

### Some recent notable trials/verdicts

#### **1. Kim H. Townsend Obtains Defense Verdict in a Bus Accident Case in New York County Walker vs. Gray Line: J. Lisa Headley**

January 28, 2020

Plaintiff claimed that, on June 21, 2013, he was walking along South Street in Manhattan, on the east side of the street (where there was no sidewalk) and approaching Pier 17 at the South Street Seaport, when he was struck by our clients' double decker bus and "thrown" ten (10) feet in the air.

Plaintiff claimed that a bus driver and tour guide exited the bus, saw plaintiff lying on the ground, and handed him a piece of paper, reportedly with a phone number to report the accident to the insurance company (plaintiff produced a piece of paper with a number to an unknown recipient). The bus then supposedly left with plaintiff lying on the ground, severely injured. A Seaport parking lot attendant was produced for deposition and confirmed that he saw plaintiff on the ground next to a double decker bus, but he did not see an impact, and later conceded he could not recall the color of the bus. There was no police report, although plaintiff claimed he did report the accident to police.

When the plaintiff presented to an ER two days later, there were no scratches or bruises on him. Ultimately, plaintiff claimed injuries to his right shoulder (resulting in two arthroscopic surgeries) and both hips (resulting in bilateral arthroscopic surgeries). He demanded \$4.8million.

Our motion for summary judgment on the basis of liability was denied, and that decision was upheld on appeal. Plaintiff was deposed no fewer than four times over the past six years, as additional surgeries and injuries were causally related to the accident.

After a liability trial in New York County, the jury awarded a defense verdict after just 30 minutes of deliberation.

#### **2. Kim Townsend Obtains Defense Verdict in Premises Case involving Fall into an Unguarded Pit.**

#### **Agbosasa vs. City of New York, Fitmar Management and B&R Concrete Kings County; Judge Fisher**

November 1, 2109

Kim Townsend recently obtained a defense verdict in a Brooklyn premises liability case in which plaintiff fell into an uncovered, 4 foot deep access pit and thereby sustained knee and neck injuries requiring cervical fusion and likely knee replacement surgery. We represented a concrete

and excavation company who performed snow removal services in winter months and, on the date of accident, accidentally removed a 350 lb. steel plate which was covering the access pit in question, all of which was confirmed by surveillance video. The plow driver, apparently unaware the his plow had struck and moved the 350 lb. metal plate, thereby exposing an open hole, continued plowing inadvertently filling up the pit with icy water and slush making it invisible to pedestrians and drivers alike. Kim argued that notwithstanding our client indisputably displaced the metal plate from the pit and exposed the open hole, the owner of the premises, City of New York, and operator of the sport facility, Paerdagate, were *solely* responsible for the occurrence for failing to maintain the roadway in a safe condition and allowing the steel plate to rise above deteriorated asphalt, thereby allowing the condition which made it possible for the plow blade to remove the steel plate. After 45 minutes of deliberation, the jury unanimously exonerated our client and found the City and Paerdagate each 50% responsible. Damages trial to follow.

**Demand \$4.5M**

**Total Offer: \$385K**

**Breakdown:**

**Client B&R: \$175K**

**Paerdagate: \$175K**

**City: 35K**

### **3. Kim Townsend Obtains Defense Verdict in Labor Law § 240(1) case in New York County; Judge David Cohen**

January 29, 2019

Plaintiff alleged that while in the course of his employment on a construction site in New York County he was struck in the head and face with rebar, causing him to fall and sustain numerous physical injuries. We represented the owner and general contractor on the project. In plaintiff's hospital chart he is credited as saying he injured himself while trying to lift, push and pull rebar and not after being struck in the head and face, as he alleged at deposition. Plaintiff's entitlement to a finding that defendants violated Labor Law § 240(1) went to the Appellate Division, First Department. The First Department held that if plaintiff's version of the accident occurred as alleged, the accident fell within the definition of Labor Law § 240(1). However, because of the discrepancies contained in the hospital records, the defendants were entitled to a jury trial.

At trial, plaintiff's counsel fought vigorously to keep the hospital records from the jury. Included in plaintiff's counsel's argument is that the plaintiff, who spoke Spanish, did not have a translator. However, we successfully argued that plaintiff's admissions were sufficiently reliable and germane to diagnosis and treatment. Moreover, and to further drive our position home with the jury, we subpoenaed one of the record keepers. This allowed us to introduce an additional prior inconsistent statement into evidence.

As a result of the accident, plaintiff, who was only 36 years-of-age at the time of the alleged accident, underwent five surgeries including two for a right shoulder rotator cuff tear and three hip surgeries. He also alleged neck and back injuries. Prior to trial, plaintiff's demand was \$4.5M. Defendants offered \$50,000. At closing, plaintiff's counsel asked the jury to award his client \$5.25M. After less than two hours of deliberations, the jury awarded him \$0.

#### **4. Kim Townsend Obtains Defense Verdict in Construction Site Accident between Crane and Truck in Supreme Court, Suffolk County; Judge Santorelli**

August 1, 2019

Kim Townsend recently obtained a defense verdict in a construction site motor vehicle accident case, in New York State Supreme Court, Suffolk County.

It was plaintiff's contention that while driving through a traffic "chute" on our client's construction site, a 60,000 ton crane slammed into his truck, causing violent vehicle movement and significant damage; all of which allegedly caused serious injury to plaintiff's back and shoulder. Plaintiff contended that management of the construction site traffic chute, and crane placement, was performed in a negligent manner and thus caused the occurrence. Specifically, plaintiff argued that the client's flagmen were negligent in waiving plaintiff through the chute while the crane—not properly placed per DOT specifications—was rotating with a load of steel beams in its boom sling. Kim argued that, notwithstanding our client's theoretical negligence, plaintiff's testimony was false on important and material matters—specifically the force of the crane's impact with his truck, which could not plausibly be reconciled with photos of the vehicle damage. Accordingly, it was argued, the jury should disregard all of plaintiff's testimony and find in favor of defendants. After approximately 4 hours of deliberation, the jury returned a unanimous defense verdict.

As a consequence of the accident, plaintiff claimed to have sustained injury to his mid back, requiring thoracic vertebral fusion surgery, and a torn rotator cuff, requiring arthroscopic surgery.

Prior to trial, plaintiff's demand was \$5,500,000. The demand was reduced to \$2,500,000 during jury deliberations.

#### **5. Kim H. Townsend Obtains Defense Verdict in a Slip and Fall case in Supreme Court, Kings County; Judge Steinhart**

October 14, 2019

[Kim H. Townsend](#) recently obtained a Defense Verdict in a slip and fall on icy steps in Kings County. Plaintiff alleged she slipped and fell on the exterior steps of our client, the owner of the two-family home, due to an accumulation of ice and snow thereby sustaining a bimalleolar ankle fracture with complications, requiring hardware and 3 related surgeries including one for an infectious condition at the wound site; which also required surgery. In addition, there was a claim of defective handrail design based on a dozen NYC Code violations.

Kim argued that notwithstanding plaintiff was found on the steps in question, she actually fell in the street, as reported in the ambulance report, but which was at odds with the hospital ER records confirming her claim that she fell down icy steps. In an evidentiary and procedural duel

involving court rulings, “opened doors” and shifting admissibility requirements, Kim was able to establish that plaintiff was experienced in personal injury litigation, having had a prior fall-down accident and lawsuit, and argued that plaintiff’s hospital version of the accident was altered to conform to practical litigation necessities of which she was aware.

Prior to trial, plaintiff’s demand was \$1,300,000 and was reduced to \$900,000. Defendants offered \$350,000. The jury deliberated for 9 minutes before returning a Defense Verdict.

**6. Voldymar Komarnytsky vs G Stars Realty Corp.: 2018 J. Wade**

Plaintiff tripped on a raised sidewalk flag in front of defendant G Stars Realty premises, sustaining a complex ankle fracture requiring open reduction and surgical hardware. **Defense Verdict**

**7. Tower Insurance a/s/o 532 39<sup>th</sup> Realty vs. Pane Stone, Metal Stone et al. 2017: J. Edwards**

**Our client, Plaintiff Tower Insurance, as subrogee of 532 39<sup>th</sup> Realty,** sought recovery of expenses paid for damage to subrogor’s when excavation on the adjacent property-in 2009- caused the ground to shift. Tower sought full recovery of \$450,000 in expenses, plus statutory interest. **Verdict: \$450,000.**

**8. Joseph Vasile vs. Empire Beauty School and Bauer Properties, J. Silber, Kings County Supreme: 2016**

Plaintiff slipped on an icy sidewalk and sustained a complex ankle fracture requiring surgery with hardware. **Dismissed** on motion at conclusion of plaintiff’s case.

**9. Partlow vs. Town of Mt. Pleasant and Tagarelli, Westchester Supreme: 2015 (NatGen)**

Plaintiff, a neighbor and friend of Defendant Tagarelli, tripped on a protruding pipe on defendant’s lawn and sustained a full rupture of the left patella tendon requiring surgery and extensive rehab. **Demand \$650,000 Offer by Town of Mt. Pleasant \$60,000. Jury Verdict: Defense Verdict**

**10. Knobloch vs. Freedman, Orange County Supreme: 2014 J. Scortino**

Plaintiff, a delivery man, was injured when a brick wall façade detached from its 2<sup>nd</sup> story mooring and fell onto plaintiff’s head, neck and back as he passed beneath. Plaintiff claimed TBI, cervical and lumbar injury and total disability from gainful employment. **Demand \$950,000. Offer \$250,000. Asked of jury: \$2.2 Million. Jury Verdict: \$32,000**

**11. Russo vs. Hamill, Kings County Supreme; 2014 J. Edwards (NatGen)**

Plaintiff, a neighbor of defendant homeowner, tripped over a driveshaft protruding from the homeowner's property onto the sidewalk. Injuries included total right eye blindness. **Demand \$500,000. Defense Verdict.**

**12. Gary Vidor v. 6 Jones Street Associates, LLC, et al., New York County Supreme. 2013: J. Freed**

Plaintiff, a Michigan resident, sought \$1.5 million for torn lateral and medial menisci with surgical repair as well as alleged exacerbation of arthritis and necessity of future knee replacement following a trip and fall on loose tiles in the lobby of our client's building. **Settlement demand \$450,000. Offer \$100,000. Verdict \$110,000.**

**13. Golden Equities v. Whitestone Contractors, New York Supreme. 2010 J. Rakower**

**Our client, Tower Insurance Co., as subrogee of plaintiff Golden Equities**, a residential property owner in Manhattan, sought to recover approximately \$300,000 in building restoration costs following a roof fire allegedly caused as a result of cigarette negligence by one of defendant's employees. Defendant claimed the fire was caused by a non-party cell phone service provider.

**Demand \$300,000 Offer \$0. Verdict: \$280,000.**

**14. Lopez v. Pitons Construction, New York County Supreme. 2013 J. Engoren**

Plaintiff pedestrian knocked down by defendant's construction van after it jumped curb and ran over plaintiff's foot causing multiple foot fractures and alleged permanent loss of use. **Plaintiff demand \$750,000. Offer \$150,000. Verdict \$150,000.**

**15. Callagari v. 420 5th Ave. v. Jansen Construction, New York Supreme. 2011 NY County J. Billings**

Plaintiff stabbed by co-worker, employee of defendant, on construction site suffering a collapsed lung, decortication, thoracic mid-line abdominal non-union, 3 weeks on ventilator, loss of lung and lung function. Defendant employer third partied in our client, the general contractor, alleging contractual and common law indemnification based on contract and allegations of negligent supervision of the workplace. Demand \$35 Million; No offer by insured Jansen. **Verdict \$11.5 Million** against first party Defendant 420 5th Ave. **Defense verdict for our client, third party defendant, insured Jansen.**

**16. Allwall vs. Con Ed and Liberty Plumbing. Queens County Supreme.**

Subrogation matter based on facts of Zaldumbidie case, above. **Recovered, on behalf of insurer,**

Tower Insurance, entire \$1.8M property loss plus all accrued interest, for a Total recovery of \$2.2Million.

**17. Zaldumbidie vs. Con Ed, Liberty Plumbing, Allwall Construction., Queens County Supreme.** Plaintiffs sustained fatality, serious burns and multiple other injuries as a result of a gas explosion which occurred during installation of stoves at insured's residential apartment building. **Settled during jury selection for \$25 million with co-defendants. Defendant insured dismissed from action with nominal contribution.**

**18. Coates v. AAA Construction Co. et ano., Suffolk County Supreme Court. 2014**  
**J. Gargulio**

Labor Law 240 case brought by injured construction worker against GC and property owner following fall from retaining wall causing severe ankle fracture with multiple surgeries and insertion of hardware. Demand \$1 Million; Offer \$150,000. **Defense verdict**

**19. Settle v. Alleyne, Kings County Supreme. 2013 J. Bayne**

Plaintiff alleged slip and fall on stairs of defendant's apartment building due to a wet slippery condition sustaining a tri-mal fracture with open reduction internal fixation. **Demand \$750,000. Offer of \$60,000 during jury deliberation accepted by plaintiff.**

**25. Rosenbaum v. Citadel, Kings County Supreme Court. 2012: J. Partnow**

Plaintiff alleged stroke and subsequent paraplegia as a result of stress from being locked in a basement utility closet of defendant's residential apartment building as result of an allegedly faulty locking mechanism. **Demand \$10 million; Offer \$500,000. Defense Verdict**

**21. Tirado v. Metropolitan Transit Authority, Bronx County Supreme Court. : 2009**  
**J. Stinson**

Alleged torn rotator cuff with surgery from fall from an access-a-ride vehicle operated by our client the MTA. **Demand \$850,000; Offer \$150,000. Defense Verdict.**

**22. Fradella v. Soto, Westchester County Supreme Court: 2012 J. Smith**

Hip fracture with reconstructive surgery from alleged slip and fall on defective sidewalk. **Case dismissed by Court at completion of plaintiff's cross-examination.** (Subsequently referred to District Attorney for fraudulent claim investigation).

**23. Peter Albano v. K.R. & S. Auto Repair, Inc., Kings County Supreme Court. 2013:**  
**J. Bayne**

Plaintiff sought \$2.5 million for 1st and 2nd degree burns to left arm and left torso as a result of radiator coolant discharging on him following an engine replacement done by defendant. **Defense Verdict.**

**24. Cassetta v. Petroleum Rays and Exxon Mobil Co, Bronx County Supreme Court:  
2011 J. Barone**

Plaintiff sought \$2.5 million for discectomy and related back and leg injuries from trip and fall on gas station property. **Defense Verdict.**