



Man struck by bus, required six surgeries

Type: Verdict-Plaintiff

Amount: \$85,000,000

Actual Award: \$87,500,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *leg*
- *chest* - fracture, rib
- *other* - sepsis; physical therapy; fasciotomy/fasciectomy
- *shoulder* - fracture, shoulder; fracture, clavicle
- *foot/heel* - foot drop (drop foot)
- *arterial/vascular* - artery, severed/tear
- *surgeries/treatment* - skin graft; debridement
- *mental/psychological* - post-traumatic stress disorder

Case Type:

- *Motor Vehicle* - Bus; Crosswalk; Left Turn; Pedestrian

Case Name: Devan J Sipher v. Twin America, LLC., Gray Line New York Tours, Inc., and Calvin C. Wright, No. 160740/15

Date: December 04, 2018

Plaintiff(s):

- Devan J. Sipher (Male, 50 Years)

Plaintiff Attorney(s):

- Howard S. Hershenhorn; Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf; New York NY for Devan J. Sipher
- Diana M.A. Carnemolla; Gair, Gair, Conason, Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf; New York NY for Devan J. Sipher

Plaintiff Expert(s):

- Lori Bennett-Penn; Psychiatry; New York, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- David S. Pereira; Orthopedic Surgery; New York, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Debra Dwyer Ph.D; Economics; Stony Brook, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Kiril Kiprovski M.D.; Neurology; New York, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Hubert Weinberg M.D.; Plastic Surgery/Reconstructive Surgery; New York, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Thomas Maldonado; Vascular Surgery; New York, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Valerie V. Parisi R.N.; Life Care Planning; Doylestown, PA called by: Howard S. Hershenhorn, Diana M.A. Carnemolla
- Rachelle Bitton; Endocrinology; New Hyde Park, NY called by: Howard S. Hershenhorn, Diana M.A. Carnemolla

Defendant(s):

- Calvin C. Wright
- Twin America LLC
- Gray Line New York Tours Inc.

Defense Attorney(s):

- Donald G. Derrico; Gordon Rees Scully Mansukhani, LLP; Harrison, NY for Twin America LLC, Gray Line New York Tours Inc., Calvin C. Wright
- Lorraine Girolamo; Gordon Rees Scully Mansukhani, LLP; Harrison, NY for Twin America LLC, Gray Line New York Tours Inc., Calvin C. Wright

Defendant Expert(s):

- David Fox; Vascular Surgery; New York, NY called by: for Donald G. Derrico, Lorraine Girolamo
- Ralph W. Liebling M.D.; Plastic Surgery/Reconstructive Surgery; Bronx, NY called by: for Donald G. Derrico, Lorraine Girolamo
- Sonya M. Mocarski C.R.C.; Vocational Rehabilitation; Atco, NJ called by: for Donald G. Derrico, Lorraine Girolamo
- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Donald G. Derrico, Lorraine Girolamo
- Robert Cooper; Endocrinology; Springfield, MA called by: for Donald G. Derrico, Lorraine Girolamo
- Douglas Cohen M.D.; Neurosurgery; New York, NY called by: for Donald G. Derrico, Lorraine Girolamo
- Leonard R. Freifelder Ph.D.; Economics; New York, NY called by: for Donald G. Derrico, Lorraine Girolamo
- Patricia Enriquez; Vocational Rehabilitation; New York, NY called by: for Donald G. Derrico, Lorraine Girolamo

Insurers:

- Lexington Insurance Co.
- Arch Insurance Group
- XL Group plc
- Axis Capital
- Alterra America Insurance Co.

Facts:

On July 3, 2015, plaintiff Devan Sipher, 50, an author and a columnist, was struck by a tour bus. The incident occurred on Sixth Avenue, alongside its intersection at West Fourth Street, in the Greenwich Village section of Manhattan. The bus's driver, Calvin Wright, was executing a left turn onto Sixth Avenue, from West Fourth Street. Sipher suffered injuries of a leg, a rib and a shoulder.

Sipher sued Wright and the bus's operators, Gray Line New York Tours Inc. and Twin America LLC. Sipher alleged that Wright was negligent in his operation of the bus. Sipher further alleged that the remaining defendants were vicariously liable for Wright's actions.

Sipher claimed that the impact occurred in a crosswalk, and he further claimed that a traffic signal permitted his entrance to the roadway. He contended that Wright should yielded the right of way.

Defense counsel conceded liability. The trial addressed damages.

Injury:

Sipher suffered an injury that severed his left leg's femoral artery and femoral vein. He also suffered a displaced fracture of his right, dominant shoulder's clavicle and a fracture of a rib.

Sipher fell onto the roadway, and he became trapped beneath the bus. He was extracted after some 15 minutes had passed. A tourniquet was applied to his left leg.

Sipher was retrieved by an ambulance, and he was transported to Bellevue Hospital Center, in Manhattan. He immediately underwent a fasciotomy, which involved surgical division of connective tissue of his left leg. The surgery included debridement of damaged tissue and the application of a graft that bypassed the damaged portion of the leg's femoral vein. The latter procedure was not successful, and the vein could not be preserved.

After four days had passed, Sipher underwent surgical washing of his left leg's wound.

After eight additional days had passed, Sipher underwent another surgery that involved drainage of his left leg's wound. He subsequently developed sepsis.

On Aug. 5, 2015, Sipher underwent surgery that involved drainage and debridement of his left leg's wound.

On Nov. 4, 2015, Sipher underwent application of a graft of skin that closed his left leg's wound.

Sipher's hospitalization lasted 78 days, and it also included courses of occupational therapy and physical therapy. During his treatment, he required use of a wheelchair, crutches, a cane and a device that immobilized his left knee. His physical therapy continues on an outpatient basis.

On Oct. 14, 2016, Sipher underwent surgical repair of his right shoulder's fracture.

Sipher claimed that his left foot has developed foot drop: weakness or paralysis of the muscles that control the front part of a foot. He claimed that the condition will require lifelong use of a brace, that he may require replacement of his left knee, and that he may require surgical lengthening of his left leg's Achilles tendon. He also suffers residual

damage of an adrenal gland. The condition is addressed via his use of steroid-based medication.

Sipher further claimed that he suffers post-traumatic stress disorder. He undergoes psychological counseling.

Sipher claimed that his residual effects hinder his performance of many physical activities. He claimed that he previously enjoyed recreational running and playing tennis, but that his residual effects prevent his resumption of those activities. He further claimed that his residual effects limit his ability to work.

Sipher 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. During the trial, the parties negotiated a settlement that resolved Sipher's economic damages. The defendants' insurer agreed to pay \$2.5 million.

Defense counsel contended that Sipher achieved an excellent recovery and leads an active life. The defense claimed that Sipher negotiates two flights of stairs when entering or exiting his residence, that Sipher has traveled to Los Angeles and Spain since the accident, and that Sipher frequents theatrical performances.

Defense counsel also contended that Sipher does not require significant medical treatment.

Result:

The jury found that Sipher's damages totaled \$85 million. The in-trial settlement totaled \$2.5 million, so Sipher's net recovery was \$87.5 million.

Devan J. Sipher

\$45,000,000 Personal Injury: Past Pain And Suffering

\$40,000,000 Personal Injury: future pain and suffering (25 years)

Trial Information:

Judge: Barbara Jaffe

Trial Length: 6 weeks

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 plaintiff's and defense counsel.

Writer Harmony Birch

Distracted, speeding driver struck man on median, lawsuit alleged

Type: Mediated Settlement

Amount: \$28,000,000

State: New York

Venue: Queens County

Court: Queens Supreme, NY

Injury Type(s):

- *arm* - fracture, arm
- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *back* - fracture, back; fracture, L1; fracture, back; fracture, L2; fracture, back; fracture, L5; fracture, back; fracture, T11; fracture, vertebra; fracture, L1; fracture, vertebra; fracture, L2; fracture, vertebra; fracture, L5; fracture, vertebra; fracture, T11; fracture, vertebra; fracture, transverse process
- *neck* - fracture, vertebra; fracture, transverse process
- *brain* - brain damage; encephalomalacia; subdural hematoma; traumatic brain injury; internal bleeding
- *chest* - fracture, rib
- *other* - necrosis; craniotomy; gastrostomy; rhabdomyolysis; fracture, sacrum; muscle, damage/loss; fasciotomy/fasciectomy
- *wrist* - fracture, wrist
- *pelvis* - fracture, pelvis; fracture, pubic ramus
- *shoulder* - fracture, shoulder; fracture, scapula; fracture, shoulder; fracture, clavicle
- *face/nose* - fracture, facial bone; fracture, occipital bone; scar and/or disfigurement, face
- *urological* - kidney
- *sensory/speech* - speech/language, impairment of
- *arterial/vascular* - hemorrhage
- *surgeries/treatment* - skin graft; debridement; splenectomy; open reduction; external fixation; internal fixation; tracheostomy/tracheotomy
- *mental/psychological* - cognition, impairment
- *pulmonary/respiratory* - respiratory distress
- *gastrointestinal/digestive* - spleen; intestine, resection

Case Type:

- *Motor Vehicle* - Speeding; Cell Phone; Pedestrian
- *Workplace* - Workplace Safety

Case Name: Dennis Rich as Guardian of Stephen Rich, Dennis Rich Individually v. The Port Authority of New York and New Jersey and Steven Auerbach, No. 22509/12

Date: July 01, 2015

Plaintiff(s):

- Dennis Rich
- Stephen Rich (Male, 47 Years)
- Veronica Rich

Plaintiff Attorney(s):

- Brian R. Davey; Mulholland, Minion, Davey, McNiff, & Beyrer; Williston Park NY for Veronica Rich
- Thomas J. McManus; Sullivan Papain Block McGrath & Cannavo P.C.; New York NY for Dennis Rich, Stephen Rich

Plaintiff Expert(s):

- Alan M. Leiken Ph.D.; Economics; East Setauket, NY called by: Thomas J. McManus
- Mary Hibbard Ph.D.; Rehabilitation Counseling; New York, NY called by: Thomas J. McManus
- Leonard R. Harrison Jr.; Orthopedic Surgery; New York, NY called by: Thomas J. McManus
- Marilyn White M.D.; Vocational Rehabilitation; New York, NY called by: Thomas J. McManus
- Lawrence W. Shields M.D.; Neurology; Long Beach, NY called by: Thomas J. McManus

Defendant(s):

- Steven Auerbach
- JCDeaux Airport Inc.
- JCDeaux North America Inc.
- North Shore Neon Sign Co. Inc.
- Port Authority of New York and New Jersey
- Port Authority of New York and New Jersey (excess insurer)

Defense Attorney(s):

- Kathleen Gill Miller; James M. Begley; New York, NY for Port Authority of New York and New Jersey, Steven Auerbach
- Andrew F. Pisanelli; Milber Makris Plousadis & Seiden LLP; White Plains, NY for North Shore Neon Sign Co. Inc.
- A. Ernest Tonorezos; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; New York, NY for Port Authority of New York and New Jersey (excess insurer)
- William Savino; Rivkin Radler LLP; Uniondale, NY for JCDeaux Airport Inc., JCDeaux North America Inc.

Defendant Expert(s):

- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Kathleen Gill Miller, Andrew F. Pisanelli, William Savino
- Martin A. Goldstein M.D.; Neurology; New York, NY called by: for Kathleen Gill Miller, Andrew F. Pisanelli, William Savino

Insurers:

- Lloyd's of London
- Harleysville Group Inc.
- Royal & SunAlliance Insurance USA
- Self-Insured
- Sompo Japan Insurance Company of America

Facts:

On June 13, 2012, plaintiff Stephen Rich, 47, an installer of billboards and signs, was servicing a sign that was located alongside John F. Kennedy International Airport's South Service Road, near its intersection at Joseph Hock Memorial Drive, in Queens. During the course of his work, Rich attempted to cross South Service Road. He was struck by a sport utility vehicle. Rich sustained injuries of his back, his head, a kidney, his legs, his pelvis, several ribs, his sacrum, his small intestine, his spleen, his shoulders and his wrists. He suffers disabling residual effects that include damage of his brain.

Rich's father, Dennis Rich, acting individually and as his son's guardian, sued the SUV's driver, Steven Auerbach, and Auerbach's employer, the Port Authority of New York and New Jersey. The plaintiffs alleged that Auerbach was negligent in the operation of his vehicle. The plaintiffs further alleged that the Port Authority of New York and New Jersey was liable because the accident occurred during Auerbach's performance of his job's duties.

The Port Authority of New York and New Jersey impleaded Stephen Rich's employer, North Shore Neon Sign Co. Inc., and the owners of the sign that Rich was servicing, JCDeaux Airport Inc. and JCDeaux North America Inc. The Port Authority of New York and New Jersey alleged that the third-party defendants negligently failed to create a safe work environment.

JCDeaux Airport and JCDeaux North America were added as direct defendants.

Plaintiffs' counsel claimed that the accident occurred on the roadway's paved median, that Auerbach was speeding, and that records proved that Auerbach was utilizing a cellular telephone during the moments that preceded the accident. He suggested that Auerbach drifted onto the roadway's median while his attention was focused on his telephone.

The Port Authority of New York and New Jersey's counsel claimed that Rich unknowingly walked into the direct path of Auerbach's SUV. They also claimed that motorists should have been warned that work was being performed in the area.

Counsel of JCDeaux Airport, JCDeaux North America and North Shore Neon Sign contended that the accident was not a workplace incident and that culpability did not extend beyond Auerbach and Rich.

Injury:

Rich sustained an injury of his head, fractures of occipital condyles, which are bones that control movement of the head and neck, fractures of his pelvis's inferior and superior pubic rami, a fracture of each leg's fibula and tibia, a fracture of each shoulder's clavicle and scapula, a fracture of each wrist's ulnar component, a fracture of each arm, a fracture of his left sacral ala, which is a winglike lateral process of the sacrum, fractures of transverse processes of his T11, L1, L2 and L5 vertebrae, fractures of ribs, an injury of a kidney, and disruption of his spleen and his small intestine. His head's injury caused a subdural hematoma, hemorrhages of the brain and encephalomalacia. He also developed acute respiratory distress syndrome and rhabdomyolysis, which is a potentially fatal condition in which muscle fiber is released into the blood.

Rich was placed in an ambulance, and he was transported to Jamaica Hospital Medical Center, in Queens. He underwent a craniotomy, a splenectomy, arterial bypasses, angioplasties, grafting of skin, resection of a bowel, implantation of a filter that was intended to prevent formation of an embolism, debridement of damaged tissue, a gastrostomy, a bronchoscopy, two tracheotomies, open reduction and external and/or internal fixation of the fractures of his legs, shoulders and wrists, and fasciotomies, which involved division of a portion of a leg's connective tissue. He also required mechanical control of his respiration.

Plaintiffs' counsel claimed that Rich suffers residual effects that include anemia, necrosis of muscles of his legs, drooping of muscles of his face, severe impairment of his cognition, insufficiency of his pulmonary functions and impairment of his speech. They also claimed that Rich requires permanent use of a wheelchair. Rich resides in a hospice facility and requires constant assistance and attention.

Rich's father sought recovery of Rich's past and future medical expenses, Rich's past and future lost earnings, and damages for Rich's past and future pain and suffering. Rich's wife, Veronica Rich, sought recovery of damages for loss of services.

Result:

The parties negotiated a pretrial settlement. The Port Authority of New York and New Jersey, which was partially self-insured, agreed to pay \$3 million; its excess insurer agreed to pay \$21 million; Northshore Neon Sign's insurer agreed to pay \$1 million; and the insurers of JCDeaux Airport and JCDeaux North America agreed to pay a total of \$3 million. Thus, the settlement totaled \$28 million. The negotiations were mediated by Ronnie Bernon Gallina, of Jams.

Trial Information:**Judge:**

Ronnie Bernon Gallina

**Editor's
Comment:**

This report is based on information that was provided by plaintiffs' counsel and counsel of Auerbach, JCDeaux Airport, JCDeaux North America, and the Port Authority of New York and New Jersey. The remaining defendants' counsel received a draft of the report but did not provide feedback.

Writer

Jack Deming

Bicyclist crashed on sidewalk's grate, suffered facial fractures

Type: Verdict-Plaintiff

Amount: \$25,500,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - fracture, vertebra; herniated disc, lumbar
- *head* - fracture, skull
- *neck* - fracture, vertebra; herniated disc, lumbar; herniated disc, cervical
- *other* - plate; ageusia; pins/rods/screws; hardware implanted; reconstructive surgery
- *face/nose* - facial laceration; fracture, facial bone; fracture, occipital bone; scar and/or disfigurement, face
- *sensory/speech* - anosmia
- *surgeries/treatment* - skin graft
- *mental/psychological* - post-traumatic stress disorder
- *pulmonary/respiratory* - respiratory

Case Type:

- *Recreation* - Bicycle
- *Government* - Municipalities
- *Dangerous Condition of Public Property*

Case Name: Michael See v. NYCTA; and Metropolitan Transportation Authority, No. 20639/11

Date: February 13, 2019

Plaintiff(s):

- Michael See (Male, 32 Years)

Plaintiff Attorney(s):

- H.Q. Nguyen; Nguyen Leftt P.C.; New York NY for Michael See
- Andrew D. Leftt; Nguyen Leftt P.C.; New York NY for Michael See

**Plaintiff Expert
(s):**

- David Hiltzik M.D.; Otolaryngology Surgery; Staten Island, NY called by: H.Q. Nguyen, Andrew D. Leftt
- James W. Pugh Ph.D.; Accident Reconstruction; Mineola, NY called by: H.Q. Nguyen, Andrew D. Leftt
- Melissa Coren; Psychotherapy; New York, NY called by: H.Q. Nguyen, Andrew D. Leftt
- Nicholas M. Bellizzi P.E.; Engineering; Holmdel, NJ called by: H.Q. Nguyen, Andrew D. Leftt

Defendant(s):

- New York City Transit Authority
- Metropolitan Transportation Authority

**Defense
Attorney(s):**

- Jane N. Barrett; Jane N. Barrett & Associates, Brooklyn, NY, of counsel, Lawrence Heisler, Brooklyn, NY for Metropolitan Transportation Authority, New York City Transit Authority

**Defendant
Expert(s):**

- Marc J. Katzman M.D.; Radiology; Lindenhurst, NY called by: for Jane N. Barrett
- Tara Brass; Psychiatry; New York, NY called by: for Jane N. Barrett
- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Jane N. Barrett
- Norman Marcus P.E.; Engineering; Rydal, PA called by: for Jane N. Barrett
- Robert S. April M.D.; Neurology; New York, NY called by: for Jane N. Barrett

Facts:

At about 3:30 a.m. on May 14, 2011, plaintiff Michael See, 32, a bartender, was bicycling on a sidewalk that abutted Columbus Circle, in Manhattan. He fell while he was bicycling across a grate that was embedded within the sidewalk and facilitated ventilation of an underground subway station. He landed on the grate, and he claimed that he suffered injuries of his back, his face, his neck, his nose and his skull.

See sued the subway station's maintainers, the Metropolitan Transportation Authority and the New York City Transit Authority. The lawsuit alleged that the defendants were negligent in their installation and maintenance of the grate. The lawsuit further alleged that the defendants' negligence created a dangerous condition that caused See's fall.

See claimed that his fall was a result of his bicycle's front tire having entered a gap that separated edges of the grate and the surrounding sidewalk. See's counsel claimed that the gap's width measured 1.375 inches and therefore was unlawfully large. He contended that an inch is the legal limit for such gaps. A New York City Transit Authority employee acknowledged that the grate's edges and the surrounding sidewalk's edges should have been flush. See's counsel suggested that the gap was a result of the grate having been improperly welded during its installation, but defense counsel argued that a welding defect could not be proven.

Defense counsel also contended that the defendants had not been aware of the grate's condition, that the grate's maintenance was the responsibility of the adjoining premises' owner, and that the grate and the surrounding area had been traversed by hundreds of millions of pedestrians without a reported accident.

Defense counsel also noted that See's bicycle lacked a functioning headlight, and she argued that a functioning headlight would have allowed See to notice and avoid the gap that separated the grate and the surrounding sidewalk. Defense counsel further noted that adults are legally prohibited from bicycling on New York's sidewalks. In response, See's counsel contended that the area was adequately lighted, that See's presence on the sidewalk therefore did not endanger pedestrians, that the accident was caused by the grate, and that See's act of bicycling on the sidewalk merely provided the opportunity for the accident.

Injury:

See was retrieved by an ambulance, and he was transported to St. Luke's-Roosevelt Hospital Center, in Manhattan. Radiological studies revealed that he suffered fractures of bones of his face and a fracture of one of his skull's occipital condyles, which are bony protuberances situated immediately above the first vertebra. See also suffered a laceration that severed a portion of his nose.

See claimed that his injuries also included fractures of vertebrae of his spine's thoracic region and herniations of intervertebral discs of his spine's cervical and lumbar regions. See further claimed that he developed residual post-traumatic stress disorder.

See immediately underwent surgical reconstruction of a portion of his face. During the ensuing week, he underwent two additional reconstructive surgeries. The procedures included application of grafts of skin, implantation of fat that had been harvested from See's abdomen, implantation of stabilizing plates and screws, and implantation of wire that immobilized See's jaw. See's hospitalization lasted 10 days.

On Aug. 17, 2011, See underwent a fourth reconstructive surgery that addressed his face. On May 20, 2016, he underwent surgical reconstruction of a portion of his nose, to resolve residual impairment of his respiration. He also undergoes psychological counseling.

See claimed that his injuries prevented his performance of months of work. He also claimed that his back, his face and his neck experience daily residual pain; that he suffers anosmia, which is a diminishment of the sense of olfaction; that he suffers ageusia, which is a diminishment of the perception of flavor; and that he suffers ongoing manifestations of post-traumatic stress disorder. He also retains scars of his face. A doctor has suggested that the scars can be improved via surgery, but See claimed that he has avoided the procedure because he does not want to endure the surgery's associated medical evaluations and postsurgical therapy. See also claimed that he requires further psychological counseling.

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

Defense counsel contended that See achieved a full orthopedic recovery, that See does not require further treatment, and that any lingering pain has not prompted See's use of painkillers. She further contended that See's psychological counseling has not significantly addressed psychological trauma.

Defense counsel also suggested that See has avoided scar-enhancement surgery to improve the value of the lawsuit.

Result:

The jury found that the defendants were liable for the accident. It also found that See was negligent with regard to the accident, but it determined that his negligence was not a proximate cause of the accident.

The jury found that See's damages totaled \$25.5 million.

Michael See

\$500,000 Personal Injury: Past Medical Cost

\$2,500,000 Personal Injury: Future Medical Cost

\$4,500,000 Personal Injury: Past Pain And Suffering

\$18,000,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Kathy J. King

Trial Length: 2 months

**Trial
Deliberations:** 2 days

Jury Vote: 6-0

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

**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 Erik Halberg

Bus passenger claimed multiple injuries after truck collision

Type: Verdict-Plaintiff

Amount: \$22,985,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - lower back; bulging disc; spasm, lumbar; herniated disc; sprain, lumbar; strain, lumbar; derangement, lumbar; herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches
- *knee* - knee derangement
- *neck* - bulging disc; herniated disc; spasm, cervical; fusion, cervical; sprain, cervical; strain, cervical; bulging disc, cervical; herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C4-5; fusion, cervical, two-level
- *other* - spasm; effusion; arthritis; corpectomy; arthrodesis; soft tissue; labrum, tear; labrum, torn; physical therapy; steroid injection; epidural injections; strains and sprains; arthritis, traumatic; tendon, severed/torn; tendinitis/tendinosis; decreased range of motion
- *shoulder* - glenoid labrum, tear; shoulder impingement; derangement, shoulder; rotator cuff, injury (tear)
- *neurological* - radiculopathy
- *surgeries/treatment* - discectomy; arthroscopy; debridement; laminectomy; laminectomy, lumbar
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Motor Vehicle* - Bus; Broadside; Passenger; Red Light; No-Fault Case; Multiple Vehicle; Question of Lights

Case Name: Quian Davis v. Umelva C. James, New York City Transit Authority, Joseph Rampulla, and New York City Department of Sanitation c/o City of New York, No. 519533/2018

Date: December 01, 2023

- Plaintiff(s):**
- Quian Davis, (Female, 37 Years)
- Plaintiff Attorney(s):**
- William Schwitzer; William Schwitzer & Associates, P.C.; New York NY for Quian Davis
- Plaintiff Expert(s):**
- Allan M. Weissman M.D.; Pain Management; North Bergen, NJ called by: William Schwitzer
 - Eugene Liu M.D.; Pain Management; New York, NY called by: William Schwitzer
 - Leonid Reyfman M.D.; Pain Management; Brooklyn, NY called by: William Schwitzer
 - Michael C. Gerling M.D.; Orthopedic Surgery; New York, NY called by: William Schwitzer
 - Desiree Chow M.D.; Primary Care Physician; New York, NY called by: William Schwitzer
 - Jonathan Reece N.P.; Nursing; Brooklyn, NY called by: William Schwitzer
 - Jonathan Lauter M.D.; Psychiatry; New York, NY called by: William Schwitzer
- Defendant(s):**
- Ulmeva C. James
 - Joseph Rampulla
 - New York City Transit Authority
 - New York City Department Of Sanitation
- Defense Attorney(s):**
- Emeka Nwokoro; Pillinger Miller Tarallo, LLP; Elmsford, NY for Ulmeva C. James, New York City Transit Authority
- Defendant Expert(s):**
- Ali M. Sadegh Ph.D.; Mechanical; New York, NY called by: for Emeka Nwokoro
 - David J. Panasci M.D.; Radiology; Massapequa, NY called by: for Emeka Nwokoro
 - Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Emeka Nwokoro

Facts:

On Jan. 2, 2018, plaintiff Quian Davis, 37, a public health assistant, was a passenger on a New York City Transit Authority bus in Brooklyn. At the intersection of Crescent Street and Etna Street, the front of the bus struck the side of a New York City Department of Sanitation truck. Davis claimed injuries to her neck, back, head, shoulders and knee.

Davis sued the bus driver, Umelva James, and the truck driver, Joseph Rampulla. She additionally sued the New York City Transit Authority and the City of New York. Davis alleged the drivers were negligent in the operation of their respective vehicles. She also claimed the New York City Transit Authority was vicariously liable for James' actions and the City of New York was vicariously liable for Rampulla's actions.

There was a traffic light at the intersection. According to court records, video from the scene confirmed that James ran the red light and drove her bus into the side of the sanitation truck. The court subsequently granted Rampulla and the City of New York's motion for summary judgment.

Plaintiff's counsel moved for summary judgment of liability against the other defendants, and that motion was also granted. The matter proceeded to a jury trial to determine damages against James and the New York City Transit Authority.

Injury:

Davis was transported to Jamaica Hospital and discharged a few hours later.

Davis was diagnosed with C3-4 and C4-5 herniations along with a C5-6 bulge and cervical spasms. She additionally alleged an L5-S1 herniation and lumbar derangement, radiculopathy and spasms.

Davis also claimed tears to the labrum, rotator cuff and subscapularis tendon in her left shoulder. She alleged left shoulder derangement, impingement, tendinosis and effusion, as well. She additionally claimed derangement of her right shoulder and left knee.

Davis further claimed post-concussion syndrome with associated headaches and dizziness. She also alleged sprains and strains to her neck, back, shoulders and left knee.

Davis received six months of physical therapy following the crash. She also underwent neck surgery in April 2018. The two-level anterior cervical discectomy and fusion included arthrodesis and a partial corpectomy.

For her shoulder, Davis received a steroid injection in February 2018. In December of that year, Davis had arthroscopic shoulder surgery that included a debridement and a subacromial bursectomy.

Davis also underwent a lumbar hemilaminectomy and received epidural injections. Plaintiff's counsel argued that all of Davis' surgeries were causally related to the crash.

Davis said that her injuries left her with post-traumatic arthritis and reduced range of motion. She never returned to work.

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

Defense counsel argued that Davis did not suffer a serious injury, as defined by the no-fault law, Insurance Law §5102(d). The defense specifically argued that the force of the impact could not have caused Davis' injuries. The defense's medical expert opined that Davis at worst sustained soft tissue injuries that resolved within a month.

The expert concluded that Davis' surgeries were not medically necessary. He based this opinion on the medical records and the alleged lack of traumatic injuries visible on Davis' MRIs. The expert added that Davis' surgeries ultimately made her injuries worse.

Result: The jury determined that Davis did not sustain a permanent consequential limitation of use of a body organ or member. However, the jury concluded that she did sustain a significant limitation of use of a body function or system.

The jury awarded Davis \$22,985,000.

Quian Davis

\$ 210,000 Past Lost Earnings

\$ 2,400,000 Past Pain Suffering

\$ 14,000,000 future pain and suffering for 38 years

\$ 5,500,000 future medical expenses for 38 years

\$ 875,000 future lost earnings for 25 years

\$ 22,985,000 Plaintiff's Total Award

Trial Information:

Judge: Joy F. Campanelli

Trial Length: 4 weeks

Trial 3 days

Deliberations:

Jury Vote: 3-3 on permanent consequential; 5-1 on future pain and suffering and future medical expenses awards; 6-0 on significant limitation, past pain and suffering award and past and future lost earnings awards

Editor's Comment: This report is based on information that was provided by plaintiff's counsel and defense counsel for James and the New York City Transit Authority. Additional information was gleaned from court documents. Counsel for Rampulla and the City of New York was not asked to contribute.

Writer

Jason Cohen

Electrician claimed fall from ladder caused brain injury

Type: Settlement

Amount: \$8,750,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - nerve impingement; herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches; concussion
- *neck* - fusion, cervical; nerve impingement; herniated disc, cervical; herniated disc at C5-6
- *brain* - stroke; brain damage
- *other* - seizure; synovitis; corpectomy; synovectomy; physical therapy; epidural injections; aggravation of pre-existing condition
- *shoulder* - shoulder impingement; rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *neurological* - radiculopathy; nerve impingement
- *sensory/speech* - speech/language, impairment of
- *surgeries/treatment* - discectomy; arthroscopy; debridement; decompression surgery
- *mental/psychological* - cognition, impairment; memory, impairment; post-concussion syndrome

Case Type:

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

Case Name: Kamil Pabjanczyk v. 119 West LLC ACP Electrical Contracting, Inc., No. 506012/17

Date: February 08, 2022

Plaintiff(s):

- Kamil Pabjanczyk, (Male, 40 Years)

- Plaintiff Attorney(s):**
- Daniel P. O'Toole; Block, O'Toole & Murphy, LLP; New York NY for Kamil Pabjanczyk
 - Pawel P. Wierzbicki; Block O'Toole & Murphy, LLP; New York NY for Kamil Pabjanczyk
- Plaintiff Expert(s):**
- Dan Wolstein Ph.D.; Vocational Rehabilitation; Hackensack, NJ called by: Daniel P. O'Toole, Pawel P. Wierzbicki
 - Alan Leiken Ph.D.; Economics; Palm Beach Gardens, FL called by: Daniel P. O'Toole, Pawel P. Wierzbicki
 - Barry C. Root M.D.; Life Care Planning; New Hyde Park, NY called by: Daniel P. O'Toole, Pawel P. Wierzbicki
 - Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Daniel P. O'Toole, Pawel P. Wierzbicki
 - Doruk Erkan M.D.; Rheumatology; New York, NY called by: Daniel P. O'Toole, Pawel P. Wierzbicki
- Defendant(s):**
- 119 West LLC
 - ACP Electrical Contracting Inc.
- Defense Attorney(s):**
- Sean C. Callahan; O'Toole Scrivo, LLC; Cedar Grove, NJ for 119 West LLC
 - Salvatore Grimaldo; Milber Makris Plousadis & Seiden, LLP; Woodbury, NY for ACP Electrical Contracting Inc.
- Defendant Expert(s):**
- Allan E. Rubenstein M.D.; Neurology; New York, NY called by: for Sean C. Callahan, Salvatore Grimaldo
 - Brian D. Greenwald M.D.; Brain Injury/Trauma; Edison, NJ called by: for Sean C. Callahan, Salvatore Grimaldo
 - Andrew N. Bazos M.D.; Orthopedic Surgery; Danbury, CT called by: for Sean C. Callahan, Salvatore Grimaldo
 - Melissa Sapan M.D.; Radiology; Manhasset, NY called by: for Sean C. Callahan, Salvatore Grimaldo
- Insurers:**
- Nationwide Mutual Insurance Co.
 - Harleysville Group Inc.
 - National Surety Corp.
 - Aspen American Insurance Co.

Facts:

On March 23, 2016, plaintiff Kamil Pabjanczyk, 40, an electrician's helper, suffered a fall. The incident occurred at a renovation site that was located at 119 W. 75th St., in Manhattan. Pabjanczyk claimed that he was working when the fall occurred. He claimed that he suffered injuries of his back, his head, his neck and a shoulder.

Pabjanczyk sued the premises' owner, 119 West LLC, and a subcontractor that was performing the renovation project's electrical work, ACP Electrical Contracting 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.

Pabjanczyk claimed that his fall occurred while he was working for ACP Electrical Contracting. He claimed that he had been hired 15 days earlier and had regularly worked at the site during the intervening period.

Pabjanczyk further claimed that he fell off of a 3-foot-tall ladder while pulling an electrical cord through an open portion of a drop ceiling. He claimed that his fall was a result of the ladder having tipped. Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Pabjanczyk was not provided the proper, safe equipment that is a requirement of the statute.

The defense claimed that Pabjanczyk was not working but merely visiting the work site. An ACP Electrical Contracting principal claimed that Pabjanczyk had applied for employment hours earlier, had not been hired, but had been allowed to visit the work site, ostensibly to view the type of work being performed. An ACP Electrical Contracting electrician claimed that Pabjanczyk was not utilizing a ladder. The electrician claimed that Pabjanczyk suffered a seizure and collapsed.

Injury:

Pabjanczyk was retrieved by an ambulance, and he was transported to Lenox Hill Hospital, in Manhattan. He departed before doctors could complete a desired battery of tests.

Pabjanczyk ultimately claimed that he suffered a concussion and resultant damage of his brain. He claimed that his brain's damage caused seizures and impairment of his memory, his speech and other elements of his cognition. He further claimed that he developed post-concussion syndrome, with manifestations that included dizziness and headaches.

Pabjanczyk also claimed that he suffered herniations of his C5-6 and L5-S1 intervertebral discs; a tear of his right shoulder's infraspinatus tendon, which is a component of the rotator cuff; a tear of the same shoulder's supraspinatus tendon, which is another component of the rotator cuff; and trauma that produced impingement of the same shoulder. He claimed that the shoulder developed synovitis: inflammation of joint-lining membrane. He further claimed that his herniated discs caused impingement of spinal nerves and resultant radiculopathy.

Pabjanczyk also claimed that the accident aggravated and activated a preexisting, previously asymptomatic autoimmune disorder, antiphospholipid syndrome, which is a condition that causes clots. He claimed that he suffered residual strokes.

After more than 12 months had passed, Pabjanczyk undertook a course of physical therapy. He also underwent occupational therapy, neurocognitive therapy and administration of three epidural injections of steroid-based painkillers. The injections were directed to his lumbar region.

On Nov. 16, 2017, Pabjanczyk underwent arthroscopic surgery that addressed his right shoulder. The procedure included debridement of damaged tissue, decompression of the shoulder's subacromial region and a synovectomy, which involved excision of inflamed tissue.

On Feb. 8, 2018, Pabjanczyk underwent surgery that included a discectomy, which involved excision of his C5-6 disc; fusion of the corresponding level of his spine; and a corpectomy, which involved excision of a portion of a vertebra. Pabjanczyk subsequently resumed physical therapy.

Pabjanczyk claimed that he suffers permanent residual pain and limitations that prevent his performance of any type of work. He has not worked since the accident. He also claimed that his residual effects hinder his ambulation and prevent his performance of many of his tasks of daily living. He claimed that he has had to retain a personal aide.

Pabjanczyk sought reimbursement of a workers' compensation lien in the amount of \$1,252,447.32, and he 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.

The defense contended that Pabjanczyk's antiphospholipid syndrome was not exacerbated by his fall, that the condition and uncontrolled hypertension were the cause of his strokes, and that his remaining injuries were not related to his fall.

Result:

Shortly before the scheduled start of jury selection, the parties negotiated a settlement. ACP Electrical Contracting's primary insurer tendered its policy, which provided \$1 million of coverage; ACP Electrical Contracting's excess insurer tendered its policy, which provided \$2 million of coverage; 119 West LLC's primary insurer tendered its policy, which provided \$1 million of coverage; and 119 West LLC's excess insurer agreed to pay \$4.75 million, from a policy that provided \$10 million of coverage. Thus, the settlement totaled \$8.75 million. That amount included an immediate payment of \$4 million. The remaining funds were invested in an annuity. The settlement also included a waiver of Pabjanczyk's workers' compensation lien and a lifelong continuation of his workers' compensation medical benefits.

Kamil Pabjanczyk

Trial Information:

Judge: Wayne P. Saitta

Trial Length: 0

**Trial
Deliberations:** 0

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel and ACP Electrical Contracting's counsel. Additional information was gleaned from court documents. The remaining defendant's counsel did not respond to the reporter's phone calls.

Writer Yawana Fields

Woman struck by car, claimed injuries of spine, shoulders, knee

Type: Verdict-Plaintiff

Amount: \$7,075,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *back* - spondylolysis; fracture, back; fracture, L5; fusion, lumbar; spondylolisthesis; fracture, vertebra; fracture, L5; herniated disc, lumbar; herniated disc at L5-S1
- *knee*
- *neck* - spondylolysis; spondylolisthesis; fracture, vertebra; fracture, pars interarticularis
- *other* - physical therapy; epidural injections; lumbar facet injury; decreased range of motion
- *shoulder* - glenoid labrum, tear
- *surgeries/treatment* - arthroscopy

Case Type:

- *Motor Vehicle* - Left Turn; Pedestrian

Case Name: Patricia M. Lopez v. Jennifer M. Lidonnici and Larry A. Lidonnici, No. 303966/15

Date: April 08, 2019

Plaintiff(s):

- Patricia Lopez (Female, 27 Years)

Plaintiff Attorney(s):

- Eugene Gozenput; Pazer, Epstein, Jaffe & Fein, P.C.; New York NY for Patricia Lopez

Plaintiff Expert (s):

- Joseph Weinstein M.D; Orthopedic Surgery; Flushing, NY called by: Eugene Gozenput

Defendant(s):

- Larry A. Lidonnici
- Jennifer M. Lidonnici

Defense Attorney(s):

- Kenneth A. Finder; Pillinger Miller Tarallo, LLP; Elmsford, NY for Jennifer M. Lidonnici, Larry A. Lidonnici

Defendant Expert(s):

- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Kenneth A. Finder
- George J. Cavaliere M.D.; Radiology; Massapequa, NY called by: for Kenneth A. Finder
- Kamran Tabaddor M.D.; Neurosurgery; West Harrison, NY called by: for Kenneth A. Finder

Insurers:

- Government Employees Insurance Co.

Facts:

On Aug. 12, 2015, plaintiff Patricia Lopez, 27, an administrative worker, was struck by a motor vehicle. The incident occurred on Grand Street, alongside its intersection at Wooster Street, in the SoHo section of Manhattan. The vehicle's driver, Larry Lidonnici, was executing a left turn onto Grand Street, from Wooster Street. Lopez claimed that she suffered injuries of her back, a knee and her shoulders.

Lopez sued Lidonnici and his vehicle's owner, Jennifer Lidonnici. Lopez alleged that Larry Lidonnici was negligent in the operation of his vehicle. Lopez further alleged that Jennifer Lidonnici was vicariously liable for Larry Lidonnici's actions.

Lopez claimed that the impact occurred in a crosswalk. She contended that Larry Lidonnici failed to yield the right of way.

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

Injury:

Lopez was transported to New York-Presbyterian Hospital, in Manhattan. An X-ray revealed that she was suffering a fracture of her L5 vertebra's pars interarticularis, which is a region of the vertebra's facet joint. Lopez claimed that the injury was a product of the accident. She was administered a painkiller.

Lopez claimed that she also suffered a herniation of her L5-S1 intervertebral disc, a tear of each shoulder's glenoid labrum and derangement of her right knee. She claimed that her right knee's injury overburdened and resultantly injured her left knee. She further claimed that her spine's L5-S1 level developed spondylolysis and spondylolisthesis, which are conditions that involve displacement of a vertebra or vertebrae.

Lopez underwent about 17 weeks of conservative treatment that included physical therapy and the administration of two epidural injections of steroid-based painkillers, but she claimed that she suffered ongoing pain. On Jan. 26, 2016, she underwent surgical fusion of her spine's L5-S1 level. The procedure was followed by another course of physical therapy.

In September 2016, Lopez underwent arthroscopic surgery that addressed one of her shoulders. In September 2018, she underwent arthroscopic surgery that addressed the other shoulder.

Lopez claimed that her injuries prevented her performance of months of work. She also claimed that she suffers residual pain and residual diminution of her range of motion. She claimed that she will require further physical therapy and that her knees require surgery. She sought recovery of future medical expenses, past lost earnings, and damages for past and future pain and suffering.

Defense counsel contended that Lopez's lumbar injuries were degenerative conditions that predated the accident. The defense's expert neurologist opined that Lopez suffers an 80 percent diminution of the back's range of motion, but that the diminution predates the accident.

Defense counsel also contended that Lopez achieved a full recovery.

Result:

The jury found that Lopez's damages totaled \$7,075,000.

Patricia Lopez

\$500,000 Personal Injury: Future Medical Cost

\$75,000 Personal Injury: Past Lost Earnings Capability

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

\$6,000,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Ben R. Barbato

Demand: \$1,300,000 (prior to the trial [insurance coverage's limit])

Offer: \$550,000 (during the trial)

Trial Length: 3 days

**Trial
Deliberations:** 2.5 hours

Jury Vote: 6-0

**Jury
Composition:** 1 male, 5 female

**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 Erik Halberg

Safety rail issue on scaffold caused fall, carpenter alleged

Type: Mediated Settlement

Amount: \$6,950,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *back* - fusion, lumbar; fracture, vertebra; fracture, transverse process; herniated disc, lumbar; herniated disc at L3-4; herniated disc, lumbar; herniated disc at L4-5
- *head* - concussion
- *neck* - fusion, cervical; fracture, vertebra; fracture, transverse process; herniated disc, cervical; herniated disc at C4-5
- *other* - sutures; laceration; SLAP lesion/tear; tendinitis/tendinosis
- *shoulder* - rotator cuff, injury (tear)
- *surgeries/treatment* - discectomy; arthroscopy; laminectomy; laminectomy, lumbar

Case Type:

- *Construction* - Accidents; Labor Law; Scaffolds and Ladders
- *Slips, Trips & Falls* - Fall from Height

Case Name: Thomas Vercelli v. Time Warner Center Condominium, Time Warner Realty, Inc., Columbus Centre LLC, and Structure Tone, LLC., No. 153525/21

Date: August 21, 2023

Plaintiff(s):

- Thomas Vercelli , (Male, 50 Years)

Plaintiff Attorney(s):

- Stephen J. Murphy; Block O'Toole & Murphy, LLP; New York NY for Thomas Vercelli
- Michael J. Hurwitz; Block O'Toole & Murphy, LLP; New York NY for Thomas Vercelli

Plaintiff Expert (s):

- Alan M. Leiken Ph.D.; Economics; East Setauket, NY called by: Stephen J. Murphy, Michael J. Hurwitz

Defendant(s):

- Structure Tone LLC
- Columbus Center LLC
- Columbus Office LLC
- Time Warner Realty Inc.
- Deutsche Bank AG NY Branch
- Time Warner Center Condominium

**Defense
Attorney(s):**

- Aviva Stein; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; White Plains, NY for Columbus Office LLC, Structure Tone LLC, Deutsche Bank AG NY Branch
- None reported for Time Warner Center Condominium, Time Warner Realty Inc., Columbus Center LLC

**Defendant
Expert(s):**

- Mark Rammauth MA, CRC; Vocational Rehabilitation; Huntington Station, NY called by: for Aviva Stein
- David M. Erlanger Ph.D.; Neuropsychology; New York, NY called by: for Aviva Stein
- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Aviva Stein
- Andrew Cheng M.D.; Otolaryngology; New York, NY called by: for Aviva Stein
- Nicholas H. Post M.D.; Neurosurgery; Westbury, NY called by: for Aviva Stein

Insurers:

- Hartford Insurance Group
- Markel Insurance Co. Inc.

Facts:

On Feb. 24, 2021, plaintiff Thomas Vercelli, 50, a carpenter, was working on the 16th floor of a building located at 10 Columbus Circle, in Manhattan, helping to construct new commercial office spaces in the building. As he was working on a Baker scaffold installing soffits overhead, the safety rail came off, causing him to fall from the scaffold and land on the floor 5 feet below. Vercelli claimed injuries to his head, right shoulder, neck and lower back.

Vercelli sued the general contractor, Structure Tone LLC; and the companies that were believed to be owners or have ownership interest in the subject property at the time of the accident, Time Warner Center Condominium, Time Warner Realty Inc., Columbus Centre LLC, Columbus Office LLC, and Deutsche Bank AG NY Branch. Vercelli alleged that the defendants violated the New York State Labor Law.

Claims against Time Warner Center Condominium, Time Warner Realty Inc. and Columbus Centre LLC were discontinued, as those defendants were improper parties to the action. Thus, the matter continued only against Structure Tone LLC, Columbus Office LLC, and Deutsche Bank AG NY Branch.

Vercelli claimed that while he was working on the 5-foot scaffold, the safety rail on one side of the scaffold broke off and that when he tried to avoid falling, he grabbed the rail on the other side, but it broke off as well. He alleged that as a result, he was propelled backward and fell to the concrete surface below. Furthermore, Vercelli alleged that the area where he fell was scattered with work materials and debris, which contributed to his injuries when he landed on the ground.

Vercelli's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Vercelli was not provided the proper, safe equipment that is a requirement of the statute. Counsel also contended that the site was not properly safeguarded and that, as such, it violated Labor Law § 241(6). Vercelli's counsel further contended that the site violated the general safety provisions of Labor Law § 200. Vercelli's counsel moved summary judgment on the issue of liability, but the motion was still pending by the time the matter was resolved.

Defense counsel argued Structure Tone, Columbus Office and Deutsche Bank did not violate any labor laws and that Vercelli was the sole proximate cause of the accident. Specifically, counsel argued that that Vercelli should have inspected the scaffold beforehand and that Vercelli should not have grabbed the safety rail because doing so could have caused it to dislodge from its placement.

Injury:

Vercelli was taken by ambulance to the emergency room at New York-Presbyterian Hospital, where he was admitted and remained hospitalized from Feb. 24, 2021, through the Feb. 26, 2021. Vercelli sustained a 5-centimeter laceration to his scalp, which required suturing. He claimed he sustained blunt-force trauma to his head, resulting in a concussion and ongoing concussive syndrome. He also claimed he sustained tears of his right shoulder and herniated cervical and lumbar intervertebral discs.

On April 1, 2021, Vercelli underwent an MRI of the right shoulder, which showed a partial thickness insertional tear of the undersurface of the supraspinatus tendon, which is an element of the rotator cuff. The MRI of the right shoulder also showed rotator cuff tendinosis and a tear of the superior labrum from anterior to posterior (also known as a SLAP tear), extending into the long head biceps anchor. After conservative treatment failed, he underwent an arthroscopic repair on Oct. 7, 2021.

Concerning the alleged cervical injuries, Vercelli claimed MRIs showed an extruded right paracentral cervical herniation at the C4-5 level with an impingement upon the cord and right C6 root, as well as a central cervical herniation at the C5-6 level with a midline inferior extrusion, impinging upon the cord. After conservative treatment failed, he underwent an anterior cervical discectomy and fusion at the C4-5 and C5-6 segments on Dec. 8, 2021.

As for the alleged lumbar injuries, Vercelli alleged that MRIs confirmed a nondisplaced fracture of the right L1 transverse process, as well as a lumbar disc herniation at the L4-5 segment. After conservative treatment failed, he underwent a decompressive lumbar laminectomy and fusion at the L3-4 and L4-5 segments on June 8, 2022.

Defense counsel argued that Vercelli's injuries were preexisting and/or not causally related to the accident. Counsel also argued that all of the surgeries that Vercelli underwent since the accident were unnecessary and that no further treatment was warranted.

The defense's experts all opined that Vercelli's diagnostic studies illustrated chronic degenerative conditions that were pre-existing and that there were no acute traumatic conditions found on any radiology studies.

In addition, defense counsel contended that Vercelli is able to engage in work and all activities of daily living without restrictions.

Result: According to defense counsel, Vercelli made a settlement demand of \$12 million. However, the parties ultimately negotiated a \$6.95 million settlement, which was established via the guidance of a mediator. Of the total settlement, The Hartford Insurance Group -- the primary insurer for Structure Tone, Deutsche Bank and Columbus Office -- tendered its primary policy, which provided \$5 million of coverage, and Markel Insurance Co. Inc. -- the excess insurer for Structure Tone, Deutsche Bank and Columbus Office -- contributed \$1.95 million.

Thomas Vercelli

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.

Writer Yawana Fields

Plaintiff claimed severe injuries after falling from ladder

Type: Settlement

Amount: \$5,500,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *arm* - fracture, arm; fracture, radius
- *leg* - fracture, leg; fracture, fibula; fracture, leg; fracture, proximal fibula
- *back* - kyphosis; lordosis; stenosis; lower back; myelopathy; upper back; spondylosis; bulging disc; herniated disc; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L1-2; herniated disc, lumbar; herniated disc at L3-4; herniated disc, lumbar; herniated disc at L5-S1; herniated disc, thoracic; herniated disc at T1-2; herniated disc, thoracic; herniated disc at T6-7; herniated disc, thoracic; herniated disc at T7-8
- *head* - headaches; concussion; closed head injury
- *knee* - fracture, knee; meniscus, tear; medial meniscus, tear; lateral meniscus, tear; chondromalacia / chondromalacia patella
- *neck* - kyphosis; lordosis; stenosis; myelopathy; spondylosis; bulging disc; herniated disc; fusion, cervical; bulging disc, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *ankle* - ankle ligament, tear
- *brain* - traumatic brain injury
- *elbow* - fracture, elbow; fracture, radial head
- *other* - lysis; orbit; effusion; fracture; adhesions; synovitis; bone graft; corpectomy; arthrodesis; hypertrophy; syndesmosis; synovectomy; arthroplasty; labrum, tear; labrum, torn; chondroplasty; tenosynovitis; ligament, tear; pseudarthrosis; SLAP lesion/tear; physical therapy; steroid injection; hardware implanted; comminuted fracture; epidural injections; tendolysis/tenolysis; tendon, severed/torn; nondisplaced fracture; tendinitis/tendinosis; cartilage/chondral, damage; chondral/cartilage, damage; foraminectomy/foraminotomy
- *wrist* - scapholunate ligament, tear; triangular fibrocartilage complex, torn
- *shoulder* - glenoid labrum, tear; rotator cuff, injury (tear)
- *face/nose* - face; face, bruise; fracture, nose; fracture, facial bone; fracture, orbit
- *hand/finger* - hand; lunotriquetral ligament, damage
- *neurological* - radiculopathy
- *surgeries/treatment* - osteotomy; discectomy; arthroscopy; debridement; laminectomy; knee surgery; meniscectomy; decompression surgery
- *mental/psychological* - anxiety; depression; cognition, impairment; memory, impairment; post-concussion syndrome; concentration, impairment

Case Type:

- *Construction* - Accidents; Labor Law; Scaffolds and Ladders
- *Slips, Trips & Falls* - Fall from Height

Case Name: Tadeusz Perko v. RCPI Landmark Properties, LLC, Tishman Speyer Properties, L.P., and RFA Hudson, Inc., No. 524885/2017

Date: March 22, 2023

Plaintiff(s):

- Tadeusz Perko, (Male, 58 Years)

Plaintiff Attorney(s):

- Slawomir W. Platta; The Platta Law Firm PLLC; New York NY for Tadeusz Perko
- Evi Kallfa; The Platta Law Firm PLLC; New York NY for Tadeusz Perko

**Plaintiff Expert
(s):**

- Daniel Wolstein Ph.D.; Life Care Planning; Hackensack, NJ called by: Evi Kallfa
- Kenneth T. Betz M.B.A.; Economics; Livingston, NJ called by: Evi Kallfa
- Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Evi Kallfa

Defendant(s):

- RFA Hudson Inc.
- PAR Environmental Corp.
- RCPI Landmark Properties LLC
- Tishman Speyer Properties L.P.

**Defense
Attorney(s):**

- Vincent Ambrosino; Ahmuty, Demers & McManus; New York, NY for RCPI Landmark Properties LLC, Tishman Speyer Properties L.P.
- Lesley Siskind; Cartafalsa, Turpin & Lenoff; New York, NY for PAR Environmental Corp.

**Defendant
Expert(s):**

- Yong H. Kim M.D.; Spinal Surgery; New York, NY called by: for Vincent Ambrosino
- Rimma Danov Ph.D.; Neuropsychology; Staten Island, NY called by: for Vincent Ambrosino
- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Vincent Ambrosino

Insurers:

- Zurich North America
- Starr Cos.

Facts:

On Dec. 8, 2017, plaintiff Tadeusz Perko, 58, an asbestos worker, was working at 45 Rockefeller Plaza in Manhattan. While he was standing on the fourth step of an A-frame ladder, the ladder shook. Perko and the ladder fell backward, and Perko landed on the ground. He claimed neck, back, knee, ankle, elbow, wrist, shoulder and head injuries.

Perko sued the premises' owner, RCPI Landmark Properties, and the property's managing agent, Tishman Speyer Properties. 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.

Perko also initially sued RFA Hudson, but that defendant was dismissed from the lawsuit.

RCPI Landmark Properties and Tishman Speyer Properties impleaded Perko's employer, PAR Environmental Corp. The third-party plaintiffs made claims for indemnification, contribution and breach of contract.

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

Perko's counsel moved for summary judgment of liability against RCPI Landmark Properties and Tishman Speyer Properties. The motion was granted as to the Labor Law § 240(1) claim. The matter proceeded to damages.

Injury:

Perko claimed herniations at C4-5, C5-6, T1-T2, T6-T7, T7-T8, L1-2, L3-4 and L5-S1. He also alleged C3-4, C6-7, L2-3 and L4-5 bulges. His other claimed spine injuries included stenosis, spondylosis, kyphosis, pseudarthrosis, myelopathy, radiculopathy and straightening of the cervical and lumbar lordosis.

Perko also had a comminuted and malunited radial head fracture of his right, dominant arm's elbow. He additionally claimed a traumatic brain injury with post-concussion syndrome. He further alleged facial bruising along with nasal and orbital floor fractures.

Perko was also diagnosed with medial and lateral meniscus tears to his right knee. He claimed synovitis, chondral damage, joint effusion and a nondisplaced proximal fibula fracture, as well.

In his right ankle, he alleged tenosynovitis, effusion and tendinosis along with tears to the flexor hallucis longus tendon, the peroneal brevis tendon and the posterior tibiofibular ligament.

Perko further claimed right rotator cuff tendinosis with a re-tear of the infraspinatus tendon. He was also diagnosed with SLAP and labrum tears in that shoulder along with adhesions, synovitis and hypertrophy.

Perko additionally alleged tears to the right wrist's triangular fibrocartilage complex, scapholunate ligament, lunotriquetral ligament and first metacarpophalangeal radial collateral ligament. He claimed synovitis and chondromalacia in that wrist, as well.

Perko had multiple surgeries after the fall. The first occurred in January 2018 and addressed his right elbow. The surgery included a replacement of the radial head.

Perko next had arthroscopic knee surgery in April 2018. The procedure included partial lateral and medial meniscectomies with a synovectomy and a coblation arthroplasty.

Later that month, Perko had an ankle arthroscopy that included a debridement, a syndesmosis repair with fixation, a tendon repair and tenolysis.

In October 2018, he underwent an anterior cervical interbody arthrodesis at C5 and C6. The procedure included partial vertebral corpectomies, spinal cord decompression and the placement of a biomechanical device.

Perko then had a right shoulder arthroscopy in July 2019. The surgery included a rotator cuff repair, debridements, lysis of adhesions and a synovectomy.

Perko had additional neck surgeries in 2020. In March of that year, he underwent an arthrodesis with partial corpectomies and bone grafting. He then had a re-operative discectomy and fusion in June 2020. He also had osteotomies, laminectomies, and foraminotomies to his neck/upper back.

In October 2020, Perko underwent arthroscopic wrist surgery that included extensive debridement, a complete synovectomy and a chondroplasty. Perko also had physical therapy and received bilateral lumbar epidural steroid injections.

Plaintiff's life care plan included future follow-up appointments, diagnostic studies, physical therapy, psychotherapy and medications. The plan also included hyaluronic acid injections to the knee and steroid injections to the wrist, shoulder, neck and back. The plan additionally discussed the need for shoulder and ankle arthroscopies, a spinal arthrodesis and a total knee arthroplasty in the future.

In his report, the life care planner noted that Perko is no longer able to perform household tasks as he did prior to the fall. The report also said that Perko's brain injury limits his attention span, short-term memory and ability to concentrate. Perko additionally complained of reactive anxiety, depression, headaches, dizziness and lightheadedness.

The defense's spinal surgery expert opined that Perko has no causally related issues to his neck or lower back. The defense's orthopedic surgery expert concluded that the plaintiff has fully recovered from his injuries and that his shoulder, knee, ankle and wrist surgeries were not necessary. Meanwhile, the defense's neuropsychological expert opined that Perko has no ongoing cognitive impairments and that Perko's anxiety and depression are unrelated to the crash.

Result: The parties negotiated a pretrial settlement. Zurich American agreed to pay \$2 million on behalf of RCPI Landmark Properties and Tishman Speyer Properties, who were additional insureds of PAR Environmental. PAR Environmental's excess insurer agreed to pay an additional \$3.5 million, so the settlement totaled \$5.5 million.

Tadeusz Perko

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 for RCPI Landmark Properties, Tishman Speyer Properties and PAR Environmental Corp. did not respond to the reporter's phone calls. Counsel for RFA Hudson was not asked to contribute.

Writer Jason Cohen

Laborer claimed numerous injuries after floor collapse

Type: Settlement

Amount: \$5,475,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *arm* - scar and/or disfigurement, arm
- *back* - lordosis; lower back; annular tear; bulging disc; spasm, lumbar; fusion, lumbar; herniated disc; sprain, lumbar; derangement, lumbar; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches
- *neck* - lordosis; annular tear; bulging disc; herniated disc; spasm, cervical; fusion, cervical; sprain, cervical; derangement, cervical; bulging disc, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *chest* - fracture, rib
- *elbow* - ulnar collateral ligament, tear; radial collateral ligament, tear
- *other* - spasm; abscess; atrophy; effusion; fracture; myositis; swelling; abrasions; arthritis; infection; bone graft; laceration; arthrodesis; facetectomy; chiropractic; labrum, tear; labrum, torn; ligament, tear; unconsciousness; SLAP lesion/tear; physical therapy; steroid injection; epidural injections; arthritis, traumatic; compartment syndrome; fasciectomy/fasciotomy; decreased range of motion; scar and/or disfigurement; foraminectomy/foraminotomy
- *wrist* - carpal tunnel syndrome
- *shoulder* - glenoid labrum, tear
- *epidermis* - edema; numbness; paresthesia
- *face/nose* - lip; facial laceration
- *hand/finger* - hand
- *neurological* - radiculopathy; neurological impairment; neuritis; neurological impairment; neuralgia; radicular pain / radiculitis
- *sensory/speech* - hypesthesia
- *surgeries/treatment* - discectomy; arthroscopy; debridement; laminectomy; laminectomy, lumbar; decompression surgery
- *mental/psychological* - anxiety; depression; post-concussion syndrome; post-traumatic stress disorder

Case Type:

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

Case Name: David Trinidad v. 150-13 89th LLC and NY Developers & Managers Inc., No. 520203/2017

Date: July 14, 2022

Plaintiff(s):

- David Trinidad, (Male, 53 Years)

Plaintiff Attorney(s):

- Ian M. Chaikin; Chaikin Trial Group; Melville NY for David Trinidad

Plaintiff Expert(s):

- Andrew Merola M.D.; Orthopedic Surgery; Brooklyn, NY called by: Ian M. Chaikin
- Charles DeMarco M.D.; Orthopedic Surgery; Astoria, NY called by: Ian M. Chaikin

Defendant(s):

- 150-13 89th LLC
- Big Apple Designers Inc.
- Sam Maintenance Service Inc.
- NY Developers & Managers Inc.

Defense Attorney(s):

- Barry Feerst; Barry R. Feerst & Associates; Long Beach, NY for Sam Maintenance Service Inc.
- Russ M. Patane; Golden Rothschild Spagnola Lundell Boylan & Garubo P.C.; New York, NY for 150-13 89th LLC, NY Developers & Managers Inc.

Defendant Expert(s):

- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Russ M. Patane

Insurers:

- Gemini Insurance
- Golden Insurance Co.

Facts:

On Sept. 27, 2017, plaintiff David Trinidad, 53, a laborer, was working at a renovation site located at 150-13 89th Ave., in the borough of Queens. He was traversing across plywood that was covering an opening in the floor on the eighth floor when a portion of the floor and plywood cover collapsed, causing him to fall approximately 10 feet to the floor below. Trinidad claimed injuries to his ribs, neck, back, a shoulder, an arm and a hand.

Trinidad sued the premises' owners, 150-13 89th LLC; and the renovation project's general contractor, NY Developers & Managers Inc. Trinidad alleged that the defendants violated the labor law.

Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Trinidad was not provided the proper, safe equipment that is a requirement of the statute.

The defendants impleaded Trinidad's employer, Sam Maintenance Service Inc.; and a subcontractor on the project, Big Apple Designers Inc. The first-party defendants sought indemnification.

Big Apple Designers was ultimately let out of the case prior to its resolution.

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

Injury:

Trinidad was placed in an ambulance, and he was transported to Jamaica Hospital Medical Center, in Queens. He was admitted through Sept. 29, 2017.

Trinidad claimed he sustained a tear of the anterior and posterior regions of the left, non-dominant, shoulder's glenoid labrum. This injury is commonly termed a "SLAP lesion." His left forearm also developed minor compartment syndrome, which is a pressurized condition of a muscle or muscles. He additionally claimed he suffered traumatically-induced carpal tunnel syndrome; atrophy of the left hand and wrist; and hypesthesia, anesthesia and paresthesia of the left hand and fingers, resulting in pain and numbness in his left fingers.

Trinidad claimed injuries to his right hand, as well. Specifically, he alleged he suffered an edema and effusion along with tears of the radial collateral and ulnar collateral ligaments of the fifth metacarpophalangeal joint.

Trinidad additionally claimed he suffered traumatic sprains, arthritis, derangement, radiculitis, myositis and sciatic neuritis in the lower back along with trauma that disrupted the lumbar lordosis, which is the normal curvature of the spine's lumbar region. He further claimed he suffered lumbar muscle spasms, plus trauma that produced bulging lumbar

discs at the L2-3, L3-4 and L4-5 levels, as well as a herniated lumbar disc with an annular tear at the L5-S1 level.

Trinidad similarly alleged traumatic arthritis, radiculopathy, derangement, sprains, radiculitis, myositis and cervico-occipital neuralgia in the neck. He complained of cervical spasms and headaches, as well. He also claimed trauma that disrupted the cervical lordosis. Trinidad additionally claimed he suffered a bulging cervical disc at the C6-7 level, and herniated cervical discs at the C4-5 and C5-6 levels with impingement at each of those levels.

Trinidad's other alleged injuries included a fracture of the right, 10th posterior rib; a laceration and abrasions to his lip; an abrasion of his chest; and other lacerations and bruises throughout his body. He also alleged that lost consciousness for a period after the accident and that he suffered post-traumatic stress disorder, post-concussion syndrome, post-traumatic headaches, post-traumatic depressive disorder, and post-traumatic nervousness and anxiety.

The day after the fall, Trinidad underwent a fasciotomy, which involved a division of the connective tissue of his left forearm. In August 2019, he underwent neck surgery that included a cervical discectomy, which involved an excision of cervical discs, and a fusion of the corresponding levels of his cervical spine. However, he developed an infection at the surgical site, so he required another procedure a few weeks later. That surgery included the evacuation of an abscess and debridement of damaged tissue.

Trinidad was administered three epidural injections of a steroid-based painkiller into his lumbar spine. The injections occurred in February, April and May of 2018. Trinidad subsequently underwent two lower back surgeries. The first occurred in June 2020. The lumbar decompression surgery included a laminectomy, which involved an excision of portions of vertebrae; medial facetectomies, which involved a decompression of spinal nerve roots; neural foraminotomies, which involved an enlargement of passages that housed spinal nerves; partial discectomies; posterior and posterolateral spinal arthrodesis; and bone grafting.

Trinidad underwent arthroscopic shoulder surgery in February 2021, and a lumbar discectomy and fusion in March 2022. He underwent physical therapy and chiropractic care, as well.

Trinidad claimed that his injuries have caused scarring, reduced range of motion and weakness in his left arm, along with swelling, tenderness and limited motion in his left shoulder. He also claimed he has swelling and limited range of motion in his right hand. Trinidad maintained that his spine injuries have caused further numbness, paresthesia, and hypesthesia to his extremities. He alleged that the cervical spine injuries, in particular, have caused anesthesia of the upper arms and limited motion to his neck. Trinidad further claimed that he suffers neck stiffness, swelling, tenderness and spasticity.

Trinidad alleged that as a result of his injuries, he has been unable to work since the fall. He claimed that he has trouble sitting for long periods, lifting heavy objects and doing manual labor. He alleged that as a result, he will need additional physical therapy, pain management care and revision surgeries in the future.

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

Defense counsel maintained that Trinidad's injuries were degenerative and pre-existing.

Result:

The parties negotiated a pretrial settlement. The insurance provider for 150-13 89th LLC and NY Developers & Managers Inc. tendered its \$1 million primary policy. The insurer also paid \$3,975,000 from an excess policy that provided \$5 million of coverage. The insurer for Sam Maintenance Service paid an additional \$500,000 from a policy that provided \$1 million of coverage. Thus, the settlement totaled \$5,475,000.

David Trinidad

Trial Information:

Judge: Ingrid Joseph

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. Counsel for NY Developers & Managers Inc. and 150-13 89th LLC, and counsel for Sam Maintenance Service Inc. did not respond to the reporter's phone calls. Counsel for Big Apple Designers Inc. was not asked to contribute.

Writer Melissa Siegel

Highway's guardrail a hazard, injured trucker claimed

Type: Settlement

Amount: \$4,500,000

State: New York

Venue: Federal

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

Injury Type(s):

- *arm* - fracture, humerus
- *back*
- *head* - fracture, skull
- *brain* - brain damage; subdural hematoma; traumatic brain injury
- *other* - plate; craniotomy; physical therapy; comminuted fracture; aggravation of pre-existing condition
- *wrist* - carpal tunnel syndrome
- *shoulder* - fracture, shoulder
- *face/nose* - fracture, facial bone; fracture, orbit
- *surgeries/treatment* - open reduction; internal fixation
- *mental/psychological* - cognition, impairment; memory, impairment

Case Type:

- *Transportation* - Roadways
- *Motor Vehicle* - Single Vehicle
- *Government* - State and Local Government
- *Dangerous Condition of Public Property*

Case Name: Ronald Tucholski and Lynne Tucholski v. New York State Bridge Authority, No. 13 CV 6673

Date: May 03, 2017

Plaintiff(s):

- Lynne Tucholski
- Ronald Tucholski (Male, 50 Years)

Plaintiff Attorney(s):

- Robert S. Kelner; Kelner & Kelner; New York NY for Ronald Tucholski, Lynne Tucholski
- Joshua D. Kelner; ; New York NY for Ronald Tucholski, Lynne Tucholski

**Plaintiff Expert
(s):**

- Peter Scalia; Accident Reconstruction; Buffalo, NY called by: Robert S. Kelner, Joshua D. Kelner
- Dennis Rosati; Pain Management; Farmington, CT called by: Robert S. Kelner, Joshua D. Kelner
- Steven H. Stein Ph.D.; Neuropsychology; Forest Hills, NY called by: Robert S. Kelner, Joshua D. Kelner
- Steven I. Schneider P.E.; Road/Highway; Ronkonkoma, NY called by: Robert S. Kelner, Joshua D. Kelner
- Thomas K. Fitzgerald Ph.D.; Economics; Bronxville, NY called by: Robert S. Kelner, Joshua D. Kelner
- Lawrence W. Shields M.D.; Neurology; Long Beach, NY called by: Robert S. Kelner, Joshua D. Kelner,

Defendant(s):

- New York State Bridge Authority

**Defense
Attorney(s):**

- Peter J. Morris; Bartlett, McDonough & Monaghan, LLP; White Plains, NY for New York State Bridge Authority
- Donald G. Derrico; Gordon Rees Scully Mansukhani, LLP; Harrison, NY for New York State Bridge Authority
- Ryan E. Dempsey; Gordon Rees Scully Mansukhani, LLP; Harrison, NY for New York State Bridge Authority
- Christopher Otton; Bartlett, McDonough & Monaghan, LLP; White Plains, NY for New York State Bridge Authority

**Defendant
Expert(s):**

- David M. Masur Ph.D.; Neuropsychology; Bronx, NY called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton,
- Edwin F. Richter III, M.D.; Physical Medicine; Stamford, CT called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton
- James P. Quinn P.E.; Road/Highway; New York, NY called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton
- Laura Bonanomi Ph.D.; Economics; New York, NY called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton,
- Andrew Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton,
- Andrew Casden M.D.; Orthopedic Surgery; New York, NY called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton
- Patrick A. Gaughan Ph.D.; Economics; New York, NY called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton
- William J. Meyer; Accident Reconstruction; Short Hills, NJ called by: for Peter J. Morris, Donald G. Derrico, Ryan E. Dempsey, Christopher Otton

Insurers:

- Lexington Insurance Co.
- Allied World Assurance Company Holdings, AG

Facts:

On Oct. 6, 2012, plaintiff Ronald Tucholski, a trucker in his 50s, was driving on the eastbound side of Interstate 84, approaching Newburgh-Beacon Bridge, in Newburgh. Tucholski lost control of his tractor-trailer, and the rig veered onto the roadway's median, where it struck a guardrail. The guardrail penetrated the tractor's windshield, and it struck Tucholski. Tucholski claimed that he suffered injuries of his back, his face, his head, a shoulder and a wrist.

Tucholski sued the roadway's maintainer, the New York State Bridge Authority. Tucholski alleged that the New York State Bridge Authority negligently created a dangerous condition that caused his injuries.

Tucholski claimed that he cannot recall the circumstances that led to the accident, but his counsel contended that the rig struck an open end of the guardrail. The guardrail had been opened during the late 1980s, to allow emergency travel between the highway's eastbound and westbound sides, and the opening survived two subsequent roadwork projects in the area. The guardrail was angled downward at the opening, and Tucholski's counsel contended that such an end treatment was designated hazardous in the 1995 edition of the National Manual on Uniform Traffic Control Devices for Streets and Highways, whose guidelines have been adopted by the state of New York. Tucholski's counsel contended that the treatment should have been updated during the roadwork projects. Tucholski's counsel also contended that other vehicular accidents had occurred in the area and that, as such, the New York State Bridge Authority should have appreciated that the guardrail had been opened in a hazardous area.

Tucholski's roadway-design expert submitted a report in which he opined that the end treatment was hazardous and should have been replaced by an updated, safer treatment. The expert also opined that the guardrail should not have been open at the area in which the accident occurred. Tucholski's accident-reconstruction expert submitted a report in which he opined that, had a modern, safe end treatment been in place, Tucholski would have been able to safely stop the tractor-trailer.

Defense counsel contended that the New York State Bridge Authority was not obligated to modify the guardrail, that the 1995 National Manual on Uniform Traffic Control Devices for Streets and Highways did not mandate revision of existing roadway installations, and that subsequent roadwork projects were not of an extent that required replacement of the guardrail. The defense's roadway-design expert submitted a report in which he opined that the guardrail satisfied all relevant design standards.

Defense counsel also claimed that Tucholski's rig did not strike the open end of the guardrail, and they contended that the accident was entirely a result of Tucholski having failed to maintain control of his rig.

Injury:

Tucholski was placed in an ambulance, and he was transported to a hospital. Doctors determined that he was suffering an open, depressed fracture of the skull; a resultant subdural hematoma; damage of the brain; a fracture of one of the skull's orbital bones; an open, comminuted fracture of his left humerus's head and neck, which are components of the left shoulder; and carpal tunnel syndrome. Tucholski claimed that the injuries were products of the accident.

Tucholski underwent a craniotomy, which involved implantation of plates. His fractured orbit was repaired via open reduction and internal fixation, and he underwent replacement of his fractured shoulder. His carpal tunnel syndrome was addressed via surgical release of one wrist's median nerve.

Tucholski claimed that his brain's injury causes significant impairment of his executive functions, his memory and other elements of his cognition. He also claimed that the accident aggravated a pre-existing injury of his lumbar region.

Tucholski underwent months of occupational therapy and physical therapy, which addressed the injury of his left shoulder. He claimed that the shoulder remains painful, that he suffers a residual diminution of the shoulder's utility, and that his injuries prevented his performance of his job's duties and necessitated an early retirement. He further claimed that he will require significant long-term care.

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

Defense counsel contended that Mr. Tucholski suffers merely minor impairment of his cognition. Defense counsel also contended that Tucholski's pre-existing lumbar condition would have inevitably prompted an early retirement.

Result:

The parties negotiated a pretrial settlement. The New York State Bridge Authority's insurers agreed to pay a total of \$4.5 million.

Trial Information:**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

Alan Burdziak

Unsecured scaffold plank led to significant injuries: lawsuit

Type: Settlement

Amount: \$3,600,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - stenosis; lower back; myelopathy; annular tear; bulging disc; herniated disc; bulging disc, lumbar; herniated disc, lumbar
- *knee* - meniscus, tear; knee derangement; medial meniscus, tear; lateral meniscus, tear
- *neck* - stenosis; myelopathy; annular tear; bulging disc; herniated disc; herniated disc, lumbar; 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* - plate; fracture; resection; synovitis; bone graft; corpectomy; laceration; arthrodesis; hypertrophy; soft tissue; synovectomy; pins/rods/screws; hardware implanted; comminuted fracture; decreased range of motion
- *shoulder*
- *foot/heel* - foot; fracture, toe; fracture, foot
- *hand/finger* - fracture, finger; fracture, phalanx
- *neurological* - radiculopathy; nerve damage/neuropathy
- *surgeries/treatment* - arthroscopy; debridement; knee surgery; meniscectomy; open reduction; internal fixation; decompression surgery

Case Type:

- *Construction* - Labor Law; Falling Object; Scaffolds and Ladders
- *Worker/Workplace Negligence* - Labor Law

Case Name: Sergey Alekseyev v. 139 Ludlow Acquisition LLC, Eurostruct, Inc., and Precision Hoist & Scaffold Corp. / Sergey Alekseyev v. Soho-Ludlow Tenant, LLC, No. 516587/2016; 502915/2017

Date: May 08, 2023

Plaintiff(s):

- Sergey Alekseyev, (Male, 59 Years)

- Plaintiff Attorney(s):**
- Howard G. Frederick; The Platta Law Firm, PLLC; New York NY for Sergey Alekseyev
- Plaintiff Expert(s):**
- Yury Rotshteyn M.D.; Podiatry; Brooklyn, NY called by: Howard G. Frederick
 - Daniel Wolstein Ph.D.; Life Care Planning; Hackensack, NJ called by: Howard G. Frederick
 - Andrew A. Merola M.D.; Orthopedic Surgery; New York, NY called by: Howard G. Frederick
 - Dmitriy Grinshpun M.D.; Neurology; Brooklyn, NY called by: Howard G. Frederick
 - Kristin K. Kucsma M.A.; Economics; Livingston, NJ called by: Howard G. Frederick
- Defendant(s):**
- Eurostruct Inc.
 - Big Shot Electric Corp.
 - Soho Ludlow Tenant, LLC
 - 139 Ludlow Acquisition LLC
 - Precision Hoist & Scaffold Corp.
- Defense Attorney(s):**
- Austin P. Murphy Jr.; Law Offices of Kevin P. Westerman; Garden City, NY for 139 Ludlow Acquisition LLC, Eurostruct Inc., Soho Ludlow Tenant, LLC
 - Stephen J. Donnelly Jr.; Law Offices of Kevin P. Westerman; Garden City, NY for 139 Ludlow Acquisition LLC, Eurostruct Inc., Soho Ludlow Tenant, LLC
- Defendant Expert(s):**
- Adam N. Bender M.D.; Neurology; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - John A. Bendo M.D.; Orthopedic Surgery; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Mark Ramnauth M.A., C.R.C.; Vocational Rehabilitation; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Ruhi Arslanoglu Ph.D.; Biomechanical; Cedar Knolls, NJ called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Craig H. Sherman M.D.; Neuroradiology; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Shawn Z. Rothstein P.E.; Engineering; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Andrew N. Bazos M.D.; Orthopedic Surgery; Danbury, CT called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Leonard R. Freifelder Ph.D.; Economics; New York, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
 - Jennifer Canter M.D.; Life Care Planning; Valhalla, NY called by: for Austin P. Murphy Jr., Stephen J. Donnelly Jr.
- Insurers:**
- Catlin Insurance Company

Facts:

On April 16, 2016, plaintiff Sergey Alekseyev, 59, an electrician for Big Shot Electric Corp., was working on the top floor of a building located at 139 Ludlow Street in Manhattan. Alekseyev was instructed to install the pipes that held the wiring for the ceiling's light fixtures. He was further instructed to perform this work by using a two-level mobile scaffold that was approximately 20 feet in height.

To complete the job, Alekseyev stood on planks that had been placed on the scaffold frame's top level. The planks were not secured to the frame.

After working approximately 90 minutes on the scaffold, Alekseyev climbed down to the ground. He and a coworker began pushing the scaffold to the next work area. As they did so, one of the planks became detached from the scaffold's top level.

The plank struck Alekseyev as it fell to the ground. He claimed injuries to his neck and back plus injuries to a knee, a foot and a shoulder.

Alekseyev sued the building's owner, 139 Ludlow Acquisition LLC, and the construction project's general contractor, Eurostruct, Inc. He also sued another entity, Precision Hoist & Scaffold Corp.

Alekseyev then filed a separate lawsuit against the building's tenant, Soho Ludlow Tenant, LLC. The two lawsuits were consolidated.

Plaintiff's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Alekseyev was not provided the proper, safe equipment that is a requirement of the statute.

Precision Hoist & Scaffold was ultimately discontinued from the lawsuit. The remaining three defendants filed a third-party claim against Big Shot Electric, but that claim was also discontinued.

Plaintiff's counsel contended that the defendants could have prevented the accident by properly securing the subject plank.

Injury:

Alekseyev claimed a right foot fracture and open fractures of his third, fourth and fifth digits. He specifically had a proximal shaft fracture of the third phalanx, a comminuted midshaft fracture of the fourth phalanx and a comminuted intra-articular fracture of the fifth phalanx. He also suffered a right anterior open laceration.

Alekseyev alleged numerous right knee injuries, as well. He claimed a lateral meniscus tear, internal derangement, patellofemoral plica and synovitis. He also had fluid within the joint and a radial tear. In his medial meniscus, he sustained an oblique linear tear of the posterior horn and blunting of the apex of the anterior horn.

Alekseyev's alleged back injuries included anterior disc prolapse at the L1-L2 and L2-L3 levels. He also claimed trauma that produced a bulge at L2-L3. In his left shoulder, he was diagnosed with hypertrophy of the acromioclavicular capsule. He also had a moderate amount of fluid in the acromioclavicular joint.

In his neck, Alekseyev alleged herniations of his C4-5, C5-6 and C6-7 intervertebral discs. He also had annular tears at C4-5 and C6-7. He claimed radiculopathy, canal stenosis, myelopathy and a spinal cord nerve root injury, as well.

The day of the accident, Alekseyev underwent open reduction and internal fixation of his foot fractures. The procedure included a debridement of soft tissue.

In April 2017, Alekseyev had a knee arthroscopy. The surgery included a partial lateral meniscectomy, a partial synovectomy and patellofemoral plica resection.

Alekseyev additionally underwent neck surgery in June 2019. The procedure involved an arthrodesis, partial vertebral corpectomies, resections, nerve root decompressions and a bone graft. Doctors also inserted hardware, including an anterior plate and screw spinal instrumentation implant, into his neck.

Alekseyev said he needs future shoulder injections. He claimed that his shoulder injury has caused a reduced range of motion.

The defense argued that Alekseyev's injuries were pre-existing and not related to the accident. Plaintiff's counsel countered that the opinions of the defense's medical experts were skewed because they did not have a doctor/patient relationship with Alekseyev.

Result:

Shortly before the jury trial's summation, the parties agreed to a settlement. The defendants' insurer agreed to pay Alekseyev \$3.6 million.

Sergey Alekseyev

Trial Information:

Judge: Wayne P. Saitta

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 for 139 Ludlow Acquisition, Eurostruct and Soho Ludlow Tenant did not respond to the reporter's phone calls. Counsel for the remaining defendants was not asked to contribute.

Writer Jason Cohen

Lawsuit alleged hoist's failure led to worker's injuries, death

Type: Mediated Settlement

Amount: \$3,200,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *leg* - fracture, leg; fracture, tibia; fracture, leg; fracture, fibula
- *ankle* - fracture, ankle
- *chest* - fracture, rib
- *other* - death; physical therapy
- *pelvis* - fracture, pelvis; fracture, pubic ramus
- *surgeries/treatment* - open reduction; external fixation; internal fixation
- *mental/psychological* - depression

Case Type:

- *Construction* - Labor Law; Falling Object
- *Workplace* - Workplace Safety
- *Wrongful Death* - Survival Damages

Case Name: Toni-Lyn Ambrosino, as Administrator of the Estate of John P. Sullivan v. The Port Authority of NY and NJ, Tishman Construction Corporation of New York and Tishman Construction Corporation, No. 22257/13

Date: November 08, 2016

Plaintiff(s):

- Estate of John P. Sullivan (Male, 51 Years)

Plaintiff Attorney(s):

- David H. Peregman; The Peregman Firm, P.L.L.C.; New York NY for Estate of John P. Sullivan

**Plaintiff Expert
(s):**

- Mark C. Drakos M.D.; Foot & Ankle; New York, NY called by: David H. Perecman
- Paul G. Jones M.D.; Orthopedic Surgery; Monticello, NY called by: David H. Perecman
- Toni M. McLaurin M.D.; Orthopedic Surgery; New York, NY called by: David H. Perecman
- Jeffrey A. Pfaendtner P.E., Ph.D.; Metallurgy; Eden Prairie, MN called by: David H. Perecman
- Kenneth Mroczek M.D.; Orthopedic Surgery; New York, NY called by: David H. Perecman

Defendant(s):

- Tishman Construction Corp.
- Port Authority of New York and New Jersey
- Tishman Construction Corporation of New York

**Defense
Attorney(s):**

- Anthony F. Tagliagambe; London Fischer LLP; New York, NY for Port Authority of New York and New Jersey, Tishman Construction Corporation of New York, Tishman Construction Corp.
- Robert M. Mazzei; London Fischer LLP; New York, NY for Port Authority of New York and New Jersey, Tishman Construction Corporation of New York, Tishman Construction Corp.

**Defendant
Expert(s):**

- Vega Lalire Ph.D.; Psychology/Counseling; Goshen, NY called by: for Anthony F. Tagliagambe, Robert M. Mazzei
- Peter D. Capotosto M.S., C.R.C.; Vocational Rehabilitation; Rochester, NY called by: for Anthony F. Tagliagambe, Robert M. Mazzei
- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Anthony F. Tagliagambe, Robert M. Mazzei

Insurers:

- Lloyd's of London
- American International Group Inc.

Facts:

On Feb. 23, 2013, plaintiff's decedent John Sullivan, 51, a union-affiliated carpenter and foreman, worked at a construction site that was located at 285 Fulton St., in Manhattan. Large plates, whose weight approximated 670 pounds, were being hoisted to various levels of a skyscraper. Sullivan had loaded the hoist. During the course of the operation, one plate fell out of the hoist. The plate plummeted some nine feet, landed on the ground, bounced and struck Sullivan. Sullivan suffered injuries of an ankle, a leg, his pelvis and several ribs.

Sullivan sued the construction project's general contractors, Tishman Construction Corp. and Tishman Construction Corporation of New York, and the site's owner, the Port Authority of New York and New Jersey. Sullivan alleged that the defendants violated the New York State Labor Law.

Sullivan died after the lawsuit had been filed. The suit was continued by his estate.

The estate's counsel contended that the accident was a result of a failure of the hoist. The plate and the hoist's lifting ring had been attached via a metal rod and nuts, but the hardware could not support the plate's weight. The rod was a soft metal object that was being used in place of the hardened steel eye bolt that was a standard component of the hoist's ring. The steel bolt had been lost. The estate's counsel claimed that the ring's manual specified that the steel bolt was a necessary component of the ring. The estate's expert metallurgist opined that the bolt's absence undermined the ring's integrity, and he contended that Sullivan should have been warned that the hoist could have failed.

The estate's counsel also contended that Sullivan had not been provided an appropriate wrench and therefore could not fully tighten the nuts that were securing the plate. The estate's expert metallurgist opined that Sullivan should have been provided a torque wrench.

The estate's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Sullivan was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel contended that the accident was a result of Sullivan having failed to adequately secure the plate. They claimed that he merely hand-tightened the securing nuts, rather than utilizing a wrench. They contended that Sullivan was the competent person in charge of the work and therefore should have understood the danger created by an inadequately secured load.

Injury: Sullivan suffered a fracture of his pelvis's right inferior pubic ramus, a fracture of his pelvis's right superior pubic ramus, a fracture of his right ankle, a fracture of his right leg's fibula, a fracture of his right leg's tibia and fractures of ribs.

Sullivan was placed in an ambulance, and he was transported to Bellevue Hospital Center, in Manhattan. He underwent open reduction and internal fixation of the fractures of his pelvis and his right leg. He also underwent application of an external fixation device. His hospitalization lasted five days. He subsequently underwent nearly two years of physical therapy. He also utilized prescribed painkillers, which included morphine and opioids.

The estate's counsel claimed that Sullivan's injuries and a resultant disability led to Sullivan's development of depression. On Feb. 22, 2015, Sullivan died. A toxicologist opined that Sullivan's death was a result of acute toxicity caused by combined use of alcoholic beverages and morphine. Given that the morphine had been prescribed to address an injury related to the accident, the estate's counsel contended that Sullivan's death was a product of the accident.

Sullivan's estate sought recovery of wrongful-death damages that included damages for Sullivan's pain and suffering.

Result: The parties negotiated a pretrial settlement. The Port Authority of New York and New Jersey's insurers agreed to pay a total of \$3.2 million. The negotiations were mediated by Kenneth Grundstein, of National Arbitration and Mediation Inc.

Trial Information:

Judge: Kenneth Grundstein

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

Writer Jacqueline Birzon

Fallen worker claimed scaffold wasn't safe for descending

Type: Mediated Settlement

Amount: \$3,000,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - nerve impingement; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L4-5
- *neck* - fusion, cervical; nerve impingement; herniated disc, cervical; herniated disc at C5-6
- *other* - SLAP lesion/tear; physical therapy; trigger point injection
- *shoulder* - glenoid labrum, tear
- *hand/finger* - fracture, metacarpal
- *neurological* - nerve impingement
- *surgeries/treatment* - discectomy; arthroscopy; debridement

Case Type:

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

Case Name: Juan Guaman v. 125 & Lenox Owner LLC KSK Construction Group LLC, No. 6744/15

Date: August 18, 2020

Plaintiff(s):

- Juan Carlos Guaman (Male, 42 Years)

Plaintiff Attorney(s):

- Judd F. Kleeger; Hecht Kleeger & Damashek, P.C.; New York NY for Juan Carlos Guaman

**Plaintiff Expert
(s):**

- John S. Vlattas M.D.; Pain Management; Bayside, NY called by: Judd F. Kleeger
- Mark P. Zaporowski; Economics; Buffalo, NY called by: Judd F. Kleeger
- Scott Silberman P.E.; Engineering; New York, NY called by: Judd F. Kleeger
- Andrew A. Merola M.D.; Orthopedic Surgery; Brooklyn, NY called by: Judd F. Kleeger
- Steven J. Touliopoulos M.D.; Orthopedic Surgery; Astoria, NY called by: Judd F. Kleeger

Defendant(s):

- 125 & Lenox Owner LLC
- KSK LLC Construction Group

**Defense
Attorney(s):**

- Jay A. Hamad; Marshall Dennehey Warner Coleman & Goggin, P.C.; New York, NY for 125 & Lenox Owner LLC, KSK LLC Construction Group

**Defendant
Expert(s):**

- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Jay A. Hamad
- Joseph Pessalano M.A., C.R.C.; Vocational Rehabilitation; Garden City, NY called by: for Jay A. Hamad
- Michael Cronin P.E.; Engineering; Edison, NJ called by: for Jay A. Hamad
- Kai-Ming Fu M.D., Ph.D.; Neurosurgery; New York, NY called by: for Jay A. Hamad

Insurers:

- XL Group plc
- Houston Casualty Co.

Facts:

On May 14, 2015, plaintiff Juan Carlos Guaman, 42, a laborer, worked at a construction site that was located at 100 W. 25th St., in the Central Harlem section of Manhattan. During the course of his work, he fell off of a scaffold. He plummeted a distance of about 10 feet, and he landed on the ground. He claimed that he suffered injuries of his back, a hand, his neck and a shoulder.

Guaman sued the premises' owner, 125 & Lenox Owner LLC, and the construction project's general contractor, KSK LLC Construction Group. 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 accident occurred while Guaman was descending from the scaffold's work platform. He was utilizing the scaffold's framework as a makeshift ladder. Guaman claimed that his fall was a result of the scaffold having shaken. He contended that the device was unstable, and he also contended that it lacked a proper ladder. Guaman's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Guaman was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel contended that the scaffold's frame included a section that, based on code specifications, constituted a built-in integral ladder. Defense counsel claimed that Guaman utilized the ladder while ascending the scaffold but not while descending and, therefore, that the accident was a result of Guaman having failed to utilize the safest means of descending the ladder. In response, Guaman's counsel contended that the scaffold's frame did not meet the codified definition of a built-in integral ladder.

Injury:

Guaman was retrieved by an ambulance, and he was transported to Mount Sinai St. Luke's hospital, in Manhattan. He underwent minor treatment.

Guaman ultimately claimed that he suffered herniations of his C5-6 and L4-5 intervertebral discs; that he suffered trauma that produced bulges of his L2-3 and L3-4 discs; that he suffered a fracture of his right hand's second metacarpal, which is the bone that joins the second finger and the base of the hand; and that he suffered a tear of the anterior and posterior regions of his right shoulder's glenoid labrum. The latter such injury is commonly termed a "SLAP lesion." Guaman also claimed that his L4-5 herniation caused impingement of a spinal nerve.

Guaman underwent about two years of conservative treatment that comprised physical therapy and the administration of two painkilling trigger-point injections, which were directed to his lumbar region. He claimed that the treatment did not provide lasting relief.

In February 2016, Guaman underwent arthroscopic surgery that addressed his right

shoulder. The procedure included debridement of damaged tissue.

In September 2017, Guaman underwent surgery that included a discectomy -- which involved excision of his C5-6 disc -- and fusion of the corresponding level of his spine.

In 2018 and 2019, Guaman underwent administration of a total of four trigger-point injections, which were directed to his neck.

Guaman claimed that he suffers residual pain and limitations that prevent his performance of his job's duties and other physical tasks. He has not resumed work. He claimed that he requires further physical therapy.

Guaman sought recovery of past medical expenses, \$1.5 million for future medical expenses, \$138,000 for past lost earnings, \$632,000 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 the accident caused nothing more than injuries of soft tissue, and he further opined that the injuries should have resolved via conservative treatment. The defense's expert neurologist submitted a report in which he opined that the injuries of Guaman's back, neck and right shoulder were degenerative conditions. Defense counsel contended that Guaman's surgeries addressed chronic conditions.

The defense's vocational-rehabilitation expert submitted a report in which he opined that Guaman can perform alternative work that would provide earnings equivalent to Guaman's pre-accident earnings.

Result:

The parties negotiated a pretrial settlement. The defendants' primary insurer tendered its policy, which provided \$2 million of coverage, and the defendants' excess insurer agreed to pay \$1 million from a policy that provided \$5 million of coverage. Thus, the settlement totaled \$3 million. The settlement's negotiations were mediated by Allen Hurkin-Torres, of Jams.

Trial Information:

Judge: Allen Hurkin-Torres

Trial Length: 0

**Trial
Deliberations:** 0

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

Writer Melissa Siegel

Taxi passenger claimed multiple injuries from bus crash

Type: Settlement

Amount: \$2,905,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - stenosis; bulging disc, lumbar
- *knee* - meniscus, tear; medial meniscus, tear; lateral meniscus, tear
- *neck* - stenosis; fusion, cervical; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C5-6
- *other* - synovectomy; labrum, tear; chondroplasty; physical therapy
- *shoulder* - rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *neurological* - radiculopathy
- *surgeries/treatment* - discectomy; arthroscopy; debridement; knee surgery; meniscectomy

Case Type:

- *Motor Vehicle* - Bus; Passenger; Right Turn; Multiple Vehicle; Taxi / Livery Vehicle

Case Name: Sharimara Stallings v. Selim Miah M.D., Eugenia Kaplan, Kimberly N. Gushue, and Careful Bus Service, Inc., No. 517124/2018

Date: October 02, 2023

Plaintiff(s):

- Sharimara Stallings, (Female, 60 Years)

Plaintiff Attorney(s):

- Paul J. Edelstein; The Edelsteins, Faegenburg & Brown LLP; New York NY for Sharimara Stallings
- Arthur Blyakher; The Edelsteins, Faegenburg & Brown LLP; New York NY for Sharimara Stallings
- Daniel A. Thomas; Law Offices of Daniel A. Thomas, PC; New York NY for Sharimara Stallings

**Plaintiff Expert
(s):**

- Ari Lerner M.D.; Pain Management; Astoria, NY called by: Paul J. Edelstein, Arthur Blyakher, Daniel A. Thomas
- Paul M. Brisson M.D.; Orthopedic Surgery; New York, NY called by: Paul J. Edelstein, Arthur Blyakher, Daniel A. Thomas

Defendant(s):

- Selim Miah
- Selim Miah
- Eugenia Kaplan
- Kimberly Gushue

**Defense
Attorney(s):**

- Angela Lurie Milch; Smith, Mazure, Director, Wilkins, Young, Yagerman & Tarallo, P.C.; New York, NY for Selim Miah, Eugenia Kaplan
- Maureen Quinn; McCabe, Collins, McGeough, Fowler, Levine & Nogan LLP; Jericho, NY for Kimberly Gushue, Selim Miah

**Defendant
Expert(s):**

- Dana Mannor M.D.; Orthopedic Surgery; New York, NY called by: for Angela Lurie Milch, Maureen Quinn
- Yong H. Kim M.D.; Orthopedic Surgery; New York, NY called by: for Angela Lurie Milch, Maureen Quinn
- Carl Jewell Ph.D.; Biomechanical; Penns Park, PA called by: for Angela Lurie Milch, Maureen Quinn
- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Angela Lurie Milch, Maureen Quinn
- Daniel J. Feuer M.D.; Neurology; New York, NY called by: for Angela Lurie Milch, Maureen Quinn
- Sheldon P. Feit M.D.; Diagnostic Radiology; Forest Hills, NY called by: for Angela Lurie Milch, Maureen Quinn

Insurers:

- American Transit Insurance Co.
- American International Group Inc.
- Sedgwick Claims Management Services Inc.

Facts:

On April 27, 2017, plaintiff Sharimara Stallings, 60, a personal chef/assistant, was a backseat passenger in a taxicab operated by Selim Miah. The taxi traveled along Washington Street, in Manhattan. However, when the taxi was at or near the intersection with West Houston Street, it struck a turning bus operated by Kimberly Gushue. Stallings claimed injuries to her neck, both shoulders, and both knees.

Stallings sued Miah; the owner of the taxicab, Eugenia Kaplan; Gushue; and the owner of the bus, Careful Bus Service Inc. Stallings alleged that Miah and Gushue were negligent in the operation of their respective vehicles. Stallings also alleged that Kaplan was vicariously liable for Miah's actions and that Careful Bus Service was vicariously liable for Gushue's actions.

According to plaintiff's counsel, Gushue attempted to make a right turn from a left bicycle lane while Miah's taxi was traveling in the middle lane, attempting to proceed straight through the intersection. Thus, counsel contended that Miah's taxicab struck Gushue's bus as it began the right turn from the left bicycle lane.

The defendants did not dispute liability, but noted that Stallings was not wearing a seatbelt at the time of the accident.

Injury:

An ambulance arrived at the accident scene, and Stallings was examined by the ambulance's personnel and given an ice pack and ibuprofen. However, Stallings refused to be transported to a hospital. She went to an urgent care facility two or three days later with complaints of pain to her neck, back, left shoulder and both knees. Two weeks later, Stallings went to her primary care physician, this time with complaints of pain in both shoulders, as well as pain to her neck, back and knees.

Stallings claimed she sustained an anterior labral tear of the left shoulder's rotator cuff, a partial-thickness tear of the right shoulder's distal supraspinatus tendon, a medical meniscus tear of the left knee, and a lateral meniscus tear of the right knee. She also claimed she sustained herniated cervical discs at the C4-5 and C5-6 levels with radiculopathy, and bilateral and central stenosis. In addition, she claimed she sustained bulging lumbar discs at the L3-4 and L4-5 levels.

Stallings attempted to treat her injuries with physical therapy, but conservative treatment did not resolve all of her pain. She ultimately underwent arthroscopic knee surgery on Dec. 8, 2017. The procedure included a debridement of the medical meniscus, a chondroplasty and a synovectomy. She also underwent arthroscopic surgery on the right knee on Aug. 24, 2018. That procedure included a partial later meniscectomy, a chondroplasty and a partial synovectomy. In between those surgeries, Stallings underwent arthroscopic surgery on her left shoulder on Feb. 5, 2018. The shoulder procedure included a debridement of the labrum, a synovectomy and a bursectomy. In addition, Stallings underwent an anterior cervical discectomy and fusion at the C4-5 and C5-6 levels.

Defense counsel asserted that Stallings' alleged injuries were degenerative in nature and not causally related to the subject accident. Counsel also asserted that even if Stallings was injured in the accident, Stallings would not have been injured at all had she been wearing an available seatbelt.

Result:

The parties negotiated a settlement three days into the trial. The insurance company for Miah and Kaplan, American Transit Insurance Co., agreed to pay \$30,000. In addition, Sedgwick Claims Management Services Inc. and American International Group Inc. (AIG), the insurers for Gushe and Careful Bus Service, agreed to pay a total of \$2,875,000. Thus, the settlement totaled \$2,905,000.

Sharimara Stallings

Trial Information:

Judge: Francios A. Rivera

Demand: \$3,000,000

Offer: \$500,000

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 Jason Cohen

Head-on crash resulted in back surgery, plaintiff claimed

Type: Mediated Settlement

Amount: \$2,800,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *leg*
- *back* - lower back; spasm, lumbar; fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *knee*
- *other* - ablation; effusion; chiropractic; massage therapy; hardware implanted; decreased range of motion
- *wrist*
- *neurological* - radicular pain / radiculitis
- *surgeries/treatment* - discectomy

Case Type:

- *Motor Vehicle* - Truck; Head-On; Passenger; Center Line; Multiple Vehicle; Sudden Emergency Defense

Case Name: Jose Infante v. Leader Electric Co. Inc. and Billy Touch Sous, No. 30085/2017E

Date: June 28, 2022

Plaintiff(s):

- Jose Infante, (Male, 38 Years)

Plaintiff Attorney(s):

- Steven B. Dorfman; The Peregman Firm, PLLC; New York NY for Jose Infante
- Sagar Chadha; The Peregman Firm, PLLC; New York NY for Jose Infante

Defendant(s):

- Billy Touch Sous
- Leader Electric Co. Inc.

**Defense
Attorney(s):**

- David Heller; Law Office of Brian Rayhill; Elmsford, NY for Leader Electric Co. Inc., Billy Touch Sous

**Defendant
Expert(s):**

- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for David Heller
- Douglas Cohen M.D.; Neurosurgery; New York, NY called by: for David Heller

Insurers:

- Nationwide Mutual Insurance Co.

Facts:

On July 11, 2016, plaintiff Jose Infante, 38, a sanitation worker, was a passenger in a pickup truck that was driving on Amsterdam Avenue, in New York. At the intersection with West 115th Street, the front of the pickup was struck head-on by a van driven by Billy Touch Sous, who had crossed over the double-yellow line while driving in the opposite direction. Infante claimed injuries to a wrist, back and a knee.

Infante sued Sous and Sous' employer, Leader Electric Co. Inc. Infante alleged that Sous was negligent in the operation of his vehicle and that Leader Electric was vicariously liable for Sous' actions.

Defense counsel maintained that Sous was faced with a sudden emergency when the vehicle in front of him abruptly stopped. In order to evade a collision, Sous inadvertently entered the opposite lane of travel and struck Infante's truck head-on, the defense contended. However, the court granted Infante's counsel's motion for summary judgment on the issue of liability.

Injury:

Infante was taken by ambulance to a hospital, where he complained of right knee pain and was diagnosed with an effusion of the right knee's suprapatellar joint. Following his discharge, Infante presented to another emergency room, where he was diagnosed with pain to his left wrist and lumbar spine. He was ultimately diagnosed with herniated lumbar discs at the L4-5 and L5-S1 levels.

Within a week of the accident, Infante came under the care of a physician, who eventually confirmed the herniations via an MRI. Infante was put on a course of treatment that consisted of physical therapy, chiropractic care, two facet injections to the lumbar spine, three epidural injections to the lumbar spine, and pain medication. Infante treated with the conservative treatment through early 2018, when it was determined that he required surgery. In April 2018, Infante underwent a lumbar discectomy and fusion at L4-5 and L5-S1.

Following the surgery, and through June 2022, Infante continued to undergo treatment for his lower back pain, which consisted of two rounds of lumbar facet block injections and four rounds of radiofrequency ablations. He also continued treating with physical therapy for his left wrist and right knee.

Infante alleged that he experiences daily pain in his left wrist, lower back and right knee. He claimed that he has an impaired gait and that the range of motion in his left wrist has not returned to its pre-accident level.

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

In his report, the defense's expert neurosurgeon opined that Infante's complaints of radicular pain are subjective. According to the expert, the accident exacerbated the degenerative changes in Infante's lumbar spine and that Infante continues to have mild reflex and sensory issues.

The defense's expert orthopedic surgeon opined in his report that Infante's right knee complaints were nothing more than the result of a soft-tissue injury that later resolved.

Result:

The parties negotiated a pretrial settlement. Leader Electric's insurer agreed to pay \$2.8 million from a policy that provided \$6 million of coverage. The settlement's negotiations were mediated by Susan Hernandez, of National Arbitration and Mediation.

Jose Infante

Trial Information:

Judge: Susan Hernandez

Demand: \$6 million

Offer: \$150,000

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

Man struck by falling cabinet, claimed injuries of spine

Type: Settlement

Amount: \$2,750,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *back* - nerve impingement; bulging disc, lumbar; herniated disc, lumbar; herniated disc at L4-5
- *neck* - fusion, cervical; nerve impingement; herniated disc, cervical; herniated disc at C5-6
- *other* - plate; bone graft; corpectomy; facetectomy; physical therapy; pins/rods/screws; hardware implanted; epidural injections; scar and/or disfigurement
- *neurological* - radiculopathy; nerve impingement
- *surgeries/treatment* - discectomy; laminectomy; laminectomy, lumbar; decompression surgery

Case Type:

- *Premises Liability* - Apartment; Falling Object; Tenant's Injury; Dangerous Condition; Negligent Assembly or Installation

Case Name: Damon Sims v. Bronx Boynton Ave LLC., No. 26370/18

Date: May 19, 2021

Plaintiff(s):

- Damon Sims, (Male, 46 Years)

Plaintiff Attorney(s):

- Stephen J. Murphy; Block O'Toole & Murphy, LLP; New York NY for Damon Sims
- Michael J. Hurwitz; Block O'Toole & Murphy, LLP; New York NY for Damon Sims

- Plaintiff Expert (s):**
- Alan Leiken Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Edwin F. Richter III, M.D.; Life Care Planning; Stamford, CT called by: Stephen J. Murphy, Michael J. Hurwitz
 - Lauren Schlesinger R.A.; Architecture; Ridgewood, NY called by: Stephen J. Murphy, Michael J. Hurwitz
- Defendant(s):**
- Bronx Boynton Ave LLC
- Defense Attorney(s):**
- Eugene T. Boulé; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; New York, NY for Bronx Boynton Ave LLC
- Defendant Expert(s):**
- Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Eugene T. Boulé
 - Douglas S. Cohen M.D.; Neurosurgery; Staten Island, NY called by: for Eugene T. Boulé
- Insurers:**
- RSUI Group Inc.
 - Allied World Assurance Company (U.S.) Inc.

Facts: On Aug. 3, 2016, plaintiff Damon Sims, a 46-year-old unemployed man, was struck by a cabinet that had fallen off of a wall. The incident occurred in the kitchen of his residence: an apartment that was located at 1135 Boynton Ave., in the Soundview section of the Bronx. Sims claimed that he suffered injuries of his back and neck.

Sims sued the premises' owner, Bronx Boynton Ave LLC. The lawsuit alleged that Bronx Boynton Ave LLC was negligent in its installation of the cabinet. The lawsuit further alleged that Bronx Boynton Ave LLC's negligence created a dangerous condition that caused the accident.

Sims' counsel contended that the cabinet, which had been installed some three weeks prior to the accident, had not been adequately secured. Sims' expert architect submitted a report in which she claimed that the cabinet was screwed into plasterboard, but that it should have been attached to beams. The expert further claimed that plasterboard anchors had not been utilized.

Defense counsel contended that the cabinet was properly installed. He claimed that the cabinet's fall was a result of it having been overloaded by Sims.

Injury:

Sims claimed that the cabinet struck his head and neck, that he became pinned between the fallen cabinet and his kitchen's counter, and that he fell backward upon extricating himself.

Sims was retrieved by an ambulance, and he was transported to NYC Health + Hospitals Jacobi hospital, in the Bronx. He underwent minor treatment.

Sims ultimately claimed that he suffered herniations of his C5-6 and L4-5 intervertebral discs. He also claimed that he suffered trauma that produced bulges of his L3-4 and L5-S1 discs. He claimed that he developed residual impingement of spinal nerves and resultant radiculopathy.

Sims underwent physical therapy and the administration of five epidural injections of steroid-based painkillers, but he claimed that he suffered ongoing pain related to the accident.

On May 24, 2018, Sims underwent surgery that included a discectomy, which involved excision of his C5-6 disc; a corpectomy, which involved excision of portions of his C5 and C6 vertebrae; fusion of his spine's C5-6 level; implantation of a stabilizing plate and screws; and application of a stabilizing graft of bony matter.

On May 23, 2019, Sims underwent surgery that included a discectomy, which involved excision of his L3-4 and L4-5 discs; a laminectomy, which involved excision of portions of adjacent vertebrae; and a facetectomy, which involved decompression of roots of spinal nerves.

During the summer of 2019, Sims underwent administration of two painkilling nerve-block injections, which were directed to his lumbar region.

Sims claimed that he suffers residual pain and limitations. He retains scars of his back and neck. He claimed that he would require 12 to 18 sessions of physical therapy a year for the remainder of his life, and he also claimed that he may require further fusion of his spine's cervical and lumbar regions. He sought recovery of about \$175,000 for past medical expenses, \$645,509 for future medical expenses, and unspecified damages for past and future pain and suffering.

Defense counsel contended that Sims' injuries were degenerative conditions that predated the accident, that Sims does not experience residual limitations, and that Sims would not require further treatment.

Result: The parties negotiated a pretrial settlement. Bronx Boynton Ave LLC's primary insurer tendered its policy, which provided \$1 million of coverage, and Bronx Boynton Ave LLC's excess insurer agreed to pay \$1.75 million, from a policy that provided \$10 million of coverage. Thus, the settlement totaled \$2.75 million.

Damon Sims

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 declined to contribute.

Writer Glenn Koch

Work site's clutter caused disabling fall, plumber claimed

Type: Settlement

Amount: \$2,700,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *knee* - fracture, knee; medial meniscus, tear; lateral meniscus, tear; anterior cruciate ligament, tear; medial collateral ligament, damage
- *other* - bursitis; arthritis; synovitis; synovectomy; chondroplasty; physical therapy; tendinitis/tendinosis; decreased range of motion; cartilage/chondral, damage
- *shoulder* - rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *surgeries/treatment* - arthroscopy; knee surgery; meniscectomy

Case Type:

- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Trip and Fall
- *Worker/Workplace Negligence* - Labor Law

Case Name: Bartlomiej Gach v. 730 Fifth Retail, LLC 730 Fifth Upper, LLC Crown 730 Invest LLC 730 Fifth Avenue Condominium Gilbane/Ant Yapi Joint Venture, LLC, No. 151165/20

Date: September 02, 2021

Plaintiff(s):

- Bartlomiej Gach, (Male, 27 Years)

Plaintiff Attorney(s):

- Pawel P. Wierzbicki; Block O'Toole & Murphy, LLP; New York NY for Bartlomiej Gach
- Daniel P. O'Toole; Block O'Toole & Murphy, LLP; New York NY for Bartlomiej Gach

**Plaintiff Expert
(s):**

- Dan Wolstein Ph.D.; Vocational Rehabilitation; Hackensack, NJ called by: Pawel P. Wierzbicki, Daniel P. O'Toole
- Alan Leiken Ph.D.; Economics; Stony Brook, NY called by: Pawel P. Wierzbicki, Daniel P. O'Toole
- Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Pawel P. Wierzbicki, Daniel P. O'Toole
- Edwin F. Richter III, M.D.; Life Care Planning; Stamford, CT called by: Pawel P. Wierzbicki, Daniel P. O'Toole
- Jeffrey Kaplan M.D.; Orthopedic Surgery; New York, NY called by: Pawel P. Wierzbicki, Daniel P. O'Toole

Defendant(s):

- Crown 730 SD LLC
- 730 Fifth Upper, LLC
- Crown 730 Invest LLC
- 730 Fifth Retail, LLC
- 730 Fifth Avenue Condominium
- Gilbane/Ant Yapi Joint Venture LLC

**Defense
Attorney(s):**

- Michael J. Lenoff; Cartafalsa, Turpin & Lenoff; New York, NY for 730 Fifth Retail, LLC, 730 Fifth Upper, LLC, Crown 730 Invest LLC, 730 Fifth Avenue Condominium, Gilbane/Ant Yapi Joint Venture LLC, Crown 730 SD LLC

**Defendant
Expert(s):**

- Mark Ramnauth M.A.; Vocational Rehabilitation; New York, NY called by: for Michael J. Lenoff
- Andrew Bazos M.D.; Orthopedic Surgery; Brookfield, CT called by: for Michael J. Lenoff

Insurers:

- Zurich North America

Facts:

On Dec. 9, 2019, plaintiff Bartlomiej Gach, 27, a union-affiliated plumber, worked at a renovation site that was located at 730 Fifth Ave., in Manhattan. Gach fell while he and a co-worker were transporting a hand truck that supported a large tank. Gach claimed that he suffered injuries of a knee and a shoulder.

Gach sued the premises' owner, Crown 730 SD LLC, and the renovation project's manager, Gilbane/Ant Yapi Joint Venture LLC. He also sued several Crown 730 SD affiliates: 730 Fifth Avenue Condominium; 730 Fifth Retail, LLC; 730 Fifth Upper, LLC; and Crown 730 Invest 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.

Gach's counsel discontinued the claims against 730 Fifth Avenue Condominium, 730 Fifth Retail, 730 Fifth Upper and Crown 730 Invest. The matter proceeded against Crown 730 SD and Gilbane/Ant Yapi Joint Venture.

Gach claimed that his fall was a result of him having tripped on a metal form. He claimed that work materials and other debris were scattered about the area. Gach's counsel contended that the defendants violated New York Codes, Rules, and Regulations title 23, part 1.7(e)(1), which specifies that a work site's passageways must be free of dirt, debris and/or other obstructions that could trip a worker; that the defendants violated New York Codes, Rules, and Regulations title 23, part 1.7(e)(2), which specifies that a work site's floors and platforms must be free of dirt, debris, scattered tools and materials, and sharp projections; and that the violations established that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6).

Defense counsel contended that Gach did not fall in an area that constituted a passageway. Defense counsel also contended that Gach tripped on material that was integral to the work that was being performed and therefore could not be considered debris or an obstruction.

Injury:

Gach visited an urgent-care facility. He underwent X-rays and minor treatment.

Gach ultimately claimed that he suffered a tear of his right knee's anterior cruciate ligament, a tear of the same knee's lateral meniscus, a tear of the same knee's medial meniscus, a sprain of the same knee's medial collateral ligament and damage of the same knee's articular cartilage. The latter such injury is commonly termed a "chondral injury." Gach claimed that his right knee's injuries also included a trabecular fracture, which is commonly termed a bone bruise, and he further claimed that the knee developed synovitis: inflammation of joint-lining membrane.

Gach also claimed that he suffered partial-thickness tears of his right, dominant shoulder's infraspinatus and supraspinatus tendons, which are components of the rotator cuff. He claimed that the shoulder developed bursitis and tendinosis.

Gach immediately commenced a course of physical therapy, and he subsequently undertook a pain-management regimen. He claimed that neither mode of treatment provided lasting relief. On July 22, 2020, Gach underwent arthroscopic surgery that addressed his right knee. The procedure included a chondroplasty, which involved a repair of cartilage; a meniscectomy, which involved excision of damaged portions of the knee's menisci; and a synovectomy, which involved excision of inflamed tissue. The surgery was followed by another course of physical therapy. The treatment is ongoing.

Gach claimed that his right knee has developed residual arthritic pain, that his right shoulder remains painful, that he suffers residual diminution of his right shoulder's range of motion, and that his residual effects hinder his performance of physical activities. He also claimed that his residual effects prevent his performance of manual labor. He has not worked since the accident. A doctor has recommended surgical repair of Gach's right shoulder, and Gach claimed that his right knee would likely require replacement. Gach sought recovery of future medical expenses, damages for past and future loss of earnings and benefits, and damages for past and future pain and suffering.

Result:

The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$2.7 million, from a policy that provided \$5 million of coverage.

Bartlomiej Gach

Trial Information:

Trial Length: 0

Trial 0
Deliberations:

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

Writer Caitlin Granfield

Motorist not mindful of flooded road, plaintiff claimed

Type: Verdict-Plaintiff

Amount: \$2,665,000

State: New York

Venue: Westchester County

Court: Westchester Supreme, NY

Injury Type(s):

- *arm*
- *neck* - herniated disc, cervical; herniated disc at C3-4; herniated disc, cervical; herniated disc at C4-5; herniated disc, cervical; herniated disc at C6-7
- *other* - acupuncture; labrum, tear; massage therapy; physical therapy; epidural injections
- *shoulder* - glenoid labrum, tear
- *neurological* - radiculopathy

Case Type:

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

Case Name: Daniel J. Evangelista v. Keith M. Kevan, No. 13205/10

Date: June 08, 2012

Plaintiff(s):

- Daniel J. Evangelista (Male, 46 Years)

Plaintiff Attorney(s):

- Christina M. Killerlane; Killerlane Law Offices; White Plains NY for Daniel J. Evangelista
- James J. Killerlane; Killerlane Law Offices; White Plains NY for Daniel J. Evangelista

Plaintiff Expert (s):

- Seth A. Waldman M.D.; Pain Management; New York, NY called by: Christina M. Killerlane, James J. Killerlane
- Ramesh H. Gidumal M.D.; Orthopedic Surgery; New York, NY called by: Christina M. Killerlane, James J. Killerlane

Defendant(s):

- Keith M. Kevan

Defense Attorney(s):

- Andrea L. Cru; Law Office of Karen L. Lawrence; White Plains, NY for Keith M. Kevan

Defendant Expert(s):

- Andrew Bazos M.D.; Orthopedics; New York, NY called by: for Andrea L. Cru
- Martin J. Barschi M.D.; Orthopedic Surgery; White Plains, NY called by: for Andrea L. Cru

Insurers:

- Allstate Insurance Co.

Facts:

On July 8, 2009, plaintiff Daniel Evangelista, 42, an accountant and part-time teacher, was driving on the northbound side of the Sprain Brook Parkway, near its interchange at Tuckahoe Road, in Mohegan Heights. His vehicle's rear end was struck by a trailing pickup truck that was being driven by Keith Kevan. Evangelista's vehicle spun, and it struck another vehicle. Evangelista claimed that his head and left side struck his vehicle's driver-side door, and he contended that he sustained injuries of his neck and a shoulder. The pickup truck and Evangelista's vehicle were totaled.

Evangelista sued Kevan. Evangelista alleged that Kevan was negligent in the operation of his vehicle.

Evangelista claimed that Kevan failed to exercise due caution.

Kevan contended that Evangelista stopped abruptly and unexpectedly. He claimed that the highway was flooded and that, as a result, he was not able to avoid the collision.

Injury:

During the day that followed the accident, Evangelista presented to a doctor. He was referred to an orthopedic facility.

Evangelista ultimately claimed that he sustained herniations of his C3-4, C4-5 and C6-7 intervertebral discs. He also claimed that he sustained a tear of his left, nondominant shoulder's glenoid labrum.

Evangelista quickly commenced a course of conservative treatment that ultimately included acupuncture, the administration of an epidural injection of a steroid-based painkiller, massages and physical therapy. The physical therapy is ongoing.

Evangelista contended that he suffers residual radiculopathy that extends to his right arm. He also contended that his left arm and shoulder remain painful. He claimed that his injuries greatly limit his ability to engage in some of his favorite personal activities, which included teaching, operating after-school programs and operating youth martial arts programs. He also claimed that he cannot easily walk and that he cannot easily enter or exit automobiles. He contended that his doctors have suggested that he may have to undergo arthroscopic surgery that would address his left shoulder, that his spinal injuries could necessitate fusion of a portion of his neck and that he will likely have to undergo another epidural injection.

Evangelista sought recovery of a total of \$1.65 million for his past lost earnings and his past and future pain and suffering.

Defense counsel contended that Evangelista's injuries predated the accident. She noted that Evangelista has undergone two hip-replacement surgeries since the accident, and she claimed that his limitations are results of hip problems. She contended that hip problems would be the most likely cause of his ambulatory problems and his difficulty entering and exiting automobiles. She also contended that his physical therapy coincided with the hip-replacement surgeries.

Defense counsel further contended that Evangelista has fully recovered. She claimed that his current recreational activities include swimming and teaching martial arts.

Defense counsel did not present one of the expert orthopedists that she retained. Judge Mary Smith ruled that the jury could draw an adverse inference from the expert's absence.

Result:

The jury found that Kevan was liable for the accident. It determined that Evangelista's damages totaled \$2,665,000.

Daniel J. Evangelista

\$15,000 Personal Injury: Past Lost Earnings Capability

\$325,000 Personal Injury: Past Pain And Suffering

\$2,325,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Mary H. Smith

Demand: \$750,000

Offer: \$30,000

Trial Length: 9 days

Trial Deliberations: 3.1 hours

Jury Vote: 6-0 (liability); 5-1 (damages)

Jury Composition: 3 male, 3 female

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

Writer Max Mitchell

Worker fell from roof, injured skull, spine, spleen and kidney

Type: Settlement

Amount: \$2,650,000

State: New York

Venue: Kings County

Court: Kings Supreme, NY

Injury Type(s):

- *back* - fracture, back; fracture, T2; fracture, back; fracture, T3; fracture, vertebra; fracture, T2; fracture, vertebra; fracture, T3; fracture, vertebra; fracture, transverse process
- *head* - fracture, skull
- *neck* - fracture, vertebra; fracture, transverse process
- *brain* - brain damage; subdural hematoma; subarachnoid hemorrhage
- *chest* - fracture, rib
- *other* - ageusia; nephrostomy; physical therapy
- *shoulder* - fracture, shoulder; fracture, clavicle; fracture, shoulder; fracture, collarbone
- *face/nose* - fracture, facial bone; fracture, occipital bone
- *urological* - kidney
- *hand/finger* - fracture, finger
- *sensory/speech* - deafness, one ear; hearing, partial loss of; speech/language, impairment of
- *surgeries/treatment* - splenectomy
- *mental/psychological* - cognition, impairment; memory, impairment
- *pulmonary/respiratory* - pneumothorax; collapsed lung
- *gastrointestinal/digestive* - spleen

Case Type:

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

Case Name: Evert Dominguez Mendez v. 1211 Redfern Avenue, LLC Kel-Tech Construction, Inc., No. 505628/15

Date: October 20, 2020

- Plaintiff(s):**
- Evert Dominguez Mendez (Male, 33 Years)
- Plaintiff Attorney(s):**
- Jeffrey A. Block; Block O'Toole & Murphy, LLP; New York NY for Evert Dominguez Mendez
 - Daniel M. Seiden; Block O'Toole & Murphy, LLP; New York NY for Evert Dominguez Mendez
- Plaintiff Expert(s):**
- Dan Wolstein Ph.D.; Vocational Rehabilitation; Hackensack, NJ called by: Jeffrey A. Block, Daniel M. Seiden
 - Kim Busichio M.D.; Neuropsychology; New York, NY called by: Jeffrey A. Block, Daniel M. Seiden
 - Jason W. Brown M.D.; Neurology; New York, NY called by: Jeffrey A. Block, Daniel M. Seiden
- Defendant(s):**
- 1211 Redfern Avenue LLC
 - Kel-Tech Construction Inc.
- Defense Attorney(s):**
- Joseph A. Orlando; O'Connor Redd Orlando, LLP; Port Chester, NY for Kel-Tech Construction Inc.
 - Warren Harris; Law Office of James J. Toomey; New York, NY for 1211 Redfern Avenue LLC
- Defendant Expert(s):**
- John T. Rigney M.D.; Radiology; Bronx, NY called by: for Joseph A. Orlando
 - Todd Feinberg M.D.; Neuropsychiatry; New York, NY called by: for Joseph A. Orlando
 - Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Joseph A. Orlando
 - Ricardo Estrada C.R.C.; Vocational Rehabilitation; New York, NY called by: for Joseph A. Orlando
- Insurers:**
- Scottsdale Insurance Co.
 - New York State Insurance Fund
 - Travelers Property Casualty Corp.
 - Arch Insurance Group

Facts:

On Dec. 18, 2014, plaintiff Evert Dominguez Mendez, 33, a laborer, worked at a construction site that was located at 1211 Redfern Ave., in the Far Rockaway section of Queens. A building was being constructed, and workers had installed a series of horizontal and vertical beams that formed the framework of the building's roof. Mendez and a co-worker were installing 25-foot-long metal sheets that covered the frame. During the course of that task, Mendez fell off of one of the horizontal beams. He plummeted a distance of some 25 feet, and he landed on the ground. He suffered injuries of his back, a finger, a kidney, his lungs, five ribs, a shoulder, his skull and his spleen.

Mendez sued the premises' owner, 1211 Redfern Avenue LLC and the premises' tenant, Kel-Tech 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.

Mendez's counsel discontinued the claim against Kel-Tech Construction, which was Mendez's employer, but 1211 Redfern Avenue LLC immediately impleaded Kel-Tech Construction. The third-party action alleged that Kel-Tech Construction negligently failed to provide a safe workplace. The third-party action further alleged that Kel-Tech Construction's failure constituted a violation of the New York State Labor Law. The third-party action also sought indemnification.

Mendez claimed that his fall was a result of him having been tossed by a gust of wind. He acknowledged that he had been provided a safety harness that could have prevented his fall, but he claimed that he had not been provided a secure point to which the harness could have been tethered. He further claimed that no other safety measures had been undertaken. Mendez's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Mendez was not provided the proper, safe equipment that is a requirement of the statute.

The defendants claimed that Mendez and his co-worker had been provided a scissor lift but instead opted to walk on the horizontal beams.

New York State Workers' Compensation Law § 11 specifies that a party's employer cannot ordinarily be liable for reimbursement of damages that stem from anything less than a "grave" injury. Kel-Tech Construction's counsel contended that Mendez did not suffer a grave injury and that, therefore, Kel-Tech Construction was not obligated to indemnify 1211 Redfern Avenue LLC.

Injury:

Mendez suffered a rupture of his spleen; a rupture of his left kidney; fractures of five ribs; fractures of transverse processes of his T2 and T3 vertebrae; a fracture of his left, nondominant shoulder's clavicle, which is the collarbone; an open fracture of his right hand's third finger, fractures of his skull's occipital bones; fractures of his skull's left temporal bone; a fracture of his skull's left parietal bone; and a fracture of his clevus, which is a bony region near the base of the skull. His skull's injuries caused a subarachnoid hemorrhage, a subdural hematoma and damage of the brain. Mendez also suffered two small pneumothoraces, which involved a collapse of each lung.

Mendez was retrieved by an ambulance, and he was transported to Jamaica Hospital Medical Center, in Queens. He immediately underwent a splenectomy and a nephrostomy. The latter procedure involved removal of his left kidney. Mendez's hospitalization lasted about three weeks, and he subsequently underwent physical therapy.

Mendez claimed that he suffers residual effects that include pain, dizziness, impairment of his speech, impairment of his balance, impairment of his memory and other elements of his cognition, a complete loss of his left ear's auditory function, and ageusia, which involves diminution of the perception of flavor. He claimed that his residual effects prevent his performance of any type of work. He has not worked since the accident.

Mendez sought reimbursement of a workers' compensation lien, recovery of damages for past and future loss of earnings, and recovery of damages for past and future pain and suffering.

The defense's expert neuropsychiatrist submitted a report in which he opined that Mendez does not present objective indications of an ongoing injury of the brain. The defense's expert radiologist submitted a report in which he opined that an MRI scan, performed some 12 months after the accident, did not depict an abnormality of Mendez's brain.

The defense also contended that Mendez achieved a good recovery and can perform all of his everyday activities, without assistance. The defense's expert orthopedist submitted a report in which he opined that Mendez did not suffer a permanent musculoskeletal injury, and the defense's vocational-rehabilitation expert submitted a report in which he opined that Mendez can be employed as an ironworker.

Result:

Mendez's counsel moved for summary judgment of liability, and the defendants moved for summary judgment of the third-party indemnification claim. During pendency of the motions, the parties negotiated a settlement. Kel-Tech Construction's primary insurer agreed to pay \$900,000, from a policy that provided \$2 million of coverage; Kel-Tech Construction's employer's liability insurer agreed to pay \$750,000; and 1211 Redfern Avenue LLC's insurer tendered its policy, which provided \$1 million of coverage. Thus, the settlement totaled \$2.65 million. The settlement also included a waiver of Mendez's workers' compensation lien. The settlement's negotiations were facilitated by Justice Lara Genovesi.

Trial Information:**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

Caitlin Granfield

Worker claimed fall caused injuries of spine and knee

Type: Settlement

Amount: \$2,250,000

State: New York

Venue: Bronx County

Court: Bronx Supreme, NY

Injury Type(s):

- *back* - nerve impingement; herniated disc, lumbar; herniated disc at L5-S1; disc protrusion, lumbar
- *knee* - medial meniscus, tear
- *neck* - nerve impingement
- *other* - synovitis; facetectomy; synovectomy; chondroplasty; physical therapy; epidural injections
- *neurological* - radiculopathy; nerve impingement
- *surgeries/treatment* - discectomy; arthroscopy; debridement; laminectomy; laminectomy, lumbar; knee surgery; decompression surgery

Case Type:

- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Labor Law

Case Name: David Clemente v. GHP 145 Huguenot Delaware, LLC GHP Office Realty, LLC, Steiner Sports Memorabilia, Inc. and Steiner Sports Marketing, Inc., No. 27605/16

Date: May 18, 2020

Plaintiff(s):

- David Clemente (Male, 38 Years)

Plaintiff Attorney(s):

- Stephen J. Murphy; Block O'Toole & Murphy, LLP; New York NY for David Clemente
- Michael J. Hurwitz; Block O'Toole & Murphy, LLP; New York NY for David Clemente

- Plaintiff Expert(s):**
- Alan M. Leiken Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Edwin F. Richter III, M.D.; Physical Rehabilitation; Stamford, CT called by: Stephen J. Murphy, Michael J. Hurwitz
- Defendant(s):**
- GHP Office Realty, LLC
 - GHP 145 Huguenot Delaware LLC
 - Steiner Sports Marketing Inc.
 - Steiner Sports Memorabilia Inc.
- Defense Attorney(s):**
- Michael J. Lenoff; Cartafalsa, Turpin & Lenoff; New York, NY for Steiner Sports Memorabilia Inc., Steiner Sports Marketing Inc.
 - Lisa L. Gollihue; Varvaro, Cotter & Bender; White Plains, NY for GHP 145 Huguenot Delaware LLC, GHP Office Realty, LLC
- Defendant Expert(s):**
- Alan Getreu; Vocational Rehabilitation; Mineola, NY called by: for Michael J. Lenoff, Lisa L. Gollihue
 - Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Michael J. Lenoff, Lisa L. Gollihue
 - Jeffrey Spivak M.D.; Orthopedic Surgery; New York, NY called by: for Michael J. Lenoff, Lisa L. Gollihue
- Insurers:**
- Chubb Group of Insurance Cos.
 - Zurich North America
 - Allied World Assurance Company (U.S.) Inc.

Facts:

On July 27, 2016, plaintiff David Clemente, 38, an engineer and a part-time doorman, worked at a building that was located at 145 Huguenot St., in New Rochelle. He was repairing a ceiling-mounted air-conditioning unit. The unit was suspended about 22 feet above floor level, and Clemente was standing upon boxes that were resting atop a shelving unit. Clemente fell off of the shelving unit, and he plummeted to the floor. He claimed that he suffered injuries of his back and a knee.

Clemente sued the premises' owners, GHP 145 Huguenot Delaware LLC and GHP Office Realty, LLC. He also sued the premises' tenants, Steiner Sports Marketing Inc. and Steiner Sports Memorabilia 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.

Clemente acknowledged that he had been provided a ladder, but he claimed that it was too short and only allowed him to reach the top of the shelving unit. Clemente's counsel contended that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Clemente was not provided the proper, safe equipment that is a requirement of the statute.

Labor Law § 240(1) is not applicable to incidents that occur during routine maintenance or work that does not involve a significant alteration of a building. The defense contended that Clemente's work was a routine act of maintenance and therefore was not subject to Labor Law § 240(1).

The building's tenants' counsel contended that Labor Law § 240(1) applies to a work site's owners and other entities that control the work site and/or the work being performed, but that Steiner Sports Marketing and Steiner Sports Memorabilia did not control Clemente's work or the work site. However, Clemente claimed that Steiner Sports Marketing and Steiner Sports Memorabilia controlled his access to the work site.

Injury:

Clemente was retrieved by an ambulance, and he was transported to Montefiore New Rochelle Hospital, in New Rochelle. He underwent minor treatment.

Clemente ultimately claimed that he suffered a tear of the posterior horn of his right knee's medial meniscus, a herniation of his L5-S1 intervertebral disc and a protrusion of his L4-5 disc. He claimed that he developed residual impingement of spinal nerves and resultant radiculopathy. He also claimed that his right knee developed synovitis: inflammation of joint-lining membrane.

Clemente underwent physical therapy, but he claimed that he suffered ongoing pain related to the accident. In November 2016, he underwent arthroscopic surgery that addressed his right knee. The procedure included debridement of damaged tissue; a chondroplasty, which involved a repair of cartilage; and a synovectomy, which involved excision of inflamed tissue.

Clemente subsequently resumed conservative treatment, which included physical therapy, the administration of an epidural injection of a steroid-based painkiller and the administration of three joint-lubricating injections that were directed to his right knee.

In September 2017, Clemente underwent surgery that included a discectomy, which involved excision of a portion of his L5-S1 disc; a laminectomy, which involved excision of a portion of an adjacent vertebra; and a facetectomy, which involved decompression of a root of a spinal nerve. The surgery was followed by another course of physical therapy.

Clemente claimed that he suffers residual pain and limitations that prevent his performance of his engineering work. He has not performed that work since the accident. He resumed his doorman work within months of the accident, but he claimed that his residual effects prevent his performance of the job's more rigorous duties, such as carrying heavy items. He also claimed that he was briefly unable to work after each of his surgeries. He claimed that he requires further physical therapy, and he also claimed that his spine's lumbar region may require further surgery.

Clemente 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.

The defense contended that a post-accident radiological study did not reveal a traumatic injury of Clemente's lumbar region, and it claimed that Clemente suffered nothing more than a minor injury of soft tissue of the right knee, that the injury resolved, and that any lingering effects are age-related conditions.

The defense also claimed that Clemente does not require additional treatment, and it further claimed that Clemente does not experience a residual physical restriction.

Result:

Each side moved for summary judgment of liability. During pendency of the motions, the parties negotiated a settlement. The primary insurer of GHP 145 Huguenot Delaware and GHP Office Realty tendered its policy, which provided \$1 million of coverage; the excess insurer of GHP 145 Huguenot Delaware and GHP Office Realty agreed to pay \$800,000, from a policy that provided \$10 million of coverage; and the insurer of Steiner Sports Marketing and Steiner Sports Memorabilia agreed to pay \$450,000, from a policy that provided \$2 million of coverage. Thus, the settlement totaled \$2.25 million.

Trial Information:

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 Melissa Siegel

Worker: Trench's collapse caused fractures of ankle, foot, leg**Type:** Settlement**Amount:** \$2,100,000**State:** New York**Venue:** Queens County**Court:** Queens Supreme, NY**Injury Type(s):**

- *leg* - fracture, leg; fracture, fibula
- *back* - nerve impingement; herniated disc, lumbar; herniated disc at L3-4
- *neck* - nerve impingement
- *ankle* - fracture, ankle; ankle ligament, tear; talofibular ligament, tear
- *other* - arthritis; chondroplasty; closed reduction; comminuted fracture; epidural injections; fracture, displaced; cartilage/chondral, damage, tear
- *foot/heel* - fracture, foot; fracture, metatarsal
- *neurological* - radiculopathy; nerve impingement
- *arterial/vascular* - deep vein thrombosis
- *surgeries/treatment* - arthroscopy; debridement; open reduction; internal fixation

Case Type:

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

Case Name: Leonard Herbert v. The City of New York New York Department of Enviromental Protection New York City Department of Design and Construction the New York City Department of Transportation KeySpan Corporation, No. 711900/15**Date:** November 11, 2020**Plaintiff(s):**

- Leonard Herbert, (Male, 58 Years)

Plaintiff Attorney(s):

- Stephen J. Murphy; Block O'Toole & Murphy, LLP; New York NY for Leonard Herbert
- Michael J. Hurwitz; Block O'Toole & Murphy, LLP; New York NY for Leonard Herbert

- Plaintiff Expert(s):**
- Alan M. Leiken Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Debra S. Dwyer Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, Michael J. Hurwitz
 - Edwin F. Richter III, M.D.; Life Care Planning; Stamford, CT called by: Stephen J. Murphy, Michael J. Hurwitz
- Defendant(s):**
- KeySpan Corp.
 - City of New York
 - The New York City Department of Transportation
 - New York City Department of Design and Construction
 - New York City Department of Environmental Protection
- Defense Attorney(s):**
- James P. Tyrie; Wood Smith Henning & Berman LLP; New York, NY for City of New York, New York City Department of Environmental Protection, New York City Department of Design and Construction, The New York City Department of Transportation
 - None reported for KeySpan Corp.
- Defendant Expert(s):**
- Adam Bender M.D.; Neurology; New York, NY called by: for James P. Tyrie
 - Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for James P. Tyrie
 - Joseph Pessalano C.R.C.; Vocational Rehabilitation; Garden City, NY called by: for James P. Tyrie
- Insurers:**
- Starr Cos.

Facts:

On Oct. 30, 2014, plaintiff Leonard Herbert, 58, a laborer, worked at an excavation site that was located on 152nd Street, near its intersection at 85th Avenue, in the Briarwood section of Queens. Workers were installing a water main. Herbert was working in a trench while an excavator's operator was breaking ground immediately adjacent to the trench. The trench collapsed, and Herbert claimed that he suffered injuries of his ankles, his back, a foot and a leg.

Herbert sued the roadway's owner, the city of New York; the area's maintainers, the New York City Department of Transportation and the New York City Department of Environmental Protection; the excavation project's manager, the New York City Department of Design and Construction; and a utility that was believed to have been involved in the project, KeySpan Corp. 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.

Herbert's counsel discontinued the claims against KeySpan, the New York City Department of Transportation, the New York City Department of Environmental Protection, and the New York City Department of Design and Construction. The matter proceeded against the city of New York, though the city was indemnified by Herbert's employer's insurer.

Herbert claimed that the trench's collapse was a result of its walls having not been shored or braced. Herbert's counsel contended that the defendants violated New York Codes, Rules, and Regulations title 23, part 4.2, which requires adequate shoring of work-site trenches whose depth equals or exceeds five feet. Herbert's counsel contended that the violation established that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6). Herbert's counsel also contended that the trench's surrounding soil was unstable, that the surrounding area was being disrupted by excavation, and that, therefore, the trench should have been shored or braced regardless of its depth.

The defense claimed that the trench's depth did not measure five feet.

Injury:

Herbert was struck by collapsing concrete and dirt. He became entrapped at and below the waist.

Herbert was retrieved by an ambulance, and he was transported to a hospital. An X-ray revealed that he suffered a fracture of the proximal region of his right leg's fibula; another X-ray revealed a fracture of his right ankle; and other X-rays revealed that he suffered fractures of his left foot's third, fourth and fifth metatarsals, which are the bones that join the third, fourth and fifth toes and the center of the foot. The fifth metatarsal's fracture was deemed a Jones fracture, which involves the base of the fifth metatarsal, and the remaining fractures were comminuted and displaced.

Herbert immediately underwent closed reduction of the fracture of his right leg's fibula.

During the aftermath of that procedure, he developed a residual deep vein thrombosis.

Herbert claimed that he also suffered a tear of his left ankle's anterior talofibular ligament, that his left ankle suffered an osteochondral lesion, which is a fracture or other injury of cartilage, and that the ankle developed resultant arthritis. He also claimed that he experienced chronic dislocation of his left foot's fifth metatarsal, and he claimed that the bone developed residual arthritis.

Herbert further claimed that he suffered a herniation of his L3-4 intervertebral disc. He claimed that the herniation caused impingement of a spinal nerve and resultant radiculopathy.

After a week had passed, Herbert underwent open reduction and internal fixation of his left foot's fifth metatarsal, and he contemporaneously underwent closed reduction of the foot's third and fourth metatarsals.

On May 19, 2016, Herbert underwent arthroscopic surgery that addressed his left ankle and his left foot. The procedure included debridement of damaged tissue, excision of a portion of the fifth metatarsal, and a chondroplasty, which involved a repair of cartilage of the ankle.

On Jan. 17, 2019, Herbert underwent surgical fusion of his left foot's third, fourth and fifth metatarsals.

Herbert also underwent administration of two epidural injections of steroid-based painkillers.

Herbert claimed that he suffers residual pain and limitations that hinder his performance of physical activities. He claimed that he would require lifelong physical therapy, surgical fusion of his left ankle and surgery that would address his spine's lumbar region. He further claimed that his residual effects would necessitate an early retirement. He sought recovery of about \$275,000 for past medical expenses, \$223,318 for future medical expenses, a total of \$985,157 for future loss of earnings and benefits, and unspecified damages for past and future pain and suffering.

The defense contended that Herbert suffered merely minor fractures, that the fractures healed without residual effects, and that Herbert's herniated disc was a degenerative condition, not related to the accident. The defense further contended that Herbert does not suffer a residual limitation.

Result: The parties negotiated a pretrial settlement. Herbert's employer's insurer, which was obligated to indemnify the city of New York, tendered its primary policy, which provided \$2 million of coverage, and it agreed to pay \$100,000 from an excess policy that provided \$3 million of coverage. Thus, the settlement totaled \$2.1 million.

Leonard Herbert

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. KeySpan's counsel was not asked to contribute, and the remaining defendants' counsel did not respond to the reporter's phone calls.

Writer Yawana Fields

Worker struck by excavator, claimed injuries of ankle, knee

Type: Settlement

Amount: \$2,000,000

State: New York

Venue: New York County

Court: New York Supreme, NY

Injury Type(s):

- *knee* - medial meniscus, tear
- *ankle* - fracture, ankle; dislocation; fracture, distal fibula
- *other* - physical therapy; comminuted fracture
- *surgeries/treatment* - arthroscopy; knee surgery; open reduction; internal fixation

Case Type:

- *Construction* - Labor Law
- *Motor Vehicle* - Pedestrian
- *Workplace* - Workplace Safety
- *Worker/Workplace Negligence* - Labor Law

Case Name: Ismael Perez v. New York City Transit Authority,, Metropolitan Transportation Authority, MTA Capital Construction Company,, the City of New York and Mic, No. 153512/16

Date: January 08, 2019

Plaintiff(s):

- Ismael Perez (Male, 41 Years)

Plaintiff Attorney(s):

- Paul J. Edelstein; The Edelsteins, Faegenburg & Brown LLP, New York, NY, of counsel, Mark J. Rayo, P.C., Brooklyn, NY; for Ismael Perez
- Glenn K. Faegenburg; The Edelsteins, Faegenburg & Brown LLP, New York, NY, of counsel, Mark J. Rayo, P.C., Brooklyn, NY; for Ismael Perez
- Gina Nicotera; Landman Corsi Ballaine & Ford P.C.; New York NY for Ismael Perez

- Plaintiff Expert(s):**
- Dov J. Berkowitz M.D.; Orthopedic Surgery; Kew Gardens, NY called by: Paul J. Edelstein, Glenn K. Faegenburg
 - Dean Lorich M.D.; Orthopedic Surgery; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg
 - Gregory S. DiFelice M.D.; Orthopedic Surgery; New York, NY called by: Paul J. Edelstein, Glenn K. Faegenburg

- Defendant(s):**
- Michels Corp.
 - City of New York
 - MTA Capital Construction Co.
 - New York City Transit Authority
 - Metropolitan Transportation Authority

- Defense Attorney(s):**
- Gina Nicotera; Landman Corsi Ballaine & Ford P.C.; New York, NY for New York City Transit Authority, Metropolitan Transportation Authority, MTA Capital Construction Co., City of New York, Michels Corp.,

- Defendant Expert(s):**
- Andrew N. Bazos M.D.; Orthopedic Surgery; New York, NY called by: for Gina Nicotera

Facts: On Dec. 3, 2015, plaintiff Ismael Perez, 41, a laborer, was struck by an excavating vehicle. The incident occurred while Perez was working at a tunnel-construction site that was located some 100 feet below the intersection of East 48th Street and Madison Avenue, in Manhattan. Perez claimed that he suffered injuries of an ankle and a knee.

Perez sued the excavator operator's employer, Michels Corp.; the construction project's general contractor, MTA Capital Construction Co.; that agency's parents, the Metropolitan Transportation Authority and the New York City Transit Authority; and the site's owner, the city of New York. The lawsuit alleged that the excavator's operator was negligent in his operation of the excavator, that Michels was vicariously liable for the actions of the excavator's operator, that the remaining defendants negligently failed to provide a safe workplace, and that their failure constituted a violation of the New York State Labor Law.

Perez claimed that he did not see or hear the approaching excavator and had not been warned of its presence. At the time of the accident, he was wearing earplugs, which were part of his job-issued safety equipment. He claimed that the excavator was not supposed to be utilized while he and his crew were working in the tunnel. He also claimed that flagmen were typically deployed during operation of the excavator, but that flagmen were not present at the time of the accident.

Perez's counsel contended that the excavator's operator failed to exercise due caution. Perez's counsel also contended that the remaining defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6), and that they violated Labor Law § 200, which defines general workplace-safety requirements.

Injury:

Perez was retrieved by an ambulance, and he was transported to New York-Presbyterian Hospital, in Manhattan. Radiological studies revealed that he suffered a comminuted fracture and corresponding dislocation of his right ankle. The fracture involved the distal region of the right leg's fibula. Perez claimed that he also suffered a tear of his right knee's medial meniscus.

After six days had passed, Perez underwent open reduction and internal fixation of his right ankle's fracture. His hospitalization lasted nine days, and it was followed by a course of physical therapy.

On Jan. 11, 2017, Perez underwent arthroscopic surgery that addressed his right knee. The procedure was followed by a course of physical therapy.

Perez claimed that he suffers residual pain and limitations that have necessitated a shift to less-rigorous work that does not provide compensation comparable to his pre-accident earnings. He sought recovery of past lost earnings, damages for future loss of earnings, damages for past pain and suffering, and damages for future pain and suffering.

Defense counsel contended that Perez's right knee's injury was not related to the accident. Defense counsel also contended that Perez achieved a good recovery.

Result:

The parties negotiated a pretrial settlement. MTA Capital Construction agreed to pay \$2 million.

Trial Information:**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

Erik Halberg

Work site was not well protected, fallen roofer claimed

Type: Mediated Settlement

Amount: \$2,000,000

State: New York

Venue: Nassau County

Court: Nassau Supreme, NY

Injury Type(s):

- *back* - lordosis; bulging disc, lumbar; bulging disc, thoracic; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *head* - headaches; concussion
- *neck* - lordosis; bulging disc, cervical; herniated disc, cervical; herniated disc at C6-7
- *ankle* - ankle ligament, tear; talofibular ligament, tear
- *other* - lysis; seizure; bursitis; effusion; swelling; adhesions; synovitis; contracture; synovectomy; tenosynovitis; SLAP lesion/tear; physical therapy
- *shoulder* - glenoid labrum, tear; rotator cuff, injury (tear); supraspinatus muscle/tendon, tear
- *epidermis* - contusion
- *foot/heel* - foot; plantar fasciitis
- *surgeries/treatment* - arthroscopy; debridement
- *mental/psychological* - post-concussion syndrome

Case Type:

- *Workplace* - Workplace Safety
- *Slips, Trips & Falls* - Fall from Height
- *Worker/Workplace Negligence* - Labor Law

Case Name: Grzegorz Sekula v. Plainedge Union Free School District, Plainedge Public Schools and School Construction Consultants, Inc., No. 601145/18

Date: June 04, 2020

Plaintiff(s):

- Grzegorz Sekula (Male, 56 Years)

Plaintiff Attorney(s):

- Brandon Cotter; The Platta Law Firm, PLLC; New York NY for Grzegorz Sekula
- Slawek W. Platta; The Platta Law Firm, PLLC; New York NY for Grzegorz Sekula

- Plaintiff Expert(s):**
- Dan Wolstein Ph.D.; Vocational Rehabilitation; Hackensack, NJ called by: Brandon Cotter, Slawek W. Platta
 - Joseph C. Cannizzo P.E.; Engineering; Mineola, NY called by: Brandon Cotter, Slawek W. Platta
 - Kristin Kucsma M.A.; Economics; Livingston, NJ called by: Brandon Cotter, Slawek W. Platta
- Defendant(s):**
- Plainedge Public Schools
 - Plainedge Union Free School District
 - School Construction Consultants Inc.
- Defense Attorney(s):**
- Mathew P. Ross; Wilson, Elser, Moskowitz, Edelman & Dicker LLP; White Plains, NY for Plainedge Union Free School District, Plainedge Public Schools, School Construction Consultants Inc.
- Defendant Expert(s):**
- Ira J. Chernoff M.D.; Orthopedic Surgery; Stony Brook, NY called by: for Mathew P. Ross
 - John Sidtis Ph.D.; Psychology/Counseling; New York, NY called by: for Mathew P. Ross
 - Scott S. Coyne M.D.; Radiology; East Islip, NY called by: for Mathew P. Ross
 - Andrew N. Bazos M.D.; Orthopedic Surgery; New Milford, CT called by: for Mathew P. Ross
 - Robert T. Bove Ph.D.; Biomechanical; Philadelphia, PA called by: for Mathew P. Ross
 - Bernard P. Lorenz P.E.; Engineering; Edison, NJ called by: for Mathew P. Ross
 - Sahadeo Ramnauth M.D.; Internal Medicine; Flushing, NY called by: for Mathew P. Ross
- Insurers:**
- Chubb Group of Insurance Cos.

Facts:

On July 12, 2017, plaintiff Grzegorz Sekula, 56, a roofer, worked at a renovation site that was located at 499 Boundary Ave., in Bethpage. Sekula was removing a building's roofing insulation. The discarded materials were being placed in a wheelbarrow on the roof, transported to the edge of the roof, and tossed, by hand, into an open receptacle situated at ground level. The roof's perimeter was protected by a series of portable guardrails, each about 5.5 feet long and bolted to the roof. While Sekula was tossing debris, he fell off of the roof. He plummeted a distance of about 10 feet, and he landed on the ground. He claimed that he suffered injuries of his ankles, his back, his head, his neck and a shoulder.

Sekula sued the premises' owners, Plainedge Union Free School District and Plainedge Public Schools, and the renovation project's general contractor, School Construction Consultants 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.

Sekula claimed that the accident was a result of him having fallen through a gap between two guardrails. Sekula's expert engineer submitted a report in which he opined that the guardrails did not provide an adequate barrier. Sekula's counsel contended that the accident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Sekula was not provided the proper, safe equipment that is a requirement of the statute.

Defense counsel contended that the accident did not occur in the manner that Sekula described. Witnesses claimed that Sekula intentionally stepped between two guardrails, to reach an edge of the roof. The defense's biomechanics expert submitted a report in which he opined that the defense's witnesses provided a more credible account of the manner in which the accident occurred. In prior testimony, Sekula claimed that he fell between two guardrails without having touched the guardrails, but the expert estimated that the guardrails were separated by a gap of 7 inches and that Sekula therefore could not have slipped between the guardrails without contact. The expert also contended that, had Sekula fallen in the manner that Sekula described, Sekula would have landed in an area other than the area in which the witnesses identified.

Injury:

Sekula was retrieved by an ambulance, and he was transported to Stony Brook University Medical Center, in the hamlet of Stony Brook. He underwent minor treatment.

Sekula ultimately claimed that he suffered a concussion and resultant post-concussion syndrome, with manifestations that included dizziness, headaches, lightheadedness and seizures.

Sekula further claimed that he suffered a tear of his left, nondominant shoulder's supraspinatus tendon, which is a component of the rotator cuff, and a tear of the anterior and posterior regions of the same shoulder's glenoid labrum. The latter such injury is commonly termed a "SLAP lesion." Sekula claimed that the shoulder developed bursitis and synovitis: inflammation of joint-lining membrane.

Sekula also claimed that he suffered herniations of his C6-7, L4-5 and L5-S1 intervertebral discs, trauma that produced bulges of his C3-4, C4-5, C5-6, L3-4 and T8-9 discs, and trauma that disrupted the lumbar lordosis, which is the normal curvature of the spine's lumbar region.

Sekula further claimed that he suffered internal derangement of each ankle, a tear of his right ankle's anterior talofibular ligament and contusions of his left ankle's talus, which is a small bone that is situated between the bones of the heel and leg. He claimed that his left ankle developed a contracture; that his left ankle developed tenosynovitis, which involved inflammation of the sheaths of tendons; that his right ankle developed synovitis; and that each ankle developed effusion: swollenness caused by a buildup of a joint's lubricating fluid. He also claimed that his right foot developed plantar fasciitis.

In December 2017, Sekula underwent arthroscopic surgery that addressed his left shoulder. The procedure included debridement of damaged tissue, lysis of adhesions of soft tissue and a synovectomy, which involved excision of inflamed tissue.

In July 2018, Sekula underwent arthroscopic surgery that addressed his right ankle. The procedure included debridement of damaged tissue, and it also included lysis of adhesions of soft tissue.

In December 2018, Sekula underwent arthroscopic surgery that addressed his right ankle. The procedure included debridement of damaged tissue.

Sekula also underwent physical therapy, concussion rehabilitation and the administration of a painkilling nerve-block injection. The injection was directed to his lumbar region.

Sekula claimed that he suffers residual pain and limitations that prevent his resumption of work. He has not worked since the accident. He also claimed that his right ankle requires another arthroscopic surgery, and he further claimed that he must undergo surgical fusion of a portion of his spine's lumbar region.

Sekula 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/or strains. He also contended that Sekula's surgeries were not necessary.

Result: The parties negotiated a pretrial settlement. The defendants' primary insurer tendered its policy, which provided \$2 million of coverage. The settlement's negotiations were mediated by Susan Hernandez, of National Arbitration and Mediation Inc.

Trial Information:

Judge: Susan Hernandez

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 Melissa Siegel

Couple claimed motorist ignored stop sign, caused accident

Type: Settlement

Amount: \$1,920,000

State: New York

Venue: Nassau County

Court: Nassau Supreme, NY

Injury Type(s):

- *back* - stenosis; fusion, lumbar; nerve impingement; herniated disc, lumbar; herniated disc at L3-4; herniated disc, lumbar; herniated disc at L4-5
- *knee* - medial meniscus, tear; lateral meniscus, tear; chondromalacia / chondromalacia patella
- *neck* - stenosis; fusion, cervical; nerve impingement; herniated disc, cervical; herniated disc at C6-7; herniated disc, cervical; herniated disc at C7-T1; fusion, cervical, two-level
- *chest* - fracture, rib
- *other* - bursitis; synovitis; synovectomy; arthroplasty; acromioplasty; chondroplasty; SLAP lesion/tear; physical therapy; hardware implanted; epidural injections; tendinitis/tendinosis; aggravation of pre-existing condition
- *wrist* - carpal tunnel syndrome
- *shoulder* - Bankart lesion; glenoid labrum, tear; shoulder impingement; rotator cuff, injury (tear); supraspinatus muscle/tendon, tear; rotator cuff, injury (non-tear)
- *neurological* - radiculopathy; nerve impingement
- *surgeries/treatment* - discectomy; arthroscopy; debridement; laminectomy; laminectomy, lumbar; knee surgery; meniscectomy; decompression surgery
- *pulmonary/respiratory* - respiratory; lung, contusion

Case Type:

- *Motor Vehicle* - Broadside; Passenger; Stop Sign; Intersection; Multiple Vehicle

Case Name: Raymond P. Drewes Gayle P. Drewes v. Long Island Power Authority Thomas F. Sabatino, No. 602780/17

Date: May 27, 2021

Plaintiff(s):

- Gayle P. Drewes, (Female, 59 Years)
- Raymond P. Drewes, (Male, 59 Years)

- Plaintiff Attorney(s):**
- Stephen J. Murphy; Block O'Toole & Murphy, LLP; New York NY for Raymond P. Drewes,, Gayle P. Drewes
 - David L. Scher; Block O'Toole & Murphy, LLP; New York NY for Raymond P. Drewes,, Gayle P. Drewes
- Plaintiff Expert(s):**
- Alan Leiken Ph.D.; Economics; Stony Brook, NY called by: Stephen J. Murphy, David L. Scher
 - Debra S. Dwyer Ph.D; Economics; Stony Brook, NY called by: Stephen J. Murphy, David L. Scher
 - Edwin F. Richter III, M.D.; Physical Rehabilitation; Stamford, CT called by: Stephen J. Murphy, David L. Scher
 - Jeffrey D. Klein M.D.; Orthopedic Surgery; New York, NY called by: Stephen J. Murphy, David L. Scher
- Defendant(s):**
- Gayle Drewes
 - Thomas F. Sabatino
 - Long Island Power Authority
- Defense Attorney(s):**
- Sean M. Prendergast; Hannum Feretic Prendergast & Merlino, LLC; Mineola, NY for Long Island Power Authority, Thomas F. Sabatino
 - None reported for Gayle Drewes
- Defendant Expert(s):**
- Andrew Bazos M.D.; Orthopedic Surgery; Brookfield, CT called by: for Sean M. Prendergast
 - Daniel J. Feuer M.D.; Neurology; Astoria, NY called by: for Sean M. Prendergast
 - Jeffrey M. Spivak M.D.; Orthopedic Surgery; New York, NY called by: for Sean M. Prendergast
- Insurers:**
- Nationwide Mutual Insurance Co.

Facts:

On Nov. 16, 2016, plaintiff Gayle Drewes, 59, a retiree, was driving on the southbound side of 13th Avenue, near its southernmost intersection at Comac Loop, in Ronkonkoma. Her husband, plaintiff Raymond Drewes, a 59-year-old unemployed man, was a front-seat passenger. While Gayle Drewes was proceeding through the intersection, her car struck the left side of a van that was being driven by Thomas Sabatino, who was traveling on the eastbound side of Comac Loop. Gayle Drewes claimed that she suffered injuries of her knees, her neck, a shoulder and a wrist. Raymond Drewes claimed that he suffered injuries of his back, a lung and his rib cage.

The Dreweses sued Sabatino and his employer, the Long Island Power Authority. The lawsuit alleged that Sabatino was negligent in the operation of his vehicle. The lawsuit further alleged that the Long Island Power Authority was liable because the accident occurred during Sabatino's performance of his job's duties.

The defendants counterclaimed against Gayle Drewes.

The Dreweses claimed that the accident was a result of Sabatino having ignored a stop sign that governed his entrance to the intersection. The Dreweses' course was not governed by a traffic-control device.

Defense counsel contended that Gayle Drewes should have seen and avoided Sabatino's van.

Injury:

Gayle Drewes was retrieved by an ambulance, and she was transported to Stony Brook University Medical Center, in the hamlet of Stony Brook. She underwent minor treatment.

Drewes ultimately claimed that she suffered a partial tear of her right, nondominant shoulder's supraspinatus tendon, which is a component of the rotator cuff, that she suffered trauma that produced impingement of the same shoulder, and that she suffered damage of the same shoulder's glenoid labrum. The glenoid labrum's damage included a Bankart lesion, which involved an avulsion of the labrum, and a SLAP lesion, which involved a tear of the anterior and posterior regions of the labrum. Drewes claimed that her left shoulder developed bursitis, that the shoulder developed chondromalacia, which involved softening of cartilage, and that the shoulder's rotator cuff developed tendinosis.

Drewes also claimed that she suffered a tear of each knee's lateral meniscus, a tear of each knee's medial meniscus, herniations of her C6-7 and C7-T1 intervertebral discs, and trauma that led to her right wrist's development of carpal tunnel syndrome. She claimed that she developed residual stenosis, which involved impingement of spinal nerves, and resultant radiculopathy. She further claimed that each knee developed synovitis: inflammation of joint-lining membrane.

Drewes underwent physical therapy, but she claimed that she suffered ongoing pain related to the accident. On Aug. 23, 2017, she underwent decompressive arthroscopic

surgery that addressed her right shoulder. The procedure included an acromioplasty, which involved excision of bone; an arthroplasty, which involved replacement of a portion of the shoulder's intra-articular surface; a bursectomy, which involved excision of an inflamed bursa; a chondroplasty, which involved a repair of cartilage; and debridement of damaged tissue.

On Nov. 15, 2017, Drewes underwent arthroscopic surgery that addressed her right wrist.

On Aug. 14, 2018, Drewes underwent arthroscopic surgery that addressed her right knee. The procedure included an abrasion arthroplasty, which involved removal of loose cartilaginous fragments; a chondroplasty, which involved a repair of cartilage; a meniscectomy, which involved excision of damaged portions of the knee's menisci; microfracture debridement, in which tiny bone abrasions and perforations were created to stimulate growth of bone and cartilage; and a synovectomy, which involved excision of inflamed tissue.

On Oct. 2, 2018, Drewes underwent administration of an epidural injection of a steroid-based painkiller.

On Oct. 18, 2018, Drewes underwent arthroscopic surgery that addressed her left knee. The procedure included an abrasion arthroplasty, a chondroplasty, a meniscectomy, microfracture debridement and a synovectomy.

During the ensuing four months, Drewes underwent administration of a total of three epidural injections.

On Oct. 16, 2019, Drewes underwent surgery that included a discectomy -- which involved excision of her C6-7 and C7-T1 discs -- and fusion of the corresponding levels of her spine.

Drewes claimed that she suffers residual pain and limitations. She claimed that she requires lifelong physical therapy, that she may require replacement of one or both knees, and that she may require further fusion of her spine's cervical region. She sought recovery of \$518,410 for future medical expenses, unspecified damages for past pain and suffering, and unspecified damages for future pain and suffering.

Raymond Drewes was retrieved by an ambulance, and he was transported to Stony Brook University Medical Center. An X-ray revealed that he suffered fractures of three ribs. Another radiological study revealed that he suffered a contusion of a lung. His respiration was impaired, and he was experiencing severe pain that necessitated administration of morphine. His hospitalization lasted about six days.

Drewes claimed that the accident also aggravated preexisting, disabling herniations of his L3-4 and L4-5 intervertebral discs. The herniations had necessitated implantation of a neurostimulator: a device that provides pain-relieving stimulation of spinal nerves. The neurostimulator remains implanted.

Drewes underwent physical therapy and the administration of nine epidural injections, but he claimed that he suffered ongoing pain related to the accident. On May 21, 2018, he underwent surgical fusion of his spine's L3-4 and L4-5 levels. The procedure also included a laminectomy, which involved excision of portions of vertebrae within the fused area, and the implantation of stabilizing hardware.

Drewes claimed that he suffers residual pain and limitations. He claimed that he requires lifelong physical therapy, and he also claimed that he will require further fusion of his spine's lumbar region. He sought recovery of \$442,958 for future medical expenses, unspecified damages for past pain and suffering, and unspecified damages for future pain and suffering.

Defense counsel contended that the Dreweses' injuries predated the accident.

Result:

The parties negotiated a pretrial settlement. The Long Island Power Authority, which was self-insured, agreed to pay \$1.85 million, which included \$1.5 million for Gayle Drewes and \$350,000 for Raymond Drewes; and Gayle Drewes' insurer agreed to pay \$70,000, from a policy that provided \$1 million.

The Long Island Power Authority, which was self-insured, agreed to pay \$1.85 million, and Gayle Drewes' insurer agreed to pay \$70,000, from a policy that provided \$1 million. Thus, the settlement totaled \$1.92 million. Gayle Drewes was allocated \$1.5 million, all from the Long Island Power Authority, and Raymond Drewes was allocated \$420,000.

Trial Information:

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. The first-party defendants' counsel did not respond to the reporter's phone calls, and the counter-defendant's counsel was not asked to contribute.

Writer

Caitlin Granfield

Auto Accident - Black Ice - Passengers Injured

Type: Verdict-Plaintiff

Amount: \$1,600,000

State: Connecticut

Venue: Litchfield

Court: Litchfield Judicial District, Superior Court, Litchfield, CT

Injury Type(s): • *back - fusion, lumbar*

Case Type: • *Motor Vehicle*

Case Name: Gary Merrill and Andye Merril v. Joseph F. Marie Commissioner of the Department of Transportation, No. CV-09-50056310-S

Date: December 21, 2011

Plaintiff(s): • Andye Merril (Female, 13 Years)
• Gary Merrill (Male, 52 Years)

Plaintiff Attorney(s): • John R. Logan; ; Torrington CT for Andye Merril

Plaintiff Expert (s): • Gary Crakes Ph.D.; Economics; Cheshire, CT called by:
• S. J. Shaid M.D.; Neurosurgery; Danbury, CT called by:
• Andrew Ramisch P.E.; Accident Investigation & Reconstruction/ Failure Analysis/Product Liability; Gaithersburg, MD called by:

Defendant(s): • Joseph F. Marie Commissioner of the Department of Transportation

Defense Attorney(s): • Ronald D. Williams; Trumbull, CT for Joseph F. Marie Commissioner of the Department of Transportation

**Defendant
Expert(s):**

- Andrew Bazos M.D.; Orthopedics; New Milford, CT called by: for

Facts:

A father and daughter were injured in a single-vehicle accident when the driver of their vehicle lost control on black ice. This lawsuit revolved around the timeliness of the Department of Transportation to respond to an earlier call of black ice in the area of the accident. Following a trial, a Litchfield jury found for the plaintiffs. The father was awarded \$1,600,000; the daughter was awarded \$25,000.

Plaintiffs Gary Merrill and Andye Merrill were passengers in a vehicle driven by Gary's wife on March 2, 2007. The driver lost control of the vehicle on black ice on Route 8, crashed through a snow bank and through an exit ramp sign, and then landed in a gore area between the highway and the ramp. Plaintiffs' accident was one of several accidents which occurred within minutes in the same general area. The investigating state trooper's report stated that the highway was dark and unlit and that ice from the mountains had melted on the highway earlier in the day. As the evening approached, melted ice refroze into black ice. Plaintiffs filed this lawsuit against the Department of Transportation, which had a garage about 15 minutes away from the accident site.

Plaintiffs alleged their injuries were caused by a defect, namely black ice on the highway. Plaintiffs asserted that the "call out" procedure used by defendant was slow and cumbersome, resulting in delays in getting workers to the garages and then to the areas of reported defects. Plaintiffs argued that there was an actual notice of the defect to the department of transportation via phone call at 7:06 p.m., but no remediation was done from the time of the call until the accident occurred 1.5 hours later. Plaintiffs further argued that there was no notice to the state police of any delay in responding to the call. Gary Merrill reportedly suffered a T12 compression fracture. He underwent conservative treatment, which did not resolve his problems. He eventually underwent an anterior/posterior fusion of the T11, T12 and L1 vertebrae. Gary had no neurological deficits, but claimed a permanent impairment of his thoracolumbar spine. He was unable to return to work as a carpenter. Andye Merrill alleged minor injuries and emotional distress.

Defendant alleged the DOT responded appropriately and timely, but there was insufficient time to remediate the condition before the accident occurred. According to defendant, since 7:00 p.m. is considered "off hours," employees were not located at the garages at the time of the call at 7:06 p.m. Defendant further claimed the notice was of ice on the exit ramp itself, but the accident occurred because ice had formed on the travel lanes of the highway. Defendant also claimed the driver of plaintiffs' vehicle was partially to blame for the accident.

Plaintiff Gary was a 52-year-old married male who was a carpenter. His daughter, Plaintiff Andye, was 13 years old.

Injury:

Plaintiff Gary suffered a T12 compression fracture and underwent an anterior/posterior fusion of the T11, T12 and L1 vertebrae. Plaintiff Andye suffered minor injuries and emotional distress.

Result:

\$1,625,000. Breakdown: \$1,600,000 for Plaintiff Gary Merrill and \$25,000 for Plaintiff Andye Merrill.

Trial Information:

Judge: Barbara J. Sheedy

Writer