

NEW YORK CITY

reduction of his blood's circulation. He underwent several additional surgeries, and he has endured 17 hospitalizations. He bears residual scars of his left leg, and he requires the assistance of a cane. He also claimed that his ambulatory deficiencies necessitate his employment of a residential aide.

Stothart sought recovery of \$3.5 million for his past pain and suffering, and he sought recovery of \$750,000 for his future pain and suffering.

The defense's expert vascular surgeon maintained that Stothart's bedsore was not related to the injury of Stothart's right foot. He contended that the bedsore was a result of Stothart's peripheral vascular disease.

RESULT The jury found that Montefiore Medical Center's doctors departed from an accepted standard of medical care. It determined that Stothart's damages totaled \$3.5 million.

LORIC STOTHART	\$3,000,000 past pain and suffering <u>\$500,000 future pain and suffering</u> \$3,500,000
DEMAND OFFER	None \$500,000
INSURER(S)	FOJP Service Corp.
TRIAL DETAILS	Trial Length: 8 days Trial Deliberations: 1.5 hours Jury Vote: 6-0 Jury Composition: 3 male, 3 female
PLAINTIFF EXPERT(S)	Jonathan Alexander, M.D., cardiology, Danbury, CT David Mayer, M.D., vascular surgery, Huntington, NY
DEFENSE EXPERT(S)	George Brief, M.D., cardiology, New York, NY Eugene Grossi, MD, cardiothoracic surgery, New York, NY Michael Silane, M.D., vascular surgery, New York, NY

POST-TRIAL Defense counsel challenged the appropriateness of a portion of plaintiff's counsel's summation. He also challenged the appropriateness of the instructions that the jury received, and he contended that plaintiff's counsel failed to establish that Stothart's treating doctors departed from an accepted standard of care. He has moved to set aside the verdict.

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

-Dan Israeli

MOTOR VEHICLE

No-Fault Case — Pedestrian — Crosswalk

Mother and daughter not hit by car or hurt, defense contended

VERDICT	Defense
CASE	Gladys Santiago Krystal Delgado, Individually and as the p/n/g of Jena Rivera v. Ramon Roman Carnasolta and Motor Club Discount Program, No. 302288/07
COURT JUDGE	Bronx Supreme Kenneth L. Thompson Jr.
DATE	6/29/2010
PLAINTIFF ATTORNEY(S)	Norman M. Block, Norman M. Block, P.C., Hawthorne, NY
DEFENSE ATTORNEY(S)	Maurice J. Recchia, Kornfeld, Rew, Newman & Simeone, Suffern, NY

FACTS & ALLEGATIONS At about 11:45 p.m. on June 3, 2006, plaintiff Crystal Delgado, a 22-year-old unemployed woman, and her mother, plaintiff Gladys Santiago, a 49-year-old unemployed woman, were walking in the Unionport section of the Bronx. They claimed that they were struck by a sport utility vehicle while they occupied a crosswalk of the intersection of Castle Hill and Haviland avenues. Delgado contended that she sustained injuries of her back, an elbow and a hip. Santiago contended that she sustained injuries of a hand and her knees.

Delgado and Santiago sued the SUV's driver, Ramon Carnasolta, and a company that was believed to be the SUV's owner, the Motor Club Discount Program. The plaintiffs alleged that Carnasolta was negligent in the operation of his vehicle. They further alleged that the Motor Club Discount Program was vicariously liable for Carnasolta's actions.

Plaintiffs' counsel ultimately discontinued the claim against the Motor Club Discount Program. He moved for summary judgment of Carnasolta's liability, and the motion was granted. The trial addressed damages.

INJURIES/DAMAGES *arthritis, traumatic; arthroscopy; bulging disc, lumbar; chondromalacia; contusions; hand; hip; knee; physical therapy; radiculopathy; seizure*

Delgado suffered an epileptic seizure. She was placed in an ambulance, and she was transported to Jacobi Medical Center, in the Bronx. Doctors observed that she was suffering contusions of her back and right hip. Her hospitalization lasted three days.

Delgado claimed that she also developed bulges of her L4-5 and L5-S1 intervertebral discs. An electromyography indicated that the latter bulge produced radiculopathy that extended to Delgado's right leg. Four weeks after the accident, Delgado

commenced a course of physical therapy that ultimately lasted about 12 months.

Delgado claimed that she suffers residual pain that impairs her performance of everyday activities, such as housework. She sought recovery of damages for her past and future pain and suffering.

Santiago was placed in an ambulance, and she was transported to Jacobi Medical Center, in the Bronx. She underwent minor treatment.

Santiago ultimately claimed that she sustained a sprain of her left knee and contusions of her knees and her left hand. An MRI scan suggested that she also sustained a tear of her left knee's meniscus, but reparative arthroscopic surgery revealed that the meniscus was not torn. The surgery did reveal chondromalacia—a softening of the knee's cartilage. The surgeon contended that he also observed damage of the patella's surface, loose pieces of cartilage and evidence of post-traumatic arthritis. He opined that the arthritic condition will worsen and that it could necessitate replacement of Santiago's left knee. Santiago also underwent about 12 months of triweekly physical therapy.

Santiago claimed that she suffers residual pain that worsens while she negotiates stairways or performs physical tasks, such as cleaning and doing laundry. Painkilling trigger-point injections have been recommended.

Santiago sought recovery of damages for her past and future pain and suffering. The plaintiffs sought a total of \$300,000.

Defense counsel contended that neither plaintiff sustained a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). He claimed that Delgado's seizure was a result of her failure to take prescribed medication that controlled her condition. Delgado acknowledged that she had not used her medication on the day of the accident. Defense counsel also suggested that Delgado was not struck by Carnasolta's vehicle. He contended that she merely had a seizure and fell.

The defense's expert orthopedist opined that Delgado does not suffer a restriction of her range of motion.

Defense counsel also challenged the extent of Santiago's injuries. He contended that Santiago was merely bumped by her daughter. He claimed that Jacobi Medical Center's records indicated that Santiago was ambulatory, free of distress and playing with her granddaughter. The records also did not document an injury of Santiago's left knee.

The defense's expert radiologist opined that post-accident MRI scans did not demonstrate trauma, a tear or any abnormalities of Santiago's left knee.

The defense's expert orthopedist also opined that Santiago does not suffer a restriction of her range of motion. However, plaintiffs' counsel reported that the orthopedist acknowledged having performed only a quick examination of Santiago and that he did not review his report or her medical records. Plaintiffs' counsel also reported that the orthopedist could not identify the purpose of a "Kemp's test," which was documented in the orthopedist's report as having produced normal results.

RESULT The jury rendered a defense verdict. It found that neither plaintiff suffers permanent consequential limitation of use of a body organ or member or significant limitation of use of a body function or system. Thus, it concluded that neither

sustained a serious injury. The jury was not asked to determine whether either sustained a medically determined, nonpermanent injury or impairment that prevented her performance of substantially all of the material acts that would have constituted the usual and customary daily activities of at least 90 of the first 180 days that followed the accident.

DEMAND	\$25,000 (for each plaintiff; insurance coverage's limit)
OFFER	None
INSURER(S)	Motor Vehicle Accident Indemnification Corp. for Carnasolta
TRIAL DETAILS	Trial Length: 4 days Jury Vote: 6-0 Jury Composition: 2 male, 4 female
PLAINTIFF EXPERT(S)	Imelda M. Cruz-Banting, M.D., P.T., physical medicine, Bronx, NY (treating doctor; testified via videotape) Paul Kleinman, M.D., orthopedic surgery, Bronx, NY (treating doctor; testified via videotape)
DEFENSE EXPERT(S)	Stanley W. Bleifer, M.D., orthopedics, Cedarhurst, NY David Fisher, M.D., radiology, Lindenhurst, NY

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

-Jaclyn Stewart

MOTOR VEHICLE

Motor Scooter — Crosswalk

Parties debated whether motor scooter equals 'motor vehicle'

SETTLEMENT	\$2,100,000
CASE	Olegario Batiz v. Jose H. Rivera & Professional Charter Service, Inc., No. 306910/08
COURT JUDGE	Bronx Supreme Howard R. Silver
DATE	4/9/2010