

# suits & deals

## **\$275,000 for Auto Accident Injuries**

***Eliana Payano v. Journal Square Path Inc.***: A Hudson County jury awarded \$275,000 on Aug. 6 to a Jersey City girl who hurt her back in a collision.

Eliana Payano, now 15, was injured on Aug. 3, 2001, on JFK Boulevard



when the YMCA van in which she was riding was struck from behind by a box truck driven by Marco Rivera, 33, of Hackensack, and owned by Journal Square Path Inc.

The van stopped in heavy traffic and Rivera swerved to the left to avoid it but hit it on the left side, says the plaintiff's lawyer, **Gregg Stone of Kirsch, Gelband & Stone** in Newark.

Payano underwent six months of chiropractic treatment but an MRI four years later showed a bulging disc and a herniated disc in her lower back. She has lower back pain every day, does not attend gym and will continue to suffer from back degeneration, Stone says.

Rivera's attorney, **Michael Forcino** of the law offices of **Doreen Ryan** in Cranford, who represented Rivera's insurer, Allstate Insurance, did not return a call seeking comment. Forcino argued that Payano's only injury was a neck abrasion from the seat belt, says Stone. Allstate offered \$25,000 before trial, Stone says.

Superior Court Judge **Hector Velazquez** presided over the trial.

— *By Maria Vogel-Short*

# suits & deals

## \$450,000 for Slip and Fall

*Robinson v. Holiday Heights Homeowners' Association*: A Berkeley Township woman, who won the liability

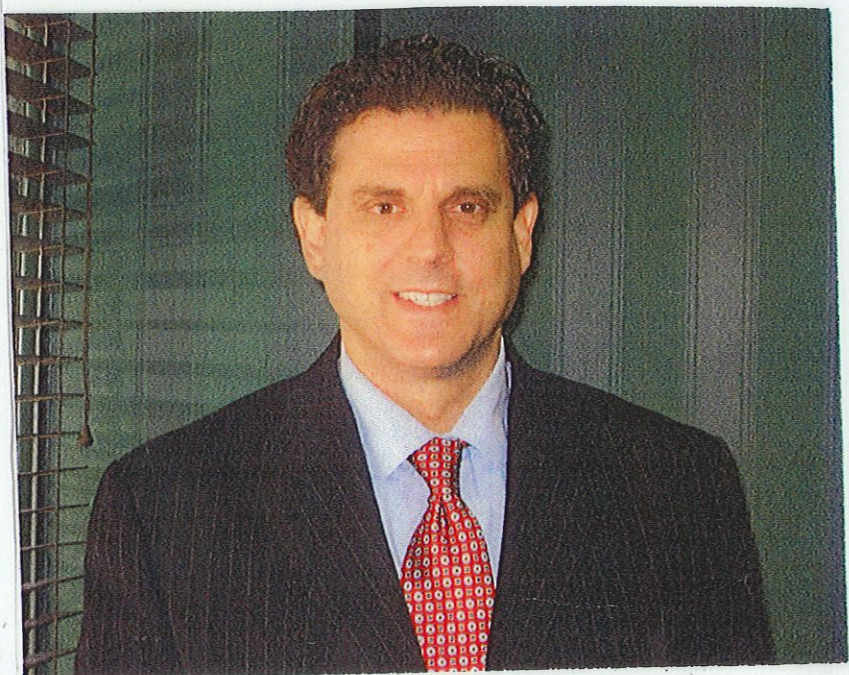
phase of her slip-and-fall suit against her retirement community, agreed to a \$450,000 settlement on July 20 — two days into the damages trial.

On Jan. 18, 1996, Lynette Robinson, a volunteer for the Holiday Heights Homeowners' Association's first-aid squad, having returned from an emergency call, was walking to her car in a parking lot owned by the squad. While opening her car door, she slipped and fell on a patch of ice.

Robinson, 71, represented by Gregg Alan Stone, a partner with Newark's Kirsch Gelband & Stone, filed suit against Holiday Heights, asserting that the association had assumed de facto responsibility for maintaining the lot. Stone says the association had regularly salted or sanded the lot, even though it wasn't obligated to do so.

Holiday Heights' lawyer, William Paulus, an associate at the law offices of Charles Peter Hopkins II in Shrewsbury, argued that the association hired a snow contractor to plow the parking lot, not salt and sand it, and thus assumed no responsibility.

Robinson, now president of the first-aid squad, works as a dispatcher because she can no longer do the physical tasks required in answering emergency calls.



### DE FACTO RESPONSIBILITY ALLEGED:

Gregg Alan Stone, above, argued that a homeowners' association regularly salted or sanded a parking lot, even though it wasn't obligated to do so.

Holiday Heights' insurance carrier, Chicago's CNA Insurance Co., will pay the settlement.

In the liability phase of the trial last May, over which Superior Court Judge Deanne Wilson presided, the jury deliberated for two hours before finding Holiday Heights 100 percent at fault. Superior Court Judge Mark Epstein was presiding over the damages phase when the case settled.

— By Steve Grbic



# suits & deals

## Jury Awards \$2 Million for Injuries Suffered in Hit-and-Run Accident

**B**rooks v. Stoney: An Essex County jury awarded \$2 million on March 7 for a woman's injuries in a hit and run accident, but recovery will be halved due to an out-of-court settlement and to coverage limits.

On Aug. 11, 2002, in East Orange, plaintiff Sheila Brooks was a front-seat passenger in a car broadsided by a vehicle that had been reported stolen, which fled the scene. She fractured her upper right arm and right thigh, requiring multiple surgeries and a bone graft, says her attorney, **Gregg Stone** of **Kirsch, Gelband & Stone** in Newark.

Brooks, now 57, walks with a limp, tires easily and developed thick scarring on her arm, Stone says.

Brooks sued her driver, James Stoney Jr. of Elizabeth, and made an uninsured motorist claim against Stoney's carrier, New Jersey Manufacturers.

At a trial in May 2005, liability was apportioned at 55 percent to Stoney and 45 percent to the hit-and-run driver. Trial of damages was delayed by an appeal that ended in an affirmance.

Stoney, represented by **Raymond Connell** of **Dwyer, Connell & Lisbona** in Fairfield, settled for \$500,000 two weeks before the recent damages trial.

Stone says he will ask Superior Court Judge **Hector DeSoto**, who presided, to mold the verdict against NJM to \$900,000, based on the 45 percent liability assessed against the hit-and-run driver.

But NJM lawyer **Brian Steller** of **Connell Foley** in Roseland says his client is obligated only up to its uninsured-motorist policy limit of \$500,000.

— By Charles Toutant

# suits & deals

NEW JERSEY LAW JOURNAL,

## \$400,000 for Slip and Fall

**Milito v. Ballyowen Golf Club:** A former beverage cart attendant accepted \$400,000 for injuries she suffered when she slipped and fell on a stairwell at a golf course clubhouse.

Stacey Milito, now 33, a middle school science teacher from Sussex County, was working part time at Ballyowen Golf Club in Hamburg on May 22, 2005, when she slipped and fell while carrying the cart down a flight of steps. The stairs were not equipped with rubber strips or other traction material, says her attorney, Gregg Alan Stone of Kirsch, Gelband & Stone in Newark.

Milito fractured four vertebral spinous processes in her lower back and no longer can lift items heavier than 25 pounds, Stone says.

Milito settled the Essex County case on March 16 after rejecting an arbitration award of \$275,000.

The club's carrier, the Granite State Insurance Co., retained Michael Salvo, of Ahmuty, Demers & McManus in Morristown. He did not return a call.

— By Michael Booth

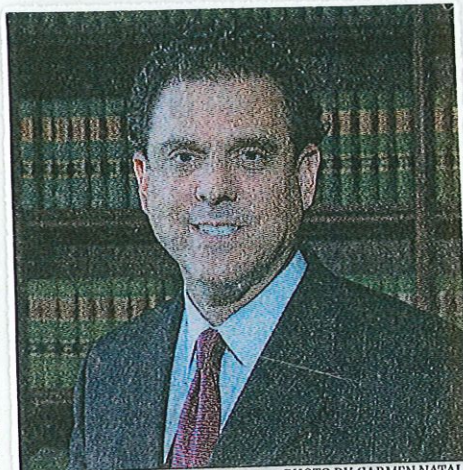


PHOTO BY CARMEN NATALE

GREGG ALAN STONE



**FOR WANT OF A LINE:** Gregg Stone says the double yellow line on the county road on which his client was sideswiped would have guided the other driver if it had not been obliterated.

### **\$750,000 for Automobile Crash**

*Cifelli v. Passaic County:* A woman who claimed that an unsafe road was a major cause of her automobile crash will receive \$750,000 under a settlement approved on Oct. 14 by the Passaic County Board of Freeholders.

Susan Cifelli of Vernon was heading south on curvy County Route 511 in West Milford on Oct. 8, 1999, when a car heading in the opposite direction sideswiped her, according to her lawyer, **Gregg Stone** of Newark's **Kirsch, Gelband & Stone**.

Cifelli, a legal secretary, suffered a permanently disabling left wrist fracture and a disfiguring fracture of the left eye socket, Stone says.

Cifelli's carrier paid \$100,000 in 2000 because the defendant driver was uninsured and the claim against the county settled on Sept. 9, the day a trial was to begin before Passaic County Superior Court Judge **Joseph Riva**.

Stone says that at trial he would have presented evidence that the county was liable because the double yellow line that would have guided the other driver on the dangerous curve had been obliterated.

Defense counsel **Eric Smith** of Totowa's **Fontanella, Benevento, Galluccio, Smith & Rapuano**, says the evidence showed that the accident was restriped the roadway annually under a regular program of maintenance that was not palpably unreasonable.

Stone says, however, the evidence showed that a county inspector traveled the road once a week and knew there was no line, putting the county on actual notice it needed to fix the problem before the regularly scheduled restriping.

— *By Henry Gottlieb*

## Familiares de criança recebem 1.2 milhões de dólares após acordo judicial

No passado dia 20 de Dezembro os familiares de Rajeev Adams concordaram em receber uma indemnização monetária de \$1.2 milhões de dólares após 6 dias julgamento no Essex County perante a Dr<sup>a</sup> Juiza Carol A. Ferentz.

O menino de 5 anos de idade, Rajeev Adams faleceu no dia 12 de Maio de 1997 após uma queda da janela do sexto andar na Corinthian Towers, 67 So. Munn Avenue, East Orange, NJ.

O advogado dos pais do menino, Gregg Alan Stone da empresa de advocacia de Newark - Kirsch, Gelband



& Stone, argumentou que se os proprietários ou responsáveis do edifício tivessem instalado as grades de protecção nas janelas, como requer a lei, este acidente jamais teria sucedido.

Mod Rehab Housing Assoc.; Essex Plaza Management e seus proprietários, Sidney Engel e Lewis Herkind, referiram que eles não poderiam ter instalado a dita protecção, visto que a Cidade de East Orange não passaria os 'permits'. Stone argumentou que, perante a lei e regulamentos, não é necessário 'permits' para proceder à instalação da grade de protecção.

Gregg Stone, advogado dos pais da criança, declarou que 'os proprietários evitaram responsabilidades durante cerca de 3 anos, altura esta que corresponde à data em que foram pela primeira vez notificados para proceder à instalação da grade de protecção na janela por causa das crianças até à data do terrível acidente.'

Gregg Stone afirmou que 'Esta criança de 5 anos de idade morreu desnecessariamente. O acidente era de fácil prevenção. Quando a legislatura regularizou as leis das grades de protecção para as janelas era com o objectivo de prevenir este tipo de acidentes.'

Uma testemunha em tribunal afirmou que Rajeev Adams sofreu durante 4 horas antes de ter falecido.

As leis que regulamentam a instalação de grades de protecção nas janelas foram aprovadas em Novembro de 1995 e obrigam os proprietários ou administradores a proceder à instalação de grades de protecção nas janelas dos apartamentos de famílias com crianças com idades inferiores a 10 anos. A lei refere também que os inquilinos que se encontrem nesta situação têm que ser notificados por escrito a dar-lhes a conhecer o direito de receberem a instalação gratuita das grades de protecção nas janelas.

No final Gregg Stone declarou que 'é uma pena que se perdeu uma vida de uma criança de 5 anos de idade... tudo por causa de uma grade de protecção que custa \$10 dólares. Espero que esta história sirva de alguma forma de mensagem para os proprietários e administradores de edifícios em New Jersey para procederem à instalação de grades de protecção nas janelas.'

# Hospital settles suit in newlywed's death

## St. Clare's to pay widower \$1 million

BY MARGARET McHUGH  
STAR-LEDGER STAFF

Newlywed Joanne Caruso underwent a routine procedure at Saint Clare's Hospital to help her get pregnant, but she ended up bleeding to death in a recovery room, her husband at her side waiting for her to wake up.

More than five years later, Saint Clare's Hospital on Monday settled a wrongful death lawsuit with Pietro Caruso for \$1 million. One of two surgeons who operated on the 38-year-old Jefferson woman settled for \$300,000 six

weeks ago, attorney Gregg Alan Stone said.

"It was just a multitude of errors that caused her death," Stone said.

Stone said Caruso's death resulted in the hospital changing a policy to now require nurses to monitor patients' vital signs throughout their same-day surgery stay.

Ben Martin, a spokesman for the Denville hospital, said the legal department and administration directed him not to comment on the case.

During laparoscopic surgery to remove fibroids from Caruso's uterus on Aug. 25, 1999, David De-

Pasquale, Caruso's gynecologist, punctured a vein, but the cut went unnoticed, Stone said.

A medical supply sales representative who was in the operating room during the procedure reported that DePasquale raised concerns after seeing blood pooling in Caruso's abdomen three times and suctioned it, but that another surgeon continued with the procedure, according to a report her employer, Ethicon Endo-Surgery Inc., filed with the FDA five days after the death.

Following surgery, Caruso was brought to a post-anesthesia care unit, where Stone said a nurse failed to take complete vital signs or notice that they showed Caruso

was in distress. A half-hour later, Caruso was moved to the same-day surgery unit, where patients recover before going home, Stone said.

Nobody took Caruso's vital signs there, but rather used the last ones recorded in the post-anesthesia unit, as per hospital procedure, Stone said.

"Fresh vital signs would have shown that Mrs. Caruso's heart rate was abnormal, and she would have been rushed back into the operating room to identify and repair the bleeding vein," Stone said.

Instead, she lay seemingly asleep for two hours before Pietro Caruso, who was waiting for his wife to wake up, asked why it was taking so long.

"I didn't know she was dying on me," Caruso said in a phone interview.

Afterward, Caruso had an autopsy done.

"I knew someone made a mistake someplace," he said.

A friend had introduced the couple, and they dated for 6½ years before marrying in 1998. She died three days short of their first anniversary.

"I have been through a lot," he said.

The case isn't over. Peter Delotto, the other surgeon, did not settle, and is scheduled to go to trial in January, Stone said.





# suits & deals

## Contractor Settles Case With Injured Roofer for \$1.5 Million

**Wright v. Quality Construction Co.:** A Pennsylvania roofer who fell through a skylight will receive \$1.5 million from a Westfield contractor under a settlement reached Nov. 30.

Kenneth Wright, 51, of Jim Thorpe, Pa., agreed to the settlement with Quality Construction Co. after two days of mediation. The case was set to go to trial in Middlesex County Superior Court the day it settled.

The accident occurred on July 6, 1995, when Wright was working as a roofer on top of a 50-foot clothing warehouse in the Avenel section of Woodbridge for the general contractor, Quality Construction. The general contractor had been hired by the owner of the property, Fleet Street Development Corp., to install a new roof and replace a series of skylights.

Wright was unfolding tar paper and laying tar on the roof when he backed into a skylight, crashed through it, and fell 50 feet onto a concrete floor.

Wright was diagnosed with a subdural and subarachnoid hematoma that

caused a closed head injury. He was hospitalized for two weeks and spent 10 weeks in rehabilitation. The fall affected his ability to concentrate and process information. He has not returned to work.

According to his attorney, **Raymond Gill**, a partner with Woodbridge's **Gill & Chamas**, Quality Construction was negligent because it failed to comply with Occupational Safety and Health Administration regulations requiring the general contractor to install wire cages beneath the skylight or box off the skylight.

Quality Construction's attorney, **Stephen Davis**, a partner with Warren's **Bivona, Cohen, Kunzman, Coley, Yospin, Bernstein & DiFrancesco**, says Wright was familiar with the roof and knew the locations of the skylights.

— *By Matt Ackermann*

### \$1.15M for Work Site Injuries

**Williams v. Grove Manufacturing Co.:** A construction company and a machinery contractor agreed to pay a total of \$1.15 million to the estate of a man killed at a road work site and to another man injured

in the same accident.

Joseph Williams and Peter Soumakis, both employees of a subcontractor, were standing on a lift platform while trying to secure a machine to a New Jersey Turnpike overpass in Elizabeth on Nov. 9, 1993. The lift struck the overpass and tipped, causing the men to fall 30 feet to the ground.

Williams, who was 32 years old and lived in Newark, died. Soumakis, a 22-year-old plumber apprentice from Brooklyn, suffered a fractured skull and a closed-head injury. He suffers from short-term memory loss.

Their attorney, **Gregg Alan Stone**, a partner with Newark's **Kirsch, Gelband & Stone**, says G.A.R. Corp. of South Plainfield, an equipment distributor, installed inferior parts in the lift before selling it to the subcontractor, Nutmeg Corp. of Colchester, Conn.. Stone also alleges that the project's general contractor, DeFoe Corp. of Mount Vernon, N.Y., should not have allowed the lift on site because it lacked a certificate attesting to its repairs. He also says the company used an inexperienced safety supervisor.

G.A.R. agreed on Nov. 25 to pay Williams' estate \$175,000 and Soumakis \$125,000. On Monday, just before jury selection, DeFoe settled, agreeing to pay Williams' estate \$525,000 and Soumakis \$330,000. DeFoe's insurance carrier, Argoaut Insurance Co. of Pennsylvania, also was the workers' compensation carrier, so a \$97,000 workers' compensation lien was waived for Williams and \$72,000 for Soumakis. That brought to \$1.3 million the total received by Williams' estate and Soumakis.

G.A.R.'s attorney, **John Devlin**, who heads a firm in East Brunswick, declines to comment on the case. DeFoe's lawyer, **Walter Timby III**, a partner with Philadelphia's **Margolis Edelstein**, did not return two telephone calls seeking comment.

The settlement was put on the record before Essex County Superior Court Judge Carol Ferentz.

— *By Heather MacGregor*





---

## ***Juri do Condado de Morris atribuiu uma indemnização de \$1 milhão a trabalhador português da Loc. 472***

Um juri do Condado de Morris atribuiu em 28 de Janeiro uma indemnização de \$1 milhão ao trabalhador português Manuel Santos por ferimentos recebidos num acidente de trabalho ocorrido em 1994 - anunciou a firma de advogados Kirsch, Gelband & Stone, que representou o trabalhador português.

Manuel Santos, trabalhador filiado na Local 472 do sindicato Heavy General Laborers' Union, ficou ferido durante o colapso duma vala ocorrido em 19 de Julho de 1994, quando, com 29 anos, trabalhava para a companhia Barnard Construction Company, de Pompton Plains.

Segundo o advogado Gregg Stone, causídico daquela firma de advogados com sede na Academy Street, em Newark, o juri considerou ter

havido negligência por parte do empreiteiro geral dos trabalhos, a firma Tomaro Contracting Company, de Mine Hill, que não teria garantido que o subempreiteiro mantivesse no local das obras as condições de segurança adequadas. O juri também considerou haver responsabilidade de 10% no acidente por parte do trabalhador vítima do acidente.

Manuel Santos trabalhava num projecto de reconstrução rodoviária no município de Mine Hill ao serviço da companhia Barnard Construction Company, de Pompton Plains, a quem a companhia Tomaro Contracting tinha entregue as obras de drenagem em regime de subempreitada.

Na altura do acidente, Manuel Santos estava a trabalhar numa vala de 10 a 12 pés

de profundidade, mas sem a protecção duma armação de madeira que, segundo defendeu em tribunal o advogado Gregg Stone, a existir, teria evitado o colapso das paredes da vala e que aquele trabalhador tivesse ficado ferido.

Como resultado deste acidente, Manuel Santos sofreu fracturas graves na perna direita e anca, do que resultou uma limitação permanente da sua capacidade de movimentação.

*Tenho esperança de que veredictos como este sejam uma mensagem a todos os empreiteiros na indústria da construção civil, levando-os a cumprir com todos os regulamentos da OSHA criados especialmente para proteger os trabalhadores de práticas laborais desrespeitadoras da segurança - disse o advogado Gregg Stone.*