

MOTOR VEHICLE

Single Vehicle

Vehicle's driver lost control, plaintiff ejected during rollover

MEDIATION **\$5,645,000**

CASE Mugahed A. M. Obeid v. Majid Khrisat,
Feras H. Khrisat & "ABC Corp.",
No. 28010/02

COURT Bronx Supreme, NY

JUDGE Alan J. Saks | Michael McAllister

DATE 10-11-2007

PLAINTIFF

ATTORNEY(S) **EDWARD R. YOUNG;** Edward R. Young &
Associates; West Babylon, NY, for
Mugahed A.M. Obeid

DEFENSE

ATTORNEY(S) None reported for ABC Corp.
Richard I. Goldsand; Brewster, NY, for
Majid Khrisat, Feras H. Khrisat

FACTS & ALLEGATIONS On Oct. 3, 2002, plaintiff Mugahed Obeid, 21, a gas station's attendant, was an occupant of a sport utility vehicle that was traveling on Route 684, in Brewster. The vehicle was also occupied by Majid Khrisat. While traveling at a great rate of speed, the vehicle's driver lost control. The vehicle rolled several times, and it left the roadway. Obeid was ejected from the vehicle, and he sustained multiple serious injuries.

Each man claimed that the other was driving the vehicle. Khrisat's blood-alcohol content was determined to be greater than the legal limit. Thus, he was arrested. However, the criminal charges were dismissed based on Khrisat's contention that Obeid was the driver.

Obeid sued Khrisat; the registered owner of Khrisat's vehicle, Feras Khrisat; and the lessor of Khrisat's vehicle.

Obeid alleged that Majid Khrisat was the vehicle's driver, that Khrisat was negligent in the operation of his vehicle and that the remaining parties were vicariously liable for Khrisat's actions.

Obeid claimed that Khrisat was intoxicated and that he was not maintaining a safe speed.

The Khrisats' counsel contended that Obeid was the vehicle's driver. Alternatively, he contended that Obeid was aware that Khrisat had consumed alcohol and, thus, that Obeid was negligent in his decision to enter the vehicle.

Obeid's counsel moved for summary judgment of liability. The motion was granted by Judge Alan Saks, and the matter proceeded to damages.

INJURIES/DAMAGES Obeid was ejected from the vehicle, and he lost consciousness. He sustained a fracture of his pelvis, a fracture of his left leg's femur, a compound fracture of his left ankle, a tear of his right knee's anterior cruciate ligament, a tear of his left knee's meniscus, fractures of two of his left hand's fingers, amputation of the tips of three of his left hand's fingers, fractures of three of his left foot's metatarsals, a collapse of one lung, an avulsion of his right testicle and a mild traumatic brain injury.

Obeid was transported to Westchester Medical Center, in Valhalla. His fractured fingers were repaired via open reduction and internal fixation, and his left leg's fracture was repaired via external fixation. He also underwent removal of his gallbladder and surgical treatment of his collapsed lung. On Nov. 12, 2002, he was transferred to St. Agnes Hospital, in White Plains. He underwent eight weeks of inpatient rehabilitation.

Obeid's ongoing treatment includes outpatient physical therapy and aggressive pain-management treatment. He contended that he will likely have to undergo stabilization

of his knees, decompression of damaged nerves and other corrective procedures.

Obeid claimed that he suffers permanent, residual impairment of neurological and neuropsychological functions that include his ability to sustain visual attention, his ability to perform simultaneous processing, his recall of rote verbal information, his executive functions and his speed of information processing. He also bears permanent, residual scars.

Obeid sought recovery of \$500,000 for his past medical expenses, \$150,000 for his future medical expenses, \$1,949,471 for his future life-care needs, a total of \$2,835,057 for his past and future loss of income, and unspecified damages for his past and future pain and suffering.

The Khrisats' counsel contended that Obeid's injuries stemmed from his failure to wear an available seat belt. Obeid's counsel moved for a Frye hearing, to force the defense's seat-belt expert to provide a valid theory to support the contention that Obeid was not seat-belted. The motion was granted.

The Khrisats' counsel also contended that Obeid experienced an excellent recovery, and he presented a surveillance videotape that depicted several consecutive days of Obeid's post-accident activity.

The Khrisats' counsel further claimed that Obeid does not require additional medical treatment and that Obeid will not suffer any loss of earnings. He contended that Obeid could not present a documented history of his earnings and that, as such, he could not recover lost earnings.

The Khrisats' counsel also claimed that Obeid does not suffer impairment of his cognitive functions and that Obeid has not sought treatment of any such impairment.

VERDICT INFORMATION The parties agreed to a \$5,645,000 pretrial settlement, which was established via the guidance of mediator Michael McAllister.

**PLAINTIFF
EXPERT(S)**

Charles Kincaid Ph.D.; Vocational Rehabilitation; Hackensack, NJ called by: Edward Young
Nicholas Bellizzi P.E.; Accident Reconstruction; Holmdel, NJ called by: Edward Young

Joseph Carfi M.D.; Life Care Planning; Lake Success, NY called by: Edward Young

Jason Brown M.D.; Neuropsychiatry; New York, NY called by: Edward Young

Kim Busichio M.D.; Neuropsychology; New York, NY called by: Edward Young

Leonard Freifelder Ph.D.; Economics; New York, NY called by: Edward Young

Aric Hausknecht M.D.; Pain Management; New York, NY called by: Edward Young

Donald Eisentraut P.E.; Seat Belts; Penns Park, PA called by: Edward Young

David Stein Ph.D.; Vocational Assessment; Springfield, NY called by: Edward Young

David Aspirino M.D.; Orthopedic Surgery; Valhalla, NY called by: Edward Young

**DEFENSE
EXPERT(S)**

Dr. Rosalind Zuger; Vocational Rehabilitation; New York, NY called by: Richard Goldsand

Robert Goldberg D.O.; Orthopedics; New York, NY called by: Richard Goldsand

John Scott; Accident Reconstruction; Riverdale, NJ called by: Richard Goldsand

Harry Smith Ph.D., M.D.; Biomechanics; San Antonio, TX called by: Richard Goldsand

Kenneth Brown P.E.; Seat Belts; called by: Richard Goldsand

EDITOR'S COMMENTS This report is based on information that was provided by plaintiff's counsel and the Khrisats' counsel. The remaining defendant's counsel was not asked to contribute.

The New York Jury Verdict Reporter

XV/13-38 MOTOR VEHICLE — CENTER LINE — ACCIDENT OCCURRED IN HAWAII —
VENUE AT ISSUE — PASSENGER SUFFERED CRUSH INJURIES TO KNEE —
WRONGFUL DEATH OF SPOUSE, A 40-YEAR-OLD DENTIST

SETTLEMENT: Amy Karp, indiv. and as Ex. of the Est. of Stanley Karp v. Maui Land & Pineapple Corp. Date of Settlement 3/12/97 Eastern District

Pltf. Atty: Edward R. Young, West Babylon

This action settled, after motions, for a total of \$4,000,000. It involved a motor vehicle accident that occurred at about 1 PM on 7/22/95 in Maui, Hawaii. Decedent, a 40-year-old dentist, was driving a car in which Pltf., his 38-year-old wife, was a front seat passenger. Def't.'s truck, loaded with pineapples, crossed over the center line and hit decedent's car head-on. Decedent was dead at the scene. Pltf. was trapped in the car for 1 hour with her husband.

Note: Venue of the trial was at issue. Pltf. argued that Def't.'s corporate structure, the nature of its business, and its distribution network in New York was such that the venue could be placed in the Eastern District. Def't.'s motion to remove the case from the Eastern District was denied with leave to renew after further discovery. The action settled after the motion was denied.

Injuries: Amy Karp (age 38) crush injury to the left knee and foot. A knee replacement was not possible. The knee was reconstructed at Beth Israel Hospital. Stanley Karp (age 40) suffered blunt trauma and crush injuries to the chest and a lacerated aorta. He was dead at the scene. Pltf. did not claim that he had any conscious pain and suffering. Decedent left his wife and three children, ages 2, 6, and 13. **Demonstrative evidence:** photographs of the accident scene; police reports; hospital and medical records; X-rays.

Settlement details: Pltf. Amy Karp received \$1,000,000 for pain and suffering and \$923,118 for the wrongful death of her husband; decedent's daughter Lindsay received \$224,092, comprised of an annuity and a cash payment; his son Justin received \$367,147, which included a cash payment of \$232,147 and an annuity; his son Joshua received \$467,008, made up of an annuity and cash payment of \$332,008.

Pltf. Experts: Pltf. would have called Conrad Berenson, Ph.D., economist, Woodbury; Richard Hilt, investigator, Hawaii; Dr. Richard Scott, treating orth. surg. (reconstructed Pltf.'s knee), Manhattan. Pltf. also would have called an accident reconstruction expert from Hawaii. **F**

XV/11-30 ASSAULT GUNSHOT WOUND PARAPLEGIA INQUEST

Robert Davis v. Mark and Wallace Peterson 94-28599 Decision 4/1/97 Suffolk Supreme

Judge: W. Bromley Hall

Decision: \$8,000,000. This inquest concerned damages only.

Pltf. Atty: Edward R. Young, West Babylon

Def. Atty: No appearance damages only

Facts: The incident occurred on 12/3/93 at about 4 PM at 25 East Walnut St. in Amityville. Pltf., age 20 and unemployed, was in Deft. Wallace Peterson's home when Deft. Mark Peterson accidentally shot him. The men had been looking at the gun, and were passing it around when it went off. Liability was conceded, and this inquest was on damages only.

Injuries: spinal cord injury causing paraplegia; gunshot wound to the abdomen; right hemothorax; puncture of the right side of the diaphragm; penetrating injury to the liver. Pltf. is employable and lives at home.

Pltf. Expert: Dr. Andrew Rochman, surgeon, Brunswick Hospital Center.

would have called Dr. Howard Balensweig, orth. surg., Manhattan.

KINGS SUPREME

XIV/50-34 LABOR LAW — BRICKLAYER FALLS FROM SCAFFOLD AFTER IT WAS HIT BY BACKHOE — BRAIN DAMAGE

SETTLEMENT: Rosolino Abbate v. Rosenthal Realty Co., et al. v. McDonald Metal & Roofing Corp., et al. 71218/96 Date of Settlement 11/96 Kings Supreme

Pltf. Atty: Philip Russotti of Wingate, Russotti & Shapiro, L.L.P., Manhattan

This action settled before trial for \$1,650,000 plus the waiver of a \$250,000 Workers' Compensation lien. Pltf. was a 57-year-old bricklayer at the time of the accident, which occurred on 11/1/90. He was employed by the lessee of a building undergoing renovations and was working on a scaffold next to the building's garage door. He claimed that Def. general contractor negligently operated a backhoe as he exited the building, and struck his scaffold, causing Pltf. to fall approximately 15 feet. Pltf. brought this action against the property owner and general contractor under Labor Law §240, and contended that he was not provided with a safety belt. Pltf. also argued that placing a scaffold slightly below the height of the door was dangerous and violated Labor Law §214(6) and the industrial code.

The backhoe operator denied that he was present at the time of the accident, and also denied that the actual renovation work had begun. Defs. contended that Pltf. was on the scaffold performing brick preparation before the actual renovation work. Defs. argued that the renovation could not have begun because the building permits had not yet been issued at the time of Pltf.'s fall. The Def. backhoe owner testified that he smelled alcohol on Pltf.'s breath after the accident.

Pltf. would have produced evidence that several thousand bricks had been delivered to the site on an ongoing basis in the 2 months before the accident, and argued that such deliveries would not have been made until the renovation work had begun.

Injuries: closed head injury causing frontal lobe damage (confirmed by CAT scan) with personality changes, concentration difficulties, and apathy; fracture of the nondominant shoulder with partial arthrodesis. Pltf. claimed that he cannot use his arm, and that he can no longer work. Settlement apportionment: property owner

paid \$150,000; Third-party Def. paid \$250,000 plus a waiver of the \$250,000 Workers' Compensation claim; backhoe operator paid \$1,250,000.

SUFFOLK SUPREME

XIV/50-35 MOTOR VEHICLE — REAR END — HERNIATED LUMBAR DISCS AND NEUROBEHAVIORAL SYNDROME — ADDITIONAL MEDICAL EXAMS AT ISSUE

SETTLEMENT: Louis Leone v. William Kiley and Royal Insurance Date of Settlement 3/29/97 Suffolk Supreme

Pltf. Atty: Edward R. Young, West Babylon

This action settled for \$238,000 before a scheduled underinsured arbitration. It arose out of a motor vehicle rear end collision on 3/26/93 between Pltf., a 50-year-old retired N.Y.C. police officer employed as a real estate agent, and Def. The underinsurance claim resulted in motions by Royal Insurance, the underinsurance company, for additional medical examinations, a statement under oath by Pltf.-insured, and the use of party-chosen arbitrators in lieu of American Arbitration Association. The court denied additional medical exams because Royal had the benefit of prior No-Fault exams, and granted Def.'s request for a statement under oath. The court also allowed 45 days to complete discovery and conduct an arbitration.

Injuries: herniated discs at L2-3, L3-4, and L4-5; post-traumatic neurobehavioral distress syndrome; diffuse axon injury; multiple disc lesions with pain in legs and urinary tract/control problems. Carrier: Aetna (primary) for Kiley; Royal (underinsured) for Leone. Pltf. Experts: Pltf. would have called Dr. Raphael Cilento, neurologist and orth. surg., Manhattan; Dr. Steven Jonas, chiropractor, Bellmore. Def. Experts: Def. would have called Dr. John Barry, internist, Hicksville; Dr. Candyce Felder, chiropractor, Hicksville.

AS PUBLISHED IN

The New York Jury Verdict Reporter

XVI/42-51 FALLDOWN — SUIT BETWEEN RELATIVES — STAIRS — HERNIATED LUMBAR DISC, FRACTURED COCCYX

SETTLEMENT: Denise Nunns v. Robert and Deborah Nunns 10300/95 Date of Settlement 3/15/99 Suffolk Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Associates, West Babylon

This action settled prior to jury selection for \$190,000, with \$114,500 in cash and the balance in a structure over 10 years. On 1/3/94 at approximately 3 PM Pltf., a 25-year-old secretary in a stock brokerage, fell while entering the rear basement stairs at Defts.' residence in West Babylon. Pltf. Denise and Deft. Robert are sister and brother. Pltf. claimed that she tripped over an extension cord that Deft. Robert had left stretched across the stairs. Deft. contended that the extension cord was in plain sight and that Pltf. should have been seen and avoided it. Deft. further claimed that Pltf. did in fact see it, and contributed to her fall by trying to kick it away.

Injuries: fractured coccyx; herniated lumbar disc at L4-5, requiring laminectomy, discectomy, and medial facetectomy. Specials: \$40,000 for medical expenses. Offer: \$90,000; demand: \$225,000. Carrier: Maryland Casualty. ¶

The New York Jury Verdict Reporter

XIV/48-18

DOG BITE — 12-YEAR-OLD ATTACKED BY ROTTWEILERS — DOG WARDEN PARTIALLY LIABLE — PERMANENT SCARS

Dennis James, indiv. and as p/n/g of Dennis James v. John Steinsvold, John DiGiorgio, and Town of Babylon 92/7401 5-day trial Verdict 4/4/97 Judge Harry E. Seidell, Suffolk Supreme

VERDICT:

Liability: Town of Babylon 30%; DiGiorgio 70% negligent (6/0). The Town settled for \$25,000 after the liability verdict, and DiGiorgio settled for \$125,000 after the damages trial. Steinsvold was dismissed after trial. Jury: 3 male, 3 female.

Pltf. Atty:

Edward R. Young, West Babylon

Def. Atty:

Helayne D. Rojas for Tracey J. Epstein, Hauppauge, for Steinsvold

Thomas F. Fallon of Martin, Fallon & Mullé, Huntington, for Town of Babylon

John DiGiorgio, *Pro Se*

Facts:

On 9/12/91, Pltf., age 12, was playing football with other children on the lawn of a house owned by Def. Steinsvold (dismissed) and rented by Def. DiGiorgio (70% liable) on Coles Ave. in the Village of Amityville when he was attacked by two Rottweilers that jumped out of a second-story window. Pltf. claimed that several days earlier, the two dogs had been reported to the Town of Babylon (30% liable) because they were running loose and were menacing. The dog warden refused to take the dogs. Pltf. contended that the Town failed its statutory duty under Agriculture & Markets Law to properly advise the complainant of his right to seek judicial intervention to have the dogs impounded. The dog warden testified about her procedures.

Injuries: lacerations to the upper right arm, upper right thigh, and left arm and leg with permanent scars. Pltf. required 90 stitches. Demonstrative evidence: medical records and photographs of injuries. No offer; demand: \$250,000. Jury deliberation: 30 minutes. Pltf. Expert: Dr. Humayun Waheed, plastic and reconstructive surgeon, Amityville.

AS PUBLISHED IN

The New York Jury Verdict Reporter

XVII/42-45 MANHOLE EXPLOSION THROWS PEDESTRIAN INTO WALL — HERNIATED CERVICAL DISC

SETTLEMENT: George Lange v. Con Edison 102597/95 Date of Settlement 2/22/99 New York Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Associates, West Babylon

This action settled during jury selection for \$60,000. On 11/17/93 at approximately 10 AM, Pltf., a 35-year-old self-employed delivery truck driver, was walking across the street at York Ave. and 73rd St. in Manhattan when there was an explosion in one of Deft.'s manholes. The force of the blast propelled Pltf. into the wall of a nearby building. Deft. admitted ownership of the manhole.

Injuries: herniated cervical disc at C5-6, confirmed by MRI; acoustic trauma/tinnitus. Pltf. claimed that he is no longer able to perform manual labor. Specials: \$6,000 in medical expenses. Offer: \$20,000; demand: \$100,000. Carrier: Deft. is self-insured. **H**

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The New York Jury Verdict Reporter

XVI/19-45 MOTOR VEHICLE — PEDESTRIAN — KNEE INJURY

SETTLEMENT: Thomas McGowan v. Nelson Dussart 0967/93 Date of Settlement 9/14/98 Nassau Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Assoc., West Babylon

This action settled prior to opening statements for \$65,000. Pltf., a 40-year-old hairdresser, claimed that at 3 PM on 7/3/93 he was struck by a vehicle driven by Def. while he was walking in front of the Omni Center on Rte. 27A in Southampton. The traffic lane, usually used by Hampton Jitney as a station/office, is one way. Pltf. claimed that Def.'s vehicle, while traveling the wrong way in that traffic lane, struck him as he was walking in front of the store. Def. would have argued that Pltf. was comparatively negligent and should have seen and avoided his vehicle.

Injuries: partial tear of the left meniscus, requiring arthroscopy and partial meniscectomy. Demonstrative evidence: photograph of lanes of traffic and arrow on the street would have been used. Specials: approximately \$5,000 for medical expenses and physical therapy; \$45,000 claimed for lost earnings. Offer: \$25,000; demand: \$75,000. Carrier: State Farm. I

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XIV/50-35 MOTOR VEHICLE — REAR END — HERNIATED LUMBAR DISCS AND NEUROBEHAVIORAL SYNDROME — ADDITIONAL MEDICAL EXAMS AT ISSUE

SETTLEMENT: Louis Leone v. William Kiley and Royal Insurance Date of Settlement 3/29/97 Suffolk Supreme

Pltf. Atty: Edward R. Young, West Babylon

This action settled for \$238,000 before a scheduled underinsured arbitration. It arose out of a motor vehicle rear end collision on 3/26/93 between Pltf., a 50-year-old retired N.Y.C. police officer employed as a real estate agent, and Def. The underinsurance claim resulted in motions by Royal Insurance, the underinsurance company, for additional medical examinations, a statement under oath by Pltf.-insured, and the use of party-chosen arbitrators in lieu of American Arbitration Association. The court denied additional medical exams because Royal had the benefit of prior No-Fault exams, and granted Def.'s request for a statement under oath. The court also allowed 45 days to complete discovery and conduct an arbitration.

Injuries: herniated discs at L2-3, L3-4, and L4-5; post-traumatic neurobehavioral distress syndrome; diffuse axon injury; multiple disc lesions with pain in legs and urinary tract/control problems. Carrier: Aetna (primary) for Kiley; Royal (underinsured) for Leone. Pltf. Experts: Pltf. would have called Dr. Raphael Cilento, neurologist and orth. surg., Manhattan; Dr. Steven Jonas, chiropractor, Bellmore. Def. Experts: Def. would have called Dr. John Barry, internist, Hicksville; Dr. Candyce Felder, chiropractor, Hicksville.

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XVIII/14-52 MOTOR VEHICLE — LEFT TURN — HERNIATED CERVICAL DISC

SETTLEMENT: Susan Schutz v. George Elmer, Jr. 12646/99 Date of Settlement 4/24/00 Suffolk Supreme

Pltf. Atty: Edward R. Young of Edward R. Young and Associates, West Babylon

Def. Atty: Jennifer E. Lee of Frank V. Merlino, Hauppauge

This action settled on the eve of trial for \$100,000 (policy). On 3/1/99 at approximately 3 PM, Pltf., a 32-year-old waitress, was driving northbound on Greenlawn Rd. in Huntington. Def., who had been driving southbound on Greenlawn Rd., made a left turn to go east on Old Field Rd. causing a collision with Pltf. Def. contended that the road was sandy, causing him to skid.

Injuries: herniated cervical disc at C5-6, with extruded material behind the C-5 vertebral body. Pltf. claimed that she is unable to work. Def. contended that Pltf. was out on sick leave anyway, due to a kidney stone. Pltf. claimed that the stone had passed and she was going to return to work shortly. No offer; demand: \$100,000. Carrier: Allstate. ¶

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The New York Jury Verdict Reporter

XVIII/15-53 MOTOR VEHICLE — LEFT TURN — KNEE INJURY — SEAT BELT DEFENSE

SETTLEMENT: Elise Mennel-Veigh v. John Pontes 27099/96 Date of Settlement 6/12/00 Suffolk Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Associates, West Babylon

Def. Atty: David W. Brand of Brand & Brand, Garden City

This action settled on the eve of jury selection for \$180,000. On 7/29/96 at approximately 12:40 PM, Pltf., a 35-year-old homemaker, was driving when Def. made a left turn in front of her at the intersection of Rte. 27A and South 4th St. in Lindenhurst, causing a collision.

Injuries: damage to the anterior cruciate ligament of the left knee, requiring reconstructive surgery with the insertion of two screws. Prior arthroscopic surgery performed on 8/26/96 was unsuccessful. Def. contended that the injury would not have been as severe if Pltf. had been wearing a seat belt. Offer: \$120,000; demand: \$225,000. Carrier: Progressive. **FI**

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The New York Jury Verdict Reporter

XVIII/15-21 MOTOR VEHICLE — REAR END — NO-FAULT QUESTION ON BACK AND NECK INJURIES

Kimberly Scarpellini v. Lynn Yagarich 8970/96 2½-day trial Verdict 8/25/00 Suffolk Supreme

Judge: John J. Dunn

Verdict: \$30,000, all for past pain and suffering (6/0). Post-trial motions were denied. Jury: 3 male, 3 female.

Pltf. Atty: Jason Shapiro of Edward R. Young & Associates, West Babylon

Def. Atty: Thomas Sica of Frank V. Merlino, Hauppauge

Facts: This accident took place at approximately 12:30 PM on 8/13/93. Pltf., a 22-year-old service advisor for a car dealer, claimed that she was driving south on Bay Shore Rd. in Bay Shore when her vehicle was struck in the rear by Def. She claimed that her car was pushed forward 10-20 feet. Def. conceded liability and the trial was limited to the issue of damages.

Note: Def. had a \$10,000 policy with Allstate. Allstate took a "no pay" position. Pltf. will proceed against Allstate with a bad faith claim.

Injuries: minimal straightening of the cervical lordosis as shown in hospital X-rays; C-7 radiculopathy as shown by SSEP test; restricted range of movement of the neck and lower back; hypertonicity of muscles as per SEMG (Surface EMG); cervical and lumbar sprain and strain. Pltf. went to work, and then went to a hospital 3 hours later. Pltf. claimed that she missed 2 weeks of work and returned with difficulty due to neck and back injuries. Pltf. claimed that she treated with a chiropractor for 10 months following the accident, and then again for another 10 months after a 2-year gap. Pltf. claimed that she experienced a drastic change in her everyday activities after the accident. Def. denied that Pltf. sustained a serious injury under the No-Fault Law, Insurance Law §5102(d). Def. contended that her injuries were nothing more than sprains and strains. Def. further contended that had Pltf. been seriously injured she would have gone for an MRI and she would have been under the care of a medical doctor, rather than just having had one visit to an orthopedic surgeon a week after the accident. Def.'s medical expert contended that the SSEP and SEMG tests were either unreliable or misused. Demonstrative evidence: photographs of the vehicles were excluded. No offer; demand: \$10,000; amount asked of jury: \$40,000. Jury deliberation: 1 hour. Carrier: Allstate.

Pltf. Expert: Dr. Bernard Furshpan, D.C., chiropractor, Bay Shore.

Def. Expert: Dr. Stuart Kandel, orth. surg., West Islip. ¶

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The New York Jury Verdict Reporter

XVII/4-51 STORE ACCIDENT — SHOPPER HIT BY FALLING LUMBER — BULGING CERVICAL DISCS, CONCUSSION

SETTLEMENT: Joan Kramer v. Home Depot USA, Inc. 05709/97 Date of Settlement 5/24/99 Suffolk Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Associates, West Babylon

This action settled in court, prior to a bench trial, for \$30,000. Pltf., a 50-year-old librarian, claimed that while shopping in Deft.'s store she was struck on the head by a piece of wooden molding that was dropped from above by one of Deft.'s employees. Deft. contended that the molding was out of a rack, leaning upright, and spontaneously fell. Deft. further contended that the molding had been left out of the rack by another customer. Pltf. claimed that if Deft.'s employee had seen a piece of molding leaning upright prior to the accident, the employee should have replaced it in the rack.

Injuries: bulging cervical discs at C4-5 and C5-6; concussion; headaches; decrease in visual acuity to 20/40. Specials: \$4,920 for medical expenses, including an MRI. No offer, until the final negotiations; demand: \$50,000. Carrier: Deft. is self-insured. **M**

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The New York Jury Verdict Reporter

XVIII/23-52 MOTOR VEHICLE — ROAD DEFECT — INADEQUATE LIGHTING — INFANT PEDESTRIAN HIT BY
THREE DIFFERENT VEHICLES — COMA, MULTIPLE FRACTURES, AND SCARRING

SETTLEMENT: Adria Kudelka v. Diana Fotopolis, Jeffrey Haney, Robert Hanneman, Town of Smithtown, County of Suffolk, and Kings Park Industries 09273/92 Date of Settlement 10/2/00 Suffolk Supreme

Pltf. Atty: Edward R. Young of Edward R. Young & Associates, West Babylon

Def't. Atty: Douglas P. Blumenthal of DeBellis & Andreotta, Melville, for Fotopolis

Wade T. Dempsey of Hammill, O'Brien, Croutier & Dempsey, P.C., Smithtown, for Haney

John R. Seybert of Neil L. Kanzer, Garden City, for Hanneman

Brian P. Callahan of Devitt, Spellman, Barrett, Callahan, Leyden & Kenney, L.L.P., Smithtown, for Town of Smithtown

Arthur T. McQuillan of White, Quinlan, Stanley & Ledwith, Garden City, for County of Suffolk

Mary Anne Walling of Steven Miller, Roslyn Heights, for Kings Park Industries

This action settled for a total of \$645,000; Def'ts. Fotopolis, Haney, and Hanneman settled before jury selection and Def'ts. Smithtown and Suffolk and Kings Park Industries settled after jury selection. On 8/31/91 at approximately 10:45 PM, Pltf., a 14-year-old student, was walking southbound along the northbound lane of Harned Rd. in Smithtown when she was struck by Def't. Fotopolis. As she lay in the road, she was struck by Def't. Haney and then Def't. Hanneman. There was no sidewalk. All of the drivers claimed not to have seen Pltf. due to the dark roadway. Def't. Fotopolis claimed that she thought her vehicle had been hit by a rock.

Def't. Suffolk owned the road and was in the process of a construction project. Def't. Smithtown owned and maintained the streetlights. There was a dispute between the County and the Town during the project as to who should restore the lighting. Kings Park Industries was the contractor for the County.

A highly contested issue was the alleged alcohol use by Pltf. No use was admitted; however, the hospital blood test showed .05. Pltf. moved *in limine* to preclude the alcohol issue at *voir dire*, and it was agreed by all parties not to raise the issue at that time. Def'ts.' motion for summary judgment was denied.

Injuries: fractured pelvis; fracture of the right femur, requiring open reduction and traction for 60 days; compound fractures of the left tibia and fibula; bone graft from the hip to the tibia; surgical repair to the tendons of the right (dominant) hand; extensive keloid scars to the hands, torso, and legs. Pltf. was in a coma for 11 days. Demonstrative evidence: police photographs of the accident scene; photographs of the injuries; plans and daily worksheets for the repaving project; correspondence between the County and Town, subject to a motion *in limine* to preclude. Settlement apportionment: \$300,000 was paid by Fotopolis; \$100,000 was paid by Haney; \$125,000 was paid by Hanneman; \$50,000 was paid by Smithtown; \$35,000 was paid by Suffolk County and \$35,000 was paid by Kings Park Ind.. Carriers: CGU for Fotopolis; CNA for Haney; USAA for Hanneman; Aetna/Travelers for Suffolk County and Kings Park Ind.; and Smithtown was self-insured.

Pltf. Experts: Dr. Rolland Parker, Ph.D., neuropsychologist (amnesia charge), Manhattan; Jesse Bidanset, Ph.D., toxicologist, Mineola; Malcolm Newman, P.E., accident reconstruction, Mineola.

Def't. Expert: Donald Hoffman, Ph.D., Hoffman & Stripp Toxicology Consulting Group, Inc., Bronx, for Suffolk County. **M**