

# Verdicts & Settlements

## MOTOR VEHICLE

**Sleepy motorist struck six cars, lawsuit alleged**

**Verdict: \$1,375,000**

*Jennel M. Morgan v. Aleksandr Arakelov Leo's Apple Ltd and Salem Truck Leasing Inc., No. 3039/14*

**Court:** Kings Supreme

**Plaintiffs' Attorney:** Larry J. Bonchonsky, Bonchonsky & Zaino, Garden City, trial counsel, Brian J. Levy & Associates, West Babylon

**Defense Attorney:** Robert J. Passarelli, McCabe, Collins, McGeough, Fowler, Levine & Nogan, Carle Place

**Facts & Allegations:** On Nov. 6, 2013, plaintiff Jennel Morgan, a home health aide in her 20s, occupied a vehicle that was parked on Avenue D, in the Canarsie section of Brooklyn. The vehicle was struck by a box truck that was being driven by Aleksandr Arakelov, who had crossed the roadway's center line. Morgan claimed that she sustained injuries to her back, her neck and her shoulders.

Morgan sued Arakelov, the owner of Arakelov's truck, Salem Truck Leasing Inc., and Arakelov's employer, Leo's Apple Ltd. Morgan alleged that Arakelov was negligent in the operation of his vehicle, that Salem Truck Leasing was vicariously liable for Arakelov's actions, and that Leo's Apple was liable because the accident occurred during Arakelov's performance of his job's duties.

Plaintiff's counsel claimed that the accident was a result of Arakelov having fallen asleep while driving. He claimed that Arakelov's truck struck five other vehicles before striking Morgan's vehicle. The court heard testimony from a police officer who responded to the accident. The police officer claimed that Arakelov acknowledged having fallen asleep.

Arakelov denied having fallen asleep. He claimed that the accident was a result of another vehicle having struck and propelled his truck.

Justice Francois Rivera directed a verdict that established that the defendants were liable for the accident. The trial proceeded to damages.

**Injuries/Damages:** Morgan was placed in an ambulance, and she was transported to The Brookdale University Hospital and Medical Center, in Brooklyn. She

claimed that her neck and shoulders were painful. She underwent minor treatment.

Morgan ultimately claimed that she sustained a tear of each shoulder's glenoid labrum, herniations of her C3-4, C4-5 and C5-6 intervertebral discs, and trauma that produced bulges of her L3-4, L4-5 and L5-S1 discs.

After 12 days had passed, Morgan commenced a course of physical therapy. The treatment lasted until December 2015. During its early stage, the treatment was typically rendered two or three times a week. Its frequency gradually diminished.

On March 28, 2014, Morgan underwent arthroscopic surgery that addressed her right shoulder. In July 2014, she underwent arthroscopic surgery that addressed her left shoulder. On April 1, 2015, she underwent surgery that included a discectomy—which involved excision of a portion of her C4-5 disc—and fusion of the corresponding level of her spine.

Morgan resumed work soon after the accident, though she claimed that her injuries prevented her performance of her job's more rigorous tasks. She has not worked since undergoing her first surgery. She claimed that she suffers residual pain, that she suffers a residual diminution of her neck's range of motion, that she suffers a residual diminution of each shoulder's range of motion, and that her residual effects prevent her resumption of work. She also claimed that her residual effects hinder her performance of recreational activities.

Morgan sought recovery of a total of \$1.7 million for past and future pain and suffering.

Defense counsel contended that Morgan did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). The defense's expert biomechanical engineer opined that the accident did not involve a collision sufficiently forceful to have caused the injuries that Morgan claimed to have sustained. The defense's expert radiologist opined that Morgan's injuries were degenerative conditions.

The parties negotiated a high/low stipulation: Damages could not exceed \$793,000, but they had to equal or exceed \$375,000. The high amount represented the limit of the defendants' insurance's coverage.

**Result:** The jury found that Morgan sustained a serious injury. It determined that she suffers permanent consequential limitation of use of a body organ or member, that she suffered significant limitation of use of a body function or system, and that she suffered 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 90 or more of the first 180 days that followed the accident.

The jury found that Morgan's damages totaled \$1,375,000, but Morgan recovered the stipulated limit: \$793,000.

## PREMISES LIABILITY

**Stairway's handrail not entirely accessible, fallen man claimed**

**Verdict: \$1,000,000**

*Dick Allen Dolan v. 251 West 51 Hospitality Corp., No. 151388/15*

**Court:** New York Supreme

**Plaintiffs' Attorney:** Elizabeth Eilender, of counsel, Jaroslawicz & Jaros, New York

**Defense Attorney:** James M. Skelly, Marks, O'Neill, O'Brien, Doherty & Kelly, New York

**Facts & Allegations:**

On Dec. 12, 2014, plaintiff Dick Allen Dolan, 72, a marketing consultant, fell while he was descending a stairway of a restaurant that was located at 251 W. 51st St., in Manhattan. He suffered injuries to his head, a hip and a shoulder.

Dolan sued the premises' owner, 251 West 51 Hospitality Corp. Dolan alleged that 251 West 51 Hospitality had negligently created and/or failed to address a dangerous condition that caused the accident.

Dolan claimed that the accident was entirely attributable to a decorative shelf that blocked access to a section of the stairway's handrail, beginning at the stairway's third-highest step. The shelf was situated immediately above the handrail. Dolan claimed that his right hand was holding the handrail, but that, when he reached the third step, his right hand struck the shelf. He claimed that he fell forward and tumbled to the bottom of the stairway.

Dolan's safety expert noted that a local code specifies that at least 1.5 inches must separate a stairway's handrail and any neighboring obstructions. The expert contended that the shelf created an unsafe condition.

Defense counsel contended that the stairway was safe, and he suggested that the accident was a result of Dolan having failed to exercise due caution.

The accident was recorded by one of the restaurant's security cameras, but the restaurant's manage-

ment did not preserve the recording. The jurors were instructed that an adverse inference could be drawn from the failure to preserve the recording.

**Injuries/Damages:** Dolan claimed that his head and body struck portions of the stairway and an abutting stone wall. He suffered a concussion, a fracture of his right femur's intertrochanteric region, which is a component of the right hip, a comminuted fracture of his left, nondominant shoulder's clavicle, which is commonly termed the collarbone, and fractures of five ribs.

Dolan was placed in an ambulance, and he was transported to New York-Presbyterian Hospital, in Manhattan. After four days had passed, he was transferred to another facility, where he underwent replacement of his right hip. His hospitalizations lasted a total of 12 days, and he subsequently underwent 11 days of inpatient rehabilitative therapy. He also underwent about nine months of physical therapy. The therapy was typically rendered three times a week.

Dolan claimed that his left shoulder, his right hip and his right leg remain painful, that he retains a limp that causes lumbar pain, and that his residual effects hinder his ambulation and limit his tolerance of long walks. He also claimed that his residual effects diminish his enjoyment of one of his favorite recreational activities: golfing. Dolan's expert orthopedist opined that Dolan's left shoulder may have developed a tear of a ligament, and he contended that the injury may necessitate surgery. The expert also opined that Dolan's lumbar pain may necessitate administration of a painkilling injection.

Dolan sought recovery of \$900,000 for past pain and suffering, and he sought recovery of \$600,000 for future pain and suffering.

The defense's expert orthopedist contended that Dolan's right hip had previously developed degenerative damage that inevitably would have necessitated replacement of the hip. The expert also opined that Dolan achieved a great recovery and does not suffer ongoing limitations.

**Result:** The jury found that 251 West 51 Hospitality was liable for the accident. It determined that Dolan's damages totaled \$1 million.

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