

FEATURED VERDICT

Medical Malpractice

Patient's fracture an accepted result of surgery, doc claimed

Defense Verdict

McGovern v. Rauschenbach

Orange County Supreme Court

Plaintiffs' Attorneys Donald J. Lambiase; Murphy & Lambiase; Goshen, N.Y.; and Richard Greenblatt; The Law Office of Richard Greenblatt, New Windsor, N.Y. (of counsel); Murphy & Lambiase; Goshen, N.Y.

Defense Attorney Craig Burgess; Feldman, Kleidman, Coffey, Sappe & Regenbaum LLP; Fishkill, N.Y.

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CASES of NOTE

Motor Vehicle — Passenger Bronx County

Plaintiff's injuries predated auto collision, defense contended 5

Motor Vehicle — Right Turn Kings County

Defense: Plaintiff couldn't prove identity of hit-and-run motorist 6

Construction — Labor Law Kings County

Forklift didn't emit warning alarm, injured bystander claimed 8

Motor Vehicle — No-Fault Case Kings County

Woman hit by car, claimed injuries of spine, knee, head 9

Premises Liability — Negligent Repair and/or Maintenance Queens County

Fall in hospital ended career, health aide claimed 12

Animals — Animal Control Queens County

Yard's watchdog should have been leashed, bitten visitor claimed 14

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Motor Vehicle — Center Line Broome County

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Premises Liability — Negligent Repair and/or Maintenance Ulster County

Housing complex didn't address icy walkway, tenant claimed 20

HOTSHEET

Bicycles 4



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After two days had passed, Henderson presented to his primary doctor. He was referred to an orthopedist.

Henderson ultimately claimed that he sustained a tear of his left, nondominant wrist's triangular fibrocartilage complex. He also claimed that he sustained a herniation of his L4-5 intervertebral disc.

After several months had passed, Henderson commenced a course of physical therapy that addressed his back and his left wrist. The treatment lasted about 15 months, and it was typically rendered two or three times a week. On April 15, 2013, he underwent arthroscopic surgery that addressed his left wrist.

Henderson claimed that he suffers permanent residual pain, a permanent residual diminution of his left wrist's range of motion and other residual limitations. He claimed that his residual effects hindered his performance of his job's duties and necessitated an early retirement. He also claimed that his residual effects hinder his performance of recreational activities, such as bicycling and gardening.

Henderson sought recovery of \$50,000 for past pain and suffering, and he sought recovery of \$150,000 for future pain and suffering.

The defense's expert orthopedist submitted a report in which he opined that Henderson does not suffer an abnormality related to the lumbar region, though he acknowledged that Henderson's left wrist has not regained full range of motion. The defense's expert neurologist submitted a report in which she suggested that Henderson's lumbar injury could be a degenerative condition.

The parties stipulated that Henderson's damages could not exceed \$100,000, which represented the limit of the defendants' insurance coverage.

RESULT The jury found that the defendants were liable for the accident. It determined that Henderson's damages totaled \$200,000, but Henderson recovered the stipulated limit: \$100,000.

JOHN

HENDERSON \$50,000 past pain and suffering
\$150,000 future pain and suffering
\$200,000

INSURER(S) Allstate Insurance Co. for both defendants

TRIAL DETAILS Trial Length: 1 day
Jury Vote: 6-0
Jury Composition: 2 male, 4 female

PLAINTIFF

EXPERT(S) Kevin E. Wright, M.D., orthopedic surgery, New York, NY (did not testify; submitted report)

DEFENSE

EXPERT(S) Monette G. Basson, M.D., neurology, Elmhurst, NY (did not testify; submitted report)

Alan B. Greenfield, M.D., radiology, Long Beach, NY (did not testify; submitted report)

Jay Nathan, M.D., orthopedic surgery, Great Neck, NY (did not testify; submitted report)

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

—Jack Deming

PREMISES LIABILITY

Negligent Repair and/or Maintenance — Dangerous Condition

Fall in hospital ended career, health aide claimed

VERDICT \$5,483,733

CASE Ana Espinal v. New York City Health Hospitals Corporation, No. 11336/08

COURT Queens Supreme

JUDGE Janice A. Taylor

DATE 12/11/2015

PLAINTIFF

ATTORNEY(S) Scott A. Steinberg, Greenberg & Stein, P.C., New York, NY

DEFENSE

ATTORNEY(S) Janet E. Keller, Senior Counsel, Zachary W. Carter, Corporation Counsel, Jamaica, NY

FACTS & ALLEGATIONS On July 18, 2007, plaintiff Ana Espinal, 41, a home health aide, fell while she was working at Elmhurst Hospital Center, which is located at 79-01 Broadway, in the Elmhurst section of Queens. Espinal claimed that she sustained injuries of her back, a knee, her neck and a shoulder.

Espinal sued the hospital's operator, New York City Health and Hospitals Corp. Espinal alleged that the hospital's staff was negligent in its maintenance of the premises, that the staff's negligence created a dangerous condition that caused her accident, and that New York City Health and Hospitals was vicariously liable for the staff's actions.

Espinal claimed that she slipped in a puddle that was created by a leaking air conditioner.

The defense's answer was stricken because it was deemed to have violated a discovery-related order. The trial addressed damages.

INJURIES/DAMAGES *aggravation of pre-existing condition; bulging disc, cervical; bulging disc, lumbar; chiropractic;*

decompression surgery; decreased range of motion; epidural injections; fusion, lumbar; hardware implanted; herniated disc at C5-6; herniated disc at L4-5; herniated disc at L5-S1; knee; knee replacement; knee surgery; laminectomy; laminectomy, lumbar; limp; osteoarthritis; physical therapy; shoulder impingement; trigger point injection

Espinal was evaluated in the hospital's emergency department. She claimed that her back, her left hip, her left leg and her left, nondominant arm's shoulder were painful. She also claimed that her left arm's sensory ability was severely diminished. The latter condition prompted her admission to the hospital. She underwent three days of observation.

Espinal ultimately claimed that she sustained herniations of her C5-6, L4-5 and L5-S1 intervertebral discs, trauma that produced bulges of her C4-5, L1-2, L2-3 and L3-4 discs, trauma that produced impingement of her left shoulder, and an aggravation of a pre-existing, asymptomatic osteoarthritic condition of her left knee. The latter condition was diagnosed in June 2010.

Espinal quickly commenced conservative treatment that included a brief course of chiropractic manipulation, intermittent courses of physical therapy, the administration of epidural injections of steroid-based painkillers and the administration of painkilling trigger-point injections. When in progress, her physical therapy was typically rendered one to three times a week. The treatment lasted until June 2013.

On March 23, 2010, Espinal underwent decompressive surgery that included a laminectomy, which involved excision of a portion of a vertebra of her spine's lumbar region; fusion of her spine's L4-5 and L5-S1 levels; and the implantation of stabilizing hardware.

On March 10, 2011, Espinal underwent implantation of a device that provided pain-relieving stimulation of a nerve of her spine's cervical region. On July 24, 2011, she underwent implantation of a device that provided pain-relieving stimulation of a nerve of her spine's lumbar region.

On Nov. 27, 2011, Espinal underwent replacement of her left knee. During the ensuing three years, Espinal underwent three additional surgeries that involved replacement or repair of implanted stimulators.

Espinal claimed that she suffers residual pain, that her back, her left knee and her neck have not regained full range of motion, that she requires use of a brace that supports her back, that she requires use of a cane when she is outside of her home, that she retains a limp, and that her residual effects prevent her resumption of work. She claimed that she would have worked until the age of 62 were it not for her residual effects.

Espinal also claimed that her stimulators must be replaced during each interval of seven years, that she must undergo fusion of a portion of her spine's lumbar region within 10 years, that her left knee's prosthesis must be revised or replaced in 15 to 20 years, and that each procedure must be followed by a course of physical therapy. She further claimed that her residual effects will necessitate her retention of a personal aide upon reaching the age of 50.

Espinal sought recovery of \$439,000 for past medical expenses, \$2.6 million for future medical expenses, \$2.1 million for the future cost of custodial care, \$134,229 for past lost earnings, \$279,406 for future lost earnings, \$4 million for past pain and suffering, and \$3.2 million for future pain and suffering.

Defense counsel contended that Espinal's injuries are pre-existing, degenerative conditions that stem from obesity and years of physical labor. The defense's expert orthopedist examined Espinal in 2009, and he opined that her cervical and lumbar injuries were nothing more than sprains and strains. The expert further contended that Espinal's surgeries were inevitable results of Espinal's pre-existing conditions and were not related to the accident.

Defense counsel also challenged the extent of Espinal's lost earnings. She claimed that Espinal had been working merely three years at the time of the accident and was not likely to have worked until the age of 62.

RESULT The jury found that Espinal's damages totaled \$5,483,733.

ANA ESPINAL \$166,000 past medical cost
 \$1,388,000 future medical cost
 \$96,533 past lost earnings
 \$83,200 future lost earnings
 \$750,000 past pain and suffering
 \$1,000,000 future pain and suffering
\$2,000,000 future cost of custodial care
 \$5,483,733

DEMAND OFFER \$9,000,000
 \$875,000

TRIAL DETAILS Trial Length: 17 days
 Trial Deliberations: 2.5 days
 Jury Vote: 5-1
 Jury Composition: 3 male, 3 female

PLAINTIFF EXPERT(S) Harold Bialsky, D.C., life-care planning, Jersey City, NJ
 Alan J. Dayan, M.D., orthopedic surgery, Brooklyn, NY (treating doctor)
 Kristin K. Kucsma, M.A., economics, Livingston, NJ
 Vadim Kushnerik, M.D., pain management, Brooklyn, NY (treating doctor)
 Andrew A. Merola, M.D., orthopedic surgery, New York, NY (treating doctor)

DEFENSE EXPERT(S) Sheldon P. Feit, M.D., radiology, Garden City, NY
 Jonathan David Lewin, M.D., orthopedic surgery, Englewood, NJ

POST-TRIAL Defense counsel has moved to set aside the verdict. She is also seeking a collateral-source offset of certain economic damages.

Plaintiff's counsel has moved to increase the pain-and-suffering and past-medical-expenses awards.

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

—Jack Deming

ANIMALS

Animal Control — Dog Bite

Yard's watchdog should have been leashed, bitten visitor claimed

SETTLEMENT \$1,350,000

CASE Philip Moliterno, Maria Moliterno v. Super Structure Fabricators, Inc., No. 3405/14

CASE Philip Moliterno and Maria Moliterno v. New York Hoist LLC US Crane & Rigging, LLC, New York Plank Service, LLC and New York Pre-Cast, Inc., No. 16426/14

COURT DATE Queens Supreme
10/9/2015

PLAINTIFF

ATTORNEY(S) Jack Cutrone, Robert K. Young & Associates, P.C., Merrick, NY
Gary J. Young, Robert K. Young & Associates, P.C., Merrick, NY

DEFENSE

ATTORNEY(S) Georgia Coats, Wade Clark Mulcahy, New York, NY (Super Structures Fabricators Inc., New York Hoist, LLC, New York Plank Service, LLC, New York Pre-Cast Inc., U.S. Crane and Rigging, LLC)
Timothy P. McColgan, Kingston, NY (Urban Erectors, LLC)

FACTS & ALLEGATIONS On Feb. 15, 2013, plaintiff Philip Moliterno, 42, a crane mechanic, visited a supply yard that was located at 1520 Decatur St., in the Ridgewood section of Queens. He was bitten by the premises' watchdog, a pit bull. Moliterno claimed that he sustained injuries of his back, his neck and two fingers.

Moliterno sued the premises' owner, Super Structures Fabricators Inc. Moliterno alleged that Super Structures Fabricators negligently failed to properly control or restrain the watchdog.

In a separate action filed in Kings County Supreme Court, Moliterno sued several tenants of the premises, New York

Hoist, LLC; New York Plank Service, LLC; New York Pre-Cast Inc.; U.S. Crane and Rigging, LLC; and Urban Erectors, LLC. Moliterno alleged that the defendants negligently failed to properly control or restrain the watchdog.

The cases were consolidated in Queens County Supreme Court.

Moliterno claimed that he was attacked without provocation. Two witnesses agreed. Moliterno also claimed that the dog was not leashed or otherwise restrained.

Moliterno's counsel claimed that the dog had previously bitten other people, and, as such, he argued that the defendants had been aware of the dog's vicious propensities. He contended that the dog should not have been allowed to roam the premises during business hours.

Defense counsel contended that Moliterno provoked the dog. Moliterno's brother, who was present when the incident occurred, claimed that his brother struck the dog with a chain moments prior to the attack.

Super Structures Fabricators' counsel presented the company's principal owner, who claimed that he was an out-of-possession landlord, that he rarely visited the premises, and that he had not been aware of any vicious propensities the dog may have exhibited.

INJURIES/DAMAGES *aggravation of pre-existing condition; arm; arthrodesis; bone graft; chiropractic; corpectomy; decreased range of motion; discectomy; finger; fusion, cervical; fusion, thoracic; hardware implanted; herniated disc at T7-8; herniated disc at T8-9; herniated disc at T9-10; herniated disc, thoracic; laceration; leg; physical therapy; radicular pain / radiculitis; radiculopathy; stenosis; thoracotomy*

Moliterno was driven to Wyckoff Heights Medical Center, in Brooklyn. He underwent repair of a near-severing laceration of his left, nondominant hand's fifth finger. He also underwent treatment of a complex laceration of his right hand's fourth finger.

Moliterno claimed that he also sustained herniations of his T7-8, T8-9 and T9-10 intervertebral discs, that he developed resultant stenosis—or narrowing—of his spine, and that he experienced resultant radicular pain that extended to his extremities. He also claimed that he sustained an aggravation of a pre-existing herniation of his C5-6 disc and radiculopathy that the herniation was causing.

On March 19, 2013, Moliterno commenced a course of physical therapy that addressed his left hand. The treatment lasted until Aug. 16, 2013, and it was typically rendered two or three times a week. On June 21, 2013, he commenced a course of physical therapy that addressed his back and neck. The treatment lasted until July 30, 2013. On Sept. 6, 2013, he commenced a course of chiropractic treatment. The treatment lasted until Feb. 21, 2014.

Moliterno claimed that he suffered ongoing pain. On March 3, 2014, he underwent a thoracotomy that included fusion of the C6-7 level of his spine; a laminoforaminotomy, which involved excision of a portion of a vertebra and other material; and the implantation of stabilizing hardware. On