

 VERDICTSEARCH

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TOP NY
VERDICTS
of 2009





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Members of Multi-Million and Million Dollar Advocates Forum

The team of Eitan Ogen and Natalie Sedaghati have an impressive proven record of multiple 7 figure and 6 figure verdicts and settlements, many for non-surgical, "soft tissue," disputed cases and/or with problematic liability scenarios. We are pleased to have some of our recent "soft tissue" verdicts honored in VerdictSearch's Top NY Verdicts of 2009.

NOTEWORTHY CASES

\$2.45 Million Pre-Trial Settlement

A 42 year old in a low speed, minimal impact, disputed liability MVA (our client pulled out of a parking spot and collided with the defendant's vehicle that was going straight at 1 mph, after just starting from a stopped position);

Client had nearly identical MRI findings prior to the accident (same bulging discs with degeneration and osteophyte formation) and prior treatment and lost time from work for this same complaint before this accident;

Defendants' doctors disputed any causality and necessity of any surgery, as client had returned to work after MVA, her EMGs/MRIs were normal for her age, and she had minimal and sporadic therapy. The doctors stated that she had resolved and did not need any further treatment.

\$1.375 Million Jury Verdict

A 39 year old unemployed man in a soft tissue MVA, knee arthroscopy case with no property damage, no EMS, no ER, 1st visit was to chiropractor, and no other doctor seen for 3 weeks. Also, no lost wages, minimal & sporadic treatment.

Defendants' doctors testified that Plaintiff's examination was completely normal. Defendants' radiologist testified MRI films showed normal findings with degenerative pre-existing conditions. Client had a prior injury and surgery to same body part.

NON-SURGICAL SOFT TISSUE DISPUTED LIABILITY CASES

\$1.3 Million Jury Verdict

A 35 year old, in a soft tissue, non-surgical herniated disc MVA, where Defendants denied liability, plaintiff had therapy for 6 months, minimal and sporadic treatment thereafter, no lost wages. Defendants' doctors' testified that their examinations were completely normal. Defendants argued he had the same injury, from a prior MVA, which he failed to reveal to his doctors, and that Plaintiff's claimed injury did not meet threshold. Of note, amount suggested to Jury was \$1 Million.

\$1.2 Million Jury Verdict

A 43 year old driver, in a soft tissue, non-surgical herniated disc MVA case, where Defendants denied liability, client's treatment was with a chiropractor and no other doctor was seen until 3 months after the accident. No lost wages and minimal & sporadic treatment.

Defendants' doctors testified that Plaintiff's examination and films were normal. Defendants argued Plaintiff's claimed injury did not meet threshold. Jury determined 100% liability. Of note, amount suggested to Jury was \$1 Million. The award was one of the highest ever for pain and suffering only for a single non-surgical disc. **App. Div. 2d** sustained \$700,000, one of the largest amounts sustained ever for such injury.

\$960,000 Judicial Award

A 37 year old driver with non-surgical bulging discs. There was minimal damage to both vehicles involved.

\$850,000 Jury Verdict

A 49 year old unemployed man in a soft tissue non surgical herniated disc MVA vehicle case, with minimal property damage, no EMS, no ER, no lost wages. Plaintiff first sought medical attention 9 days after the accident with a chiropractor. Treatment thereafter was sporadic and minimal.

Defendant's radiologist testified that plaintiff's back condition was pre-existing and degenerative. Defendant's doctor stated that Plaintiff was not injured, his exam was completely normal. Defendant argued Plaintiff claimed injury did not meet threshold.

\$500,000 New York County Pre-Trial Settlement

A 43 year old immigrant residing in Suffolk County who claimed non-surgical bulging and a herniated disc, and was never recommended for any surgery.

Defendant's doctors stated Plaintiff's examinations were completely normal and that he was capable of working without any restrictions. Defendants argued plaintiff's alleged soft tissue injuries were minor, degenerative, and were completely resolved.

DISPUTED ON-THE-JOB CASES

\$900,000 Settlement

In a case involving an employee injured on the job (ordinarily barred from suing the employer), wherein we successfully held the tenant (a separate but related corporate entity from the employer) liable for the client's injuries.

\$600,000 Settlement

Following liability jury verdict in a hotly disputed liability case where our client was injured while working at a store. The tenant who operated the store was her employer. We sued the landlord, who denied any liability, and argued that he was an absentee landlord who had nothing to do with the store. Jury awarded 100% liability against the landlord, who settled immediately thereafter.

\$450,000 Settlement

For hand injury in a case involving an employee injured on the job (ordinarily barred from suing the employer), wherein we successfully sued related, but separate, corporate entities, despite the fact that they were owned by the same parent corporation and owners.

COURT DECISION IN THE NEWS

\$11 Million lawsuit against Madison Square Garden given go-ahead to proceed by New York State Supreme Court in widely publicized case where spectator was struck by a hockey puck at MSG. (Precedent-setting case in New York).



Prior results do not guarantee a similar outcome.

-Continued from p30

months, and she subsequently underwent orthopedic treatment.

Aguilar claimed that she suffers residual damage of her legs' nerves. She also claimed that she experiences "phantom" pain that seems to stem from the missing portion of her left leg. She further claimed that she undergoes treatment of residual psychological conditions that include post-traumatic stress disorder and major depression. She contended that her disability prevents her resumption of work.

Aguilar's life-care-planning expert opined that Aguilar must undergo lifelong physical therapy. He also opined that Aguilar's prosthesis must be replaced every three to five years.

Aguilar sought recovery of about \$5.6 million for her future medical expenses. She also sought recovery of damages for her past and future pain and suffering. Her husband sought recovery of damages for his past and future loss of services and society.

Verdict Information The jury found that the defendants were liable for the accident. It also found that Aguilar was negligent, but it concluded that her negligence was not the cause of the accident. The jury determined that the plaintiffs' damages

totalled \$27.5 million.

Aristides Aguilar
\$1,000,000 Personal Injury: past loss of services and society
\$1,000,000 Personal Injury: future loss of services and society (27.4 years)
Gloria Aguilar
\$9,500,000 Personal Injury: Future Medical Cost
\$4,000,000 Personal Injury: Past Pain And Suffering
\$4,000,000 Personal Injury: future pain and suffering (32.5 years)
\$4,000,000 Personal Injury: past emotional, mental and psychological suffering
\$4,000,000 Personal Injury: future emotional, mental and psychological suffering (32.5 years)

Post-Trial: Defense counsel made motions to set-aside the verdict as excessive and for a new trial, but the motions were denied. Defense counsel indicated that they plan to appeal.

Editor's Comments This report includes information that was gleaned from articles that were published by The New York Times and New York Post. It also includes information that was gleaned from court

documents and an interview of plaintiffs and defense counsel.

MEDICAL MALPRACTICE

Baby's defects blamed on failure to restrain at-risk mom

Verdict: (P) \$24,100,000.00

Case Type: Negligent Treatment, Medical Malpractice - Birth Injury

Case: Kiyanna Cush, and Kevin Cush by Their mother and natural guardian Kisha Swaby v. Interfaith Medical Center, J. Finley, S. Nakra, Dian Kinch, and Andre Celestin, No. 12356-2004

Venue: Kings Supreme, NY

Judge: Marsha L. Steinhart

Date: 11-24-2009

PLAINTIFF(S) Attorney:

- Charles Silverstein; Silverstein & Bast; New York, NY, for Kiyanna Cush, Kevin Cush

Expert:

- Daniel Adler M.D.; Pediatric Neurology; Englewood, NJ called by: Charles Silverstein
- Philip Bresnick M.D.; OB-GYN -

See also Gynecology; Great Neck, NY called by: Charles Silverstein

- Joseph Carfi M.D.; Life Care Planning; Great Neck, NY called by: Charles Silverstein

Facts:

On July 28, 1994, plaintiff Kevin Cush and his sister, plaintiff Kiyanna Cush, were born. Their birth was premature and a result of a massive hemorrhage that their mother, Kisha Swaby, sustained while she was hospitalized at Interfaith Medical Center, in Brooklyn.

Swaby's hospitalization had begun on July 16, 1994. She was suffering placenta previa--abnormal development and positioning of the placenta. As a result, the placenta is prone to sudden detachment, which can cause severe bleeding that necessitates immediate, premature delivery of the mother's fetus or fetuses. Swaby's hemorrhage occurred while she was walking to a restroom. She claimed that the hospital's staff should have ensured that she was confined to a bed.

Swaby, acting as the parent and natural guardian of Kevin and Kiyanna, sued the hospital and several of its employees. She alleged that the hospital's staff failed to render proper care. She further alleged that

Motor Vehicle

CASE	DATE	COURT	TYPE OF ACTION	PLAINTIFF'S COUNSEL	AMOUNT
Lanza v.A-1 Compaction Inc.	1/23	Westchester Supreme	Motor Vehicle: Pedestrian claimed truck struck him and caused back injuries	Peter E.Tangredi of Peter E.Tangredi & Associates	\$2,493,530
Kayes v. Liberati	11/9	Queens Supreme	Motor Vehicle: Man hit by falling sign, claimed injury of neck	Todd A. Restivo of Garden City, NY, trial counsel, Law Offices of Omrani & Taub, P.C., New York, NY	\$2,000,000
Dowd v. New York City Transit Authority	4/6	Queens Supreme	Motor Vehicle: Woman struck, killed by reversing bus in terminal	Christopher T. McGrath of Sullivan Papain Block McGrath & Cannavo P.C.	\$2,000,000
Williams v. New York City Transit Authority	3/10	New York Supreme	Motor Vehicle: Pedestrian injured after being hit by bus on busy corner	Ezra B. Glaser & Jon L. Norinsberg	\$1,800,000
James v. Farhood	10/1	Bronx Supreme	Motor Vehicle: Car bounced out of crash, jumped sidewalk, struck two	Eitan A. Ogen of Ogen & Sedaghati, and Brett I. Bloom of Bloom & Noll, LLP, Mineola, NY, trial counsel, Law Office of Melvin Maiman, New York, NY	\$1,800,000
Rivera v. Panarella	5/7	Bronx Supreme	Motor Vehicle: Expressway accident activated scoliosis, plaintiff alleged	Jason Shapiro of Shapiro Law Offices	\$1,500,000
Letman v. PTM Management Corp.	3/10	Kings Supreme	Motor Vehicle: Plaintiff claimed motorist's failure to yield caused crash	Cory J. Rosenbaum of Rosenbaum Faria LLP, New York, NY, trial counsel, Martin L. Ginsberg, P.C.	\$1,450,000
Blackmon v. Fabiano	6/11	Ulster Supreme	Motor Vehicle: Car crash caused spinal injuries, atrophy, plaintiff alleged	Joseph E. O'Connor of Mainetti, Mainetti & O'Connor, P.C.	\$1,400,000
Marrero v. Najib	12/22	Bronx Supreme	Motor Vehicle: Parties debated car crash's link to back and knee injuries	Kenneth E. Mangano of Ferro, Kuba, Mangano, Skylar, P.C.	\$1,296,438
Estate of Nichols v. Plant	1/27	Suffolk Supreme	Motor Vehicle: Car crash blamed on driver's failure to activate headlights	Richard A. Dubi & Gregory D. Bellantone of Law Office of Richard A. Dubi, P.C.	\$1,250,000
Finley v. Anderson	8/28	Erie Supreme	Motor Vehicle: Car crash's parties each claimed green light	David G. Henry of Lipsitz, Green, Scime, Cambria, LLP	\$1,189,041
Soto v. Kraft Foods Global Inc.	3/4	U.S. District Court, Eastern District	Motor Vehicle: Truck hit from behind, pushed into pedestrian	Dennis A. Breen of Lurie, Ilchert, MacDonnell & Ryan LLP	\$1,100,000
Chimento v. Degenhart	11/9	Erie Supreme	Motor Vehicle: Accident caused neck injury, early retirement, plaintiff alleged	J. Michael Hayes of Law Offices of J. Michael Hayes	\$1,100,000
Alicea v. City N.Y.	4/1	Bronx Supreme	Motor Vehicle: Bus's passenger claimed snowy, icy stop caused fall	Pablo A. Sosa of Law Office of William A. Gallina	\$1,033,760
Beato-Lopez v. S.M. Transportation Ltd.	10/8	Bronx Supreme	Motor Vehicle: Ambulette's passenger claimed rough ride caused injuries	Alexandra F. Pinilla of Law Offices of Morton Povman, P.C., Bronx, NY, trial counsel, Orlian & Levine	\$1,005,000

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performed about 20 years of volunteer work. Tenuto sought recovery of damages for his past and future pain and suffering. His wife sought recovery of damages for her loss of consortium.

Verdict Information The jury rendered a mixed verdict. It found that Orimune was unreasonably dangerous, that Lederle Laboratories failed to adequately disclose the drug's hazardous nature and, as such, that Lederle Laboratories was entirely liable for Mr. Tenuto's injuries. Schwartz's estate was not assigned liability. The jury determined that Tenuto's damages totaled \$22.5 million.

Dominick Tenuto
\$2,500,000 Personal Injury: Past Lost Earnings Capability
\$12,000,000 Personal Injury: Past Pain And Suffering
\$2,500,000 Personal Injury: future medical cost (20 years)
\$5,500,000 Personal Injury: future pain and suffering (20 years)
Post-Trial: Lederle Laboratories' counsel has moved to set aside the verdict.

Editor's Comments This report is based on newswire articles and information

that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

CONSTRUCTION

Carpenter fell through skylight that wasn't properly covered

Verdict: (P) \$20,000,000.00
Case Type: Labor Law, Slips, Trips & Falls - Fall from Height, Construction - Accidents, Workplace - Labor Law, Workplace Safety
Case: Jorge Angamarca v. New York City Partnership Housing Development Fund company Inc., No. 115471/2004
Venue: Kings Supreme, NY
Judge: Karen S. Smith
Date: 04-08-2009

PLAINTIFF(S) Attorney:

- Marc C. Saperstein; Davis, Saperstein & Salomon, P.C.; New York, NY, for Jorge Angamarca, Blanca A. Gu-guancela Encolade

Expert:

- Ira Esformes M.D.; Orthopedic Surgery; Emerson, NJ called by: Marc

Saperstein
Dustin Gordon Ph.D.; Neuropsychology; Fair Lawn, NJ called by: Marc Saperstein

- Patricia Iyer M.S.N.; Pain & Suffering Evaluations; Flemington, NJ called by: Marc Saperstein
- Edward Provder; Vocational Rehabilitation/Counseling; Hackensack, NJ called by: Marc Saperstein
- Jamie Williams Ph.D.; Bioengineering; Lancaster, PA called by: Marc Saperstein
- Douglas Cohen M.D.; Neurosurgery; New York, NY called by: Marc Saperstein
- Frank Tinari Ph.D.; Economics; South Orange, NJ called by: Marc Saperstein

Facts:

On Oct. 30, 2003, plaintiff Jorge Angamarca, early 30s, an undocumented alien from Ecuador who worked as a carpenter in New York, fell through a hole in a roof of a residential townhouse project under

construction on Jefferson Street in Brooklyn. He was discovered lying unconscious on the second floor of the building. Although no one witnessed the fall and Angamarca had no recollection of what happened, there was circumstantial evidence that he probably fell two stories through an improperly covered skylight hole in the roof. Just prior to the fall, Angamarca and a co-worker were on the roof near the opening. There were only three pieces of plywood at the scene, two of which covered the two openings in the roof. More wood had been requested and was being sent up by lift. He sustained multiple fractures and a head injury.

Angamarca sued owner New York City Partnership Housing Development Fund Company Inc., developer Jefferson Townhouses LLC, general contractor Novalex Contracting LLC and carpentry subcontractor Citywide contractors LLC pursuant to the provisions of New York's Labor Law sec. 240(1) that imposes liability "[w]hen the circumstances of a worker's task create a risk related to an elevation differential, a basis of the imposition of liability under Labor Law sec. 240(1) is established. He did not sue his employer, Roadrunner Construction Corp., which subcontracted with Citywide.

Plaintiff's counsel argued that the circum-

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Motor Vehicle

CASE	DATE	COURT	TYPE OF ACTION	PLAINTIFF'S COUNSEL	AMOUNT
Pichardo v. Mustafa	10/28	Bronx Civil	Motor Vehicle: Parties debated whether man's herniation was due to car crash	Norman R. Gershon of trial counsel, Harmon Linder & Rogowsky	\$400,000
Malloy v. VW Credit Leasing Ltd.	1/6	Bronx Supreme	Motor Vehicle: Car crash caused spinal injuries, plaintiff alleged	Stuart M. Rissoff of Law Offices of Stuart M. Rissoff	\$400,000
Yousefzadeh v. Beyer Farms Inc.	1/1/29	Kings Supreme	Motor Vehicle: Car crash caused back, knee injuries, plaintiff alleged	Eitan A. Ogen & Natalie Sedaghati of Ogen & Sedaghati, PC.	\$350,000
Roque v. Flores	12/16	Bronx Supreme	Motor Vehicle: Auto shop's patron hurt in multi-vehicle crash in garage	Lester R. Hill of trial counsel, Richard J. Katz, L.L.P.	\$350,000
Miller v. Premier Lincoln Mercury	9/22	Kings Supreme	Motor Vehicle: Boy hit by car needs surgical adjustment of leg, suit alleged	Phil Castaldi of Lucarelli & Castaldi	\$350,000
Lopez-Santos v. MTA	5/4	Bronx Supreme	Motor Vehicle: Teen struck by bus sustained back, knee, leg injuries	Kenneth E. Mangano of Ferro, Kuba, Bloom, Mangano, Gacovino & Lake, PC.	\$350,000
Figuroa v. Rooania Limo Services Inc.	6/30	Bronx Supreme	Motor Vehicle: Teacher claimed she can't work because of car crash's injury	Lennon C. Edwards of Leav & Steinberg, L.L.P.	\$350,000
Moye v. St. Cyr	8/24	Erie Supreme	Motor Vehicle: Car crash aggravated spinal condition, plaintiff claimed	James E. Morris of James E. Morris, Esq.	\$325,000
Egan v. AllParking Management Inc.	5/11	New York Supreme	Motor Vehicle: Plaintiff pinned when car backed out of control in garage	Mitchell L. Korder of Eppinger, Reingold & Korder	\$300,000
Barkley v. Jean	12/16	Kings Supreme	Motor Vehicle: Speeding driver; failure to yield caused crash, plaintiff alleged	Stephen H. Jacobson of Hecht Kleeger Pintel & Damashek	\$300,000
Echevarria v. Rodriguez	8/17	Bronx Supreme	Motor Vehicle: Car crash caused injuries of hip and neck, plaintiff alleged	Jeffrey A. Rubin of Jeffrey A. Rubin & Associates, PC.	\$300,000
Dimyan v. Freitas	1/20	Kings Supreme	Motor Vehicle: Car crash caused back, shoulder injuries, plaintiff alleged	Eitan A. Ogen of Ogen & Associates PC & Natalie Sedaghati of Sedaghati & Associates PC	\$275,000
Molina v. L.A. Taxi Inc.	3/27	Bronx Supreme	Motor Vehicle: Car crash caused spinal injuries, plaintiff alleged	Jeffrey J. Schietzelt of Silverson, Pareres & Lombardi L.L.P.	\$250,000
Lord v. Sakovich	12/16	Kings Supreme	Motor Vehicle: Motorist sped into intersection, caused crash, plaintiff alleged	Elliot G. Budashewitz of trial counsel, Law Office of Craig Rosuck Craig Rosuck of Law Office of Craig Rosuck	\$250,000
Ligon v. Perez Auto Corp	7/21	Queens Supreme	Motor Vehicle: Cab driver struck woman while turning through intersection	Dimitri Kotzamanis of Shaevit & Shaevit	\$250,000