

Defendant's Verdicts

Paul Felicione, Esq tried to verdict **Valdez v Sibrian** in Supreme Court Westchester County. This case involved a left turn accident where liability was conceded in exchange for an damages parameter of 5,000 to 75,000.00. This case was tried before Justice Loehr. The plaintiff alleged a torn ACL, medial meniscus of the left knee along with herniations at C3-4 and C5-6. Dr. Daniel Fisher (a radiologist) testified on our behalf. He opined that the tear of the ACL was pre-existing injury not casually related to the accident. The MRI films showed that the ACL tear was chronic and not acute without any evidence of swelling or edema. The testimony revealed that the plaintiff had a prior knee injury 20 years ago in a football incident. Dr. Fischer also testified that the herniations were chronic in nature and due to degeneration. They were not casually related to the accident. The jury, after 40 minutes of deliberation, rendered a defendant's verdict.

Paul also tried to verdict **Desouza v Koester**, Supreme Court New York County before Justice Mayerson. This was a summary jury trial on liability only. The plaintiff was a pedestrian who was allegedly struck by the client's vehicle on Broadway in Astoria. The plaintiff testified that due to construction in the area she exited a cab facing westbound on Broadway at a traffic light. She crossed the double yellow line and was struck by the client who was traveling eastbound on Broadway. The plaintiff testified that the point of contact occurred in the parking lane while an independent witness testified that it occurred at the double yellow line. The plaintiff's ear was torn partially off and surgically reattached. The jury rendered a defendant's verdict. (An offer of 30,000 had been presented and declined by the plaintiff).

Paul J. Felicione, Esq.

*joins the firm as a
Senior Trial Associate*



Paul joins us from a defense firm in Garden City. He is a graduate of St. John's University Law School. He was admitted to practice law in New York in 1988. He served as an Assistant District Attorney in Bronx County from 1988 to 1992. He is also admitted in the United States District Courts for the Eastern and Southern Districts of New York. Paul has extensive trial experience in the State and Federal Courts in the New York Metropolitan area. He has tried cases in all areas of negligence, labor law and products liability cases. He has experience handling cases involving truck accidents that have involved bio-mechanical engineer and accident reconstruction experts in State and Federal Court. He has argued cases before the First and Second Departments of the Appellate Division including cases involving slip and falls and asbestos.

We were successful in overturning a adverse decision on liability following a summary judgment motion in the Appellate Division, Second Department in **Reitz v Seagate Trucking** _____ AD 3d _____ **2010 Slip Op 02532 (2d Dept, march 23, 2010)**. It was alleged that the client struck the plaintiff in the rear. The court stated, “a rear end collision with a stopped or stopping vehicle creates a prima facia case of negligence against the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a non-negligent explanation for the collision” (*citations omitted*). The court found that at the deposition of our client, the defendant successfully rebutted the inference of negligence by his testimony that the plaintiff suddenly changed lanes directly in front of his vehicle “forcing the defendant to stop suddenly” The liability motion was reversed and the issue of liability was put back in play. (This lead to an agreement prior to trial of a cap of damages at the policy limits for an agreement to concede liability. The case is presently on trial).

The Appellate Division in **Noh v Duffe**, _____ AD 3d _____ **2010 SlipOp 01628**, denied plaintiff’s appeal on a threshold motion granted by Judge McCarty in Nassau County. The court found, that contrary to the plaintiff’s contentions, that the defendant established prima facia basis for dismissal based on the expert reports of the neurologist, orthopedist and radiologist that found that the plaintiff did not meet the definition of a serious injury as a result of the accident alleged. The court found that the “plaintiff’s subjective complaints of pain and limitation of motion were unsubstantiated by verified objective medical findings.” The plaintiff has filed a motion for permission to appeal to the Court of Appeals.

The Court dismissed **Mezzapesa v Sousa**, Supreme Court Nassau Court, Iannacci, J. on our motion for summary judgment on threshold. The court granted our motion finding that the plaintiff’s allegation of a disc bulge alone was not sufficient to establish a serious injury. The plaintiff was unable to explain the significant gaps in treatment between October 2004 and May 2005 (7 months), May 2005 and September 2006 (16 months), and September 2006 and October 2007 (13 months). The plaintiff did go the hospital after the accident but was released the same day. He underwent very conservative treatment following the accident. He only missed a few days from work following the accident. When he returned he worked less hours but he eventually left this job due to a conflict with his manager supposedly because he could not lift items.