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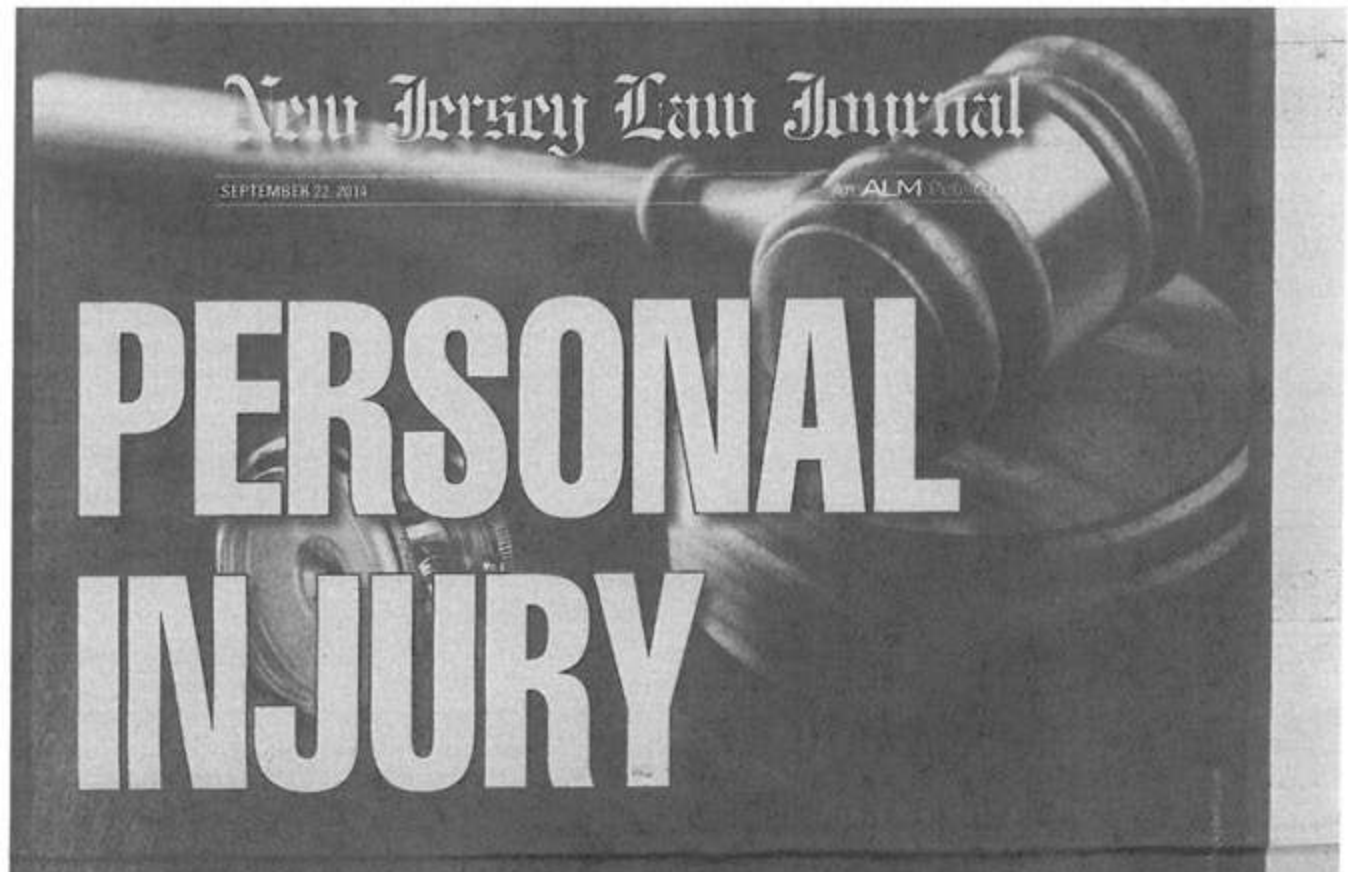

PERSONAL INJURY

Top 20 Personal Injury Awards Rise in 2014

By Juliette Gillespie

New Jersey's top 20 personal injury recoveries saw an uptick this year. The largest awards reported by the *Law Journal* between Sept 1, 2013, and Sept. 12, 2014, totaled $156.6 million, up from $116.3 million last year.

The top payout this year is $20.5 million; last year's largest award was $16.3 million.

This year's average award is $7.8 million, which is significantly above last year's average of $5.8 million.

The median recovery, however, is not so different: $5.5 million in 2014, as compared to $5 million in 2013. This indicates that there was a greater number of larger awards. Indeed, this year there are five awards over $9 million, whereas in 2013 there were only two.

But the lowest awards on our 2013 and 2014 lists are not as far apart. Ranked at number 20 this year is an award for $3.75 million. Last year's 20th place award was $3.35 million.

Increases in 2014 were also evident in the next tier of recoveries (see "Ten More Awards Worth Noting"). This year's grouping ranges from $3 million to $3.55 million, compared with $2.5 million to $3.2 million last year.

As usual, the top awards are listed in order of compensatory damages, as of the date of the verdict or settlement, even if there were punitive damages as well. For example, in the case of *Dwyer v. Alaris Health at Harborview*, the plaintiff was awarded $13.2 million in damages, but that amount included about $8.2 million in punitive damages. Therefore, the case is ranked as an award of $5 million, in a tie for 11th place.

Awards of equal value share a ranking. There are three cases ranked at number 11 and two at number 14.

Awards for multiple parties are ranked by their lump-sum value.

Awards are listed according to their original amounts, even if they were subsequently reduced. For example, the award of $9.6 million to the plaintiff in *Stetson v. Nunez* is ranked at number 6, even though the amount was cut by 35 percent due to the plaintiff's preexisting condition.

Unilateral decisions by governmental entities to compensate injured parties are not included.

1 Teen run over by truck, rendered triplegic recovers $20.5M

A Morris County suit on behalf of a youth run over by a pick-up truck and left paralyzed settled for $20.5 million, *Matakitis v. Delbarton School*.

On May 8, 2007, 12-year-old Daniel Matakitis was visiting his grandparents, Charles Matakitis Sr. and Barbara Matakitis, at their home in Hanover, N.J. He was riding his bicycle when his great uncle, Ronald Matakitis, backed out of the driveway and ran over him. Daniel was rendered a triplegic, without the use of his legs and his right arm, says plaintiff lawyer, **Brian O'Toole of O'Toole & Couch** in Whippany, N.J.

Ronald Matakitis was the chief of maintenance at the Delbarton School in Morristown, N.J., which owned the truck.

The defendants in the suit included the school and its operators, the

Continued on next page

Continued from preceding page

Order of St. Benedict's of New Jersey and St. Mary's Abbey of Mendham, N.J.

Daniel's parents, Charles and Mary Ann Matakitis of Chester, N.J., agreed to the settlement Feb. 21 and Superior Court Judge **Thomas Manahan** approved it that day.

The Delbarton defendants had four insurance carriers. National Catholic Risk Retention Group will contribute $10 million; International Ins. Co. of Hannover, Germany, $5 million; Princeton Excess and Surplus Lines Ins. Co., $4 million; and Axis Surplus Ins. Co., $1 million.

New Jersey Manufacturers Ins. Co., the carrier for Daniel's grandparents, will pay $500,000.

O'Toole's co-counsel in the case was **John Collins**, of Denville, N.J.'s **Bongiovanni, Collins & Warden**.

The Delbarton defendants were represented by **Keith Harris**, of Livingston, N.J.'s **Bruff, Harris & Sukoneck**, who declined comment. The grandparents' lawyer was **Maryann McCoy**, of **O'Donnell, McCoy & Heleniak** in Morristown, N.J., who did not return a telephone call.

2 Jury awards $19.3M in motorcycle crash case

A Sussex County jury awarded $19.3 million on February 27, 2014, to a man who suffered spinal injuries when his motorcycle was hit by a pickup truck.

The award is the highest ever in rural Sussex County, which has a reputation for conservative jury verdicts, said plaintiff lawyer **Andrew Fraser**.

Although the defendant's auto policy with GEICO had only $250,000 in coverage, that company is exposed to the entire award under *Rova Farms Resort v. Investors Insurance Co. of America* because of its failure to negotiate before trial, Fraser said. The defendant was also covered by a $1 million umbrella policy from Selective Insurance Co.

The defendant stipulated to liability but deemed the crash a light-impact accident and claimed the plaintiff's spinal injuries were merely a consequence of old age, he said.

Plaintiff Steven Visaggio made a pretrial demand for $250,000, which he estimated would cover his costs for an upcoming spinal operation, but lawyers for GEICO made no pretrial offer, Fraser said. Before trial, the plaintiff filed a bad-faith claim against the carrier under *Rova Farms Resort* for failure to negotiate, he said.

Plaintiff lawyers consider GEICO "very hard-nosed, very difficult to negotiate with," said Fraser. "They rolled the dice here and lost."

GEICO offered $65,000 on the first day of trial and later increased its offer to $150,000, but the plaintiff did not accept, Fraser said.

The carrier's under-valuation of the case is common in so-called soft-tissue injury cases, he said.

"Insurance companies do not view these cases as having significant value—they want to hear there was surgery or a fractured bone. They're getting it backward—if you have a fractured leg, it's going to heal in eight weeks. If you have an injury to your spine, it's not going to get better," said Fraser, of **Laddey, Clark & Ryan** in Sparta, N.J. He was assisted by the firm's **Timothy Dinan**.

The jury awarded $15.5 million to Visaggio for pain and suffering, disability, impairment and loss of enjoyment of life. His wife, Barbara, was awarded $3.8 million for loss of consortium. The verdict was awarded after a three-day trial before Sussex County Superior Court Judge **Edward Gannon**.

According to Fraser, Visaggio, then 58 years old, was injured while riding a motorcycle on Route 23 in Sussex Borough, N.J., on March 20, 2010. He had stopped behind other traffic at a red light when a pickup truck driven by Kurt Dorthe, then 19, of Sussex, stopped behind him. When the light turned green, but before the vehicles in front of Visaggio pulled ahead, Dorthe accelerated abruptly. Dorthe's truck struck Visaggio, pushing him into the oncoming lane and causing his 900-pound motorcycle to fall on top of him.

Visaggio suffered cervical and lumbar spinal injuries, including disc herniation, disruption and bulging. He also sustained a torn right rotator cuff. He suffers from chronic pain in his lower back, neck and right arm.

GEICO's staff counsel, **Emad Iskaros**, who tried the case, contended

Continued on page S-4

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INSIDE

Continued from page S-2

that Visaggio's spinal injuries were pre-existing, but that was refuted by an MRI film taken soon after the accident, showing blood in the spinal column, Fraser said.

The plaintiff lost three months from his business as a home renovation contractor. Since the accident he can only spend two or three hours per day on the job and must hire others to do work that he used to perform himself, Fraser said.

Visaggio takes pain medication that makes him drowsy since the accident. The jury heard about the accident's impact on his family, which includes three biological children and five adopted children. The jury also heard that the adopted children are all biological siblings from a Newark family whose mother abused drugs while pregnant, Fraser said.

Fraser said he thinks the jury was impressed by the accident's impact on the plaintiff's family. Before the accident, Visaggio spent much of his time helping his children with tasks like coaching their basketball teams, repairing their cars or fixing their leaking roofs, but he is unable to do so now because of the impact of the pain medication, Fraser said.

Defense lawyer Iskaros, of **Walter Skrod**'s office in Hackensack, N.J., did not return a call about the verdict.

3 Woman run over by bus settles for $17M

Baker v. New Jersey Transit: A woman permanently injured when she was run over by a bus settled her Essex County suit on Feb. 20 for $17 million.

In January 2011, Angelique Baker had exited an NJ Transit bus in East Orange, N.J., when the driver, Jean Valme, closed the door on a drawstring bag she was carrying. The bus dragged Baker several feet as it departed the stop, and its right rear wheel ran over her, say her lawyers, **William Greenberg** and **Lawrence Minasian** of **Greenberg Minasian** in West Orange, N.J.

She sustained a crushed pelvis, numerous other fractures and a closed-head injury. During one of her 12 surgeries, Baker stopped breathing, which exacerbated the brain injury and led to a cognitive deficit. Now 42, she can walk short distances but is largely wheelchair-bound, her lawyers say.

NJ Transit contended that Valme's duty ended once Baker reached the sidewalk. The agency also argued that Baker's health problems, AIDS and past heroin use, could have contributed to her fall and shortened her life expectancy.

In a six-week trial before Superior Court Judge **W. Hunt Dumont** that was interrupted by holidays and weather delays, the eight-member jury reached a verdict after an hour and 10 minutes. The panel unanimously found NJ Transit liable, assigned it 100 percent fault and awarded $1.4 million for past medical expenses, $3.6 million for future medical expenses, and $12 million for pain and suffering.

NJ Transit's counsel, **Thomas Hart** of **Ruprecht Hart Weeks & Ricciardulli** in Westfield, N.J., didn't return a call.

4 Motorcyclist hurt at blind corner wins $9.7M jury verdict

A Camden County jury awarded $9.7 million on Feb. 26 to a motorcyclist injured in an accident found to have been caused by a sight obstruction at an intersection, *Mazzone v. Atlantic City Electric Co.*

Mark Mazzone was riding on Route 30 in Waterford Township, N.J., on Aug. 29, 2008, when he collided with a car driven by Sharon Czyzewski, who was pulling onto the highway from Briarcliff Road.

At the intersection, the lanes of Briarcliff Road were separated by a traffic island that was owned by Waterford Township and maintained by the Ivystone Farms Civic Association, under an arrangement approved by the township. A utility pole on the portion of the island nearest Route 30, owned by Atlantic City Electric, had become overgrown with ivy and other vegetation, which Czyzewski claimed blocked her view of Mazzone coming.

Also sued were Waterford Township, the Ivystone Farms Civic Association and Atlantic City Electric for their alleged failure to prevent or remediate the hazardous condition.

Mazzone was in a coma for six weeks after the accident. Afterward, he underwent multiple surgeries for implantation of hardware in his right shoulder and wrist and his pelvis, requiring external fixation. He also fractured his cervical spine and left foot and sustained disc herniations, for which he underwent decompression surgery at L3-L4 and L4-L5. He suffered a closed-head injury and was left with memory deficits and cognitive impairment.

Czyzewski deposited her $125,000 policy with the court. Ivystone defaulted; Waterford claimed it was immune under the enhanced liability standards of Title 59. Waterford and Atlantic City Electric also claimed their alleged failures were not a proximate cause of the accident.

Following an eight-day trial before Superior Court Judge **Robert Millenky** and a day-and-a-half of deliberation, the jury found the defendants negligent and found proximate cause.

The jury awarded $4.75 million for pain and suffering, $180,326 for past wage losses, $470,747 for future wage losses, $3.49 million for past medical expenses, and $795,583 for future medical expenses. Liability was apportioned 14 percent to Czyzewski, 16 percent to the Civic Association, 15 percent to Atlantic City Electric, and 55 percent to Waterford Township.

Mazzone was represented by **Steven Johnson** and **Patrick D'Arcy**, assisted by **Andrew D'Arcy** and **Christopher Vanderveer**, all of **D'Arcy Johnson Day** in Egg Harbor, N.J.

Atlantic City Electric was represented by **Gerald Corcoran** of **Montgomery, McCracken, Walker & Rhoads** in Linwood, N.J. Corcoran says he will appeal. He adds that he will seek a molded verdict that would reduce the portion of the award for past medical expenses by roughly $3 million to reflect items already covered by insurance.

Continued on page S-6

Continued from page S-4

Waterford Township's lawyer, **James Birchmeier** of **Powell, Birchmeier & Powell** in Tuckahoe, N.J., and Czyzewski's lawyer, Haddonfield, N.J., solo **Robert Nicodemo III**, did not return calls.

5 Jury awards $9.6M to boy blinded by birth injuries

A Middlesex County jury awarded $9.6 million on Oct. 11, 2013, to a boy who is blind, confined to a wheelchair and unable to speak due to injuries at birth, *Stetson v. Nunez*.

The recovery is reduced to $6.24 million, however, because of his mother's preexisting conditions.

Michael Stetson was born in March 2002 with cerebral palsy and fluid in his lungs at Hackensack (N.J.) University Medical Center, says his lawyer, **Danielle George** of **Phillips & Paolicelli** in New York.

The suit claimed obstetrician David Nunez and maternal fetal medicine doctor Manuel Alvarez negligently failed to detect placental insufficiency, insufficient oxygen to the fetus, elevated blood pressure and other distress signs.

Superior Court Judge **Heidi Willis Currier** presided at the trial.

Nunez and Alvarez were found negligent and Michael's injuries were found to have been caused by Nunez's departures from the standard of care.

The jury awarded $6 million for future medical costs, $1.5 million in future pain and suffering, $1 million in lost wages, $500,000 for past pain and suffering, and $110,475 for past medical costs. Giovanna Stetson was awarded $500,000 for emotional distress.

The jury attributed 35 percent of the damages to Giovanna's preexisting conditions, cutting the award by $3.36 million.

Defense counsel were **Kenneth Brown** of Wilson Elser Moskowitz Edelman & Dicker in Florham Park, N.J., for Nunez; **James Sharp** of **Sharp & Mahoney** in Cedar Knolls, N.J., for the hospital; and **Robert Evers** of **Marshall Dennehey Warner Coleman & Goggin** in Roseland, N.J., for Alvarez. None returned a call.

6 Elevator injury case rebounds with $8M verdict after $4M overturned

In a case of double reversal of fortune, a New Jersey carpenter who saw his $4 million award for injuries in a 2005 elevator accident overturned on appeal has won $8 million on retrial.

After a two-week trial, a Morris County jury on Tuesday found Schindler Elevator and Escalator Co.'s negligent maintenance of an elevator led to a two-and-a-half-story plunge that left Richard Tufaro with neck and back injuries.

It was a stinging loss for the company, which now must pay double the damages awarded in the first trial, where it conceded liability but contested proximate cause for the injuries.

Tufaro, who had been renovating the lobby in the Headquarters Plaza office building in Morristown, N.J., claimed the impact when the elevator halted caused his knees to buckle and herniated back and neck discs, leaving him unable to continue in his trade.

In the first trial, in March 2012, Schindler's lawyer, **James DeNorscia**, asked Superior Court Judge **Donald Coburn** to put the proximate-cause question to the jury. Coburn refused, saying it was not the customary practice in a damages-only trial.

The jury awarded $2.8 million for pain and suffering, $233,000 in medical expenses and $950,000 per quod to Tufaro's wife, totaling about $4 million.

Schindler appealed and the Appellate Division reversed in March 2013, finding the verdict sheet and Coburn's jury instructions "together created a misleading and ambiguous deliberative environment, fully capable of engendering an unjust result."

But DeNorscia's attack on proximate cause seems to have misfired in the second trial. The plaintiff's expert witness, James Fillippone, who oversees elevator maintenance for the Port Authority of New York and New Jersey, testified that the elevator was stopped by its emergency brake when it was dropping too fast. He said the sudden stop imparted five g-forces on Tufaro, the equivalent of 1,500 pounds.

On cross-examination, DeNorscia asked Fillippone if he answered to David Wildstein and Bill Baroni, former Port Authority officials now at the center of the Bridgegate scandal. Judge **Edward Gannon** sustained plaintiff lawyer **Andrew Fraser**'s objection and told the jury to disregard the question.

DeNorscia, who had a series of surveillance videos taken of Tufaro's post-accident activity that were shown during the first trial, apparently decided against showing them in the second one.

But Fraser did show video clips, which he says did not depict Tufaro engaging in strenuous activities but instead demonstrated how his lifestyle was limited by the injuries. "I thought [the videotape] was the best evidence of the harms and losses this couple was living with every day," says Fraser, of **Laddey, Clark & Ryan** in Sparta, N.J., who was aided by **Timothy Dinan** of the firm.

The jury found that the elevator malfunction caused by Schindler's negligence was the proximate cause of Tufaro's injuries. It awarded $5.5 million for pain and suffering, $2.25 million per quod and $250,000 in medical expenses.

DeNorscia, of **Sonageri & Fallon** in Hackensack, N.J., did not return calls, nor did representatives at Schindler's office in Morristown.

The Headquarters Plaza office building houses the chambers of Appellate Division Judges **Jose Fuentes** and **Victor Ashrafi**, whose panel had originally been assigned to the appeal of the original judgment. They recused, and two other judges—**Joseph Yanotti** and **Jonathan Harris**, both based in Newark—were put on the case.

Judiciary spokeswoman Tammy Kendig says that judges never give the reasons for recusals.

7 Negligent security suit settles for $7.8M

A $7.8 million settlement in a negligent security suit stemming from the murder of a woman and an assault on her infant was approved by a Bergen County judge on June 6, 2014.

The suit, *Estate of Reyes v. Westgate Management*, stems from the stabbing death of Jacqueline Reyes, 29, of the Paulus Hook Towers apartment complex in Jersey City, N.J., on Dec. 8, 2009. She had 34 stab wounds in the face, neck, torso and arms. Her 7-month-old son, Ivan, was stabbed eight times in the abdomen. The child was hospitalized for two months after the attack.

Police said Martey Williams of Newark committed the assaults while stealing $7,000 in cash from the apartment. He pleaded guilty to murder and was sentenced to 40 years in prison.

The decedent's family sued the owner of the apartment complex, Paulus Hook Community Housing Corp. of Jersey City; the management company, Westgate Management of Lawrenceville, N.J.; and a security contractor hired by Westgate, DMS Security Systems of Jersey City.

The suit charged the defendants were negligent because uniformed guards were on duty from 4 p.m. to 8 a.m. and the attack took place at around 8:30 a.m.

The entrance to the apartment building required visitors to be buzzed in, but Williams managed to enter as a resident was leaving.

The defendants maintained that security was reasonable and that the crime could not be prevented because Williams targeted his victim, said plaintiff lawyer **Daryl Zaslow**.

Williams stated in a deposition that the attacks were precipitated by a dispute over a drug deal with the decedent's husband, Ivan Reyes, but Reyes denied that he knew Williams.

The case was to be tried by Superior Court Judge **Charles Powers**. The settlement was reached after jury selection. Westgate Management and Paulus Hook jointly paid $6 million and DMS Security Systems paid $1.8 million.

Zaslow, of **Eichen, Crutchlow, Zaslow & McElroy** in Edison, N.J., was assisted by **Edward McElroy** of the firm. **Adam Adrignolo** of **Graham Curtin** in Morristown, N.J., represented DMS Security Systems. He declined comment. **Joseph McGlone**, of **McElroy, Deutsch, Mulvaney & Carpenter** in Morristown, represented Westgate and **William Brennan**, of **Callen, Koster, Brady & Brennan** in Shrewsbury, N.J., represented Paulus Hook. They did not return calls.

8 Suit linking child's cerebral palsy to misread fetal test settles for $7.5M

The family of a child born with cerebral palsy recovered $7.5 million in settlement of a medical malpractice suit, *Martinez v. Ebert*.

On July 5, 2004, at Robert Wood Johnson University Hospital in New Brunswick, N.J., Aleksander Martinez allegedly was deprived of oxygen during the hour between a monitor indication showing a slowing of his heart rate and his birth by Caesarean section.

His mother's uterus was rupturing but Dr. Gary Ebert and a nurse thought the reading resulted from a spinal epidural, and only afterward did Ebert realize the severity of the situation and order a C-section, says the family's lawyer, **Timothy Barnes** of **Porzio Bromberg & Newman** in Morristown, N.J.

Barnes says Aleksander has spastic quadriplegia, cannot speak, needs a respirator and a feeding tube, and requires around-the-clock care.

The settlement was reached on Oct. 22, 2013, through mediation with

TOP 20 PERSONAL INJURY AWARDS OF THE YEAR

retired Superior Court Judge **Anthony Sciuto**, of **Maggiano, DiGirolamo & Lizzi** in Fort Lee, N.J. Middlesex County Superior Court Judge **Joseph Rea** approved it at a Nov. 21 friendly hearing.

Of the $7.5 million, $950,000 will be paid on behalf of Ebert and the rest on behalf of Rutgers Biomedical and Health Sciences, Ebert's practice group in 2004. The claims against the nurse remain, Barnes says.

Ebert's lawyer, **Justin Johnson** of **Marshall Dennehey Warner Coleman & Goggin** in Roseland, N.J., did not return a call.

9 Suit alleging misread genetic tests led to disability settles for $7.15M

A woman who alleged that misread genetic tests caused her child's disabilities settled her wrongful-birth suit, *Hunter v. Shertz*, for $7.15 million.

In the fall of 2009, Laurie Hunter, then 40, underwent genetic testing at Monmouth County Medical Center in Long Branch, N.J., and was assured of no abnormalities, says her lawyer, **Bruce Nagel** of **Nagel Rice** in Roseland, N.J.

Her daughter Kaitlyn was born in January 2010 with Wolf-Hirschhorn syndrome, which is characterized by facial deformities, intellectual disabilities, delayed growth and seizures. Nagel says the girl cannot speak, is deaf and likely blind, is fed through a stomach tube, requires around-the-clock care and has a 20- to 30-year life expectancy.

Hunter settled with the director of the center's genetic laboratory, Dr. Wendy Shertz, in August 2013 for her $1 million policy limit.

The other $6.15 million will be paid on behalf of the center and two lab technicians, as agreed on Nov. 21, 2013, through mediation with former Superior Court Judge **James Clyne** of **Benchmark Resolution Services** of New Egypt, N.J.

The center's lawyer, **Robert Giannone** of **Ronan Tuzzio & Giannone** in Tinton Falls, N.J., confirms the amount of the settlement. The parties are awaiting a friendly hearing.

Shertz's attorney, **Lauren Strollo** of **Vasios Kelly & Strollo** in Union, N.J., was out of the office and could not be reached.

Greg Kohn of Nagel's firm was his co-counsel.

10 Tenant Accepts $6M to settle suit over rodent-borne viral infection

An Atlantic County judge on Dec. 6, 2013, approved a $6 million settlement for a boy allegedly paralyzed at birth from a mouse-borne infection passed on in utero, *Kilpatrick v. Interstate Realty Management Co.*

Leroy Kilpatrick III, born on Sept. 23, 2010, with water on the brain, is a blind, deaf and spastic quadriplegic who might not be able to speak, says his lawyer, **John Zaorski** of **Cappuccio & Zaorski** in Hammonton, N.J.

The cause was diagnosed as lymphocytic choriomeningitis, a rodent-borne virus transmitted by his mother, Lourdes Rivera. Its primary host is the domestic mouse, which can carry it in saliva, urine and feces. Rivera had complained numerous times about rodent infestation in the Brigantine Home Apartments in Atlantic City, where she lived, Zaorski says.

She and the boy's father, Leroy Kilpatrick Jr., sued building owner Brigantine Home Associates and manager Interstate Realty Management of Marlton, N.J., claiming they failed to provide a safe living environment. Corbett Exterminating Inc. of Cranford was brought in on a third-party complaint.

The case settled on Nov. 22, 2013, through mediation with former U.S. Magistrate Judge **Joel Rosen**, now at **Montgomery McCracken Walker & Rhoads** in Cherry Hill, N.J., and Superior Court Judge **James Isman** approved the deal. Brigantine and Interstate will pay $4.5 million. Their lawyer, **Marc Zingarini** of **Weber Gallagher Simpson Stapleton Fires & Newby** in Philadelphia, confirms the agreement. Corbett is paying $1.5 million. Its attorney, **Jonathan Field** of **Mintzer Sarowitz Zeris Ledva & Meyers** in Cherry Hill, declines comment.

11 —TIE Estate awarded $5M in compensatory damages for nursing-home death

The estate of an 87-year-old woman who died in a nursing home while recuperating from a dislocated shoulder caused by a fall at her home has been awarded $13.2 million in total damages in *Dwyer v. Alaris Health at Harborview*.

A Hudson County jury on May 14, 2014, awarded the family of Mary Dwyer, of Jersey City, N.J., $5 million in compensatory damages and $8,213,000 in **punitive** damages, said one of the estate's attorney, **David Cohen**.

Dwyer was injured on Oct. 20, 2009. After a short hospital stay, she was transferred to the Alaris Health at Harborview facility in Jersey City for what was supposed to be a short-term rehabilitation stay, said Cohen, of Lawrenceville, N.J.'s **Stark & Stark**.

Instead, Dwyer remained at the nursing home until Feb. 3, 2010, shortly before she died in a hospital of systemic organ failure, said Cohen, who handled the case along with **Michael Brusca**, also of Stark & Stark.

The wrongful death and negligence lawsuit filed against Alaris alleged that while there, Dwyer developed extensive bed sores, lost 20 pounds, underwent seven debridement procedures on the bed sores, two bone shavings and a colostomy. After being transferred to a hospital, she underwent two more debridement procedures. She died on Feb. 27, 2010, said Cohen.

The lawsuit said the 180-bed facility was understaffed and was unable to provide proper patient care, and that Dwyer's records were falsified so as to indicate she received greater care than was actually provided.

Alaris denied that it provided inadequate or substandard care, and argued that Dwyer was already seriously ill

Continued on page S-9

TOP 20 PERSONAL INJURY AWARDS OF THE YEAR

Continued from page S-7

when she came to the facility.

The lawsuit was filed by Dwyer's daughter, Henrietta. Judge **Nesle Rodrigues** presided over the 11-day trial.

Alaris' carrier, Montpelier U.S. Ins. Co., retained **Neil Ptashnik**, who runs a firm in New York. He did not return a telephone call.

11—TIE

Man who alleged doctors missed stroke indicators settles for $5M

A man who said doctors missed warning signs of a stroke agreed to a $5 million settlement of his Ocean County medical malpractice suit on June 20, 2014.

In *Silecchia v. Dietz*, Paul Silecchia of Toms River, N.J., claimed his optometrist and his primary care physician both failed to diagnose an onset of carotid artery disease that was a precursor to a stroke. He has difficulty walking and speaking as a result of the stroke he suffered and was forced to leave his job in a supermarket, according to his suit.

Silecchia, then 50, visited optometrist Michael Deitz on June 25 and July 20, 2009, complaining of headaches and loss of vision in his left eye. Deitz diagnosed Silecchia with glaucoma and a migraine, and told him to follow up with his primary care physician if the headaches persisted, giving no indication of a need for immediate treatment, the suit said.

On July 20, Silecchia phoned his primary care physician, Thomas Lozowski, and left a message indicating he was having headaches and had lost vision in the left eye. Lozowski prescribed an MRI but did not suggest the symptoms should be investigated urgently, the suit said. On Aug. 3, 2009, Silecchia suffered a stroke.

Experts retained by Silecchia indicated the symptoms were related to loss of blood supply to the ophthalmic artery from a carotid artery lesion, which warrants an emergent investigation. The plaintiff's attorney, **Daryl Zaslow**, maintained that the condition could have been easily diagnosed and treated any time in the six weeks before Silecchia suffered the stroke.

Under the terms of the settlement, the insurance carrier for Deitz and his medical practice, The Ocean Eye Institute, agreed to pay $4 million and Lozowski and his practice, DiChiara & Lozowski, agreed to pay $1 million.

While the suit was pending, Silecchia's wife, Marta, who had a claim for loss of consortium against the defendants, filed for divorce. Zaslow had represented both until then but she retained separate counsel after filing for divorce. The two agreed that Marta would receive $750,000 of the $5 million.

Paul Selecchia's lawyer, Zaslow, is with **Eichen, Crutchlow, Zaslow & McElroy** in Edison, N.J. Marta Selecchia's lawyer was **Brian Ansell** of **Ansell, Grimm & Aaron** in Ocean, N.J. **Joseph Cooney** of **Widman, Cooney, Wilson, McGann & Fitterer** in Oakhurst, N.J., represented Deitz. **James Ronan** of **Ronan, Tuzzio & Giannone** in Tinton Falls, N.J., represented Lozowski. Defense lawyers Cooney and Ronan did not return calls about the settlement.

11—TIE

Lindenwold pays $5M over injuries from police-dog attack

A Camden County municipality will pay $5 million to settle an excessive-force suit by a man who claimed a police-dog attack left him with neurological and cognitive problems, *Black v. Borough of Lindenwold*.

According to the suit, Michele Black and her two children were pulled over by a Lindenwold, N.J., police patrol car on Oct. 7, 2010. When her husband, James Black, drove up in another car and inquired what was happening, Officer Scott Pierson released his German shepherd, which repeatedly bit Black, and didn't call off the dog until Black was facing the ground.

The suit said Pierson had no reason to pull over Michele Black and that James Black did not act in a menacing way. Black claimed he suffered a stroke in the attack, had part of his skull removed to relieve brain swelling and could not return to his cab-driver job.

The settlement was reached after mediation with former Superior Court Judge **C. Judson Hamlin**, of **Keefe Bartels** in Red Bank, N.J., and was approved on Oct. 9, 2013, by U.S. District Judge **Joseph Irenas** in Camden, N.J. Of the total, $602,814 will go to Black and his wife; $1.544 million into a structured settlement; $878,329 into a trust for Black; $28,000 into a trust for each child; $26,847 for repayment of Black's two personal loans; $88,458 for a medical lien; $22,025 for a Medicare set-aside; $1.54 million for attorney fees; and $235,000 for legal expenses.

Black was represented by **William Buckman**, who heads a Moorestown, N.J., firm, and **Paula Xinis** of **Murphy, Falcon & Murphy** in Baltimore. Lindenwold's lawyer, **Michael Madden** of Haddonfield, N.J.'s **Madden & Madden**, did not return a call. Pierson's lawyer, **J. Brooks DiDonato** of **Parker McCay** in Mount Laurel, N.J., declines to comment.

14—TIE

$4.5M for woman hit by bus

Layne v. New Jersey Transit: A Newark woman run over by a New Jersey Transit bus settled with the state for $4.5 million on May 13, 2014.

June Layne was in the crosswalk at the intersection of Lyons and Maple Avenues in Newark, on June 2, 2010, when she was struck by the corner of a turning bus and knocked down, said her lawyer, **James Maggs** of **Maggs & McDermott** in Brielle, N.J.

When the driver, alerted by passengers, stopped the articulated bus, its middle wheels came to rest on Layne and the bus had to be backed off of her, Maggs said.

She was brought to nearby Newark Beth Israel Hospital with an open, dislocated fracture of her right ankle, a collapsed lung and large degloving injuries on her right leg and left thigh. She went into cardiac arrest and resuscitation efforts fractured three ribs.

Layne had surgery to reconnect her ankle bones with screws, and for about 12 weeks after, wore an external metal brace attached to her bones with pins to hold the ankle steady.

The degloving injuries required multiple procedures and extensive wound care. A drain was implanted in her left thigh which became infected and then necrotic, requiring surgery to remove dead tissue and skin grafting.

Layne stayed at Beth Israel until Sept. 30, 2010, then went to Chancellor Specialty Care Center in Irvington, N.J., until Dec. 20, 2010. Outpatient physical therapy continued through October 2012, wound care through November 2011, orthopedic care through April 2012, podiatric care through January 2013, and psychological treatment through 2013.

Now 56, Layne cannot flex her right foot, which is stuck at an angle, or move the toes on that foot; she has neck and back pain and she must use a wheelchair, walker or scooter to get around, except for short distances.

Maggs said the bus driver first claimed that he did not see her because she was in his blind spot and later that she walked into the bus. There were statements from passengers that she was talking on a cellphone and not looking where she was going, he added.

Her Essex County suit settled through mediation on March 6 with retired Superior Court judge **Eugene Codey**, now with Roseland, N.J.'s **Connell Foley**. The New Jersey Transit board approved it on April 8, 2014, and Layne signed the release on May 13, 2014.

Defense counsel **Thomas Hart**, of **Ruprecht Hart Weeks & Ricciardulli** in Westfield, N.J., did not return a call.

Maggs' law partner, **John McDermott III**, was co-counsel.

14—TIE

$4.5M for motorcycle accident fatality

Gentile v. Kuhta: The widow and child of a man who died in a motorcycle crash accepted $4.5 million on Nov. 25, 2013, to settle her Middlesex County suit.

Gregory Gentile, 27, of East Brunswick, N.J., was fatally hit on Amwell Road in Hillsborough, N.J., on May 17, 2012, by a car making a U-turn.

Gentile was an electrical engineer earning about $100,000 a year, and an expert estimated his death would cost his family more than $4 million, says plaintiff lawyer **Raymond Gill Jr.** of **Gill & Chamas** in Woodbridge, N.J.

His widow, Bethany Gentile, settled with Allstate Ins. Co., the carrier for the car's driver, Joseph Kuhta of Glenfield, N.Y., who made the U-turn.

Defense lawyer **Paul Daly**, of Springfield, N.J.'s Hardin, Kundla, McKeon & Poletto did not return a call.

16

$4.25M for brain injury to baby improperly placed in car seat

In *D.C. v. DYFS*, a Roxbury, N.J., girl, now four years old, who was left with permanent brain damage after being placed improperly in a child car seat by a state child welfare officer when the girl was two weeks old, will receive $4.25 million in compensation to cover her current and future needs.

T.F., the adoptive mother of the girl, identified only as D.C., agreed to the

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settlement with the state of New Jersey on April 25, 2014, said the family's attorney, **Andrew Fraser**. Because the settlement involves a minor, it still must be approved by a Superior Court judge.

D.C. was removed from her biological mother's care by the Division of Youth and Family Services, now called the Division of Child Protection and Permanency, because the mother had tested positive for benzodiazepines and amphetamines, said Fraser, of Sparta, N.J.'s **Laddey Clark & Ryan**.

D.C. was injured on Nov. 23, 2009, when a DYFS caseworker, Marshay Best, took her from her adoptive parents' home to a DYFS facility for a supervised visit with her biological parents. D.C. was placed in the car seat incorrectly, said Fraser. Best, who did not have training in the proper installation or use of car seats, did not use the proper base and placed D.C. at an improper angle, Fraser said.

D.C. did not have the muscle capacity to support her head and it flopped forward. At the end of the nine-minute drive, Fraser said, D.C. had stopped breathing and was in cardiac arrest by the time she and Best arrived at the DYFS facility.

D.C. is now severely developmentally disabled and will have significant cognitive disabilities as she ages, Fraser said, and will need permanent care.

The state was represented by **John North** of **Greenbaum Rowe Smith & Davis** in Woodbridge, N.J. He confirmed the amount of the settlement.

No date has been set for a hearing to approve the settlement, Fraser said.

17 $4.15M in medical malpractice suit

Hatcher v. Jacobwitz: A Morris County judge approved a $4.15 million settlement on Oct. 25, 2013, in a suit by the parents of a child, now 19 years old, born with cerebral palsy and brain damage.

Liza Hatcher claimed that when she arrived on Nov. 10, 1993, at Morristown (N.J.) Memorial Hospital at 12:30 p.m., she was hooked up to monitors and told after half an hour that she was not in active labor and could leave. Hatcher returned around 4 p.m., having received a message from the hospital that the fetal heart rate was abnormal.

Obstetrician David Jacobwitz performed a Caesarean section at 6:06 p.m. Hatcher claimed her son, David, was denied oxygen before birth, causing brain damage. Jacobwitz did not detect fetal distress, which should have prompted an earlier C-section, says plaintiff lawyer **Daryl Zaslow** of **Eichen, Crutchlow, Zaslow & McElroy** in Edison, N.J.

Superior Court Judge **Thomas Manahan** approved the settlement, with $3.75 million paid on behalf of the now-deceased doctor, and $400,000 on behalf of the hospital and nurses.

Rachel Schwartz of **Giblin & Combs** in Morristown, N.J., for Jacobwitz's estate, and **Michael Bubb** of **Bubb, Grogan & Cocca** in Morristown, for the hospital, did not return calls.

18 Motorcyclist settles suit over crash injuries for $4.1M

A motorcyclist who claimed he lost use of his right, dominant arm resulting from his collision with a car settled with the other driver for $4.1 million on May 7, 2014, in *Dey v. Ourach*.

The accident occurred on Nov. 2, 2011, when Michael Dey, then 30, was riding his Kawasaki motorcycle east on Edinburg Road in Hamilton, N.J., when a car trying to turn left onto Paxson Avenue suddenly crossed his path, says his lawyer, **Dennis Brotman** of **Fox Rothschild** in Princeton, N.J.

Trying to avoid a crash, Dey laid down his bike and separated himself from it, but his helmeted head and right shoulder struck the car's rear right side.

Dey suffered broken ribs, brachial plexus nerve damage, a concussion and back injury—a herniation at L5-S1, partial compression fracture in his thoracic spine and disc extrusion at C6-7 with cord compression.

He spent two weeks at Helene Fuld Medical Center in Trenton, N.J., followed by three weeks at Saint Lawrence Rehabilitation Center in Lawrenceville, N.J.

His injuries caused paresis—weakness and numbness of the entire right side of his body—and cognitive deficits affecting his memory, concentration and language.

After pain-blocking injections and various types of therapy—physical, occupational, cognitive and speech—the lower body paresis improved, but Dey never regained function in his right arm and he requires help with home care and ambulation, says Brotman.

Dey was unable to return to work as a delivery driver. His lost future earnings were estimated at $1.1 million and the cost of his future treatment and care at between $1.7 million and $3.1 million.

His lawsuit, filed in Mercer County against the other driver, Robert Ourach of Hamilton, settled on the eve of court-ordered arbitration.

Defense lawyer **Julie Smith**, of **Chierici, Chierici & Smith** in Moorestown, N.J., did not return a call.

19 Cerebral palsy victim wins $3.8M in medical malpractice settlement

An Essex County judge on Oct. 9, 2013, approved a $3.825 million settlement for a woman allegedly brain-damaged due to an incorrect diagnosis and treatment when she was an infant.

In the summer of 1992, 1-year-old Alyssa Powell was brought repeatedly to Pediatric Associates of West Essex by her mother for fever and diarrhea, according to court papers. Doctors allegedly diagnosed her with a stomach virus without diagnostic testing.

On the fifth visit, when she was gasping for breath, she was sent to St. Barnabas Medical Center in Livingston, N.J., and was seen twice by resident doctor Irene Lintag. The next day, she was sent to the United Hospital pediatric ICU, was diagnosed with septic shock and acute respiratory distress syndrome and was put on a ventilator for 18 days.

Now 22, Powell allegedly suffers from cerebral palsy caused by brain damage from lack of oxygen and can never live independently.

Her experts said she would have been intubated sooner had diagnostic tests been done, showing pneumonia.

Defense experts disputed she had brain damage and the occurrence of an acute hypoxic event, saying she had severe viral pneumonia, which would have worsened, regardless of care.

The suit, brought by the woman's mother and guardian ad litem Tina Powell, settled through mediation with retired Superior Court Judge **Eugene Codey**, now with **Connell Foley** in Roseland, N.J., and was approved by Superior Court **Judge Dennis Carey III** after a friendly hearing.

UMDNJ is paying $2.575 million on behalf of Lintag, who was on loan to St. Barnabas. A $900,000 payment will resolve claims against Pediatric Associates and two doctors, Morton Rachelson and Joel Steckelman. The New Jersey Property-Liability Insurance Guaranty Association is paying the $300,000 maximum for each. St. Barnabas will pay $350,000.

Powell's attorney, **Ernest Fronzuto** of Woodland Park, N.J., says the settlement was confidential.

Not returning calls were defense lawyers **Lauren Koffler O'Neill** of Roseland,N.J.'s **Post Polak Goodsell MacNeill &Strauchler** for Lintag; **Nicholas Rimassa** of **Marshall Dennehey Warner Coleman & Goggin** in Roseland, for Pediatric Associates and Steckelman; **Rachael Schwartz** of **Giblin & Combs** in Morristown, N.J., for Rachelson; and **Lauren Strollo** of Union, N.J.'s **Vasios Kelly & Strollo**, for St. Barnabas.

20 PATH worker hurt on tracks settles suit for $3.75M

A federal jury in Newark awarded $3.75 million to a railroad worker who suffered an eye injury while on the job, in *Meals v. Port Authority Trans Hudson*.

James Meals, a PATH track maintenance worker, was removing spikes from the rail bed in Hoboken, N.J., on Feb. 10, 2011. He placed a metal washer that had been cut in half under the head of each spike, creating a rim that helped give his claw hammer leverage. The washer shot up and struck his eye, rupturing his iris.

Meals underwent four operations to save his vision, but he is at increased risk of developing glaucoma and must undergo screening for that condition twice a year. He also had to give up his side job as a martial arts instructor because he is at risk for nerve damage to the eye and cannot engage in contact sports, according to his lawyer, **Marc Wietzke** of **Flynn & Wietzke** in Garden City, N.Y.

Meals sued PATH under the Federal Employee Labor Act, contending that the safety goggles he was issued were insufficient and tended to slip off in the moist environs of the rail tunnel where he was working. He also claimed his employer had a specific machine to remove rail spikes but did not use it because of the time required to set it up and then move it to accommodate train traffic.

Following a four-day jury trial before U.S. District Judge **Jose Linares**, the jury on Feb. 24, 2014, found the employer was negligent and Meals was not. The damages award was for lost wages, pain and suffering, disability, impairment and loss of enjoyment of life.

PATH was represented by in-house counsel **Thomas Brophy**, who did not return a call. ■

TEN MORE AWARDS WORTH NOTING

This year, our "10 more" personal injury awards worth noting are actually 11, due to a seven-way tie at the $3 million level. These awards, ranging from $3 million to $3.55 million, were reported by the *Law Journal* between Sept. 1, 2013, and Sept. 13, 2014. They are ranked in order of their value as of the date of verdict or settlement. Awards of equal value share a ranking (thus, the seven number-fives this year) and are not listed in any particular order. Awards for multiple parties are ranked by their lump-sum value.

1 *Portee* suit over child's death in crash settles for $3.55M

A wrongful death and emotional distress suit over an automobile accident that killed a child in his father's presence settled for $3.55 million on March 7, 2014, in *Badlani v. Peretsman*.

The accident occurred in June 2011 on South Wyoming Ave. in South Orange, N.J. According to plaintiff lawyer **David Mazie**, a car missed a stop sign at intersecting Lenox Avenue and broadsided his client Sunil Badlani's vehicle, causing it to turn on its side. A third car then struck Badlani's vehicle.

Badlani's son Nikhil, 11, who was secured in the rear seat, sustained a fatal head trauma and may have expired at the scene, says Mazie, of **Mazie Slater Katz & Freeman** in Roseland, N.J.

Badlani sued under *Portee v. Jaffee*, 84 N.J. 88 (1980), which created a cause of action for negligent infliction of emotional distress from witnessing the wrongful death or serious injury of another. He alleged post-traumatic stress disorder, insomnia, anxiety and depression from watching his child dying.

Essex County Superior Court Judge **Sebastian Lombardi** granted summary judgment on the liability of Miriam Peretsman, who ran the stop sign. The parties then settled in a conference with Superior Court Judge **Dennis Carey III**. Of her $3.45 million, Travelers Insurance, her primary carrier, paid $500,000, her excess carrier Great Northern Ins. Co. paid $2.925 million, and $25,000 came from her own personal assets.

Robert Hebron, the driver of the third car, agreed to pay $100,000.

Peretsman's counsel, **Jerald Howarth** of **Howarth & Associates** in Parsippany, N.J., and Hebron's counsel, **Jack Maloof** of **Maloof, Lebowitz, Connahan & Oleske** in Chatham, N.J., confirm the settlement.

2 Estates of workers killed by toxic fumes settle for $3.5M

An Essex County jury awarded $3.5 million on March 13, 2014, to the estates of two men who died after inhaling toxic fumes at a commercial laundry, in *Diaz v. Northeast Linen Supply*.

According to the suit, Carlos Diaz, a maintenance worker, and Victor Diaz, a truck driver, were employed at Northeast Linen Supply in Linden, N.J. In December 2007, they were instructed to remove debris from a 15,000-gallon wastewater holding tank. Inside, they encountered sludge containing sulfuric acid, bleach and other toxins. One of the workers went in first and became dizzy, prompting the other to go in to help him. The men had been in the tank for three hours when their bodies were discovered.

The suit charged that neither worker had performed the task before or received any training on how to carry it out. The company claimed the workers were instructed to remain outside the tank, according to **John O'Dwyer** of **Ginarte, O'Dwyer, Gonzalez, Gallardo & Winograd** in Newark, who represented the estate of Carlos Diaz.

The case was tried for three weeks before Judge **W. Hunt Dumont**. The jury accepted the plaintiffs' argument that the workers' compensation bar did not apply because the company engaged in deceptive conduct while knowing its workers faced a substantial certainty of serious injury or death, O'Dwyer says. There was testimony from former employees who said they regularly entered the tanks, contradicting company reports to government agencies that no one ever went inside, he adds.

The jury awarded $1.6 million to the estate of Carlos and $1.9 million to the estate of Victor. The awards varied because Carlos had one child and Victor had three, says O'Dwyer. The two men were unrelated.

Jeffrey Mandel of **Cutolo Mandel** in Manalapan, N.J., represented Victor Diaz's estate.

Edward DePascale of **McElroy, Deutsch, Mulvaney & Carpenter** in Morristown, N.J., representing the defendant, confirmed the settlement but declined to comment.

3 $3.2M to customer injured in supermarket slip and fall

A Cumberland County jury awarded $3.261 million on Dec. 19, 2013, to a woman who claims a slip and fall in a store left her permanently disabled, *Mercado v. Delsea Drive Supermarket*.

Blanca Mercado slipped when a plume of rice spilled from two punctured bags on a shelf at the Delsea Drive Supermarket, d/b/a ShopRite of Vineland, N.J., on Feb. 3, 2008, says her lawyer, **Daniel Rosner** of **Rosner & Tucker** in Vineland. The plume was five feet long and one foot wide and an expert testified it would have taken at least an hour for the rice to leak out and spread, Rosner says.

Mercado was taken by ambulance to South Jersey Healthcare Regional Medical Center in Vineland with a concussion, a torn rotator cuff, a fracture at L3-L4, and herniations, bulges and tears between L2-S1.

She developed frozen shoulder after shoulder repair surgery, requiring a second operation. Her back injuries called for a four-level fusion but the success rate was set at only about 15 percent, so she instead had a spine stimulator installed in her back to alleviate pain.

She has back pain, shoulder pain and limited motion, memory loss and

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depression, and will need more surgeries to replace the stimulator batteries. Rosner adds that Mercado, previously a home health-care aide, is permanently disabled as a result.

He says the store lacked a designated loss-prevention employee and a fall-prevention plan, contrary to ShopRite recommendations and industry practice.

The verdict consisted of $2.7 million for pain and suffering, $241,000 for lost wages, $160,101 for past medical expenses and $160,000 for future ones.

Rosner says the defendant offered $435,000 during trial before Superior Court Judge **Richard Geiger** and is on the hook for legal fees, interest and expenses dating from July 2012 because it did not accept his $825,000 offer of judgment.

Rosner's law partner, **Edward Tucker**, was his co-counsel. Defense lawyer **Colleen Ready**, of **Margolis Edelstein** in Mount Laurel, N.J., declines comment.

4 $3.1M for neck and back injuries from car crash

Quarcoo v. Li: An Essex County jury awarded $3.1 million on March 26, 2014, for car-crash-caused neck and lower back injuries, though a high-low agreement will limit the recovery.

The accident occurred in Livingston, N.J., on May 20, 2009. Kate Quarcoo of Newark, then 33, was driving west on South Orange Avenue when she was broadsided on the driver's side by a car that went through a red light at Passaic Avenue, says her lawyer, **James DeZao** of Parsippany, N.J.

The accident caused herniations at C5-6, C6-7, L4-5 and L5-S1, and lumbar facet syndrome. Quarçoo was treated with chiropractic care and had one epidural injection in her back. She stopped the shots because she became pregnant in 2011 but she plans to resume them, DeZao says. She continues to have pain that interferes with sitting, standing, lifting, normal household chores, holding her child and sleeping, which she now sometimes does on a sofa, and is no longer able to exercise as before, he adds.

The other car's driver, Hsien Li of Livingston, died about a year after th accident of unrelated causes. His exec utrix, Yvonne Li, took over the case.

DeZao says there were no wit nesses and the defense denied liabilit until the day trial began before Superio Court Judge **Thomas Vena**, but it con tinued to contest damages.

The verdict was for noneconomi damages. No lost wages were sought.

DeZao says Li had only $100,00 in coverage with Allstate and the partie entered into a zero-$100,000 high-lov settlement because the estate had n other assets.

Defense counsel **Martha Lynes** of **Chasan Leyner & Lamparello** i Secaucus, N.J., confirms the verdict.

5 — TIE Motorist settles brain injury case for $3M

In *Ferrante v. Atlantic City*, an Egg Harbor man settled for $3 million in a case in which he suffered brain injuries when his car was struck by a police car.

Plaintiff Frank Ferrante, now 29, agreed to settle with defendant Atlantic City, N.J., on Aug. 20, 2014, after mediation before retired Superior Court Judge **Francis Orlando**, now with the Cherry Hill, N.J., office of **Connell Foley**, according to Ferrante's attorney, **Bruce Stern**.

Ferrante was injured on June 1, 2008. He was driving eastbound on Atlantic Avenue in Atlantic City when his car was struck broadside by a city police car driven by patrolman Omar Martin, according to Stern, of **Stark & Stark** in Lawrenceville, N.J.

Martin was attempting to make a left turn onto Missouri Ave., and his car struck Ferrante's after Martin turned on a red light. Ferrante's car struck a light pole and flipped, Stern said.

Ferrante sustained a brain injury that has manifested in the form of cognitive difficulties, impulsivity, anxiety and depression, Stern said. Ferrante also sustained soft-tissue injuries in his neck and back that have left him with chronic pain.

Atlantic City was self-insured for a portion of the settlement and had an excess policy with Meadowbrook Insurance Group.

The parties agreed to mediation after an unsuccessful attempt to seat a jury in June before Atlantic County Superior Court Judge **Michael Winkelstein**, Stern said.

Atlantic City and Meadowbrook retained **Barbara Ann Johnson-Stokes**, of **Michael Armstrong & Associates** in Willingboro, N.J. She confirmed the amount of the verdict.

Although the city and the carrier agreed to settle the case rather than go to trial, Johnson-Stokes said Ferrante was speeding at the time of the accident, which could have been a contributing factor.

5 — TIE $3M for spinal injuries

In *Korbeh v. Duran*, a Middlesex County jury awarded $3 million on May 19, 2014, to a Clifton, N.J., woman who suffered spinal injuries when the car she was riding in overturned on the New Jersey Turnpike.

Malaka Korbeh, now 20, of Clifton, was injured while riding in the back seat of a car driven by Jonathan Duran on the northbound highway near Exit 8A in Cranbury, N.J., on Sept. 3, 2011.

TEN MORE AWARDS WORTH NOTING

Duran's car overturned after it was struck in the rear by one driven by Emmanuel Egbutu, then struck another car in front of it.

Duran and Egbutu offered conflicting accounts of how the accident happened. Duran claimed he had been driving in the left lane for several miles when traffic had to slow down due to construction and he was rear-ended by Egbutu. Egbutu, however, said Duran suddenly changed lanes in front of him because he could not stop in time to avoid an accident in the middle lane.

Korbeh testified that Duran had been driving erratically and making frequent lane changes before the accident.

Korbeh had several bulges in her lumbar and cervical discs. She underwent three lumbar manipulations under anesthesia, and she was advised to have surgery for lumbar fusion but she did not have the money, said plaintiff lawyer **Edward Lutz**, a solo in Parsippany, N.J.

Egbutu settled for $90,000. Before trial, Duran made no settlement offer until the day of jury selection, when he offered $25,000, said Lutz. Korbeh demanded $250,000 from Duran and issued a *Rova Farms* letter against him.

After a four-day trial before Superior Court Judge **Arthur Bergman**, the jury, charged with apportioning fault between Duran and Egbutu, found Duran was entirely at fault for the crash and awarded $3 million in damages.

The lawyer for Duran, **Robert Helwig** of **Hoagland, Longo, Moran, Dunst & Doukas** in New Brunswick, N.J., and **Michael Bustard**, of **Styliades & Jackson** in Mount Laurel, N.J., representing Egbutu, did not return calls seeking comment.

5 — TIE
$3M for paralyzed cyclist

McGorty v. Johnson: A bicyclist who was left paralyzed after he was struck by a truck trailer agreed to a $3 million settlement of his Union County suit on July 17, 2014.

Dennis McGorty was riding his bicycle on West South Avenue in Westfield, N.J., on May 20, 2013, when he was struck by a landscaping trailer being pulled by a pickup truck that was making a right turn. McGorty was trapped under the trailer and had to be extricated by the Westfield Fire Department.

McGorty, now 44, a self-employed builder and real estate investor, sustained a thoracic fracture to the spinal cord that rendered his legs paralyzed, the suit said. Since the accident, McGorty, who was a competitive cyclist before the accident, has undergone rehabilitation and regained partial feeling and movement in his legs, says plaintiff lawyer **Raymond Gill Jr.**, of **Gill & Chamas** in Woodbridge, N.J.

McGorty claimed the driver of the truck towing the trailer, David Johnson, was liable. The settlement was reached before the discovery end date. It calls for $1 million payment from Johnson's vehicle policy and another $2 million payment from his umbrella policy with State Farm.

Johnson's lawyer, **Louis DeMille Jr.** of **Zirulnik, Sherlock & DeMille** in Hamilton, N.J., did not return a call about the settlement. **Thomas Matthews** of **Soriano, Henkel, Salerno, Biehl & Matthews** in Roseland, N.J., the attorney for State Farm, confirms the settlement.

5 — TIE
$3M for injuries from motorcycle accident with truck

James v. Hup: A motorcyclist allegedly injured when he fell to avoid hitting a truck accepted a $3 million settlement.

Jordan James said that on May 15, 2010, a dump truck pulled in front of him on Asbury-Anderson Road in Washington Township, N.J., in Warren County, causing him to ground his bike.

James' suit, filed in Warren County Superior Court, alleged that truck driver Craig Hup ignored a stop sign. Hup was an employee of Hup & Sons of Glen Gardner, N.J., which owned the truck.

James allegedly degloved his buttocks, back and legs, requiring reconstructive surgeries and skin grafts, and suffered spinal injuries, causing a dropped left foot that gave him a limp.

Hup & Son's carrier, Peerless Ins. Co., retained **Edward Thornton**, of Edison, N.J.'s **Methfessel & Werbel**, who confirms the settlement amount, to be offset by a $286,972 health-care lien, says plaintiff attorney **James Dunn** of **Levinson Axelrod** in Flemington, N.J.

5 — TIE
$3M settlement for estate of motorcyclist killed on rough road

A deceased motorcyclist's family accepted a little more than $3 million to settle its wrongful death suit, *Trejo v. Ferreira Construction*.

Ronee Trejo, 39, lost control of her motorcycle in a Garden State Parkway construction zone in Clifton, N.J., on June 17, 2009. She went over her handlebars, was struck by another motorcycle and died the next day.

The roadway in the zone had been milled to remove striping, creating a washboard effect, says plaintiff attorney **Christopher Pyne** of **Stark & Stark** in Lawrenceville, N.J. The plaintiffs alleged that 1½ inches of pavement had been milled when only a thin layer should have been taken off.

Named as defendants in the Passaic County suit were Statewide Striping of Parsippany, N.J., Zone Striping of Glassboro, N.J., general contractor Ferreira Construction of Somerville, N.J., the New Jersey Turnpike Authority and the other motorcyclist, Fred Stolarski Jr.

Ferreira and the authority were covered by an indemnification agreement with Statewide, Pyne says.

On Oct. 13, 2013, after mediation with retired Superior Court Judge **Mark Epstein**, now with **Hoagland, Longo, Moran, Dunst & Doukas** in New Brunswick, N.J., Statewide agreed to pay $3 million, Zone $50,000 and Stolarski $25,000.

The defense attorneys were **Bruce Seidman** of **Marshall, Dennehey, Warner, Coleman & Goggin** in Roseland, N.J., for Statewide; **Douglas Sanchez** of **Cruser, Mitchell & Sanchez** in Montvale, N.J., for Zone; and **Gregory Boyle** of **Ronan, Tuzzio & Giannone** in Tinton Falls, N.J., for Stolarski. They did not return calls.

5 — TIE
Two plaintiffs recover $3M total for neck injuries in rear-end crash

A Princeton, N.J., woman who claimed that a rear-end crash greatly exacerbated preexisting neck problems agreed to a nearly $2.88 million settlement on July 30, 2014, while a passenger in her car, with lesser injuries, accepted $120,000, for a total of $3 million, in *Alston v. Robinson*.

Ursula Alston, now 51, was stopped in traffic on the ramp from Route 24 to Route 78 in Springfield, N.J., on Sept. 29, 2009, when she was hit from behind by Lori Robinson of Short Hills, N.J.

Robinson told police she sneezed and took her foot off the brake and placed it on the gas pedal by mistake.

Alston had a prior two-level fusion in her neck at C3-4 and C5-6 as the result of a 2007 accident but wound up with a five-level fusion as a result of the 2009 crash, her lawyer, **Edward Capozzi**, of Ridgewood, N.J.'s **Seigel Capozzi**, said.

The second crash caused herniations at C4-5 and C6-7, for which Alston first had a fusion at C4-5, then one at C6-7 after the pain persisted. The strain from the four-level fusion necessitated a third fusion at C2-3 and Alston's neck is now like a lollipop on a stick, with no range of motion, Capozzi said.

In addition, Alston suffered shoulder impingement on her right, dominant side, for which she had clavicle surgery, and carpal tunnel syndrome, which was treated by cutting the tendon to ease the pressure on the nerve.

Capozzi said Alston still works but her job was impacted because she traveled a lot and can no longer do so because of her inability to carry things.

Alston's sister, Dianne Johnson, then of Montclair, N.J., but now 57 and living in Macon, Ga., was a passenger and also injured. She had neck and lower back herniations, for which she had epidural injections, and a displaced jaw, which required surgery.

The sisters sued in Essex County Superior Court and settled through mediation with retired Essex County Judge **Paul Vichness**, now with **Mandelbaum, Salsburg, Lazris & Discenza** in West Orange, N.J.

Capozzi said Robinson offered her $500,000 policy beforehand and kicked in $2.5 million more from her excess policy during mediation.

Defense counsel **Brian Steller**, of **Connell Foley** in Roseland, N.J., declined comment.

5 — TIE
$3M for injuries to two passengers in car

Cardenas v. Abaunza: Two Cliffside Park, N.J., women who claimed neck and back injuries from the same automobile accident reached a combined $3 million settlement of their claims on March 7, 2014.

On May 17, 2009, Nivia Cardenas, then 58, and Sylvia Rodriguez, then 41, were passengers in a car heading south on Lemoine Avenue in Fort Lee, N.J., that was broadsided on the passenger side by a car going east on Coolidge Avenue.

The plaintiffs' car was flipped onto its roof and they and the driver were left hanging upside down by their seatbelts.

The plaintiffs' lawyer, **Robert Linder** of Englewood, N.J., describes their injuries as follows:

The accident aggravated and enlarged Cardenas' prior neck herniations at C5-6 and C6-7, caused pain at a previously asymptomatic lower back herniation at L3-4 and resulted in a new annular tear at L4-5. In addition, she tore a tendon in her right shoulder and has been diagnosed with post-traumatic stress disorder due in part to her fear, as she hung suspended, that leaking car fluids would ignite.

Cardenas had two neck surgeries—a discectomy/fusion followed by a decompression/fusion/laminectomy—and had a lower back discectomy. She still has pain and limited motion in her neck and lower back, and doctors have recommended a spinal cord stimulator.

Rodriguez suffered herniated disks at C4-5 and C5-6 and had a discectomy and fusion. The fusion caused a new herniation at C3-4 and she had a second fusion at that location. She also suffered an aggravation of a prior tear at L3-4 and tore the labrum of her right shoulder, for which she had laparoscopic surgery and has also received a PTSD diagnosis.

The women sued their driver, Hernan Galvis of New York City, the other car's driver, Robert Abaunza of Montvale, N.J., and Abaunza's employer, Patti Funeral Directors of Fort Lee.

Retired Appellate Division Judge **Jack Lintner**, now with **Norris, McLaughlin & Marcus** in Bridgewater, N.J., mediated a settlement that gives Cardenas $1.75 million and Rodriguez $1.25 million, with Patti Funeral paying $2.8 and $200,000 from Galvis.

Not returning calls were defense lawyers **Robert Williams Jr.** of **McElroy Deutsch Mulvaney & Carpenter** in Morristown, N.J., for Patti, and **Donald Barone**, of Edison, N.J.'s **Gelfand & Barone**, for Galvis. ■

N.J. Civil Stats: Personal Injury Tops the 'Filed Cases' List

By Robert L. Pincu

Each year the New Jersey Judiciary publishes statistics for civil cases in the trial courts. The statistics show that, in the period from July 2013 to June 2014, there were 88,391 civil filings in the state trial courts. A total of 86,416 cases were resolved during the reporting period. At the end of the period, 100,840 cases were active and pending. The statistics also include a breakdown of the civil case load summary by county and the civil back load summary by case type for each county. Several interesting trends can be seen from the statistics. A brief summary of these trends follows.

Cases are first broken down into four "tracks" by case type. Track I cases include, among others, actions on negotiable instruments, book accounts, declaratory judgment actions, PIP coverage, real property and UM/UIM coverage. Track II cases include auto negligence—personal injury and property damage, contract/commercial transactions, employment other than CEPA or LAD, personal injury, UM/UIM bodily injury and other torts. Track III cases deal with assault and battery, civil rights, medical and professional malpractice, product liability and toxic tort. Track IV cases include actions in lieu of prerogative writ, complex commercial litigation, environmental coverage litigation and multicounty litigation (formerly "mass tort").

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For the most part, and as would be expected, the largest number of filings were in the most populous counties of the state. For the top 10 most populous counties, this ranged from 12,395 filings in Bergen County down to 3,533 in Morris County. The one county that did not fit the pattern was Atlantic County. Atlantic County, with a comparatively small population, had the fourth largest number of filings. This was attributable to several large multicounty litigation cases having their venue in Atlantic County.

Statistics also show that the top five largest number of cases filed by type were Track II auto negligence—personal injury (25,829), Track I book accounts (11,908), Track II personal injury (11,126), Track II contract/commercial transactions (10,155) and Track IV multicounty litigation (6,621). These five case types made up roughly 75 percent of the civil cases filed in New Jersey in the time period.

The civil back load summary by case type sheds interesting light on the time it takes for case resolution and the reasons why. As a result of the complexities of litigation in certain case types, resolution does not closely follow the number of case types filed. The top five largest numbers of backlogged cases were 12,878 represented by multicounty litigation; 5,005 represented by auto negligence–personal injury; 2,587 represented by personal injury; 655 represented by medical malpractice; and 554 represented by contract/commercial transactions.

The civil back load summary by case type sheds interesting light on the time it takes for case resolution and the reasons why.

Of these case types, the statistics show that in multicounty litigation, roughly 38 percent of the cases are backlogged from 24 to 36 months from the date of complaint, and the remaining 62 percent are backlogged over 36 months from the date of complaint. The numbers for auto negligence–personal injury are much better, but are still substantial. Sixty-seven percent of these cases are backlogged from 18 to 24 months, 29 percent from 24 to 36 months, and 4 percent are backlogged for over 36 months. The backlog time period percentages for the other case types follow this pattern, with the exception of medical malpractice cases, where 60 percent of the cases are backlogged from 24 to 36 months and 40 percent are backlogged for over 36 months.

While, understandably, Atlantic County had the largest number of cases in backlog, roughly 50 percent, four of the most populous counties—Bergen, Middlesex, Essex and Hudson—together accounted for only 25 percent of the total number of backlogged cases in the state.

These statistics cannot predict the time it will take from the filing of a complaint until resolution, due to the many other factors that may be involved. They can, however, provide a sense of what to expect by case type and county.

Given the nature of my practice, where I assist attorneys with rule-compliant appellate filings in the New Jersey appellate courts, I wanted to include some statistics on appeals in personal injury cases. Although I was not able to track appeals so specifically, I did manage to find some other interesting facts. The most current statistics available for the Appellate Division show that the 32 judges who regularly sit in the eight parts of the Appellate Division process approximately 6,500 appeals and 8,500 motions per year. Civil appeals make up approximately 60 percent of the total number of appeals processed. Of these, roughly 73 percent are affirmed, 15 percent are reversed, 6 percent are affirmed in part and reversed in part, and 6 percent had other resolutions.

For more detailed information, the full Judiciary Report may be accessed at www.judiciary.state.nj.us/quant/index.htm.

Playing Outside: N.J. Landowners' Liability Act Protects PI Defendants

By Christopher Block and Elizabeth Chang

With the sounds of children playing in the Jersey Shore's crashing waves a few scant weeks behind us, many of us returned from summer vacations to a rising pile of paper work and new lawsuits to prosecute and defend. Fortunately, landowners who face lawsuits stemming from injuries sustained on undeveloped or rural land may find solace in the little known but applicable provisions of the New Jersey Landowners' Liability Act.

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The Landowners' Liability Act provides that owners of certain premises, whether improved or maintained in a natural condition, or used as part of a commercial enterprise, owe no duty to keep the premises safe or give warning of any hazardous condition on the land to persons entering the property for the purpose of sports and recreational activities. N.J.S.A. §§2A:42A-2 to 10. The definition of "sports and recreational activities" as used in this act includes but is not limited to hunting, fishing, horseback riding, hiking, swimming, skating, skiing and "any other outdoor sports, game, and recreational activity including practice and instruction thereof." N.J.S.A. §2A:42A-2. The purpose of the act is to encourage landowners to allow members of the general public to have limited access to the land for some recreational use and induce owners to do so without fear of liability. N.J.S.A. §2A:42A-5.1.

In 1962, the New Jersey legislature enacted the forerunner of this act, which specifically limited the "liability of landowners of agricultural lands or woodlands for personal injuries to or the death of any person while hunting or fishing upon landowner's property." N.J.S.A. §2A:42A-1 (repealed 1968). This act was "intended specifically to apply to owners of rural or semi-rural lands, pointedly, agricultural and wooded tracts." *Harrison v. Middlesex Water Co.*, 80 N.J. 391 (1979).

However, in 1968, the legislature repealed the act and replaced it with an arguably broader version. Among the changes enacted was use of the word "premises" in place of the phrase "agricultural lands or woodlands." Even though the legislature did not define "premises" as used in this act, courts concluded and continue to maintain that this change in language was not intended to enlarge the protected class of landowners to suburban landowners. *Bouleau v. DeCecco*, 125 N.J. Super. 263 (App. Div.1973), aff'd o.b., 65 N.J. 234 (1974). Rather, this change was "intended to better define, and perhaps somewhat broaden, the protected class originally specified."

In *Harrison v. Middlesex Water Co.*, the New Jersey Supreme Court found that the defendant landowner owed a duty to the decedent who was attempting to rescue two boys ice-skating on a man-made 94-acre lake at a reservoir. The court found that the 42-acre land surrounding the lake was heavily populated and bound by a high school and several athletic fields, as well as many private homes. Moreover, the lake was readily accessible to the public. 158 N.J. Super. 368 (App. Div.), certif. granted, 78 N.J. 402, reversed on other grounds, 80 N.J. 391 (1979). The court found that this type of land was distinct from rural or woodland areas where the activities of people could not be supervised or controlled and therefore, the land did not fall within the protections of the act.

Subsequently, in 1991, the legislature further amended the act to provide that this immunity would also apply with regard to activities on land, whether in a natural or improved state or whether the land is the site of a commercial enterprise. N.J.S.A. §2A:42A-3. As part of the 1991 amendments, the legislature also required that the provisions of the act be "liberally construed." N.J.S.A. §2A:42A-5.1. The legislature's statement that the act be "liberally construed," however, did not announce a departure by the legislature from the narrow interpretation of "premises." *Toogood v. St. Andrews at Valley Brook Condo. Ass'n*, 313 N.J. Super. 418 (App. Div. 1998), citing N.J.S.A. §2A:42A-5.1.

Today, despite the fact that the act is to be liberally construed, the act still does not extend to suburban landowners. See *St. Andrews at Valley Brook Condo. Ass'n* (finding that a sandy road located within a residential condominium development does not qualify a landowner for immunity under the act); *Mancuso by Mancuso v. Klose*, 322 N.J. Super. 289 (App. Div. 1999) (act did not apply where minor was injured in neighbors' yard because immunity under the act did not extend to owners of land located in residential, semi-rural neighborhoods); *Benjamin v. Corcoran*, 268 N.J. Super. 517 (1993) (denying immunity to the

New Jersey Fireman's Home for injuries suffered by child sledding on the grounds where the grounds were improved lands located in a suburban area).

However, courts today continue to construe the protections of the act liberally with regard to open tracts of land situated in sparsely populated areas. For example, in *Lareau v. Somerset County Park Com'n*, the plaintiff was crossing a footbridge on a closed golf course to get to a nearby complex when he fell on "wet carpet" and suffered personal injuries. 2013 WL 5538867 (App. Div., Oct. 9, 2013). The motion judge granted the defendant's motion for summary judgment based upon the act and the plaintiff appealed.

The Appellate Division held that the defendant landowner was entitled to immunity under the act because the golf course consisted of a large tract of open land comparable to an open tract of land in a sparsely populated area. The fact that the land had been improved so that it could be used as a golf course was irrelevant because the act provided immunity regardless of whether it was improved or used for commercial purposes. Although the golf course abutted a developed residential area, the court found that the golf course was not situated within a suburban, residential development. Moreover, the fact that the golf course was open to the public is exactly the type of situation intended to be protected under the act. Thus, the Appellate Division upheld summary judgment relieving the defendants of liability.

However, even when the type of land qualifies a landowner with immunity under the act, the act does not limit liability which would otherwise exist for willful or malicious failure to warn against a dangerous condition, especially when a landowner creates or knowingly permits a condition which foreseeably would lead to an accident. N.J.S.A. §2A:42A-4. In *Krevicz v. Ayars*, the court found that the defendant's deliberate placement of a cable across a motorbike trail to keep others off the land foreseeably created a serious injury and the defendant therefore was not entitled to immunity under the act. 141 N.J. Super. 511 (Law Div. 1976). Compare to *Lauber v. Narburt*, where the plaintiff's jeep struck a steel cable and the court found that there was no evidence that the cables were placed deliberately to keep people off the land, thereby entitling the landowner to immunity under the act. 178 N.J. Super. 591 (App. Div. 1981). See also *Monk v. State*, 2011 WL 2349856 (App. Div. May 6, 2011) (finding that there was no willful or malicious failure to warn against a metal bracket on a concrete abutment at a state park).

Our courts also are faced with the question of whether an activity is considered a "sports or recreational activity" pursuant to the protections of the act. Courts interpreting the act have held that so long as a particular activity is sporting or recreational within the meaning of the act, the activity need not be specifically delineated within the act in order to confer immunity upon the landowner. For example, despite the fact that biking can be considered a common recreational activity, the act inexplicably does not include biking in its definition of "sport and recreational activities," even though "dirt bikes" and "all-terrain vehicles" are expressly included. N.J.S.A. §2A:42A-2. As recently as 2013, however, courts have found that biking may fall within the catch-all provision of "any other outdoor sport, game and recreational activity" and that an activity need not be delineated within the act in order to confer immunity upon a landowner. *Cosh v. United States*, No. 12-308, 2013 U.S. Dist. LEXIS 157362 (D.N.J. Nov. 2013).

In *Cosh*, the plaintiff was riding his bicycle in the Delaware Water Gap National Recreational Area when he ran over a pothole and lost control of his bicycle, sustaining personal injuries. The court in *Cosh* agreed with the landowner that cycling on a touring bike may fall under the catch-all provision—"any other outdoor sport, game and recreational activity"—of the act. However, the court found that there was a disputed fact as to whether the plaintiff was using his bike for recreational or transportation purposes based on the plaintiff's testimony that he was riding his bicycle as a means of meeting his friend. The court disagreed with the landowner's argument that the injured party's subjective intent was immaterial to the determination of whether he was engaged in a sports or recreational activity at the relevant time.

Interestingly, courts recently extended the act to people not necessarily engaged in a recreational purpose at the time of the incident so long as they enter qualified premises for a recreational activity or purpose. In *Vaxter v. Liberty State Park*, the plaintiff had completed her workout at a park and returned to the park to throw a water bottle away in the trash can when she stepped into a hole in the grassy area. The plaintiff argued that she was not engaged in recreational activity at the time of the incident because she had already completed her workout. The Appellate Division rejected her interpretation of the act and held that she indisputably "entered" and was on the park premises for a recreational purpose or activity. No. L-5623-08, 2010 WL 4237242, at *1 (N.J. Super. Ct. A.D. Oct. 28, 2010). Thus, the court reasoned that the act's protective immunity neither restricted nor limited injuries incurred during recreation, but rather extended to persons who entered qualified premises for a recreational activity or purpose.

As New Jersey is becoming more densely populated, the public is looking to undeveloped land as recreational playgrounds for activities such as swimming, fishing, jogging, hunting and more. Landowners with concerns of personal injury liability should be encouraged by the protections afforded by the New Jersey Landowners' Liability Act and its progeny of case law that can have a big impact on the defendant's position in a personal injury action. ■

When Jurors + Verdict Forms = Mistakes

By Jocelyn V. Cinquino

The reality is that, in litigation, much like in anything else, mistakes happen. When it comes to the kind of mistakes jurors make, it ranges from administrative errors, slip ups in calculations, inconsistent verdicts or simply just getting it wrong. Regardless of the scale of the error, it can add up to having a significant impact on the outcome of a case. Among the most troubling part of it all is that sometimes you never even know the mistake was made. It is in those instances, where the verdict does not accurately reflect what the jury decided, where everyone involved suffers the most.

While being able to completely control all factors that lead to errors happening isn't likely, taking control of what you can is the next best thing. It pays to put a premium on making it easier for jurors to work with the verdict form to stop mistakes happening in the first place—and to ask the 'right' questions after the fact to find out if they did.

Contemplating the "accuracy" of jury verdicts is not a new endeavor but it has been attracting new consideration, particularly in the criminal context on the heels of recent controversial verdicts. Studies from over 80 years ago examining cases of innocent men being convicted showed cause for concern even back then. (Borchard 1932.) More recent studies by Kalven-Zeisel (1966), the National Center for State Courts (2003) and Spencer (2007) looked at judicial agreement with criminal jury verdicts, found it to be an accurate indicator of verdict accuracy, and saw it was off in 11–15 percent of cases.

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Defining "accuracy," however, is not completely straightforward. It can encompass more than just a human error in logistics—it can also include complete misses where evidence does not support the conclusion. This is something previous studies found where DNA evidence made clear an innocent party was paying for someone else's crime. Determining accuracy can also be an ambiguous concept when you consider whether following legal rules satisfies commonsense justice. Case in point is the *People v. Pearson* matter, where the jury was deadlocked on burglary charges, but due to confusion over forms to sign, ended up acquitting him. Following the rules, considering the verdict had already been recorded by the court, the court sent Pearson home. (He was murdered just hours later, in an unrelated incident.)

In civil matters, like personal injury cases, where numbers, money and calculations are being considered, room for these errors grows. Jurors, too, might be unaware that they are unclear about the issues or logistics in the first place. In a national study of mock jurors, 85 percent reported feeling comfortable making the kinds of decisions jurors have to make (MMG Jury Consulting, 2013-14.) They are not shying away from the task just because of the gravity of their decisions or the complexity involved in reaching them. In fact, over 65 percent of the group reported looking forward to jury service. So much for the assumption that all jurors are hoping to be excused from duty once they get those summons.

The jurors were confused in deliberations by what "all those lines" for damages meant, but felt confident that they had figured it out.

What accompanies this approach to jury service is confidence. If jurors believe they can handle the job of listening to evidence and making decisions that will impact both sides of the case, it makes sense that most also feel confident about the tools they are given to do it. While jury instructions may be lengthy and most definitely include concepts that are new to jurors, close to 80 percent of people in the same study that actually served on a jury believed that the instructions they received were *completely* clear. It follows then that the same percentage felt *completely* confident in verdicts they ultimately reached.

What doesn't follow is the same group of jurors' assessment of the verdict forms that were to structure, support and report their decisions. There, 68 percent believed that those forms were completely clear. Some realized there was an issue with this critical part of their decision-making process, even if they felt confident with the verdicts these forms would report in the end. Jurors in a personal injury case summed it up in interviews like this: "We just sat through two weeks of trial by the time we got to deliberate—we looked at the verdict form, we looked at each other and said, now what are we supposed to do again?"

So how do jurors settle this uncertainty? How do they make sense of the questions before them to the point where they feel certain enough to end deliberations and report their verdict? In many cases, they rely on their own devices to "figure it out."

In a case involving a man's death in a major accident, jurors went through this process when deliberating on damages. After a verdict for the plaintiff was reached, and damages of $1.5 million (and 15 cents) were awarded, post-trial juror interviews were conducted. These interviews revealed jurors' uncertainty on the damages, both in substance and in form. Jurors found liability with no issues. They reported, however, that the categories of damages on the verdict form were confusing. All they saw was "a bunch of lines for money—we didn't know what all those lines were for." So they spent time figuring it out for themselves.

What these jurors decided was that they had to "show our work, like we had to do in school on math tests." That meant they reported their "total award"

on whatever the first line of damages was and then broke that amount down in the categories that followed. So in essence, their reported award was *double* what they intended it to be.

The tip-off that this happened was their total award specifically included 15 cents, and the burial expenses awarded totaled $9,989.15. By carefully asking jurors to talk about how they reached their award for "$1.5 million dollars (and 15 cents)," each expressed alarm with that amount. They were confused in deliberations by what "all those lines" for damages meant, but felt confident that they had figured it out. After having the jurors sign affidavits swearing that "the jury misunderstood the verdict form," the award was ultimately adjusted by the court.

This kind of error and confusion can happen even under the best circumstances where the judge is very careful about instructions and makes efforts to give jurors comfort with their job. In trying these cases, there are ways to make these efforts go even further. While you cannot control for what exact decision-making process jurors will use to reach their verdicts, you do have control over what guidance and structure you can offer on making sense of the uncertain.

This control begins in the pretrial phase, with your opportunity to think critically about how verdict questions will be asked and how the verdict form will actually look. Stepping away from purely legal considerations to appreciate jurors' perspective is always important, but particularly so when contemplating tools they will be given. If verdict questions physically look like you are asking jurors to "show their work" when reporting damages, that's just what they may do. If it is unclear what jurors should

do in following skip instructions, then skip around and compromise they will. Taking time to go through filling out the verdict form on your own helps make clear where jurors may get lost or where inconsistencies lie.

During trial, you should give jurors familiarity with the verdict questions so they don't do a double-take upon first seeing the verdict form in deliberations. Use the language they will be seeing on that form throughout trial so they don't wonder about "negligence," "causation" or what different categories of damages include. If they can see the actual verdict form at some point, and your perspective on it, even better.

Witnesses can also give jurors guidance in approaching the verdict form to head off errors and reinforce your position in the case at the same time. Have experts "do the math" before jurors at trial so they can concretely see how damages were calculated. Seeing the numbers come together, or where they don't, is instructive and something jurors remember. Jurors can use this process as a model for their own discussion in deliberations. Even more helpful—they are modeling after your perspective on the case.

Opportunities to manage potential juror error does not end once deliberations begin. After a verdict, conducting post-trial interviews can uncover major errors to be remedied by the court or simply offer insight into ways you can improve jurors' experience and support your cases going forward. Spend time looking at the verdict itself to see if something is off (like the 15 cents in the previous case) and direct the interview to cover any ambiguity.

When jurors are asked about key issues, assumptions shouldn't be made. Have jurors confirm the basics like the amount of their damage award. You may get a surprise in their response and so might they. And if interviews are allowed, consider having someone other than you conduct them. Without having to go through the filter of impressions they have of you, good or bad, the feedback you get will be cleaner and more direct.

While people make decisions all day, every day in their lives, they don't do so regularly as jurors. When new tasks and unfamiliar issues are introduced, mistakes can result. Taking charge of what you can to make jurors' job easier to perform, and verdict forms easier to navigate, can help balance the risk for error and ensure the verdicts delivered equal what the jurors intended. ■