



Auto accident led to spinal fusion, plaintiff claimed

Type: Settlement

Amount: \$1,200,000

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L4-5; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - sprain, cervical; strain, cervical
- *other* - physical therapy; decreased range of motion
- *wrist*
- *surgeries/treatment* - laminectomy; laminectomy, lumbar

Case Type:

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

Case Name: Michael Varona v. Sierra Presser & Mark Presser, No. 426/16

Date: May 23, 2017

Plaintiff(s):

- Michael Varona (Male, 37 Years)

Plaintiff Attorney(s):

- Brandon Cotter; The Law Offices of Sobo & Sobo L.L.P.; Middletown NY for Michael Varona
- Matthew Samradli; The Law Offices of Sobo & Sobo L.L.P.; Middletown NY for Michael Varona

- Plaintiff Expert(s):**
- David Harning; Vocational Rehabilitation; Liverpool, NY called by: Brandon Cotter, Matthew Samradli
 - Andrew Weintraub Ph D; Economics; Rhinebeck, NY called by: Brandon Cotter, Matthew Samradli
 - Steven K. Jacobs M.D.; Neurosurgery; Fishkill, NY called by: Brandon Cotter, Matthew Samradli

- Defendant(s):**
- Mark Presser
 - Sierra Presser

- Defense Attorney(s):**
- Joseph V. Tejeiro; Law Office of Thomas K. Moore; White Plains, NY for Sierra Presser, Mark Presser

- Defendant Expert(s):**
- Bradley D. Wiener M.D.; Orthopedic Surgery; Middletown, NY called by: for Joseph V. Tejeiro

- Insurers:**
- Travelers Property Casualty Corp.

Facts: On Aug. 26, 2015, plaintiff Michael Varona, 37, a carpenter, was driving on Broadway, near its intersection at Nott Place, in Newburgh. His vehicle's rear end was struck by a trailing vehicle that was being driven by Sierra Presser. Varona claimed that he suffered injuries of his back, his neck and a wrist.

Varona sued Presser and her vehicle's owner, Mark Presser. Varona alleged that Sierra Presser was negligent in the operation of her vehicle. Varona further alleged that Mark Presser was vicariously liable for Sierra Presser's actions.

Varona claimed that the collision occurred while he was decelerating toward a red traffic signal. He contended that Sierra Presser failed to exercise due caution.

Presser acknowledged that her attention was diverted from the roadway, but she also claimed that Varona contributed to the accident.

Injury: During the day that followed the accident, Varona presented to a hospital. He claimed that he was suffering pain that stemmed from his neck. He underwent minor treatment.

Varona ultimately claimed that he suffered herniations of his L4-5 and L5-S1 intervertebral discs, sprains and strains of soft tissue of his cervical region, and a sprain of his right, dominant arm's wrist.

Varona quickly commenced a course of physical therapy. The treatment addressed all of his injuries, and it lasted into February 2016. Later that month, he underwent surgery that included a laminectomy--which involved excision of a portion of a vertebra of his spine's lumbar region--and fusion of his spine's L4-5 level. He subsequently underwent further physical therapy.

Varona claimed that his injuries prevented his performance of about six weeks of work; that, upon resuming work, his injuries would not permit his performance of anything more than part-time work; and that he has not been able to work since his surgery. He further claimed that his back remains painful, that he suffers a 25 percent residual diminution of his back's range of motion, that his residual effects are permanent, that they prevent his resumption of work, and that they hinder his performance of his household chores and other physical activities. Varona also claimed that he requires additional medical treatment.

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

The defense's expert orthopedist submitted a report in which he opined that Varona's herniated discs were degenerative conditions that predated the accident. The expert also opined that Varona's remaining injuries resolved.

Result: The parties negotiated a pretrial settlement. The defendants' insurer agreed to pay \$1.2 million.

Trial Information:

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

Writer Jack Deming

Plaintiffs' vehicle struck while awaiting left turn

Type: Settlement

Amount: \$788,000

Actual Award: \$788,000

State: New York

Venue: Ulster County

Court: Ulster Supreme, NY

Injury Type(s):

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L5-S1
- *neck* - herniated disc, cervical; herniated disc at C6-7
- *surgeries/treatment* - laminectomy

Case Type:

- *Motor Vehicle* - Passenger; Rear-ender; Intersection

Case Name: Suzanne Chadwick and James Kelly v. Jeffrey Sisco, Wheels Inc. and Gtech Corporation, No. 2020/01

Date: December 13, 2004

Plaintiff(s):

- James Kelly (Male, 34 Years)
- Suzanne Chadwick (Female)

Plaintiff Attorney(s):

- George M. Levy; Finkelstein & Partners L.L.P.; Newburgh NY for James Kelly
- None reported; ; for Suzanne Chadwick

Plaintiff Expert (s):

- Joel E. Mandel; Orthopedics; New Windsor, NY called by: George M. Levy
- Barry Scheinfeld M.D.; Physical Medicine; Middletown, NY called by: George M. Levy
- David Kennett; Economic Analysis; Poughkeepsie, NY called by: George M. Levy

Defendant(s):

- GTech Corp.
- Wheels Inc.
- Jeffrey Sisco

Defense Attorney(s):

- Louis K. Szarka; the Law Offices of Craig P. Curcio; Middletown, NY for Jeffrey Sisco, Wheels Inc., GTech Corp.

Defendant Expert(s):

- Rene Elkin M.D.; Neurology; White Plains, NY called by: for Louis K. Szarka
- Albert Griffith; Vocational Rehabilitation; Newark, NJ called by: for Louis K. Szarka
- Richard Moscovitz M.D.; Orthopedic Surgery; Kingston, NY called by: for Louis K. Szarka

Insurers:

- Kemper Insurance Cos.

Facts:

On Oct. 8, 2000, plaintiff James Kelly, 34, a carpenter, was a passenger in a vehicle that was being operated by Suzanne Chadwick, who was traveling on Route 9W in Esopus. While stopped in anticipation of a left turn, Chadwick's vehicle was struck from behind. Chadwick and Kelly sustained injuries.

Chadwick and Kelly sued the other vehicle's driver, Jeffrey Sisco, and the owners of Sisco's vehicle, Gtech Corp. and Wheels Inc. The plaintiffs alleged that Sisco was negligent in the operation of his vehicle.

Chadwick and the defendants agreed to a pretrial settlement. Terms were not disclosed. The defendants subsequently conceded liability, and Kelly's claims proceeded to damages.

Injury:

Kelly sustained disc herniations at C6-7 and L5-S1. He underwent a laminectomy and fusion surgery with the insertion of a fixation cage. He has resumed work, though his work schedule is limited.

Kelly's expert orthopedist and expert physiatrist determined that Kelly's injuries were causally related to the accident.

The defendants' expert orthopedist and expert neurologist determined that Kelly's injuries had resolved. The experts concluded that he experiences no limitations and that he has no need for further surgery.

Result:

Kelly and the defendants agreed to a \$788,000 pretrial settlement.

Trial Information:**Judge:**

Vincent G. Bradley

Demand:

\$1,200,000

Offer: \$788,000

**Editor's
Comment:** Counsel for Chadwick was not asked to contribute to this report.

Writer Peter Hayes

Cargo fell out of tractor-trailer, struck nearby worker

Type: Settlement

Amount: \$600,000

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):

- *back* - fusion, lumbar; herniated disc, lumbar; herniated disc at L2-3; herniated disc, lumbar; herniated disc at L3-4; herniated disc, lumbar; herniated disc at L4-5
- *other* - physical therapy; epidural injections; decreased range of motion; aggravation of pre-existing condition
- *surgeries/treatment* - laminectomy; laminectomy, lumbar; decompression surgery

Case Type:

- *Transportation* - Trucking
- *Worker/Workplace Negligence*

Case Name: Richard Feiner v. Applica Consumer Products Inc, No. 5163/12

Date: August 15, 2016

Plaintiff(s):

- Richard Feiner (Male, 50 Years)

Plaintiff Attorney(s):

- Steven H. Beldock; Birbrower & Beldock P.C., New City, NY, trial counsel, Law Office of Stephen D. Donohue, P.C., Nanuet, NY; New City NY for Richard Feiner
- Stephen D. Donohue; Law Office of Stephen D. Donohue, P.C.; Nanuet NY for Richard Feiner

Plaintiff Expert(s):

- David A. Stopper; Trucking Industry; Southlake, TX called by: Steven H. Beldock

Defendant(s):

- Applica Consumer Products, Inc.

**Defense
Attorney(s):**

- Dennis A. First; O'Connor, O'Connor, Bresee & First, P.C.; Albany, NY for Applica Consumer Products, Inc.

**Defendant
Expert(s):**

- Lewis Grill; Truck - Unloading/Loading; Billings, MT called by: for Dennis A. First
- Robert C. Hendler M.D.; Orthopedic Surgery; Goshen, NY called by: for Dennis A. First

Facts:

On July 27, 2009, plaintiff Richard Feiner, 50, a truck jockey, worked at a warehouse facility that was located at 3440 State Route 209, in Wurtsboro. During the course of his work, Feiner attempted to initiate unloading of a tractor-trailer that had arrived with a delivery. The trailer's cargo included wooden pallets, each supporting heavy boxes that were secured to the pallet. When Feiner opened one of the trailer's doors, a pallet fell off of the top of a stack of merchandise. The pallet struck Feiner, and Feiner claimed that he sustained injuries of his back.

Feiner sued the company that had loaded the trailer, Applica Consumer Products Inc. Feiner alleged that the company was negligent in its loading of the trailer.

Feiner's counsel claimed that the pallet and its boxes weighed a total of about 1,200 pounds. Feiner's trucking-industry expert claimed that the pallet had been placed atop loose boxes. He contended that the loose boxes did not provide a secure base for the pallet. The expert also claimed that the pallet should have been secured via straps and specialized bars. He concluded that the trailer's cargo was not loaded in a manner that would have allowed it to safely withstand a trip that had begun in Arkansas.

Feiner acknowledged that, while opening the trailer's door, he noticed that the pallet was not stable. He conceded that he continued to open the door. Given that concession, defense counsel contended that Feiner was liable for the accident. He argued that Feiner should have closed the door and requested the assistance of a crew that possessed the proper experience.

Defense counsel also contended that the tractor-trailer's driver--who was not an employee of Applica Consumer Products--inspected the trailer's cargo at the outset of the trip and declared that it had been properly and safely loaded.

Injury:

The trial was bifurcated. Damages were not before the court.

During the day that followed the accident, Feiner presented to Orange Regional Medical Center, in Middletown. He claimed that his back, his head and his neck were painful. He underwent minor treatment.

Feiner ultimately claimed that the accident aggravated a previously asymptomatic degenerative condition of his spine. He claimed that he sustained resultant herniations of his L2-3, L3-4 and L4-5 intervertebral discs.

Feiner underwent about four months of conservative treatment that included physical therapy and the administration of epidural injections of steroid-based painkillers.

Feiner claimed that he suffered ongoing pain. On March 2, 2010, he underwent surgery that included a laminectomy--which involved excision of a portion of a vertebra--and fusion of his spine's L4-5 level. On Dec. 21, 2012, he underwent decompressive surgery that included a laminectomy and fusion of his spine's L2-3 and L3-4 levels.

Feiner claimed that he suffers ongoing pain and a residual diminution of his back's range of motion. He claimed that his limitations prevent his resumption of work. He also claimed that he previously enjoyed playing a bagpipe at ceremonial events, but that he cannot resume that activity.

Feiner sought recovery of a total of \$500,000 for past and future lost earnings, unspecified damages for past pain and suffering, and unspecified damages for future pain and suffering.

The defense's expert orthopedist submitted a report in which he opined that Feiner's injuries were products of severe degeneration, and he claimed that Feiner's surgeries were inevitable results of that degeneration.

Result:

The jury found that each party was liable for the accident. Applica Consumer Products was assigned 65 percent of the liability, and Feiner was assigned 35 percent of the liability.

Prior to the scheduled start of the trial's damages phase, the parties negotiated a settlement. Applica Consumer Products, which was self-insured, agreed to pay \$600,000.

Trial Information:

Judge: Elaine Slobad

Trial Length: 4 days

Trial Deliberations: 5 hours

Jury Vote: 6-0

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

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

Writer Jack Deming

Motorist's injuries degenerative, defense alleged

Type: Verdict-Plaintiff

Amount: \$500,000

Actual Award: \$500,000

State: New York

Venue: Orange County

Court: Orange Supreme, NY

Injury Type(s):

- *back* - herniated disc, lumbar; herniated disc at L4-5
- *other* - physical therapy; aggravation of pre-existing condition
- *surgeries/treatment* - discectomy; laminectomy

Case Type:

- *Motor Vehicle* - Rear-ender

Case Name: Gary S. & Judith Olman v. Richard J. Arneel & Moriggia Inc. d/b/a Mike's Tire Discount, No. 3023/04

Date: July 01, 2005

Plaintiff(s):

- Gary Olman (Male, 75 Years)
- Judith Olman (Female, 70 Years)

Plaintiff Attorney(s):

- James E. Monroe; Dupee, Dupee & Monroe P.C.; Goshen NY for Gary Olman, Judith Olman

Plaintiff Expert(s):

- Joel E. Mandel; Orthopedics; New Windsor, NY called by: James E. Monroe
- David H. Segal; Neurosurgery; Goshen, NY called by: James E. Monroe
- Robert Nerich M.D.; Radiology; Middletown, NY called by: James E. Monroe

Defendant(s):

- Moriggia Inc.
- Richard J. Arneel

**Defense
Attorney(s):**

- Robert M. Lefland; Thomas M. Bona P.C.; White Plains, NY for Richard J. Arneel, Moriggia Inc.

**Defendant
Expert(s):**

- Denise McHale M.D.; Neurology; Middletown, NY called by: for Robert M. Lefland
- Robert C. Hendler M.D.; Orthopedic Surgery; Goshen, NY called by: for Robert M. Lefland
- Charles M. Elkin M.D.; Radiology; Pleasantville, NY called by: for Robert M. Lefland

Insurers:

- Erie Insurance Group

Facts:

On Dec. 16, 2003, plaintiff Gary Olman, 75, a semi-retired businessman, was driving on eastbound Route 211, in Wallkill. As Olman's vehicle was stopped behind a vehicle that was waiting to make a left turn, it was struck from behind. Olman claimed that he sustained back injuries.

Olman sued the other vehicle's driver, Richard Arneel, and the owner of Arneel's vehicle, Moriggia Inc. He alleged that Arneel was negligent in the operation of his vehicle and that Moriggia was vicariously liable for Arneel's actions.

Olman moved for pretrial summary judgment. He claimed that the collision occurred because Arneel was tailgating. The summary judgment motion was granted, and the trial addressed damages.

Injury:

Approximately two months after the accident, a doctor determined that Olman had sustained a disc herniation at L4-5 and an aggravation of a preexisting spinal stenosis--a constriction or narrowing of the spinal canal.

On March 11, 2004, Olman underwent a discectomy, which is the excision of an intravertebral disc, and a laminectomy, which is the excision of a vertebra's posterior arch. The procedures were followed by three months of physical therapy.

On Nov. 30, 2004, Olman underwent revisionary lumbar-decompression surgery. That procedure was also followed by three months of physical therapy.

Olman claimed that his injuries were causally related to the accident and that they constitute a permanent disability. His treating neurosurgeon and treating radiologist agreed. Olman sought recovery of unspecified damages for his past and future pain and suffering.

The defendants' expert orthopedic surgeon opined that Olman's injuries were not traumatically induced. He opined that the disc herniation stemmed from degenerative, age-related spinal stenosis.

Result:

Olman was awarded \$500,000.

Gary Olman

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

\$350,000 Personal Injury: Future Pain And Suffering

Trial Information:

Judge: Joseph G. Owen

Demand: \$750,000

Offer: \$225,000

Trial Length: 4 days

**Trial
Deliberations:** 5 hours

Jury Vote: 6-0

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

Writer Peter Hayes