

New Jersey Law Journal PERSONAL INJURY

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Top 20 Personal Injury Awards of the Year

Recoveries fall sharply in 2017

By Juliette Gillespie

The dollar amounts of New Jersey's top 20 personal injury recoveries took a precipitous drop this year.

The largest 20 awards reported by the Law Journal between Aug. 20, 2016, and Aug. 21, 2017, totaled less than \$100 million (about \$97.38 million). For the same period last year, the awards totaled almost \$158 million.

The top payout this year was \$9.5 million—just more than half the amount of last year's top payout, which was \$18.5 million.

The lowest award this year—ranked at number 20—is \$2.95 million. That is the

smallest award to hold 20th place since at least 2011.

For the time period covered here, the average amount of the top 20 awards is \$4.9 million. That is well below the averages from the last six years, which range from \$5.8 million to \$10.2 million.

This year's median recovery is \$4.7 million. Since 2011, the median recovery has been between \$5 million and \$7 million.

The next tier of recoveries ("More Awards Worth Noting") ranges from \$2.7 million down to \$2.05 million. Over the last

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TOP 20 PERSONAL INJURY AWARDS OF THE YEAR

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six years, this tier has ranged between \$4.2 and \$2.6 million. Not surprisingly, this year's numbers are on the low side.

As usual, the top awards are listed in order of compensatory damages, as of the date of verdict or settlement, even if there were punitive damages as well.

Awards of equal value share a ranking. For example, there are two cases ranked at number 13, and two cases ranked at number 17. The total number of recoveries listed is still 20.

Awards for multiple parties are ranked by their lump-sum value. Awards are listed according to their original amounts, even if they were subsequently reduced. Unilateral decisions by governmental entities to compensate injured parties are not included.

1 Jury Awards \$9.5M to Sisters Injured in Boat Collision

A Bergen County jury on July 26 awarded \$9.5 million in *Franzino v. McCarthy's Marine Sales* to sisters from Mahwah who were injured when their boat collided with another in the Manasquan Inlet.

The jury awarded Gina Franzino, now 30, \$5.6 million, and Jamie Franzino, now 26, \$3.9 million, said one of their attorneys, **Christopher Karounos**, who heads a firm in Elmwood Park.

The sisters were injured on May 22, 2005, when the 15-foot boat in which they were riding was struck by a 31-foot boat owned by McCarthy's Marine Sales of Brielle and piloted by an employee, Edward McCarthy, said Karounos, who handled the case with **Samuel Davis of Davis, Saperstein & Salomon** in Teaneck.

At the time, Karounos said, McCarthy was returning from sea trials.

Gina Franzino sustained a shattered pelvis that required open reduction surgery and internal fixation with pins, plates and screws. Her spleen was severely damaged, requiring removal. She also sustained a concussion that placed her in a coma for several days. She also sustained significant scarring of her abdomen, hip and legs due to the spleen and pelvic surgeries, Karounos said.

The hardware remaining in Gina's pelvis, and the intense radiation she received after surgery to stem complications as her bones healed, causes her great concern about being able to maintain a pregnancy to term or even attempt to deliver naturally, Davis said.

Jamie Franzino sustained a collapsed lung that required chest tube insertion, intubation and placement on a ventilator; a broken rib; bilateral lung contusions; a complex fracture to her right pelvis; a concussion; scalp lacerations; shattered teeth; loss of sense of smell and taste; and permanent nerve damage to her left foot, Karounos said.

She has also been hospitalized numerous times since the accident for breathing difficulty stemming particularly from her right lung that had collapsed, Karounos said.

Both sisters also suffer from post-traumatic stress disorder, he said.

The pilot of their boat, Kyle Tavis, died in the accident, and his family is pursuing a separate claim.

Superior Court Judge Charles Powers Jr. presided over the trial.

McCarthy's Marine's carrier, Swiss Re, retained **Joseph Gallo**, of the Florham Park office of **McGivney & Kluger**. He didn't return a call seeking comment.

2 Bench Trial Ends in \$7M Award for Plaintiff Who Lost Leg in Accident

A Bergen County judge awarded \$7 million to a woman whose right leg was amputated after she was struck by a car, though the defendant's insurance policy limit is less than that.

Superior Court Judge Charles Powers Jr. awarded \$7 million to Rita Fiorino, now 52, of Hillsdale, after a bench trial on June 20, 2016.

Fiorino, who was an employee of the Trader Joe's store in Westwood, was in front of the store while on her break when a driver lost control, jumped the curb and struck Fiorino. She was pushed back into the store's plate glass window, pinned between the vehicle and the cart corral, said plaintiff lawyer **Samuel Davis of Davis, Saperstein & Salomon** in Teaneck.

The car's driver, Maryann Lewis, who was 75 at the time of the crash, told police she thought she was stepping on the brake when she instead stepped on the accelerator, said Davis.

Fiorino underwent an amputation above the knee, and has undergone 13 surgical procedures on her leg, as well as rehabilitation and physical therapy. Since the accident she has suffered from growth of nerve bundles, infection and unconstrained bone growth, Davis said. She suffers phantom limb pain and needs strong and potentially habit-forming pain medication, he said.

Fiorino sued Lewis as well as the owner of the property, A&P Real

Property LLC, a subsidiary of the A&P grocery store company, but that company went into bankruptcy.

Powers entered a \$7 million judgment against Lewis, whose auto insurance policy limit was \$300,000.

Davis said he intends to recover on Lewis' other assets.

Lewis' lawyer, **Patricia Palma**, who heads a firm in Berkley Heights, did not return a call about the case.

3 Settlement of \$5.975M in Case of Child Struck by Vehicle

A boy struck by a car in the street and his family settled a Monmouth County suit, *Moreno-Flores v. Fell*, for \$5.975 million on Nov. 7, 2016.

In June 2015, Guadalupe Janeth Moreno-Flores and her two-and-a-half-year-old son, Aldo, were in a park on Lake Terrace in Bradley Beach when the boy ran into the street. Moreno-Flores chased him, but while Aldo was in the street, he was struck by an SUV driven by Eileen Fell, according to the plaintiffs' lawyers.

Aldo was struck and dragged, sustaining bone fractures, a brain injury and other injuries that led to permanent scarring on his head and neck, said **Norman Hobbie of Hobbie, Corrigan & Bertucio** in Eatontown, counsel to Moreno-Flores and father Saul Esparza Guzman, and **Robert Fuggi of the Fuggi Law Firm** in Toms River, who represents Aldo.

The suit included a claim under *Portee v. Jaffee* on behalf of Moreno-Flores, who claimed she sustained psychological injuries because she witnessed Aldo's injury and underwent counseling. Moreno-Flores and Esparza Guzman also lodged loss of consortium and loss of companionship claims.

The defense contested liability as well as the severity of the injuries, according to Hobbie and Fuggi.

The parties had completed expert discovery when they settled, on Nov. 7, 2016, during mediation with retired Ocean County Superior Court Judge James Clyne of Benchmark Resolution Services in New Egypt.

The sum is made up of \$3.25 million for Aldo, \$2.5 million for Moreno-Flores, and \$225,000 for Esparza Guzman, Hobbie and Fuggi said.

Fuggi noted that the settlement sum for Aldo is subject to court approval.

Fell was represented by **Jeffrey Bell of Golden Rothschild Spagnola Lundell Boylan & Garubo** in

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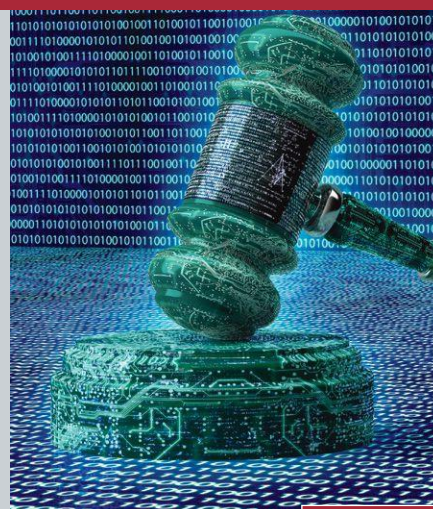
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Bridgewater and **Brendan Judge of Connell Foley** in Roseland. Neither returned a call seeking comment on the settlement.

4 Pedestrian Paralyzed by Vehicle Strike Received \$5.5M Settlement

A woman rendered paraplegic when she was struck by a vehicle received the proceeds of a \$5.5 million settlement on Aug. 4 in her suit, *Rodriguez v. Jaynes*.

On the night of Dec. 19, 2012, plaintiff Astrid Rodriguez had just exited a public transit bus and was crossing the street at University Plaza and Main Street in Hackensack. The parties would later dispute whether she crossed with a green light or against a red light, and whether she was inside or outside the crosswalk, according to her lawyer, **Patrick Metz of Dario, Albert, Metz & Eyerma**n in Hackensack.

As she crossed the street, Rodriguez was struck by an SUV driven by Royal Jaynes, who was on the job at the time, making stops to service automatic teller machines, according to Metz.

The vehicle was owned and insured by a fleet leasing company, which Metz declined to identify, although an electronic judiciary database of civil cases identifies that defendant as Wheels Ltd.

Rodriguez was thrown 40 feet and sustained three fractured vertebrae at the thoracic level, Metz said. Her spinal cord was severed, and she is now paralyzed below the waist.

Rodriguez and Jaynes each claimed to have a green light. A police report taken that night was inconsistent with both accounts, Metz said.

The parties were through expert discovery and set to go to trial in June when, on April 5, they settled during mediation with retired Monmouth County Superior Court Judge Bette Uhrmacher, now a Freehold solo.

The vehicle owner's insurance paid the full settlement amount, Metz said: \$3 million from ACE American Insurance Co. and \$2.5 million from ESIS Inc.

In the months after the settlement, a special-needs trust was formed, according to Metz, who handled the matter with **Dario Albert** partner **Ronald Dario**.

The defendants' counsel, **Denise Ricci of Wade Clark Mulcahy** in Springfield, declined to comment.

5 Woman Struck by Truck Settles for \$5.35M in Middlesex County

In *Parikh v. Frock Brothers Trucking*, a North Brunswick woman will receive \$5.35 million as compensation for injuries she sustained when she was struck by a tractor-trailer.

Plaintiff Ankitaben Parikh, now 35, was injured on Sept. 19, 2014, when she was struck by a tractor-trailer driven by Robert Smith and owned by defendant Frock Brothers Trucking Inc. of New Oxford, Pennsylvania, said one of Parikh's attorneys, **Edward Capozzi of Brach Eichler** in Roseland.

At the time of the accident, Parikh was walking to her office at defendant Taro Pharmaceuticals USA Inc. in Cranbury from a parking lot in the rear loading area of the building, said Capozzi, who handled the case

along with **Corey Dietz** of the same firm.

Parikh normally would have parked in a lot in front of the building, but that lot had been closed for an expansion project, Capozzi said.

Smith, according to Capozzi, was lost and had stopped in the rear lot to ask for directions. As he drove away, Parikh was struck by the tractor-trailer. She sustained a broken pelvis, multiple broken ribs, two broken vertebrae, a broken right hip, two broken ankles and a broken sacrum. She underwent a number of surgeries, Capozzi said, and now has a right foot drop and suffers from sustained pain.

Parikh sued Frock Brothers and Taro Pharmaceuticals in Middlesex County Superior Court. The claim against Taro alleged the company created an unsafe work condition by requiring Parikh to park in the loading area, Capozzi said.

Taro's carriers, Great Northern Insurance Co. and Federal Insurance Co., agreed to pay Parikh \$1.9 million on Feb. 17, Capozzi said.

Frock Brothers' carrier, Encompass Risk Solutions Inc., agreed to pay Parikh \$3.45 million on March 2, while the case was being tried before Superior Court Judge Michael Cresitello Jr., Capozzi said.

Encompass retained **Donald Derrico of Gordon & Rees** in Harrison, New York. He declined to comment.

Taro's carriers retained **Linton Turner Jr., of Cherry Hill's Mayfield, Turner, O'Mara & Donnelly**. He did not return a call seeking comment.

6 Jury Awards \$5.225M in Pedestrian Case

A woman who suffered a traumatic brain injury in a pedestrian accident was awarded a \$5.225 million verdict in her Somerset County suit, *Kirk v. Spagnola*, on Dec. 7, 2016.

Wendy Kirk, now 55, was crossing the street in a crosswalk in Bernardsville on March 29, 2014, when she was struck by a vehicle driven by Michael Spagnola, according to the suit.

Spagnola, who was making a left turn, claimed he didn't see Kirk, according to plaintiff lawyer **Evan Goldman of Goldman, Davis & Gutfleisch** in Hackensack.

Kirk suffered a subdural hematoma, subarachnoid hemorrhage, left temporal bone fracture, and cervical spine injuries in the incident. She has lost her ability to taste and smell, has significant problems with balance and communication, and has vestibular dysfunction, the suit claimed.

She was previously a home designer but can no longer work in that profession, said Goldman, who was assisted by **Kristen Ragon** of the same firm. After the accident, Kirk was hospitalized for five days, followed by two months in rehabilitation, Goldman said.

According to Goldman, the parties had no dispute about the facts of the case or the extent of the injuries, so Superior Court Judge Kevin Shanahan set the value of the injuries at \$5.225 million.

Edward Martin of Martin and Tune in Annandale, who represented Spagnola, confirmed the verdict.

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