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Worker's Scaffolding Fall Leads to \$4 Million Settlement in Essex

A \$4 million settlement was reached on Sept. 20 in an Essex County lawsuit, *Castaneda-Delfino v. Brookdale Apartments*, for a construction worker.

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Personal Injury



Colleen Murphy

A \$4 million settlement was reached on Sept. 20 in an Essex County lawsuit, *Castaneda-Delfino v. Brookdale Apartments*, for a construction worker seriously injured in a 30-foot fall from what he alleged was a faulty scaffolding.

Plaintiff Feliciano Castaneda-Delfino worked for Penn Roofing at a roofing job site and was injured when a scaffolding collapsed, causing him to fall 30 feet onto the pavement below. Castaneda-Delfino suffered a skull fracture and a traumatic brain injury as a result of the accident, according to his suit.

The accident took place on Oct. 12, 2015, at the Brookdale Apartments on Tracy Lane in Hackensack. The building was managed by defendant James E. Hanson Management Co.

Castaneda-Delfino filed suit against Penn Roofing, the property owner, and the property management company. The suit alleged that James E. Hanson Management hired an incompetent contractor, Penn Roofing, and was aware of the lack of safety precautions used on this site and on prior work sites. The injured worker further alleged that Penn Roofing constructed the scaffolding using dilapidated and unsafe ladders, and failed to provide personal fall protection, said counsel for Castaneda-Delfino, **Barry R. Eichen** of **Eichen Crutchlow Zaslow** in Edison.

James E. Hanson Management argued that their company did not control the worksite and that they did not know Penn Roofing was an incompetent contractor, Eichen said.

On Sept. 20, two weeks prior to a scheduled trial date, a settlement was reached for \$4 million.

"I think it was an adequate settlement [given] the possibility of an appeal," Eichen said. "My client was waiting for many years. He didn't want to gamble, and I agreed. With that being said, I am happy for my client. This will change his life."

Eichen credited partner **Christopher J. Conrad**, also of Eichen Crutchlow Zaslow, with writing the brief on the defense's motion to dismiss.

"We made the argument that an owner has control of the job and when the owner knowingly hires an incompetent contractor. It was a difficult argument," said Eichen. "Chris Conrad wrote the brief and he won it."

Counsel for James E. Hanson Management, **Colleen M. Ready** of **Margolis Edelstein** in Mount Laurel, could not be reached for comment.

— Colleen Murphy

\$1M Auto Settlement in Bergen

Fernandez v. Jaroslaw: A woman who sustained spinal injuries in a broadside crash settled her Bergen County lawsuit on June 22 for \$1 million.

According to plaintiffs and defense counsel, on May 14, 2018, plaintiff Melba Fernandez, 52, was driving west on Main Common Way in Edgewater. The driver's side of Fernandez's car was struck by the front of a sport utility vehicle driven by Harry Jaroslaw. Jaroslaw was driving in a parking lane at a mall when he drove through a stop sign at the end of the row.

Fernandez's lawsuit alleged that Jaroslaw was negligent and was solely liable for causing the accident. Fernandez ultimately was diagnosed with herniations at C5-6, C6-7, L4-5 and L5-S1. She received massage and spinal manipulation, epidural injections to her cervical spine and lumbar spine, muscle relaxers, and pain medication. Fernandez then underwent a fusion at L4-5 and L5-S1. Following the surgery, Fernandez slept in a chair for several months.

In their respective reports, Fernandez's orthopedic surgeon, chiropractor and pain-management doctor causally related her injuries and treatment to the accident. Fernandez alleged that she continues to experience low-back pain and difficulty bending. She sought to recover outstanding medical bills of \$630,000, plus damages for past and future pain and suffering, and her husband sought damages for loss of consortium.

The defense cited surveillance video that showed Fernandez continuing to lead her church services in song and lifting her young grandchild. According to the defense's expert in biomechanical engineering, the relatively low-speed impact did not cause Fernandez's injuries. In their respective reports, the defense's experts in orthopedic surgery and neurology opined that Fernandez's conditions were preexisting and degenerative, with no permanency.

In a June 22 settlement, Jaroslaw's primary insurer agreed to pay \$497,093, the remaining amount of a policy that provided \$500,000 of coverage. His excess insurer agreed to pay \$502,907, from a policy that provided \$5 million of coverage. The settlement's negotiations were mediated by **Robert Polifroni of Hardin Kundla McKeon & Poletto** in Springfield.

The plaintiffs were represented by **Todd I. Siegel of Siegel & Siegel** in Teaneck.

Jaroslaw was represented by **Cynthia J. Birkitt** of the Law Office of **James H. Rohlifing** in Morristown and **Brian G. Steller** of **Connell Foley** in Roseland.

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

— *Aaron Jenkins (adapted from [VerdictSearch](#))*

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