

FEATURED VERDICT

Premises Liability

Building's managers neglected clogged roof drain, tenant alleged

Verdict \$7,143,004

Higgins v. West 50th Street Associates LLC

New York County Supreme Court

Plaintiff's Attorney Denise M. Dunleavy; Kramer & Dunleavy, LLP; New York

Defense Attorney Thomas Judge; Margaret G. Klein & Associates; New York

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CASES of NOTE

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RESULT Shortly before a January 2010 hearing that was to be presided over by Judge R. Bruce Cozzens Jr., the parties agreed that the option price should total slightly more than \$1.6 million.

The litigation proceeded to the mid-2011 hearing before Dana on the outstanding issue of Steiner and Novello's assignment rights under the purchase agreement. Dana ruled that it was appropriate for Steiner and Novello to enjoy assignment rights under their purchase agreement with 215 Rockaway.

PLAINTIFF

EXPERT(S) Benjamin Weinstock, Esq., law (real estate), Uniondale, NY

DEFENSE

EXPERT(S) Brian Sahn, Esq., law (real estate), Uniondale, NY

EDITOR'S NOTE This report is based on court documents, information that was provided by plaintiffs' counsel and information that was provided by defense counsel.

—Asher Hawkins

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MOTOR VEHICLE

Passenger — Driver Fatigue — Rear-ender — Multiple Vehicle

Car crash caused injuries of spine, shoulder, plaintiff claimed

VERDICT \$1,505,000

CASE Winston Murphy v. Hempstead Auto Sales, Ltd d/b/a Millenium Honda and Leroy James, No. 9766/08

COURT Nassau Supreme
JUDGE Antonio I. Brandveen
DATE 6/23/2011

PLAINTIFF

ATTORNEY(S) Joel Levine, Levine & Wiss, Mineola, NY

DEFENSE

ATTORNEY(S) Randy Faust, Faust, Goetz, Schenker & Blee, L.L.P., New York, NY

FACTS & ALLEGATIONS At about 8:30 p.m. on Oct. 24, 2007, plaintiff Winston Murphy, 55, a parking garage's attendant and a groundskeeper, was a passenger of a vehicle that was being driven by Leroy James, who was traveling on the southbound side of Franklin Avenue, near its intersection at 12th Street, in Garden City. James fell asleep, and his vehicle struck the rear end of a preceding vehicle. Murphy claimed that he sustained injuries of his neck and a shoulder.

Murphy sued James and the owner of James' vehicle, Hempstead Auto Sales Ltd. Murphy alleged that James was negligent in the operation of his vehicle. Murphy further alleged that Hempstead Auto Sales was vicariously liable for James' actions.

Murphy's counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

INJURIES/DAMAGES arthroscopy; decreased range of motion; fusion, cervical; herniated disc at C3-4; herniated disc at C4-5; herniated disc at C5-6; herniated disc at C6-7; torn rotator cuff

Murphy claimed that he sustained a tear of his left, nondominant shoulder's rotator cuff and herniations of his C3-4, C4-5, C5-6 and C6-7 intervertebral discs. His left shoulder's injury was addressed via arthroscopic surgery, and his herniations necessitated fusion of his spine's C4, C5 and C6 levels. Murphy's expert radiologist reviewed the results of tests, and he concluded that Murphy's injuries were a result of the accident.

Murphy also claimed that his neck and left shoulder remain painful, and he contended that he suffers a residual reduction of each area's range of motion. He further claimed that he must undergo physical therapy, that he requires painkilling medication and that he may have to undergo surgery. He

contended that he cannot resume work or many of his other pre-accident activities, such as playing soccer.

Murphy sought recovery of his future medical expenses, his past and future lost earnings, and damages for his past and future pain and suffering.

The defense's expert radiologist reviewed the results of tests, and he concluded that Murphy's injuries stemmed from degenerative conditions that were not related to the accident.

RESULT The jury found that Murphy's damages totaled \$1,505,000.

WINSTON MURPHY

\$100,000 future medical cost
\$64,000 past lost earnings
\$416,000 future lost earnings
\$100,000 past pain and suffering
<u>\$825,000 future pain and suffering</u>
\$1,505,000

DEMAND OFFER

\$650,000
\$100,000

TRIAL DETAILS

Trial Length: 12 days
Trial Deliberations: 2 hours
Jury Composition: 4 male, 2 female

PLAINTIFF EXPERT(S)

Dov J. Berkowitz, M.D., orthopedics, Kew Gardens, NY
Thomas Kolb, M.D., radiology, New York, NY

Nizvali Visram,

M.D., physical medicine, Hempstead, NY

DEFENSE EXPERT(S)

John C. Killian, M.D., orthopedics, Hempstead, NY
A. Robert Tantleff, M.D., radiology, Roslyn, NY

POST-TRIAL Defense counsel has expressed an intention to file an appeal.

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

—Jaclyn Stewart

MOTOR VEHICLE

Pedestrian — Crosswalk — Bus

Teacher hit by car, claimed career-ending brain injury

SETTLEMENT \$850,000

CASE Maxine Geller and Alan F. Geller v. Acme Bus Corp. and Adolf Schmidt, Jr., No. 10016/09

COURT Nassau Supreme

JUDGE Ute W. Lally

DATE 5/20/2011

PLAINTIFF

ATTORNEY(S) Howard S. Kass, Carle Place, NY

DEFENSE

ATTORNEY(S) James T. Whalen Jr. (lead), Lewis Brisbois Bisgaard & Smith LLP, New York, NY
Annemarie Craig, Lewis Brisbois Bisgaard & Smith LLP, New York, NY

FACTS & ALLEGATIONS On April 28, 2009, plaintiff Maxine Geller, 60, a special education teacher, was struck by a school bus. The incident occurred alongside the intersection of Lakeview Avenue and North Long Beach Road, in Rockville Centre. Geller sustained injuries of an arm, her head, a leg, a rib, her spleen, a toe and a wrist.

Geller sued the bus's driver, Adolf Schmidt Jr., and the bus's owner, Acme Bus Corp. She alleged that Schmidt was negligent in the operation of his vehicle. She further alleged that Acme Bus was vicariously liable for Schmidt's actions.

Geller claimed that the impact occurred within one of the intersection's crosswalks, and she contended that a pedestrian-traffic signal provided the right of way. A police officer's report of the accident supported Geller's claim that Schmidt was entirely liable for the accident.

Defense counsel conceded liability. The trial addressed damages.

INJURIES/DAMAGES *arm; brain damage; diminished cognitive ability; fracture, fibula; fracture, leg; fracture, rib; fracture, tibial plateau; fracture, toe; fracture, wrist; head; internal fixation; open reduction; psychological; ruptured spleen; scar and/or disfigurement; splenectomy; subdural hematoma; traumatic brain injury*

Geller sustained a fracture of her left wrist; a fracture of her left leg's tibial plateau, which is the shin; a fracture of the same leg's fibula; a fracture of her left foot's great toe; a fracture of a rib; a rupture of her spleen; a laceration of her right forearm; and an injury of her head. The latter injury resulted in a subdural hematoma. She was placed in an ambulance, and she was transported to a hospital, where she underwent open reduction and internal fixation of the