



Fallen worker claimed safety gear wasn't provided

Amount: \$7,000,000

Type: Mediated Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *back* - fracture, back; fracture, L1; fracture, back; fracture, L2; fusion, lumbar; fusion, thoracic; fracture, vertebra; fracture, L1; fracture, vertebra; fracture, L2; fracture, vertebra; fracture, transverse process
- *neck* - fracture, vertebra; fracture, transverse process
- *ankle* - fracture, ankle; fracture, distal fibula
- *chest* - fracture, rib
- *other* - effusion; hematoma; hardware implanted; dislocation, radius; fracture, displaced
- *wrist* - fracture, wrist
- *surgeries/treatment* - open reduction; internal fixation

Case Type:

- *Construction* - Accidents; Labor Law
- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Fall from Height

Case Name: Robert Labatto and Mary Labatto v. Genting New York LLC, Tutor Perini Corporation and Resorts World Casino

Date: February 10, 2015

Plaintiff(s):

- Mary Labatto
- Robert Labatto (Male, 46 Years)

Plaintiff Attorney(s):

- Anthony P. Gentile; Godosky & Gentile, P.C.; New York NY for Robert Labatto, Mary Labatto
- David M. Godosky; Godosky & Gentile, P.C.; New York NY for Robert Labatto, Mary Labatto

**Plaintiff Expert
(s):**

- Jerry A. Lubliner M.D.; Orthopedic Surgery; New York, NY called by: Anthony P. Gentile, David M. Godosky
- Scott M. Silberman P.E.; Safety; New York, NY called by: Anthony P. Gentile, David M. Godosky
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Anthony P. Gentile, David M. Godosky
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Anthony P. Gentile, David M. Godosky

Defendant(s):

- J&J Erectors Inc.
- Tutor Perini Corp.
- Genting New York LLC
- Resorts World Casino
- Island Steel & Detailing Corp.

**Defense
Attorney(s):**

- Matthew Ross; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; New York, NY for Genting New York LLC, Resorts World Casino
- Ellen H. Greiper; Goldberg Segalla LLP; Garden City, NY for J&J Erectors Inc.
- Eileen R. Fullerton; Kaufman Borgeest & Ryan LLP; Valhalla, NY for Island Steel & Detailing Corp.
- None reported for Tutor Perini Corp.

**Defendant
Expert(s):**

- Fu Kai-Ming; Spinal Surgery; New York, NY called by: for Eileen R. Fullerton
- John M. Tomich; Safety; Delmar, NY called by: for Ellen H. Greiper
- Elton Strauss M.D.; Orthopedic Surgery; New York, NY called by: for Eileen R. Fullerton
- Steven Pietropaolo P.E.; Engineering; North White Plains, NY called by: for Eileen R. Fullerton
- Werner Laag; Workplace Safety; Hauppauge, NY called by: for Matthew Ross

Facts:

On Dec. 17, 2012, plaintiff Robert Labatto, 42, a union-affiliated ironworker and a firefighter, worked at a construction site that was located at 110-00 Rockaway Blvd., in the South Ozone Park section of Queens. During the course of his work, Labatto fell off of the top step of a partially constructed stairway. He plummeted some 25 feet, and he landed on the ground. He sustained injuries of an ankle, his back, his neck, several ribs and a wrist.

Labatto sued the premises' owners, Genting New York LLC and Resorts World Casino, and the construction project's general contractor, Tutor Perini Corp. Labatto alleged that the defendants violated the New York State Labor Law.

Genting New York and Resorts World Casino impleaded Labatto's employer, J&J Erectors Inc., and a subcontractor that oversaw installation of the stairway, Island Steel & Detailing Corp. The first-party defendants alleged that the third-party defendants directed and controlled Labatto's work functions. They sought contractual indemnification.

Labatto's counsel ultimately discontinued the claim against Tutor Perini. The matter proceeded against the remaining defendants, but Island Steel & Detailing and J&J Erectors were obligated to indemnify Genting New York and Resorts World Casino.

Labatto claimed that the accident occurred while he was kneeling on the stairway's top step, wrench-tightening a bolt. He claimed that he lost his balance and fell when his wrench slipped off of the bolt. He further claimed that he had not been provided a harness or any other equipment that could have prevented his fall. He also contended that a guardrail should have been installed on the stairway. Labatto's expert engineer submitted a report in which he opined that Labatto should have been provided a harness and a secure point to which it could have been tied.

Labatto's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Labatto was not provided the proper, safe equipment that is a requirement of the statute. They also contended that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6). They further contended that the defendants violated Labor Law § 200, which defines general workplace-safety requirements.

Defense counsel contended that Labatto was the lead foreman of the stairway-construction project, and, as such, they contended that he was responsible for correcting any unsafe condition. They further contended that Labatto possessed a harness and an accompanying lanyard but opted not to use the equipment.

Injury:

Labatto sustained complex fractures of his L1 and L2 vertebrae; displaced fractures of transverse processes of his L1, L2, L3 and L4 vertebrae; a fracture of his left fibula's distal region, which is a component of the left ankle; a trans-scaphoid perilunate fracture and dislocation of his left wrist; and fractures of three ribs. He also developed pleural effusion and an epidural hematoma that spanned his spine's C2, C3, C4, C5 and C6 levels.

Labatto was placed in an ambulance, and he was transported to Jamaica Hospital Medical Center, in Queens. He underwent surgical implantation of a vena cava filter, which was intended to inhibit development of a pulmonary embolism; surgical fusion of his spine's T11, T12, L1, L2, L3 and L4 levels; implantation of hardware that stabilized the fused area; and open reduction and internal fixation of the fracture of his left wrist. His hospitalization lasted 11 days, and he subsequently underwent about 13 weeks of inpatient rehabilitation. On Feb. 25, 2013, he underwent surgical removal of his left wrist's fixation hardware.

Labatto claimed that he suffers permanent residual pain and limitations that prevent his resumption of physical labor, though he performs light-duty firefighting work.

Labatto sought recovery of past lost earnings, future lost earnings, damages for past pain and suffering, and damages for future pain and suffering. His wife presented a derivative claim.

Defense counsel contended that Mr. Labatto's injuries were resolved via surgery and that Labatto can perform full-time work.

Result:

The parties negotiated a pretrial settlement. J&J Erectors' insurers agreed to pay a total of \$6 million, and Island Steel & Detailing's insurer agreed to pay \$1 million. Thus, the settlement totaled \$7 million. The settlement was finalized via the guidance of mediator Allen Hurkin-Torres, of Jams.

Trial Information:**Judge:**

Allen Hurkin-Torres

**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' counsel and Island Steel & Detailing's counsel. Additional information was gleaned from court documents. Tutor Perini's counsel was not asked to contribute, and the remaining defendants' counsel did not respond to the reporters' phone calls.

Car accident left pedestrian paralyzed from the waist down

Amount: \$5,500,000

Type: Mediated Settlement

State: New Jersey

Venue: Bergen County

Court: Bergen County Superior Court, NJ

Injury Type(s):

- *back* - fracture, back; fracture, T2; fracture, back; fracture, T3; fracture, back; fracture, T4; fracture, vertebra; fracture, T2; fracture, vertebra; fracture, T3; fracture, vertebra; fracture, T4
- *other* - per quod; severed spine
- *paralysis/quadriplegia* - paralysis, partial

Case Type:

- *Motor Vehicle* - Pedestrian; Single Vehicle; Question of Lights

Case Name: Astrid Rodriguez and Caleb Rodriguez v. Royal W. Jaynes, and Wheels LTD

Date: April 05, 2016

Plaintiff(s):

- Caleb Rodriguez (Male)
- Astrid Rodriguez (Female, 40 Years)

Plaintiff Attorney(s):

- Patrick M. Metz; Dario, Albert, Metz & Eyerman, LLC; Hackensack N.J. for Astrid Rodriguez, Caleb Rodriguez
- Ronald A. Dario; Dario, Albert, Metz & Eyerman, LLC; Hackensack NJ for Astrid Rodriguez, Caleb Rodriguez

Plaintiff Expert (s):

- Faisal Mahmood M.D.; Orthopedic Surgery; Wayne, NJ called by: Patrick M. Metz, Ronald A. Dario
- Stuart B. Kahn M.D.; Orthopedic Surgery; New York, NY called by: Patrick M. Metz, Ronald A. Dario
- Despina Vougioukas MA, Ed.M.; Life Care Planning; Ridgewood, NJ called by: Patrick M. Metz, Ronald A. Dario

Defendant(s):

- Wheels LTD.
- Royal W. Jaynes

Defense Attorney(s):

- Denise Ricci; Wade Clark Mulcahy; Springfield, NJ for Royal W. Jaynes, Wheels LTD.

Facts:

On Dec. 19, 2012, plaintiff Astrid Rodriguez, 40, an office manager, stepped off a bus in Hackensack and began to cross Main Street at its intersection with University Plaza. While she was walking, she was struck from behind by a car, shattering several spinal vertebrae. She was rendered paralyzed from the waist down.

Rodriguez sued the driver, Royal W. Jaynes, alleging he was negligent. She also sued car-owner Wheels Ltd., claiming the company was vicariously liable.

Rodriguez stated that she had crossed the street with a green light and was walking inside the crosswalk when she was struck.

Jaynes argued Rodriguez was crossing outside the crosswalk and against a red light.

Injury:

Rodriguez was taken by ambulance to a local emergency room. She had three fractured vertebrae, at thoracic levels T2, T3, and T4, which severed her spinal cord. She was paralyzed from the waist down.

Rodriguez was in the hospital for three months, then transferred to a rehabilitation center, where she continues to reside for in-patient rehabilitation. She sought damages for past and future medical expenses and past and future pain and suffering. Her husband, Caleb Rodriguez, asserted a loss of consortium claim.

Defense counsel did not actively dispute Rodriguez' damages.

Result:

Prior to trial, the case was settled during mediation with retired Monmouth County Superior Court Judge Bette Uhrmacher. Jayne's insurers agreed to pay Rodriguez \$5.5 million, with \$3 million from ACE American Insurance Co., and \$2.5 million from ESIS Inc., both part of Chubb Group of Insurance Cos.

Trial Information:**Judge:**

Bette Uhrmacher

Editor's Comment:

This report is based on information that was provided by plaintiffs' counsel. Defense counsel declined to comment.

Motorist not mindful of wet road, injured passenger claimed

Amount: \$5,500,000

Type: Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *knee* - medial meniscus, tear
- *neck* - fracture, neck; fracture, C5; fusion, cervical; fracture, vertebra; fracture, C5
- *other* - bone graft; massage therapy; physical therapy; hardware implanted; decreased range of motion

Case Type:

- *Motor Vehicle* - Speeding; Passenger; Single Vehicle; Weather Conditions

Case Name: Michael Hodor v. William Kooyker and Terence R. Kooyker

Date: May 30, 2013

Plaintiff(s):

- Michael Hodor (Male, 30 Years)

Plaintiff Attorney(s):

- Paul J. Edelstein; The Edelsteins, Faegenburg & Brown LLP; New York NY for Michael Hodor
- Glenn K. Faegenburg; The Edelsteins, Faegenburg & Brown LLP; Brooklyn NY for Michael Hodor
- Daniel A. Thomas; Law Offices of Daniel A. Thomas, P.C.; New York NY for Michael Hodor
- Judah Z. Cohen; Law Office of Judah Z. Cohen, PLLC; New York NY for Michael Hodor

**Plaintiff Expert
(s):**

- John Bendo M.D.; Orthopedic Surgery; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas, Judah Z. Cohen
- Barry C. Root M.D.; Physical Medicine; Glen Cove, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas, Judah Z. Cohen
- Robert S. Gotlin; Physical Medicine; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas, Judah Z. Cohen
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas, Judah Z. Cohen
- Matthew Zepnick; Investigation; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas, Judah Z. Cohen

Defendant(s):

- Willem Kooyker
- Terence R. Kooyker

**Defense
Attorney(s):**

- Gregory Walthall; Hoey, King, Toker & Epstein; New York, NY for Willem Kooyker, Terence R. Kooyker

**Defendant
Expert(s):**

- Andrew Casden M.D.; Spinal Surgery; New York, NY called by: for Gregory Walthall
- Edmond A. Provder C.R.C.; Vocational Rehabilitation; Lodi, NJ called by: for Gregory Walthall
- Douglas Cohen M.D.; Neurosurgery; New York, NY called by: for Gregory Walthall

Facts:

At about 1 a.m. on July 18, 2009, plaintiff Michael Hodor, 30, a technologist, was a passenger of a car that was being driven by Terence Kooyker, who was traveling on Amsterdam Avenue, near its intersection at West 72nd Street, in Manhattan. Kooyker lost control of the vehicle, and the vehicle mounted a sidewalk and struck a lamppost. Hodor claimed that he sustained an injury of his neck.

Hodor sued Kooyker and the vehicle's owner, Willem Kooyker. Hodor alleged that Terence Kooyker was negligent in the operation of his vehicle. Hodor further alleged that Willem Kooyker was vicariously liable for Terence Kooyker's actions.

Hodor claimed that the accident occurred during wet conditions. He further claimed that Terence Kooyker was speeding and not exercising due caution.

Kooyker claimed that he lost control while attempting to avoid a taxi that had veered into the immediate path of his car. Defense counsel attempted to invoke the emergency doctrine, which prevents the attachment of liability to motorists who reasonably and prudently respond to a sudden, unexpected emergency that necessitates a speedy reaction.

Injury:

Hodor was placed in an ambulance, and he was transported to New York-Presbyterian Hospital, in Manhattan. He underwent minor treatment.

Hodor, who suffers skeletal dysplasia, commonly known as "dwarfism," ultimately claimed that he sustained a fracture of his C5 vertebra. He also claimed that the injury caused instability of his spine's C4-5 level. On Sept. 9, 2009, he underwent surgery that involved fusion of several levels of his spine's cervical region, the implantation of stabilizing hardware and the application of a graft of bony matter.

Hodor claimed that he was unable to perform any physical activities during the six months that followed the surgery. After having resumed physical activity, Hodor began to report that his knees were painful. An MRI scan revealed that he was suffering a tear of his right knee's medial meniscus. Hodor's dysplasia had caused severe degeneration of the knee, but Hodor claimed that the torn meniscus was a result of physical stress caused by the fracture of his spine. He subsequently underwent massage therapy, physical rehabilitation and physical therapy.

Hodor did not work during the six months that followed his surgery. After a period in which he worked from his home, he returned to the office, though he claimed that he could not perform certain strenuous tasks.

Hodor claimed that he suffers residual pain and a residual diminution of his neck's range of motion. He further claimed that he requires additional treatment that could include surgery that would address his spine and/or his right knee.

Hodor sought recovery of future medical expenses and damages for past and future pain and suffering.

Defense counsel contended that Hodor's fracture was a result of a congenital condition that predated the accident and had necessitated three prior fusions of Hodor's spine. He claimed that Hodor's post-accident surgery was an extension of the prior fusions and was not related to any trauma that Hodor may have sustained during the accident. He also contended that Hodor's right knee's tear was not related to the accident.

Defense counsel further contended that Hodor achieved a good recovery. He claimed that Hodor has resumed all of his pre-accident work duties and that Hodor exaggerated the extent of his future medical needs.

Result:

The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$5.5 million.

Trial Information:**Judge:**

George Silver

**Editor's
Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Building's taped stairway a hazard, visitor alleged

Amount: \$2,875,000

Type: Settlement

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):

- *head*
- *other* - infection
- *paralysis/quadriplegia* - quadriplegia

Case Type:

- *Premises Liability* - Trip and Fall; Stairs or Stairway; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Fook L. Lee v. Flushing Medical Arts Building Inc. and New Primecare, LLC

Date: November 12, 2009

Plaintiff(s):

- Fook L. Lee (Male, 78 Years)

Plaintiff Attorney(s):

- Daniel T. Leav; Leav & Steinberg, L.L.P.; New York NY for Fook L. Lee

Plaintiff Expert (s):

- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Daniel T. Leav
- Seymour Gendelman M.D.; Neurology; New York, NY called by: Daniel T. Leav

Defendant(s):

- New Primecare, LLC
- Flushing Medical Arts Building Inc.

Defense Attorney(s):

- Frederick C. Johs; Lewis Johs Avallone Aviles, LLP; Melville, NY for Flushing Medical Arts Building Inc.
- Steven Steigerwald; Law Office of Andrea Sawyers, Esq.; Melville, NY for New Primecare, LLC

**Defendant
Expert(s):**

- Robert S. April M.D.; Neurology; New York, NY called by: for Frederick C. Johs, Steven Steigerwald

Facts:

On May 18, 2007, plaintiff Fook Lee, 78, was visiting the Doshi Diagnostic facility on 147th Street, in Queens, to undergo a stress test. Lee, accompanied by his daughter, was instructed that his test was to be conducted at a Doshi Facility next door. As he descended a short staircase to exit the building, his right foot got caught, and he fell one step to the pavement, striking his head. He sustained a serious spinal injury, resulting in quadriplegia.

Lee sued Flushing Medical Arts Building Inc., the building's owner, and New Primecare, LLC, the lessee that operated the facility. Lee alleged that the defendants were negligent in their maintenance of the premises. He further alleged that the defendants' negligence created a dangerous condition.

Lee claimed that he was descending the staircase behind his daughter when his right foot got caught on tape, which had been laid on the corners, or nosing, of the steps by the defendants. Lee claimed that he then tripped on the last step, falling head first on the pavement. The plaintiff further claimed that a handicap access ramp, installed by the defendants, blocked him from reaching a railing for the stairway on his right.

Lee's counsel claimed that the stairway violated the applicable provisions of the Administrative Code of the City of New York, including those sections concerning handrails.

The defendants contended that the tape did not create a hazard, but rather merely alerted those walking on the steps to the existence of the nosing. Defense counsel argued that Lee was comparatively at fault, since the area was well lit and because Lee had ascended the same staircase earlier without incident or complaint.

Injury:

Lee fell down one step and struck his head on the pavement. He was rushed by ambulance to an emergency room and diagnosed with a C2-5 vertebral cord compression. The severe spinal injury left Lee quadriplegic with central cord dysfunction. He lost complete use and function below the C2 level of his spine, with some ability to partially move his fingers.

Lee spent nearly seven months in hospitals and rehabilitation centers, and he is now cared for by his daughter, full-time, at her home. He has had occasional re-admissions to the hospital, due to recurrent infections secondary to his quadriplegic condition. He is completely dependant on others for care, which includes other family members and a nurse aide.

Lee sought recovery of his future medical expenses and damages for his past and future pain and suffering.

The defense contended that Lee's life expectancy was lower than the 5.5 years determined by plaintiff's life plan.

Result:

The parties negotiated a settlement during jury selection. The plaintiff received \$2,875,000 in damages from the defendants. Under a lease agreement, it was agreed that New Primecare would pay 75 percent of the settlement (\$2,156,250), while Flushing Medical would pay 25 percent (\$718,750).

Trial Information:

Judge: Martin J. Schulman

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Accident ended hopes for surgical career, doctor claimed

Amount: \$2,850,000

Type: Verdict-Plaintiff

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *arm*
- *back* - herniated disc, lumbar; herniated disc at L5-S1
- *neck* - herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C5-6
- *other* - physical therapy; epidural injections
- *epidermis* - paresthesia

Case Type:

- *Motor Vehicle* - Left Turn; Multiple Vehicle

Case Name: Sharone Marie Jacobs and Allstate Insurance Company as Subrogee of Sharone Jacobs v. Perciballi Container Service Inc. and John A. Giasi

Date: December 12, 2014

Plaintiff(s):

- Sharone Marie Jacobs (Female, 34 Years)
- Allstate Insurance Co.

Plaintiff Attorney(s):

- Stephen H. Jacobson; Jaroslawicz & Jaros, LLC; New York NY for Sharone Marie Jacobs
- None reported; ; for Allstate Insurance Co.

Plaintiff Expert(s):

- Donald R. Welsch; Economics; West Orange, NJ called by: Stephen H. Jacobson
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Stephen H. Jacobson
- Thomas M. Kolb M.D.; Radiology; New York, NY called by: Stephen H. Jacobson

Defendant(s):

- John A. Giasi
- Perciballi Container Service Inc.

**Defense
Attorney(s):**

- Randy Miller; trial counsel, Cheven, Keely & Hatzis; New York, NY for Perciballi Container Service Inc., John A. Giasi

**Defendant
Expert(s):**

- Sorin Siegler Ph.D.; Biomechanics of Injury; Philadelphia, PA called by: for Randy Miller
- Thomas P. Nipper M.D.; Orthopedic Surgery; Brookfield, CT called by: for Randy Miller
- Jessica F. Berkowitz M.D.; Diagnostic Radiology; Port Chester, NY called by: for Randy Miller
- Marianna Golden M.D.; Neurology; West Nyack, NY called by: for Randy Miller

Facts:

On March 8, 2011, plaintiff Sharone Marie Jacobs, 34, a physician, was driving in the left lane of Narrows Road North, near its intersection at Fingerboard Road, in the Concord section of Richmond County. Her vehicle collided with a truck that was being driven by John Giasi, who was executing a left turn onto Fingerboard Road, from the center lane of Narrows Road North. Jacobs claimed that she sustained injuries of her back and neck.

Jacobs sued Giasi and his truck's owner, Perciballi Container Service Inc. Jacobs alleged that Giasi was negligent in the operation of his vehicle. Jacobs further alleged that Perciballi Container was vicariously liable for Giasi's actions.

In a separate filing, Jacobs' insurer, Allstate Insurance Co., acting as Jacobs' subrogee, sued Giasi and Perciballi Container Service. Allstate Insurance alleged that Giasi was negligent in the operation of his vehicle. Allstate Insurance further alleged that Perciballi Container Service was vicariously liable for Giasi's actions.

The cases were consolidated, but Allstate Insurance did not pursue its claim.

Jacobs claimed that Giasi negligently executed a turn from a lane that was intended for traffic that was proceeding straight through the intersection. She further claimed that his vehicle's front end struck the right side of her vehicle.

Giasi claimed that the collision was a sideswipe and that Jacobs was speeding.

Injury:

After several hours had passed, Jacobs presented to a hospital. She claimed that she was suffering pain that stemmed from her neck and her right, dominant arm's shoulder. She underwent minor treatment.

Jacobs ultimately claimed that she sustained herniations of her C3-4, C5-6 and L5-S1 intervertebral discs. She underwent physical therapy and the administration of an epidural injection of a steroid-based painkiller.

Jacobs claimed that she suffers residual pain, that her right arm experiences paresthesia, and that the arm and its hand have not regained full strength. She had been working toward a career as a surgeon prior to the accident and had completed a required course, but she claimed that her residual effects prevent her pursuit of such a career path. She is currently employed as a wound-care specialist, but she claimed that her earnings do not approach those of a surgeon. Jacobs' expert physiatrist agreed that Jacobs is not physically capable of performing surgical work.

Jacobs sought recovery of \$396,346 for past lost earnings, \$4,873,000 for future lost earnings, \$200,000 for past pain and suffering, and \$800,000 for future pain and suffering.

Defense counsel contended that Jacobs did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d).

The defense's expert radiologist opined that post-accident MRI scans suggested that Jacobs' injuries were degenerative conditions. The defense's expert orthopedist examined Jacobs, and he opined that she demonstrated minor restrictions that were a result of suboptimal effort. The defense's expert neurologist examined Jacobs, and she opined that Jacobs experiences mild weakness that is a product of pain.

The defense's expert biomechanical engineer opined that the accident was a sideswipe collision, and he contended that the collision could not have produced forces capable of causing the injuries that Jacobs claimed to have sustained. During cross-examination, Jacobs' counsel contended that the expert ignored damage that indicated that the truck's front left tire struck the right side of Jacobs' vehicle with a great degree of force.

The parties stipulated that Jacobs' damages could not exceed \$650,000, but that they had to equal or exceed \$200,000.

Result:

The jury found that the defendants were entirely liable for the accident. It also found that Jacobs sustained a serious injury. It determined that she suffered significant limitation of use of a body function or system and that she suffers permanent consequential limitation of use of a body organ or member. The jury further found that Jacobs' damages totaled \$2.85 million. Jacobs' counsel claimed that defense counsel has not yet confirmed compliance with the stipulation regarding a cap of damages.

Sharone Marie Jacobs

\$180,000 Personal Injury: Past Lost Earnings Capability

\$70,000 Personal Injury: Past Pain And Suffering

\$2,400,000 Personal Injury: future lost earnings (22 years)

\$200,000 Personal Injury: future pain and suffering (40 years)

Trial Information:

Judge: Carol E. Huff

Trial Length: 9 days

Trial Deliberations: 4 hours

Jury Composition: 3 male, 3 female

Editor's Comment: This report is based on information that was provided by Jacobs' counsel. Additional information was gleaned from court documents. Allstate Insurance's counsel was not asked to contribute, and defense counsel declined to contribute.

Woman struck by car, claimed fractures of knees

Amount: \$2,500,000

Type: Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *knee* - fracture, knee; fracture, patella; fracture, tibial plateau
- *other* - effusion; swelling; physical therapy; nondisplaced fracture; cartilage/chondral, damage
- *surgeries/treatment* - knee surgery; knee replacement

Case Type:

- *Motor Vehicle* - Left Turn; Pedestrian

Case Name: Caroline Burton v. Alamo Financing L.P. and Jermaine Montalvo

Date: January 14, 2015

Plaintiff(s):

- Caroline Burton (Female, 51 Years)

Plaintiff Attorney(s):

- Michael W. Gunzburg; Michael Gunzburg, P.C.; New York NY for Caroline Burton
- Joseph A. Ruta; of counsel, Michael Gunzburg, P.C.; New York NY for Caroline Burton

Plaintiff Expert (s):

- Andrew D. Pearle M.D.; Orthopedic Surgery; New York, NY called by: Michael W. Gunzburg
- Robert Meyerson M.D.; Orthopedic Surgery; Brooklyn, NY called by: Michael W. Gunzburg, Joseph A. Ruta
- Stuart B. Kahn M.D.; Orthopedic Surgery; New York, NY called by: Michael W. Gunzburg, Joseph A. Ruta

Defendant(s):

- Jermaine Montalvo
- Alamo Financing L.P.

**Defense
Attorney(s):**

- David W. Brand; Brand Glick & Brand, P.C.; Garden City, NY for Alamo Financing L.P., Jermaine Montalvo

**Defendant
Expert(s):**

- Jordan Haber; Radiology; Huntington Station, NY called by: for David W. Brand
- Jeffrey Passick M.D.; Orthopedic Surgery; Brooklyn, NY called by: for David W. Brand,

Facts:

On Nov. 26, 2008, plaintiff Caroline Burton, 51, an advertising creative director, was struck by a motor vehicle. The incident occurred on Seventh Avenue, alongside its intersection at West 13th Street, in Manhattan. Burton claimed that she sustained injuries of her knees.

Burton sued the vehicle's driver, Jermaine Montalvo, and the vehicle's owner, Alamo Financing L.P. Burton alleged that Montalvo was negligent in the operation of his vehicle. Burton further alleged that Alamo Financing was vicariously liable for Montalvo's actions.

Burton claimed that the impact occurred in a crosswalk of Seventh Avenue, while Montalvo was executing a left turn off of West 13th Street. Burton's counsel contended that Montalvo should have yielded the right of way.

Burton's counsel moved for summary judgment of liability, and the motion was granted. The matter proceeded to damages.

Injury:

Burton was placed in an ambulance, and she was transported to St. Vincent's Hospital Manhattan. She claimed that she was suffering pain that stemmed from her right knee. Her right knee was immobilized; her right leg was placed in a soft cast; and she was given crutches.

Burton ultimately claimed that she sustained a nondisplaced fracture of her right knee's patella, a fracture of her left leg's tibial plateau, which is a lower component of the knee, and a bruise of each knee. She also claimed that each knee experienced a residual loss of cartilage. She further claimed that her right knee developed residual effusion: swollenness caused by a buildup of a joint's lubricating fluid.

During the eight months that followed the accident, Burton underwent a total of 39 sessions of physical therapy. She subsequently underwent administration of injections of painkilling lubricants. Each knee received four injections. The treatment was followed by about eight weeks of physical therapy.

Burton claimed that she experienced ongoing pain. On Sept. 5, 2013, she underwent replacement of her right knee's patellofemoral component. During the ensuing three months, she underwent a total of 24 sessions of physical therapy.

Burton claimed that her injuries and convalescence prevented her performance of about eight weeks of work. She further claimed that she suffers residual pain and limitations, that her residual effects impair her ambulation, and that she cannot easily ascend stairways. She also claimed that she requires replacement of each knee.

Burton sought recovery of a total of \$780,000 for future medical and life-care needs. She also sought recovery of damages for past and future pain and suffering.

Defense counsel claimed that Burton suffered pre-existing injuries that included chondromalacia, which is a softening of cartilage. However, defense counsel could not produce radiological studies to support that claim. Defense counsel also claimed that Burton had previously undergone physical therapy that addressed each knee.

Result:

The parties negotiated a pretrial settlement. Alamo Financing, which is self-insured, agreed to pay \$2.5 million.

Trial Information:**Editor's
Comment:**

This report is based on information that was provided by plaintiff's and defense counsel.

Fall in airport caused permanent knee damage, plaintiff claimed

Amount: \$2,305,000

Type: Verdict-Plaintiff

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *knee* - fracture, patella
- *other* - infection; physical therapy; comminuted fracture; fracture, displaced
- *surgeries/treatment* - open reduction; internal fixation

Case Type:

- *Premises Liability* - Slip and Fall; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Bradley Kaplan v. Port Authority of New York and New Jersey, Bombardier Transportation, USA, Inc., Capital Cleaning Contractors, Inc., and KenCar Contracting, Inc.

Date: January 18, 2011

Plaintiff(s):

- Bradley Kaplan (Male, 33 Years)

Plaintiff Attorney(s):

- Michael W. Gunzburg; Michael Gunzburg, P.C.; New York NY for Bradley Kaplan

Plaintiff Expert(s):

- Andrew D. Pearle M.D.; Orthopedic Surgery; New York, NY called by: Michael W. Gunzburg
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Michael W. Gunzburg

Defendant(s):

- Ken-Car Contractors Inc.
- Capital Cleaning Contractors Inc.
- Bombardier Transportation USA Inc.
- Port Authority of New York and New Jersey

**Defense
Attorney(s):**

- Robert S. Bonelli; Law Office of Michael Pressman; New York, NY for Bombardier Transportation USA Inc., Capital Cleaning Contractors Inc., Ken-Car Contractors Inc.
- Jennifer Watson; Marshall, Dennehey, Warner, Coleman & Goggin; New York, NY for Port Authority of New York and New Jersey

**Defendant
Expert(s):**

- Robert M. Israel M.D.; Orthopedic Surgery; New York, NY called by: for Robert S. Bonelli

Facts:

On Aug. 7, 2006, plaintiff Bradley Kaplan, 33, an owner of five package-delivery franchises, slipped in an AirTrain terminal at John F. Kennedy International Airport, in Queens. He fell, and he sustained injuries of a knee.

Kaplan sued the airport's operator, the Port Authority of New York and New Jersey, and several entities that had been hired to maintain the AirTrain terminal, Bombardier Transportation USA Inc., Capital Cleaning Contractors Inc. and Ken-Car Contractors Inc. Kaplan alleged that the defendants were negligent in their maintenance of the premises. He further alleged that the defendants' negligence created a dangerous condition.

Ken-Car Contractors defaulted. The matter proceeded against the remaining defendants.

The Port Authority of New York and New Jersey's counsel contended that the port authority did not have actual or constructive notice of any hazard that may have caused Kaplan's fall. She moved for summary judgment of her client's liability, and the motion was granted. The matter proceeded to a trial against Bombardier Transportation and Capital Cleaning Contractors.

Kaplan claimed that he slipped in water that had been deposited by an electric scrubbing machine. He and his girlfriend, who was present when the incident occurred, claimed that they were met by a maintenance worker who acknowledged that the area was wet because he had scrubbed it. Kaplan and his girlfriend contended that the man's identification badge indicated that he was an employee of Capital Cleaning Contractors, but that his clothing bore the logo of Bombardier Transportation. The worker was never identified and was not produced during the trial. Judge Barbara Jaffe rejected Kaplan's counsel's request to issue a charge of adverse inference.

Kaplan's counsel also noted that one of the port authority's police officers responded to the incident and created a report that indicated that the floor was wet.

Defense counsel contended that Bombardier Transportation had subcontracted its maintenance duties to Capital Cleaning Contractors, which, in turn, subcontracted its maintenance duties to Ken-Car Contractors. Thus, he argued that Ken-Car Contractors employed the man who allegedly acknowledged responsibility for the accident.

Injury:

Kaplan sustained comminuted, displaced fractures of his right knee's patella. He soon underwent surgeries that involved open reduction and internal fixation of the fractured components. During the ensuing month, he wore a device that immobilized his right leg, and he subsequently underwent about four weeks of physical therapy.

In December 2006, Kaplan's right knee failed and necessitated a surgical procedure that involved open reduction and internal fixation. During the ensuing 2.5 months, he wore a device that immobilized his right leg, and he subsequently underwent physical therapy. In March 2007, he underwent surgery that addressed an infection of his operative wound.

Kaplan's treating orthopedic surgeon opined that Kaplan's right knee has experienced a residual loss of cartilage and residual shifting of the kneecap, and he contended that those conditions caused the knee to shrink to some 50 percent of its prior size. The expert also contended that the knee's bones are rubbing and causing pain that will worsen. He opined that Kaplan will require additional surgeries and several replacements of the knee. Kaplan's expert physiatrist estimated that three replacements would be necessary.

Kaplan claimed that he previously relied on subways and walking to travel between his businesses' various locations, but that his residual pain limits his ability to travel in that manner and, thus, manage his businesses.

Kaplan sought recovery of his past medical expenses, about \$275,800 for his future medical expenses, and damages for his past and future pain and suffering.

The defense's expert orthopedic surgeon did not testify, but his findings suggested that Kaplan does not suffer a permanent disability.

Result:

The jury found that Bombardier Transportation, Capital Cleaning Contractors and Ken-Car Contractors were liable for the accident. Bombardier Transportation was assigned 45 percent of the liability; Capital Cleaning Contractors was assigned 45 percent of the liability; and Ken-Car Contractors was assigned 10 percent of the liability. The jury determined that Kaplan's damages totaled \$2,305,000.

Bradley Kaplan

\$105,000 Personal Injury: Past Medical Cost

\$300,000 Personal Injury: Future Medical Cost

\$500,000 Personal Injury: Past Pain And Suffering

\$1,400,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Barbara Jaffe

Demand: \$1,950,000 (total, from Bombardier Transportation and Capital Cleaning Contractors)

Offer: \$250,000 (total, by Bombardier Transportation and Capital Cleaning Contractors)

Trial Length: 6 days

**Trial
Deliberations:** 6 hours

Jury Vote: 5-1 (apportionment of liability, damages for pain and suffering); 6-0 (all other questions)

**Editor's
Comment:** This report is based on court documents, information that was provided by plaintiff's counsel and information that was provided by counsel of the Port Authority of New York and New Jersey. The remaining defendants' counsel did not respond to the reporter's phone calls.

Motorist, scooter's rider debated whether collision occurred

Amount: \$2,000,000

Type: Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *leg* - scar and/or disfigurement, leg
- *other* - laceration; physical therapy
- *epidermis* - degloving
- *surgeries/treatment* - debridement

Case Type:

- *Motor Vehicle* - Crosswalk; Right Turn; Motor Scooter

Case Name: Sylvia B. Raider v. Gregory S. Smith

Date: January 07, 2016

Plaintiff(s):

- Sylvia B. Raider (Male, 93 Years)

Plaintiff Attorney(s):

- Paul J. Edelstein; The Edelsteins, Faegenburg & Brown LLP; New York NY for Sylvia B. Raider
- Glenn K. Faegenburg; The Edelsteins, Faegenburg & Brown LLP; New York NY for Sylvia B. Raider
- Daniel A. Thomas; Law Offices of Daniel A. Thomas, P.C., New York, NY, of counsel, The Edelsteins, Faegenburg & Brown LLP; New York NY for Sylvia B. Raider

Plaintiff Expert(s):

- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg, Daniel A. Thomas

Defendant(s):

- Gregory S. Smith

Defense Attorney(s):

- Peter D. Garone; Kelly, Rode and Kelly, LLP; Mineola, NY for Gregory S. Smith

Defendant Expert(s):

- Stuart Hershon M.D.; Orthopedic Surgery; Manhasset, NY called by: for Peter D. Garone

Facts:

On July 16, 2014, plaintiff Sylvia Raider, 93, was riding a motorized scooter. She was traveling on the east sidewalk of Madison Avenue, near its intersection at East 72nd Street, in Manhattan. When Raider reached the intersection, she entered East 72nd Street's crosswalk. She encountered a vehicle that was being driven by Gregory Smith, who was executing a right turn onto East 72nd Street. Raider claimed that Smith's vehicle struck her. She fell onto the roadway, and she sustained injuries of a leg.

Raider sued Smith. Raider alleged that Smith was negligent in the operation of his vehicle.

Raider claimed that a green traffic signal permitted her entrance to the roadway. She contended that Smith should have yielded the right of way.

Smith claimed that his vehicle may not have struck Raider. He also claimed that he executed a complete stop before beginning his turn.

Injury:

Raider sustained a laceration and degloving of her left leg. She was placed in an ambulance, and she was transported to a hospital. During the day that followed the accident, she underwent debridement of damaged tissue. The procedure was repeated after four days had passed. Her hospitalization lasted 15 days, and she subsequently underwent 24 days of inpatient rehabilitation. After six days had passed, she underwent a second course of inpatient rehabilitation. The treatment lasted 29 days.

Raider claimed that she suffers permanent residual pain. She claimed that she previously utilized a scooter to travel long distances, but that her pain necessitates more frequent use of the device. She also claimed that she previously enjoyed a relatively active lifestyle, but that her pain limits her activities. She further claimed that she undergoes physical therapy. She retains a permanent scar of her left leg.

Raider sought recovery of damages for past and future pain and suffering.

Defense counsel contended that the accident did not greatly alter Raider's lifestyle. He claimed that she has required full-time use of a wheelchair since sometime prior to the accident.

Result:

The parties negotiated a pretrial settlement. Smith's primary insurer tendered its policy, which provided \$250,000 of coverage, and Smith's excess insurer agreed to pay \$1.75 million. Thus, the settlement totaled \$2 million.

Trial Information:**Editor's Comment:**

This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

Club's freshly painted stairs a hazard, guest alleged

Amount: \$1,593,000

Type: Verdict-Plaintiff

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *hip*
- *back* - herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *other* - coccydynia; labrum, tear; fracture, coccyx; physical therapy; steroid injection; epidural injections

Case Type:

- *Premises Liability* - Slip and Fall; Stairs or Stairway; Dangerous Condition

Case Name: Eric Roche v. Soho House New York, LLC Soho House, LLC, and Soho House New York, Inc.

Date: October 17, 2011

Plaintiff(s):

- Eric Roche (Male, 30 Years)

Plaintiff Attorney(s):

- Natascia Ayers; Jaroslawicz & Jaros; New York NY for Eric Roche

Plaintiff Expert (s):

- Jacob Lichy M.D.; Radiology; New York, NY called by: Natascia Ayers
- Kevin Math M.D.; Radiology; New York, NY called by: Natascia Ayers
- George Unis M.D.; Orthopedic Surgery; New York, NY called by: Natascia Ayers
- Stuart B. Kahn M.D.; Pain Management; New York, NY called by: Natascia Ayers

Defendant(s):

- Soho House, LLC
- Soho House New York LLC
- Soho House New York Inc.

**Defense
Attorney(s):**

- Michael W. Coffey; Wilson Elser Moskowitz Edleman & Dicker LLP; New York, NY for Soho House New York LLC, Soho House, LLC, Soho House New York Inc.
- Kurt Robertson; Wilson Elser Moskowitz Edelman & Dicker LLP; White Plains, NY for Soho House New York LLC, Soho House, LLC, Soho House New York Inc.

**Defendant
Expert(s):**

- A. Robert Tantleff M.D.; Radiology; East Hills, NY called by: for Michael W. Coffey, Kurt Robertson
- Robert M. Israel M.D.; Orthopedic Surgery; New York, NY called by: for Michael W. Coffey, Kurt Robertson

Facts:

At about 1 a.m. on Nov. 11, 2009, plaintiff Eric Roche, a real estate agent in his mid-30s, fell down a stairway within the Soho House, a hotel and members-only club in Manhattan's Meatpacking District of which Roche was a member.

Roche claimed that his fall was caused by wet paint on the stairway's steps. He sued the Soho House, alleging that it negligently failed to ensure that the stairway was either blocked off or surrounded by warning signs after a paint job was performed on it during normal business hours.

Roche arrived at Soho House several hours before the accident to attend a dinner cooked by a visiting gourmet chef. Roche claimed that as he began to descend the stairway, he slipped and fell about a dozen stairs before coming to a stop. The incident was captured on surveillance video. The footage indicated that, less than half-an-hour before Roche's accident, a Soho House janitor had painted the stairway. Plaintiff's counsel entered into evidence the suit Roche was wearing on the day of the accident. The garment was covered in what plaintiff's counsel argued was oil-based paint.

Over plaintiff's counsel's objections, the defense called to the stand a Soho House manager who had invited Roche to the chef's dinner. That employee testified that Roche was visibly inebriated upon arriving at the dinner, relating to her that he just gotten off a flight that brought him back to New York from a work-related trip abroad and was drinking throughout the flight home.

Plaintiff's counsel presented surveillance footage from Roche's place of work, which showed Roche working a regular business day in an apparently sober state. Roche's passport was also presented in an effort to show that Roche had not been on an international flight in the hours leading up to his accident.

Plaintiff's counsel argued that the employee who testified as to Roche's alleged inebriation was romantically involved with Soho House's general manager, who had allegedly allowed the janitor to paint the staircase in question during business hours.

Following the conclusion of the defense's case-in-chief, Judge Geoffrey Wright granted plaintiff's counsel's pending motion for a directed verdict in favor of Roche on the issue of comparative fault.

Injury:

Roche did not immediately seek medical attention following the accident. He had to fly to London for work the following day, and shortly after arriving there, he visited a doctor, who treated him for a fractured coccyx.

Roche was subsequently diagnosed as suffering herniations at the L4 through S1 levels, a torn right hip labrum, and, as a result of incorrect healing of his coccyx fracture, coccydynia. He has undergone physical therapy intermittently since the date of the accident, and he receives epidural and steroid injections in his back about once a month. He also takes pain medication on a daily basis.

Because of repeated medical absences from work in the year following the absences, Roche was allegedly forced to pay part of his real-estate commissions on several deals to colleagues who assisted him during the time he missed from work while receiving medical treatment. Roche claimed that the resulting loss of income totaled about \$55,000. Roche further asserted that he has trouble walking and can no longer run or dance.

Roche's treating pain-management physician testified that Roche will require some form of pain-management care for the rest of his life and will need spinal fusion surgery within five years. Roche's treating orthopedic surgeon testified that the condition of Roche's hip will worsen over the course of his life, requiring a replacement surgery in his later years. Those physicians provided estimates of future-care costs that totaled more than \$1 million.

Roche's treating radiologists testified that the injuries of Roche's coccyx, right hip and lower back were all causally related to the trauma of his fall down the staircase. Plaintiff's counsel did not ask the jury to award a specific amount of money in damages for past and future pain and suffering.

An expert in radiology retained by defense counsel opined that Roche's coccyx was unremarkable, that his hip injury stemmed from a pre-existing degenerative condition, and that the back injuries he attributed to the slip-and-fall were caused by Scheuermann's disease, a congenital condition causing curvature of the spine. An expert in orthopedic surgery also testified that Roche's lower-back symptoms were attributable to Scheuermann's disease and that his hip injury was the result of degeneration, not trauma.

Plaintiff's counsel cross-examined the defense's orthopedic surgery expert as to the fact that he apparently examined Roche for less than two minutes.

Result:

The jury found that Soho House was liable for the accident. It determined that Roche's damages totaled \$1,593,000.

Eric Roche

\$65,000 Personal Injury: Past Medical Cost

\$1,220,000 Personal Injury: Future Medical Cost

\$50,000 Personal Injury: Past Lost Earnings Capability

\$150,000 Personal Injury: Past Pain And Suffering

\$108,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Geoffrey Wright

Demand: \$800,000

Offer: \$160,000

Trial Length: 3 weeks

Trial Deliberations: 1 hours

Jury Vote: 6-0

Jury Composition: 6 female

Post Trial: Defense counsel has moved to set aside the verdict.

Editor's Comment: This report is based on court documents and information that was provided by plaintiff's counsel. Defense counsel reviewed a draft of the report, but he did not provide feedback.

Car crash caused back, knee, neck injuries, plaintiff alleged

Amount: \$1,324,500

Type: Verdict-Plaintiff

State: New York

Venue: Nassau County

Court: Nassau Supreme, NY

Injury Type(s):

- *leg*
- *back* - nerve impingement; herniated disc, lumbar; herniated disc at L5-S1
- *knee* - medial meniscus, tear; lateral meniscus, tear
- *neck* - nerve impingement; bulging disc, cervical; herniated disc, cervical; herniated disc at C6-7
- *other* - physical therapy; epidural injections; trigger point injection
- *neurological* - radiculopathy; nerve impingement
- *surgeries/treatment* - arthroscopy; debridement; knee surgery; meniscectomy
- *mental/psychological* - insomnia; depression; psychiatric; post-traumatic stress disorder

Case Type:

- *Motor Vehicle* - Passenger; Rear-ender; No-Fault Case; Multiple Vehicle
- *Civil Practice* - Summary Judgment

Case Name: Fausto Rotondo and Giuseppina Rotondo v. Northrop Grumman Corporation and Paul V. Diederich

Date: June 24, 2011

Plaintiff(s):

- Fausto Rotondo
- Giuseppina Rotondo (Female, 54 Years)

Plaintiff Attorney(s):

- Michael W. Gunzburg; Michael Gunzburg, P.C.; New York NY for Fausto Rotondo, Giuseppina Rotondo
- Marilyn Diamond; Diamond Law Offices; Garden City NY for Fausto Rotondo, Giuseppina Rotondo

Plaintiff Expert(s):

- Dr. Gary H. Rusk; Psychiatry; New York, NY called by: Michael W. Gunzburg, Marilyn Diamond
- Zafer Termanini M.D.; Injury Biomechanics; West Orange, NJ called by: Michael W. Gunzburg, Marilyn Diamond
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Michael W. Gunzburg, Marilyn Diamond
- Leonard Freifelder; Economics; New York, NY called by: Michael W. Gunzburg, Marilyn Diamond
- Richard Obedian M.D.; Orthopedic Surgery; Hicksville, NY called by: Michael W. Gunzburg, Marilyn Diamond
- Vandana Soni; Neurology; Plainview, NY called by: Michael W. Gunzburg, Marilyn Diamond
- Rosalind R. Zuger M.A., C.R.C.; Vocational Rehabilitation; New York, NY called by: Michael W. Gunzburg, Marilyn Diamond

Defendant(s):

- Paul V. Diederich
- Northrop Grumman Corp.

Defense Attorney(s):

- Edward J. Donlon; Congdon, Flaherty, O'Callaghan, Reid, Donlon, Travis & Fishlinger, P.C.; Garden City, NY for Northrop Grumman Corp., Paul V. Diederich

Defendant Expert(s):

- A. Robert Tantleff M.D.; Radiology; East Hills, NY called by: for Edward J. Donlon
- S. Murthy Vishnubhakat M.D.; Neurology; Manhasset, NY called by: for Edward J. Donlon
- Peter Langan M.D.; Orthopedic Surgery; Mineola, NY called by: for Edward J. Donlon
- Dr. Peter J. Lesniewski; Orthopedic Surgery; Plainview, NY called by: for Edward J. Donlon

Facts:

On Aug. 4, 2004, plaintiff Giuseppina Rotondo, 54, a delicatessen's employee, was a passenger of a van that was being driven by her husband, Fausto Rotondo, who was traveling on the westbound side of Central Avenue, near its interchange at Route 107, in Bethpage. When Mr. Rotondo reached the interchange, he veered onto a ramp that led to the northbound side of Route 107. His vehicle's rear end was struck by a trailing van that was being driven by Paul Diederich. Ms. Rotondo claimed that she sustained injuries of her back, her knees and her neck.

Ms. Rotondo sued Diederich and his vehicle's owner, Northrop Grumman Corp. Rotondo alleged that Diederich was negligent in the operation of his vehicle. She further alleged that Northrop Grumman was vicariously liable for Diederich's actions.

Rotondo's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

Injury:

Rotondo was placed in an ambulance, and she was transported to New Island Hospital, in Bethpage. She reported that she was suffering pain that stemmed from her back and neck, and she underwent minor treatment.

Rotondo initially underwent physical therapy. About two weeks after the accident, doctors

determined that Rotondo was suffering herniations of her C6-7 and L5-S1 intervertebral discs; impingement of roots of associated spinal nerves; bulges of her C3-4, C4-5, C5-6 and C6-7 discs; radiculopathy; a tear of each knee's medial meniscus; a tear of her left knee's lateral meniscus; and fraying of her left knee's lateral meniscus. Rotondo claimed that the injuries were products of the accident. She acknowledged that she had been involved in prior motor-vehicle and work-related accidents, but she contended that the prior accidents did not produce serious or lasting injuries. Rotondo's expert engineer acknowledged that the instant accident caused merely minimal damage of the parties' vehicles, but he opined that the collision could have caused the injuries that Rotondo claimed to have sustained.

Rotondo also claimed that she developed post-traumatic stress disorder that caused depression, insomnia and panic attacks. She underwent psychiatric treatment. Rotondo's treating psychiatrist opined that Rotondo's psychiatric difficulties were products of the accident.

Rotondo's spinal injuries are being addressed via physical therapy that is typically rendered three times a week. She also underwent the administration of epidural injections of steroid-based painkillers and painkilling trigger-point injections, and she contended that she has required as many as 20 painkillers per day. In 2009, she underwent two arthroscopic surgeries. One addressed her left knee; the other addressed her right knee. Each included debridement of damaged tissue and a meniscectomy: the excision of a damaged meniscus.

Rotondo claimed that her spinal injuries produce persistent pain that stems from her back, her legs and her neck. She contended that the pain prevents her resumption of work, her household activities and many of her social activities. She claimed that she previously worked about 60 hours a week and enjoyed a good relationship with her husband, but that her physical injuries limit her activities and her relationship with her friends and family. Rotondo's former boss contended that Rotondo was a top employee who was physically capable of performing her job's tasks prior to the accident.

Rotondo's treating orthopedist opined that Rotondo must undergo surgery that would address her spine's cervical and lumbar regions. He agreed that her spinal injuries were products of the accident, and he contended that their results are permanent and disabling. Rotondo's expert neurologist opined that Rotondo suffers a permanent partial disability that is a product of the accident.

Rotondo sought recovery of her past and future medical expenses, her past and future lost earnings, and damages for her past and future pain and suffering. Her husband sought recovery of damages for his loss of consortium.

Defense counsel contended that Ms. Rotondo did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). He claimed that the accident involved a minor, slow-speed impact that could not have caused the injuries that Rotondo claimed to have sustained, and he contended that her injuries were products of the prior accidents in which she was involved. He contended that a pre-2004 MRI scan had revealed a herniation of her L5-S1 disc. He claimed that surgery was recommended, but that Rotondo instead underwent pain-management treatment that included the administration of epidural injections. He also claimed that her prior work-related accident resulted in a four-month-long absence from work.

The defense's expert neurologist opined that Rotondo does not suffer neurological damage, and he contended that her spinal injuries stemmed from degenerative conditions that predated the accident.

The defense's expert radiologist opined that Rotondo suffered an advanced, pre-existing degenerative condition of her knees and her spine's cervical and lumbar regions, and he also opined that X-rays suggested that her knee's tears predated the accident. Rotondo's counsel challenged the radiologist's credibility, suggesting that the radiologist testifies almost exclusively for defendants and that he almost always attributes injuries to nontraumatic causes.

Result: The jury found that Rotondo's injuries were a result of the accident. It determined that the plaintiffs' damages totaled \$1,324,500.

Fausto Rotondo

\$50,000 Personal Injury: Past Loss Of Consortium

Giuseppina Rotondo

\$91,000 Personal Injury: Past Medical Cost

\$143,500 Personal Injury: Past Lost Earnings Capability

\$240,000 Personal Injury: Past Pain And Suffering

\$112,500 Personal Injury: past emotional distress

\$504,000 Personal Injury: future medical cost (22 years)

\$20,500 Personal Injury: future lost earnings (one year)

\$63,000 Personal Injury: future emotional distress (22 years)

\$100,000 Personal Injury: future pain and suffering (22 years)

Trial Information:

Judge: John Galasso

Demand: None

Offer: \$5,000 (total, for both plaintiffs)

Trial Length: 12 days

**Trial
Deliberations:** 40 minutes

Jury Vote: 5-1 (Rotondo's injuries were a product of the accident); 6-0 (all other questions)

**Jury
Composition:** 4 male, 2 female

**Editor's
Comment:** This report is based on court documents, information that was provided by plaintiffs' counsel and information that was provided by defense counsel.

Plaintiff claimed disabling injuries caused by rear-ender

Amount: \$950,000

Type: Settlement

State: New York

Venue: Suffolk County

Court: Suffolk Supreme, NY

Injury Type(s):

- *hip*
- *back* - annular tear; fusion, lumbar; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - annular tear
- *other* - plate; scar tissue; myofasciitis; chronic pain syndrome; decreased range of motion
- *neurological* - radiculopathy
- *surgeries/treatment* - discectomy; internal fixation

Case Type:

- *Motor Vehicle* - Rear-ender; Multiple Vehicle

Case Name: Marshall C. Holmes v. Cargo Transport Inc. & Frank Alvarez

Date: November 13, 2007

Plaintiff(s):

- Marshall C. Holmes (Male, 37 Years)

Plaintiff Attorney(s):

- Leandros A. Vrionedes; ; New York NY for Marshall C. Holmes

Plaintiff Expert(s):

- Alan M. Leiken Ph.D.; Economics; East Setauket, NY called by: Leandros A. Vrionedes
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Leandros A. Vrionedes
- Jeffrey D. Klein M.D.; Spinal Surgery; New York, NY called by: Leandros A. Vrionedes

Defendant(s):

- Frank Alvarez
- Cargo Transport Inc.

Defense Attorney(s):

- Daniel D. Wang; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; New York, NY for Cargo Transport Inc., Frank Alvarez

Defendant Expert(s):

- Jerry Lubliner M.D.; Orthopedics; New York, NY called by: for Daniel D. Wang
- Sharon Levine; Vocational Rehabilitation; Columbia, PA called by: for Daniel D. Wang
- Steven J. Schwartz M.D.; Neurology; Hicksville, NY called by: for Daniel D. Wang

Facts:

At about 5:30 a.m. on Nov. 10, 2004, plaintiff Marshall Holmes, 37, a truck driver, was driving in the right eastbound lane of the Long Island Expressway, in the Little Neck section of Queens. His box truck was mired in slowly moving traffic. As Holmes approached the interchange at Little Neck Parkway, his truck's rear end was struck by a trailing tractor-trailer that was being driven by Frank Alvarez. Holmes sustained an injury of his back.

Holmes sued Alvarez and the owner of Alvarez's vehicle, Cargo Transportation Inc. Holmes alleged that Alvarez was negligent in the operation of his vehicle and that Cargo Transportation was vicariously liable for Alvarez's actions.

Holmes claimed that Alvarez was maintaining an excessively fast rate of speed and that his box truck was knocked off of the road. He also claimed that Alvarez failed to maintain a proper lookout and failed to avoid the crash.

Alvarez failed to appear at a scheduled deposition. Thus, he was not allowed to testify during the trial.

Injury:

Holmes claimed that he sustained a herniation and posterior annular tear of his L5-S1 intervertebral disc. He contended that the injury produced radiculopathy.

Holmes' injury was addressed via surgery that included an anterior lumbar discectomy, which is the excision of the anterior portion of a lumbar disc; fusion of the associated area of his spine; the insertion of stabilizing cages; the application of a fixation plate; and a fluoroscopy, which is an imaging technique. He contended that the fusion failed and led to his development of scarification and failed fusion syndrome--a painful, restrictive condition. He also contended that he suffers chronic lumbosacral pain syndrome, chronic lumbar radiculopathy, myofascitis, weakness of his right leg and damage of the capsule of his right hip. He claimed that his injuries produce a permanent limp and that he requires the assistance of a cane. He also claimed that his injuries prevent his resumption of his job.

Holmes sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering.

Defense counsel contended that Holmes experienced a good recovery and that Holmes can undergo training that will allow his performance of an alternative form of work.

Result: The parties agreed to a pretrial settlement. The defendants' insurer agreed to contribute \$950,000 from its \$1 million policy.

Trial Information:

Judge: Paul J. Baisley

Editor's Comment: This report is based on information that was provided by plaintiff's and defense counsel.

Passenger claimed ferry crash affected her artistic ability

Amount: \$813,481

Type: Decision-Plaintiff

State: New York

Venue: Federal

Court: U.S. District Court, Eastern District, NY

Injury Type(s):

- *back* - herniated disc, lumbar; herniated disc at L4-5
- *head* - blunt force trauma to the head
- *brain* - traumatic brain injury
- *other* - bursitis; labrum, tear; physical therapy; trigger point injection
- *shoulder* - rotator cuff, injury (tear)
- *neurological* - radiculopathy; nerve damage/neuropathy
- *surgeries/treatment* - arthroscopy
- *mental/psychological* - depression; post-concussion syndrome

Case Type:

- *Government* - Municipalities
- *Damages* - Pain and Suffering
- *Admiralty/Maritime* - Boating Accidents

Case Name: Annamarie Trombetta v. The City of New York, as Owner and Operator of the M/V Andrew J. Barberi

Date: December 31, 2009

Plaintiff(s):

- Annamarie Trombetta (Female, 40 Years)

Plaintiff Attorney(s):

- Natascia Ayers; Jaroslawicz & Jaros; New York NY for Annamarie Trombetta
- Michelle Holman; Jaroslawicz & Jaros; New York NY for Annamarie Trombetta

**Plaintiff Expert
(s):**

- Eric Goldsmith M.D.; Psychiatry; New York, NY called by: Natascia Ayers
- Gayle Skluzacek; Fine Arts; New York, NY called by: Natascia Ayers
- Daniel Kuhn M.D.; Psychiatry; New York, NY called by: Natascia Ayers
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Natascia Ayers
- Salvatore R. Lenzo M.D.; Orthopedic Surgery; New York, NY called by: Natascia Ayers

Defendant(s):

- City of New York

**Defense
Attorney(s):**

- Kenneth S. Sasmor; Assistant Corporation Counsel, Michael A. Cardozo, Corporation Counsel; New York, NY for City of New York
- Marie Bonitatibus; Assistant Corporation Counsel, Michael A. Cardozo, Corporation Counsel; New York, NY for City of New York

**Defendant
Expert(s):**

- Paul Nassar M.D.; Psychiatry; New York, NY called by: for Kenneth S. Sasmor, Marie Bonitatibus
- Ramon Valderrama M.D.; Neurology; New York, NY called by: for Kenneth S. Sasmor, Marie Bonitatibus
- Monica Rivera-Mindt Ph.D.; Neuropsychology; New York, NY called by: for Kenneth S. Sasmor, Marie Bonitatibus
- Charles Epstein M.D.; Neurology; Atlanta, GA called by: for Kenneth S. Sasmor, Marie Bonitatibus
- Herbert S. Sherry M.D.; Orthopedic Surgery; New York, NY called by: for Kenneth S. Sasmor, Marie Bonitatibus

Facts:

On Oct. 15, 2003, plaintiff Annamarie Trombetta, 40, an artist, was a passenger of the Andrew J. Barberi public ferry, which was bound for the St. George terminal, in Richmond County. The ship's captain was preparing for an inspection that was to be conducted during the following day, so the ship was being operated by the assistant captain, Richard Smith.

As the ferry neared the terminal, it passed a "KV" buoy, which marks the point at which the pilot typically slows the ship's engines. The deceleration alerts the ship's crew members, who perform preparations that are necessary to the docking procedure. However, Smith was suffering fatigue. He was also suffering medication-induced disorientation and drowsiness. As a result, his consciousness became diminished, and he failed to slow the ship's engines. The ship veered off of its course, and it struck a concrete pier. Eleven passengers were killed; many others were injured. Trombetta claimed that she sustained injuries to her head, lower back and right shoulder and arm in the accident.

Trombetta sued the ship's operator, the city of New York. She alleged that the ship's crew was negligent in its operation of the ship. She further alleged that the city was liable for the crew's actions.

The city sought a limitation of its liability. It filed a petition that was based on 46 U.S.C. §§ 30505 and 30511, which specify that a shipowner's liability can be limited to the ship's value. The ferry's value totaled about \$14.2 million. Thus, Trombetta and any other claimants would not have been able to recover a combined total of more than \$14.2 million. However, the statutes also specify that the shipowner's upper management cannot have had "privity and knowledge" of the negligent act or acts that caused the underlying accident. The city's counsel argued that Smith's impairment was a sudden, unforeseeable cause of the accident.

Claimants' counsel contended that the ferry's operators were bound by a rule that specified that two captains had to be present during docking of the ship. They claimed that the city was aware that the rule was routinely disregarded. Patrick Ryan, who directed the ferry's operations, acknowledged that the rule was not always observed. However, the city's counsel argued that the rule was a city-imposed guideline that exceeded the industry's standard of care. Thus, the city's counsel contended that the rule was not applicable.

On Feb. 26, 2007, Chief Judge Edward Korman dismissed the city's petition. As a result, the claimants' damages were not limited. Korman also held that the city was liable for the accident. Thus, the matter proceeded to damages.

Injury:

Trombetta claimed that the accident caused her to suffer injuries to her head, right shoulder, right arm neck and lower back. She alleged that she sustained blunt force trauma to her head, resulting in a traumatic brain injury and post-concussion syndrome, and a right-sided disc herniation at the L4-5 level with stenosis. She also claimed that she suffered from cervical radiculopathy and rotator cuff and labral tears of the right shoulder, resulting in bursitis and nerve damage throughout her right, dominant arm. Trombetta did not seek immediate treatment following the accident, but ultimately presented to her physician a few days later. She subsequently underwent physical therapy treatment for her shoulder and spinal injuries, and trigger point injections to her right arm. She ultimately underwent arthroscopic surgery on her right shoulder.

Trombetta claimed that she continues to suffer from pain and loss of motion to her spine and shoulder. She contended that she also sought alternative methods to treat her condition, including seeing "Brazilian energy healers," when other methods failed to relieve her pain. Trombetta claimed that as a result, she will require additional treatment in the future, including a lumbar discectomy, trigger injections, radial tunnel decompression surgery of the right forearm, plus additional rehabilitation therapy, pain medications and psychological and psychiatric treatment.

Trombetta alleged that despite all the treatment she received, she can not stand for long periods of time, affecting her ability to stand in front of an easel. She claimed that prior to the accident, she would paint from morning to dusk and was exhibiting her art in galleries and museums, but that the injuries to her painting arm affected her ability to work on her art. She alleged that although she never earned more than \$11,000 a year being an artist, her injuries have caused her to suffer a loss of enjoyment of life and affected her ability to earn a living as an artist. Trombetta claimed that as a result, she suffered from psychological injuries, such as depression, by not being able to enjoy working on her art like she used to.

Trombetta sought recovery for her past and future pain and suffering, past and future medical expenses, and past and future loss of earnings.

Defense counsel argued that many of Trombetta's alleged injuries were not causally related to the accident. They contended that there was no sign of the plaintiff suffering from a brain injury or from post-concussion syndrome. They further claimed that most, if not all, of the plaintiff's psychological problems preceded the accident. In addition, defense counsel disputed the claim that the plaintiff was entitled to any future loss of earnings.

Result:

During the trial, the Court held a Daubert hearing on the issue of whether quantitative electroencephalography (qEEG), or "brain mapping", findings of traumatic brain injury were admissible. At the conclusion of the hearing, the Court found that one of the plaintiff's experts, Dr. Daniel Kuhn, was qualified to testify in the field of psychiatry, but not in any other area, including specifically the use of qEEG to diagnose brain injuries. The Court held that the excluded testimony failed to meet the standard that the United States Supreme Court set under Daubert. As a result, plaintiff's counsel did not call Kuhn to testify any further during the trial.

After both sides presented their case, Judge Tucker Melancon noted that the case had "not been the medical professions finest moment" and found only doctors Salvatore Lenzo, Stuart Kahn, Eric Goldsmith, Charles Epstein and Monica Rivera-Mindt to be credible. He also found the plaintiff's art appraisal expert to be credible, but determined that the expert's testimony about the plaintiff's future loss of earnings was based on mere speculation. Thus, the judge declined to award for future lost earnings.

Judge Melancon also found that Trombetta failed to establish by a preponderance of evidence that she had suffered a traumatic brain injury as a result of the ferry crash. In addition, he found that although there was evidence to suggest that the plaintiff suffers from post-concussion syndrome, but that it was not established by a preponderance of evidence. However, the judge did find that the plaintiff had sustained injuries to her right shoulder and arm, neck and lower back, as well as suffered from psychological injuries.

Thus, the Court awarded Trombetta \$813,480.69 in damages.

Annamarie Trombetta

\$12,765 Personal Injury: Past Medical Cost

\$100,716 Personal Injury: Future Medical Cost

\$425,000 Personal Injury: Past Pain And Suffering

\$275,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Tucker Melancon

Trial Length: 1 weeks

Editor's Comment: This report is based on articles that were published in The Daily News, court documents, and information that was provided by plaintiff's and defense counsel.

Limo's driver claimed crash caused disabling spinal injuries

Amount: \$700,000

Type: Settlement

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *leg*
- *back* - nerve impingement; herniated disc, lumbar; herniated disc at L5-S1; herniated disc, thoracic; herniated disc at T4-5; herniated disc, thoracic; herniated disc at T5-6; herniated disc, thoracic; herniated disc at T6-7; herniated disc, thoracic; herniated disc at T7-8; herniated disc, thoracic; herniated disc at T8-9; herniated disc, thoracic; herniated disc at T9-10; herniated disc, thoracic; herniated disc at T10-11
- *head* - headaches
- *neck* - nerve impingement; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *brain* - Chiari malformation / Arnold-Chiari malformation
- *shoulder*
- *neurological* - radiculopathy; nerve impingement
- *mental/psychological* - depression

Case Type:

- *Motor Vehicle* - Left Turn; Sideswipe; No-Fault Case; Multiple Vehicle; Underinsured Motorist
- *Alternative Dispute Resolution* - Arbitration

Case Name: Tarek Bouras v. St. Paul's Fire and Casualty Insurance Co. and Travelers Insurance Co.

Date: April 27, 2009

Plaintiff(s):

- Tarek Bouras (Male, 33 Years)

Plaintiff Attorney(s):

- Michael W. Gunzburg; Michael Gunzburg PC; New York NY for Tarek Bouras

Plaintiff Expert(s):

- Paul Ladopoulos M.D.; Psychiatry; Long Island City, NY called by: Michael W. Gunzburg
- Ahmed Fahmy M.D.; Internal Medicine; New York, NY called by: Michael W. Gunzburg
- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Michael W. Gunzburg
- Richard J. Radna M.D.; Neurosurgery; New York, NY called by: Michael W. Gunzburg
- Rosalind R. Zuger M.A., C.R.C.; Vocational Rehabilitation; New York, NY called by: Michael W. Gunzburg

Defendant(s):

- Travelers Insurance Co.
- St. Paul's Fire and Casualty Insurance Co.

Defense Attorney(s):

- James Toner; Law Offices of James Toomy PC; New York, NY for St. Paul's Fire and Casualty Insurance Co., Travelers Insurance Co.

Defendant Expert(s):

- James E.O. Hughes M.D.; Neurology; New York, NY called by: for James Toner
- Peter Stickney M.S., C.R.C.; Vocational Rehabilitation; Manlius, NY called by: for James Toner
- Robert S. Fijan Ph.D.; Injury Biomechanics; West Chester, PA called by: for James Toner
- William J. Kulak M.D.; Orthopedic Surgery; New York, NY called by: for James Toner

Facts:

On Oct. 4, 2006, claimant Tarek Bouras, 33, the driver of a limousine, was driving in the left westbound lane of West 57th Street, in Manhattan. As he entered the intersection at Broadway, his limousine collided with a vehicle that was traveling in West 57th Street's right westbound lane. Bouras claimed that the other motorist negligently attempted to execute a left turn from the right lane of West 57th Street, from which turns are not permitted. Bouras contended that he sustained injuries of his back, his neck and a shoulder.

Bouras recovered \$25,000 in a settlement with the other motorist's insurer. He subsequently sought additional recovery from the supplementary-underinsured-motorist provision of his employer's insurance policy, which was administered by Travelers Insurance Co. and St. Paul's Fire and Casualty Insurance Co. The matter proceeded to arbitration that addressed damages.

Injury:

During the third day that followed the accident, Bouras presented to Beth Israel Medical Center, in Manhattan. He reported that he was suffering headaches and pain that stemmed from his back, his neck and a shoulder. He underwent minor treatment.

Bouras subsequently presented to an internist, who prescribed physical therapy. Bouras also underwent an MRI scan, and the internist ultimately determined that Bouras was suffering herniations of his C4-5, C5-6, T4-5, T5-6, T6-7, T7-8, T8-9, T9-10, T10-11 and L5-S1 intervertebral discs. The doctor determined that the T6-7 herniation produced impingement of the associated level of Bouras' spinal cord and that Bouras was suffering radiculopathy that stemmed from his spine's C5, C6, L5 and S1 levels. The doctor also noted that Bouras was suffering a congenital defect: a Chiari malformation, which is a structural defect of the brain's cerebellum.

Bouras claimed that the Chiari malformation was previously dormant, but that the accident activated it, leading to headaches and a reduction of his gustation and olfaction. He contended that more-serious complications could develop. He also contended that he will have to undergo brain surgery, but that the procedure is not guaranteed to resolve the malformation's effects.

Bouras further claimed that he suffers severe residual pain that stems from his back and neck, and he contended that he also suffers disabling residual disabilities of his legs and the lower portion of his back. Bouras claimed that he uses prescription painkillers and that he undergoes physical therapy, but Bouras' expert neurosurgeon has recommended surgery that would include a multi-level discectomy, which would involve the excision of several multiple discs; a laminectomy, which would involve the excision of a vertebra's posterior arch; and spinal stabilization. Bouras contended that he will undergo the surgery.

The Workers' Compensation Board has determined that Bouras suffers a partial disability, but Bouras claimed that he will never be able to resume work. He contended that he suffers depression and impairment of his daily functioning as a result of his inability to work.

Bouras sought recovery of his past and future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering.

Defense counsel noted that the collision produced merely minor damage of Bouras' vehicle and no damage of the other vehicle. He also noted that Bouras was wearing a seat belt, and, as such, he argued that the collision could not have produced the injuries that Bouras claimed to have sustained. Thus, he argued that Bouras did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d).

Defense counsel also contended that Bouras will be able to perform sedentary work that will provide better income than the income he earned as a limousine's driver.

Result:

During the arbitration, the parties negotiated a \$700,000 settlement.

Trial Information:

Judge: Philip DeBellis

**Editor's
Comment:** This report is based on information that was provided by claimant's and defense counsel.

Motor Vehicle-

Amount: \$495,500

Type: Verdict-Plaintiff

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Case Type:

- *Motor Vehicle*

Case Name: Thomas and Katherine Tsamasiros v. Scott Hughes and Wilmon Industries Supply Corp., d/b/a Tri State

Date: June 06, 2002

Plaintiff(s):

- Thomas and Katherine Tsamasiros (Male, 32 Years)

Plaintiff Attorney(s):

- Michael B. Palillo; Michael B. Palillo, P.C.; New York NY for Thomas and Katherine Tsamasiros

Plaintiff Expert (s):

- Andrew Brown M.D.; rehabilitative medicine; Manhattan, NY called by:
- Dr. Stuart Kahn; rehabilitative medicine; Manhattan, NY called by:
- Solomon Genuth M.D.; Diagnostic Radiology; West Hempstead, NY called by:

Defendant(s):

- Scott Hughes
- Wilmon Industries Supply Corp., d/b/a Tri State Supply Co

Defense Attorney(s):

- David Campbell; Kelly, Rode & Kelly, L.L.P.; Mineola, NY for Scott Hughes

Defendant Expert(s):

- Dr. Jacob Toledano; Orthopedics; Jamaica, NY called by: for
- Dr. Stanley Ross; Orthopedics; Forest Hills, NY called by: for

Facts: The accident occurred on 4/12/99 at 9:30 AM at the intersection of Jerome Ave. and East 162nd St. in the Bronx. Plaintiff, a 32-year-old plumber, was traveling on Jerome Ave. when defendant, who was traveling in the opposite direction on Jerome, made a left turn from behind a box truck in front of plaintiff. Plaintiff contended that defendant made the turn from behind the truck without checking for oncoming traffic. Plaintiff was granted a directed verdict on liability at the close of his liability case.

Offer: \$150,000; demand: \$500,000.

Injury: Herniated cervical disc at C5-6 with a positive EMG; discogenic disc disease at L4-5, L5-S1; internal derangement of the lumbar spine; torn lateral and medial menisci of the right knee; torn right anterior cruciate ligament. Plaintiff underwent arthroscopic surgery to both knees and an arthroplasty of the left patella. After physical therapy, chiropractic care, and epidural and facet injections failed to relieve his pain, plaintiff underwent an experimental procedure known as IDET intradiscal electrothermal therapy, which plaintiff paid for out-of-pocket to kill off the nerve endings in the L4-5 and L5-S1 discs. Plaintiff claimed that he can no longer engage in recreational activities including hunting, fishing, and gardening. Plaintiff, who was earning \$100,000 per year at the time of the accident, was out of work for 7 months immediately following this accident, but then returned as a plumbing supervisor earning \$150,000 per year. Defendant denied that plaintiff sustained a serious injury under the No-Fault Law, Insurance Law §5102d, and contended that his low back pain was caused by his profession and a prior 1990 motor vehicle accident.

Result: \$495,500 for Thomas T. 6/0. Breakdown: \$350,000 for past pain and suffering; \$115,000 for future pain and suffering; \$18,500 for lost earnings; \$7,000 for medical expenses.

Actual Award: \$0

Trial Information:

Judge: Orin R. Kitzes

**Trial
Deliberations:** 4

Worker hit by falling rock at excavation site

Amount: \$255,000

Type: Mediated Settlement

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *back* - fracture, back; fracture, L1; fracture, back; fracture, L2; fracture, back; fracture, L3; fracture, back; fracture, L4; nerve impingement; fracture, vertebra; fracture, L1; fracture, vertebra; fracture, L2; fracture, vertebra; fracture, L3; fracture, vertebra; fracture, L4; fracture, vertebra; fracture, transverse process; herniated disc, lumbar; herniated disc at L3-4; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - nerve impingement; fracture, vertebra; fracture, transverse process
- *other* - fibromyalgia
- *neurological* - radiculopathy; nerve impingement

Case Type:

- *Construction* - Accidents; Labor Law; Falling Object
- *Alternative Dispute Resolution* - Mediation

Case Name: Abel Torres a/k/a Jose Castillo v. 3536 Cambridge Ave, LLC 915 East 107th Street Restaurant Corp., Meridian Contracting Corp., Robert Wagner, New Vision Enterprise, Inc., and DNO Construction Corp.

Date: March 20, 2012

Plaintiff(s):

- Abel Torres (Male, 27 Years)

Plaintiff Attorney(s):

- Seth M. Katz; Law Offices of William Pager; New York NY for Abel Torres

Plaintiff Expert(s):

- Stuart B. Kahn M.D.; Physical Medicine; New York, NY called by: Seth M. Katz

Defendant(s):

- Robert Wagner
- 3536 Cambridge Ave LLC
- DNO Construction Corp.
- New Vision Enterprise Inc.
- 915 East 107th Street Restaurant Corp.

Defense Attorney(s):

- Jonathan Banks; Brody, O'Connor & O'Connor; Northport, NY for 3536 Cambridge Ave LLC, 915 East 107th Street Restaurant Corp., Robert Wagner
- None reported for New Vision Enterprise Inc.
- Neil Mascolo; Bartlett, McDonough & Monaghan, LLP; New York, NY for DNO Construction Corp.

Defendant Expert(s):

- Daniel J. Feuer M.D.; Neurology; New York, NY called by: for Jonathan Banks, Neil Mascolo
- Michael Katz; Orthopedics; Bronx, NY called by: for Jonathan Banks, Neil Mascolo

Facts:

On April 13, 2005, plaintiff Abel Torres, 27, a construction worker, worked at a construction site that was located at 3517 Riverdale Ave., in the Bronx. Torres was removing debris from an area in which workers had excavated a hillside. During the course of his work, he was struck by a large rock that had fallen off of an upper portion of the work site. Torres claimed that he sustained injuries of his back and two ribs.

Torres sued the premises' owner, 3536 Cambridge Ave LLC; that corporation's principal, Robert Wagner; the construction project's general contractor, 915 East 107th Street Restaurant Corp., which operates as Meridian Contracting Corp.; the subcontractor that performed the excavation, DNO Construction Corp.; and another subcontractor, New Vision Enterprise Inc. Torres alleged that the defendants violated the New York State Labor Law.

Discovery revealed that New Vision Enterprise's work did not begin until after the accident had occurred. Thus, that party was dismissed. The matter proceeded against the remaining defendants.

Torres claimed that the rock fell out of the excavated hillside, and he contended that the hillside had not been adequately secured. His counsel contended that a net or scaffold should have been erected. Torres' counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Torres was not provided the proper, safe equipment that is a requirement of the statute. He also claimed that the site was not properly safeguarded, as required by Labor Law § 241(6), and that the defendants violated the general safety provisions of Labor Law § 200.

Defense counsel contended that workers had used nails to install a fence-like material that was specially designed to prevent falling rocks. They claimed that Torres could not prove that he was injured by a rock that had fallen off of the excavated area of the hillside.

Injury:

Torres was placed in an ambulance, and he was transported to St. Barnabas Hospital, in the Bronx. He underwent minor treatment.

Torres ultimately claimed that he sustained fractures of the left transverse processes of his L1, L2, L3 and L4 vertebrae; herniations of his L3-4 and L5-S1 intervertebral discs; and injuries of two ribs. The injured ribs may have been fractured. Torres further claimed that his herniations caused impingement of the thecal sac, which houses the roots of spinal nerves, fibromyalgia and radiculopathy. He contended that the latter condition was confirmed by the results of a nerve-conduction-velocity test.

Torres underwent about six months of physical therapy that was typically rendered three times a week, but he claimed that he suffers constant residual pain that radiates to his legs. He contended that his pain interrupts his sleep; that he cannot endure prolonged periods in which he is seated, standing or walking; that he cannot easily dress himself or bend; that he cannot lift heavy objects; that he cannot resume some of his favorite recreational activities, such as playing soccer; and that he cannot resume construction work, though he acknowledged that he performs sporadic painting jobs. Torres' treating physiatrist agreed that Torres cannot resume construction work.

Torres sought reimbursement of a workers' compensation lien that approximated \$125,000, including about \$100,000 of lost earnings. Torres also sought recovery of damages for his past and future pain and suffering.

Defense counsel contended that independent medical examinations indicated that Torres does not suffer accident-related physical abnormalities.

Result:

The parties negotiated a pretrial settlement, which was finalized via the guidance of mediator Ronnie Bernon Gallina, of Jams. The insurer of 915 East 107th Street Restaurant, 3536 Cambridge Ave and Wagner agreed to pay \$200,000, and DNO Construction's insurer agreed to pay \$55,000. Thus, the settlement totaled \$255,000.

Trial Information:**Judge:**

Ronnie Bernon Gallina

**Editor's
Comment:**

This report is based on information that was provided by plaintiff's counsel and counsel of 915 East 107th Street Restaurant, 3536 Cambridge Ave, DNO Construction and Wagner. New Vision Enterprise's counsel was not asked to contribute.

Motor Vehicle-Stop Sign

Amount: \$45,650

Type: Verdict-Plaintiff

State: New York

Venue: Bronx County

Court: Bronx Civil, NY

Case Type:

- *Motor Vehicle - Stop Sign*

Case Name: Angela Vickers v. Marie and Gabriele Rositani

Date: November 30, 1999

Plaintiff(s):

- Angela Vickers (Female, 35 Years)

Plaintiff Attorney(s):

- Donald R. Cohen; Belovin & Franzblau; Bronx NY for Angela Vickers

Plaintiff Expert (s):

- Hal S. Gutstein MD; Neurology; Bronx, NY called by:
- Dr. Stuart Kahn; physical medicine; Manhattan, NY called by:

Defendant(s):

- Marie Rositani
- Gabriele Rositani

Defense Attorney(s):

- Dale E. Hibbard; Law Offices of Steven I. Lubowitz; New York, NY for Marie Rositani

Defendant Expert(s):

- Dr. Irving Etkind; Orthopedics; Manhattan, NY called by: for
- Joseph C. Polifrone M.D.; Neurosurgery; Bronx, NY called by: for

Facts: At 2 PM on 8/5/95, Pltf., a 35-year-old licensed practical nurse, was traveling westbound on Nereid Ave. in the Bronx, approaching the intersection of Murdock Ave. Pltf. claimed that she had the right-of-way as she advanced into the intersection, when Deft., traveling south on Murdock, ran a stop sign and struck her vehicle. Deft. denied that she ran the stop sign, and contended that Pltf. caused the accident by being inattentive to cars that were entering the intersection.

Offer: \$6,500; demand: \$15,000; amount asked of jury: \$85,000 for past and \$100,000 for future pain and suffering.

Injury: Cervical radiculopathy; bursitis of the right hip. Pltf. produced positive EMG and MRI films that showed a straightening of the cervical curvature. Also produced were confirmations of Pltf.'s positive reactions to remedial injection treatments for bursitis. Pltf. contended that her injuries caused her to miss 2 months of work from her full-time nursing position, as well as 5 months from a part-time job. She claimed that she continues to suffer from pain and discomfort as a result of the accident.

Deft. disputed that Pltf. sustained any injuries, and contended that Pltf.'s exams were normal, that her EMG reading failed to support a diagnosis of radiculopathy, and that the straightening of the cervical spine was due to the way that the MRI examiner had positioned her during the test. Deft. questioned whether Pltf. suffered from bursitis, and contended that even if the condition existed, it was caused by her work as a nurse.

Result: \$45,650 (6/0). Breakdown: \$4,000 for past pain and suffering; \$40,250 for future pain and suffering; \$1,400 for medical expenses. Jury: 2 male, 4 female.

Actual Award: \$0

Trial Information:

Judge: Richard O. Tolchin

Trial Length: 5

Trial Deliberations: 4

Government-Prisoner Suit

Amount: \$15,000

Type: Decision-Plaintiff

State: New York

Venue: White Plains

Court: Court of Claims, White Plains, NY

Case Type:

- *Government* - Prisoner Suit

Case Name: Dominick Grimaldi v. State of New York

Date: February 27, 1998

Plaintiff(s):

- Dominick Grimaldi (34 Years)

Plaintiff Attorney(s):

- Robert Blossner; ; New York NY for Dominick Grimaldi
- David Segal; ; New York NY for Dominick Grimaldi

Plaintiff Expert (s):

- Monroe Eberlin; Engineering; Manhattan, NY called by:
- Dr. Stuart Kahn; Medical Equipment; Glens Falls, NY called by:

Defendant(s):

- State of New York

Defense Attorney(s):

- Dewey Lee; White Plains, NY for State of New York

Facts: On 8/23/91, Clmt., then a 34-year-old inmate at Sing Sing Correctional Facility, was injured while playing softball in the prison yard. While running to catch a fly ball, Clmt. came into contact with the top of a metal chain link fence. The twisted points of the fence lacerated Clmt.'s forearm. Clmt. was playing third base at the time of his injury. The evidence showed that the fence was placed 15-30 feet beyond the third base line to separate foul territory from game spectators and passersby. Clmt.'s expert testified that the use of such a fence was not appropriate in a recreational area, and that the industry standard is that the protruding ends of a chain link fence should always be knuckled under to create a rounded top. Decision at p. 4. The court agreed, and found Deft. 100% liable for the occurrence of the accident. The Court finds that while such a boundary fence is inherently part of playing softball at such facilities, the points on top of the fence are not an inherent risk of the game of softball. Decision at p. 9, citing *Morgan v. State of New York*, 90 N.Y.2d 471.

Injury: Lacerations to forearm requiring sutures. At issue was whether Clmt. had suffered neurological damage as the result of the laceration. The court found that Clmt. failed to establish any significant dysfunction or impairment as a result of the injury. Note: Clmt. was an inmate in a federal penitentiary at the time of trial. His testimony was presented by videotape.

Result: \$15,000 for past pain and suffering and scarring.

Actual Award: \$0

Trial Information:

Judge: Terry Jane Ruderman

Trial Length: 10

Woman claimed that hospital didn't prevent premature labor

Amount: \$0

Type: Verdict-Defendant

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *paralysis/quadriplegia* - quadriparesis

Case Type:

- *Medical Malpractice* - Hospital; Childbirth; Failure to Treat

Case Name: Marco Naranjo, an Infant Under the Age of 14, by His Mother and Natural Guardian, Diana Naranjo v. New York Presbyterian Hospital

Date: May 13, 2003

Plaintiff(s):

- Marco Naranjo (Male, 13 Years)

Plaintiff Attorney(s):

- Kenneth J. Ready; Kenneth J. Ready & Associates, P.C.; Mineola NY for Marco Naranjo

Plaintiff Expert (s):

- Jay Lombard M.D.; Neurology; , called by: Kenneth J. Ready
- David Miller M.D.; OB/GYN; Yonkers, NY called by: Kenneth J. Ready
- Conrad Berenson; Economics; Woodbury, NY called by: Kenneth J. Ready
- Dr. Stuart Kahn; Physical Medicine; New York, NY called by: Kenneth J. Ready
- Stewart Danoff; Neonatology; Stamford, CT called by: Kenneth J. Ready

Defendant(s):

- New York Presbyterian Hospital

Defense Attorney(s):

- Charles L. Bach; Heidell, Pittoni, Murphy & Bach; New York, NY for New York Presbyterian Hospital

Defendant Expert(s):

- Dr. Fred Goldman; Economics; New York, NY called by: for Charles L. Bach
- Boris Petrikofsky M.D.; Fetal Medicine; New York, NY called by: for Charles L. Bach
- Dr. Warren Rosenfeld; Neonatology; Mineola, NY called by: for Charles L. Bach

Facts:

On Nov. 24, 1990, at 6:20 a.m., plaintiff Diana Naranjo presented to the New York Presbyterian Hospital emergency room. Naranjo, who was 30 weeks pregnant, claimed that she had been experiencing labor contractions since the previous day. Naranjo gave birth to a son at approximately 3 p.m. The child suffered an intraventricular hemorrhage and was later diagnosed with periventricular leukomalacia. It has been paralyzed since birth.

Naranjo, acting on behalf of her son, infant plaintiff Marco Naranjo, sued New York Presbyterian Hospital. She claimed that the hospital should have administered tocolytics, which would have prevented premature labor, and corticosteroids, which would have decreased the chance of birth defects stemming from the infant's underdeveloped lung tissue. She contended that the failure to administer these agents resulted in pathologies that caused her child's paralysis. She also claimed that obstetrical residents failed to examine her in a timely manner.

The defendant claimed that Naranjo had developed an amniotic-fluid leak prior to her hospitalization, and thus, that administration of tocolytics would have sharply increased the infection risk for both Naranjo and her child. It also claimed that corticosteroid administration was a controversial issue in 1990, and that it did not become the standard of care in such cases until 1995.

Injury:

Marco Naranjo suffered an intraventricular hemorrhage during birth and was later diagnosed with periventricular leukomalacia, which is believed to be a product of insufficient blood supply to the brain during birth or the first few days of life. He is paralyzed and suffers from spastic quadriplegia.

Naranjo is wheelchair-bound, and requires lifelong assistance in most daily living activities, including normal school activity. He is intelligent and speaks well, and he should be able to earn a college degree and maintain a professional career.

Result:

The jury rendered a defense verdict on liability.

Trial Information:

Judge: Saralee Evans

Demand: \$10,000,000

Offer: \$750,000

Trial Length: 11 days

**Trial
Deliberations:** 2 days

Jury Vote: 5-1 (use of tocolytics); 6-0 (use of corticosteroids)

**Jury
Composition:** 2 male, 4 female

Motor Vehicle/Passenger

Amount: \$0

Type: Verdict-Defendant

State: New York

Venue: Westchester County

Court: Westchester Supreme, NY

Case Type:

- *Motor Vehicle - Passenger*

Case Name: Abby Nash v. Sherry Roseboro-Brown and Kenneth and Ingrid Braslow

Date: January 25, 2001

Plaintiff(s):

- Abby Nash (Female, 30 Years)

Plaintiff Attorney(s):

- Phillip E. Gutsin; Roura & Melamed; New York NY for Abby Nash

Plaintiff Expert (s):

- Dr. David Beneliyahu D.C.; Chiropractic; Selden, NY called by:
- Dr. Stuart Kahn; Physical Medicine; Manhattan, NY called by:
- Cynthia Michele March M.D.; Internal Medicine; Manhattan, NY called by:

Defendant(s):

- Ingrid Braslow
- Sherry Roseboro-Brown

Defense Attorney(s):

- Andrea L. Cru; Robert P. Tusa; White Plains, NY for Sherry Roseboro-Brown
- Simon Herling; Paganini & Herling; New York, NY for Ingrid Braslow

Defendant Expert(s):

- Michael I. Weintraub; Neurology; Briarcliff Manor, NY called by: for

Facts: Facts: On 1/4/96, Pltf., a public relations executive about 30 years old, was a passenger in Deft. Roseboro-Brown's car, which was parked along the curb of Mamaroneck Ave. in White Plains when Deft. Roseboro-Brown opened the car door and it was struck by Deft. Braslow's car. Pltf. testified that she was looking for something in the backseat and that the collision caused her to jerk her neck. On cross-examination, Pltf. was unable to recall what she was looking for. Defts.'s counsels read the testimony from a separate action filed by Pltf.'s cousin, in which the cousin stated that their car had pulled over to the side of the road in order to park before having their hair done.

Injury: Injuries: (defense verdict on damages) herniated cervical disc at C5-6 and C6-7, confirmed by MRI; thoracic outlet syndrome. Pltf. underwent 3 months of chiropractic treatment, which she started 3 months after the accident. Pltf.'s chiropractor testified that he clinically diagnosed Pltf.'s condition. Pltf.'s initial treating doctor testified that Pltf. complained of neck and back pain. Deft. denied that Pltf. sustained a serious injury under the No-Fault Law, Insurance Law §5102(d). Deft.'s neurologist testified that thoracic outlet syndrome can only be diagnosed with objective evidence and that Pltf.'s nerve conduction study and EMGs were negative. The jury found that Pltf. did not suffer a significant injury.

Result: Verdict: Defense verdict on damages (5/1). January 25, 2001

Actual Award: \$0

Trial Information:

Judge: Orazio R. Bellantoni

Trial Length: 8 days

**Trial
Deliberations:** 1.5 hours

Motor Vehicle-

Amount: \$0

Type: Verdict-Defendant

State: New York

Venue: Westchester County

Court: Westchester Supreme, NY

Case Type:

- *Motor Vehicle*

Case Name: Tony and Mary Testa v. Romulo Luz and Leon Fendley

Date: May 09, 2002

Plaintiff(s):

- Tony and Mary Testa (Male, 39 Years)

Plaintiff Attorney(s):

- Michael J. Lombardi; ; White Plains NY for Tony and Mary Testa

Plaintiff Expert (s):

- Dr. Stuart Kahn; physiatry; Manhattan, NY called by:

Defendant(s):

- Romulo Luz
- Leon Fendley

Defense Attorney(s):

- Gary A. Farole; Gambeski & Ambrose; White Plains, NY for Romulo Luz

Defendant Expert(s):

- Michael R. Rosen M.D.; Orthopedics; White Plains, NY called by: for

Facts: On 11/8/99, plaintiff, a 39-year-old landscaper, was struck in the rear by defendant's vehicle on Rte. 287 in Westchester County. Liability was conceded and the trial proceeded on the issue of damages.

The defendant denied that the plaintiff sustained a serious injury under the No-Fault Law, Insurance Law §5102d. Defendant's expert, Dr. Rosen, testified that based on his analysis of plaintiff's prior records, plaintiff did in fact exhibit radicular symptoms before the accident and was also suffering degenerative disc disease that was present before the accident. Defendant also argued that the auto accident was not the proximate cause of the lawnmower burn injuries. Offer: \$1,000; demand: \$5,000.

Injury: Defense verdict on damages bulging lumbar disc at L4-5 with impingement on the thecal sac; bulging lumbar disc at L3-4; lumbar radiculopathy. Plaintiff also alleged that a subsequent work-related accident in which he sustained a serious burn on his right calf while refueling a lawnmower was caused by his back giving out. Plaintiff had prior back problems and was treated by Dr. Kahn before the accident for facet arthropathy. Dr. Kahn testified that the instant accident caused different pain with radicular symptoms that were not present before the accident. Plaintiff underwent at least three epidural injections for this pain. He had not treated with Dr. Kahn for 18 months before this accident occurred.

Result: Defense verdict on damages.

Actual Award: \$0

Trial Information:

Judge: Joan B. Lefkowitz

**Trial
Deliberations:** 1

Defense: Mover's injury not related to lifting of tabletop

Amount: \$0

Type: Verdict-Defendant

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5
- *other* - hematoma; microdiscectomy; decreased range of motion
- *surgeries/treatment* - discectomy

Case Type:

- *Worker/Workplace Negligence*

Case Name: Theresa Ann Dalcamo, Individually and as Administratrix of the Estate of Gerard Dalcamo, Deceased, v. 550 Madison Avenue Trust Ltd. and CB Richard Ellis Real Estate Service Inc.

Date: December 17, 2015

Plaintiff(s):

- Theresa Ann Dalcamo
- Estate of Gerard Dalcamo (Male, 47 Years)

Plaintiff Attorney(s):

- Norman E. Frowley; Jaroslawicz & Jaros, LLC; New York NY for Estate of Gerard Dalcamo, Theresa Ann Dalcamo

Plaintiff Expert(s):

- Stuart B. Kahn M.D.; Pain Management; New York, NY called by: Norman E. Frowley

Defendant(s):

- 550 Madison Avenue Trust Ltd.
- Grubb & Ellis Management Services Inc.
- CB Richard Ellis Real Estate Service Inc.

**Defense
Attorney(s):**

- Bhavna Changrani; Lewis Brisbois Bisgaard & Smith LLP; New York, NY for CB Richard Ellis Real Estate Service Inc., Grubb & Ellis Management Services Inc.
- None reported; Goldberg Segalla LLP; Garden City, NY for 550 Madison Avenue Trust Ltd.
- Kenneth Gerard; Lewis Brisbois Bisgaard & Smith LLP; New York, NY for CB Richard Ellis Real Estate Service Inc., Grubb & Ellis Management Services Inc.

**Defendant
Expert(s):**

- Lewis M. Rothman M.D.; Neuroradiology; Valhalla, NY called by: for Bhavna Changrani, Kenneth Gerard
- Daniel J. Feuer M.D.; Neurology; Astoria, NY called by: for Bhavna Changrani, Kenneth Gerard

Facts:

On Dec. 22, 2006, plaintiff's decedent Gerard Dalcamo, 47, a mover, worked at an office building that was located at 550 Madison Ave., in Manhattan. During the course of the day, Dalcamo and a co-worker relocated a large marble tabletop. Dalcamo claimed that the task caused physical strain and trauma that injured his back.

Dalcamo sued the premises' owner, 550 Madison Avenue Trust Ltd., and the premises' manager, Grubb & Ellis Management Services Inc., then known as CB Richard Ellis Real Estate Service Inc. Dalcamo alleged that his injury was a result of a negligent act by an employee of one or both of the defendants.

Dalcamo's counsel discontinued the claim against 550 Madison Avenue Trust. The matter proceeded against Grubb & Ellis Management Services.

Dalcamo died after the lawsuit had been filed, though his death was not related to the injury that was attributed to the accident. The lawsuit was continued by Dalcamo's widow, Theresa Ann Dalcamo, who was acting individually and as administrator of her late husband's estate.

During a deposition, Mr. Dalcamo claimed that his injury occurred while the tabletop was being removed from a cart. He claimed that a CB Richard Ellis Real Estate Service employee offered to provide assistance, but failed to promptly remove the cart after the tabletop had been lifted. Dalcamo estimated that he and a co-worker had to hold the tabletop for a period of 10 seconds, and he claimed that he endured physical strain and trauma that caused an injury.

Defense counsel contended that Dalcamo's injury was not sustained during relocation of the tabletop. One of Dalcamo's co-workers claimed that the relocation occurred without incident and without any complaint by Dalcamo. Defense counsel contended that Dalcamo's medical records indicate that Dalcamo was injured on Dec. 26, 2006--four days after Dalcamo's handling of the tabletop--and they noted that Dalcamo did not seek medical attention on Dec. 22 or the four days that followed.

Injury: On Dec. 27, 2006--five days after having worked at the defendants' premises--Dalcamo presented to his doctor. He claimed that he was suffering pain that stemmed from his back. He was referred to an orthopedist.

Dalcamo ultimately claimed that he sustained a herniation of his L4-5 intervertebral disc. On March 7, 2007, Dalcamo underwent a microdiscectomy, a minimally invasive procedure that involved excision of a portion of his L4-5 disc. He claimed that he experienced ongoing pain. On March 26, 2007, he underwent fusion of his spine's L4-5 level. The operative site developed a residual hematoma that required draining. Dalcamo subsequently underwent about five months of conservative treatment that included a regimen of pain management.

Dalcamo died on July 11, 2014. His death was not related to the injury of his back.

Plaintiffs' counsel claimed that Dalcamo's injury caused years of intractable pain, that Dalcamo suffered a residual diminution of his back's range of motion, and that Dalcamo could not fully bend his torso. Plaintiffs' counsel also claimed that Dalcamo's injury prevented Dalcamo's resumption of work.

Dalcamo's estate sought recovery of Dalcamo's lost earnings and damages for Dalcamo's pain and suffering. Dalcamo's widow sought recovery of damages for loss of services.

Defense counsel contended that a surveillance videotape, produced after the events of Dec. 22, 2006, depicted Mr. Dalcamo carrying objects without apparent restriction or deficits. The defense's expert neuroradiologist opined that Dalcamo's herniated disc was sustained three to 12 months prior to December 2006. The defense's expert neurologist opined that an electromyography, performed after Dalcamo's surgeries, did not reveal an indicator of pain.

Result: The jury rendered a defense verdict.

Trial Information:

Judge: Margaret A. Chan

Demand: \$4,600,000 (from Grubb & Ellis Management Services)

Offer: None

Trial Length: 10 days

Trial Deliberations: 40 minutes

Jury Vote: 6-0

**Jury
Composition:** 4 male, 2 female

**Editor's
Comment:** This report is based on information that was provided by Grubb & Ellis Management Services' counsel. Plaintiffs' counsel did not respond to the reporter's phone calls, and 550 Madison Avenue Trust's counsel was not asked to contribute.