

KINGS COUNTY**MOTOR VEHICLE**

Pedestrian — Rear-ender — Parked Car — Multiple Vehicle

Man struck by his own car on highway, injured head, shoulder**SETTLEMENT** \$950,000**CASE** Jean Schuster and Whitney Allen v. Michael Shields; Michael Shields Prov. Inc.; Michael Shields Provisions Inc.; & Michael Shields d/b/a Michael Shields Prov Inc.; Daniel Munoz; Mike's Heavy Duty Towing Inc.; & Frank S. Hart, No. 500238/13**COURT DATE** Kings Supreme
8/25/2014**PLAINTIFF ATTORNEY(S)** Benjamin E. Setareh, Doolan Platt & Setareh, LLP, Irvington, NY**DEFENSE ATTORNEY(S)** Edward V. Schwendemann, Goldberg Segalla LLP, Mineola, NY (Frank S. Hart, Mike's Heavy Duty Towing Inc.)
Matthew J. Vitucci, Gallo Vitucci & Klar LLP, New York, NY (Daniel Munoz, Michael Shields, Michael Shields Provisions Inc.)**FACTS & ALLEGATIONS** On Dec. 27, 2012, plaintiff Jean Schuster, 46, a tow truck's driver, was driving on the westbound side of the Brooklyn Queens Expressway, in the Columbia Street section of Brooklyn. Schuster's car became disabled near the expressway's interchange at the Hugh L. Carey Tunnel. A tow truck arrived, and Schuster crawled beneath his car, to assist in the process of connecting the vehicles. Moments later, Schuster's car's rear end was struck by a vehicle that was being driven by Daniel Munoz. Schuster was struck by his car, and he sustained injuries of his head and a shoulder.

Schuster sued Munoz; the owners of Munoz's vehicle, Michael Shields and Michael Shields Provisions Inc.; the tow truck's driver, Frank Hart; and Hart's employer, Mike's Heavy Duty Towing Inc. Schuster alleged that Munoz was negligent in the operation of his vehicle, that Shields and Michael Shields Provisions were vicariously liable for Munoz's actions, that Hart was negligent in the performance of his duties related to the towing of the disabled vehicle, and that Mike's Heavy Duty Towing was negligent in its retention of Hart.

Liability was decided via summary judgment: Hart and Mike's Heavy Duty Towing were dismissed, and Munoz,

Shields and Michael Shields Provisions were deemed entirely liable for the accident. The matter proceeded to damages.

INJURIES/DAMAGES brain damage; chiropractic; cognition, impairment; fracture, scapula; fracture, shoulder; glenoid cavity; head; internal fixation; memory, impairment; open reduction; physical therapy; sutures; traumatic brain injury

Schuster sustained an injury of his head, resultant damage of his brain, a fracture of his left, dominant shoulder's acromion, and fractures of the same shoulder's scapula, including the scapula's glenoid, which is the area that forms the shoulder's socket, and the coracoid process, which is a hooklike projection of the scapula.

Schuster was placed in an ambulance, and he was transported to a hospital. He underwent the application of about 300 sutures that closed a wound of his head. His left shoulder's injuries required three surgeries, which included open reduction and the internal fixation of hardware. Schuster also undergoes chiropractic manipulation and physical therapy.

Schuster claimed that he suffers a permanent diminution of his left shoulder's utility, that his brain's injury caused permanent impairment of his cognition, including his memory, and that he experiences residual changes of his mood.

Schuster sought recovery of damages for past and future pain and suffering. His wife, Whitney Allen, sought recovery of damages for loss of consortium.

RESULT The parties negotiated a pretrial settlement. The insurer of Shields and Michael Shields Provisions agreed to pay \$950,000.**INSURER(S)** Carolina Casualty Insurance Co. for Munoz, Shields and Michael Shields Provisions**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel and counsel of Munoz, Shields and Michael Shields Provisions. The remaining defendants' counsel did not respond to the reporter's phone calls.

—Max Robinson

MOTOR VEHICLE

Speeding — Motorcycle — Intersection

Defense: Motorcyclist's hasty turn led to accident**VERDICT** Defense**CASE** Raymel Page v. Crystal Johnson and Jashan Johnson, No. 500299/11**COURT** Kings Supreme**JUDGE** Karen B. Rothenberg**DATE** 8/13/2014

dated to construction of the sidewalk. She submitted a report in which she opined that the defect was a product of improper settling of the flags, and she blamed improper mixing of cement or insufficient backfill beneath the flags.

Lopez's counsel presented photographs of the defect that Lopez cited, and they contended that the appellate division, First Department has held that photographs of an obvious, apparent sidewalk defect are sufficient to establish a defendant's constructive notice of the defect.

Defense counsel contended that the shopping center's owner and manager had not been aware of any defect that may have caused Lopez's fall. He also contended that Lopez could not legally establish an act of negligence that was a proximate cause of the accident.

INJURIES/DAMAGES *arthroscopy; chondromalacia / chondromalacia patella; chondroplasty; contusion; embolism; knee replacement; knee surgery; medial meniscus, tear; meniscectomy; osteochondral defect; physical therapy; pulmonary/respiratory; respiratory; synovectomy; synovitis*

Lopez was placed in an ambulance, and she was transported to a hospital. She underwent X-rays and minor treatment. The treating doctor diagnosed a contusion of Lopez's right knee.

Lopez ultimately claimed that she sustained a tear of the anterior horn of her right knee's medial meniscus, a tear of the posterior horn of her left knee's medial meniscus and a sprain of the same knee's medial collateral ligament. She also claimed that her left knee sustained an osteochondral injury: an injury of a bone and the associated articular cartilage. She further claimed that her left knee developed residual chondromalacia, which is a softening of cartilage, and residual synovitis, which is an inflammation of the tissue that lines a joint.

Lopez underwent about 12 weeks of physical therapy that was typically rendered thrice weekly, but she claimed that the treatment did not resolve her pain. On April 16, 2008, her left knee was addressed via surgery that included a meniscectomy, which involved excision of a damaged portion of the knee's medial meniscus; a chondroplasty, which involved the repair of damaged cartilage; and a synovectomy, which involved excision of inflamed tissue. On Sept. 1, 2010, she underwent exploratory arthroscopic surgery that addressed her right knee. The procedure revealed a large tear of the knee's medial meniscus. On May 29, 2012, Lopez underwent a partial replacement of her left knee.

On June 13, 2012, Lopez was transported to a hospital after having reported that she was suffering severe impairment of her respiration. A doctor diagnosed a pulmonary embolism. Lopez claimed that the embolism was a residual product of her knee-replacement surgery. She underwent the administration of anticoagulants, and her hospitalization lasted eight days.

Lopez claimed that her knees remain painful and that her mobility is limited. Lopez's expert physiatrist submitted a report in which he opined that Lopez will require replacement of each knee.

Lopez sought recovery of \$86,354 for past medical expenses, \$987,710 for future medical expenses, and unspecified damages for past and future pain and suffering.

The defense's expert orthopedist submitted a report in which he opined that Lopez's injuries were not related to the accident.

RESULT The parties negotiated a pretrial settlement, to be paid by the insurers of City Bay Plaza and Prestige Properties & Development. The primary insurer tendered its policy, which provided \$1 million of coverage, and the excess insurer agreed to pay \$1.75 million, from a policy that provided \$25 million of coverage. Thus, the settlement totaled \$2.75 million. The settlement was finalized via the guidance of mediator Susan Hernandez, of National Arbitration and Mediation Inc.

INSURER(S) Philadelphia Insurance Cos. for City Bay Plaza and Prestige Properties & Development (primary insurer)
Federal Insurance Co. for City Bay Plaza and Prestige Properties & Development (excess)

PLAINTIFF EXPERT(S) Denise P. Bekaert, engineering, New York, NY (did not testify)
Alan M. Leiken, Ph.D., economics, Stony Brook, NY (did not testify)
Edwin F. Richter, M.D., physical medicine, Stamford, CT (did not testify)

DEFENSE EXPERT(S) Robert C. Sugarman, Ph.D., P.E., ergonomics/human factors, Buffalo, NY (did not testify)
Bradley D. Wiener, M.D., orthopedic surgery, Middletown, NY (did not testify)

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Additional information was gleaned from court documents. Defense counsel did not respond to the reporter's phone calls.

—Aaron Jenkins

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