2016 Million Dollar Verdicts & Settlements

This section includes verdicts and settlements of $1 million or more obtained in a Michigan court in 2016 that were reported to Michigan Lawyers Weekly and verified on or before Dec. 23, 2016.

We would like to thank the attorneys who submitted their reports to MiLW throughout 2016. While many of these reports were published in the "Verdicts & Settlements" section of the newspaper, others appear in this section for the first time.

MiLW seeks to be as inclusive as possible in reporting verdicts and settlements from across the state. This annual compilation includes case results reported to us and verified by our editors. Please help us to be as complete as possible and send your case results for our weekly Verdicts & Settlements feature. They may be submitted online at milawyersweekly.com/submit-verdicts.

Verdicts

A federal jury determined five deputies were liable for a county jail inmate's severe beating and subsequent, lengthy face-down restraint, awarding $36,630,000. Auto negligence, medical malpractice and personal injury under the Federal Employers Liability Act also placed high among top trials.

Judgments

A federal judge awarded treble damages in a Lanham Act lawsuit, bringing the total award to $44.5 million, plus a medical center must pay $2,076,500 to a woman who suffered permanent damages from hormone replacement meds.

Arbitrations

A shareholder oppression, breach of fiduciary duties, conversion and fraud claim was arbitrated for $2,252,306, while a salesman received $1,572,626 in a breach of employment and stock rights agreement case.

Settlements

Claims of wrongful death, auto negligence, delayed intubation and permanent injuries from unneeded chemotherapy are among the largest deals.

Class actions

Claims of auto parts price-fixing schemes resulted in settlements of $550 million and $125 million, while a massive ignition switch defect recall led to a $300 million deal with General Motors.

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MICHIGAN LAWYERS WEEKLY

Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

1 $36,630,000

Inmate, deputies dispute beating, restraint method

This case involved a severe beating and subsequent, lengthy face-down restraint at the Genesee County Jail on September 18, 2010.



ERNST

Plaintiff William Jennings had been transported to the jail without incident after being arrested for DWI. His roadside PBT was 0.12. All the events at the jail were captured on the jail video system.

A key part of the case and a factor that resulted in the verdict was that Jennings was beaten, had his head slammed into a wall while he was handcuffed, pepper sprayed, then had a spit hood placed over his face and then was restrained face down on a restraint bed and left unattended for 2½ hours while he struggled to breathe. He was never decontaminated for the pepper spray. The video depicted the entire 2½ hours.

Plaintiff's counsel noted that the five deputies involved were all well above 200 pounds, ranging from approximately 220 to 280, while the plaintiff weighed approximately 150 pounds.

Immediately prior to being torqued down in the restraint bed, plaintiff also was Tased while he lay on the ground handcuffed, with several deputies holding him down. One of the deputies lifted up his shirt so the Taser could be applied directly to his bare skin.

Plaintiff's counsel contended that a Genesee County Sheriff's general order on the use of force provided that "under no circumstances" could a person be restrained face down after being pepper sprayed.

Defendants testified inconsistently with what was plainly depicted in the video, claiming, among other things, that the plaintiff flung himself face first into the wall (while he was handcuffed); that he was "resisting" while he lie there virtually motionless; and claiming he was "actively resisting" when his body reacted to the pain they were inflicting.

Defendants also repeatedly claimed that although the video depicted the entire event, plaintiff's acts of resistance could not be seen because they occurred while multiple deputies were holding him down, which obscured the video footage.

Plaintiff's counsel argued that all five deputies assaulted the plaintiff at one time or another and/or held him down while another deputy assaulted him. Counsel further argued the deputies clearly acted in concert and were joint tortfeasors.

Plaintiff's policy expert, Ken Katsaris, testified that the officers' actions were not consistent with nationally recognized practices and procedures for restraining individuals or for using force in a correctional setting.

Plaintiff's psychiatric expert, Dr. Gerald Shiener, testified that the use of restraints was improper in any institutional setting and that no one should ever be restrained face down due to the risk of asphyxiation. He also testified that plaintiff suffered PTSD and, because he continued to be symptomatic six years after the traumatic event, his prognosis was very poor.

Plaintiff's forensic audio and video expert, Kenneth Glazer, testified that he forensically examined every frame of the video. He added that gross motor movements such as the ones defendants attributed to plaintiff were not present and could not be obscured from a frame-by-frame forensic analysis, as defendants claimed. Glazer also testified that he never saw any physical resistance.

Plaintiff's treating ophthalmologist, John A. Waters, testified that plaintiff suffered traumatic cataracts as result of the trauma to his face and head; that they dramatically affected his vision; and that even if he had successful bilateral cataract surgery, he would have a 71 percent disability based on AMA disability standards.

Plaintiff's primary care physician, Dale Hanson, testified that plaintiff suffered a permanent shoulder injury, which he determined to be a winged scapula after an MRI ruled out a torn rotator cuff. That condition was not correctable by surgery or physical therapy.

Defendants' police policy expert, Darrell Ross, testified that all defendants' actions were "absolutely appropriate" and that restraining someone face down, even after being pepper sprayed and with a spit hood over his face, created no safety concerns.

Defendants' expert in ophthalmology, Dr. Thomas Byrd, testified that plaintiff's traumatic cataracts could be corrected and his vision made better than his pre-morbid condition. He also admitted that the trauma plaintiff suffered could cause traumatic cataracts.

Defendants' orthopedic expert, Dr. William Kohen, testified that the trauma plaintiff suffered as depicted in the video could cause a shoulder injury, but he did not believe that the trauma could cause a torn rotator cuff injury, which was his diagnosis of plaintiff's shoulder injury.

The jury found all defendants liable on plaintiff's unlawful force claim and awarded $36,630,000, including individualized punitive damages against each defendant.

Kevin S. Ernst, co-counsel for plaintiff, provided case information.

See related story, "$36.6M awarded in Genesee jail beating," MiLW, Nov. 21, 2016.

Type of action: Civil rights (police misconduct)

Injuries alleged: Eyesight disability, permanent shoulder injury, PTSD, facial fractures, extensive bruising

Name of case: *Jennings v. Fuller*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 13-13308; Nov. 3, 2016

Tried before: Jury

Name of judge: Hon. Avern L. Cohn

Demand: $1.8 million

Highest offer: $500,000

Verdict amount: $36,630,000

Most helpful experts: Kenneth Katsaris, law enforcement, corrections and private security, Tallahassee, Florida; Kenneth Glazer, forensic audio and video, Southfield; Dr. Gerald Shiener, psychiatry, Birmingham

Attorneys for plaintiff: Kevin S. Ernst, Dean D. Elliott

Attorneys for defendants: H. William Reising, Christopher J. Scott

V&S

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2 $19 Million

Plaintiff: 4-month-old's death was avoidable

Plaintiff's decedent, Sabrie Nash, was a twin who was born premature at 25 weeks on July 7, 2010. Following birth, she was diagnosed with bronchopulmonary dysplasia (BPD), respiratory distress syndrome and pulmonary hypertension.

She was hospitalized at defendant Children's Hospital of Michigan (CHM) and placed on a mechanical ventilator for almost two months. Over time, Sabrie began to make progress with respect to growth and development and her condition improved. On Oct. 11, 2010, she was discharged home on supplemental oxygen.

Sabrie continued to show signs of improvement while at home. She was eating well and gaining weight. Nevertheless, she remained on supplemental oxygen and medication to assist with breathing as her lungs continued to develop.

During the first week of November, Sabrie's mother noticed that she had respiratory congestion with nasal discharge. On Nov. 7, Sabrie's mother took her and her twin brother to CHM to be evaluated. Sabrie's mother indicated that she did not feel that Sabrie's breathing was labored, but she was concerned that drainage was clogging the nasal cannula tubing. A chest X-ray showed no focal consolidations (a sign of pneumonia). Sabrie was prescribed nasal saline drops and sent home.

On Nov. 18, at approximately 9:15 pm, Sabrie's parents brought her to the emergency department at CHM. Sabrie's mother reported that Sabrie "was breathing funny," describing episodes of rapid breathing followed by slow breathing. She also reported that Sabrie had stopped breathing and had gone limp. Sabrie's mother said that she had a "bad feeling" which had prompted her to take Sabrie to the emergency department. Her level of concern was much higher Nov. 18 than it had been when Sabrie was taken to the emergency department Nov. 7.

Sabrie was first seen by Dr. Katie Dobratz. Upon evaluation, Sabrie was tachypneic (respiratory rate 60-68 bpm), hypoxemic (oxygen saturation 88 per on 0.06 L NC), and cyanotic (blue). She had a bronchospastic cough, coarse breath sounds, diffuse wheezing, and decreased air exchange. The nursing staff noted that Sabrie had labored respirations with retractions and accessory muscle use. The use of accessory muscles with respirations was an indication that Sabrie was having to work very hard to breathe. In short, she was in respiratory distress. Sabrie's clinical status was much more concerning than it had been 11 days earlier. Her clinical condition was indicative of pneumonia.

Dr. Dobratz was doing a residency in emergency medicine. Her supervising physician was Defendant Dr. Minh Cruz, who was acting as the attending physician.

A chest X-ray was done, with findings that were consistent with pneumonia. Because there was low lung volume, the X-ray was not diagnostic. Cruz and Dobratz's interpretation was that no focal consolidations were present. According to the treating radiologist and experts, this was incorrect. No additional diagnostic studies were ordered by Cruz or Dobratz, and neither consulted with a radiologist.

Sabrie was put on 100 percent oxygen. She was also given two bronchodilators (albuterol and Atrovent) to relax the muscles in the airways and increase air flow to the lungs. Sabrie's oxygen saturation temporarily improved after she was started on 100 percent oxygen and given breathing treatments. Plaintiff's counsel asserted that Cruz and Dobratz incorrectly assumed that this was a sign that she was stabilizing, but Sabrie remained in respiratory distress.

Cruz and Dobratz made a diagnosis of bronchiolitis, an infection of the bronchioles (small air passages in the lungs) that is the leading cause of serious lower respiratory illness in infants. The standard of care required that Sabrie be admitted to the PICU. Instead, she was discharged home at approximately 11:36 p.m. with orders for albuterol treatments every few hours. Sabrie's parents did not have a pulse oximeter to monitor her oxygen saturation at home. Cruz testified that the standard of practice required that a patient such as Sabrie be sent home with a pulse oximeter.

A resident radiologist and senior radiologist interpreted the chest X-ray after Sabrie had been discharged. The radiologists reported there was low volume in the lungs, and that focal consolidations could not be excluded. The senior radiologist who interpreted the chest X-ray testified that the study was abnormal and the focal consolidations were consistent with pneumonia. He further testified that Cruz and/or Dobratz could have obtained input from a radiologist prior to discharging Sabrie. Moreover, the senior radiologist stated that he would have expected Cruz and Dobratz to appreciate the fact that the chest X-ray findings did not rule out pneumonia.

Sabrie's parents gave her breathing treatments at home as had been ordered. They testified that her condition was the same throughout Nov. 19 as it had been when she was in the emergency department the day prior, i.e. she did not get better nor did she get worse.

After a family outing Nov. 20 to an auto auction, Sabrie's mother found that she was not breathing. Her father immediately started doing CPR. Copious amounts of fluid were coming out of Sabrie's mouth and nose. An ambulance was immediately called and CPR was started.

Sabrie was taken to CHM, but the health care providers were unable to successfully resuscitate her. She was pronounced dead at 3:01 p.m. An autopsy revealed she died of bilateral, bacterial bronchopneumonia.

At deposition, Cruz testified that she first learned that Sabrie had died when she received the notice of intent to file claim. The audit trail produced at trial demonstrated that Cruz had accessed the medical records 12 minutes after Sabrie had been pronounced dead.

Plaintiff's expert witnesses testified that the standard of care mandated that Sabrie be admitted to the hospital, where she would have been monitored and the respiratory distress would be treated.

Defendants argued that it was appropriate to have discharged Sabrie from the hospital. They claimed that she improved while she was in the emergency department. Defendants asserted that Sabrie died as a result of positional asphyxia because she had been left in her car seat for more than an hour, as opposed to pneumonia and bronchiolitis.

When the defense portrayed the autopsy

Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

done by the Wayne County Medical Examiner's office as being substandard, and the pathologist who performed the autopsy as being incompetent, plaintiff called the pathologist to testify at trial. The pathologist stated that there were clear and unequivocal signs of pneumonia (macrophages) and that the cause of death was pneumonia "every day of the week and twice on Sunday."

A Wayne County jury awarded $19 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, wrongful death

Injuries alleged: Death of 4-month-old girl

Name of case: *Nash v. Children's Hospital of Michigan*

Court/Case no./Date: Wayne County Circuit Court; 14-006203-NH; Oct. 14, 2016

Tried before: Jury

Name of judge: Hon. Kathleen I. MacDonald

Demand: $400,000

Highest offer: $200,000

Verdict amount: $19 million

Most helpful experts: Dr. Eliot Katz, pediatric pulmonology/critical care, Boston; Dr. Robert Baker, pediatric emergency medicine, Baltimore; Dr. Robert Van Amerongen, pediatric emergency medicine, Brooklyn, New York; Dr. Karen Jubanyik, emergency medicine, New Haven, Connecticut; Dr. Michael Fishbein, pathology, Los Angeles

Insurance carrier: Self-Insured

Attorney for plaintiff: Brian J. McKeen

Attorney for defendant: Jenna Wright-Greenman

3 $5 Million

Mother died when bus turned, ran her over



FIEGER

Plaintiff was walking home from a store at the intersection of Maplelawn and Crooks in Troy. She was walking on a green light, within the crosswalk, when a SMART bus, making a left-hand turn, ran her over. A video on the bus showed plaintiff attempting to run away from the bus as the bus ran her down.

Plaintiff died and was survived by her two young children.

At trial, defendant took the position that plaintiff's decedent did not suffer any pain while the bus tore her apart.

After a weeklong trial, the jury deliberated for two hours and awarded plaintiff's estate $5 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

See related story, "$5 million after woman hit by bus," MiLW, May 30, 2016.

Type of action: Auto negligence

Injuries alleged: Death

Name of case: *LaMay v. SMART*

Court/Case no./Date: Oakland County Circuit Court; 14-144455-NI; May 13, 2016

Tried before: Jury

Name of judge: Hon. Nanci J. Grant

Verdict amount: $5 million

Attorney for plaintiff: Geoffrey N. Fieger

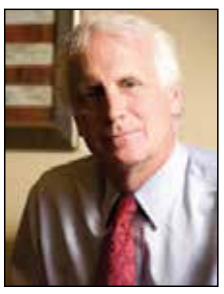
Attorney for defendant: Mark J. Zausmer

4 $4,389,000

Physician misdiagnosed cancerous thigh tumor

This medical-malpractice action alleged a failure to diagnose a cancerous tumor in patient's thigh.

Despite the fact that plaintiff presented to defendant physician with complaints of pain and a lump in his thigh, the physician failed to order an ultrasound or MRI and failed to include a cancerous mass in his differential diagnosis.



MEYERS

The tumor continued to grow until diagnosed approximately two years after initial presentation. Despite aggressive treatment, the cancer recurred and metastasized to the patient's spine and lungs.



TAKALA

Plaintiff contended that the physician should have appropriately worked up the mass at a treatable stage. Instead, the physician assumed the mass was a fatty tumor known as a lipoma and never ordered appropriate testing including ultrasound or MRI.

The case was vigorously litigated during a five-day trial. The jury returned a $4,389,000 verdict that included $2.2 million in econom-

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Verdicts

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ic damages.

Jeffrey T. Meyers and Timothy M. Takala, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Delay in diagnosis of a cancerous tumor in plaintiff's thigh

Name of case: *Pedley v. Danish*

Court/Case no./Date: Wayne County Circuit Court; 14-005867-NH; Dec. 14, 2016

Tried before: Jury

Name of judge: Hon. Daniel A. Hathaway

Verdict amount: $4,389,000

Attorneys for plaintiff: Jeffrey T. Meyers, Timothy M. Takala

Attorneys for defendant: David M. Ottenwess, A. Tony Taweel

5 $3,956,000

62-year-old hit, injured by truck in parking lot

Plaintiff's counsel contended that defendant negligently ran over plaintiff, 62, with defendant's Dodge Ram pickup truck, while plaintiff was walking through the parking lot of a Harbor Freight store after purchasing equipment for his concrete contractor business.

Plaintiff suffered several broken bones, including a fractured scapula, right elbow, multiple ribs and herniated three cervical discs. He developed a frozen shoulder condition and had a cervical fusion surgery shortly before trial. He was unable to return to his concrete business and required 16 hours per day of attendant care.



MUELLER

Defendant, who died before trial, had no explanation for why he did not see plaintiff after pulling out of his parking spot. The day before trial, defendant admitted liability.

Plaintiff's counsel said plaintiff and his wife made compelling witnesses. Photographs of plaintiff taken the year before the incident showed a vibrant family man and were likely the most persuasive evidence of the effect of the injuries on plaintiff's life. Plaintiff's doctors described his pain medication as "pharmaceutical heroin," and that the man who appeared at trial looked like a shell of his former self. Witnesses stated that plaintiff spent his days watching TV.

A Wayne County jury awarded $1.1 million in past noneconomic damages; $2.1 million in future noneconomic damages (21 years' life expectancy); and $106,000 in future lost wages. The jury also awarded $650,000 for plaintiff's wife's loss of consortium claim.

Wolfgang Mueller, counsel for plaintiffs, provided case information.

Type of action: Auto negligence

Injuries alleged: Fractured elbow, fractured scapula, three herniated cervical discs

Name of case: *Vitale v. Marshall*

Court/Case no./Date: Wayne County Circuit Court; 14-006018-NI; April 21, 2016

Tried before: Jury

Name of judge: Hon. Sheila Gibson

Demand: $850,000

Highest offer: $350,000

Verdict amount: $3,956,000

Case evaluation: $600,000

Most helpful experts: Dr. Alfred Faulkner, orthopedic surgery, Dearborn; Dr. Aashish Deshpande, physical medicine and rehabilitation, Grand Rapids

Insurance carrier: State Auto

Attorney for plaintiff: Wolfgang Mueller

Attorney for defendant: John W. Whitman

6 $2,570,795

Hospital didn't quickly diagnose, treat fasciitis

Plaintiff was admitted to defendant Sparrow Hospital on Aug. 30, 2010, after going to the emergency room with complaints of pain and swelling in her upper extremity. Over the next two days, she was seen by a general surgeon and an infectious disease specialist, both of whom diagnosed cellulitis and prescribed antibiotics.

An orthopedic specialist was called, but because he was unable to see the patient, he recommended another general surgeon. The recommended general surgeon examined the patient Sept. 2 and rendered a clinical impression of necrotizing fasciitis that warranted surgery immediately.

Plaintiff claimed that because of the defendants' misdiagnosis and failure to quickly treat the flesh-eating disease, her condition worsened. This necessitated a more extensive debridement procedure, damaged and infected tissue, and caused disfigurement and lack of mobility that will last the rest of her life.



WATKINS

On Sept. 26, 2016, Judge William E. Collette rendered a $2,570,795 verdict, including $520,000 in lost wages and future earnings, $438,000 in noneconomic damages, and more than $1.5 million for the cost of medical care and treatment.

Kenneth T. Watkins, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Unnecessary pain and suffering, permanent disfigurement, loss of mobility in right arm

Name of case: *Guerrero vs. Sparrow Health System*

Court/Case no./Date: Ingham County Circuit Court; 13-160-NH; Sept. 26, 2016

Tried before: Judge

Name of judge: Hon. William E. Collette

Verdict amount: $2,570,795

Case evaluation: $900,000

Attorney for plaintiff: Kenneth T. Watkins

Attorney for defendant: John P. Ryan

7 $2,515,285

Heavy labor led to man's double hip replacement

Plaintiff sustained cumulative trauma from being required to perform heavy labor, which included squatting, kneeling, and crouching hundreds of times per day during his 30-plus-year career working for the railroad. He developed severe osteoarthritis requiring three surgeries, including total replacement of both hips, and is now medically restricted from most employment opportunities, including his former position.

During the trial, defendant attempted to argue that the repeated strenuous work performed and awkward postures assumed by the plaintiff could not be a cause of his hip osteoarthritis, and that it did not know or have reason to know that those activities were risk factors for the development of osteoarthritis. Defendant claimed that plaintiff's osteoarthritis was caused completely by a condition known as femoral acetabular impingement and had nothing to do with cumulative trauma.

Plaintiff presented publications produced by the American Association of Railroads, a trade group of which the defendant was a member, recognizing that the plaintiff's work activities were linked to disorders like osteoarthritis of the hip.

Plaintiff offered testimony from Dr. Robert Andres, a certified ergonomist and biomechanical engineer, that these facts were well-known and acted upon by reasonable industrial employers and that the standard in heavy industrial industries was to have a health and safety plan built on sound ergonomic principals.



PEARLMAN

Plaintiff also presented testimony from an expert orthopedic surgeon that his condition was caused by his work at the railroad, which corroborated the testimony of the plaintiff's own treating orthopedic surgeon that he believed that the plaintiff's condition was work-related.



WILENSKY

The Wayne County jury deliberated for less than two hours before returning a unanimous verdict for the plaintiff, awarding $2,515,285.

Arvin J. Pearlman and Benjamin J. Wilensky, co-counsel for plaintiff, provided case information.

Type of action: Personal injury under the Federal Employers Liability Act (FELA)

Injuries alleged: Cumulative trauma necessitating hip replacements

Name of case: *Lilly v. Grand Trunk Western Railroad Co.*

Court/Case no./Date: Wayne County Circuit Court; 16-001908-NO; Dec. 7, 2016

Tried before: Jury

Name of judge: Hon. David Allen

Verdict amount: $2,515,285

Case evaluation: $350,000

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Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Most helpful experts: Dr. Robert Andres, ergonomics and biomechanics, Pelham, Massachusetts; Dr. Robert Widmeyer, orthopedic surgery, Roanoke, Virginia; Robert Ancell, vocational rehabilitation; Southfield; Michael Thomson, economist, Bloomfield Hills

Attorneys for plaintiff: Arvin J. Pearlman, Benjamin J. Wilensky; C. Richard Cranwell (Roanoke, Virginia)

Attorneys for defendant: Michael J. Liddane, Richard A. Dietz

8 **$2,508,565**

Liability argued in crash that injured H.S. athlete

On March 8, 2014, plaintiff Iyana Brown, who had just turned 15 years old, got into a six-passenger sedan with five of her girlfriends (ages 14-15), and four young men (ages 15-19, with the driver, defendant James Sutton, being 18). The vehicle had only six seatbelts. All six of the girls and a young man were in the back seat. Very few of the 10 occupants were using seatbelts. Iyana was unbelted and sitting on the lap of one of her friends at the time of the accident, in which she was partially ejected.

The vehicle in which Iyana was a passenger started tailgating a Mitsubishi sports car in northern Ottawa County. The Mitsubishi was being driven by 21-year-old defendant Kyle Schaab, and the front seat passenger threw a smoke bomb at Sutton's tailgating car.

Eventually the two vehicles were side-by-side as they entered the village of Fruitport in Muskegon County. There were several stories from the 12 witnesses about how the accident occurred, but the main two were:

1) the Mitsubishi driver veered from right lane and sideswiped the Sutton car, causing it to lose control and crash into a guard rail and roll multiple times; or

2) the Mitsubishi passed the Sutton car after being side-by-side, then Sutton — still enraged due to the smoke bomb and being passed — passed the Mitsubishi by crossing a double yellow line into the opposing lane of traffic and lost control, hit the guard rail and rolled several times.

Several witnesses in the Sutton car, including two of the driver's brothers, supported the version of events that exonerated Sutton. Iyana's version of how the accident occurred supported Sutton, as well. A minority of witnesses supported the second version of how the accident occurred, the version in which most of the liability would be imposed on Sutton.

Iyana suffered a fracture at L2. She underwent posterior fusion with screws and rods from L1-L3. She was a freshman at Fruitport High School and had just finished her basketball season (she started as a freshman on the women's varsity team) when the accident occurred.

Approximately three months after the accident, Iyana started light basketball drills, then started her sophomore season on time in November 2014. She scored more points and earned more awards in her sophomore season than she did the season before the accident. She also participated in track in the spring 2015, running several sprint events and participating in the long jump. In her junior year, which concluded in June 2016, Iyana was named First Team All State in basketball, and she had another successful track season in the spring 2016. Iyana is expected to receive a scholarship to play basketball at the collegiate level, notwithstanding her injury.


SHAFER

The biggest hurdles plaintiff's counsel had to overcome included arguing a liability theory that was not supported by Iyana and dealing with her excellent recovery. Defense counsel introduced a highlight film of Iyana which had been produced to provide to college scouts. Iyana is an amazing athlete and the film and her athletic exploits since the accident caused plaintiff's counsel concern with respect to getting proper compensation for Iyana.

Plaintiff accepted a $135,000 case evaluation award against Sutton and his mother, who owned the car Sutton was driving, and also accepted a $95,000 award against Schaab. All defendants rejected the case evaluation awards. The highest offer before trial was $30,000 from Sutton's counsel.

Plaintiff had the treating orthopedic surgeon, Dr. J. Christopher Eyke, testify live in court and he was an effective witness. In addition, plaintiff called 18 witnesses over the four-day trial.

The jury deliberated for approximately one hour before returning a verdict of $2,508,565 (before reduction to present value). Fault was allocated as 90 percent Sutton and 10 percent Schaab.

David P. Shafer, counsel for plaintiff, provided case information.

See related story, "Teen athlete awarded $2.5M for back injury," MiLW, Sept. 12, 2016.

Type of action: Third-party auto negligence

Injuries alleged: Fracture of L2 resulting in fusion of L1-L3, back pain, surgical scarring

Name of case: *McDaniel v. Sutton*

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Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Court/Case no./Date: Muskegon County Circuit Court; 15-49997-NI; Aug. 19, 2016

Tried before: Jury

Name of judge: Hon. William C. Marietti

Highest offer: $30,000 (defendant Sutton)

Verdict amount: $2,508,565

Case evaluation: $135,000 (defendant Sutton); $95,000 (defendant Schaab)

Allocation of fault: 90 percent defendant Sutton; 10 percent defendant Schaab

Most helpful experts: Dr. Katie McCausland, physical medicine and rehabilitation, Muskegon; Dr. J. Christopher Eyke, orthopedic surgery, Muskegon

Insurance carriers: State Farm (defendant Sutton); Nationwide (defendant Schaab)

Attorney for plaintiff: David P. Shafer

Attorneys for defendants: Robert J. Johnson (defendant Sutton); Donald J. Trybus (defendant Schaab)

Keys to winning: Providing good, understandable evidence regarding future pain and damages; having a hard-working, positive client

9 $2,305,000

Woman fell down stairs when the rail gave out



SOLOMON RADNER



HOWARD RADNER



MARTIN RADNER

Plaintiff was attempting to walk down the stairs in her apartment building where she was a tenant, when the handrail gave out. Though it did not completely detach from the wall, it was loose enough and moved enough to cause Roshell to lose her balance and fall. She fell awkwardly and severely broke her left ankle.

Being a diabetic, her ankle did not heal properly. She had up to 10 procedures and her doctor is currently recommending amputation.

Defense claimed there was nothing wrong with the handrail, that it was inspected weekly, and that nobody ever complained about it. Defense also claimed the loose handrail was open and obvious and that plaintiff's fall wasn't due to the handrail but because plaintiff simply slipped on the stairs because of her diabetes and neuropathy and because she was wearing heels. Plaintiff denied those claims.

The case was tried May 3-5, 2016, in Genesee County Circuit Court. The jury deliberated for an hour May 5 and five hours May 6, and determined plaintiff was 40 percent negligent and the defendants 60 percent negligent. The jury apportioned damages as $505,000 for past economic; $100,000 future medical; $100,000 past noneconomic; and $1.6 million future noneconomic.

Solomon M. Radner, counsel for plaintiff, provided case information.

Type of action: Fall down stairs from broken handrail

Injuries alleged: Broken left ankle

Name of case: *Roshell v. Bristol Court Limited Dividend Housing Association Limited Partnership d/b/a Bristol Court Apartments LP*

Court/Case no./Date: Genesee County Circuit Court; 14-103544-NO; May 6, 2016

Tried before: Jury

Name of judge: Hon. Geoffrey L. Neithercut

Demand: $1 million

Highest offer: $150,000

Verdict amount: $2,305,000

Case evaluation: $150,000

Allocation of fault: Plaintiff 40 percent; defendant 60 percent

Most helpful expert: Steven Ziemba, comprehensive risk analysis, Northville

Attorneys for plaintiff: Solomon M. Radner, Howard J. Radner, Martin E. Radner

Attorney for defendant: Tara S. Cannatella

10 $2 Million

6-year-old struck, killed by pickup on bike path

Ezekiel Goodwin, age 6, was participating in the Northwestern Michigan Fair as a 4-H camper. He was riding his bicycle on the bike path between the camping area and the animal barn, where he was going to show his pet horse on Special Kids Day.

A noncamper driver drove his pickup truck into the fairgrounds and down the bike path, on a private errand, and passed Ezekiel. Forgetting that Ezekiel was behind him, the driver suddenly stopped and backed up approximately 30 feet. Ezekiel froze in his tracks, was run over and was pinned under the vehicle and died instantly.

Plaintiff sued on a theory of premises negligence, driver negligence and business liability, as the driver had detoured slightly from a business errand. Plaintiff also filed a bystander liability claim on behalf of Ezekiel's father, who arrived within minutes at the scene.

Before trial, plaintiff settled with the driver and his business, and settled the bystander claim for the father. All those settlements are confidential. At trial, the sole defendant was the fair.

Plaintiff presented evidence that the defendant Fair permitted vehicular traffic to use the children's bike path; did not implement feasible alternatives that would have alleviated any risk on the bike path; and removed barriers set up by "do-gooders" across the bike path.

Defendant argued that the father was negligent for allowing Ezekiel to ride on the bike path, because the father had seen one or two vehicles parked near the bike path and should have recognized an unreasonable risk of vehicular traffic.

The six-day trial included poignant damages evidence of Ezekiel and how he was a memorable little boy, and was also marked by striking impeachment testimony elicited from fair officials.

Plaintiff's counsel noted that most important evidence was the demonstrative and scanned graphics introduced on the court's electronic equipment, which allowed the jury to understand very clearly:

1) the layout and landmarks of the fairground premises;

2) the sequence of events; and

3) the feasible alternative safety measures not implemented by the fair.



PARSONS

The jury awarded $500,000 for Ezekiel's fright and shock and $1.5 million to plaintiff's estate for loss of society and companionship. The jury allocated 50 percent nonparty fault to the driver.

Grant W. Parsons, counsel for plaintiff, provided case information.

See related story, "Jury awards $2M for boy's death at fair," MiLW, June 20, 2016.

Type of action: Personal injury, premises negligence

Injuries alleged: Death

Name of case: *Goodwin v. Northwestern Michigan Fair*

Court/Case no./Date: Grand Traverse County Circuit Court; 2015-030872-NI; May 12, 2016

Tried before: Jury

Name of judge: Hon. Philip E. Rodgers Jr.

Demand: $1.2 million to $2.4 million

Verdict amount: $2 million

Allocation of fault: 50 percent defendant Northwestern Michigan Fair, 50 percent nonparty driver

Most helpful expert: Kelly Bernish, certified safety professional, Orlando, Florida

Attorneys for plaintiff: Grant W. Parsons, Kathryn M. Walker

Attorney for defendant: William J. Ewald

11 $1.76 Million

Mother of 3 suffered neck, back injuries



FILIATRAUT

Defendant Badrul Haque was driving a company vehicle owned by B.S. Group LLC. Plaintiff Valerie White was traveling on eastbound Davison Avenue when defendant failed to yield the right of way and negligently struck plaintiff's vehicle.

White, a mother of three, suffered severe neck and back injuries that ultimately required surgery.

Defendants contested the accident



MORSE



MELFI

facts, as well as the injuries. B.S. Group hired Dr. Louis Jacobs and Dr. Steven Geiringer to dispute causation and claim the surgeries were not necessary.

The jury found the defendant fully at fault and awarded $1 million for past and present damages and $760,000 for future noneconomic damages.

Christopher D. Filiatraut, Lewis A. Melfi, Michael J. Morse, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: C4-C5, C5-C6, C6-C7, L5-S1 disc herniations, anterior cervical discectomy with fusion, lumbar laminectomy and foraminotomy

Name of case: *White v. B.S. Group Services LLC*

Court/Case no./Date: Wayne County Circuit Court; 14-000365-NI; Feb 17, 2016 (judgment entered)

Tried before: Jury

Name of judge: Hon. Edward Ewell Jr.

Highest offer: $150,000

Verdict amount: $1.76 million

Case evaluation: $350,000

Special damages: $92,580.69 in attorney fees and taxable costs

Most helpful expert: Dr. Daniel Fahim, neurosurgery, Royal Oak

Attorney(s) for plaintiff: Christopher D. Filiatraut, Lewis A. Melfi, Michael J. Morse

Attorney(s) for defendant: David M. Liedel, Daniel P. Steele Sr.

Keys to winning: Cross-examination of the defendant and its biomechanical expert to prove that the motor vehicle accident could not have happened as they described; understanding the significance of plaintiff's spinal injuries and how these injuries affected her life

12 $1,705,000

Patient died after fluid overload caused distress

Decedent went to the Sinai-Grace Hospital Emergency Room on Jan. 12, 2011, complaining of nausea and vomiting over the previous four days. She was given boluses of fluids but only a small amount of urine output was recorded. The patient was diagnosed with a bowel obstruction and defendant general surgeon performed a partial colon removal.

During the procedure, the patient was provided additional fluids with little to no urine output. She continued to receive aggressive fluid resuscitation post-operatively in the surgical intensive care unit.

The patient continued to deteriorate. Two days later, defendant surgeon performed a subsequent operation to inspect the abdomen for evidence that would ex-

Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

plain the patient's declining condition. Upon opening the abdomen, the patient suffered a cardiac arrest. CPR was initiated and her heart rate restored, but she suffered extensive brain damage that prevented her from regaining consciousness. Family members requested her transition to comfort care on March 7, 2011, and she died March 23, 2011.



SICKELS



STINAR

Plaintiff claimed that in light of the patient's extremely low urine output despite adequate initial fluid resuscitation, the surgeon should have requested an immediate consultation with a kidney specialist. Plaintiff further alleged the defendants failed to appreciate that additional fluids were causing respiratory distress and abdominal compartment syndrome. Plaintiff's experts included a general surgeon, a medical critical care specialist and a nephrologist.

A Wayne County jury awarded $600,000 in economic damages; $500,000 in noneconomic damages for decedent's pain and suffering; $430,000 for past loss of society and companionship; and $175,000 for future loss of society and companionship.

Kenneth T. Watkins, Robert B. Sickels and Parker G. Stinar, counsel for plaintiff, provided case information.

See related story, "$1.7M awarded for patient's aggressive fluid intake," MiLW, Nov. 28, 2016.

Type of action: Medical malpractice, wrongful death

Injuries alleged: Cardiac arrest, brain damage, and death due to fluid overload following an abdominal surgery

Name of case: *Mays vs. VHS of Michigan d/b/a Detroit Medical Center*

Court/Case no./Date: Wayne County Circuit Court; 14-004174-NH; Nov. 1, 2016

Tried before: Jury

Name of judge: Hon. Susan L. Hubbard

Verdict amount: $1,705,000

Attorneys for plaintiff: Kenneth T. Watkins, Robert B. Sickels, Parker G. Stinar

Attorneys for defendants: Keith P. Felty, Jill H. Vandercook

13 $1,603,595

Couple suffer back, neck, shoulder injuries in crash

Plaintiffs were traveling eastbound on Saginaw Highway in Eaton County on Oct. 11, 2013. At approximately 5:30 p.m., they were stopped at a traffic light at the intersection of Nixon Highway.

Plaintiffs' vehicle was hit from behind by a driver traveling at a speed of 60 to 70 miles per hour. The at-fault driver failed to brake because she was distracted by her cellphone. The force of the accident was so great that the backs of plaintiffs' vehicle seats were broken.

The plaintiffs were taken to Sparrow Hospital Emergency Room and have treated for back, neck, and shoulder injuries.

Defendant Progressive Michigan Insurance Co. assured plaintiffs that they would pay whatever amount the jury verdict was for when it was returned.

The jury awarded $1,374,113 for Debra Andreson and $229,482 for David Andreson.



NOLAN

Lawrence P. Nolan, the plaintiffs' counsel who provided case information, said that calling plaintiffs' treating physician live for the jury played an important part in obtaining such a substantial verdict. Nolan further stated that the jury verdict may be one of the largest underinsured motorist claims in the state of Michigan.

See related story, "Couple in Eaton Co. crash awarded $1.6M," MiLW, May 23, 2016.

Type of action: Uninsured motorist coverage

Injuries alleged: Back, neck and shoulder

Name of case: *Andreson v. Progressive Michigan Insurance Co.*

Court/Case no./Date: Eaton County Circuit Court; 15-168-NI; May 6, 2016

Tried before: Jury

Name of judge: Hon. Janice K. Cunningham

Highest offer: $50,000 for plaintiff Debra Andreson, $10,000 for plaintiff David Andreson

Verdict amount: $1,603,595

Most helpful expert: Dr. Christopher Abood, brain and spine, Lansing

Insurance carrier: Progressive

Attorney for plaintiff: Lawrence P. Nolan

Attorney for defendant: James R. Bradley

14 $1,476,031

Estate: Cancerous lesion not timely diagnosed

On May 19, 2011, Dr. Daniel Woodland, a general dentist, evaluated plaintiff's decedent Sandra Jager and documented a large yellow spot on left side of her tongue, which he attributed as a lesion caused by biting of the tongue. He rendered no treatment and wrote a note to check it at the patient's next visit.

When she was next seen March 19, 2012, Woodland documented a yellow and white patch on the left side posterior tongue and the tip of the tongue. After an examination, referred the patient to defendant Dr. Paul Flynn, an oral surgeon.

Flynn saw Jager on April 4, 2012, at which time he noted the patient's past medical history as a cigarette smoker and prescribed Kenalog in Orabase [a medication used for the temporary relief of symptoms from mouth sores due to injury] to treat the lesion topically.

In a letter to Woodland, Flynn recommended "that we observe the lesion at her regular cleaning appointments and if it becomes larger, I would remove it in the hospital." Flynn neither biopsied the lesion nor scheduled a follow-up appointment.

In March 2013, Jager called Flynn and advised him that she was in extreme pain and that the sore was eating away her tongue. Flynn did not see her but instead called in another prescription for Kenalog in Orabase.

She called again May 1, 2013, and Flynn consented to see her. Flynn did not photograph the lesion, despite his protocol to photograph all new lesions. Flynn referred her to department of surgery at Michigan State University to be seen by an ear, nose, and throat specialist.

Because Flynn had not indicated that the matter called for urgent attention, Jager was unable to see an ENT specialist at MSU until June 5, 2013. Concerned about her health, her husband, Joseph Jager, contacted Dr. Mark Lebeda at Mid-Michigan Ear, Nose & Throat PC on May 8, 2013. Lebeda was able to see Sandra Jager that day.



TURNER



ESSER-WEIDENFELLER

Lebeda biopsied Jager's tongue, and a CT/PET scan of the neck was performed. His impression was that she had an ulcerative mass on the left side of her tongue, which was "suspicious" for squamous cell carcinoma — a suspicion that was confirmed on Jager's next visit with Lebeda on May 15, 2013, at which time he scheduled her for surgery.

A May 21, 2013, operation by Lebeda involved a left hemiglossectomy with left partial neck dissection. Preoperative and postoperative reports confirmed the diagnosis of squamous cell carcinoma with a 3.5 cm tumor with metastatic carcinoma in four lymph nodes taken from the neck.

Jager had to return to the operating room the next day for surgery to control significant postoperative bleeding from the tongue. A tracheostomy was necessary to ensure that she had a safe airway.

Jager remained hospitalized for the next week, then discharged to an intermediate care facility for help with her physical rehabilitation caused by her deconditioned state. Jager then began a course of radiation treatment, but became dehydrated and suffered radiation burns for which she had to be hospitalized.

By February 2014, the radiation proved unsuccessful and she returned to Lebeda with a right neck mass. An April 8, 2014, aspiration revealed that the cancer had metastasized to the lymph nodes on the right side of the neck. She continued her treatment at the University of Michigan but gradually weakened and endured great pain before her death Oct. 5, 2014.

Plaintiff's counsel argued that the oral surgeon's failure to either biopsy the lesion or make sure that it went away delayed the diagnosis of squamous cell carcinoma. The errors and omissions in the records made it easy for plaintiff's experts — oral surgeon Dr. Michael Krell, radiologist Dr. Richard Chesbrough and ENT specialist Dr. Carolyn Bradford — to point to defendants' violation of the standard of care and how it resulted in Jager's death.

Krell testified that Flynn should have biopsied the lesion April 4, 2012, when he first saw the patient, or, alternatively, at a follow-up visit he should have scheduled for two to four weeks after. Plaintiff relied heavily on the literature that supported the case.

An Ingham County jury awarded $1,476,031, apportioning fault at 40 percent plaintiff and 60 percent defendant.

Matthew L. Turner, co-counsel for plaintiff, provided case information.

See related story, "$1.47M awarded in oral cancer case," MiLW, Aug. 22, 2016.

Type of action: Medical malpractice

Injuries alleged: Wrongful death due to oral surgeon's failure to diagnose cancer of the tongue

Name of case: *Jager v. Flynn*

Court/Case no./Date: Ingham County Circuit Court; 14-577-NH; June 24, 2016

Tried before: Jury

Name of judge: Hon. Rosemarie E. Aquilina

Verdict amount: $1,476,031

Case evaluation: $665,000

Allocation of fault: 40 percent plaintiff; 60 percent defendant

Attorneys for plaintiff: Matthew L. Turner, Lisa Esser-Weidenfeller

Attorney for defendant: Dale L. Arndt

15 $1.15 Million

Photos taken at scene bolstered U-turn claim

In a lawsuit filed in Wayne County Circuit Court, the 39-year-old plaintiff sought noneconomic damages caused when the defendant driver did an improper U-turn in front of plaintiff's vehicle.

Defendant was employed with Catholic Social Services of Wayne County and was driving a company passenger van at the time of the crash. Negligence was disputed.



CUMMINGS

Defendant denied that he was doing a U-turn at the time of the collision. He testified that he was merging into the center turn lane. Defense argued that the plaintiff caused the crash because she was driving too fast and not paying attention.

Plaintiff's counsel focused on photographs taken at the scene of the crash, which showed that the defendant's story was not true and that he was doing a U-turn at the time of the crash. Plaintiff's

Verdicts

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

counsel said the jury relied heavily on the photographs.

Plaintiff claimed injuries primarily to her lower back and right knee. MRI testing established an L5-S1 herniation, which was the plaintiff's main problem. She had a fusion surgery on her lower back. The surgery was successful and reduced her pain level to where it was minimal pain at the time of trial. However, plaintiff's doctor testified that she needed to watch what physical activities she did in the future to protect the surgical hardware.

Defense relied heavily on nontreating experts that they hired to refute the plaintiff's claims. These experts testified that the plaintiff did not have a disc herniation and did not suffer any injury in the car crash. Defense also argued that the plaintiff did not suffer a serious impairment of body function, because she was working full time on the line at Faygo at the time of trial and had only missed a few months of work.

The plaintiff testified that she was able to work but her family and recreational life had been affected.

The defense offered $30,000 to settle the matter. The case evaluation amount was $30,000. After a three-day trial, the jury awarded $1.15 million.

Donald J. Cummings, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Lower back, right knee

Name of case: *Perkins v. Rapp*

Court/Case no./Date: Wayne County Circuit Court; 14-005106-NI; March 10, 2016

Tried before: Jury

Name of judge: Hon. Patricia S. Fresard

Demand: $800,000

Highest offer: $30,000

Verdict amount: $1.15 million

Case evaluation: $30,000

Attorney for plaintiff: Donald J. Cummings

Attorneys for defendant: Kyle N. Smith, Richard A. Joslin

Key to winning: Demonstrative evidence that established the defendant was doing a U-turn when he denied doing so

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Judgments

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

1 $44.5 Million

Trebled damages awarded in Lanham Act lawsuit

In federal court, Hon. Robert J. Jonker awarded $44.5 million to plaintiff LidoChem Inc., which includes attorneys' fees, interest and other costs. The decision comes nearly two years after a jury determined defendants Stoller Enterprises Inc., Jerry Stoller and David Alexander willfully violated the Lanham Act because of defendants' anti-competitive business activities.



WILLIAM HOWARD



JEAN HOWARD

Plaintiff's counsel said they had "substantial evidence that Stoller and its executives were intentionally spreading falsehoods about LidoChem and its Performance Nutrition products over a 10-year period that ultimately interfered with LidoChem's business relationships, resulting in a substantial impact on the company and its brand."

The original verdict came down March 26, 2014, after a 20-hour trial, in which a unanimous jury awarded $12 million to LidoChem Inc. Jonker trebled the award to $36 million because of Stoller's actions as well as the jury's determination that the actions were intentional. Jonker also awarded plaintiff pre-judgment interest in the amount of $7 million and attorney fees and costs in the amount of $1.5 million.

Plaintiff's counsel provided case information.

Type of action: Lanham Act (false advertising)

Type of injuries: Loss of business

Name of case: *LidoChem Inc. v. Stoller Enterprises Inc.*

Court/Case no./Date: U.S. District Court, Western District of Michigan; 1:09-CV-204; Jan. 5, 2016

Name of judge: Hon. Robert J. Jonker

Judgment amount: $44.5 million

Special damages: Enhanced damages — exceptional case

Attorneys for plaintiff: William D. Howard, Jean M. Howard

Attorney for defendant: Barry G. Flynn (Houston)

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2 $2,076,500

Hormone replacement meds caused damages

On Feb. 27, 2012, plaintiff Melissa MacDonald went to defendant HRC Medical Centers for evaluation of her testosterone levels due to complaints of low energy. MacDonald met with several medical care providers who advised she would benefit from hormone replacement therapy medication to increase her testosterone levels. She specifically asked if there were side effects and was advised there were "absolutely no side effects besides a little extra hair growth."

Over multiple office visits, MacDonald was prescribed and administered hormone "pellets" containing testosterone and progesterone. She began suffering side effects throughout the treatments, but was not aware they were caused by the hormone implants at the time. The side effects included severe acne, thinning head hair, hypertension, thyroid dysfunction, impaired renal function and swollen axillary lymph nodes.

In October 2012, MacDonald presented to an internist who ran blood work. The blood work found her testosterone levels excessively higher than the normal range. She was advised to discontinue the hormone treatment. MacDonald stopped undergoing the treatments. Plaintiff's counsel said that as a direct result of the high levels of hormones, MacDonald suffered permanent damages including vision loss, pain, body changes and headaches, and her quality of life has been greatly reduced.

Oakland County Circuit Court Judge Phyllis C. McMillen entered judgment at $2,076,500.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Physical and cognitive injuries from excessive levels of hormone replacement therapy medications

Name of case: *MacDonald v. HRC Medical Centers Inc.*

Court/Case no./Date: Oakland County Circuit Court; 14-142563-NH; March 28, 2016

Tried before: Judge

Judgment amount: $2,076,500

Attorney for plaintiff: Brian J. McKeen

3 $1.55 Million

Judgment details firm's specific oppressive acts

Plaintiff Rama Madugula alleged that he began working for defendant Dataspace Inc. in late 2002, at which time Dataspace was losing more than $50,000 per month. In less than a year, Madugula's efforts returned Dataspace to profitability.

In light of Madugula's substantial contributions to the growth and success of the company, he became a 29 percent shareholder in 2004. Madugula's interest increased to 36.25 percent in 2007 after Dataspace redeemed another shareholder's interest.

In his complaint, Madugula alleged that defendant Benjamin Taub terminated Madugula's employment in breach of a supermajority provision in a shareholders' agreement. Plaintiff further alleged Taub froze Madugula out of any involvement in the company's operations and decisions after the company's revenues doubled and it appeared the company might sell for many millions of dollars.

After a trial, Madugula won a jury verdict for oppression, totaling approximately $1.3 million for a buyout and damages.

Taub appealed, arguing that (1) oppression is an equitable claim that should have been tried by the court; and (2) the breach of the supermajority provision was just a breach of contract and not evidence of oppression. The Michigan Court of Appeals denied the appeal on both grounds.



MANTESE



WILLIAMSON

Taub then sought leave to the Michigan Supreme Court, arguing the same two points. The MSC — in the first shareholder oppression case ever taken up by the high court — held that the oppression cause of action was an equitable claim, to be tried by a jury, and that trial courts may employ advisory juries when deciding claims alleging willfully unfair and oppressive conduct, *Madugula v. Taub*, 496 Mich. 685 (2014). The MSC also held that the breach of a shareholders' agreement can be evidence of oppression.

On remand, the trial court used the advisory jury's findings and found oppression, writing: "Based on the facts produced at trial, the reasoning set forth above and the governing law, the Court concludes that Madugula's shareholder interests were interfered with by Taub as a matter of law."

The specific oppressive acts identified in the order include: termination of Madugula's employment, compensation and benefits; denying Madugula access to information regarding Dataspace's operations; freezing Madugula out of decision-making and involvement in operations; and violation of the parties' shareholders agreement.

The court then entered judgment in favor of Madugula, awarding a buyout of $1.2 million and $191,675 in damages. After setting off amounts that the court determined were owed to Taub, the court entered a total net judgment of $1,283,782.66 against Taub, with interest payable at the statutory rate and compounding annually. With interest, the judgment reached $1.55 million. Defendant filed a claim of appeal, and the court ordered him to post a bond in the amount of $600,000.

The case then settled for a confidential amount.

Gerard V. Mantese, co-counsel for plaintiff, provided case information.

Type of action: Shareholder oppression

Injuries alleged: Damages to shareholding interest, buyout amount, lost wages

Name of case: *Madugula v. Taub*

Court/Case no./Date: Washtenaw County Circuit Court; 2008-537-CK; May 26, 2016.

Tried before: Advisory jury, bench trial

Name of judge: Hon. Archie C. Brown

Judgment amount: $1.55 million

Most helpful expert: Thomas Frazee, economics, Rochester

Attorneys for plaintiff: Gerard V. Mantese, Ian M. Williamson, Peter S. Tangalos

4 $1.25 Million

Clinic sought restitution for embezzled money

From June 1994 until Dec. 12, 2012, defendant was employed by plaintiff Michigan Institute of Urology PC. Her job responsibilities included oversight of accounts payable and management of the billing for the corporate MIU American Express credit card account.

Plaintiff said that from approximately 2007 through December 2012, defendant devised a scheme to obtain money from MIU through materially false and fraudulent pretenses and representations. Specifically, defendant concealed the fact that she diverted more than $1.2 million of corporate funds to her own use by forging at least 90 checks from MIU's accounts, without authorization, primarily to pay her personal American Express account (from which she used to make extravagant purchases and take cash withdrawals). Kushner also frequently overpaid balances on her personal American Express account with MIU's funds, and either spent the excess credits, and/or received checks from American Express for overages.



ROSENBAUM



SCHWARTZ

After the fraud was discovered by MIU, defendant was terminated and report-

Judgments

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

ed to law enforcement. In October 2015, the U.S. Attorney for the United States District Court for the Eastern District of Michigan filed criminal charges against defendant for mail fraud (18 U.S.C. §1341). Defendant pleaded guilty.

On Jan. 15, 2016, MIU's attorneys initiated a lawsuit against defendant for causes of action including conversion; statutory conversion; fraud; and unjust enrichment/constructive trust. The allegations in the complaint were bolstered by defendant's written admissions in the criminal case.

During the discovery process, after extensive negotiations among counsel, the parties agreed to entry of a consent judgment, in the amount of $1.25 million, which represents the funds stolen plus attorneys' fees and costs.

Jonathan H. Schwartz, co-counsel for plaintiff, provided case information.

Type of action: Fraud

Injuries alleged: Theft of $1.2 million by former employee

Name of case: *Michigan Institute of Urology PC v. Kushner*

Court/Case no./Date: Macomb County Circuit Court; 2016-143-CB; April 19, 2016

Name of judge: Hon. Richard L. Caretti

Demand: $1.25 million

Consent judgment amount: $1.25 million (with statutory interest accruing)

Case evaluation: Consent judgment entered prior to case evaluation

Attorneys for plaintiff: Barry M. Rosenbaum, Jonathan H. Schwartz

Attorney for defendant: Dean Elliot

5 **$1,002,544**

Investors: Operating agreement breached

In 2005, Richard C. Hermann solicited accredited investors seeking $2 million in initial capital investment to construct a fractional timeshare condominium project on East Grand Traverse Bay that is known as Tamarack Lodge. To induce their investment of $50,000 per membership unit, Hermann offered 25 percent annual interest, noncompounded, and guaranteed their investments to be repaid by himself personally after three years if the LLC failed to do so before then.

In 2008, Hermann did not repay the investors. Before doing so, he diluted his personal assets and claimed that he was uncollectible if they sought to enforce the personal guarantee. As for the LLC, the condominium building was underwater at that time, owing more on the construction loan than what the building was worth.

Plaintiff's counsel said that instead of attempting to repay the investors, Hermann asked them for more money. Although their investment was entitled to priority repayment, he solicited a vote of the investors to create a new class of investors that would have a greater priority of repayment than the initial investors.

Despite the fact that the original investors' operating agreement required unanimous consent to amend the agreement, Hermann was alleged to have wrongfully amended the operating agreement, without the unanimous consent of the original investors, to subordinate the original investors' repayment behind the repayment of the new class of investors. Hermann also was alleged to have wrongfully amended the operating agreement to require a super majority vote to enforce the personal guarantee against him.



KERN

Hermann's defenses were essentially that the investors' right to return of their investment was barred by their failure to pursue him earlier, and that only a majority of investors could take any enforcement action against him.

The arbitrator held that amendments were in breach of the LLC's operating agreement because Hermann never obtained the unanimous consent of the original investors to do so. Because the amendments also diluted the voting percentages of the original investors, the arbitrator also held that Hermann's action oppressed the minority shareholders.

Ultimately, the arbitrator awarded the investors' return of their original investment plus 25-percent noncompounded, annual interest for the 11 years that had passed since they invested in Tamarack. The arbitrator held the LLC liable for breach of the LLC's operating agreement, and Hermann liable for breach of his guarantee agreement.

Upon entry of the arbitrator's award in circuit court, Judge Philip E. Rodgers Jr. vacated the award against Hermann personally (without providing any justification for doing so). The order vacating the award against Hermann is being appealed by the investors, whereas the order granting judgment against the LLC for $1,002,544 is a final order that was able to be collected upon as of Dec. 6.

Brace Kern, counsel for plaintiffs, provided case information.

Type of action: Contract

Injuries alleged: Failure to repay investors

Name of case: *Cook v. Tamarack Development Associates, LLC*

Court/Case no./Date: 13th Circuit Court-Grand Traverse County; 14-30615-CK; Oct. 11, 2016

Tried before: Arbitration, judge

Name of judge: Hon. Philip E. Rodgers Jr.

Name of arbitrator: Alton Thomas Davis

Judgment amount: $1,002,544

Attorney for plaintiff: Brace E. Kern

Attorney for defendant: Todd W. Millar

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Arbitrations

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

1 $2,252,306

Minority shareholders asserted oppression

Plaintiffs were minority shareholders in a construction and staffing company, Vetbuilt Building Group Inc. (VBG). Defendant Garcia was the majority owner and president. Garcia and defendant Malacara moved staffing customers, accounts receivable and money from VBG to Malacara's company, Vetbuilt Services Inc. (VSI) and damaged the company thereby.

Inter alia, the arbitrator awarded damages against Garcia for shareholder oppression, breach of fiduciary duties, conversion and fraud. He also awarded all attorneys' fees, expert fees and costs under the statutory claims. The arbitrator also held Garcia responsible for alleged business expenses not documented for proper business purpose and taking excessive compensation.



NEWMAN

Against VSI, the arbitrator awarded damages to plaintiffs for wrongfully collecting and retaining VBG's receivables, and improper payments made to and for VSI by VBG.

Plaintiffs' counsel said that the most difficult aspects of the proofs were damages. VBG did not keep proper books and records, and almost all of plaintiff's damage proofs were subpoenaed from third parties. Plaintiffs' controller, Michelle Hohendorf, was extremely helpful in constructing the money trail.

Hon. Daniel P. Ryan awarded $2,252,306 in arbitration.

H. Joel Newman, counsel for plaintiffs, provided case information.

Type of action: Shareholder oppression, breach of fiduciary duties

Name of case: *Johnson v. Garcia*

Court/Case no./Date: Michigan Judicial Arbitration Mediation Services; 14-011825-CB; Dec. 3, 2016

Tried before: Arbitration

Name of judge: Hon. Maria Oxholm

Name of arbitrator: Hon. Daniel P. Ryan

Case evaluation: $1 million

Arbitration award: $2,252,306

Special damages: $275,000 in attorneys' fees and costs under oppression and conversion statutes

Attorney for plaintiff: H. Joel Newman

Attorney for defendant: Avery Williams

2 $1,572,626

Breach of employment, stock case arbitrated

In this action for breach of employment and stock rights agreements, the parties entered into an employment contract and, claimant argued, a poorly written stock rights agreement. Claimant asserted that neither he nor the president of the respondent were legally sophisticated, but that both were experienced, successful salesmen.

The stock rights agreement provided for American Arbitration Association commercial arbitration, while the employment agreement provided for arbitration under the AAA employment rules. Martin C. Weisman was appointed the commercial arbitrator and David Barbour was appointed the employment arbitrator. The arbitrations were consolidated for hearing, which was conducted from March 14-17, 2016.



FETT



TISHKOFF

Respondent sells copiers and other office equipment in Southeastern Michigan. Claimant had experience in copiers and several other fields, including legal publishing and biologics. Respondent hired claimant to be its vice president and general manager pursuant to a five-year employment agreement that respondent could terminate only for cause. In the event of termination without just cause, the agreement provided for liquidated damages equal to the unpaid balance of the contract at $265,000 per year.

Contemporaneously, the parties executed a stock rights agreement which was extremely ambiguous as to whether it granted stock or stock rights. The distinction turned out to be unimportant as the agreement provided for payout of a lump sum equal to the value of the stock or stock rights. Arbitrator Weisman in the commercial case ultimately determined that claimant had stock rights but not stock. Applying the formula for valuing the stock rights, Weisman awarded $665,932.

The dispute arose because there was confusion as to whether claimant was an actual shareholder or merely an employee. The stock rights agreement was highly ambiguous on this point. The parties conducted themselves as if claimant was a shareholder for the first two years of the contract.

Claimant argued that apparently nobody informed respondent's CPA that claimant was a shareholder. Claimant's status as a shareholder would have dramatically impacted respondent's tax reporting and in fact would have necessitated amended personal and corporate returns. Respondent's CPA learned that claimant was a shareholder (or so he thought) in February 2014.

Respondent's and its CPA's solution was to retroactively amend the employment and stock rights agreements. Consequently, respondent's president offered to enhance claimant's compensation and responsibilities if he would agree to retroactively amend the agreements. He solicited a proposal from claimant.

Respondent's president found claimant's proposal unacceptable. Upon learning that his attorney had obtained an expert opinion that the stock rights agreement conferred stock rights, not stock, respondent's president began setting the stage for a "just cause" termination which would allow respondent to escape the payouts provided in the employment and stock rights agreements. Within four months, respondent believed it had racked up enough just cause to fire claimant and escape the payouts. It was wrong. Nonetheless, respondent fired claimant in June 2014.

Towards the end of claimant's tenure, respondent locked him out, denied him access to the computer network and ordered him to cease all communications with respondent's personnel. Respondent also demanded that claimant return his company-issued laptop. Claimant retained the laptop for nine days so that his attorney could image the hard drive and through his attorney returned the laptop to respondent.

The question in both arbitrations was whether respondent had just cause to fire claimant. Both arbitrators answered "no."

Respondent's asserted bases of just cause were:

(1) claimant abandoned his job when he failed to return the computer for nine days;

(2) he engaged in criminal fraud or embezzlement by (a) telling people he was an owner, (b) failing to return for 10 days the 2012 corporate tax return which he had ready access to in the ordinary course and (c) failing to list people that he told he was an owner;

(3) he breached job duties and responsibilities by telling customers and employees that he was an owner and securing the 2012 tax return from the CPA;

(4) he defied directives to (a) return the 2012 tax return and (b) stop telling people he was an owner; and

(5) he was insubordinate for failing to return his laptop for nine days.

The arbitrators easily rejected these grounds as pretextual.

The key to success in the arbitration was the detailed depositions of respondent's president, CPA and other employees taken by co-counsel William G. Tishkoff. Much of the testimony was admitted over respondent's objection as admissions under MRE 801(d)(2)(D). This was particularly important because the parties agreed to forgo a hearing transcript. Thus, the record consisted of pages of deposition excerpts containing admissions by respondent's president, CPA and other managers.

After three months of skirmishing in Livingston County Circuit Court, claimant collected the full amount of the judgments with interest — $670,823.46 for the stock rights agreement and $901,802.72 for the employment agreement.

James K. Fett, counsel for claimant, provided case information.

Type of action: Breach of employment contract, stock rights agreement

Injuries alleged: Economic damages — severance, bonuses, value of stock rights

Name of case: Confidential

Court/Case no./Date: Judgments entered in Livingston County on two Arbitration Awards; 01-14-0001-6939; May 17, 2016

Tried before: Arbitration

Names of arbitrators: Martin C. Weisman (stock rights agreement); David M. Barbour (employment agreement)

Demand: $1,314,696

Highest offer: $400,000

Arbitration awards: $670,823.46 (stock rights agreement); $901,802.72 (employment agreement)

Most helpful expert: William G. Mallon, CPA, Rochester

Attorneys for claimant: James K. Fett, William G. Tishkoff

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1 $17.5 Million

Plaintiff killed while on premises lawfully

Plaintiff was killed due to the alleged negligence of defendant corporation while plaintiff was lawfully on the premises of the corporation.

The matter settled for $17.5 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: General negligence

Injuries alleged: Wrongful death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 9, 2016

Settlement amount: $17.5 million

Attorney for plaintiff: Geoffrey N. Fieger

2 $15 Million

Rear-end crash caused spinal cord, head trauma

Defendant driver failed to pay attention to the road ahead and rear-ended slow-moving farm equipment. This resulted in plaintiff passenger becoming a quadriplegic, involving spinal cord injuries, closed-head injuries, seizures and lifetime need for 24-hour care.

The matter settled for $15 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Quadriplegia, spinal cord injuries, closed-head injuries, seizures

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 4, 2016

Settlement amount: $15 million

Attorney for plaintiff: Geoffrey N. Fieger

3 $10.7 Million

Tractor-trailer struck driver from behind

On July 24, 2014, at approximately 7 a.m., plaintiff's husband was driving to work on his motorcycle, travelling east on U.S. 12 in Pittsfield Township in Washtenaw County. It was a beautiful, sunny morning. At the same time, defendant truck driver, employed by FedEx Freight, was also driving his tractor and two trailers, following plaintiff's husband on U.S. 12. There were no vehicles between them.

Plaintiff's decedent arrived near the intersection of U.S. 12 and Platt Road, a well-known busy intersection, on his way to work, and came to a complete stop behind a long line of vehicles waiting for the light to change. When stopped, the decedent was approximately a quarter-mile west of the intersection, about one car length behind a white pickup. While plaintiff's husband waited for traffic to move, the tractor and trailers driven by defendant truck driver slammed into plaintiff's husband from behind at more than 40 mph.

The impact occurred almost directly in front of the Pittsfield Township fire and police departments. Prior to the collision, defendant truck driver did not apply the brakes or react in any way to the line of traffic backed up in front of him in plain view. The roadway is straight and flat for a considerable distance west of the accident scene. Plaintiff's counsel said defendant truck driver was inattentive to his surroundings, as well as the dangers created due to his acute and chronic sleep deprivation. Just prior to impact, his head was down, he was dozing, and the passenger side of his truck had drifted to the right, onto the pavement fog line.

The force of the collision pushed the motorcycle into the white pickup truck, which forced the plaintiff's husband under the front of defendant's tractor, crushing him. The motorcyclist/ plaintiff's husband's pelvis was crushed between his motorcycle and the semi. This initially prevented serious internal bleeding and allowed him to maintain blood pressure, while his helmet protected his head from serious injury. He was therefore conscious at the scene and able to respond to the police, fire and ambulance personnel. His spinal cord was not seriously injured and he was consequently experiencing excruciating pain.

It took rescue workers nearly half an hour to lift the semi off the plaintiff's husband. During much of this time, nearly delirious with pain, he was attempting to pull himself out from under the semi. During this time, emergency medical workers kept talking to him but could not provide him any pain control medications. Once the truck was lifted up, plaintiff's husband was placed on a stretcher and given drugs to sedate him and permit him to be intubated. He was then loaded onto a helicopter and flown to the University of Michigan Medical Center, where he died about an hour after arrival.

When questioned by police at the scene of the collision, defendant truck driver initially admitted that he fell asleep and caused the accident. He later admitted he "normally" sleeps about six hours per day, but that prior to going to work on the evening of July 23, 2014, he had only slept a total of three to four hours. After being taken into police custody, his story changed and he claimed the accident occurred because the sun was in his eyes.

Defendants admitted to liability for negligently rear-ending plaintiff's decedent, causing his death, and sought to exclude all other evidence of fault. The truck driver's pre-employment physical exam reportedly revealed he was not get-



Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

ting "enough rest" and needed to increase his daily sleep time. However, FedEx placed the driver on its overnight shift.

The Trial Court ruled that defendant's admission of liability on one theory did not preclude the plaintiff from advancing other theories of liability. Plaintiff advanced theories of recklessness and negligent training, screening, and hiring of the truck driver. Plaintiff claimed that defendant truck driver was reckless in operating the semi-truck while being chronically sleep deprived.

Plaintiff claimed that defendant knew of defendant truck driver's chronic sleep deprivation, yet did nothing to remedy this dangerous condition. Moreover, plaintiff claimed that defendant truck driver should have never been hired as a midnight shift semi-tractor trailer operator given his chronic sleep deprivation, and that FedEx Freight had negligently entrusted its vehicle to him.

Plaintiff and her husband had been married since 2009, and had welcomed their first child in September 2013, 10 months before the accident.

One of plaintiff's key experts was Dr. Charles Czeisler, chief of the Sleep Medicine Department at Harvard Medical School. Czeisler has conducted extensive research on the negative effect of sleep deprivation on worker awareness and reaction time, and opined that the truck driver in this case was chronically and acutely sleep deprived to the point where his actions simulated those of a drunken driver.

Trial preparation efforts focused on the significant conscious pain and suffering along with the tremendous economic and noneconomic losses suffered by the surviving spouse and child. Through discovery depositions of first responders and emergency medical personnel, plaintiff's counsel was able to establish about 26 minutes of conscious pain and suffering. Computer generated images of the impact, showing the semi, motorcycle and pickup were prepared to help demonstrate this key point.

Decedent, while employed full time, had designed and personally constructed (along with his wife and grandfather) the family home. Given the decedent's young age, professional and personal accomplishments, plaintiff was able to claim wage loss of more than $6 million (accounting for present-cash value). This was supported by successful motion practice on the issue of the types of economic recovery available to the estate, including future salary increases and household services in excess of those recoverable under MCL 500.3108.

Through the use of focus groups and a mock trial, plaintiff's counsel was able to focus on those areas most receptive to likely jurors, as well as determine appropriate settlement value. This played a key role in determining the potential value of the damages.

The matter settled for $10.7 million.

Brian T. Keck, co-counsel for plaintiff, provided case information.

Type of action: Civil, negligence

Injuries alleged: Death

Name of case: *Doe v. FedEx Freight*

Court/Case no./Date: Washtenaw County Circuit Court; confidential; Jan. 25, 2016

Name of judge: Hon. Timothy P. Connors

Settlement amount: $10.7 million

Most helpful experts: Dr. Steven Sherbel, clinical psychology, Birmingham; Michael H. Thomson, economics, Southfield; Daniel Lee, accident reconstruction, East Lansing; Dr. Elissa Benedek, psychology, Ann Arbor; Dr. Charles A. Czeisler, sleep medicine, Boston; Whitney G. Morgan, motor carrier safety, Birmingham, Alabama; Dr. Werner U. Spitz, forensic pathology, St. Clair Shores; William C. Wilson, technical expert, Bath; Robert G. Pachella, human perception expert, Ann Arbor

Attorneys for plaintiff: Courtney E. Morgan Jr., Brian T. Keck, John J. Bursch

Keys to winning: Thorough development of significant conscious pain and suffering along with extensive juror analysis; careful development of multiple theories of recovery; successful motion practice

4 $9 Million

Delay in calling code led to debilitation

Patient was admitted to the hospital through the emergency department with progressively worsening shortness of breath. Her symptoms started approximately a month earlier after she gave birth to her daughter.

An X-ray of her heart showed some dilation, along with some pulmonary congestion. She was provided with Lasix and an echocardiogram was ordered. The echocardiogram that was performed revealed an ejection fraction between 50 and 55 percent. As a result, the patient was scheduled for a transesophageal echocardiogram (a "TEE") to be performed the following day.

The TEE started at 9:25 a.m. and was terminated at 9:29 a.m. because the patient stopped breathing, was hypoxic and experiencing a low heart rate. The cardiologist performing the procedure testified that four minutes after the procedure started, he withdrew the probe so that the CRNA could establish the airway and improve the hypoxic status.

Sixteen minutes had passed before a code was called during which time the patient was deprived of oxygenation to her brain. Immediately after the patient was intubated, her oxygen saturation level returned to 100 percent, and eight minutes later, her heart rate returned. The code was stopped at 10:06 a.m. and the patient was transferred to the Intensive Care Unit in a comatose state.

As a result of the delay in calling the code and intubation, the patient suffered severe hypoxic encephalopathy.

The case was vigorously litigated and value was added in preparation of life care planning and life expectancy tables. Plaintiff's counsel successfully attacked the credibility of defendants' retained life care planners and life expectancy experts with extensive research of the literature and quality of the literature upon which defendants' retained experts relied. The case required several facilitations before the matter resolved short of trial.

Jeffrey T. Meyers and Timothy M. Takala, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Delay in the calling of a code and intubation leading to severe hypoxic encephalopathy

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; May 4, 2016

Name of judge: Hon. Maria L. Oxholm

Settlement amount: $9 million

Attorneys for plaintiff: Jeffrey T. Meyers, Timothy M. Takala

5 $8.5 Million

After fall, woman, 41, needs lifelong treatment

Plaintiff was a 41-year-old mother of two children during the surgery at issue. Plaintiff sustained a fall where she hit her head and neck. After the fall, she had right cervical radiculopathy and pain, and numbness in her right arm with loss of sensation in her fingers.

Before the fall, she was completely independent and employed full time at defendant hospital. After the fall, she was ambulatory and could still perform activities of daily living. An MRI taken was interpreted to demonstrate a right C5-6 herniation. Some conservative management was attempted for a brief amount of time.

Defendants then decided not to perform any additional conservative management and simply recommended immediate surgery. Defendant surgeon and an assistant performed a right C5-6 poster cervical discectomy upon plaintiff using METRx system. There was a disc herniation compressing the C6 nerve, which was removed.

After plaintiff was extubated and awakened, it was discovered that she had no movement in her legs and no movement of triceps or hands. She was emergently taken back to the operating room. The surgical area was reopened. Upon exposing the C5-6 lamina, a central durotomy with spinal cord contusion was discovered. The lamina at C5-6 was removed. Further exploration was performed.

Following the surgery, an MRI was performed that eliminated other potential areas of compression. It was "suspected" that one of the dilators penetrated between the lamina causing the durotomy and spinal contusion. No other cause was identified. The only possible cause of the contusion was the placement of the dilator tubes by the defendants. The result was a total and permanent injury of the spinal cord causing quadriplegia.

Plaintiff now requires around-the-clock nursing care. She has no feeling from C6 down. She cannot independently feed herself. She requires physical and occupational therapy. Her bladder is catheterized every four hours. Her bowel is

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managed and regulated by medications and enema. She cannot transfer or sit up independently.

Defendants argued that the cause of the injury was not due to malpractice, but rather because plaintiff had an abnormal anatomy in her spine. Defendants argued plaintiff had a "splayed" lamina that allowed the dilator tube to cause a contusion on the spinal cord. Normally, patients' spinal cords are similar to shingles on a roof and an object such as a dilator cannot penetrate through. Defendants argued plaintiff's abnormal anatomy was the sole cause of the injury.

Defendants also argued that plaintiff was exaggerating economic damages. They believed that plaintiff could still be gainfully employed and that with physical therapy she could continue to be largely self-sufficient.

After two days of jury trial, the matter settled for $8.5 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Improper technique during spinal surgery resulting in permanent quadriplegia

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 5, 2016

Settlement amount: $8.5 million

Attorney for plaintiff: Brian J. McKeen

6 **$8 Million**

Doctor gave unneeded chemo to his patients

Defendant Dr. Farid Fata was accused of misdiagnosing his patients with cancer and treated them unnecessarily and excessively with chemotherapy for his own personal, financial gain. In many cases, this unnecessary and excessive treatment lasted as many as seven years, upending these individuals' entire lives and leading to significant, permanent injuries and, in some cases, death.



MACKENZIE

In one of those cases, Fata treated a patient for almost seven years with chemotherapy, allegedly for myelodysplasia. When the patient first saw Fata, he was in excellent health with very few complaints, other than fatigue. He was golfing often and without difficulty.



OLSMAN

Fata immediately started this patient on an aggressive course of chemotherapy, which caused permanent and irreversible damage to his heart and vascular system. This damage, coupled with the fact that Fata did not allow the patient to have a break in treatment, led to the amputation of both of his legs and, ultimately, the patient's death.



MCKEEN

There were 43 civil cases in total. The cases were either filed in Oakland County Circuit Court, or subject to a tolling agreement during the pendency of the global facilitation. The parties facilitated with Robert Riley, who worked for almost a full year before an $8 million settlement was reached.

Upon settlement, the cases were submitted to binding arbitration with Richard Boothman, who made a determination as to how the settlement funds were distributed among Fata's patients. All arbitration results are confidential.

Donna M. MacKenzie, co-counsel for plaintiffs, provided case information.

See related story, "Facilitation-arbitration approach nets $8M for cancer fraud claims," MiLW, Dec. 26, 2016.

Type of action: Medical malpractice

Injuries alleged: Administration of unnecessary chemotherapy

Name of case: *Korff v. Fata*

Court/Case no./Date: Oakland County Circuit Court; 2014-142251-NH; July 20, 2016

Tried before: Mediation

Name of judge: Hon. Hala Jarbou

Name of mediator: Robert Riley

Name of arbitrator: Richard Boothman

Settlement amount: $8 million

Attorneys for plaintiffs: Donna M. MacKenzie, Jules B. Olsman, Brian J. McKeen

Attorneys for defendants: John M. Toth, Randall A. Juip, Leroy H. Wulfmeier III, Bruce E. Bigler, Enrico G. Tucciarone

7 **$6.5 Million**

Spinal injuries, nerve damage incurred in crash

Defendant driver failed to pay attention to the road ahead and struck plaintiff's vehicle head-on. The collision resulted in plaintiff passenger suffering multiple spinal cord injuries, nerve damage and multiple fractures requiring ongoing medical care.

The matter settled for $6.5 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Spinal cord injuries, nerve damage, multiple upper and lower extremity fractures

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 27, 2016

Settlement amount: $6.5 million

Attorney for plaintiff: Geoffrey N. Fieger

8 **$5.45 Million**

Failed forceps use cited in birth trauma

Plaintiff claimed the mismanagement of minor-plaintiff's mother's labor and delivery led to hyperstimulation; cranio-cerebral compression; arrest of descent; traumatic fetal delivery; failed use of forceps; and delayed C-section. This combined to cause the minor-plaintiff catastrophic permanent injury.

The matter settled for $5.45 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, birth trauma

Injuries alleged: Hypoxic ischemic encephalopathy and trauma, cerebral palsy, seizures

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Aug. 4, 2016

Settlement amount: $5.45 million

Attorney for plaintiff: Geoffrey N. Fieger

9 **$5 Million**

Failure to treat infection caused a brain injury

Plaintiff-minor sought compensatory damages from defendant hospital, prenatal care practice, doctors and nurses for claims of medical malpractice.

Mother began her prenatal care with an OB/GYN at about 8 weeks' gestation. She had a history of prior preterm delivery and umbilical cord prolapse at 23 weeks gestation, where her baby passed away.

At 29 weeks gestation, she was admitted to the hospital with preterm labor. She received medications to mature the baby's lungs and stop her labor (i.e. her contractions and cervical dilatation). After admission and medications, she no longer had preterm labor. She did not receive antibiotics for group B streptococcus (GBS) bacteria, which is routinely administered to mothers in preterm labor to prevent GBS infection of the fetus.

Mother was admitted for 39 hours and then was discharged home. Lab results from the day after discharge indicated that the mom had an E. Coli urinary tract infection. Lab results also showed she was positive for GBS bacteria. She did not receive antibiotics for the UTI since she was not in the hospital when the lab results came back.

Mother followed up as directed with her OB/GYN six days later. She had complaints of frequent urination since the night before. Upon examination by the OB/GYN, her water bag was noted to be broken, and she was sent immediately to the hospital. She delivered by C-section at 29 weeks, 6 days gestation.

Placental pathology revealed the presence of intrauterine infection (chorioamnionitis) and GBS bacteria. The presence of E. Coli bacteria also could not be ruled out. Plaintiff-minor was admitted to the neonatal ICU for prematurity, and was subsequently noted to have brain damage on head imaging.

Subsequent to this pregnancy, mother delivered two other babies at 29 and 27 weeks gestation due to incompetent cervix. All experts agreed that because of mother's history of preterm delivery that the delivery at issue would have been premature.



REITER

Plaintiff-minor suffered cerebral palsy, developmental delays and learning disabilities. Discovery of data recovered from the electronic medical record (audit trail data) revealed that the preliminary results for mother's abnormal lab cultures were available while mother was still in the hospital, and yet she did not receive antibiotics prior to discharge.



WALSH

Plaintiff argued that health care providers were required to give antibiotics upon mother's admission to the hospital with preterm labor, and again upon discharge when abnormal lab results indicated the presence of an E. Coli urinary tract infection and a positive GBS culture.



THOMAS

The presence of the untreated infections led to preterm dilatation of cervix and allowed the bacteria to ascend, causing intrauterine infection. Had these infections been treated, plaintiff argued, then the baby's brain injury from exposure to bacteria in utero would have been averted.

Defendant hospital and hospital providers argued that antibiotic prophylaxis for preterm labor was not required where delivery was not imminent and the moth-

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Settlements

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er was not in preterm labor while in the hospital.

They also argued that the abnormal lab results evidencing bacteria did not come back until after mother was discharged from the hospital, and therefore treatment was not the responsibility of the hospital, but the responsibility of mother's private OB/GYN who ordered the tests and was responsible for following up.

In addition, defense contended that the brain damage was due to the fact that baby delivered 10½ weeks early and the mother had a history of delivering four of her babies early.

The case settled for $5 million.

Jesse M. Reiter and Emily G. Thomas, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, birth trauma

Injuries alleged: Brain damage, cerebral palsy, developmental delays, cognitive deficits, learning disabilities

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 16, 2016

Tried before: Mediation

Settlement amount: $5 million

Most helpful expert: InFocus Research Group, Shelby Township

Attorneys for plaintiff: Jesse M. Reiter, Rebecca S. Walsh, Emily G. Thomas

9 $5 Million

Driver suffered major injuries in head-on crash



DANZIG



JOHNSON

A semi-tractor was speeding in inclement weather on Interstate 475. The driver lost control, crashed through the median — a cement barrier — and struck plaintiff's van head-on. Plaintiff was rendered unconscious, with major orthopedic, brain and head injuries.

The matter settled in Genesee County Circuit Court for $5 million.

Jeffrey A. Danzig, co-counsel for plaintiff, provided case information.

Type of action: Auto negligence, trucking accident

Injuries alleged: Major orthopedic, brain and internal injuries

Name of case: Confidential

Court/Case no./Date: Genesee County Circuit Court; confidential; July 18, 2016

Name of judge: Hon. Joseph J. Farah

Name of facilitator: Daniel P. Makarski

9 $5 Million

Lawsuit: Child born with extensive brain damage

Minor-plaintiff was born via emergency C-section after her mother was rushed to the delivery room with a severe placental abruption caused by her severe preeclampsia. Due to the abruption, minor-plaintiff was left without oxygen and blood supply to the brain and was born severely depressed with extensive brain damage and permanent cognitive impairments.

Plaintiff claimed defendant health care providers failed, during the prenatal period, to recognize the classic symptomology of pregnancy-induced hypertension and preeclampsia, which led to the abruption. Plaintiff further claimed after birth, the health care providers also failed to implement the necessary resuscitation, which exacerbated minor-plaintiff's brain damage.

The matter settled for $5 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, birth trauma

Injuries alleged: Hypoxic-ischemic encephalopathy, significant developmental delay, cerebral palsy, history of a seizure disorder

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Jan. 25, 2016

Settlement amount: $5 million

Attorney for plaintiff: Geoffrey N. Fieger

12 $4.95 Million

Woman suffered multiple injuries in auto accident

Plaintiff was a passenger in her boyfriend's vehicle. They were hit head-on by defendants' truck.

Plaintiff's injuries included: a left frontoparietal subdural hematoma and resulting mild traumatic brain injury; comminuted left acetabular fracture (hip socket); left greater trochanteric fracture (upper femur); left lateral tibial plateau fracture; right knee subluxation with resulting grade posterior cruciate ligament tear; complete tear of the right lateral collateral ligament; grade 1 right anterior cruciate ligament tear; oblique tear through the posterior horn of the medial meniscus; and a comminuted left calcaneal fracture requiring open reduction and internal fixation.

The matter settled for $4.95 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Mild traumatic brain injury, lateral tibial plateau and knee injuries

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Aug. 11, 2016

Settlement amount: $4.95 million

Attorney for plaintiff: Geoffrey N. Fieger

13 $4.7 Million

Passenger struck, killed in collision with truck

Defendant driver was driving a vehicle owned by defendant trucking company and defendant corporation. The vehicle plowed into a vehicle in which plaintiff's decedent was a backseat passenger. Plaintiff's decedent was fatally injured with no conscious pain and suffering.

The matter settled for $4.7 million.

Louis G. Corey, counsel for plaintiff, provided case information.

Type of action: Third-party auto/trucking accident

Injuries alleged: Death of 38-year-old husband/father of three

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; June 3, 2016

Name of mediator: Amy P. Hathaway

Settlement amount: $4.7 million

Attorney for plaintiff: Louis G. Corey

14 $4.5 Million

Experts: Trauma findings needed prompt attention

This case involves a first-time mother who is diabetic. At 27 weeks gestation, she began experiencing severe abdominal pain and cramping, a back ache and leg cramps. The abdomen was hard and the mother noticed a decrease in fetal movement.

She called the OB/GYN clinic on three

97,151

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separate occasions throughout the afternoon and informed a female nurse about her symptoms, as well as about problems she was having with her insulin pump. The nurse indicated that everything was fine. The last time the mother called the clinic, the nurse instructed her to take a bath.

Plaintiff's expert opined that she should have been told to promptly go to the hospital for immediate evaluation, and the failure to do so was a violation of the standard of care.

The mother did as she was instructed and waited for her condition to improve. When it did not, she presented to the hospital at or about 8 p.m. She was first seen by resident physician. The cervix was noted to be dilated to 1 cm and 75 percent effaced. The record states that the baby was at -1 station and the uterus "firm." Plaintiff's expert opined that the firm uterus was a sign of a placental abruption that the resident failed to appreciate.

The mother also complained of spotting, which plaintiff's expert was another sign of abruption. She was contracting every one to two minutes, yet another sign of abruption. The mother's blood sugar was elevated. According to plaintiff's expert, this constellation of findings mandated a STAT consultation with an attending obstetrician, but no staff obstetrician was called.

An external fetal monitor was applied at approximately 8:05 p.m., but because it was not properly adjusted, a fetal heart rate tracing was not obtained. Plaintiff's nursing expert indicated that the standard of care required that the monitor be immediately repositioned. It was not until 8:21 p.m. that a fetal heart tracing was recorded. At that time, the tracings were broken because of poor positioning of the toco.

Despite the fact that the tracing was not continuous, it revealed that the fetal heart rate was in the 150s with minimal variability and probable decelerations. Plaintiff's experts stated that these were worrisome and alarming findings that mandated prompt attention pursuant to the standard of practice.

At 20:25, the tracing was broken once again, but there were indications of probable, severe fetal heart rate decelerations and decreased beat to beat variability. At 20:33, there were continuous fetal heart rate tracings. According to plaintiff's experts, it should have been apparent to those caring for the mother and fetus that a significant and prolonged fetal heart rate deceleration had been taking place. Following a return to baseline at 20:39, there was diminished variability and probable repetitive late decelerations.

Predictably, the variability became more diminished. The uterine monitor showed tachysystole, an obvious marker of placental abruption. No one was providing any intrauterine fetal resuscitation, nor was anyone taking steps to deliver the baby. Plaintiff's experts opined that it should have been obvious that this baby was in need of intrauterine resuscitation and immediate delivery, and that the standard of care required intrauterine fetal resuscitation; if that did not improve the situation, a STAT C-section was required.

By 21:20, the strip had deteriorated markedly, evolving into a severe bradycardia. From that moment on, there was a very narrow window of opportunity to deliver the baby and avoid neurologic injury. It does not appear that any attending obstetrician was ever asked to see the mother until sometime after 21:22. The mother was not taken down to OR until 21:35 and delivery was not accomplished until 21:41.

The obstetricians who performed the procedure noted significant placental abruption with extensive clot and Couvelaire uterus. At birth, the child had diffuse bruising, no spontaneous respirations, and no movement. Apgar scores were 2 at one minute and 3 at five minutes. The baby required positive pressure ventilation and intubation. Arterial cord blood gases revealed profound metabolic acidosis with a pH of 6.676 and base excess of -21.4. These findings were consistent with acute intrapartum asphyxia due to a decrease in the supply of blood and oxygen to vital organs as a consequence of placental abruption.

The worsening abnormalities in the fetal heart monitor tracings prior to delivery, including, but not limited to, minimal to absent variability, bradycardia, lack of accelerations, variable decelerations, and late decelerations, were all consistent with decreasing fetal reserves and the baby's inability to tolerate an increasingly hypoxic and hostile intrauterine environment.

The baby was transferred to the neonatal intensive care unit. During her hospitalization, she was diagnosed with respiratory distress syndrome, bilateral intraventricular hemorrhage, patent ductus arteriosis, and retinopathy of prematurity. Following discharge from the hospital, the child was diagnosed with cerebral palsy and seizures.

She has significant neurodevelopmental delays, spasticity, severely impaired speech, and dysphagia. Neuroimaging has revealed: "low brain volume, minimally low cerebral white matter volume." This was described as representing "… expected sequelae of old cerebral injury." She is confined to a wheelchair. The child requires Botox injections for spasticity, as well as physical therapy, occupational therapy, equine therapy and speech therapy. She was recently admitted to the hospital for psychiatric counseling because she was exhibiting behaviors that were dangerous to herself and others

Defendants denied negligence. They disputed that the mother called the clinic complaining of abdominal pain and decreased fetal movement. This was not recorded in the chart, while other phone calls were duly noted. Defendants pointed out that the mother's blood sugar was markedly high when she presented to the hospital, and it was reasonable and prudent to first take measures to lower the blood sugar.

Defendants further argued that the fetal monitoring strips were initially reassuring, and that prompt action was taken to deliver the fetus once the strips became nonreassuring. Lastly, defendants asserted that there was no scientific basis to demonstrate the baby's condition would have been improved had she been delivered earlier in the day.

The matter settled for $4.5 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, birth trauma

Injuries alleged: Cerebral palsy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 1, 2016

Demand: $5 million

Highest offer: $4.5 million

Settlement amount: $4.5 million

Attorney for plaintiff: Brian J. McKeen

14 $4.5 Million

Bus passenger removing bicycle run over, killed

Plaintiff's decedent, Joey J. Davis, was a bicycle passenger of a DDOT bus owned and operated by the City of Detroit. The bus was being driven by a municipal employee.

Defendant ran the decedent over at a stop as decedent was removing his bicycle from the front of the bus. Plaintiff's decedent died after experiencing conscious pain and suffering.

The matter settled for $4.5 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Wrongful death

Injuries alleged: Death

Name of case: *Davis v. City of Detroit*

Court/Case no./Date: Wayne County Circuit Court; 15-007207-NI; June 24, 2016

Name of judge: Hon. Lita M. Popke

Settlement amount: $4.5 million

Attorney for plaintiff: Geoffrey N. Fieger

16 $4.35 Million

Plaintiffs: Providers took too long to intubate

Plaintiff minor sought compensatory damages from defendant hospital, doctors and nurses for claims of medical malpractice.

Mother was 35 years old and pregnant with twins. She had a cerclage stitched in the cervix, because her cervix was short, at 21 weeks' gestation.

Mother was admitted to the hospital at approximately 33 weeks' gestation with high blood pressure and protein in her urine. A C-section was performed due to severe high blood pressure. Both babies were fine when they were born. Both twins were admitted to the neonatal intensive care unit because they were small and born early.

Shortly after birth, Twin A started breathing fast and with difficulty. He stopped breathing for short periods, had decreased oxygen in the blood and his heart rate slowed for short periods. He was given oxygen via CPAP and had breathing problems for the next two days.

He had air in his chest that caused a collapsed lung. He was intubated and developed more air in the chest and had to have a chest tube. He continued to have problems breathing and remained in the hospital for 36 days. Head imaging was initially normal, but showed brain injury from lack of oxygen later in the hospital course.

The child suffers from brain damage, hypotonic nonspastic cerebral palsy, developmental delays, cognitive deficits, and hearing loss. His twin brother is fine except for hearing loss unrelated to malpractice claims.

Plaintiffs argued that the nasal cannula CPAP was set too high causing the air in the chest, which was not timely diagnosed. This caused the baby to have decreased oxygen, slow heart rate and low blood pressure.



SECORSKI

Plaintiffs also contended that the health care providers also took too long to intubate Twin A and put the endotracheal tube in the wrong place, causing more injury and less oxygenation. Although the air in the chest was removed with a small needle, a chest tube needed to be placed to avoid recurrence. More air in the chest occurred resulting in more problems and more injury. A chest tube was finally placed but placed improperly. Twin A, for 60 hours, had too little oxygen to the brain which caused brain injury.

Defendants argued that Twin A's problems were caused by a pregnancy complicated by preeclampsia, prematurity and twin-twin transfusion syndrome. Twin A's problems were also likely genetic. Defendants argued that Twin A was the recipient twin in the TTTS, which led to the injury before he was born.

The case settled pre-suit for $4.35 million.

Plaintiffs' counsel provided case information.

Type of action: Medical malpractice, birth injury

Injuries alleged: Brain damage, hypotonic nonspastic cerebral palsy, developmental delays, cognitive deficits

Court/Case no./Date: Confidential; confidential; Feb. 1, 2016

Settlement amount: $4.35 million

Most helpful expert: InFocus Research Group, Shelby Township

Attorneys for plaintiff: Jesse M. Reiter, Rebecca S. Walsh, Jennifer Secorski

17 $4.25 Million

Woman crushed to death in semi-truck accident

Plaintiff's decedent was crushed to death when she was run over by a semi-truck driven by the defendant.

The matter settled for $4.25 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Dec. 8, 2016

Settlement amount: $4.25 million

Attorney for plaintiff: Geoffrey N. Fieger

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

18 $4.14 Million

Man fell 3 stories, died after guardrail failed

The 33-year-old plaintiff's decedent died from injuries sustained when a guardrail at his apartment building failed. The plaintiff filed the premises liability lawsuit in October 2014 on behalf of his estate, seeking compensation for the decedent's pain, suffering, and wrongful death, and the loss of income, society and companionship to his loved ones.

Discovery revealed that the railing was not regularly inspected or properly maintained by the maintenance staff. Photos taken at the scene of the accident showed that a top bracket was disconnected from the railing, a center base bracket was badly broken and rusted, and screws supporting the lower brackets were dislodged from the wall. These were some of the more than 50 guardrail and handrail violations cited by the township ordinance enforcement officer the next day following the fatality.



MEKLIR

The plaintiff alleged that, because the railing was detached, it did not support the decedent's weight when he leaned on it, causing him to plummet three stories onto a concrete floor, resulting in multiple serious injuries and his ultimate death.

Although clearly on notice of the pending litigation, the apartment manager advised the police in early December 2014 that the defendant no longer wanted the railing, brackets or bolts that the police had in their possession. The railing and hardware were then destroyed, and because they could not be produced for further examination, the plaintiff moved for summary disposition and a directed verdict on the inference that the evidence would have been adverse to the defense.

The matter was settled on the second day of trial for a partially structured settlement, with payment total exceeding $4.14 million.

Kenneth T. Watkins, co-counsel for plaintiff, provided case information.

Type of action: Personal injury, wrongful death

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 26, 2016

Settlement amount: Partially structured settlement, payment total exceeding $4.14 million

Attorneys for plaintiff: Kenneth T. Watkins, Samuel A. Meklir



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19 $3,575,000

'Snow emergency' theory is disputed by plaintiff

On Jan. 25, 2014 plaintiff was severely injured when defendant's tractor-trailer combination crossed the center line and jackknifed. Plaintiff's right foot and ankle were crushed, requiring seven surgeries.

Plaintiff then developed complex regional pain syndrome in the injured extremity. Plaintiff also developed thoracic radiculopathy and abdominal wall muscle paralysis due to the crash. Despite being placed on a wound vac, plaintiff also developed infection in the injured right leg.

Defendants asserted the crash occurred due to poor weather conditions and a "snow emergency."



SIMPSON

Plaintiff's counsel conducted extensive discovery, ultimately establishing that this collision was not the result of emergency, but because the commercial motor carrier hired a young, inexperienced and careless driver who was following the vehicle ahead too closely, then slammed the brakes in the snow, causing the trailer to jackknife.

Plaintiff's counsel asserted that the same driver never completed his post-collision substance screen and continued to drive for the motor carrier without any discipline or retraining. In the end, plaintiff's counsel said it was clear that both the defendant driver and the defendant motor carrier were operating in violation of their respective standards of care.

The matter settled for $3,575,000.

Michael J. Morse, Eric M. Simpson and Lewis A. Melfi, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Fractured calcaneus, tarsal, tibia, cuneiform bones in right foot and ankle, complex reginal pain syndrome

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 6, 2016

Settlement amount: $3,575,000

Attorneys for plaintiff: Michael J. Morse, Eric M. Simpson, Lewis A. Melfi

Keys to winning: Exposing corporate negligence of a federally regulated motor carrier; understanding complex medical issues

20 $3.5 Million

Patient had neurologic deficits following surgery

A 16-year-old was diagnosed with a congenital skeletal abnormality and underwent surgery to repair the condition. Post-operatively, the patient suffered significant neurologic deficits. Subsequent surgery was unsuccessful in restoring the patient's premorbid neurologic condition.

Plaintiff claimed that the deficits were avoidable while defendants claimed that the complications were unavoidable. Defendants claimed that the surgery saved the patient's life.

The matter settled for $3.5 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Neurologic deficits

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 10, 2016

Settlement amount: $3.5 million

Attorney for plaintiff: Brian J. McKeen

21 $3,325,000

Man killed when wheel struck roof, windshield

Plaintiff's decedent was driving south on U.S. 23 near Ann Arbor. A commercial vehicle was traveling the opposite direction. The commercial vehicle's wheel dislodged and separated, traveled across the median, then struck the roof and windshield of decedent's vehicle, resulting in his instantaneous death.

Decedent was a 20-year-old college student with no dependents.

Plaintiff's counsel said the wheel that separated from the commercial vehicle was installed several days prior by its owner along with two other wheels that remained affixed to the vehicle. The commercial vehicle was being operated by an individual who did not work for the company that owned it.



SEIFERHELD

The owner and driver — both named defendants — blamed each other for the event while maintaining their own denial of any culpability.

The matter settled for $3,325,000.



JONES

Kevin H. Seiferheld and Jordan M. Jones, counsel for plaintiff, provided case information.

Type of action: Commercial motor vehicle wrongful death

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; Washtenaw County Circuit Court; September 2016

Settlement amount: $3,325,000

Attorneys for plaintiff: Kevin H. Seiferheld, Jordan M. Jones

22 $3.1 Million

Blood pressure rise in transplant led to stroke

The 20-year-old plaintiff, through his conservator, alleged that the defendants were professionally negligent in their management of the plaintiff's elevated blood pressure during a bone marrow transplant.

During the transplant process, plaintiff's blood pressure became dangerously elevated. Plaintiff alleged that because defendants did no undertake to aggressively lower plaintiff's blood pressure, he suffered a left temporo-occipital intracerebral hemorrhagic stroke. The cognitive impairment left plaintiff significantly injured and in need of a life care plan.

Defendants claimed they were not professionally negligent and that plaintiff suffered a rare but known complication of a bone marrow transplant. They further asserted plaintiff developed a condition where the immunosuppressive drug necessary for the transplant causes endothelial damage to the cerebrovasculature, which caused leaking of fluid into the brain and led to a hemorrhagic stroke. Defendants further alleged plaintiff had made a good recovery and had very limited economic damages.

The matter settled for $3.1 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Organic brain injury

Name of case: Confidential

Court/Case no./Date: Confidential;

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

confidential; June 24, 2016

Settlement amount: $3.1 million

Special damages: Pain/suffering, medical expenses, life care plan

Attorney for plaintiff: Brian J. McKeen

22 **$3.1 Million**

Agreement terminated retroactively for cause

Defendant terminated the manufacturer's representative agreement in April 2014, effective Dec. 31, 2014. The termination was without cause. Plaintiff filed suit for unpaid commissions in March 2015. Defendant thereafter terminated the manufacturer's representative agreement retroactively for cause.

Plaintiff contended defendant was responsible to pay life-of-the-part commissions for all parts for which purchase orders were received as of Dec. 31, 2014. Defendant contended that no post-termination commissions were due as a result of defendant's later termination for cause.



GILLARY

The manufacturer's representative agreement had been drafted by attorneys for both parties who were not experienced in preparing such agreements. One result of this was that there was insufficient clarity regarding the payment of post-termination commissions, so a jury would have had to determine the amount of commissions owed. Neither counsel for the parties in this case were involved in drafting the manufacturer's representative agreement.

The parties reached a settlement for payment of commissions due through Dec. 31, 2016, in the amount of $1,172,500, to be paid in 2017, plus the payment of continuing commissions through June 30, 2021 at a reduced rate. Plaintiff estimates the continuing commissions to be in the amount of approximately $2 million for a total estimated settlement amount of approximately $3.1 million.

Randall J. Gillary, co-counsel for plaintiff, provided case information.

Type of action: Sales commission dispute

Injuries alleged: Unpaid sales commissions

Name of case: Confidential

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; confidential; Nov. 29, 2016

Settlement amount: $1,172,500 to be paid in 2017, plus payment of continuing commissions through June 30, 2021, at a reduced rate; plaintiff estimates the continuing commissions to be in the amount of approximately $2 million for a total estimated settlement amount of approximately $3.1 million

Attorneys for plaintiff: Randall J. Gillary, Kevin P. Albus

24 **$2.75 Million**

Man in bus shelter killed when vehicle struck him

In a dram shop claim, plaintiff's decedent was sitting in a bus shelter, when a vehicle driven by defendant plowed into him and killed him.

The matter settled for $2.75 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Dram shop

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 30, 2016

Settlement amount: $2.75 million

Attorney for plaintiff: Geoffrey N. Fieger

24 **$2.75 Million**

Motorcyclist died from test-driver's collision

Plaintiff's decedent, 61, was driving a motorcycle northbound on M-100 at approximately 11 a.m. An 18-year-old test-driving a used car owned by Sundance Chevrolet turned left into him, killing him at the scene.



HEOS

Defendants postured a defense that the motorcyclist should have been able to avoid the accident but for his taking the prescriptive drug Adderall.

The matter settled for the $2.75 million case evaluation.

James T. Heos, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Death

Name of case: *Pierce v. Sundance*

Court/Case no./Date: Eaton County Circuit Court; 15-1089-NI; Aug. 30, 2016

Name of judge: Hon. John D. Maurer

Demand: $4 million

Highest offer: $905,000

Settlement amount: $2.75 million

Case evaluation: $2.75 million

Special damages: $510,000 in excess wage loss

Most helpful experts: William King, economist, Lansing; Gary McDonald, accident reconstruction, Grand Rapids; Robert Belloto, pharmacology, Dayton, Ohio

Insurance carriers: Farm Bureau, Harco

Attorney for plaintiff: James T. Heos

Attorneys for defendant: Paul E. Tower, Anthony S. Kogut

24 **$2.75 Million**

Man on cycle struck, killed in failure to yield

Plaintiff was riding his motorcycle when defendant failed to yield, striking plaintiff, resulting in plaintiff's death.

The matter settled for $2.75 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Wrongful death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 8, 2016

Settlement amount: $2.75 million

Attorney for plaintiff: Geoffrey N. Fieger

27 **$2.56 Million**

Suit: Failure to recognize sepsis signs, symptoms

This is a medical negligence action resulting in the untimely death of plaintiff's decedent, a physician. When decedent discovered blood in his stool, he called a colleague and had an upper and lower endoscopy performed.

A tumor was discovered in his colon, so decedent immediately contacted a colleague surgeon and asked him to perform surgery. After surgery, pathology determined decedent had Stage II colon cancer.

Subsequent to the surgery, a family friend who practiced internal medicine visited decedent and found him to be stable. On the second day, the surgeon saw the decedent and saw he was doing well without evidence of complications. The family friend physician again visited the decedent on post-op day one in the afternoon and found decedent was nauseated with abdominal pain and a rapid heart rate. By early evening, ominous changes had become evident.

There was some confusion as to whether the family friend physician could formally participate in decedent's care, so the nurses asked the surgeon for a consult so the family friend physician could help manage decedent's pulmonary status.

The surgeon did order a bolus infusion and formally requested a consult with the family friend physician. This was the last time any nurse or employee at the medical institution or any physician contacted the surgeon.

Within an hour, things began to deteriorate significantly. The family friend physician noted decedent was having shortness of breath, but no one called the surgeon and it took at least three hours for anyone to monitor decedent's vital signs. Upon monitoring, decedent's heart was racing, his respiratory rate was up and he was administered oxygen. Again, no one called the surgeon.

About three hours went by before decedent's vitals were monitored again. Decedent was noted to be diaphoretic and confused. Almost another four hours passed before the surgeon was notified. By the time the surgeon was notified, decedent was near death.



CHRISTENSEN



ROSEN

The surgeon immediately recognized sepsis and took decedent to the operating room for exploratory surgery. Within minutes of anesthesia induction, decedent went into cardiac arrest. He was stabilized and taken to intensive care.

That afternoon, the surgeon returned to the operating room to find out what was causing the sepsis. He discovered a tear in decedent's duodenum and repaired it. Because decedent's body had been overwhelmed by the undiagnosed and untreated sepsis, he went into organ failure and died.

Decedent's estate filed a claim against the nursing staff and family friend physician for failure to recognize signs and symptoms of sepsis and failing to notify the surgeon for intervention. Plaintiff's experts supporting the claim were in the specialties of internal medicine, colon and rectal surgery, nursing and economics.

Defendants attempted to blame the surgeon as the cause of decedent's death, or claimed it was too speculative to know whether surgery would have saved decedent or that he would have succumbed to the colon cancer. The surgeon's testimony was dispositive; he said that had he been informed of the changes in decedent's vital signs, he would have come in and operated promptly.

The matter settled for $2.56 million.

Mary Pat Rosen, co-counsel for plaintiff's estate, provided case information.

Type of action: Medical malpractice

Injuries alleged: Death

Name of case: Confidential

Settlement amount: $2.56 million

Attorneys for plaintiff: David W. Christensen, Mary Pat Rosen

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28 $2.45 Million

Woman's neurological function didn't return

Plaintiff suffered a cauda equina syndrome injury in connection with the placement of an epidural catheter. Her ability to walk three years later is dramatically reduced. She has limited sensation below the waist and no control over bladder or bowel movements.

Plaintiff argued that defendants failed to diagnose, and that once plaintiff was diagnosed, defendants failed to do anything. Rather, plaintiff asserted, the client was told that her neurological function would return but it never did.

The matter settled for $2.45 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Cauda equina syndrome

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 9, 2016

Settlement amount: $2.45 million

Attorney for plaintiff: Geoffrey N. Fieger

29 $2.2 Million

Damages sought after lockout from property

Plaintiff agreed to purchase and demolish one of the defendant's decommissioned factories. Under the terms of the parties' agreement, plaintiff was to receive title to the property after it completed demolition of the factory.

After performing the initial demolition work, plaintiff discovered significant contamination and made certain reports, at which point the defendant locked plaintiff out of the property.



BLUM

The plaintiff filed suit for breach of contract and sought a preliminary injunction to prevent the defendant from blocking access to the property. The defendant filed a counterclaim seeking damages.



EISENSTEIN

After robust motion practice and several sessions of facilitation, the parties agreed that plaintiff would receive the promised consideration of the real estate worth in excess of $2.2 million and defendant would dismiss its counterclaims.

Alexander E. Blum, co-counsel for plaintiff, provided case information.

Type of action: Breach of contract

Injuries alleged: Contract damages

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Dec. 16, 2016

Settlement amount: $2.2 million

Attorneys for plaintiff: Gerard V. Mantese, Alexander E. Blum, Kathryn R. Eisenstein

30 $2.1 Million

Shareholder oppression action reaches settlement

Plaintiff owned a one-third interest in a corporation. After defendants removed him from his position and threatened to cut off his salary, plaintiff brought suit for shareholder oppression.



MANSOUR

The case settled at facilitation for $2.1 million.

Gerard Mantese and Fatima M. Mansour, counsel for plaintiff, provided case information.

Type of action: Shareholder oppression, breach of contract

Injuries alleged: Damage to shareholding interest

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; August 2016

Settlement amount: $2.1 million

Attorney for plaintiff: Gerard Mantese, Fatima M. Mansour

30 $2.1 Million

Incomplete quadriplegia from unfinished surgery

The 68-year-old patient was admitted for decompression of the cervical spine caused by OPLL (ossification of the posterior longitudinal ligament). The surgical plan called for decompression at C2-C4. Plaintiff claimed the surgery was carried out at the wrong levels (C3-C7) and left unfinished, resulting in kinking of the spinal cord at C2.



GOETHEL

Post-operatively, the patient was severely quadriparetic, unable to walk with no functional use of his arms, together with indications of Cauda Equina Syndrome and autonomic dysreflexia. Immediate CT imaging demonstrated ongoing compression of the spinal cord left unaddressed by the surgeon.

Through perseverance of the patient's wife, a second neurosurgeon evaluated and returned the patient to surgery in an effort to relieve the spinal cord compression, but by then it was too late. The injury and profound deficits had become fixed.

The patient, who previously was working full time, was rendered bed bound and incontinent of bowel and bladder.

Keys to a $2.1 million settlement included persistence obtaining the hospital audit trails, proving the neurosurgeon never accessed or reviewed the patient's post-operative imaging contrary to her sworn testimony.



ENGELHARDT

Stephen B. Goethel, co-counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Spinal cord injury, incomplete quadriplegia

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 26, 2016

Tried before: Mediation

Settlement amount: $2.1 million

Attorneys for plaintiff: Stephen B. Goethel, Chad D. Engelhardt

32 $2.07 Million

Structural defects alleged in molten steel machine

Plaintiff argued that a hot metal tilter machine in a steel plant, which receives a large ladle filled with 375 tons of molten steel, had structural defects. Despite this, it was placed back into service and failed, dumping the steel and resulting in explosions that killed plaintiff's decedent, who was working his shift.

The matter settled for $2.07 million.

Jeffrey A. Danzig, co-counsel for plaintiff, provided case information.

Type of action: Industrial accident, intentional tort

Injuries alleged: Death

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Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; Aug. 4, 2016

Name of judge: Hon. Lita M. Popke

Name of facilitator: James R. Case

Demand: $3 million

Settlement amount: $2.07 million

Special damages: Wage loss, funeral and burial expenses

Most helpful experts: James Miller, engineering, Ann Arbor; Elizabeth Buc, metallurgy, Livonia; Michael Thomson, economics, Bloomfield Hills

Attorneys for plaintiff: Jeffrey A. Danzig, Ven R. Johnson

33 $2 Million

Driver 'messing with' radio hits stopped car

In August 2014, plaintiff, a mortgage loan specialist with a master's degree, was the restrained front seat passenger in his compact Chevy Aveo. He was headed to his cabin in northern Michigan with his partner, who was driving. At the same time and place, defendant, a marketing professional, was operating his company-owned 2011 GMC Yukon SUV on his way to deliver some marketing materials to a customer in Ithaca. Defendant encountered rush hour traffic that was backed up from a signed construction zone on westbound U.S. 10 in Bay County, where the right lane was closed ahead.



FELDMAN

Defendant driver was not looking at the roadway ahead while driving at 75 mph (confirmed by data downloaded from his airbag control module). He crashed into the rear of the Aveo, which was stopped in traffic in the left lane, then propelled into the rear of another vehicle. Both airbags inflated, as did the airbag in defendant's vehicle.



KOLTONOW

Defendant admitted to the Bay County sheriff's deputy dispatched to the scene that he had been "messing with his radio," and when he had finally returned his eyes to the roadway, he "looked up and saw everyone was stopped." He further stated, "I was looking at the radio controls and didn't have my eyes on the road ... Traffic backed up suddenly due to construction and it happened very quickly ... didn't see this until it was too late."

Plaintiff passenger suffered several personal injuries including mild traumatic brain injury, a lumbar fracture and short period of loss of consciousness.

A Dow Chemical Co. engineer traveling directly behind the defendant told the deputy that defendant's brake lights never came on before the collision. Defendant was appropriately given a reckless driving ticket, and admitted his sole and complete fault at deposition.

The biggest disputes in this case were "serious impairment of body function," and damages. Defense contended plaintiff would be able to return to work and had experts who questioned whether he recovered. Plaintiff's counsel maintained the position that he had not recovered, was not employable and wasn't able to return to any job, whether sedentary or not.

Plaintiff's counsel took a number of treating defense doctors' depositions. As a result of the cross-examination, defense increased its offer one week before trial by 25 percent. The case settled for $2 million.

Jeffrey H. Feldman and Leonard M. Koltonow, counsel for plaintiff, provided case information.

Type of action: Third-party auto negligence

Injuries alleged: Mild traumatic brain injury, lumbar fracture, short period of loss of consciousness

Name of case: Confidential

Court/Case no./Date: Bay County Circuit Court; confidential; Oct. 26, 2016

Settlement amount: $2 million

Attorneys for plaintiff: Jeffrey H. Feldman, Leonard M. Koltonow

33 $2 Million

Suit: Broken leg ruined nursing instructor's life

In November 2014, the defendant, a driver for an inpatient rehabilitation company, failed to make a turn in order to follow a bend in the road. Instead he crashed head-on into the plaintiff, who was then a 68-year-old nursing instructor. Plaintiff sustained a broken leg that required surgery and resulted in a poor recovery.

Defense contended that plaintiff should be able to return to work either as a nurse instructor or in some other similar capacity, asserting that her broken leg would be fully healed in a year. To the extent that she wasn't able to heal, defense argued that she would eventually not be much different than any other elderly person in their 70s or 80s, i.e., hobbling around on a cane if she needed one and refraining from some physical activities and social gatherings.

Plaintiff's counsel asserted that plaintiff was fully independent and very active prior to the car accident. Her family lived out of state, so she completely relied on herself. A surgery spurred her need for attendant care for nearly two years, and plaintiff lost her independence and quality of life. Plaintiff was no longer able to drive her boat, exercise, teach nursing, travel, go on dates, garden, socialize with her friends or even drive a car as she did before.

The fact that she was on pain medications, had surgery and was now disabled affected her cognitively as well, causing depression.

The matter settled for $2 million.

Kevin Seiferheld, counsel for plaintiff, provided case information.

Type of action: Third-party auto negligence

Injuries alleged: Broken leg, repair surgery

Name of case: Confidential

Court/Case no./Date: Oakland County Circuit Court; confidential; Dec. 8, 2016

Settlement amount: $2 million

Attorney for plaintiff: Kevin Seiferheld

35 $1.9 Million

Commissions due, unpaid through termination date

This sales commission dispute involved the sale of industrial components. Defendant terminated the sales representation agreement, claiming plaintiff breached it. The commissions at issue were due and unpaid through the effective termination date. No post-termination commissions were at issue.

After three years of litigation, the parties agreed to mediate the case. The owners of the plaintiff and of the defendant talked the evening prior to the scheduled mediation and agreed upon the settlement amount of $1.9 million.

Randall J. Gillary, counsel for plaintiff, provided case information.

Type of action: Sales commission dispute

Injuries alleged: Unpaid sales commissions

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; March 20, 2016

Tried before: Mediation

Settlement amount: $1.9 million

Attorney for plaintiff: Randall J. Gillary

35 $1.9 Million

Orthopedic injuries sustained in collision

On March 16, 2015, plaintiff was severely injured when defendant's commercial vehicle failed to yield for an intersection and sheared off the front corner of plaintiff's vehicle.

Plaintiff sustained severe orthopedic injuries and underwent five orthopedic surgeries as a result. However, plaintiff had recently stopped working and applied for Social Security disability prior to the collision.

In her application, plaintiff listed functional deficits with mobility. As such, defendants took a deep dive into her past and filed a 541-page facilitation summary (with exhibits) detailing her past and citing her prior inabilities to walk, stand, work and function generally.

Because of this, plaintiff narrowed her claims to noneconomic damages only and focused on the differentials in functional capacity with her acute orthopedic injuries. Defendants resolved the matter at an early facilitation for $1.9 million.

Michael J. Morse, Eric M. Simpson and Lewis A. Melfi, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Fractured acetabulum, fibula, tibia, talus and malleolus

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 17, 2016

Tried before: Mediation

Settlement amount: $1.9 million

Attorneys for plaintiff: Michael J. Morse, Eric M. Simpson, Lewis A. Melfi

Key to winning: Understanding anatomy and functional deficit differentials

37 $1.84 Million

Unnecessary banding procedure led to death

On Dec. 5, 2012, plaintiff's decedent, 53, underwent a hemorrhoidal banding procedure. The procedure itself was totally unnecessary as plaintiff had no signs or symptoms of any symptomatic hemorrhoids, but merely agreed to have the procedure done at his physician's recommendation after an incidental discovery of the hemorrhoid during a screening colonoscopy.

On Dec. 9, the patient presented to his local emergency room with a history of recent hemorrhoidal banding. His pain level noted as 8 out of 10 in the rectal area. His history included complaints of chills, sweats, fever, nausea and vomiting and an elevated white count in excess of 16,000.

Ignoring the obvious cause and effect relationship, the ER physician contacted the partner of the physician who had performed the unnecessary banding procedure. That physician recommended the patient be discharged from the hospital for follow-up in the office. The ER physician discharged the patient home with a diagnosis of "the flu."

On Dec. 10, the patient presented to the office of the physician who had performed the unnecessary banding procedure. The physician sent the patient back to the emergency department. Despite his obvious signs and symptoms of a post-banding infection, the patient went uncared for several hours until a patient advocate had to become involved at his wife's request. When the patient finally was seen, he was seen by a surgical resident who failed to appreciate the dire situation that the patient's symptoms suggested.



GARVEY

The patient was not seen by the attending general surgeon until the next morning. By that time, it was too late as the patient's infection had become unsalvageable. The patient died on the afternoon of Dec. 11 as a result of severe sepsis caused by the unnecessary banding procedure.

The matter settled for $1.84 million.

Brian J. McKeen, co-counsel for plaintiff, provided case information.

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Type of action: Medical malpractice

Injuries alleged: Wrongful death secondary to nonindicated hemorrhoidal banding procedure, which led to the development of sepsis that was not diagnosed or treated in a timely manner

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; July 1, 2016

Settlement amount: $1.84 million

Attorneys for plaintiff: Brian J. McKeen, Robert F. Garvey

38 $1.8 Million

Young father asserted pain, neurologic deficits

On Feb. 13, 2014, defendant AM Communications LLC's driver sideswiped plaintiff Aaron Turoski's vehicle, pushing it into a snow bank. Following this collision, Turoski developed spinal pain and associated neurologic deficits. Turoski underwent epidural injections in his lumbar spine and eventually required lumbar fusion surgery. He was only 27 years old at the time of the injury and was also a young father.

Plaintiff's counsel focused on Turoski's youth and his family's long-term issues.

Defendant's counsel contested negligence and tried to utilize biomechanical and reconstruction experts, William Newberry and Jennifer Yaek. Plaintiff's counsel said the medical evidence from plaintiff's treating physicians as well as defendant's forensic experts undermined defendant's nonmedical liability experts.

The matter settled for $1.8 million.

Michael J. Morse, Eric M. Simpson and Lewis A. Melfi, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: L5-S1 disc herniation resulting in lumbar fusion

Name of case: *Turoski v. AM Communications LLC*

Court/Case no./Date: Macomb County Circuit Court; 15-003475-NI; Nov. 17, 2016

Tried before: Mediation

Settlement amount: $1.8 million

Insurance carrier: Motorists

Attorneys for plaintiff: Michael J. Morse, Eric M. Simpson, Lewis A. Melfi

Attorney for defendant: Timothy P. Brady

Key to winning: Understanding the mechanics of the contested crash facts and spinal anatomy to undermine defendant's nonmedical liability defense experts

39 $1.5 Million

Plaintiff run over when co-worker lost control

Plaintiff, age 38, was a mechanic working beneath a customer's truck on a wheeled creeper. A floor drain interfered with the wheels of the creeper and prevented plaintiff from reaching the rear underside of the truck. Therefore, while still under the truck, plaintiff asked a co-worker to drive the truck forward one foot.

The co-worker started the truck before plaintiff got out from under it. The co-worker lost control and drove over plaintiff's midsection.

Plaintiff suffered a broken tibia, arthritis, nerve damage and psychological harm.

Plaintiff sued the customer who owned the truck under the Owner's Liability Act. Although the co-worker and employer were immune from negligence liability under the Workers' Compensation Exclusive Remedy Rule, the customer brought third-party indemnification claims against them.



ALTMAN

Plaintiff alleged he could no longer work as a mechanic. Defense argued plaintiff could mitigate all lost earnings because he had been denied Social Security Disability and continued to work in other capacities.

The parties conducted extensive discovery and took numerous expert depositions.

The defense offered only a nominal amount after three facilitations, relying on defenses of comparative fault, the subjective nature of the injuries, a lack of serious impairment and mitigation of damages.

Days after plaintiff's counsel completed the trial depositions of the treating doctors, and just days before trial, plaintiff's employer agreed to pay plaintiff a settlement of $1.5 million.

Brett D. Altman, counsel for plaintiff, provided case information.

Type of action: Personal injury

Injuries alleged: Broken tibia, arthritis, nerve damage, psychological harm

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 6, 2016

Settlement amount: $1.5 million

Attorney for plaintiff: Brett D. Altman

39 $1.5 Million

82-year-old suffered aspiration, pneumonia

Plaintiff, a previously active and self-sufficient 82-year-old, sustained a fractured tibia and fibula while snowmobiling. He was taken to defendant hospital. An open reduction and internal fixation was planned for the next morning. Plaintiff was placed on a pain pump and was NPO (nothing by mouth) after midnight.

The next morning, a pre-anesthetic evaluation was completed by a certified registered nurse anesthetist (CRNA). Plaintiff was assessed as having a Class 3 Mallampati score, which is associated with a difficult airway. While in the holding area before surgery, plaintiff vomited 100 ml of solid and liquid stomach contents. The CRNA, who was the sole anesthesia provider, was informed.

The CRNA decided to proceed with a general anesthesia/endotracheal intubation using rapid sequence intubation (RSI). RSI eliminates a patient's ability to breathe on their own and eliminates their natural airway reflexes (coughing, gag reflex). Plaintiff's counsel noted that it should be used with caution in patients with a suspected difficult airway, and that alternative intubation techniques, such as fiber optic or regional anesthesia, are safer alternatives. If RSI is to be used, additional qualified personnel should be present and a difficult intubation cart/equipment should be available.

Defendant hospital did not have an anesthesiologist on site, and the CRNA did not summon anyone to assist. After three failed intubation attempts using a standard laryngoscope, the CRNA decided to proceed with a laryngeal mask airway (LMA), which does not protect the patient's lungs from regurgitated stomach contents in the event of vomiting.

According to the operative note, there were no intraoperative complications and plaintiff was sent to the recovery room in "satisfactory condition." But the post-anesthetic recovery nurse found patient to be in critical condition with hypoxia and diminished lung sounds.

A pulmonologist was called to bedside and was able to intubate using a Glide scope on the first attempt. Old blood in the upper airway was observed. An orogastric tube was placed and additional stomach contents were returned.

Plaintiff was taken to the ICU. A bronchoscopy was performed and it revealed a large bilateral aspiration. The plaintiff developed acute respiratory distress syndrome secondary to the aspiration, septic shock and the complications thereof.

Plaintiff required prolonged intubation, rehabilitation and nursing facility care. He had recurrent pneumonia and infections at his tracheostomy site. Secondary to his antibiotic use, he developed a *clostridium difficile* infection. Plaintiff failed repeated swallow tests and requires tube feedings. He has had bed sores, muscle wasting and neuropathy in his hands and feet. Plaintiff returned home approximately one year after the incident with 24/7 care. All of plaintiff's medical expenses have all been paid by PIP.

Plaintiff contended that there were numerous ways to avoid this injury. When the CRNA was informed of the pre-operative emesis, consistent with the standard of care, the CRNA should have informed the orthopedic surgeon of the residual stomach volume and recommended delay of the nonemergent surgery.

Plaintiff further contended that if surgery could not be delayed, an anesthetic option, such as spinal anesthesia, should have been selected as it would have allowed the patient to maintain his airway reflexes and would have avoided the repeated instrumentation, trauma, and attendant risk of aspiration. If the CRNA decided to proceed with a general anesthesia, steps should have been taken to handle a difficult intubation including having proper equipment and personnel available.

Finally, plaintiff argued, when the CRNA could not intubate after three failed attempts, the CRNA should have terminated the procedure and woken the patient up. Proceeding with the LMA in the face of residual stomach volume was contraindicated as an LMA does not seal off the esophagus from regurgitated stomach contents.



LITTLE



BEREZNOFF

Plaintiff's noneconomic damages were limited by the lower damage cap of $438,800, but plaintiff had significant past and future medical expenses, which were covered by PIP. While the amounts paid by PIP for past medical expenses would be subject to a collateral source offset, there is no adjustment for future medical expenses.

Pursuant to MCL 600.6306(1)(d), *Bender v Farmington Ridge, L.P.*, 2000 Mich App LEXIS 1010, *Libbrecht v Marshal Medical Associates, P.C.*, 1996 Mich App LEXIS 2075, and *Amlotte v United States*, 292 F Supp 2d 922, 926 (ED Mich 2003), defendant had full exposure for future medical expenses. Utilizing the average monthly cost of care and an average life expectancy of 5.8 years, future medical expenses were projected to be approximately $1.3 million.

Defendant argued that plaintiff had a limited life expectancy, which limited its exposure.

The case settled through facilitation for $1.5 million, prior to taking any formal discovery.

Ronda M. Little and Gregory M. Bereznoff, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Aspiration, pneumonia, lung injury

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 2, 2016

Settlement amount: $1.5 million

Attorneys for plaintiff: Ronda M. Little, Gregory M. Bereznoff

39 $1.5 Million

Firm, property owner dispute condemnation

Plaintiff, a national gas pipeline company, wished to acquire an 18.7-acre permanent easement, together with a temporary construction easement, in agricultural land located in Monroe and Lenawee counties.

The pipeline company intended to exercise its power of eminent domain against defendant property owner if necessary. The taking would enable plaintiff to in-

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

stall a second interstate pipeline near a pre-existing pipeline that has been present on the property for many years.

Plaintiff contended that the presence of its first line, which was installed pursuant to consensual easements granted many years ago, eliminated any damage that the new acquisition might cause to the property. The pipeline company argued that the property rights needed for the second line were effectively secured via the initial easements decades ago.



COHEN

The pipeline company further contended that agricultural property in Monroe and Lenawee counties is plentiful and inexpensive. It made a statutory first written offer in the amount of $229,355.



SCHEIBELHUT

[Editor's note: Under the state's eminent domain statute, the procedure calls for the government, municipality or other related entity to file a lawsuit if the parties cannot agree on an offer of at least a property's appraised value. In this case, the national gas pipeline company is the plaintiff, even though the defendant property owner sought compensation.]

Defendant, conversely, asserted that the pre-existing easements supporting the first pipeline were ambiguous and subject to varying interpretations. The taking could therefore impose additional damages upon the owner's remaining property.

Defendant also claimed that the subject property possessed potential for development at an intensity greater than mere agricultural use.

After many months of protracted, pre-litigation negotiations, the parties settled for just compensation in the amount of $1.5 million.

H. Adam Cohen and John E. Scheibelhut, counsel for defendant, provided case information.

Type of action: Eminent domain/condemnation

Injuries alleged: Acquisition of agricultural land in Monroe and Lenawee counties

Name of case: Confidential

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Court/Case no./Date: Confidential; confidential; Sept. 16, 2016

Demand: $1.6 million

Highest offer: $229,355 (statutory written offer)

Settlement amount: $1.5 million

Attorneys for defendant: H. Adam Cohen, John E. Scheibelhut

Key to winning: Preparation

39 $1.5 Million

Truck didn't yield, hit oncoming vehicle

A large garbage truck made a left turn in front of plaintiff's oncoming vehicle. The truck failed to yield, resulting in a significant front-end crush impact. Plaintiff lost consciousness and was airlifted to a local hospital. Plaintiff received protracted medical care for orthopedic and closed-head injuries.

The matter settled for $1.5 million.

Jeffrey A. Danzig and Ven R. Johnson, counsel for plaintiff, provided case information.

Type of action: Auto negligence, trucking accident

Injuries alleged: Orthopedic and brain injuries

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; Aug. 11, 2016

Judge: Hon. Daphne Means Curtis

Facilitator: Thomas R. Behm

Demand: $2 million

Highest offer: $1.5 million

Settlement amount: $1.5 million

Case evaluation: $2 million

Most helpful experts: Tim Abbo, accident reconstruction, Bloomfield Township; Roger Allen, trucking, Friendswood, Texas; Dr. Eric Kovan, physical medicine and rehabilitation, Livonia; Dr. Gerald Shiener, psychiatry, Birmingham

Attorneys for plaintiff: Jeffrey A. Danzig, Ven R. Johnson

39 $1.5 Million

Macomb accident caused many injuries, disability



FEMMININEO

This confidential settlement arises out of a disputed Macomb County accident with extensive injuries and long-term disability.

The matter settled for $1.5 million.

David C. Femminineo, counsel for plaintiff, provided case information.

Type of action: Third-party auto accident

Injuries alleged: Extensive injuries, long-term disability

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Aug. 30, 2016

Tried before: Mediation

Settlement amount: $1.5 million

Special damages: Pain and suffering, excess economic loss

Most helpful expert: Dr. John Sase, economics, Royal Oak

Attorney for plaintiff: David C. Femminineo

39 $1.5 Million

Circumstances over fall from gurney disputed

On May 22, 2012, plaintiff, a self-sufficient, independently living 84-year-old woman, fell at her daughter's house and was taken via ambulance to the hospital. The ambulance records show an altered level of consciousness, a history of falling and a facial droop along with a high blood pressure.

She was classified with a fall-risk score of 9 on the Hendrich II Scale — almost the highest for a person to receive. She was transported via a Hill-Rom gurney, to the CT room. Her CT was normal.

When taking her out of the CT room, the defendant technician claimed that the side rails of the gurney were up. He added that in the "two seconds" he looked away from the patient to open the door to exit the CT room, plaintiff, described as "dizzy with altered level of consciousness," climbed, with her left arm and leg, over the side rail, landing on the floor, striking the right side of her head.



TURNER

She was returned to the CT and found to have a significant, life-altering subdural hematoma with mass effect and midline shift.

Plaintiff argued that the guard rail was not up and presented deposition testimony.

From the CT manager's deposition:

Q: If the railing is not up, the patient just can roll one way or the other and go right to the ground, correct?

A: Correct.

From the emergency room supervisor's deposition:

Q: Why do you think they are called guard rails? What are they guarding against?

A: Patient safety.

Q: To prevent a patient from falling, right?

A: Patient safety, yes.

What patient's daughter said her mother told her after the fall:

A: What I did next, I asked my mom what happened, and she said, "I went to turn over and I fell."

From the emergency room supervisor's deposition:

Q: So I am just asking if you would agree, that any time a patient's in the emergency room they are on a gurney and the nurse knows they are a fall risk, the nurse should put the guard rails up, is all I'm asking?

A: I would agree to that.

From the CT manager's deposition:

Q: So any time a patient is on the cart, both rails should be up, correct?

A: Absolutely, yes.

An emergency craniotomy was performed. The patient remained institutionalized, sedated, and on a ventilator until her death, seven months later.

Plaintiff's attorney arranged, through defendant hospital, to actually attempt to climb over the gurney rail in "two seconds." It took the "well-conditioned" plaintiff's attorney about six seconds to climb over the rail. The video was attached for settlement and trial purposes.

Plaintiff had a biomechanical engineer, who viewed medical records and the facts, and secured a similar gurney and a female crash dummy. Plaintiff then reproduced the scenario as alleged by the defendant tech. The expert's conclusion was inconsistent with the defendant's tech. The expert "proved" that if the side rails were up, she would have hit the left side of her head, not the right.

The matter settled for $1.5 million.

Lee I. Turner, counsel for plaintiff, provided case information.

Type of action: Malpractice, negligence

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 2, 2016

Settlement amount: $1.5 million

Most helpful expert: Albert King, biomechanical engineering, Detroit

Attorney for plaintiff: Lee I. Turner

39 $1.5 Million

Economic loss argued in amputation action

Plaintiff was a middle-aged woman with a lengthy history of paranoid schizophrenia. She presented to the defendant hospital following a drug overdose.

Defendants admitted negligence in this case and did not contest that nursing malpractice led to intravenous extravasation of potassium chloride into the plaintiff's subcutaneous tissue and muscle of her dominant upper extremity. This led to destruction of skin, subcutaneous tissue, muscle, and bone that was resistant to operative efforts to save the limb. The plaintiff ultimately required an above elbow amputation.

Defendants strongly contested the economic damages, claiming there was no loss of wage-earning capacity because of the plaintiff's history of mental illness. Defendants further claimed plaintiff was noncompliant and refused to use her prosthetic device.

The matter settled for $1.5 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Injuries alleged: Above-elbow amputation of plaintiff's dominant upper extremity

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Oct. 4, 2016

Settlement amount: $1.5 million

Special damages: Pain and suffering, medical expenses, life care plan

Attorney for plaintiff: Brian J. McKeen

39 $1.5 Million

Supporting proof for past sales sought

Plaintiff and defendant entered into an oral agreement for plaintiff to bring new business to defendant. The agreement was for a commission to be paid at the rate of 5 percent.

Defendant began paying sales commissions but with no supporting documentation to enable plaintiff to verify the commission payments. Eventually plaintiff filed suit seeking the supporting documentation for the past sales and continuing sales commissions at the rate of 5 percent for the life of the part.

The parties were able to settle the case for the sum of $750,000 in past commissions and continuing commissions for the life of the parts, which will total approximately $1.5 million over the course of the next few years. The parties additionally negotiated and signed a sales representation agreement going forward for commissions on new business for the life of the parts.

Randall J. Gillary, counsel for plaintiff, provided case information.

Type of action: Sales commission dispute

Injuries alleged: Unpaid sales commissions

Name of case: Confidential

Court/Case no./Date: Confidential

Tried before: Mediation

Settlement amount: $750,000 in past due commissions, plus commissions for the remaining life of the part, with a total value of approximately $1.5 million

Attorney for plaintiff: Randall J. Gillary

47 $1,375,000

Patient injected with too much insulin, died

Plaintiff underwent a surgical procedure to repair his fistula when his blood sugar suddenly dropped. The defendant had ordered 10 units of insulin, but plaintiff was mistakenly injected with 100 units.

He suffered severe injuries: Prolonged hypoglycemia causing anoxia and severe, diffuse encephalopathy; coma and placement on ventilator for approximately a month; tracheostomy and peg tube placement from January 2014 through date of death; confinement to a hospital bed for the rest of his life; horrific pain and suffering while confined to a bed and nursing home for nearly two years; and death due to complications from the extreme overdose of insulin.

The matter settled for $1,375,000.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 13, 2016

Settlement amount: $1,375,000

Attorney for plaintiff: Geoffrey N. Fieger

48 $1.3 Million

Driver's knee injured in separated trailer crash

Plaintiff was driving a work truck on U.S. 2 near Escanaba in the Upper Peninsula. Defendant's truck with a trailer hauling parts separated and crossed over the center line, crashing into plaintiff's work truck.

Plaintiff was extricated and treated for a broken femur initially along with some arthroscopic knee repair. Upon return to work with restrictions, his knee worsened and he needed a complete knee replacement, along with an eventual sacroiliac joint surgery, with causation disputed as to that surgical repair.

Initially, a nonparty fault allegation was made against the maker of the trailer hitch, who was added to the case but eventually was dismissed along with the nonparty fault allegations.



WUORI

Important lay witness investigation/statements/affidavits provided proof contradicting defendant's version of what happened: whether the load was even secured; whether the trailer was swerving out of control; the condition of the trailer and chains; and whether the right size ball was used.



RINGSMUTH

Facilitation was attempted unsuccessfully but subsequent discussions resolved the matter for $1.3 million.

Thomas J. Wuori, co-counsel for plaintiff, provided case information.

Type of action: Trailer unhitched and crossing center line causing crash

Injuries alleged: Broken femur, knee injury/replacement, sacroiliac joint repair

Name of case: *Jacobs v. Lambert*

Court/Case no./Date: Delta County Circuit Court; 14-022291-NI; Jan. 2, 2016

Name of judge: Hon. Stephen T. Davis

Settlement amount: $1.3 million

Attorneys for plaintiff: Thomas J. Wuori, Blake K. Ringsmuth

Attorney for defendant: Robert J. Johnson

49 $1.25 Million

Clotting caused cardiac arrhythmia, then death

On Jan. 6, plaintiff had robotic prostatectomy surgery. After surgery, his bowel function was delayed and he experienced nausea and vomiting. Nevertheless, plaintiff was discharged home Jan. 9. At home, plaintiff continued having nausea and vomiting.

On Jan. 11, plaintiff was readmitted to the hospital with the complaint of vomiting and abdominal distention. The decision was made to admit plaintiff to the hospital. The next day, it was noted that plaintiff was hypotensive and had limited urinary output. He was placed on Zosyn, Vancomycin, intravenous fluids and vasopressors. He was eventually intubated Jan. 12.



PEACOCK

On Jan. 13, the central IV line that was infusing the vasopressor medication became dislodged while nursing staff were turning and/or bathing plaintiff. As a result, the vasopressor medication was not infusing into plaintiff's body. This resulted in severe hypotension that caused extensive cardiac damage and liver damage.

Additionally, on or about Jan. 14, plaintiff was receiving kidney dialysis called continuous renal replacement therapy, or CRRT. During the course of this dialysis, the CRRT filter clotted, causing the femoral dialysis catheter to also clot. This was the result of inadequate predialysis preparation and monitoring during dialysis.

As a result of the clotting, plaintiff again became severely hypotensive and developed a cardiac arrhythmia. These complications led to death.

The matter settled for $1.25 million.

Emily M. Peacock, co-counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Aug. 18, 2016

Settlement amount: $1.25 million

Attorney for plaintiff: Jules B. Olsman, Emily M. Peacock

49 $1.25 Million

Brain injury, cognitive defects sustained in crash



CHRISTENSEN



STEMPKY-KIME

A semi-truck ran a red light, crashing into the plaintiff. Plaintiff sustained a traumatic brain injury with mild-moderate cognitive deficits.

The matter settled for $1.25 million

Sarah Stempky-Kime, co-counsel for plaintiff, provided case information.

Type of action: Third-party auto tort

Injuries alleged: Traumatic brain injury

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; June 7, 2016

Name of mediator: Richard Soble

Settlement amount: $1.25 million

Attorneys for plaintiff: David E. Christensen, Sarah Stempky-Kime

49 $1.25 Million

TBI, shoulder dislocation among injuries in fall

Plaintiff fell on a dangerous condition while walking up a ramp at her timeshare condominium, suffering severe injuries.

The matter settled for $1.25 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Premises liability

Injuries alleged: Traumatic brain injury with associated memory deficits, cognitive changes and mood disorder, left femur fracture, left shoulder dislocation and rotator cuff injury

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Jan. 13, 2016

Settlement amount: $1.25 million

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2016 MILLION DOLLAR VERDICTS & SETTLEMENTS



Attorney for plaintiff: Geoffrey N. Fieger

49 **$1.25 Million**

64-year-old bicyclist struck, killed in Otsego

Plaintiff's decedent, a 64-year-old married male and former local police officer, was struck in August 2015 by an auto from behind while riding his bicycle on a two lane rural road in Otsego County.

The driver was an 18-year-old woman on her way to her summer employment, operating an auto owned by her parents. No evidence of cellphone use or texting was established by state police. Weather was fair with the road being straight and without visual obstructions.

The driver admitted seeing plaintiff's decedent and stated she thought she had given him adequate room as she tried to pass. Plaintiff was nonresponsive at the scene and pronounced dead at the hospital.

Issues in the case included lack of cycling helmet, comparative negligence, immediate death/pain and suffering, age of claimant, lost future wages and extent of surviving family members beyond spouse.

The insurer ultimately agreed to tender policy limits of $250,000 plus an umbrella of $1 million.

Charles F. Grzanka, counsel for plaintiff, provided case information.

Type of action: Auto accident, wrongful death

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 9, 2016

Demand: Policy limits

Settlement amount: $1.25 million

Insurance carrier: State Farm

Attorney for plaintiff: Charles F. Grzanka

49 **$1.25 Million**

Child acquires Erb's palsy in birth trauma

In a medical malpractice/birth trauma claim, plaintiff argued that after delivery of the fetal head using a vacuum extractor, shoulder dystocia was encountered due to impaction of the right shoulder under the pubic symphysis.

Plaintiff's minor suffered a fractured humerus and an avulsion injury to the nerves of the right brachial plexus, leaving the child with a permanent condition known as Erb's palsy affecting the right arm.

The matter settled for $1.25 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Medical malpractice, birth trauma

Injuries alleged: Shoulder dystocia, Erb's palsy

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 19, 2016

Settlement amount: $1.25 million

Attorney for plaintiff: Geoffrey N. Fieger

54 **$1,182,500**

Police misconduct cited in shooting death case

This police misconduct action occurred with the shooting death of plaintiff. Deadly force was the final escalation with plaintiff, who had committed no crime.

The matter settled for $1,182,500.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Civil rights §1983 claims for police shooting

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; June 6, 2016

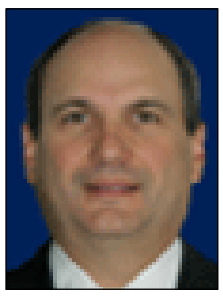
Settlement amount: $1,182,500

Attorney for plaintiff: Geoffrey N. Fieger

55 **$1.1 Million**

Inmate died of acute water intoxication

This 42 USC Sec. 1983 case was brought against various corrections officers for denial of medical treatment pursuant to the Eighth Amendment (freedom from cruel and unusual punishment).



ALEXANDER

Kenneth Dalstra was an inmate with mental illness. Several days before his death, he began drinking water excessively (polydipsia). Despite being observed by numerous corrections officers, nurses and mental health personnel, no medical treatment was provided. Dalstra died of acute water intoxication.

The parties agreed to a $1.1 million settlement.

John T. Alexander, attorney for plaintiff's estate, provided case information.

Type of action: Civil rights

Injuries alleged: Denial of medical treatment

Name of case: *Scherbinski v. Palmer*

Court/Case no./Date: U.S. District Court, Western District of Michigan; 1:15-cv-474; Aug. 19, 2016

Tried before: Mediation

Name of judge: Hon. Robert Holmes Bell

Name of mediator: Magistrate Judge Phillip J. Green

Settlement amount: $1.1 million

Most helpful experts: Lynn Drouin, registered nurse; Shawn Brown, corrections, Dr. Tahir Khwaja, prison psychiatry

Attorney for plaintiff: John T. Alexander

55 **$1.1 Million**

Inappropriate dosage caused heart condition

A 38-year-old female plaintiff went to the emergency room with complaints of vaginal bleeding, pelvic pain, and heartburn.

She was examined by defendant physician assistant who verbally instructed the nurse to give plaintiff a "GI cocktail" for the treatment of her heartburn. The GI cocktail contains four different medications, one of which is hyoscyamine. The nurse proceeded to administer the GI cocktail to plaintiff despite her previously reported allergy to hyoscyamine.

After the medication was administered, defendants realized that the hyoscyamine in the GI cocktail may cause plaintiff to have a reaction. Plaintiff complained that her throat felt tight and itchy, and began coughing. Defendants thought that plaintiff was suffering an allergic reaction and ordered Epinephrine for treatment.

Defendants were alleged to have ordered an inappropriate dose of Epinephrine and also ordered the wrong route of administration. They ordered Epinephrine 1 mg to be given intravenously.

Plaintiff's counsel noted that an appropriate dose of Epinephrine for the treatment of a nonlife threatening allergic reaction would have been 0.2 to 0.5 mg, and the medication should have been given intramuscularly. A larger intravenous dose, like the one ordered by defendants, is used in patients who have suffered a cardiac arrest. Plaintiff's counsel alleged that defendants failed to recognize that both the dosage and route of administration were inappropriate for plaintiff's condition.

Plaintiff complained of crushing chest pain and numbness. She was placed on a cardiac monitor and was found to have ventricular tachycardia. Following the episode of ventricular tachycardia, plaintiff was noted to have ST segment depression and elevated cardiac enzyme levels.

Plaintiff was admitted to the hospital and cardiology was consulted. Plaintiff was diagnosed with a stress-induced myocardial infarction and Takotsubo cardiomyopathy.

Defendants alleged that the Takotsubo cardiomyopathy had resolved and plaintiff had no residual sequela related to the incident.

The matter settled for $1.1 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Takotsubo cardiomyopathy (heart condition)

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Feb. 10, 2016

Tried before: Mediation

Settlement amount: $1.1 million

Attorney for plaintiff: Brian J. McKeen

57 **$1,021,831**

Shareholders dispute alliance with outside rep

This multifaceted business dispute arose out of the plaintiff shareholders' efforts to regain control of a closely held corporation. This came after defendant corporation president and CEO created an alliance with an outside sales representative and attempted to freeze plaintiffs out of their own business.

Co-defendants were an outside sales representative company that was in league with the president/CEO; and the former CFO of the plaintiff corporation.

Plaintiffs became suspicious after learning at a board meeting that the president/CEO had entered into an "exclusive" sales representative agreement with his son's sales company, without disclosure to the board of directors or company attorneys. The sales agreement guaranteed the sales company significant commissions tied to the corporation's total gross revenues, without any performance requirements and even on business procured by the plaintiff corporation's own sales force.

Upon further investigation, plaintiffs discovered that the arrangement had been in place for over four years and that the president/CEO had signed four different "exclusive" sales agreements without any disclosure to the board of directors or anyone else.

The shareholders increased their scrutiny of management and brought in an outside consultant to gather information. In response, the president of the sales company threatened to exercise a "change of control" provision in the sales agreement that purportedly allowed the sales company to terminate the relationship and collect millions in commissions for up to two years.

Plaintiffs' counsel said the corporation's president/CEO colluded with the president of the sales company, and attempted to force the shareholders to either abandon any efforts to control of the corporation and give the president/CEO a lifetime employment contract, or sell the corporation to the president/CEO and the president of the sales company. Instead of selling, plaintiffs terminated the president/CEO's employment.

Faced with the potential post-termination commission liability estimated at $2 million, plaintiffs filed suit against the former president/CEO and the outside sales company, asserting breach of fiduciary duties, fraud, civil conspiracy, and a shareholder oppression under MCL 450.1489, based on the defendants' assertion that they were in control of the corporation prior to the president/CEO's termination.

Thereafter, plaintiff corporation stopped paying post-termination sales commissions. Defendant sales company then filed a counterclaim for millions of dollars in commissions, statutory penalties and attorney fees under the Sales Representative Commission Act.

Over the course of the litigation, the parties continually fought over venue, as the defendants sought to move the case to arbitration pursuant to a broad arbitration clause in the sales agreement.

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Through extensive motion practice, the plaintiff corporation successfully avoided the arbitration provision by arguing that the sales agreement was "unusual" and therefore not within the president's power to sign. Thereafter, the Court of Appeals denied the sales company's application for leave to appeal.



MACWILLIAMS

After 18 months of litigation and with trial approaching, the defendants agreed to settlements that will net the plaintiffs at least $1,021,831. In addition, the plaintiff corporation avoided paying substantial post-termination commissions in the seven figures.

Ian M. Williamson, Gerard V. Mantese and Sara K. MacWilliams, counsel for plaintiffs, provided case information.

Type of action: Breach of fiduciary duty, fraud, shareholder oppression

Injuries alleged: Lost profits, damage to shareholding interest

Name of case: Confidential

Court/Case no./Date: Confidential, confidential, October 2016

Settlement amount: $1,021,831

Most helpful experts: Rodney Crawford, economics, Detroit; Kurt Vaaler, financial investigation, Detroit

Attorneys for plaintiff: Ian M. Williamson, Gerard V. Mantese, Sara K. MacWilliams

58 **$1,015,000**

Ship worker crushed, killed in conveyor system

This is a wrongful death action under the Jones Act for negligence. The Jones Act is basically a negligence statute, whereby any negligence, however slight, which causes or contributes to an injury, is sufficient upon which to affix liability. It need not be the sole cause, or proximate cause, or producing cause. It only need be a slightly contributing cause. The Jones Act also creates liability for failure to provide a safe place to work.

Plaintiff was employed by defendant shipping company as a deck mechanic. His job included maintaining the loading and unloading equipment aboard the tug barge. Typically, this maintenance was performed on the equipment while the barge was traveling between ports. Plaintiff was described by his shipmates as a hard-working and safe worker.

At the date and time of the incident, the barge was traveling on Lake Michigan, having unloaded at Muskegon and en route northbound to Charlevoix. At approximately 11:45 a.m. Nov. 3, 2013, plaintiff was found dead by the chief engineer. It was reported that plaintiff was performing routine maintenance on the conveyor system when he was pulled into and crushed between the rollers/belt of the system.

When plaintiff was found, the powered drum was turning at approximately half-speed (80-100 rpm), but the conveyor belt was jammed and not moving due to plaintiff's being jammed between the upper drum and the belt. The chief engineer noticed plaintiff's legs hanging down by the drive pulley. In an attempt to free plaintiff from the machine, members of the crew released the belt tension. This caused the body to change position and be pulled further into the machine but still remain stuck between the rollers and the belt. Grease fittings on the pillow blocks appeared to have been recently greased and serviced.

Further, the pressurized grease line was found located in close proximity to the machine, leading to the conclusion that plaintiff was applying grease to the fittings at the time of the injury/fatality. Plaintiff had apparently completed greasing the bearings on the right side of the conveyor system, and would have greased the bearings until a significant amount of grease would exude out of the pillow box/bearing.

The primary source document — the U.S. Department of Labor-Employer's First Report of Injury of Occupational Illness, dated Nov. 15, 2014 — states:

"Box 18: Employee was doing usual work when injured/killed.

"Box 26: [Mechanic] was performing routine maintenance on an unloading conveyor and was found caught in the moving conveyor and was crushed by it."

The subject conveyor was ordered, designed, constructed and operated lacking sufficient, adequate and proper guarding, leaving large openings and access points. At the time and date of the fatality accident, there was no requirement by the defendant to have two people present when working in proximity to moving machinery with exposed dangerous moving machinery. In addition, there were no instruction manuals provided with the conveyor in order to alert users as to the proper and safe use of the conveyor system.

Plaintiff's wedding band was flattened out-of-round, demonstrating that his hand was likely initially caught in the ingoing conveyor/drum nip. This leads to the probable conclusion that plaintiff was alive for some time while his upper body was being crushed.

Plaintiff argued the design and/or manufacturing defects that existed in the subject conveyor at the time of its acceptance by and subsequent operation by the defendant were a proximate cause of plaintiff's death.

Plaintiff contended the defendant's wrongful acts aforesaid caused or contributed to the estate's damages, including but not limited to pain and suffering prior to death, loss of earnings and earning capacity, loss of support, inheritance and guidance, and loss of society and companionship for the unseaworthy condition.

The matter settled for $1,015,000.

Dennis M. O'Bryan, counsel for plaintiff, provided case information.

Type of action: Jones Act

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: U.S. District Court, Eastern Division of Michigan; confidential; March 15, 2016

Name of judge: Withheld

Settlement amount: $1,015,000

Attorney for plaintiff: Dennis M. O'Bryan

59 **$1 Million**

Decedent alleged to be at fault in auto accident

Plaintiff's decedent was pronounced dead at the scene of an auto accident, and was considered to be at fault for causing the accident after the investigation conducted by the local police.

Surveillance in the area was obtained and light timing permits were scrutinized, revealing that decedent clearly had the green light at the time of the accident.

Policy limits of $1 million were paid forthwith.

David C. Femminineo, counsel for plaintiff, provided case information.

Type of action: Auto negligence

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Nov. 4, 2016

Demand: Policy limits

Settlement amount: $1 million

Special damages: Wrongful death damages without conscious pain and suffering

Most helpful expert: Tim Robbins, accident reconstruction, Bay City

Attorney for plaintiff: David C. Femminineo

59 **$1 Million**

Plaintiff pepper sprayed to death while confined

This was a wrongful death, §1983 federal civil rights action involving plaintiff, who was pepper sprayed to death while confined in jail.

The matter settled for $1 million.

Geoffrey N. Fieger, counsel for plaintiff, provided case information.

Type of action: Jail death

Injuries alleged: Death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Dec. 1, 2016

Settlement amount: $1 million

Attorney for plaintiff: Geoffrey N. Fieger

59 **$1 Million**

Eyewitness followed truck driver who hit pedestrian

In November 2011, plaintiff, a 19-year-old female, was hit by a pickup truck while crossing 15 Mile Road in Clinton Township. She sustained numerous life-threatening injuries, including traumatic brain injury and spine fractures, among others. Defendant truck driver fled the scene.

An eyewitness was driving behind defendant. When the eyewitness realized that defendant was not stopping, she decided to follow him. She got defendant's license plate number and gave it to authorities, who were able to identify and locate him. Defendant later pleaded guilty to reckless driving and a moving violation causing serious injuries.

When defendant's no-fault insurance company refused to resolve the case for the policy limits of $2 million, suit was filed against defendant in Macomb County Circuit Court, seeking economic and noneconomic damages.

A negligent entrustment claim also was filed against defendant's business, which owned the truck. This claim was brought because defendant had a poor driving record, including several traffic offenses and speeding violations, as well as a DWI charge that had resulted in a suspended license.

Regarding noneconomic damages, plaintiff's counsel alleged the severity of plaintiff's brain injuries and other injuries had, and would continue to have, a major impact on her life. Regarding economic damages, financial expert Barry Grant stated that if plaintiff did not return to work and did not pursue any further college, the present value of her economic loss ranged between $2.55 million and $3.26 million.

At deposition, defendant testified that he was traveling 30 mph at the time of the accident, which was 10 mph below the posted 40 mph limit. He also testified that he applied his brakes at the time of impact. His reason for not stopping after he struck plaintiff was that he thought she was a "garbage can."



STEPHEN SINAS

The one eyewitness contradicted defendant's testimony at deposition. She explained that her own vehicle's speed was about 50 mph, and that she was not gaining ground on defendant's truck, but was keeping up with it. This testimony showed that the truck was traveling in excess of 30 mph, contrary to defendant's testimony. She also testified that defendant did not apply his brakes when he hit plaintiff.



GEORGE SINAS

Plaintiff's counsel noted that plaintiff was jaywalking when she was hit and asserted that while a jury could infer that plaintiff may have been somewhat comparatively negligent, this did not negate defendant's egregious and reckless conduct. In making this argument, plaintiff's counsel emphasized defendant's poor driving record.

The case went to facilitation. After a good-faith reduced demand of $1.95 million, the matter settled for $1 million.

Plaintiffs' counsel provided case information.

Type of action: Third-party auto liability arising out of a motor vehicle-pedestrian collision

Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Injuries alleged: Catastrophic brain injuries, fractures of spine, fracture of right acetabulum, torn knee ligament, temporomandibular dysfunction, psychological and emotional injuries

Name of case: Confidential

Court/Case no./Date: Macomb County Circuit Court; 14-4176-NI; March 10, 2016

Name of judge: Withheld

Settlement amount: $1 million (up-front cash settlement of $457,000, plus structured settlement of $543,000 to plaintiff for remainder of her life)

Most helpful experts: Dr. Kertia Black, physical medicine and rehabilitation, Detroit; Barry Grant, CPA, Southfield

Insurance carrier: State Auto

Attorneys for plaintiff: Stephen H. Sinas, George T. Sinas

59 $1 Million

Claim: Bleed persisted, led to 69-year-old's death

Plaintiff, a 69-year-old female, suffered a sentinel subarachnoid hemorrhage when she went to defendant hospital's emergency room with symptoms of posterior neck and head pain, diaphoresis and nausea.

Plaintiff underwent a head CT, MRI of her brain, and MRA of her head. The studies were each improperly read as negative by the defendant radiologist. The CT scan actually revealed plaintiff had a posterior bleed at the foramen magnum as well as mild hydrocephalus. The MRI/MRA showed an abnormality posterior to the cervical medullary junction at the foramen magnum.

Plaintiff was given a prescription for oral steroids and then was discharged without a proper diagnosis or treatment.

Plaintiff returned to defendant hospital a week later with new onset complaints of intractable posterior head and neck pain, upper trapezius tenderness, and nausea. Defendants relied on the erroneous impressions made off of the tests that had been performed on the previous visit and failed to perform new diagnostic studies even though plaintiff was demonstrating signs and symptoms of an aneurysm. They failed to perform a lumbar puncture, which would have diagnosed the subarachnoid hemorrhage. Plaintiff was discharged two days later.

Two weeks later, plaintiff went back to the defendant emergency room again with a severe headache and neck pain. Defendants failed to immediately order additional studies including a CT with contrast and a lumbar puncture. Plaintiff only received pain medication and was admitted to the medical floor.

She was finally transferred to the ICU three days later where she was noted to have markedly increased tone in her upper and lower extremities caused by the large bleed that was allowed to persist through multiple admissions to the hospital where the defendants failed to perform additional studies. In the ICU, plaintiff was completely unresponsive and then developed tonic-clonic movements consistent with a grand mal seizure. Finally, a CT scan was performed that revealed an intraventricular bleed and hydrocephalus.

After approximately a month in the hospital, plaintiff was transferred to a long-term care center and subsequently passed away.

Defendants argued that the findings on the radiology studies were too subtle to reveal any bleeding that was occurring. Due to the negative studies, they believed there was no reason to work the patient up for anything more than neck pain caused by her degenerative disc disease. Defense also argued that the patient was stable on each discharge which is not compatible with an ongoing bleed.

Plaintiff's counsel reiterated that patients such as plaintiff can have bleeds that restart at later times, in that each time a patient has a "re-bleed," it is usually worse than the prior bleed. The key to a lifesaving diagnosis is to catch a bleed before it becomes a full hemorrhage.

The matter settled for $1 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Failure to diagnose a subarachnoid hemorrhage, causing death

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; May 9, 2016

Tried before: Mediation

Settlement amount: $1 million

Attorney for plaintiff: Brian J. McKeen

59 $1 Million

Products liability claim: Brain damage, eye loss



TYLER

This products liability case concerned serious and permanent injuries to a 51-year-old man, resulting from a product that was alleged to have a defective design.

The injuries included brain damage and the loss of an eye. The past and future loss of income was calculated at $400,000, while the past medical expenses were resolved for $85,000 from an original amount in excess of $250,000. The settlement totaled $1 million.

B.A. Tyler, counsel for plaintiff, provided case information.

Type of action: Products liability

Injuries alleged: Brain damage, loss of an eye

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; June 30, 2016

Name of facilitator: Norman D. Tucker

Settlement amount: $1 million

Attorney for plaintiff: B.A. Tyler

59 $1 Million

Surgical intervention should've been sooner

This was a medical-malpractice case arising from the failure to timely diagnose an 80-year-old man's cauda equina syndrome following back surgery.

Cauda equina syndrome is where there is compression of the sacral nerves which fan out from the end of the spinal cord. These delicate nerves innervate the legs, bowel, bladder and sexual apparatus. Once suspected, time is of the essence to relieve the compression of these nerves or there will be permanent damage.

Plaintiff's counsel said that in this case, despite ample warning, surgical intervention was delayed. As the result, plaintiff suffered permanent nerve damage that caused him to experience lower extremity weakness; be incontinent of bowel and bladder; and endure severe pain.

In January 2012, plaintiff began experiencing right leg pain. It was determined that the cause of the pain was irritation of the L4-L5 nerve roots. In May 2012, he underwent surgery to relieve the irritation. There were no complications during the procedure.

On the first postoperative day, plaintiff complained of new onset numbness and pain in both legs. This information was relayed to his surgeon. Plaintiff himself emailed his surgeon explaining that he had pain and enormous numbness in both legs. Despite these ominous findings, the surgeon did not examine the patient for 14 hours.

When an MRI was finally done, it showed a spinal hematoma that was putting pressure on the sacral nerves. A spinal hematoma is where there is a bleed into the spinal canal compressing both the cord and nerves. Plaintiff underwent an emergency procedure to evacuate the blood and relieve the compression. Because the surgical intervention came too late, there was already permanent damage to the sacral nerves.

Plaintiff alleged that there was ample indication, including new onset pain and numbness in both legs, to warrant earlier surgical intervention. Had this been done, the nerve compression would have been relieved and he would not have suffered permanent neurological damage.

Defendants claimed that the symptomatology — pain and numbness — did not warrant earlier surgical intervention. They contended that the numbness and pain experienced by plaintiff was a normal finding after the original surgery. It was not until the following day that the symptoms were of such a nature to warrant emergency surgery. Defendants alleged that as soon as the patient showed evidence of neurologic deficits, he was rushed back to surgery.

The matter settled for $1 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Lower extremity weakness, incontinence of bowel and bladder

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; Sept. 24, 2016

Settlement amount: $1 million

Attorney for plaintiff: Brian J. McKeen

59 $1 Million

Cellphone use, debris on road disputed in suit

A young couple were hit head-on near Ann Arbor by a distracted, teenage driver. Defendant, who was suspected to have been using her cellphone, lost control of her car, crossed the median and crashed into the couple, causing the injuries. Defendant denied being on her phone, arguing that she had ended the call just before the accident.

Defense counsel argued that the defendant had swerved to avoid debris in the road, overcorrected and lost control of her car and was thus not liable based on a sudden emergency. Defense contested the nature and extent of the plaintiffs' injuries.

Plaintiff contended that there was no evidence of any debris on the road. In addition, although plaintiffs had made a good recovery in terms of their orthopedic injuries, the ongoing residual effects of chronic pain as well as their brain injuries rendered plaintiffs disabled into the foreseeable future.

Plaintiffs' counsel noted that plaintiffs are Canadian citizens, and counsel was able to help with the interplay between Canadian and Michigan law, as well as helping them get appropriate medical treatment under the Canadian health care system.

The matter settled for $1 million.

Kevin H. Seiferheld, counsel for plaintiffs, provided case information.

Type of action: Third-party auto accident

Injuries alleged: Broken foot, spinal fracture, mild traumatic brain injury, rib injuries

Name of case: Confidential

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Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Court/Case no./Date: Washtenaw County Circuit Court; confidential; October 2016

Settlement amount: $1 million

Attorney for plaintiff: Kevin H. Seiferheld

59 $1 Million

Patient died after getting surgery for sleep apnea

Plaintiff was 59 years old and had a history of obstructive sleep apnea. Plaintiff went to defendant hospital for surgical intervention.

Plaintiff underwent sleep apnea surgery at the hospital. Preoperatively, plaintiff's blood oxygen saturation was 95 percent on ambient air. There were no complications during the procedure. Plaintiff was admitted to an inpatient unit for continued care.

The admission orders indicate that plaintiff was to be admitted for 23 hours of observation. Both intravenous and oral morphine were ordered for postoperative pain control. Vital signs were to be performed every four hours. Continuous pulse oximetry monitoring was not ordered.

Postoperatively, plaintiff's blood oxygen saturation was lower than it had been preoperatively. Plaintiff also was having significant difficulty swallowing postoperatively.

Despite the fact that plaintiff had recently undergone surgery on his airway, he was observed to have swelling of his airway, was being given an opioid analgesic that suppressed his respiratory drive (morphine), and reported having difficulty swallowing. Continuous pulse oximetry and/or telemetry monitoring were never ordered.

Within 48 hours of surgery, plaintiff was found unresponsive. A CT scan of the brain revealed marked hypoxic-ischemic injury. Plaintiff was noted to be neurologically unresponsive with fixed and dilated pupils, no spontaneous movement and no reflexes. Plaintiff's prognosis was grave. An initial brain death exam indicated that no cortical or brainstem function was present. A second brain death exam was performed, confirming plaintiff was brain dead. Plaintiff passed away shortly thereafter.

Defendants argued that the morphine that was given for pain was too low of a dose to cause any respiratory depression or brain damage. They also argued that even if plaintiff was on cardiac monitoring, it would not have prevented the outcome. Defendants pointed to the history of the patient's cardiac disease and argued that it led directly to the plaintiff's death.

The matter settled for $1 million.

Brian J. McKeen, counsel for plaintiff, provided case information.

Type of action: Medical malpractice

Injuries alleged: Improper administration of narcotics, failure to monitor plaintiff during and after surgery for sleep apnea

Name of case: Confidential

Court/Case no./Date: Confidential; confidential; April 20, 2016

Tried before: Mediation

Settlement amount: $1 million

Attorney for plaintiff: Brian J. McKeen

59 $1 Million

Sudden emergency from stroke claim investigated

On Sept. 17, 2015, four days before her 79th birthday, Audry Pyrett died as a result of the negligence of Jerome Beck crossing the center line and hitting her vehicle head-on. He was driving a pickup truck owned by his employer, the Isabella Corp. The collision caused Pyrett severe injuries, resulting in her death.

As a result of inconsistent statements from a 79-year-old driver, Jerome Beck, about falling asleep, and Beck's family's posting on social media that Beck had suffered a "stroke" seconds prior to this collision, plaintiff's counsel retained a neuroradiologist to review Beck's scans.

With cooperation of Beck's criminal defense attorney (Beck was charged with committing a civil infraction causing a death of another human being), plaintiff's counsel was able to obtain Beck's emergency room medical records generated following the accident.

This provided plaintiff's medical expert with such records to review, allowing the expert to document to the insurance company that the infarct noted on the MRI was subacute, as opposed to being acute.

After reviewing Beck's medical records, CT scans and MRI, Dr. George F. Ascherl Jr., a neuroradiologist, determined that Beck had not suffered a cardiovascular accident or a stroke at the time of the accident. By retaining such an expert, plaintiff's counsel was able to nullify any possible defense that Beck's negligence in crossing the center line was excusable negligence as a result of a sudden emergency not of his own making (i.e. due to suffering a stroke). In addition, while Beck likely had previously suffered a stroke, such a stroke had likely occurred days or weeks prior to the date of the accident.

Additionally, plaintiff's counsel retained a private investigator, Les Rosan, and directed him to go door-to-door interviewing potential witnesses that the police might have missed in the area where the accident had occurred, in regard to the actions and behavior of Beck at the scene of the accident. This investigation discovered a witness left off the official police report, who was actually the first person to reach Beck.

The witness confirmed that after the accident Beck was coherent, indicating "he was all right" and told the witness that he should check on the welfare of the other driver. It also was noted by the witness that Beck had his cellphone in his lap and was apparently calling someone regarding the situation. These observations by the first-responding witness documented behavior that would be inconsistent with a person who had just suffered a stroke, i.e., there was no slurring of speech or no indication of paralysis.

Accordingly, based on both the medical expert testimony and the documented physical condition of Beck after the accident, 100 percent of the liability for causing this collision was able to be attributed to Beck's negligence in falling asleep, rather than experiencing a loss of consciousness from a CVA or a stroke.



BARBERI

Despite Pyrett's age, she was the epicenter of her family. She was an integral part of her children's lives and emotionally supported all five of her children, as well as her grandchildren and great-grandchildren in everything they did. Plaintiff's counsel and his staff interviewed all children and grandchildren and submitted a 26-page settlement demand detailing the intertwining of the life of the decedent with her children and grandchildren.

The matter settled for $1 million.

Joseph T. Barberi, counsel for plaintiff, provided case information.

See related story, "Wrongful death claim settles for $1M in Isabella," Jan. 2, 2017.

Type of action: Head-on motor vehicle collision resulting in death

Injuries alleged: Conscious pain and suffering prior to death

Name of case: *Pyrett v. Beck*

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Settlements

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

Court/Case no./Date: Isabella County Trial Court; N/A; Oct. 19, 2016

Demand: $3.85 million

Highest offer: $1 million

Settlement amount: $1 million

Most helpful experts: Dr. George F. Ascherl Jr., neuroradiology, Bay City; Les Rosan, licensed private investigator, Shepherd

Insurance carrier: Auto-Owners

Attorney for plaintiff: Joseph T. Barberi

Attorney for defendant: Peter D. Bosch

59 $1 Million

Benefits sought for vet's 'locked-in' syndrome

A paralyzed veteran of the U.S. Marine Corps who served in Vietnam and retired as a decorated Master Sergeant, and his daughter, who is his conservator and guardian, brought suit against the United States Department of Defense challenging its refusal to pay for skilled nursing facility care.

Since having a stroke in 2003, plaintiff suffered from "locked-in" syndrome, which is the complete paralysis of all voluntary muscles in the body except the eyes and eyelids. Plaintiff also suffered from other ailments, causing his medical condition to be precarious.

Plaintiff's military service entitled him to coverage for "[s]killed nursing facility care ... [that] shall continue to be provided as long as medically necessary and appropriate." 10 U.S.C. 1074j(b). The SNF care provided to plaintiff cost approximately $7,500 each month and the prospect of a lifetime of such care is a virtual certainty.

After initially providing SNF coverage to plaintiff for several years, the Department of Defense switched gears and refused to cover his skilled nursing care, claiming that the plaintiff only required "custodial care" and that it was not "medically necessary" for him to continue to receive skilled nursing care.

Suit was commenced on plaintiff's behalf in U.S. District Court for the Eastern District of Michigan, challenging the government's denial of SNF coverage and seeking to establish that plaintiff's SNF care was "medically necessary" and that he required more than merely "custodial care," which is care that "can be rendered safely and reasonably by a person who is not medically skilled" or is "designed to help the patient with activities of daily living." 32 CFR 199.

The government moved to dismiss the case, arguing that plaintiff lacked for various reasons. Plaintiff argued that he had standing and the controversy was ripe for adjudication because the government's coverage determinations already caused injury-in-fact and posed a threat of imminent harm to plaintiff, including the threat that he could be forced to vacate the nursing home where he had resided for years.

The court denied the motion to dismiss, finding, *inter alia*: "Here, Plaintiffs have alleged a real injury — Flores' financial responsibility for nursing care from February 10, 2010 onward. This is a concrete economic injury sufficient for standing purposes." *Flores v. United States*, 2011 WL 4806769, at *7 (ED Mich Oct 11, 2011). The decision has since been cited in other case law to support the conclusion that the government's denial of health care coverage is sufficient to confer standing. See *Middlebrooks v. United States*, 8 F Supp 3d 1169, 1177 (DSD 2014).

Following additional proceedings and negotiations, the parties agreed to an order remanding the case for further agency review, requiring the Department of Defense to conduct a new review of plaintiff's claims and medical records, conduct a physical examination of plaintiff, and render a new coverage decision subject to judicial review by the court.

Upon remand, the Department of Defense reversed its denials of SNF coverage and issued "a fully favorable determination," finding that "[s]killed care was required and provided daily" and "[t]he services were medically necessary and within the standard of care." Since then, the Department of Defense has provided full coverage for the plaintiff's SNF care, representing hundreds of thousands of dollars in past care and likely more than $1 million in future care.

Finally, plaintiff successfully moved the court to reopen the case and enter a final judgment affirming the government's fully favorable benefits determination on remand. The government opposed reopening the case and allowing a judgment to be entered, arguing that the court relinquished jurisdiction when it entered the order remanding the case for further agency review.

Plaintiff's side argued, among other things, that the remand order was interlocutory in nature, the court retained jurisdiction to enter a final judgment, and the plaintiff should be allowed to file a motion for attorneys' fees and costs under the Equal Access to Justice Act.

The court adopted the positions advanced by plaintiff, and held, "[i]n the end, Plaintiff has the better view as to the proper interpretation of the Remand Order. It did not divest the Court from further jurisdiction nor foreclose the Court from taking further action after TRICARE [the health care benefits agency of the Department of Defense] completed the review required on remand." *Flores v United States*, 2015 WL 3887537, at *7 (ED Mich June 24, 2015).

Following entry of the judgment, the parties engaged in negotiations regarding plaintiff's claim for reimbursement of his attorneys' fees and costs under the Equal Access to Justice Act, which recently resulted in a settlement of the issue.



HONIGMAN



SAXE

The matter settled for a reversal of health care coverage denials, representing hundreds of thousands of dollars in care, and likely more than $1 million in future care.

Brian M. Saxe, co-counsel for plaintiff, provided case information.

Type of action: Statutory claim for health care benefits

Type of injuries: Denial of health care benefits

Name of case: *Flores v. United States*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 2:11-CV-12119; June 24, 2015, and Jan. 5, 2016

Name of judge: Hon. Avern Cohn

Settlement: Reversal of health care coverage denials, representing hundreds of thousands of dollars in care and likely more than $1 million in future care

Attorneys for plaintiff: David M. Honigman, Brian M. Saxe

Attorneys for defendant: U.S. Department of Justice



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Class Actions

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

1 **$550,086,258**

Antitrust action led to widespread settlement

These consolidated class-action cases are part of a multidistrict litigation against numerous automotive parts suppliers alleging violation of Section 1 of the Sherman Antitrust Act, state antitrust statutes, and consumer protection statutes arising from a conspiracy to fix prices. The multiple classes include indirect purchasers (end payors/consumers), indirect purchasers (auto dealers), and direct purchasers.



MILLER

The matter involves an alleged conspiracy among some of the automotive industry's largest manufacturers and suppliers of automotive parts. Plaintiffs' counsel represents consumers who purchased or leased a new vehicle that included one or more of the parts at issue (the "End Payor Class"). Plaintiffs allege that defendants agreed, during meetings and conversations, to sell certain automotive parts at noncompetitive prices to automobile manufacturers in the United States and elsewhere.

The U.S. Department of Justice and the Japanese Fair Trade Commission, among other international law enforcement bodies, have been investigating these conspiracies in the market for automotive parts since at least February 2011. The FBI has participated in raids, and executed search warrants, in some of defendants' offices.

Settlements were reached between various defendants and the End Payor Class, and approved by the U.S. District Court:

- $76 million: Yazaki Corp. and Yazaki North America Inc.
- $19 million: settlement by Autoliv Inc. (and affiliated entities)
- $5,446,350: TRW Deutschland Holding Gmbh and TRW Automotive Holdings Corp.
- $4.56 million: Nippon Seiki Co. Ltd. (and affiliated entities)
- $3.04 million: Lear Corp.
- $128,640: Kyungshin-Lear Sales and Engineering LLC

The following settlements have been preliminarily approved by the U.S. District Court:

- $193.8 million: DENSO Corp. (and affiliated entities)
- $64,229,268: Mitsubishi Electric Corp. (and affiliated entities)
- $47.5 million: JTEKT Corp. (and affiliated entities)
- $42,560 million: Furukawa Electric Co Ltd. and American Furukawa Inc.
- $26.22 million: NSK Ltd. (and affiliated entities)
- $18.62 million: Aisin Seiki Co. Ltd and Aisin Automotive Casting LLC
- $11.4 million: Sumitomo Riko Co. Ltd. and DTR Industries Inc.
- $7.6 million: Schaeffler Group USA Inc.
- $6.65 million: Valeo Japan Co. Ltd. (and affiliated entities)
- $6.08 million: Yamashita Rubber Co. Ltd. and YUSA Corp.
- $3.04 million: Omron Automotive Electronics Co. Ltd.
- $3.04 million: GS Elechtech Inc. (and affiliated entities)
- $1,482,000: LEONI Wiring Systems Inc. and Leonische Holding Inc.
- $760,000: Tokai Rika Co. Ltd and TRAM Inc.

The following settlements are pending preliminary approval by the U.S. District Court:

- $6,574,000: NTN Corp. and NTN USA Corp.
- $2,356,000: Yamada Manufacturing Co. Ltd. and Yamada North America Inc.

Devon P. Allard, co-counsel for plaintiff, provided case information.

Type of action: Antitrust, consumer protection

Injuries alleged: Economic damages

Name of case: *In re Automotive Parts Antitrust Litigation*

Court/Case no./Date: U.S. Eastern District of Michigan, Southern Division; 12-MD-02311; Aug. 9, 2016

Tried before: Judge

Name of judge: Hon. Marianne O. Battani

Settlement amount: $550,086,258

Attorneys for plaintiff: E. Powell Miller, Devon P. Allard, Mariell R. Lehman (liaison counsel for end payors/consumers); Steven Williams, Hollis Salzman, Marc Seltzer (lead counsel for end payors/consumers)

2 **$300 Million**

Ignition switch defects resulted in massive recall

On Feb. 13, 2014, General Motors Co. announced a recall of 779,000 cars, including the company's 2005-07 Chevrolet Cobalt and the 2007 Pontiac G5, because of defects with their ignition switches. Specifically, the defect enabled the ignition switch key to move out of position, causing the car to shut off and critical safety features to become disabled. GM also disclosed that there had been 22 crashes involving its cars where the airbags did not deploy, including five crashes that caused six deaths.

On Feb. 25, 2014, GM more than doubled its recall related to the ignition switches, recalling an additional 842,000 cars including Saturn Ion compact cars from 2003-07; Chevy HHR mid-sized vehicles from 2006-07; Pontiac Solstice and Saturn Sky sports cars from 2006-07; and the Opel GT Roadster from 2007. The two recalls affected more than 1.6 million GM cars worldwide. GM also said that it had underreported the amount of accidents and fatalities caused by its defective ignition switch when it first announced the recall, and that the problem actually caused 31 accidents, including 13 fatalities.



ALMONRODE

On March 11, 2014, the U.S. Justice Department, the U.S. Attorney for the Southern District of New York and the U.S. Senate Committee on Commerce, Science and Transportation announced that they were investigating GM's handling of the ignition switch recall in order to determine whether the company violated criminal or civil laws by failing to notify regulators about the switch failures.

Further, the U.S. House of Representatives Energy and Commerce Committee also asked GM CEO Mary Barra for documents and field reports related to the recall.

The matter settled for $300 million.

Devon P. Allard, on behalf of counsel for plaintiff's class New York State Teachers' Retirement System, individually and on

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MICHIGAN Lawyers Weekly's 2017 SPECIAL EVENT PUBLICATIONS



January 2017

The "2016 Million-Dollar Verdicts & Settlements" section compiles verdicts, settlements and class actions of $1 million or more in 2016 from Michigan courts.



March 2017

On **March 23, 2017**, we invite you to join us in honoring Leaders in the Law - individuals who have made meaningful and inspiring contributions to the legal community. An awards luncheon is held to honor influential leaders who are making waves with their energy, ideas, achievements and commitment to excellence.



Largest Law Firms

Our annual survey and directory lists Michigan-based law firms with 15 or more Michigan-licensed attorneys.



September 2017

On **September 7, 2017**, we salute high-achieving women lawyers in Michigan and their accomplishments at an awards luncheon. Join us in recognizing these leaders who have helped to pave the way for others in their profession and their local and regional communities.



September 2017

Michigan Lawyers Weekly is again publishing a State Bar SPECIAL EDITION specifically for distribution at the State Bar Annual Meeting in **September 2017**.



December 2017

In **December 2017**, we invite you to celebrate the Leaders of Tomorrow - Michigan lawyers who, in their first 10 years of practice, have excelled in their profession and are standouts among their peers.

Contact Charlene Boccaccio at (248) 865-3112 or email: charlene.boccaccio@mi.lawyersweekly.com for more info.

Class Actions

2016 MILLION DOLLAR VERDICTS & SETTLEMENTS

behalf of all other persons similarly situated, provided case information.

Type of action: Securities fraud

Injuries alleged: Money damages

Name of case: *New York State Teachers' Retirement System v. General Motors Co.*

Court/Case no./Date: U.S District Court, Eastern District of Michigan; 14-cv-11191; May 23, 2016

Tried before: Judge

Name of judge: Hon. Linda V. Parker

Settlement amount: $300 million

Attorneys for plaintiff: E. Powell Miller, Sharon S. Almonrode, Salvatore J. Graziano, James A. Harrod, Adam H. Wierzbowski

3 $125 Million

Auto dealerships recover in price-fixing cases

U.S. District Court Judge Marianne O. Battani approved settlements of $125 million reached between a class of automobile dealership plaintiffs and defendant automotive parts manufacturers, alleged to have engaged in price-fixing and bid-rigging on numerous automotive parts.

The settlements cover 28 different parts and 10 different defendants, including the Denso and Sumitomo defendant groups. The settlements are part of the ongoing *In re Automotive Parts Antitrust Litigation*.

The U.S. Department of Justice has called the related criminal antitrust prosecution the largest in U.S. history.

Alexander E. Blum, co-counsel for plaintiffs, provided case information.

Type of action: Violations of Section 1 of the Sherman Act and several state antitrust and consumer protection statutes

Name of case: *In re Automotive Parts Antitrust Litigation*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 12-md-02311; Nov. 28, 2016

Name of judge: Hon. Marianne O. Battani

Settlement amount: $125 million

Attorneys for plaintiff: Gerard V. Mantese, Alexander E. Blum, Theresamarie Mantese, Jonathan Cuneo, Don Barrett, Shawn Raiter

4 $42 Million

Nurses make claim for underpaid wages

This case arises out of plaintiffs' allegations that nurses were underpaid wages due to an alleged conspiracy among hospitals to depress nurses' wages.

Pat Cason-Merenda and Jeffrey A. Suhre were representatives of plaintiffs' certified class.

E. Powell Miller and Sharon S. Almonrode, co-counsel for plaintiffs, provided case information.

Type of action: Antitrust

Injuries alleged: Money damages

Name of case: *Cason-Merenda v. VHS of Michigan Inc. d/b/a Detroit Medical Center*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 06-cv-15601; Jan. 27, 2016

Name of judge: Hon. Gerald E. Rosen

Settlement amount: $42 million

Attorneys for plaintiff: E. Powell Miller, Sharon S. Almonrode, Lynn Lincoln Sarko, Mark A. Griffin, Daniel A. Small, Daniel E. Gustafson, Joseph Goldberg

5 $3.35 Million

Deferred retirement program under dispute

Certain executives at defendant Henkel Corp. were part of a top-hat deferred retirement program. When the executives retired, Henkel did not determine whether these retirees were subject to any FICA liability on the retirement benefits.

Several years later, in 2011, Henkel advised the retirees that an error had been made and that the FICA benefits should have been subject to FICA at the time of retirement. If Henkel had assessed the FICA at the time of retirement, the retirees would have never again been subject to FICA taxes. Because Henkel failed to assess the taxes at retirement, the retirees lost the benefit of this one-time "non-duplication tax rule."

Once Henkel discovered the error, the retirees and Henkel had to pay the past taxes on the benefits, then pay FICA going forward for the remainder of the retirees' lives. The retirees were subject to FICA taxes that they never would have had to pay but for Henkel's error.

Plaintiff's counsel noted that top-hat plans are unique in that they only receive some of the statutory protections of ERISA. In this case, counsel argued that the remedial provisions of ERISA applied to make the retirees whole. Counsel obtained class certification and summary judgment on liability. With only trial on the remedy remaining, counsel successfully negotiated the result.

Plaintiff's counsel obtained remuneration for the error, including a tax gross up to cover any tax consequences associated with the payment, including the ironical result that there would be FICA taxes on the reimbursement for FICA. Counsel also obtained the abatement of FICA collection against surviving spouses. In addition, attorneys' fees were paid over and above the 100 percent recovery.

The matter settled for $3.35 million.

Sharon S. Almonrode, co-counsel for plaintiff's class, provided case information.

Type of action: ERISA class action on behalf of top-hat retirees

Injuries alleged: Reduction in retirement benefits

Name of case: *Davidson v. Henkel Corp.*

Court/Case no./Date: U.S. District Court, Eastern District of Michigan; 12-cv-14103; Jan. 29, 2016

Name of judge: Hon. Gershwin A. Drain

Settlement amount: $3.35 million

Attorneys for plaintiff: E. Powell Miller, Sharon S. Almonrode, Emily Hughes

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