwent arthroscopic surgery to her

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right shoulder, involving a capsular shift with five anchors. The plaintiff was a female, approximately 20 years old at the time, and was an avid soccer player.

The defendant maintained that the substantial property damage to the back of the plaintiff's car could not have been caused by the subject impact. The configuration of the vehicles (the defendant was driving a Ford RF150 pick-up truck) showed that the bumpers of the vehicles did not line up, according to the defendant's argument.

The defense asserted that the plaintiff's shoulder condition was not causally related to the rear end impact.

The jury found that the plaintiff did not sustain a permanent injury as a result of the accident, and was awarded $95,000 in damages, comprised of $80,000 in past medical expenses, and $15,000 in future medical expenses. A $10,000 PIP off-set applied. The defendant filed a proposal for settlement in the amount of $90,000.

REFERENCE

Gomez vs. 21st Century Centennial, et al. Case no. 502013CA002105XXXXMB; Judge Janis Brustares Keyser, 10-08-14.

Attorney for defendant tortfeasor: Edward W. Malavenda of Law Office of Nicholas J. Ryan & Associates in Fort Lauderdale, FL. Attorney for defendant insurance company: Julio L. Diaz, Jr. of Law Offices of Sanabria Llorente & Associates in Plantation, FL.

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NEGLIGENT SUPERVISION

DEFENDANT'S VERDICT

Alleged negligent school board supervision – Fall from playground equipment – Arm fracture to minor plaintiff

Palm Beach County, FL

This action was brought by the plaintiff mother individually, and as the natural guardian of her eight-year-old daughter against the School Board of Palm Beach County. The plaintiff alleged that the defendant failed to provide adequate supervision at an after-school program to prevent the minor plaintiff from falling from a piece of playground equipment. The defendant maintained that supervision was adequate, but that the accident was not preventable.

The minor plaintiff was attending an after-school program at Berkshire Elementary School in West Palm Beach Florida, and was playing on an apparatus comprised of a series of platforms of various heights. The minor plaintiff testified that another girl pulled her and caused her to fall from the equipment. The minor plaintiff sustained an arm fracture, which required several castings.

There was a discrepancy as to the exact number of students present at the time of the incident, but it was estimated to be between five to ten. The plaintiff alleged that the teacher supervising the children was a considerable distance away, watching other students in a soccer field at the time of the injury. Had the teacher been watching, the plaintiff argued that she would have prevented the other student from pulling the minor plaintiff off the equipment.

The teacher involved testified that she was standing not far away, but did not see the minor plaintiff's fall, because she was paying attention to two other students. The defense also argued that the plaintiff had made a good recovery from her arm fracture with no permanent restrictions.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The defendant's motions for attorney fees, and costs are pending.

REFERENCE

Martinez vs. School Board of Palm Beach County, Florida. Case no. 2014-CA-004321XXXXMB; Judge Catherine M. Brunson, 10-29-14.

Attorney for defendant: J. Erik Bell of Senior Counsel with The Palm Beach County School Board in West Palm Beach, FL.

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PREMISES LIABILITY

Fall Down

$78,103 GROSS VERDICT

Premises liability – Failure to maintain restaurant parking lot – Trip and fall – Rotator cuff tear – Arthroscopic surgery performed – 75% comparative negligence found.

Pinellas County, FL

The plaintiff alleged that she was caused to trip and fall in the parking lot of the defendant's restaurant as a result of the defendant's failure to maintain the premises in a safe condition. The defendant argued that the condition was open and obvious, and that the fall was caused by the plaintiff's own inattentiveness.

The plaintiff was a female in her mid-60s at the time in question. She testified that she was walking from her vehicle to an outside area of the defendant's restaurant, with two small dogs on leashes. The plaintiff contended that she tripped and fell as a result of a three-inch deep hole in the asphalt surface of the parking lot. The plaintiff's husband corroborated the plaintiff's version of the event.

The plaintiff was diagnosed with a rotator cuff tear, which her orthopedic surgeon causally related to the fall, and underwent arthroscopic shoulder surgery. The plaintiff also called an orthopedic surgeon retained by the defendant, who concurred that the plaintiff's shoulder condition was causally related to the fall.

The defendant argued that an emergency room report indicated that the plaintiff was carrying her dogs at the time of the fall. The defense contended that the plaintiff was distracted, and was not watching where she was walking.

The defendant's radiologist testified that the plaintiff's rotator cuff tear was consistent with the natural aging process, and was degenerative in nature.

The jury found the defendant 25% negligent and the plaintiff 75% comparatively negligent. The plaintiff was awarded $78,103 in damages, including $60,484 in past medical expenses. The verdict was reduced to a net award of $19,526. The plaintiff's post-trial motion for new trial was denied, and a motion for costs is pending.

REFERENCE

Plaintiff's orthopedic surgery expert: Anthony Marcotte from Clearwater, FL. Defendant's radiology expert: Michael Foley from Tampa, FL.

Schlepko vs. Checkers Drive In Restaurants, Inc. Case no. 12-6115CI; Judge John A. Schaefer, 10-23-14.

Attorney for defendant: J. Scott Brasfield of Brasfield, Freeman, Goldis & Cash, P.A., in St. Petersburg, FL.

DEFENDANT'S VERDICT

Premises Liability – Slip and fall – Plaintiff strikes head on wall as she falls and claims closed head trauma with headaches and memory loss – Aggravation of lumbar and cervical herniations – Soft tissue shoulder injuries

Orange County, FL

The plaintiff, in her 40s, contended that the defendant failed to maintain the premises, resulting in her falling on "green slime" inside an aquarium. The plaintiff maintained that if the defendant had provided appropriate inspections and maintenance, the hazard would not have existed. Sea World denied there was any green slime, and provided expert testimony that the conditions inside the aquarium are not conducive to algae growing, and supported testimony that the floors are cleaned every morning and regularly inspected throughout the day. No witnesses or photos corroborated the plaintiff's claim of green slime on the floor, and on her clothes. The incident occurred as the plaintiff was with her son's class who was visiting Sea World on a field trip. The school vice principal testified that he did not observe green slime, but said the floor was wet from patrons tracking in water during a rainy day.

The defendant denied that the floor was slippery, claiming the surface was slip resistant, both dry and wet, and contended that the failure of the plaintiff to walk more carefully in her wet shoes caused the incident. The defendant pointed out that the plaintiff had indicated she been looking overhead at the string rays, and that her shoes were wet from rain when the fall occurred. The plaintiff countered that the defendant had arranged the exhibits to draw customers' attention upwards, and that its claims that she was not paying adequate attention should be rejected.

The plaintiff maintained that she sustained a closed head injury, which caused continuing headaches and memory loss. The CT scans were negative, and the plaintiff did not undergo neuropsychological testing.

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The plaintiff further contended that she suffered an aggravation of cervical and lumbar herniations, first sustained in prior auto and work accidents, and the plaintiff supported that she will suffer permanent pain and weakness.

The plaintiff also maintained that she suffered a soft tissue shoulder injuries that will cause permanent symptoms.

The jury found that the defendant was not negligent.

REFERENCE

Plaintiff's orthopedic surgeon expert: David Robbins, MD from Miami, FL. Defendant's engineering expert: Roy Wadding, P.E from Tampa, FL.

Estrada vs. Sea World of Florida, LLC. Case no. 2010-CA-13968-O, 01-00-15.

Attorneys for defendant: Robert L. Blank and Carie L. Hall of Rumberger, Kirk & Caldwell, P.A. in Tampa, FL.

$250,087 VERDICT

Premises Liability – Slip and fall in Dollar General Store – Failure to clean liquid detergent from floor – Lumbar compression fractures.

Broward County, FL

The plaintiff was a 68-year-old female who was shopping in the defendant's Dollar General Store, when she slipped and fell in liquid detergent, which had been spilled on the floor. The plaintiff argued that the defendant was negligent in failing to clean the spill in a timely manner. The defense argued that a teenager had kicked a soccer ball in the store and spilled the detergent. The boy's guardian was listed as a Fabre defendant on the verdict form on a negligent supervision theory.

The plaintiff argued that surveillance video showed that the detergent spill was on the floor for some eight minutes before the plaintiff's fall, ample time for the defendant's employees to have cleaned it. The plaintiff also argued that children were repeatedly allowed to enter the store and knock over merchandise.

The plaintiff was diagnosed with compression fractures to her lumbar spine as a result of the fall, and was treated conservatively without surgery.

The defendant denied negligence and argued that the plaintiff was negligent for not avoiding the spill. The defendant's radiologist opined that the plaintiff's lumbar condition was not causally related to the fall.

The jury found the defendant 100% negligent. The plaintiff was awarded $250,087 in damages.

REFERENCE

Barry vs. Dolgencorp. Case no. CACE-13-24231; Judge Carlos Augusto Rodriguez, 11-04-14.

Attorney for plaintiff: Raymond R. Dieppa and Christopher Wadsworth of Wadsworth Huott LLP in Miami, FL. Attorney for plaintiff: Charles M.P. George of Law Offices of Charles M.P. George in Coral Gables, FL.

$176,200 GROSS VERDICT

Premises Liability – Trip and fall on parking bumper – Knee injury with surgery – Damages/causation only.

Palm Beach County, FL

This action arose after the female plaintiff tripped and fell over a parking bumper on sidewalk maintained by the defendant City of Rivera Beach. The defendant city stipulated to negligence at the time of trial. Accordingly, the case proceeded on the issues of damages and causation only. A number of other defendants were dismissed from the case prior to trial.

The plaintiff was attending the "Jazz on the Beach" festival in 2007 when the fall occurred. She was diagnosed with a knee injury which her doctor causally related to the fall, and for which surgery was performed.

The defendant maintained that the plaintiff's knee condition and surgery were not causally related to the subject fall.

The jury awarded the plaintiff $176,200 in damages. Collateral source set-offs reduced the judgment to $68,494. The plaintiff disputes the set-offs, and post-trial motions are currently pending.

REFERENCE

Gooden vs. City of Riviera Beach, et al. Case no. 502011CA002566XXXXMB; Judge Donald W. Hafele, 10-03-14.

Attorney for plaintiff: Roy W. Jordan, Jr. of Roy W. Jordan, Jr., P.A. in West Palm Beach, FL. Attorneys for defendant: Loniell Olds and Don Stephens of Olds & Stephens P.A., in West Palm Beach, FL.

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Negligent Maintenance

$76,386 VERDICT

Premises liability – Failure to maintain apartment unit – Cabinet falls from wall and strikes plaintiff – Damages only

Palm Beach County, FL

The plaintiff was a tenant in an apartment unit owned by the defendant. She claimed that a cabinet fell from the wall and struck her, causing neck, back, and facial injuries. The plaintiff alleged that the incident was caused by the defendant's failure to safely maintain the unit. The defendant was in default, and the case was heard on the issue of damages only.

The plaintiff was a resident in a four-unit apartment building owned by the defendant in Belle Glade, Florida. She claimed that the cabinet landed on top of her and caused facial injuries. The plaintiff was also diagnosed with sprain and strain injuries to her neck and back, which she claimed were a result of the incident.

The jury awarded the plaintiff $76,386 in damages. Collection efforts are currently underway.

REFERENCE

Williams vs. Smith. Case no. 502011CA001732XXXXMB; Judge Thomas H. Barkdull III, 10-15-14.

Attorney for plaintiff: Christopher F. Lanza of Christopher F. Lanza, PA in Miami, FL.

RETALIATORY TERMINATION

$340,000 RECOVERY

Retaliation termination – Former prison officials accuse state of whistleblower retaliation – Lost wages and benefits

Leon County, FL

This matter involved the alleged wrongful firing of a two state prison employees as whistleblower retaliation. The matter was resolved with a jury verdict.

The plaintiffs, Ted J. and Carolann B., were formerly warden and assistant warden, respectively, at Jackson Correctional Institution in Malone, Florida. The plaintiffs were terminated following accusations of falsifying documents in connection with an inmate's July 2011 death, as well as deficiencies in their response to the incident.

In March 2013, the plaintiffs filed suit in the Leon County Circuit Court under the State of Florida's Whistleblower's Act, naming as the defendant, State of Florida, as managing authority of its Department of Corrections. The Department of Corrections was accused of retaliatory termination. The plaintiffs sought back wages and lost benefits as a result of the termination. The defendant Department of Corrections denied any wrongdoing in the firings.

At trial, the plaintiffs asserted that their termination was not due to any wrongdoing on their part, but was instead a response to their having reported behavior illegal behavior by staff of the Department's Inspector General. The plaintiffs asserted that in their investigation of the July 2011 death, the IG's staff engaged in coercion of witnesses and violation of HIPAA regulations, respecting the deceased's medical records.

The jury found for the plaintiffs, and awarded $340,000 in damages, including $205,000 to Ted J., and approximately $136,000 to Carolann B., for lost wages and benefits.

REFERENCE

Ted Jeter and Carolann Bracewell vs. State of Florida.; Judge James Hankinson, 01-23-15.

Attorney for plaintiff: Marie Mattox of Marie A. Mattox, P.A. in Tallahassee, FL. Attorney for defendant: Brennan Donnelly in Floral Park, NY.

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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

$30,000,000 VERDICT - MEDICAL MALPRACTICE - OB/GYN - NEGLIGENT PERFORMANCE OF HYSTERECTOMY - BLADDER LEAK - SEPSIS - RENAL FAILURE - ADDITIONAL SURGERY REQUIRED - DAMAGES ONLY.

Palm Beach County, FL

The plaintiff, a 51-year-old female physical therapist, underwent a laparoscopic hysterectomy performed by the defendant ob/gyn. The plaintiff alleged that the defendant negligently damaged her bladder during the procedure and prematurely removed a catheter, resulting in a bladder leak, sepsis, and ultimately life-threatening complications. A second ob/gyn, and the defendant doctor's practice group, were dismissed from the case prior to trial. The defendant was not represented at trial, and the case was tried on the issue of damages only.

The jury awarded the plaintiff total damages of $30,000,000.

REFERENCE

Haughie vs. Comprehensive Ob/Gyn. Case no. 502008 CA 036889XXXXMB; Judge Timothy P. McCarthy, 12-17-13.

Attorneys for plaintiff: Walter G. Campbell Jr., Scott S. Liberman and Brent M. Reitman of Krupnick, Campbell, Malone, Buser, Slama, Hancock, Liberman & McKee in Fort Lauderdale, FL.

$4,000,000 CONFIDENTIAL RECOVERY - MEDICAL MALPRACTICE - RADIOLOGY NEGLIGENCE - FAILURE TO DIAGNOSE ANEURYSM - MISDIAGNOSED BRAIN ANEURYSM BURST - BRAIN DAMAGE TO 43-YEAR-OLD FEMALE PLAINTIFF.

Withheld County, MA

In this medical malpractice action, the 43-year-old female plaintiff contended that the defendant radiologists were negligent in failing to properly read a MRA/MRI scan and diagnose the plaintiff's brain aneurysm which resulted in the plaintiff suffering severe brain damage. The defendants denied the plaintiff's allegations and disputed damages.

The parties ultimately agreed upon a settlement of $4,000,000 representing the full polices for both defendants in a confidential settlement agreement between the parties. A third claim against the defendant radiologist who read the MRI scan is still pending.

REFERENCE

Plaintiff Jane Doe vs. Defendant Radiologist Roe., 07-18-14.

Attorney for plaintiff: Andrew M. Abraham of Abraham & Associates in Boston, MA.

$2,200,000 RECOVERY - MEDICAL MALPRACTICE - DEFENDANTS NEGLIGENTLY MANAGED PLACEMENT OF DECEDENT'S ENDOTRACHEAL TUBE RESULTING IN ONLY DECEDENT'S RIGHT LUNG BEING VENTILATED - RESPIRATORY ARREST - WRONGFUL DEATH.

Bucks County, PA

In this medical malpractice action, the estate of the male decedent maintained that the defendants physician and hospital staff negligently failed to promptly diagnose and manage a misplacement of the decedent's endotracheal tube, causing only one lung to be somewhat ventilated. The plaintiff contended that as a result, the decedent went into respiratory and

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cardiac arrest, and ultimately expired. The defendants denied all of the plaintiff's allegations of negligence.

The parties settled for $2,200,000.

REFERENCE

Estate of Richard Link by Lisa Link vs. Neil Khare D.O., Frankford Hospital Bucks County Campus, and Aria Health System. Case no. 2010-11730; Judge Clyde Waite, 10-24-14.

Attorney for plaintiff: Robert Ross of Ross Feller Casey, LLP in Philadelphia, PA. Attorney for defendant: Donald Brooks Jr. of Eckert Seamans Cherin & Mellott, LLC in Philadelphia, PA.

$1,500,000 VERDICT - MEDICAL MALPRACTICE - INITIAL DEFENDANT PSYCHIATRIST NEGLIGENTLY WITHDRAWS LITHIUM TAKEN FOR BIPOLAR DISORDER WITHOUT ADEQUATELY MONITORING PATIENT - DECEDENT WHO SURVIVED INITIAL SUICIDE ATTEMPT COMES UNDER CARE OF SECOND DEFENDANT AND THEN SUCCESSFULLY COMMITS SUICIDE.

Essex County, NJ

This was a psychiatric malpractice case involving a 54-year-old male decedent, who had been successfully treated with Lithium for bipolar disorder for some 25 years. During this time period, the decedent worked as a successful landscape architect and was earning approximately $100,000 per year at the time of his death. The decedent had been treated by the defendant for some nine years, and in January of 2008, blood tests disclosed kidney difficulties, which can be associated with Lithium use. The initial defendant took the patient off Lithium and prescribed a number of alternative medications. In June, 2008, the decedent attempted suicide by hanging, but was found by his wife, who administered CPR and had him admitted to the hospital. The initial defendant psychiatrist settled during trial for $420,000. The decedent recovered from the suicide attempt, and shortly after his discharge, came under the care of the second defendant psychiatrist. The second psychiatrist's chart reflected his concern that much of the difficulties suffered by the decedent stemmed from the decedent's relationship with his wife, with whom the second defendant believed was impossible to live. The plaintiff maintained that although the chart also reflected that the second defendant was concerned that this factor might interfere with his ability to treat the decedent, the second defendant did not discuss these concerns with the decedent. This defendant provided treatment for approximately five weeks when he changed the prescription to Lexipro, which the plaintiff stressed has not been approved for treatment of bipolar disorder. The decedent committed suicide by hanging approximately one week later. At the time of the settlement with the initial defendant, the plaintiff also entered into a $1,000,000-$250,000 high/low agreement with the second defendant psychiatrist.

The jury found the initial defendant psychiatrist 50% negligent, the second defendant psyhciatrist 30% negligent, and attributed 20% to the pre-existing bipolar disorder under Scaffidi. The jury then rendered a gross award $1,500,000, The net award of $453,922 against the second defendant psychiatrist fell within the parameters of the high/low agreement and together with the $420,000 settlement by the first psychiatrist, provided a net recvery for the plaintiff of $873,922.

REFERENCE

Movitz vs. Sostowski, et al.; Judge James Rothschild, 07-00-14.

Attorney for plaintiff: Bruce H. Nagel of Nagel Rice, LLP in Roseland, NJ.

$65,000 VERDICT - DENTAL MALPRACTICE - INJURY TO LINGUAL NERVE AND FAILURE TO INFORM OF POSSIBLE SURGICAL REPAIR IN A TIMELY FASHION LEAVES 26-YEAR-OLD PLAINTIFF WITH PERMANENT PARTIAL LOSS OF SENSATION AND TASTE.

Suffolk County, NY

In this dental malpractice case, the male plaintiff, a 26-year-old restaurant manager studying to be a wine steward, contended that the defendant oral surgeon violated the standard of care in injuring the plaintiff's lingual nerve during wisdom teeth extraction surgery. The plaintiff maintained that he has been left with the loss of sensation and taste to a portion of his tongue as a result. The defendant denied malpractice, claiming that injury of the lingual nerve is a known complication that had been a disclosed risk of the surgery and maintained that the plaintiff failed to mitigate his damages by seeking

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repair of the injury in a timely manner. The plaintiff countered that the defendant had told him that his condition would likely improve over time and did not instruct the plaintiff to come back within a certain amount of time if it did not. The plaintiff further claimed that the defendant had failed to tell him that there was a limited window of opportunity for surgical repair of the nerve injury if sensation and taste did not return.

The jury found the defendant 100% negligent and awarded that plaintiff $65,000.

REFERENCE

Daniel Leonard vs. Total Dental Care. Index no. 13508/09; Judge Hector D. Lasalle, 10-16-12.

Attorney for plaintiff: Joel J. Ziegler of Joel J. Ziegler, P.C. in Smithtown, NY.

PRODUCTS LIABILITY

$5,920,707 VERDICT - PRODUCT LIABILITY - DEFECTIVE DESIGN OF AIRBAG SYSTEM IN MERCURY SABLE - FAILURE OF AIRBAG TO DEPLOY IN FRONT-END COLLISION - SPINAL CORD INJURY - PERMANENT PARALYSIS

Lackawanna County, PA

This product liability action was brought against the defendants manufacturer and seller of a 2005 Mercury Sable. The 83-year-old male plaintiff alleged that the Sable contained a defectively designed airbag system, resulting in failure of the driver's side airbag to deploy during a front-end collision. As a result, the plaintiff claimed that he sustained a spinal cord injury causing permanent paralysis and other complications. The defendants maintained that the airbag design was not defective, and that the impact was not severe enough to deploy the airbag.

The jury found that the airbag system in the Mercury Sable was uncrashworthy. The plaintiffs were awarded $5,920,707 in damages. The jury found for the defendant on the failure to warn claim. Post-trial motions are currently pending.

REFERENCE

Cancelleri vs. Ford Motor Company. Case no. 11-CV-6060;; Judge James Gibbons, 08-21-14.

Attorneys for plaintiff: James F. Mundy and Bruce Zero of Powell Law in Scranton, PA.

MOTOR VEHICLE NEGLIGENCE

$3,500,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - AUTO STRUCK IN REAR BY TRACTOR-TRAILER - WRONGFUL DEATH OF 37-YEAR-OLD DECEDENT WITH WIFE AND TWO CHILDREN - DECEDENT KILLED INSTANTLY.

Middlesex County, NJ

This action was brought by the estate of the 37-year-old male decedent automobile in which the plaintiff estated contended that as the decedent was stopped at a red light in the early morning hours, his car was forcefully struck in the rear by the defendant tractor-trailer driver. The decedent, who suffered fatal injuries and died instantly, left a wife and two daughters, ages four and 14 at the time of his death. The defendant contended that the decedent's lights were not on and contended that the defendant was suddenly confronted with a dark car that was stopped in front of him, making the collision unavoidable.

The case settled prior to trial for $3,000,000.

REFERENCE

Torres vs. Tractor Trailer driver; Judge Set after med before ret J Daniel Mecca.

Attorneys for plaintiff: Bruce H. Stern and Michael G. Donahue, III of Stark & Stark in Lawrenceville, NJ.

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$3,476,024 GROSS VERDICT- MOTOR VEHICLE NEGLIGENCE - MOTORCYCLE/ TRACTOR TRAILER COLLISION - PLAINTIFF'S MOTORCYCLE WAS STRUCK BY DEFENDANT'S TRACTOR TRAILER WHICH FAILED TO YIELD THE RIGHT-OF-WAY - MULTIPLE SPINAL FRACTURES - PARTIAL AMPUTATION OF EAR - SEVERE ROAD RASH.

Hartford County, CT

In this motor vehicle negligence matter, the 25-year-old male plaintiff alleged that the defendants tractor trailer driver and truck owner were negligent in causing a collision that resulted in severe injuries to the plaintiff. The plaintiff claimed that he suffered multiple fractures to his spine, as well as severe road rash and partial amputation of his ear. The defendant denied negligence and maintained that the plaintiff was at fault for the collision.

At the conclusion of the trial, the jury returned a verdict in favor of the plaintiff. The jury assessed liability at 80% to the defendant driver and 20% to the plaintiff. The jury assessed damages at $3,476,024, consisting of $121,723 in past medical expenses; $24,301 in past lost wages; $30,000 in future medical expenses; $300,000 in past non-economic damages, and $3,000,000 in future non-economic damages. The net award after allocation of liability is $2,780,819.

REFERENCE

Matthew R.L. Karotkin vs. United Parcel Service, et al.. Case no. CV13-6038978-S; Judge M. Nawaz Wahla, 10-09-14.

Attorney for plaintiff: Patrick J. Kennedy of Riscassi & Davis in Hartford, CT.

$3,125,000 RECOVERY - TRUCK/MOTORCYCLE COLLISION - MOTORCYLE PASSENGER SUFFERS KNEE INJURIES, HERNIATION, AND SHOULDER TEAR - MOTORCYCLE OPERATOR SUSTAINS SHOULDER TEARS AND UNDERGOES TWO UNSUCCESSFUL SURGERIES - BIFURCATED CASE.

Queens County, NY

This action involved a plaintiff motorcycle operator and his passenger, both in their 30s, in which the plaintiffs contended that the defendant driver of a box truck negligently traveled at an excessive rate of speed as he approached the motorcycle from behind and negligently struck the motorcycle in the side as it attempted to pass when the motorcycle had slowed and was about to turn left. The plaintiff passenger contended that as a result of the collision, she suffered meniscal tears and an internal derangement of the knee requiring arthroscopic surgery. This plaintiff also maintained that she suffered a lumbar herniation that was confirmed by MRI as well as a shoulder tear. The plaintiff passenger was working as a bartender in a high end restaurant at the time of the incident and had reported earnings of approximately $100,000 per year, not including tips. This plaintiff contended that she can no longer continue in that position. However, she has commenced studies as a nutritionist to mitigate her damages. The plaintiff motorcycle operator contended that he suffered severe shoulder tears and that two surgical interventions were unsuccessful. This plaintiff maintained that his permanent pain and restriction will be very significant. The defendants made a general denial of liability and disputed the nature and extent of the plaintiff's injuries.

The liability jury assessed 100% negligence against the defendant. The case then settled for $2,000,000 to the plaintiff motorcycle passenger and $1,250,000 to the plaintiff motorcycle operator.

REFERENCE

Tanasesco, et al, vs. Cayuga Excavating, et al. Index no.6098/11; Judge David Elliot, 03-00-14.

Attorney for plaintiff: Howard G. Frederick for motorcycle passenger of Silbowitz, Garafola, Silbowitz, Schatz & Frederick, LLP in New York, NY. Attorney for plaintiff: Glenn K. Faegenburg for motorcycle operator of The Edelsteins Faegenburg & Browne, LLP in New York, NY.

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$794,572 VERDICT - MOTOR VEHICLE NEGLIGENCE - FAILURE TO STOP AT RED LIGHT - ONSET OF SEVERE CERVICAL PAIN FOLLOWING COLLISION - PROBABLE CERVICAL BULGE NOTED ON MRI - HEADACHES - NEED FOR SURGERY TO INSTALL SPINAL CORD STIMULATOR.

U.S. District Court Northern, (Pensacola) County, FL

The female plaintiff driver, approximately age 40 at the time of the collision, contended that the defendant driver negligently failed to stop at a red light, causing a collision. The plaintiff contended that she suffered severe cervical trauma that caused a probable cervical bulge, and that because of on-going, extensive cervical pain and headaches, she required the surgical implantation of a spinal cord stimulator. The defendant denied that the collision caused the claimed injuries. The defendant pointed out that the collision involved only a light impact. The defendant also maintained that the plaintiff had made complaints of migraine headaches prior to the collision. The plaintiff maintained that within a very short period after the happening of the accident, she developed severe neck pain and frequent headaches. The plaintiff contended that although she had a history of migraine headaches, the headaches suffered after the subject collision were qualitatively different and occurred with significantly greater frequency. The plaintiff further maintained that the MRI showed a probable cervical bulge and contended that the disc injury was the cause of both the cervical pain and the headaches.

The jury awarded $794,572, including $182,472 for past medical bills, $478,100 for future medical bills over 42 years, $0 for past lost wages, $60,000 for future lost wages for 27 years, $20,000 for past pain and suffering and $54,000 for future pain and suffering.

REFERENCE

Sanders vs. State Farm Mutual Automobile Insurance Co. Case no. 3:11 cv - 614 -MCR/CJK, 05-01-14.

PREMISES LIABILITY

$2,731,519 VERDICT - PREMISES LIABILITY - DEFENDANT CONSTRUCTION CORPORATION CREATES DANGEROUS CONDITION ON PREMISES - PLAINTIFF WAS ORDERED TO BRING DOWN UNSUPPORTED WALLS - WALL COLLAPSES - PLAINTIFF FALLS TO GROUND - HEAD INJURIES.

Dallas County, TX

The plaintiff brought this hazardous premises suit against the defendant construction corporation for liability, contending that the defendant created a dangerous condition on the premises. The plaintiff maintained that the dangers included unsecured upper portions of walls, failure to remove unsecured upper portions of the walls, failure to inspect the premises before ordering the removal of the supporting studs, failure to have a safety plan in place to prevent the creation of the dangerous walls, and negligence in permitting the plaintiff to perform work operations with the defendant's knowledge of the hazardous condition and without providing adequate warnings. The plaintiff maintained that as a result, he suffered severe injuries, including head injuries. The plaintiff's wife, who claimed that she suffered the loss of companionship of her husband, brought a loss of consortium claim. The defendant denied the plaintiff's allegations and contended that the plaintiff attempted to knock down the upper wall in question in a negligent manner, causing his own injuries. The defendant further maintained that the events which made the basis of the plaintiff's claims were caused by negligent acts of third parties, which the defendant had no control over.

A jury of six reached a verdict in favor of the plaintiffs for a total of $2,731,519($2,580,330 for the plaintiff Jorge R. including $300,000 for past physical pain and mental anguish; $500,000 for future physical pain and mental anguish; $95,000 for past loss of earning capacity; $825,000 for future loss of earning capacity; $91,780 for past medical care expenses; $126,550 for future medical expenses; $150,000 for past physical impairment; $360,000 for future physical impairment; $60,000 for past physical disfigurement; $72,000 for future physical disfigurement)) ($60,000 for plaintiff, Sandra T., for past loss of household services) plus $87,097 for interest on plaintiff, Jorge R.'s, damages, as well as $4,090 for plaintiff, Sandra T.'s damages.

REFERENCE

Jorge Rodriguez, Sandra Tonche vs. Lee Lewis Construction, Inc. Case no. CC-12-01898-D; Judge Ken Tapcott, 06-25-14.

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

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$1,350,000 VERDICT - PREMISES LIABILITY - FAILURE OF MOTEL TO ATTEND TO ICY CONDITIONS CAUSED BY SEVERAL HOURS OF FREEZING RAIN - PLAINTIFF GUEST SLIPS AND FALLS WHILE ATTEMPTING TO RETRIEVE KEYS OF OTHER GUEST WHO PREVIOUSLY FELL - L5-S1 HERNIATION AND AGGRAVATION AND EXACERBATION OF SCOLEOSIS.

Middlesex County, NJ

The female plaintiff contended that the defendant motel negligently failed to apply salt, or otherwise address a walkway that was rendered very slippery after several hours of freezing rain. The plaintiff contended that she slipped and fell after coming to the assistance of another guest who had slipped and fallen. The plaintiff claimed that she suffered a herniation at L5-S1 that was previously a bulging disc. The plaintiff also claimed that she suffered an aggravation and exacerbation of previously mildly symptomatic scoliosis, and maintained that the trauma from the fall caused severe radiculopathy to her right leg that ultimately necessitated a spinal fusion from T9 through L4. The plaintiff also named the snow removal contractor as a defendant, contended that had a duty to salt the area. The defendant hotel cross-claimed against the contractor.

The jury found that the hotel was causally negligent, that although the plaintiff was negligent, there was an absence of proximate cause, and that the snow removal contractor was not negligent. They then awarded $1,350,000 in non-economic damages.

REFERENCE

Janiszak vs. Extended Stay et al.. Docket no. MID-L-4051-11; Judge Phillip Paley, 08-13-14.

Attorney for plaintiff: Craig M. Aronow of Rebenack Aronow Mascolo, LLP in New Brunswick, NJ.

$770,000 GROSS VERDICT - PREMISES LIABILITY - SLIP AND FALL AT HOTEL POOL - FAILURE TO MAINTAIN WOODEN DECK IN SAFE CONDITION - HERNIATED CERVICAL AND LUMBAR DISCS WITH SURGERY - ROTATOR CUFF TEAR - 50% COMPARATIVE NEGLIGENCE FOUND.

Miami-Dade County, FL

The 53-year-old male plaintiff claimed that he slipped and fell on a slippery wooden pool deck at a Miami Beach hotel managed by the defendant. The plaintiff claimed that the fall caused herniated discs in both his cervical and lumbar spine which required surgery. In addition, the plaintiff alleged that he sustained a rotator cuff tear, which also necessitated surgery. The defendant argued that the plaintiff was a trespasser on the premises at the time of his fall and that several large, yellow warning cones had been placed on the deck by the hotel personnel prior to the incident. The plaintiff countered that he had arrived at the hotel in the early morning to meet a female friend for lunch, and that he intended to check in and spend the night with her after their meal. The plaintiff claimed that he was not yet checked into the hotel when he went out to the pool area, whereupon a pool attendant gave him a towel and showed him to a lounge chair by the pool. The plaintiff contended that he then walked across the plaza to have breakfast when he fell on a wooden deck which was slippery with algae. The plaintiff claimed that sandpaper strips that had been placed on this deck had all but peeled away. The plaintiff also alleged that there were no cones or warning signs visible on the deck at the time of his fall and presented a former pool attendant who confirmed that he seated the plaintiff by the swimming pool, and also testified that he watched the warning cones be put up after the plaintiff's fall.

The jury found the defendant 50% negligent and the plaintiff 50% comparatively negligent. The plaintiff was awarded $770,121 in damages, reduced to a net recovery of $335,061.

REFERENCE

Cohen vs. Renaissance Hotel Mgmt. Co. LLC. Case no. 2012-013703CA01; Judge Lisa S. Walsh, 06-27-14.

Attorney for plaintiff: David A. Kleinberg of Neufeld, Kleinberg & Pinkert, P.A., in Miami, FL. Attorney for defendant: William E. Crabill of Quintairos, Prieto, Wood & Boyer, P.A. in Miami, FL.

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ADDITIONAL VERDICTS OF INTEREST

Crane Collapse

$1,000,000 RECOVERY - CRANE COLLAPSE - WRONGFUL DEATH OF 30-YEAR-OLD CONSTRUCTION WORKER - LABOR LAW SEC. 240 (1) - CASE RESOLVES PRIOR TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON LIABILITY.

New York County, NY

This case arose out of a crane collapse which occurred during the construction of a subway line extension in April, 2012, and involved a 30-year-old construction worker who was struck and killed by a portion of the boom when frayed cables snapped. The plaintiff contended that the decedent, who suffered a thoracic transection and bled to death, was conscious, in great pain and suffered fear of his impending demise for approximately 30 minutes. The plaintiff contended that crane inspection certificates were forged and that workers at the site had made numerous complaints regarding unusual noises being made by the crane for several months before the collapse. The plaintiff further maintained that the post-accident inspection revealed that the cables that snapped had been frayed for some time and were not replaced as they should have been.

The case settled prior to the plaintiff's motion for Summary Judgment on liability for a total of $1,000,000.

REFERENCE

Simermeyer vs. MTA, et al. Index no. 57276/12, 10-00-13.

Attorney for plaintiff: Jeffrey A. Manheimer of counsel to Saltz Mongeluzzi Barrett & Bendesky, Ltd in Garden City, NY.

Personal Negligence

$124,260,000 VERDICT PERSONAL NEGLIGENCE - WRONGFUL DEATH - DEFENDANT GUILTY IN BLUDGEONING DEATH OF HIS WIFE - DECEDENT'S ESTATE SUES FOR COMPENSATORY AND PUNITIVE DAMAGES IN WRONGFUL DEATH OF DECEDENT.

Montgomery County, PA

The plaintiff in this wrongful death suit was the estate of the 49-year-old female decedent, consisting of the decedent's now 20-year-old daughter and the decedent's two brothers. The estate sued the defendant, the decedent's husband who was reportedly worth millions, for causing the wrongful death of the decedent when he bludgeoned her to death in their home during the holiday season of 2006. The plaintiff estated claimed that following the decedent's filing for divorce, but prior to her moving out of the house, the defendant husband came home and became argumentative when informed that the decedent intended to get a divorce and had secured an apartment for herseld and their daughter. During the argument, the defendant allegedly picked up an exercise bar and repeatedly struck the decedent to her face and head, causing fatal injuries. In the criminal case, the defendant had pleaded guilty to voluntary manslaughter and was sentenced to five to ten years in prison. In this subject civil action, the defendant made a general denial of all allegations against him.

The jury awarded the plaintiff estate $24,026,000 in compensatory damages and $100,000,000 in punitive damages. The plaintiff estimates that the defendant still has millions in assets.

REFERENCE

Estate of Ellen Gregory Robb by Gary Gregory vs. Rafael Robb. Case no. 200836401; Judge Thomas M. Del Ricci, 11-05-14.

Attorney for plaintiff: Robert Mongeluzzi of Saltz Mongeluzzi Barrett & Bendesky, PC in Philadelphia, PA. Attorney for defendant: Eric Levin of Rishor & Simone in Butler, PA.

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Pool Drowning

$12,290,000 VERDICT - NEGLIGENT SUPERVISION BY LIFEGUARD ON DUTY NEGLIGENT SUPERVISION BY LIFEGUARD ON DUTY - INSUFFICIENT PROCEDURES BY CLUB - INSUFFICIENT SUPERVISION OF LIFEGUARD - DROWNING OF 5-YEAR-OLD NON SWIMMER IN SHALLOW END OF POOL.

Waterbury County, CT

In this negligent supervision action, the plaintiffs alleged that the defendant swim club was negligent in supervising and overseeing the supervision of young children, most of whom were non-swimmers, in the defendant's pool during an after school program. The plaintiffs decedent, a five-year-old female non-swimmer, drowned and could not be resuscitated as a result of the defendant's lifeguard's failure to property supervise the children in the pool. The defendant denied any wrongdoing and alleged that the plaintiff's decedent suffered a cardiac event, which was the actual cause of her death.

At the conclusion of the trial, the jury returned a verdict in favor of the plaintiff. The jury awarded the plaintiff the sum of $12,290,000 in damages, consisting of $90,601 to the mother for economic damages associated with the incident and death; $5,000,000 to the brother for bystander emotional distress; and $7,200,000 to the estate.

REFERENCE

Retemar Coombs, et al. vs. Boys and Girls Club of Greater Waterbury, Inc.. Case no. UWY-CV-095014869S; Judge Terence Zemetis, 09-18-14.

Attorney for plaintiff: Kathleen Nastri of Koskoff Koskoff & Bieder PC in Bridgeport, CT.

Trademark Infringement

$450,000 VERDICT - INTELLECTUAL PROPERTY - TRADEMARK INFRINGEMENT - DISPUTE OVER COMPANY NAME RESOLVED BY JURY.

Dallas County, TX

In this action, a Texas business won its second jury verdict in a long-fought court battle over a trade name. The second trial was held in Dallas District Court. The plaintiff, Premier Pools, Inc., is a family-owned, longtime builder of custom swimming pools based in Lewisville, Texas. The defendants were Premier Pools Management Corp. of Nevada, and Shan Pools, Inc. of Allen, Texas, who did business collectively as Premier Pools & Spas. The plaintiff filed suit in 101st District Court of Dallas County, accusing the defendants of intentional infringement of their trademark. The plaintiff sought damages for irreparable damage resulting from the misuse of their brand and resulting confusion and dilution.

The jury returned a finding in favor of the plaintiff, concluding that Premier Pools, Inc.'s trademark was eligible for protection in four Texas counties, and that the defendants had willfully infringed that trademark. However, the jury awarded no financial damages, and found no irreparable harm. The defendants sought and were granted a new trial. On September 24, 2014, a new trial jury found that the name "Premier Pools" name was eligible for trademark protection in 12 Texas counties, including Dallas, Denton, Tarrant, Rockwall, and Collin counties. The jury further awarded $455,006 in damages, concluding that plaintiff's brand was irreparably harmed by the defendants' infringement.

REFERENCE

Premier Pools Inc. vs. Premier Pools Management Corp. Shan Pools, Inc., 09-24-14.

Attorney for plaintiff: Bryan Rose of Rose Walker, LLP in Dallas, TX. Attorney for defendant: Leland De La Garza of Shackelford, Melton, McKinley & Norton, LLP in Dallas, TX.

Unsafe Workplace

$2,041,000 VERDICT - UNSAFE WORKPLACE - ELECTRICIAN SUES AFTER SUFFERING PERMANENT DISABILITY - PERMANENT BACK AND KNEE INJURY.

Dallas County, TX

In this unsafe workplace action, the plaintiff workman sued after he was injured on the job. The plaintiff maintained that he was working as an electrician for a contractor at Bass Tower II, an office building owned by the defendant University of Texas Southwestern Medical School. The contractors were upgrading the computer system which controlled the air handling units that provided and controlled the air flow into the

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tenant occupied spaces of the building. The plaintiff, who was running electrical conduits in close proximity to the unguarded pulley on an operational air handling unit, tried to get by the pulley in a confined area when the pulley caught some electrical wires and wrapped around his leg, wrenching his back and left knee. The plaintiff claimed that he sustained permanent back and left knee injuries which required two surgeries, as well as leaving him permanently disabled, and likely in need of two knee replacements in the future. The defendant denied liability for the plaintiff's injuries.

Ultimately, the matter was resolved by a Dallas County jury with a finding of negligence and primary responsibility against the defendant owner, The University of Texas Southwestern Medical School. Mr. M. was awarded $600,000 for past and future pain and suffering, $370,000 in past and future medical expenses, $700,000 in past and future physical impairment, and $740,000 in loss of past and future wage earning capacity.

REFERENCE

Johnny Felipe Munoz vs. The University of Texas Southwestern Medical School. Case no. CC-10-00309-E; Judge Mark Greenberg, 06-30-14.

Attorney for plaintiff: Bill Zook of Ted B. Lyon & Associates in Mesquite, TX. Attorney for defendant: Douglas D. Fletcher of Fletcher Farley in Dallas, TX.

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