



# suits & deals



## **\$600,000 for Rock Wall Fall**

***Dasilva v. H&S Development Corp. db/a New Jersey Rock Gym:*** A man who allegedly suffered head and spinal injuries in a fall from an indoor climbing wall agreed to a \$600,000 settlement of his Essex County suit on May 5.

Carlos Dasilva, now 47, fell 18 feet and landed on his head and back while climbing at New Jersey Rock Gym in Fairfield on December 27, 2009. He sustained a subdural hematoma and post-traumatic, closed head injury, and compression fractures at L1 and L3, said his lawyer, **Gregg Stone of Kirsch, Gelband & Stone** in Newark.

While Dasilva climbed, his son Michael, then 19, was serving as "belayer," which entailed managing the slack of a rope attached to the climber to ensure it does not accidentally slide out of the harness, the suit said.

Before the accident, a staff member gave Michael a test to determine if he could be a certified belayer. He failed the test but was nonetheless allowed to serve as belayer for his father's climb, and he failed to perform the proper belayer technique to prevent his father's fall, according to the suit.

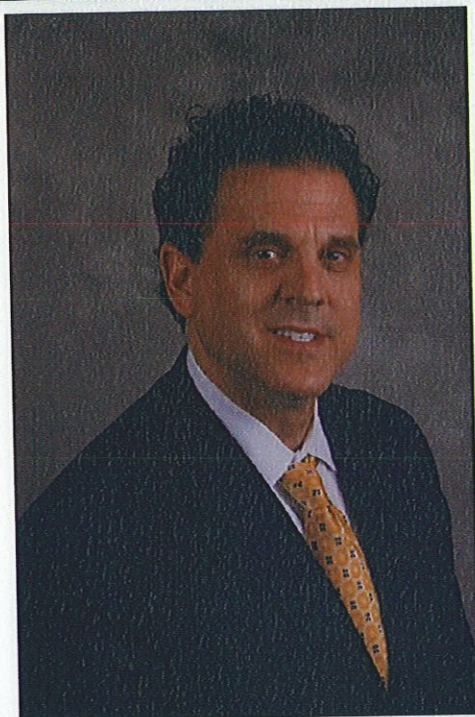
The gym contended that the staff member who allowed Michael to serve as belayer exercised reasonable judgment and that a waiver form signed by Dasilva insulated it from liability.

The carrier funding the \$600,000 settlement is Colony Insurance.

The lawyer for the gym, **Adam Kipnis of Braff, Harris & Sukonick** in Livingston, did not return a call.

— *By Charles Toutant*





### **\$750,000 for Workplace Accident**

#### ***Canales v. Genmar Holding Co.:***

A bakery worker whose hand was crushed in a machine accident settled his Essex County suit for \$750,000.

On Oct. 1, 2002, at Pechter's Bakery in Harrison, David Canales, then 56, put his left hand in a hamburger roll-making machine that was slowly rotating the rolls prior to baking. His hand was crushed between a gear and chain, says his lawyer, **Gregg Stone of Kirsch, Gelband & Stone** in Newark.

He required amputation of the middle, ring and pinky fingers, and part of the hand, as well as reconstructive surgeries. Canales has residual pain and limited use of the hand.

Canales claimed the 50-year-old apparatus made by AMF Inc., a company since acquired by Genmar Holding Co. of Richmond, Va., was defectively

designed, even by 1950s standards.

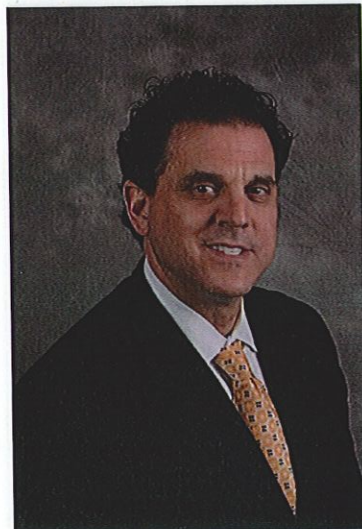
Genmar contended that the machine had been modified and that Canales' actions proximately caused the injury.

The suit was stayed when Genmar entered bankruptcy proceedings in Minnesota. Genmar's carrier, Travelers Ins. Co., proposed a settlement earlier this year. Each side agreed to \$750,000 and petitioned to lift the stay. The settlement was finalized on Nov. 12.

Genmar counsel **John Shea** of **Litchfield Cavo** in Cherry Hill did not return a reporter's call.

— *By David Gialanella*





### **\$505,000 for Fatal Auto Accident**

**Estate of Smith v. Ricketts:** The estate of a 72-year-old man killed in an automobile accident on Interstate 78 will receive \$505,000 in a wrongful-death suit.

Adolf Smith of Palmer Township, Pa., was killed almost instantly when his car was struck from behind at about 3:30 a.m. on June 6, 2011, in Readington by a car driven by defendant Ryan Ricketts, then 32, of Tinton Falls, says the estate's attorney, Gregg Stone.

Ricketts' car, rented for him by his employer, the management consulting company Accenture, was traveling at 94 miles per hour when the accident occurred, says Stone, of Newark's Kirsch, Gelband & Stone.

Stone says Ricketts had been drinking with friends in New York and was returning to a hotel in Branchburg, where he was staying while on a job assignment. He missed his exit and, after turning around, found himself behind Smith, a maintenance man who was on his way to work at the University of Medicine and Dentistry of New Jersey in Newark.

Ricketts, who later pleaded guilty to vehicular homicide and is serving a three-year prison sentence, had a blood-alcohol level of 0.13 percent, Stone says.

Ricketts was uninsured. Accenture's carrier, Zurich Ins. Group, agreed to provide coverage for Ricketts because the policy language provided for coverage if the accident was broadly related to the driver's business assignment.

Zurich agreed on Feb. 3 to pay \$300,000 on behalf of Accenture and \$200,000 on behalf of Ricketts. Smith's carrier, Travelers Ins. Co., agreed to pay \$5,000 to settle a possible uninsured/underinsured motorist claim.

Zurich retained Alan White, of the Parsippany office of Bonner Kiernan Trebach & Crociata, to represent Accenture and Thomas Wester, of Millburn's McDermott & McGee, to represent Ricketts. Both confirmed the settlement amount. Travelers retained Michael Mourtzanakis of William Staehle's law office in Morristown. He did not return a telephone call.

The lawsuit, venued in Essex County, was settled shortly before it was to go to trial before Superior Court Judge Edith Payne.

— By Michael Booth





## \$4 Million for Inmate Death

**Dawkins v. County of Union:** Union County agreed on March 11 to pay \$500,000 over injuries to an inmate that allegedly led to his death, bringing the total recovery to \$4 million.

Johnathan Dawkins, allegedly a schizophrenic who required psychotropic medication, was transferred from Essex County Jail to the Union County Correctional Facility on an assault warrant on Oct. 1, 2007.

While serving time in Essex for assault, Dawkins had been medicated and hospitalized by Correctional Health Services, but CHS allegedly did not send his medical information to Union.

During intake in Union, Dawkins was verbally abusive and uncooperative and placed in detention for 13 days, according to papers filed in federal court in Newark by his estate's attorney, **Gregg Alan Stone of Kirsch Gelband & Stone** in Newark. His mental condition allegedly deteriorated so much that the jail removed two other inmates from his cell for their safety.

On Oct. 13, 2007, guards and supervisors in SWAT gear showed up to take him for a psychological evaluation and allegedly forced him from the cell, using pepper-spray in his cell, removing him face down and pressing down on his torso. A video allegedly shows him with a pillow against his face to block the spray and gasping for breath before going limp. When he got to the medi-

cal department, he was brain dead, the papers say. He died on April 12, 2012.

Stone's papers say that last Oct. 25, CHS settled for \$3.4 million through mediation with former U.S. Magistrate Judge **Joel Rosen** and that Essex County settled a month earlier for \$100,000. Of the \$3.5 million, \$1,126,000 went to pay a Medicaid lien and more than \$49,000 to pay litigation costs.

U.S. Magistrate Judge **Joseph Dickson** approved \$904,124 in legal fees on Jan. 7, with the rest of the money distributed to Dawkins' relatives.

Stone declines to discuss the settlement with CHS or name the company, citing a confidentiality proviso.

CHS lawyer **Stephen Siegrist**, of **O'Connor Kimball** in Cherry Hill, and Union's lawyer, **Alexander Booth Jr.** of Jersey City, did not return calls. Assistant Essex County Counsel **Alan Ruddy** declines comment.

— *By Mary Pat Gallagher*







### \$1.2 Million for Slip and Fall

**Barboza v. Tacuri:** An Essex County jury on Nov. 29 awarded \$1.2 million to a woman found to have sustained ankle injuries slipping and falling on steps in her apartment building.

But due to a pretrial agreement, the plaintiff, Katherine Barboza, will receive \$500,000, which is the policy limit for the building's owner and the sole defendant, Eric Tacuri, says Barboza's lawyer, Gregg Stone of Newark's **Kirsch, Gelband & Stone**.

On Dec. 11, 2008, according to the suit, Barboza was descending the exterior stairs of her Bloomfield apartment building, which were covered with a moss-like growth that made them slip-

pery. The steps were allegedly poorly lit.

Barboza sustained a broken right ankle with joint displacement in the fall, Stone says. She underwent surgery that included surgical placement of a plate and eight screws to secure the ankle. Later, two of the screws were removed.

Now 24 and living in Newark, she continues to complain of swelling, pain and loss of motion, Stone says. There were no claims for wage loss or past medical expenses.

In return for Barboza agreeing to cap damages at \$500,000, Tacuri agreed to stipulate fault at 100 percent and not to appeal. The case, presided over by Superior Court Judge **Paul Vichness**, was tried on damages only.

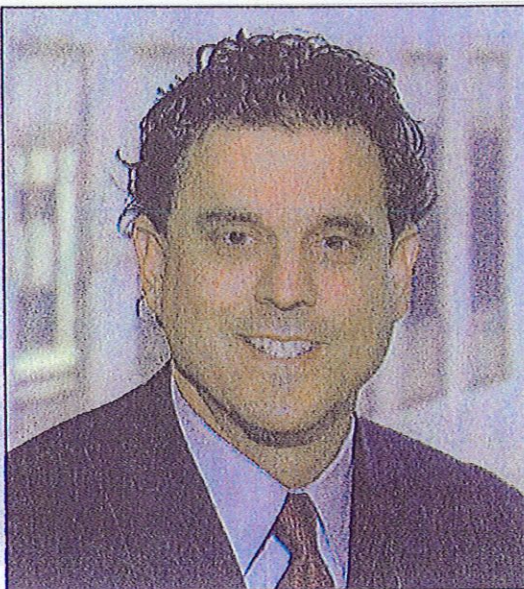


PHOTO BY CARMEN NATALE

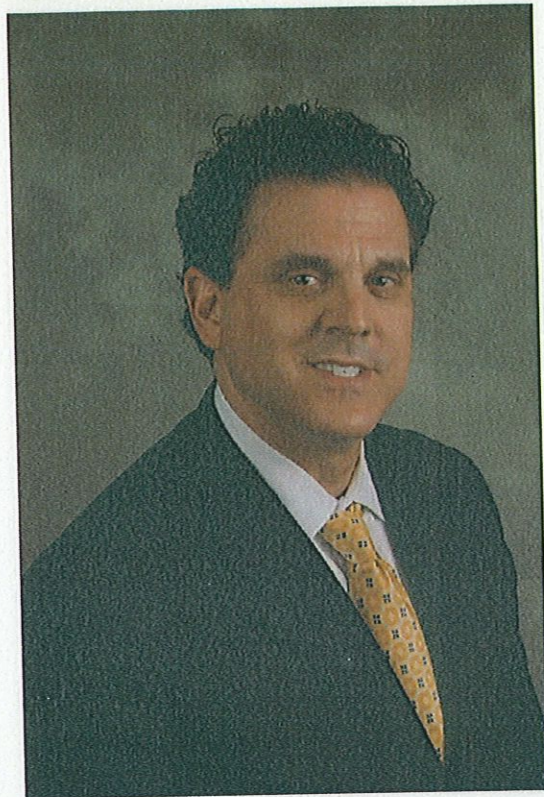
**HALF A LOAF:** Though the jury would award twice that amount, agreeing to cap damages at \$500,000 won Gregg Stone a defense admission of liability.

Tacuri's carrier, Philadelphia Contributionship Ins. Co., retained **Matthew Venema**, of **Venema, Proko & Keahey** in Philadelphia. He confirms the verdict and the settlement terms.

— *By Michael Booth*



# suits & deals



## **\$992,500 for Fire Injuries**

**Cordero v. Essex Plaza:** A tenant who alleged he suffered permanent injuries in a fire in his apartment settled his Essex County suit for \$992,500 on July 3.

Jose Cordero, now 34, and his girlfriend were asleep in the bedroom of his Newark apartment on Aug. 15, 2007, when they were awakened by smoke. A couch in his living room had caught fire, most likely from a cigarette, says Cordero's lawyer, **Gregg Stone of Kirsch, Gelband & Stone** in Newark.

While trying to exit, Cordero collapsed and suffered third-degree burns over 30 percent of his body, as well as smoke inhalation that caused chronic obstructive pulmonary disease, Stone says. Afterward, a medically induced coma left him with a dropped foot, which is a permanent disability that prevents him from working, Stone adds.

The suit alleged the apartment's smoke detector did not sound due to the negligence of the building owner, Essex Plaza; the property manager, Planned Building Services of Parsippany; and contractors responsible for the alarms.

Essex Plaza and Planned Building Services will pay \$492,500 each; Pyramid Fire Inc. and Treycom Technologies Corp. of Farmingdale, N.Y., a combined \$5,000; and Scarsdale Security Systems Inc. of Scarsdale, N.Y., which monitored the system, \$2,500.

The settlement was mediated by **Mark Epstein**, a retired state judge now with **Hoagland, Longo, Moran, Dunst & Doukas** in New Brunswick.

**Marc Pakrul** of **Tompkins, McGuire, Wachenfeld & Barry** in Newark, Scarsdale Security Systems' attorney, confirms the settlement.

Essex Plaza's lawyer, **Brian Murphy** of Montvale, did not return a call. Neither did Planned Building Services' lawyer, **Gaetano Mercogliano** of **Sweeney & Sheehan** in Philadelphia; nor **Steven Wiederhorn** of **Faust, Goets, Schenker & Blee** in Livingston, counsel to Treycom and Pyramid.

— *By David Gialanella*





## Newark To Pay \$6M for Injuries From Street Hole Covered by Metal Plate

**T**he Newark City Council approved a \$6 million payment on Wednesday to a Newark woman who suffered a crippling back injury when she fell into a hole in the street.

Kimberly Campos, then 36, was injured on Dec. 28, 2001, when she stepped off the curb on Raymond Boulevard near Penn Plaza and her foot caught on a metal construction plate partly covering a hole, causing her to fall into the hole, twist her body and injure her lower back, according to her suit, *Campos v. City of Newark*.

An MRI showed herniations at L4-5 and L5-S1 and she experienced radiating pain down her right leg with numbness and tingling. Between February 2002 and October 2006, she had eight surgeries. She also has multilevel spinal stenosis, degenerative disc disease and arachnoiditis, a chronic pain condition.

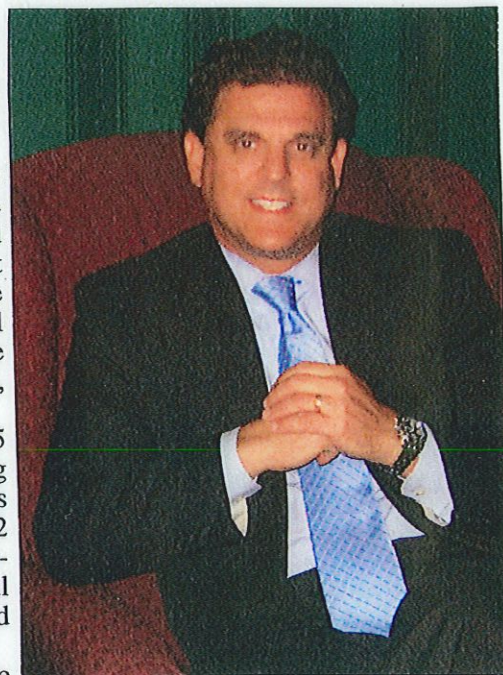
Now permanently disabled, she walks unevenly with a cane and takes pain medicine through patches and a morphine pump, says her lawyer, **Gregg Stone** of **Kirsch Gelband & Stone** in Newark.

Stone says Newark knew for several years that a leaking pipe was eroding the pavement but instead of repairing it, kept patching the area and covering it with a plate.

The city's lawyer, **Victor Afanador** of Newark's **Lite DePalma Greenberg & Rivas**, did not return a call.

Former Essex County Superior Court Judge **Carol Ferentz**, of **Grieco, Oates & DeFilippo** in West Orange, helped mediate the settlement.

— *By Mary Pat Gallagher*





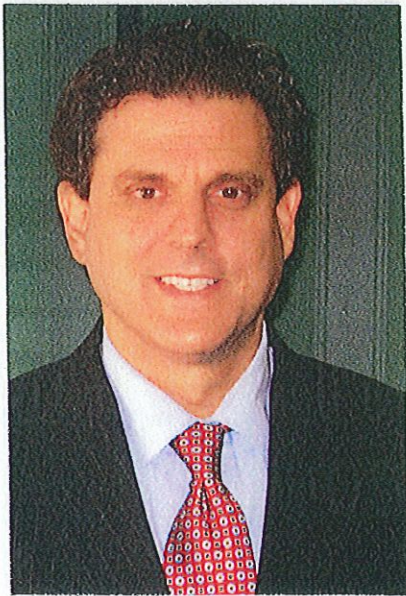


### **\$1.3M for Fatal Fall at Work Site**

**Estate of Lawson v. Gilbane Building Co.:** The estate of an ironworker who fell to his death during construction of the Prudential Arena in Newark agreed to accept \$1.3 million on Aug. 14.

Jamal Lawson, 30, of Newark fell from a six-inch-wide steel beam 80 feet up on Aug. 31, 2006, while bolting steel beams, says the estate's attorney, **Gregg Alan Stone**.

The safety manual mandated a double lifeline tethering the harness to the safety cable but the special order harness worn by the 340-pound Lawson had only one, says Stone, of **Kirsch Gelband & Stone** in Newark. Lawson



died on impact.

His family sued general contractor Gilbane Building Co. of Providence, R.I., and Lawson's employer, Cornell & Co. of Westville, alleging that the lifeline problem was an intentional wrong that created a substantial certainty of injury and surmounted the worker's compensation bar under *Laidlow v. Hariton Machinery Co.*

The Essex County suit settled through mediation with retired Superior Court Judge **Robert Feldman**, a Neptune solo. Each defendant will pay \$650,000.

Cornell's counsel, **John Farns** of **Lamb, Kretzer, Reinman & Roselle** in Jersey City, confirms the settlement. **Dana Argeris**, of **Marshall Dennehy Warner Coleman & Goggin** in Cherry Hill, for Gilbane, could not be reached.

— *By Mary Pat Gallagher*





# suits & deals

## \$1M for Officer's Motorcycle Accident

***Koelble v. Pasteur:*** An Irvington motorcycle policeman struck by a driver during a chase settled an injury suit on Jan. 16 for \$1.005 million.

John Koelble was pursuing a fleeing vehicle on Springfield Avenue with his siren and lights activated on Aug. 29, 2007, when a car traveling in the opposite direction tried to turn left in front of him. Koelble hit the car, driven by Rutherford Pasteur, an employee of St. Elrac Inc./Enterprise Rent-A-Car of St. Louis, who was moving it from one company location to another.

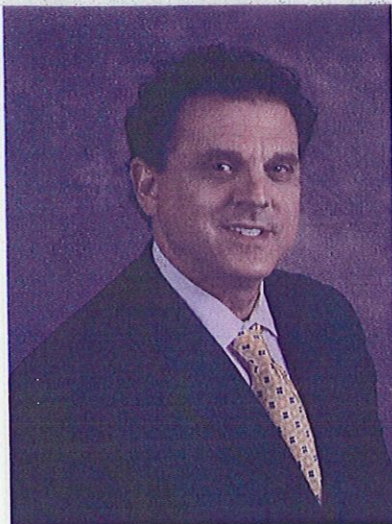


PHOTO BY CARMEN NATALE

**INJURY DURING CHASE:** Gregg Stone says his client, a policeman, was pursuing a fleeing car when a driver coming the other way tried to turn left in front of him, causing the collision.

Koelble was thrown from the motorcycle and landed in the street, says his lawyer, **Gregg Stone** of **Kirsch, Gelband & Stone** in Newark. He suffered herniated neck discs and fractured his right wrist, which required surgery. He also suffered nerve damage that diminished strength and feeling in his right shoulder, elbow and wrist, and is now unable to work.

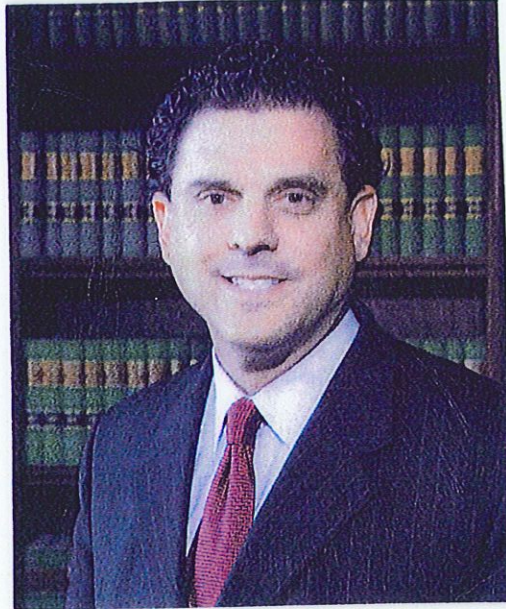
St. Elrac's lawyer, **Bruce Magaw** of **Decker & Magaw** in Westfield, did not return a call. Stone says Koelble claimed Pasteur negligently ignored the oncoming motorcycle. The Essex County case settled after mediation.

— *By David Gialanella*





# suits & deals



## Judge Approves \$2.2M Settlement for Crash That Killed One, Injured Three

**A** Bergen County judge approved a \$2.2 million settlement on July 1 in a suit over a fatal car crash, *Yeager v. Simpson*.

Stephanie Yeager of Wayne was driving west on Route 80 in Paterson on Oct. 13, 2005, when her car broke down in the middle lane, with her children, Amanda, 9, and Sean, 7, in the back seat and her boyfriend, Chris Spaulding, in the passenger seat. Yeager called her father, Bryan Yeager, for help and he came to the scene.

The disabled car was hit from behind by a tractor-trailer. Sean died a few minutes after the impact. Amanda had back and neck soft-tissue injuries, Spaulding and Yeager suffered herniated discs and Amanda, Spaulding and Yeager suffered from post-traumatic stress disorder, according to **Gregg Alan Stone of Kirsch, Gelband & Stone** in Newark, the lawyer for Amanda, Bryan and Sean's estate.

Yeager sued the truck's driver, Michael Simpson, and its owner, SMP Inc. of Phillipsburg. Spaulding, Amanda, Bryan and Sean's estate sued Simpson, SMP and Yeager. Yeager's father made a claim for infliction of emotional dis-

ress under *Portee v. Jaffee*.

Under the settlement approved by Superior Court Judge **Robert Wilson**, SMP will pay \$1.9 million of its \$2 million policy with Lincoln General and Yeager will pay her entire \$300,000 bodily injury policy with AMICA. Sean's estate and Amanda will each receive \$479,167; Bryan, \$479,166; Stephanie, \$412,500; and Spaulding, \$350,000.

Yeager was represented as a plaintiff by **Jeffrey Youngman of Feitlin, Youngman, Karas & Youngman** in Fair Lawn and as a defendant by **John Kearney of Sellar Richardson** in Livingston; Spaulding by **Robert Jones** of Livingston; and Simpson and SMP by **Michael Willison of Dickie, McCamey & Chilcote** in Haddonfield. Jones and Willison confirm the settlement; Kearney and Youngman did not return calls.

— By Charles Toutant





# NEW JERSEY

## JURY VERDICT

### REVIEW & ANALYSIS®

**\$1,225,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – INTERSECTION COLLISION – FAILURE TO MAKE OBSERVATIONS BEFORE PROCEEDING BEYOND STOP SIGN AT INTERSECTION WHERE VIEW IS OBSTRUCTED BY BUILDING – DIABETIC SUFFERS SEVERE LEG FRACTURES – SUBSEQUENT BELOW-THE-KNEE AMPUTATION – DEATH FROM UNRELATED CAUSES APPROXIMATELY 1½ YEARS AFTER ACCIDENT.**

*Essex County*

The plaintiff contended that the defendant driver of a box truck negligently failed to make sufficient observations before turning left from a stop sign at an intersection in which the driver's view was obstructed by a building situated at the corner. The plaintiff contended that as a result, he collided with the defendant's truck, suffering severe bilateral leg fractures. The plaintiff also suffered fractures to the jaw and eye orbit. The plaintiff was a diabetic and contended that the superimposition of the fractures on the underlying diabetes caused severe complications, including the onset of infection that ultimately required a below-the-knee amputation. The plaintiff further contended that after the amputation, the patient fell and suffered a fractured hip. The patient died from unrelated causes approximately one-and-a-half years following the accident. The plaintiff maintained that the pain and suffering during this period was particularly severe and that the emotional consequences were heightened by the evidence that whenever the decedent seemed to be making progress, he subsequently suffered a setback, including the onset of the infection which ultimately led to the amputation and subsequent hip fracture.

The plaintiff contended that as the decedent driver proceeded into the intersection with the right-of-way, he was suddenly confronted with the defendant's vehicle and could not avoid the collision. The defendant driver did not dispute that he did not "inch-out" from the stop sign, but instead proceeded directly into the intersection after having initially stopped. Further, he did not dispute his actions, even though his ability to view the intersection from the stop sign was obstructed by a building on the corner. The defendant testified during his deposition that almost immediately before the collision, he was confronted by the presence of

#### COMMENTARY:

The plaintiff obtained a particularly significant recovery in view of the nature of the case involving a driver who lived for only one-and-a-half years following the accident and then died from unrelated causes. Particularly persuasive in this regard was the evidence that the decedent, who was a diabetic, had developed an infection in the fractured leg which ultimately necessitated a below-the-knee amputation and the fact that he then suffered a hip fracture when he made an attempt to walk after the amputation.

It is felt that the impact of the projected testimony of the four adult children, in which they would have offered compelling descriptions of the extremely sad nature of the decedent's final months, would have been underscored by the presentation of photographs depicting the decedent in a wheelchair after having undergone the amputation. These photos would have been accompanied by the evidence that from the time of the accident until his death, the decedent was institutionalized in either a hospital or nursing home.

Finally, plaintiff's counsel reports that the mediation, which resulted in an award slightly greater than the settlement amount, was very helpful in the resolution of the case. □

an unidentified driver who suddenly pulled from a driveway, forcing him to stop. The plaintiff would have countered that the defendant had made no mention of such an alleged "phantom" vehicle to the investigating officer.

The plaintiff maintained that the decedent suffered severe bilateral tibial and fibula fractures. The decedent had a history of diabetes and the plaintiff maintained that some time after the accident, the decedent developed a severe left leg wound infection. The plaintiff contended that antibiotic therapy was not sufficient to control the infection and that the decedent ultimately required a below-the-knee amputation of the left leg.

The plaintiff contended that the decedent, who continued to experience phantom pain and was also disoriented, attempted to walk sometime after the amputation and fell, suffering a hip fracture. The plaintiff maintained that from the time of the accident until the decedent's death from unrelated causes approximately one-and-a-half years after the collision, he was essentially bedridden. The plaintiff further maintained that in addition to the severe pain experienced by the decedent, the emotional suffering was especially great. The testimony revealed that each time the decedent appeared to be improving, he encountered a setback, including the infection that led to the amputation and subsequent fall-down and hip fracture.

The decedent left four adult children. The death was caused by unrelated reasons and there was no claim for wrongful death. The plaintiff would have presented the children who would have discussed the manner in which they observed the downward spiral experienced by their father, who was a patient at several hospitals and a nursing homes during the approximate one-and-a-half year period between the accident and death.

The defendant had \$1,000,000 in primary coverage and more than sufficient excess coverage. The case settled after mediation before Retired Judge Carole Ferentz for \$1,225,000, including \$850,000 from the primary carrier. The primary carrier also paid \$150,000 in a PIP subrogation claim.

#### REFERENCE

Plaintiff's orthopedist: Richard Schenk from Whippany, NJ.

Moldanado vs. Knight, et al. Docket no. L-11689-00; 2-06.

Attorney for plaintiff: Gregg Alan Stone of Kirsch Gelband & Stone in Newark, NJ.