Joan Ross v. City of New York. and New York City Transit Authority

No. 12058/08

DATE OF VERDICT/SETTLEMENT: September 16, 2009

TOPIC: NEGLIGENCE - NEGLIGENT MAINTENANCE - PREMISES LIABILITY - DANGEROUS CONDITION OF PUBLIC PROPERTY - TRANSPORTATION - BUS - SLIPS, TRIPS & FALLS - FALLDOWN - SLIPS, TRIPS & FALLS - POTHOLE - GOVERNMENT - MUNICIPALITIES

Bus's Patron Claimed Driver Stopped in Front of Pothole

SUMMARY:

RESULT: Verdict-Defendant

The jury rendered a defense verdict.

EXPERT WITNESSES:

ATTORNEYS:

Plaintiff: Christopher J. Donadio; Burns & Harris; New York, NY (Joan Ross)

Defendant: None reported; Michael A. Cardozo, Corporation Counsel; New York, NY (City of New York); Alexandra **Vandoros**; Wallace D. Gossett; Brooklyn, NY (NYCTA)

JUDGE: Mark I. Partnow

RANGE AMOUNT: 0

STATE: New York

COUNTY: Kings

INJURIES: The trial was bifurcated, so damages were not before the court.

Facts:

At about 8:30 p.m. on Dec. 12, 2007, plaintiff Joan Ross, 57, a cook, fell while attempting to board a public bus that was stopped on Church Avenue, in Brooklyn. Ross claimed that she fell in a pothole. She sustained injuries of her head and a hip.

Ross sued the bus's operator, the New York City Transit Authority, and the street's owner, the city of New York. She alleged that the bus's driver was negligent in his or her operation of the bus, that the New York City Transit Authority was vicariously liable for the driver's actions, that the city was negligent in its maintenance of the street and that the city's negligence created a dangerous condition.

Ross and the city negotiated a pretrial settlement. Terms were not disclosed. The matter proceeded to a trial against the New York City Transit Authority.

Ross claimed that the bus was stopped 4 to 5 feet away from the curb and that she fell into the pothole as she approached the door. She contended that the bus's driver assisted her before continuing the route. Ross' counsel argued that New York City Transit Authority rules specify that passengers must be provided a safe area in which to enter and exit the bus.

Defense counsel noted that Ross did not present any eyewitnesses to corroborate her claim, and she contended that Ross' counsel did not establish negligence. Ross had

presented a photograph of the pothole, but defense counsel argued that the photograph did not establish the defect's proximity to the area in which the bus stopped.

Ross claimed that she sustained a contusion of her forehead. She also claimed that she sustained a right-hip injury that led to effusion--a buildup of a joint's lubricating fluid.

Ross contended that she could not work during the three months that followed the accident. She underwent about four months of physical therapy, but she claimed that she suffers residual limitations.

Ross sought recovery of her past lost earnings and damages for her past and future pain and suffering.

No. 14783/99

DATE OF VERDICT/SETTLEMENT: October 21, 2008

TOPIC: TRANSPORTATION - BUS - NEGLIGENCE - NEGLIGENT MAINTENANCE - GOVERNMENT - MUNICIPALITIES

Bus Hand Strap Couldn't Have Slid on Bar, Authority Insisted

SUMMARY:

RESULT: Verdict-Defendant

The jury rendered a verdict for the defense. It found that the bus driver had not negligently failed adequately to inspect the bus before driving his route and also that neither transit authority had negligently failed to maintain the bus in a safe condition.

EXPERT WITNESSES:

Plaintiff: Lizette Velasquez, M.D.; Neurology; Bronx, NY

Defendant: Carl Wilson, M.D.; Orthopedic Surgery; Brooklyn, NY Michael J. Carciente, M.D.; Neurology; Brooklyn, NY

ATTORNEYS:

Plaintiff: Candice A. Pluchino; Perrineville, NJ, trial counsel to the Law Offices of Francis M. Decaro; Bronx, NY (Linda Boyd)

Defendant: Edward A. Flores; **Krez** & Peisner; New York, NY (MABSTOA, NYCTA)

JUDGE: John A. Barone

RANGE AMOUNT: 0

STATE: New York

COUNTY: Bronx

INJURIES: According to Boyd, in grabbing the allegedly defective strap, screws dug into and deeply cut her hand. Just afterward, she debarked the bus and looked in vain for a bus dispatcher to whom to report her accident before going shopping.

Facts:

On Sept. 24, 1998, plaintiff Linda Boyd, 49, was walking to the back of the bus traveling on Gun Hill Road near Bartow Avenue in the Bronx, N.Y., when she grabbed a strap to catch her balance and twisted her body as the strap allegedly slid 18 inches on its bar.

According to the suit Boyd filed against the Manhattan and Bronx Surface Transit Operating Authority and the New York City Transit Authority, she stumbled and injured herself because the screws attaching the strap to the bar were loose, cutting her hand in the process.

Boyd faulted the bus authorities and the bus driver for the accident. According to Boyd, the driver should have inspected the straps by hand during the routine inspection he performed before driving his route. She said he had shoddily inspected the bus and the transit authorities had negligently maintained the bus.

According to the defense, the driver, who had known nothing of the accident, wasn't trained to manipulate the straps as part of his inspection. The defense also argued that the strap could not have slid and the screws could not have cut her hand as Boyd had claimed. It said Boyd must have twisted when the bus stopped without the loop moving.

Showing the jury a sample strap at trial, the defense said that in order for the strap to slide across the bar 18 inches, all of the screws attaching it must have fallen out. Those screws, it noted, were not in the loop of the strap but above it, recessed and flush with the loop. The defense said that if the screws were loose, they could not have cut Boyd's hand while she grabbed the loop as she said she had, and the loop could not have slid 18 inches along the bar.

Before that trial, the case had gone to trial before Judge Edgar Walker in 2005. At the end of that trial, the jury returned a $450,000 verdict for Boyd. Claiming the plaintiff had not proven actual or constructive notice and objecting to Judge Walker's jury charge of a common carrier's duty to the passenger, the defense appealed the decision to the appellate division and then to the Court of Appeals.

On Oct. 18, 2007, the appeals court found that the trial judge should have charged notice and that the pattern jury instructions were out of date. It said those pattern jury instructions did not reflect the 1998 appeals ruling in Bethel v. NYCTA that found common carriers should be held to the same standard as, not a higher one than, all other defendants facing negligence claims in accident cases.

The Court of Appeals remanded the case for a new trial. Meanwhile, in light of that ruling and the earlier Bethel decision, the pattern jury instructions on common carrier liability were modified to include language requiring plaintiffs to prove actual or constructive notice of an alleged defect. That meant that for a new trial, the jury instruction in Boyd's suit would reflect the modification, too.

Complaining of neck, back and right shoulder pain, Boyd later was taken by ambulance to Our Lady of Mercy Medical Center, where she was treated and released. She followed up with neurologist Lizette Velasquez M.D., who suspected Boyd had refractured her right humerus, which had been broken before. Dr. Velasquez sent her to orthopedic surgeon Jeffrey Cohen M.D.

Dr. Cohen diagnosed impingement syndrome in Boyd's right shoulder; although his back and neck MRIs came back negative, a shoulder MRI had found an impinging bony growth in the subacromial space. When Dr. Cohen performed surgery to relieve the impingement syndrome and to shave off that spur, he also found and repaired a small rotator cuff tear.

Boyd followed up with physical therapy for several months and thereafter underwent no more surgeries, claiming a permanent disability. She claimed no missed work due to her injuries.

The defense disputed Boyd's claimed hand laceration, insisting that they could not have occurred in light of the location of the screws at the top of the strap and Boyd's testimony about grabbing the loop. A treating emergency medical technician testified that he recalled no bleeding from Boyd's hand.

Defense counsel also disputed the causation of Boyd's shoulder injuries. It said Boyd had cited similar injuries in a 1994 slip and fall suit against the city. That case was still pending when Boyd sued the transit authorities, and in that earlier case, Boyd had first claimed a broken humerus and in 1998 added, with an amended bill of particulars, claims of impingement syndrome symptoms.

In the instant suit against the transit authorities, meanwhile, defense orthopedic expert Carl E. Wilson M.D. said he found full range of motion when he examined Boyd in 2002, and in 2003 neurologist Michael Carciente M.D. said he found no neurological disabilities or impairments.

John Difalco v. New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Metropolitan Transportation Authority and Steven Alesci

No. 25814/04

DATE OF VERDICT/SETTLEMENT: July 25, 2006

TOPIC: MOTOR VEHICLE - LEFT TURN - MOTOR VEHICLE - INTERSECTION - MOTOR VEHICLE - SIDESWIPE - MOTOR VEHICLE - MOTORCYCLE - MOTOR VEHICLE - BUS - MOTOR VEHICLE - MULTIPLE VEHICLE - TRANSPORTATION - BUS - GOVERNMENT - MUNICIPALITIES

Crash Caused by Cop on Wrong Side of Road, Defense Claimed

SUMMARY:

RESULT: Verdict-Defendant

The jury rendered a defense verdict. It found that Alesci violated the Vehicle and Traffic Law but that he was not negligent and that the traffic-law violations did not cause the accident.

EXPERT WITNESSES:

ATTORNEYS:

Plaintiff: Franklin Braunstein; Frank J. Laine, P.C.; Mineola, NY (John Difalco)

Defendant: Edward A. Flores; **Krez** & Peisner; New York, NY (NYCTA, Steven Alesci)

JUDGE: Robert C. Kohm

RANGE AMOUNT: 0

STATE: New York

COUNTY: Queens County

INJURIES: The trial was bifurcated, so damages were not before the court.

Facts:

On June 19, 2004, plaintiff John Difalco, a policeman in his 40s, was motorcycling in the left lane of 126th Street, near its intersection at 34th Avenue, in the Flushing section of Queens. He was part of a police escort of a truck. As Difalco proceeded through the intersection, he collided with a bus that was traveling in the same direction of 126th Street. He claimed that he sustained a shoulder injury.

Difalco sued the bus's owners, the New York City Transit Authority and the Metropolitan Transportation Authority; the bus's operator, the Manhattan and Bronx Surface Transit Operating Authority; and the bus's driver, Steven Alesci. Difalco alleged that Alesci was negligent in his operation of the bus and that the remaining defendants were vicariously liable for the driver's actions.

Difalco claimed that Alesci executed a sharp left turn onto 34th Avenue, from the right lane of 126th Street and struck his right shoulder and his motorcycle's right floorboard. He contended that he was forced to veer into oncoming traffic and that his motorcycle's floorboards scraped the ground. He claimed that his motorcycle's sirens were activated and that, as such, Alesci should have detected the proximity of the two vehicles.

Difalco's partner testified that he was traveling behind Difalco and that the bus was initially in the right lane, that it entered the left lane and that it made a gradual left turn. He contended that he saw one of Difalco's shoulders hit the bus.

Alesci, a mechanic who was driving the bus to evaluate its system, contended that he was in the left lane when he executed his turn and that he never felt any impact. He claimed that the bus's front wheels were already in the intersection when Difalco approached the side of the bus contending that there had been an accident. He denied that Difalco's shoulder came into contact with the bus.

Defense counsel argued that the accident scene bordered Shea Stadium's parking lot and that, without buildings for the sound of sirens to bounce off of, Alesci would not have been able to determine the noise's direction of origin.

Defense counsel further argued that photographs from the accident scene did not confirm Difalco's theory on liability. He contended that the motorcycle made 30-foot-long skid marks that were parallel to 126th Street's double yellow line and four feet to the left of those lines, which were followed by only a short, curved mark to the left where the bike stopped. He claimed that this showed that Difalco inappropriately attempted to pass the bus on the left side, while traveling on the wrong side of the two-way street.

Difalco was placed in an ambulance and transported to a local hospital, where he underwent minor treatment.

Difalco ultimately claimed that he sustained a tear of his right, dominant, shoulder's rotator cuff. He underwent arthroscopic surgery that addressed his right shoulder.

Difalco did not work during the 60 days that followed the accident. He contended that he suffers an ongoing residual disability that prevents his operation of motorcycles and that, as such, he is restricted to desk duty. He contended that the new position was not as interesting as his old one and that, as a result, he retired on three-quarter's disability. He sought recovery of his past and future loss of earnings and damages for his past and future pain and suffering.

Defense counsel contended that Difalco's surgery addressed acromial impingement and a bone spur and that both conditions preexisted the accident. He also contended that Difalco did not show signs of any torn tendons or ligaments. He further claimed that Difalco is capable of working.

Susan Goodman v. New York City Transit Authority

No. 22729/03
DATE OF VERDICT/SETTLEMENT: September 08, 2006
TOPIC: MOTOR VEHICLE - PASSENGER - MOTOR VEHICLE - BUS - TRANSPORTATION - BUS - GOVERNMENT - MUNICIPALITIES
Moving Bus With Open Door Caused Fall, Plaintiff Claimed

SUMMARY:
RESULT: Verdict-Defendant
The jury rendered a defense verdict.

EXPERT WITNESSES:
ATTORNEYS:
Plaintiff: Michael Maoilica; Law Office of Steven Wildstein, P.C.; Great Neck, NY (Susan Goodman)
Defendant: Edward A. Flores; **Krez** & Peisner; New York, NY (NYCTA)

JUDGE: Augustus C. Agate

RANGE AMOUNT: 0

STATE: New York
COUNTY: Queens County

INJURIES: The trial was bifurcated, so damages were not before the court.

Facts:
On March 18, 2003, plaintiff Susan Goodman, a mattress retailer's order clerk in her 50s, was a bus passenger exiting at the stop on Queens Boulevard, between 40th and 39th streets, in the Sunnyside section of Queens. As she was descending the bus's front three steps, she tripped and fell. She claimed that she fell to the ground, landing on her hands and knees and sustaining an injury of her ankle.

Goodman sued the bus's operator, the New York City Transit Authority. She alleged that the bus's driver was negligent in his operation of the bus and that the transit authority was vicariously liable for the driver's actions.

Goodman claimed that the bus suddenly moved forward while she was on the middle step and caused her to fall down.

The transit authority denied that the bus moved while the front door was open. However, with the absence of the bus driver or an expert, the defense was precluded from arguing that the bus's interlock mechanism prevents it from moving while its front and rear doors are open.

Defense counsel read into evidence the deposition testimony of the bus driver, who had since moved out of state. He claimed that his foot was on the brake the entire time and that Goodman fell because her right heel got caught on the top step, causing her to lose her balance and her left foot to twist. He further claimed that she fell forward but caught herself and did not make contact with the floor.
Defense counsel argued that Goodman's claim at trial was inconsistent with a form for no-fault benefits that she filled out nine days following the accident and where she wrote that her foot got caught in a bus step and fell down. Defense counsel noted that Goodman did not state in the form that the bus moved and caused her to fall.

Goodman countered that she did not include some details in the no-fault benefits form because a nurse was hurrying her and made her feel rushed.

Goodman was placed in an ambulance and transported to Methodist Hospital, in Brooklyn. She sustained a bimalleolar fracture of her left ankle. She was casted and released.

Goodman treated conservatively with her private physician because the fracture was not displaced. She contended that within a year of the accident she was able to resume working, but that she could no longer play sports, go to the gym or jog. She sought recovery of damages for her past and future pain and suffering.

The defense contended that Goodman was overweight and that she was not as active prior to the accident as she claimed. The defense further contended that, despite claiming that she fell on her hands and knees, Goodman did not sustain any bruises or abrasions.

TORIN HYLOR AND SIMONE BROADNAX vs. VERIZON COMMUNICATIONS INC. ET AL

007536/2001

DATE OF VERDICT/SETTLEMENT: November 18, 2010

TOPIC: PREMISES LIABILITY - NEGLIGENT MAINTENANCE - ALLEGED FAILURE TO PROPERLY MAINTAIN ROADWAY - MOTORCYCLE TIRE BLOWS OUT, INJURING DRIVER AND PASSENGER - ROAD RASH, BURNS, ABRASIONS, PERMANENT DISFIGUREMENT.

SUMMARY:

Result: DEFENDANT'S VERDICT

EXPERT WITNESSES:

Plaintiff's motorcycle expert: Dennis Toaspern from Binghamton, NY.
Defendant's mechanical engineering expert: John McManus from Purchase, NY.

ATTORNEY:

Plaintiff's: Werbel & Werbel in Brooklyn, NY.
Defendant's: Edward Flores of **Krez** & Flores, LLP in New York, NY.
Defendant's: Richard Babinecz in New York, NY.
Defendant's: Corporation Counsel in New York, NY.
Defendant's: Morris, Duffy, Alonso & Faley in New York, NY.
Defendant's: Charles Siegel in New York, NY.

JUDGE: Lawrence Knipel

RANGE AMOUNT: $0

STATE: New York
COUNTY: Kings

INJURIES:

Premises liability - Negligent maintenance - Alleged failure to properly maintain roadway - Motorcycle tire blows out, injuring driver and passenger - Road rash, burns, abrasions, permanent disfigurement.

FACTS:

On August 9, 2000, the plaintiff Torin H. was driving a motorcycle with the plaintiff Simone B. as a passenger. They were riding southbound on Ocean Parkway between Gravesend Neck Road and Avenue W in Brooklyn. The plaintiffs alleged that the motorcycle hit a series of roadway defects, including bumps and depressions and that, as a result, the tire blew out and the driver lost control. The motorcycle overturned, causing injuries to both plaintiffs. The plaintiffs commenced this action against Verizon New York, Inc., the Consolidated Edison Company of New York, Inc., and the City of New York. Verizon impleaded V.N.A. Utility Contracting Co., Inc. The plaintiffs alleged that Verizon was negligent in causing and creating a hazard by leaving an open trench that spanned through the main road of Ocean Parkway. The City settled the action in March 2010 and the action against Con Ed was discontinued. The V.N.A admitted responsibility for the trenching, backfilling, and repaving of the trench pursuant to a written contract between Verizon and the V.N.A. However, both defendants argued that the trench was completed and repaved flush with the roadway in June 2000, six weeks before the plaintiffs' accident. At the time of the accident, the plaintiff Torin H. was a 51-year-old barber, and the plaintiff Simone B. was 40 years old and unemployed. Defense counsel presented post-accident photographs, Verizon records, department of transportation records, conduit maps, and blueprints of the job done by V.N.A. for Verizon on the main road and on the nearby service road. Counsel argued that the conduit sheets and maps, Verizon blueprints, and department of transportation permits showed that the trench across Ocean Parkway was completed and paved in June 2000. Plaintiffs' counsel argued that Verizon's failure to produce records reflecting work done in the area during the week of the accident should be construed against the defendants. Defense counsel argued that the plaintiffs' nonparty eyewitness contradicted plaintiff Torin H.'s claim that he had traveled from Gravesend Road to Avenue W. The defendants' expert in accident reconstruction opined that Torin H. could not have driven 420 feet from the alleged trench to Avenue W without overturning. Defense counsel argued that Torin H.'s credibility was undermined by his deposition testimony, pictures of the accident scene, contradictory trial testimony, and the impossibility of his claim that he had traveled 420 feet in two to three seconds before overturning, which would have required him to travel from 95 to 143 miles per hour in the two to three seconds. There was minimal damage to the motorcycle which suggested that the motorcycle had been traveling at 30 to 35 miles per hour.

The trial was bifurcated and never reached the damages phase. The plaintiffs claimed that they sustained road rash, second and third-degree burns, and abrasions to their upper back, right shoulders, right arms, right elbows, right thighs, right knees and right calves. The plaintiffs claimed permanent disfigurement and scarring to their shoulders, arms, and legs. No demand was presented; the defendant made a joint offer of $30,000 for both plaintiffs.

After deliberating for four hours, the jury returned a unanimous verdict for the defense.

Jury Verdicts Review Publications, Inc.

PUBLISHED IN: New York Jury Verdict Review & Analysis, Vol. 28, Issue 5

Rudolph Jaundoo and Gomatie Jaundoo v. New York City Transit Authority Manhattan & Bronx Surface Transit Operating Authority & Ovril W. Skepple

No. 7580/06

DATE OF VERDICT/SETTLEMENT: December 16, 2008

TOPIC: MOTOR VEHICLE - PEDESTRIAN - MOTOR VEHICLE - BUS - GOVERNMENT - MUNICIPALITIES

Bus Driver Claimed Pedestrian Walked Into Collision With Bus

SUMMARY:

RESULT: Verdict-Defendant

The jury rendered a defense verdict. It found that Skepple was not negligent.

EXPERT WITNESSES:

Plaintiff: Ali E. Guy, M.D.; Physical Medicine; New York, NY

Defendant: Marie Pulini; Endocrinology; New York, NY Michael J. Carciente, M.D.; Neurology; Brooklyn, NY Sheldon Fiet; Radiology; Bronx, NY

ATTORNEYS:

Plaintiff: Raphael Rybak; David Resnick & Associates P.C.; Brooklyn, NY (Rudolph Jaundoo)

Defendant: Edward A. Flores; **Krez** & Peisner; New York, NY (Manhattan and Bronx Surface Transit Operating Authority, New York City Transit Authority, Ovril W. Skepple)

JUDGE: Cynthia S. Kern

RANGE AMOUNT: 0

STATE: New York

COUNTY: Bronx

INJURIES: Jaundoo sustained herniated discs at C4-5 and C7-T1, a rotator cuff tear in his left shoulder and a small meniscus tear in his right knee. Jaundoo had the shoulder tear repaired by surgery and a knee surgery, as well. He underwent physical therapy for several months. He did not return to work and claims of continuing pain and the necessity of a cane to walk. Jaundoo asked the jury for past loss of earnings of $50,000, as he showed to make $340 per week. He also asked for $50,000 for future loss of earnings and about $250,000 for future medical costs which would include a neck surgery and knee replacement. Jaundoo also requested $250,000 for past pain and suffering and $250,000 for future pain and suffering. His wife presented a derivative claim.

Facts:

On Oct. 25, 2005, plaintiff Rudolph Jaundoo, 55, an employee of an automobile axle refurbishing business, was walking across the service road of the Cross Bronx Expressway, near the intersection at White Plains Road, in the Bronx. As he walked across the service road, a public bus driven by Ovril Skepple was traveling on White Plains Road and made a left turn onto the service road. Jaundoo claimed that the bus hit him from behind and struck his left shoulder and knocked him forward so he fell on his left elbow and right knee. He claimed that Skepple continued to drive but then came back to check on him. Jaundoo claimed that the incident occurred in the crosswalk.

Jaundoo sued Skepple and the bus's operators, the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority. Jaundoo alleged that Skepple was negligent in the operation of the bus and that the remaining defendants were vicariously liable for Skepple's actions.

Skepple claimed that he made a left turn onto the service road and waited in traffic. While the bus was standing still in traffic, Skepple heard a thump at the front door to the bus and when he opened the door, he claimed to see Jaundoo on the floor. Skepple claimed that Jaundoo walked into the bus and that as Jaundoo tried to get up, Skepple asked him if he was OK. Skepple then saw a police officer on a scooter that was writing parking tickets near the scene and notified the police officer of Jaundoo's condition. The police officer took down a report noting Jaundoo's statement, and Jaundoo asked him if could urinate. Skepple claimed that the incident occurred away from the crosswalk.

Defense's medical experts testified that Jaundoo's injuries were degenerative and that he was a diabetic that did not manage his diabetes well, as tests from the hospital indicated that he did not take insulin for 48 hours prior to the incident. Defense's expert testified that this lack of insulin can lead to impaired vision and that diabetics that do not manage their insulin have a frequent need for urination. Additionally, the police officer at the scene took down a report only noting Jaundoo's statement that he admitted walking into the bus.

Transit Authority Not Liable for Passenger's Alleged Fall

Supreme Court, Eleventh Judicial District, Queens County, New York.

Kim v. New York City Transit Auth.

Type of Case:
Common Carrier • Bus/Streetcar
Vehicle Negligence • Public Transportation
Vehicle Negligence • Bus
Vehicle Negligence • Passenger
Vehicle Negligence • Abrupt Start/Stop
Vicarious Liability
Specific Liability: Employee operating bus suddenly accelerated bus, causing passenger to fall and sustain injuries

General Injury: Hip, leg and ankle injuries; medical expenses

Jurisdiction:
State: New York
County: Queens

Related Court Documents:
Plaintiff's verified complaint: 2010 WL 9505684
Plaintiff's memorandum of law: 2012 WL 8305304
Trial order: 2013 WL 3270048

Case Name: Ok Kyung Kim v. New York City Transit Authority and Juan Casanova a/k/a "John", actual first name unknown, Casanova

Docket/File Number: 27070/2010

Verdict: Defendants, $0

Verdict Range: $0

Verdict Date: March 27, 2013

Judge: Diccia T. Pineda-Kirwan
Attorneys:
Plaintiff: David N. Sloan, Hicksville, N.Y.
Defendants: Channon Nicole Weston, Wallace D. Gossett, Brooklyn, N.Y.; Paul A. **Krez**, **Krez** & Flores, New York, N.Y.

Trial Type: Jury
Breakdown of Award:
$0

Summary of Facts:
On Feb. 12, 2010, Ok Kyung Kim reportedly was a paying passenger on a bus owned by New York City Transit Authority (NYCTA) and operated by its employee, Juan Casanova, near the intersection of 147nd Street and Northern Boulevard in Queens County, N.Y. Feb. According to Kim, she paid her fare and started walking towards the rear of the bus when the bus suddenly accelerated, causing her to fall backwards into the fare box and onto the floor.

Kim claimed she sustained injuries to her hip, leg and ankle and was taken to the hospital by EMS employees as a result of the collision.

Kim filed a lawsuit against NYCTA and Casanova a/k/a "John", actual first name unknown, Casanova in New York Supreme Court for Queens County. In the plaintiff's verified complaint, she claimed the defendants were negligent for failing to allow her to safely get to an available seat and failing to properly control their vehicle.

The plaintiff sought to recover damages for her personal injuries, medical expenses and inability to attend to her usual duties and activities.

According to Casanova, he had only moved a few feet when an unnamed and unidentified passenger attempted to open the rear door of the bus, causing an interlock mechanism to activate and bringing the bus to an automatic stop. Additionally, he claimed the bus had a black box recording device that recorded the interlock mechanism, but was unable to locate it.

The matter proceeded to a jury trial on liability only before Justice Diccia T. Pineda-Kirwan. Queens County jurors reportedly returned a verdict in favor of the defendants March 27, 2013, finding the defendants not negligent.
Court: Supreme Court, Eleventh Judicial District, Queens County, New York.

XXIV/22-06
MOTOR VEHICLE
Passenger Bus Transportation Government Municipalities
Plaintiff claimed he fell out of moving bus
Verdict Defense
Case Omar Malone v. Jeffrey Gatling & the New York City Transit Authority, No. 38516/00
Court Kings Supreme
Judge Bert A. Bunyan

Plaintiff
Attorney(s) Bruce A. Newborough, Brooklyn, NY
Defense
Attorney(s) Paul A. **Krez**, New York, NY
Facts & Allegations On March 25, 2000, plaintiff Omar Malone, a 34-year- old unemployed man, was a passenger of a bus that was traveling on Mother Gaston Boulevard, in Brooklyn. Malone claimed that he was standing in the bus' stairwell when the driver opened the front doors of the bus, causing him to be thrown from the bus and his leg to be crushed by one of the bus's wheels. He sustained leg injuries.
Malone sued the bus's driver, Jeffrey Gatling, and the bus's operator, the New York City Transit Authority. Malone alleged that Gatling was negligent in his operation of the bus and that the New York City Transit Authority was vicariously liable for Gatling's actions.
Malone claimed that Gatling negligently opened the bus's doors while he was standing in the stairwell. Gatling contended that he pulled away from the bus stop after Malone had crossed the white standee line and that Malone then decided that he wanted to leave the moving bus. He claimed that Malone proceeded to kick the front doors of the bus and push his way through them. He claimed that Malone fell to the street and caught his right leg in the door. He acknowledged that Malone's left leg was crushed by one of the bus's wheels. Defense counsel produced two eyewitnesses who were on the bus at the time of the incident. The witnesses corroborated Gatling's description of the incident.
Defense counsel also noted that hospital records showed that Malone had a blood-alcohol concentration of 1.95, as well as cocaine metabolites in his blood. Evidence indicated that Malone had previously been diagnosed as a paranoid schizophrenic and that he had an extensive criminal record. Medical records also showed that Malone had not taken the medication that was prescribed to treat his psychotic condition.
Injuries/Damages comminuted fracture; crush injury, leg; degloving injury; fracture, femur; internal fixation; open reduction; scar and/or disfigurement, leg; screws; skin grafts
Malone sustained a comminuted fracture and crush injury of his left femur. He also sustained severe degloving injuries of his right leg. The fracture was treated via open reduction and the internal fixation of an intermedullary rod and screws. The degloving injury necessitated five surgeries and skin grafts, which were complicated by infections.
Malone suffers a bad disfigurement of his left thigh. He sought recovery of damages for his past and future pain and suffering.
Result The jury rendered a defense verdict.
Demand $1,500,000
Offer None

VII/21-11 SUBWAY ACCIDENT - FALL BETWEEN CARS - DEFENDANT CLAIMS PLAINTIFF TRIED TO BOARD MOVING TRAIN

Charles and Evelyn Armstrong v. NYCTA 10833/82 Judge William J. Garry, Kings Supreme

VERDICT: Defense verdict on liability (6/0). Pltf.'s post-trial motion to set aside verdict denied.

Pltf. Atty: Richard Slater of Richard J. Cardali, Manhattan
Deft. Atty: Paul A. **Krez** of Jackson, Manhattan

Facts: The incident occurred on 3/29/79 at the BMT subway station at Pacific St. and Fourth Ave. Pltf. claimed that he was walking north on the southbound platform when he tripped over a hole and fell between the cars of a moving subway train. Pltf. claimed that the hole was repaired after the accident and introduced a photograph which showed a patched area on the platform at the location in which he claimed that he fell. Deft. argued that Pltf. tried to board the moving subway train by pulling back the safety gates and jumping between the cars. Deft. produced an eyewitness who was standing on the platform at the time of the incident who testified that Pltf. was attempting to board the train as it was moving. Injuries: (not before the jury) amputation of the right (dominant) arm; severe trauma to the head, neck, and right knee; abrasions, lacerations, and contusions of the upper and lower body and face; multiple fractures of the navicular and capitate bones; nerve root damage in the stump of the amputated arm; severe psychological trauma. Demand: $3,000, 000 for Pltf.; $500,000 for his mother for loss of services.

BUS ACCIDENT PATRON ALLEGEDLY DRAGGED AFTER DOOR CLOSES ON HIS FOOT DEFENSE VERDICT ON LIABILITY

Anthony Suadwa v. New York City Transit Authority 4-day trial
Kings Supreme

Judge: David I. Schmidt

Verdict: Defense verdict on liability (6/0). Post-trial motions were denied. Jury: 2 male, 4 female (2009).

Pltf. Atty: Marc A. Bernstein of Oshman, Helfenstein, Bernstein, Mirisola & Schwartz, L.L.P., Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., a 52-year-old security guard, claimed Deft. s bus driver closed the front doors of the bus as Pltf. was attempting to board, causing his right foot to become stuck in the doors with his left foot on the sidewalk. He contended that the bus then left the stop, dragging him on the ground for an unspecified distance. Pltf. s right foot eventually became dislodged from the doors and his left foot was run over by the right rear wheel of the bus. Deft. argued that Pltf. was intoxicated and had consumed a half bottle of vodka prior to the accident. Deft. produced the nurse anesthetist, to whom Pltf. had admitted consuming vodka. Deft. also claimed that Pltf. was running to catch the bus and that his foot became crushed when he fell as the bus was pulling out of the stop. There were no witnesses to the accident, but the responding police officer testified that Pltf. told him that he had slipped and fallen while running to catch the bus. He also made a similar statement in his No-Fault statement. The trial judge refused to admit the toxicology lab report that showed Pltf. s blood-alcohol level to be 132 mg/dcl. He also allowed Pltf. to cross-examine the police officer about his dismissal from the New York City Police Department for alleged cocaine use.

Injuries: (not before the jury) crush injury and degloving injury to the third toe of the left foot. The toe was subsequently amputated. Demonstrative evidence: No-Fault statement and hospital records (to demonstrate alcohol involvement); MV-104; photographs of the area and similar bus; Notice of Claim; bus transfer. Offer: $15, 000; demand: $100,000. Jury deliberation: 20 minutes.

BUS ACCIDENT PASSENGER FALLS INTO EXCAVATION WHILE EXITING BUS CONSTRUCTION COMPANY LIABLE HERNIATED LUMBAR DISC

Victor Brady v. New York City Transit Authority, Roadway Contracting Corp., and Con Edison
6-week trial Judge Leland G. DeGrasse, New York Supreme (2010).

VERDICT: $72,000 v. Roadway Contracting, reduced to $36,000 for 50% comparative negligence of Pltf. Breakdown: $20,000 for past pain and suffering; $15,000 for future pain and suffering; $9,000 for past lost earnings; $8,000 for future lost earnings; $20,000 for past medical expenses.

Defense verdict for NYCTA and Con Edison. Deft.'s post-trial motion to set aside the verdict was granted. See below. Notice of Appeal by Pltf.

Pltf. Atty: Fred Ehrlich, Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan, for NYCTA
Nicholas Cardascia of Ahmuty, Demers & McManus, Albertson, for Roadway Contracting
Barry S. Goldstein of Richard W. Babinecz, Manhattan, for Con Edison

Facts: Pltf., a 54-year-old musician at the time, claimed that he was struck by the rear doors of a Transit Authority bus while he was exiting. He claimed that the bus began to move while he was attempting to get off the bus. Pltf. also contended that the bus driver dropped him off at an active construction site. He claimed that after he was hit by the doors, he tripped over a spike at the site and fell into an excavation.

Pltf. contended that Deft. Roadway Contracting (50% liable) failed to place barricades around the construction site and that Con Edison (defense verdict), which contracted with Roadway to perform the excavation, failed to inspect the area. Deft. NYCTA (defense verdict) denied that Pltf. was hit by the rear doors of the bus, noting that an interlock device prevents the bus from moving when the rear doors are open. Deft. Roadway claimed that barricades were in place and that Pltf. did not fall into the excavation.

Injuries: herniated disc at L5-S1. Pltf. claimed that he was no longer able to continue with his career as a professional musician. He claimed a loss of $750,000 in past and future earnings. Pltf. was permitted to introduce into evidence five albums that he recorded, as well as photographs depicting him with celebrities. Pltf. was also permitted, over objection, to play steel drums for the jury live in the court room. Demonstrative evidence: medical records; anatomy charts; tapes of Pltf.'s recordings; photographs; tax returns. No offer; demand: $1,000,000; amount asked of jury: $1,500,000

PLAINTIFF STRUCK BY NYCTA SPIKE FROM ELEVATED TRAIN BRAIN DAMAGE DEFENSE VERDICT

Sheila Smith a/k/a Sheila Miranda v. New York City Transit Authority 4-week trial Judge Douglas E. McKeon, Bronx Supreme (2010)

VERDICT: Defense verdict (6/0). Post-trial motions were denied. Jury: 2 male, 4 female.

Pltf. Atty: David Friedman for Lloyd F. Goldstein, Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., age 35 and unemployed, claimed that at approximately 10 PM she was struck by a rail spike from an elevated train at 216th St. and White Plains Rd. in the Bronx. Pltf. claimed that she heard the train going overhead and then was hit by the object. Pltf. claimed that the spike was used to hold the rails in place. Deft. contended that the accident never occurred and that Pltf. did not sustain any injuries. Note: A C-bolt was produced at trial as being the object that fell from the tracks and struck Pltf. The testifying police officer identified the object as being a spike, not a bolt, and took it to Property Office at the New York City Police Department. Deft. made an in limine motion prior to trial to suppress the bolt because Pltf.'s attorney could not attest as to how the bolt was taken from the Police department. The motion was granted. Judge McKeon submitted the case to the jury on the theory of res ipsa loquitur. The jury found Deft. wasn't negligent. Injuries: brain damage, manifested by dementia and memory loss; cervical nerve root damage at C5-6. Pltf. claimed that she could not recall many particulars about the accident and that she suffered from amnesia. Demonstrative evidence: photographs of scene; model of skull; medical drawings of the head; hospital and medical records.

Offer: $40,000; demand: $500,000; amount asked of jury: $750,000. Jury deliberation: 3 hours.

FALLDOWN PASSENGER ATTEMPTING TO BOARD BUS DEFENDANT DENIED THAT ACCIDENT OCCURRED AT BUS STOP DEFENSE VERDICT

Edith Weinstein v. NYCTA 3-day trial Kings Supreme

Judge: Edward M. Rappaport

Verdict: Defense verdict on liability (6/0). Jury: all female. (2009)

Pltf. Atty: Isaac Tessler, Brooklyn

Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., a 77-year-old retired office worker, claimed that she was injured when she tripped over a curb at a bus stop on the corner of Kings Hwy. and East 13th St. in Brooklyn in an attempt to avoid a bus that allegedly moved too close to her. Pltf. claimed that Deft. s bus driver stopped 3-4 feet from the curb and opened the doors of the bus. She testified that as she was walking over to board the bus, the driver began to move the bus toward the curb with the front doors still open. Pltf. claimed that she stepped backward to avoid the bus and tripped over the curb and fell. There was never any contact between the bus and Pltf.

Defts driver denied that the accident occurred. Deft. contended that Pltf. did not go to an emergency room until 11:35 that evening, over 7 hours after the incident, and argued that Pltf. was injured in another manner later that same day. Deft. contended that Pltf. had been accompanied by four friends from the time she exited the bus until she went to the emergency room, and that she failed to call any of them as witnesses to dispute a subsequent fall and injury.

Injuries: (not before the jury) fractured left hip requiring open reduction and internal fixation with three nails. Pltf. underwent physical therapy and may require a total hip replacement. She would have claimed that she now requires a cane to ambulate. Demonstrative evidence: photograph of the bus; Notice of Claim; hospital admission sheet; emergency room record. No offer; demand: $ 150,000. Jury deliberation: 45 minutes.

XIV/27-5 MOTOR VEHICLE PASSENGER QUESTION OF LIGHTS NO- FAULT QUESTION ON FRACTURED NOSE AND HERNIATED CERVICAL DISCS DEFENSE VERDICT ON DAMAGES

Jorge Peralta v. New York City Transit Authority and Jose Vargas v. Diabate Bakary 6828/91 5-day trial

Judge Norman C. Ryp, New York Supreme

VERDICT: Defense verdict on damages (6/0). Jury: 4 male, 2 female.

Pltf. Atty: Robyn M. Brilliant, Brooklyn, for Barry Montrose, Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan, for Transit Authority
Michael A. Barnett of Simon, Drabkin & Margulies, for Bakary

Facts: On 7/24/88 at approximately 4 PM, Pltf., a 38-year- old unemployed salesman, was a passenger in the back seat of Third- party Deft. s livery cab when it was involved in an accident with Deft. s bus at the intersection of Broadway and West 133rd St. in Manhattan. Pltf. claimed that Third-party Deft. Bakary had a green light while traveling south on Broadway. Deft. Transit Authority argued that the bus had a green light while attempting to make a left turn from 133rd St. Deft. claimed that Third-party Deft. s cab collided with the bus at a high rate of speed. Third-party Deft. did not testify at trial.

Injuries: (defense verdict on damages) fractured nose; herniated discs at C4-5 and C5-6; bulging disc at L4-5. Pltf. claimed that he was unable to return to work. Deft. denied that Pltf. sustained a serious injury under the No-Fault Law, Insurance Law §5102(d). Deft. s expert testified that Pltf. did not sustain a fractured nose and argued that he had no residuals. Deft. contended that any herniated or bulging discs were degenerative in nature and were not causally related to the accident.

Demonstrative evidence: photographs of Pltf.; police accident report; hospital records; MRI films. Specials: approximately $1,500. No offer; demand: $125,000; amount asked of jury: $750,000. Jury deliberation: 2 hours. Carrier: First Central Insurance for Bakary.

VII/21-7 SUBWAY ACCIDENT - FALL IN SPACE BETWEEN CAR AND PLATFORM - DEFENSE VERDICT

Freida and Charles Adler v. NYCTA 005050/88 Judge Irving S. Aronin, Kings Supreme

VERDICT: Defense verdict on liability (6/0). Pltf.'s post-trial motion to set aside verdict denied.

Pltf. Atty: Joel Braziller of Braziller & Thomas, Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf., about 60 years old at the time, claimed that on 5/22/84, she fell as she was entering a train at the Ave. J station in Brooklyn. Pltf. claimed that the conductor closed the doors on her before she was completely inside the car. When she fell, both feet were stuck in the space between the platform and the train. Pltf. contended that the conductor was negligent for closing the doors prematurely and the Transit Authority was negligent for allowing an unreasonably wide gap between the car and the platform. The only witnesses for Pltf.'s case were the Adlers themselves. Deft. called a Transit Authority engineer who testified that the gap was not unreasonably wide. Injuries: (not before the jury) multiple bruises and abrasions. Pltf. claimed that the accident caused a weakness in her ankle which later caused it to fracture. Pltf. also claimed that a preexisting heart condition was aggravated. No offer; demand: $1,000,000.

VII/6-9 BUS ACCIDENT - DEFENDANT CLAIMS BICYCLIST "HITCHING A RIDE" - DEFENSE VERDICT

Alfred Moreira v. MABSTOA and William Smith 17195/86 Judge Anita R. Florio, Bronx Supreme

VERDICT: Defense verdict.

Pltf. Atty: Gerald P. Goldsmith, Manhattan
Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf. claimed that he was riding his bicycle on Westchester Ave. in the Bronx when Deft.'s bus, driven by Deft. Smith, came up behind him and struck his bike, causing him to fall to the ground. He claimed that the bus then ran over his hand. Deft. claimed that Pltf. was "hitching a ride" by holding onto the rear of the bus as he rode his bike, and that he lost his balance and fell. Injuries: fracture of the second left finger; temporomandibular joint syndrome; loss of motion in the upper left arm and shoulder; reflex sympathetic dystrophy. Deft. argued that Pltf.'s injury could not have been caused by a bus running over his hand since that would have crushed the hand, not just fractured one finger. Demonstrative evidence: bicycle involved in accident; photographs and maps of accident scene. Jury deliberation: 1 hour.

XXVI/33-03
MOTOR VEHICLE
Pedestrian Bus Government Municipalities
Bus driver claimed pedestrian walked into collision with bus
Verdict Defense
Case Rudolph Jaundoo and Gomatie Jaundoo v. New York City Transit Authority Manhattan & Bronx Surface Transit Operating Authority & Ovril W. Skepple, No. 7580/06
Court Bronx Supreme
Judge Cynthia S. Kern
Plaintiff Attorney(s) Raphael Rybak, David Resnick & Associates P.C., Brooklyn, NY
Defense Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On Oct. 25, 2005, plaintiff Rudolph Jaundoo, 55, an employee of a company that refurbished axles, claimed that he was struck by a public bus. The incident was alleged to have occurred on the Cross Bronx Expressway's westbound service road, near its interchange at White Plains Road, in the Parkchester section of the Bronx. Jaundoo claimed that he sustained injuries of a knee, his neck and a shoulder.
Jaundoo sued the bus's driver, Ovril Skepple, and the bus's operators, the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority. Jaundoo alleged that Skepple was negligent in his operation of the bus. Jaundoo further alleged that the remaining defendants were vicariously liable for Skepple's actions.
Jaundoo claimed that the impact occurred within one of the service road's crosswalks.
Skepple contended that he was initially traveling on White Plains Road. He claimed that he executed a left turn onto the service road, stopped in traffic and subsequently heard a thump that seemed to emanate from the front door of his bus. He contended that he opened the door and saw Jaundoo on the ground. He also contended that the incident did not occur within a crosswalk.
Skepple further contended that he and Janudoo reported the incident to a nearby police officer. Skepple claimed that Jaundoo asked the officer for permission to urinate. The defense's expert endocrinologist noted that Jaundoo suffers diabetes, and she also noted that hospital records indicated that Jaundoo did not take his prescribed insulin during the 48 hours that preceded the accident. She contended that insulin insufficiency can impair a person's vision and cause a frequent need for urination. Thus, Skepple and defense counsel argued that an impaired Jaundoo simply entered the street and initiated a collision with the bus. The police officer's report included a notation that Jaundoo admitted to having initiated the collision.
Injuries/Damages herniated disc at C4-5; herniated disc at C7-T1; physical therapy; torn meniscus; torn rotator cuff
Jaundoo claimed that the bus struck the rear side of his left shoulder and knocked him forward. He contended that he fell onto his left elbow and right knee.
Jaundoo ultimately claimed that he sustained herniations of his C4-5 and C7-T1 intervertebral discs, a tear of his left shoulder's rotator cuff, and a small tear of his right knee's meniscus. He underwent surgery that addressed the injuries of his left shoulder and right knee, and he also underwent several months of physical therapy.
Jaundoo claimed that he suffers residual pain that prevents his resumption of work. He contended that he requires the assistance of a cane, and he also contended that he may have to undergo replacement of his right knee and surgery that will address his spinal injuries.
Jaundoo further claimed that his most recent weekly earnings totaled about $ 340. He sought recovery of $50,000 for his past lost earnings, $50,000 for his future loss of earnings, $250,000 for his future medical expenses, $ 250,000 for his past pain and suffering, and $250,000 for his future pain and suffering. His wife presented a derivative claim.
The defense's medical experts opined that Mr. Jaundoo's injuries stemmed from degenerative conditions that were not related to the accident.
Result The jury rendered a defense verdict. It found that Skepple was not negligent.
Demand $985,000
Offer None
Trial Details Trial Length: 7 days
Trial Deliberations: 2.5 hours
Jury Vote: 6-0

XXIV/20-15
MOTOR VEHICLE
Left Turn Intersection Sideswipe Motorcycle Bus Multiple Vehicle Transportation Bus Government Municipalities
Crash caused by cop on wrong side of road, defense claimed
Verdict Defense
Case John Difalco v. New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, Metropolitan Transportation Authority and Steven Alesci, No. 25814/04
Court Queens Supreme
Judge Robert C. Kohm
Plaintiff
Attorney(s) Franklin Braunstein, Frank J. Laine, P.C., Mineola, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On June 19, 2004, plaintiff John Difalco, a policeman in his 40s, was motorcycling in the left lane of 126th Street, near its intersection at 34th Avenue, in the Flushing section of Queens. He was part of a police escort of a truck. As Difalco proceeded through the intersection, he collided with a bus that was traveling in the same direction of 126th Street. He claimed that he sustained a shoulder injury.
Difalco sued the bus's owners, the New York City Transit Authority and the Metropolitan Transportation Authority; the bus's operator, the Manhattan and Bronx Surface Transit Operating Authority; and the bus's driver, Steven Alesci. Difalco alleged that Alesci was negligent in his operation of the bus and that the remaining defendants were vicariously liable for the driver's actions.
Difalco claimed that Alesci executed a sharp left turn onto 34th Avenue, from the right lane of 126th Street and struck his right shoulder and his motorcycle's right floorboard. He contended that he was forced to veer into oncoming traffic and that his motorcycle's floorboards scraped the ground. He claimed that his motorcycle's sirens were activated and that, as such, Alesci should have detected the proximity of the two vehicles.
Difalco's partner testified that he was traveling behind Difalco and that the bus was initially in the right lane, that it entered the left lane and that it made a gradual left turn. He contended that he saw one of Difalco's shoulders hit the bus.
Alesci, a mechanic who was driving the bus to evaluate its system, contended that he was in the left lane when he executed his turn and that he never felt any impact. He claimed that the bus's front wheels were already in the intersection when Difalco approached the side of the bus contending that there had been an accident. He denied that Difalco's shoulder came into contact with the bus.
Defense counsel argued that the accident scene bordered Shea Stadium's parking lot and that, without buildings for the sound of sirens to bounce off of, Alesci would not have been able to determine the noise's direction of origin.
Defense counsel further argued that photographs from the accident scene did not confirm Difalco's theory on liability. He contended that the motorcycle made 30-foot-long skid marks that were parallel to 126th Street's double yellow line and four feet to the left of those lines, which were followed by only a short, curved mark to the left where the bike stopped. He claimed that this showed that Difalco inappropriately attempted to pass the bus on the left side, while traveling on the wrong side of the two-way street.
Injuries/Damages arthroscopy; torn rotator cuff
The trial was bifurcated, so damages were not before the court.
Difalco was placed in an ambulance and transported to a local hospital, where he underwent minor treatment.
Difalco ultimately claimed that he sustained a tear of his right, dominant, shoulder's rotator cuff. He underwent arthroscopic surgery that addressed his right shoulder.
Difalco did not work during the 60 days that followed the accident. He contended that he suffers an ongoing residual disability that prevents his operation of motorcycles and that, as such, he is restricted to desk duty. He contended that the new position was not as interesting as his old one and that, as a result, he retired on three-quarter's disability. He sought recovery of his past and future loss of earnings and damages for his past and future pain and suffering.
Defense counsel contended that Difalco's surgery addressed acromial impingement and a bone spur and that both conditions preexisted the accident. He also contended that Difalco did not show signs of any torn tendons or ligaments. He further claimed that Difalco is capable of working.
Result The jury rendered a defense verdict. It found that Alesci violated the Vehicle and Traffic Law but that he was not negligent and that the traffic-law violations did not cause the accident.
Demand $250,000
Offer $15,000

Trial Details Trial Length: 5 days

XXIV/19-10
MOTOR VEHICLE
Passenger Bus Transportation Government Municipalities
Moving bus with open door caused fall, plaintiff claimed
Verdict Defense
Case Susan Goodman v. New York City Transit Authority, No. 22729/03
Court Queens Supreme
Judge Augustus C. Agate
Plaintiff
Attorney(s) Michael Maoilica, Law Office of Steven Wildstein, P.C., Great Neck, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On March 18, 2003, plaintiff Susan Goodman, a mattress retailer's order clerk in her 50s, was a bus passenger exiting at the stop on Queens Boulevard, between 40th and 39th streets, in the Sunnyside section of Queens. As she was descending the bus's front three steps, she tripped and fell. She claimed that she fell to the ground, landing on her hands and knees and sustaining an injury of her ankle.
Goodman sued the bus's operator, the New York City Transit Authority. She alleged that the bus's driver was negligent in his operation of the bus and that the transit authority was vicariously liable for the driver's actions.
Goodman claimed that the bus suddenly moved forward while she was on the middle step and caused her to fall down.
The transit authority denied that the bus moved while the front door was open. However, with the absence of the bus driver or an expert, the defense was precluded from arguing that the bus's interlock mechanism prevents it from moving while its front and rear doors are open.
Defense counsel read into evidence the deposition testimony of the bus driver, who had since moved out of state. He claimed that his foot was on the brake the entire time and that Goodman fell because her right heel got caught on the top step, causing her to lose her balance and her left foot to twist. He further claimed that she fell forward but caught herself and did not make contact with the floor.
Defense counsel argued that Goodman's claim at trial was inconsistent with a form for no-fault benefits that she filled out nine days following the accident and where she wrote that her foot got caught in a bus step and fell down. Defense counsel noted that Goodman did not state in the form that the bus moved and caused her to fall.
Goodman countered that she did not include some details in the no-fault benefits form because a nurse was hurrying her and made her feel rushed.
Injuries/Damages bimalleolar fracture; fracture, ankle
The trial was bifurcated, so damages were not before the court.
Goodman was placed in an ambulance and transported to Methodist Hospital, in Brooklyn. She sustained a bimalleolar fracture of her left ankle. She was casted and released.
Goodman treated conservatively with her private physician because the fracture was not displaced. She contended that within a year of the accident she was able to resume working, but that she could no longer play sports, go to the gym or jog. She sought recovery of damages for her past and future pain and suffering.
The defense contended that Goodman was overweight and that she was not as active prior to the accident as she claimed. The defense further contended that, despite claiming that she fell on her hands and knees, Goodman did not sustain any bruises or abrasions.
Result The jury rendered a defense verdict.
Demand $125,000
Offer None
Trial Details Trial Length: 2 days

XXII/46-12
MOTOR VEHICLE
Pedestrian Bus
Man struck by bus while walking through stop area
Verdict Defense
Case James Dignall v. New York City Transit Authority and Eric Davis, No. 122244/01
Court New York Supreme
Judge Harold B. Beeler
Plaintiff
Attorney(s) Bradley S. Hames, Law Firm of Allen L. Rothenberg, New York, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations At 9:34 a.m. on Aug. 21, 2001, plaintiff James Dignall, 54, a truck driver and delivery man, was struck by a New York City Transit Authority bus. The incident occurred on First Avenue, at its intersection with East 79th Street, in Manhattan. Dignall was knocked onto the sidewalk. His head struck a scaffold, and he sustained multiple fractures.
Dignall sued the transit authority and the bus' driver, Eric Davis. He alleged that Davis was negligent in the operation of the bus.
Dignall claimed that he was struck from behind. He contended that Davis did not sound the bus' horn.
At the time of the incident, Davis was being monitored by an onboard supervisor. Davis and the supervisor agreed that the incident occurred as the bus was entering a stop area. They contended that the bus was traveling 5 to 7 mph and that Dignall stepped into the bus' path. They agreed that the bus' horn was sounded at least twice and that Dignall looked at the bus, but that he did not attempt to avoid it. They contended that he merely extended his head, as though he was looking beyond the bus. They also contended that Dignall's forehead was struck by the bus' right- side exterior mirror. The defendants contended that Dignall's recklessness created an emergency situation and that the incident was unavoidable.
Injuries/Damages acromioclavicular impingement; facial laceration; fracture, clavicle; fracture, rib; internal fixation; open reduction; plate; scar and/or disfigurement, facial; screws
Dignall sustained a vertical laceration of his forehead, a mid-shaft fracture of his right clavicle and a rib fracture. He contended that he also developed impingement of his right shoulder's acromioclavicular joint.
Dignall's laceration was closed via 30 sutures. He developed residual scars that necessitated two plastic-surgery procedures. His clavicle fracture was repaired via open reduction and the internal fixation of a plate and six cortical screws.
Dignall's medical costs were paid by workers' compensation insurance. The exact costs were not disclosed.
Dignall sought recovery of a total of $500, 000 for his past and future pain and suffering.
Result The jury rendered a defense verdict. It found that Davis was not liable for the incident. According to defense counsel, jurors indicated that they believed that Davis' forehead was struck by the bus' right-side exterior mirror and that, as such, they concluded that he was struck while facing the bus.
Demand $450,000
Offer $50,000
Trial Details Trial Length: 9 days

XXII/41-04
MOTOR VEHICLE
Pedestrian Question of Lights Bus Sudden Emergency Defense
Teenager struck by bus while crossing street
Verdict Defense
Case Miguel J. Montes Infant, by Elizabeth Montes p/n/g, & Elizabeth Montes Indv. v. City N.Y. & the N.Y.C.T.A., M.A.B.S.T.O.A. & Melvin A. Talley, No. 16073/02
Court Bronx Supreme
Judge Kenneth A. Thompson
Plaintiff
Attorney(s) Alan M. Shapey, Lipsig, Shapey, Manus & Moverman P.C., New York, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On March 5, 2002, plaintiff Miguel Montes, 14, was struck by a New York City Transit Authority bus. The incident occurred on Fordham Road, at its intersection with Third Avenue, in the Bronx. Miguel sustained a blunt head trauma.
Miguel's mother, Elizabeth Montes, acting individually and on her son's behalf, sued the New York City Transit Authority; its affiliate, the Manhattan and Bronx Surface Transit Operating Authority; the bus' driver, Melvin Talley; and the city of New York. Montes alleged that Talley was negligent in his operation of the bus.
The city's inclusion was erroneous, so the parties stipulated discontinuation of the claims against it. The matter proceeded to trial against the Manhattan and Bronx Surface Transit Operating Authority, the New York City Transit Authority and Talley.
The plaintiffs claimed that Talley ignored a red traffic signal. A non- party witness agreed.
The defendants contended that the traffic signal was green. They presented a non-party witness, who contended that the signal was green several moments before the accident.
The defendants also presented a sudden emergency defense. They contended that Miguel emerged from behind a parked bus. The parked vehicle's driver-- a transit authority employee--agreed. He also agreed that the traffic signal was green.
Injuries/Damages blunt force trauma to the head; cognitive deficit; fracture, skull; head; lacerations
Miguel claimed that he sustained a blunt-force head trauma, a skull fracture and a 1.5-centimeter-long laceration of his scalp's parietal region. He contended that the fracture created a small depression, which was corrected via surgery. He also contended that his head injury led to permanent cognitive deficits.
The plaintiffs' expert neuropsychologist testified that Miguel's injuries were causally related to the accident. He opined that Miguel's cognitive deficits are permanent and that they include a 20-point reduction of the boy's IQ.
The plaintiffs' expert economist testified that Miguel's deficits will prevent his attainment of a high-school diploma. As such, the expert determined that Miguel's injuries resulted in a $1.7 million diminution of his future earnings.
Miguel sought recovery of damages for his past medical expenses, his future lost earnings, and his past and future pain and suffering. His mother presented a loss-of-services claim.
The defendants' expert psychiatrist testified that Miguel exhibited no objective signs of neurological abnormalities or cognitive deficits. He opined that the boy's academic shortcomings were the product of his disobedient behavior and the absence of a father figure.
The defendants' expert economist challenged the plaintiffs' wage-loss claim. He contended that the claim was calculated via flawed methodology. However, he did not present his own lost-wages calculation.
Result The jury rendered a defense verdict. It found that the defendants were not liable for the accident.
Demand $2,000,000
Offer $150,000
Trial Details Trial Length: 12 days

XX/42-13
PREMISES LIABILITY
Dangerous Condition Sidewalk Trip and Fall
Plaintiff Stepped in Sidewalk Hole While Exiting Bus
Verdict Defense
Case Laverne Francis, Individually, and as Grandmother and Natural Guardian of Kashawn Johnson, an Infant v. City of New York, Manhattan and Bronx Surface Transit Operating Authority, and New York City Transit Authority, No. 128552/95
Court New York Supreme
Judge Faviola A. Soto
Plaintiff
Attorney(s) Gerald P. Goldsmith; Gerald P. Goldsmith, P.C.; New York, NY
Steven L. Barkan; of counsel to Lambos & Junge; New York, NY
Defense
Attorney(s) Kaming Lau; Asst. Corp. Counsel; New York, NY (City of New York)
Edward A. **Flores**; New York, NY (Manhattan and Bronx Surface Transit Operating Authority, New York City Transit Authority)
Facts Plaintiff Laverne Francis, 38, tripped and fell while exiting a bus on the northeast corner of 14th Street and Union Square East in Manhattan, N.Y. Francis, an eligibility specialist for the New York City Department of Social Services, claimed that she stepped in a small sidewalk hole as she disembarked from the bus. At the time of the accident, Francis was carrying her grandchild, plaintiff Kashawn Johnson. Her daughter was also present.
Francis contended that defendant the City of New York was negligent for not repairing the sidewalk hole. She also claimed negligence against defendants New York City Transit Authority, and Manhattan and Bronx Surface Transit Operating Authority, based on her contention that the bus driver positioned the vehicle's doorway adjacent to the sidewalk hole.
At issue was whether the City of New York had prior notice of the sidewalk hole. A Big Apple Pothole Corp. map confirmed the existence of a sidewalk hole in the general vicinity of Francis' fall. However, the parties debated whether the fall occurred at the site of the mapped hole, or at an adjacent area that didn't appear on the map.
The transit-authority defendants claimed that Francis was not watching her steps or holding the bus' handrail as she exited. They added that the sidewalk hole was not visible to the bus driver because the incident occurred during the evening. However, the bus driver conceded that he had been to that bus stop many times, and that he was aware of defects on the sidewalk. The bus-company dispatcher who investigated the accident claimed that the bus driver positioned the vehicle's doorway 10 feet from the sidewalk hole.
The defendants also claimed that Francis' daughter was clinging to her mother's clothing as Francis disembarked from the bus. Francis contended that her daughter exited the bus via the rear door.
The action on behalf of Johnson was dismissed on summary judgment prior to the trial. The court found that Johnson did not sustain an injury in the incident.
Injuries contusions; knee; subluxation
Francis sustained contusions to both knees. She later developed a recurrent subluxation of her left-knee patella, for which she underwent arthroscopic surgery with a synovectomy and retinacular release.
Four years post-accident, Francis suffered another fall in which she sustained a subluxation of her left-knee patella. She underwent a synovectomy and a chondroplasty. She claimed that the latter fall was a result of ongoing knee instability caused by the instant accident. She continues to receive knee treatment.
Result The jury rendered a liability verdict in favor of the defendants. It found that the City of New York did not have written notice of the sidewalk hole.
Demand $1.2 million
Trial Details Trial Length: 5 days

Transportation

Bus hand strap couldn't have slid on bar, authority insisted
Verdict: Defense
Case Type: Bus, Negligence - Negligent Maintenance, Government - Municipalities
Case: Linda Boyd v. M.A.B.S.T.O.A. & N.Y.C.T.A., No. 14783/99
Venue: Bronx Supreme, NY
Judge: John A. Barone

PLAINTIFF(S)
Attorney:
Candice A. Pluchino; Perrineville, NJ, trial counsel, The Law Offices of Francis M. Decaro; Bronx, NY, for Linda Boyd

DEFENDANT(S)
Attorney:
Edward A. **Flores,** New York, NY, for Manhattan and Bronx Surface Transit Operating Authority, New York City Transit Authority
Facts:
On Sept. 24, 1998, plaintiff Linda Boyd, 49, was walking to the back of the bus traveling on Gun Hill Road near Bartow Avenue in the Bronx, N.Y., when she grabbed a strap to catch her balance and twisted her body as the strap allegedly slid 18 inches on its bar.
According to the suit Boyd filed against the Manhattan and Bronx Surface Transit Operating Authority and the New York City Transit Authority, she stumbled and injured herself because the screws attaching the strap to the bar were loose, cutting her hand in the process.
Boyd faulted the bus authorities and the bus driver for the accident. According to Boyd, the driver should have inspected the straps by hand during the routine inspection he performed before driving his route. She said he had shoddily inspected the bus and the transit authorities had negligently maintained the bus.
According to the defense, the driver, who had known nothing of the accident, wasn't trained to manipulate the straps as part of his inspection. The defense also argued that the strap could not have slid and the screws could not have cut her hand as Boyd had claimed. It said Boyd must have twisted when the bus stopped without the loop moving.
Showing the jury a sample strap at trial, the defense said that in order for the strap to slide across the bar 18 inches, all of the screws attaching it must have fallen out. Those screws, it noted, were not in the loop of the strap but above it, recessed and flush with the loop. The defense said that if the screws were loose, they could not have cut Boyd's hand while she grabbed the loop as she said she had, and the loop could not have slid 18 inches along the bar.
Before that trial, the case had gone to trial before Judge Edgar Walker in 2005. At the end of that trial, the jury returned a $450,000 verdict for Boyd. Claiming the plaintiff had not proven actual or constructive notice and objecting to Judge Walker's jury charge of a common carrier's duty to the passenger, the defense appealed the decision to the appellate division and then to the Court of Appeals.
On Oct. 18, 2007, the appeals court found that the trial judge should have charged notice and that the pattern jury instructions were out of date. It said those pattern jury instructions did not reflect the 1998 appeals ruling in Bethel v. NYCTA that found common carriers should be held to the same standard as, not a higher one than, all other defendants facing negligence claims in accident cases.
The Court of Appeals remanded the case for a new trial. Meanwhile, in light of that ruling and the earlier Bethel decision, the pattern jury instructions on common carrier liability were modified to include language requiring plaintiffs to prove actual or constructive notice of an alleged defect. That meant that for a new trial, the jury instruction in Boyd's suit would reflect the modification, too.

Injury:
According to Boyd, in grabbing the allegedly defective strap, screws dug into and deeply cut her hand. Just afterward, she debarked the bus and looked in vain for a bus dispatcher to whom to report her accident before going shopping.
Complaining of neck, back and right shoulder pain, Boyd later was taken by ambulance to Our Lady of Mercy Medical Center, where she was treated and released. She followed up with neurologist Lizette Velasquez M.D., who suspected Boyd had refractured her right humerus, which had been broken before. Dr. Velasquez sent her to orthopedic surgeon Jeffrey Cohen M.D.

Dr. Cohen diagnosed impingement syndrome in Boyd's right shoulder; although his back and neck MRIs came back negative, a shoulder MRI had found an impinging bony growth in the subacromial space. When Dr. Cohen performed surgery to relieve the impingement syndrome and to shave off that spur, he also found and repaired a small rotator cuff tear.
Boyd followed up with physical therapy for several months and thereafter underwent no more surgeries, claiming a permanent disability. She claimed no missed work due to her injuries.
The defense disputed Boyd's claimed hand laceration, insisting that they could not have occurred in light of the location of the screws at the top of the strap and Boyd's testimony about grabbing the loop. A treating emergency medical technician testified that he recalled no bleeding from Boyd's hand.
Defense counsel also disputed the causation of Boyd's shoulder injuries. It said Boyd had cited similar injuries in a 1994 slip and fall suit against the city. That case was still pending when Boyd sued the transit authorities, and in that earlier case, Boyd had first claimed a broken humerus and in 1998 added, with an amended bill of particulars, claims of impingement syndrome symptoms.
In the instant suit against the transit authorities, meanwhile, defense orthopedic expert Carl E. Wilson M.D. said he found full range of motion when he examined Boyd in 2002, and in 2003 neurologist Michael Carciente M.D. said he found no neurological disabilities or impairments.

Verdict Information The jury rendered a verdict for the defense. It found that the bus driver had not negligently failed adequately to inspect the bus before driving his route and also that neither transit authority had negligently failed to maintain the bus in a safe condition.

XX/7-38 FALLDOWN HEIGHT DIFFERENTIAL BETWEEN SIDEWALK AND VENT ALLEGEDLY CAUSED BY NEGLIGENT INSTALLATION CASE DISMISSED DURING LIABILITY TRIAL FOR FAILURE TO PROVE PRIMA FACIE CASE

Esther Caicedo v. NYCTA 6446/00 3-day trial Queens Supreme

Judge: James P. Dollard

Decision: Case dismissed pursuant to oral argument at the close of defendant s liability case, before summations. Former defendant City of New York settled for $1,500 before jury selection.

Pltf. Atty: Tina Russell of Trolman, Glaser & Lichtman, P.C., Manhattan
Deft. Atty: Sondra **Bonnick**, Manhattan

Facts: Plaintiff, a 72-year-old retiree at the time, claimed that on 11/9/99 she was injured when she tripped and fell due to a height differential between a Transit Authority vent border and the public sidewalk, located on Broadway near Britton St. in Queens. Former defendant City of New York settled before trial. Plaintiff claimed that defendant negligently installed the vent. Defendant moved to dismiss the case for failure to prove a prima facie case because plaintiff could not prove that defendant negligently installed the vent, when the sidewalk was installed, or if it had been constructed incorrectly.

Injuries: (not before the jury case dismissed during liability trial) fractured right (dominant) wrist requiring internal fixation. Demonstrative evidence: enlarged Transit Authority report; photographs of the accident scene. Offer: $25,000; demand: $100,000.

IX/19-5 MOTOR VEHICLE BUS MAKING RIGHT TURN DEFENSE VERDICT FOR ONE PASSENGER IN CAR, OTHER PASSENGER, WHO SUFFERED CERVICAL AND LUMBAR SPRAIN AND RADICULOPATHY, SETTLED BEFORE TRIAL

Merrill Griffith v. MABSTOA and Norman Saxton 2803/90 5-day trial Judge Stanley Green, Bronx Civil

VERDICT: Defense verdict (6/0). Lloyd Bunburry, a former co-Pltf., settled after jury selection for $15,000 ($12,000 from MABSTOA and $3,000 from Pltf.'s carrier). Post-trial motions were denied. Jury: 1 male, 5 female.

Pltf. Atty: Jeffrey Stillman of Stillman & Speigel, Bronx
Deft. Atty: Edward A. **Flores**

Facts: The accident occurred on 3/2/84 at 10 AM at the intersection of Heath Ave. and Albany Crescent Terrace in the Bronx. Pltf., a 46-year-old registered nurse, claimed that she was parked on the side of the road at a stop sign when Deft.'s bus passed her on the left and struck the left front fender of her car. Lloyd Bunburry, a former co- Pltf. (settled for $15,000) and a passenger in Pltf.'s car, corroborated this testimony.

Deft.'s bus driver testified that there were no cars on his right as he stopped at the stop sign. He testified that when he was of the way through his turn, he heard a crash and saw that the right wheel of the bus had hit Pltf.'s car. Deft. claimed that Pltf. drove into the right rear of the bus as the bus was making its turn.

Injuries: Griffith (age 46, defense verdict) concussion; post- concussion headaches; cervical and lumbar sprain; contusions to the chest and ribs; low back sprain. Pltf. refused medical treatment at the scene, but presented to Prospect Hospital where she remained until 3/14/84. She was admitted to St. Claire's Hospital on 3/22/84 by her treating physician and remained there until 3/30/84. Pltf.'s treating physician testified that she suffered from post-concussion headaches and low back pain for 3 years after the accident. Deft. denied that Pltf. sustained a serious injury under the No-Fault Law, Insurance Law § 5102(d). Bunburry (age 24 at the time of the accident, settled for $15,000) concussion; cervical and lumbar sprain; radiculopathy. He was a native of Guyana who was staying with Pltf. at the time of the accident.

Deft.'s expert testified that when he examined Pltf., he found no restriction of motion or spasms, and made no objective findings to support her subjective complaints. Deft. testified that the CAT scans, X-rays, EEGs, and thermogram of Pltf.'s cervical spine were all negative. Deft. also contended that Pltf.'s expert was not qualified enough in the field of orthopedic medicine to present an expert opinion. Offer: $15,000; demand: $50,000; amount asked of jury: $300,000 (including $156,000 for lost earnings). Jury deliberation: less than 1 hour.

IX/5-5 BUS ACCIDENT -- PASSENGER -- MULTIPLE PREEXISTING CONDITIONS -- DEFENSE VERDICT

Haydee Morales v. MABSTOA 21650/89 8-day trial Judge Anita R. Florio, Bronx Supreme

VERDICT: Defense verdict (6/0). Jury: 1 male, 5 female.

Pltf. Atty: Mitchell L. Korder of Eppinger, Reingold, & Fremont, Larchmont
Deft. Atty: Edward A. **Flores** of Wallace D. Gossett, NYCTA, Brooklyn

Facts: Pltf., a 43-year-old unemployed computer programmer at the time of this accident on 7/28/87, was a passenger in the rear seat of a MABSTOA bus that was traveling west from Orchard Beach on Pelham Pkwy. in the Bronx at approximately 4:30 PM. Pltf. claimed that the bus driver speeded recklessly over bumps and potholes on Pelham Pkwy., causing her to be bounced around and then thrown from her seat.

Deft. contended that its driver made two or three stops, each about ½ mile apart, on Eastchester Rd. between the time that Pltf. had entered the bus and the time of her alleged accident. Deft. contended that the bus could not have accelerated to a dangerous speed between those stops. Deft. also noted that no other passengers on the "standing room only" bus had reported any injuries.

Injuries: herniated disc and lumbosacral sprain at L5-S1 confirmed by CAT scan and resulting in back spasms and urinary incontinence. Pltf. claimed that there is a possibility that she would develop arthritis in the future. She was in traction for 1 week. Deft. produced medical testimony that Pltf.'s urinary incontinence was not a result of trauma but was the result of a preexisting urinary tract infection and a prolapsed bladder due to multiple childbirths and five abdominal surgeries. Deft.'s expert also testified that Pltf. had other preexisting conditions including an inflammation of the hip bone, a lumbarization of L-5 (a congenital anomaly of the lumbosacral junction), and osteoporosis due to surgically induced menopause as a result of a hysterectomy. He contended that any of these preexisting conditions could produce lower back pain. Offer: $7,500; demand: $36,000. Jury deliberation: 40 minutes.

VIII/23-7 MOTOR VEHICLE -- PEDESTRIAN HIT BY BUS -- ALCOHOL INVOLVEMENT -- DEFENSE VERDICT

Angel Olmeda v. MABSTOA and Emilio Izquiereo 17837/88 7-day trial Judge Howard R. Silver, Bronx Supreme

VERDICT: Defense verdict (5/1). Post-trial motions were denied. Jury: 1 male, 5 female.

Pltf. Atty: Gail D. Ricketts of Rodman & Campbell, Bronx
Deft. Atty: Edward A. **Flores**, Brooklyn

Facts: On 11/25/87 at 10:45 AM, Pltf., a 43-year-old unemployed bartender, was struck by Deft.'s bus on White Plains Rd. between Arnow and Addee Sts. in the Bronx. Pltf. claimed that the driver was negligent for not driving safely, for failing to keep a proper lookout, and for driving at an unsafe speed. Deft. claimed that Pltf. walked out from behind an " el" pillar in the middle of the block just as the bus came abreast of the pillar, and that he stepped out without looking for oncoming traffic. Deft. also claimed that Pltf. was intoxicated. A blood alcohol test taken at the hospital indicated a reading of .26%. Deft. impeached Pltf.'s testimony that he had six or seven beers the night before the accident with testimony by a pathologist who said that a .26% blood alcohol level is caused by more than seven beers ingested the night before. He also testified that a .26% reading can cause blurred and double vision, an inability to walk, and impaired reflexes. Injuries: laceration to the left upper eyelid into the eyebrow requiring 30 stitches; iridoplegia (rupture of the sphincter muscles of the iris) to the left eye. Pltf. claimed that he suffers from photophobia and blurry vision. Deft. denied that Pltf.'s vision was impaired and cross-examined Pltf.'s ophthalmologist, who admitted that he did not find evidence that Pltf. had blurred vision but that Pltf. told him his vision was blurry. Demonstrative evidence: photos of accident scene. Specials: $8,000. Offer: $25,000; demand: $75,000; amount asked of jury: $250,000 for past pain and suffering and $450,000 for future pain and suffering. Jury deliberation: 10 minutes.

VII/48-6 BUS PASSENGER ACCIDENT - NO-FAULT QUESTION ON HERNIATED DISC - DIAGNOSIS QUESTIONED - DEFENSE VERDICT

Linda and Anthony Conte v. MABSTOA, Port Authority of NY & NJ, and NYCTA 8765/84 1-month trial Judge Philip C. Modesto, Bronx Supreme

VERDICT: Defense verdict (6/0). Anthony Conte was discontinued before trial. Post-trial motions were denied. Jury: 2 male, 4 female.

Pltf. Atty: Wilma Guzman of Morris J. Eisen, Manhattan
Deft. Atty: Edward A. **Flores**, Brooklyn

Facts: Pltf., a 26-year-old bank teller, was a passenger on Deft.'s bus on the date of the incident on 3/20/83. She testified that she was standing in the front of the bus because there were no available seats. She claimed that the bus was traveling 35-40 mph when it came to a sudden stop, throwing her against the fare box. She also claimed that she was holding onto an overhead handrail but that her fingers were pulled from the rail by the violent nature of the stop. Pltf.'s friend witnessed the incident and corroborated her testimony.

Deft.'s driver denied that the bus stopped short. He claimed that when Pltf. fell, he was slowing down normally and gradually. He also contended that the bus was traveling 20-25 mph before he began to slow down. The responding police officer testified that Pltf. told him that she slipped and fell as the bus was slowing down. Deft. noted that the bus' overhead grab rail was 6 feet above the floor and that Pltf., who was a little over 5 feet tall, could not have been holding the rail securely. Deft. contended that Pltf. could have held onto vertical poles in the front of the bus to keep from falling. Deft. produced a street map of the accident area which showed that the length of the block on which the accident occurred was 720 feet. Just before this incident, the bus had stopped at the previous corner. Deft. contended that it could not have sped up to 35-40 mph in 320 feet, the length of ¼ block.

Injuries: muscle contusions to the cervical and lumbar spine. Three months after the accident, Pltf. was hospitalized for 16 days and placed in pelvic traction. Pltf. testified that she was fired from her job because she could not work after the accident due to back pains and restriction of motion. She returned to work 8 months later. She claimed that she could not perform many household duties and that she was no longer able to engage in sports. Pltf.'s expert neurologist testified that an EMG that he performed in June 1985 showed abnormal findings. He testified that Pltf. suffered post-concussion syndrome with limitation of motion in the neck and the possibility of the development of arthritis in the neck. On cross-examination, he was confronted with his diagnosis of a herniated disc at C6-7 and L4-5 on the basis of an EMG he took 2 years after the accident. The hospital record indicated that 3 months after the accident, Pltf. had an EMG and X-rays which were both negative for a herniated disc. Deft.'s experts testified that it was not proper practice to make a confirmatory diagnosis of a herniated disc based solely on an EMG without a follow-up CAT scan, MRI or myelogram. A bulging disc was found on a CAT scan 6 years after the accident. Deft.'s experts contended that a bulging disc is common to overweight people (Pltf. weighed 190 lbs.). Deft. argued that Pltf. produced no objective findings to support her complaints of pain. Deft. contended that Pltf. sustained only back sprains which had completely resolved a few months after the accident. The jury found that Pltf. did not sustain a significant injury under the No-Fault Law, Insurance Law § 5102(d). Demonstrative evidence: photos of street; photos and engineering diagrams of interior of bus; street map; model of human spine and intervertebral discs. Offer: $25,000; demand: $ 70,000. Jury deliberation: 2 days.

VII/9-7 MOTOR VEHICLE - CAB PASSENGER - COLLISION WITH BUS - QUESTION OF CAUSATION

William Patterson v. MABSTOA, Mohammed Khan, and Prestige Cab Co. 18775/87 8-day trial Judge Lorraine Backal, Bronx Civil

VERDICT: Defense verdict. Defts. Khan and Prestige Cab settled for $10,000 policy before opening statements. Pltf.'s post-trial motions were denied. Jury: 4 male, 2 female.

Pltf. Atty: Ralph Bell for Budin, Reisman, Schwartz & Goldberg, Manhattan
Deft. Atty: Edward A. **Flores**, Brooklyn

Facts: On 2/25/85, a gypsy cab collided with a MABSTOA bus in a bus stop area on the Grand Concourse near the intersection of E. 165th St. in the Bronx. Pltf. claimed that he was a passenger in the cab at the time and testified that he was injured when he was thrown into the cab partition and then back on his left hand. An EMS ambulance attendant testified that Pltf. admitted to him that he had been mugged 90 minutes before the accident. Deft. MABSTOA argued that his injuries were a result of that incident. The cab driver also testified at trial that Pltf. was not in or near the cab at the moment of impact. Injuries: fracture of the first metacarpal of the left thumb; concussion; lumbosacral sprain; radiculopathy. Deft.'s expert testified that the thumb fracture was consistent with an injury sustained in a fistfight or mugging. Pltf. was treated with traction, heat therapy, and back and neck massage. Specials: $ 3,900 for medical treatments. Offer: $7,500, reduced to $0; demand: $100, 000 reduced to $50,000.

XXIII/44-03
RAILROAD
Subway Accident Transportation Subway Wrongful Death Survival Damages
Train's conductor didn't spot woman on tracks, estate alleged
Verdict $500,000
Actual $200,000
Case Barbara Licea as Admx. of the g/c/c of Maria Paulino, Deceased v. N. Y.C.T.A., No. 18736/93
Court Bronx Supreme
Judge Mary Ann Briganti-Hughes
Plaintiff
Attorney(s) Richard W. Berne, Irom, Wittels, Freund, Berne & Serra, P. C., Bronx, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On March 6, 1992, plaintiff's decedent Maria Paulino, 26, a hair-washer, slipped on wet pavement on the Soundview Avenue subway- station platform, in the Bronx. She fell onto the tracks, was struck by a train, and was killed.
Paulino's aunt, Barbara Licea, acting as administratrix of Paulino's estate, sued the train's operating entity, the New York City Transit Authority. The estate alleged that the train's conductor was negligent in his operation of the train and that the New York City Transit Authority was vicariously liable for the conductor's actions.
The estate claimed that the conductor failed to maintain a proper lookout and that, as a result, he didn't notice Paulino on the tracks. The estate also contended that the conductor failed to timely apply the train's emergency brake.
Defense counsel contended that Paulino was negligent for leaning over the edge of the wet platform and falling onto the tracks. He also contended that there was no lighting on the track bed and that, as a result, the conductor could not see Paulino in the dark. He further contended that the train requires a long distance to fully stop and that, as such, the accident was unavoidable.
Injuries/Damages arm; blunt force trauma to the head; compound fracture; death; fracture, femur; fracture, rib; hemorrhage; lacerations; liver, laceration; lung, puncture; thigh
Paulino's body was found under the train. She was determined to have sustained blunt force trauma to her head, torso, right arm and both legs, resulting in avulsion of the right side of her scalp, cerebral hemorrhages, avulsion of her right upper arm, compound fractures of both femurs, an avulsion of her left thigh, fractures of 10 ribs, and deep lacerations of her liver and her right lung. Both parties agreed that Paulino died of massive blood loss. However, plaintiff's counsel claimed that Paulino endured about five minutes of conscious pain and suffering before dying.
Paulino's estate sought recovery of damages for Paulino's wrongful death, the estate's funeral expenses, Paulino's two sons' loss of parental guidance, and damages for Paulino's conscious pain and suffering. One of her sons is now deceased, and the surviving son is 16 years old.
Defense counsel contended that Paulino lost consciousness upon being struck, or less than one minute after being hit by the train and that, therefore, Paulino did not endure conscious pain and suffering.
Result The jury rendered a plaintiff's verdict, but Paulino was assigned 60% comparative negligence. The jury determined that the estate's damages totaled $500,000, but the comparative-negligence reduction produced a net recovery of $200,000.
Demand $1,800,000
Offer $15,000
Trial Details Trial Length: 9 days
Jury Deliberations: 4 hours
Jury Vote: 5-1
Jury Composition: 2 male, 4 female

XXIII/24-10
TRANSPORTATION
Subway
Subway patron claimed doors closed on his body
Verdict Defense
Case Andrew Mesoraca v. New York City Transit Authority, No. 403905/02
Court New York Supreme
Judge Louis B. York
Plaintiff
Attorney(s) Mark R. Bernstein, Sanders, Sanders, Block & Woycik P.C., Mineola, NY
Defense
Attorney(s) Sandra **Bonnick**, New York, NY
Facts & Allegations On Sept. 13, 2000, plaintiff Andrew Mesoraca, 39, an electrician, was standing on the platform waiting for a New York City Transit Authority subway car at the Fulton Street subway station, in Manhattan. He claimed that, as he was boarding the open train, the doors closed against his body. He contended that he sustained back, neck and shoulder injuries.
Mesoraca sued the transit authority. He alleged that the train's conductor was negligent in his operation of the train's doors.
Mesoraca claimed that the conductor failed to see that he was entering the subway car as the doors were closing. Mesoraca's expert engineer determined that the conductor was negligent for closing the door while a passenger was still boarding. He opined that the conductor should have waited until all the passengers on the platform had boarded and that he had a clear, unobstructed view of the entire platform.
The transit authority contended that the accident did not happen as Mesoraca claimed, if at all. It contended that the accident was not witnessed and that Mesoraca did not report it until arriving at the next station.
The defense's accident-reconstruction expert determined that the doors produced no more than 30 pounds of closing force and could not have caused the injuries that Mesoraca claimed to have sustained.
Injuries/Damages aggravation of preexisting condition; bulging disc, cervical; bulging disc, lumbar; epidural injections; herniated disc at C3- 4; herniated disc at C4-5; physical therapy; radiculopathy; shoulder- impingement syndrome
Mesoraca presented to NYU Downtown Medical Hospital, in Manhattan. He claimed that the accident aggravated a preexisting condition that was caused by four previous work-related accidents that injured the same parts of his body. He claimed that, as a result of the accident, he sustained disc herniations at C3-4 and C4-5 and that he developed disc bulges at C5- 6 and L5-S1, with radiculopathy. He also claimed that he suffered impingement of his right (dominant) shoulder. He soon commenced thrice- weekly physical-therapy sessions, which are ongoing. He also received an epidural injection and was prescribed a morphine patch. He did not return to work. In 2001, the Social Security Administration deemed him totally disabled.
Mesoraca's expert neurologist determined that Mesoraca suffers a permanent partial disability that is causally related to the accident. He opined that Mesoraca would require surgery for his shoulder and back.
Mesoraca's expert psychologist determined that Mesoraca sustained a traumatically induced injury and that he would require continued treatment.
Mesoraca sought recovery of damages for his past and future pain and suffering.
The defendants claimed that Mesoraca's injuries stemmed from preexisting conditions that were not causally related to the accident.
The transit authority's expert orthopedist and expert neurologist determined that Mesoraca had no objective deficits or limitations. The neurologist opined that a comparison of Mesoraca's previous MRIs and those from the instant accident showed no interval change. The transit authority's expert psychiatrist determined that Mesoraca suffers no psychiatric or psychological injuries or deficits.
Result The jury rendered a defense verdict. It found that the transit authority was not negligent.
Demand $250,000
Offer $45,000
Defense

Attorney: Sandra **Bonnick**
— — — — — — — — —

XIX/40-14 BUS ACCIDENT PASSENGER FALLS AFTER STEPPING IN HOLE AS SHE DISEMBARKED DEFENSE VERDICT

Susan and Mario Contino v. City of New York; NYCTA; and Consolidated Edison Company of New York, Inc. 20185/94 2-day trial Queens Supreme

Judge: Simeon Golar

Verdict: Defense verdict for NYCTA (6/0). Deft. City of New York settled before jury selection for $1 and Deft. Con Ed settled after jury selection, but before trial, for $65,000. Post-trial motions were denied. Jury: 4 male, 2 female.

Pltf. Atty: Larry R. Bonchonsky, Manhattan, for Mark E. Weinberger, P.C., Great Neck
Deft. Atty: Sandra **Bonnick**, Manhattan, for NYCTA

Facts: The accident occurred at 1:15 PM on 11/23/93 at or near the intersection of Main St. and Roosevelt Ave. in Flushing. Pltf., a 52-year-old nurse at the time, claimed that her left foot became caught in a hole in the roadway as she exited Deft. s Q28 bus through the front door. Pltf. claimed that the bus let her off in the middle of the street at a location that was not reasonably safe, thereby breaching the requirements for common carriers with regard to maintaining the safety of their passengers while getting on or off buses or trains. Deft. NYCTA denied that it breached its duty to provide a reasonably safe place to enter or exit its bus, and claimed that Pltf. failed to use reasonable care when disembarking from the bus, thereby causing her own accident.

Pltf. testified on cross-examination that she saw the hole after she fell; at her depositions, however, she testified that she did not see the hole. She also testified on cross-examination that she had identified photographs of the accident site after the accident, although she never identified the photographs at any of her depositions.

Injuries: soft tissue injury to the left ankle; permanent loss of vision in the left eye as a result of allegedly falling and striking her left temple on the roadway. Medical records indicated that Pltf. had degenerative process of both eyes before the accident, and was allegedly blind in the right eye before this accident. Demonstrative evidence: Pltf. introduced a color photograph of the roadway. Offer: $5,000; demand: $250,000. Jury deliberation: less than 1 hour.

XXIII/03-01
MOTOR VEHICLE
Bus Motor Vehicle Passenger
Bus' door closed on passenger's arm
Verdict Defense
Case Denise Davis & Kenneth Martin v. N.Y.C.T.A. M.A.B.S.T.O.A. & Ramdin " Doe", said surname being fictitious & unknown, No. 26148/02
Court Bronx Supreme, NY
Judge Kenneth A. Thompson
Plaintiff
Attorney(s) Mark E. Seitelman, New York, NY
Defense
Attorney(s) Sandra **Bonnick**, New York, NY
Facts & Allegations On Dec. 20, 2001, plaintiff Denise Davis, 42, a cook, boarded a New York City Transit Authority Bus at Tremont Avenue, at its intersection with Webster Avenue, in the Bronx. As the bus door closed, Davis' left arm was pinned between the bus' front doors.
Davis sued the driver for negligent operation of the bus and the NYCTA and the bus' operating entity, Manhattan and Bronx Surface Transit Operating Authority on a theory of vicarious liability.
Davis contended that while she boarded the bus and was standing on the first step with both feet the door closed on her arm.
The defense argued that the accident did not happen as Davis claimed. The driver testified that Davis was standing outside the bus when she extended her left arm to prevent the bus' door from closing.
Injuries/Damages arthroscopy; bulging disc, cervical; herniated disc at C5- 6; physical therapy
The trial was bifurcated, so damages were not before the court. However, Davis was taken by ambulance to Bronx-Lebanon Hospital Center in the Bronx. She claimed to have sustained a herniation at C5-6 and bulges at C4-5 and C6-7. Davis underwent three surgeries. On March 22, 2002, she had an ulnar nerve entrapment of the left (dominant) elbow. On Feb. 28, 2003, Davis underwent arthroscopic rotator cuff repair. Approximately 13 months later, on March 4, 2004, she had a contraction of the left shoulder. Each surgery was followed by several months of physical therapy.
Davis' expert orthopedist would have testified that her injuries are causally related to the accident.
Davis' husband, Kenneth Martin, presented a loss-of-services claim. They sought recovery of damages for past and future pain and suffering as well as past and future medical expenses.
The defendants' contended that her injuries and subsequent surgery was not causally related to the door accident.
Result The jury rendered a defense verdict. It found the defendants were not liable for the accident.
Demand $200,000
Offer $15,000

XX/26-7 SUBWAY ACCIDENT PATRON DRAGGED BY TRAIN FINGER INJURY REQUIRING SURGERY

Donna Druckman v. NYCTA 37031/96 7-day trial Kings Supreme

Judge: Francois Rivera

Verdict: $200,750, reduced to $60,225 for 70% comparative negligence of Pltf. (6/0). Breakdown: $75,000 for past pain and suffering; $75,750 for past lost earnings; $25,000 for future pain and suffering (10 years); $25,000 for future medical expenses (10 years). Post-trial motions were denied. Jury: 3 male, 3 female.

Pltf. Atty: Andrew L. Weitz of Weitz, Kleinick & Weitz, Manhattan
Deft. Atty: Sandra M. **Bonnick**, Manhattan

Facts: Plaintiff, a 41-year-old computer programmer, claimed that on 4/1/96, she was dragged by the L train for 75 feet along the subway platform at the Rockaway Parkway Station in Brooklyn . She contended that she was then ejected from the doors of the train onto the concrete platform. According to an eyewitness, plaintiff stuck her left hand between closed train doors and panicked when the train started to move, pulling her hand out from between the doors and falling to the platform. Plaintiff s train operations and procedures expert testified that a train conductor is supposed to look toward the rear of the train before giving the signal to pull out of the station. Defendant produced one of its conductors, who testified that he was trained to look forward before giving the signal.

Injuries: cervical and lumbar strain and sprain; injury to the collateral ligament of the right index finger. Plaintiff underwent surgery to the right index finger 1 year post-accident, after which she acquired an infection at the surgical site. She underwent four additional surgeries to the finger, including a debridement. A review of plaintiff s prior medical records confirmed that plaintiff had prior complaints regarding her right index finger. Defendant s expert testified that an injury such as the type plaintiff claimed to have suffered to her finger, especially given her alleged low tolerance for pain, would have been evident immediately after the accident. Demonstrative evidence: enlargements of photographs of the station and plaintiff s claimed injuries; medical records; plaintiff s surgical records; employment records. Amount asked of jury: $520, 000. Jury deliberation: 2 hours.

XXII/12-12
MOTOR VEHICLE
Bus Pedestrian
Pedestrian claimed bus pinned her to corner light post
Verdict (P) $70,000
Case Ellen Suber and Ronald Suber v. Manhattan & Bronx Surface Transit Operating Authority & New York City Transit Authority, No. 107377/00
Court New York Supreme
Judge Karen S. Smith
Plaintiff
Attorney(s) Kevin A. O'Connell, Breadbar Garfield & Solomon, New York, NY
Defense
Attorney(s) Sandra **Bonnick**, New York, NY
Facts & Allegations At approximately 5:40 p.m. on April 5, 1999, plaintiff Ellen Suber, 39, a probation officer, was standing on the southeast corner of Church and Vesey streets in New York, when a New York City Transit Authority bus rounded the corner. Suber claimed that the bus' rear right section rode over the sidewalk and pinned her against a light post.
Suber sued the transit authority and the company that operates the bus, Manhattan and Bronx Surface Transit Operating Authority.
The defendants noted that the accident was unwitnessed, and they claimed that it never happened. They contended that no other injuries were reported on the busy street corner at that time. They also claimed that Suber twice refused medical attention at the scene.
The bus driver testified that the accident never happened. He testified that Suber knocked on the bus' front door and claimed that the rear of the bus struck her right hand.
Injuries/Damages bulging disc, cervical; bursitis; carpal-tunnel syndrome; loss of services
Suber claimed that she suffered from bulging discs at C3-4, C4-5 and C5-6, deep retro-calcaneal bursitis of her right heel, and carpal-tunnel syndrome in her right, nondominant, wrist. In June 2002, she underwent carpal-tunnel-release surgery.
Suber's treating orthopedic surgeon testified that Suber's carpal-tunnel syndrome was causally related to the accident. He opined that all of her injuries were permanent, and that she will experience significant residual limitations.
Suber's husband, Ronald, presented a loss-of-services claim. Suber asked the jury to award $600,000.
The defendants claimed that Suber's injuries were inconsistent with the accident. Their expert orthopedist testified that Suber made an excellent recovery. He opined that she is not a candidate for surgery, and that she experiences no permanent limitations or disabilities. He also testified that Suber's carpal-tunnel syndrome was not causally related to the accident.
Result The jury rendered a plaintiff's verdict. It awarded Suber $70,000, all for past pain and suffering.

XX/34-3
MOTOR VEHICLE
Bus Passenger
Bus Rider Fell When Driver Made Quick Stop
Verdict $25,000
Case Arlene Meyer v. Manhattan and Bronx Surface Transportation Operating Authority, and New York City Transit Authority, No. 17233/97
Court Bronx Supreme
Judge Janice Bowman
Plaintiff
Attorney(s) Joel Zuckerberg; Ossining, NY
Defense
Attorney(s) Sandra **Bonnick**; New York, NY
Facts Plaintiff Arlene Meyer, 71, a substitute teacher, claimed that she fell and was injured while riding defendant City of New York's bus. The incident occurred at the intersection of Tremont and University avenues in the Bronx, N.Y.
Meyer testified that her fall occurred during a left turn. She contended that the bus driver made the turn at an excessive rate of speed, causing him to swerve to avoid a van in the intersection, then brake abruptly.
The defendants contended that the bus had been cut off by another vehicle, and that the driver was confronted with an emergency situation and had to brake quickly. The bus driver testified that he avoided a collision by applying light pressure to his brake, and that the other vehicle did not stop.
The judge gave the emergency charge to the jury.
Injuries compression fracture, T12; herniated disc, lumbar
Meyer claimed that she sustained three herniated lumbar discs. At trial, her expert orthopedist testified that the herniations were unrelated to the accident; however, he found a compression fracture at T12. The defendants agreed that the herniations -- to the extent that they existed -- were unrelated to the accident. They also contended that there was no compression fracture.
Result The jury awarded the plaintiff $25,000.
Arlene Meyer $25,000 past pain and suffering
Demand $100,000
Offer $25,000

XX/48-3
MOTOR VEHICLE
Bus Right Turn
Car and bus collided while attempting side-by-side turns
Verdict (P) $10,000
Case Samuel James and Ingrid James v. New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, and Mary Joseph, No. 15152/00
Court Bronx Supreme
Judge Anne E. Targum
Plaintiff
Attorney(s) Jonathan R. Vitarelli, Edelman & Goldstein, New York, NY
Defense
Attorney(s) Sandra **Bonnick**, New York, NY
Facts & Allegations Plaintiff Samuel James, 36, a porter, claimed that a New York City Transit Authority bus ran a red light and struck his car at the intersection of Asch Loop and Alcott Place in Co-op City, N.Y.
James sued the New York City Transit Authority; the bus driver, Mary Joseph; and Manhattan and Bronx Surface Transit Operating Authority, which owned the bus. He contended that he was stopped in the right lane with his right directional signal on, and that the bus began a right turn alongside him and struck his car.
The points of impact were to the right passenger side of the bus, near the rear door, and the driver's side front quarter panel of James' car.
The defendants argued that James had parked his car in a bus stop in a non- moving lane of travel, and that he attempted to make a right turn at the same time as the bus, causing the accident. They contended that James should not have parked in the bus-stop area, and that he should have been aware of the moving bus.
Injuries/Damages bulging disc, lumbar; herniated disc at C3-C4; herniated disc at C5-C6; loss of services; torn rotator cuff
James claimed that he suffered bulging discs at L4-L5 and L5-S1, herniated discs at C3-C4 and C5-C6, and a partial tear of his right, dominant, rotator cuff. He was out of work for three months beginning about one week after the accident. He underwent physical therapy and claimed that surgery has been suggested.
The defendants disputed the causal connection of James' claimed injuries, though no medical expert was called.
Result The jury apportioned liability at 55% against the defendants and 45% against James. Thus, its $10,000 award was reduced to $5,500, based on comparative negligence.
Samuel James $5,000 past medical cost
$5,000 past pain and suffering
$10,000
Demand $775,000
Offer $30,000
Trial Details Trial Length: 4 days
Trial Deliberations: 3 hours

VII/18-4 MOTOR VEHICLE - TAXI PASSENGER SUFFERS FRACTURED FEMUR

Stuart Williams v. Lena Cab Corp., Altmore Cab Corp., Keith Alexander, and Barbara Stark 2135/87 4-day trial Judge Bruce McM. Wright, New York Supreme

VERDICT: $17,500. Lena, Altmore, and Alexander 100% negligent. Liability was conceded. Alexander did not appear at trial. Pltf.'s post- trial motion to set aside verdict as inadequate denied.

Pltf. Atty: Steven R. Fusfeld of Esterman & Esterman, Manhattan

Deft. Atty: Jonathan Ressler of Jacobowitz, Spessard, Garfinkel & Llesman, Manhattan, for Lena, Alexander, and Altmore

N. Jeffrey **Brown**, Albany, for Stark

Facts: On 6/29/86, Pltf., age 41 at the time, was a passenger in Deft. Lena Cab's taxi, driven by Deft. Alexander (no appearance at trial). Pltf. was visiting from Florida. The cab collided with an Altmore Cab, driven by Deft. Stark, at the intersection of Crescent and 138th Aves. Pltf. claimed that Alexander was speeding and that he drove through a red light. Liability was conceded. Injuries: undisplaced intercondylar fracture of the left femur, extending into the knee joint, resulting in a 1œ-inch size difference between the left and right thighs. Offer: $150, 000; demand: $200,000. Pltf. Expert: Dr. Philip Hardy, treating orth. surg., Jacksonville, Florida. Deft. Expert: Dr. Irving Etkind, orth. surg ., Manhattan.

VII/44-3 FALLDOWN - ICY STEPS ON BUS - DEFENSE VERDICT

Patricia Phelan v. MABSTOA 8234/87 2-week trial Judge Herbert Shapiro, Bronx Supreme

VERDICT: Defense verdict (6/0). Post-trial motions were denied. This was the second trial of this action. See below. Jury: 4 male, 2 female.

Pltf. Atty: Daniel Chavez of Stillman & Spiegel, Bronx
Deft. Atty: Paul A. **Krez**, Manhattan

Facts: Pltf. was a 47-year-old secretary at the time of the incident on 2/7/86. She claimed that she was exiting Deft.'s bus at about 9 AM on the date in question when she slipped on an accumulation of ice on the bus steps. Deft. contended that Pltf. fell in the street, not on the bus steps but even if she did fall on the steps, Deft. was not negligent because it was snowing at the time of the incident and Deft. could not prevent passengers from tracking ice and snow on the bus. Deft.'s driver conceded that the bus was not equipped with sand, salt, or snow shovels. Injuries: Pltf. claimed that she sustained herniated discs at L4-5 and L5- S1. Deft.'s expert testified that Pltf. suffered soft tissue injuries only. Demonstrative evidence: medical records; models of lower spine; CAT scans of lumbosacral spine. No offer; demand: $275,000; amount asked of jury: $600,000. Jury deliberation: 3 hours

Note: This was the second trial of this action. The first trial ended in a mistrial after a full trial and charge when two jurors got into a fistfight during jury deliberations.

XXV/28-03
PREMISES LIABILITY
Negligent Repair and/or Maintenance Dangerous Condition of Public Property Slip and Fall
Government Municipalities
Subway station's recurrent leak caused fall, patron alleged
Verdict Defense
Case Bonita Chellel v. NYCTA & MTA, No. 41593/03
Court Kings Supreme
Judge Arthur M. Schack
Plaintiff Attorney(s) Marie Ng, Sullivan Papain Block McGrath & Cannavo P. C., New York, NY
Defense Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On March 7, 2003, plaintiff Bonita Chellel, 57, a nurse, slipped while exiting a subway train that was stopped at the station that is located on Nevins Street, in Brooklyn. She claimed that she fell and sustained an injury of one knee.
Chellel sued the station's operators, the Metropolitan Transportation Authority and the New York City Transit Authority. She alleged that the defendants were negligent in their maintenance of the premises and that their negligence created a dangerous condition.
Chellel claimed that she slipped while stepping onto the tiled floor of the station's platform. She contended that water had leaked from the station's ceiling and accumulated in the area of her fall. She claimed that the leak occurred during inclement weather, that the defect was created about two years before the incident occurred and that the defendants were aware of its presence. A nonparty witness claimed that he observed the leak while Chellel was receiving medical attention.
Defense counsel reported that, during a deposition, Chellel testified that she fell near the rear end of the train. During the trial, Chellel was given a photograph of the platform and asked to indicate the location of her fall. She marked an "X" at a point about 12 feet north of a staircase near the center of the platform. However, the train's conductor claimed that Chellel fell near the last car of the train, which would have been about 200 feet from the center of the platform.
The station's supervisor acknowledged that the leak occurred during heavy rainfall or snowfall, but he contended that the leak directed water to an area that was between two staircases that sandwiched the center of the platform--not the north end of the platform, which was the area in which the defense claimed that Chellel fell. The supervisor also contended that he inspected the area less than one hour after the incident and that the platform was "damp," but that it was clean and not hazardous or slippery. Defense counsel claimed that the moisture was created by water that had been tracked into the area. Although meteorological reports showed that there had not been any precipitation during the day of the incident, the New York area was covered by about 2 inches of snow.
Injuries/Damages fracture, patella
The trial was bifurcated, so damages were not before the court.
Chellel claimed that she sustained a fracture of one patella. She sought recovery of damages for her past and future pain and suffering.
Result The jury rendered a defense verdict.
Trial Details Trial Length: 6 days

XXIII/24-06
PREMISES LIABILITY
Negligent Repair and/or Maintenance Dangerous Condition Slip and Fall Snow and Ice
Subway patron claimed he slipped on large patch of ice
Verdict Defense
Case Michael Spano & Melissa Spano v. N.Y.C.T.A., No. 13267/01
Court Bronx Supreme
Judge Yvonne Gonzalez
Plaintiff
Attorney(s) David B. Calendar, Vozza & Huguenot, Bronx, NY
Defense
Attorney(s) Edward A. **Flores**, New York, NY
Facts & Allegations On Dec. 20, 2000, the plaintiff Michael Spano, a 42- year-old accountant, was walking on the platform of the subway, when he slipped and fell on a patch of snow and ice. He claimed he fell into the train car, hitting the floor and sustained wrist injuries.
Spano sued the train's operating entity, the New York City Transit Authority. He alleged that the transit authority was negligent in its maintenance of the platform and that its negligence created a dangerous condition.
Spano's counsel claimed that he walked alongside the train for about 10 feet and when he pivoted on his left foot, he slipped and fell into the train car. It further claimed the patch of snow and ice was about 4-inches wide and about 12-inches to 18-inches long.
Defendants claimed that this was an unreported accident, which plaintiff conceded he did not report the accident to the train conductor or the token-booth clerk at his home station, although he had seen both after the accident.
Defense argued that plaintiff not reporting incident made his claim suspicious. Defense also argued that its station supervisors inspected that same platform on several occasions prior to the accident, and the platform was found to be in satisfactory condition. Defense presented three separate supervisors' testimony and reports into evidence, which verified its contentions.
Injuries/Damages arthroscopy; comminuted fracture;fracture, radius; fracture, wrist; physical therapy; torn cartilage
Spano remained on the train, exited it at his stop and drove himself home. However, later that evening, he sought medical attention from Jacobi Medical Center, in Bronx. While at the hospital, he received an X-ray, which revealed a comminuted fracture of his left distal radius and an MRI, which revealed a partial tear of triangular fibrocartilage complex in his left wrist. His left (non-dominant) wrist was casted and he was released. Spano's partial tear injury was repaired via arthroscopic surgery, which was performed in July 2001. He subsequently underwent three months of weekly physical therapy.
For about two months following the accident, Spano claimed that he was unable to use his left hand for lifting and carrying heavy items, such as his briefcase, and for driving. He claimed that he experiences residual stiffness, loss of strength, and some weakness, which was confirmed by his expert.
Spano's wife testified that her husband was a carpenter and was subsequently unable to teach their children carpentry. Though on cross- examination, she admitted that her husband would be able to use his right dominant hand to teach their children to hammer and saw. Spano further claimed that he was unable to participate in sports and activities with his children.
Spano sought recovery of damages for $200,000 for his past pain and suffering and $400,000 for his future pain and suffering. Michael's wife, Melissa, presented a loss-of-services claim.
Defense contended that plaintiff was right hand dominant and that the left wrist injury healed satisfactory.
Defense expert denied Spano's left hand weakness and testified that his hand had good strength. He further testified that he had palpitated all of Spano's tendons and that Spano elicited no pain.
Defense further contended that Spano only missed two days of work and that he was not disabled from working full-time.
Defense expert testified that Spano lost 20% range of motion, which was not significant in his line of work. He opined that had Spano worked in a different field, which required him to use both hands, such as professional tennis player, his wrist injuries would have been significant.
Result The jury rendered a defense verdict. It found that the platform was in reasonably safe condition on the date of incident.
Demand $350,000
Offer $15,000
Trial Details Trial Length: 8 days

BUS ACCIDENT BICYCLE DEFENSE VERDICT

Susan Oren v. NYCTA and William McLoud 12-day New York Supreme

Judge: Helen E. Freedman

Verdict: Defense verdict on liability (6/0). Post-trial motions were denied. Jury: 4 male, 2 female.

Pltf. Atty: Eric F. Popkin of David M. Lee, Manhattan
Deft. Atty: Paul A. **Krez** of **Krez** & Peisner, Manhattan

Facts: Pltf., a 36-year-old unemployed dancer claimed that at approximately 3 PM, she was riding her bicycle north in the second lane of traffic (next to the parking lane) on First Ave. in Manhattan near the intersection of 12th St. when Deft. McLoud, driving Deft. NYCTA s bus, suddenly changed lanes without warning and cut her off. Pltf. claimed that as a result, she was wedged between the bus and a parked car in the parking lane, and then fell off her bike and was dragged by the bus for 15 feet. The responding police officer testified for Pltf. that he found her in the second lane of traffic, bleeding from one elbow. There was no damage to the bus or to the bike, which was brand new. He also testified that a pedestrian flagged down the bus, and told the driver that it had hit a bicyclist.

Deft. denied that the bus hit Pltf., and contended that she fell due to her own recklessness.

Injuries: (not before the jury) triple compound fracture of the right elbow with a degloving injury, requiring open reduction and internal fixation with multiple skin grafts. Demonstrative evidence: photographs of the accident scene; police report; diagram of the accident site. No offer; demand: $200,000. Jury deliberation: 1¼ hours.

XII/43-18 FELA - RAILROAD ACCIDENT - TRAIN HITS CAR ON CROSSING-WRONGFUL DEATH DEFENSE VERDICT

Rayna Vertichio and Valerie Amante, Adms. of the Est. of Carolyn Wallace v. Long Island Railroad Co. 8-day trial Judge Gerard D'Emilio, Suffolk Supreme

VERDICT: Defense verdict (6/0). Post-trial motions were denied. 4 male, 2 female. Jury: 4 male, 2 female.

Pltf. Atty: Mark G. Sokoloff of Jacob D. Fuchsberg, Manhattan
Deft. Atty: William J. Blumenschein of Roberta Bender, Jamaica

The accident occurred on the South Country Rd. railroad crossing in East Patchogue on. Decedent, age 69, was killed when her vehicle was struck by Deft.'s train. Pltf. claimed that the railroad signal apparatus and crossing gate operated improperly. Pltf. 's expert also contended that the train was traveling over the speed limit, based on the amount of time it took to stop upon braking. Pltf.'s glass expert testified that an examination of the car's windshield revealed, in his opinion, that the gate hit the windshield, not that the car drove into the gate, as Deft. claimed.

Deft. contended that decedent drove out onto the crossing after the gate started to descend. Deft.' s railroad safety expert testified that the engineer's actions, regarding when he began to brake, were proper.

Decedent, age 69 at her death, left two adult children. She died 51/2 hours after the accident, and there was a dispute as to whether she was conscious at all during that time. Offer: $25,000; demand: $1 00,000. Jury deliberation: l % hours. Pltf. Experts: Ronald Dunn, railroad engineering, Williamsburg, Virginia; Dr. Brian Pinard, trauma surgeon, Stony Brook; Robert Sheffler, glass expert. Deft. Expert: Wallace Holl, procedures and safety, Lexington, Kentucky.

Westlaw

13 A.D.3d 615, 788 N.Y.S.2d 148, 2004 N.Y. Slip Op. 09624
(Cite as: 13 A.D.3d 615, 788 N.Y.S.2d 148)

Supreme Court, Appellate Division, Second Department, New York.
Amargeet WADHWA, et al., appellants,
v.
LONG ISLAND RAIL ROAD, respondent.

Dec. 27, 2004.

Background: Pedestrian who was struck by passing train brought personal injury action against railroad. The Supreme Court, Queens County, Kelly, J., granted railroad's motion for summary judgment, and pedestrian appealed.

Holding: The Supreme Court, Appellate Division, held that plaintiff's reckless actions in walking to railroad tracks and squatting down near the middle of a slowly passing train constituted a superseding cause of the accident which relieved railroad of any liability.

Affirmed.

West Headnotes

Railroads 320 ⚿279

320 Railroads
320X Operation
320X(D) Injuries to Licensees or Trespassers in General
320k279 k. Proximate Cause of Injury. Most Cited Cases

Plaintiff's reckless actions in walking to railroad tracks and squatting down near the middle of a slowly passing train constituted a superseding cause of the accident which relieved railroad of any liability for injuries she incurred when she "disappeared" under the train.

***148** Goldberg & Carlton, New York, N.Y. (Gary Carlton and Robert H. Goldberg of counsel), for appellants.

Mary Jennings Mahon, Jamaica, N.Y. (William J. Blumenschein of counsel), for respondent.

FRED T. SANTUCCI, J.P., HOWARD MILLER, ROBERT A. SPOLZINO, and PETER B. SKELOS, JJ.

In an action to recover damages for personal injuries, etc., the plaintiffs appeal from an order of the Supreme Court, Queens County (Kelly, J.), dated April 26, 2004, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff Amargeet Wadhwa was seriously injured when, after standing next to a signal case adjacent to the railroad tracks as one of the defendant's trains was slowly passing her on its way out of the Port Jefferson station, she walked to the tracks, squatted down near the middle of the passing train, and "disappeared" under it.

The Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint. The defendant demonstrated its prima facie entitlement to judgment as a matter of law by establishing that its personnel exercised reasonable care and that the accident was unavoidable under the circumstances (*see Guller v. Consolidated Rail Corp.*, 242 A.D.2d 283, 661 N.Y.S.2d 42; *Alba v. Long Is. R.R.*, 204 A.D.2d 143, 611 N.Y.S.2d 196). The conclusory expert affidavits submitted by the plaintiffs in opposition to the motion failed to raise a triable issue of fact regarding whether the defendant's engineer should have anticipated that the injured plaintiff would disregard the obvious danger posed by the train and place herself in a position of extreme peril. In any event, even if the plaintiffs had come forward with some evidence of negligence on the part of the defendant,

the reckless actions of the injured plaintiff constituted a superseding cause of the accident which relieved the defendant of any liability (*see* ***149** *e.g. Lassalle v. New York City Tr. Auth.*, 11 A.D.3d 661, 783 N.Y.S.2d 402; *Mooney v. Long Is. R.R.*, 305 A.D.2d 560, 759 N.Y.S.2d 380; *Brown v. Long Is. R.R.*, 304 A.D.2d 601, 758 N.Y.S.2d 150; *Wright v. New York City Tr. Auth.*, 221 A.D.2d 431, 633 N.Y.S.2d 393).

N.Y.A.D. 2 Dept.,2004.
Wadhwa v. Long Island Rail Road
13 A.D.3d 615, 788 N.Y.S.2d 148, 2004 N.Y. Slip Op. 09624

END OF DOCUMENT

305 A.D.2d 560, 759 N.Y.S.2d 380, 2003 N.Y. Slip Op. 14245
(Cite as: 305 A.D.2d 560, 759 N.Y.S.2d 380)

Supreme Court, Appellate Division,
Second Department, New York.

Karen MOONEY, etc., et al., appellants,
v.
LONG ISLAND RAIL ROAD, respondent. (Action No. 1)
Christopher Cavanagh, etc., et al., appellants,
v.
Metropolitan Transportation Authority, et al., respondents. (Action No. 2)

May 19, 2003.

William K. Polignani, Long Beach, N.Y., for appellants in Action No. 1.

Elovich & Adell, Long Beach, N.Y. (Mitchel Sommer of counsel), for appellants in Action No. 2.

Tricia Troy Alden, Jamaica, N.Y. (**William J. Blumenschein** of counsel), for respondents in Action Nos. 1 and 2.

***560** In two related actions to recover damages for personal injuries, etc., the plaintiffs in Action No. 1 appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Winslow, J.), dated May 8, 2002, as granted that branch of the motion of the defendant in Action No. 1 which was for summary judgment dismissing the complaint in Action No. 1, and the plaintiffs in Action No. 2 appeal, as limited by their brief, from so much of the same order as granted that branch of the motion of the defendants in Action No. 2 which was for summary judgment dismissing the complaint in Action No. 2.

ORDERED that the order is affirmed, with one bill of costs.

****381** The defendants established their prima facie entitlement to summary judgment dismissing the complaints. In response, the plaintiffs failed to raise a triable issue of material fact as to the defendants' negligence. There was no evidence in the record that the infant plaintiffs were injured as a result of the defendants' failure to properly maintain safety equipment at a pedestrian crossing over railroad tracks, or that the train failed to properly signal its approach to the crossing. The sole proximate cause of the infant plaintiffs' injuries was their reckless behavior in proceeding around a safety gate in the down position and crossing the tracks directly behind an eastbound train without first checking to see if a westbound train was approaching (*see de Pena v. New York City Tr. Auth.*, 236 A.D.2d 209, 210, 653 N.Y.S.2d 327; ***561***Avery v. N.Y.O. & W. Ry. Co.*, 205 N.Y. 502, 506, 99 N.E. 86).

Westlaw

304 A.D.2d 601, 758 N.Y.S.2d 150, 2003 N.Y. Slip Op. 13031
(Cite as: 304 A.D.2d 601, 758 N.Y.S.2d 150)

C

Supreme Court, Appellate Division, Second Department, New York.
Arnold BROWN, Appellant,
v.
LONG ISLAND RAIL ROAD, et al., Respondents.

April 14, 2003.

Pedestrian injured when he was struck by a train sued the train's owner and operator to recover damages for personal injuries. The Supreme Court, Queens County, Golia, J., set aside a jury verdict on the issue of liability, and entered judgment dismissing the complaint. Pedestrian appealed. The Supreme Court, Appellate Division, held that pedestrian's unlawful conduct was so reckless as to constitute an intervening and unforeseeable act which broke any causal connection between his injuries and any negligence of the defendants.

Affirmed.

DRAFT

NEW YORK

QUEENS COUNTY

MOTOR VEHICLE

Passenger — Slips, Trips & Falls — Falldown — Motor Vehicle — Bus — Government — Municipalities

Bus driver rejected blame for abrupt stop, passenger's fall

Verdict Defense
Case Ok Kyung Kim v. New York City Transit Authority and Juan Casanova, No. 27070/10
Court Queens Supreme
Judge Diccia T. Pineda-Kirwan
Date 3/27/2013

Plaintiff
Attorney(s)

David N. Sloan, Law Offices of David N. Sloan, Hicksville, NY

Defense
Attorney(s)

Paul A. Krez, Krez & Flores, LLP, New York, NY, trial counsel, Wallace D. Gossett, Brooklyn, NY, New York, NY

Facts & Allegations

On Feb. 12, 2010, plaintiff Ok Kyung Kim, 56, a homemaker, boarded a public bus that was stopped near the intersection of 147th Street and Northern Boulevard, in the Flushing section of Queens. Kim fell a moment after the bus had begun to move; before she could seat herself. She sustained injuries of her back, her neck and a shoulder.

Kim sued the bus's driver, Juan Casanova, and the bus's operator, the New York City Transit Authority. Kim alleged that Casanova was negligent in his operation of the bus. Kim further alleged that the New York City Transit Authority was vicariously liable for Casanova's actions.

Kim claimed that the bus violently accelerated away from the stopped position a moment after she had paid her fare but before she could reach the white safety line that separates the driver's and passengers' areas. She contended that she fell onto the fare box and landed on the floor.

Casanova contended that he waited 30 to 40 seconds after Kim had paid her fare before resuming travel. He claimed that he had reached a speed of no more than 4 mph and traveled no more than 3 feet when a passenger attempted to exit the bus's rear doors and, in doing so, activated a device that automatically stopped the bus. He contended that the bus's abrupt stop caused Kim's fall. He claimed that Kim had already proceeded across the safety line and was not holding any of the bus's safety railings.

A witness agreed that the bus quickly accelerated away from the stop but did not offer an opinion regarding whether the bus stopped abruptly.

Injuries/Damages

herniated disc at C5-6; nerve impingement; fusion, cervical; discectomy; herniated disc at L2-3; herniated disc at L4-5; herniated disc at L5-S1; radiculopathy; epidural injections; medial meniscus, tear; arthroscopy; rotator cuff, injury (tear); SLAP lesion/tear; physical therapy
The trial was bifurcated. Damages were not before the court.
Kim was placed in an ambulance, and she was transported to New York Hospital Queens, in Flushing. She underwent minor treatment, and her hospitalization lasted one day.
Kim ultimately claimed that she sustained herniations of her C5-6, L2-3, L4-5 and L5-S1 intervertebral discs; a tear of the posterior horn of her left knee's medial meniscus; and a partial tear of her left, dominant shoulder's rotator cuff. She also claimed that her left shoulder sustained a superior-labrum-from-anterior-to-posterior tear, which is alternately termed a "SLAP" lesion. She further claimed that her herniated discs caused impingement of roots of spinal nerves and resultant radiculopathy.
On April 16, 2010, Kim underwent arthroscopic surgery that addressed the injuries of her left shoulder. In February 2011, she underwent surgery that included a discectomy, which involved the excision of her C5-6 disc, and fusion of the corresponding level of her spine. Her remaining herniated discs were addressed via the administration of epidural injections of steroid-based painkillers, and she also undergoes physical therapy.
Kim sought recovery of damages for past and future pain and suffering.
Defense counsel contended that Kim's injuries are not permanent.

Result
The jury rendered a defense verdict. It found that the defendants were not liable for the accident.

Plaintiff(s)

Ok Kyung Kim

Demand $1,500,000

Offer None

Insurer(s)

None reported

Trial Details

Trial Length: 3 Days
Jury Deliberations: 1 Hour
Jury Poll: 5-1
Jury Composition: None reported

Plaintiff
Expert(s)

Philip M. Rafiy, M.D., orthopedic surgery, East Meadow, NY (David N. Sloan) (did not testify)
Richard M. Seldes, M.D., orthopedic surgery, New York, NY (David N. Sloan) (did not testify)

Defense
Expert(s)

Jacquelin Emmanuel, M.D., orthopedic surgery, Jamaica, NY (Paul A. Krez) (did not testify)

Post-Trial

Judge Diccia Pineda-Kirwan denied plaintiff's counsel's motion for a new trial.

Editor's Note

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

Plaintiff(s)

Demographics

Ok Kyung Kim

Age: 56 Years

Occupation: homemaker

Gender: Female

Married: Yes

Children: Yes

Children Description: injured party

Written By -Jason Pafundi