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SUMMARIES WITH TRIAL ANALYSIS

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VERDICTS BY CATEGORY

Summaries with Trial Analysis

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

Hillsborough County, FL

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

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

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

REFERENCE

Plaintiff's expert: Barry Castleman from Garrett Park, MD. Plaintiff's expert: Murray Finkelstein from Toronto. Plaintiff's expert: Eugene Mark from Boston, MA. Plaintiff's expert: James Millette from Duluth, GA. Plaintiff's Path expert: Arnold Brody from St. Louis, MO. Defendant's expert: Charles Blake from Tucson, AZ. Defendant's expert: James Crap. Defendant's expert: Patrick Hessel from Alberta. Defendant's expert: Victor Roggli from Durham, NC.

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

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

COMMENTARY

Genuine Parts Company (the parent company of the National Automotive Parts Association (NAPA)) was also found 20% liable, and Honeywell International was found five percent liable as successor in interest to the Bendix Corporation. However, by the time the verdict was delivered, Pneumo Abex was the sole defendant remaining in the case. The defendant Ford settled after a week of trial.

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

Orange County, FL

The plaintiff contended that the defendant truck driver negligently made a left hand turn into the path of the decedent motorcycle operator, causing death. The decedent left a wife, and the plaintiffs also included a son who was born three months after the death of his father.

The collision occurred on a roadway which had a 55 mph speed limit. The defendant presented an accident reconstruction expert who maintained that the decedent was traveling at approximately 70 mph in the 55 mph zone. The defendant's expert contended that the length of the skid marks supported this contention. The plaintiff's accident reconstruction expert estimated the speed to be between 55 and 61 mph, and supported that the decedent was riding a newer bike that had lighter weight fairings, and was sufficiently aerodynamic to significantly impact the stopping distance, accounting for the longer skid marks at a slower speed .The plaintiff also contended that the defendant truck driver had falsified the paper logs relating to the amount he drove in the past 24 hours, as well as the amount of rest time taken. The plaintiff asserted that although the trucker drove only approximately one hour and ten minutes longer than reflected on the log, and the rest time was approximately one-half hour less than reported, the

jury should consider that the defendant trucking company permitted its drivers to use paper logs when most of the industry used electronic logs that the plaintiff maintained were more difficult to falsify. The plaintiff contended that the defendant trucking company probably knew that the drivers were on the road longer than they should have been, and that the trucking company placed profits over the safety of the public. The plaintiff's commercial trucking expert related that the logs are generally kept for 30 days, and that a comparison of the logs and black boxes in the fleet's trucks showed some 10 incidents of discrepancies during this 30-day period. The defendant's corporate witness denied that the company acted in such a manner. The plaintiff elicited testimony on cross-examination of the witness that paper logs are commonly called "comic books" in the industry, because they can be so easily falsified.

There was no evidence of conscious pain and suffering. The decedent was a seven-year veteran of the Navy and served in Iraq.

The jury found the defendant 93% negligent, the decedent 7% comparatively negligent, and rendered a gross award of $15,206,113, including $5,114,947 to the wife for loss of support and services, $5,000,000 to the wife for loss of companionship, including pain and suffering stemming from the death, $5,000,000 to the son for loss, companionship, and pain and suffering, and $91,166 to the son until age 21 for loss of support and services.

REFERENCE

Plaintiff's accident reconstruction expert: Donald Fornio from Orlando, FL. Plaintiff's commercial trucking expert: David Stopper from Springfield, MO. Defendant's accident reconstruction expert: Kevin Breen from Brooklyn, NY.

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

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

COMMENTARY

This award is unusually large for a motorcycle death. The plaintiff's counsel relates that research by a jury evaluation team reflected that in order to maximize a result in such a case, the jury must believe that the trucking company actively shares blame, and is not merely vicariously liable for the actions of it's employee who drove in a negligent manner. In this regard, the plaintiff argued that the trucking company was aware that paper logs are known in the industry as "comic books," because they can be so easily falsified, and that its also known in the industry that maximizing driving time will maximize profits. Moreover, the testimony of the plaintiff's commercial trucking expert that he discovered some ten discrepancies between black boxes and paper logs in a 30-day period was crucial. Finally, although a plaintiff in a motorcycle case is often challenged by negative stereotypes held by a jury, the testimony in this case of a very dedicated husband who had returned from Iraq after serving seven years in the Navy, and whose wife gave birth to the couple's son three months after the death clearly overcame this factor.

$3,500,000 VERDICT – DEFAMATION – INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONSHIPS - FALSE INFORMATION POSTED ON INTERNET – DAMAGE TO REPUTATION – LOSS OF PROPERTY SALE - LOSS OF LAW PRACTICE – DAMAGES ONLY.

Miami-Dade County, FL

The plaintiff, a former Florida attorney, filed this action against a Bahamian rap musician and his company, asserting counts of defamation and intentional interference with business relationships. The plaintiff alleged that the defendants posted false and defamatory statements about him on the internet. As a result, the plaintiff alleged that he lost the sale of his property in the Bahamas. The defendants were in default at the time of trial, and the case proceeded on damages only.

The plaintiff alleged that he was the owner of property in the Bahamas located on Rum Cay. The plaintiff claimed that, in 2009, he had a potential buyer for the property at a price of $5,000,000. However, the potential buyer logged onto various websites hosted by the defendant where it was posted, that the plaintiff was not the owner of the property, according to the plaintiff's claims. The plaintiff contended that, as a result of the defendant's false internet statements, he lost the property sale. The statements about the plaintiff posted on the web sites were removed by court order in 2010.

The plaintiff claimed that the defendant's motive for the defamation was to assist a third party, a convicted felon, in disparaging the plaintiff's title to the property; so that the third party could have another person claim the title.

The plaintiff testified that he still owns the property on Rum Cay in the Bahamas, but has been unable to sell it at the price agreed upon in 2009, due to the false internet postings by defendant. The plaintiff sought a total of $5,000,000 in damages from the defendants.

The jury awarded the plaintiff $3,500,000 in damages.

REFERENCE

Evans vs. Rolle, et al. Case no. 11-18338CA10; Judge Peter Lopez, 06-23-14.

Attorney for plaintiff: Mario Quintero, Jr. of Law Office of Mario Quintero Jr., PA in Miami, FL.

COMMENTARY

The defaulted defendant in this defamation action was a fairly well-known musician, and was one of the artists who recorded the popular rap single "Who Let The Dogs Out?"
The plaintiff's claim regarding loss of a property sale in the Bahamas was supported by the testimony of a witness who was negotiating the sale at a price of $5,000,000. The plaintiff claimed the sale was lost after the potential buyer read postings on the internet sites hosted by the defendant, questioning the plaintiff's ownership of the property.
The jury apparently discounted the plaintiff's requested $5,000,000 in damages based on the fact that he still owns the property in the Bahamas. The plaintiff's counsel has recorded the judgment in both Florida and the Bahamas, where collection efforts are currently underway against the defendant who, reportedly, owns several restaurants on the island.

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

Palm Beach County, FL

In this action, a woman sued a church after slipping on their sidewalk. The matter was resolved by a jury verdict after the defendant denied negligence.

In 2009, the 39-year-old plaintiff, Andrea T., fell and crushed her knee while walking on an exterior sidewalk at Ascension Catholic Church in Boca Raton, FL. The plaintiff has undergone four knee surgeries as a result of her injuries, and will need at least two total knee replacement surgeries in the future.

The plaintiff filed suit in the 15th Judicial Circuit Court of Palm Beach County for premises liability. The plaintiff named defendants: The Diocese of Palm Beach, general contractor, Hunter Construction Services Inc., and Civil Cadd Engineering Inc., who is the subcontractor who built the sidewalk. The plaintiff sought recovery of damages for past and future medical treatment, past lost wages, and past and future pain and suffering. Defendant, Civil Cadd, settled with plaintiff, and the remaining defendants denied liability. The defendant offered as much as $500,000 for settlement. Ultimately, defendants Hunter, and the Diocese, conceded liability, and the trial commenced solely on the subject of damages.

After four days, the jury returned a finding for the plaintiff, who was awarded over $2,500,000 in damages.

REFERENCE

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

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

COMMENTARY

The defendants were represented by house counsel for Zurich North America Insurance, carrier for Hunter Construction, through an indemnification agreement. The plaintiff's counsel states that the defendants conceded liability after an agreement came to light between the Diocese and their insurance adjuster. As per that that agreement, the counsel states that the church would not investigate incidents of alleged injury on their premises unless the parties involved filed a personal injury claim. The counsel maintains that two weeks prior to the plaintiff's fall, another person had fallen during wet weather, but the Diocese did not investigate, as that party did not file an injury claim.

$766,456 GROSS VERDICT – MOTOR VEHICLE NEGLIGENCE – NEGLIGENT LEFT TURN - AUTO/MOTORCYCLE COLLISION – ROTATOR CUFF TEAR – LABRUM TEAR – 28% COMPARATIVE NEGLIGENCE FOUND.

Palm Beach County, FL

The plaintiff claimed that he was riding his motorcycle with the right-of-way, when the defendant negligently made a left turn from the opposite direction and caused a collision. The defendant countered that the plaintiff had the opportunity to avoid the collision, and was comparatively negligent.

The plaintiff, age 36 at the time, was the helmeted operator of a motorcycle proceeding on Military Trial in Jupiter, Florida. He testified that he was driving through the intersection on a green light, when the defendant's vehicle suddenly turned left in front of him. The plaintiff maintained that he could do nothing to avoid impacting the defendant's car.

The plaintiff was diagnosed with a rotator cuff tear and labrum tear of the right shoulder as a result of the accident.

The defendant argued that the plaintiff was riding his motorcycle at an unsafe speed, at least 10 miles in excess of the posted 45 mph speed limit. The defense also contended that the plaintiff could have avoided the collision by braking his motorcycle, instead of attempting to steer around the defendant's left-turning vehicle.

The jury found the defendant 72% negligent, and the plaintiff 28% comparatively negligent. The plaintiff was awarded $766,456 in gross damages, reduced to a net recovery of $551,848. The jury declined to award the plaintiff damages for loss of future earnings.

REFERENCE

Hanzi vs. Mack. Case no. 502013CA16064XXXXMB; Judge Lucy Chernow Brown, 06-05-14.

Attorneys for plaintiff: Michael S. Smith and Joseph B. Landy of Lesser, Lesser, Landy & Smith in West Palm Beach, FL. Attorney for defendant: Harlan M. Gladstein of Law Offices of Kevin M. McGowen in Plantation, FL.

COMMENTARY

The defendant conceded that he made a left turn in front of the plaintiff's oncoming motorcycle, and was therefore, at least partially responsible for the ensuing collision. However, the defense maintained that the plaintiff was speeding, and could have avoided the impact.Thus, the main issue before the jury became how much, if any, comparative negligence would be assessed against the plaintiff. The plaintiff's counsel attempted to discover, during voir dire, any prejudice which potential jurors might harbor against motorcycle operators in general. It was shown that the plaintiff clearly had the right-of-way, but there was evidence that the plaintiff was riding his motorcycle in excess of the posted speed limit and tried to steer around the left-turning defendant, rather than braking his motorcycle.

The jury ultimately concluded that the plaintiff was 28% at fault for causing his injuries, reducing the rather generous $766,456 damage award.

DEFENDANT'S VERDICT – CLAIMED NEGLIGENCE OF PUBLIX EMPLOYEE IN ASSISTING CUSTOMER USING POWERED SHOPPING CART – CART ALLEGEDLY STRIKES DECEDENT – FEMUR FRACTURE WITH SURGERY – WRONGFUL DEATH – LIABILITY ONLY.

Miami-Dade County, FL

The plaintiff alleged that an employee of the defendant Publix Supermarket negligently assisted a customer driving a powered shopping cart. As a result, the plaintiff alleged that the customer struck and knocked down the decedent, causing injuries, which led to the decedent's eventual death. The case was bifurcated and tried on the issue of liability only. The defendant argued that its employee was not negligent, and that the customer did not strike the decedent with the cart as alleged.

The plaintiff claimed that one of the defendant's employees negligently guided the customer using the electric powered shopping cart as the customer exited the check-out lane on November 7, 2010. The plaintiff claimed that the defendant's employee failed to properly guide the customer, causing the customer to strike and knock down the decedent with the cart. The 78-year-old decedent sustained a comminuted subtrochanteric fracture of the proximal left femur. On November 10, 2010, he underwent an open reduction and internal fixation of the left hip with an intramedullary, cephalomedullary nail. The decedent died four days later, and the plaintiff alleged that the decedent's fall, fracture, and surgery cause his death. The defendant argued that the customer in the powered shopping cart (who was not identified) did not strike or knock down the decedent. The defense maintained after the customer had safely and completely passed the decedent, the decedent took two steps and then fell.

The defense maintained that its employee used reasonable care by guiding the customer using the powered shopping cart. The jury viewed a store surveillance video of the incident. The defense was also expected to dispute causation between the decedent's fall-related injuries and his death, which was listed as being caused by atherosclerotic heart disease. The defendant claimed that the decedent's condition was stable and improving following the surgery, and then, four days post surgery, he was suddenly found unresponsive and died from natural causes.

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

REFERENCE

Duarte vs. Publix Supermarkets, Inc.. Case no. 11-36399-CA32; Judge Lisa Walsh, 07-24-14.

Attorneys for defendant: Surama Suarez and Frank Angones of Angones, McClure & Garcia, P.A in Miami, FL.

COMMENTARY

Pursuant to § 768.093, Fla. Stat., a "powered shopping cart" gratuitously provided by a retail establishment to a customer is not be considered a dangerous instrumentality. Thus, the defendant had no vicarious liability under the dangerous instrumentality doctrine. Rather, the plaintiff's counsel was required to plead and prove that the defendant's own negligence caused or contributed to the subject incident. The plaintiff's complaint contained a count for negligence which alleged 17 different acts of negligence by the defendant, plus a count for negligent entrustment of the powered shopping cart. All but one of the 17 allegations of negligence, as well as the count for negligent entrustment, were disposed of by summary judgments in the defendant's favor, thereby significantly narrowing the issues before the jury.

In fact, the case proceeded to trial on only a single issue: Whether the defendant's employee used reasonable care when he assisted the customer using the powered shopping cart.

The defendant's position was supported by store surveillance video which captured the incident. The defense argued that the video showed the customer in the shopping cart passing the decedent, following the decedent taking two steps, and then falling to the floor.

RECOVERY – DOJ – DISABILITY DISCRIMINATION – JUSTICE DEPARTMENT REACHES SETTLEMENT WITH FLORIDA STATE UNIVERSITY – VIOLATION OF ADA

Leon County, FL

In this action, the Department of Justice resolved its accusation of disability discrimination against a state university. The matter was resolved through a settlement.

An investigation and compliance review by the Justice Department revealed that the defendant Florida State University of Tallahassee, Florida, maintained a website for its Police Department whose online application form asked questions about a past or present disability and other medical conditions. This, the Justice Department asserted, violated the Americans with Disabilities Act, which forbids employers from inquiring on individuals disability or the nature thereof, before making a conditional offer of employment.

Following the investigation, the Florida State University Board of Trustees, acting for, and on behalf of Florida State University (FSU), was accused of violating Title I of the Americans with Disabilities Act. The defendant denied the accusation.

The board of trustees ultimately agreed to resolve the matter through settlement, agreeing to cease conducting any medical examination or making any disability-related inquiry prior to a conditional offer of employment, as well as limiting the scope of medical examinations to the applicants ability to perform job-related functions (with or without reasonable accommodations), or whether the applicant poses a direct threat to the health or safety of the applicant or others. The defendant also agreed to maintain the medical or disability-related information of an applicant or employee in separate, confidential medical file. The defendant also agreed to train employees responsible for hiring decisions within the FSU Police Department on ADA regulations, as well as insuring that the FSU Police Department's website conformed to the Web Content Accessibility Guidelines 2.0 Level AA Success Criteria and other Conformance Requirements.

REFERENCE

United States vs. Florida State University., 06-05-14.

Attorney for plaintiff: Jocelyn Samuels of U.S. Department of Justice in Washington, DC.

COMMENTARY

The Justice Department has also recent entered into a similar settlement agreement with the City of Hubbard, Oregon. In that case, the investigators found a similar alleged breach of the ADA in the city's online job application process. That matter was resolved with a settlement substantially similar to this one.

SUMMARY JUDGMENT FOR DEFENDANTS – MEDICAL MALPRACTICE – ALLEGED FAILURE OF HOSPITALISTS TO ORDER TAMIFLU – H1N1 INFECTION – WRONGFUL DEATH OF 19-YEAR OLD

Brevard County, FL

This medical malpractice action was brought against four physicians, and the hospital, where the 19-year-old decedent was treated for flu-like symptoms in 2009. The plaintiff alleged that the defendants deviated from the required standard of care in failing to administer Tamiflu, resulting in the decedent's death.

The defendant hospital settled the plaintiff's claims prior to deposition of the plaintiff's medical experts. The hospitalist who treated the decedent upon her admission, and a subsequent treating physician, was moved for summary judgment.

The defense argued that it could not be established that administration of Tamiflu at the time in question would have made a difference in the decedent's medical course.

The decedent began experiencing flu-like symptoms on June 30, 2009. She presented to the emergency department of the defendant medical center twice, and her primary care physician once, before returning to the defendant medical center's emergency department on July 4, 2009.

The first defendant hospitalist admitted the decedent to the hospital and ordered an influenza test, chest x-ray, antibiotics, and consultations with neurology and infectious disease. The decedent's care was then assumed by the second defendant hospitalist on the evening of July 5, 2009.

The decedent's condition deteriorated over the next several days. She was diagnosed with H1N1 on July 13, 2009. Influenza A H1N1 virus is the subtype of influenza A virus, the most common cause of human influenza (flu) in 2009.

The decedent was transferred to another hospital and then a third facility where she died from complications of her infection on August 15, 2009.

The decedent was 19 years-old on the date of her death, and was attending school to be a beauty technician. She was survived by her parents.

The plaintiffs alleged that the defendant physicians committed medical malpractice for failing to order Tamiflu or Tiphani for the decedent on July 5, 2009.

The plaintiff's critical care expert testified at deposition that each of the defendant physicians should have ordered Tamiflu. He believed Tamiflu possibly would have

prevented the decedent's death if ordered by the decedent's primary care physician before the defendant doctors saw her. However, while this expert felt that Tamiflu possibly could have increased the decedent's chance of survival if ordered by the defendant doctors, he could not say Tamiflu probably would have prevented the decedent's death.

The defendants moving for summary judgment argued that they met the standard of care in their treatment of the decedent, and that Tamiflu would not have prevented the decedent's death if given at the time these two defendants saw her.

The court granted summary judgment for the two defendant hospitalists. The plaintiff's claim against the defendant primary care physician, and a physician who treated her prior to the defendant hospitalists' involvement, remain pending.

REFERENCE

Corley vs. Mostafavi, et a. Case no. 05-2011-CA-57064; Judge George Maxwell, 04-29-13.

Attorneys for defendant first hospitalist: Richard S. Womble and Amy L. Baker of Rissman, Barrett, Hurt, Donahue & McLain, P.A. in Orlando, FL. Attorney for defendant subsequent treating hospitalist: Robert D. Henry of Ringer, Henry, Buckley & Seacord P.A in Orlando, FL.

COMMENTARY

The plaintiff's expert was forced to concede during deposition testimony that, although administration of Tamiflu might have increased the young decedent's chance of surviving the A H1N1 virus, he could not say that Tamiflu more likely that not would have resulted in her survival at the time she was treated by the first defendant hospitalist who treated her on admission.

The subsequent treating hospitalist also joined the motion for summary judgment arguing that, if the decedent's survival was uncertain at the time she was first admitted to the hospital, it was even more so by the time of this defendant's subsequent treatment.

Thus, the court determined that there was no genuine issue of material fact to be submitted to the jury, and granted final summary judgment in favor of the two defendant hospitalists.

The plaintiff's stronger claims against the earlier treating physicians remain pending.

Verdicts by Category

MEDICAL MALPRACTICE

Ambulance Service Negligence

$400,350 GROSS VERDICT

Negligent ambulance transport – Plaintiff dropped from stretcher – Hip fracture – 25% comparative negligence found.

Miami-Dade County, FL

The plaintiff was a 69-year-old female being transported home from the hospital by the defendant transport service after undergoing left hip replacement surgery. The plaintiff alleged that the defendant's employees negligently dropped her while transferring her from the stretcher to her bed.

The plaintiff called her daughter and granddaughter who supported the plaintiff's claim that she was dropped from the stretcher by the defendant's employees. The plaintiff claimed that she sustained a fracture of the (non-operative) right hip as a result of the incident, and that she required rehabilitative therapy.

The defendant maintained that the plaintiff's transfer was routine without incident. The defense argued that there was no report of the alleged incident, and the plaintiff made no complaints to the defendant. It was the defendant's position that the plaintiff's left hip injury occurred before the date of this claimed incident and was part of her prior hip injury. The defense also contended that the plaintiff was given a walker on release from the hospital, as she was walking prior to discharge, but the plaintiff failed to use the walker upon arrival at home.

The jury found the defendant 75% negligent and the plaintiff 25% comparatively negligent. The plaintiff was awarded $400,350 in total damages, reduced accordingly. The defendant has filed an appeal.

REFERENCE

Lozano vs. MCT Express, Inc. Case no. 13-06462-CA-42; Judge Victoria S. Sigler, 06-10-14.

Attorney for plaintiff: Paul A. McKenna of Paul A. McKenna & Associates in Coral Gables, FL. Attorney for defendant: Michael S. Kaufman of Michael S. Kaufman in Miami, FL.

Hospital Negligence

SUMMARY JUDGMENT FOR DEFENDANT

Hospital Negligence – Claimed negligent performance of surgery to remove abdominal tumor – Laceration of vena cava – Wrongful death.

Hillsborough County, FL

The plaintiff claimed that the decedent, a 69-year-old female, sustained a negligently-caused laceration of the vena cava, causing her death during surgery to remove an abdominal tumor at the defendant hospital. The defendant hospital argued that the plaintiff could not maintain a case against the hospital, and moved for summary judgment. The physicians involved in the plaintiff's treatment settled for an undisclosed sum.

The plaintiff's complaint alleged medical negligence on the part of the defendant hospital under theories of agency, apparent agency, and non-delegable duty. The plaintiff argued that the surgeons were agents of the defendant hospital, and that the defendant hosptial failed to properly notify the patient of its delegation of duties and responsibilities of the surgical services to the surgeons. The plaintiff also claimed the defendant hospital had both a contractual and federal obligation to provide non-negligent surgical medical services to the decedent.

The defendant hospital relied on Florida Statute Section 1012.965 for the plaintiff's agency claims. That Statute states in pertinent part: "An employee or agent under the right of control of a university board of trustees who, pursuant to the university board's policies or rules, renders medical care or treatment at any hospital or health care facility.… shall not be deemed to be an agent of any person other than the university board in any civil action resulting from any act or omission of the employee or agent while rendering said medical care or treatment."

Regarding the plaintiff's non-delegable duty claims the defendant cited Tarpon Springs Hospital Foundation v. Reth. In that case, the Appellate court reversed the denial of a hospital's motion for directed verdict, and stated that the "applicable statutes and rules do not impose a nondelegable duty to provide anesthesia services to surgical patients."

The court granted the summary judgment motion as to all counts against the defendant hospital following a two-hour hearing. The plaintiff has appealed the ruling.

REFERENCE

Godwin vs. Tampa General Hospital. Case no. 12-CA-000017 Division B; Judge Martha J. Cook, 04-01-14.

Attorneys for defendant: Paula J. Parisi and Robert J. Murphy of Cole, Scott & Kissane in Tampa, FL.

Radiology Negligence

DEFENDANT'S VERDICT

Alleged failure to detect breast cancer

Miami-Dade County, FL

In this matter, a woman suffering from breast cancer sued her radiologist. The matter was resolved through a jury verdict after the defendant denied liability.

On July 14, 2008, the 41-year-old plaintiff, Hortensia M., went for a routine mammogram screening, which was interpreted by the defendant, Dr. Jorge S., a radiologist. The mammography report identified a "nodule" in the plaintiff's right breast. Approximately one year later, the plaintiff developed metastasized cancer, which spread from her breast to her lymph nodes, and ultimately to her vertebrae. The defendant was insured by Lancet Indemnity RRG, a physician owned and directed professional liability insurance carrier.

The plaintiff filed suit in the 11th Judicial Circuit for Miami-Dade County, Florida for medical malpractice, accusing the defendant, Dr. S., of breaching the standard of care by failing to detect her cancer. The plaintiff sought over $26,000,000 in damages, including $5,316,940 in lost earnings, past and future medicals, and $20,985,000 in pain and suffering. The defendant denied the accusation. By the time of trial, the plaintiff's cancer had progressed further, and testimony given to the court gave her a life expectancy of less than two years. The plaintiff's primary care doctors were also named as co-defendants, but ultimately were dismissed prior to trial.

At trial, it was uncontroverted that the plaintiff's primary care doctor never met with the patient, nor informed the plaintiff of the results. The alleged truth was further disputed that the plaintiff subsequently presented to a second primary care doctor complaining of breast pain. The plaintiff argued that the defendant, Dr. S., knew that there was cancer on the film in 2008, but failed to indicate it in his report. The plaintiff brought as evidence a videotaped deposition, taken in 2013, in which defendant admitted to being aware of cancer in July of 2008. However, the defendant subsequently recanted the testimony in a later deposition, claiming that he was confused at the earlier deposition.

The defense called both primary care doctors as adverse witnesses. The first primary care doctor admitted that it took four months for him to fax the plaintiff a copy of her mammography report. The second primary care doctor testified that, although she saw the plaintiff on four occasions, she did not review the mammography report at all. The defense also called Kevin Inwood, M.D., a board certified internal medicine specialist of Jupiter, Florida, who testified that the primary care doctors breached the standard of care by failing to refer the plaintiff for a surgical consult and/or surgical biopsy. Expert testimony offered by both parties agreed that, had a surgical biopsy been ordered within a year of the original finding, the plaintiff's cancer would have likely been detected before it metastasized.

The jury returned a finding for the defendant, rejecting the plaintiff's theory of liability against the defendant doctor.

REFERENCE

Hortensia Martin vs. Jorge Jose Sowers, M.D.; Judge Peter Lopez, 09-30-14.

Attorney for plaintiff: Maria Rubio in Miami, FL.
Attorney for defendant: Steven L. Lubell of Lubell & Rosen, LLC in Syosset, NY.

BREACH OF FIDUCIARY DUTY

$1,896,000 VERDICT

Minority shareholder action – Wrongful takeover of corporate control - Improper rescission of stock sale – Breach of fiduciary duty – Liquidation of corporation.

Miami-Dade County, FL

This complex stockholder litigation has been ongoing for approximately seven years. The plaintiffs, a wine importing company, and its president, brought suit against two other shareholders. The plaintiffs alleged that the defendants improperly attempted to rescind a sale of stock, ousted the plaintiff from the corporation, wrongfully took over corporate control, and liquidated corporation assets.

The individual plaintiff owned 45% of the outstanding stock in the corporation and was its president. One of the defendant shareholders owned 45%, and the third owned 10%. The shareholder with the 10% ownership interest sold her stock; leaving the plaintiff, and remaining shareholder, 50/50 owners of the corporation.

However, the plaintiff alleged that the selling shareholder improperly attempted to rescind her sale, and the defendants (as purported majority stockholders) held a series of meetings to oust the plaintiff as president and take control of the corporation. The court determined, via summary judgment, that the stock sale at issue was valid, and therefore, subsequent shareholder and directors meetings purporting to oust the president were invalid.

Evidence showed that prior to the corporate takeover, the plaintiff had entered a contract to share overhead expenses with another import company. The plaintiff's expert testified that, but for the defendants' actions, the corporation would have made a significant profit. The plaintiff sought approximately $3,000,000 in damages.

The plaintiff also alleged, in a separate action, that the defendants failed to pay a $110,000 Bank of America loan, resulting in a judgment against the company, including the individual plaintiff who had guaranteed the loan. Shortly before trial, the plaintiff contends that the defendants acquired the Bank of America judgment, and used it in an attempt to execute on the corporate plaintiff's treasury stock, and once again, take control of the corporation. The individual plaintiff asserts that he was forced to file for bankruptcy to avoid the garnishment.

The jury found wrongful taking of corporate authority and breach of fiduciary duty against the defendants. Total damages of $1,896,000 were awarded, including $1,063,000 to the plaintiff corporation, and $833,000 ($548,000 in lost wages and commissions, and $285,000 in personal liability for corporate debt) to the individual plaintiff. Post-trial motions are currently pending. The plaintiff sought a stay of the defendants' attempt to use the Bank of America Judgment to execute on the plaintiff's stock, but the stay was denied. The denial of the stay will be appealed, according to plaintiffs' counsel.

REFERENCE

Taverna Imports, Inc. vs. Laudisio, et al. Case no. 2007-009620CA01; Judge Sarah I. Zabel, 09-12-14.

Attorney for plaintiff corporation: Eduardo I. Rasco of Rosenthal, Rosenthal, Rasco & Kaplan, LLC, in Aventura, FL. Attorney for plaintiff as individual: Jessica Geller of Geller Law and Mediation in Plantation, FL.

CIVIL RIGHTS

DEFENDANT'S VERDICT

Civil Rights Action – Claimed use of excessive police force – Plaintiff allegedly punched in face and tasered after traffic stop – Contusions – Dental injuries.

Withheld County, FL

The plaintiff, a pro se litigant, alleged under the Federal Civil Rights Act (42 USC Section 1983), that two deputies employed by the Collier County Sheriff's office, used excessive force in punching him in the face and tasering him after a routine traffic stop. The defense maintained that the two defendant officers used appropriate force, after it appeared that the plaintiff was concealing drugs in his mouth. The plaintiff was a 50-year-old male at the time in question. He claimed that after he was pulled over by the defendant officers for allegedly failing to stop at a stop sign, one of them grabbed his neck, and the other punched him in the face repeatedly. The plaintiff testified that he was then tasered for no legitimate reason. The plaintiff claimed multiple contusions, and that a tooth was knocked loose as a result of the incident.

The defendants argued that the plaintiff was known to one of the defendant officers as a result of prior arrests, and when stopped, the plaintiff appeared to be manipulating something in his mouth, which he refused to spit

out. The officers contended that they attempted to force the plaintiff spit out the objects in his mouth. The defense maintained that the plaintiff resisted arrest, and was tasered into compliance.

The defendants also stressed that a crack pipe was found on the plaintiff at the time of his arrest, and he refused blood and urine tests at the hospital. Photographs of the plaintiff taken following the incident did not show bruising or facial injuries, according to defense arguments.

The jury found for the defendants. The defendants were awarded court costs.

REFERENCE

Jones vs. Leocadio. Case no. 2:12-CV-285; Judge n/a, 03-10-14.

Attorneys for defendant: Christy Michelle Runkles and Richard A. Giuffreda of Purdy, Jolly, Giuffreda & Barranco in Fort Lauderdale, FL.

CONTRACT

DEFENDANT'S VERDICT

Contract – Breach of alleged oral agreement to provide free arena event tickets in exchange for limousine services.

Hillsborough County, FL

The plaintiff, in this contract action, was a limousine service which alleged that the defendant arena breached an oral agreement to provide free event tickets to the plaintiff in exchange for limousine services. The defendant denied that it made such an agreement with the plaintiff.

The plaintiff alleged that it was solicited by two former employees of the defendant for the plaintiff to provide limousine rides in exchange for an equal number of tickets to events at the Tampa Bay Times Forum (n/k/a the Amalie Arena). The plaintiff maintained that the two former employees were acting within the course and scope of their actual or apparent agency on behalf of the defendant in offering this deal, which the plaintiff accepted.

The evidence, at trial, showed that over the course of approximately three years, the plaintiff provided limousine services to the defendant's two former employees on 28 occasions, which included a number of times where other employees of the defendant were in the limousines as well. The evidence also showed that the defendant's two former employees provided tickets to the plaintiff to 21 events at the arena. The plaintiff sought damages for the value of the limousine rides provided in excess of the number of events for which tickets were provided. In closing argument, plaintiff's counsel asked for $21,404 in damages.

Both of the defendant's former employees testified at trial (one via deposition testimony) that every limousine ride with the plaintiff's service was strictly personal in nature, and that the tickets they provided to the plaintiff were their own personal tickets that they had purchased.

The defense also moved for directed verdict arguing that, in light of the plaintiff's testimony, this agreement was intended to last more than one year, and the plaintiff's claim for breach of an oral contract was barred by the statute of frauds. The defense further argued that the doctrine of partial performance did not remove the plaintiff's claim from the purview of the statute of frauds, because that doctrine is inapplicable to a services contract.

The jury found that the defendant's two former employees were not acting as agents of the defendant with regard to any exchange of limousine services for tickets to events. Accordingly, a defense verdict was entered. The trial court reserved ruling on defendant's motion for directed verdict, which ultimately became moot in light of the jury's defense verdict. The plaintiff has filed a post-trial motion for new trial. The defendant claims entitlement to costs.

REFERENCE

Hummer Limo, Inc vs. Tampa Bay Arena, L.P. Case no. 13-CA-006748; Judge Bernard C. Silver, 09-17-14.

Attorney for defendant: Bryan R. Snyder of Rissman, Barrett, Hurt, Donahue & McLain, P.A. in Tampa, FL. Attorney for defendant: Danna Haydar of Associate General Counsel Tampa Bay Lightning and Amalie Arena in Tampa, FL.

DISCRIMINATION

SUMMARY JUDGMENT FOR DEFENDANT

Alleged violation of Americans with Disabilities Act – Claimed failure of restaurant to provide handicapped accessibility.

Palm Beach County, FL

The plaintiff brought this action against the defendant under the Americans with Disabilities Act (ADA). The plaintiff alleged that the defendant failed to provide handicapped access to its restaurant. The defendant argued that

It did not own, lease, or control the subject restaurant and, therefore, lacked authority to make any repairs or modifications to the restaurant to comply with the ADA.

The male plaintiff claimed that he was discriminated against based on his disability because certain elements of a local restaurant were not ADA compliant. The plaintiff contended that he was therefore, denied the opportunity to enjoy the same goods and services provided by the restaurant to non-disabled individuals.

The defendant showed that that it did not own, lease, or control the restaurant. The defense moved for summary judgment, arguing that it had no authority to make any repairs or modifications to the restaurant.

The court granted the defendant's motion for final summary judgment. There is nothing to prevent the plaintiff from filing a new lawsuit against another entity.

REFERENCE

Harty vs. Gator Apple, LLC, d/b/a Applebees Neighborhood Grill & Bar #4083. Case no. 2:13-CV-14129-DLG; Judge Donald L. Graham, 12-14-13.

Attorney for defendant: Nicole M. Wall of Cole, Scott & Kissane in West Palm Beach, FL.

$20,000 RECOVERY

DOJ – USERRA – Business accused of demoting national guard member because of deployment – Violation of USERRA.

Hillsborough County, FL

In this case, the United States sued for the alleged discrimination against a member of the U.S. military. The matter was resolved through a settlement.

In October 2012, U.S. Army National Guard member, Ronald C. Jr., notified his employer, Key Safety Systems, that he was being deployed in February 2013 for one year of military service. Two months later, he was demoted, resulting in a reduction in pay. Mr. C. had not been the subject of any disciplinary actions prior to the announcement of his impending deployment, and was given no reason for the demotion. In January 2014, Mr. C. returned from deployment, and was returned to the position of his demotion. A month later, Mr. C. submitted his letter of resignation from the defendant company.

This case stems from a referral by the U.S. Department of Labor (DOL), pursuant to an investigation by the DOL's Veterans' Employment and Training Service. The United States filed suit in the U.S. District Court for the Middle District of Florida, accusing defendant, Key Safety Systems Inc., of discrimination against a veteran in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA protects the rights of uniformed servicemembers to retain their civilian employment following absences due to military service obligations, and provides that servicemembers shall not be discriminated against because of their military obligations. The United States sought damages for Mr. C., as well as other relief.

The matter was resolved through a consent decree filed simultaneously with the complaint. The defendant agreed to pay $20,000 as back pay and liquidated damages to Mr. C.

REFERENCE

United States of America vs. Key Safety Systems, Inc. Case no. 8:14-cv-02503-JSM-TGW, 10-03-14.

Attorney for plaintiff: Delora L. Kennebrew of Justice Department - Civil Rights Division in Bowie, MD. Attorney for plaintiff: Yohance S. Pettis of U.S. Attorney's Office in Miami, FL. Attorney for defendant Key Safety Systems, Inc.: Matthew C. Cohn of Corporate Counsel in Detroit, MI.

DOG BITE

DEFENDANT'S VERDICT

Claimed failure to warn of dangerous guard dogs – Bite wounds to forearm and shoulder – Alleged nerve damage.

Palm Beach County, FL

The plaintiff alleged that she went to the defendant's home to pick up her daughter, and was attacked by the defendant's mixed-breed pit bulls. The plaintiff alleged that the defendant failed to control the animals, or warn the plaintiff of their dangerous propensities. The defendant countered that the plaintiff did not have express, or implied permission to be on the premises at the time of the incident. The defendant operated a children's camp which was attended by the plaintiff's pre-teenaged daughter. The camp was initially named as a defendant, but was dismissed from the case prior to jury instructions. On the night in question, the plaintiff's daughter was spending the night at the defendant's house.

Evidence showed that there were text messages between the plaintiff and the defendant. The defendant indicated that the plaintiff's daughter wanted to go home. The plaintiff texted back that her daughter missed her teddy bear, and that the plaintiff was coming over to the defendant's home. The defendant then texted to the plaintiff "Let me know when you get here, the dogs are out."

The plaintiff testified that she never saw the defendant's last text regarding the dogs. The plaintiff removed a chain from the defendant's gate marked "beware of dogs." The plaintiff unlatched the gate, entered the property, and was attacked by the defendant's mixed breed pit bulls. The plaintiff, who was in her early 30s at the time, sustained bite wounds to her forearm and shoulder, and required several sutures to the forearm, and also claimed nerve damage to the arm.

The defendant argued that the plaintiff had been on the premises numerous times before the incident and was aware of the dogs. Although the defendant received a text that the plaintiff was coming over, the defendant testified that she did not know when the plaintiff was coming, and she had instructed the plaintiff to call her when she arrived.

The defense maintained that the plaintiff did not have permission to enter the property when she did, and could not, meet the "express or implied permission" requirement contained in Florida's dog bite statute.

The jury found that the plaintiff was not lawfully on the defendant's property at the time of the incident. The court's ruling on the plaintiff's post-trial motion for new trial is currently pending.

REFERENCE

Storms vs. Parker. Case no. 502012CA-019454XXXXMB; Judge Donald W. Hafele, 06-20-14.

Attorney for defendant: Robert B. Goldman in Boynton Beach.

FRAUD

$1,065,000 RECOVERY

DOJ – Fraud – Florida home health care company accused of inducing doctors for referrals by employing their spouses – Violation of False Claims Act

Broward County, FL

In this action, the government accused a health care company operating a scheme to increase Medicare referrals. The matter was resolved through a settlement.

The defendant, A Plus Home Health Care Inc., is a home health care company located in Fort Lauderdale, Florida. According to complaint filed by William G., its former director of development, and subsequently the government, the defendant operated a scheme since 2006 aimed at increasing its revenue from Medicare referrals. The scheme involved employing the spouses of seven physicians, and one's boyfriend, in order to induce the doctors to send the defendant more Medicare referrals. The defendant asserted that the employees were hired for marketing duties, however, the plaintiffs stated that the parties had little or no duties, and were employed as inducement. Further, the plaintiff asserted that the defendant fired at least two of the employees after their significant others failed to refer a certain number of patients to the defendant.

William G. filed suit under the qui tam whistleblower provisions of the False Claims Act in the U.S. District Court for the Southern District of Florida. The defendant owners of A Plus, Tracy N., and her father, Stephen N., were accused of violating the False Claims Act through their scheme. The United States later intervened in the case.

The matter was resolved via settlement for $1 065,000 in civil penalties, with no admission of liability on the part of the defendant. The plaintiff previously settled with five couples who allegedly accepted payments from the

defendant: Steven and Fortuna H., Mark and Meredith R., Sam and Christy S., Gary and Stacy W. and Keifer W., and Nuria R.

REFERENCE

United States ex rel. Guthrie vs. A Plus Home Health Care, Inc. Case no. 12-cv-60629; Judge William P. Dimitrouleas, 09-17-14.

Attorney for plaintiff: Joyce R. Branda of United States Justice Department - Civil Division in Washington, DC. Attorney for plaintiff: Wifredo A. Ferrer of U.S. Attorney's Office in Hialeah, FL.

INSURANCE OBLIGATION

DEFENDANT'S VERDICT

Underinsured motorist claim – Rear end collision – Negligence stipulated – Claimed neck and back injuries – Cervical disc herniation.

Pinellas County, FL

This was an underinsured motorist claim tried against the defendant State Farm Mutual Automobile Insurance Company. The defendant stipulated to the tortfeasor's negligence in striking the plaintiff's car from behind. However, the defendant disputed the injuries, which the plaintiff claimed were caused by the collision. The plaintiff was a 56-year-old female at the time of the accident in 2012. She was transported from the scene to the emergency room by ambulance, and was discharged the same day. The plaintiff complained of neck and back pain, and was diagnosed with a disc herniation at the C5-C6 level, which she claimed was caused by the subject collision. The plaintiff underwent epidural steroid injections for treatment of neck pain. The plaintiff had undergone prior chiropractic treatment for neck and back complaints, according to evidence offered by the defense. The defendant argued that the plaintiff's testimony was not credible, and that she failed to disclose a prior accident, in addition to her prior neck and back treatment to her treating physician.

The jury found that the tortfeasor's negligence was not a legal cause of injury to the plaintiff. The plaintiff's post-trial motion for new trial was recently denied. The defendant has filed motions to tax costs and attorney fees based on a proposal for settlement.

REFERENCE

Kaminsky vs. State Farm Mutual Automobile Insurance Company. Case no. 13-004632; Judge Pamela Campbell, 09-11-14.

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

PLAINTIFF'S VERDICT

Declaratory judgment on post-loss compliance – Claimed wrongful denial of water damage loss under homeowners' policy.

Palm Beach County, FL

This was a declaratory judgment action brought by the plaintiffs against the defendant, State Farm Insurance Company, under a homeowners' insurance policy. The plaintiffs sought to confirm coverage and establish that they met the post-loss requirements of the policy. The defendant filed a counterclaim for declaratory relief, arguing that the plaintiffs failed to meet conditions precedent to recovery, specifically the examination under oath and inspection provisions of the policy issued. The defendant also maintained that plaintiffs' declaratory relief action was prohibited by the "no action" clause of the policy.

The plaintiffs claimed that roof damage allowed water to enter their home and cause interior damage, and contended that the defendant sent an expert to their home, who concurred that the water damage was a covered loss under the policy issued by the defendant, and that the defendant also confirmed a covered loss

Evidence showed that the defendant asked the plaintiff to provide dates for an examination under oath, which the dates were provided, but the examination under oath was never completed. The plaintiff argued that the defendant never scheduled the examination under oath, and also stated that multiple inspections were provided to the defendant, yet the defendant continued to ask for inspections.

The plaintiffs testified that, after inspections were completed, examination under oath dates provided an appraisal demanded by the defendant, with the defendant advising the plaintiff to submit the claim to their windstorm carrier.

The defendant sought a forfeiture of insurance benefits based on the plaintiffs' alleged failure to comply with post-loss requirements. The defendant argued that the plaintiffs filed suit before the insurance company con-

ducted the examination under oath, or obtained an inspection by a general contractor selected by defendant.

The jury found that the plaintiffs complied with both the examination under oath provision, and the inspection provision of the policy. Post-trial motions are currently pending.

REFERENCE

Silverman vs. State Farm Florida Insurance Company. Case no. 502010-CA-021704XXXXMB; Judge Janis Brustares Keyser, 06-23-14.

Attorneys for plaintiff: Megan Chandler Moore and Dale S. Dobuler of Ver Pleog & Lumpkin in Miami, FL.

MOTOR VEHICLE NEGLIGENCE

Head-on Collision

DEFENDANTS' VERDICT

Truck/Truck front end collision – Alleged failure to maintain lane – Cervical and lumbar disc herniations with surgery.

Palm Beach County, FL

This action arose from the front end collision of two 18-wheel tractor trailers. The plaintiff alleged that the defendant's truck crossed the double center line and caused the impact. The defendants, in the case, included the truck driver (an independent contractor) and the company which hired him. The defendants argued that it was the plaintiff's truck that crossed the double center line and caused the accident.

The plaintiff was a 51-year-old truck driver at the time of the collision. The plaintiff alleged that the defendant driver crossed into his oncoming lane, and then corrected back into his lane. However, the plaintiff claimed that he was caused to turn his rig to the left, and collided with the defendant's truck and spun 180 degrees.

The plaintiff claimed that the collision caused disc herniations in his cervical and lumbar spine. He underwent a cervical decompression surgery at the C4 to C7 levels.

The defendant maintained that it was the plaintiff's truck which crossed the double yellow line. Two witnesses testified that they were driving in the opposite direction of the defendant (the same direction as the plaintiff). The witnesses testified that, when they met the defendant's truck, it was entirely in the proper lane.

The defense also asserted that the plaintiff's neck and back symptoms and surgery stemmed from preexisting conditions, not 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

Sotomayor vs. Coast Fleet Leasing, LLC, et al. Case no. 50-2010CA018439XXXXMB; Judge Edward H. Fine, 06-23-14.

Attorneys for defendant: J. W. Webb and Paola M. Garcia of Lydecker Diaz in Orlando, FL.

Multiple Vehicle Collision

$308,449 GROSS VERDICT

Multiple vehicle collision – Rotator cuff tear – Thoracic outlet syndrome – Surgery performed – Damages/causation only.

Pinellas County, FL

The plaintiff's vehicle was stopped in traffic when a vehicle, driven by the defendant driver, and owned by the defendant corporation, struck the rear of another vehicle and pushed it into the back of the plaintiff's car. The defendant stipulated to negligence in causing the collision. The driver of the center vehicle settled with the defendants prior to trial. The defendants maintained that the plaintiff did not sustain a permanent injury as a result of the collision. The plaintiff was a 30-year-old female at the time of the accident in 2008. She was transported from the scene to the emergency room by ambulance. The plaintiff alleged that the impact caused a tear of the rotator cuff in her right shoulder, necessitating arthroscopic shoulder surgery which was performed in March of 2010. The plaintiff also claimed that the collision caused thoracic outlet syndrome. The plaintiff underwent surgery to treat the thoracic outlet syndrome in 2012, but contended that the surgery was not successful. The plaintiff's vascular surgeon testified that the

thoracic outlet was initially masked by the plaintiff's shoulder pain. The defendants argued that the plaintiff never documented symptoms related to thoracic outlet syndrome until she moved, had a subsequent accident and began treating in Denver, Colorado. The defense denied that the plaintiff's symptoms were causally related to the accident.

The jury found the plaintiff sustained a permanent injury as a result of the accident, and awarded her $308,449 in damages, (including $10,000 to her husband for loss of consortium). Collateral source set-offs reduced the plaintiff's recovery to a net of $271,897. The defendant paid costs. The plaintiff's motion to tax attorney fees is currently pending.

REFERENCE

Wilson vs. Silco.com. Case no. 10-011702-CI7; Judge Walter Schafer, 06-17-14.

Attorney for plaintiff: Thomas R. O'Malley of O'Malley & Wolfe in Clearwater, FL. Attorney for defendant: Dale L. Parker of Banker Lopez Gassler, PA. in St. Petersburg, FL.

DEFENDANT'S VERDICT

Three-vehicle rear end collision – Claimed cervical and lumbar disc herniations – Shoulder injury – Damages/causation only.

Brevard County, FL

This action arose from a three-car, rear end collision which the plaintiff claimed caused her permanent neck, back, and shoulder injuries. The defendant stipulated to negligence in causing the collision. However, the defense maintained that the impact to the back of the plaintiff's car was light, and did not cause the injuries alleged.

The plaintiff was a 53-year-old hairdresser who was driving on Eau Gallie Boulevard in Melbourne at the time of the accident on September 20, 2010. Evidence showed that the defendant's vehicle struck a van operated by a non-party, and the van then struck the rear of the plaintiff's vehicle.The plaintiff alleged multi-level cervical and lumbar disc herniations as a result of the collision. She also claimed a tear of the supraspinatus tendon in her right shoulder, for which surgery was recommended. The defense argued that there was no damage to any of the vehicles involved, indicating a very light impact. The defense also stressed that the plaintiff did not make any complaints with respect to her right shoulder for several weeks after the automobile accident.

The defendant's radiologist testified that the findings in the plaintiff's right shoulder were indicative of a long-standing degenerative condition that pre-existed the automobile accident. This expert also opined that the findings on the plaintiff's cervical and lumbar spine were degenerative in nature, and not related to the collision.

The jury found that the defendant's negligence was not a legal cause of injury to the plaintiff. The defendant filed a proposal for settlement in the amount of $11,000. The plaintiff's proposal for settlement was for $22,000.

REFERENCE

Plaintiff's chiropractic expert: Shawn T. Eagan from Melbourne, FL. Plaintiff's orthopedic surgery expert: Anthony Lombardo from Melbourne, FL. Plaintiff's radiology expert: Daniel Beirne from Indian Harbour Beach, FL. Defendant's radiology expert: Michael Foley from Tampa, FL.

Dunn vs. Abdel-Magid. Case no. 2013-CA-40364; Judge John D. Moxley, Jr, 08-29-14.

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

Parking Lot Collision

$10,000 GROSS VERDICT

Parking lot collision – Neck and back injuries – 65% comparative negligence – No permanent injury found.

Palm Beach County, FL

The plaintiff brought this action against the Palm Beach County Board of County Commissioners alleging motor vehicle negligence on the part of a county employee. The plaintiff alleged that the employee backed out of a parking space and struck her vehicle. The defendant contended that the plaintiff caused the impact by driving behind moving truck. The defense also disputed the injuries which the plaintiff claimed to have sustained as a result of the collision.

The plaintiff was a 35-year-old female at the time of the accident, which occurred in a Belle Glade parking lot. The plaintiff testified that the county truck suddenly backed out of a parking space and struck the right rear of her SUV.

The plaintiff claimed that the collision caused injuries to her neck and back, resulting in continuing pain and limitation of motion.The defendant argued that the county

truck was already moving backwards when the plaintiff attempted to drive behind it, and also argued that the plaintiff's neck and back symptoms were not causally related to the accident.

The jury found the defendant's driver 35% negligent and the plaintiff 65% comparatively negligent. The jury also found that the plaintiff did not sustain a permanent injury as a result of the accident. The plaintiff was awarded $10,000 in past medical expenses, reduced accordingly. Post-trial motions are pending.

REFERENCE

Renteria vs. Palm Beach County Board of County Commissioners. Case no. 502013-CA-12810; Judge Janis Brustares Keyser, 05-08-14.

Attorney for defendant: Sara C. Lindsey of Palm Beach County Attorney's Office in West Palm Beach, FL.

Rear End Collision

DEFENDANT'S VERDICT

Rear end collision – Lumbar disc herniation claimed – Surgery recommended – Damages/causation only.

Orange County, FL

The defendant did not dispute negligence in this motor vehicle negligence action which arose from a rear end collision. Rather, the defense contended that the plaintiff was not injured as a result of the impact. The plaintiff was a 55-year-old male owner of a custom garage door business at the time of the accident, on June 16, 2008. The plaintiff claimed that as a result of the collision, he suffered headaches, neck pain, left shoulder pain, left knee pain, upper back pain, and lower back pain. He was diagnosed with a lumbar disc herniation, which his doctors causally related to the accident, and for which surgery was recommended. The defendant's radiologist pointed out several areas of degenerative change on the plaintiff's cervical and lumbar imaging studies. This expert opined that these findings were more closely related to pre-existing degenerative changes and not causally related to the automobile accident.

The defendant's orthopedic surgeon also testified that the plaintiff's symptoms were not related to the subject accident, and that he did not agree with the surgical recommendation.

The jury found that the defendant's negligence was not a legal cause of injury to the plaintiff. The defendant filed a $15,000 proposal for settlement. The plaintiff's proposal for settlement was in the amount of $30,000. The defendants' motion to tax costs was granted.

REFERENCE

Plaintiff's chiropractic expert: Wayne Wolfson from Orlando, FL. Plaintiff's radiology expert: Robert Martinez from Orlando, FL. Defendant's orthopedic surgery expert: Robert Murrah from Orlando, FL. Defendant's radiology expert: Michael Foley from Tampa, FL.

Benjamin vs. Moraski. Case no. 2009-CA-039069-0; Judge Robert J. Egan, 06-06-14.

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

$125,000 VERDICT

Rear end collision – Cervical disc bulges – Defendant in default – Damages only.

Miami-Dade County, FL

The male plaintiff was approximately 50-years-old when his vehicle was struck from behind by the defendant's vehicle. The defendant initially answered the complaint pro se,, but was in default at the time of trial, and did not appear. Accordingly, the case was heard on the issue of damages only. The plaintiff's chiropractor testified that the plaintiff sustained disc bulges of his cervical spine as a result of the collision. The plaintiff's chiropractor also opined that the plaintiff's accident-related neck injuries constituted a 3% impairment of the whole body. The plaintiff complained of ongoing neck pain and limitation of motion. He returned to work operating a security business, and made no claim for lost wages. The plaintiff sought $4,000 in past medical expenses as well as the cost of future medical care.

The jury awarded the plaintiff $125,000 in damages.

REFERENCE

Plaintiff's chiropractic expert: Gary Friedman from Miami, FL.

Corraliza vs. Fernandez. Case no. 2007-006612CA01; Judge Abby Cynamon, 08-25-14.

Attorneys for plaintiff: Daniella Klein and Arthur M. Garel of Arthur M. Garel P.A. in Miami, FL.

$3,653 VERDICT

Rear end collision allegedly causes cervical extrusions and need for fusion surgery – Defendant points to lengthy gaps in treatment – Damages only

Hillsborough County, FL

Liability was stipulated in this case, in which the plaintiff driver, in her mid 30s, was struck in the rear by the defendant's Econoline van. The plaintiff contended that she suffered multiple cervical extrusions confirmed by MRI, and which necessitated the need for a cervical fusion. The plaintiff first treated with a chiropractor (also her employer) for seven to eight months before a lengthy gap in treatment where she had only a handful of chiropractic visits over the next three years.

The plaintiff then saw her orthopedic surgeon approximately four years post-accident and underwent a C4-5 and C5-6 discectomy and fusion with allograft, including an application of an anterior cervical plate with titanium screws.

The defendant pointed out the lengthy gap in treatment, and argued that the MRI findings pre-dated the subject accident. The defendant's neurosurgeon found that the surgery performed was not related to the subject accident, and that there was no permanent injury. The plaintiff's medical expenses totaled over $103,000, and there was no income/wage loss claim. In the closing argument, The plaintiff asked the jury to award over $1,100,000 in total damages.

The jury awarded $3,653. PIP payments of $10,000 were set off against the verdict.

REFERENCE

Defendant's neurosurgical expert: Scott Cutler, MD from Tampa, FL.

Rodriguez vs. Associated Plumbing. Case no. 10-CA-006943; Judge Scott Stephens, 03-05-14.

Attorneys for defendant: Charles E. McKeon and Kevin S. Smith of Law Offices of Charles E. McKeon, P.A. in Tampa, FL.

PREMISES LIABILITY

Fall Down

$68,500 GROSS VERDICT REDUCED BY 35% COMPARATIVE NEGLIGENCE

Plaintiff contends defendant truck stop negligently fails to timely clean diesel spill near pumps – Slip and fall – SI fractures – Two surgeries – Shoulder tear – Two arthroscopic surgeries – Aggravation of knee arthritis – Arthroscopic surgery – Inability of trucker to work

Charlotte County, FL

The plaintiff trucker contended that after the prior trucker, who was unidentified, overfilled his rig with diesel fuel, a large spill occurred. The plaintiff maintained that the defendant should have been able to clean it prior to his slipping and falling 15-20 minutes after the fall occurred. The evidence disclosed, however, stated that the plaintiff was aware of the spill, and that the incident occurred after he had walked in the area several times, and that the barrels had been placed to barricade the area. The defendant supported that it takes between one half hour and an hour to effectively clean the area, with an oil absorbent, known in the trade as "kitty litter." The defendant maintained that the sole cause of the incident was the negligence of the plaintiff, who suffered a shoulder tear, and required two arthroscopic surgical interventions. He also suffered a sacroiliac, which was addressed by two surgeries. The plaintiff further maintained that he suffered an aggravation of knee arthritis that required arthroscopy as well. The plaintiff maintained that he will suffer extensive pain and limitations permanently and will be unable to work.

The jury found the defendant 65% negligent, the plaintiff 35% comparatively negligent, and rendered a gross award of $68,500, including $40,000 for past lost wages, $15,000 for past medical bills, $9,000 for past pain and suffering, and $4,500 to the wife for loss of consortion. The defendant has moved to mold the award to reflect set-off of benefits received, including SSI, and a granting of this motion would reduce the award to $0.

REFERENCE

Plaintiff's economist expert: Brenda Mulder, MBA from Tampa, FL. Plaintiff's orthopedic surgeon expert: Michael Stonnington, MD from Laurel, MS. Plaintiff's physiatrist expert: Steven M. Tucci from Punta Gorda, FL. Plaintiff's radiologist expert: Paul Macchi, MD from Sarasota, FL. Defendant's orthopedic surgeon expert: Steven Knezevich, MD from Tampa, FL. Defendant's radiologist expert: Michael Foley, MD from Tampa, FL.

Tallent vs. Pilot Travel Center, LLC. Case no. 09-001139-CA; Judge Donald Mason, 10-16-14.

Attorneys for defendant: Joseph A. Kopacz and Anthony J. Petrillo of Luks, Santaniello, Petrillo & Jones in Tampa, FL.

DEFENDANT'S VERDICT

Slip and fall outside Costco store – Alleged failure to prevent water from being tracked under overhang – Herniated lumbar disc with epidural steroid injections

Lee County, FL

The plaintiff was a 50-year-old man who alleged that he slipped and fell in water caused by shopping carts that had tracked water under the overhang from the parking lot of the defendant's Costco store. The plaintiff alleged that the defendant was aware of the slippery condition, yet failed to warn or correct the issue at hand. The defendant denied negligence, and maintained that the plaintiff failed to use due caution in rainy weather. The plaintiff testified that he was walking under the covered section of the defendant's parking lot on October 18, 2011, when he slipped and fell in water. The plaintiff supported that there was a lack of cones or other warnings to alert him to the slippery condition. The plaintiff was diagnosed with a herniated disc in his lumbar spine, plus soft tissue injuries to his neck and left shoulder, which he claimed were caused by the fall.

The plaintiff called (via video depo) an orthopedic surgeon retained by the defendant. This expert conceded that the plaintiff sustained a permanent injury, and agreed he will benefit from future lumbar injections by his pain specialist. The plaintiff claimed past medical expenses of $14,333, plus $7,300 in future medical expenses. Two of the defendant's employees testified that they witnessed the plaintiff's fall and confirmed that he slipped in water from cart tracks under the overhang. However, the employees stated that the fall was closer to the edge of the overhang, and that the plaintiff was walking quicker than normal.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The defendant filed a proposal for settlement in the amount of $10,000. The plaintiff's proposal for settlement was in the amount of $15,000.

REFERENCE

Plaintiff's neurology expert: David Sudderth from Fort Myers, FL. Plaintiff's orthopedic surgery expert: David Berretta from Fort Myers, FL. Plaintiff's pain management expert: Wayne Isaacson from Fort Myers, FL. Defendant's orthopedic surgery expert: Howard Kapp from Naples, FL.

Davis vs. Costco Wholesale Corporation. Case no. 12-CA-003574; Judge Michael McHugh, 09-24-14.

Attorney for defendant: David W. Grossman of Simon, Reed & Salazar in Miami, FL.

DEFENDANT'S VERDICT

Trip and fall on tile step – Claimed lack of contrast – Femur fracture with surgery - $35,000 recovery under high/low agreement.

Miami-Dade County, FL

The plaintiff was a realtor attending an open house in Miami, when she tripped and fell at a four inch step-down from the tile foyer, to the sunken living room. The plaintiff brought suit against the property owner and property management company, alleging that the step down was dangerous. The defendant property owner settled the plaintiff's claims prior to trial. The remaining defendant property management company contended that the step down was not a dangerous condition, and that the plaintiff failed to watch where she was walking.

The plaintiff was a 65-year-old female realtor at the time of the fall. She claimed that the floor tile was the same on both sides of the step-down in the home's entranceway and lacked contrast, thereby constituting a tripping hazard.

The plaintiff was diagnosed with a fracture of the neck of the right femur as a result of the fall. She underwent surgery to repair the fracture.

The defendant argued that the step-down foyer was a common design, and that the plaintiff, as an experienced realtor, should have watched where she was walking.

The jury found no negligence on the part of the defendant, which was a legal cause of injury to the plaintiff. The plaintiff recovered $35,000 under a $35,000/$300,000 high/low agreement reached before verdict.

REFERENCE

Plaintiff's human factors expert: Michael Maddox from Madison, NC.

Goldberg vs. Shoor, et al. Case no. 2009-28-503-CA-O1; Judge Peter R. Lopez, 05-10-14.

Attorneys for plaintiff: Alan Goldfarb and Michael Goldfarb of Alan Goldfarb, PA., in Miami, FL. Attorney for defendant: Russell B. Karr of Ayenn, Stark & Associates in Miami, FL.

$8,806 GROSS VERDICT

Slip and fall in supermarket – Claimed knee injury – Total knee replacement performed - 70% comparative negligence found.

Osceola County, FL

The plaintiff was a 62-year-old customer in the defendant's supermarket when she slipped and fell. The plaintiff claimed that the fall was caused by the defendant's failure to properly maintain its store and freezer, leading to a water leak. The defendant denied negligence and disputed the injuries which the plaintiff claimed resulted from the fall.

The incident occurred on December 12, 2011 at the defendant's supermarket in Kissimmee, Florida. The plaintiff alleged that she fell on a mat saturated with water, because of a freezer leak. The plaintiff claimed that the fall caused a knee injury, which necessitated a total knee replacement. The defense argued that plaintiff did not provide any evidence that the defendant had constructive notice concerning a defect with the rug or the presence of water on the floor. The defense argued that the plaintiff testified that she did not know the source of the water, and she never saw a puddle or leaking freezer. In addition, the plaintiff wore slippers into the store, and walked with a limp at the time of the incident, which the defense contended contributed to her fall. The defendant's orthopedic surgeon testified that the plaintiff's total knee replacement surgery was related to her preexisting osteoarthritis, and that she should have had only a temporary exacerbation from the subject accident.

The jury found the defendant 30% negligent, and the plaintiff 70% comparatively negligent. The plaintiff was awarded $8,806 in damages, reduced to a net award of $2,642. The jury declined to award future damages to the plaintiff. The defendant filed a proposal for settlement in the amount of $25,000. The plaintiff's proposal for settlement was in the amount of $500,000.The parties reached a post-verdict agreement, wherein the plaintiff would not appeal or enter a judgment against the defendant, and all parties would pay their own fees and costs.

REFERENCE

Plaintiff's orthopedic surgery expert: Ayman Daouk from Orlando, FL. Plaintiff's orthopedic surgery expert: Paul Maluso from Ocoee, FL. Defendant's orthopedic surgery expert: Jeffrey Rosen from Orlando, FL.

Morales vs. Boggycreek Food Corporation. Case no. 2012-CA-4257-ON; Judge John E. Jordan, 09-12-14.

Attorney for defendant: Art C. Young and Meredith M. Stephens of Rissman, Barrett, Hurt, Donahue & McLain, P.A. in Orlando, FL.

DEFENDANT'S VERDICT

Trip and fall in supermarket – Alleged dangerous buckled floor mat – Claimed disc herniations with surgery.

Palm Beach County, FL

The plaintiff alleged that she was caused to trip and fall as a result of a buckled floor mat in the defendant's supermarket. The defense argued that the floor mat was not buckled, and was not the cause of the plaintiff's fall.

The plaintiff contended that she was walking near the floral department of the defendant's supermarket, when her foot hit a lump or buckle in the floor mat, and she fell forward. The plaintiff claimed that the fall caused herniated discs at the C5-C6 and C6-C7 levels, and underwent a cervical fusion. The incident was captured by the store's surveillance video camera and viewed by the jury. The defendant argued that the video showed some 28 to 30 individuals walking and pushing carts without incident on the subject 3' x 10' floor mat just prior to the plaintiff's fall. The defense maintained that the floor mat was not buckled until after the plaintiff tripped and caused the buckle.

On damages, the defense argued that the plaintiff's cervical condition preexisted the date of the incident. Evidence showed that the plaintiff was involved in a prior auto/pedestrian collision, and had had a prior cervical discectomy.

After a three-day trial, the jury found no negligence on the part of the defendant which was a legal cause of injury to the plaintiff. The case is currently on appeal.

REFERENCE

Songin vs. Publix Super Markets, Inc. Case no. 50-2013CA005934; Judge Donald W. Hafele, 06-05-14.

Attorney for defendant: Philip W. Thron and Gregory T. Anderson of Anderson, Mayfield, Hagan & Thron, P.A. in West Palm Beach, FL.

SUMMARY JUDGMENT FOR DEFENDANTS

Alleged dangerous raised concrete panel in residential driveway – Trip and fall – Ruptured spleen requiring surgery

Collier County, FL

The plaintiff brought this premises liability action against her mother, alleging that the mother allowed a dangerous condition to exist on the premises in the form of a raised concrete panel in the driveway. The plaintiff also named the City of Naples as a defendant, alleging that the city was responsible for the condition caused by a tree root. The plaintiff claimed that the driveway defect, a concrete panel raised by a large tree root, caused her to trip and fall. The defendants filed a motion for summary judgment, arguing that the plaintiff could not maintain the suit, because she was a co-owner of the property in question and had constructive knowledge of the driveway condition. As such, the defendants argued that there was no duty to warn the plaintiff.

The plaintiff was exiting her mother's house carrying a large urn when she tripped and fell on a raised concrete panel in the driveway. As a result of fall, the plaintiff ruptured her spleen requiring surgery, as well as a lengthy hospitalization.

The plaintiff alleged that the defendants negligently allowed a tree root to raise the driveway panel, and failed to warn of the dangerous condition. Through discovery, the defendants learned that the plaintiff co-owned the property where the incident occurred. Additionally, the plaintiff admitted that she regularly visited the property. Accordingly, the defendants demonstrated to the court that the plaintiff was not a social guest on the property since she was a co-owner, and therefore, the defendants owed no duty to the plaintiff to warn her of the raised concrete panel.

The court granted defendants' motion for summary judgment on both grounds of co-ownership and constructive knowledge. The plaintiff has filed an appeal.

REFERENCE

Iantosca vs. City of Naples and Marion Joyce O'Green a/k/a Joyce O'Green. Case no. 13-00280-CA; Judge Hugh D. Hayes, 04-23-14.

Attorneys for defendant property owner: Scott Shelton and Brooke Beebe of Cole, Scott & Kissane in Orlando, FL. Attorney for defendant City of Naples: James D. Fox of Roetzel & Andress in Naples, FL.

DEFENDANT'S VERDICT

Plaintiff's leg become caught in narrow gap between raised roll-off ramp and dumpster at county collection center – Fall – Knee injuries and ligament damage to ankle – Aggravation of low back condition and bladder incontinence

Dixie County, FL

The plaintiff , 50-years-old at trial, contended that contended that as she was attempting to throw trash into a dumpster adjacent to a raised roll off ramp, her leg became caught in a narrow gap. The plaintiff supported that the defendant failed to properly maintain the area, and that an overgrowth of weeds obscured the hazard. The defendant denied that the area was dangerous, or poorly maintained, and stated that the cause of the incident was the negligence of the plaintiff who failed to make proper observations. The plaintiff observed that she sustained a tear of the medial meniscus that was treated without surgery, which will cause permanent pain and some difficulties ambulating.

The plaintiff also contended that she sustained a ligament damage in her ankle, and lower extremity pain that will continue for the foreseeable future, including aggravation of prior back pain and bladder incontinence.

The jury found for the defendant.

REFERENCE

Lashley vs. County of Dixie. Case no. 09-177-CA; Judge David Fina, 08-20-14.

Attorney for defendant: L. Johnson Sarber, III of Marks Gray in Jacksonville, FL.

DEFENDANT'S VERDICT

Alleged grimy and sticky substance on supermarket floor – Fall – Lumbar herniation – Surgery

Miami-Dade County, FL

The plaintiff, approximately 40-years-old, contended that she slipped and fell on a grimy and sticky liquid substance on the defendant supermarket's aisle floor. The plaintiff maintained that the substance was present for a sufficient time for the defendant to have notice, and that it

should have been cleaned prior to the incident. The defendant's manager, who came to the scene immediately after the fall, contended that it appeared clean, and that although he went on his hands and knees to look for a foreign substance, he did not see any substance.

The plaintiff maintained that in addition to the sticky liquid, the floor also had skid marks from her shoes. The plaintiff had taken photographs, and the defendant maintained that the pictures did not depict any substance on the floor, and only the shoe markings were visible. The defendant also maintained that if the skid marks had been from her shoe, she could not have slipped on a slippery substance, as the friction necessary to create such a skid mark requires a dry floor.

The plaintiff was a civilian administrative police employee. The defendant contended that in view of this factor, it was to be expected that she could accurately document the condition if it existed, and that the apparent absence of support for the plaintiff's position on the photographs was highly probative.

The plaintiff contended that she suffered a lumbar herniation that necessitated surgery, and which will cause permanent symptoms.

The jury found that the defendant was not negligent.

REFERENCE

Wright vs. Publix. Case no. 10-20937 CA 04.

Attorneys for defendant: Gregory M. Palmer and Marty Fulgueira Elfenbein of Rumberger, Kirk & Caldwell, P.A. in Miami, FL.

RACIAL DISCRIMINATION

$200,000 RECOVERY

EEOC – Racial Discrimination – Transportation company sued after predecessor company allegedly refused to hire African Americans – Violation of Title VII

Miami County, FL

In this action, the EEOC accused a transportation company of racial discrimination. The matter was resolved via settlement.

The defendant, Prestige Transportation Service, LLC, is a Miami company which provides transportation services to airline personnel to and from Miami International Airport. The EEOC later asserted that defendant's predecessor company, Airbus Alliance, Inc., which was under different ownership, repeatedly instructed its human resources manager not to hire African American applicants. Airbus allegedly asserted that African American applicants were "trouble," and "would sue the company," and further stated that it would be a "waste of paper" to give them applications. The EEOC further asserted that Airbus's owners referred to one employee as "the monkey," and fired her for filing a discrimination charge with the EEOC. Finally, the EEOC asserted Airbus terminated its human resources manager and another employee for opposing their discriminatory practices.

The EEOC filed suit in U.S. District Court for the Southern District of Florida after first attempting to reach a settlement through its conciliation process. The defendant was accused through its predecessor company of violating Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race. The defendant the denied the accusation.

The matter was resolved through a four-year consent decree, in which the defendant agreed to pay $200,000 in damages to the three complainants who filed claims with the EEOC, as well as a class of black applicants for employment. In addition, defendant agreed hire class members over the next four years as openings become available, to implement numerical goals for hiring black applicants and use targeted advertising and recruitment to encourage black applicants to apply. The defendant will also implement an anti-discrimination policy that includes clear avenues for reporting discriminatory conduct, train human resources personnel, management personnel, and hiring personnel on an annual basis, and report to the EEOC and keep records about its hiring practices and compliance with the consent decree.

REFERENCE

U.S. Equal Employment Opportunity Commission vs. Prestige Transportation Service, LLC. Case no. 1:13-cv-20684; Judge Andrea Simonton, 09-26-14.

Attorney for plaintiff: Kristen Marie Foslid of Equal Employment Opportunity Commission in Miami, FL. Attorney for defendant: Richard L Richards of Law Offices of Richard L Richards in Miami, 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

$11,000,000 VERDICT - MEDICAL MALPRACTICE - RADIOLOGY NEGLIGENCE - NEGLIGENT READING OF CHEST X-RAY - FAILURE TO TIMELY DIAGNOSE LUNG CANCER - WRONGFUL DEATH OF 47-YEAR-OLD FEMALE

Suffolk County, MA

In this medical malpractice/death action, the plaintiff estate alleged that the defendant radiologist was negligent in failing to properly read the decedent's chest x-ray, which demonstrated a 1.5 cm nodule in the plaintiff's right lung. The plaintiff's decedent died of metastatic lung cancer at 47 years of age, allegedly due to the delay in diagnosis. The defendant denied negligence and maintained that the cancer had already spread prior to the 2006 x-ray, and nothing the defendant did or failed to do contributed to her death.

The matter was tried over a period of 7 days. At the conclusion of the trial, the jury deliberated for 2 hours and 45 minutes, and returned its verdict in favor of the plaintiff and against the defendant. The jury awarded the sum of $11,000,000 in damages, consisting of $1,000,000 for conscious pain and suffering, $3,000,000 for past loss of consortium, and $7,000,000 for future loss of consortium.

REFERENCE

Johnette Ellis Administratrix of the Estate of Jeanne Ellis vs. Peter Clarke, M.D. Case no. 2010-00558; Judge Bonnie MacLeod, 06-18-14.

Attorneys for plaintiff: Robert M. Higgins and Barrie Duchesneau of Lubin & Meyer in Boston, MA. Attorney for defendant: Phillip Murray of Murray Kelly & Bertrand in Woburn, MA.

$8,000,000 VERDICT - MEDICAL MALPRACTICE - OB/GYN - DEFENDANT PHYSICIAN FAILS TO DIAGNOSE AND TREAT LOW GLUCOSE/CALCIUM LEVELS IN PREMATURE INFANT - HYPOCALCEMIA AND HYPONATREMIA, SEIZURES, AND PERMANENT BRAIN INJURY.

KINGS County, NY

In this medical malpractice action, the infant plaintiff contended that the defendant physician failed to diagnose and treat low levels of calcium following premature birth resulting in seizures and permanent brain injury. The defendant denied a duty of care to the plaintiff. Prior to trial the plaintiff demanded the policy limit of $1,000,000 and the defendant offered $25,000. The parties did not reach an agreement and the matter went to trial. The defendant physician is now deceased, and the suit proceeded against her estate. The defendant administratrix of the estate of the defendant physician filed a motion for summary judgment on liability, arguing that the decedent did not have a duty of care. The Court denied the summary judgment motion. The defendant administratrix filed an appeal, which was still pending at the time of trial.

The jury found that the defendant physician had violated the standard of care in her treatment of the plaintiff and awarded $8 million in damages broken down as follows: $3 million in past pain and suffering; $2 million in future pain and suffering; and $3,000,000 in future medical expenses. The defendant administratrix appealed and the parties settled.

REFERENCE

Akira Thomas vs. Carmen Seastres-Hermoso, Administratrix of the Estate of Dr. Luz Seastres-Ahmed. Index no. 2331/08; Judge Peter Paul Sweeney, 02-28-13.

Attorney for plaintiff: Kwarma Vanderpuye of The Cochran Firm Paul B. Weitz and Associates in NEW YORK, NY.

$3,000,000 VERDICT - DENTAL MALPRACTICE - INAPPROPRIATE EXTRACTION OF EIGHT TEETH SIMULTANEOUSLY WITH ADMINISTRATION OF LARGE DOSE OF EPINEPHRINE TO PATIENT WITH CARDIAC HISTORY - HEART ATTACK - CONFINEMENT TO NURSING HOME.

NEW YORK County, NY

The female patient was suffering from loose teeth, periodontitis, and trouble chewing. She presented to the defendant dentist for extraction of eight teeth in all four quadrants of her mouth. The plaintiff had a preexisting heart condition which was known to the defendant. The defendant performed all eight extractions on the same day. The defendant administered epinephrine in conjunction with lidocaine. The procedure concluded at approximately 11:00 am. The patient, who had returned to her home, began to suffer symptoms of a heart attack and called an ambulance. She was taken by ambulance to the emergency room and arrived at approximately 3:00 pm, whereupon she was diagnosed as being in cardiac arrest and life-saving treatment including cardiac surgery was administered. The plaintiff maintained that the patient was left with severe heart damage. The patient was ultimately moved directly from the hospital to a nursing home where she stayed for the remainder of her life. The plaintiff contended that epinephrine was contraindicated for this patient due to her underlying heart condition; that it caused her heart attack which left her severely debilitated and confined to a nursing home for approximately five years prior to her death. Before the subject incident, the patient had lived alone and was self-sufficient. In fact, on the day of the subject incident, the plaintiff had walked to the defendant's office for her appointment.

The jury, which found that it was not a violation of the standard of care to extract all eight teeth in one procedure or to administer epinephrine to this patient, also found that there was a departure from the standard of care by virtue of the defendant not gaining appropriate clearance for the decedent's procedure from the cardiologist. The jury decided that the consult was not obtained appropriately because full information was not given to the consulting cardiologist. The jury awarded the plaintiff's estate $3 million in damages. The defendant filed a motion for JNOV, arguing that the jury's verdict was inconsistent because they found that the defendant's treatment of the decedent was appropriate, but that the cardiac consult was inappropriate. The judge granted the defendant's motion, set aside the verdict, and sent the matter for a new trial. The case resolved via settlement prior to the new trial date for an undisclosed amount.

REFERENCE

Nancy Morillo vs. Fany Pereyra, D.D.S. Index no. 109084/07; Judge, Eileen A Rakower., 02-08-13.

Attorney for plaintiff: Peter D Assail of Alpert & Kaufman, LLP in New York, NY.

PRODUCTS LIABILITY

$55,325,714 VERDICT - PRODUCTS LIABILITY - AUTOMOTIVE DEFECT - DEFECTIVE SEAT BELT/RESTRAINT SYSTEM - PLAINTIFF CATASTROPHICALLY INJURED IN LOW SPEED ROLL OVER COLLISION - QUADRIPLEGIA.

Philadelphia County, PA

The plaintiff in this products liability action was rendered a quadriplegic when the car he was operating, which was manufactured by the defendant, rolled over and the plaintiff's head hit the roof of the car. The plaintiff argued that the catastrophic injuries he suffered were due to a faulty seat belt restraint system in the vehicle. The defendant denied all of the plaintiff's allegations of defects in the vehicle.

The jury found that the plaintiff's injury was caused by the vehicle's defective seat belt design and that defendant was negligent for failing both to redesign the seat belt and to warn consumers that they were at risk for hitting their heads on the roof if the vehicle rolled. The jury awarded $25 million to Martinez for past and future noneconomic damages, $15 million to his wife, plaintiff Rosa De Los Santos De Martinez, for loss of consortium, about $14.6 million for future medical expenses and about $720,000 for past and future lost earnings.

REFERENCE

Carlos Martinez and Rosita De Los Santos de Martinez vs. Honda Motor Co. Case no. 111203763; Judge Lisa M. Rau, 06-26-14.

Attorney for plaintiff: Stewart Eisenberg of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C. in Philadelphia, PA. Attorney for defendant: Tiffany Alexander of Campbell Campbell Edwards & Conroy in Berwyn, PA.

$5,000,000 RECOVERY - PRODUCT LIABILITY - MANUFACTURING DEFECT - DEFENDANT NEGLIGENTLY INSTALLS PORTABLE TOILET - TOILET TIPS OVER WITH PLAINTIFF INSIDE - SPINAL CORD INJURY - PERMANENT QUADRIPLEGIA.

Sullivan County, PA

The plaintiff's two cousins were playing a joke on the plaintiff when the portable toilet the plaintiff was using tipped over, causing the plaintiff to be permanently paralyzed from the neck down. The plaintiff brought this action against the manufacturer of the portable toilet, the installer of the toilet and the plaintiff's two cousin in-laws who were involved in the incident. The plaintiff alleged that the toilet was defectively designed in that it lacked adequate stabilization, and further contended that it was negligently installed on a slant without proper staking to the ground. The plaintiff also contended that his two cousins were negligent in causing the unit to tip over. The defendant manufacturer and installer contended that the toilet was intentionally knocked over by the plaintiff's relatives who used a pick-up truck and rocking motion to overturn the unit and, therefore, they should not be held responsible for the intentional act of the co-defendant cousins.

The case settled for a total of $5,000,000 with contributions made by all of the defendants.

REFERENCE

Plaintiff's rehabilitation expert: Mona Yudkoff from Bala Cynwyd, PA. Plaintiff's spinal cord expert: Guy Fried from Philadelphia, PA.

Donald H. Adams III vs. Poly-San, et al. Case no. 2011-CV-101; Judge Russell D. Shurleff, 01-31-14.

Attorneys for plaintiff: Jeffrey P. Goodman and Robert J. Mongeluzzi of Saltz Mongeluzzi Barrett & Bendesky in Philadelphia, PA.

MOTOR VEHICLE NEGLIGENCE

$4,138,669.28 VERDICT - MOTOR VEHICLE NEGLIGENCE - REAR END COLLISION - DEFENDANT TRACTOR TRAILER DRIVER FAILS TO CONTROL 18-WHEELER - REAR ENDS PLAINTIFF AT HIGH SPEED - HEAD, NECK AND BACK INJURIES; MEDICAL EXPENSES.

Dallas County, TX

The plaintiff brought this rear end collision lawsuit against the defendant driver when he failed to maintain control of his commercial tractor trailer and plowed into the back of the plaintiff's vehicle at a high rate of speed, severely injuring the plaintiff. The plaintiff asserted that the defendant driver was in the course and scope of his employment with the defendant carrier company at the time of the collision. The plaintiff maintained that the defendant carrier company negligently entrusted the defendant driver with the operation of the vehicle. As a result of the accident, the plaintiff sustained injuries to her head, neck and back. The defendant denied the plaintiff's allegations, and pleaded the affirmative defenses of unavoidable accident, sudden emergency, sole proximate cause, preexisting condition and failure to mitigate damages.

The jury reached a verdict in favor of the plaintiff and found the defendant driver and the defendant carrier company 100% responsible for the incident. The jury's findings rendered that the plaintiff recover actual damages in the amount of $4,088,669.28. The court further awarded the plaintiff pre-judgment interest on the sum of past damages and post-judgment interest. The plaintiff recovered $50,000 from defendant carrier company pursuant to the punitive damages awarded by the jury.

REFERENCE

Bobbie Bush vs. R+L Carriers, Inc. and Steven C. Gaston. Case no. DC-11-16041; Judge Emily G. Tobolowsky, 05-06-14.

Attorneys for plaintiff: Ryan H. Zehl, Bryant Fitts & Kevin C. Haynes of Fitts Zehl, LLP in Houston, TX. Attorney for plaintiff: Carmen S. Mitchell in Dallas, TX. Attorney for plaintiff: Ron C. McCallum of Ted B. Lyon & Associates, PC in Mesquite, TX. Attorneys for plaintiff: Kirk L. Pittard & Leighton Durham of Kelly, Durham & Pittard, LLP in Dallas, TX. Attorney for defendant: Jeffrey W. Hastings of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC in Houston, TX. Attorney for defendant: David Hall of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC in Birmingham, AL. Attorney for defendant: William M. Toles of Fee, Smith, Sharp & Vitullo, LLP in Dallas, TX. Attorney for defendant: James L. Mitchell of Payne Mitchell Law Group in Dallas, TX.

$4,100,000 RECOVERY - DEFENDANT AUTOMOBILE DRIVER MAKES LEFT TURN DIRECTLY INTO PATH OF PLAINTIFF MOTORCYCLIST AS PLAINTIFF IS EN ROUTE TO WORK - LOSS OF USE OF DOMINANT RIGHT ARM - SPINAL INJURY CAUSES TEMPORARY LOSS OF USE OF LEG - CONCUSSION AND POST CONCUSSION SYNDROME - COGNITIVE DEFICITS - RIB FRACTURES.

Mercer County, NJ

The 30-year-old plaintiff motorcyclist contended that as he was en-route to work, the defendant automobile driver suddenly made a left hand turn into his path. The plaintiff maintained that although he attempted to avoid an impact with the defendant by laying down his motorcycle, he impacted with the automobile. The plaintiff, who was wearing a helmet, contended that he sustained a brachial plexus injury that caused a permanent loss of use of the right arm, a compression of the cervical spinal cord, a lumbar herniation, and that he suffered a temporary loss of use of the right leg. The plaintiff further maintained that he suffered a closed head injury, concussion, post-concussion syndrome and moderate neuropsychological deficits involving short term memory and concentration. The evidence reflected that the collision occurred after the plaintiff, a veteran, returned from having served three tours in Iraq.

The case settled prior to trial for $4,100,000.

REFERENCE

Dey vs. Ourach. Docket no. MER-L-2484-12, 05-07-14.

Attorney for plaintiff: Dennis S. Brotman of Fox Rothschild, LLP in Lawrenceville, NJ.

$2,600,000 VERDICT - MOTOR VEHICLE NEGLIGENCE - REAR END COLLISION - DECEDENT PASSENGER DIES AFTER CAR WAS REAR-ENDED BY THE DEFENDANT'S VEHICLE AT A SPEED OF 100 MPH - INTOXICATED DRIVING

Bristol County, MA

In this motor vehicle negligence matter, the plaintiff alleged that the 49-year-old male decedent was killed when the vehicle in which he was riding as a passenger was rear-ended by the intoxicated defendant, who allegedly struck the host vehicle while traveling at approximately 100 mph. The defendant denied the allegations and maintained that she had fallen asleep behind the wheel of the vehicle.

At the conclusion of the trial, the jury determined that the plaintiff was entitled to damages in the amount of $2,600,000, representing $1,300,000 to the widow, and $1,300,000 to the decedent's minor child.

REFERENCE

Robin DeNardo Administratrix of the Estate of Peter Colangelo vs. Colleen Ingemanson. Case no. CV2009-01752A; Judge Richard T. Moses, 04-09-14.

Attorney for plaintiff: Rhonda T. Maloney of Esdaile Barrett Jacobs & Mone in Boston, MA.

$1,050,000 RECOVERY - MOTOR VEHICLE NEGLIGENCE - AUTO/PEDESTRIAN COLLISION - RIB FRACTURES - SHOULDER FRACTURE - FRACTURE OF TRANSVERSE PROCESS - TIBIA/FIBULA FRACTURES WITH SURGERY.

Pinellas County, FL

The plaintiff, a 75-year old male, contended that he was struck by the defendant's SUV while he was walking in a supermarket crosswalk. The plaintiff claimed that the defendant driver made a negligent right turn to exit the supermarket parking lot and caused the impact. The plaintiff also named the property owner and management company for the supermarket as defendants, arguing that the parking lot was dangerous.The plaintiff maintaied that he suffered blunt force trauma and fractures of the tibia/fibula, humerus, ribs, and transverse process. The plaintiff underwent shoulder surgery and claimed continuing pain and limitation of motion with physical restrictions stemming from the accident. The plaintiff's wife asserted a claim for loss of consortium. The defendants maintained that the plaintiff was comparative negligent in failing to watch for oncoming traffic before crossing the driveway.

The case was settled pre-suit against the defendant driver for a total of $1,050,000. The claim against the defendant supermarket property owner and management company remains pending.

REFERENCE

Stenov vs. Defendants. Case no. (pre-suit), 03-10-14.

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

$766,000 GROSS VERDICT MOTOR VEHICLE NEGLIGENCE - AUTO/MOTORCYCLE COLLISION - NEGLIGENT LEFT TURN FROM OPPOSITE DIRECTION - ROTATOR CUFF AND LABRUM TEARS - ARTHROSCOPIC SHOULDER SURGERY

Palm Beach County, FL

The 34-year-old male plaintiff was operating a motorcycle northbound on Military Trail in Palm Beach County when he alleged that the defendant made a negligent left-hand turn from the opposite direction into his path of travel, causing a collision. The plaintiff claimed that he suffered tears of the rotator cuff and labrum as a result of the collision requiring arthroscopic shoulder surgery. The plaintiff also underwent an out-patient procedure to drain a hematoma on his leg, but admitted that the leg injury had completely resolved. The plaintiff complained of continuing shoulder pain and limitation of motion. The defendant contended that the plaintiff was speeding, and could have avoided the impact.

The jury awarded found the defendant 72% negligent and the plaintiff 28% comparatively negligent. The plaintiff was awarded $766,000 in gross damages. The jury declined to award damages for future loss of earnings. After reduction for comparative negligence and collateral sources, the plaintiff's net award was $524,000.

REFERENCE

Hanzi vs. Mack. Case no. 502013CA016064XXXXMBAH; Judge Lucy Chernow Brown, 06-05-14.

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

PREMISES LIABILITY

$1,500,000 RECOVERY - PREMISES LIABILITY - PLAINTIFF RETURNING TO WAREHOUSE RENTED BY EMPLOYER FROM DEFENDANT AFTER PLAINTIFF DELIVERS FURNITURE, STEPS ON UNCOVERED PIPE PROTRUDING FROM GROUND NEAR DOOR - LUMBAR HERNIATION - THREE SURGERIES - PRIOR LAMINECTOMY.

Hudson County, NJ

The 45-year-old plaintiff maintained that the defendant owners of the warehouse rented by his employer negligently created the dangerous condition of an uncovered plastic pipe that was protruding from the ground near the warehouse door. The plaintiff, who had just returned from delivering furniture to a customer, contended that as he stepped into the open pipe, twisted his foot and leg and fell, suffering a lumbar herniation. The plaintiff, who weighed approximately 300 pounds, had a history of lower back complaints and had undergone a lumbar laminectomy approximately five years earlier. The plaintiff maintained that he had been faring well during the intervening years and was able to work

The case settled prior to trial for $1,500,000.

REFERENCE

Woods vs. Hartz Mountain Industries, et al. Docket no. MON-L-6294-10, 05-00-14.

Attorney for plaintiff: John G. Mennie of Schibell Mennie & Kentos, LLC in Ocean, NJ.

$750,000 VERDICT - $1,100,000 TOTAL RECOVERY - PREMISES LIABILITY - NEGLIGENCE MAINTENANCE - DEFENDANT FAILS TO MAINTAIN PARKING LOT - PLAINTIFF STRUCK BY FALLING TREE ON ADJOINING PROPERTY - HIP FRACTURE WITH SURGERY AND KNEE FRACTURE.

Delaware County, PA

This premises liability action was brought by the 70-year-old female plaintiff against the Ridley Park Swim Club as well as the owner of an adjacent property where an alleged black locust tree was located. The tree fell and struck the plaintiff while she was a business invitee at the swim club. The owner of the property where the tree was located settled the plaintiff's claims prior to trial for $350,000. The plaintiff alleged that the remaining defendant swim club was negligent when it failed to trim the overhanging branches, failed to prohibit parking in the dangerous area, and failed to warn of the condition. The defendant denied that there was a visible problem with the tree or that it had any knowledge that the tree presented a danger.

The jury found the defendant swim club negligent and awarded the plaintiff $750,000 in damages. Combined with the prior $350,000 settlement from the property owner, the plaintiff recovered $1,100,000. Delay damages were also added to the plaintiff's award. Post-trial motions are pending.

REFERENCE

Maryann Dunlap vs. Ridley Park Swim Club, et al. Case no. 12-009105; Judge James F. Proud, 03-19-14.

Attorney for plaintiff: John A. Lord of Silvers, Langsam & Weitzman in Philadelphia, PA.

$1,100,000 GROSS VERDICT - PREMISES LIABILITY - FAILURE TO MAINTAIN FLOOR OF BEAUTY SALON - SLIP AND FALL- COMMINUTED TIBIA/FIBULA FRACTURES WITH SURGERY - FOOT FRACTURES - LUMBAR RADICULOPATHY

Palm Beach County, FL

The female plaintiff, age 68 at the time, alleged that the defendant beauty salon negligently failed to maintain its floor in a safe condition, causing her to slip and fall in an oily substance. The plaintiff maintained that she suffered comminuted fractures of the right tibia and fibula as a result of the fall, necessitating open reduction and internal fixation. She was also diagnosed with fractures of the talus and calcaneus in her right foot. Her recovery was complicated by a nonunion of the foot fracture, and she wore an external fixator on her right leg for nine months. The plaintiff also alleged lumbar radiculopathy, and a neuroma of the left foot, stemming from gait changes related to the right foot and leg fractures. The defendant argued that there was no foreign substance on the floor, and the plaintiff could not establish the cause of her fall.

The jury found the defendant 51 percent negligent and the plaintiff 49 percent comparatively negligent. The plaintiff was awarded $1,100,000 in gross damages, reduced to a net award of $561,000. The award included $200,000 in past medical expenses; $166,668 in future medical expenses; $200,000 in past loss of earnings; $166,666 in future loss of earnings; $200,000 in past pain and suffering, and $166,666 in future pain and suffering. The parties stipulated that the plaintiff's recoverable past medical expenses would be reduced to $35,000, the amount paid by Medicare.

REFERENCE

Kates vs. Soleil Salons, Inc., d/b/a Salon De Soleil, a Florida Corporation. Case no. 2011 CA 16668; Judge Peter D. Blanc, 02-14-14.

Attorneys for plaintiff: David L. Rich, Zachary Rich, and Tamara Klopenstein of David L. Rich, P.A in Margate, FL. Attorney for defendant: James T. Sparkman in West Palm Beach, FL. Attorney for defendant: Anika R. Campbell of Cole, Scott & Kissane in West Palm Beach, FL.

ADDITIONAL VERDICTS OF INTEREST

Aviation Negligence

$1,671,871 VERDICT FOR PLAINTIFF - AVIATION NEGLIGENCE - HELICOPTER ACCIDENT - FAILURE TO TAKE APPROPRIATE CARE WHILE OPERATING A HELICOPTER - BACK INJURY - POST-TRAUMATIC STRESS DISORDER.

Calhoun County, TX

In this action for negligence, the plaintiff alleged that his injuries were proximately caused by the defendant's failure to appropriately operate one of its helicopters. The plaintiff, a passenger in a helicopter owned and operated by the defendant, conteded that when the helicopter suddenly experienced an equipment failure, the tail rotor authority was lost and the pilot went into autorotation. The helicopter ultimately landed in the Gulf of Mexico and proceeded to roll over in the water. As a result, the plaintiff sustained back injuries and suffered from post-traumatic stress disorder which prevented him from returning to his prior career and caused him to seek out light-duty work. The defense not only denied all negligence, but also challenged the severity of the damages alleged.

After a six-day trial, the jury found in favor of the plaintiff; awarding the total sum of $1,671,871 plus interest and costs.

REFERENCE

Derek LeBlanc vs. PHI, Inc. Case no. 12-2-1545; Judge The Hon. Juergen Koetter, 02-05-14.

Attorneys for plaintiff: Cory Itkin and Caj Boatright of Arnold & Itkin, LLP in Houston, TX. Attorneys for defendant: Ross Cunningham and Bryan Rose of Rose Walker, LLP in Dallas, TX.

Construction Negligence

$5,000,000 RECOVERY - ROAD CONSTRUCTION NEGLIGENCE - FAILURE TO COMPLY WITH CONSTRUCTION CONTRACT - PLAINTIFF'S VEHICLE COLLIDES INTO UNMARKED AND UNWARNED BARRIER - INCOMPLETE QUADRIPLEGIA

Withheld County, MA

In this negligence matter, the 52-year-old male plaintiff contended that the defendant road construction company was negligent in failing to place arrow signs to indicate that concrete barriers had been erected on a part of the road which was in a "fog area." The plaintiff contended that the defendant was in violation of the construction contract which required the placement of signs and warnings regarding the reconfiguration of the roadway. The plaintiff collided into a "Jersey" barrier in foggy weather as an alleged result of the defendant's negligence in failing to place any warning signs on the highway indicating the reconfiguration of the road. As a result of the collision, the plaintiff was rendered an incomplete quadriplegic. The defendant denied the plaintiff's allegations of negligence and disputed liability and damages.

The parties agreed to settle the plaintiff's claim for the sum of $5,000,000 in a confidential settlement between the parties.

REFERENCE

Plaintiff Driver vs. Defendant Roadway Construction Company., 02-18-14.

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

$3,200,000 VERDICT - CONSTRUCTION SITE NEGLIGENCE - PLAINTIFF CARPENTER USING BAKER SCAFFOLD TO DURING RENOVATIONS - WHEEL OF SCAFFOLD STRIKES HOLE IN FLOOR AND TOPPLES - PNEUMOTHORAX WITH RESPIRATORY DISTRESS NECESSITATING VENTILATOR FOR SHORT PERIOD - THORACIC SURGERY - LUMBAR HERNIATION - FUSION SURGERY - ROTATOR CUFF TEAR.

Middlesex County, NJ

The 59-year-old male plaintiff carpenter, who was participating in a project in which the defendant technology company was upgrading it's data center, contended that the defendant technology company acted as the general contractor and that this defendant and the defendant project manager negligently failed to properly cover holes that were in the floor because of the prior removal of items including air conditioning ducts. The plaintiff also contended that the defendant plumbing and heating contractor had created the hole in question and negligently failed to cover it. The plaintiff maintained that he suffered a pneumothorax that caused respiratory distress and required a ventilator for a short period The plaintiff underwent thoracic surgery., and maintained that he will permanently be subject to some breathing problems upon exertion. The plaintiff also contended that he suffered a lumbar herniation that required fusion surgery, a tear of the rotator cuff on the dominant side that required arthroscopic surgery and a the formation of a urinary stricture that substantially resolved with surgery.

The jury found the defendant technology compay, whom the plaintiff contended acted as the general contractor, 55% negligent, the project manager 30% negligent, and the plumbing and heating subcontractor 15% negligent. The jury also determined that the plaintiff was comparatively negligent, but that there was an absence of proximate cause. They then awarded $3,200,000, including $2,000,000 for pain, suffering, disability, impairment and loss of enjoyment of life, $900,000. for economic losses including lost wages and loss of household services and $300,000 to the wife on her per quod claim. The parties also agreed that in the event of a favorable verdict to the plaintiffs, the court would add $288,000 to the jury award for medical bills for a total recovery of $3,488,000.

REFERENCE

Lattanzio vs. Quality Technology Services, LLC, et al. Docket no. MID-L-1143-11; Judge Joseph Rea, 05-00-14.

Attorneys for plaintiff: Peter Chamas and William Bock of Gill & Chamas in Woodbridge, NJ.

Defamation

$8,025,000 VERDICT - DEFAMATION - TORTIOUS INTERFERENCE AND LIBEL - DEFENDANT USES FALSE EMAIL ADDRESSES TO SEND DEFAMATORY INFORMATION ABOUT PLAINTIFF TO THE POTENTIAL BUYER OF PLAINTIFF'S BUSINESS.

New York, County, NY

In this tortious interference action, the plaintiff contended that the defendant took specific actions that caused a purchase deal for the plaintiff's business to fail. The plaintiff, the owner of a credit default swap trading firm, contended that when the business was approximately one-year-old, the plaintiff got a buy-out offer of $25 million from Knight Capital Group. On the eve of the sale, the plaintiff alleged that the defendant hacked into the plaintiff's computer system to steal documents and sent defamatory emails under false names to the potential buyer which disparaged the plaintiff. The maintained that the defendant was a former business partner with whom the plaintiff had parted ways one year earlier, and contended that the defendant held ill will toward the plaintiff and interfered with the potential sale of the plaintiff's business. The deal for the sale of the plaintiff's business fell through. The plaintiff sued the defendant and three of his cohorts for tortious interference. The plaintiff's business wound down a couple of years later, prior to trial.

The jury found two of the four defendants liable, including the plaintiff's former partner. The jury found that the deal would have gone through if not for the interference of the defendants and that the defendants had tortiously interfered by wrongful means. The other two defendants, who had claimed they were not involved, were found not liable. The jury also found that the defendant former partner of the plaintiff committed libel against the plaintiff. The jury awarded the plaintiff approximately $8,025,000 in damages, including punitive damages.

REFERENCE

IDX Capital, LLC vs. Phoenix Partner Groups. Index no. 102806/07; Judge Jeffrey K. Oing, 01-07-13.

Attorney for plaintiff: Jeffrey A. Udell of Olshan Frome Wolosky, LLP

in New York, NY.

Fraud

$521,000 VERDICT - FRAUD - PLAINTIFF SUES DEFENDANTS FOR VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, FRAUD AND BREACH OF CONTRACT - DEFENDANTS BREACH CONTRACT BY FAILING TO PAY THE PLAINTIFF 40% OF THEIR GROSS SALES - DAMAGES.

Harris County, TX

The plaintiff brought this fraud action against the defendants for misrepresenting to the plaintiff that they would pay him 40% of their gross sales. The plaintiff asserted that he relied on the defendants' promises and guarantees of the contracts in sustaining his business profitability and viability. The plaintiff maintained that the defendants breached the contract by failing to pay the plaintiff 40% of their gross sales and by failing to use the plaintiff as their service dry cleaner. As a result of the defendants' misrepresentations and false promises of future performance, the plaintiff has suffered actual and consequential damages as a result of the defendants' fraud. The defendants denied the plaintiff's allegations, and contended that they are not liable to the plaintiff because of his own acts which caused the plaintiff's injury.

The jury, on a unanimous vote, found in favor of the plaintiff and against the defendants on each of the plaintiff's claims in violation of the Texas Deceptive Trade Practices Act, Fraud and Breach of Contract. The jury found clear and convincing evidence that the damage to the plaintiff resulted from fraud attributable to defendant Wan K. and defendant cleaner corporation. The jury found that the plaintiff should recover from the defendants a total of $521,000 ($425,000 for damages, $30,000 for additional damages, and $66,000 for attorney's fees).

REFERENCE

Ki Chang Jang vs. Wan Y Kim d/b/a Hanyang Corp., Jin Kim d/b/a Baldwin Cleaners Hanyang, Inc. Case no. 2010-51758; Judge Kyle Carter, 03-14-14.

Attorneys for plaintiff: Stephen E. McCleery & Terry Kim of The McCleery Law Firm in Houston, TX. Attorney for plaintiff: Sean M. Reagan of Leyh, Payne & Mallia, PLLC in Houston, TX. Attorney for defendant: Robert W. Blair in Houston, TX. Attorney for defendant: Robert J. Kruckemeyer in Houston, TX.

Notes:

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