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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

A capsulized summary of signficant verdicts from our companion publications is also included.

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Summaries with Trial Analysis

$3,000,000 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – MULTIPLE VEHICLE COLLISION – DRIVER UNDER DRUG INFLUENCE REAR ENDS CAR, CAUSING CHAIN REACTION STRIKE TO THIRD VEHICLE IN FRONT – CERVICAL FRACTURE – BRIEF PAIN AND SUFFERING – DEATH OF MIDDLE CAR DRIVER.

Palm Beach County, FL

In this action, the plaintiff contended that the defendant SUV driver, then 17, traveled at an excessive rate of speed and negligently failed to make proper observations. The plaintiff contended that as a result, the defendant struck the decedent's automobile in the rear with great force as it was stopped behind a line of cars. The plaintiff maintained that this impact caused the decedent's car to strike the stopped car in front. The plaintiff contended that the front of the decedent's car traveled under the car in front, and that the forward forces resulted in the cervical fracture that took her life a very short time later.

The defendant had initially been criminally charged with DUI manslaughter. The blood tests were subsequently ruled inadmissible because there was an insufficient appearance of impairment to justify the tests, the attending paramedic and lead homicide investigator indicated that they did not believe that the defendant had appeared impaired at the scene, and the criminal charges were dropped. The jury was not aware of the arrest or the 0.072 test results.

The defendant maintained that the decedent had initially struck the car that was stopped in front of her and that the defendant then struck the decedent's car. The plaintiff presented eyewitness testimony reflecting that the defendant struck the decedent's vehicle first. Two of these witnesses testified over objection that the defendant appeared to be "zoned out." One of the witnesses also testified that he inquired of the defendant if she had consumed alcohol, and that the defendant responded by indicating that she was more concerned with the Xanax in her system than any alcohol that was consumed.

The plaintiff asked the defendant during cross-examination if she had been under the influence of any substances. The defendant invoked the Fifth Amendment.

The defendant further contended that the decedent was not wearing her safety belt and that if she had been doing so, she would not have suffered the fracture leading to the death. The decedent was not seen with the belt attached after the collision. The defendant also pointed to the absence of any marks that would reflect that the safety belt detached in the collision. The plaintiff contended that the severe impact caused extensive damage to the rear of the decedent's car and resulted in the demolition of the rear seats and the front passenger seat. The plaintiff maintained that in view of such extensive property damage, no inference regarding the question of whether the decedent was wearing the safety belt could be made.

The plaintiff contended that the decedent was conscious and choking on her blood for a brief period before losing consciousness. The plaintiff also presented the medical examiner who testified that the cause of death was an unstable cervical fracture.

The decedent left three adult children who did not reside at home. The plaintiff contended that the family was very close, that the children spoke on the phone with the decedent frequently, and the loss of guidance and advice was very significant. The plaintiff also stressed that under Florida law, the pain and suffering experienced by the children stemming from the death was compensable.

The evidence disclosed that the decedent had been diagnosed with bilateral Stage IV lung cancer. The defendant maintained that even if the collision had not occurred, it was likely that the decedent would have died within one year. The defendant also contended that it was highly unlikely that the decedent would have survived as long as five years.

The plaintiff contended that the defendant's position was speculative, especially in view of evidence that the decedent had survived a prior bout of cancer. The plaintiff also argued that the jury should consider that irrespective of this factor, the defendant's negligence clearly caused a horrific and premature death.

The jury found the defendant 75% negligent, the decedent 25% comparatively negligent and rendered a gross award of $3,000,000, including $1,000,000 to each of the children.

REFERENCE

Plaintiff's accident reconstruction expert: Martin Garcia from W. Palm Beach, FL. Plaintiff's medical examiner expert: Michael Bell, MD. Defendant's accident reconstruction expert: Rick Swope from Davies, FL. Defendant's surgeon expert: Jeffrey Augenstein, MD from Coral Gables, FL.

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Founder
Ira J. Zarin, Esq.

Editor in Chief
Jed M. Zarin

ContributingEditors
Brian M. Kessler, Esq.
Michael Bagen
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Business Development
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garyz@jvra.com

Production Assistant
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Assisted Search
Tim Mathieson

Court Data Coordinator
Jeffrey S. Zarin

Customer Services
Meredith Whelan
meredithw@jvra.com

Circulation Manager
Ellen Loren

Proofreader
Cathryn Peyton

Web Development & Technology
Juris Design
www.jurisdesign.com

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Main Office:
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Prushansky vs. Fradley. Case no. 50 2008; Judge David Crow, 03-09-11.

Attorneys for plaintiff: Kenneth M. Metnick and Matthew D. Levy of Metnick & Levy in Delray Beach, FL.

COMMENTARY

Although the jury was not aware that the plaintiff had initially been charged with DUI manslaughter, the plaintiff was permitted to elicit eyewitness testimony that after the collision, the defendant appeared to be "zoned out." Moreover, when asked about the issue during cross-examination, the defendant invoked the Fifth Amendment. In this regard, the court instructed the jury in this civil case that they could draw an adverse inference from refusal of the defendant to answer.

Additionally, it was undisputed that the cervical fracture was caused by forward motion; the defendant had maintained that the decedent struck the car in front before the defendant struck the decedent's automobile and that this initial impact was the cause of death. The plaintiff's evidence, that countered this position, included eyewitness testimony reflecting that the defendant initiated the collision by first striking the rear of the decedent's car.

The jury assessed 25% comparative negligence in this rear end collision case and plaintiff's counsel relates that this result may reflect a partial acceptance of the defendant's position that the decedent was not wearing her safety belt and that this factor was the cause of death. The jury was also aware that a pack of cigarettes were found in the car, notwithstanding that the decedent, who suffered lung cancer, was not supposed to be smoking. This evidence might also have had some influence on the jury, notwithstanding the absence of any evidence that smoking by the decedent contributed to the happening of the accident.

Finally, the jury rendered a very significant award, especially in view of the evidence that the decedent suffered from bilateral Stage IV lung cancer, which the defendant maintained, would have caused the death in a short period even if the accident had not occurred. The plaintiff, who did not present expert testimony on the issue, argued that the jury should not accept that the decedent, who had survived a prior bout of cancer, would have succumbed. Additionally, the plaintiff emphasized that under Florida law the pain and suffering experienced by the adult children because of the decedent's death, was compensable.

$462,605 VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – PLAINTIFF REAR-ENDED BY DUMP TRUCK – CERVICAL DISC HERNIATIONS – CERVICAL FUSION PERFORMED – BILATERAL CARPAL TUNNEL SYNDROME – SURGERY TO ONE WRIST – DAMAGES/CAUSATION ONLY.

Palm Beach County, FL

The plaintiff alleged that her vehicle was stopped on a Palm Beach County road in 2003 when it was struck from behind by a dump truck driven by the defendant. The defendant stipulated to negligence in causing the impact. However, the defense argued that the impact was minor and did not cause the injuries alleged by the plaintiff. The defendant was self-employed and his business, which owned the dump truck he was driving, was also named as a defendant in the case.

The plaintiff was a 32-year-old female at the time of the accident. Her neurosurgeon testified that the collision caused disc herniations in the plaintiff's cervical spine requiring an anterior cervical fusion and microdiscectomy which was performed approximately three years post-accident. The plaintiff testified that the surgery did not fully alleviate her cervical symptoms and that she experiences ongoing neck pain.

In addition, the plaintiff was diagnosed with bilateral carpal tunnel syndrome which she also claimed stemmed from the collision. The plaintiff underwent carpal tunnel release surgery to one wrist and future surgery was recommended for the other wrist. The plaintiff returned to her employment as an ultrasound technician following the accident.

The defendant argued that minimal property damage to the vehicles involved indicated a light impact to the back of the plaintiff's car. The defendant contended that the plaintiff's cervical and wrist conditions were not causally related to the subject accident.

The defendant stressed the delay of three years between the date of the accident and the date of the plaintiff's cervical surgery and maintained that her cervical condition was not related to the accident. The defendant's nuclear medicine expert testified that the plaintiff's diagnostic films showed degenerative disc bulges not herniations. The defense also argued that the plaintiff's wrist condition was consistent with the repetitive motion associated with her employment as an ultrasound technician.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $462,605 in damages.

REFERENCE

Plaintiff's neurosurgery expert: Charles Theofilos from Palm Beach Gardens, FL. Defendant's nuclear medicine expert: Robert Kagan from Fort Lauderdale, FL. Defendant's orthopedic surgery expert: Bradley Chayet from Fort Lauderdale, FL.

Perkins vs. Loaiza. Case no. 502008 CA 03008; Judge David Crow, 12-01-10.

Attorneys for plaintiff: Andy M. Custer and John T. McGovern of Custer ~McGovern, P.A. in Lake Worth, FL.

COMMENTARY

This case centered squarely on causation after the defense admitted negligence in causing the rear end impact to the plaintiff's car. The defense attempted to establish that the impact was minimal, despite the fact that a heavy dump truck was involved.

Plaintiff's counsel faced the difficulty presented by evidence that the plaintiff did not undergo cervical surgery until some three years after the subject collision. The defense position was that the plaintiff's condition was degenerative and, at most, minimally affected by the accident.

However, the plaintiff stressed that the cervical surgery had been recommended in the first year following the collision and that the plaintiff had dealt with her wrist injury and undergone conservative cervical treatment in an attempt to avoid the surgery which was ultimately performed. In this way the defense position, regarding the three year gap before performance of cervical surgery, appears to have been successfully mitigated. In addition, on cross-examination, the defendant's orthopedic surgeon conceded that the plaintiff's cervical condition and her carpal tunnel symptoms were at least partially related to the subject rear end collision.

Although there was enough insurance coverage in place at the time of the accident to satisfy the $462,605 damage award, the defendant's insurance carrier, Aequicap, based in Fort Lauderdale, subsequently went into receivership and liquidation after the verdict was rendered, but before paying the judgment. The plaintiff is in the process of filing a claim with the Florida Insurance Guarantee Association which limits recovery to $300,000 per occurrence. Collection above that amount would require payment through the receivership from the insolvent insurance company's remaining assets, if any.

DEFENDANT'S VERDICT – MOTOR VEHICLE NEGLIGENCE – AUTO/TRUCK COLLISION – WOMAN'S VEHICLE HIT BY REVERSING TOW TRUCK – CONTESTED SPINAL INJURIES.

Palm Beach County, FL

In this case, an alleged drug addict claimed to be struck by a tow truck. The jury found for the defendant in less than ten minutes.

The circumstances of this case involved a claim by the female plaintiff. She claimed to have been struck in her vehicle with wheels spinning by a tow truck moving in reverse, driven by the defendant Joseph D. The plaintiff alleged that the vehicle was thrown, causing the plaintiff injuries including herniations to the back and neck, requiring multiple fusions.

The plaintiff filed suit in the 15th Judicial District Court of Palm Beach County, Florida. The plaintiff sought nearly a million in recovery of medical damages, as well as non-economic damages on this personal injury action. Named in the suit were Joseph D. and his employer, Palm Beach Gardens Towing Corporation.

Evidence at trial included the deposition of the plaintiff, as well as a photo she took of her vehicle's bumper. The plaintiff made an unsuccessful attempt to have the medical testimony of an expert witness introduced. The defense at trial argued that the plaintiff's injuries were preexisting.

The jury returned a verdict for the defendants after ten minutes.

REFERENCE

Plaintiff's medical expert: Dr. Campbell.

Angela Riley vs. Palm Beach Gardens Towing Corporation and Joseph Dttmyre. Case no. 2007CA14988; Judge Donald W. Hafele, 09-01-10.

Attorney for plaintiff: Philips Paul O'Shaughnessy in Fort Lauderdale. Attorney for defendant: David P Bradley of Cole, Scott & Kissane, P.A. in West Palm Beach, FL. Attorney for defendant: James Sparkman of Cole, Scott & Kissane, P.A. in Miami, FL.

COMMENTARY

An attorney for the defense recalled the plaintiff having taken a Percocet during the deposition process. How apparent the nature of the plaintiff's character was during trial and how much impact that had on the verdict is unknown.

$2,395,828 VERDICT INCLUDING $1,500,000 IN PUNITIVE DAMAGES – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – VIOLATION OF FLORIDA'S ASSISTED LIVING FACILITIES ACT – FAILURE TO PROVIDE FALL PROTECTION – 11 FALLS IN ONE-MONTH PERIOD – CERVICAL VERTEBRA FRACTURE – SURVIVAL ACTION.

Broward County, FL

This case was brought under Florida's Assisted Living Facilities Act by the granddaughter of a 99-year-old woman who fell 11 times during her 29-day stay in the defendant's facility. The plaintiff alleged that the defendant failed to provide fall precautions and failed to adequately supervise the decedent. The decedent sustained a cervical vertebra fracture in her last fall and was confined to bed until her death approximately seven months later. The defendant maintained that the decedent's falls were unpreventable.

The plaintiff contended that over a 29-day residency at the defendant's facility, the elderly decedent fell 11 times and also suffered other unexplained injuries. The plaintiff alleged that the decedent's repeated falls resulted from the defendant's failure to implement any fall precautions, such as increased supervision, alarms or the placing of mats on the floors.

The plaintiff also claimed that the decedent was placed for two hours in a locked Alzheimer's wing of the defendant's facility without supervision. This unsupervised period resulted in the decedent suffering a final fall which caused a fracture of her cervical vertebra, according to the plaintiff's claims. After the last fall, the plaintiff's evidence showed that the decedent was found in a puddle of blood screaming and was covered in blood. She was transported to the hospital where she was diagnosed with a C-2 vertebra fracture as a result of the fall.

The decedent also suffered two black eyes and a gash over her nose in the fall, according to evidence offered. Because of the decedent's advanced age, her physician advised that surgery was not a viable option. Thus, the decedent remained in hospitals and nursing homes for seven months and was required to wear a neck brace, to immobilize her cervical spine, until her ultimate death.

The plaintiff contended that, during the seven months prior to her death, the decedent suffered the development and deterioration of painful bed sores and had a stroke. The plaintiff claimed $145,828 in past medical expenses and sought punitive damages, as well as compensatory damages from the defendant.

The defendant argued that the decedent's falls were a result of her deteriorated physical and mental condition and advanced age and were not the result of anything that the defendant's staff did or failed to do. The defense maintained that the decedent was adequately supervised at all times and that her falls could not have been prevented. The defendant's nursing expert opined that the decedent's care at the defendant's facility met the required standard of nursing care.

The jury found the defendant was negligent and also that it violated Florida Statute section 429, known as the Assisted Living Facilities Act. The plaintiff was awarded $2,395,828 in damages comprised of $145,828 in past medical expenses; $750,000 in compensatory damages and $1,500,000 in punitive damages.

REFERENCE

Plaintiff's family medicine expert: Lee Alan Fischer from West Palm Beach, FL. Plaintiff's nursing expert: Cynthia Oram from Fort Myers, FL. Defendant's internal medicine expert: Kenneth Homer from Oakland Park, FL. Defendant's nursing expert: Darla Ura from Atlanta, GA.

Karen Pagano as personal representative of the Estate of Frances Tremblay vs. Hillsborough Management LLC d/b/a Living Legends Retirement Center. Case no. 09-30107; Judge John J. Murphy, 02-23-11.

Attorneys for plaintiff: William A. Dean and Michael J. Rotundo of Ford & Dean, P.A. in Aventura, FL.

COMMENTARY

Because the decedent had no survivors under Florida's Wrongful Death statute, this action was brought as a survival claim only. The decedent's estate was represented by her granddaughter, who was her closest relative. Despite the decedent's advanced age of 99 years and her diagnosis with Alzheimer's disease, the jury placed a substantial value on the seven months of pain and suffering which the decedent endured prior to her death.

Evidence showed that the decedent's age precluded the performance surgery to repair the cervical fracture. Thus, during the seven months in question, the decedent was confined to bed with a neck immobilizer and developed significant and painful decubitus ulcers, as well as suffering a stroke.

A large portion of the total damage award ($1.5 million) was assessed against the defendant in the form of punitive damages. In this regard, the plaintiff established that the decedent had been left unsupervised for some two hours in the defendant's "Alzheimer's Wing". It was during this time that she suffered the fall which caused her debilitating cervical vertebra fracture. In addition, the decedent had fallen at least ten times in a 29 day period before this final fall, which the jury may have believed certainly put the defendant on notice that she was at extreme risk of injury due to falls.

The case was tried over the course of seven days. The six member jury deliberated for approximately four hours before returning its unanimous decision awarding the plaintiff nearly $2.4 million in damages. Plaintiff's counsel is currently seeking to tax attorney fees and costs. The plaintiff also contends that the $250,000 available insurance policy limit was demanded and not timely tendered. The defendant has filed a post-trial motion for new trial.

$350,000 VERDICT – MEDICAL MALPRACTICE – HOSPITAL NEGLIGENCE – NEGLIGENT TREATMENT OF BED SORES – FAILURE TO PROVIDE TIMELY AND APPROPRIATE WOUND CARE AND INTERVENTIONS – INFECTION – EIGHT MONTHS OF PAIN AND SUFFERING TO ELDERLY DECEDENT – SURVIVAL ACTION.

Miami-Dade County, FL

The estate of the elderly decedent in this medical malpractice action alleged that an osteopath, and advanced registered nurse practitioner rendered substandard medical care in tending to the decedent's pressure sores. The private wound care company which employed the health care providers was also named as a defendant on a vicarious liability theory. The plaintiff alleged that the defendant's negligence caused the 88-year-old decedent to suffer extreme pain and agony for some eight months prior to her death. The case was brought as a survival action with no claim of wrongful death. The defendants' maintained that all appropriate care was rendered to the decedent.

The decedent fell at her home and sustained a hip fracture. As a result, she was admitted to a non-party hospital where she underwent hip replacement surgery. During the decedent's hospitalization and confinement to bed, records showed that she suffered the development and deterioration of a Stage IV sacral pressure sore.

Upon discharge from the hospital, the decedent was admitted to a non-party rehabilitation facility on May 23, 2008 for rehabilitation and treatment of her sacral pressure sore. Upon arrival to the rehabilitation facility, the plaintiff argued that records showed that the decedent's Stage IV sacral pressure sore was clean, small, and showed no signs of infection. The rehabilitation facility immediately consulted the defendant wound care company to take over the care, treatment, and supervision of the decedent's sacral wound. The plaintiff's pressure wound was treated by the defendant registered nurse practitioner, as well as the defendant osteopath.

The plaintiff alleged that the defendants failed to provide timely and appropriate wound care, treatment, supervision and interventions including surgical debridement from May 26, 2008 to June 11, 2008. As a result of the defendants' negligence, the plaintiff alleged that the decedent's wound deteriorated, become infected, and developed a puss pocket, induration, erythema, and undermining. As a result, the plaintiff contended that the decedent was forced to live the last eight months of her life with an infected and painful sacral bedsore.

The defendants maintained that they provided appropriate wound care, treatment, and supervision to the decedent's sacral wound. The defendant's family medicine expert testified that the decedent's condition was such that the pressure sore could not be cured and that the defendants rendered all appropriate care to treat it. The defense also argued that the surgical debridements suggested by the plaintiff's experts were not appropriate in light of the fact that the decedent was taking anticoagulants.

The jury found the defendant osteopath 65% negligent and the defendant advanced registered nurse practitioner 25% negligent. The non-party rehabilitation facility, which was listed as a Fabre defendant, was found 10% negligent. The plaintiff was awarded total damages of $350,000 consisting of $13,000 in medical expenses and $337,000 for the decedent's pain and suffering under the survival action.

REFERENCE

Plaintiff's nursing expert: Joyce Black from Elkhorn, NE. Plaintiff's plastic surgery expert: James D. Stern from Hollywood, FL. Defendant's family medicine expert: Glenn Gidseg from Marathon, FL.

Zoila Gutierrez as personal representative of the Estate of Dilia Dolores Jaquez vs. Vohra Health Services, P.A., et al. Case no. 2009-28783 CA 21; Judge William Thomas, 04-28-11.

Attorneys for plaintiff: William A. Dean and Michael J. Rotundo of Ford & Dean, P.A. in Aventura, FL.

COMMENTARY

The bulk ($337,000) of this total $350,000 damage award represents compensation for approximately eight months of pain and suffering to an elderly decedent. The verdict signifies the jury's complete intolerance of perceived neglect of our senior citizens. The verdict also examines an interesting concept regarding the calculation of monetary damages for human pain and suffering. In performing the arithmetic, the damage award equates to approximately $42,125 per month or roughly $1,404 per day while the decedent suffered from the bed sores under the defendant's care.

The defendant maintained that the pressure wound was preexisting and could not be cured. Plaintiff's counsel stressed the painful and uncomfortable nature of the sacral pressure wound involved and presented expert testimony that the condition was not properly cared for. Graphic photographs depicting the bed sore as it progressed were also viewed by the jury. Plaintiff's counsel suggested $400,000 as appropriate compensation during closing statements. The jury of three males and three females reached a unanimous decision awarding $350,000 after four days of trial and approximately three hours of deliberation. The plaintiff served offers of judgment totaling $150,000. Plaintiff's counsel is currently seeking to tax attorney fees and costs.

$475,000 RECOVERY – CONSTRUCTION SITE NEGLIGENCE – NEGLIGENT OPERATION OF BACKHOE OVER PLAINTIFF'S FOOT – CRUSH INJURY TO RIGHT FOOT – DEVELOPMENT OF GANGRENE – AMPUTATION OF SECOND AND THIRD DIGITS – LUMBAR DISC PROTRUSION WITH NERVE ROOT IMPINGEMENT.

Miami-Dade County, FL

The plaintiff was a 33-year-old Cuban immigrant who was working for a plumbing subcontractor at Trump Towers, a luxury high-rise condominium complex in Miami Beach. The plaintiff alleged that the defendant backhoe operator, employed by the defendant backhoe company, negligently operated the heavy equipment so as to crush the plaintiff's right foot. The defendant argued that the accident was caused by the plaintiff's own negligence, as well as the negligence of the non-party general contractor on the project. The defense also contended that the plaintiff's suit was barred by a statutory worker's compensation provision protecting subcontractors. The court ruled that the gross negligence exception to the worker's compensation immunity statutes applied. Accordingly, the plaintiff was required to prove that there was gross negligence on the part of the defendants in order to recover.

The plaintiff contended that on July 6, 2007, in order to complete necessary pipe repair work, he and his assistant were excavating a damaged pipe. At approximately 9:30 a.m. that morning the plaintiff was working with the defendant backhoe operator to excavate the pipe. The plaintiff claimed that the defendant backhoe operator negligently caused the bucket of the backhoe to crush the plaintiff's foot. Both the plaintiff and his assistant testified that they were on an elevated concrete platform adjacent to the excavation area when the incident occurred.

The plaintiff was diagnosed with a crush injury to his right foot caused by the backhoe. He suffered open fractures of the second and third metatarsals. He underwent repair of a 12 cm laceration on the day of the accident. Between July 7, 2007 and July 18, 2007, the plaintiff began to develop gangrene. On July 19, 2007, he underwent an amputation of the second and third digits of his right foot. He subsequently required evacuation of subungual hematomas of the fourth nail bed, full thickness skin debridement and removal of an ingrown toenail related to the trauma. The plaintiff underwent physical therapy and his physician recommended a custom orthotic.

Approximately three years post-accident, the plaintiff presented to the hospital with back complaints. An MRI showed lumbar disc bulges and a disc protrusion at the L5-S1 level which was touching the bilateral S1 nerve root. The plaintiff claimed that his lumbar condition was also causally related to being struck with the backhoe bucket.

The plaintiff earned approximately $21 per hour prior to the accident and was unemployed for more than a year afterwards. He currently works 32 hours per week at a discount department store earning approximately $9 hour. The plaintiff was single with no children.

The defendant backhoe operator maintained that the plaintiff was not on the elevated platform, as he alleged, but was on the ground next to the pipe which was being excavated when the backhoe bucket struck his right foot. The defense contended that the plaintiff should not have been in the area where the backhoe was operating.

The defense also contended that the plaintiff's lumbar condition was degenerative in nature and completely unrelated to the accident. The defendant stressed the three-year gap between the date of the accident and the plaintiff's first complaints of back pain.

The case was settled for a total of $475,000 two weeks before trial was scheduled to begin.

REFERENCE

Plaintiff's heavy equipment operation expert: William Gulya, Jr. from Metuchen, NJ. Plaintiff's podiatric surgery experts: Jean Holewinski from Miami, FL, and Marie Williams from Miami, FL. Plaintiff's vocational economic expert: Anthony M. Gamboa, Jr. from Louisville, KY. Plaintiff's vocational rehabilitation expert: Jacquelyn Vega Velez from Louisville, KY.

Sosa vs. Defendant. Case no. 08-17823CA09; Judge Jerald Bagley, 03-07-11.

Attorney for plaintiff: Brett Alan Panter of Panter, Panter & Sampedro, P.A. in Miami, FL.

COMMENTARY

Liability was severely contested under Florida's worker's compensation statutes, specifically Section 440.10 which, under certain circumstances, provides limited immunity to subcontractors from suits brought by employees of other subcontractors. In this case, the gross negligence exception to the defendant subcontractor's worker's compensation immunity was deemed to apply, significantly increasing the plaintiff's burden of proof. The plaintiff maintained that the gross negligence of the defendant backhoe operator was the major contributing cause of the injuries the plaintiff sustained when the bucket of the backhoe struck his right foot. There was a factual dispute regarding the plaintiff's location at the time of the accident. The plaintiff and a co-worker testified that they were standing on an elevated concrete platform near the area where a pipe was being excavated. However, the defendant backhoe operator maintained that the plaintiff was down on the ground

right next to the excavation; a crucial discrepancy which may have determined the extent of any comparative negligence to be assessed against the plaintiff.
Although the plaintiff's toe amputations were indisputable, there was a damage issue centering on the plaintiff's claim for damages associated with a lumbar disc protrusion. The defense asserted that the lumbar condition, which manifested some three years post-accident, was unrelated to the plaintiff's initial foot injury. However, plaintiff's counsel stressed that the plaintiff was young and less like to have degenerative problems and that there were no intervening causes to explain his lumbar symptoms. The plaintiff maintained that, if the condition was preexisting, it was at least aggravated by the backhoe incident.
The plaintiff's damages were also bolstered by a substantial wage loss claim. The plaintiff, 33 at the time of the incident, was able to firmly establish both a reduction in his hourly wage and the number of hours that he worked.

$425,000 VERDICT – WRONGFUL TERMINATION – EMPLOYEE RIGHTS – VIOLATION OF FLORIDA'S WHISTLE BLOWER STATUTE – CPR CARDS ISSUED WITHOUT REQUIRED TRAINING – RETALIATORY DISCHARGE OF COMPLAINING NURSE.

Pinellas County, FL

The plaintiff brought this action against the hospital where she formerly worked, alleging violations of Florida's Private Whistleblower Act. The plaintiff alleged that she was discharged from her nurse management position by the defendant in retaliation for her complaints that her supervisor had renewed CPR cards to employees who did not undergo the required CPR training. The defendant maintained that the plaintiff's termination was associated with a reduction in force undertaken by the hospital and was not related to her complaints regarding the allegedly fraudulent CPR cards.

The plaintiff was a 13 year employee of the defendant hospital and held the position of Nurse Manager of Surgical Services at the Outpatient Care Center during the time in question. The plaintiff testified that she learned that her supervisor, the Director of Surgical Services, had issued renewed CPR cards to two surgical registered nurses and a surgical technician without those employees having undergone the requisite CPR training.

The plaintiff argued that the Florida Administrative Code requires that all surgical nursing staff receive at least annual continuing education in CPR. The plaintiff, having become aware that her supervisor simply issued the cards without holding the requisite training, claimed that she confronted him and informed him of the illegality of the practice. Evidence showed that, less than three weeks after making the complaints, the same supervisor informed the plaintiff that her position had been eliminated as part of the hospital's reduction in force.

The plaintiff argued that surgical services that had never before been affected by any kind of personnel reduction and that the plaintiff was the only clinical employee affected. Only the plaintiff and one or two administrative employees in the entire hospital were included in the personnel reduction, according to evidence offered by the plaintiff. In addition, in the months immediate prior to the plaintiff's termination, she claimed that the supervisor in question had hired three additional nurses and two additional surgical technicians.

The plaintiff contended that the reasons proffered by the defendant for her termination were pretextual and that the real reason for her termination was retaliation for the complaints she had made to her supervisor regarding his illegal issuance of the CPR cards. The defendant claimed that the plaintiff's inclusion in the reduction in force had been determined well before her complaints to her supervisor regarding the alleged fraudulent CPR cards.

The jury found for the plaintiff and awarded her $425,000 in damages. The award included $50,000 in past wages; $250,000 in future wages and $125,000 in pain and suffering. The plaintiff has moved for attorney fees pursuant to statute.

REFERENCE

Martell vs. Tarpon Springs Hospital Foundation, Inc. d/b/a Helen Ellis Memorial Hospital. Case no. 08-018401; Judge George M. Jirotka, 09-29-10.

Attorneys for plaintiff: Will H. Florin and Thomas D. Roebig of Florin Roebig, P.A. in Palm Harbor, FL.

COMMENTARY

The defendant hospital maintained that it underwent a reduction in its workforce and that the decision to terminate the plaintiff was made well before her complaints regarding illegal renewal of employee's CPR cards and, therefore, her termination could not possibly have been related to her complaints. However, plaintiff's counsel was able to successfully disprove the defense contentions as a pretext through the introduction of evidence which showed that prior personnel reductions at the hospital had never before affected the surgical services department where the plaintiff was employed. In addition, the plaintiff stressed that she was the only clinical employee affected by the so-called reduction in force and that, during the months just before her termination; the defendant had actually hired five new employees, including nurses and surgical technicians.
The Florida Private Whistleblower Act, under which the case was brought, allows for recovery of attorney fees for the prevailing party. As the prevailing party, the plaintiff has moved for an award of attorney fees. Prior to trial, the defendant made a proposal for settlement in the amount of $32,000.

DEFENDANT'S VERDICT – PERSONAL NEGLIGENCE – KEYS ALLEGEDLY LEFT IN VEHICLE – STOLEN VEHICLE RUNS STOP SIGN – AUTO/MOTORCYCLE COLLISION – BILATERAL FEMUR FRACTURES – FUTURE LEG AMPUTATION INDICATED – BILATERAL WRIST FRACTURES – MULTIPLE RIB FRACTURES – PULMONARY EMBOLISM – THREE WEEK COMA – TOTAL DISABILITY FROM EMPLOYMENT CLAIMED.

Broward County, FL

This case featured Florida Statute 316.1975 which prohibits any vehicle from being left unattended without first stopping the engine, locking the ignition and removing the key. The plaintiff alleged that the defendant left his keys in the ignition of his Pontiac TransAm, resulting in the theft of the car. The stolen vehicle then ran a stop sign and collided with the plaintiff who was riding a motorcycle with the right-of-way. The plaintiff maintained that the defendant's statutory violation made him responsible for the injuries caused to the plaintiff as a result of the accident. The defendant denied that he left his car keys in the ignition of his vehicle as alleged.

The plaintiff was a 58-year-old man who was employed as a manager of a liquor store at the time of the collision. The plaintiff alleged that the driver, who somehow obtained the vehicle from the car thief, drove through a stop sign some 20 hours after the theft and caused the collision with the plaintiff's motorcycle.

Testimony established that the defendant, who was employed as a limousine driver for USA Parking at the Diplomat Hotel in Hollywood, drove his car up the ramp of the convention center and got out to take some paperwork into the office, leaving the windows and convertible top of his car down. The theft of the defendant's car was captured on the hotel's video surveillance camera.

The video showed the thief lurking in the parking lot and the defendant walking into the building and disappearing down a hallway with the thief following him. The thief then exited the building, jumped into the defendant's car and drove away. The plaintiff's auto theft expert testified that it was apparent that the thief started the vehicle with a key. However, this expert could not say how the thief acquired the key or whether it was left in the ignition. The plaintiff maintained that evidence established that the defendant had left the key in the vehicle, thus enabling the theft.

The plaintiff was in a coma for approximately three weeks following the collision and his recovery was complicated by a pulmonary embolism. He was diagnosed with fractures of both femurs. His right leg did not heal properly and exhibited a non-union. The plaintiff underwent internal fixation of the right femur fracture, developed osteomyelitis and underwent additional surgery to remove the orthopedic hardware. A total of five surgeries were performed on the plaintiff's right leg.

The plaintiff's orthopedic surgeon opined that the plaintiff will ultimately require an above-knee amputation of the right leg in the future. The plaintiff was also diagnosed with bilateral wrist fractures and multiple rib fractures. His orthopedic surgeon testified that the plaintiff will additionally require a wrist fusion in the future.

The plaintiff was an in-patient of a rehabilitation center for approximately a year and a-half after the collision. He claimed that he was unable to return to work and sustained a total disability from employment as a result of the accident. The plaintiff sought approximately $150,000 in past loss of wages plus some $500 per week in future wage loss for the remainder of his work life.

The defendant testified that he did not leave his keys in the ignition of his car and that he may have dropped them in the inside hallway. The defense maintained that the surveillance video was consistent with the thief finding the keys in the hallway after he followed the defendant inside the building.

The defendant's orthopedic surgeon agreed that the plaintiff sustained a significant permanent impairment rating as result of the injuries he sustained in the accident. However, this expert opined that the plaintiff's right leg did not exhibit the extent of vascular compromise which would require an amputation.

The jury found that the defendant did not leave his car keys in the ignition and a defense verdict was entered.

REFERENCE

Plaintiff's orthopedic surgery expert: Raul Aparacio from Plantation, FL. Defendant's orthopedic surgery expert: Richard Strain from Hollywood, FL.

Allan vs. Graf. Case no. CACE 05001933; Judge Mily Rodriguez-Powell, 04-26-11.

Attorney for plaintiff: Dan Cytryn of Law Offices of Cytryn & Velazquez, P.A. in Coral Springs, FL. Attorney for defendant: Michael A. Robb of Clark, Robb, Mason, Coulombe & Buschman in Coral Springs, FL.

COMMENTARY

Amazingly, the theft of the plaintiff's car was captured on hotel security cameras and played for the jury at trial. Plaintiff's counsel maintained that the facts of the case (including the defendant's short trip into his office with the windows, roof and doors of his car left open) was a situation in which the defendant would have been likely to leave his keys in the ignition. It was also clear that the thief used a key to start the vehicle.

However, the defendant's victory may have hinged on a segment of the surveillance video which showed the defendant disappearing into a hallway of the hotel followed by the thief. The cameras did not show what took place during the time that they were inside the hallway. The theft then emerged, jumped in the defendant's car

and drove away. Defense counsel was able to plant a seed in the minds of the jury as to the possibility that the defendant may have dropped his keys in the hallway and the thief picked them up there.

Based on the questions asked by the jury during deliberations (including why the car thief was not a defendant in the case) it appears as though the jury may have had some difficulty with holding the defendant responsible for the actions of the driver who obtained the car from the thief. Although there was a question of comparative negligence on the verdict form, regarding the plaintiff's operation of his motorcycle, the jury never reached that question since it determined that the defendant did not leave his keys in the ignition of his car.

The plaintiff attempted to sue the Diplomat Hotel for alleged negligent security and also the defendant's employer, which owned the vehicle which was stolen. However, the hotel and the defendant's employer were both granted summary judgment prior to trial and the rulings were upheld on appeal.

One of the members of the jury was a trauma nurse, selected after the plaintiff's peremptory challenges were exhausted. Trial testimony established that an orthopedic pin came out of the plaintiff's knee and he failed to seek medical treatment following that incident. The plaintiff developed an infection in his leg, and the defense also introduced evidence that the plaintiff had more than 20 cats running around in his apartment, including stray cats, which were licking at the wound.

The defendant reportedly attempted to tender a $10,000 liability policy limit early in the litigation. Plaintiff's counsel requested $10 million in damages during closing statements. The defense verdict and prior summary judgments have reportedly left the plaintiff no avenue for recovery in light of the lack of uninsured motorist coverage.

Verdicts by Category

PROFESSIONAL MALPRACTICE

Primary Care

DEFENDANT'S VERDICT

Medical malpractice – Primary care – Alleged failure to diagnose and treat spinal epidural abscess – Paraplegia at age 51.

Miami-Dade County, FL

This case involved a 51-year-old male plaintiff who sued, among others defendants, the family practitioner who treated him. The plaintiff alleged that the defendant failed to diagnose and treat a spinal epidural abscess, leading to permanent paraplegia. The plaintiff's claims against the hospital where he was treated and an emergency room physician were settled prior to trial. The defendant maintained that his treatment of the plaintiff was reasonable and that he met the standard of care in all respects.

The plaintiff's experts opined that the defendant physician missed obvious signs and symptoms of a spinal emergency, leading to the plaintiff suffering permanent paraplegia within six hours of his visit to the defendant. Plaintiff's counsel requested $12,000,000 in damages during closing statements to the jury.

The defendant argued that, although the plaintiff's signs and symptoms were consistent with a spinal process, there were other processes in his differential diagnosis that needed to be worked up first. The defense maintained that there was insufficient time for the defendant physician to arrive at the diagnosis of spinal epidural abscess and that the plaintiff's paraplegia was ultimately due to an unpreventable stroke of the spinal cord.

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

REFERENCE

Coachman vs. Gumber. Case no. 2009-044981; Judge Valerie Manno Schurr, 02-25-11.

Attorney for defendant: Oscar J. Cabanas of Wicker Smith in Coral Gables, FL.

BUS NEGLIGENCE

DIRECTED VERDICT FOR DEFENDANT

Bus negligence – Bus driver makes negligent left turn and hits car – Herniated disc claimed by plaintiff bus passenger.

Broward County, FL

The plaintiff was a passenger on a bus when he claimed that the defendant made a negligent left turn from the opposite direction and caused a collision. The defendant disputed the injuries claimed by the plaintiff and maintained that he did not sustain a permanent injury as a result of the collision. The bus company and bus driver were not parties to the lawsuit.

The plaintiff was a man in his late 20s at the time of the accident. He alleged that the bus was proceeding through a Broward County intersection with the right-of-way when the defendant's vehicle made a negligent left turn in front of it and caused a collision. The plaintiff claimed that the impact caused a non-surgical disc herniation.

The pro se plaintiff did not appear for trial. Defense counsel picked a jury of six and then moved for a directed verdict, which was granted. The defendant's motion to tax costs and attorney fees, based on a proposal for settlement in the amount of $2,500, is pending.

REFERENCE

Bumpers vs. Daniels. Case no. 09046387; Judge Mily Rodriguez-Powell, 04-08-11.

Attorney for defendant: James T. Sparkman of Cole Scott & Kissane in Fort Lauderdale, FL.

CIVIL RIGHTS

$66,000 VERDICT

Civil rights – Violation of Florida's Whistle Blowers Act – Plaintiff sexually harassed at work then terminated after complaining – Wrongful termination.

Miami-Dade County, FL

This action was brought under Florida's civil rights act and the so-called Whistle Blower Act against the defendant corporation, which manufacturers snack food products. The plaintiff alleged that she was sexually harassed at work, and then wrongfully terminated by the defendant after complaining of the harassment. The defense maintained that the plaintiff was not sexually harassed at work and that she was terminated for poor job performance.

The plaintiff, a female in her 40s, was employed as a cook in the defendant's factory. She alleged that she was sexually harassed by a male supervisor who grabbed her breasts, tried to kiss her and demanded sexual favors. The plaintiff testified that these sexual advances were unwanted by her, she asked the supervisor to stop, but he would not stop. When the plaintiff complained to the defendant corporation's management about the sexual harassment she claimed that nothing was done to halt the harassment. Instead, the plaintiff claimed that she was transferred, her hours cut and she was ultimately terminated by the defendant.

The supervisor involved denied the allegations made by the plaintiff and maintained that he did not sexually harass the plaintiff. The defense contended that the plaintiff never made complaints to management and that she was terminated for valid reasons involving her job performance.

The jury found for the plaintiff in the amount of $66,000, including $5,000 in punitive damages.

REFERENCE

Perez vs. ARA Food Corp. Case no. 09-17485 CA 01 (22); Judge Lawrence Schwartz, 12-09-10.

Attorneys for plaintiff: Juliana Gonzalez and Lawrence J. McGuinness of McGuinness & Gonzalez, P.A. in Miami, FL.

CONTRACT

$50,000 VERDICT

Contract – Unjust enrichment – Alleged breach of oral contract – Failure to repay business loan to former father-in-law.

Miami-Dade County, FL

The plaintiff brought this action against his former son-in-law alleging that the defendant was personally liable for a $100,000 loan which the plaintiff made so that the defendant (and the plaintiff's daughter) could open an antique business in Coral Gables, Florida. The plaintiff asserted claims of breach of contract and unjust enrichment against the defendant. The plaintiff's daughter, who was divorced from the defendant, was not a party to action. The defendant maintained that the loan was made to a corporation, which had since dissolved, and he had no personal liability for the debt.

The plaintiff, who was a resident of Spain, claimed that he made a personal loan to the defendant in two installments of $50,000 each. Although there was no written contract documenting the loan, the plaintiff produced faxes from the defendant thanking the plaintiff for agreeing to lend him the money.

In addition, the plaintiff produced bank information showing that $50,000 was transferred from the plaintiff's account into an account designated by the defendant in November of 2002 and another $50,000 was transferred in December of 2003. The plaintiff contended that none of the loan had been repaid by the defendant as promised.

Evidence showed that the money was transferred from the plaintiff's bank account into two corporate accounts, Sahara Dreams LLC, and then Sahara Dreams, Inc. The corporations were owned by the defendant and the plaintiff's daughter. The corporations were subsequently administratively dissolved and the defendant maintained that he had no personal liability for the debt.

The jury found for the defendant on the breach of contract claim. The jury found for the plaintiff on the unjust enrichment claim. The plaintiff was awarded $50,000 in damages.

REFERENCE

Gaebelt vs. Infante. Case no. 2007-043571; Judge Marc Schumacher, 01-20-11.

Attorneys for plaintiff: Julio Bertemati and Jason Bravo of Aran, Correa, Guarch & Shapiro, P.A. in Coral Gables, FL.

DEFENDANT'S VERDICT

Contract – Claimed breach of recruiting firm contract – Alleged failure to pay fee for personnel provided to law firm.

Miami-Dade County, FL

The plaintiff was an employment firm which alleged that it was owed a recruiting fee from the defendant law firm. The plaintiff claimed that it placed an attorney with the defendant firm, but the defendant breached its contract by wrongfully refusing to pay the fee due and owing to the plaintiff. The defendant maintained that it had advised the plaintiff that it was not hiring for a salaried position, but was entering into an affiliate partnership agreement. The defense contended that the plaintiff acknowledged that its standard fee schedule was not applicable to the law partner in question.

The plaintiff alleged that it placed an attorney in the defendant firm and was contractually entitled to approximately 20% of his anticipated first year earnings. The attorney in question testified that, after he was introduced to the defendant law firm by the plaintiff, he entered into a partnership with the defendant. Under the written partnership agreement, introduced at trial, the new attorney was entitled to retain 100% of his originations.

The defendant asserted that no agreement had been reached with the plaintiff concerning the new attorney because he was a partner and not an employee. The defense also argued that the new attorney was not receiving a salary and there was no way to reconcile the plaintiff's formula for calculating an alleged recruiting fee.

The case was tried as a bench trial with a ruling in favor of the defendant. The plaintiff's post-trial motions are pending.

REFERENCE

Terry M. Weiss & Associates, Inc. vs. Diaz, Reus & Targ, LLP. Case no. 2009-005872CA01; Judge Lester Langer, 12-09-10.

Attorney for defendant: Brant C. Hadaway of Diaz, Reus & Targ, LLP in Miami, FL.

FRAUD

$93,000 AWARD

Fraud – Civil theft – Violation of Florida's Deceptive and Unfair Trade Practices Act – Failure of boat dealer to pay off loan on boat taken as trade-in.

Broward County, FL

The plaintiff alleged that he purchased a new boat from the defendant boat dealer and traded in his old boat with the agreement that the defendant would pay off the loan on the old vessel. However, the plaintiff alleged that the

defendant failed to pay off the old loan thereby committing fraud, civil theft and violation of Florida's Deceptive and Unfair Trade Practices Act. The defendant admitted that it failed to repay the plaintiff's loan as agreed. However, the defendant maintained that its actions constituted only a breach of contract and did not rise to the level of an intentional tort.

The plaintiff testified that when he traded in his old boat for a new one at the defendant's dealership, the defendant agreed to satisfy an outstanding loan of approximately $40,000. The plaintiff produced evidence that the defendant did not satisfy the loan and the plaintiff negotiated a settlement with the lender.

The plaintiff also named the husband and wife principals of the defendant boat dealership as defendants in the case, alleging that they were personally responsible for the failure to repay the loan on the plaintiff's boat trade-in. The defendants argued that the boat dealership became insolvent and that there were insufficient funds to pay off the plaintiff's loan. The defense argued that there was no intent to defraud the plaintiff.

The individual defendants maintained that they acted in a corporate capacity and had no personal liability for corporate actions.

The jury found against the defendant corporation only. The plaintiff received a judgment of $93,000 against the defendant corporation, which included punitive damages and attorney fees.

REFERENCE

Esser vs. Legacy Fisherman, Inc., et al. Case no. 09044629; Judge Jack B. Tuter, Jr., 03-22-11.

Attorney for plaintiff: Richard F. Hussey of Richard F Hussey, PA. in Fort Lauderdale, FL.

INSURANCE OBLIGATION

$270,000 VERDICT

Insurance obligation – Underinsured motorist claim – Failure to stop for red light – Intersection collision – Two annular disc tears to lumbar spine – Damages/causation only.

Manatee County, FL

The tortfeasor, who ran a red light and collided with the plaintiff's vehicle, tendered a $10,000 liability policy limit to settle the plaintiff's claims. The plaintiff then proceeded against the defendant insurance carrier pursuant to the underinsured motorist portion of her policy. The defendant admitted that the collision was caused by the tortfeasor's negligence. The case was tried on the issue of damages and causation only.

The plaintiff was a female, in her mid-to-late 40s at the time of the collision. Evidence showed that the right rear of the tortfeasor's vehicle impacted with the front bumper of the plaintiff's car. The plaintiff testified that her front bumper was knocked off as a result of the impact. The plaintiff introduced photographs showing the front bumper of the plaintiff's car attached with a bungee cord.

The plaintiff was diagnosed with two annular disc tears (tears of the outer ring of the disc without herniation) in her lumbar spine. The plaintiff's radiologist opined that the annular tears were traumatically caused by the accident. The plaintiff's treating chiropractors testified that the plaintiff's condition would not improve and could develop into a lumbar disc herniation.

The defendant maintained that the impact was not significant and did not cause permanent injury to the plaintiff. The defendant's orthopedic surgeon testified that the plaintiff's lumbar condition was degenerative and not caused by the subject accident. The defendant's orthopedic surgeon also opined that the plaintiff did not require future medical treatment in relation to the annular tears.

The defense also contended that the plaintiff had prior back problems which she did not disclose. However, the plaintiff countered that notations of back pain reflected in her medical record stemmed from a bladder issue, not a disc injury.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $270,800 in damages. The UIM limit of the policy issued by the defendant was $200,000.

REFERENCE

Plaintiff's radiology expert: Mark Herbst from St. Petersburg, FL. Defendant's orthopedic surgery expert: Mark Lonstein from Sarasota, FL.

Younger vs. Allstate Property & Casualty Insurance Company. Case no. 09-CA-7971; Judge Diana Moreland, 02-16-11.

Attorney for plaintiff: Sumeet Kaul of Morgan & Morgan, P.A. in Tampa, FL.

$89,490 VERDICT

Insurance obligation – Underinsured motorist claim – Negligent reversal in parking lot – Claimed lumbar disc herniations and bulges – Damages/causation only.

Palm Beach County, FL

The plaintiff's car was impacted by an uninsured vehicle which backed into the plaintiff's vehicle in a Palm Beach parking lot. The plaintiff pursued an action against the defendant insurance company under the uninsured motorist portion of his automobile policy. The defendant stipulated that the tortfeasor was negligent in causing the collision. However, the defense maintained that the plaintiff did not sustain a permanent injury as a result of the impact.

The plaintiff was a 38-year-old man at the time of the accident in 2008. He was diagnosed with a lumbar disc herniation and multiple lumbar disc bulges which his physician causally related to the subject accident. The plaintiff underwent injection therapy to his lumbar spine, but complained of continuing back pain and limitation of motion. The plaintiff contended that he had not experienced back pain for some 15 to 20 years prior to the collision.

The defendant claimed that the impact to the plaintiff's car was light and caused minimal property damage to the vehicles involved. The defendant's medical expert testified that the plaintiff's lumbar condition was degenerative in nature, preexisted the date of the accident and was not caused by it. The defense contended that the plaintiff's lumbar condition was consistent with his years of manual labor in his in-ground pool business.

The jury found that the plaintiff sustained a permanent injury as a result of the accident. The plaintiff was awarded $89,490 in past and future medical expenses. The jury declined to award damages to the plaintiff for past or future pain and suffering. The case was resolved post-verdict.

REFERENCE

Coon vs. Security National Insurance Company. Case no. 502009CA019975; Judge David Crow, 01-10-11.

Attorney for plaintiff: Dewey H. Varner, Jr. of Dewey H. Varner, PA. in Lake Worth, FL. Attorney for plaintiff: Shannon J. Sagan of Shannon J. Sagan, PA in Lake Worth, FL.

$2,052 NET VERDICT

Insurance obligation – Motor vehicle negligence – Intersectional collision – Failure to stop for stop sign – Cervical disc herniations and bulge – Underinsured motorist claim Damages/causation only – No permanent injury found.

Broward County, FL

The plaintiff brought this action against the defendant driver as well as her underinsured motorist carrier, based on the defendant driver's $10,000 liability policy limit. The defendants stipulated to the defendant driver's negligence in driving through a stop sign and colliding with the plaintiff's car. The case proceeded on the issues of damages and causation only.

The plaintiff treated in the emergency room on the day of the collision, which was in June of 2006. The plaintiff's physician testified that the plaintiff sustained three cervical disc herniations and a cervical disc bulge as a result of the subject collision. The plaintiff complained of continuing neck pain. Her orthopedic surgeon recommended cervical surgery.

The defendants' medical expert opined that the plaintiff's neck condition was preexisting and that the plaintiff's complaints were not causally related to the subject collision.

The jury found that the plaintiff did not sustain a permanent injury as a result of the collision and awarded her net damages (after a $10,000 PIP off-set) of $2,052 in past medical expenses only. Defense motions for attorney fees and costs are pending.

REFERENCE

Persad vs. Aguilar, et al. Docket no. 07005321; Judge Jeffrey E. Streitfeld, 03-24-11.

Attorney for defendant defendant driver: Patrick Knight of Victor Rams & Associates, P.A. in Miami, FL. Attorney for defendant UIM carrier: Adolfo Podrecca of Fazio Disalvo Cannon Abers in Fort Lauderdale, FL.

DEFENDANT'S VERDICT

Insurance obligation – Uninsured motorist claim – Broward Sheriff's vehicle allegedly makes a negligent left turn from opposite direction, causing tow truck to stop short and cause rear end collision with plaintiff's car – Lumbar disc herniation – Two lumbar surgeries performed – Damages only.

Miami-Dade County, FL

This case involved an uninsured motorist claim brought by the plaintiff based on the alleged negligent operation of a Broward County Sheriff's vehicle. Because the Sheriff's Department is self-insured and does not carry liability coverage, the plaintiff was entitled to bring the uninsured motorist claim against her own insurance carrier. The case was bifurcated and previously tried on liability, with a finding that the Broward County Sheriff's employee (the uninsured motorist) was 60% negligent and the plaintiff's wife (the host driver) was 40% negligent. Thus, the second phase of the trial proceeded on the issue of damages and causation only.

The accident occurred after a Broward County Sheriff's vehicle made a left turn from the opposite direction and caused traffic, traveling in the host driver's direction, to stop. The host driver then struck the back of a tow truck which had stopped in response to the Sheriff's vehicle.

The plaintiff was a man in his mid 40s at the time of the impact. He claimed significant lower back injuries and an L5-S1 disc herniation as a result of the collision which his physician testified necessitated lumbar surgery the following year. The plaintiff then underwent a second revision surgery the following year.

The defendant maintained that the plaintiff's lumbar condition was not causally related to the subject accident. Records showed that the plaintiff had sustained a serious back injury in the military in 1995 at the same disc level. The defense argued that the plaintiff had undergone extensive medical treatment for his back through the VA hospital and had not disclosed this information to his treating physician or the defendant's medical expert. The plaintiff contended that his preexisting back condition was aggravated by the accident to the point that surgery was required.

The jury found that the uninsured motorist's negligence was not a legal cause of injury to the plaintiff and a defense verdict was entered.

REFERENCE

Dunton vs. Progressive Express Insurance Company. Case no. 2008-036203CA01; Judge Pedro P. Echarte, Jr., 02-25-11.

Attorney for defendant: Valerie A. Dondero of Houck Anderson PA in Miami, FL.

MOTOR VEHICLE NEGLIGENCE

Auto/Motorcycle Collision

PLAINTIFF'S VERDICT

Motor vehicle negligence – Auto/motorcycle collision – Negligent pull-out from driveway – Liability only.

Palm Beach County, FL

This motor vehicle negligence action was bifurcated and tried on the issue of liability only. The plaintiff alleged that the defendant negligently pulled out from a driveway into the path of his oncoming motorcycle and thereby caused a collision. The defendant maintained that the accident was caused when the plaintiff changed lanes at an excessive speed and struck the back of her vehicle which was driving in the westbound lane.

The plaintiff was a 47-year-old male at the time of the accident on July 27, 2009. The plaintiff testified that he was driving his Harley Davidson motorcycle westbound on Lantana Road in Lantana, Florida. The plaintiff contended that the defendant's vehicle suddenly pulled out from a parking lot in front of his motorcycle and violated his right-of-way. The plaintiff's accident reconstruction expert opined that the plaintiff had insufficient time and distance to avoid impacting the defendant's car from behind.

The defendant called two independent witnesses who supported the defendant's contention that the plaintiff was riding his motorcycle at a speed of between 60 and 65 mph in a 35 mph zone just before he changed lanes and struck the defendant's car. The defendant's accident reconstruction expert opined that evidence showed that the collision occurred while the plaintiff's vehicle was fully in the westbound through lane. The defense maintained that the collision was caused by the plaintiff's excessive speed and negligent lane change.

The jury found the defendant 100% negligent. The defendant's motion for a new trial is pending.

REFERENCE

Plaintiff's accident reconstruction expert: G. Scott Gurthrie, Jr. from Tallahassee, FL. Defendant's accident reconstruction expert: Donald J. Fournier, Jr. from Lake Mary, FL.

Litersky vs. Milne. Case no. 502009CA035330; Judge Thomas H. Barkdull, III, 04-13-11.

Attorneys for plaintiff: Joseph B. Landy and Michael S. Smith of Lesser, Lesser, Landy & Smith in West Palm Beach, FL.

Left Turn Collision

$90,000 VERDICT

Motor vehicle negligence – Left turn collision – Aggravation of previously asymptomatic disc herniation – Aggravation of preexisting shoulder condition – Damages/causation only.

Palm Beach County, FL

This was a motor vehicle negligence action which arose when the defendant made a left turn from the opposite direction in front of the plaintiff's car. The defendant denied that the plaintiff sustained a permanent injury as a result of the ensuing collision.

The plaintiff was a 65-year-old male at the time of the accident in 2008. His physician testified that the plaintiff exhibited a preexisting disc herniation which was asymptomatic before the date of the accident. The plaintiff claimed that the collision caused his disc herniation to become symptomatic to the point that future surgery was recommended.

The plaintiff testified that his shoulder was also hurting a few months before the collision and he had received three injections into his shoulder for treatment of pain. The plaintiff's doctor testified that the collision also caused an aggravation of the plaintiff's preexisting right shoulder injury.

The defendant maintained that the plaintiff's disc condition, as well as his right shoulder condition, both preexisted the date of the accident and were not changed or worsened by it.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded him $90,226 in damages.

REFERENCE

Sauls vs. Sukhnandan. Case no. 502009CA014396; Judge Thomas Barkdull, III, 11-29-10.

Attorney for plaintiff: William D. Zoeller of Schuler, Halvorson & Weisser in West Palm Beach, FL.

Multiple Vehicle Collision

$100,800 VERDICT

Motor vehicle negligence – Multiple vehicle collision – Failure to stop for red light – Defendant causes chain reaction collision, forcing non-party driver to rear end plaintiff – Headaches – Herniated cervical discs – Aggravation of preexisting lumbar disc herniations – Damages/causation only.

Palm Beach County, FL

The plaintiff alleged that the defendant drove through a red light and struck a non-party vehicle, which was then propelled into the plaintiff's car. The defendant stipulated to negligence, but disputed the injuries that the plaintiff alleged to have sustained as a result of the accident.

The plaintiff was a 49-year-old man at the time of the collision. The plaintiff's doctors testified that the plaintiff sustained aggravation of a preexisting disc herniation at the L3-L4 level and new herniations at C4-C5 and C5-C6. The plaintiff's neurosurgeon testified that future cervical surgery was recommended. The plaintiff also complained of ongoing headaches associated with the accident.

The defendant argued that the plaintiff had a five year history of chiropractic treatment for lower back and neck pain prior to the date of the collision. The defense stressed that the plaintiff made no medical complaints at the scene and did not seek treatment until some 11 days post-accident. Testimony indicated that the plaintiff had exited his vehicle after the collision and assisted the female whose car had struck his car.

The defendant's orthopedic surgeon testified that a review of the plaintiff's MRI films revealed osteophytes which suggested that his cervical condition was degenerative and not caused by trauma. The plaintiff countered that the osteophytes were on the opposite side of the spine from the impingements. The defendant's orthopedic surgeon also opined that the plaintiff was not a candidate for cervical surgery. The defense introduced surveillance video depicting the plaintiff lifting chlorine tubs and turning his neck with no apparent difficulty.

The jury found that the plaintiff sustained a permanent injury and awarded him $100,800 in damages. A prior trial resulted in a defense verdict and the plaintiff was granted a new trial after arguing that the defense improperly read new portions of the plaintiff's deposition testimony during closing statements in an effort to impeach his credibility.

REFERENCE

Plaintiff's neurosurgery expert: Douglas Martin from Boynton Beach, FL. Plaintiff's orthopedic surgery expert: Frank Murphy from Stuart, FL. Plaintiff's radiology expert: Sean Mahan from Maitland, FL. Defendant's orthopedic surgery expert: Kenneth Jarolem from Plantation, FL.

Asher vs. Pantori. Case no. 502009 CA 025308; Judge Edward Fine, 10-01-10.

Attorneys for plaintiff: Philip A. Gold and Lance C. Rudzinski of Gold & Gold in Coral Gables, FL.

DEFENDANT'S VERDICT

Motor vehicle negligence – Multiple vehicle collision – Three car rear end collision – Cervical sprain and strain – Lumbar disc herniation – Nerve blocks performed – Surgery recommended.

Miami-Dade County, FL

This action arose from a three vehicle, rear end collision in Miami-Dade County. The plaintiff claimed that the defendant struck the center vehicle and pushed it into the back of her car. The driver of the center vehicle settled the plaintiff's claims prior to trial. The defendant argued that the center vehicle struck the back of the plaintiff's car first and the defendant was then unable to avoid the subsequent impact.

The plaintiff testified that she felt only one impact and alleged that the impact was caused by the defendant's negligence in striking the middle vehicle. The driver of the (settling) middle vehicle testified that the defendant struck the back of her car and pushed it into the plaintiff's vehicle.

The plaintiff was transported from the scene to the hospital by ambulance. Her physician contended that the plaintiff sustained cervical and lumbar sprain and strain and a lumbar disc herniation as a result of the collision.

The plaintiff underwent nerve blocks to the lumbar spine and her physician testified that future lumbar surgery is indicated.

The defendant testified that the center vehicle impacted the back of the plaintiff's car and his vehicle then struck the back of the center vehicle. The defense argued that photographs showed minimal to no damage to the rear of the center car; moderate damage to the front of the center car; little damage to the rear of the plaintiff's car and no damage to the front of the defendant's car.

The defendant also attempted to impeach the plaintiff's credibility by arguing that she denied prior neck and back treatment during deposition testimony. The defense maintained that the plaintiff's medical records showed long-standing neck and back conditions which were unrelated to the subject collision.

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

REFERENCE

Benitez vs. Petit. Case no. 2008-053350CA01; Judge William Thomas, 03-02-11.

Attorney for defendant: Mai-Ling Castillo of Julie A. Taylor & Associates in Miami, FL.

Rear End Collision

$190,000 VERDICT

Motor vehicle negligence – Rear end collision – Defendant strikes rear of plaintiff stopped at red light – Cervical disc herniation – Damages/causation only.

Palm Beach County, FL

The defendant did not dispute liability in striking the back of the plaintiff's car while it was stopped at a traffic light in Palm Beach County. The defendant denied that the plaintiff sustained a permanent injury as a result of the collision.

The plaintiff was a 33-year-old female at the time of the accident in 2006. The plaintiff's physician testified that the plaintiff sustained a cervical disc herniation as a result of the rear end impact.

The plaintiff claimed that she had seen an orthopedic surgeon twice yearly since the 2006 accident and each time, the orthopedic surgeon referred her for more therapy because her cervical pain was not resolving. The plaintiff, a mother of two minor children, testified that she continues to suffer flair-ups of neck pain. She returned to her prior employment following the collision and made no claim for past or future loss of wages.

The defendant denied that the plaintiff' cervical condition was causally related to the accident. The defense also argued that the plaintiff's condition was not causing impingement; she did not require surgery and any therapy she required could be performed at home.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $190,000 in damages.

REFERENCE

Hernandez vs. Paredes. Case no. 502009CA043821; Judge Donald W. Hafele, 01-13-11.

Attorneys for plaintiff: Philip A. Gold and Lance C. Rudzinski of Gold & Gold in Coral Gables, FL.

$80,000 VERDICT

Motor vehicle negligence – Rear end collision – Cervical and lumbar sprain and strain – Epidural injections – Damages/causation only.

Miami-Dade County, FL

This action arose from a collision to the back of the plaintiff's car by a vehicle driven by the defendant. The court directed a verdict against the defendant on liability and the case continued on the issues of damages and causation only. The defendant maintained that the plaintiff did not sustain a permanent injury as a result of the collision.

The plaintiff was a female in her 40s at the time of the accident which occurred in 2005. She was diagnosed with cervical and lumbar sprain and strain. The plaintiff underwent physical therapy, chiropractic treatment, orthopedic treatment and epidural injections. She complained of ongoing neck and back pain.

The defendant argued that the impact to the back of the plaintiff's vehicle was light and caused minimal property damage to the vehicles involved. Evidence showed that the plaintiff did not seek medical treatment for several days post-accident. The defense contended that the plaintiff's neck and back symptoms were unrelated to the subject accident. Evidence showed that the plaintiff was involved in a prior motor vehicle accident and had made previous complaints of neck and back pain before the date of the subject collision.

The jury found that the plaintiff sustained a permanent injury as a result of the accident and awarded her $80,000 in damages.

REFERENCE

Plaintiff's orthopedic surgery expert: Richard Simon from Plantation, FL. Defendant's orthopedic surgery expert: Salvador Ramirez from Miami, FL. Defendant's radiology expert: Steven Brown from Dania, FL.

Dominguez vs. Vallarino. Case no. 08-80773; Judge Pedro Echarte, 12-15-10.

Attorneys for plaintiff: Todd R. McPharlin and Eric Rosen of Kelley/Uustal in Fort Lauderdale, FL.

DEFENDANT'S VERDICT

Motor vehicle negligence – Rear end collision – Alleged cervical disc herniation – Injury to back and wrist – Ongoing neck, back, and wrist pain – Damages/causation only.

Lake County, FL

The plaintiff was a 32-year-old unemployed female at the time her car was struck from behind by a vehicle driven by the defendant on April 23, 2008. The defendant stipulated to negligence and the case was tried on the issues of damages and causation only.

Evidence showed that the rear end collision occurred in Leesburg, Florida, as the defendant attempted to exit a Home Depot parking lot behind the plaintiff's car.

The plaintiff was diagnosed with a herniated disc at the C3 level, which her medical experts causally related to the collision. The plaintiff's radiologist testified that the disc herniation was confirmed by an MRI film taken on May 15, 2008. The plaintiff also alleged that the collision caused injuries to her back and wrist and she complained of continuing neck, wrist and back pain. The plaintiff claimed $10,500 in past medical expenses.

The defendant testified that he saw the plaintiff's car move and assumed her vehicle had departed. The defendant testified he then looked left, took his foot off of the brake and made contact with back bumper of the plaintiff's vehicle.

The defendant argued that the plaintiff did not seek medical treatment until seven days post-accident and did not mention neck or back pain to her doctor at that time. On May 7, 2008, 14 days after the accident, the plaintiff was treated at the emergency room for numbness and shooting pains in her arms, back pain and blood in her urine. Records indicated that she did not mention the automobile accident and she specifically denied neck pain in the emergency room. The defendant's radiologist testified that the plaintiff's MRI film indicated a disc protrusion, but not an extrusion.

The jury found that the defendant's admitted negligence was not a legal cause of injury to the plaintiff. The defendant filed a proposal for settlement in the amount of $7,501. The plaintiff filed a proposal for settlement in the amount of $10,000. The defendant's motion to tax attorney fees and costs is pending.

REFERENCE

Plaintiff's chiropractic expert: John F. Heilgenthal from Eustis, FL. Plaintiff's radiology expert: Michael K. Herron from Eustis, FL. Defendant's radiology expert: Michael J. Foley from St. Petersburg, FL.

Nix vs. Secor. Case no. 09-CA-3227; Judge Don F. Briggs, 01-11-11.

Attorney for defendant: Vance R. Dawson of Rissman, Barrett, Hurt, Donahue & McLain, P.A. in Orlando, FL.

Sideswipe Collision

DEFENDANT'S VERDICT

Motor vehicle negligence – Sideswipe collision – Herniated lumbar discs – Percutaneous discectomy – Lumbar fusion surgery performed – Additional surgery indicated.

Palm Beach County, FL

The plaintiff was a 25-year-old male passenger in a vehicle driven by his mother at the time of the collision which gave rise to this motor vehicle negligence action. The plaintiff claimed that the defendant negligently squeezed up on the host vehicle's right side and caused a sideswipe collision. The defendant maintained that the accident was caused by the non-party host driver (plaintiff's mother) who reversed her vehicle and contacted the defendant's car.

The plaintiff alleged that the host vehicle was stopped to make a left turn into a narrow street in a parking lot when the defendant tried to squeeze up on its right side to make a right turn. The plaintiff alleged that the left rear fender of the defendant's vehicle struck the right rear bumper of the host vehicle.

The plaintiff was diagnosed with two lumbar disc herniations which his physician causally related to the collision. The plaintiff underwent a percutaneous lumbar discectomy which was not successful. He then underwent a lumbar fusion. The plaintiff's doctor opined that the plaintiff will most likely require additional future lumbar fusion surgery at the levels above and below the fusion which was performed. The plaintiff complained of continuing back pain and limitation of motion. The plaintiff sought approximately $420,000 in past medical expenses and $600,000 in future medical expenses.

The elderly defendant claimed that he was in the process of making a right turn when the host vehicle backed into his car. The defendant's wife, who was a passenger in his car at the time, testified that the host vehicle backed into the defendant's car. The defendant also called an accident reconstruction expert who testified that the evidence supported the defendant's version of the collision. The defendant testified that, after exiting their vehicles, the host driver apologized to him saying "I'm sorry I backed into you." The host driver denied making the comment.

The defendant's medical expert opined that the plaintiff sustained only sprain and strain injuries as a result of the collision and that the collision did not cause the plaintiff permanent injury.

The jury found no negligence on the part of the defendant which was a legal cause of injury to the plaintiff. The defendant was granted entitlement to attorney fees in an amount to be determined, based on a proposal for settlement.

REFERENCE

Gates vs. Kaplan. Case no. 502008CA025850; Judge Thomas H. Barkdull, III, 02-11-11.

Attorneys for defendant: James T. Sparkman and Sherry M. Schwartz of Cole Scott & Kissane in Fort Lauderdale, FL.

PREMISES LIABILITY

Fall Down

$45,000 VERDICT

Premises liability – Fall down – Failure to clean greasy substance from restaurant floor – Slip and fall – Sprain and strain to lower back and leg.

Miami-Dade County, FL

The plaintiff was a 58-year-old female who was dining in the defendant's restaurant when she claimed that she slipped and fell as a result of a greasy substance which the defendant allowed to remain on the floor. The defendant denied that there was a foreign substance on the floor or that it was dangerously slippery.

The plaintiff testified that she and her husband got up from a table in the defendant's restaurant, she took a few steps and her feet slipped out from under her causing her to fall in a "split" position. The plaintiff contended that the defendant allowed a greasy substance to remain on the floor in the area where the waitresses walked in and out of the kitchen. The plaintiff's husband testified that he touched the floor after the plaintiff's fall and noticed that it felt greasy.

The plaintiff claimed sprain and strain injuries to her low back and right leg as a result of the fall. The plaintiff complained of ongoing back and right leg pain.

The defendant argued that the floor was clean and dry and the plaintiff's husband had walked through the area with no difficulty in front of the plaintiff. The plaintiff admitted that she was not looking where she was walking at the time of the fall. The defense also contended that any injuries sustained by the plaintiff as a result of the fall were minor and had resolved.

The jury found the defendant 100% negligent and awarded the plaintiff $45,000 in damages.

The case was settled for $40,000 post-verdict. The defendant waived post-trial motions or an appeal.

REFERENCE

Lopez vs. Jeda Holdings, Inc. d/b/a Luis Gallindo Latin American No. 2. Case no. 10-47243CA13; Judge Pedro P. Echarte, Jr., 04-11-11.

Attorney for plaintiff: Julio C. Jaramillo of Law Offices of Julio C. Jaramillo in Miami, FL.

DEFENDANT'S VERDICT

Premises liability – Fall down – Alleged dangerously slippery handicapped ramp – Slip and fall – Dislocated patella – Future knee replacement indicated.

Palm Beach County, FL

The plaintiff alleged that the defendant restaurant was negligent in allowing water to remain on its handicapped ramp, causing a dangerous condition which resulted in the plaintiff slipping and falling. The defendant argued that the ramp was not slippery and was not the cause of the plaintiff's fall.

The plaintiff testified that, in 2008, she and her party had eaten dinner at the defendant's restaurant and were leaving the establishment. The plaintiff claimed that she slipped in water while walking on the defendant's handicapped ramp in dry weather. The plaintiff's orthopedic surgeon testified that the plaintiff sustained a patella fracture as a result of the fall and that a future knee replacement was indicated.

The defendant argued that its employees inspected the ramp after the plaintiff's fall and did not detect water or any other slippery substance. The defense argued that the plaintiff was wearing high heels and could not establish the cause of her fall. The defendant's orthopedic surgeon opined that the plaintiff will not require a future knee replacement as suggested by her physician.

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

REFERENCE

Plaintiff's economic expert: Bernard Pettingill, Jr. from West Palm Beach, FL. Plaintiff's orthopedic surgery expert: Jeffrey Press from Boynton Beach, FL. Defendant's orthopedic surgery expert: Marc Matarazzo from West Palm Beach, FL.

Potter vs. Houston's. Case no. 50-2008-CA04040471; Judge David French, 12-15-11.

Attorneys for defendant: Paul Buschmann and Cheryl L. Wilke of Hinshaw & Culbertson in Fort Lauderdale, FL.

DEFENDANT'S VERDICT

Premises liability – Fall down – Slip and fall at pastry distributor – Alleged negligent cleaning of floors during daylight hours – Failure to warn – Wrist fracture.

Miami-Dade County, FL

The plaintiff was a 32-year-old female who was employed by the defendant wholesale pastry distributor. She was permitted to bring suit against her employer because the defendant did not have worker's compensation insurance. The plaintiff alleged that the defendant negligently cleaned its floors with soapy water during the day, causing the plaintiff to slip and fall. The defendant denied that it cleaned its floors during the day as alleged.

The plaintiff claimed that the defendant had hosed down its floors with a scented detergent and water and failed to place warnings in the area, causing her to slip and fall. The plaintiff sustained a fracture of her dominant left wrist as a result of the fall. Her physician opined that the fracture has left the plaintiff with a permanent residual injury.

The defendant maintained that the floors were not being cleaned at the time of the plaintiff's fall and the floors were not slippery. The owner of the defendant corporation testified that the floors are never cleaned during the day because it is a violation of health regulations to use detergent when food is out. One of the defendant's employees also testified that the floors were not being cleaned at the time the plaintiff fell.

Hospital records indicated that the plaintiff fell at home. The plaintiff testified that she gave that false information because her boss instructed her to say she fell at home since there was no worker's compensation insurance to cover an injury sustained at work. The fall had also been witnessed by several of the plaintiff's co-workers. The defendant denied instructing the plaintiff to lie about the location of her fall.

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

REFERENCE

Abeza vs. Miami Foods Distributors of USA, Inc. Case no. 2007-031669CA01; Judge Beatrice Butchko, 02-10-11.

Attorney for defendant: Julio C. Jaramillo of Law Offices of Julio C Jaramillo in Miami, FL.

DEFENDANT'S VERDICT

Premises liability – Fall down – Slip and fall in water from roof leak – Herniated cervical discs – Double-level fusion surgery performed.

Broward County, FL

The plaintiff claimed that she slipped and fell in water which entered the defendant's Wal-Mart store through a leaking roof. The defendant argued that it had no prior warning of a roof leak, it was not negligent and had acted reasonably in placing mats, warning cones and a store employee in the area after the leak began.

The plaintiff was a 39-year-old female at the time of the fall in 2008. She testified that she was in the process of retrieving a shopping cart in the defendant's store when she slipped and fell as a result of water on the floor. The plaintiff claimed that the defendant failed to maintain its roof and negligently allowed water to leak into the store and remain on the floor.

The plaintiff was diagnosed with cervical disc herniations which her neurosurgeon causally related to the fall. The plaintiff underwent a double-level cervical fusion. She complained of continuing neck pain and limitation of motion.

The defendant argued that the roof had just begun to leak without warning prior to the plaintiff's fall. The defense claimed that it had placed a container to catch the drip, positioned floor mats and warning cones and that a store employee was assigned to the area. The defense contended that the employee did not know of the water on the floor and was assisting another customer when the plaintiff fell.

The defendant's orthopedic surgeon opined that the plaintiff's cervical condition was preexisting, degenerative in nature and not causally related to the fall.

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 a new trial was denied. The defendant's motion to tax attorney fees and costs was granted.

REFERENCE

Plaintiff's neurosurgery expert: Anthony Hall from Fort Lauderdale, FL. Defendant's orthopedic surgery expert: Michael Zeide from Boyton Beach, FL.

Martin vs. Wal-Mart Stores, Inc. Case no. 09-022444; Judge Marc Gold, 01-25-11.

Attorneys for defendant: David M. Tarlow and Michael J. Wood of Quintairos, Prieto, Wood & Boyle in Fort Lauderdale, FL.

Hazardous Premises

DEFENDANT'S VERDICT

Premises liability – Hazardous premises – Elderly woman falls on child's tricycle left on sidewalk – Hip fracture – Femur fracture with surgery – Hand injuries – Rotator cuff tear.

Miami-Dade County, FL

The plaintiff was a female in her 80s who was visiting the home of the defendants (her daughter and son-in-law) when she fell on the defendants' sidewalk. The plaintiff alleged that the fall was caused by a child's tricycle which had negligently been left on the sidewalk. The plaintiff's daughter was dismissed from the case prior to trial and the case proceeded against her son-in-law only. The defendant maintained that the tricycle did not constitute a dangerous condition and was not the cause of the plaintiff's fall.

The plaintiff contended that she was walking out of the defendant's house following another of her daughters. When the daughter stopped to move a Hot Wheels tricycle off the sidewalk, the plaintiff alleged that she attempted to walk around her stopped daughter, but was caused to lose her balance and fall. The daughter who had stopped in front of the plaintiff was listed as a Fabre defendant on the verdict form.

The plaintiff was diagnosed with a hip fracture and femur fracture which required open reduction and internal fixation. In addition, she claimed injuries to her hand and a rotator cuff tear. The plaintiff was hospitalized for approximately a month following the fall.

The plaintiff alleged that the defendant (her son-in-law) was negligent in that he had been outside with the children earlier and had failed to make sure that the toys were removed from the sidewalk. The defendant argued that the plaintiff never walked into her daughter nor contacted the tricycle and that the toy was not the cause of her fall.

The jury found no negligence on the part of the defendant which was legal cause of injury to the plaintiff. The defendant's motion for attorney fees and costs, based on a proposal for settlement in the amount of $1,000, is pending. The plaintiff has filed a post-trial motion for new trial.

REFERENCE

Smith vs. Willett. Judge Allan L. Langer, 03-15-11.

Attorney for defendant: Mai-Ling Castillo of Julie A. Taylor & Associates in Miami, FL.

WRONGFUL TERMINATION

DEFENDANT'S VERDICT

Wrongful termination – Alleged civil rights violation – Claimed retaliatory discharge for complaining of national origin discrimination.

Broward County, FL

The plaintiff was a man of Haitian national origin who brought this action against his former employer under Florida's Civil Rights Act. At trial, the plaintiff alleged that he was wrongfully terminated by the defendant for complaining about his co-workers allegedly calling him derogatory names related to his Haitian national origin

The plaintiff testified that he was employed for some seven years as a draftsperson by the defendant, a company which manufactures pressure switches. He contended that, for almost his entire period of employment with the defendant, his co-workers constantly called him names and made derogatory references to his Haitian national origin. The plaintiff further testified that he made numerous complaints to his supervisors about his co-workers' conduct. The plaintiff claimed that he was ultimately terminated by the defendant in retaliation for those complaints.

The defendant argued that the plaintiff never revealed his co-workers' alleged misconduct to any of his supervisors or to the company's Human Resources Department. The defendant called witnesses, including people the plaintiff testified had heard his co-workers calling him names over the years. However, those witnesses testified that they had not heard the alleged name-calling and that the plaintiff never said a word about it to them. The defendant argued that, not only had the plaintiff never complained about being called derogatory names related to his Haitian national origin, but also that the name-calling never occurred.

The jury found in favor of the defendant.

REFERENCE

Clermont vs. Micro Pneumatic Logic, Inc. Case no. 09027700; Judge Jeffrey E. Streitfeld, 04-15-11.

Attorney for defendant: Robert S. Nayberg of The Scher Law Firm, LLP in Carle Place, NY. Attorney for defendant: Richard A. Ivers of of Law Office of Richard A. Ivers, P.A. in Coral Springs, FL.

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

$10,700,000 VERDICT INCLUDING $9,000,000 EXEMPLARY DAMAGE AWARD - MEDICAL MALPRACTICE - PRIMARY CARE - ALLEGED OPERATION OF "PILL MILL" OUT OF CLINIC RESULTS IN LETHAL COMBINATION OF VICODIN, XANAX AND SOMA PRESCRIBED BY THE DEFENDANTS - WRONGFUL DEATH.

Harris County, TX

In this medical malpractice matter, the plaintiff alleged that the decedent died as a result of a deadly combination of medication prescribed by the defendants who were operating a "pill mill" and prescribed the medication to the decedent which was twice the dosage normally prescribed to the decedent at the Veteran's Administration hospital where he received his regular medical care. The defendants each denied the allegations and the disputed their individual liability regarding the operation of the alleged "pill mill" and the decedent's resulting death.

The matter was tried over a period of four days. The jury deliberated for seven hours and returned its verdict in favor of the plaintiff and against all the defendants. The jury allocated liability at 65% to the defendant doctor, 30% to the defendant clinic and 5% to the defendant recruiter. The jury awarded the plaintiff the total sum of $10,700,000 consisting of $425,000 to each of the four plaintiffs who were the mother and children of the decedent. The jury also awarded exemplary damages of $8,000,000 against the defendant doctor and $1,000,000 in exemplary damages against the defendant clinic.

REFERENCE

Augusta Jackson, as Wrongful Death Beneficiary of Michael Skorpenske vs. Maurice S. Conte, M.D., Melissa Martin, Individually and d/b/a Family Medi Clinic, Michael J. Kabzinski, individually and d/b/a Family Medi Clinic and Med Quest, LLC. Case no. 2009-41648; Judge Reece Rondon, 01-18-11.

Attorneys for plaintiff: Tommy R. Hastings and Joe B. Stephens of Hastings Law Firm, P.C. in The Woodlands, TX. Attorney for defendant Conte: Thomas B. Swanson in Houston, TX. Attorney for defendant Martin: Greg Heath in Dallas, TX. Attorney for defendant Moore: Don E. Lewis in Houston, TX.

$5,000,000 VERDICT - MEDICAL MALPRACTICE - ANESTHESIOLOGY - ESOPHAGEAL PERFORATION DURING INTUBATION - FAILURE TO CONDUCT POST-OP EXAM OR ADVISE SUBSEQUENT CAREGIVERS FOR APPROPRIATE MONITORING OF ESOPHAGUS - PERFORATION RESULTS IN MASSIVE INFECTION, COLLAPSED LUNG AND NUMEROUS OTHER COMPLICATIONS - THREE CORRECTIVE SURGERIES.

Kings County, NY

In this medical malpractice case, the elderly female plaintiff contended that she underwent an elective surgical procedure when the situation went awry during intubation wherein her esophagus was perforated. The defendant anesthesiologist and her assistant were accused of not conducting a proper pre-operative exam and not informing the post-operative staff to closely monitor the plaintiff's esophagus. As a result, the plaintiff suffered severe complications including sepsis and the need for three corrective surgeries. The plaintiff alleged that the anesthesiologists' actions constituted malpractice.

The jury found that the defendants deviated from good medical practice. The jury further found that the anesthesiologists failed to tell the post-operative caregivers about the esophageal problem and that during follow-up visits, the anesthesiologists failed to examine the record. They awarded the plaintiff $4,500,000 for the first three years of pain and suffering and $500,000 for reimbursable medical expenses.

REFERENCE

Silverberg vs. Guzman, M.D. Index no. 024076/2006; Judge Michelle Weston.

Attorney for plaintiff: Leland S. Beck of Beck & Strauss, P.L.L.C. in Uniondale, NY. Attorney for defendant: Lois Ottombrino of Wilson Elser Moskowitz Edelman & Dicker, LLP in New York, NY.

$4,000,000 CONFIDENTIAL RECOVERY - MEDICAL MALPRACTICE - EMERGENCY DEPARTMENT - SPLEEN IS RUPTURED DURING COLONOSCOPY - FAILURE TO DIAGNOSE MASSIVE INTERNAL BLEEDING - CARDIAC ARREST - ANOXIC BRAIN INJURY RESULTS IN DEATH OF 58-YEAR-OLD MALE.

Suffolk County, MA

In this medical malpractice matter, the plaintiff alleged that the defendants were responsible for the untimely death of the 58-year-old decedent from an undiagnosed ruptured spleen during a colonoscopy. The defendants denied the allegations and maintained that a spleen rupture is an extremely rare complication of a colonoscopy and could not have been foreseen.

The parties agreed to a confidential settlement of the plaintiff's claims of negligence and wrongful death of the 58-year-old husband and father for the sum of $4,000,000.

REFERENCE

Doe Plaintiff vs. Roe Gastroenterologist, et al. 02-01-10.

Attorneys for plaintiff: Jodi M. Petrucelli and Benjamin R. Zimmerman of Sugarman & Sugarman in Boston, MA.

$2,500,000 CONFIDENTIAL RECOVERY - MEDICAL MALPRACTICE - OB/GYN - MIDWIFE NEGLIGENCE - FAILURE TO PERFORM CESAREAN SECTION RESULTS IN HYPOXIA - CEREBRAL PALSY.

Withheld County, MA

In this medical malpractice matter, the plaintiff alleged that the defendant nurse midwife was negligent in failing to have a Cesarean section performed when it became apparent that the fetus was in distress, resulting in hypoxic brain injury. The defendant denied the allegations of negligence.

The matter was settled following mediation with a confidential recovery of $2,500,000 to the plaintiff.

REFERENCE

Doe Infant vs. Roe Midwife. 11-01-10.

Attorneys for plaintiff: Gregg J. Pasquale, Ann Marie Maguire and Melissa A. White of Keches Law Group in Taunton, MA.

$975,000 RECOVERY - MEDICAL MALPRACTICE - HOSPITAL NEGLIGENCE - DEFENDANT LINEN SERVICE'S EMPLOYEE NEGLIGENTLY MANEUVERS TWO 400 POUND BINS DOWN NARROW HALLWAY - BIN PINS PLAINTIFF HOSPITAL EMPLOYEE AGAINST WALL - SEVERE AGGRAVATION OF 1993 LUMBAR HERNIATION - SUBJECT INCIDENT NECESSITATES THREE-LEVEL LUMBAR FUSION - NERVE DAMAGE CAUSES URINARY CONTROL DEFICITS - INABILITY TO WORK.

Essex County, NJ

In this action, the plaintiff, in his mid 50s, a hospital Environmental Services Department employee whose duties were primarily in the maintenance field, contended that the defendant employee of the hospital's linen service negligently attempted to wheel two unwieldy, 400 pound bins down a narrow hallway, misjudging the space available and knocking into the plaintiff, pinning him against the hospital wall. The plaintiff contended that as a result, he suffered a severe aggravation of a lumbar herniation that was initially sustained in a 1993 motor vehicle accident. The defendant denied that the incident was the cause of the claimed injuries and contended that they stemmed from the prior herniation and motor vehicle accident that occurred some weeks earlier.

The case settled during trial for $975,000, including $250,000 for lost wages and $725,000 for pain and suffering.

REFERENCE

Haynes vs. Hospital Services Cooperative. 10-21-10.

Attorney for plaintiff: Phillip C. Wiskow of Gelman Gelman Wiskow & McCarthy, LLC in Dover, NJ.

PRODUCTS LIABILITY

$2,000,000 RECOVERY - PRODUCT LIABILITY - DEFECTIVE DESIGN OF MACHINE USED TO SEPARATE METAL FROM OTHER MATERIALS AT LARGE RECYCLING FACILITY - CRUSH INJURIES LEADING TO AMPUTATION OF FOUR FINGERS ON DOMINANT HAND.

Hudson County, NJ

In this product liability action, plaintiff, age 35, was employed as a machine operator at a recycling facility. He suffered amputation of four fingers after his dominant right hand became caught in a "nip-point" created by a chain and sprocket that was part of a machine, which separated metal from other debris. The plaintiff alleged that the machine was activated while he was attempting to remove material that had become caught in the chain. The plaintiff contended that the machine was defective because it lacked a guard that would have prevented workers from accessing the nip point and also prevented debris from getting caught in the chain and sprocket. The plaintiff also maintained that the machine should have had an overriding shut-off switch in the proximity of the nip point to prevent remote activation.

The case settled prior to trial for $2,000,000.

REFERENCE

Pompey vs. RRT Construction and Design. Docket no. HUD- L-1345-08; ret. Judge Mark Epstein (mediator).

Attorney for plaintiff: Francis E. Wilton in Tinton Falls, NJ.

MOTOR VEHICLE NEGLIGENCE

$4,800,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - MULTIPLE VEHICLE COLLISION - PLAINTIFF'S VEHICLE PUSHED INTO TRAFFIC BY DEFENDANT AND STRUCK BY THIRD VEHICLE - TRAUMATIC BRAIN INJURY TO 35-YEAR-OLD FEMALE - PERMANENT DISABILITY WITH ONGOING COGNITIVE DEFICITS CLAIMED.

Philadelphia County, PA

The plaintiff was a 35-year-old female when her vehicle was struck from behind by a vehicle driven by the defendant driver and owned by the defendant company. The plaintiff's vehicle was pushed into oncoming traffic where it was then broadsided by SUV driven by a non-party to the lawsuit. The defendants did not dispute liability in striking the plaintiff's car from behind. However, the defense disputed the nature and severity of the traumatic brain injury which the plaintiff claimed to have sustained as a result of the collision. Although the collision occurred in Berks County, venue was found in Philadelphia because the defendant company operates beauty schools in the city.

The case settled prior to trial for a total of $4,800,000.

REFERENCE

Smith vs. Defendant. Case no. 02-2009-00778; Judge Jacqueline F. Allen, 09-21-10.

Attorneys for plaintiff: Andrew P. Baratta and Anthony J. Baratta of Baratta, Russell & Baratta in Huntingdon Valley, PA.

$4,000,000 CONFIDENTIAL RECOVERY - MOTOR VEHICLE NEGLIGENCE - INTERSECTION COLLISION - DEFENDANT RUNS STOP SIGN AND COLLIDES INTO PLAINTIFF'S VEHICLE - TRAUMATIC BRAIN INJURY - CONCUSSION - BACK INJURIES - POST-CONCUSSIVE SYNDROME - DEPRESSION AND ANXIETY.

Hampden County, MA

In this motor vehicle negligence matter, the plaintiff alleged that the defendant was negligent in failing to obey a stop sign and collided into the plaintiff's vehicle, causing him injuries. The plaintiff struck his head and was diagnosed with a traumatic brain injury, concussion, post-concussive syndrome and other related injuries. The defendant denied the allegations and disputed the nature and extent of the plaintiff's alleged injuries.

The matter was resolved between the parties in a pre-trial confidential settlement of $4,000,000.

REFERENCE

Doe vs. Roe Delivery Driver. 10-14-10.

Attorneys for plaintiff: John C. DeSimone and Paul E. Mitchell of Mitchell & DeSimone in Boston, MA.

$2,400,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - REAR END COLLISION - PLAINTIFF STRUCK FROM BEHIND IN HIGHWAY TRAFFIC - MULTIPLE SPRAIN AND STRAIN INJURIES - LEFT ANKLE SPRAIN AND CONTUSION - GANGRENE OF LEFT ANKLE - LEFT BELOW-KNEE AMPUTATION APPROXIMATELY ONE AND A-HALF YEARS POST-ACCIDENT.

Palm Beach County, FL

This action arose from a rear end collision to the plaintiff's car which the plaintiff alleged resulted in an ultimate below-knee leg amputation some one and a-half years later. The defendant maintained that the plaintiff's leg amputation was related to preexisting conditions, including diabetes and ulcerations, and was not causally related to the impact.

The case was settled for a total of $2,400,000 prior to trial.

REFERENCE

Randall vs. Defendant. Case no. 502009CA019684XXXXMB; Judge David E. French, 12-03-10.

Attorneys for plaintiff: Robert Zimmerman, Robert Baker, and Orestes "Rusty" Perez of Baker, Zimmerman & Perez in Parkland, FL.

$500,000 GROSS VERDICT - MOTOR VEHICLE NEGLIGENCE - AUTO/PEDESTRIAN COLLISION - LANDSCAPER BLOWING GRASS ON ROAD SHOULDER HIT BY CAR - TORN ROTATOR CUFF WITH SHOULDER SURGERY - AGGRAVATION OF PREEXISTING LUMBAR DISC HERNIATION - LUMBAR SURGERY PERFORMED - 40% COMPARATIVE NEGLIGENCE FOUND.

Palm Beach County, FL

The plaintiff claimed that he was in the course and scope of his employment as a landscaper and was blowing grass to the shoulder of the road when the defendant negligently struck him with his automobile. The defendant died prior to trial of unrelated causes and the case was continued against his estate. The defense maintained that the plaintiff caused the accident by stepping into the path of the defendant's oncoming vehicle. The defense also denied that the plaintiff sustained a permanent injury as a result of the accident.

The jury found that the plaintiff sustained a permanent injury as a result of the accident. The jury also found the defendant 60% negligent and the plaintiff 40% comparatively negligent. The plaintiff was awarded $500,000 in damages which was reduced to a net award of $300,000.

REFERENCE

Bautista vs. Froot. Case no. 502007 CA 014579; Judge Edward Fine, 11-08-10.

Attorney for plaintiff: Scott A. Lazar of Koltun & Lazar in Miami, FL. Attorney for defendant: Michael R. Davies of Julie A. Taylor & Associates in Fort Lauderdale, FL.

PREMISES LIABILITY

$7,143,004 VERDICT - PREMISES LIABILITY - FALL DOWN - FAILURE OF DEFENDANT LANDLORD TO PROVIDE ROOF DRAIN COVER CAUSES CLOGGING - PLAINTIFF TENANT FALLS DOWN FLOODED FLIGHT OF STAIRS - CLOSED HEAD INJURY - MILD TBI - EXTENSIVE PERSONALITY CHANGE AND COGNITIVE DEFICITS - EXTENSIVE FUTURE INCOME LOSSES.

New York County, NY

This action involved a 32-year-old plaintiff tenant, who resided on the third floor of the five floor walk-up in Hell's Kitchen, in which the plaintiff contended that the defendant landlord negligently failed to provide a strain or cover over the roof drain as is required by both the Multiple Dwelling Law and the New York City Administrative code. The plaintiff maintained that as a result, the drain became clogged during heavy raining conditions and a significant amount of rainwater cascaded down the interior stairs. The plaintiff contended that as she was on the landing about to descend, the flowing water and debris caused her to fall down the flight of concrete stairs.

The jury found the defendant 100% negligent and awarded $7,143,004. The award was allocated as follows: $1,500,000 for past pain and suffering, $2,000,000 for future pain and suffering, $129,004 for past lost earnings, $2,000,000 for future lost income over 28 years, $14,000 for past medical bills and $2,500,000 for future medical bills over 43 years.

REFERENCE

Higgins vs. W. 50th St. Assoc., LLC, et al. Index no. 101704/06; Judge Cynthia S. Kern, 02-04-11.

Attorney for plaintiff: Denise M. Dunleavy of Kramer & Dunleavy in New York, NY.

$6,113,609 VERDICT - PREMISES LIABILITY - HAZARDOUS PREMISES - FAILURE TO USE CONTRASTING COLOR PAINT ON DANGEROUS HOSPITAL STEPS LEADS TO TRIP AND FALL - COMMINUTED HIP FRACTURE - DEVELOPMENT OF MRSA INFECTION - PNEUMONIA - WRONGFUL DEATH AT AGE 86.

Miami-Dade County, FL

This case involved an 86-year-old man who fell on February 13, 2009 while descending the steps in front of the defendant, Mount Sinai Hospital. The plaintiff alleged that the steps were dangerous, lacked contrasting color paint and failed to meet applicable code requirements. The plaintiff claimed that the decedent's fall-related injuries resulted in his death approximately 30 days later. The defendant denied that the steps were dangerous or that they were the cause of the plaintiff's fall. The defense also disputed that the fall was the cause of the decedent's ultimate death.

The jury found the defendant hospital 100% negligent. The plaintiff was awarded a total of $6,113,609 in damages. The award included $113,609 in medical expenses and $6,000,000 to the plaintiff wife. The plaintiff has a filed a motion to tax costs and fees pursuant to two proposals for settlement; one for $400,000 and the other for $250,000.

REFERENCE

Gonzalez vs. Mount Sinai Medical Center of Greater Miami, Inc. Case no. 09-59900 CA 15; Judge Israel Reyes, 01-31-11.

Attorneys for plaintiff: Judd Rosen and Jesse Soffer of Goldberg and Rosen, P.A. in Miami, FL, Pedro P. Sotolongo of Sotolongo, P.A. in Miami, FL, and Julio V. Arango of Julio Arango, P.A. in Miami, FL.

$3,000,000 RECOVERY - PREMISES LIABILITY - FALL DOWN - DEFENDANT HEALTH CLUB'S SLIPPERY SURFACE AND INCLINE BY JACUZZI LEAD TO SLIP AND FALL - SKULL FRACTURE - INTRACRANIAL HEMORRHAGE AND SUBDURAL HEMATOMA - INCIDENT IS ALLEGEDLY SUBSTANTIAL CONTRIBUTING FACTOR IN HEART ATTACK AND MASSIVE STROKE TWO WEEKS LATER - CONTINUING PAIN AND SUFFERING.

Bergen County, NJ

In this action, the plaintiff contended that the area leading from the locker room to the Jacuzzi was dangerous because of the combination of a slightly excessive slope, which the plaintiff contended violated the code, and the buildup of soap residue on the floor. The plaintiff also contended that as a result, he slipped and fell backwards after leaving the locker room, striking his head and suffering skull fractures. The plaintiff also named a maintenance company and a second maintenance company who was subcontracted by the first maintenance company to provide cleaning services at the health club. Such services were provided under an oral agreement and these defendants denied that they were responsible for the Jacuzzi area, which they maintained was the responsibility of the health club's lifeguards.

The case settled prior to trial for $3,000,000, including $2,500,000 from the health club and $250,000 from each of the maintenance companies.

REFERENCE

Manno vs. Bally Total Fitness of New York Inc., et al., 10-26-10.

Attorney for plaintiff: Samuel L. Davis of Davis Saperstein & Salomon, PC in Teaneck, NJ.

ADDITIONAL VERDICTS OF INTEREST

Civil Assault

$630,000 VERDICT - CIVIL ASSAULT - CUSTODIAN ASSAULTS PLAINTIFF AT EMPLOYER STORAGE FACILITY - LUMBAR DISC HERNIATIONS AND BULGES - THECAL SAC COMPRESSION - LUMBAR RADICULOPATHY - CONTUSIONS AND ABRASIONS - CERVICAL SPRAIN AND STRAIN.

Philadelphia County, PA

The plaintiff brought this claim against the defendant, U-Haul Company of Pennsylvania ("U-Haul") and one of its custodians, for negligence, assault and battery and intentional infliction of emotional distress as a result of an incident which occurred at a U-Haul storage facility in Philadelphia. The plaintiff alleged that he was attacked by the custodian and sustained injuries. The plaintiff also asserted additional claims of negligent hiring, supervision and training against U-Haul. The defendant, U-Haul, stipulated to the agency of the custodian, but disputed that the plaintiff was assaulted as he alleged.

The jury found for the plaintiff in the amount of $630,000. Post-trial motions are pending.

REFERENCE

Blakely vs. U-Haul Co. of Pennsylvania, et al. Case no. 09-06-03132; Judge Ricardo Jackson, 12-16-10.

Attorney for plaintiff: Alan E. Denenberg of Abramson & Denenberg, P.C. in Philadelphia, PA.

Dog Attack

$7,020,600 VERDICT - DOG ATTACK - WRONGFUL DEATH - TEN-YEAR-OLD BOY IS ATTACKED AND MAULED TO DEATH BY THE DEFENDANTS' DOGS.

Rusk County, TX

In this negligence action, the plaintiff alleged that the defendants' dogs attacked and mauled her ten-year-old son to death. The plaintiff contended that the defendants failed to properly restrain their dogs which they knew were dangerous to humans. The defendants denied the allegations and maintained that a third dog which was not owned by them was responsible for the attack of the child.

The matter proceeded to trial. There were witnesses called that positively identified the defendants' dogs as being involved in the attack. At the conclusion of the trial, the jury returned its verdict finding the defendants negligent. The jury awarded the plaintiff the sum of $7,020,600 in damages.

REFERENCE

Serenia Clinton individually and as representative of the Estate of Justin Clinton, deceased vs. Ricky George and Christy George. Case no. 2009-282; Judge Clay Gossett, 09-17-10.

Attorneys for plaintiff: Cynthia S. Ken and Don W. Kent of Kent Good Anderson & Bush in Tyler, TX. Attorney for defendant: John G. Heike in Tyler, TX.

Film Company Negligence

$27,600,000 GROSS VERDICT - NEGLIGENCE IN FILMING PROMOTIONAL VIDEO - KNEE REPLACEMENT SURGERY PATIENT ASKED TO MAKE PROMOTIONAL VIDEO TOUTING ARTIFICIAL KNEE - PLAINTIFF USING EXERCISE BICYCLE AND TREADMILL IN VIDEO SUFFERS SUBSEQUENT SYNOVITIS IN KNEES - FOUR SURGERIES PERFORMED - CONTINUING CHRONIC KNEE PAIN - 30% COMPARATIVE NEGLIGENCE FOUND.

Philadelphia County, PA

This negligence action was filed by the female plaintiff against the manufacturer of a prosthetic knee implant, an advertising company and others, after the plaintiff participated in a video to promote the defendants' artificial knee. The plaintiff, who had previously undergone knee replacement surgery using the defendant manufacturer's prosthetic knee, claimed that the defendants negligently asked her to use an exercise bicycle and treadmill during the filming of the video without obtaining appropriate medical clearance. As a result, the plaintiff claimed that she sustained synovitis in both knees

which required additional surgery and which has caused permanent disability. A third-party complaint was filed against the plaintiff's orthopedic surgeon. However, the claim against the orthopedic surgeon, as well as the hospital where the promotional film was shot and others involved in the film-making, were dismissed prior to trial. The defendant artificial knee manufacturer assumed the defense of the co-defendant advertising company which filmed the video. The defendants maintained that the plaintiff had told the advertising company's representative that her orthopedic surgeon cleared her to ride a bicycle and the defendants maintained, therefore, that the plaintiff was comparatively negligent. The defense also disputed causation between the plaintiff's knee condition and the exercises which she performed for the promotional video.

The jury found the defendant Zimmer Inc. 34% negligent; the co-defendant Public Communications 36% negligent and the plaintiff 30% comparatively negligent. The plaintiff was awarded $27,600,000 in damages, which was reduced accordingly. The award included $1,000,000 to the plaintiff's husband for his loss of consortium claim. Post-trial motions are pending.

REFERENCE

Polett vs. Zimmer, Inc., et al. Case no. 08-09-01650; Judge Frederica A. Massiah-Jackson, 11-22-10.

Attorneys for plaintiff: Shanin Specter and Carl E. Jones Jr. of Kline & Specter in Philadelphia, PA. Attorney for defendant: Kurt Stitcher of Baker & Daniels in Chicago, IL. Attorney for defendant: William J. Conroy of Campbell, Campbell Edwards & Conroy in Wayne, PA.

Port Authority Negligence

$5,365,000 AWARD - PORT AUTHORITY NEGLIGENCE - ALLEGED FAILURE TO CLOSE GARAGE DESPITE KNOWN VULNERABILITY TO TERRORIST ATTACK PRIOR TO FIRST WORLD TRADE CENTER BOMBING - PHYSICAL INJURIES AND MENTAL DISORDERS CLAIMED BY PLAINTIFF SURVIVOR WHO WAS STRUCK BY DEBRIS IN PARKING GARAGE.

New York County, NY

Following the original 1993 World Trade Center terrorist attack in the parking garage of WTC 1, the female plaintiff contended that she suffered short-term memory disorder and post-traumatic stress disorder as well as physical injuries after the explosion. The plaintiff claimed that the defendant Port Authority negligently failed to close the parking garage despite a report on its vulnerability to terrorism. As a result, Islamic terrorists were able to park a rental truck loaded with explosives in the garage and cause it to explode, causing the plaintiff who was exiting her vehicle 1 floor above to be struck by debris and suffer mental, emotional and physical disorders including lung injuries from smoke inhalation related to the attack. The plaintiff contended that her injuries caused her work performance to suffer, ultimately resulting in her termination as a senior benefits manager for a Big-5 accounting firm. The defendant denied that the plaintiff suffered any brain injuries during the bombing and contended that she could have found alternate employment after her termination following the incident.

This case was tried on the issue of damages following an appeals court ruling in 2008 which upheld a prior jury's earlier verdict for the plaintiff on liability. In the earlier liability trial held in 2005, the jury found the defendant Port Authority 68% liable and the terrorists 32% liable. In the subject trial, the jury of comprised of three men and three women deliberated for approximately two hours before returning with a verdict of $5,365,000 for past and future pain and suffering and past lost wages, but no award for future lost wages.

REFERENCE

Linda P. Nash vs. Port Authority of NY & NJ. Index no. 129074/1993; Judge M.A.Tingling.

Attorney for plaintiff: Louis Mangone of Law Office of Louis Mangone in NEW YORK, NY. Attorney for defendant Port Authority: Paul Devine of Goldberg Segalla, L.L.P., in Mineola, NY.

Racial Discrimination

$5,804,109 VERDICT INCLUDING $5,000,000 PUNITIVE DAMAGE AWARD - RACIAL DISCRIMINATION - PLAINTIFF TERMINATED BASED UPON HIS ANGLO NATIONALITY FOLLOWING AN ARGUMENT WITH THE HISPANIC HUMAN RESOURCE MANAGER, WHO THREATENED TO KILL HIM - TERMINATION ALLEGED TO BE A MEANS OF PREVENTING A RACIAL DISCRIMINATION CLAIM BY FIRING BOTH THE WHITE PLAINTIFF AND THE HISPANIC MANAGER.

El Paso County, TX

In this civil rights case, the plaintiff, a white male, alleged that he was terminated along with a Hispanic manager when the two got into an argument and the manager, who was a prior discipline problem, threatened to kill him. The plaintiff alleged that his termination was to show that the termination of the Hispanic employee was not racially motivated in the event of discrimination suit. The defendant denied the allegations.

The matter proceeded to trial and after a five day trial; the jury deliberated for less than two and one-half hours and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the plaintiff the total sum of $5,804,109 which consisted of $129,913 for past lost wages, $669,196 for future lost wages, $5,000 compensatory damages and $5,000,000 for punitive damages against the defendant.

REFERENCE

Mark Duncan vs. El Pas Electric Company. Case no. 2008-4083; Judge Bonnie Rangel, 12-17-10.

Attorney for plaintiff: John A. Wenke of Law Office of John A. Wenke in El Paso, TX. Attorneys for defendant: Dan Dargene of Ogletree Deakins in Dallas, TX and Jeff Ray of Ray Valdez McChristian & Jeans in El Paso, TX.

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