Defective cable protector caused disabling injuries: plaintiff

Type: Verdict-Plaintiff

Amount: $18,111,250

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *leg* - fracture, leg; fracture, tibia
- *ankle* - fracture, ankle; fracture, malleolus; fracture, distal fibula
- *other* - plate; swelling; physical therapy; pins/rods/screws; hardware implanted; comminuted fracture; fracture, displaced; arthritis, traumatic; chronic pain syndrome
- *neurological* - nerve damage/neuropathy; nerve damage, peroneal nerve; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Products Liability* - Strict Liability; Manufacturing Defect

Case Name: Dana Burnley and Ralph Burnley v. Loews Hotel, Philadelphia Hotel Operating Company, Inc., Twelfth Street Hotel Associates, Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services, Lawall Communications, Checkers Industrial Products, Checkers Safety Group, Checkers Industrial Safety Products, Firefly Cable Protectors, Linebacker Cable Management and Ascendant Ventures, Inc., No. 160901257

Date: August 31, 2022

Plaintiff(s):
- Dana Burnley, (Female, 41 Years)
- Ralph Burnley, (Male, 48 Years)

Plaintiff Attorney(s):

- Michael O. Pansini; Pansini, Mezrow & Davis; Philadelphia PA for Dana Burnley,, Ralph Burnley
- Steven M. Mezrow; Pansini, Mezrow & Davis; Philadelphia PA for Dana Burnley,, Ralph Burnley
- David B. Pizzica; Pansini, Mezrow & Davis; Philadelphia PA for Dana Burnley,, Ralph Burnley

Plaintiff Expert (s):

- Harold D. Schoenhaus D.P.M.; Podiatry Surgery; Philadelphia, PA called by: Michael O. Pansini, Steven M. Mezrow, David B. Pizzica
- Robert J. Nobilini Ph.D.; Biomechanical; Harleysville, PA called by: Michael O. Pansini, Steven M. Mezrow, David B. Pizzica
- Enrique A. Aradillas M.D.; Neurology; Philadelphia, PA called by: Michael O. Pansini, Steven M. Mezrow, David B. Pizzica

Defendant(s):

- Loews Hotel
- Allen Price
- Evan Andrews
- FOH Productions
- Evan Andrews Design
- FallLine Corporation
- Checkers Safety Group
- Lawall Communications
- Price Productions, LLC
- Ascendant Ventures, Inc.
- Firefly Cable Protectors
- Ascendant Ventures, Inc.
- Christopher Hassfurther
- Checkers Industrial Products
- Linebacker Cable Management
- Twelfth Street Hotel Associates
- Audio Visual Services Group, Inc.
- Checkers Industrial Safety Products
- Industry Advanced Technologies, Inc.
- Philadelphia Hotel Operating Company, Inc.

Defense Attorney(s):

- Marc H. Perry; Post & Schell, P.C.; Philadelphia, PA for Checkers Industrial Products, Checkers Safety Group, Checkers Industrial Safety Products
- Roberto K. Paglione; Law Offices of Terkowitz & Hermesmann; Mount Laurel, NJ for Checkers Industrial Products, Checkers Safety Group, Checkers Industrial Safety Products

Defendant Expert(s):

- Paul A. Horenstein M.D.; Orthopedic Surgery; Broomall, PA called by: for Marc H. Perry, Roberto K. Paglione

Insurers:

- Hanover Insurance Co. (The)

Facts:

On Sept. 26, 2014, plaintiff Dana Burnley, 41, a pharmaceutical compliance specialist, was attending a work-related conference at the Lowes Hotel in Philadelphia. She claimed that, while walking from her seat during the conference, she stepped into a Firefly cable

protector that caused her to suffer leg fractures and, ultimately, chronic pain syndrome.

The cable protector was allegedly manufactured and distributed by Industry Advanced Technologies Inc. After Burnley's accident, Checkers Industrial Products acquired the Firefly product line from Industry.

Burnley sued Checkers. Burnley alleged claims of products liability, including a manufacturing defect and strict liability.

A number of other companies were originally named as defendants in the suit, but the claims against those entities were dismissed or concluded via dispositions involving undisclosed terms.

Checkers brought in a number of entities as third-party defendants, including FallLine Corp., which participated in the manufacture of the cable protector, and FOH Productions, the distributor of the cable protector. Those entities did not participate in trial, but remained on the verdict slip.

Burnley alleged that the cable protector contained a gap or opening in the plastic components of that particular cable protector. Her counsel argued that Checkers was a liable successor corporation of the defective cable protector manufactured by Industry Advanced Technologies. Checkers acquired the entire Firefly product line, inventory, goodwill, tooling equipment, customer contracts and lists, intellectual property, patents and trademark.

Burnley's counsel asserted that, at the time of trial, Checkers continued to manufacture and sell the Firefly product line. The plaintiff's counsel cited the testimony of a Checkers corporate designee, who admitted that Checkers continues to honor Firefly product and warranty claims regarding the Firefly cable protectors and, if there is any Firefly cable protector cable that is defective, it is Checkers' responsibility.

The defense maintained that Checkers is not liable for the accident, as it had no role whatsoever in the conference that Burnley was attending at the time of the accident. Additionally, the defense contended that Checkers had no role in the design, manufacture, sale or distribution of the cable protector involved in the accident.

The defense maintained that any defect associated with the cable protector was the result of the decisions made by FallLine and FOH Productions. The defense further argued that Burnley was comparatively negligent since the cable protector was an open and obvious condition.

Injury:

Burnley was taken by ambulance to a hospital and admitted. She was diagnosed with a comminuted spiral fracture of the right distal tibia, a displaced fracture of the right distal fibula, and lateral and posterior malleolus fractures of her right ankle. Burnley was later diagnosed with post-traumatic arthritis, damage to the peroneal nerve, chronic pain syndrome and complex regional pain syndrome.

Burnley underwent emergency surgery that consisted of intramedullary nailing of the right tibia fracture, open reduction and internal fixation of the right lateral malleolus and internal fixation of the right posterior malleolus. She was discharged days later and remained non-weight-bearing in the ensuing weeks.

Burnley eventually treated with a course of physical therapy. She later came under the care of a neurologist and pain-management physician, who administered nerve blocks and ketamine. A permanent spinal cord stimulator was eventually implanted to address her complex regional pain syndrome. At the time of trial, Burnley continued to treat with pain management and was being monitored by her physicians.

Burnley's podiatrist testified that the accident caused the development of post-traumatic arthritis in the ankle and an inflammatory response that is seen by the persisting swelling in her right ankle. The physician concluded that Burnley suffered permanent nerve damage and will need surgery, such as an ankle fusion or ankle replacement, in the next 10 years.

Burnley's neurologist rated Burnley's prognosis as guarded and testified that she will require indefinite pain management to treat her ongoing symptoms, which are permanent and will likely result in disability.

Burnley testified that she is in constant pain, which forced her to eventually stop working. She discussed how she has difficulty standing for long periods and climbing stairs, and how she relies on her husband to perform the brunt of their household chores, including helping her dress.

Burnley sought to recover $5 million in future medical costs and lost wages, plus damages for past and future pain and suffering. Burnley's husband sought damages for past and future pain and suffering.

The defense's expert in orthopedic surgery, who examined Burnley, testified that Burnley recovered from her injuries. According to the expert, any limitations she experiences are minor and do not prevent her from working or performing activities of daily living.

Result:

The jury attributed 100 percent liability to Checkers. The jury determined that the plaintiffs' damages totaled $18,111,250.

Ralph Burnley

$ 3,000,000 loss of consortium

$ 3,000,000 Plaintiff's Total Award

Dana Burnley

$ 15,111,250 damages

$ 15,111,250 Plaintiff's Total Award

Trial Information:

Judge:	Michele D. Hangley
Demand:	$9 million
Offer:	None
Trial Length:	7 days
Trial Deliberations:	2 days
Jury Vote:	12-0
Post Trial:	Plaintiffs’ counsel filed a motion for delay damages in the amount of $4,739,689.32.
Editor's Comment:	This report is based on information that was gleaned from court documents and after speaking with plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls. The other defendants were not asked to contribute.
Writer	Aaron Jenkins

SEPTA worker crushed by 5,644-pound spool of wire

Type: Verdict-Plaintiff

Amount: $15,556,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *arm*
- *head* - headaches
- *chest*
- *other* - spasm; laparotomy; anastomosis; physical therapy; decreased range of motion
- *abdomen* - crush injury, abdomen
- *shoulder*
- *neurological* - brachial plexus; nerve damage/neuropathy; reflex sympathetic dystrophy; complex regional pain syndrome
- *mental/psychological* - anxiety; depression; emotional distress; post-traumatic stress disorder
- *pulmonary/respiratory*
- *gastrointestinal/digestive* - diarrhea; intestine, resection; gastrointestinal complications; ileus; bowel/colon/intestine, perforation

Case Type:
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence*

Case Name: William Meszaros v. Southern Pennsylvania Transportation Authority a/k/a SEPTA, No. 170803246

Date: August 16, 2021

Plaintiff(s):
- William Meszaros, (Male, 28 Years)

Plaintiff Attorney(s):	• Daniel N. Purtell; McEldrew Young Purtell Merritt; Philadelphia PA for William Meszaros • John J. Coyle; McEldrew Young Purtell Merritt; for William Meszaros • Marcus A. Washington; McEldrew Young Purtell Merritt; for William Meszaros
Plaintiff Expert (s):	• Guy W. Fried M.D.; Physical Medicine; Philadelphia, PA called by: Daniel N. Purtell, John J. Coyle, Marcus A. Washington • Alex Karras O.T.R.; Life Care Planning; Jamison, PA called by: Daniel N. Purtell, John J. Coyle, Marcus A. Washington • Dr. Albert M. Harary; Gastroenterology; New York, NY called by: Daniel N. Purtell, John J. Coyle, Marcus A. Washington • Andrew C. Verzilli M.B.A.; Economics; Lansdale, PA called by: Daniel N. Purtell, John J. Coyle, Marcus A. Washington • Stephen G. Rosen M.D.; Internal Medicine; Philadelphia, PA called by: Daniel N. Purtell, John J. Coyle, Marcus A. Washington
Defendant(s):	• Southern Pennsylvania Transportation Authority
Defense Attorney(s):	• Richard K. Hohn; Hohn & Scheüerle, Attorneys at Law; Philadelphia, PA for Southern Pennsylvania Transportation Authority • Stephen A. Scheüerle; Hohn & Scheüerle, Attorneys at Law; Philadelphia, PA for Southern Pennsylvania Transportation Authority
Defendant Expert(s):	• George H. Dooneief M.D.; Neurology; Flourtown, PA called by: for Richard K. Hohn, Stephen A. Scheüerle • Richard J. Mandel M.D.; Orthopedic Surgery; Bala Cynwyd, PA called by: for Richard K. Hohn, Stephen A. Scheüerle • Vishal Patel; Gastroenterology; Reading, PA called by: for Richard K. Hohn, Stephen A. Scheüerle

Facts:

On April 6, 2017, plaintiff William Meszaros, 28, a railroad power trainee, was part of a crew working in the electric yard for Southeastern Pennsylvania Transportation Authority (SEPTA), in Philadelphia. The crew was tasked with loading a 5,644-pound spool of trolley wire into a storage container. During the loading, Meszaros became pinned and crushed to the wall of the storage container, suffering catastrophic crush injuries.

Meszaros sued SEPTA. He alleged violations under the Federal Employers Liability Act. In preparation to move the spool into the storage container, two members of Meszaros' crew laid two sections of railroad ties in front of the storage container to compensate for the approximately six-inch difference in height between the container floor and the ground. The spool of wire was then placed by way of forklift on the railroad ties.

Once the spool of wire was placed on the railroad ties, the forklift was backed up to remove the forks of the forklift from under the reel. At this time, Meszaros was positioned just inside the storage container doorway as the other crew members began to roll the spool into the storage container doorway. The weight of the spool shifted to the right and pinned and crushed Meszaros to the wall of the storage container.

The defense stipulated to liability, and the case was tried on the issue of damages.

Injury:

Meszaros was taken by ambulance to a hospital and admitted. He was diagnosed with a trauma injury to his right shoulder, of his dominant arm, and blunt abdominal trauma that resulted in a mesenteric tear and serosal tear of the ascending colon. He was later diagnosed with a traction injury to the brachial plexus causing restrictive pulmonary disease, chronic regional pain syndrome, chronic migraines and post-traumatic stress disorder.

Meszaros underwent emergency surgery which consisted of exploratory laparotomy, a small bowel resection with small bowel anastomosis and repair of the serosal tear of the ascending colon.

Meszaros was hospitalized through April 17, 2017, and then discharged home. However, on April 19, he was re-hospitalized after suffering a small bowel obstruction and a prolonged ileus. He remained in the hospital through April 25.

Over the next 30 days, Meszaros, due to his bowel complications, lost 30 pounds. He treated with physical therapy three days a week for several months, consulted with his primary care physician and gastroenterologist, used a nasogastric tube on seven different occasions and had to go to the emergency room approximately four times.

Meszaros also treated with a psychiatrist for his anxiety and depression that stemmed from his post-traumatic stress disorder. He further treated with a pulmonologist for his restrictive pulmonary disease. The nerve damage from the brachial plexus injury extended to damaging the intercostal nerves in Meszaros' chest wall.

Meszaros' internist and experts in physical medicine and gastroenterology testified that he is permanently disabled, as the nerve damage prevents him from fully using his right arm and his abdominal injuries caused severe and permanent gastrointestinal issues.

According to the physicians, Meszaros requires a lifetime of treatment, which consists of pain medications, a spinal cord stimulator, Botox injections for his migraines, gastroenterology care for motility, physical therapy and psychological treatment.

Meszaros testified that he suffers from constant pain and is restricted in nearly all aspects of his life. Meszaros experiences alternating bowel issues of diarrhea, constipation and bowel spasms. He discussed his inability to care for his son, who is special needs, and how he was emotionally impacted by his inability to perform physical activities with his son. According to Meszaros, who prided himself as a mechanical person, he suffered a loss of purpose as he can no longer fix things, such as replacing the roof on his garage or mowing his lawn. Due to his limited lung capacity, Meszaros can only walk short distances and has to physically pace himself.

Meszaros sought to recover approximately $360,000 in past wage loss, $3,077,639 in future wage loss and $5.7 million in future medical costs, plus damages for past and future pain and suffering.

The defense maintained that Meszaros malingered and exaggerated some of his symptoms. To support this theory, the defense played surveillance footage of Meszaros performing numerous activities.

According to the defense's expert in orthopedic surgery, Meszaros sustained no lasting orthopedic injuries, and opined that he was unable to diagnose Meszaros with a brachial plexus injury.

The defense's expert in neurology also did not detect a brachial plexus injury, but confirmed that Meszaros suffered from chronic pain.

Result: The jury determined that Meszaros would receive $15,556,000.

$3500000 Personal Injury: Future Medical Cost

$356000 Personal Injury: Past Loss of Earnings

$3100000 Personal Injury: Future Loss of Earnings

$8600000 Personal Injury: non-economic damages

Trial Information:

Judge:	James C. Crumlish III
Demand:	$14 million
Offer:	$3 million
Trial Length:	7 days
Trial Deliberations:	3 hours
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.
Writer	Aaron Jenkins

Plaintiff claimed car crash caused injuries of ankle, shoulder

Type: Verdict-Plaintiff

Amount: $13,500,000

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):
- *ankle*
- *other* - arthritis; arthroplasty; SLAP lesion/tear; aggravation of pre-existing condition
- *shoulder* - glenoid labrum, tear; frozen shoulder (adhesive capsulitis); adhesive capsulitis (frozen shoulder)
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy

Case Type:
- *Motor Vehicle* - Rear-ender; Multiple Vehicle

Case Name: Karen and Patrick Noller v. Edwin Holt, No. 5347/14

Date: October 08, 2021

Plaintiff(s):
- Karen Noller, (Female, 47 Years)
- Patrick Durso, (, 0 Years)

Plaintiff Attorney(s):
- Kenneth B. Fromson; Finkelstein & Partners, LLP; Newburgh NY for Karen Noller,, Patrick Durso
- Andrew G. Finkelstein; Finkelstein & Partners, LLP; Newburgh NY for Karen Noller,, Patrick Durso

Plaintiff Expert (s):
- Stuart B. Kahn M.D.; Pain Management; New York, NY called by: Kenneth B. Fromson, Andrew G. Finkelstein
- Richard Saunders M.D.; Orthopedic Surgery; Queensbury, NY called by: Kenneth B. Fromson, Andrew G. Finkelstein

Defendant(s):

- Edwin Holt
- Red Hawk Fire & Security (NY), LLC

Defense Attorney(s):

- Kenneth R. Lange; Goetz Schenker Blee & Wiederhorn LLP; New York, NY for Edwin Holt, Red Hawk Fire & Security (NY), LLC

Defendant Expert(s):

- Rene Elkin M.D.; Neurology; Bronx, NY called by: for Kenneth R. Lange
- Lloyd Saberski M.D.; Pain Management; New Haven, CT called by: for Kenneth R. Lange
- Harvey Seigel M.D.; Orthopedic Surgery; New Windsor, NY called by: for Kenneth R. Lange

Insurers:

- Scottsdale Insurance Co.
- Zurich North America

Facts:

On Sept. 24, 2013, plaintiff Karen Noller, 47, an appraiser, was driving on State Route 9, in Rhinebeck. Her vehicle's rear end was struck by a trailing truck that was being driven by Edwin Holt. Noller claimed that she suffered injuries of an ankle and a shoulder.

Noller sued Holt and his vehicle's owner, Red Hawk Fire & Security (NY), LLC. The lawsuit alleged that Holt was negligent in the operation of his vehicle. The lawsuit further alleged that Red Hawk Fire & Security was vicariously liable for Holt's actions.

Noller estimated that Holt's vehicle was traveling 40 mph at the moment of impact.

Defense counsel conceded liability. The trial addressed damages.

Injury:

Noller was retrieved by an ambulance, and she was transported to a hospital. She claimed that her left ankle was painful. An X-ray revealed a sprain of the ankle. Noller underwent minor treatment.

Noller ultimately claimed that the accident aggravated a preexisting arthritic condition of her left ankle. She also claimed that she suffered a tear of the anterior and posterior regions of her right shoulder's glenoid labrum. Such an injury is commonly termed a "SLAP lesion." Noller claimed that her right shoulder developed adhesive capsulitis, which is commonly termed "frozen shoulder."

Three months passed before Noller reported an issue related to her right shoulder. She claimed that an injury had been apparent earlier, but that doctors suspected that it was a result of whiplash and were investigating a spinal injury rather than an injury of the right shoulder.

On May 15, 2014, Noller underwent arthroscopic surgery that addressed her right shoulder. The procedure involved a repair of the glenoid labrum. Noller subsequently

underwent surgery that addressed her right shoulder's adhesive capsulitis. She subsequently underwent an arthroplasty, which involved replacement of a portion of her right shoulder's intra-articular surface.

On Dec. 28, 2017, Noller underwent surgical replacement of her left ankle.

Noller claimed that her left ankle has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy." Noller has undergone implantation of a neurostimulator, which is a device that provides pain-relieving stimulation of spinal nerves, but she claimed that she suffers ongoing, permanent pain and limitations.

Noller sought recovery of past medical expenses, $1.4 million for future medical expenses, and unspecified damages for past and future pain and suffering. Her husband, Patrick Durso, sought recovery of damages for past and future loss of consortium.

Defense counsel contended that the accident caused nothing more than a sprain of Noller's left ankle. The defense's expert orthopedist opined that the ankle's surgery was necessitated by the arthritic condition that predated the accident, and the defense's expert pain-management specialist opined that Noller's ongoing pain is not a product of complex regional pain syndrome but likely a surgical complication, peroneal neuralgia, which is caused by irritation of a nerve.

Defense counsel also contended that Noller's right shoulder's injury was not related to the accident, given that months passed before the injury was reported or treated. However, the defense's expert neurologist opined that whiplash's symptoms could have masked an injury of the right shoulder.

Result: The jury found that the plaintiffs' damages totaled $13.5 million.

Patrick Durso

$ 300,000 Past Loss of Consortium

$ 200,000 future loss of consortium (28.2 years)

$ 500,000 Plaintiff's Total Award

Karen Noller

$ 2,000,000 Past Medical Cost

$ 3,500,000 Past Pain Suffering

$ 3,000,000 future medical cost (28.2 years)

$ 4,500,000 future pain and suffering (28.2 years)

$ 13,000,000 Plaintiff's Total Award

Trial Information:

Judge: Sandra Sciortino

Demand: $15,500,000 (total, by both plaintiffs, from both defendants)

Offer: $1,000,000 (total, for both plaintiffs, by both defendants)

Trial Length: 10 days

Trial Deliberations: 2 hours

Jury Composition:	1 male, 5 female
Editor's Comment:	This report is based on information that was provided by plaintiffs' and defense counsel.
Writer	Caitlin Granfield

Woman fell on icy sidewalk, claimed permanent foot pain

Type: Verdict-Mixed

Amount: $8,000,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *ankle* - ankle ligament, tear; deltoid ligament, tear; ankle ligament, tear; talofibular ligament, tear
- *other* - physical therapy; peroneal tendon, tear
- *foot/heel* - foot
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - Snow and Ice; Tenant's Injury; Apartment Building; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Nataki Caver v. ABCNY Inc. Nosrat LLC KS Jamm Dance Troupe Inc Kashani Stokely, No. 503297/17

Date: December 20, 2021

Plaintiff(s):
- Nataki Caver, (Female, 37 Years)

Plaintiff Attorney(s):
- Seth A. Harris; Burns & Harris; New York NY for Nataki Caver
- Sheri E. Holland; Burns & Harris; New York NY for Nataki Caver

Plaintiff Expert (s):
- Ali E. Guy M.D.; Physical Medicine; New York, NY called by: Seth A. Harris, Sheri E. Holland
- Hal S. Gutstein M.D.; Neurology; New York, NY called by: Seth A. Harris, Sheri E. Holland
- Jung H. Kim M.D.; Pain Management; New York, NY called by: Seth A. Harris, Sheri E. Holland
- Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Seth A. Harris, Sheri E. Holland

Defendant(s):

- ABCNY Inc.
- Nosrat LLC
- Kashani Stokely
- K.S. JA.M.M. Dance Troupe Inc.

Defense Attorney(s):

- Kevin G. Faley; Morris Duffy Alonso & Faley; New York, NY for Kashani Stokely, K.S. JA.M.M. Dance Troupe Inc.
- Thomas F. Keane; Gladstein Keane & Partners PLLC; New York, NY for Nosrat LLC, ABCNY Inc.

Defendant Expert(s):

- Kara Genderson LCSW; Life Care Planning; Washington, DC called by: for Thomas F. Keane
- Edward A. Toriello M.D.; Orthopedic Surgery; Middle Village, NY called by: for Thomas F. Keane
- Michael J. Carciente M.D.; Neurology; Bronx, NY called by: for Thomas F. Keane

Insurers:

- Quincy Mutual Fire Insurance Co.

Facts:

On Jan. 26, 2016, plaintiff Nataki Caver, 37, a teacher, fell while she was traversing a sidewalk that abutted her residence, a mixed-use building that was located at 347 Nostrand Ave., in the Bedford Stuyvesant section of Brooklyn. She suffered injuries of an ankle.

Caver sued the adjoining premises' owner, Nosrat LLC; the premises' manager, ABCNY Inc.; and the premises' commercial tenants, Kashani Stokely and K.S. JA.M.M. Dance Troupe Inc. The lawsuit alleged that the defendants were negligent in their maintenance of the sidewalk. The lawsuit further alleged that the defendants' negligence created a dangerous condition that caused Caver's fall.

Caver claimed that her fall was a result of her having slipped on snow and/or ice that had accumulated on the sidewalk. Caver's counsel claimed that the snow and ice were residual products of a snowstorm that had concluded two days prior to the accident, and Caver claimed that the sidewalk's condition had not substantially changed from the prior instance in which she had traversed the sidewalk, a day prior to the accident. Caver, who was exiting the premises when the accident occurred, claimed that there was no safe path to and from the doorway, and she also claimed that the defendants had not applied a melting agent.

The subject premises comprised two entryway areas: one that provided access to the residential area, and one that provided access to the commercial area, occupied by Stokely and K.S. JA.M.M. Dance Troupe. A lease specified that Stokely and K.S. JA.M.M. Dance Troupe were responsible for maintenance of their entrance's surrounding area. Stokely claimed that Caver fell near the residential entrance, and Nosrat and ABCNY claimed that Caver fell near the commercial entrance. ABCNY's superintendent claimed that Caver indicated that the accident occurred near the commercial entrance, but Caver claimed that the accident occurred near the residential entrance.

Injury:

Caver visited an urgent-care facility. She claimed that her left ankle was painful. She underwent X-rays, which did not reveal a fracture, and she was provided a soft cast.

Caver ultimately claimed that she suffered a tear of her left ankle's anterior talofibular ligament, a sprain of the same ankle's deltoid ligament and a tear of the same ankle's peroneus brevis tendon. Caver claimed that her left foot has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy."

Caver claimed that her injuries prevented her performance of about eight weeks of work. She underwent physical therapy and the administration of more than 50 painkilling nerve-block injections, but she claimed that her complex regional pain syndrome persists. She claimed that her pain is permanent and that it prevents her performance of many physical activities, such as running, performing yoga and performing other types of exercises. She also claimed that she requires further physical therapy, further painkilling injections and implantation of a neurostimulator, which is a device that provides pain-relieving stimulation of spinal nerves. She sought recovery of future medical expenses, damages for past pain and suffering, and damages for future pain and suffering.

The defense's expert orthopedist opined that Caver suffered nothing more than sprains and/or strains of the left ankle, and he contended that the injuries fully resolved. The defense's expert neurologist opined that Caver has not suffered complex regional pain syndrome.

Result:

The jury rendered a mixed verdict: It found that Nosrat and ABCNY were liable for the accident, and it found that Stokely and K.S. JA.M.M. Dance Troupe were not liable for the accident. It determined that Caver's damages totaled $8 million.

Nataki Caver

$ 1,520,320 Future Medical Cost

$ 6,000,000 Future Pain Suffering

$ 479,680 Past Pain Suffering

$ 8,000,000 Plaintiff's Total Award

Trial Information:

Judge:	Richard Velasquez
Demand:	$3,000,000 (total, from ABCNY and Nosrat)
Offer:	$750,000 (total, by ABCNY and Nosrat)
Trial Length:	0
Trial Deliberations:	0
Post Trial:	The liable defendants' counsel has moved to set aside the verdict.
Editor's Comment:	This report is based on information that was provided by plaintiff's and defense counsel.
Writer	Glenn Koch

Carpenter claimed injuries from fall while moving glass panels

Type: Settlement

Amount: $7,500,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *leg* - fracture, leg; fracture, fibula
- *head* - concussion; blunt force trauma to the head
- *ankle* - fracture, ankle; ankle ligament, tear; deltoid ligament, tear
- *brain* - traumatic brain injury
- *other* - sutures; pins/rods/screws; hardware implanted
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - open reduction; internal fixation
- *mental/psychological* - post-concussion syndrome

Case Type:
- *Construction* - Accidents; Labor Law
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Labor Law

Case Name: Tomasz Zuraw and Justyna Zuraw v. New York City School Construction Authority, New York City Department of Education, New York City Board of Education and City of New York, No. 524332/2019

Date: May 24, 2023

Plaintiff(s):
- Justyna Zuraw, (Female, 0 Years)
- Tomasz Zuraw, (Male, 41 Years)

Plaintiff Attorney(s):
- David B. Golomb; Golomb & Longo, PLLC; New York NY for Tomasz Zuraw,, Justyna Zuraw

Defendant(s):

- City of New York
- Whitestone Construction Corp.
- New York City Board of Education
- New York City Department of Education
- New York City School Construction Authority

Defense Attorney(s):

- James Walsh; London Fischer LLP; New York, NY for New York City School Construction Authority, New York City Department of Education, New York City Board of Education, City of New York
- Edward Chen; Golden, Rothchild, Spargnola, Lundell, Boylan, Garubo & Bell, P.C.; New York, NY for Whitestone Construction Corp.

Insurers:

- Crum & Forster
- Chubb Group of Insurance Cos.

Facts:

On March 16, 2019, plaintiff Tomasz Zuraw, 41, a carpenter employed by the general contractor, Whitestone Construction Corp., was working on a major façade renovation project, which involved the replacement of all windows at the administrative headquarters of the New York City Department of Education and the New York City Board of Education, located at 65 Court St., Brooklyn. The building had a single loading bay and dock on the Livingston Street side of the building, where Whitestone had the replacement panels of glass unloaded from a flatbed truck.

Whitestone previously loaded the replacement panels on a flatbed truck at its yard. The panels of glass were each 10 feet by 5 feet and weighed about 100 pounds each. They were each put standing on their edge in wooden, partially-framed crates. However, the glass panels were not secured by any means inside each crate. The work was done at night so as not to interfere with normal administrative operations.

Typically, the crates of glass panels were offloaded from the flatbed while the truck was parked on Livingston Street. The crates were offloaded with a forklift lifting one crate at a time, carrying it into the bay, and placing the crate on the elevated loading dock. There, workers would remove one side of each crate and two men, each with a suction cup grip, would raise one panel at a time to clear the bottom of the crate and carry it inside to a freight elevator.

On the night in question, the flatbed truck was backed into the bay until its rear edge was almost flush with the dock. The surfaces of both the flatbed and the loading dock were approximately 5 feet above the concrete floor of the bay, and there were no guardrails, toe boards or any other equipment placed to prevent anyone or anything from falling off the sides of the flatbed. Cross-bracing was attached from one side of each crate being unloaded to one wall of the bay to try to prevent it from tipping or falling as each panel was lifted and carried away. Otherwise, unloading was done as it had previously been done.

There were five crates on the flatbed truck that night. After two crates had been unloaded,

Zuraw, who was working inside the building, was told by his foreman to go to the loading bay and help with the unloading. As a result, Zuraw joined two other workers in the bay.

While unloading each panel, Zuraw had to stand on the flatbed in the space between the crate and the flatbed's unprotected, driver's side edge. Zuraw and one co-worker each used a suction cup grip to unload two panels, one at a time, and walk them inside while a third worker used his weight to hold the remaining panels from tipping in the partially stripped crate. However, as Zuraw and his co-worker were hoisting the third panel, the 20 or so remaining glass panels in the crate began to tip over toward Zuraw and fall, striking him and the panel he was hoisting.

The force of the falling panels knocked Zuraw off the flatbed headfirst to the ground 5 feet below. The glass panel Zuraw was hoisting also fell on top of him and broke. The third worker was then unable to stop or prevent the remaining panels from falling and was, himself, also knocked off the flatbed to the floor. As a result, multiple additional panels fell out of the crate, landing and breaking on top of Zuraw.

Workers struggled to free Zuraw. After about 90 seconds, Zuraw was able to wriggle free, crawl out from under the glass, under the flatbed, and get out near the rear of the truck. Zuraw he sustained injuries to his head and an ankle.

Zuraw sued the owner of the premises, the city of New York; the lessees of the premises, the New York City Board of Education and the New York City Department of Education; and the construction manager, the New York City School Construction Authority. Zuraw alleged that the defendants violated the New York Labor Law.

The city, board of education, department of education and school construction authority brought a third-party claim against the general contractor, Whitestone Construction Corp., seeking indemnification.

Plaintiff's counsel contended that a guard or rail should have been placed around the sides of the flatbed truck and that braces or stays should have been used to ensure that the remaining panels of glass in the crate could not fall or tip. Counsel also contended that proper equipment should have been provided for hoisting the panels. Thus, plaintiff's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Zuraw was not provided the proper, safe equipment that is a requirement of the statute.

Despite the defense's opposition, surveillance video of the entire incident was obtained by plaintiff's counsel in a pre-action disclosure proceeding.

Defense counsel asserted that the plaintiffs' Notice of Claim, per General Municipal Law §50, did not provide adequate notice of all claims ultimately pled in Zuraw's Summons

and Complaint and Bills of Particulars. Counsel also asserted that Labor Law §240(1) was inapplicable under the circumstances of the subject incident. Specifically, defense counsel asserted that the truck's flatbed did not qualify as a work platform and that the 5-foot height differential between the flatbed and concrete floor was insufficient to qualify for §240(1) protection.

Plaintiff's counsel moved for summary judgment on the issue of liability, and the motion was granted.

Injury:

Zuraw claimed he sustained fractures to his right leg and ankle, a facture to his right wrist, lacerations to his head and one ear, and blunt force trauma to his head. He also claimed he sustained a mild traumatic brain injury and post-concussion syndrome.

After the accident, Zuraw was taken by ambulance to NewYork-Presbyterian Brooklyn Methodist Hospital, where he underwent X-rays that revealed a fractured right ankle. Zuraw's lacerations to his head and one ear were sutured and his right ankle was wrapped in an ACE bandage. He was then told to consult his physician and sent home with his wife.

On March 18, 2019, Zuraw returned to the emergency room at NewYork-Presbyterian Hospital, in Manhattan, where he complained of severe pain. He underwent a comprehensive workup, which revealed an oblique fracture of the lower third of the right fibula into the ankle and a tear of the deltoid ligament in the right ankle, as well as a fracture of the pisiform, a bone in his right wrist. The ankle was not operated on until two weeks later because of swelling. During the procedure, a surgeon performed an open reduction and internal fixation with the placement of a plate and multiple screws. However, a surgeon needed to operate on the ankle again in 2022 because of the development of complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition. During the 2022 procedure, the surgeon removed the hardware from the ankle.

Zuraw received medication and underwent cognitive therapy for his mild traumatic brain injury and post-concussion syndrome until December 2022.

Plaintiff's counsel asserted that Zuraw was permanently and completely disabled from work. Counsel contended that, as a union carpenter, Zuraw had been earning approximately $80,000 per year at the time he was injured. Thus, counsel asserted that Zuraw's economic losses from lost wages and benefits totaled $5.2 million.

Zuraw sought recovery of medical costs, lost earnings and damages for his past and future pain and suffering. Zuraw's wife brought a derivative claim.

Defense counsel asserted that Zuraw's right ankle had completely recovered and that there was no reason Zuraw could not return to work. Counsel also asserted that there were no signs of CRPS and that Zuraw was fully capable of working in his former capacity.

Result:

The parties negotiated a pretrial settlement. The city's insurer agreed to pay Zuraw $7,053,104.16 and Whitestone's insurer contributed $200,000. In addition, the insurance carrier for the city waived the repayment of $246,895.84, which was the portion of the workers' compensation lien for which Zuraw was responsible. Thus, the settlement totaled $7,500,000.

Justyna Zuraw

Tomasz Zuraw

Trial Information:

Judge: Kenneth Sherman

Trial Length: 0

Trial Deliberations: 0

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.

Writer Jason Cohen

Merchant mariner claimed vessel did not have proper equipment

Type: Verdict-Plaintiff

Amount: $7,000,000

State: New York

Venue: Federal

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

Injury Type(s):
- *back* - herniated disc
- *neck* - herniated disc; fusion, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7
- *other* - physical therapy
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - discectomy

Case Type:
- *Workplace* - Workplace Safety
- *Admiralty/Maritime* - Jones Act; Unseaworthiness

Case Name: Jay A. Goss v. Sealift Inc. and Sagamore Shipping, LLC, No. 1:19-cv-05123-CLP

Date: February 01, 2024

Plaintiff(s):
- Jay A. Goss, (Male, 50 Years)

Plaintiff Attorney(s):
- Andrew V. Buchsbaum; Friedman, James & Buchsbaum LLP; New York NY for Jay A. Goss
- James Jacobsen; Stacey & Jacobsen, PLLC; Seattle WA for Jay A. Goss
- Nigel T. Stacey; Stacey & Jacobsen, PLLC; Seattle WA for Jay A. Goss

Plaintiff Expert (s):
- Arthur Faherty; Marine; Seattle, WA called by: Andrew V. Buchsbaum, James Jacobsen, Nigel T. Stacey

Defendant(s):
- Sealift Inc.
- Sagamore Shipping LLC

Defense Attorney(s):

- Gregory W. O'Neill; Hill, Betts & Nash LLP; New York, NY for Sagamore Shipping LLC, Sealift Inc.
- Mary T. Reilly; Hill, Betts & Nash LLP; New York, NY for Sagamore Shipping LLC, Sealift Inc.
- Kevin J. O'Donnell; Hill, Betts & Nash LLP; New York, NY for Sagamore Shipping LLC, Sealift Inc.

Defendant Expert(s):

- Alan Colletti; Marine; Tinton Falls, NJ called by: for Gregory W. O'Neill, Mary T. Reilly, Kevin J. O'Donnell
- Samuel Rapoport M.D.; Neurology; New York, NY called by: for Gregory W. O'Neill, Mary T. Reilly, Kevin J. O'Donnell

Insurers:

- The American Club

Facts:

On Oct. 27, 2017, plaintiff Jay Goss, 50, a merchant mariner, was employed on a vessel that was docked in South Korea. Goss claimed that he suffered a neck injury while lifting a heavy platform.

Goss sued the vessel's owner/operator, Sealift Inc., and a related entity, Sagamore Shipping LLC. Goss alleged that the defendants violated the Jones Act and that the subject vessel was unseaworthy.

Goss contended that he was ordered to lift the platform in question. He claimed he was not provided an assistive device.

The defense maintained that Goss did not require assistance nor a mechanical lifting device.

Injury:

Goss claimed C4-5, C5-6 and C6-7 herniations. He said these injuries led to complex regional pain syndrome.

Goss received physical therapy and underwent an anterior cervical discectomy and fusion. He never returned to work following the incident.

Goss sought recovery of damages for his past and future pain and suffering.

The defense argued that Goss' injuries were pre-existing and degenerative.

Result: The jury determined that the defendants were negligent and that their negligence contributed to Goss' injury. The jury also concluded that the vessel was unseaworthy and that the unseaworthiness contributed to Goss' injury.

The jury awarded Goss $7 million.

Jay Goss

$ 5,000,000 Future Pain Suffering

$ 2,000,000 Past Pain Suffering

$ 7,000,000 Plaintiff's Total Award

Trial Information:

Judge: Cheryl L. Pollak

Trial Length: 4 days

Trial Deliberations: 2 hours

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

Writer Jason Cohen

Fall from ladder caused wrist fracture and continued pain: plaintiff

Type: Verdict-Plaintiff

Amount: $6,765,762

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):
- *wrist* - fracture, wrist
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Workplace* - Workplace Safety
- *Construction* - Scaffolds and Ladders
- *Premises Liability* - Apartment Building
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Labor Law

Case Name: Saikou Sinera v. Embassy House Eat LLC, Stellar Management LLC, and Stellar Management Group, Inc., No. 24647/2013

Date: May 23, 2022

Plaintiff(s):
- Saikou Sinera, (Male, 29 Years)

Plaintiff Attorney(s):
- Sal A. Spano; Edelman, Krasin & Jaye PLLC; Westbury NY for Saikou Sinera

Plaintiff Expert (s):
- Ali E. Guy M.D.; Life Care Planning; Westbury, NY called by: Sal A. Spano
- Andrew Weintraub PhD; Economics; Ithaca, NY called by: Sal A. Spano
- Timothy D. Groth M.D.; Chronic Pain; Smithtown, NY called by: Sal A. Spano

Defendant(s):
- Embassy House Eat LLC
- Stellar Management LLC
- Stellar Management Group Inc.

Defense Attorney(s):

- Timothy G. McNamara; Traub Lieberman Straus & Shrewsberry LLP; Hawthorne, NY for Embassy House Eat LLC, Stellar Management Group Inc., Stellar Management LLC

Defendant Expert(s):

- Jane D. Mattson Ph.D.; Life Care Planning; Norwalk, CT called by: for Timothy G. McNamara
- Norman Marcus M.D.; Pain Management; New York, NY called by: for Timothy G. McNamara
- Alamgir Isani M.D.; Hand Surgery; New York, NY called by: for Timothy G. McNamara
- Bradley D. Weiner M.D.; Orthopedics; Middletown, NY called by: for Timothy G. McNamara
- Patricia Enriquez M.A.; Vocational Rehabilitation; New York, NY called by: for Timothy G. McNamara

Insurers:

- Nautilus Insurance Co.

Facts:

On March 2, 2012, plaintiff Saikou Sinera, 29, a painter, was painting an apartment inside a building located at 301 East 47th Street, in Manhattan. As he was standing on a ladder, he fell and fractured his left wrist.

Sinera sued the property owner, Embassy House East LLC; and the building managers, Stellar Management LLC and Stellar Management Group Inc. Sinera alleged that the defendants violated the labor law.

Sinera claimed that the ladder he was ascending was missing one of its plastic feet, which caused it to move and fall over while he was on it. Thus, plaintiff's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Sinera was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel argued that Sinera was the sole proximate cause of the accident by knowingly selecting a defective ladder from among many others and placed it on an uneven floor.

Plaintiff's counsel moved for summary judgment on liability, and it was granted on Jan. 30, 2019, after the court found that there was no evidence that Sinera knowingly used a defective ladder. Thus, the trial proceeded on the issue of damages only.

Injury:

Immediately after the accident, a co-worker transported Sinera to Lenox Hill Hospital, in Manhattan. Sinera sustained a comminuted distal fracture of the left, non-dominant wrist, which was treated conservatively. However, he claimed he suffered progressively worsening pain to the affected limb. Eventually, it was determined that Sinera was exhibiting signs and symptoms of complex regional pain syndrome, also known as reflex sympathetic dystrophy or causalgia, a chronic pain condition. As a result, Sinera ultimately underwent a series of stellate ganglion block injections with fluoroscopic guidance over the course of several years in order to relieve the pain.

Plaintiff's counsel noted that the diagnosis of CRPS was controverted by workers' compensation and most of Sinera's treating doctors. The plaintiff's chronic pain expert also diagnosed Sinera with CRPS, and testified that the presentation may have been atypical at times, but that the objective signs of CRPS were patent. He further testified that the symptoms waxed and waned in severity.

Sinera claimed that he was unable to return to work due to his progressively worsening pain. He also claimed that he attempted to return to work, but that it was short-lived, as he experienced hyper-sensitivity to his wrist and excruciating pain to the entire upper extremity.

Sinera alleged that his pain continues and that as a result, he will required additional treatment.

Thus, Sinera sought recovery of future medical costs, past and future loss of earnings, and damages for his past and future pain and suffering.

Although defense counsel conceded that the wrist fracture was due to the accident, he attacked the credibility of Sinera and his experts on the CRPS diagnosis and, instead, contended that Sinera did not suffer from CRPS. Specifically, defense counsel argued that Sinera's wrist fracture had fully healed and that the alleged signs and symptoms of CRPS were being exaggerated. Counsel further argued that the alleged symptoms were inconsistently documented or absent altogether from Sinera's treating doctors' notes. Thus, counsel argued that Sinera's symptoms did not meet the so-called "Budapest Criteria."

Defense counsel contended that Sinera failed to seek treatment in the several years leading up to the trial. Thus, counsel argued that Sinera failed to mitigate his injury, making Sinera responsible for his own alleged pain and suffering, as well as permanency.

In response, Sinera claimed that he did not have the means necessary to pursue continuous treatment.

Result:

The jury determined that Sinera's damages totaled $6,765,762.

Saikou Sinera

$ 2,500,000 Future Medical Cost

$ 265,762 Past Lost Earnings

$ 1,000,000 Future Lost Earnings

$ 2,000,000 Future Pain Suffering

$ 1,000,000 Past Pain Suffering

$ 6,765,762 Plaintiff's Total Award

Trial Information:

Judge: Leticia M. Ramirez

Demand: $1,800,000

Offer: $250,000

Trial Length: 7 days

Trial Deliberations: 4 hours

Jury Vote: unanimous

Jury Composition: 3 men, 3 women

Post Trial: Defense counsel moved to set aside the verdict. The motion is pending.

Editor's Comment:	This report is based on Information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.
Writer	Yawana Fields

Laborer claimed trench's collapse caused disabling injuries

Type: Mediated Settlement

Amount: $6,000,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *leg* - fracture, leg; fracture, femur; fracture, leg; fracture, fibula; fracture, leg; fracture, proximal fibula
- *back* - nerve impingement; bulging disc, lumbar; disc protrusion, lumbar
- *knee* - fracture, knee; medial meniscus, tear; lateral meniscus, tear; scar and/or disfigurement, knee; chondromalacia / chondromalacia patella
- *neck* - nerve impingement; bulging disc, cervical
- *other* - scar tissue; arthrofibrosis; physical therapy; trigger point injection
- *epidermis* - numbness
- *neurological* - radiculopathy; nerve impingement; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; debridement; knee surgery; meniscectomy; open reduction; internal fixation

Case Type:

- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Labor Law

Case Name: Marek Wodz and Urszula Wodz v. The City of New York and New York City Department of Design and Construction Mega Engineering and Land Surveying, P.C., No. 160924/15

Date: April 28, 2021

Plaintiff(s):

- Marek Wodz, (Male, 39 Years)
- Urszula Wodz, (, 0 Years)

Plaintiff Attorney(s):

- David H. Perecman; The Perecman Firm, P.L.L.C.; New York NY for Marek Wodz,, Urszula Wodz
- Mariusz J. Sniarowski; The Perecman Firm, P.L.L.C.; New York NY for Marek Wodz,, Urszula Wodz

Plaintiff Expert (s):

- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: David H. Perecman, Mariusz J. Sniarowski
- Marilyn White; Life Care Planning; New York, NY called by: David H. Perecman, Mariusz J. Sniarowski
- Michael J. Tuttman P.E.; Engineering; Clifton Park, NY called by: David H. Perecman, Mariusz J. Sniarowski
- Richard J. Schuster Ph.D.; Vocational Rehabilitation; New York, NY called by: David H. Perecman, Mariusz J. Sniarowski

Defendant(s):

- City of New York
- Perfetto Contracting Co. Inc.
- Mega Engineering and Land Surveying, P.C.
- New York City Department of Design and Construction

Defense Attorney(s):

- Michael E. Jones; Barry McTiernan & Moore LLC; New York, NY for Perfetto Contracting Co. Inc.
- Brian E. Middlebrook; Gordon Rees Scully Mansukhani, LLP; New York, NY for City of New York, New York City Department of Design and Construction
- Sarah K. Prager; Gordon Rees Scully Mansukhani, LLP; New York, NY for City of New York, New York City Department of Design and Construction
- Michael J. Byrne; Byrne & O'Neill, LLP; New York, NY for Mega Engineering and Land Surveying, P.C.

Defendant Expert(s):

- Adam N. Bender M.D.; Neurology; New York, NY called by: for Brian E. Middlebrook
- Paul L. Kuflik M.D.; Orthopedic Surgery; New York, NY called by: for Brian E. Middlebrook, Michael J. Byrne
- Lloyd R. Saberski M.D.; Pain Management; New Haven, CT called by: for Brian E. Middlebrook, Michael J. Byrne
- Peter D. Capotosto M.S., C.R.C.; Vocational Rehabilitation; Rochester, NY called by: for Brian E. Middlebrook, Michael J. Byrne
- Joseph F. Fetto M.D.; Orthopedic Surgery; Brooklyn, NY called by: for Brian E. Middlebrook, Michael J. Byrne
- Herbert S. Sherry M.D.; Orthopedic Surgery; New York, NY called by: for Brian E. Middlebrook, Michael J. Byrne

Insurers:

- Travelers Property Casualty Corp.
- Starr Cos.
- Catlin Insurance Co. Inc.

Facts:

On May 21, 2015, plaintiff Marek Wodz, 39, a union-affiliated laborer, worked at an excavation site that was located on 86th Street, near its intersection at Bay Seventh Street, in the Bensonhurst section of Brooklyn. Wodz was working in a trench in which a water main was being installed. The trench collapsed, and Wodz claimed that he suffered injuries of his back, a knee, a leg and his neck.

Wodz sued the roadway's owner, the city of New York; the excavation project's manager, the New York City Department of Design and Construction; and a contractor that oversaw and supervised the work site, Mega Engineering and Land Surveying, P.C. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

The city of New York and the New York City Department of Design and Construction impleaded Wodz's employer, Perfetto Contracting Co. Inc. The first-party defendants alleged that Perfetto Contracting controlled and directed Wodz's work functions. They sought common-law indemnification.

Wodz's counsel claimed that the defendants had not undertaken any measure to prevent a collapse of the trench. Witnesses claimed that several inches of water had accumulated in the trench, and Wodz's counsel claimed that the surrounding soil was of a non-homogenous composition -- containing ash, sand or silt -- and therefore more likely to collapse than a trench created in homogenous soil. Wodz's counsel contended that the defendants violated New York Codes, Rules, and Regulations title 23, part 4.2(a), which requires adequate shoring of work-site trenches whose depth equals or exceeds three feet, provided that the surrounding soil is non-homogenous, or any work-site trench whose depth equals or exceeds five feet. Engineering plans indicated that the trench's depth was supposed to exceed five feet. Wodz's counsel also contended that the defendants violated New York Codes, Rules, and Regulations title 23, part 4.1(b), which prohibits a worker's use of a trench without proper safeguards against a collapse. Wodz's counsel contended that the violations established that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

The defense contended that the trench's depth did not reach five feet and that the surrounding soil was homogenous.

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

Injury:

Wodz was retrieved by an ambulance, and he was transported to a hospital. An X-ray revealed that he suffered a fracture of his left leg's femoral condyle, which is an upper component of the left knee. Another X-ray revealed that he suffered a fracture of the head of his leg's fibula.

Wodz claimed that he also suffered tears of his left knee's lateral and medial menisci, that

he suffered trauma that produced a protrusion of his L5-S1 intervertebral disc, and that he suffered trauma that produced bulges of his C3-4, C6-7, L2-3, L3-4 and L4-5 discs. He claimed that his left knee developed arthrofibrosis, which is a painful, restrictive condition caused by a buildup of scar tissue, and chondromalacia, which involves softening of cartilage. Wodz also claimed that he developed residual impingement of a spinal nerve and resultant radiculopathy. He claimed that his legs have developed reflex sympathetic dystrophy, which is a form of complex regional pain syndrome, a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. Wodz claimed that the syndrome's residual effects also included numbness.

Wodz immediately underwent open reduction and internal fixation of the fractured components of his right fibula. He also underwent arthroscopic surgery that addressed his left knee. The latter procedure included debridement of damaged tissue. Wodz's hospitalization lasted four days.

Wodz soon commenced a course of physical therapy. The treatment lasted more than four years.

In August 2015, Wodz underwent another arthroscopic surgery that addressed his left knee. The procedure included a meniscectomy, which involved excision of a damaged portion of the knee's medial meniscus. In June 2017, Wodz underwent another arthroscopic surgery that addressed his left knee. The procedure included a meniscectomy, which involved excision of damaged portions of the knee's lateral and medial menisci.

Wodz also underwent administration of two painkilling nerve-block injections, which were directed to his lumbar region, administration of a painkilling trigger-point injection and administration of a painkilling injection that was directed to his sacroiliac joint.

Wodz claimed that his left knee's fracture caused a deformity that necessitated his use of corrective braces. He also claimed that he suffers constant residual pain that stems from his back, his left knee, his legs and his neck. He claimed that his pain and resultant limitations prevent his performance of physical labor. He has not worked since the accident. He further claimed that his condition will worsen and eventually necessitate his retention of an aide and a housekeeper. He also claimed that he requires further treatment. He sought reimbursement of a workers' compensation lien in the amount of $400,445.86, and he sought recovery of $2,216,175 for future medical expenses, $400,251 for past lost earnings, $670,522 for past loss of employer-provided health insurance, $2,785,814 for future loss of earnings, $1,046,100 for future loss of pension benefits, and unspecified damages for past and future pain and suffering. His wife presented a derivative claim.

The defense contended that Marek Wodz's bulging and protruding discs are degenerative conditions, not related to the accident.

The defense's expert neurologist and expert pain-management specialist submitted reports in which they opined that Wodz does not exhibit objective evidence of reflex sympathetic dystrophy. The expert pain-management specialist also opined that Wodz can perform sedentary work and would eventually be able to perform more physically challenging work.

Result: The parties negotiated a pretrial settlement. Perfetto Contracting's primary insurer tendered its policy, which provided $2 million of coverage; Perfetto Contracting's excess insurer agreed to pay $2.5 million, from a policy that provided $3 million of coverage; Mega Engineering and Land Surveying's primary insurer agreed to pay $750,000, from a policy that provided $1 million of coverage; and Mega Engineering and Land Surveying's excess insurer agreed to pay $750,000, from a policy that provided $1 million of coverage. The city of New York did not contribute. Thus, the settlement totaled $6 million. Marek Wodz was allocated $5.9 million, and his wife was allocated $100,000. The settlement also included a waiver of Marek Wodz's workers' compensation lien. The settlement's negotiations were mediated by Boris Gelfand.

Urszula Wodz

Marek Wodz

Trial Information:

Judge: Boris Gelfand

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

Laborer claimed fall in pool caused permanent injuries

Type: Verdict-Plaintiff

Amount: $5,920,924

Actual Award: $3,600,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):

- *leg* - fracture, leg; fracture, fibula
- *back* - lower back
- *knee* - meniscus, tear; medial meniscus, tear; lateral meniscus, tear
- *neck*
- *ankle* - fracture, ankle; ankle ligament, tear; talofibular ligament, tear; fracture, distal fibula
- *other* - fracture; neuropathy; chondroplasty; ligament, tear; physical therapy; steroid injection; epidural injections; bilateral knee injury; bilateral torn menisci
- *foot/heel* - foot
- *neurological* - nerve damage/neuropathy; neurological impairment; neuritis; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; knee surgery; meniscectomy
- *mental/psychological* - anxiety; depression

Case Type:

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

Case Name: Ernesto Sanchez v. 74 Wooster Holding, LLC., No. 700051/2018

Date: July 25, 2023

Plaintiff(s):

- Ernesto Sanchez , (Male, 53 Years)

Plaintiff Attorney(s):	• Peter S. Thomas; Peter S. Thomas, P.C., Forest Hills, N.Y., of counsel, Lipsig, Shapey, Manus & Moverman, P.C; New York NY for Ernesto Sanchez
Plaintiff Expert (s):	• Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Peter S. Thomas • Jacob Rauchwerger M.D.; Pain Management; Rockville Centre, NY called by: Peter S. Thomas • Irving Friedman M.D.; Neuropsychology; Brooklyn, NY called by: Peter S. Thomas • Sanjit R. Konda M.D.; Orthopedic Surgery; Jamaica, NY called by: Peter S. Thomas • Nicholas M. Bellizzi P.E.; Civil; Holmdel, NJ called by: Peter S. Thomas
Defendant(s):	• 74 Wooster Holding, LLC.
Defense Attorney(s):	• Kevin R. McNiff; Mulholland, Minion, Davey, McNiff & Beyrer; Williston Park, NY for 74 Wooster Holding, LLC.
Defendant Expert(s):	• Neil S. Roth M.D.; Orthopedic Surgery; New York, NY called by: for Kevin R. McNiff • William B. Head M.D.; Neurology; New York, NY called by: for Kevin R. McNiff
Insurers:	• Merchants Insurance Group • Colony Insurance Co.

Facts:

On Nov. 16, 2017, plaintiff Ernesto Sanchez, 53, a contractor, was working at a construction site at 74 Wooster Street in Manhattan. Sanchez fell at the job site.

Sanchez alleged injuries to an ankle, a foot and both knees. He also claimed neck, back and psychological injuries.

Sanchez sued the property's owner, 74 Wooster Holding LLC. The lawsuit alleged that the defendant negligently failed to provide a safe workplace. The lawsuit further alleged that the defendant's failure constituted a violation of the New York State Labor Law.

Sanchez's counsel specifically contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law §240(1), and that Sanchez was not provided the proper, safe equipment that is a requirement of the statute. Plaintiff's counsel further alleged that the defendant violated Labor Law §200, which defines general workplace-safety requirements.

Sanchez claimed that he was walking along a narrow path to an empty and uncovered swimming pool when his foot became caught on wet, loose construction materials. Sanchez said that this caused him to fall into the 5-foot-deep pool.

Sanchez's civil engineering expert testified that the proximate causes of the accident were the wet, loose debris and the absence of any protective structures/equipment such as handrails, nets, guards or coverings. The expert concluded that the defendant violated labor laws and industrial codes.

The defense questioned the legitimacy of Sanchez's allegations. The defense maintained that Sanchez gave varying accounts of how the accident occurred. In one instance, Sanchez claimed that he slipped on wet stairs. In another recorded statement, he said that he slipped on the deck and then in the pool.

The defense further contended that Sanchez did not encounter construction debris as he alleged. The defense also maintained that the worksite complied with all applicable safety codes.

Injury:

Sanchez was driven to a walk-in medical clinic and diagnosed with an ankle fracture. He specifically had a distal shaft fracture of the left fibula. He was placed in a walking boot and discharged with instructions to follow up with an orthopedic surgeon.

Sanchez was ultimately diagnosed with tears of the left anterior talofibular ligament, right medial meniscus and left lateral meniscus. He also alleged neuropathy, complex regional pain syndrome and mononeuritis of the left ankle/foot. He additionally claimed depression and anxiety.

Following the accident, Sanchez started seeing a workers' compensation physician and an orthopedic surgeon. He began a course of physical therapy that lasted through summer 2018. That July, Sanchez underwent an arthroscopic partial menisectomy of his right knee. In October 2018, he underwent an arthroscopic partial meniscectomy and chondroplasty of his left knee.

Following the knee surgeries, Sanchez resumed physical therapy. He also received three epidural steroid injections to his left ankle.

In February 2020, Sanchez underwent a surgical repair of the anterior talofibular ligament. After the surgery, Sanchez continued with physical therapy and pain management treatment through 2022. He also received counseling for his anxiety and depression.

Sanchez's orthopedic surgeon testified that the injuries to Sanchez's knees and ankle impaired the plaintiff's gait, causing a misalignment of his spine and subsequent neck and back pain. The physician recommended future knee replacements, additional ankle surgery and a potential back surgery.

Sanchez's neuropsychologist attributed the plaintiff's anxiety and depression to the accident.

Sanchez testified that he experiences daily pain in his neck, low back, knees and ankle. He has not returned to work since the accident because he has difficulty sitting and standing for long periods.

Sanchez sought recovery of $1,670,924 in future medical expenses, $2 million in damages for his past pain and suffering and $4 million for his future pain and suffering.

The defense's orthopedic surgery expert testified that Sanchez's ankle fracture healed and that his other complaints were unrelated to any trauma he sustained in the accident. The defense's neurology expert similarly attributed the plaintiff's complaints and treatment to pre-existing degenerative conditions.

The parties negotiated a high/low stipulation: Damages could not exceed $3.6 million, but they had to equal or exceed $900,000.

Result: The jury determined that 74 Wooster Holding was negligent and that the defendant negligently failed to use reasonable care to provide Sanchez a safe place to work. The jury concluded that 74 Wooster Holding's negligence was a substantial factor in causing the accident.

The jury further determined that the defendant violated Industrial Code Regulation 23-1.7(e) (2), that this violation constituted a failure to use reasonable care and that the violation was a substantial factor in causing the accident. The jury also concluded that Sanchez was not negligent.

The jury awarded Sanchez $5,920,924. He recovered the stipulated limit: $3.6 million.

Ernesto Sanchez

$ 750,000 Past Pain Suffering

$ 1,670,924 future medical expenses for 21 years

$ 3,500,000 future pain and suffering for 21 years

$ 5,920,924 Plaintiff's Total Award

Trial Information:

Judge: Allan B. Weiss

Demand: $4 million

Offer: $1,075,000 (after liability verdict)

Trial Length: 12 days

Trial Deliberations: 2 hours

Jury Vote:	6-0
Jury Composition:	4 male, 2 female
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Suit: Companies were liable for worker's intoxicated driving

Type: Verdict-Plaintiff

Amount: $5,053,946

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula; crush injury, leg; scar and/or disfigurement, leg
- *other* - physical therapy; hardware implanted
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - skin graft; debridement; open reduction; internal fixation

Case Type:
- *Motor Vehicle* - Pedestrian; Single Vehicle
- *Worker/Workplace Negligence* - Negligent Hiring; Negligent Supervision

Case Name: Daniel Dwyer v. Robert Wilson, I.T. Landes & Son, Inc. d/b/a I.T. Landes Company, People Ready, Inc. and TrueBlue Enterprises, Inc., No. 191001662

Date: June 01, 2023

Plaintiff(s):
- Daniel Dwyer , (Male, 27 Years)

Plaintiff Attorney(s):
- Andrea M. Sasso; Stampone O’Brien Dilsheimer Law.; Philadelphia PA for Daniel Dwyer
- Kevin P. O’Brien; Stampone O’Brien Dilsheimer Law; Philadelphia PA for Daniel Dwyer

Plaintiff Expert (s):

- Guy W. Fried M.D.; Physical Medicine; Philadelphia, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Alex Karras O.T.R.; Life Care Planning; Frazer, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Romy Tota Ed.D.; Vocational Rehabilitation; Lahaska, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Andrew C. Verzilli M.B.A.; Economics; Lansdale, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Justin P. Schorr Ph.D.; Accident Reconstruction; Abington, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Saqib Rehman M.D.; Orthopedics; Philadelphia, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Shailen Jalali M.D.; Pain Management; Philadelphia, PA called by: Andrea M. Sasso, Kevin P. O'Brien
- Lawrence J. Guzzardi M.D.; Alcohol Toxicology; Hockessin, DE called by: Andrea M. Sasso, Kevin P. O'Brien

Defendant(s):

- Robert Wilson
- People Ready, Inc.
- I.T. Landes & Son, Inc.
- TrueBlue Enterprises, Inc.

Defense Attorney(s):

- Maureen E. Daley; Rawle & Henderson, LLP; Philadelphia, PA for I.T. Landes & Son, Inc.
- Kevin E. Hexstall; Marshall Dennehey Warner Coleman & Goggin, P.C.; Philadelphia, PA for People Ready, Inc., TrueBlue Enterprises, Inc.
- Kyle T. McGee; Margolis Edelstein; Philadelphia, PA for People Ready, Inc., TrueBlue Enterprises, Inc.
- Kathryn Sears; Margolis Edelstein; Philadelphia, PA for People Ready, Inc., TrueBlue Enterprises, Inc.

Facts:

On July 1, 2019, plaintiff Daniel Dwyer, 27, a laborer, was unloading equipment from his work truck that was parked on Ridge Avenue in Philadelphia. At the same time, Robert Wilson was driving on Ridge Avenue and struck the rear of a parked vehicle, which pushed the vehicle into Dwyer, crushing his left leg.

Wilson, who was intoxicated, was a skilled worker for the temporary agency, People Ready Inc. On the day of the accident, he had been placed to work at a job site run by I.T. Landes & Son Inc., which ultimately sent him home, minutes before the accident.

Dwyer sued Wilson, I.T. Landes, People Ready and an affiliate of People Ready, TrueBlue Enterprises Inc. Dwyer alleged that Wilson was negligent in the operation of a vehicle. He further alleged that People Ready and I.T. Landes negligently hired and trained Wilson.

Prior to the accident, I.T. Landes had sent Wilson home from its work site after he was determined to be impaired from an interaction of two prescribed medications (Xanax and Benadryl) that he had taken. According to Dwyer's expert in toxicology, the interaction of the medications severely disrupted Wilson's judgment and reaction capabilities, which caused him to crash his vehicle. The expert concluded that Wilson should not have been operating a vehicle as a result of his impaired condition.

Dwyer's counsel faulted I.T. Landes for allowing a visibly incoherent Wilson to drive after it determined that his impairment disqualified from operating machinery. At the very least, counsel argued, I.T. Landes should have had Wilson sit out on the work site until he recovered, or should have called him a ride-sharing vehicle to take him home.

Dwyer's counsel contended that People Ready failed to train Wilson on the potential side effects of mixing prescription drugs, and failed to properly supervise him.

Wilson testified that he was unaware of the harmful interaction that Xanax and Benadryl would have on him, and that he would not have taken the two drugs before work if he had known that.

Counsel for I.T. Landes maintained that People Ready was the more culpable entity since it did not sufficiently vet Wilson when it hired him.

Counsel for People Ready asserted that, since the motor-vehicle accident did not happen while Wilson was working, the temp agency had no responsibility over Wilson's actions. The defense additionally argued that I.T. Landes should not have released Dwyer from the job site given his intoxicated state.

Injury:

Dwyer was taken by ambulance to a hospital and admitted. He was diagnosed with a crush injury to his lower left leg, which consisted of fractures to his tibia and fibula and significant damage to his arteries. He was ultimately diagnosed with complex regional pain syndrome.

Dwyer underwent emergency surgery. During the 18 days he was hospitalized, he underwent approximately 12 operations, which consisted of open reduction with internal fixation, irrigations, skin grafts, debridements and extensive wound treatment.

On July 19, 2019, Dwyer was transferred to an inpatient rehabilitation facility and eventually to a different one. It was not until December 2019 when Dwyer was finally released home.

Following his discharge, Dwyer continued to treat with outpatient physical therapy. In February 2020, a revision surgery was performed to his left leg. He later came under the care of a pain-management doctor for his CRPS, and continued to receive pain injections to his left leg at the time of trial.

Dwyer's expert in orthopedic surgery testified about the severe and extensive vascular, tissue and bone damage Dwyer's leg from the accident, and how there is a strong possibility that his leg could be amputated if it does not heal properly.

Dwyer's experts in physical medicine and pain management testified that Dwyer requires lifelong treatment, which consists of ongoing pain injections and medications and the potential amputation of his left leg, if its condition worsens.

According to the plaintiff's expert in vocational rehabilitation, Dwyer is unable to return to his job as a laborer and has a narrow path to employability, given his education level.

Dwyer testified how his physical limitations permanently impacted his life. He walks with a cane and had to move to a one-floor residence, as well as forego his outdoor lifestyle. He discussed his fear of potentially losing his left leg.

Dwyer sought to recover $633,945.52 in past medical costs, plus approximately $1.5 million in future medical costs, about $120,000 in future past wages and roughly $800,000 in future lost earnings. He further sought damages for past and future pain and suffering.

The defense maintained that Dwyer was capable of working in a sedentary-based job in which he could potentially earn a higher salary than he had as a laborer.

Result: The jury found I.T. Landis 70 percent liable, People Ready/TrueBlue 25 percent liable and Wilson five percent liable. No liability was found against Dwyer. The jury determined that Dwyer’s damages totaled $5,053,945.52.

Daniel Dwyer

$ 633,945.52 Past Medical Cost

$ 1,500,000 Future Medical Cost

$ 120,000 Past Lost Earnings

$ 800,000 Future Lost Earnings

$ 2,000,000 non-economic damages

$ 5,053,945.52 Plaintiff's Total Award

Trial Information:

Judge: Kenneth J. Powell Jr.

Trial Length: 9 days

Trial Deliberations: 0

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.

Writer Aaron Jenkins

Railroad station's leak wasn't addressed, fallen woman claimed

Type: Mediated Settlement

Amount: $4,900,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):
- *leg* - shortened
- *ankle* - fracture, ankle; pilon fracture
- *other* - osteomyelitis
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - osteotomy; debridement; open reduction; external fixation; internal fixation

Case Type:
- *Premises Liability* - Snow and Ice; Negligent Repair and/or Maintenance; Dangerous Condition of Public Property
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Mayra Adames v. Long Island Rail Road Metropolitan Transportation Authority, No. 19851/13

Date: October 04, 2019

Plaintiff(s):
- Mayra Adames (Female, 38 Years)

Plaintiff Attorney(s):
- Heather Nathan; Rodriguez & Nathan, PLLC; Rockville Centre NY for Mayra Adames
- Glen P. Rodriguez; Rodriguez & Nathan, PLLC; Rockville Centre NY for Mayra Adames

Plaintiff Expert (s):

- Omar Saleem M.D.; Orthopedic Surgery; Garden City, NY called by: Heather Nathan, Glen P. Rodriguez
- Barry C. Root M.D.; Physical Medicine; Glen Cove, NY called by: Heather Nathan, Glen P. Rodriguez
- James Vosseller M.D.; Orthopedic Surgery; New York, NY called by: Heather Nathan, Glen P. Rodriguez
- Joseph C. Cannizzo P.E.; Engineering; Mineola, NY called by: Heather Nathan, Glen P. Rodriguez
- Ronald E. Missun Ph.D.; Economics; Louisville, KY called by: Heather Nathan, Glen P. Rodriguez

Defendant(s):

- Long Island Rail Road
- Metropolitan Transportation Authority

Defense Attorney(s):

- Richard Femia; Goldberg Segalla LLP; Garden City, NY for Long Island Rail Road, Metropolitan Transportation Authority

Defendant Expert(s):

- Robert L. Michaels M.D.; Orthopedic Surgery; Mineola, NY called by: for Richard Femia

Facts:

On Dec. 28, 2012, plaintiff Mayra Adames, 38, a home-care attendant, fell while she was traversing the grounds of a railroad station that was located alongside the intersection of Front Street and North Village Avenue, in the village of Rockville Centre. She suffered an injury of an ankle.

Adames sued the railroad station's operator, the Long Island Rail Road, and the Long Island Rail Road's parent, the Metropolitan Transportation Authority. The lawsuit alleged that the defendants were negligent in their maintenance of the station. The lawsuit further alleged that the defendants' negligence created a dangerous condition that caused Adames' fall.

The accident occurred on a brick walkway that was located beneath the station's platform, which was elevated far above ground level. Adames claimed that she slipped on ice that had formed in a depressed area of the walkway, and she claimed that the ice was a result of water having leaked from the platform. Adames' expert engineer submitted a report in which he opined that the defendants had attempted to repair the leak some five years before the accident, and he therefore contended that the defendants had been aware of the leak. The expert also contended that Adames fell in a dangerously concave section of the walkway.

Defense counsel contended that the accident was a result of Adames having failed to exercise due caution. He claimed that snow and ice were prevalent at the time of the accident and that Adames therefore should have anticipated slippery conditions.

Injury: Adames suffered a fracture of her left ankle. The injury was deemed a pilon fracture, which indicates a comminuted fracture of the distal region of a leg's tibia.

Adames was retrieved by an ambulance, and she was transported to South Nassau Communities Hospital, in the hamlet of Oceanside. She immediately underwent open reduction and internal fixation of her fracture.

Adames' left leg developed residual, chronic osteomyelitis. The condition ultimately necessitated 16 surgeries. The procedures included irrigation of wounds, debridement of damaged tissue, implantation and subsequent removal of antibiotic agents, lengthening of the tibia, application of an external fixation device, and an osteotomy, which involved shaving of bone.

Adames claimed that her left leg has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy." Adames also claimed that, as a result of her left leg's surgeries, the leg's length is 5 to 6 millimeters shorter than it was prior to the accident. One of Adames' treating orthopedists, Dr. James Vosseller, submitted a report in which he opined that Adames' osteomyelitis has not resolved.

Adames claimed that her residual effects prevent her performance of many physical activities, including any type of work. She has not worked since the accident. She claimed that she requires use of an assistive walking device, that she requires the presence of a personal aide, and that she will require lifelong physical therapy.

Adames sought recovery of a total of nearly $4 million for future medical expenses and life-care needs, a total of $382,246 to $1,216,062 for past and future loss of earnings, and unspecified damages for past and future pain and suffering.

Defense counsel contended that Adames is exaggerating the extent of her residual effects and does not require further treatment.

Result: The parties negotiated a pretrial settlement. The Metropolitan Transportation Authority agreed to pay $4.9 million. The settlement's negotiations were mediated by Richard Byrne, of National Arbitration and Mediation Inc.

Trial Information:

Judge: Richard Byrne

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

Writer Caitlin Granfield

Plaintiff said he is no longer able to work due to hand pain

Type: Mediated Settlement

Amount: $4,000,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):
- *back* - lower back; herniated disc; nerve impingement; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - herniated disc; nerve impingement; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7
- *other* - laceration; neurolysis; contracture; physical therapy; steroid injection; epidural injections; tenolysis/'tendolysis; avulsion (non-fracture); resultant radiculopathy
- *hand/finger* - hand; finger
- *neurological* - radiculopathy; nerve impingement; nerve damage/neuropathy; reflex sympathetic dystrophy; complex regional pain syndrome
- *arterial/vascular* - blood loss
- *surgeries/treatment* - discectomy; decompression surgery
- *mental/psychological* - depression

Case Type:
- *Construction* - Accidents; Labor Law
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Labor Law

Case Name: Bledar Greca and Elsida Greca v. Choice Associates LLC, Cekaj Construction Corp., and AMD & Associates Inc., No. 22075/2017E

Date: May 20, 2023

Plaintiff(s):
- Bledar Greca, (Male, 45 Years)
- Elsida Greca, (, 0 Years)

Plaintiff Attorney(s):
- Ylber Albert Dauti; The Dauti Law Firm, P.C.; New York NY for Bledar Greca,, Elsida Greca

Plaintiff Expert (s):

- Alan M. Leiken Ph.D.; Economics; Stony Brook, NY called by: Ylber Albert Dauti
- Aric D. Hausknecht M.D.; Neurology; New York, NY called by: Ylber Albert Dauti
- Edwin Perez M.D.; Pain Management; New York, NY called by: Ylber Albert Dauti
- Kevin E. Wright M.D.; Orthopedic Surgery; New York, NY called by: Ylber Albert Dauti

Defendant(s):

- Donato Inc.
- Donato Plumbing Inc.
- AMD & Associates Inc.
- Choice Associates, LLC
- Cekaj Construction Corp.
- Donato Plumbing Group Inc.
- KG Plumbing & Sprinkler Corp.
- Donato Plumbing And Heating Corp.

Defense Attorney(s):

- John T. O'Dwyer; Goetz Schenker Blee & Wiederhorn LLP; New York, NY for Choice Associates, LLC

Defendant Expert(s):

- Daniel J. Feuer M.D.; Neurology; Astoria, NY called by: for , John T. O'Dwyer

Insurers:

- Chubb Group of Insurance Cos.
- AmTrust Financial Services Inc.

Facts:

On Feb. 21, 2017, plaintiff Bledar Greca, 45, a day laborer, was working as a plumber's assistant at a construction site at 53 Ludlow Street in Manhattan. Greca claimed that he was injured at the job site. He specifically alleged hand, neck, back and psychological injuries.

Greca sued the construction project's general contractor, Cekaj Construction Corp.; the company that had obtained the plumbing permit with the Department of Buildings, AMD & Associates Inc.; and the property's owner, Choice Associates LLC. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

A default judgment was entered against Cekaj Construction Corp. Counsel for AMD & Associates filed a motion for summary judgment that plaintiff's counsel did not oppose.

Choice Associates impleaded Greca's employer, KG Plumbing & Sprinkler Corp. Choice Associates also impleaded Donato Plumbing Inc. and other related entities. The third-party actions were ultimately dismissed.

Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Greca was not provided the proper, safe equipment that is a requirement of the statute. Greca's counsel also claimed a violation of New York Codes, Rules, and Regulations title 23, part 1.7(b)(1)(i).

Greca specifically alleged that he was walking on the property's fifth floor when one of the temporary floor's plywood pieces shifted. Greca said that this caused him to fall through an opening in the floor. Greca claimed that, in order to avoid falling to the floor below, he grabbed one of the metal studs that was part of the fourth floor's ceiling.

Counsel for Choice Associates disputed Greca's version of events and denied that the accident occurred on the company's premises. The defense claimed that Greca slipped and fell on snow/ice on a nearby public sidewalk. The defense also noted that Greca told hospital personnel that he had slipped and fallen on glass.

Greca's counsel moved for summary judgment on liability. The motion was originally denied by Judge Lucindo Suarez. However, the Appellate Division of the First Department overturned the lower court's decision and granted the plaintiff's motion. The matter proceeded to damages.

Injury:

The day of the accident, Greca presented to Jacobi Medical Center in the Bronx.

At the hospital, doctors diagnosed lacerations and an avulsion to the palm of Greca's right, dominant hand. Greca suffered significant bleeding from the injuries. He was medicated

with intravenous morphine and released from the hospital the same day.

Greca alleged that the lacerations caused nerve damage. He also claimed that his right hand developed contractures of the ring and small fingers along with complex regional pain syndrome.

Greca was further diagnosed with herniations of his C5-6, C6-7, L4-5 and L5-S1 intervertebral discs. He additionally claimed that he developed residual impingement of spinal nerves and resultant radiculopathy that stemmed from his neck. He also claimed that his injuries caused him to develop depression.

Approximately one week after the accident, Greca underwent an outpatient surgical procedure on his right hand. The surgery included repairs of the small and ring finger's flexor digitorum profundus and flexor digitorum superficialis. The procedure also included a repair of a common digital nerve, a carpal tunnel release and an exploration and washout of the right hand laceration.

In September 2017, Greca underwent another outpatient surgical procedure on his right hand. The surgery included neurolysis of the median nerve and tenolysis of the middle, ring and little finger's flexor digitorum profundus and flexor digitorum superficialis.

Greca had a third outpatient right hand surgery in July 2019. That surgery involved extensor tenolysis and proximal interphalangeal joint capsulotomies of the long, ring and small fingers. Then, in March 2020, Greca underwent an outpatient decompression of the right hand's ulnar nerve.

Greca additionally underwent about 40 months of conservative treatment that included physical therapy and epidural steroid injections. In July 2021, he received a spinal cord stimulator. A year later, he had a transforaminal endoscopic partial discectomy at L4-5. Greca also received psychological counseling.

Greca still has a contracture of his right hand's small finger. He has not worked since the accident.

Greca sought reimbursement of a $283,088.80 workers' compensation lien. He also sought recovery of $1.3 million in past and future lost earnings. He additionally sought recovery of damages for his past and future pain and suffering. His wife, Elsida Greca, filed a derivative claim.

The defense's neurology expert opined that Bledar Greca did not suffer from complex regional pain syndrome. The expert added that Greca should be able to work and do other activities of daily living with his injured right hand.

Result: Shortly before the scheduled start of the damages-only trial, the parties negotiated a settlement. Choice Associates' primary insurer tendered its $1 million policy, and Choice Associates' excess insurer agreed to pay an additional $3 million. The negotiations were mediated by Joseph Spinola.

Elsida Greca

Bledar Greca

Trial Information:

Judge: Doris M. Gonzalez, Joseph P. Spinola

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel for Choice Associates did not respond to the reporter's phone calls. Counsel for the remaining defendants were not asked to contribute.

Writer Priya Idiculla

Pedestrian struck by forklift, suffered degloving of foot

Type: Settlement

Amount: $3,100,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):
- *leg*
- *other* - infection; scar and/or disfigurement
- *epidermis* - degloving
- *foot/heel* - foot
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - skin graft
- *mental/psychological* - anxiety; depression; post-traumatic stress disorder

Case Type:
- *Workplace* - Forklift; Workplace Safety
- *Motor Vehicle* - Pedestrian; Reversing Vehicle
- *Worker/Workplace Negligence* - Negligent Supervision

Case Name: Shaked Shapira v. New York One LLC and Edilberto Hernandez, No. 157770/16

Date: March 09, 2020

Plaintiff(s):
- Shaked Shapira, (Male, 25 Years)

Plaintiff Attorney(s):
- Daniel P. O'Toole; Block O'Toole & Murphy, LLP; New York NY for Shaked Shapira
- Scott C. Occhiogrosso; Block O'Toole & Murphy, LLP; New York NY for Shaked Shapira

Plaintiff Expert (s):

- Alan Leiken Ph.D.; Economics; Stony Brook, NY called by: Daniel P. O'Toole, Scott C. Occhiogrosso
- Debra S. Dwyer Ph.D; Economics; Stony Brook, NY called by: Daniel P. O'Toole, Scott C. Occhiogrosso
- Edwin F. Richter III, M.D.; Physical Rehabilitation; Stamford, CT called by: Daniel P. O'Toole, Scott C. Occhiogrosso

Defendant(s):

- New York One LLC
- Edilberto Hernandez

Defense Attorney(s):

- Nicholas J. Marino; Foran Glennon Palandech Ponzi & Rudloff PC; New York, NY for New York One LLC, Edilberto Hernandez

Defendant Expert(s):

- Lloyd Saberski M.D.; Pain Management; New Haven, CT called by: for Nicholas J. Marino
- Jessica Gallina M.D.; Orthopedic Surgery; New York, NY called by: for Nicholas J. Marino

Insurers:

- Samsung Fire & Marine Insurance Co. Ltd.

Facts:

On Aug. 23, 2016, plaintiff Shaked Shapira, 25, a security guard, was struck by a reversing forklift. The incident occurred on West 37th Street, near its intersection at Ninth Avenue, in Manhattan's Garment District. The forklift's driver, Edilberto Hernandez, was unloading a truck that contained a delivery intended for his employer, which occupied a nearby building. Shapira suffered an injury of a foot.

Shapira sued Hernandez and Hernandez's employer, New York One LLC. The lawsuit alleged that Hernandez was negligent in his operation of the forklift, that New York One was vicariously liable for Hernandez's actions, that New York One was negligent in its supervision of the forklift's use, and that New York One's negligence contributed to the accident.

Plaintiff's counsel contended that the accident was a result of Hernandez having failed to ensure that the forklift's path was clear. Plaintiff's counsel also contended that New York One should have provided a flagman.

Defense counsel contended that Shapira inattentively stepped into the forklift's path.

Injury: Shapira suffering degloving of his left foot, including a significant loss of the heel's fat pad. He was retrieved by an ambulance, and he was transported to a hospital, where his wound was cleaned and bandaged. He later required application of grafts of skin.
Shapira subsequently developed an infection that required administration of a regimen of antibiotics. Further infections followed.
Shapira claimed that his left leg has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy."
Shapira claimed that his complex regional pain syndrome prevents his performance of many physical tasks. He also claimed that he had been offered more-lucrative, union-affiliated security work sometime around the time of the accident, but that his injury and ongoing residual effects do not permit his performance of the job. He further claimed that he developed residual post-traumatic stress disorder, with manifestations that included anger, anxiety, depression and hopelessness. He underwent psychological counseling.
Shapira's expert physiatrist submitted a report in which he opined that Shapira requires lifelong treatment that will include medication and physical therapy.
Shapira sought recovery of $820,999 for future medical expenses, a total of $4,161,607 for past and future loss of earnings and benefits, and unspecified damages for past and future pain and suffering.
Defense counsel contended that Shapira does not suffer complex regional pain syndrome, that Shapira's treatment was excessive, and that Shapira possesses a master's degree in music business and is therefore qualified to perform work far more lucrative than the union-affiliated security job he had hoped to perform.

Result: The parties negotiated a pretrial settlement. The defendants' insurer tendered its primary policy, which provided $2 million of coverage, and it agreed to pay $1.1 million from an excess policy that provided $5 million of coverage. Thus, the settlement totaled $3.1 million.

Trial Information:

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel declined to contribute.

Writer John Schneider

Dealership's negligence caused customer to suffer CRPS: plaintiff

Type: Verdict-Plaintiff

Amount: $3,022,500

State: New Jersey

Venue: Camden County

Court: Camden County Superior Court, NJ

Injury Type(s):
- *arm*
- *leg*
- *epidermis* - numbness; paresthesia
- *hand/finger* - hand; finger
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - Failure to Warn; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Amanda Fahrer and Todd Fahrer v. McRech, Inc. t/a Turnersville Dodge Chrysler Jeep Ram, Foulke Management Corp., and McCall Remi Charlie, LLC, No. CAM-L-000369-19

Date: February 10, 2023

Plaintiff(s):
- Todd Fahrer , (Male, 0 Years)
- Amanda Fahrer, (Female, 42 Years)

Plaintiff Attorney(s):
- Paul A. Sochanchak; Lundy Law; Cherry Hill NJ for Amanda Fahrer,, Todd Fahrer
- Andrew J. Van Wagner; Liss & Marion, P.C.; for Amanda Fahrer,, Todd Fahrer

Plaintiff Expert (s):

- Carl R. Scatena; Environmental Sciences; North Wales, PA called by: Paul A. Sochanchak, Andrew J. Van Wagner
- Philip Getson D.O.; Family Medicine; Evesham, NJ called by: Paul A. Sochanchak, Andrew J. Van Wagner
- Scott Leggoe D.O.; Neuromuscular Diseases; Vorhees, NJ called by: Paul A. Sochanchak, Andrew J. Van Wagner
- Varsha A. Desai B.S.N., R.N.; Life Care Planning; Blue Bell, PA called by: Paul A. Sochanchak, Andrew J. Van Wagner
- Enrique Aradillas Lopez M.D.; Neurology; Philadelphia, PA called by: Paul A. Sochanchak, Andrew J. Van Wagner

Defendant(s):

- McRech, Inc.
- Foulke Management Corp.
- McCall Remi Charlie, LLC

Defense Attorney(s):

- William C. Mead; Freeman Mathis & Gary for McRech, Inc., Foulke Management Corp., McCall Remi Charlie, LLC

Defendant Expert(s):

- Daniel M. Feinberg M.D.; Neurology; Philadelphia, PA called by: for William C. Mead
- Michael Cronin P.E.; Engineering; Edison, NJ called by: for William C. Mead

Insurers:

- Chubb Group of Insurance Cos.
- Markel Insurance Co. Inc.

Facts:

On Aug. 4, 2017, plaintiff Amanda Fahrer, 42, dropped off her truck for service maintenance at Turnersville Dodge Chrysler Jeep Ram dealership in Turnersville. Fahrer claimed that upon exiting her truck, she stepped in a puddle of water which caused her to slip and fall and land on her left arm. Fahrer claimed that she suffered Complex Regional Pain Syndrome.

Fahrer sued the dealership; the management company, Foulke Management Corp.; and the property owner, McCall Remi Charlie LLC. She alleged that they were negligent in allowing a dangerous condition to exist. The puddle of water came off a car that a dealership employee drove through the service area before Ms. Fahrer.

Fahrer's counsel argued that the dealership failed to clean up the water and failed to warn Fahrer of the water. Her counsel further asserted that the dealership violated its own policies and procedures by failing to have an employee present at the time Fahrer pulled into the service garage.

Fahrer's expert in environmental health and safety testified that the dealership's floor in the service garage was made of epoxy-coated cement, which is a slippery surface on its own. However, the flooring becomes increasingly slippery once liquid comes in contact with it, creating a very dangerous condition, the expert concluded.

The defense maintained that Fahrer's accident was an unfortunate incident not caused by any negligence on the part of the dealership. The defense also contended that Fahrer was comparatively negligent for the incident.

The defense's engineering expert performed a slip-resistance test on the service garage's floor three and a half years post-accident. The expert opined that the floor was not slippery as the coefficient of friction exceeded the standards set forth by the American National Standards Institute.

Injury:

Fahrer alleged that following the accident, she immediately had numbness and tingling in her left fingers, of her non-dominant arm. She presented to an urgent-care facility and was examined and released.

Fahrer was ultimately diagnosed with complex regional pain syndrome and reflex sympathetic dystrophy.

A week after the accident, Fahrer presented to a rehabilitation facility, where she underwent MRIs and X-rays in the ensuing months, all of which were negative. She was put on a nerve medication for her ongoing numbness and tingling.

In December 2017, Fahrer came under the care of a family-medicine physician, who referred her to a neuromusculoskeletal-medicine specialist, who confirmed her complex

regional pain syndrome and reflex sympathetic dystrophy. At that time, she was suffering from pain in her right leg.

Fahrer was recommended ketamine infusions, but was unable to receive them due to issues with health coverage. In 2019, Fahrer came under the care of a neurologist, who administered a series of nerve-block and ganglion-block injections. Fahrer further treated with immunoglobulin therapy, which required a nurse to administer the treatment in her home five days in a row, for three months, which required Fahrer to sit for eight hours for each session. Despite the extensive treatment, Fahrer received little to no relief.

By 2021, after her insurance permitted the treatment, Fahrer began receiving the ketamine infusions every three weeks, which she continued to receive at the time of trial.

Fahrer's physicians testified that the incident caused her to suffer complex regional pain syndrome, a permanent condition that requires lifelong treatment. The physicians recommended that Fahrer undergo ketamine infusions for the rest of her life, in addition to medical monitoring and additional pain management.

Fahrer testified that every day she wakes up it is akin to Russian roulette, because she does not know the degree of pain she will be in. She experiences no pain for the first 15 minutes, and then excruciating, burning pain sets in to her left arm or right leg. The pain can go from a hot, burning sensation to freezing cold.

Fahrer discussed how her relationship with her four daughters and five grandchildren has changed. She can no longer be affectionate with her family as she used to, since her skin is so sensitive. This requires her to wear loose, baggy clothing.

Fahrer sought to recover $1.3 million to $1.4 million in future medical costs, plus damages for past and future pain and suffering.

Fahrer's husband testified about the varying emotions he experiences due to his wife's chronic pain. He discussed how he has taken on the dual roles of mother and father to their children because of Fahrer's impaired condition. He sought damages for his claim for loss of consortium.

The defense's expert in neurology testified that Fahrer does not suffer from complex regional pain syndrome or reflex sympathetic dystrophy, and that she had been misdiagnosed and treated incorrectly. Fahrer's symptoms more likely resemble fibromyalgia. The expert recommended that Fahrer treat with a rheumatologist, even though she had unsuccessfully.

Result: The jury found that the dealership was negligent and its negligence was a factual cause of injury to Fahrer. The jury found that Fahrer was not comparatively negligent. The jury determined that the Fahrers would receive $3,022,650.

Todd Fahrer

$ 122,500 loss of consortium

$ 122,500 Plaintiff's Total Award

Amanda Fahrer

$ 1,400,000 Future Medical Cost

$ 1,500,000 pain and suffering

$ 2,900,000 Plaintiff's Total Award

Trial Information:

Judge: Michael J. Kassel

Offer: $500,000

Trial Length: 0

Trial Deliberations: 0

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

Writer Aaron Jenkins

Plaintiff claimed forklift accident permanently injured him

Type: Settlement

Amount: $3,000,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *other* - plate; swelling; bone graft; physical therapy; pins/rods/screws; decreased range of motion
- *foot/heel* - foot drop (drop foot)
- *neurological* - nerve damage/neuropathy; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - debridement; open reduction; internal fixation
- *mental/psychological* - anxiety; depression; emotional distress

Case Type:
- *Workplace* - Forklift
- *Worker/Workplace Negligence* - OSHA; Negligent Training

Case Name: Gualberto Rivas-Reyes v. Crescent Park Corp., Nesim Tawadrous and Eastern Lift Truck Co. Inc., No. 180300156

Date: February 14, 2020

Plaintiff(s):
- Gualberto Rivas-Reyes (Male, 28 Years)

Plaintiff Attorney(s):
- Gerald B. Baldino Jr.; Sacchetta & Baldino; Media PA for Gualberto Rivas-Reyes
- Timothy G. Daly; Daly & Clemente, P.C.; King of Prussia PA for Gualberto Rivas-Reyes

Plaintiff Expert (s):

- Alex Karras O.T.R.; Vocational Rehabilitation; Frazer, PA called by: Gerald B. Baldino Jr., Timothy G. Daly
- Terry P. Leslie M.Ed., C.R.C.; Vocational Rehabilitation; Lancaster, PA called by: Gerald B. Baldino Jr., Timothy G. Daly
- Andrew C. Verzilli M.B.A.; Economics; Lansdale, PA called by: Gerald B. Baldino Jr., Timothy G. Daly
- Robert F. Sing D.O.; Family Medicine; Springfield, PA called by: Gerald B. Baldino Jr., Timothy G. Daly
- Robert P. Jasinski; Forklifts; Danville, CA called by: Gerald B. Baldino Jr., Timothy G. Daly
- Benjamin D. Overley D.P.M.; Podiatry Surgery; Limerick, PA called by: Gerald B. Baldino Jr., Timothy G. Daly

Defendant(s):

- Nesim Tawadrous
- Crescent Park Corp.
- Eastern Lift Truck Co. Inc.

Defense Attorney(s):

- William G. Cilingin; Naulty, Scaricamazza & McDevitt, LLC; Philadelphia, PA for Crescent Park Corp., Nesim Tawadrous
- None reported for Eastern Lift Truck Co. Inc.

Defendant Expert(s):

- Jody F. DeMarco P.E.; Engineering; Mount Laurel, NJ called by: for William G. Cilingin
- Marc Manzione M.D.; Orthopedic Surgery; Huntingdon Valley, PA called by: for William G. Cilingin
- Marc A. Weinstein; Lost Earnings (Economics); Philadelphia, PA called by: for William G. Cilingin
- Jasen M. Walker Ed.D.; Vocational Rehabilitation; Valley Forge, PA called by: for William G. Cilingin

Insurers:

- Cincinnati Insurance Cos.

Facts:

On Feb. 21, 2017, plaintiff Gualberto Rivas-Reyes, 28, a forklift's operator, worked at a warehouse shipping facility in Mechanicsburg. He was struck in the left leg by the forks of a forklift. He suffered leg fractures.

Rivas-Reyes sued the warehouse's owner, Crescent Park Corp.; the forklift's operator, Nesim Tawadrous; and the forklift's lessor, Eastern Lift Truck Co. Inc. The lawsuit alleged that Tawadrous was negligent in the operation of the forklift. The lawsuit further alleged that the remaining defendants were vicariously liable for Tawadrous' actions.

Eastern Lift was dismissed. The matter proceeded against the remaining defendants.

At the time of the accident, Rivas-Reyes was moving cargo with a forklift. Tawadrous ran into Rivas-Reyes with the forklift that he was driving, striking him about seven inches below his left knee. Tawadrous and Rivas-Reyes were driving in opposite directions, and Tawadrous' forks were facing forward. The forks on Tawadrous' forklift were elevated about 18 inches above floor level. Rivas-Reyes claimed that he had not expected Tawadrous to be driving at him, since forklift drivers are instructed not to drive with the forks facing forward. He also contended that he was unable to swerve out of the way because Tawadrous came so quickly. In a report, Rivas-Reyes' expert in forklifts opined that Tawadrous violated standards of the Occupational Safety and Health Administration by driving with the forklifts elevated. The expert also contended that Crescent Park failed to properly demarcate the travel lanes for forklift operation. The expert concluded that Crescent Park failed to properly train Tawadrous to use a forklift.

The defense's expert in engineering contended, in a report, that Rivas-Reyes had been told not to enter the warehouse's K-Dock area, where the accident occurred. The expert also noted that, several days before the collision, Rivas-Reyes had been involved in another collision concerning a forklift.

Injury:

Rivas-Reyes was taken by ambulance to a hospital and was admitted. He was diagnosed with fractures of the left tibia and fibula. He was later diagnosed with left foot drop, complex regional pain syndrome, nerve entrapment, anxiety and depression.

For more than a week, Rivas-Reyes remained hospitalized. During this time he underwent three surgeries: an open reduction and internal fixation, in which a rod, plates and screws were implanted; a surgery to insert antibiotic cement to fill a portion of bone that was missing from his tibia; and a bone graft.

Upon discharge, Rivas-Reyes remained non-weight-bearing at his home before starting an extensive course of physical therapy, which he followed through 2018. On April 27, 2017, a little more than two months after the accident, he underwent a fourth surgery to remove the antibiotic spacer. The procedure included another bone graft.

Rivas-Reyes also treated with a pain management specialist, who diagnosed him with complex regional pain syndrome in his right leg. Rivas-Reyes treated with pain medication, which he continues to use. In December 2019, due to swelling, Rivas-Reyes was hospitalized briefly for concern of a blood clot in his left leg. A blood clot was ruled out, and he was given compression socks.

Rivas-Reyes' podiatrist opined, in a report, that RIvas-Reyes suffers a permanent injury. According to the physician, Rivas-Reyes can perform only sedentary work and is precluded from lifting, pushing and pulling more than 10 pounds. The physician determined that Rivas-Reyes is at risk of developing post-traumatic arthritis in his left ankle and that he will possibly need joint replacement or fusion. Rivas-Reyes' expert in family medicine supported these opinions.

Rivas-Reyes uses a cane to walk, and his foot occasionally catches due to his mild foot drop. At the time of the accident, Rivas-Reyes had been working to move his wife and 2-year-old son to Puerto Rico, where his mother, whom he supported, lived. He sought to recover $360,000 in future medical costs and $2.1 million to $3.1 million in future lost earnings, plus damages for past and future pain and suffering.

The defense's expert in orthopedic surgery opined, in a report, that Rivas-Reyes is not at risk of getting post-traumatic arthritis in his ankle, nor does he suffer complex regional pain syndrome.

The defense's expert in vocational rehabilitation opined, in a report, there were light- to medium-capacity jobs that Rivas-Reyes was eligible for in which he could earn the same salary, if not more. Since there would be no reduction in salary, Rivas-Reyes sustained no lost earnings, the defense's expert in economics concluded in his report.

Result:

The parties negotiated a pretrial settlement. Crescent Park's insurer tendered its primary policy, which provided $1 million of coverage, and it agreed to pay $2 million from an excess policy that provided $10 million of coverage.

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.
Writer	Aaron Jenkins

Plaintiff said permanent foot injury received on jobsite

Type: Verdict-Plaintiff

Amount: $2,877,958

Actual Award: $3,782,722

State: Pennsylvania

Venue: Dauphin County

Court: Dauphin County Court of Common Pleas, PA

Injury Type(s):
- *elbow* - tarsal tunnel syndrome
- *other* - physical therapy; steroid injection; cortisone injections; fasciectomy/fasciotomy
- *foot/heel* - foot; plantar fasciitis
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - OSHA

Case Name: John Jarema v. N.C. Masonry Co., Inc., No. CI-2011-12293

Date: August 14, 2019

Plaintiff(s):
- John Jarema (Male, 36 Years)

Plaintiff Attorney(s):
- Howard G. Silverman; Haggerty & Silverman P.C.; Lancaster PA for John Jarema
- Samuel G. Encarnacion; Haggerty & Silverman P.C.; Lancaster PA for John Jarema

Plaintiff Expert (s):

- John S. Risser; Vocational Assessment; Elizabethtown, PA called by: Howard G. Silverman, Samuel G. Encarnacion
- David C. Erfle D.P.M.; Podiatry; Media, PA called by: Howard G. Silverman, Samuel G. Encarnacion
- Timothy L. Kauffman Ph.D., P.T.; Functional Capacity Assessment; Lancaster, PA called by: Howard G. Silverman, Samuel G. Encarnacion,
- Vincent A. Gallagher; Employee Safety; Audubon, NJ called by: Howard G. Silverman, Samuel G. Encarnacion

Defendant(s):

- N.C. Masonry Co., Inc.

Defense Attorney(s):

- Anthony T. Lucido; Johnson Duffie Stewart & Weidner; Lemoyne, PA for N.C. Masonry Co., Inc.

Defendant Expert(s):

- David L. Hopkins A.S.A.; Economics; King of Prussia, PA called by: for Anthony T. Lucido
- Jasen M. Walker Ed.D.; Vocational Rehabilitation; Valley Forge, PA called by: for Anthony T. Lucido

Insurers:

- Erie Indemnity Co.

Facts:

On Jan. 12, 2010, plaintiff John Jarema, 36, a sheet metal worker, was welding a stainless-steel duct at a baseball stadium in Harrisburg. A motorized pallet jack ran over his right foot. Jarema claimed foot injuries.

Jarema sued N.C. Masonry Co. Inc., which employed the operator of the pallet jack. Jarema alleged that the worker was negligent in the operation of the pallet jack. According to Jarema's expert in employee safety, the N.C. Masonry employee failed to simply watch where he was going and failed to keep the pallet jack under control. Had N.C. Masonry pallet jack operators been trained, and had they followed regulations of the Occupational Safety and Health Administration and the American National Standards Institute relative to keeping a clear view of the path of travel, and to traveling at a speed that permitted the pallet jack to be brought to a stop in a safe manner, Jarema's accident would not have occurred, the expert concluded.

The defense stipulated to liability.

Injury:

Jarema first sought medical attention a month after the Jan. 12, 2010, accident, during which time he was still able to work. Jarema was ultimately diagnosed with plantar fasciitis in his right foot, tarsal tunnel syndrome and complex regional pain syndrome. He was put on a course of physical therapy, received four steroid injections in his foot and was placed in a splint.

In February 2012, Jarema underwent a plantar fasciotomy with spur excision, and in October of that year he underwent a tarsal tunnel release of the right foot/ankle. After the last surgery, Jarema continued to consult with his podiatrist; he continued to do so at the time of the trial.

Jarema testified that he is unable to work in the same capacity, due to his foot pain and to an associated reduction in overall strength and stamina that prevents him from performing strenuous activities. His expert in functional capacity confirmed this. Additionally, Jarema has difficulty using stairs and stepping off curves. He relies on a shopping cart as a type of walker when shopping, to take weight off his right foot and ankle. Jarema wears orthotics, uses an ankle brace and a transcutaneous electrical nerve stimulation unit, and receives cortisone injections every four months.

Jarema sought to recover a stipulated workers' compensation lien of $97,958.40, in addition to $512,277.66 in past lost wages and $983,369.05 to $1,517,211.02 in future lost wages. He further sought damages for past and future pain and suffering.

The defense questioned the severity of Jarema's injury, given that the plaintiff continued to work for 18 months after the accident, before he was terminated for violating company policies.

The defense's expert in vocational rehabilitation testified that Jarema could still work full time at full capacity earning a comparable salary to what he received at the time of the accident. Any lost earnings would amount to $1,486,600.40, the defense's expert in economics calculated.

Result:

The jury found that N.C. Masonry was negligent and its negligence was a factual cause of injury to Jarema. Jarema was determined to receive $2,877,958.40.

John Jarema

$400,000 Personal Injury: Past Lost Earnings Capability

$1,400,000 Personal Injury: FutureLostEarningsCapability

$980,000 Personal Injury: pain and suffering

$97,958 Personal Injury: workers' compensation lien

Trial Information:

Judge: Andrew H. Dowling

Demand: $1.5 million

Offer: $850,000

Trial Length: 4 days

Trial Deliberations: 2 hours

Post Trial: The court determined that Jarema's counsel would receive $904,763.12 in delay damages.

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.

Writer Aaron Jenkins

Improper fusion at VA led to leg amputation: plaintiff

Type: Settlement

Amount: $2,750,000

State: Pennsylvania

Venue: Federal

Court: U.S. District Court, Western District of Pennsylvania, Pittsburgh, PA

Injury Type(s):
- *knee*
- *ankle*
- *other* - swelling; prosthesis; phantom pain; physical therapy; scar and/or disfigurement
- *foot/heel* - foot
- *amputation* - leg; leg (below the knee)
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *mental/psychological* - emotional distress

Case Type:
- *Medical Malpractice* - Podiatrist; Foot Surgery; Surgical Error; Failure to Test

Case Name: Darwin Gurto v. United States of America, No. 2:18cv53

Date: May 21, 2021

Plaintiff(s):
- Darwin Gurto , (Male, 56 Years)

Plaintiff Attorney(s):
- Regan S. Safier; Kline & Specter; Philadelphia PA for Darwin Gurto

Plaintiff Expert (s):

- John M. Lally C.P.A.; Accounting; Pittsburgh, PA called by: Regan S. Safier
- Tamar Fleischer R.N.; Life Care Planning; Bala Cynwyd, PA called by: Regan S. Safier
- Michael C. Munin M.D.; Physical Medicine; Pittsburgh, PA called by: Regan S. Safier
- Richard L. Riley C.P.; Prosthetics; Washoe Valley, NV called by: Regan S. Safier
- Ronald B. Resnick M.D.; Orthopedic Surgery; Concord, NH called by: Regan S. Safier

Defendant(s):

- United States of America

Defense Attorney(s):

- Michael C. Colville; Attorney General's Office; Pittsburgh, PA for United States of America

Defendant Expert(s):

- Alan R. Catanzariti D.P.M.; Foot & Ankle; Pittsburgh, PA called by: for Michael C. Colville
- James Sferra M.D.; Orthopedic Surgery; Pittsburgh, PA called by: for Michael C. Colville
- Douglas S. King C.P.A., A.B.V., C.F.F.; Accounting; Pittsburgh, PA called by: for Michael C. Colville
- Kimberly Kushner R.N.; Life Care Planning; Bala Cynwyd, PA called by: for Michael C. Colville

Facts:

In April 2019, plaintiff Darwin Gurto, 56, underwent a below-the-knee amputation of his left leg in Pittsburgh. He claimed that the amputation was due to improper care by a podiatrist at the Pittsburgh VA Medical Center.

Gurto sued the United States of America. Gurto alleged that the federal government, through Dr. Richard Scanlan, his treating podiatrist at the Pittsburgh VAMC, failed in its standard of care toward him.

In February 2015, Gurto underwent a left ankle fusion and mid-foot fusion by Dr. Scanlan to repair an osteochondral defect. In the months following the surgery, Gurto reported that he was unable to place his foot flat on the ground and that the ball of his foot struck the ground before his heel, which caused foot pain and swelling and made his knee lock up. The surgeon treated Gurto with pain medication, physical therapy and had him non-weight-bearing for a period of time.

In July 2015, Dr. Scanlan, after finding that a deformity in Gurto's left foot was causing hyperextension of his left knee, offered a one-inch heel lift to offer more pain-free walking. Gurto alleged that the doctor failed to advise him that his ankle was negligently and improperly fused in excessive plantar flexion, which was preventing proper weight-bearing progressions and resulting in talocalcaneal pain. In September 2015, Gurto saw an orthopedic surgeon who recognized that the foot had been improperly fused at 12 degrees of plantar flexion.

In March 2016, Gurto underwent a left ankle fusion with subtalar fusion removal of hardware and placement of a bone stimulator. Gurto was subsequently diagnosed with complex regional pain syndrome. For the next three years, Gurto treated with extensive pain management and treated with multiple physicians for his left foot pain and limitations. Gurto claimed that his foot became more and more damaged and, in combination with the intensifying pain from the complex regional pain syndrome, his leg below the knee had to be amputated in April 2019.

In his report, Gurto's expert in orthopedic surgery opined that the VA surgeon excessively fused Gurto's foot at 12 degrees of plantar flexion, instead of a more appropriate flexion of zero to five degrees. The expert criticized the physician for failing to X-ray Gurto's foot immediately after the surgery to ensure that no excessive flexion had occurred. The expert concluded that, because of the surgical error, Gurto's ankle resulted in a non-union which led to his complex regional pain syndrome.

The defense did not contest that Gurto's ankle was fused with an excessive flexion. However, according to its expert in podiatry, the VA surgeon timely recognized the mal-position of Gurto's ankle and appropriately treated him with heel lifts. The expert attributed Gurto's issues to his pre-existing foot problems and not to the fusion.

Injury: Following his leg amputation, Gurto spent several weeks hospitalized and in an inpatient rehabilitation facility. The surgery was able to alleviate some of his complex regional pain syndrome. Upon his discharge, Gurto, was fitted with a prosthesis and continued to treat with physical therapy and pain medication, both of which he continued as of May 2021.

In his report, Gurto's expert in physical medicine determined that Gurto requires treatment for the rest of his life, which consists of pain management, prosthetics, physical therapy, counseling, implantation of a spinal cord stimulator, handicap-accessible modifications to his home and treatment for potential skin breakdowns at the amputation site.

Gurto alleged that he is continuing to deal with the realities of his amputation. He said that he primarily uses a wheelchair and relies on his wife to care for him and perform household duties.

Gurto sought to recover approximately $904,000 in future medical costs, plus damages for past and future pain and suffering. Gurto's wife sought damages for loss of consortium.

In his report, the defense's expert in orthopedic surgery opined that Gurto does not require any further surgery in the future.

The defense's expert in life-care planning calculated future medical costs at roughly $506,000.

Result: The parties negotiated a pretrial settlement. The federal government agreed to pay $2.75 million.

Darwin Gurto

Trial Information:

Judge: Yvette Kane

Trial Length: 0

Trial Deliberations: 0

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.
Writer	Aaron Jenkins

Worker claimed unsafe gear led to burns of hands

Type: Mediated Settlement

Amount: $2,700,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):
- *arm*
- *knee*
- *burns* - chemical
- *other* - swelling; contracture; physical therapy
- *hand/finger* - hand
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *mental/psychological* - depression; psychiatric; post-traumatic stress disorder

Case Type:
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Labor Law

Case Name: Lourdes Rivera Marcelo Agudo v. New York City School Construction Authority Nehal Contracting, Inc. the City of New York Department of Education of the City of New York, No. 711464/15

Date: March 31, 2021

Plaintiff(s):
- Lourdes Rivera, (, 0 Years)
- Marcelo Agudo , (Male, 25 Years)

Plaintiff Attorney(s):
- Steven B. Dorfman; The Perecman Firm, P.L.L.C.; New York NY for Marcelo Agudo
- Zachary S. Perecman; The Perecman Firm, P.L.L.C.; New York NY for Marcelo Agudo
- None reported; ; for Lourdes Rivera

Plaintiff Expert (s):

- Lee Wasserman; Industrial Hygiene; Ocean, NJ called by: Steven B. Dorfman, Zachary S. Perecman
- Yakov Perper M.D.; Pain Management; Astoria, NY called by: Steven B. Dorfman, Zachary S. Perecman
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Steven B. Dorfman, Zachary S. Perecman
- Dr. Richard Schuster Ph.D.; Vocational Rehabilitation; New York, NY called by: Steven B. Dorfman, Zachary S. Perecman

Defendant(s):

- City of New York
- Nehal Contracting Inc.
- New York City Department of Education
- New York City School Construction Authority

Defense Attorney(s):

- None reported for City of New York, New York City Department of Education
- Amy L. Schaefer; Cornell Grace, P.C.; New York, NY for New York City School Construction Authority, Nehal Contracting Inc.
- Janet O'Connor Cornell; Cornell Grace, P.C.; New York, NY for New York City School Construction Authority, Nehal Contracting Inc.

Defendant Expert(s):

- Paul Haas; Industrial Hygiene; Mcalpin, FL called by: for Amy L. Schaefer, Janet O'Connor Cornell
- David M. Yamins M.D.; Psychiatry; Brooklyn, NY called by: for Amy L. Schaefer, Janet O'Connor Cornell
- Connie K. Standhart; Vocational Rehabilitation; Middleburgh, NY called by: for Amy L. Schaefer, Janet O'Connor Cornell
- Norman J. Marcus M.D.; Pain Management; New York, NY called by: for Amy L. Schaefer, Janet O'Connor Cornell
- Bradley D. Wiener M.D.; Orthopedic Surgery; Middletown, NY called by: for Amy L. Schaefer, Janet O'Connor Cornell

Insurers:

- Ace Group of Cos.

Facts:

On June 22, 2015, plaintiff Marcelo Agudo, 25, a union-affiliated abatement specialist, worked at a renovation site that was located at 91 Henderson Ave., in the Randall Manor section of Richmond County. Lead paint had been removed from certain areas of the site, and Agudo and several co-workers, including plaintiff Lourdes Rivera, were applying a chemical intended to eliminate any remaining paint. Agudo's arms, hands and knees were irritated and/or burned by the chemical. Rivera claimed that she suffered similar injuries of her hands.

Agudo sued the renovation project's general contractor, Nehal Contracting Inc.; the project's manager, the New York City School Construction Authority; and the premises' owner, the city of New York. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

In a separate filing, Rivera sued Nehal Contracting, the New York City School Construction Authority, the city of New York and the premises' tenant, the New York City Department of Education. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

The lawsuits were consolidated.

Rivera's claim resulted in a pretrial settlement whose terms were not disclosed to VerdictSearch. Agudo's counsel discontinued Agudo's claims against the city of New York and the New York City Department of Education. Rivera's case continued against Nehal Contracting and the New York City School Construction Authority.

Agudo's industrial-hygiene expert submitted a report in which the expert opined that the paint-stripping chemical was a corrosive substance. Agudo claimed that, during use of the chemical, he customarily wore three layers of gloves, which were provided at the work site. The inner glove was a latex glove of the type commonly used in medical applications; the middle glove was a cloth glove; and the outer glove was a yellow glove of the type commonly used for dishwashing. Agudo's industrial-hygiene expert opined that the gloves were not chemical resistant and therefore did not provide adequate protection. Agudo claimed that he discarded the gloves at the end of the workday without having inspected them, but Rivera claimed that her outer set of gloves, the yellow gloves, had been largely destroyed by the time she removed them. Agudo and Rivera each claimed that their hands were wet when they removed their gloves at the end of the workday.

Agudo's counsel claimed that the defendants violated New York Codes, Rules, and Regulations title 23, part 1.8(c)(4), which specifies that workers handling corrosive material must be provided appropriate protective apparel, and New York Codes, Rules, and Regulations title 23, part 1.7(h), which specifies that the protective apparel must be provided by the worker's employer. Agudo's counsel contended that the violations established that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

The defense contended that Agudo was not handling a corrosive chemical, that Agudo was provided adequate protective gear, that Agudo's injuries were a result of Agudo having worked in a sloppy, rushed manner that resulted in splashing of the chemical that was being applied, and that Agudo worsened his condition by improperly decontaminating himself.

Injury:

Upon removing his gloves, Agudo discovered that his hands were reddened and swollen. He washed and returned to his home. During the following day, he visited a hospital, where doctors diagnosed chemical burns of his hands, knees and right forearm. Agudo claimed that his hands developed contractures.

Agudo immediately commenced a course of physical therapy, which included exercises and ultrasonography treatment. In July 2015, he was prescribed a topical ointment.

Agudo claimed that he subsequently developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed “reflex sympathetic dystrophy.” Agudo also claimed that he developed depression and post-traumatic stress disorder. He underwent psychiatric and psychological counseling.

Agudo further claimed that he could not work during the 47 months that followed the accident. He briefly resumed work in June 2019 but quickly stopped working again. He claimed that his condition would not permit his performance of his job’s duties.

Agudo also claimed that his complex regional pain syndrome persists. He claimed that he suffers resultant swelling of his hands, resultant discoloration of the skin of his hands and resultant changes of the temperature of the skin of his hands. Agudo’s vocational-rehabilitation expert submitted a report in which he opined that Agudo probably would not be able to resume work. Agudo’s treating pain-management specialist submitted a report in which he opined that Agudo would require lifelong use of painkillers.

Agudo sought recovery of $2,287,527 for future medical expenses, $2,610,470 for future loss of earnings, and unspecified damages for past and future pain and suffering.

The defense’s expert orthopedist submitted a report in which he opined that Agudo suffered chemical-induced irritation, but the expert questioned whether the irritation constituted a significant burn.

The defense’s expert psychiatrist submitted a report in which he opined that Agudo does not suffer post-traumatic stress disorder or a major depressive disorder.

The defense’s pain-management expert submitted a report in which he opined that Agudo does not exhibit objective indications of complex regional pain syndrome or any specific limitation that would prevent a resumption of work. The defense’s vocational-rehabilitation expert submitted a report in which she opined that Agudo can resume his pre-accident vocation.

Result: Agudo’s case was resolved via a pretrial settlement. The insurer of Nehal Contracting and the New York City School Construction Authority agreed to pay $2.7 million, from a policy that provided $5 million of coverage. The settlement’s negotiations were mediated by Shelley Rossoff Olsen, of Jams.

Trial Information:

Judge: Shelley Rossoff Olsen

Trial Length: 0

Trial Deliberations: 0

Post Trial: This report is based on information that was provided by Agudo's counsel. Additional information was gleaned from court documents. Counsel of the city of New York, the New York City Department of Education and Rivera did not respond to the reporter’s phone calls, and the remaining defendants' counsel was not asked to contribute.

Writer Aaron Jenkins

Truck driver struck by steel panel at construction site

Type: Verdict-Plaintiff

Amount: $2,250,000

Actual Award: $1,440,000

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *back* - lower back; fusion, lumbar; herniated disc, lumbar; herniated disc at L5-S1
- *ankle* - fracture, ankle
- *other* - swelling; massage therapy; physical therapy; hardware implanted; epidural injections; arthritis, traumatic; decreased range of motion
- *foot/heel* - foot
- *neurological* - radiculopathy; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - discectomy; open reduction; internal fixation

Case Type:
- *Construction* - Accidents
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence*

Case Name: Michael Ruth and Lisa Ruth v. Miller Brothers, No. 190605476

Date: May 08, 2023

Plaintiff(s):
- Lisa Ruth , (Female, 0 Years)
- Michael Ruth , (Male, 52 Years)

Plaintiff Attorney(s):	• Mark W. Tanner; Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP; Philadelphia PA for Michael Ruth ,, Lisa Ruth • Peter M. Newman; Feldman Shepherd Wohlgelernter Tanner Weinstock Dodig LLP; Philadelphia PA for Michael Ruth ,, Lisa Ruth • Christine G. Benedum; Benedum Law; Philadelphia PA for Michael Ruth ,, Lisa Ruth
Plaintiff Expert (s):	• David R. Decker; Rigging & Mast; Media, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • James G. Lowe M.D.; Neurosurgery; Linwood, NJ called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • Andrew C. Verzilli M.B.A.; Economics; Lansdale, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • Scott J. Loev M.D.; Pain Management; Quakertown, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • Steven Gumerman Ph.D.; Vocational Rehabilitation; Huntingdon Valley, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • Michael A. Troiano D.P.M.; Podiatry; Philadelphia, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum • Valerie V. Parisi RN; Life Care Planning; Doylestown, PA called by: Mark W. Tanner, Peter M. Newman, Christine G. Benedum
Defendant(s):	• Miller Brothers
Defense Attorney(s):	• Andrew J. Connolly; Post & Schell, P.C.; Philadelphia, PA for Miller Brothers • Colin E. Burgess; Post & Schell, P.C.; Philadelphia, PA for Miller Brothers • Karyn Dobroskey Rienzi; Post & Schell, P.C.; Philadelphia, PA for Miller Brothers
Defendant Expert(s):	• Eric C. Gokcen M.D.; Orthopedic Surgery; Philadelphia, PA called by: for Andrew J. Connolly, Colin E. Burgess, Karyn Dobroskey Rienzi • Timothy J. Carlsen P.E.; Civil; Edison, NJ called by: for Andrew J. Connolly, Colin E. Burgess, Karyn Dobroskey Rienzi • William Bussone P.E.; Biomechanical; Media, PA called by: for Andrew J. Connolly, Colin E. Burgess, Karyn Dobroskey Rienzi

Facts:

On Sept. 16, 2018, plaintiff Michael Ruth, 52, a truck driver, was delivering steel panels on a flatbed truck to a construction site at the Navy Yard in Philadelphia. While an excavator operator was removing panels from the truck, Ruth was struck in the hip and knocked to the ground by one of the panels, which weighed approximately 3,000 pounds. The excavator operator was an employee of Miller Brothers, the general contractor of the work site. Ruth suffered injuries to his back and ankle.

Ruth sued Miller Brothers. Ruth alleged that the general contractor's employee operated the excavator negligently during the unloading of the steel panels.

According to Ruth's counsel, the excavator operator negligently lifted the steel panels in such a way that one of the chains became dangerously looped over the boom of the excavator. Ruth and another worker reportedly hand-signaled for the excavator to stop. Ruth said that he subsequently walked toward the excavator to speak to the operator to fix the problem. However, the operator allegedly disregarded Ruth and the other worker's hand signals and swung the bundle of steel panels, which struck Ruth and knocked him to the ground.

Ruth's rigging expert testified that the Miller Brothers' employee violated fundamental work site safety protocol by disregarding the stop signals by Ruth and the other worker, and continuing to operate the excavator when Ruth was in close proximity to it. Additionally, the expert concluded, the Miller Brothers employee negligently operated the excavator in such a way that he created a dangerous condition when the chain became looped over the boom of the excavator, which set into motion the chain of events that led to Ruth's injuries.

The defense maintained that Ruth was comparatively negligent in that Ruth was at fault for entering the danger zone of the functioning excavator when it was completely unsafe and a violation of protocol to do so. The defense asserted that Ruth's negligent actions were the sole cause of the accident.

According to the defense's engineering expert, the laws of physics did not allow the accident to have happened in the manner Ruth described. The expert stated that it was physically impossible for the excavator operator to lift the steel plates so quickly that the chains became entangled and looped.

Injury:

Ruth was taken by a coworker to an urgent-care facility and then transferred to a hospital. He was admitted and diagnosed with a fracture of the right ankle. He was ultimately also diagnosed with a herniation at lumbar intervertebral disc L5-S1, lumbar radiculopathy, arthritis in his right ankle and complex regional pain syndrome in his right ankle and foot.

Ruth remained hospitalized for three days, during which time an open reduction with internal fixation was performed on his right ankle. Following his discharge, Ruth remained non-weight-bearing and followed up with his surgeon.

From November 2018 to February 2019, Ruth treated with physical therapy. Also, epidural injections were administered to his lumbar spine, which only provided minimal relief. He underwent a fusion and discectomy at L5-S1 in February 2019.

Following the surgery, Ruth came under the care of a pain-management doctor, who confirmed the complex regional pain syndrome. Ruth received pain medication and underwent additional epidural injections to his lumbar spine. In December 2020, a spinal cord stimulator was implanted. At the time of trial, Ruth continued to treat with pain medication and consult with his pain-management physician.

Ruth's expert in neurosurgery testified that Ruth will most likely need an additional lumbar fusion at L3-4 and L4-5.

According to Ruth's expert in podiatry, Ruth's ankle has such instability from the arthritis and screws in his ankle that he will require a future fusion or ankle replacement.

Ruth testified that he was working full-time and overtime before the accident, but has not worked since the accident. He and his wife testified as to how they can no longer attend events and engage in social activities with friends and family, and that most of Ruth's day consists of sitting on the couch in pain.

Ruth sought to recover $882,000 to $1,157,000 in future lost wages and $1.28 million in future medical costs, plus damages for past and future pain and suffering. Ruth's wife sought damages for loss of consortium.

The defense's expert in biomechanical engineering questioned the mechanism of injury by testifying that Ruth's injuries were inconsistent with his account of how the accident occurred.

The defense's expert in orthopedic surgery testified that Ruth fully recovered from the ankle fracture and requires no further treatment.

Result: The jury found Miller Brothers 64 percent liable and Ruth 36 percent liable. The jury determined that the plaintiffs' damages totaled $2.25 million, including $2 million for Michael Ruth and $250,000 for Lisa Ruth. The verdict was reduced to $1.44 million to reflect Ruth's comparative negligence.

Lisa Ruth

$ 250,000 loss of consortium

$ 250,000 Plaintiff's Total Award

Michael Ruth

$ 2,000,000 damages

$ 2,000,000 Plaintiff's Total Award

Trial Information:

Judge: Michael E. Erdos

Trial Length: 2 weeks

Trial Deliberations: 0

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

Writer Aaron Jenkins

Car crash's parties disputed status of traffic signals

Type: Mediated Settlement

Amount: $2,000,000

State: New York

Venue: Rockland County

Court: Rockland Supreme, NY

Injury Type(s):
- *arm* - fracture, arm; fracture, ulna; fracture, arm; fracture, radius
- *other* - decreased range of motion
- *wrist* - fracture, wrist; carpal tunnel syndrome; triangular fibrocartilage complex, torn
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; debridement; open reduction; internal fixation

Case Type:
- *Motor Vehicle* - Broadside; Intersection; Multiple Vehicle; Question of Lights

Case Name: Amy M Gamsen v. Palisades Automotive Partners, LLC Premier Collection, LLC CMS Holdings, LLC Palisades Audi LLC Palisades Automotive Partners II LLC Palisades Audi CMS Automotive Group LLC CMS Volkswagen Holdings LLC Lenworth O Chambers, No. 33929/18

Date: August 23, 2021

Plaintiff(s):
- Amy M. Gamsen, (Female, 46 Years)

Plaintiff Attorney(s):
- Ylber Albert Dauti; The Dauti Law Firm, P.C.; New York NY for Amy M. Gamsen

Plaintiff Expert (s):
- Alan Leiken Ph.D.; Economics; Stony Brook, NY called by: Ylber Albert Dauti
- Aric Hausknecht M.D.; Neurology; New York, NY called by: Ylber Albert Dauti

Defendant(s):

- Palisades Audi
- CMS Holdings, LLC
- Palisades Audi LLC
- Lenworth O. Chambers
- Premier Collection, LLC
- CMS Automotive Group LLC
- CMS Volkswagen Holdings, LLC
- Palisades Automotive Partners, LLC
- Palisades Automotive Partners II LLC

Defense Attorney(s):

- Jeremy D. Platek; Ondrovic Hurley & Platek, PLLC; White Plains, NY for Lenworth O. Chambers, Palisades Automotive Partners, LLC, CMS Automotive Group LLC, CMS Holdings, LLC, CMS Volkswagen Holdings, LLC, Palisades Audi, Palisades Audi LLC, Palisades Automotive Partners II LLC, Premier Collection, LLC

Defendant Expert(s):

- Rene Elkin M.D.; Neurology; Bronx, NY called by: for Jeremy D. Platek
- Jeffrey Salkin M.D.; Orthopedic Surgery; Waterford, CT called by: for Jeremy D. Platek

Insurers:

- Selective Insurance Group Inc.

Facts:

On June 16, 2017, plaintiff Amy Gamsen, an administrative worker in her 40s, was driving on Market Street, a service road within the Shops at Nanuet shopping plaza, in Nanuet. Upon reaching the plaza's north exit, she attempted to execute a left turn onto the westbound side of West Route 59. Her vehicle's left side was struck by a vehicle that was being driven by Lenworth Chambers, who was traveling on the eastbound side of West Route 59. Gamsen suffered injuries of a wrist.

Gamsen sued Chambers; Chambers' employer, Palisades Automotive Partners, LLC; and several of that entity's affiliates: CMS Automotive Group LLC; CMS Holdings, LLC; CMS Volkswagen Holdings, LLC; Palisades Audi; Palisades Audi LLC; Palisades Automotive Partners II LLC; and Premier Collection, LLC. The lawsuit alleged that Chambers was negligent in the operation of his vehicle. The lawsuit further alleged that the remaining defendants were liable because the accident occurred during Chambers' performance of his job's duties.

Gamsen claimed that a green traffic signal permitted her entrance to the intersection. She claimed that Chambers ignored a red signal. A witness agreed.

Chambers claimed that a green signal permitted his entrance to the intersection, and he claimed that Gamsen ignored a red signal.

The remaining defendants claimed that Chambers had not been authorized to use the vehicle he was driving at the time of the accident.

Injury: Gamsen suffered fractures of her right, dominant arm's wrist. The fractures involved the distal region of her right arm's radius and ulna. She also suffered a tear of the same wrist's triangular fibrocartilage complex.

Gamsen was retrieved by an ambulance, and she was transported to Good Samaritan Hospital, in Suffern. She immediately underwent open reduction and internal fixation of her fractures. Her hospitalization lasted one day.

Gamsen claimed that her right wrist developed carpal tunnel syndrome. She further claimed that the wrist has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy."

In 2019, Gamsen underwent arthroscopic surgery that addressed her right wrist. The procedure included debridement of damaged cartilage and removal of the previously implanted hardware.

Gamsen claimed that her right wrist remains painful, that she suffers residual diminution of the wrist's range of motion, and that her residual effects hinder her performance of physical activities that involve her right hand. She claimed that her residual effects would necessitate an early retirement. She also claimed that she requires further treatment. She sought recovery of future medical expenses, damages for future loss of earnings, and damages for past and future pain and suffering.

Defense counsel contended that Gamsen achieved a good recovery, that Gamsen does not require further treatment, and that Gamsen's career would not be affected by the accident.

Result: The parties negotiated a pretrial settlement. The defendants' insurer tendered its primary policy, which provided $1 million of coverage, and it agreed to pay $1 million from an excess policy that provided $2 million of coverage. Thus, the settlement totaled $2 million. The settlement's negotiations were mediated by Susan Hernandez, of National Arbitration and Mediation Inc.

Amy Gamsen

Trial Information:

Judge: Susan Hernandez

Trial Length: 0

Trial Deliberations: 0

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.

Writer Glenn Koch

Defective handrail caused fall, permanent injuries: tenant

Type: Arbitration

Amount: $1,750,000

State: New Jersey

Venue: Middlesex County

Court: Middlesex County Superior Court, NJ

Injury Type(s):
- *hip*
- *leg* - scar and/or disfigurement, leg
- *back* - lower back; nerve impingement; herniated disc, lumbar; herniated disc at L2-3
- *neck* - nerve impingement
- *ankle* - ankle ligament, tear; sprain/strain
- *other* - bursitis; swelling; neuropathy; synovectomy; chiropractic; massage therapy; physical therapy; steroid injection; epidural injections; decreased range of motion; aggravation of pre-existing condition
- *foot/heel* - foot
- *neurological* - nerve impingement; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; debridement
- *mental/psychological* - emotional distress

Case Type:
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Apartment Building; Stairs or Stairway; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Iveta Gomes v. 1221 Magie Apartments LLC and Emperian Village of Maryland LLC, No. MID-L-000728-19

Date: September 26, 2022

Plaintiff(s):
- Iveta Gomes , (Female, 43 Years)

Plaintiff Attorney(s):
- Stacey Selem Antonucci; Selem Antonucci Law; for Iveta Gomes

Plaintiff Expert (s):

- Scott D. Moore P.E.; Engineering; Vorhees, NJ called by: Stacey Selem Antonucci
- Homam M. Badri M.D.; Podiatry; Wayne, NJ called by: Stacey Selem Antonucci
- Gregory J. Lawler D.O.; Pain Management; Paramus, NJ called by: Stacey Selem Antonucci
- Jennifer H. Yanow M.D.; Pain Management; Bridgewater, NJ called by: Stacey Selem Antonucci

Defendant(s):

- 1221 Magie Apartments LLC
- Emperian Village of Maryland LLC

Defense Attorney(s):

- Jill Cantor-Burns; CP Law Group for 1221 Magie Apartments LLC, Emperian Village of Maryland LLC

Defendant Expert(s):

- Steven C. Hausmann M.D.; Orthopedic Surgery; Freehold, NJ called by: for Jill Cantor-Burns

Insurers:

- Aspen Specialty Insurance Co.
- Allied World Assurance Company Holdings Ltd.

Facts:

On March 17, 2017, plaintiff Iveta Gomes, 43, was descending a staircase at her apartment building in Union. She alleged that the stairwell's handrail detached from the wall which caused her to lose her balance and fall down the stairs. She claimed back, ankle and psychological injuries.

Gomes sued the building owner, 1221 Magie Apartments LLC, and its parent company, and Emperian Village of Maryland LLC. The lawsuit alleged that the defendants were negligent for allowing a dangerous condition to exist. Gomes' engineering expert, in his report, faulted the defendants for improperly maintaining the property. In addition to the loose handrail, the other building's staircases and sidewalks were not cared for, and that the overall management of the property was inadequate, the expert concluded.

The defense maintained that the defendants had no notice of any alleged defect with the handrail, as there had been no prior complaints.

Injury:

On March 18, 2017, Gomes presented to an emergency room with complaints of pain to her right ankle and right hip. She was diagnosed with a high ankle sprain and discharged with instructions to follow up with a physician.

Gomes was ultimately diagnosed with aggravations of pre-existing post-traumatic stress disorder and a lumbar condition, complex regional pain syndrome of the right foot and ankle, a herniation at lumbar intervertebral disc L2-3, nerve entrapment, sinus tarsi syndrome of the right ankle, tears of the right anterior talofibular ligament and bursitis of the right hip.

On March 20, 2017, Gomes presented to a chiropractor, with whom she had a few visits, and then treated with a short course of physical therapy. During that time, Gomes underwent diagnostic studies and was diagnosed with her injuries.

In August 2017, Gomes underwent surgical repair of her right ankle, which consisted of an arthroscopy, synovectomy and debridement. Following the surgery, Gomes remained non-weight-bearing and eventually treated with physical therapy through December 2017. A nine-month gap in treatment followed, and Gomes presented to podiatrist in September 2018

For the next two years, Gomes treated with additional physical therapy, received steroid injections and consulted with a podiatrist. In July 2020, a peroneal nerve release, arthroscopy, synovectomy and debridement were performed to her right ankle. Gomes also treated with physical therapy for her lumbar spine, in addition to receiving up to seven epidural injections. She further treated with cognitive behavioral therapy for her exacerbated post-traumatic stress disorder.

In their respective reports, Gomes' pain-management doctors testified that the accident caused her to suffer permanent complex regional pain syndrome in her right foot.

Gomes alleged that she continues to experience right ankle and low-back pain. Her stiffness and foot pain prevent her from walking on even surfaces and for long periods, as she is prone to swelling. Gomes sought damages for past and future pain and suffering.

In his report, the defense's expert in orthopedic surgery opined that Gomes' extensive treatment and surgery were not necessary. Her back complaints were solely due to her pre-existing degenerative lumbar condition, and she only sustained sprains to her right hip and right ankle, according to the expert. The expert cited how Gomes had a gap of nine months in her treatment.

Result:

A three-person arbitration panel found in favor of Gomes and against the defendants. The panel determined that Gomes would receive $1.75 million.

Iveta Gomes

Trial Information:

Trial Length: 0

Trial Deliberations: 0

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.

Writer Aaron Jenkins

Worker fell on scaffold, claimed disabling knee injuries

Type: Settlement

Amount: $1,550,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):
- *back*
- *knee* - fracture, knee; knee contusion; medial meniscus, tear; fracture, tibial plateau; medial collateral ligament, damage
- *other* - chondroplasty; physical therapy; nondisplaced fracture
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; knee surgery; meniscectomy

Case Type:
- *Construction* - Accidents; Labor Law; Scaffolds and Ladders
- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Falldown

Case Name: Willard Surko v. 56 Leonard LLC Lend Lease (US) Construction LMB Inc. Lend Lease (US) Construction Inc., No. 156246/16

Date: December 07, 2021

Plaintiff(s):
- Willard Surko, (Male, 50 Years)

Plaintiff Attorney(s):
- Adam M. Hurwitz; The Perecman Firm, P.L.L.C.; New York NY for Willard Surko

Plaintiff Expert (s):
- Sukdeb Datta M.D.; Pain Management; New York, NY called by: Adam M. Hurwitz
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Adam M. Hurwitz
- Christopher Passariello M.D.; Orthopedic Surgery; Toms River, NJ called by: Adam M. Hurwitz

Defendant(s):

- 56 Leonard LLC
- Lend Lease (US) Construction Inc.
- Lend Lease (US) Construction LMB Inc.

Defense Attorney(s):

- Robert J. Paliseno; Ropers Majeski; New York, NY for 56 Leonard LLC, Lend Lease (US) Construction LMB Inc., Lend Lease (US) Construction Inc.

Defendant Expert(s):

- Lloyd R. Saberski M.D.; Pain Management; New Haven, CT called by: for Robert J. Paliseno
- Edward A. Toriello M.D.; Orthopedic Surgery; Middle Village, NY called by: for Robert J. Paliseno

Insurers:

- American International Group Inc.

Facts:

On March 7, 2016, plaintiff Willard Surko, 50, a union-affiliated tile installer, worked at a construction site that was located at 56 Leonard St., in the Tribeca section of Manhattan. Surko was tiling a wall, some 15 feet above floor level. The task necessitated his use of a scaffold. Surko claimed that he fell while stepping around a co-worker who was seated on the scaffold's platform. Surko claimed that he resultantly suffered an injury of a knee.

Surko sued the premises' owner, 56 Leonard LLC, and the construction project's general contractors, Lend Lease (US) Construction LMB Inc. and Lend Lease (US) Construction Inc. The lawsuit alleged that the defendants negligently failed to provide a safe workplace. The lawsuit further alleged that the defendants' failure constituted a violation of the New York State Labor Law.

Surko claimed that the accident was a result of the scaffold's platform having not been fully planked. He claimed that he inadvertently stepped onto the edge of a plank and resultantly twisted his right foot. He further claimed that he likely would have fallen off of the scaffold had he not added an extra plank to the platform. Surko's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Surko was not provided the proper, safe equipment that is a requirement of the statute. Surko's counsel also contended that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

The defense contended that the scaffold was safe. It claimed that the accident was a result of Surko having experienced a loss of balance during a moment of carelessness.

Injury:

After a day or two had passed, Surko visited an urgent-care facility. He claimed that his right knee was painful. He underwent minor treatment.

Surko ultimately claimed that he suffered a tear of his right knee's medial meniscus, a sprain of the same knee's medial collateral ligament, and a contusion and a nondisplaced fracture of his right leg's tibial plateau, which is a lower component of the right knee.

Surko underwent physical therapy, but he claimed that he suffered ongoing pain related to the accident. On June 28, 2016, he underwent arthroscopic surgery that addressed his right knee. The procedure included a meniscectomy, which involved excision of a portion of the knee's medial meniscus. The procedure also included removal of loose bone. The surgery was followed by about five months of physical therapy.

Surko claimed that his right knee experienced ongoing pain related to the accident. On Aug. 29, 2017, he underwent another arthroscopic surgery that addressed his right knee. The procedure included a chondroplasty, which involved a repair of cartilage. The surgery was followed by another course of physical therapy. The treatment concluded on Dec. 28, 2017.

Surko claimed that his right knee has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy." Surko claimed that the condition persists, that the pain extends to his lumbar region, and that the pain prevents his performance of physical labor. He has not worked since the summer of 2016. Surko has been prescribed painkillers, and his treating pain-management specialist has recommended administration of painkilling nerve-block injections.

Surko sought recovery of $317,600 for past lost earnings, $866,000 for future loss of earnings, $200,000 for future loss of pension benefits, $118,000 for loss of employer-provided health-insurance benefits, and unspecified damages for past and future pain and suffering.

The defense contended that Surko's injuries were not related to the accident, given that Surko continued working during the three months that followed the accident. The defense's expert orthopedist submitted a report in which he opined that Surko suffered preexisting injuries of the knees. The expert also contended that Surko achieved a full recovery.

The defense's expert pain-management specialist opined that Surko did not suffer complex regional pain syndrome.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay $1.55 million, from a policy that provided $2 million of coverage.

Willard Surko

Trial Information:

Trial Length: 0

Trial Deliberations: 0

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

Writer Aaron Jenkins

Woman fell on sidewalk, fractured ankle and foot

Type: Verdict-Plaintiff

Amount: $1,200,000

Actual Award: $840,000

State: New York

Venue: Suffolk County

Court: Suffolk Supreme, NY

Injury Type(s):
- *leg* - scar and/or disfigurement, leg
- *ankle* - fracture, ankle; fracture, malleolus
- *other* - plate; synovitis; synovectomy; physical therapy; pins/rods/screws; comminuted fracture; reconstructive surgery; scar and/or disfigurement
- *foot/heel* - fracture, foot; fracture, metatarsal
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - debridement; open reduction; internal fixation

Case Type:
- *Premises Liability* - Sidewalk; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Dawn Smith and Daniel Smith v. JB Squared, LLC and Tritec Asset Management, Inc., No. 609915/15

Date: November 27, 2019

Plaintiff(s):
- Dawn Smith (Female, 43 Years)
- Daniel Smith

Plaintiff Attorney(s):
- Seth I. Fields; Bergman, Bergman, Fields & Lamonsoff, LLP; Hicksville NY for Dawn Smith, Daniel Smith
- Michael Bergman; Bergman, Bergman, Fields & Lamonsoff, LLP; Hicksville NY for Dawn Smith, Daniel Smith

Plaintiff Expert (s):

- Andrew Weintraub Ph.D.; Economics; Rhinebeck, NY called by: Seth I. Fields
- Steven J. Touliopoulos M.D.; Orthopedic Surgery; Astoria, NY called by: Seth I. Fields
- Matthew H. Kalter; Physical Medicine; Smithtown, NY called by: Seth I. Fields

Defendant(s):

- JB Squared, LLC
- Tritec Asset Management Inc.

Defense Attorney(s):

- Kevin P. Slattery; Law Offices of Tromello & Fishman; Melville, NY for Tritec Asset Management Inc., JB Squared, LLC

Defendant Expert(s):

- Lloyd R. Saberski M.D.; Pain Management; New Haven, CT called by: for Kevin P. Slattery

Insurers:

- CNA

Facts:

On July 24, 2015, plaintiff Dawn Smith, 43, an administrative worker, fell while she was traversing a sidewalk that abutted the premises of 45 Research Way, in East Setauket. She suffered injuries of an ankle and a foot.

Smith sued the adjoining premises' manager, Tritec Asset Management Inc., and the premises' owner, JB Squared, LLC. The lawsuit alleged that the defendants were negligent in their maintenance of the sidewalk. The lawsuit further alleged that the defendants' negligence created a dangerous condition that caused Smith's fall.

Smith claimed that her fall was a result of her having tripped on a cracked, raised area of the sidewalk's surface. Smith's counsel contended that the crack was located immediately adjacent to the main entrance to the defendants' premises and therefore would have undoubtedly been noticed had the defendants performed periodic inspections of the premises. The defendants had claimed that their inspection and maintenance records had been destroyed by a flood, but, during the trial, it was revealed that the records were stored electronically and were accessible. The jury was instructed that an adverse inference could be drawn from the defense's failure to produce the records.

Defense counsel claimed that the premises were routinely inspected, but that the crack had not been detected. Defense counsel alternatively contended that the crack was an open, obvious condition that Smith should have avoided.

Injury:

Smith suffered a fracture of her right foot and a comminuted fracture of her left ankle. Her right foot's fracture was deemed a Jones fracture, which involves the fifth metatarsal: the bone that joins the fifth toe and the center of the foot. Her left ankle's fracture involved the medial and posterior malleoli, which are the bony protuberances that extend toward the left leg and the rear of the foot. Her left ankle developed synovitis: inflammation of joint-lining membrane.

Smith was retrieved by an ambulance, and she was transported to Stony Brook University Medical Center, in the hamlet of Stony Brook. She underwent application of a cast.

After a week had passed, Smith's left ankle's fracture was addressed via open reduction and the internal fixation of two plates and several screws.

On Jan. 29, 2016, Smith's right foot's fracture was addressed via open reduction and the internal fixation of a screw.

On May 1, 2017, Smith underwent surgical reconstruction of her left ankle. The procedure included debridement of damaged tissue and a synovectomy, which involved excision of inflamed tissue.

Smith subsequently underwent a total of about six months of physical therapy and pain management.

Smith claimed that her injuries prevented immediate resumption of her job and led to the termination of her employment. She has not resumed work, though she claimed that she is seeking employment.

Smith further claimed that her left foot and left leg have developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy." Smith claimed that she requires use of a cane. She retains scars of her left ankle and her left leg. Smith's expert orthopedist opined that Smith requires lifelong orthopedic treatment.

Smith sought recovery of past and future medical expenses, damages for past and future loss of earnings, and damages for past and future pain and suffering. Her husband, Daniel Smith, sought recovery of damages for past and future loss of services and society.

Defense counsel contended that Ms. Smith does not suffer complex regional pain syndrome. Defense counsel also presented post-accident surveillance footage that depicted Smith walking with and without use of a cane.

Result:

The jury found that the defendants were negligent in their maintenance of the sidewalk, but Ms. Smith was assigned 30 percent of the liability. The jury determined that the Smiths' damages totaled $1.2 million, but the comparative-negligence reduction produced a net recovery of $840,000.

Daniel Smith

$5,000 Personal Injury: past loss of services and society

$5,000 Personal Injury: future loss of services and society (35.4 years)

Dawn Smith

$140,000 Personal Injury: Past Medical Cost

$125,000 Personal Injury: Past Lost Earnings Capability

$400,000 Personal Injury: Past Pain And Suffering

$150,000 Personal Injury: future medical cost (five years)

$175,000 Personal Injury: future lost earnings (12.5 years)

$200,000 Personal Injury: future pain and suffering (35.4 years)

Trial Information:

Judge:	David T. Reilly
Demand:	$3,000,000 (total, by both plaintiffs)
Offer:	$500,000 (total, for both plaintiffs)
Trial Length:	13 days
Trial Deliberations:	3 hours
Jury Vote:	6-0
Jury Composition:	2 male, 4 female
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

Writer Erik Halberg

Plaintiff: Snow-covered ice on sidewalk, leading to fall

Type: Settlement

Amount: $1,000,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):
- *arm* - fracture, arm; fracture, ulna; fracture, arm; fracture, radius
- *other* - fracture; neurolysis; fracture, distal; physical therapy
- *wrist* - fracture, wrist
- *epidermis* - numbness
- *neurological* - nerve damage/neuropathy; nerve damage, median nerve; neurological impairment; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Premises Liability* - Sidewalk; Snow and Ice; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Margaret Duffy v. 92-01/03 Rockaway Beach Boulevard Inc., Salvatore Cavalieri, Vincenzo Lentini and Bozena Lentini, No. 707262/2022

Date: March 21, 2023

Plaintiff(s):
- Margaret Duffy, (Female, 44 Years)

Plaintiff Attorney(s):
- Daniel P. O'Toole; Block O'Toole & Murphy, LLP; New York NY for Margaret Duffy
- Joshua Stern; Block O'Toole & Murphy, LLP; New York NY for Margaret Duffy

Defendant(s):
- Bozena Lentini
- Vincenzo Lentini
- Salvatore Cavalieri
- 92-01/03 Rockaway Beach Boulevard Inc.

Defense Attorney(s):

- David I. Robinson; Law Office of Eric D. Feldman; Hartford, CT for 92-01/03 Rockaway Beach Boulevard Inc.
- Alex Temple; Cariello Law Firm; Uniondale, NY for Vincenzo Lentini, Bozena Lentini
- Daniel El Arnaouty; Tyson & Mendes, LLP; New York, NY for Salvatore Cavalieri

Defendant Expert(s):

- Alan R. Miller M.D.; Orthopedic Surgery; Westwood, NJ called by: for David I. Robinson
- Daniel J. Feuer M.D.; Neurology; Astoria, NY called by: for David I. Robinson

Insurers:

- Northland Insurance

Facts:

On Jan. 31, 2022, plaintiff Margaret Duffy, 44, unemployed, was walking her dog in Far Rockaway when she slipped and fell on an icy sidewalk. The incident occurred two days after a storm that had caused more than nine inches of snow to accumulate on the ground.

Duffy sued the company that owns the property abutting this sidewalk, 92-01/03 Rockaway Beach Boulevard, Inc.; the owners of a shared driveway that was close to the sidewalk, Vincenzo and Bozena Lentini; and the owner of another adjacent property, Salvatore Cavalieri. Duffy alleged that the defendants were liable for a dangerous condition that caused her fall. Plaintiff's counsel specifically contended that, under New York City's administrative code, the abutting property owner is responsible for removing snow and ice from a sidewalk once a storm ends.

Initially, it was unclear which defendant was responsible for clearing snow from the sidewalk area in question. After the property owners were deposed, plaintiff's counsel determined that 92-01/03 Rockaway Beach Boulevard was solely responsible for the snow removal. Duffy's counsel voluntarily discontinued the claims against the other defendants.

Plaintiff's counsel pointed to a video taken shortly after the accident that showed the sidewalk covered with snow and ice. Plaintiff's counsel contended that Duffy thought she was stepping onto a safe, snow-covered area of the sidewalk. However, there was ice underneath the snow, which caused her to slip.

92-01/03 Rockaway Beach Boulevard admitted it had a duty to clear the snow and ice and that the company failed to fulfill this duty after the storm.

Injury: Duffy was taken to a hospital.

Duffy sustained an intra-articular fracture of the distal radius and ulna requiring an open reduction and internal fixation on Feb. 1, 2022. She received physical therapy and injections following the surgery, but she remained in pain. Due to severe neurological complications, including tingling, numbness, and electric shock sensations, she underwent neurolysis and a median nerve release on Oct. 18, 2022.

After the procedure, the pain in her fingers reduced but her wrist pain persisted. She sought a second opinion, and a three-phase bone scan confirmed the presence of complex regional pain syndrome.

Duffy is left with limitations and is still in pain.

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

Result: After defense counsel for 92-01/03 Rockaway Beach Boulevard provided proof of no excess insurance, the case settled for $1 million. The parties agreed to the settlement 13 months after the subject accident occurred.

The settlement was paid entirely by 92-01/03 Rockaway Beach Boulevard's insurer.

Margaret Duffy

Trial Information:

Trial Length: 0

Trial Deliberations: 0

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and defense counsel for 92-01/03 Rockaway Beach Boulevard. Additional information was gleaned from court documents. Counsel for the remaining defendants did not respond to the reporter's phone calls.

Writer Priya Idiculla

Landlord's stairway repair a failure, fallen tenant claimed

Type: Settlement

Amount: $1,000,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *elbow* - tarsal tunnel syndrome
- *other* - ulcer; infection; scar and/or disfigurement
- *epidermis* - gangrene; cellulitis
- *foot/heel* - foot; tibial tendon, torn; fracture, toe
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Slips, Trips & Falls* - Falldown
- *Premises Liability* - Tenant's Injury; Apartment Building; Stairs or Stairway; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Lauren Norris v. 92 Emerson Realty Corp., No. 516096/20

Date: May 23, 2022

Plaintiff(s):
- Lauren Norris, (Female, 35 Years)

Plaintiff Attorney(s):
- Roman J. Shakh; Epstein Shakh LLP; Melville NY for Lauren Norris
- Deborah J. Epstein; Epstein Shakh LLP; Melville NY for Lauren Norris

Defendant(s):
- 92 Emerson Realty Corp.

Defense Attorney(s):
- Nicole Boeckle; Traub Lieberman Straus & Shrewsberry LLP; Hawthorne, NY for 92 Emerson Realty Corp.

Insurers:
- Boulder Claims, LLC

Facts:

On Aug. 20, 2020, plaintiff Lauren Norris, 35, a hospital's transportation supervisor, fell while she was descending an exterior stairway of her residence, an apartment building that was located at 311 Beach 29th St., in the Far Rockaway section of Queens. She suffered injuries of a foot and a toe.

Norris sued the premises' owner, 92 Emerson Realty Corp. The lawsuit alleged that 92 Emerson Realty was negligent in its maintenance of the premises. The lawsuit further alleged that 92 Emerson Realty's negligence created a dangerous condition that caused Norris' fall.

Norris claimed that her fall was a result of a step having collapsed beneath her feet. Norris' counsel contended that the step, composed of wood, had rotted and should have been replaced, but that the landlord instead installed a bracket that did not provide sufficient support.

Defense counsel claimed that the landlord had not been aware of any hazard involving the step that collapsed.

Injury: Norris suffered a fracture of her right foot's great toe. She also suffered a tear of her right foot's posterior tibial tendon. She visited an urgent-care facility, where she underwent treatment of an open wound of her injured toe.

After three days had passed, Norris visited a hospital. Her injured toe had developed infectious gangrene, and her right foot had developed pyoderma gangrenosum: a condition that produces large painful ulcers. The ulcers caused extensive loss of skin.

Norris' right foot ultimately developed cellulitis, which is an acute inflammation of the skin's connective tissue, and a methicillin-susceptible Staphylococcus aureus infection. On Aug. 30, 2020, she underwent surgical drainage of the infected area. She underwent a similar surgery on Oct. 19, 2020.

Norris claimed that her right foot has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy." Norris also claimed that her right ankle and right foot developed tarsal tunnel syndrome, which is a painful condition that is caused by entrapment of an ankle's peroneal nerve. She claimed that her pain necessitates regular use of a painkiller. She further claimed that her pain prevents her performance of any type of work. She has not worked since the accident. She retains two raised, discolored scars.

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

Defense counsel did not challenge the extent of Norris' injuries and residual effects.

Result: The parties negotiated a pretrial settlement. The defendant's insurer tendered its policy, which provided $1 million of coverage.

Lauren Norris

Trial Information:

Trial Length: 0

Trial Deliberations: 0

Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter’s phone calls.
Writer	Yawana Fields

Trip, fall on uneven concrete caused CRPS: plaintiff

Type: Settlement

Amount: $980,000

State: New Jersey

Venue: Monmouth County

Court: Monmouth County Superior Court, NJ

Injury Type(s):
- *ankle* - fracture, ankle; trimalleolar fracture
- *other* - plate; swelling; physical therapy; pins/rods/screws; hardware implanted
- *foot/heel* - foot
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - internal fixation

Case Type:
- *Slips, Trips & Falls* - Slip and Fall
- *Premises Liability* - Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Richelle Walling v. 227 Freneau Realty, LLC and 227 Freneau Caterers LLC t/a Sterling Gardens, No. MON-L-3857-18

Date: May 06, 2021

Plaintiff(s):
- Richelle Walling, (Female, 28 Years)

Plaintiff Attorney(s):
- Michael S. Noonan; Clark, Clark & Noonan, LLC; Wall NJ for Richelle Walling

Plaintiff Expert (s):
- Larry Z. Bloomstein M.D.; Orthopedic Surgery; Red Bank, called by: Michael S. Noonan
- Enrique Aradillas-Lopez; Neurology; Princeton, NJ called by: Michael S. Noonan

Defendant(s):
- 227 Freneau Realty, LLC
- 227 Freneau Caterers LLC

Defense Attorney(s):

- Michael J. Marone; McElroy, Deutsch, Mulvaney & Carpenter, LLP; Morristown, NJ for 227 Freneau Realty, LLC, 227 Freneau Caterers LLC
- Richard J. Williams, Jr.; McElroy, Deutsch, Mulvaney & Carpenter, LLP; Morristown, NJ for 227 Freneau Realty, LLC, 227 Freneau Caterers LLC

Defendant Expert(s):

- Scott E. Metzger M.D.; Pain Management; Shrewsbury, NJ called by: for Michael J. Marone, Richard J. Williams, Jr.
- Daniel M. Feinberg M.D.; Neurology; Philadelphia, PA called by: for Michael J. Marone, Richard J. Williams, Jr.

Insurers:

- Selective Insurance Group Inc.

Facts:

On June 9, 2018, plaintiff Richelle Walling, 28, a psychologist, tripped and fell while attempting to re-enter a wedding venue at Sterling Gardens, in Matawan. Walling claimed that she tripped on a concrete entrance that had uneven concrete. She suffered an ankle fracture and claimed she was experiencing complex regional pain syndrome.

Walling sued the wedding venue and its property owner, 277 Freneau Realty. The plaintiff alleged that the defendants were negligent for allowing a dangerous condition to exist.

The defense maintained that Walling was comparatively negligent.

Injury: Following the June 9, 2018, accident, Walling presented to an emergency room and was diagnosed with a trimalleolar fracture of the left ankle. She was placed in a walking boot and discharged.

Ten days later, Walling underwent an internal fixation of her ankle fracture in which a metal plate and locking screws were implanted on the distal fibula and distal tibia. Following the surgery, Walling remained non-weight-bearing for several weeks. She eventually treated with a course of physical therapy.

Several months after the surgery, Walling was diagnosed with complex regional pain syndrome after experiencing significant skin discoloration along with constant pain, swelling and sensitivity in her left ankle. In addition to treating with physical therapy, in the ensuing years she received pain medication and numerous nerve block injections. As of May 2021, Walling continued to treat with pain medication.

According to Walling's expert in neurology, the plaintiff suffered a permanent injury and requires future treatment, consisting of pain medications and pain injections.

Walling testified that she experiences significant pain and swelling on a daily basis. She is limited in her physical activities, and routine tasks of walking up and down stairs and driving a car are problematic. Walling sought damages for future medical costs and past and future pain and suffering.

In his report, the defense's expert in pain management opined that Walling suffers from complex regional pain syndrome.

Although Walling suffers from CRPS, according to the defense's expert in neurology the condition is manageable with medication.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay $980,000.

Trial Information:

Trial Length: 0

Trial Deliberations:	0
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.
Writer	Aaron Jenkins

Parking lot defect caused permanent knee injury: plaintiff

Type: Mediated Settlement

Amount: $950,000

State: New Jersey

Venue: Monmouth County

Court: Monmouth County Superior Court, NJ

Injury Type(s):
- *knee* - medial meniscus, tear
- *other* - swelling; physical therapy
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy; knee surgery

Case Type:
- *Premises Liability* - Parking Lot; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Michele Cathey and John Cathey v. Jersey Shore Convalescent Center, No. MON-L-003085-17

Date: December 19, 2019

Plaintiff(s):
- John Cathey
- Michele Cathey (Female, 51 Years)

Plaintiff Attorney(s):
- John G. Mennie; Schibell & Mennie, LLC; Oakhurst NJ for Michele Cathey, John Cathey

Plaintiff Expert (s):
- Peter P. Barcas D.O.; Neurology; Neptune City, NJ called by: John G. Mennie
- Wayne F. Nolte Ph.D.; Engineering; Hazlet, NJ called by: John G. Mennie
- Philip Getson D.O.; Family Medicine; Marlton, NJ called by: John G. Mennie
- Robert L. Knobler M.D.; Neurology; Fort Washington, PA called by: John G. Mennie
- Robert B. Grossman M.D.; Orthopedic Surgery; Shrewsbury, NJ called by: John G. Mennie

Defendant(s):
- Jersey Shore Convalescent Center

Defense Attorney(s):

- Suzanne M. Marasco; Hill Wallack LLP; Princeton, NJ for Jersey Shore Convalescent Center

Defendant Expert(s):

- Toby B. Husserl M.D.; Orthopedic Surgery; Freehold, NJ called by: for Suzanne M. Marasco
- Kelly Scott; Engineering; Edison, NJ called by: for Suzanne M. Marasco
- Lloyd R. Saberski M.D.; Pain Management; New Haven, CT called by: for Suzanne M. Marasco
- Maria C. Carta M.D.; Neurology; Hammonton, NJ called by: for Suzanne M. Marasco

Insurers:

- CNA

Facts:

On Sept. 8, 2015, plaintiff Michele Cathey, 51, a hospice nurse, was exiting her vehicle in the parking lot of Jersey Shore Convalescent Center, in Neptune. She claimed that after turning around from her vehicle and taking two steps, her left foot stepped into a depression 2 inches deep., causing her left leg to buckle. She claimed that she suffered an injury of a knee.

Cathey sued Jersey Shore Convalescent Center. She alleged that the facility was negligent for allowing a dangerous condition to exist.

Plaintiff's counsel contended that Jersey Shore Convalescent Center had an unsafe practice in which, once a year, its maintenance personnel would patch any depressions in the parking lot by using material purchased from a hardware store instead of hiring a professional to resurface the parking lot properly. In a report, Cathey's expert engineer faulted Jersey Shore Convalescent Center for failing to routinely inspect the parking lot for any defects and for the defective condition that caused Cathey's accident and violated municipal codes.

The defense contended that Jersey Shore Convalescent Center inspected the parking lot daily and that any issues would be addressed immediately. According to the defense, Cathey had been seeing a patient at the facility for about a month and a half on a daily basis and never had a complaint about the parking lot. The defense questioned whether the accident happened, since there were no witnesses, and because Cathey did not report it until the next day.

Additionally, Jersey Shore Convalescent Center's premises were inspected by the state each year, and at no point did the state raise any issues with the condition of its property, the defense noted.

In a report, the defense's expert engineer opined that the depression was de minimis in nature and did not appear to represent a dangerous condition.

Injury:

Following the accident, Cathey continued to work her shift. She reported the accident to her employer the next day. Within a week, she came under the care of a workers' compensation physician.

Cathey was ultimately diagnosed with a torn medial meniscus of her left knee and complex regional pain syndrome, which is alternately termed "reflex sympathetic dystrophy."

For the next two months, Cathey had consultations with an orthopedic surgeon. In November 2015, she underwent an arthroscopy to repair the meniscus tear. Following the surgery, Cathey's knee pain increased. This prompted her to see approximately a dozen specialists, including neurologists and pain management doctors. She was eventually diagnosed with complex regional pain syndrome.

Cathey later came under the care of a pain management physician, who treated her with nerve and narcotic pain medications. In the ensuing years, and as of December 2019, Cathey continued to treat with pain medication and to consult her pain management doctor. She claimed that her complex regional pain syndrome requires lifelong use of painkillers.

Cathey contended that she is in chronic pain and has good and bad days. The bad days, she said, she spends on the couch and is unable to perform household tasks, such as cooking and cleaning; when she is able to move around, she does so with a cane. Cathey sought damages for past and future pain and suffering. Her husband sought damages for loss of consortium.

The defense questioned the severity of Ms. Cathey's alleged injury, since she continued to work that evening.

In a report, the defense's expert in pain management opined that complex regional pain syndrome is a psychologically based condition that occurs as a result of emotional distress sustained by the patient. The expert attributed Cathey's pain condition to pre-existing depression.

The defense's experts in neurology and orthopedic surgery, in their respective reports, opined that Cathey did not suffer a torn meniscus from the accident and that her knee complaints are solely due to the knee's pre-existing degenerative and arthritis changes.

Result:

The parties negotiated a pretrial settlement. Jersey Shore Convalescent Center agreed to pay $950,000, from a policy that provided $1 million of coverage. Cathey was allocated $760,000, and her husband was allocated $190,000. The settlement's negotiations were mediated by Dennis O'Brien of Keefe Law Firm.

Trial Information:

Judge:	Dennis R. O'Brien
Editor's Comment:	This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Plaintiff: Auto accident caused injuries of spine, shoulders, wrist

Type: Settlement

Amount: $945,000

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):
- *neck* - fusion, cervical; herniated disc, cervical; herniated disc at C5-6; herniated disc, cervical; herniated disc at C6-7; fusion, cervical, two-level
- *other* - bone graft; corpectomy; chiropractic; physical therapy; hardware implanted; epidural injections
- *wrist* - carpal tunnel syndrome
- *shoulder* - rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - discectomy

Case Type:
- *Motor Vehicle* - Rear-ender; Multiple Impact; Multiple Vehicle

Case Name: Cicely Prevost v. Mahendrasingh Kesharsingh Rathod Fly Eagles Fly Logistics, LLC., No. 1083/20

Date: October 13, 2021

Plaintiff(s):
- Cicely Prevost, (Female, 45 Years)

Plaintiff Attorney(s):
- Matthew M. Samradli; Law Offices of Sobo & Sobo L.L.P.; Middletown NY for Cicely Prevost

Plaintiff Expert (s):
- Steven K. Jacobs M.D.; Neurosurgery; Fishkill, NY called by: Matthew M. Samradli
- Dr. Gabriel Dassa D.O.; Orthopedic Surgery; Bronx, NY called by: Matthew M. Samradli

Defendant(s):

- Fly Eagles Fly Logistics LLC
- Mahendrasingh Kesharsingh Rathod

Defense Attorney(s):

- Kenneth E. Pitcoff; Morris Duffy Alonso & Faley; New York, NY for Mahendrasingh Kesharsingh Rathod, Fly Eagles Fly Logistics LLC

Defendant Expert(s):

- Harvey L. Seigel M.D.; Orthopedic Surgery; New Windsor, NY called by: for Kenneth E. Pitcoff

Insurers:

- Progressive Casualty Insurance Co.

Facts:

On Sept. 14, 2019, plaintiff Cicely Prevost, 45, a nurse, was driving on Route 9W, near its intersection at Carter Avenue, in Newburgh. When Prevost reached the intersection, she stopped behind a car that was stopped at a red traffic signal. Before she could resume travel, her minivan's rear end was struck by a trailing tractor-trailer that was being driven by Mahendrasingh Rathod. Prevost's minivan was propelled forward, and it resultantly struck the rear end of the preceding car. Prevost claimed that she suffered injuries of her neck, her shoulders and a wrist.

Prevost sued Rathod and the owner of Rathod's vehicle, Fly Eagles Fly Logistics LLC. The lawsuit alleged that Rathod was negligent in the operation of his vehicle. The lawsuit further alleged that Fly Eagles Fly Logistics was vicariously liable for Rathod's actions.

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

Injury:

Prevost was retrieved by an ambulance, and she was transported to Montefiore St. Luke's Cornwall hospital, in Newburgh. She underwent minor treatment.

Prevost ultimately claimed that she suffered herniations of her C5-6 and C6-7 intervertebral discs; a tear of each shoulder's supraspinatus tendon, which is a component of the rotator cuff; a tear of her right, dominant shoulder's infraspinatus tendon, which is another component of the rotator cuff; and trauma that led to her right wrist's development of carpal tunnel syndrome.

Prevost immediately commenced a course of conservative treatment that comprised chiropractic manipulation, physical therapy and the administration of epidural injections of steroid-based painkillers. The treatment lasted about four months.

In February 2020, Prevost underwent surgery that included a discectomy, which involved excision of her C5-6 and C6-7 discs; fusion of the corresponding levels of her spine; a corpectomy, which involved excision of portions of her C5, C6 and C7 vertebrae; implantation of stabilizing hardware; and application of a stabilizing graft of bony matter. Prevost has resumed chiropractic manipulation and physical therapy.

In June 2020, Prevost underwent surgical release of her right wrist's median nerve.

Prevost claimed that her right shoulder has developed complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed "reflex sympathetic dystrophy."

Prevost also claimed that her neck and her left shoulder remain painful, that her residual effects hinder her performance of physical activities, and that her residual effects prevent her performance of her job's duties. She has not worked since the accident. She further claimed that she would require further conservative treatment, that she may require further fusion of her spine's cervical region, and that one or both shoulders may require arthroscopic surgery.

Prevost sought recovery of past and future medical expenses, damages for past and future loss of earnings, and damages for past and future pain and suffering.

Defense counsel contended that the accident caused nothing more than sprains and strains of Prevost's neck and shoulders. He contended that any other injuries were degenerative conditions, aggravated by the accident.

Defense counsel also contended that Prevost achieved a good recovery, that she can perform some type of work, and that her right wrist's surgery was unnecessary.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay $945,000, from a policy that provided about $985,000 of coverage after payment of a vehicular-damage claim related to the accident.

Cicely Prevost

Trial Information:

Trial Length: 0

Trial Deliberations: 0

Editor's Comment:	This report is based on information that was provided by plaintiff's and defense counsel. Additional information was gleaned from court documents.
Writer	Melissa Siegel

Permanent injuries claimed by motorist after sideswipe collision

Type: Settlement

Amount: $800,000

State: Connecticut

Venue: New Haven

Court: New Haven Judicial District, Superior Court, CT

Injury Type(s):

- *arm*
- *back* - sprain, thoracic
- *head* - concussion
- *neck* - sprain, cervical
- *other* - steroid injection; decreased range of motion
- *epidermis* - numbness
- *hand/finger* - hand
- *neurological* - radicular pain / radiculitis; reflex sympathetic dystrophy; complex regional pain syndrome
- *sensory/speech* - tinnitus
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Motor Vehicle* - Sideswipe; Lane Change; Multiple Vehicle; Underinsured Motorist

Case Name: Olivia Noyes v. Safeco Insurance Company of Illinois a/k/a Safeco Insurance, No. NNH-CV18-6083438-S

Date: March 20, 2020

Plaintiff(s):

- Olivia Noyes (Female, 22 Years)

Plaintiff Attorney(s):	• Charles B. Price Jr.; McEnery Price Messey & Sullivan, LLC; Milford CT for Olivia Noyes • Robert P. . Messey; McEnery, Price, Messey & Sullivan; Milford CT for Olivia Noyes • Gerard McEnery; McEnery Price Messey & Sullivan, LLC; Milford CT for Olivia Noyes • Charles Prince; McEnery, Price, Messey & Sullivan; Milford CT for Olivia Noyes • Robert C. Messey; McEnery Price Messey & Sullivan, LLC; Milford CT for Olivia Noyes
Plaintiff Expert (s):	• Michael L. DiLuna M.D.; Neurosurgery; New Haven, CT called by: Robert P. . Messey, Gerard McEnery, Charles Prince
Defendant(s):	• Safeco Insurance Co. of Illinois
Defense Attorney(s):	• Christopher Russo; Meehan, Roberts, Turret & Rosenbaum; Wallingford, CT for Safeco Insurance Co. of Illinois
Defendant Expert(s):	• Kishore N. Ranade M.D.; Neurology; Carmel, NY called by: for Christopher Russo
Insurers:	• Safeco Insurance Cos.

Facts:

On Dec. 27, 2016, plaintiff Olivia Noyes, 22, was driving south on Route 15, in New Haven. As she was traveling in the right lane, Jonathan Hill was operating a sedan in the lane to her left. Hill moved into Noyes' lane of travel and struck the driver's side of her vehicle. The impact pushed Noyes' vehicle into the wall of a tunnel, causing it to spin out of control and strike a third vehicle. Noyers claimed she inured her head, neck and back.

Noyes sued the underinsured motorist carrier, Safeco Insurance Company of Illinois, after settling with Hill's liability carrier for the $20,000 policy. Noyes alleged that the liability policy was insufficient to compensate her for her losses.

Liability was not in dispute, but Safeco contested causation and the nature and extent of Noyes' injuries.

Injury: Noyes was transported by ambulance to a local emergency room. She had X-rays and was discharged.

Noyes was diagnosed with a concussion, post-concussion syndrome, sprains of her cervical and thoracic spine, radicular pain radiating from her neck into her left shoulder, left arm and left hand, complex regional pain syndrome and tinnitus.

Noyes presented to a neurologist, who diagnosed the cervical and thoracic sprains, radicular pain, CRPS and tinnitus. She then underwent pain management care. Her treatment included two occipital nerve block injections, and three medial branch block injections into the C2, C3 and C4 spinal levels, in July 2018.

Noyes claimed ongoing severe pain, a decreased range of motion in her cervical spine with numbness, and tingling and weakness in her left hand and left arm. She stated that she is unable to fully extend her left arm.

Noyes' treating neurosurgeon opined that the CRPS and decreased range of motion was caused by the subject accident. He testified that Noyes will require future pain management treatment, as well as decompression surgery.

Noyes sought damages for past and future medical care, and for past and future pain and suffering.

The defense's neurology expert opined that Noyes’ claimed cervical injuries were not caused by the subject accident. He opined that she only suffered minor soft tissue injuries that had resolved and there was no need for future surgery.

Result: Prior to trial, Safeco agreed to settle the case for $800,000, out of a $1 million policy.

Trial Information:

Judge: Michael P. Kamp

Trial Length: 0

Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter’s phone calls.
Writer	Gary Raynaldo

Crush injury to wrist did not cause CRPS, defense argued

Type: Verdict-Plaintiff

Amount: $150,000

Actual Award: $250,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):
- *other* - swelling; soft tissue; crush injury; physical therapy; steroid injection; cortisone injections
- *wrist* - triangular fibrocartilage complex, torn
- *epidermis* - numbness; contusion
- *hand/finger* - hand; crush injury, hand
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - Restaurant; Dangerous Condition
- *Worker/Workplace Negligence*

Case Name: Catherine Luongo v. Panera, LLC, EHI Realty, Inc., Doherty Enterprises, Inc., Doherty Enterprises, LLC, and Woodell Acquisition Corp., No. 710605/2018

Date: August 04, 2023

Plaintiff(s):
- Catherine Luongo, (Female, 45 Years)
- Pasquale Antuofermo, (, 0 Years)

Plaintiff Attorney(s):
- Joseph Napoli; Napoli Shkolnik PLLC; New York NY for Catherine Luongo,, Pasquale Antuofermo

Plaintiff Expert (s):
- Ali Guy M.D.; Physical Medicine; New York, NY called by: Joseph Napoli
- Mark S. McMahon M.D.; Orthopedics; New York, NY called by: Joseph Napoli
- Steven A. Fayer M.D.; Psychiatry; New York, NY called by: Joseph Napoli
- Leonard R. Freifelder Ph.D.; Economics; New York, NY called by: Joseph Napoli

Defendant(s):

- Panera, LLC
- EHI Realty Inc.
- Doherty Enterprises LLC
- Doherty Enterprises Inc.
- Woodell Acquisition Corp.

Defense Attorney(s):

- James A. Pannone; Morris Duffy Alonso Faley & Pitcoff; New York, NY for Doherty Enterprises Inc., Doherty Enterprises LLC

Defendant Expert(s):

- Daniel J. Feuer M.D.; Neurology; Astoria, NY called by: for James A. Pannone
- Teresa Habacker M.D.; Orthopedic Surgery; Southampton, NY called by: for James A. Pannone

Insurers:

- Conifer Insurance Co.

Facts:

On November 27, 2017, plaintiff Catherine Luongo, 45, an office manager, was dining at a Panera Bread restaurant on Woodhaven Boulevard in Glendale. Her left hand was crushed between two chairs. Luongo claimed injuries to her left hand and wrist.

Luongo sued the restaurant's owners, Doherty Enterprises Inc. and Doherty Enterprises LLC. Doherty is a Panera Bread franchisee. Luongo alleged that the defendants were negligent in the operation of their establishment.

Luongo also initially sued other entities, but they were removed from the case during or prior to trial.

Plaintiff's counsel argued that a restaurant employee negligently moved the chair and caused the accident. Luongo specifically claimed that as she put her left hand on the top corner of the back of her chair, the employee slammed an empty chair onto Luongo's hand. Luongo's counsel further contended that the location of the tables created a hazardous condition.

The defense maintained that the condition was not dangerous and that Luongo's hand got crushed when she moved her chair herself.

Injury: The trial was bifurcated.

Luongo was taken to an emergency room.

Luongo sustained a crush injury and contusion to her left hand and wrist. She also claimed a left wrist sprain along with a tear of that wrist's triangular fibrocartilage complex. She said that these injuries caused numbness, swelling and stiffness. After following up with medical providers, she was also diagnosed with complex regional pain syndrome (CRPS).

Luongo's treatment included medications, physical therapy and one corticosteroid injection. She claimed that her CRPS had spread to her left leg and rendered her permanently disabled.

She sought recovery of $4.6 million in future medical expenses, $1.2 million in past and future lost earnings and millions in past and future pain and suffering. Her husband, Pasquale Antuofermo, filed a derivative claim.

The defense argued that there was no significant objective evidence to support the CRPS diagnosis. Luongo's presentation also was not consistent with CRPS, the defense contended. The defense further maintained that surveillance footage demonstrated Luongo was not as injured as she claimed she was.

The parties negotiated a high/low stipulation. Damages could not exceed $1.2 million, but they had to equal or exceed $250,000.

Result: At the conclusion of the trial's liability phase, a jury assigned 55 percent of the liability to the Doherty defendants and the remaining 45 percent of liability to Luongo.

At the conclusion of the damages phase, a jury awarded $150,000 to Luongo and zero dollars to Antuofermo. The award solely addressed Luongo's past pain and suffering.

The comparative-fault reduction produced a net verdict of $82,500. However, the plaintiffs recovered the stipulated minimum: $250,000.

Pasquale Antuofermo

Catherine Luongo

Trial Information:

Judge:	Denise N. Johnson
Trial Length:	19 days
Trial Deliberations:	6.5 hours
Jury Vote:	5-1 on past pain and suffering damages; 6-0 on all other questions
Post Trial:	Plaintiff's counsel filed a motion for a new damages trial or additur.
Editor's Comment:	This report is based on information provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel reported that there were some inaccuracies, but declined to elaborate.
Writer	Yawana Fields

Plaintiff knew about crack in sidewalk, defense contended

Type: Verdict-Plaintiff

Amount: $50,000

Actual Award: $25,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):
- *arm* - fracture, arm; fracture, radius
- *other* - swelling; fracture, distal; physical therapy; hardware implanted
- *wrist* - fracture, wrist
- *shoulder* - rotator cuff, injury (tear)
- *neurological* - reflex sympathetic dystrophy
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Premises Liability* - Sidewalk; Failure to Warn; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Trip and Fall

Case Name: Lana Roz v. Gesualda Gandolfo and the City of New York, No. 139/2016

Date: January 23, 2024

Plaintiff(s):
- Lana Roz, (Female, 54 Years)

Plaintiff Attorney(s):
- Harlan Wittenstein; Wittenstein & Associates, Brooklyn, NY, trial counsel, Banilov & Associates, P.C.; Brooklyn NY for Lana Roz

Plaintiff Expert (s):
- Irvin S. Loewenstein; Sidewalks/Other Walking Surfaces; Staten Island, NY called by: Harlan Wittenstein

Defendant(s):

- City of New York
- Gesualda Gandolfo

Defense Attorney(s):

- David S. Gould; Russo & Gould LLP; New York, NY for Gesualda Gandolfo
- Anthony J. Milone; Russo & Gould LLP; New York, NY for Gesualda Gandolfo

Defendant Expert(s):

- Pierce J. Ferriter M.D.; Orthopedic Surgery; New York, NY called by: for David S. Gould, Anthony J. Milone
- Richard Lechtenberg M.D.; Neurology; Brooklyn, NY called by: for David S. Gould, Anthony J. Milone
- William Marletta Ph.D.; Sidewalks/Other Walking Surfaces; West Islip, NY called by: for David S. Gould, Anthony J. Milone

Insurers:

- New York Central Mutual Fire Insurance Co.

Facts:

On April 28, 2015, plaintiff Lana Roz, 54, a home health aide, was walking on the sidewalk alongside Gesualda Gandolfo's property on Bay Ridge Avenue, in Brooklyn, when Roz allegedly tripped on a crack and fell to the ground. Roz claimed injuries of her left wrist and shoulder.

Roz sued the property owner, Gesualda Gandolfo, and the believed maintainer of the sidewalk, the city of New York. Roz alleged that the defendants failed to repair and/or maintain the sidewalk, creating a dangerous condition.

The city was ultimately let out of the case.

Roz claimed the crack in the sidewalk was 6 inches long and 1 inch deep.

Plaintiff's counsel noted that Gandolfo's son-in-law, a general contractor, repaired the subject sidewalk in 2009. However, counsel argued that Gandolfo's son-in-law did not do the repairs correctly and failed to respond appropriately as the sidewalk condition worsened. Counsel also argued that Gandolfo's son-in-law knew the sidewalk was a hazard and should have replaced the slab himself, hired a contractor or contacted the city about the defect. Plaintiff's counsel further argued that Gandolfo and/or her son-in-law should have also put up a sign warning pedestrians about the hazard, but failed to do so.

Defense counsel argued that the crack was trivial and could not have caused Roz's fall. Counsel also denied the fall took place on the subject sidewalk. Defense counsel noted that Roz told doctors at the hospital after the incident that she had tripped in the street and that while Roz said she took pictures of the sidewalk that had caused her fall, she did not present those photos at trial.

Defense counsel contended that any repairs done by Gandolfo's son-in-law did not worsen the sidewalk's condition. Counsel also made a comparative-fault argument, noting that Roz had been to Bay Ridge Avenue in the past and that Roz admitted she was not completely paying attention to her surroundings at the time of the fall. Thus, counsel argued that Roz should have known about the alleged condition of the sidewalk and could have easily walked around the crack.

Injury:

Roz took a taxi from the scene to Coney Island Hospital, where she was treated and released.

Roz sustained a fracture of the distal radius of her left, non-dominant wrist and a tear of the left shoulder's rotator cuff. She underwent open reduction and internal fixation surgery on her wrist one week after the incident. The surgery included the insertion of hardware. Roz then received a round of ganglion nerve block injections.

In November 2015, Roz underwent surgery to remove some of the hardware in her wrist. She also underwent physical therapy in 2016. Her treatment ended several years before trial.

Roz did not return to work after her second surgery. She was diagnosed with reflex sympathetic dystrophy.

Roz claimed she suffers from continued swelling in her wrist. She also claimed she can no longer make a fist, walk her dog, swim with her grandson or clean her apartment.

Roz sought recovery of $750,000 for her past pain and suffering and $400,000 for her future pain and suffering.

Defense counsel argued that Roz's wrist fracture had resolved and that Roz is still able to do any job for which she is qualified. Counsel also argued that Roz did not have reflex sympathetic dystrophy, and that even if she did have that condition, it stemmed from her prior home health aide job and not the subject fall.

The parties negotiated a $250,000/$20,000 high/low stipulation.

Result:

The jury determined that Roz and Gandolfo were each 50 percent liable for the incident. It determined that Roz's damages totaled $50,000. However, the award solely addressed Roz's past pain and suffering.

After the comparative-fault reduction, Roz's recovery would total $25,000.

Lana Roz

$ 50,000 Past Pain Suffering

$ 50,000 Plaintiff's Total Award

Trial Information:

Judge:	Richard Velasquez
Demand:	$200,000 (after jury question about time missed from work)
Offer:	$100,000 (in response to plaintiff's $200,000 demand)
Trial Length:	2 days
Trial Deliberations:	3.5 hours
Jury Vote:	6-0
Jury Composition:	3 male, 3 female
Editor's Comment:	This report is based on information that was provided by plaintiff's counsel and Gandolfo's counsel. Additional information was gleaned from court documents. The city of New York's counsel was not asked to contribute.
Writer	Melissa Siegel

Patron's slip, fall in market did not cause CRPS: defense

Type: Verdict-Defendant

Amount: $0

State: Pennsylvania

Venue: Chester County

Court: Chester County Court of Common Pleas, PA

Injury Type(s):
- *leg*
- *knee* - knee contusion
- *other* - physical therapy
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - Store; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Vanessa Tooles v. Hershey's Farm Market, No. 2018-06488-TT

Date: March 17, 2020

Plaintiff(s):
- Vanessa Tooles (Female, 50 Years)

Plaintiff Attorney(s):
- Edward L. McCandless Jr.; Allan M Horwitz & Associates; Coatesville PA for Vanessa Tooles

Plaintiff Expert (s):
- Jonathan P. Garino M.D.; Orthopedic Surgery; Malvern, PA called by: Edward L. McCandless Jr.

Defendant(s):
- Hershey's Farm Market

Defense Attorney(s):
- Joshua J. Bovender; Thomas, Thomas & Hafer LLP; Harrisburg, PA for Hershey's Farm Market

Defendant Expert(s):

- Richard H. Bennett M.D.; Neurology; Elkins Park, PA called by: for Joshua J. Bovender

Facts:

On Aug. 5, 2016, Vanessa Tooles, 50, slipped and fell on spilled ice cream at a Hershey's Farm Market, in Parkesburg. Tooles landed on her right knee. She claimed a leg injury.

Tooles sued Hershey's Farm Market. She alleged that the market was negligent for allowing a dangerous condition to exist. An employee had spilled the ice cream, and immediately after this occurred, that employee had to assist a co-worker at the register. Tooles, walking toward the market's bathroom, slipped and fell on the ice cream. Tooles' counsel argued that the employee created a hazardous condition for customers by allowing the spilled ice cream to remain on the floor instead of cleaning it up immediately.

The defense maintained that the employee's actions did not constitute negligence.

Injury:

Following the Aug. 5, 2016, accident, Tooles sought medical attention and was diagnosed with a contusion of the right knee. Tooles was ultimately diagnosed with complex regional pain syndrome in her right leg.

Through 2018, Tooles treated with physical therapy and pain medication.

Toole's orthopedic surgeon testified that the plaintiff's complex regional pain syndrome was permanent.

Tooles sought damages for past and future pain and suffering.

The defense's expert in neurology testified that Tooles did not suffer from complex regional pain syndrome. The expert attributed Tooles' complaints and treatment to a longstanding, pre-existing knee condition, as she had previously undergone a right knee replacement.

Result:

The jury found that Hershey's Farm Market was negligent, but its negligence was not a factual cause of injury to Tooles.

Trial Information:

Judge: William P. Mahon

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

Writer Aaron Jenkins

Hospital not negligent in visitor's slip and fall, defense claimed

Type: Verdict-Defendant

Amount: $0

State: Pennsylvania

Venue: Allegheny County

Court: Allegheny County Court of Common Pleas, PA

Injury Type(s):
- *ankle* - fracture, ankle; fracture, malleolus; fracture, ankle; trimalleolar fracture; fracture, distal fibula
- *other* - plate; swelling; physical therapy; pins/rods/screws; steroid injection; comminuted fracture
- *foot/heel* - foot
- *neurological* - neurological impairment; neuroma; reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - open reduction; internal fixation

Case Type:
- *Premises Liability* - Snow and Ice; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Slip and Fall

Case Name: Lucy Garrighan v. UPMC Mercy, Joseph Conte Jr. and Joseph Conte Jr. Landscaping Inc., No. GD-15-019913

Date: September 19, 2019

Plaintiff(s):
- Lucy Garrighan (Female, 53 Years)

Plaintiff Attorney(s):
- Gregory R. Unatin; Meyers Evans Lupetin & Unatin, LLC; Pittsburgh PA for Lucy Garrighan

Plaintiff Expert (s):
- Haibin Wang M.D., Ph.D.; Pain Management; Pittsburgh, PA called by: Gregory R. Unatin
- Robert T. Stevens Jr. R.A.; Architecture; McMurray, PA called by: Gregory R. Unatin

Defendant(s):

- UPMC Mercy
- Joseph Conte Jr.
- Joseph Conte Jr. Landscaping Inc.

Defense Attorney(s):

- None reported for Joseph Conte Jr., Joseph Conte Jr. Landscaping Inc.
- Christopher J. Watson; Dickie, McCamey & Chilcote, P.C.; Pittsburgh, PA for UPMC Mercy

Defendant Expert(s):

- Mark S. Berkowitz M.D.; Orthopedic Surgery; Cleveland, OH called by: for Christopher J. Watson

Facts:

On Nov. 27, 2017, plaintiff Lucy Garrighan, 53, slipped and fell at UPMC Mercy hospital in Pittsburgh. She claimed that she slipped on snow or ice. She suffered an ankle fracture.

Garrighan sued the hospital. She alleged that it was negligent for allowing a dangerous condition to exist. She also sued Joseph Conte Jr. and Joseph Conte Jr. Landscaping Inc., whom UPMC Mercy hired to perform snow-removal services. Conte and his company were dismissed prior to trial. Garrighan alleged that she was walking to the hospital's emergency department, having dropped off her husband. The lawsuit alleged that Garrighan, having parked on a hill, chose to walk along what she believed to be a safer path: a level path through an approximately 6-feet-wide area of wood chips that led directly to a crosswalk. The crosswalk led directly to the entrance of the emergency department. Garrighan alleged that she slipped and fell while walking on a path through wood chips. According to Garrighan, she was afraid walk down the expansive, sloped parking lot, which she believed to be icy. Instead, she believed that the path she chose to walk along was the shortest, most direct way to the hospital.

Garrighan's expert in architecture testified that UPMC Mercy's parking lot violated applicable building codes necessary to ensure that a parking lot provided safe ingress and egress to individuals entering and exiting the hospital.

The defense maintained that the hospital maintained its parking lots and sidewalks appropriately to provide safe walkways for pedestrians and visitors, including Garrighan. The defense asserted that Garrighan was contributorily negligent for walking in an area that was not designated as a walkway.

Injury:

Garrighan was assisted by a hospital security guard and taken to the emergency room. She was diagnosed with a comminuted fracture of the medial malleolar fragment, a posterior malleolar fracture of the distal tibia and a comminuted oblique segmental fracture of the distal fibula.

Garrighan was admitted to the hospital and underwent an open reduction and internal fixation, in which screws and a plate were implanted. She was discharged three days later, on Nov. 30. Five days later, on Dec. 5, Garrighan began a course of physical therapy and remained non-weight-bearing in the ensuing weeks.

In the ensuing years, Garrighan developed complex regional pain syndrome in her left leg. She treated with a number of specialists, including podiatrists, physiatrists and a pain management specialist. Her treatment consisted of a series of steroid injections and an electronic nerve stimulator, and she underwent surgical excision of a neuroma. Garrighan continued to treat with her pain management doctor at the time of trial.

Garrighan's pain management doctor causally related Garrighan's injuries and treatment to the accident. The physician opined that Garrighan will suffer from permanent and chronic pain in her left ankle for the rest of her life.

Garrighan testified that she is in constant pain. She alleged that she was unable to walk and stand for long periods of time, and she has difficulty performing her activities of daily living. She sought damages for past and future pain and suffering.

The defense's expert in orthopedic surgery determined that Garrighan made a full recovery from her ankle injury and that she has no ongoing restrictions.

Result:

The jury rendered a defense verdict. It found that UPMC Mercy was negligent but its negligence was not a factual cause of harm to Garrighan.

Trial Information:

Judge: Philip A. Ignelzi

Trial Length: 3 days

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.

Writer Aaron Jenkins

Custodian should have known how closet door operated: defense

Type: Verdict-Defendant

Amount: $0

State: Pennsylvania

Venue: Philadelphia County

Court: Philadelphia County Court of Common Pleas, PA

Injury Type(s):
- *other* - swelling; physical therapy; avulsion fracture; decreased range of motion
- *wrist* - fracture, wrist; triangular fibrocartilage complex, torn
- *hand/finger* - hand; crush injury, hand
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - Door Accidents; Failure to Warn; Dangerous Condition; Negligent Repair and/or Maintenance

Case Name: Sophia Cheek v. Main Line Hospitals, Inc. d/b/a Lankenau Medical Center, No. 1909003782

Date: March 07, 2022

Plaintiff(s):
- Sophia Cheek, (Female, 45 Years)

Plaintiff Attorney(s):
- Thomas F. Sacchetta; Sacchetta & Baldino; Media PA for Sophia Cheek

Plaintiff Expert (s):
- Leah P. Greenwood Ph.D.; Vocational Rehabilitation/Counseling; Exton, PA called by: Thomas F. Sacchetta
- Royal A. Bunin; Economics; Wynnewood, PA called by: Thomas F. Sacchetta
- William C. Murphy D.O.; Physical Medicine; Media, PA called by: Thomas F. Sacchetta

Defendant(s):
- Main Line Hospitals Inc.

Defense Attorney(s):

- Joseph W. Petka; Goldberg Miller & Rubin; Philadelphia, PA for Main Line Hospitals Inc.

Facts:

On Nov. 7, 2017, plaintiff Sophia Cheek, 45, a custodian, was working as an independent contractor at Lankenau Medical Center in Philadelphia. She claimed that the door of the housekeeping closet inadvertently closed on her wrist, causing an injury.

Cheek sued the hospital's owner, Main Line Hospitals Inc. Cheek alleged that the hospital was negligent in allowing a dangerous condition to exist.

Cheek's counsel faulted the hospital for failing to inspect its premises, and failing to discover and repair the defective, unsafe door. Her counsel asserted that the hospital failed to erect any barricades or pylons, place a warning on the door, or take any other precautions to prevent invitee employees from using the defective door.

The defense maintained that Cheek was comparatively negligent. According to the defense, Cheek had been going in and out of the hospital's housekeeping closets several times a day over the course of seven years. The defense contended that Cheek was fully aware the closets closed by themselves if not held open, and that no warning was necessary to alert her of the door's closing mechanism.

Injury: Following the accident, Cheek presented to the hospital's emergency room with complaints of pain and swelling to the wrist and hand of her non-dominant left arm. She was diagnosed with an avulsion fracture of the left lunate and a crush injury to the left hand and wrist. Cheek's left wrist was splinted and she was discharged.

In addition to the injuries diagnosed at the emergency room, Cheek was ultimately diagnosed with a tear of the left triangular fibrocartilage complex and complex regional pain syndrome.

Within weeks of the accident, Cheek came under the care of a hand specialist, with whom she consulted through the end of 2017. In January 2018, Cheek began a course of physical therapy, which lasted for several months. She further treated with pain medication.

Cheek's expert in physical medicine testified that Cheek has not recovered from her injuries and her prognosis is poor. According to the expert, Cheek should avoid activities that would aggravate her symptoms, including repetitive squeezing, grasping, lifting and pushing. The physician recommended future physical therapy, pain injections and pain medication.

Cheek's expert in vocational rehabilitation testified that Cheek's physical impairment has reduced her work-life expectancy.

Cheek testified that her continued wrist pain interferes with lifting her grandchildren, doing her hair and performing activities that involve squeezing, lifting or using fine motor function. She sought to recover $831,692 to $1,260,630 in future lost earnings, plus damages for past and future pain and suffering.

The defense cited Cheek's medical records in which a physician in November 2017 told her that her complaints were disproportionate to the physical findings.

Result: The jury rendered a defense verdict, finding that Main Line Hospitals was not negligent.

Sophia Cheek

Trial Information:

Judge: Sean F. Kennedy

Trial Length:	3 days
Trial Deliberations:	0
Editor's Comment:	This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.
Writer	Aaron Jenkins

Surgeon: Patient's pain a result of her own noncompliance

Type: Verdict-Defendant

Amount: $0

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):
- *neck*
- *other* - decreased range of motion
- *shoulder*
- *neurological* - nerve damage/neuropathy; nerve damage, spinal accessory nerve; reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Medical Malpractice* - Surgeon; Surgical Error; Failure to Treat; Delayed Treatment; Failure to Diagnose

Case Name: Nikki Schwartz v. Jatin P Shah, MD, Iain J Nixon, MD, David Gyork, MD and Memorial Sloan Kettering Cancer Center, No. 805192/15

Date: January 30, 2020

Plaintiff(s):
- Nikki Schwartz (Female, 35 Years)

Plaintiff Attorney(s):
- Marvin Salenger; Salenger, Sack, Kimmel & Bavaro, LLP; Woodbury NY for Nikki Schwartz
- Carolyn M. Caccese; Salenger, Sack, Kimmel & Bavaro, LLP; Woodbury NY for Nikki Schwartz

Plaintiff Expert (s):
- Jacob Rachlin M.D.; Neurosurgery; Brookline, MA called by: Marvin Salenger, Carolyn M. Caccese
- James T. D'Olimpio M.D.; Oncology; Lake Success, NY called by: Marvin Salenger, Carolyn M. Caccese
- Michel Kliot M.D.; Neurosurgery; Palo Alto, CA called by: Marvin Salenger, Carolyn M. Caccese

Defendant(s):

- David Gyorki
- Iain J. Nixon
- Jatin P. Shah
- Memorial Sloan Kettering Cancer Center

Defense Attorney(s):

- Steven D. Weiner; Kaufman Borgeest & Ryan LLP; Valhalla, NY for Jatin P. Shah, Iain J. Nixon, David Gyorki, Memorial Sloan Kettering Cancer Center
- Ericka Fang; Kaufman Borgeest & Ryan LLP; Valhalla, NY for Jatin P. Shah, Iain J. Nixon, David Gyorki, Memorial Sloan Kettering Cancer Center

Defendant Expert(s):

- Kyle R. Eberlin M.D.; Plastic Surgery/Reconstructive Surgery; Boston, MA called by: for Steven D. Weiner, Ericka Fang

Facts:

In December 2012, plaintiff Nikki Schwartz, 35, a therapist, underwent surgical removal of a cancerous thyroid. Dr. Jatin Shah performed the procedure. Shah was assisted by Dr. David Gyorki and Dr. Iain Nixon. During the surgery, Schwartz suffered an injury of the spinal accessory nerve, which controls muscles of the neck. Schwartz suffers permanent residual effects.

Schwartz sued Shah, Gyorki, Nixon and their employer, Memorial Sloan Kettering Cancer Center. The lawsuit alleged that Shah, Gyorki and Nixon failed to properly perform the thyroidectomy, that Shah failed to timely address Schwartz's resultant injury, that the doctors' failures constituted malpractice, and that Memorial Sloan Kettering Cancer Center was vicariously liable for the doctors' actions.

During the trial, Schwartz's counsel discontinued the claims against Gyorki and Nixon. The trial continued against Shah and Memorial Sloan Kettering Cancer Center.

Schwartz's counsel contended that Schwartz's injury was a result of Shah having failed to adequately visualize the surgical field.

Schwartz's expert neurosurgeon opined that Shah also failed to promptly diagnose and treat the injury of Schwartz's spinal accessory nerve. Schwartz claimed that she suffers complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. Schwartz also claimed that she suffers residual diminution of her right shoulder's range of motion. Schwartz's counsel contended that the spinal accessory nerve's injury should have been diagnosed and repaired during the six months that followed the thyroidectomy. Reparative surgery was not performed until 14 months had passed. Schwartz's counsel contended that timely intervention would have produced a better outcome.

Defense counsel contended that Shah properly performed the thyroidectomy. Defense counsel noted that the spinal accessory nerve is located near the thyroid, and defense counsel argued that Schwartz's injury was a known, accepted risk of the surgery.

Defense counsel also contended that Shah is not liable for Schwartz's pain and limitations. The defense's expert surgeon opined that Schwartz's right shoulder's limitation may be a result of intentional underuse of the shoulder. Defense counsel claimed that Schwartz did not consistently undergo physical therapy that had been prescribed after the thyroidectomy. Defense counsel also contended that chronic pain would not be the result of an injury of the spinal accessory nerve, which is a mostly non-sensory nerve that controls the functions of two muscles. Defense counsel further claimed that Schwartz's medical records indicate that Schwartz had previously reported that her neck was hypersensitive and debilitatingly painful. The defense's expert reviewed the results of an electromyography that was performed between the thyroidectomy and the reparative surgery, and he opined that the test's results indicated that the spinal accessory nerve had been healing. Defense counsel contended that the reparative surgery was an unnecessary measure that hindered the nerve's recovery.

Injury: Schwartz suffered an injury of her spinal accessory nerve. In March 2014, she underwent surgical repair of the nerve. The procedure included application of a graft. Schwartz subsequently underwent cryotherapy and other rehabilitative treatment.

Schwartz claimed that her neck has developed complex regional pain syndrome, which is alternately termed "reflex sympathetic dystrophy." She claimed that her neck experiences chronic pain, that her pain is permanent, that she suffers severe residual diminution of her right shoulder's range of motion, and that she requires use of a brace that secures her neck. She also claimed that she requires use of painkillers.

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

Result: The jury rendered a defense verdict.

Trial Information:

Judge: Joan A. Madden

Demand: $2,000,000 (total, from Memorial Sloan Kettering Cancer Center and Shah)

Offer: $150,000 (total, by Memorial Sloan Kettering Cancer Center and Shah)

Trial Length: 4 weeks

Trial Deliberations: 45 minutes

Jury Vote: 6-0

Jury Composition: 3 male, 3 female

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

Writer Caitlin Granfield

Mother denied committing battery upon daughter

Type: Verdict-Defendant

Amount: $0

State: Massachusetts

Venue: Hampden County

Court: Hampden County, Superior Court, MA

Injury Type(s):
- *arm* - bruise
- *epidermis* - numbness
- *face/nose* - face
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Intentional Torts* - Battery

Case Name: Brooke Chichakly v. Laurel Carman, No. 1879CV00169

Date: March 31, 2022

Plaintiff(s):
- Brooke Chichakly, (Female, 30 Years)

Plaintiff Attorney(s):
- J. Michael Conley; Kenney & Conley, P.C.; Braintree MA for Brooke Chichakly
- Benjamin T. Carroll; Kenney & Conley, P.C.; Braintree MA for Brooke Chichakly

Plaintiff Expert (s):
- Roberto Feliz M.D.; Pain Management; Hyde Park, MA called by: J. Michael Conley, Benjamin T. Carroll

Defendant(s):
- Laurel Carman

Defense Attorney(s):
- John P. Knight; Morrison Mahoney LLP; Boston, MA for Laurel Carman
- Janelle M. Gordon; Morrison Mahoney LLP; Boston, MA for Laurel Carman

Defendant Expert(s):

- Carol A. Warfield M.D.; Pain Management; Cambridge, MA called by: for John P. Knight, Janelle M. Gordon

Insurers:

- Praetorian Insurance Co.

Facts:

On March 13, 2015, plaintiff Brooke Chichakly, a woman in her early 30s, got into a dispute with her mother, Laurel Carman. The incident occurred at Carman's home on Feeding Hills Road, in Southwick. Chichakly was living at the home at the time.

Chichakly contended that her mother struck her during this dispute. Chichakly specifically claimed an injury to an arm.

Chichakly sued Carman for negligence and battery.

Chichakly contended that her mother shoved her with a baby gate. Chichakly's counsel presented an audio recording of the incident and contended that the audio supported Chichakly's version of events.

Carman denied striking her daughter with the baby gate, and defense counsel maintained that the fight never became physical. The defense also contended that Chichakly instigated the argument, egged on Carman during the fight and was comparatively negligent.

Injury: Chichakly did not go to the hospital from the scene. She first sought treatment six days after the incident. She did not require a hospital admission.

Chichakly suffered a bruise to her left, non-dominant wrist. She contended that this injury led to complex regional pain syndrome, which is a chronic neurological condition that is typically characterized by severe pain, pathological changes of bone and skin, swollenness, and/or increased sensitivity to physical stimulus. The syndrome is alternately termed reflex sympathetic dystrophy.

Chichakly saw numerous doctors with complaints of pain. She also took medications and received several nerve-block injections. She claimed she will need additional doctors' appointments and pain medications in the future.

Chichakly contended that she suffers from constant pain in her arm. She additionally complained of numbness that spread to the left side of her face. She claimed that her injuries have made her homebound, and that she can no longer use her left arm.

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

The defense retained a pain management expert who concluded that Chichakly does not have CRPS. The doctor suggested that Chichakly may be exaggerating her complaints in order to get pain medications. The doctor further opined that Chichakly's symptoms are more consistent with opioid-induced hyperalgesia and/or Raynaud's syndrome. The defense similarly pointed to medical records indicating that Chichakly may be a malingerer. Defense counsel also pointed out that Chichakly has a history of mental illness.

Result: The jury rendered a defense verdict. It found that Carman was not negligent and did not commit a harmful or offensive contact with Chichakly.

Brooke Chichakly

Trial Information:

Judge: James Manitsas

Demand: $500,000

Offer:	$25,000
Trial Length:	4 days
Trial Deliberations:	45 minutes
Jury Vote:	8-0
Jury Composition:	4 male, 4 female
Editor's Comment:	This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.
Writer	Melissa Siegel

Defense: Severing nerve during surgery was appropriate

Type: Verdict-Defendant

Amount: $0

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):
- *leg*
- *other* - decreased range of motion
- *foot/heel* - foot
- *neurological* - nerve damage/neuropathy; nerve, severed/torn; nerve damage/neuropathy; nerve damage, peroneal nerve; neurological impairment; causalgia; reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Medical Malpractice* - Surgeon; Orthopedist; Foot Surgery; Informed Consent; Orthopedic Surgeon; Orthopedic Surgery; Negligent Treatment; Failure to Communicate

Case Name: Janette Burgess v. Mikhail Itingen, D.O., No. 155/2020

Date: October 31, 2023

Plaintiff(s):
- Janette Burgess, (Female, 40 Years)

Plaintiff Attorney(s):
- Derek J. Spada; Basch & Keegan, LLP; Kingston NY for Janette Burgess

Plaintiff Expert (s):
- Luis A. Mendoza M.D.; Internal Medicine; Poughkeepsie, NY called by: Derek J. Spada
- Samuel J. Snyder M.D.; Orthopedic Surgery; Fair Lawn, NJ called by: Derek J. Spada

Defendant(s):
- Mikhail Itingen D.O.

Defense Attorney(s):

- Louis E. Jakub Jr.; Garson & Jakub LLP; New York, NY for Mikhail Itingen D.O.

Defendant Expert(s):

- Justin Greisberg M.D.; Foot & Ankle; New York, NY called by: for Louis E. Jakub Jr.
- Martin G. Ferrillo D.O.; Pain Management; Albany, NY called by: for Louis E. Jakub Jr.

Insurers:

- Best Practices Medical Partners, LLC

Facts:

On July 7, 2017, plaintiff Janette Burgess, a woman in her 40s, presented to Dr. Mikhail Itingen for foot surgery.

Back in May 2016, Burgess had injured her left ankle when stepping into a pothole. She was eventually referred to Itingen, a foot and ankle specialist.

In November 2016, Itingen recommended surgery to lengthen the Achilles tendon. Burgess initially sought second and third opinions before returning to Itingen in May 2017. At that time, he again recommended the Achilles tendon surgery along with a repair of the torn anterior talofibular ligaments, an arthroscopic debridement and a transection of the superficial peroneal nerve. The latter procedure is called a neurectomy.

Itingen performed those procedures on July 7, 2017. Approximately three months later, Burgess was diagnosed with complex regional pain syndrome (CRPS) in her left leg.

Burgess sued Itingen. She alleged that Itingen negligently chose to perform the neurectomy and failed to obtain informed consent for the procedure.

Plaintiff's orthopedic surgery expert testified that Itingen departed from accepted medical practices when he opted to transect the superficial peroneal nerve. The expert determined that there was no reason to sever the nerve and that the neurectomy caused Burgess' CRPS. The expert specifically opined that Burgess had CRPS type II, which results from a nerve injury.

Defense counsel noted that, on cross-examination, this expert conceded CRPS is a recognized complication of orthopedic surgery in general and is specifically a potential complication of each of the four procedures Itingen performed on July 7, 2017. Defense counsel also pointed to the records of Burgess' subsequent treating physicians. Per defense counsel, four of those doctors diagnosed Burgess with CRPS type I, which does not involve a nerve injury.

The defense's foot and ankle expert testified that the neurectomy was a reasonable way to address Burgess' foot and ankle pain. The expert further testified that CRPS is a known complication of each of the procedures Itingen performed on July 7. The CRPS could

have also resulted from the plaintiff's initial traumatic injury, the expert opined.

The defense's pain management expert stated that Burgess had CRPS type I and that the condition was not caused by the neurectomy. The expert additionally noted that he often alleviates a patient's pain complaints by destroying the superficial peroneal nerve.

Following the close of evidence, defense counsel moved for a directed verdict on the lack of informed consent claim. The defense argued that the plaintiff did not demonstrate that a reasonably prudent person in her position would have declined the neurectomy if provided additional information about the procedure's risks. The motion was granted.

Injury: Burgess said she developed complex regional pain syndrome in her left leg. At trial, she testified that she experienced severe burning pain in her left foot and ankle the day after Itingen's surgery. Over the next six years, she sought treatment from several pain management doctors and orthopedists, but she said that none of them could alleviate her pain.

Burgess claimed that she experiences constant pain that affects her ability to ambulate and forces her to significantly curtail her physical activities. She also stated that her CRPS prevents her from working full time. Plaintiff's internal medicine expert opined that the CRPS has limited the strength and motion in Burgess' left foot.

Burgess sought recovery of damages for her past and future pain and suffering.

The defense's foot and ankle expert opined that the superficial peroneal nerve provides no motor function to the foot and that severing the nerve would not have decreased the foot's range of motion and strength.

Result: The jury returned a defense verdict. It determined that Itingen did not depart from accepted medical practices by performing the neurectomy.

Janette Burgess

Trial Information:

Judge: E. Loren Williams

Demand: $1 million

Offer:	None
Trial Length:	7 days
Trial Deliberations:	30 minutes
Jury Composition:	1 male, 5 female
Editor's Comment:	This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.
Writer	Priya Idiculla

Plaintiff's trip, fall on sidewalk not due to defect, defense argued

Type: Verdict-Defendant

Amount: $0

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):
- *ankle* - ankle ligament, tear; talofibular ligament, tear
- *other* - ligament, tear; physical therapy
- *neurological* - reflex sympathetic dystrophy; complex regional pain syndrome
- *surgeries/treatment* - arthroscopy

Case Type:
- *Premises Liability* - Sidewalk; Dangerous Condition; Negligent Repair and/or Maintenance
- *Slips, Trips & Falls* - Falldown; Trip and Fall

Case Name: Christie Acevedo v. Marino Plaza 63-12 LLC and AAG Management Inc., No. 705058/2018

Date: February 16, 2023

Plaintiff(s):
- Christie Acevedo, (Female, 40 Years)

Plaintiff Attorney(s):
- Kurt A. Doiron; Sacco & Fillas; Astoria NY for Christie Acevedo

Defendant(s):
- AAG Management Inc.
- Marino Plaza 63-12 LLC

Defense Attorney(s):
- Warren D. Holland; Goldberg, Miller & Rubin; Philadelphia, PA for Marino Plaza 63-12 LLC, AAG Management Inc.

Facts:

On Nov. 25, 2017, plaintiff Christie Acevedo, a fitness center manager in her early 40s, was walking on the sidewalk alongside 245-13 Jericho Turnpike in Queens. Acevedo tripped and fell on a portion of the sidewalk. She claimed injuries to an ankle.

Acevedo sued the property owner, Marino Plaza 63-12 LLC. She also sued AAG Management Inc., which was affiliated with the property. Acevedo alleged that the defendants were liable for a dangerous condition that caused her fall.

Acevedo claimed that she tripped due to a crack in the sidewalk. Acevedo's counsel argued that the defendants failed in their duty to maintain a defective-free sidewalk. Had the defendants adequately monitored and repaired the property, the accident would not have occurred, plaintiff's counsel asserted.

The defense maintained that the sidewalk was reasonably safe and properly maintained. The alleged crack in the sidewalk was an open and obvious condition that Acevedo should have avoided, the defense contended.

Injury:

The trial was bifurcated. Damages were not before the court.

Following the accident, Acevedo presented to an emergency room. She underwent an MRI that showed a tear of the right ankle's talofibular ligament. Acevedo was discharged with instructions to follow up with a physician.

Acevedo eventually began a course of physical therapy that lasted for several weeks. During that time, she was administered a fluoroscopically guided injection into her right ankle.

Acevedo only experienced minimal relief from the conservative treatment, so she underwent surgery in February 2018. The procedure included an arthroscopic repair of her torn ligament. Acevedo resumed physical therapy after the surgery.

Acevedo alleged that she began experiencing increased pain in her right foot and ankle after the surgery. She was diagnosed with complex regional pain syndrome and came under the care of a pain management doctor who prescribed her medication. Acevedo's treatment ended in 2018.

Had the case proceeded to a damages trial, Acevedo would have sought recovery of an approximately $250,000 workers' compensation lien. She also planned to seek damages for her past and future pain and suffering.

Result:

The jury issued a defense verdict. It determined that the defendants were not negligent.

Christie Acevedo

Trial Information:

Judge: Joseph J. Risi

Trial Length: 2 days

Trial Deliberations: 0

Jury Vote: 5-1

Post Trial: Plaintiff's counsel has filed a notice of appeal.

Editor's Comment: This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

Writer Aaron Jenkins

No record of teacher's alleged complaints about cart: defense

Type: Verdict-Defendant

Amount: $0

State: New York

Venue: Richmond County

Court: Richmond Supreme, NY

Injury Type(s):
- *back* - stenosis; lower back; spondylosis; annular tear; bulging disc; bulging disc, lumbar
- *neck* - stenosis; spondylosis; annular tear; bulging disc
- *ankle*
- *other* - atrophy; bursitis; effusion; arthropathy; tenosynovitis; physical therapy; steroid injection; epidural injections
- *epidermis* - numbness
- *foot/heel* - foot
- *neurological* - radiculopathy; nerve damage/neuropathy; nerve damage, foot; reflex sympathetic dystrophy; complex regional pain syndrome

Case Type:
- *Premises Liability* - School; Dangerous Condition; Negligent Repair and/or Maintenance
- *Workplace* - Workplace Safety

Case Name: Annalisa Rossi v. The City of New York, and New York City Board of Education, No. 151396/2016

Date: October 31, 2023

Plaintiff(s):
- Annalisa Rossi, (Female, 30 Years)

Plaintiff Attorney(s):
- Jason T. Herbert; Krentsel Guzman Herbert, LLP; New York NY for Annalisa Rossi

Plaintiff Expert (s):

- Uel Alexis M.D.; Pain Management; Staten Island, NY called by: Jason T. Herbert
- Alan M. Leiken Ph.D.; Economics; Stony Brook, NY called by: Jason T. Herbert
- Debra S. Dwyer Ph.D.; Economics; Centereach, NY called by: Jason T. Herbert
- Frank M. Marlow Ed.D.; School Safety; Huntington, NY called by: Jason T. Herbert
- Andrew R. Yarmus P.E.; Engineering; New City, NY called by: Jason T. Herbert
- Connie Kane Standhart M.S., C.R.C.; Vocational Rehabilitation; Middleburgh, NY called by: Jason T. Herbert
- Michael C. Gerling M.D.; Spinal Surgery; New York, NY called by: Jason T. Herbert

Defendant(s):

- City of New York
- New York City Board of Education

Defense Attorney(s):

- Peter J. Shaw; Senior Counsel, Sylvia O. Hinds-Radix, Corporation Counsel; New York, NY for City of New York, New York City Board of Education
- Kayla Santosuosso; Assistant Corporation Counsel, Sylvia O. Hinds-Radix, Corporation Counsel; New York, NY for City of New York, New York City Board of Education

Facts:

On Feb. 10, 2016, plaintiff Annalisa Rossi, a teacher in her 30s, was pushing a cart in her Intermediate School 72 classroom in Staten Island. She claimed that one of the wheels on the school-issued cart suddenly stopped, causing her foot to slam into the cart. Rossi alleged foot, ankle and back injuries.

Rossi sued New York City and the New York City Board of Education. Rossi claimed the defendants negligently allowed a dangerous condition to exist.

Rossi specifically contended that the cart had been in poor condition. She claimed she had repeatedly complained about the cart and that the defendants had failed to act on those complaints.

The defense argued that Rossi wrote in her post-accident incident report that she had banged her ankle into the cart. The defense also maintained that the school had no record of Rossi’s alleged complaints regarding the cart.

Injury: The trial was bifurcated. Damages were not before the court.

Rossi visited the nurse's office immediately after the incident. Rossi then went to urgent care the following day.

After various MRIs, she was diagnosed with tenosynovitis, bursitis and joint effusions in her right foot/ankle. She claimed these injuries caused numbness, nerve damage and atrophy in her foot.

Rossi experienced back pain, as well. She was diagnosed with lumbar arthropathy, radiculopathy, spondylosis and stenosis. She also alleged an L5-S1 bulge with an annular tear and facet arthrosis. Her doctors additionally diagnosed complex regional pain syndrome.

Rossi underwent physical therapy, saw doctors and took medications. She also received a nerve block, medial branch blocks and epidural steroid injections to her back. She additionally had neuroma and tarsal tunnel steroid injections to her foot.

Rossi claimed that she has trouble walking. She did not return to work after the incident.

Result: The jury returned a defense verdict. It concluded that while the city was negligent, the negligence was not a substantial factor in causing the accident.

Annalisa Rossi

Trial Information:

Judge: Orlando Marrazzo Jr.

Trial Length: 1 weeks

Trial Deliberations: 2.5 hours

Editor's Comment: This report is based on information that was provided by defense counsel. Additional information was gleaned from court documents. Plaintiff's counsel did not respond to the reporter's phone calls.

Writer Jason Cohen